

**IN THE MATTER OF A HEARING OF A HEARING TRIBUNAL
OF THE COLLEGE OF CHIROPRACTORS OF ALBERTA**

**pursuant to *THE HEALTH PROFESSIONS ACT*,
being Chapter H-7 of the Revised Statutes of
Alberta**

Regarding the conduct of Dr. Curtis Wall

**WRITTEN SUBMISSIONS OF THE COMPLAINTS DIRECTOR OF THE
COLLEGE OF CHIROPRACTORS OF ALBERTA
REGARDING PENALTY**

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I. INTRODUCTION

1. Following a virtual hearing held on September 1, 2, 7 and 8, 2021, November 16 and 20, 2021, January 28 and 29, 2022, February 25, 2022, April 12, 2022 and June 16 and 17, 2022, a Hearing Tribunal (the "Hearing Tribunal") of the College of Chiropractors of Alberta (the "College") found Dr. Curtis Wall ("Dr. Wall") guilty of unprofessional conduct concerning all five of the charges brought before the Hearing Tribunal. These charges stated:

1. *Beginning on or about June of 2020 and at the "Wall Chiropractic Clinic" (the "Clinic") Dr. Wall:*
 - a. *Failed to use Personal Protective Equipment, specifically he failed to wear a mask;*
 - b. *Failed to observe the required two metres of social distancing when unmasked;*
 - c. *Until on or about December of 2020, failed to have a plexiglass barrier at the Clinic reception; and/or*
 - d. *Did not require patients to be masked;*

when interacting with patients, members of the public or both.

2. *Beginning on or about June of 2020 and at the Clinic, one or more staff members of the Clinic (the "Staff"):*
 - a. *Failed to use Personal Protective Equipment, specifically Staff failed to wear masks;*
 - b. *Failed to observe the required two metres of social distancing when unmasked; and;*
 - c. *Did not require patients to be masked*

when they interacted with patients, members of the public or both.

3. *Beginning on or about June of 2020, Dr. Wall treated patients while not wearing a mask and/or did not require patients to be masked and:*
 - a. *He did not advise patients of the increased risk of transmission of COVID-19 due to masks not being worn;*
 - b. *He advised patients that masks were not required; and/or*
 - c. *He advised patients that wearing masks had no effect concerning transmission of COVID-19.*

4. *Beginning on or about June of 2020, Dr. Wall failed to chart and/or failed to properly chart communications with his patients about:*

- a. *Him not wearing a mask;*
- b. *His Staff not wearing masks; and/or*
- c. *His patients not wearing masks.*

5. *Beginning on or about June of 2020, Dr. Wall and/or the Staff:*

- a. *Failed to follow the Chief Medical Officer of Health Orders regarding masking and COVID-19; and/or*
- b. *Failed to follow the ACAC "Pandemic Practice Directive".*

IT IS FURTHER ALLEGED that the conduct described above constitutes unprofessional conduct as defined in s. 1(1)(pp) of the Health Professions Act, and/or constitutes a contravention of one or more of the following (in force at the relevant time): Chief Medical Officer of Health Orders, ACAC "Pandemic Practice Directive", Alberta Health Services directions and requirements, ACAC Standards of Practice 1.2(a), (i), (j), and/or (k), 4.3, 5.1, and ACAC Code of Ethics Principle #2, Principle #4, A-1, B-1, C-1, and D-1.

- 2. The Hearing Tribunal's findings were set out in a written decision dated January 27, 2023 (the "Findings Decision").
- 3. Having found the above noted charges proven, the Hearing Tribunal requested that the parties provide written submissions regarding penalties.
- 4. These are the submissions of the Complaints Director regarding penalty.

II. THE HEARING TRIBUNAL'S PENALTY ORDER AUTHORITY UNDER THE HEALTH PROFESSIONS ACT

5. Section 82 of the *Health Professions Act* ("HPA") establishes three types of orders that a Hearing Tribunal may make after finding that a regulated member's conduct constitutes unprofessional conduct: general orders, costs orders and fines orders.

(a) General Orders: Sections 82(1)(a) to (i) and 82(1)(l)

6. Sections 82(1)(a) to (i) and (l) allow a Hearing Tribunal to make the following general orders:

82(1) If the hearing tribunal decides that the conduct of an investigated person constitutes unprofessional conduct, the hearing tribunal may make one or more of the following orders:

- (a) caution the investigated person;
- (b) reprimand the investigated person;
- (c) impose conditions on the investigated person's practice permit generally or in any area of the practice of the regulated profession, including conditions that the investigated person
 - (i) practise under supervision,
 - (ii) practise with one or more other regulated members,
 - (iii) not practise in an area of the practice of the regulated profession until the investigated person has successfully completed a specific course of studies or obtained supervised practical experience of a type described in the order,
 - (iv) not practise in an area of the regulated profession, or
 - (v) report on specific matters to the hearing tribunal, council, committee or individual specified in the order;
- (d) direct the investigated person to satisfy the hearing tribunal, committee or individual specified in the order that the investigated person is not incapacitated and suspend the investigated person's practice permit until the hearing tribunal, committee or individual is so satisfied;
- (e) require the investigated person to undertake counselling or a treatment program that in its opinion is appropriate;
- (f) direct that within the time set by the order the investigated person must pass a specific course of study, obtain supervised practical experience of a type described in the order or satisfy the hearing tribunal, committee or individual specified in the order as to the investigated person's competence generally or in an area of the practice of the regulated profession;
- (g) subject to subsection (1.1), suspend the practice permit of the investigated person for a stated period or until
 - (i) the investigated person has successfully completed a specific course of studies or obtained supervised practical experience of a type described in the order, or
 - (ii) the hearing tribunal or a committee or individual specified in the order is satisfied as to the competence of the investigated person generally or in a specified area of the practice of the regulated profession;
- (h) subject to subsection (1.1), cancel the registration and practice permit of the investigated person;
- (i) if, in the opinion of the hearing tribunal, the investigated person's fees for professional services were improper or inappropriate or the professional services that the investigated person provided were improperly rendered or required the complainant to undergo remedial treatment, the hearing tribunal may direct the investigated person to waive, reduce or repay the fee for professional services provided by the investigated person;
- (l) any order that the hearing tribunal considers appropriate for the protection of the public.

[Authorities, TAB 1]

7. As well, in terms of publication orders, the College has established a Bylaw requiring publication of hearing tribunal and appeal findings decisions (including the name of the regulated member). Specifically, pursuant to College Bylaw 9.1, if the proven unprofessional conduct does not relate to sexual abuse or sexual misconduct, the information and the regulated member's name is posted on the College's website for 10 years.

[Authorities, TAB 2]

(b) Costs Orders: Section 82(1)(j)

8. Pursuant to section 82(1)(j) of the HPA, a Hearing Tribunal may make costs orders as follows:

82(1)(j) direct, subject to any regulations under section 134(a), that the investigated person pay within the time set in the order all or part of the expenses of, costs of and fees related to the investigation or hearing or both, including but not restricted to

- (i) the expenses of an expert who assessed and provided a written report on the subject-matter of the complaint,
- (ii) legal expenses and legal fees for legal services provided to the college, complaints director and hearing tribunal,
- (iii) travelling expenses and a daily allowance, as determined by the council, for the complaints director, the investigator and the members of the hearing tribunal who are not public members,
- (iv) witness fees, expert witness fees and expenses of witnesses and expert witnesses,
- (v) the costs of creating a record of the proceedings and transcripts and of serving notices and documents, and
- (vi) any other expenses of the college directly attributable to the investigation or hearing or both;

[Authorities, TAB 3]

(c) Fines Orders: Section 82(1)(k)

9. Section 82(1)(k) of the HPA allows a Hearing Tribunal to make fines orders. It states:

82(1)(k) direct that the investigated person pay to the college within the time set in the order a fine not exceeding the amount set out in the column of the unprofessional conduct fines table that is specified for the college in a schedule to this Act for each finding of unprofessional conduct or the aggregate amount set out in that column for all of the findings arising out of the hearing;

[Authorities, TAB 4]

10. For the purposes of section 82(1)(k), the three column “table” in section 158 of the HPA states the following:

Unprofessional conduct fines table

158 For the purposes of this Act, the unprofessional conduct fines table is the following:

Unprofessional Conduct Fines Table

The following columns of maximum fines apply to proceedings under Part 4:

	Column 1	Column 2	Column 3
maximum fine for each finding of unprofessional conduct	\$1000	\$5000	\$10 000
maximum aggregate fine for all findings of unprofessional conduct arising out of a hearing	\$5000	\$25 000	\$50 000

[Authorities, TAB 5]

11. As well, section 4 of the Chiropractor Schedule to the HPA states that column 3 of the table applies to the chiropractic profession.

[Authorities, TAB 6]

III. PENALTY ORDERS SOUGHT BY THE COMPLAINTS DIRECTOR

12. For the reasons that follow and in light of the findings of unprofessional conduct made by the Hearing Tribunal, the Complaints Director requests that the Hearing Tribunal impose the following penalty orders:

1. Dr. Wall shall pay fines as follows:
 - (a) Fine for Charge 1- \$5,000.00
 - (b) Fine for Charge 2- \$5,000.00
 - (c) Fine for Charge 3- \$5,000.00
 - (d) Fine for Charge 4- \$1,000.00
 - (e) Fine for Charge 5- \$10,000.00

Total amount of fines: \$26,000.00 (collectively the “Fines”).

2. The Fines are payable in equal monthly instalments over a period of five (5) years from the date of the Hearing Tribunal’s written penalty decision provided that if Dr. Wall fails to make an instalment payment then the Registrar of the College shall immediately and without the necessity of any further steps suspend Dr. Wall’s practice permit until the balance of the Fines are paid in full.

3. Dr. Wall shall pay thirty (30%) percent of the costs of the investigation and hearing (the "Costs"). The Costs are payable in equal monthly instalments over a period from five (5) years of the date of the Hearing Tribunal's written penalty decision provided that if Dr. Wall fails to make an instalment payment then the Registrar of the College shall immediately and without the necessity of any further steps suspend Dr. Wall's practice permit until the balance of the Costs are paid in full.
4. Dr. Wall's practice permit will be suspended for a period of three (3) months provided that the commencement date for the suspension shall occur at the discretion of the Complaints Director after reasonable consultation with Dr. Wall regarding patient continuity matters. In any event the three (3) month suspension shall occur within six (6) months of the date of the Hearing Tribunal's written penalty decision.
5. The Findings Decision and the Hearing Tribunal's decision regarding penalties will be published with Dr. Wall's name. Publication will be by posting both decisions on the College website for ten (10) years from the date of the Hearing Tribunal's written penalty decision.

IV. SELF-REGULATION CONSIDERATIONS

13. Before considering the penalty order factors established by the Courts which are mentioned later in this decision, some background comments about self-regulation are important.

(a) The Health Professions Act and Self Regulation

14. This hearing and the proven charges focus on Dr. Wall's obligations as a professional to comply with the requirements of his regulatory body, including the College's Pandemic Directive. This is founded on the College's overarching and paramount public protection duty to ensure that chiropractors are practicing safely, competently and ethically and that patients are not at risk of harm.
15. That is reflected in Section 3 of the HPA which sets out the College's mandatory public protection role. Section 3 states:

3(1) A college

(a) must carry out its activities and govern its regulated members in a manner that protects and serves the public interest,

(b) must provide direction to and regulate the practice of the regulated profession by its regulated members,

(c) must establish, maintain and enforce standards for registration and of continuing competence and standards of practice of the regulated profession,

(d) must establish, maintain and enforce a code of ethics,

(e) carry on the activities of the college and perform other duties and functions by the exercise of the powers conferred by this Act, and

(f) may approve programs of study and education courses for the purposes of registration requirements.

[Authorities, TAB 7]

Importantly, use of the term “must” establishes that these are mandatory duties to be carried out by the College.

(b) Case Law and the Meaning of Section 3 of the HPA

16. There is extensive case law reinforcing the public protection mandate of the College. Importantly, the Alberta Court of Appeal made the following comments in *Zuk v. Alberta Dental Association and College*, 2018 ABCA 270:

[94] The statutory mandate of ADA+C, found at s 3 of the *HPA*, is: to govern the profession in a manner that protects and serves the public interest; to regulate the practice of dentistry; and to set standards of competence and practice. **In short, ADA+C’s mandate includes ensuring competence and appropriate standards of professional conduct. This statutory objective is pressing and substantial and of great importance.** ADA+C’s mandate is reflected in the five fundamental principles adopted by the profession in its *Code* (in place at the time of these events): patient autonomy and informed choice; do no harm; beneficence; competence; and veracity.

[123] Dr. Zuk’s argument is premised on the Findings Decision of *Sobeys West Inc v Alberta College of Pharmacists*, 2016 ABQB 232, 38 Alta LR (6th) 144, overturned by this Court after Dr. Zuk filed his factum: *Alberta College of Pharmacists v Sobeys West Inc*, 2017 ABCA 306, [2017] AJ No 976 [*Sobeys West*]. **In *Sobeys West*, this Court confirmed that s 3(1) of the *HPA* grants ADA+C the authority to not only protect the public from demonstrable harm, but also to ensure high ethical standards and professionalism, and foster an environment in which the dentistry profession can most effectively serve the public: *Sobeys West* at paragraphs 9, 77.** [Emphasis added.]

[Authorities, TAB 8]

17. As well, other cases emphasize the importance of self-regulation and the privilege of practicing in a profession.
18. Alberta’s highest Court has held that self-regulation is based on the legitimate expectation of both the government and public that members of a profession who are found guilty of conduct deserving of sanction will be regulated – and disciplined – by the profession’s statutorily prescribed regulatory bodies (*Adams v. Law Society of Alberta*, 2000 ABCA 240 (*Adams*) at paragraph 6).

[Authorities, TAB 9]

19. The purpose of ordering penalties in the professional regulatory context is to ensure that the public is protected from unprofessional conduct and to maintain the integrity of the profession.
20. These goals are achieved by ensuring the public is not at risk of harm as a result of continuing conduct by the member, by ensuring that the public has confidence in the profession, and by sending an appropriate message to other members of the profession regarding conduct that is found to be unacceptable.

(c) **The Jaswal Factors**

21. In the case of *Jaswal v. Newfoundland (Medical Board)*, 1996 CanLII 11630 at paragraph 35 (NL SCTD), the Newfoundland Trial Court provided a non-exhaustive list of factors that should be taken into consideration by a discipline tribunal in determining the appropriate penalty. Those factors are as follows:

- the nature and gravity of the proven allegations;
- the age and experience of the offending member;
- the previous character of the member and in particular the presence or absence of any prior complaints or convictions;
- the age and mental condition of the offended client(s);
- the number of times the offence was proven to have occurred;
- the role of the member in acknowledging what has occurred;
- whether the member has already suffered other serious financial or other penalties as a result of the allegations having been made;
- the impact of the incident on the offended patient;
- the presence or absence of any mitigating circumstances;
- the need to promote specific and general deterrence and, thereby, to protect the public and ensure the safe and proper practice of the profession;
- the need to maintain the public's confidence in the integrity of the profession;
- the degree to which the offensive conduct that was found to have occurred was clearly regarded, by consensus, as being the type of conduct that would fall outside the range of permitted conduct; and
- the range of sentences in similar cases.

[Authorities, TAB 10]

(d) **Ungovernability: General Principles**

22. In addition to the *Jaswal* penalty factors, given the nature of the unprofessional conduct that Dr. Wall committed and given the Hearing Tribunal's finding that Dr. Wall "clearly demonstrated ungovernability" (see page 83 of the Findings Decision), it is necessary to consider ungovernability principles in terms of penalty orders. Importantly, a finding of ungovernability is not a charge. Instead, it is a finding of fact that, in this case, has been made by the Hearing Tribunal.

23. The *Ontario (College of Physicians and Surgeons of Ontario) v. Savic*, 2019 ONCPSD 40, case contains the following statement on page 22 in the “Governability” part of their Findings Decision:

“Ungovernability speaks to a pattern of conduct that demonstrates that the member is unprepared to recognize his or her professional obligations and the regulator’s role. The privilege of professional regulation depends on members’ willingness to be governed in the public interest and to abide by the directions of the College.”

[Authorities, TAB 11]

24. In *Law Society of Upper Canada v. Paul William Slocombe*, 2012 ONLSHP 22, the following statement appears at paragraph 28:

“Without compliance, the Law Society is unable to fulfill its role of protecting the public.”

[Authorities, TAB 12]

25. The test for ungovernability has also been articulated by the Courts in this way:

A professional person will be considered “ungovernable” if the nature, duration and repetitive character of the person’s misconduct demonstrates an inability on the part of that person to respond appropriately to the authorities who are authorized to regulate the individual’s professional activities.

Ahluwalia v College of Physicians and Surgeons (Man), 2017 MBCA 15 at paragraph 44

[Authorities, TAB 13]

Given the specific factual circumstances in this matter, the Complaints Director submits that the reference in *Ahluwalia* to “the authorities who are authorized to regulate the individual’s professional activities” applies not only to the College but also to the Chief Medical Officer of Health and the various CMOH Orders (the “CMOH Orders”) that were issued and legally bound Dr. Wall.

Similarly the “authorities” must also include the Government of Alberta who issued the direction entitled “Alberta’s Safely Staged Covid-19 Relaunch” which was Exhibit “F-1” in this hearing (the “Relaunch Document”). The Relaunch Document expressly stated that chiropractors such as Dr. Wall could only resume provision of professional services starting May 1, 2020 if they followed guidelines established by their respective HPA professional colleges.

26. The principles in *Ahluwalia* are in keeping with Alberta law, where it has been established that a professional is ungovernable if he fails to accept the authority of the professional organization or acts as though he is not bound by rules and standards of the profession. *Alsaadi v Alberta College of Pharmacy*, 2021 ABCA 313 at paragraph 68.

[Authorities, TAB 14]

27. Consequently, if a member of a profession refuses to be governed by the body that exists to regulate the profession, the profession is then not able to govern itself. As well, if a member of the regulated profession is not willing to be regulated, the public's confidence in the profession and protection of the public is in jeopardy (*College of Physicians and Surgeons of Saskatchewan v. Ali*, 2016 SKQB 42 at paragraphs 20, 73 and 75).

[Authorities, TAB 15]

28. Serious sanctions are the outcome in cases of ungovernability since the guiding principle is the public interest. Members of a profession must be willing to be governed by the regulatory body and to adhere to its requirements. Otherwise, the public cannot be protected (*Ali* at paragraph 20).

V. **APPLICATION OF THE PENALTY ORDER FACTORS: THE HEARING TRIBUNAL'S FINDINGS DECISION**

29. Before providing comments in relation to specific penalty factors, it is necessary to review portions of the Findings Decision and the Hearing Tribunal's findings and conclusions regarding Dr. Wall's unprofessional conduct.

(a) Generally

- "Dr. Wall is also not challenging the authority of the College to create policies in order to satisfy the requirements set out in the *Health Professions Act*, and he has acknowledged that he is bound by the College's Rules and Standards of Practice." [Page 67]

(b) The College's Authority and Practicing is a Privilege

- "Dr. Wall has also acknowledged the authority of the College to create the Pandemic Directive in satisfaction of the requirements set out in the Health Professions Act. Dr. Wall is not challenging the College's motivation and reasonableness when it created and established that directive.

Dr. Wall has agreed that practicing as a chiropractor is a privilege, not a right. He has also acknowledged that he is bound by the College's rules." [Page 68]

- "In *Mussani v. College of Physicians and Surgeons of Ontario*, the Ontario Court of Appeal clearly stated that:

"the weight of authority is that there is no constitutional right to practice a profession unfettered by the applicable rules and standards which regulate that profession".

This principle was accepted and reinforced in *Tanase v. College of Dental Hygienists of Ontario*," [Page 68]

- "It has been made very clear by the Courts that regulated professionals have an obligation to follow the rules and regulations instituted by their governing bodies. Failure to do so will result in punishment and sanctions." [Page 69]

(c) Dr. Wall's Actions: Generally

- “Dr. Wall admitted that he initially complied with the Pandemic Directive and did wear a mask when treating his patients.
- He then self-diagnosed a mental disability and stopped wearing either a mask or face shield. His failure to wear a mask was directly contrary to the Pandemic Directive issued by the College, and also directly contrary to the then current CMOH Order, as neither the Pandemic Directive nor the CMOH Order provided for any exemptions for mask wearing.” [Page 69]

(d) Dr. Wall's Failure to Advise or Provide an Explanation

- “Dr. Wall failed to advise the College that he was not complying with the requirements of the College's Pandemic Directive. He also did not provide any explanation as to why he did not immediately obtain a Doctor's note confirming his self-diagnosed mental condition.
- When Dr. Wall initially spoke to Dr. Halowski on December 2, 2020, he did not indicate that he had any Medical disability, nor did he request any accommodation.” [Page 69]

(e) Dr. Wall's Unilateral Decision and “Open Defiance” are Very Concerning

- “It is evident that Dr. Wall made a unilateral decision to stop wearing a mask contrary to the express requirements of both the Pandemic Directive and the CMOH Order. This is very concerning. We can come to no other conclusion but that Dr. Wall had unilaterally decided to practice contrary to the express requirements of both the Pandemic Directive and the CMOH Order. He did so deliberately, and was either willfully blind or deliberately ignorant of his obligations.” [Page 70]
- “Dr. Wall's comments about his personal beliefs regarding the spread of COVID-19 and the health impacts of contracting COVID-19 support the conclusion that Dr. Wall operated in open defiance of the Pandemic Directive.” [Page 74]

(f) Issues Regarding the Timing of the Medical Note

- “It is also concerning that the first medical note provided was only obtained after the College contacted him and requested one.” [Page 70]

(g) Issues Regarding the Religious Exemption Defence

- “Dr. Wall also made a claim for a religious exemption for not wearing a mask...However, he made no requests for religious exemption during the period of June 2020 to early December 2020. He also made no mention of any religious beliefs when he first spoke to the College in December of 2020. Based upon his evidence of his deep faith, one would have expected that Dr. Wall would have made such a claim at that time, if not earlier. [Page 70] Instead, the religious exemption claim was only made via his legal counsel in response to the College's request...” [Page 71]

- “He admits that he made no mention of any religious exemption in either of the discussions he had with Dr. Halowski or Mr. Lawrence.” [Page 71]
- (h) Dr. Wall Knowingly and Continually Disobeyed the Pandemic Directive and Provided No Explanation to the College
- “We find that Dr. Wall knowingly and continually disobeyed the Pandemic Directive based on his own personal beliefs that COVID-19 was not as harmful as the authorities said it was. He has provided no explanation as to why he failed to contact the College once he self-diagnosed his medical disability.... he failed to invoke any religious exemption request until after his clinic was shut down and did so only when his counsel responded to the College in mid-December, 2020.” [Page 71]
- (i) The College Did Accommodate Dr. Wall
- “When the College did become aware of the request for the exemptions they accommodated him by permitting him to practice pursuant to the terms of the January 25, 2021 AHS rescind notice. That rescind notice was issued in conjunction with a letter from Dr. Linford of the College dated December 18, 2020 where the following express conditions were placed upon Dr. Wall: ...” [Page 72]
- (j) Dr. Wall Never Appealed the AHS Closure Order or the s.65 Interim Orders
- “Dr. Wall at no time challenged the closure order, and at no time appealed any of these conditions.” [Page 73]
- (k) Dr. Wall’s Human Rights Defence Failed
- “It is well-established that a requirement may be imposed on an individual even if, on the face of it, the requirement appears to be discriminatory. This is known as a bona fide occupational requirement. In order for the College to be successful in arguing that the Pandemic Directive is a bona fide occupational requirement, they must satisfy the three part test that is set out in the Supreme Court of Canada Meiorin decision.” [Pages 73 to 74]
 - “It is also difficult to conceive that the College ought to be responsible for accommodating Dr. Wall for the period of June-December, 2020, when he at no time requested any accommodation.” [Page 74]
 - “While we have difficulty with Dr. Wall’s conduct in the manner of defying the Pandemic Directive, and his failure to claim his medical and religious exemptions until after a complaint was received by the College, it is not necessary for us to delve deeply in to the validity of these exemption claims given the conclusion arising from our analysis of the *Meiorin* decision.”
- (l) The Meorin Test Was Not Met
- “*Meiorin* established a three part test when determining whether or not an imposed standard is a bona fide occupational requirement (BFOR). In *Meiorin* the...” [Page 74]

- Dr. Wall has expressly conceded steps one and two of the analysis. What is at issue is whether the College is able to establish that the pandemic directive was reasonably necessary to accomplish a legitimate work related purpose, and that it was impossible to accommodate Dr. Wall without experiencing undue hardship. *Meiorin* has established that the concept of undue hardship means that some hardship is acceptable. In order to satisfy the test the College must show that the hardship is “undue”. Undue hardship is an amorphous concept, and must be considered in the context of each individual case it is applied to.

The Supreme Court in *Meiorin* provides useful commentary with respect to the application of this third step: ...

The various factors are not entrenched, except to the extent that they are expressly included or excluded by statute. In all cases, as Cory J. noted in Chambly, supra, at p. 546, such considerations “should be applied with common sense and flexibility in the context of the factual situation presented in each case”. [Page 75]

- ***“Employers, courts and tribunals should be innovative yet practical when considering how this may best be done in particular circumstances.***

... it may often be useful as a practical matter to consider... or alternatively the employer’s reasons for not offering any such standard: ...” [Page 76]

- ***“Conversely, if the general purpose of the standard is rationally connected to the performance of the particular job, the particular standard was imposed with an honest, good faith belief in its necessity, and its application in its existing form is reasonably necessary for the employer to accomplish its legitimate purpose without experiencing undue hardship, the standard is a BFOR. If all of these criteria are established, the employer has brought itself within an exception to the general prohibition of discrimination.”*** [Page 76]

(m) The College was Facing an Unprecedented and Chaotic Situation

- “The situation facing the College in the spring of 2020 was entirely unprecedented. A worldwide pandemic was under way. In this case, in order to assess the existence of undue hardship we must consider the particular facts at play at that time. In the Spring of 2020 the SARS COVID-2 virus and COVID-19 had been declared a pandemic. Countries around the world were wrestling with how to contain its spread. There was uncertainty as to the manner and nature of its spread, and as to its infection fatality rate.” [Pages 76 to 77]
- “The Province of Alberta, along with many other jurisdictions, imposed various lockdowns. Entire industries were shuttered, and Governments around the world issued trillions of dollars of relief and subsidizing payments. It was a chaotic and unpredictable time.” [Page 77]

(n) Practice of Chiropractic was Shut Down Throughout Alberta

- “One of the many professions impacted by the lockdowns involved the practice of chiropractic. That practice was completely shut down, throwing all Alberta Chiropractors into a period of uncertainty. It was only following the issuance of CMOH Order 16-2020 that chiropractors were able to practice. That CMOH Order required that as a condition of reopening the College was required to publish COVID-19 guidelines applicable to their profession. CMOH Order 16-2020 required guidelines for masking, social distancing and the installation of plexiglass barriers. The objective was to prevent transmission of infection.” [Page 77]

(o) The College’s Positive Obligation

- “The College had a positive obligation to either support or create mandatory mask wearing by its members. This was a legal obligation, and one which must be carefully considered in counterbalance to Dr. Wall’s individual rights. CMOH Order 16-2020 stated that: ... There is no question that the College was obligated to follow the Workplace Guidance For Community Health Care Settings or implement equivalent requirements.” [Pages 77 to 78]

(p) The College Acted Reasonably Pursuant to its Legal Obligations

- “In the circumstances it is very clear that the College acted reasonably in invoking the mandatory masking requirement. There is also no question that the pandemic directive was rationally connected to the practice of chiropractic and imposed with honest and good faith belief in its necessity. It was also reasonably necessary in order to have the College have its members return to work. If the College refused to implement the mandatory Workplace Guidance For Community Health Care Settings its members would have been unable to return to work. The College clearly had a legal obligation to comply with CMOH Order 16-20. That is a significant consideration in this matter. Had the College not complied and allowed Dr. Wall to practice without wearing a mask they would have been in breach of that Order.” [Page 78]

(q) Undue Hardship Did Not Occur

- “The only issue to be addressed is whether Dr. Wall is able to successfully argue that there would not be undue hardship to the College if it accommodated his claimed medical and religious disabilities. Fortunately, the issue of reasonable accommodation for people claiming exemption from masking has been directly addressed by the *Human Rights Commission*, both on their website and in a number of decisions of the Chief Commissioner.” [Page 78]
- In all instances the Commission found that the masking requirement was rationally connected to a legitimate business purpose, adopted in good faith, and that it was not possible to accommodate the complainant without incurring undue hardship.

While each of the above cases involve fact scenarios that differ from the one before this Tribunal, they are illustrative of the approach and considerations of the Alberta Human Rights Commission, and establish that organizations are able to establish and maintain mandatory masking requirements without running afoul of the Alberta Human Rights Act.” [Page 79]

(r) No BFOR

- “Dr. Wall argues that masks cannot be a BFOR as the evidence establishes that masks are ineffective and do little or nothing to protect the public from transmission of COVID-19.” [Page 79]
- “Dr. Wall further argues that there cannot be a bona fide occupational requirement for masking, as the evidence produced at the hearing establishes that masks are entirely ineffective. While there was conflicting evidence as to the efficacy of masking there is no doubt that masks have some ability to reduce or minimize transmission and do prevent droplet transmission from symptomatic people. While the evidence is admittedly contradictory, we find Dr. Hu’s evidence compelling. Not only was he directly involved with the Government of Alberta’s COVID response.” [Page 81]
- “While we do not dispute that there are differences of opinion amongst the experts as to the nature of the spread of the virus and the effectiveness of masks in controlling that speed, where there are contradictions in the evidence we prefer the evidence of Dr. Hu. As a result, we find that to the extent that the Pandemic Directive may have conflicted with any applicable Human Rights Legislation, that conflict is justified as a bona fide occupational requirement.” [Page 82]

(s) The Focus Should be on Regulatory Compliance

- “In reviewing that evidence, the Hearing Tribunal agrees with the College’s submission that we should be focused on regulatory compliance and not the efficacy of masking. It is very telling that, notwithstanding whatever beliefs or positions Dr. Wall’s experts have on the efficacy of masking, each and every one of the experts called by Dr. Wall acknowledged in cross examination that they either have, or would have, complied with a mandatory masking requirement. By doing so, they have demonstrated that they recognized the obligation to be bound by mandated requirements notwithstanding their beliefs on masking efficacy.” [Page 80]

(t) Ungovernability

- “The College has also raised the principle of ungovernability that arises when members fail to respect their regulatory body...

There is no doubt that Dr. Wall failed to contact the College when he decided to unilaterally stop wearing a mask. It is also apparent from the facts that Dr. Wall showed no intention of ever contacting the College; he stated that he viewed his claimed medical disability as an issue between him and his physician. The only reason the College became aware that Dr. Wall was not following the Pandemic Directive was a result of a patient complaining to AHS, who then contacted the College. Dr. Wall did not provide

any independent medical evidence of any disability until after the complaint was filed and after he had been contacted by the College.” [Page 82]

- “We are satisfied that Dr. Wall intended to defy the Pandemic Directive requirements issued by the College. In doing so, he has clearly demonstrated ungovernability.” [Page 83]

(u) Dr. Wall Breached His Fiduciary Obligation as a Professional

- “It is clear to the Hearing Tribunal that it was Dr. Wall who was required to contact the College. He failed to make any effort to advise the College that he was operating offside the Pandemic Directive. As a member of the College he had a fiduciary responsibility to the College to advise them of his actions. He failed or neglected to do so. This is unacceptable. These actions speak loudly to his ungovernability.” [Page 83]

(v) No Weight on Patient Testimony

- “The College has also asked us to place no weight on the evidence of Dr. Wall’s patients. We agree. Their opinions and perspectives have no bearing whatsoever on this matter and their evidence is of little or no use to this Tribunal.” [Page 83]

(w) Dr. Wall’s Charter Defence Failed

- “Dr. Wall argues that charges 3(a) and 3(c) are an unjustified limitation of his right to freedom of expression. He maintains that he was telling his patients the truth about masks and that as a result he could not have contravened the College’s Standards of Practice or the *Health Professions Act*.” [Page 84]
- “The facts before us are very different. As evidenced by the testimony of the various experts produced by the parties, there is no common ground as to the efficacy of masking. While we have no doubt that Dr. Wall does not believe that masks are effective, and while he is certainly entitled to that view and is free to not wear a mask in his personal life, he remains a regulated professional and must comply with the College’s requirements. When the College makes a reasonably grounded requirement, based on sound scientific evidence it is not for Dr. Wall to unilaterally determine they are incorrect. His failure to advise patients of the increased risk of transmission when masks are not worn and his advising patients that masks have no effect on the transmission of COVID-19 was improper. Dr. Wall was also not presenting a balanced view on masking.” [Pages 84 and 85]
- “The Courts have firmly established that “the right to freedom of expression is not absolute and limitations of expression may be justified under section 1.” [Page 85]
- “To the extent that there were any violations of Dr. Wall’s Charter Rights, those rights are subject to the provision of Section 1 of the Charter. In the circumstances of the pandemic it was reasonable for the College to implement the restriction that it did.” [Page 88]

VI. APPLICATION OF THE PENALTY ORDER FACTORS: THE COMPLAINTS DIRECTOR'S SUBMISSIONS

30. The factors that the Complaints Director submits are relevant with respect to the proposed penalty orders are outlined in the following paragraphs.

31. There are different considerations that apply when considering whether to order costs, and if so, in what amount. Accordingly, the orders sought for costs are addressed separately in Parts VII and VIII of these written submissions.

(a) The Nature and Gravity of the Proven Allegations: Charges

32. The deliberate, secretive and prolonged nature of Dr. Wall's unprofessional conduct is a paramount consideration. Dr. Wall is guilty of a pattern of extremely troubling conduct which is a clear departure from the core principles of the chiropractic profession and each chiropractor's professional obligations to patients, their regulatory body, the Alberta Government (including the CMOH) and the public.

33. The nature and gravity factor for each of the proven charges will be discussed separately in these written submissions and is a decidedly aggravating factor in terms of penalty orders.

(b) The Age and Experience of Dr. Wall

34. Dr. Wall has been a regulated member of the College since 1996. This is not a case where the allegations have been made against a new member of the profession. With his level of experience, Dr. Wall should have been well aware of his fiduciary obligation to communicate with the College about his religious objections, his self-diagnosis, a request for an exemption and, in general, his non-compliance with the Pandemic Directive. The conduct that Dr. Wall engaged in was inappropriate for any chiropractor of any age or experience. This is an aggravating factor.

(c) The Presence or Absence of any Prior Complaints or Convictions

35. Dr. Wall had no discipline history with the College before these proceedings. That is a mitigating factor.

(d) The Age and Mental Condition of the Affected Individuals

36. See the comments below regarding the "Impact of the Incident on Patients".

(e) The Number of Times the Offence Occurred

37. Dr. Wall's actions of unprofessional conduct by deliberately and secretly failing to comply with the CMOH Orders, the Pandemic Directive and the Government of Alberta's Relaunch Document occurred repeatedly and over an extended period of time. This is an aggravating factor justifying more serious penalties.

(f) The Role of Dr. Wall in Acknowledging what Occurred

38. Dr. Wall has provided no acknowledgement of responsibility and has shown no remorse for his actions. Dr. Wall raised various defences to the allegations (including scientific principles, religious

principles, Charter arguments and Human Rights Act arguments) but all of his defences were rejected by the Hearing Tribunal. Collectively, this is an aggravating factor.

(g) Whether Dr. Wall has Suffered Other Serious Financial or Other Penalties

39. There was no specific evidence before the Hearing Tribunal in this regard. However, as the result of Dr. Wall defying the Pandemic Directive and the CMOH Orders, Dr. Wall was able to continue to practice chiropractic and earn a livelihood in that regard. As well, even though Dr. Wall's clinic was subject to a closure order issued by the CMOH, he complied with the CMOH's orders for reopening his clinic and was also able to continue to earn a living as a chiropractor.

40. Also, the section 65 interim orders set out conditions on Dr. Wall's continued practice and there was no evidence before the Hearing Tribunal that Dr. Wall failed to comply with the section 65 conditions or closed his clinic.

41. In summary, Dr. Wall was able to continue to practice chiropractic with the exception of a very brief point in time where the CMOH mandated a closure of his clinic. Consequently, this is an aggravating factor but not a significant one.

(h) The Impact of the Incident on Patients

42. The precise effect on Dr. Wall's patients generally and on his staff for the failure to comply with the Pandemic Directive cannot be determined. However, there was compelling evidence from Dr. Hu (which was accepted by the Hearing Tribunal) of a clear increased risk of transmission of Covid-19 due to failure by healthcare providers to utilize masking and social distancing.

43. This is a significant aggravating factor.

(i) The Presence or Absence of any Mitigating Circumstances

44. There was no evidence before the Hearing Tribunal in this regard. This is neither an aggravating or mitigating factor.

(j) The Need to Promote Specific and General Deterrence

45. The penalty orders must make it abundantly clear to both Dr. Wall and other members of the chiropractic profession that his conduct was unacceptable. As the Hearing Tribunal expressly stated, practicing in a profession is a privilege and not a right and Dr. Wall openly defied his regulatory and legal obligations and breached his fiduciary duty as a professional.

(k) The Need to Maintain the Public's Confidence in the Chiropractic Profession

46. The penalty orders made by the Hearing Tribunal must clearly demonstrate to the public that the College takes these matters seriously. The penalties must convey a message to the public that the College is committed to carrying out its mandate under the HPA and to following the legally valid directions of the CMOH and the Government of Alberta.

(l) **The Degree to which the Unprofessional Conduct Falls Outside the Range of Permitted Conduct**

47. Consistent with the Findings Decision, Dr. Wall's conduct clearly falls outside the range of permitted conduct for members of this profession. The Complaints Director strongly submits that this is not a situation involving a "grey area" but is instead one that involves conduct which is unequivocally wrong, is inconsistent with the fundamental principles of self-regulation and was --- in terms of the CMOH Orders and the relaunch document --- illegal.

(m) **The Range of Sentences in Similar Cases**

48. There are no sufficiently similar cases to provide to the Hearing Tribunal.

(n) **Concluding Comments Regarding Penalty Orders**

49. The Complaints Director submits that the findings of unprofessional conduct and a determination of ungovernability justify imposition of very serious sanctions and penalties against Dr. Wall.

VII. FACTORS FOR DETERMINING COSTS ORDERS

(a) **General Principles**

50. In *Lysons v Alberta Land Surveyors' Association*, 2017 ABCA 7, the Alberta Court of Appeal commented on the inclusion of costs in professional disciplinary sanctions and stated at paragraph 13:

"Requiring the professional to pay all or a portion of hearing and investigation costs is a common part of professional disciplinary sanctions. It is not an error of principle to include in those costs the fees of counsel retained by the appeal panel and the Association."

[Authorities, TAB 16]

51. The rationale for this is that the discipline process is undertaken by the College as part of its public protection mandate to ensure that the public is being served by competent and ethical practitioners. Some of the costs of that process are properly borne by the member whose conduct has been found wanting. In *Hoff v. Alberta Pharmaceutical Association*, 1994 CanLII 8950 (AB QB) at paragraph 22, the Alberta Court of Queen's Bench said the following with respect to cost orders:

"As a member of the pharmacy profession the appellant enjoys many privileges. One of them is being part of a self-governing profession. Proceedings like this must be conducted by the respondent association as part of its public mandateto assure to the public competent and ethical pharmacists. Its costs in so doing may properly be borne by the member whose conduct is at issue and has been found wanting."

[Authorities, TAB 17]

52. In summary, a member of a profession is found guilty of unprofessional conduct, it is appropriate that he or she bears at least a portion of the costs. Otherwise, compliant members of the profession will have to "subsidize" those costs.

(b) **The *Jaswal* Factors Regarding Costs**

53. In *Jaswal*, at paragraph 50, the Court provided a non-exhaustive list of factors that are relevant in determining whether to exercise the discretion to order payment of all or part of the costs of the hearing, including:

- The degree of success, if any, of the member in resisting any or all of the charges;
- The necessity for calling all of the witnesses who gave evidence or for incurring other expenses associated with the hearing;
- Whether the persons presenting the case could reasonably have anticipated the result based on what they knew prior to the hearing;

(c) **The *Jinnah* Factors Regarding Costs: Generally**

54. In *Jinnah v. Alberta Dental Association and College*, 2022 ABCA 336, a relatively recent decision of the Alberta Court of Appeal, the Court established the following costs principles.

- **The Purpose of Costs in the *Health Profession Act* Is Full or Partial indemnification of the College in Appropriate Cases**

According to the Court of Appeal, costs are not meant to be punitive. Rather, their purpose is to indemnify the College partially or fully for expenses incurred in disciplinary proceedings (paragraph 127).

- **A Hearing Tribunal and an Appeal Board Must Justify a Findings Decision to Impose Costs**

The Court of Appeal held that costs should not be awarded in every case (paragraph 128). Therefore, the first question a College must ask is whether costs should be awarded at all (paragraph 130).

- **In determining whether costs are warranted, and if so, what amount, the College must consider the factors set out in *K.C. v. College of Physical Therapists of Alberta*, 1999 ABCA 253:**

- The degree of success or failure;
- The seriousness of the charges;
- The conduct of the parties; and
- The reasonableness of the amounts (including a consideration of what expenses should be included).

- **The College must provide clear and transparent reasons for a costs order (paragraph 154).**

- **The profession as a whole should bear the costs in most cases of unprofessional conduct (paragraph 145).** Therefore, the Court held that it is not appropriate to impose a significant costs award against a member unless there is a compelling reason to do so (paragraph 138).

[Authorities, TAB 18]

(d) **The Jinnah Factors Regarding Costs: Exceptions Allowing a Significant Costs Award**

55. As well, the *Jinnah* case described four scenarios which can rebut the presumption that the profession as a whole should bear the costs of discipline proceedings and constitute a compelling reason to impose a significant costs award:

- **The member engaged in serious unprofessional conduct.**

Serious unprofessional conduct includes sexual assault on a patient, fraud of an insurer, practicing while suspended, or practicing in a manner that constitutes a marked departure from the ordinary standard of care. Such conduct can justify the member being ordered to bear a substantial portion of or even all the costs associated with prosecuting the complaint (paragraph 141).

- **The member is a repeat offender.**

- **The member failed to cooperate with the investigation.**

- **The member prolonged the hearing process.**

If the member unnecessarily prolongs the process, they should then be expected to pay costs that completely or mostly indemnify the College for the unnecessary hearing expenses (paragraph 144).

56. Importantly, all four factors do not have to be satisfied in order for a significant costs order to be made. One or more criteria can justify a significant costs order.

VIII. APPLICATION OF THE COSTS ORDERS FACTORS

57. Attached as Appendix “A” is a statement of costs which provides a summary of the costs associated with the investigation and the hearing up to March 7, 2023 and includes an estimate of the costs associated with the June 7 and 8, 2023 penalty hearing.

58. The Complaints Director’s rationale for seeking payment of 30% of the costs of the investigation and hearing is discussed below.

(a) **Degree of success in resisting the charges**

59. The Complaints Director successfully proved all of the charges before the Hearing Tribunal. All of Dr. Wall’s defences were conclusively rejected by the Hearing Tribunal.

The Hearing Tribunal did not accept his scientific principles defence, his religious beliefs defence, his Alberta Human Rights defence or his Charter defence.

(b) **Necessity of calling all of the witnesses who gave evidence or for incurring other expenses associated with the hearing**

60. All of the Complaints Director’s witnesses (including an expert witness) who attended the hearing were required to testify to prove the charges.

(c) **Whether the persons presenting the case could reasonably have anticipated the result based on what they knew prior to the hearing**

61. As discussed above, the proven charges demonstrate a significant departure from the conduct expected of healthcare professionals.
62. Accordingly, the findings of unprofessional conduct made by the Hearing Tribunal could reasonably have been anticipated prior to the hearing. Among other things, deliberately, secretly and repeatedly breaching the College's Pandemic Directive is clearly unprofessional conduct on its face.
63. Dr. Wall's conduct and his failure to abide by well established professional obligations were the cause of the proceedings, proceedings in which serious findings of unprofessional conduct were made. There is no reason why the costs payable should be reduced beyond what is being sought by the Complaints Director.

(d) Whether Dr. Wall cooperated with respect to the investigation and offered to facilitate proof by admissions

64. Dr. Wall cooperated with the investigation. Under cross-examination, Dr. Wall made "admissions" concerning the facts relating to all 5 of the charges but at the same time advanced a robust and lengthy defence.

(e) Financial Circumstances of Dr. Wall and the degree to which his financial position has already been affected by other aspects of any penalty that has been imposed

65. There was no evidence before the Hearing Tribunal regarding this factor.

(f) Jinnah Analysis

66. Dr. Wall's unprofessional conduct unquestionably falls within three of the "exemptions" set out in *Jinnah* which allow for imposition of a significant costs order. In short, in these circumstances, there are ---to use the words of the Court of Appeal in *Jinnah* – "compelling reasons" to award significant costs against Dr. Wall.

(g) Jinnah Factor #1: Dr. Wall Engaged in Serious Unprofessional Conduct

67. For all of the reasons mentioned previously in these written submissions, Dr. Wall's conduct was a marked departure from his obligations as a regulated professional and unquestionably constitutes serious unprofessional conduct. Among other things:
- Dr. Wall's failure to follow his responsibilities as a professional strikes at the very foundation of self-regulation.
 - Practicing is a privilege and not a right.
 - Dr. Wall made a unilateral and secret decision to practice contrary to the express requirements of the Pandemic Directive and practiced illegally in that he was not complying with the applicable CMOH Orders and the Relaunch Document.
 - Dr. Wall provided "no explanation" as to why he did not contact the College once he self diagnosed his medical disability.

- Dr. Wall only provided a medical note after the College contact him and requested one.
- Dr. Wall admitted that he made no mention of any religious exemption or medical exemption in any of his discussions with the College's Registrar or prior Complaints Director.
- Dr. Wall breached his fiduciary responsibility as a professional by not contacting the College about his non-compliance and provided no explanation as to why he did not contact the College once he self diagnosed his medical disability.
- Dr. Wall "operated in open defiance of the Pandemic Director".
- Dr. Wall knowingly and continually disobeyed the Pandemic Directive, the applicable CMOH Order(s) and the Relaunch Document.
- Dr. Wall has clearly demonstrated ungovernability.

(h) Jinnah Factor #2: The Member is a Repeat Offender

68. The evidence was clear before the Hearing Tribunal that Dr. Wall's actions occurred over an extended period of time and displayed a consistent and ongoing breach of the Pandemic Directive, the CMOH Orders and the Relaunch Document. It is clear that:

- Dr. Wall is a "repeat offender" since there are five findings of unprofessional conduct occurring over a significant period of time.
- Dr. Wall is guilty of repeated and deliberate breaches of the Pandemic Directive, the applicable CMOH Orders and the Government of Alberta Relaunch Document, all of which occurred over an extended period of time. As the Hearing Tribunal noted, Dr. Wall acted in "open defiance" of those requirements.

(i) Jinnah Factor #4: The Member Prolonged the Hearing Process

69. As mentioned above, all of Dr. Wall's defences were conclusively rejected by the Hearing Tribunal.

70. As well, the presentation and extent of Dr. Wall's defence unnecessarily prolonged the hearing including as follows:

- Dr. Wall called four patients as lay witnesses. Quite properly, the Hearing Tribunal placed no weight on the testimony of those witnesses.
- Dr. Wall called four expert witnesses and conducted extremely lengthy direct examinations of all of those witnesses. Very significantly, the Hearing Tribunal preferred the evidence of Dr. Hu over all of the expert witnesses called by Dr. Wall.
- From a much broader perspective, it simply was not necessary for Dr. Wall to call four

expert witnesses (which the Complaints Director formally objected to).

- The Hearing Tribunal made express mention of the fact that all of Dr. Wall's expert witnesses candidly admitted that despite their opinions to the contrary they did follow masking, social distancing and similar Covid-19 restrictions.
- Dr. Wall's legal counsel conducted overly lengthy direct examinations of Dr. Wall's witnesses and overly lengthy cross examinations of the Complaints Director's witnesses.
- The Complaints Director's legal counsel consistently made comments during the liability phase of the hearing that his client was concerned about the nature and extent of Dr. Wall's defence and its impact on costs.

71. As well, the Complaints Director's legal counsel consistently made comments during the liability phase of the hearing that his client was concerned about the nature and extent of Dr. Wall's defence and its specific impact on costs.

(j) Concluding Remarks on Costs

72. Dr. Wall's decision to present the defence that he did was not a spur of the moment decision. Instead, it was made with the advice of experienced legal counsel. The only reasonable conclusion is that Dr. Wall knew of and accepted the risk of a significant adverse costs award against him.

Dr. Wall was entitled to present a defence of his choosing to the charges. However, in presenting the defence that he did he ran the risk of a significant costs award against him:

- if, as per *Jaswal* (and *Jinnah* when it adopted the *K.C. v. College of Physical Therapists of Alberta* decision), his defences were not accepted; and
- if, per *Jinnah*, his conduct fell within one or more of the exemptions which warrant a significant costs award.

That is exactly what occurred in this hearing.

73. The costs being sought are not insignificant. However, the position of the Complaints Director is consistent with the principles established by the Courts. Accordingly, the costs sought are appropriate given the circumstances.

74. The allegations against Dr. Wall were serious and were all proven. In all of the circumstances, it is appropriate for Dr. Wall to pay 30% of the costs of the investigation and hearing. Very importantly, the five (5) year time period for payment of the Fines and Costs is generous and fair.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 30TH DAY OF MAY, 2023.



Blair E. Maxton, K.C.

Stillman LLP

Counsel for the Complaints Director of the
College of Chiropractors of Alberta

APPENDIX "A"



STATEMENT OF COSTS

December 31, 2020 to March 7, 2023

Dr. Curtis Wall CCOA FILE #20-20

INVESTIGATION COSTS	
December 2020 to February 2021	\$5,003.54
TOTAL	\$5,003.54
HEARING COSTS	
Hearing 1	
September 1, 2, 7 & 8, 2021	
College Legal Fees (Stillman LLP)	\$82,322.54
1.3 hours at \$485.00/hr	\$630.50
146.4 hours at \$480.00/hr	\$70,272.00
12 hours at \$450.00/hr	\$5,400.00
3.3 hours at \$225.00/hr	\$742.50
5.4 hours @ \$150.00/hr	\$810.00
5.6 hours at \$0.00/hr	\$0.00
TOTAL ADMIN & GST	\$4,467.54
TOTAL HOURS	174
Tribunal ILC Fees (MLT Aikins LLP)	\$30,521.93
0.8 hours at \$230.00/hr	\$184.00
42.1 hours at \$685.00/hr	\$28,838.50
TOTAL ADMIN & GST	\$1,499.43
TOTAL HOURS	42.9
Tribunal Member Fees	\$8,000.00
Court Reporter & Transcripts	\$7,163.63
Couriers, Document Sharing & Postage	\$210.77
Hotel Fees (Hearing Space)	\$2,573.40
Expert Witness - Dr. Jia Hu	\$9,500.00
Research & Draft Mask Memo - Eric Adams	\$3,675.00
TOTAL	\$143,967.27
Hearing 2	
November 16 & 20, 2021	
College Legal Fees (Stillman LLP)	\$10,781.93
0.8 hours at \$150.00/hr	\$120.00
20.1 hours at \$480.00/hr	\$9,648.00
TOTAL ADMIN & GST	\$1,013.93
TOTAL HOURS	20.9

Tribunal ILC Fees (MLT Aikins LLP)		\$16,326.98
	22.7 hours at \$685.00/hr	\$15,549.50
	TOTAL ADMIN & GST	\$777.48
	TOTAL HOURS	22.7
Tribunal Member Fees		\$4,000.00
Court Reporter & Transcripts		\$2,753.89
Couriers & Postage		\$74.66
	TOTAL	\$33,937.46
Hearing 3		
January 28 & 29, 2022		
College Legal Fees (Stillman LLP)		\$8,718.32
	16.9 hours @ \$480.00/hr	\$8,112.00
	TOTAL ADMIN & GST	\$606.32
	TOTAL HOURS	16.9
Tribunal ILC Fees (MLT Aikins LLP)		\$9,013.73
	0.3 hours at \$685.00/hr	\$205.50
	11.4 hours at \$735.00/hr	\$8,379.00
	TOTAL ADMIN & GST	\$429.23
	TOTAL HOURS	11.7
Tribunal Member Fees		\$4,000.00
Court Reporter & Transcripts		\$3,526.95
	TOTAL	\$25,259.00
Publication Application, Review, Deliberations & Decision		
February 25, March 7, April 11 & 12, 2022		
College Legal Fees (Stillman LLP)		\$26,185.95
	2.8 hours @ \$150.00/hr	\$420.00
	50.1 hours at \$480.00/hr	\$24,048.00
	TOTAL ADMIN & GST	\$1,717.95
	TOTAL HOURS	52.9
Tribunal ILC Fees (MLT Aikins LLP)		\$28,395.68
	0.4 hours at \$350.00/hr	\$140.00
	36.6 hours at \$735.00/hr	\$26,901.00
	TOTAL ADMIN & GST	\$1,354.68
	TOTAL HOURS	37
Tribunal Member Fees		\$5,000.00
Court Reporter & Transcripts		\$2,298.46
Couriers & Postage		\$155.69
	TOTAL	\$62,035.78
Closing Statement, Deliberation & Decision		
June 16 & 17, 2022 to March 7, 2023		
College Legal Fees (Stillman LLP)		\$38,013.73

	2.5 hours @ \$225.00/hr	\$562.50
	72.3 hours at \$480.00/hr	\$34,704.00
	TOTAL ADMIN & GST	\$2,747.23
	TOTAL HOURS	74.8
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Tribunal ILC Fees (MLT Aikins LLP)		\$122,822.17
	0.3 hours at \$295.00/hr	\$88.50
	0.4 hours at \$375.00/hr	\$150.00
	0.1 hours at \$390.00 hours	\$39.00
	147.7 hours at \$735.00/hr	\$108,559.50
	9.5 hours at \$785.00/hr	\$7,457.50
	TOTAL ADMIN & GST	\$6,527.67
	TOTAL HOURS	158
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Tribunal Member Fees		\$8,000.00
Court Reporter & Transcripts		\$4,484.81
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	TOTAL	\$173,320.71
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Estimated Costs		
Sanctions Hearing		
June 7 & 8, 2023		
College Legal Fees (Stillman LLP)		\$30,000.00
Tribunal ILC Fees (MLT Aikins LLP)		\$45,000.00
Tribunal Member Fees		\$5,000.00
Court Reporter & Transcripts		\$3,500.00
Couriers & Postage		\$100.00
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	TOTAL	\$83,600.00
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		\$527,123.76

LIST OF AUTHORITIES

TAB 1	Section 82(1)(a) to (i) and (l) of the <i>Health Professions Act</i>
TAB 2	College of Chiropractors of Alberta Bylaw 9.1 (see attached)
TAB 3	Section 82(1)(j) of the <i>Health Professions Act</i>
TAB 4	Section 82(1)(k) of the <i>Health Professions Act</i>
TAB 5	Section 158 of the <i>Health Professions Act</i>
TAB 6	Section 4 Chiropractor Schedule – <i>Health Professions Act</i>
TAB 7	Section 3(1) of the <i>Health Professions Act</i>
TAB 8	<i>Zuk v. Alberta Dental Association and College</i> , 2018 ABCA 270
TAB 9	<i>Adams v. Law Society of Alberta</i> , 2000 ABCA 240
TAB 10	<i>Jaswal v. Medical Board (Nfld.)</i> , 1996 CanLII 11630
TAB 11	<i>Ontario (College of Physicians and Surgeons of Ontario) v. Savic</i> , 2019 ONCPSD 40
TAB 12	<i>Law Society of Upper Canada v. Paul William Slocombe</i> , 2012 ONLSHP 22
TAB 13	<i>Ahluwalia v. College of Physicians and Surgeons (Man)</i> , 2017 MBCA 15
TAB 14	<i>Alsaadi v. Alberta College of Pharmacy</i> , 2021 ABCA 313
TAB 15	<i>College of Physicians and Surgeons of Saskatchewan v. Ali</i> , 2016 SKQB 42
TAB 16	<i>Lysons v. Alberta Land Surveyors' Association</i> , 2017 ABCA 7
TAB 17	<i>Hoff v. Alberta Pharmaceutical Association</i> 1994 CanLII 8950 (AB QB)
TAB 18	<i>Jinnah v. Alberta Dental Association and College</i> , 2022 ABCA 336

TAB 2

9.1 Publication of Conduct Information

Adopted 12/2021, Revised 11/2022

a) Subject to the HPA, and in the interest of transparency to the public about the professional conduct and discipline process and education of the regulated members, the College shall publish or distribute any information in any manner, with respect to a complaint, the professional conduct process, hearings, appeals and complaint resolution agreements as required or permitted to be disclosed pursuant to any section of the HPA.

b) The publication time period is ten years from the date of (i) the finding of unprofessional conduct or (ii) the complaint resolution agreement unless otherwise specified in the HPA or any discipline order.