Proceedings taken via Videoconference for The Alberta College and Association of Chiropractors, Edmonton, Alberta

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September 2, 2021 Afternoon Session

HEARING TRIBUNAL

J. Lees	Tribunal Chair
W. Pavlic	Internal Legal Counsel
Dr. L. Aldcorn	ACAC Registered Member
Dr. D. Martens	ACAC Registered Member
D. Dawson	Public Member
A. Nelson	ACAC Hearings Director

ALBERTA COLLEGE AND ASSOCIATION OF CHIROPRACTORS

D. Lawrence	ACAC Complaints Director
B.E. Maxston, QC	ACAC Legal Counsel

FOR DR. CURTIS WALL

J.S.M. Kitchen	Legal Counsel

K. Schumann, CSR(A) Official Court Reporter

(PROCEEDINGS RECOMMENCED AT 1:18 PM)

THE CHAIR: This Hearing Tribunal is back in session. It's 1:15, and I believe we are at the

point where Mr. Maxston on behalf of the College Complaints Director will have Dr. Todd Halowski take the stand to provide testimony.

Dr. Halowski, I'm going to ask the court reporter to swear or affirm you in, whichever is your preference.

A I'm happy to affirm.

DR. TODD HALOWSKI, Affirmed, Examined by Mr. Maxston

Q MR. MAXSTON: Good afternoon, Dr. Halowski.

MR. MAXSTON: Just for the Tribunal's benefit, I'm going to be asking Dr. Halowski questions in six areas. The first is some -- the first area is some very brief questions about his background. The second area is going to be some questions, again relatively brief, about his role as Registrar at the College. Third area I will be asking questions about is generally the functions of the College. The fourth area I'm going to ask questions about are the educational background for chiropractors and to ask Dr. Halowski to discuss briefly the educational information the College has on its registration file for Dr. Wall. The fifth area I'm going to take Dr. Halowski to are the CMOH orders and the Pandemic Directive and what I will call the ACAC notices and web blasts and things that were sent out to the members, which are Exhibits C-1 to C-22. And then the final

sixth area I'll be asking questions of Dr. Halowski about is his specific involvement in the Wall complaint.

So skipping to the first area then, Dr. Halowski, I understand that you are the Registrar for the College. Are you also a licensed practicing chiropractor?

A I am.

Q Can you tell me about what your chiropractic education is and your employment history in the profession?

A Yeah, I graduated from Palmer College of Chiropractic in 2005. Since then, I entered private practice in September of 2005 and have been a practicing chiropractor until 2019, when I left full-time practice and became the Registrar of the College.

I am still currently practicing in a part-time capacity, with my role as Registrar demanding the majority of my time, and right now I'm practicing part time in Sherwood Park as an associate in a clinic.

Q Thank you. Going to the secondary, I think you mentioned you became Registrar in 2019 then?

A M-hm, yes.

Q Okay, can you tell me before you became Registrar, did you have any positions or other involvement with the College?

A Yeah. I had started volunteering with the College I

think in 2007 or 2008 -- or with the ACAC. At that time, I was on a fee negotiating committee, which is an association activity versus the College.

In 2014, I was asked to become an investigator for the ACAC, which is a College activity. I received investigator training with Field Law at the time, and I think I started into investigations shortly thereafter, where we would participate as an investigator under Part 4 of the HPA. In 2015, I was trained also as a member of a -- to be a member of a hearing tribunal. During that time, I actively participated in investigations but never served as a member of the hearing tribunal.

Q Now, I understand you have the title of Registrar and you carry out Registrar duties, but there is also a, I'll call it a management or administration function you carry out as well. Can you tell me what -- first of all, what your duties are as Registrar?

A Yeah, the Registrar, we primarily focus -- that role primarily focuses on registration and registration decisions and also membership renewal in a year, so we're making sure that those people that are joining the profession meet the requirements that are set out by council or under the Health Professions Act, and then we also, for renewal, we perform that same duty, and that would be very specific to the Registrar role.

Beyond that, I'm also the director of regulatory, and in that capacity, I oversee the regulatory programs administered by the College. Specifically, I look at -- I work with the complaints, and I am aware of what's going on in the complaints department, I work in the continuing competence. I also oversee things like professional corporation and some of the other duties that go on on an ongoing basis like professional corporation renewal and membership renewal and the other things that go on in a year that the College administers on behalf of the members.

Q You've helpfully gone to my second area of questioning here, which is what your other duties are over and above Registrar. In your -- I'll call it your management or administration duties you described, do you work with council at all?

A Yes, I attend all council meetings, and one of the roles that I have is, because I am a clinician, I advice council on clinical matters as well, so for consideration. Our council is composed right now of six chiropractors and two public members. We are waiting for more public members to be appointed so that that does go to an equal representation.

So my role is also in providing practice information and being a consultant to council on areas of that and advising council on policy -- recommending

policy to support the safe practice of chiropractic in the Province of Alberta.

Q And I take it -- I'm going to take you to Pandemic Directive in a few minutes, but I take it you were given assignments from time to time to become involved on certain projects and things like that?

A That is a hundred percent correct.

Q Okay, I'm going to go to my third area of questioning, which is just to talk a little bit about the College. Can you explain the role of the College and what its mandate is?

A Absolutely. The best -- you know, if we look at it very high level, a college, a regulatory college has two duties: Protection of the public and professional competence. And at a high level, protection of the public comes down to setting standards, Codes of Ethics and bylaws that set the guidelines and direction that members must follow when they're practicing.

And then there's the whole aspect of complaints that a college oversees. So when a complaint or concern comes from the public, how we address it and how we respond is one of the primary functions that is in the Health Professions Act.

And then the other is the competence component, is identifying the competence programs that are there, how they're operating, is it meeting the intended goals,

highlighting what competencies may need extra attention from members due to -- our practice visit program will observe patterns or trends in practice, and that may result in recommendations to counsel on ways that we can improve the competence requirements that the profession meets as part of being a regulated member.

Q In keeping with your comment about sort of a high-level view of the College and its role, I don't need you to go to this section of the HPA, the Health Professions Act; are you familiar with Section 3 of the HPA?

A That is -- that defines specifically the roles that a college must fulfil or the reason that we exist.

Q Is public protection part of the College's role?

A That is -- absolutely. That's -- when we talk about that public protection is our -- the primary mandate that we have is making sure that we are producing -- or protecting the public in -- is our primary consideration.

Q You talked a few minutes ago about the College creating bylaws and Standards of Practice and Codes of Ethics, is the creation of a Code of Ethics and a Standard of Practice is that a mandatory duty under the HPA?

A Yes, it is. It's mandatory, and they need to be consulted with members but adopted by council, and once they are adopted, they do become binding upon the membership. And it's the standard under which, when we

look at it, that we enforce conduct based on the Standards of Practice. And some people look at standards are -- you know, really, one of the considerations there that's really important, and it's a discussion often is that they're meant to be the minimal acceptable level of performance that our members must meet.

Q Okay. I'll get to this later in some more detail, questioning with you on the Pandemic Directive and some other things, but are some of those Standards of Practice, are they mandatory in nature?

A That's a great question. I would say all Standards of Practice are meant to be mandatory. There is specific languaging in them that highlights -- when we see the word "must", they are mandatory; that is an absolute that must be followed.

Sometimes you'll see the word "may", which is meant to leave that to the professional judgment of the member, and so -- but they are meant to define practice.

Q I'm going to move to then the fourth area of questions I wanted to chat with you about, and that is, again, the educational background for chiropractors generally and what Dr. Wall's education is reflected in the College's records. So I'll just start off with a general question, are you familiar with the education

generally required to become licensed as a chiropractor?

A Absolutely. Yeah, would you like me to describe that for you?

Q Yeah, if you could.

A Absolutely. So the majority of chiropractors are trained here in North America. Most, who are in the entry school, have some form of undergrad education with -- meaning they'll have a Bachelor's degree or some have advanced degrees in Masters of Science or other components.

A chiropractic program has very set requirements to go through that are defined by the council -- well, they're defined by the regulators, but they're put forward by the council on chiropractic education, and chiropractic colleges are -- must be accredited, or a chiropractor that practices must be accredited and leave an institution that's accredited in order to be eligible to licence in Alberta.

And so -- but those requirements cover over aspects of delivery of health care and broad ranges of topics that prepare us to be clinicians.

Q As part of the education that chiropractors receive to get their degree, is there a required component for public health education?

A There is, yeah. So we do have a very, very -- we do

have two courses that may apply. We have one in kind of microbiology, which is a component that is considered. And then we actually have specific courses in public health, and more of an introductory -- I would call an introductory course. They are not meant for chiropractors to be prepared to manage public health situations; it's meant to understand kind of the implications of public health and to understand how our role is relative to public health.

Q Are there any specific training or educational requirements then in any of these approved programs relating to infection prevention and control, for example?

A There would be, relative to practice, there would be things like hand hygiene and so on like this. Never during our training initially would we have been exposed to things like PPE or personal protective equipment. It wasn't a consideration because chiropractors are not typically working with an infectious population; you know, we're not having people come in that could be highly infectious or contagious with different things. So we tend to run and work from that point of view of -- around neuromusculoskeletal conditions.

And so with that, PPE isn't typically used, nor do we work with body fluids typically. Gloves may be

another thing we're exposed to; i.e., if we're working in or around the mouth or on the face in treating, chiropractors may use gloves to work with in the mouth or in intraoral situations.

Q Is there any required training then in these programs for how to address viral outbreaks or pandemics?

A I -- so I'll speak personally, I graduated in 2005. I took my public health training in 2003 or 2004, and we were not advised to any such learning during education. It is something that is, I would say, has been a gap in our education up to now, and given the current environment that may adapt, but I can't speak to that.

Q I'm going to ask you a question about the chiropractic profession sort of generally, but are there chiropractors who take the position that chiropractic care can strengthen the immune system?

A There is. That is an issue within the profession where some chiropractors do believe that by providing chiropractic care that they may prevent illness or prevent infections. We do know that there has been research focused on that in the last couple of years that has come out and said that there isn't evidence to support the position that chiropractic care is an effective treatment for many immune-based disorders such as infections or common colds or flus.

Q Okay, I'm going to switch gears a little bit here in

this fourth area I'm asking you questions about. Have you been able to review Dr. Wall's registration file with the College?

A I did go through and look at that just to confirm the details for this file, yeah.

Q Can you tell me where Dr. Wall was educated?

A Yeah, Dr. Wall was educated at Palmer College of Chiropractic in Iowa, the same place I was.

Q And do you know when he graduated?

A On his transcripts, it identifies October 18th, 1996.

Q And do you know when he became licensed with the Alberta College?

A Yeah, that, in our records, indicates that he was originally -- his initial joining with the College was December 2nd of 1996.

Q Now, you mentioned before that you were involved in managing the required continuing competence program for chiropractors, and I should say that's a mandatory requirement, to maintain your continuing competence?

A M-hm.

Q And to meet the College's requirements for continued competence?

A That's correct. Yes, we have set requirements on an annual basis, and so annually all chiropractors are required to complete a minimum of 24 continuing competence credits. That's usually obtained through

seeking further development in courses, seminars, or different things. Those could focus on anywhere from assessment right through to treatment in that, or they could be more informationally based in their presentation.

And further, that we also currently have required recordkeeping, we have a required -- all members must demonstrate competence in first aid, right? And then we -- since the introduction of Bill 21, all members must annually demonstrate that they've taken trauma informed training.

Q When you look through Dr. Wall's continuing -- well, I should go back, did you look through Dr. Wall's continuing competence history with the College?

A I have reviewed Dr. Wall's continuing competence history in his profile, and in reviewing that, I did look back to see what kind of continuing competence, and there is no record of Dr. Wall completing any continuing competence around the treatment of infection, nor anything to do with practicing during a pandemic or any kind of public health training.

Q Okay. I want to go to the next area of my questions for you, which is the CMOH orders and the Pandemic Directive. I'm going to take you to the CMOH orders specifically and the Pandemic Directive specifically, but I'd just like you to begin with some -- giving me

some background, some history about what was happening with the College in I believe late March of '20, 2020, and the CMOH orders that were coming out and what the status of the profession was at that point.

A Absolutely I can talk to that. So in -- I think it was right around the middle of March where there -- you know, there was -- we started to see some notices coming from Dr. Hinshaw about the presence of the novel Coronavirus here in Alberta. As that escalated, we kind of watched -- on March 27th, CMOH order I think it was 7 was issued that effectively closed all health care except to urgent care.

Once that came down, that was I think both a very psychological blow to Albertans but also, speaking to our profession, was a psychological blow to many of my colleagues, right? It was a very tough time to see us shut down. You know, it wasn't something that we planned for, prepared for, would have expected in our lifetime.

One of the things that became very acutely aware is that our members didn't have any skill set around practicing in a pandemic, and there was a lot of confusion. This was novel. There was a lot of discussion around how it -- you know, the risk, the severity, all those things like this, but one of the things we set about doing as a college right away, and

we advised council and were given direction to go in that direction is to prepare a guide or directive for members to follow during the pandemic so that they would know how to practice safely and have kind of a guideline to practice during a pandemic.

And so we set about doing the research, reviewing the documents that Alberta Health was publishing, other information that was available at that time. Ultimately though, we did look at Alberta Health as a guide, because they were advising practice and health care workers in the province on how to practice safely during a pandemic.

Q So that's late -- I think you said March 27, that's late March where you're starting this effort or looking at this question, this issue. Did you consult with any other regulators in the province or outside the province about what they were doing for the -- their response to pandemic issues?

A Absolutely. During that time, in Alberta, there's something called the Alberta Federation of Regulated Health Professions, and that would be kind of like -- it's like a -- I don't want to call it a working group, but it's a federation, we actually work together and address issues together. And many regulators face common issues, and so I know there was discussions going on amongst Alberta regulators in that group on

exactly the impact to the environment introduced by the novel Coronavirus.

Also at that time, the ACAC as a member of the FCC, which is the Federation of Chiropractic Colleges, which is all the Canadian chiropractic regulators across the country. And all provinces were shut down at that time as a result of Coronavirus, and so why was -- one of the things that we were doing was sharing what we were looking at in developing.

And during that time, in Alberta, we're really lucky, we actually have one of our members, who is a published microbiologist who we were able to consult with, we consulted with our competence committee, because we really wanted to contextualize how to practice safely during the pandemic to chiropractors and make those considerations.

So we consulted with regulators to understand kind of the environment, the Alberta regulators, which are not chiropractors, but every other profession, on practicing safely, and then we consulted with chiropractic regulators from across the country and were very proactive in developing kind of a plan and a guide. And, you know, it took us a lot.

What we ended up with is what I would call a summit of documents. So there was a lot of information, and we kind of compiled it into different

areas, things like hand hygiene, we compiled it into areas on physical distancing, we compiled it into areas on personal protective equipment, and, you know, infection prevention and control. And what would we require, what would we not require.

And then once we developed all of that, we actually initiated a member consultation where all members had an opportunity to review what we developed and provide comments.

In addition to that, that was conducted via two things, we had town halls where we could talk and listen; we also had a digital consultation, where members were able to provide responses. And then once we had those consultations, we took the information back and prepared revisions to what we put forward. We listened to the membership, and we had a lot of information to contextualize, how to inform safe practice during a pandemic.

And then -- so that's kind of where we went to. That was April 22nd, 23rd, we were consulting. The next week, by April 29th, we were meeting with council with what was a plan, which we do call the Pandemic Practice Directive. And so that was by -- and then that was published, we reviewed that, council had some corrections. We came back to them a day later, and they adopted that, which we were then able to prepare

and publish to the membership.

Q Okay, I want to skip back to something you said before that -- and I think you used the word "direction", that you felt it was important to give clear direction to chiropractors. Why was it important to do that?

A Well, one of the things that we experienced and we had to be really clear with the membership, and I think some of that goes back to, one, we're not trained to practice; we were never trained to originally practice in that environment. It wasn't a consideration of our training.

The second one is that within the profession, we do see a diversity in membership, where, you know, some members, even to this day, I think really struggle with the idea that they shouldn't be offering adjustments to treat COVID. And so when I look at that, like that direction was required in order to provide -- and for us, our primary concern was making sure that what we were doing was going to be safe for the public to meet our mandate as a College. We have that obligation to protect the public, and so we needed to provide a way for our members to practice as safe as possible for the public during a pandemic.

Q So before the Pandemic Directive was created, was there any type of significant training or exposure in PPE that chiropractors would have had?

A I don't -- not to the degree that was required during the pandemic. I would say, you know, some chiropractors were very aware of when to use gloves, but as far as things like face masks, face shields, gowns, or other PPE, there was a low level of uptick in consumption amongst members.

Even now, I can speak to members, and some of them, you know, around some of -- they kind of go, Oh, this has actually been really helpful. It's really helped me reframe how I'm going to practice and how to make considerations for safe practice going forward.

And one thing too, Mr. Maxston, that we have to consider is that a lot of the information we present here is actually in our standard of practice. Like there's nothing that we presented that was new. We just provided direction per the Health Professions Act on informing practice according to the standard of practice.

Q I want to skip back. You talked about two communication modes you used. I think, I'll let you clarify the time period, but I think it's March and April of last year being town halls and digital consultations. What was the purpose of having that communication?

A We wanted to -- you know, it's really important for us, like we are a very transparent organization, and you

know, like just like our members, this was novel for us, and so we were doing our absolute best to make sure we provided a safe environment for the public, but we also needed to make sure that it's enforceable.

Remember, when we talk about Standards of Practice or practice direction has to meet a minimally acceptable level. It's not about ideal or being aspirational; it's a minimal acceptable level of performance and in the context of practicing safely. And so, you know, well, we go there, we want that perspective from all of our membership.

And so we did conduct two consultations. We had town halls that, you know -- where they could actually ask questions, provide feedback in a live way. We could go through, listen to them, respond, and all those kinds of communications.

And the second is we used a platform called ThoughtExchange, which allowed us -- you know, they could read the whole practice directive and then provide any feedback they chose to anonymously. We had a high uptick, we had over 356 unique IP addresses provide feedback to that. I'd like to think that that was significant, considering our membership at the time was probably around between 1150, 1200 members. You know, so I think that that's at 25 percent of our membership were actively providing feedback.

And it came on a spectrum at that time as well. It wasn't all like, This is great. Some people really challenged and helped to inform, you know, and maybe some of the things, hey, this shouldn't be used now, or we should do this now.

So where we got to after consultation was a place that really represented -- it was a great way for us to understand the climate of the membership and also to advise council on how to adopt a directive that was going to keep the public safe.

Q I think I want to skip back again, was there a particularly -- was there a large or significant risk that you identified when you were putting together the pandemic derivative?

A The risk for our membership, there was a couple. One is that, you know, if I speak about it, there's kind of two ways I can look at this, so even during the development of it, we would have -- we receive emails from people going, Oh, this is -- you know, why are we doing this, we shouldn't be shut down. One of the biggest concerns for chiropractors, we should be considered essential services, and essential services didn't have to shut down during COVID, right? And so that was -- we got a lot of communication around that.

When we started looking at it and asking, well, what do you mean; you know, a lot of our membership

wanted to understand, well, we want to be safe, how do we practice safe, why weren't we considered to be safe at this time. And so there was obviously some questions around that that came in, but a lot of it was also around things like, you know, like hand hygiene.

You know, one of the practices we identified is that chiropractors really need to be consistent in their hand hygiene, when they apply it, how to apply it. PPE was one that we recognized that the membership really needed to -- we needed to be able to advise a member on the safe and effective use of PPE according to the evidence that was available.

And so the -- we really went through the stuff that the Medical Officer of Health was instructing, who was obviously the lead -- leading the response to the public health crisis or pandemic that we were experiencing, so we looked at that kind of feedback.

Q Was close body contact a concern?

A It was for us, because we do work very close -- I mean, when we're actually delivering care to a patient, the hands-on care that chiropractic is known for, we're right over top. We stand and breathe on a patient, sometimes like less than a foot away from their face.

Similar like -- to contextualize it, some members on the Hearing Tribunal may have been to a chiropractor, some, they haven't, but think of like

when a dental hygienist or a dentist is working on you, where they're leaning over top, when we're caring for patients, we're right there, and so that close contact is there. There's other things where we do work are maybe not as close or our faces aren't in close proximity. Sometimes when we do assessments, like ophthalmological assessments or doing some of the other things, we're like face to face and mouth to mouth -- well, close to mouth to mouth with patients. So that was an important consideration we had to make.

Q I should go back, was masking intended to address that risk?

A Absolutely. Masking was identified in what we were looking to be a measure that would ensure that we reduce the risk of transmission of COVID.

Q I'm going to take you to CMOH Order 16-20 [sic] in a little while, but I'll just stay in this area of the Pandemic Directive and how it was developed. I understand that under Order 16-2020, you are required to or were required to send your directive to government for review; did that occur?

A That did. We sent that and submitted that to government on May 1st. So prior to the releasing of that, we had some opportunities to have phone calls with Dr. Hinshaw and a couple other representatives. I believe Martin Tyre [phonetic] was one of them as well,

who was head of the emergency operations centre at that time. And they were very specific to us in the guidelines that they were looking for, and that we would need to submit that in order for our practitioners to be able to return to practice when things opened back up.

Q Give me a moment, Dr. Halowski.

A Okay.

Q Did you receive any feedback from the CMOH about the Pandemic Directive before you adopted it then?

A No. We were able to adopt it and advised our membership that they could return to practice right away.

We did have one follow-up inquiry specific to what we were advising employers, but we did point them to the section of the practice directive that covered that, and they were satisfied.

Q In your consultation with CMOH, did they ever ask about an exemption for members under the masking requirements of the Pandemic Directive?

A There was no expectation in any of the Alberta Health literature we reviewed in developing that us in the proximity, because we're always going to be breaching that 2 metre physical distance that has been identified very early on, that there would be exemptions for that close of practice.

We did recognize, like -- yeah, so there was never any thought of an exemption, because we are always going to breach when delivering physical care to a patient, that 2 metres.

Q I'm going to skip ahead. I'll ask you some more questions in a little about this, but did the College recognize or identify in any way that treatment could be provided outside of that 2 metre space?

A Yeah. So one of the things that we did do in very early March -- I was so focused on the practice directive, I forgot to mention it, but we had developed and council had adopted Telehealth, and so Telehealth and Telerehabilitation is a practice. It's not obviously the same as providing physical care, but it was a way for us to consult with patients, it is a way for us to instruct patients on movement, exercises, and shown to be effective for mitigating many common MSK conditions through education and instruction.

Q And "MSK" means, just for those of us --

A Oh, yeah --

Q -- who aren't chiropractors?

A -- fair enough, I apologize. So "MSK" or NMSK means neuromusculoskeletal, so the common conditions that chiropractors do see patients for.

MR. MAXSTON: Mr. Chair, I'm going to ask you and your colleagues to turn to Exhibit F-1, which

is the government relaunch document. Just wait a little bit to make sure everybody's literally and figuratively on the same page, and I'm going to be looking at the top of page 2 of that 5-page document.

Q MR. MAXSTON: Dr. Halowski, are you familiar with this document?

A I am. This document actually -- I'm very familiar with it, because when they first announced, it was very contentious because they did not specifically list chiropractors to be able to return to work on May 4th, and so we had to seek clarification to provide that for our members.

Q Well, that's right where I was leading you. On the top of page 2, there's a second bullet. Maybe I'll just ask you to read that.

A (as read)

> Dental and other health care workers, such as physiotherapist, speech-language pathologists, respiratory therapists, audiologists, social workers, occupational therapists, dieticians, and more will be allowed to resume services starting May 4th as long as they are following approved guidelines set by their professional colleges.

Q So just two questions. We talked about "and more", I

take it you received confirmation that chiropractors were in the "and more" category?

A We did, yes.

Q And as long as they were following approved guidelines, did they tell you that was mandatory then, the CMOH?

A Yes, that we had to actually submit that before our membership could return to practice.

MR. MAXSTON: So, Mr. Chair and Tribunal Members, I'm going to ask you to go to CMOH Order 16-2020, which is Exhibit F-2.

Q MR. MAXSTON: Dr. Halowski, you weren't present for Dr. Hu's testimony, but I took him through this, but I'm going to ask you some specific questions about it, given your direct role in the College in this regard.

Are you familiar with this document?

A Yes, I am.

Q Can you tell me what the second numbered paragraph, number 2, says?

A Would you like me to read it?

Q Sure.

A (as read)

> Effective May 4th, 2020, and subject to Section 6 of this order, a regulated member of a college established under the Health Professions Act practicing in the community

must comply with the attached workplace guidance for community health care settings to the extent possible when providing a professional service.

Q Does that attached guideline that's attached to this order, does it require masking?

A It does. There's two references to it in there, and specifically, I'll just find them and share them with the Tribunal. On page 3 of Appendix A for that, for prevention, it does highlight personal protective equipment. And then on page 9, it does go further into defining that: (as read)

> All staff providing direct client/patient care or working in client/patient care areas must wear a surgical/procedure mask continuously at all times and in all areas of the workplace if they are either involved in direct client/patient contact or cannot maintain adequate physical distancing [which they defined as 2 metres] from client/patients and co-workers.

Q I'm going to ask you to skip ahead to paragraph 6. Can you tell me what that says in this CMOH order?

A Yes: (as read)

> Section 2 of this order [meaning the section that we just read] does not apply in respect

of a regulated member under the Health Professions Act whose college has published COVID-19 guidelines as required by Section 3 of this order.

Q So let's go to Section 3 then. I'll ask you to look at that, read that in, and tell us what that means to you.

A Yeah: (as read)

Subject to Section 5 of this order, each college established under the Health Professions Act must as soon as possible publish COVID guidelines applicable to the regulated members of the college that are substantially equivalent to the guidance set out in the workplace guidance for community health care settings developed by Alberta Health along with any additional guidelines to the usual practices of the regulated profession.

Q So the option here was, under item 2, you could use the guidance document that they have with mandatory masking, or the College could create its own?

A Yes.

Q And was this a condition to re-opening?

A That was what was indicated to us, and that is the information we had from the Medical Officer of Health, so the -- so that was our exact understanding that this

was a condition.
Q So was it a requirement to practice then?
A Yes, and it was adopted by council motion.
Q Can you tell me what paragraph 4 -- paragraphs 4 and 5 say?
A Yeah: (as read)

> Each college must provide the Chief Medical Officer of Health with a copy of any COVID-19 guidelines published in accordance with Section 3 of this order.

And then Section 5 says: (as read)

> The Chief Medical Officer of Health may amend any COVID-19 guidelines created by a college under Section 3 if the Chief Medical Officer of Health determines that the guidelines are insufficient to reduce the risk of transmission of COVID-19 in the practice of the regulated profession.

Q I think a few minutes ago, you told me that you complied with Order Number 4, you provided to the Minister of Health, and just to be clear, did you receive amendments from the CMOH; did you get any amendments from them?
A We did not amend our practice directive due to any feedback from the CMOH. There was no feedback provided that we needed to amend anything or make further

considerations to reduce the risk of COVID-19 in chiropractic practice.

Q I'm going to ask you to go to CMOH Order 38-20, which is Exhibit D-8. This is a November 24, 2020 CMOH order. I'm going to ask, Dr. Halowski, you and everyone to go to part 4 on page 4.

THE CHAIR: Sorry, which number was this? D --

MR. MAXSTON: Sorry, Mr. Chair, this is Exhibit D-8.

THE CHAIR: Okay.

MR. MAXSTON: And it's CMOH Order 38-20.

Q MR. MAXSTON: So, Dr. Halowski, I'm just going to ask you to go to paragraphs -- well, I've taken you to page 4, which talks about masks and the geographic application of this order, but I'm going to ask you to go to paragraphs 23 and 24, and can you tell me what those two sections mean or what you interpreted them to mean?

A Yeah. So we took a very literal look at this: (as read)

> For the purpose of part 4 of this order, a "public place" has the same meaning given to it in the Public Health Act but does not include a rental accommodation used solely for the purpose of a private residence.

And then 24 says: (as read)

> For the purpose of this order, a "face mask" means a medical or nonmedical face mask or other face coverings that cover a person's nose, mouth, and chin.

When we saw this and had an opportunity to read this, one of the things that we did look at is is a chiropractic office a public space. And at that time, we were under direction that appointments were by -- or if we were to control our environment, so who was coming into the office was by schedule. And we interpreted this, and the interpretation was that chiropractic offices are, for the intent of this, a private space, meaning that we control who's in the office or can control who receives care at the time.

And then face masks under this order, one of the things when we looked at this, we reviewed and recognized that, you know, when they start talking about cloth face masks and the other, we knew that this didn't specifically apply to chiropractors as the requirement was that we had to wear at least a Level 1 surgical procedural mask as identified in the practice directive.

So when we saw this section, we saw it as applying not to our profession but to the public and more of a guidance for the public on what they should be doing.

And I think this is when the Province started to institute their provincial face mask guidelines and requirements.

Q So let's go to paragraph 26 of this order, and we there have a -- I'm going to ask a question -- but it says: (as read)

> Subject to Section 27, a person must wear a face mask at all times while attending an indoor public place. For greater certainty, an indoor public place includes any indoor location where a business or an entity is operating.

Chiropractic clinics would be covered by that?

A Correct.

Q There's an exemption in paragraph 27(c) of this order. You're aware of that exemption?

A I did read that, yeah. We had read that when it was published.

Q Okay, I'll have some questions for you later on about the exemption and the Pandemic Directive ultimately.

I'll get you to now go to and everyone to go to Exhibit D-9, which is CMOH Order 42-20, and the date of that order is December 11th, 2020. And, Dr. Halowski, I will get you to go to paragraphs 23 and 24, which are on page 5 of that CMOH order.

A M-hm. Yeah, I'm there.

Q I could ask you to read these in, but are these substantially similar, if not identical, to the equivalent provisions in the last CMOH order we looked at?
A Yes, they are, on a quick reading, yes.
Q And there's the same exemption there in 24(c)?
A Correct.
Q So we have these two exemptions then or two references to exemptions. Was there ever any consideration about whether those exemptions should apply to chiropractors?
A We did look at that in consideration. Based on the guidance that Public Health had provided, that we could not maintain a physical distance of 2 metres, the consideration was made that this wouldn't apply because we can't maintain a physical distance of 2 metres when providing in-person or close contact care.

And I remember communicating this to our members and using the example that this is probably more meant for situations like in the public, like if you were going to a grocery store where you could maintain a physical distance, or in the public where you can space yourself appropriately from somebody. But when we're -- as a practitioner, when we're face to face, we are not maintaining that distance of 2 metres, which was identified as one of the risks for transmission during COVID.

Q I'm going to ask you to go to the Exhibits C-20, 21, and 22, which are the three versions of the Pandemic Directive. They are dated I believe May 5, 2020, May 25, 2020, and January 6th, 2021. Just broadly speaking, can you tell me why there are three directives?

A That's a great question. So obviously the first one was published, this is the one we had originally submitted to government when they had alerted us that we would have to provide this for our members to be able to return to practice on May 4th, and so that was published and sent to them for review.

On May 25th, we had done some review and revisions and included the practice of mobile chiropractic for chiropractors to be able to provide chiropractic care in mobile settings. And for a percentage of our population, our members, they do provide mobile care, where they go and provide care in different settings outside of their office. And, originally, we had not allowed it, and so council had made the decision that this would be allowed as long as they were following the Pandemic Practice Directive. And then --

Q Then --

A Sorry, yeah, I'll stop.

Q No, you go ahead. I was just going to say January 6th.

A Yeah, oh, yeah, January 6th, that one was published,

that was right in the middle of the second wave of COVID or the one that was identified as being significant, and there had been a significant number of cases. And so we did continue to regularly review the Pandemic Practice Directive with council.

And one of the recommendations we made on this one was to include the requirements -- or, sorry, include the recommendation of PPE to include a face shield or eye protection. And that specifically -- and one of the unique things about that is this is one of the first considerations we specifically made for members to be protected, because it was -- some of the information that was published in an advisement that we had had was that eye protection was seen as protective against the Coronavirus.

Up until this time, the practice directive was focused on public protection. With the introduction of the eye protection, that was one of the pieces that and one of the few that we actually specifically put -- meant for the protection of the member only, and that was to consider the use of eye protection.

Q I'm going to take you through the portions of the Pandemic Directive in a couple of minutes when we deal with masking and social distancing and plexiglass barriers. Through those three versions of the Pandemic Directive, were there changes about masking and social

distancing and the plexiglass barrier requirements?
A There was slight -- I believe there were some slight changes, nothing significant. Some of it may have been wording.

Specifically when we got the last one in January, we introduced the requirement that patients must be masked in the clinic as well. And that was in response to, one, the orders that we received, there was a lot of confusion from membership, going, well, do my patients have to mask, the practice directive doesn't say they have to mask. And so we implemented that patients are required to mask in that January 6th one, and then that has -- that persisted through to this summer.

MR. MAXSTON: Mr. Chair, I think as I mentioned earlier, I'm going to simply use the January 6th, 2021 Pandemic Directive in my questions for Dr. Halowski and other witnesses, so I'm going to continue that here.

THE CHAIR: Can you give us a reference number for that?

MR. MAXSTON: Yeah, it's C-22.

THE CHAIR: Great, thank you.

Q MR. MAXSTON: So I'd just like to summarize I think what are the more -- ask you questions about what are the more relevant elements of the personal

directive -- sorry, Pandemic Directive for today's hearing in the questions for you.

I'd like you to go to page 7 of the Pandemic Directive. And there's a heading "Physical Distancing", and I think the comments on this actually go over to page 8, but can you tell me what the requirements were in that regard in the Pandemic Directive?

A Yeah, that we were to, as much as possible, in this space ensure that physical distancing was provided for in treatment areas.

And one of the things that some of our members do operate is more an open-concept style where they'll have multiple tables in one area, so we wanted to make sure that patients receiving care were at least 2 metres apart in those spaces. In waiting areas, that the patients were provided a place, if they were waiting indoors, to be 2 metres from the next closest patient, right; or from staff that may be working behind the desk, right; in transition areas, i.e., you know, like hallways or there might be areas where patients are moving in and out of treatment rooms.

Then we did provide an exemption for people who lived together to be 2 metres, because they're obviously within the same cohort already, and there are patients that may present to the office who have care

givers or companions with them, and so they were exempted from that requirement as well. You know, we didn't feel that it was our place to separate, especially if somebody that needed a care giver, in the office environment.

And then we did talk about non-clinical employees in the public, right? So that would be the reception area. And if 2 metres cannot be maintained, that staff must be continuously masked, or the installation of a plexiglass or plastic barrier must occur to protect reception staff.

Q So, again, the word "must" is used, that's mandatory?

A Yeah, that's correct, "must" is a mandatory requirement.

Q Okay. I'm going to take you to the heading that says "Personal Protective Equipment", and I wonder if you can tell me about the opening paragraph, what it means.

A Yeah. So one is that we -- personal protective equipment is an essential element for the disease. Like that was identified early on that it was being novel and without an effective treatment, personal protective equipment would be essential in order to provide as safe an environment as possible.

We also wanted to alert members that if they were not using PPE appropriately, it could fail to prevent transmission and may facilitate the spread of the

disease.

Q So the next heading is "Staff and Practitioner PPE", and there's a quote from an AHS announcement. Can you tell us what that quote says, what it means?

A Yeah. So one of the things we were looking at in the development stage is what is the requirement or what are we going to look at around the use of personal protective equipment. And so this was very clear, it says: (as read)

> Effective immediately, AHS is advising all health care workers [which chiropractors are considered a health care worker] providing direct patient care in both AHS and community settings [chiropractors are in a community setting] to wear a surgical procedural mask continuously at all times and in all areas of their workplace if they are involved in direct patient contact or cannot maintain adequate physical distancing from patients and co-workers.

Q Can you take me to the next section "PPE Requirements" and tell me what those first three bullets say?

A Yeah: (as read)

> Surgical or procedural masks are the minimal acceptable standard.

And that's identified, because there's -- you know, one

of the questions that we had during the development is like do I need an N95 mask, which is a fitted mask meant for aerosol producing procedures. We wanted to be very clear that that was not a requirement.

Again, we always set minimally acceptable standards. So a minimal acceptable standard in this would be a surgical mask.

Q Okay.

A And then the next one: (as read)

> Chiropractors and clinical staff must be masked at all times while providing patient care.

That was very clear. Like if you're providing patient care, you must wear a mask. It wasn't a suggestion; it was a requirement.

And then the last one is: (as read)

> Nonclinical staff must be masked when a physical distance of 2 metres cannot be maintained.

And that would be like some offices are smaller, the reception desk may not be able to be isolated, the -- you know, or the receptionist is in and out from behind the desk because they have double duty in bringing patients to rooms or to cleaning or other aspects. We wanted to make sure that there was a safety provided for that person as well.

Q So I'm going to ask you to go ahead to page 9.
A Okay.
Q And at the top of that page, there's some requirements for donning and doffing masks. But there's a paragraph right after number 7 under "Doffing of Masks", and it starts off with: (as read)

> It is essential that all chiropractors and staff providing services in a clinic area are aware of the proper donning and doffing of PPE.

I just want to be clear here, who is responsible for, in a chiropractic clinic, for ensuring that staff complies with the Pandemic Directive requirements?
A That would be anybody, the chiropractor as a regulated member has a requirement to provide a safe environment for themselves and those that work at their direction.
Q Okay. I'm going to ask you when the masking requirement was developed, were you focusing only on the protection to patients, or were you also considering your members' protection?
A Obviously, there was member protection, but as a College, our first consideration is always the public as well. And so anything we could do to reduce the risk of transmission from a chiropractor who had acquired a COVID infection was our first consideration, followed by the safety of the member.

And I would say, you know, followed by, it's not like it was a large gap. You know, both were very, very important, but as a College, we had a requirement to definitely consider the needs of the public first.

Q Okay, we talked before about CMOH Order 16-2020 and the use of the guideline or opting into the Pandemic Directive and the mandatory guideline on masking or creating your own Pandemic Directive, in terms of masking and what you developed for your Pandemic Directive here, were less restrictive directives than requiring masking considered?

A We did look at all sorts of things. And I do remember the final meeting, the second -- on April 29th, when we met with council, I believe that was the Wednesday, they had -- that was one of their considerations. Like they had a question: Should masking be a recommendation or a requirement.

And after discussion, council felt strongly that masking was and should be a requirement of practice at that time. So it was discussed, but given the climate, given that this was novel, and given the risk of being close contact body workers, council ultimately did adopt the position that masking is required.

Q I note that -- well, I should ask you, does the Pandemic Directive contain an exemption for masking, social distancing, or plexiglass barriers?

A There -- let me see if I understand the question, so there is no exemption for masking at any time when we're providing care within 2 metres. The original one did allow -- the original one introduced did allow for them to not have a mask on if they were conversing over 2 metres apart, so i.e., on the other side of the room.

And the other exemption that was provided is that if you can't -- if you need to, you could use Telehealth as a form of care for patients to lessen the risk of spread for COVID-19.

Q Ultimately, why wasn't there an exemption for masking like we saw in the CMOH orders?

A You mean in the CMOH 38 and 42?

Q Yeah.

A Yeah, so the reason that we didn't ever consider an exemption is because we work face to face with a patient. We're not walking around in parks or open spaces; we're in closed rooms, sometime poorly ventilated, and we are breathing right on a patient, and patients are breathing right on us as well, but having a mask was meant to be protective for the patient as well as for the practitioner.

Q Are you aware of any other HPA colleges and their pandemic directives?

A Yeah. So one of the things that we did do after is we had an opportunity to read and review other colleges

and what they were directing. And to my knowledge, every college adopted a position of masking is a requirement.

I know recently that, talking to one of the registrars, who -- for I think it was ACSLPA, which is the Alberta College of Speech-Language Pathology [sic] and Audiologists. They had indicated that that had been very stressful for their members to practice during the pandemic when masking was required, because they need to observe the mouth and visualize it in order to respond or appropriately teach or provide interventions, but they also, in some of their interventions, identified that they produced more aerosols because they're -- of speaking and causing that, and so they had to maintain masking. And then up until the end of June or beginning of July this year, they amended it to become a recommendation. And that was one that had indicated it was stressful.

Physiotherapists from when I reviewed, the physicians when I reviewed, everybody else was requiring masking for providing that close care.

Q So I'm going to ask you to go a little bit backwards in this document. I'd like to go to page 1 -- actually page 2 of the Pandemic Directive.

A Okay.

Q And right after the introduction, the first paragraph,

there's a second paragraph that says -- actually it's an indent after the second paragraph: (as read)

> Note to chiropractors, this directive is current as of the date of publication and reflects the rules and requirements for chiropractors. In the event of a discrepancy between this information and the directives of Provincial Public Health authorities, the directions of the Provincial Public Health authorities take precedence.

Can you tell me what you meant by that language and --

A Absolutely.

Q -- what would or wouldn't take precedence, I guess?

A Absolutely. So when we look at that, one of the things that -- I think the word we could describe around COVID is it was a very fluid environment, and it seemed that information was consistently and constantly shifting or changing, or new information would come to light.

And so one of the things we wanted to make sure that our members were aware that, say, this was in place, and something came out from the Chief Medical Officer of Health that had a more stringent requirement, i.e., that maybe all practitioners were required to wear an N95 mask or were required to wear a face shield, that our members would know that they should follow that direction, that they should wear

something more stringent.
Q So -- sorry.
A No, go ahead.
Q So that comment is directed to chiropractors then?
A Yes.
Q Health care professionals?
A Yeah.
Q If we go a little further down, it says: (as read)

> As regulated health professionals, chiropractors are required to: 1. Follow all mandates and recommendations from Public Health and Government of Alberta regarding your personal and professional conduct. As a regulated -- [Mr. Kitchen, there is a question coming] -- regarding your personal and professional conduct. As a regulated health professional, you have a fiduciary responsibility to follow all civil orders that originate from any level of government.

And then number 2: (as read)

> Read to and adhere to all communication from the ACAC.

So what message are you sending to chiropractors there?
A Yeah, that's a great question. This was introduced for our regulated members, because, at one time, we were getting a lot of members calling in and going, hey, you

know, the City of Calgary has a masking mandate, or this city has a masking mandate; and what we were finding is people were calling us to interpret local legislation, so we wanted to inform them that they actually also have a responsibility to be aware of and follow legislation or requirements or orders, civil orders, that are introduced in the location where they practice.

You know, one of the ones I remember dealing with specifically was the City of Chestermere had ordered all clinics closed at one time, and our members that were there were calling and saying, But we're regulated. I said, You need to follow the civic orders that are introduced by your local government.

And so that was the intent of that, because those may change or have a crossover, an impact for the direction that we're providing. And we continually also informed members that we wanted them to follow the more stringent requirements. So that would be the part of it as well.

Q Okay, so I want to just explore that a little bit with, so if a local bylaw, for example, was more stringent, you were required to follow that?

A Correct.

Q If a Pandemic Directive was more stringent, you were required to follow that?

A Correct.
Q Dr. Halowski, you were not part of the discussion or not present when we talked about entering some new exhibits relating to Alberta Health Services, but I have provided those to you, and I'm just going to ask you to go through them briefly. They are again three documents.
MR. MAXSTON: And, Mr. Chair, you'll have those I believe in your File H [sic], and they're the AHS Guidelines for Continuous Masking, the AHS Personal Protective Equipment document, and the Alberta Health Services Directive Use of Masks During COVID-19.
A Mr. Maxston, I don't have those documents available right now. Can I obtain them? I apologize, I just don't have them here.
Q I wonder if Ms. Nelson can send those to you in the Dropbox, or we can have her forward them to you by email.
A Okay, I'll wait for her to provide those.
MS. NELSON: Yeah, I will email those out right now. Just the three AHS docs?
MR. MAXSTON: Mr. Chair, I wonder if this isn't a good time to just take a 5- or 10-minute break, just to allow some time for those documents to make their way to Dr. Halowski, and we'll make sure he's got them, and then we'll resume.

THE CHAIR: I was about to suggest the same thing. It's 25 after 2, so let's take a 10-minute break, and we'll come back at 25 to 3 and resume, and hopefully by then, Dr. Halowski, you'll have received and had a chance to look at the three documents. They're not lengthy.

MR. MAXSTON: And, Mr. Kitchen, I'm aware of the fact that I can't speak with Dr. Halowski about his testimony, but I am going to chat with him just briefly to make sure he's got the right documents if you're okay with that.

THE CHAIR: Okay, I'm okay with that. Mr. Kitchen, any comment?

MR. KITCHEN: I was muted, I'm sorry. Blair, it looks like we're going to have time for me to do my whole cross, and that's probably going to be it for the day. Is that what you're thinking?

MR. MAXSTON: Yeah, I'll see how far I've got to go. I still have to go through Exhibits C-1 to C-22 with Dr. Halowski. I'm not going to through every line of them; I'm going to highlight some things, but, yeah, I think we're making some good progress. So I'm just going to make sure he's got these documents, James. I won't talk to him about his testimony, but I want to make sure he's on the literally the same page, so --

MR. KITCHEN: That's fine, yeah.
MR. MAXSTON: -- okay, thanks, yeah.
THE CHAIR: Okay, we're in recess now, and we'll reconvene in 10 minutes, thank you.
(ADJOURNMENT)
THE CHAIR: The Hearing Tribunal is back in session, and Mr. Maxston is continuing with his direct examination of Dr. Halowski.
EXHIBIT G-1 - AHS - Directive Use of Masks During COVID-19
EXHIBIT G-2 - AHS - Guidelines for Continuous Masking
EXHIBIT G-3 - AHS - Personal Protective Equipment (PPE)
Q MR. MAXSTON: So, Dr. Halowski, you've got these three AHS documents in front of you?
A Yes, I do.
Q I'm not going to be very long with these with you. You talked before about the fact that council was monitoring the situation in terms of the Pandemic Directive. Were you and council considering AHS documents?
A We were considering them. That was one of the resources, one of the primary resources we used when evaluating the practice directive.
Q So I'm just looking at the first document, which is AHS

Guidelines for Continuous Masking, and the middle of the page, it says: (as read)

> To prevent the spread of COVID-19, AHS has a continuous masking directive in place.

I take it that supports the Pandemic Directive from your perspective?

A It does, and it -- one of the things in reading this, and I remember having conversations with council about it is we would see these documents, and, you know, obviously these were developed specifically for the AHS environment, but we did pay close attention to them because they're advising how to keep their staff safe and how to limit the risk of spread between patients and between patients and staff.

Q The next document is the Personal Protective (PPE) document, and really I'm just going to take you to page 2, under the heading "AHS Guidelines For Continuous Masking and Use of Eye Protection". Again, there's a statement about AHS has a continuous masking directive in place, and, again, that would have been consistent with the directive?

A Correct.

Q The final document is the AHS directive on use of masks, and I'll take you to the principle section, and the first sentence there, I wonder if you can just read that, the one beginning with "Continuous".

A Yeah: (as read)

Continuous masking can function either as a source control, being worn to protect others, or part of personal protective equipment to protect the wearer to prevent or control the spread of COVID-19. Working collaboratively, we shall ask all individuals to assist us in limiting the spread of COVID-19 through the use of procedure masks in AHS facilities/settings.

Q So we talked --

A Okay, next paragraph? Okay, sorry.

Q No, that's fine. So we talked a little bit about this before. They're talking here about two things, source control protecting others and protecting the wearer; was that a consideration for the development of the Pandemic Directive?

A That is the consideration that we made to protect our patients and also to provide that protection for our members as well.

Q To your knowledge, has AHS ever granted an exemption from masking for the health care workers they regulate?

A No, and specifically during the pandemic, I did speak to members who raised concerns, i.e., one had a severe allergy to latex and was reacting to the mask. And I did reach out to AHS and had a conversation with them

about that, and they indicated that there was no substitution for a procedural mask available. And so even in the case of somebody that was having that reaction and actually having a like constant contact dermatitis reaction, there was no exception provided to masking.

Q I'm going to talk now about the manner in which the Pandemic Directive was communicated or distributed to members, and I'm going to, in a couple of minutes, I'm just going to ask you to go through some of the highlights of the documents C-1 to C-22, but I'll just -- I'll ask you to call those up.

When we look at C-1 to C-22, they are a series of -- they're entitled "Notice to Member", "Registrar's Report", "Council Updates". Can you tell me generally how the Pandemic Directive was communicated and what the purpose of these notices was?

A Yeah, no, and that's great. So a lot of -- I looked back, during COVID, we were highly communicative with our members, right from the time there was an identified pandemic declared, all the way up and to -- including the provision of the Pandemic Practice Directive, we were sending communications to members or notices to members once, sometimes twice a day, to make sure they had the most current information for their consideration.

And that would have been a blend of -- because we are a dual-mandate organization currently, that would have been a blend of both Association communications and College communications. And often they may -- that communication may have come from one, like clearly the Association or the College, or made a blended communication where we would have covered topics of both in that communication.

Q Okay, so when we look at these notices and the, again, Registrar's report, who sends them; how do they go out to chiropractors?

A Yeah, so those are sent specifically out of our patient -- or not our patient but our member database. So those are in there. We have -- we can see who we're sending to. They would have distributed to all of the regulated members at the same time.

One of the requirements of the College, of the ACAC is that members must receive our electronic communications because we're an electronic communicator.

Q So are you confident that Dr. Wall would have received all of these notices and updates?

A I am confident. It is our members' responsibility to ensure that their email address is up to date and on the College database. And I am confident, because when I did contact Dr. Wall, I did so using the email

address that's provided to the College when I first reached out to Dr. Wall in December of 2020.

Q We talked about the -- I'm going to take you through some of these, of course -- or take you through them in a minute. We talked about the fact that the Pandemic Directive had mandatory language for masking. Do these notices all have mandatory language in terms of masking?

A I would say that it depends on each notice. Some will say "must", some will say "may", but whenever we were being direct with members of what they were required to do, we always used the word "must". If they were allowed to -- professional discretion in a situation, then we used the word "may".

Q So I'm going to (INDISCERNIBLE) --

THE COURT REPORTER: That was all -- you were turned away from the camera. I did not hear a word of that, sorry.

MR. MAXSTON: I'm sorry, Madam Court Reporter.

Q MR. MAXSTON: Dr. Halowski, I'm going to take you or ask you questions about Notices C-1, C-10, and C-13, and they are the Telehealth notices.

MR. MAXSTON: I don't need, Mr. Chair, you, and the Tribunal Members, to go to all of them.

Q MR. MAXSTON: But I just wonder if you can

tell me what these Telehealth notices to members are, when they came out, and what they were intended to achieve.

A Absolutely. So C-1 specifically we sent to members. We had developed a framework for our members to be able to provide Telehealth, but one of the things that we were getting questions on was billing. And I say "we", often they would call me in looking to do that. The College cannot advise on billing matters, so then this would have been a communication that came from the Association but specific to needs identified, where they were asking, well, how do I bill for Telehealth, how do I, you know. And so they were looking for a way. So this was our advisement provided to members on how to bill when they're providing Telehealth services.

Q Okay. Was this something new for the profession, to be allowed to do Telehealth?

A Absolutely. This -- we had never provided Telehealth as a profession before, and so this was something that we developed as soon as -- we started working on this right away when things were -- when we saw where this was going so that we could offload or offset the risk for in-person care at that time. And so this was developed and adopted by a motion from council as a temporary Telehealth solution, which was intended to be reviewed in June of that same year.

Q Is Telehealth now a permanent allowed modality for treatment for chiropractors?
A It is a permanent allowed modality, and it's the intention of the ACAC to take and turn that into a standard of practice as time permits. Some of that's been restricted due to other legislative challenges within the system and introduction of other bills. So that is our intention to make that a standard of practice down the road.
Q Okay, I'm going to be mindful of the court reporter's caution to me, I'm going to keep looking at the camera here when I go to the next documents. I'd like to take you to C-2, which is an April 21, 2020 Notice to Members.
A Yeah.
Q Broadly speaking, when I look at paragraph 2, this addresses, at least in part, the return to practice plan. Can you tell me what paragraph 2 is talking about in terms of consultation or feedback?
A Yeah. So when we developed this, you know, we had done a lot of work to develop, but we wanted to inform members how we developed it, that we weren't pulling it out of a hat, we had spoken to other regulators, we had spoken to members of the competence committee, to specialists within the profession, and other regulators across Canada so that we had a framework for

chiropractors to reasonably practice during a pandemic.

And then what we did is that we were advising members that as -- we've done the work, but we're not just going to say here it is, we wanted consultation, we wanted their feedback.

Q The second paragraph talks about the platform you referred to before as ThoughtExchange, and there's a final sentence in that paragraph: (as read)

> This is your opportunity to engage in the development of this plan, so please participate.

Were you hoping for participation?

A Absolutely. We wanted feedback, and I believe we received robust feedback from members in the form of participation in the ThoughtExchange, during the town halls, and then also with direct communication from members to myself or to council during the time that we were developing that.

Q If you go to paragraph 3 in this notice, it talks about virtual member meetings on COVID-19 to be held next week, and the final sentence: (as read)

> There will be an opportunity for members to submit questions related to COVID-19 during the meeting.

Did you receive questions?

A I do, we did receive questions. During that, there was

a lot of questions ranging from like everything in the practice directive and other questions that were also other than College questions, there was Association questions, people worried about different aspects of practice and when could we go back.

As indicated when I spoke earlier, one of the concerns that chiropractors continued to voice was around the idea of why aren't we considered an essential worker, and so that was a question that was also raised during that meeting.

Q When we go to document C-3, which is a Notice to Members, the first line after that says: (as read)

> Participate in the member consultation on the draft return to practice plan.

Is this the mechanics of getting that access we were just talking about?

A Yeah, absolutely. We published it, which is what step 1 was so they could review the draft return to practice plan, and step 2 was to provide anonymous feedback to that draft practice plan.

Q There is a statement just above the heading "Registration for ACAC", and it says: (as read)

> If you have any questions or concerns about the plan or survey, please email Dr. Todd Halowski.

Were you available to take questions then about the

plan for re-entry?

A Absolutely. In addition to that, I received I would say upwards of a hundred emails from members, ranging and weighing in of topics of concern or consideration in regard to the Pandemic Practice Directive as presented -- as the draft was presented.

Q I'm going to ask you more about this in a moment, but do you recall if you received any communications or questions from Dr. Wall?

A I did review my email to see if Dr. Wall had submitted any feedback to the practice directive, and in all the emails that I reviewed, I did not see any feedback received from Dr. Wall.

Q I'm going to ask you to go to document C-4, "Our Clinics are Adjusting to Keep You Safe". What is that document?

A Yeah, so this is one of the things, this would be an Association style communication that was produced, and, again, this is more meant for marketing to patients, but it's also highlighting what chiropractors are going to be doing to keep them safe when patients return to practice.

And so this was developed and prepared, and you'll see the date on it was April 29th. That's when we knew that we were going to be going ahead, and this had been approved for distribution, so members could get these

posters prepared for use in their clinics when we had the opportunity to re-open.

Q Did this also go to chiropractors then, just so I'm clear?

A Yeah, yes, that was distributed to all members of the Alberta College and Association of Chiropractors.

Q Okay. I'm looking at the next document, C-5, it's a Notice to Members, and item 1, numbered paragraph 1, the last paragraph says: (as read)

> Chiropractors will not be able to open until the ACAC has received Public Health approval of the return to practice plan.

This is referring to the Pandemic Directive approval process we talked about before?

A That is correct, we wanted to make members very aware that that was a part of that.

Q If you go to number 5 on the next page, it's dealing with PPE, and can you tell me what the first sentence says and what it means?

A Yeah: (as read)

> The initial information from Alberta Health Services is that the appropriate use of PPE will be a requirement of return to practice for close contact practitioners. As mentioned in the --

Oh, sorry, I'll stop.

Q Sorry. This would have gone to all chiropractors?
A This was distributed to all chiropractors of the Alberta College and Association of Chiropractors.
Q Okay, I'll go to document C-6, which is a May 1, 2020 Notice to Members. And I'll just ask you to tell me what the first paragraph -- first couple sentences in paragraph 1 say.
A Is that starting with "Yesterday"?
Q No, numbered paragraph 1, I'm sorry --
A Oh, sorry.
Q -- "Status on".
A Yes: (as read)

> Status on the return to practice plan. Council approved the ACAC COVID-19 Pandemic Practice Directive today, which can be accessed here. This directive has been submitted to Public Health for review and approval as required by the Government of Alberta.

And then: (as read)

> Public Health must approve the directive before chiropractors can proceed with re-opening, and chiropractors can remain limited to urgent, critical, and emergency care until otherwise notified by the ACAC.

Q So was this the first communication of the Pandemic

Directive to members?
A It absolutely was, yes. And we did that because we wanted members to be able to review it so they could be prepared to implement it, because they weren't allowed to return to practice till they could implement it.
Q So that sort of takes us to the next document, C-7, which is a May 3, 2020 notice.
A Yeah.
Q And I wonder if you can just read the first three paragraphs, it begins with "We are", and tell me what this means.
A Yeah: (as read)

> We are excited to report that Alberta Health notified all regulated health professions today that effective May 4th, 2020, regulated health professions who are ready to execute all requirements of their respective regulatory college pandemic practice directives can return to practice.

Q And the next, I've got a question, tell me about the next two paragraphs, if you can read those.
A Yeah: (as read)

> The ACAC COVID-19 Pandemic Practice Directive is approved. Chiropractors who can completely implement the directive may re-open. Chiropractors who are unable to

fully implement the ACAC Pandemic Practice Directive may not proceed with re-opening until all measures are in place.

Q So compliance was a condition to re-opening?

A Absolutely.

Q And was that mandatory compliance, just to be clear?

A Mandatory, yes.

Q I'll go to the next document C-8, which is a May 25, 2020 Notice to Members.

A Yeah.

Q And in specific, I'll get you to go to page 2, and there is a heading "Why do Chiropractors need to wear masks". I'm wondering if you can just explain why this is being sent to members?

A Yeah, and so we did have some questions from members once we originally returned to practice who were wondering why we were required to wear masks, and so we wanted to make sure that we were answering that for members, and that that was that proper -- the observing PPE requirements protects chiropractors from mandatory self-isolation if they treat an asymptomatic patient who later tests position for COVID-19.

So when we returned to practice, what we did start to see is that members that were being deemed close contacts would have to isolate, and it was communicated via Public Health that chiropractors that were wearing

masks at the time would not be required to self-isolate if they were masked when exposed to a pre -- what Alberta Health termed a presymptomatic patient.

Q Okay, if we go to Notice C-9, it's July 24, 2020 Notice to Members, there's a reference on page 1 to the City of Calgary's mandatory face bylaw, but I'd like to take you to the top of page 2, and there's a bullet that starts off with "Exemptions", I wonder if you can just read that.

A Yeah. So: (as read)

> Exemptions to any bylaw are designated by each municipality.

And I should give context to that, at that time, only the cities were providing exemptions; there was no provincial exception -- our provincial bylaw requiring masking, sorry, not exemptions: (as read)

> A medical diagnosis that leads to an exemption may only be provided by practitioners who have the authority to grant exemptions.

So currently, chiropractors are not entitled to offer exemption from face covering to their patients.

Q So I'm going to stop you. Are you telling chiropractors there that they can't grant exemptions?

A Absolutely correct. One of our concerns was that chiropractors may attempt to write exemptions once

these were introduced, and so we wanted to be very clear that that is not in our scope of practice to exempt patients from a face covering when required by a bylaw.

Q And there's a sentence you read: (as read)

> A medical diagnosis that leads to an exemption may only be provided by practitioners who have the authority to grant exemptions.

The College was requiring a medical diagnosis then?

A No, so I think in the initial stages of the bylaw introduction, one of the things we were trying to be clear to our members is if a medical -- "that leads to an exemption may only be" -- so if there was a medical diagnosis, i.e., that somebody was -- because I -- like Edmonton required an exemption card, Calgary had a different way, but we wanted our members to know that they weren't authorized to provide any sort of -- exemption for a member of the public from a masking bylaw.

Q I'm going to ask you a question, but was -- did you ever -- that's okay.

I'll go to the next notice, C-10 -- sorry, we've talked about C-10, that's the Telehealth notice, my apologies.

I'd like to go to C-11, which is your August 2020

Registrar's report.
A Yeah.
Q And more specifically, I'm going to ask you to go to page 9.
A Okay.
Q And under the heading "Return to Practice Feedback Survey, I wonder if you could read that sentence.
A Yeah: (as read)

> We want to hear how implementation of the return to practice plan is going in your clinic. Please submit your feedback to us using this survey.

And that was another ThoughtExchange survey that was sent out for members to be able to make comments on.
Q So you had a line of communication for positive comments or negative comments?
A For any comment, and comments received could have been both positive or negative.

I can take a second and explain how ThoughtExchange works. So in ThoughtExchange, what happens is somebody gets to make a comment, and they could say, I love masking, or they could say, I hate masking. And when then they do that, then what happens is, once you get enough thoughts in there, people get to go and read the thoughts that are currently in it, and they can rank them; they can go this is actually

really important, or, oh, this is garbage, or they may flag inappropriate comments. So ThoughtExchange is meant for a much more interactive response than, say, the idea of a yes/no survey.

Q Okay. Let's go to document C-12, which is an August 11, 2020 Notice to Members.

A Okay.

MR. MAXSTON: Mr. Chair and Tribunal Members, I'm planning on going through these quickly. I'm assuming that once you're in that C file, you're able to click ahead fairly easily too. If any of you are not at a document, please let me know.

Q MR. MAXSTON: So, Dr. Halowski, I'm looking at C-12 again, and numbered paragraph 1 says: (as read)

> Chiropractors must adhere to the ACAC COVID-19 Pandemic Directive regardless of local bylaws.

What are you intending to communicate there?

A Yeah. So one of the questions that members were going, say -- they were asking what's the interplay between bylaws and what's the interplay between this. And so when we said this, that "Chiropractors must adhere to the ACAC COVID" ... "regardless of local bylaws", local bylaws only expand practice requirements. They do not remove the requirements of the practice directive.

And so we're saying like they may add things in, but they can't diminish the minimally acceptable level of performance that's put out by the practice directive.

Q Okay. We've already talked about C-13, that's one of the Telehealth directives, so I'm going to go ahead to C-14, which is a November 23, 2020 Notice to Members, and I'd just like you to, I'm on page 1, if you could read the last couple of sentences on that page, "As always".

A (as read)

> As always, as soon as we know more, we will advise you. If you have questions, please contact us at the ACAC office.

So we -- again, we were always very open and communicative with members, especially when questions were coming up. You know, speaking as a -- as the Registrar, I was often communicated to with questions. And speaking as a practitioner, this time, I think this is when we started to see kind of the development of that second wave, and practitioners were getting nervous, that, hey, we're going to get shut down again like we did when the first wave happened. And so they were often seeking clarification. We wanted to make them very aware that they could reach out and speak to us at any time.

Q Okay. So C-15 is a November 25, 2020 document.
A Yeah.
Q I'd like you to read the last sentence on the bottom of that page "As a health professional", that's what it begins with.
A Oh: (as read)

> As a health professional, it is your obligation to be informed of and to uphold all restrictions, bylaws, or other decisions that impact your clinic and the health and well-being of staff, patients, and visitors.

Q And then if you go to the next page, can you read the last sentence, "If you have"?
A Yeah: (as read)

> If you have questions, please contact the ACAC office.

Q So this is an opportunity for members to contact you again?
A Yes, it is.
Q Again, these would go to all members?
A Yes.
Q If we go to the next document, C-16, which is a November 25, '20 FAQ or frequently asked questions, I'm going to ask you to go to page 7.
A Okay.
Q And there's a heading "Do we need barriers for our

reception desks", and can you tell me what it talks about in that next paragraph?

A Yeah, I will read it, and then interpret it, if that's okay: (as read)

> Employees in the public should be 2 metres from each other. If 2 metres cannot be maintained at reception/payment area, other noncontact electronic payment means can be used or installed, or installation of a plexiglass or plastic barrier can be used to protect reception staff. Many local companies are retooling to do installations of barriers in local businesses.

One of the things that we wanted to make sure is that members knew how to obtain and provide for barriers for their staff, especially with the uptick in cases, that that was made available for members as a resource and also just to remind them that they have a duty to keep barriers in place when the physical distance of 2 metres can't be maintained or to separate them from the general public that was receiving care.

Q Just below that, there's a heading "Personal Protective Equipment (PPE), and it has some Q and As again about wearing masks, et cetera. Is this a reminder to members of your profession?

A Yeah, absolutely, because we were getting not only

questions about that but questions around things like, Do I have to wear a mask, or, Do I have to wear gloves or gowns when treating. So we wanted to just be very mindful and remind them of the duty that a surgical/procedure mask must be worn by the member when treating patients and a physical distance of 2 metres cannot be maintained.

Q If we go to page 10 of that document, there is a heading "Who should I contact if I have questions", I wonder if you can read that paragraph?

A (as read)

> If you have questions, please contact the ACAC at office@albertachiro.com, and we will respond to you as quickly as possible. If you have a question, it's likely that other chiropractors are having the same question. We'll answer your question if we can. Follow up with the Government on anything that requires further investigation, and continue to update you on any news.

And that's one of the patterns that we saw, like if we started to get one member asking a question, usually we'd get three or four questions. That's one of the ways we identified some of our FAQs, because if somebody was asking it, we'd get multiple questions along the same line around topics like that.

Q And there's a reference here to an email address so members could communicate with you by email as well then?
A That's correct.
Q I'd just like to go to the next document very briefly, C-17, which is I think an ACAC website update, and it's entitled "Adjusting for you". I'm assuming this is something that was intended to go to the public or more for public consumption?
A Yes, yeah, this is more of an Association style communication relative versus a College style.
Q And the second page has a heading called "Wearing Masks", can you tell me what that is telling the public, members of the public who might read this?
A Yeah, so if you look like -- like if we -- and for a second, if you juxtapose this to the practice directive, this language is meant to be clear, like everyday language so that chiropractors are wearing personal protective equipment such as masks during treatments.

We're letting the public know that that's what chiropractors are doing, because in the directive, we're very clear that that's a requirement, and we thought it was reasonable to alert the public that chiropractors are wearing masks.

Q I'd like to go to the next document, which is C-18, a

Notice to Members dated December 9, 2020.
A Yeah.
Q And about halfway down the page, maybe two-thirds of the way down the page, there's a paragraph that begins with "Masking is mandatory", and there is a sentence sort of about a third of the way down or half of the down that paragraph that says: (as read)

> There are no exemptions to chiropractors and staff masking.

Was that consistent with the Pandemic Directive?
A That was a hundred percent consistent with what we had indicated to our members.
Q So this is another reminder to members?
A Yes.
Q If you go to page 2, there's an impacts -- sorry, "Impacts on ACAC operations", and there's a paragraph that begins, it's the third one: (as read)

> If you experience a COVID-19 emergency.

Can you tell me what that paragraph says?
A Yeah, so at that time, with the -- right now, the province was in the full, like kind of a ramp-up up to that second wave of COVID-19, and we were shutting down operations, and so we wouldn't be answering the phones live, so we wanted to make sure that our members knew how to reach us and how to contact us and that we were there to receive their communications.

And so when you look at that, they could email the Registrar, email directly. Under that, this contact information, where you see the underlined in blue, where it says "Dr. Todd Halowski" or "Sheila Steger", those lines, that provided a direct link to our personal emails. And then also that was the extension of the phone number, if they called the College office, it would come to us, and we received all voice mails electronically at that time.

Q So they can communicate by email or by phone?

A We were available to be communicated to at all times.

Q C-19 is a Notice to Members, and I'm just going to get you to go to the third page of that three-page document, and I'd like you to read the last sentence literally above your signature. It says "We are here to support you: Can you read that sentence?

A Yeah: (as read)

> We are here to support you. If there are COVID topics that will benefit the profession that you believe the ACAC should cover, contact me.

Q So this is another opportunity for members to contact you?

A Yes.

Q I just have to grab a binder, just bear with me for one moment.

I'm looking -- I'd like to take you to File F, File Folder F and, in specific, F-3, the ACAC Registrar report from July 5 of 2020, and more specifically, I'll just get you to go to page 5 -- sorry, 2021, thank you. Mr. Lawrence just reminded me.

And on page 5, there's a reference to a simple rule. Can you read that sentence?

A I'm just going to pull it up on the 'K' drive here.

Q And, again, that's the --

A Registrar's report.

Q -- yeah, July 2021, yeah.

A Yeah, okay.

Q So I've asked you to go to page 5, and the second complete paragraph has a sentence about the "simple rule". Can you just tell me what the "simple rule" is?

A Yeah: (as read)

> The simple rule to follow to maintain compliance is that the more stringent requirement applies to chiropractic practice in Alberta.

And that's -- we communicated that: (as read)

> For example, if Public Health relaxed a restriction, but your local municipality maintained their bylaw, then the bylaw would be considered more stringent and would need to be followed. If your local --

Q Okay -- yeah, I'm sorry.
A Oh, so, yeah, this is part of that line of communication. Like it's the more strict. The baseline, the minimal accepted level is the practice directive. If there was a more strict requirement introduced, it was the requirement of the member to follow the more strict requirement.
Q And just finally, very quickly, the next document, F-4, is an FAQ from July 7. I'll just let you get to that. I'm not sure if you have it handy or have to go through your computer to --
A I have it, I have it handy.
Q Okay. There's a question on the first page: (as read)

> Why are we still required to do all this when the rest of the province is back to normal.

Can you tell me what the answer is?
A Yeah, we are a regulated health profession. We're not -- not to diminish the work or role that anybody else plays, but we have a responsibility as a health care provider to act first for the safety and protection of our patients and to consider their health needs.

> And so when we're looking at that, we have a duty to maintain the privilege that we're offered as a regulated health profession, and part of that is to make sure that we're following the highest standard in

ensuring public health and safety.
Q So I've taken you through a number of documents --
MR. MAXSTON: Thank you, Mr. Chair, for your patience, and Tribunal Members --
Q MR. MAXSTON: -- that have talked about the communication efforts and the feedback efforts from the College.
I asked you this question before, but I'm just going to confirm, you did receive feedback from the membership?
A I did receive feedback from the membership.
Q I'm going to talk with you in a couple of minutes about your communications with a lady named Ms. Ho and how the Dr. Wall complaint arose.
After -- or in April and May, when the Pandemic Directive was being created and thereafter, did you receive any communication from Dr. Wall?
A I received -- in preparing for this, I was reviewing and I didn't see any communication via email directly to myself or the College from Dr. Wall. And all communication around COVID was always forwarded to me for a response and -- and review and response of the College, and I have no record of Dr. Wall emailing the College.
Q Just so I'm clear, no emails or phone calls?
A No phone calls either.

Q Before the introduction of the Pandemic Directive, did Dr. Wall contact you about pandemic concerns?

A I didn't -- prior to this, I didn't have any communication from Dr. Wall about the pandemic.

You have one communication in my record that I had received from Dr. Wall in early March, just when the thought of the pandemic was coming.

Council had recently introduced some direction on discussion of vaccines and that -- chiropractors, we wanted to be very clear with our members that, you know, we don't have it in our scope of practice to administer, educate on vaccinations, and so we had tightened up a position statement that directed our regulated members to send questions direct -- send patients with questions directly to Public Health or their medical doctor in order to receive the appropriate answer and education.

One of the things that we know is that vaccine misinformation or -- can elevate vaccine hesitancy and put the public at risk especially in the times of communicable disease. And Dr. Wall had written a letter saying that, you know, that he was -- he said that he recognizes that chiropractors are governed under the Health Professions Act, and he intends to follow any guidelines and rules put forth to our profession through Standards of Practice and bylaws.

But then he was also expressing frustration that chiropractors couldn't speak up about vaccines, that he indicated that he doesn't believe in vaccines to the same extent that Public Health does and that he thinks that, you know, it's a shame that we were being limited in our ability to communicate about vaccination. So he provided feedback to a policy that council had put forward that he disagreed with.

Q And that was before the Pandemic Directive though?

A Absolutely.

Q I'm not going to take you to these documents to look at, but Exhibits D-3 to D-7 are a series of CMOH orders, and I'll just ask you, are you generally familiar with those?

A I believe so, yes.

Q And just to close off a discussion on the Pandemic Directive, did the College review CMOH orders as they came out?

A We did, we did review them and consider them in our policies that we were maintaining and the direction that council was providing.

CMOH orders were an essential part in looking at, reviewing, and advising council so that council had the best information when they were making their decisions.

Q Was the Pandemic Directive a fluid document?

A It was fluid in the sense that when a change was

required, we would make a change. As we reviewed that, there was no need to change the directive relatively -- when it first came out, we were very -- we wanted to think big picture with it, so we wanted to have a document that would stand during a pandemic. I didn't want the idea of tinkering it. It's difficult for members to have to adapt if we were reviewing it every two weeks and going, What about this and what about that.

So we really did develop a document that was able to stand during a pandemic and provide and inform members' practice relative to the standard of practice.

Q I understand that there was change to the Pandemic Directive in early July of 2021; is that correct?

A I think -- oh, this year, yeah, sorry. There was. That was changed -- sorry, I was thinking back to last year. I don't think anything happened in 2020, but 2021, that's correct, we did introduce new direction for the members based on the current environment and current information and the medical orders that were in place from the Medical Officer of Health at that time, so ...

Q So mask --

A Yeah, we amended specifically, we changed and we maintained requirements around infection prevention and control in the office, but specifically, you know, hand

washing and some of the other measures in around screening as well.

We did remove the requirement for masking and eye protection but did maintain a strong recommendation that members consider to continue to use the masking for themselves and the eye protection for themselves as well.

Q So, Dr. Halowski, a while ago when we were first talking, I think you mentioned to me that the Pandemic Directive, at least in part, was based on Standard 4.3 --

A Yes.

Q -- that was already in place. I'd like you to go to and the Tribunal Members to go to Exhibit A-11, which is an excerpt from the -- or, pardon me, it is the Standards of Practice for the College, and I'd like everyone specifically to go to page 15 and Standard 4.3, which is "Infection Prevention and Control". So, again, that's Exhibit A-11, and I'd ask all of you to go to page 15.

Dr. Halowski, this is a bit of a lengthy standard. I'm more interested in -- most interested in the opening statement and then the bullets that appear on page 16. I'm wondering if you can take me through this with as much detail as you need to. Can you tell me what the standard of practice says?

A Yeah, so this is our infection, prevention, and control standard. It was adopted in 2010 and revised in 2014 specifically.

And, again, one of the things that, Mr. Maxston and the Hearing Tribunal, is that I cannot stress enough that Standards of Practice represent our minimally acceptable level of performance. These are not aspirational; they're meant to designate the low bar for practice.

And so when we look at that -- and that's the same in every profession, that's not unique to us as chiropractors or unique to physicians or physiotherapists, dentists, or anybody; Standards of Practice are the minimal acceptable level of performance, and it's kind of how we measure if somebody has met the threshold of professional conduct. And if they're at or exceed the standards, then that's one of the considerations.

So when we look at that and go through this, the standard does lay out specifically what the requirements are for our members to be minimally acceptable, to: (as read)

Remain current in generally accepted routine practices and infection control protocols relative to their current practice context.

And practice context can be what's internal in the

environment and what's external to the environment.

In the case of something like a novel Coronavirus, none of us have practiced that in that environment, and so that's where we saw a need that we would have to provide direction for membership, right?

The next one: (as read)

Develop, incorporate, and keep up to date infection control policies to promote the use of infection control measures, which may be unique to their personal professional practice style.

That's a -- so that's incorporating that they need or are required to have an infection prevention control policy in their office that highlights how they execute and practice to keep in consideration of infection and infectious disease, right?

(as read):

Ensure that their clinic is fully equipped, operated, and maintained to meet generally accepted infection control guidelines.

And that's a really important one is the "generally accepted". You know, it's not -- we're not looking to set a bar higher for the chiropractic profession than any other profession; these are measures that are generally accepted.

Like, you know, hand washing is a great example.

The World Health Organization continues to identify that hand washing is the single most effective way to break the transmission of disease. Every standard of practice I review from other professions highlights the importance of hand hygiene before and after care.

And so that's -- and you look at that in our practice directive: (as read)

> Hand hygiene, which must include the use of hand cleaner or a hand washing -- or hand washing before and after each patient contact.

We're very consistent as a generally accepted measure: (as read)

> Use of protective barriers as standard practice whenever contact with blood and body fluids is likely to occur during patient contact. Barriers must also be used when a patient's personal care equipment is likely to have been contaminated with potentially infected fluids, like wheel chairs or walkers.

So protective barriers, and that's defined specifically in here as personal protective equipment: (as read)

> Specialized equipment or clothing used by health care workers to protect themselves from direct exposure to client's blood,

tissue, or body fluids. Personal protective equipment [and here's where we leave it to practitioner discretion in the standard of practice] may include gloves, gowns, fluid-resistant aprons, head and foot coverings, face shields or masks, eye protection, and ventilation devices, for example, mouth pieces, respirator bags, pocket masks.

And the reason that it's left to practitioner discretion in a standard of practice is -- and if we required our practitioners to wear gloves, to wear a gown, fluid-resistant aprons, and head and foot coverings for every patient interaction would be significantly oppressive to practice and to the practice style that we practice in. You know, chiropractors tend to work with non-infectious patients, we tend to work with patients that are coming in with neuromusculoskeletal conditions or NMSK as I indicated earlier.

We go on to talk about: (as read)

Internal environmental cleaning, disinfecting and sterilizing equipment and facilities, and managing waste and materials contaminated by body fluids [which we use Appendix A to define all of that].

And I'm happy to review that as part of this, right?

And highlights of that is measures practiced in appendix -- I'm going to jump over to that, and then I'll come back to the bullets. But: (as read)

> Measures practiced by health care practitioners intended to prevent spread, transmission, and acquisition of agents or pathogens between patients, from health care practitioners to patients, from patients to health care practitioners n the health care setting. Infection control measures instituted are based on how an infectious agent is transmitted and includes standard, contact, droplet, and airborne precautions.

Cleaning is really the physical cleaning of a space, right? Disinfection is using different things that we know are -- during contact time are meant to kill or -- kill the pathogen, right? Sterilization is a two-step process not typically applied in practice, but there may be some practitioners who use metallic pinwheels, and those require sterilization versus, say, a disposal one.

And then we really highlight as well as part of Appendix A that we have to consider our policies in light of both external and internal practice environments. External would be: (as read)

Any locale beyond the internal practice environment and may extend to municipal, provincial, national, or international borders, depending on the nature of the infection risk being considered.

Specifically when I look at that, that just specifically speaks about a novel infection. There was so much information that was lacking at the onset of the pandemic that we -- this is where we again identified that we really need to be -- get the information and provide the information that's relevant to practice.

And then when you come back, we are adamant that our members must: (as read)

Adopt appropriate -- [and this is a minimal level] -- but adopt appropriate infection control measures, including contact management protocols and monitor their use and effectiveness to identify problems, outcomes, and trends; provide infection prevention and control training for clinical staff and monitor implementation of that.

So, again, they are highlighting, to a question you had asked earlier, Mr. Maxston, part of this standard is that our members have a responsibility to make sure their staff are trained and monitored in their use of

infection prevention and control procedures, which -- excuse me for a sec -- which does include the use of personal protective equipment.

And then to: (as read)

> Conduct ongoing assessments of current risk of infections and transmissions to patients, staff, colleagues, and other health professionals, and take appropriate remedial action in a timely manner consistent with professional requirements --

Right? And when I look at that word "professional requirements", you know, that is the Pandemic Practice Directive, that was the professional requirement that council put in place in respect of the novel Coronavirus that -- pandemic: (as read)

> -- and the applicable law based on consideration of the following: The assessment of the treatment [so this is speaking to, you know, assessing what's going on]; the health condition of the patients; the degree of infection and risk currently present in the internal practice environment; the degree of risk presently in the external practice environment; and current best practice infection prevention control protocols relative to his or her practice.

Again, going back to, you know, if -- what they're doing with patients.

For instance, we have some practitioners that work intraoral or do work inside of somebody's mouth, they're going to wear gloves. There's a risk that they could be closer or developing aspirations or -- from the patient or where they would need face shields. So that was a significant portion of that.

And then, you know, so this standard of practice is there -- there isn't a requirement in our Pandemic Practice Directive that isn't already considered in our standard of practice, but the Pandemic Practice Directive was contextualized to the information provided by Alberta Health and Public Health to practicing during the novel Coronavirus outbreak and was meant to -- as a requirement for our members to follow. Hence, why we use the word "directive" instead of "suggestions".

Q Okay.

MR. MAXSTON: Mr. Chair, it's about 3:30. The -- I have my last section of questions for Dr. Halowski is about his involvement in the complaint concerning Dr. Wall and a couple of I guess housekeeping questions after that, not many.

I understand from the College that the Hearings Director at 4:00 would need to hand over control of the

meeting hosting to someone else. I think I would propose to go another half an hour unless you need a break, and I don't think, unfortunately, we're going to get to cross-examination today by Mr. Kitchen, but I think I can finish with Dr. Halowski today. And then next Tuesday, we would resume with Mr. Kitchen. I, of course, wouldn't talk to Dr. Halowski about his testimony during that break.

Do you want to take a quick break now though for 5 or 10 minutes, or do you want me to just go ahead, and I'm fine either way?

THE CHAIR: No, I think my body doesn't like sitting in front of a computer screen eight hours a day, so I'd like to get up and stretch. So let's just -- I mean 5 minutes is fine, and then we'll --

Mr. Kitchen, does that sound fair to you in terms of a plan for the rest of today and for next week?

MR. KITCHEN: That's fine, yeah. We're not going to have time to do my cross, so that's fine.

THE CHAIR: Okay, very good. All right, well, if that's the case, let's break for -- come back at 20 to 4, and then we'll plow through the rest of the direct examination. So we're in -- session is in recess for now, reconvene at 3:40. Thank you.

(ADJOURNMENT)

THE CHAIR: The hearing is back in

session, and, Mr. Maxston, it's your floor to continue with Dr. Halowski.

MR. MAXSTON: Thank you, Mr. Chair.

I'm now going to turn to the sixth and final area that I wanted to have questions for Dr. Halowski on, and that is his involvement in the complaint concerning Dr. Wall. I'm going to ask you, Mr. Chair and your colleagues, to go to Exhibit A-2, which is a December 1, 2020 email from a lady named Heidi Ho at Alberta Health Services that was sent to Dr. Wall and was copied to Dr. Halowski, so I'll just let everybody get to that document, and then I'll -- I've got a few questions on that.

THE CHAIR: And, Dr. Halowski, do you have a copy?

A Yes, I do, thank you.

Q MR. MAXSTON: So, Dr. Halowski, I really, as I said, going to want to talk to you here about your involvement with this complaint and how things started. Can you tell me who Heidi Ho is at Alberta Health Services?

A Yeah. Heidi Ho is a community medical specialist, so she's like a ground-worker for Public Health, and so when Public Health complaints are received, then she would go out and investigate.

During the pandemic in the initial phase, we

received many contacts specifically from Public Health about the conduct of our membership, where we would investigate. That was something that I would often receive, initiate, and then follow up and let me them know that we'd investigated and any action taken.

So for Heidi Ho to reach out and communicate to me directly was an occurrence that wouldn't have raised on my radar from time to time, but it was a signal that Public Health had something that they wanted us to look into and be able to respond to them that our member was, in fact, doing what they should do, or if there was concerns, then we would raise them back to Public Health as well.

Q So the December 1, 2020 email, you're copied with it, it's going to Dr. Wall. Can you tell me what Ms. Ho is communicating to you in this email?

A Yeah. So she says: (as read)

> Alberta Health Services received a complaint indicating that the administration staff and yourself are not masking even when within 2 metres distance with patients. As per our phone conversation, you indicated you were mask-exempted as per CMOH 38-2020. Please indicate which exemption you would fall under; otherwise, you are required to be masking when within 2 metres distance with a

patient. As for your administrative staff, you indicated that there is no plexiglass barrier at the reception and that staff are not masking. Patients could be within 2 metres' distance when making payments. This is in violation of the CMOH Order 26-2020, where every person attending an indoor or an outdoor location must maintain a minimum of 2 metres distance from every other person. Your clinic must have control measures, physical barriers -- for example, physical barriers to promote physical distancing at all times; otherwise, the administrative staff must be masked as per CMOH Order 38-2020.

And then she just informs that she's copied me, and when I received this email, I was quite concerned that Dr. Wall was not following the practice directive, because we were very clear about what the requirements are, and masking was one of them, and Ms. Ho was also aware of that.

Q Okay. I'll ask you to go and everyone else to go to Exhibit A-3, which is your December 2, 2020 letter to Mr. Lawrence, in his capacity as Complaints Director. And I'll just -- you quote Ms. Ho's email in there in your letter, I'll just ask you to read the first

paragraph in your letter to Mr. Lawrence.

A (as read)

> It has come to the attention of the Registrar through Public Health on December 1st, 2020, at 4:17 PM that Dr. Curtis Wall is not following the ACAC Pandemic Directive and the CMOH orders regarding masking and the requirements to maintain 6 feet of social distance.

And I included that body of the email just for Mr. Lawrence's consideration.

Q Okay, and can you read the last two paragraphs -- I'm going to have questions for you on these, but can you read the last two paragraphs in your letter, beginning --

A Yeah.

Q -- with "Further to"?

A (as read)

> Further to the email from Public Health, in conversation with Dr. Wall, he indicated that he does not mask, and he has not provided for barriers in his clinic.

So I did, once I had this, send an email to Dr. Wall, letting him know I would need to speak with him. We did have a conversation on December 2nd.

> And so that's what that's referencing, that, in

conversation, he had communicated that he wasn't doing it and nor do he have intention to: (as read)

> I have serious concern for public safety as Dr. Wall refuses to mask when he breaches the physically distance of 6 feet with the public. He is not providing for or requiring his staff to mask when they are within 6 feet of distance.

Q Okay, so I want to turn back to this phone conversation you had with Dr. Wall, and can you just refresh my memory, what day did that happen?

A December 2nd.

Q And did he call you?

A I can't remember the exact -- I did imply that we would need to converse, and I believe that I did call him at his clinic, but I don't know off the top of my head.

Q Okay, I want to just be very clear about your conversation with him and what he said to you. You said in your letter he indicated that he does not mask?

A Yeah.

Q And that's accurate?

A That's what he indicated at the time, that he was not masking, and I also remembered he indicated he had no intention to mask because -- yeah, well, he did, for a brief moment in that conversation, describe how he didn't think that COVID was serious, and that it was --

we were overreacting with the Pandemic Practice Directive. And so he was indicating that he was not going to because he did not believe that he needed to follow this, that he would be just fine.

And somewhat at -- somewhat at the time, I think they've come to be known as COVID deniers in the public, that there was rhetoric, there was speech about how COVID's not real, how it's not serious, that it's no more than a mild flu, and some of that language that was common and has continued to be common about COVID during the pandemic.

Q Did he talk to you about his exemption from masking or his alleged exemption?

A He had talked about how he had originally worn a mask but then decided that he didn't like to wear it and that he -- you know, I think he said, you know, he just didn't feel comfortable wearing it, so he had been wearing it since May. And so at the end of May, I think, is when he indicated that he had removed the mask from what I recall of that conversation.

Q And, I'm sorry, what did he identify as the reason for not masking?

A He said he didn't like how he felt when he wore it, you know, he just didn't feel comfortable wearing it, which I believe were the words he used in that conversation.

Q Okay. Did he identify any other reasons for not

wanting to wear the mask?
A Other than, you know, I asked why, and I think that's when some of the conversation around COVID not being real and that this is, you know, we're just overreacting, and, in this environment, to have to wear a mask and that he wasn't comfortable doing that.
Q Did he mention any religious objections?
A I don't believe he did at that time; not that I can recall.
Q Did he argue that he couldn't practice because of the Pandemic Directive then?
A No, he didn't raise anything. You know, I tried to encourage him that masking is required, and he said that he wouldn't be masking, that he -- I think he then was -- yeah, I think, you know, part of it he was claiming he was now exempt from masking because of the City bylaws allowed him to be exempt. And I do remember having a conversation that that's not the intent of the bylaws, and the practice directive applies to you.

Hence, the follow-up communication to Mr. Lawrence, that we have a member that's not following the Pandemic Practice Directive.
Q We talked before about the Telehealth directives; were there some options for practice available to Dr. Wall if he didn't want to mask?

A Dr. Wall could have practiced Telehealth. Dr. Wall could have -- at that time, he could have had conversations with his patients to only mask when he was going to be within 6 feet, but Dr. Wall indicated that he wouldn't do that either.

Q I'm going to ask you some closing questions here just about I guess the regulatory function of the College and, more specifically, the regulatory roles that you occupy or have involvement with as Registrar.

Does the College have mandatory practice visits?

A Yes, that is a part of our practice. That's part of the rights given in our regulations that our competence committee has mandatory practice visits.

Q And can a chiropractor choose to opt out of practice visits?

A They cannot.

Q Does the College have a required continuing competence program?

A We do have a continuing competence program that requires a certain number of CC hours. Council has also directed that members have to maintain currency in first aid, that right now we have a requirement for a recordkeeping course that must be completed annually, and that members also must complete trauma-informed training on an annual basis.

Q Can a member choose to opt out of those requirements?

A Not if they would like to renew their practice permit.
Q So I take it that means, no, if they want to practice?
A That's correct, yes.
Q In his questions with a prior witness, Mr. Kitchen asked a question about whether chiropractic clinics are or are not health care settings; how would you respond to that?
A The way I would look at that is we're a regulated profession underneath the Health Professions Act, and we are health professionals, health care workers. We're regulated members of a health care profession, and that's what the Health Professions Act establishes. That's the level of expertise.

When people come to us, they're coming to us for health care problems. They're coming to us because they're seeking our care for conditions that impact their health. So I would say, in every sense of the word, we are health care workers.

Q Dr. Halowski, since the COVID-19 pandemic began, have any chiropractors died from COVID-19, to your knowledge?
A Yes. We've had two of our members that passed away as a result of COVID-19. We had one practitioner in his early 50s in Calgary that passed way as a result of it. We had one of our members in their early 60s passed away as a result of it. And during that time, I've had

an opportunity to speak to many of our members who acquired COVID as well.

MR. MAXSTON: Dr. Halowski, those are all my questions for you.

I see we're just coming to 4:00, so Ms. Nelson is still involved. I take it, based on our previous discussion, Mr. Chair and Mr. Kitchen, that what the intention will be is that next Tuesday, when we resume, Dr. Halowski's testimony would continue, and Mr. Kitchen would commence his cross-examination, I would do my redirect, if any, and the Tribunal would ask any questions of Dr. Halowski?

THE CHAIR: That's my understanding. I think that's the path that we shall follow.

The Chair Questions the Witness

THE CHAIR: But before we break for today, I had one quick question that I would like to ask Dr. Halowski, and this goes to the complaint that was received.

Q THE CHAIR: So the complaint was made by a patient to Alberta Health?

A It was made by one of Dr. Wall's patients specifically to Alberta Health, but Alberta Health communicated it back to us. They indicated that that patient would like to stay anonymous, as they had a -- often patients -- and that's very standard for a patient not

to want to be identified -- but when they made that complaint and with that follow-up conversation to Dr. Wall where I became aware of it, that's when we decided to action further.

Q Okay, so there was no further communication with the patient?

A No, at no time did we communicate with the patient; that came to Alberta Health from a patient.

Q Okay, I just was curious as to how -- what the path was for that complaint to end up where it did.

THE CHAIR: Did any other Members of the Tribunal have questions they wanted to talk about today? We can caucus and discuss those, or we can -- you have a chance to think about this and certainly raise them next week when we meet.

Okay, I think the Hearing Tribunal Members are fine; I'm fine.

So thank you very much, Dr. Halowski, for your time and your testimony today. Much appreciated.

Thank you, counsel, both counsel for your efforts. They are long days, but there's a lot to cover, and we shall pick this up at 9:00 on September 7th and continue, at that point, with Mr. Kitchen's cross-examination of Dr. Halowski.

And I would just ask, Mr. Pavlic, do we need to caution Dr. Halowski not to discuss his testimony, or

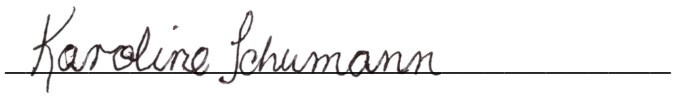
is that not an issue?
MR. PAVLIC: He should be provided the usual caution, but I think Mr. Maxston has already indicated that he will not be discussing any matters with him, so I think that will cover it off.
MR. KITCHEN: Okay, your comment, mine, and Mr. Maxston's.
THE CHAIR: Okay, that's great. Okay, thanks everybody. We will call this hearing to close for today, and we'll see everybody on the 7th. Have a good long weekend.

PROCEEDINGS ADJOURNED UNTIL 9:00 AM, SEPTEMBER 7, 2021

CERTIFICATE OF TRANSCRIPT:

I, Karoline Schumann, certify that the foregoing pages are a complete and accurate transcript of the proceedings, taken down by me in shorthand and transcribed from my shorthand notes to the best of my skill and ability.

Dated at the City of Calgary, Province of Alberta, this 27th day of September, 2021.



Karoline Schumann, CSR(A)
Official Court Reporter

IN THE MATTER OF A HEARING BEFORE THE HEARING TRIBUNAL OF THE ALBERTA COLLEGE AND ASSOCIATION OF CHIROPRACTORS ("ACAC") into the conduct of Dr. Curtis Wall, a Regulated Member of ACAC, pursuant to the Health Professions Act, R.S.A.2000, c. P-14

DISCIPLINARY HEARING

VOLUME 3

VIA VIDEOCONFERENCE

Edmonton, Alberta

September 7, 2021

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Proceedings taken via Videoconference for The Alberta College and Association of Chiropractors, Edmonton, Alberta

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J. Lees	Tribunal Chair
W. Pavlic	Internal Legal Counsel
Dr. L. Aldcorn	ACAC Registered Member
Dr. D. Martens	ACAC Registered Member
D. Dawson	Public Member
A. Nelson	ACAC Hearings Director

ALBERTA COLLEGE AND ASSOCIATION OF CHIROPRACTORS

B.E. Maxston, QC	ACAC Legal Counsel

FOR DR. CURTIS WALL

J.S.M. Kitchen	Legal Counsel

K. Schumann, CSR(A)	Official Court Reporter

(PROCEEDINGS COMMENCED AT 9:08 AM)

THE CHAIR: Good morning, everybody. Thank you, Dr. Halowski, for coming back this morning.

A Thank you for having me back.

THE CHAIR: Just to remind everybody, we concluded on September 2nd with the direct examination of Dr. Halowski, and we will start this morning -- I should, first of all, remind everybody that the Hearing Tribunal is back in session, and we will start this morning with the cross-examination of Dr. Halowski.

And, Dr. Halowski, I would just remind you that you are still under oath. Very good.

Mr. Kitchen, I'll turn the floor over to you.

MR. KITCHEN: Thank you, Chair.

DR. TODD HALOWSKI, Previously affirmed, Cross-examined by Mr. Kitchen

Q MR. KITCHEN: Good morning, Dr. Halowski. Is it all right, if I call you Dr. Halowski?

A Yeah, that works for me.

Q Thank you. Well, I'm going to start with just a few questions about some of the things you had to say on Thursday, and I might refer to last Thursday, and that's just a reference to your direct examination with Mr. Maxston.

Now, Dr. Halowski, the primary form of care provided by chiropractors is physical manipulation of the musculoskeletal system of their patients; isn't that right?

A That is one form of treatment provided. There's also consultation. There's education. There's also soft

tissue immobilization. There's exercise instruction. And so one of the modalities of treatment that is used is physical manipulation as well as many others.

Q So you disagree that the primary form of care is manipulation?

A That is one of the modalities of treatment that we are taught. It may be that many chiropractors employ it. There are chiropractors that don't use that. So for me to speak for every chiropractor and the treatment plan they provide would be inappropriate in this setting, but it is one of the treatment forms that chiropractors utilize and are trained to utilize and recognized as a restricted activity that we are able to perform under the Health Professions Act.

Q Okay, and I appreciate that answer, but can you just confirm for me that you disagree that it's the primary; in other words, you would say it is only one form of treatment, it is not the primary; would you agree with that statement?

A I would say that historically, manipulation was the primary means of treatment. I would say in today's chiropractic. There are many approaches; chiropractors also provide acupuncture, they provide all sorts of different treatments that are physical or meant as for intervention. So I think that having me agreed to that statement or disagree to that statement, doesn't

provide the full context of care provided by chiropractors.

Q And I appreciate that you feel that way --

A No, that's the truth; it's not my feeling.

Q Okay, and I appreciate that you think that's the truth, but you are required to answer my question, and my question is do you agree that physical manipulation of the musculoskeletal system is the primary form of care? If you disagree, I'd ask that you tell me.

A I think I have answered that that is one of the forms of care, and it may be the most --

Q I didn't --

A -- commonly --

Q -- ask you if it's one form of care; I asked you if it's the primary.

A Again, then --

Q Do you agree it's the primary, or do you disagree?

A I would say I can't answer that question the way you're asking it.

Q So do you agree that you don't know the answer to that question?

A No, I think I do understand that that applies, and I did inform you as well as the Hearing Tribunal of the many different options that are available for treatment as offered by chiropractors.

Q I didn't ask you if you understood. I asked you if you

don't know. So is your answer to the question whether you agree that musculoskeletal manipulation is the primary form, is your answer I don't know?

A The answer is that would depend on each practitioner, and while that is we are trained and experts in providing manipulation as you're describing, or if we talked about osseous manipulation, then, yes, that is a primary treatment that we're trained to offer.

Q So you would agree that physical manipulation is a primary form but not the primary form?

A That's correct.

Q Well, do you agree that the physical manipulation of the musculoskeletal system is called an adjustment?

A That is one word that's used for it. Adjustment and manipulation are used interchangeably by practitioners, often recognizing that, you know, manipulation is what would be recognized by the majority of health professions. Adjustment is the term used by some chiropractors when they're describing manipulation.

Q Well, I'll use the word "manipulation" because it seems to be the one favoured by you. Now, manipulation is done by chiropractors by either touching patients with their hands or with small manipulation devices; isn't that right?

A That are -- yes, that would be the two, typically either instrument-assisted or hand-based adjustment or

manipulation as you call it.
Q Well, I'm calling it that, because you called it that. Adjustments cannot be done -- okay, sorry, let's call them manipulation. Manipulation cannot be done over the phone, can it?
A That is correct.
Q Manipulation cannot be done if a chiropractor is physically distanced from their patients by 2 metres; isn't that correct?
A That's correct.
Q You stated last Thursday that Telehealth is not the same as physical care, did you not?
A It is not the same.
Q I don't think you said last Thursday that Telehealth is shown to be effective, but you have produced no independent evidence of this effectiveness in the form of studies or reports, have you?
A I think I did report on a study that's forthcoming that's not yet published, but there is evidence and there is published evidence that treating musculoskeletal conditions with Telehealth has been shown for specific conditions to be effective, that depends on the condition.
Q You haven't produced that evidence for the purposes of this hearing, have you?
A I didn't -- no, we didn't produce that evidence. It's

not submitted as one of the articles.
Q Chiropractors don't generally work with people that have infectious illnesses, do they?
A They -- not typically, we don't. We don't seek out to treat patients with infections. Some patients may show up because they have an infection -- well, with an infection as a comorbidity.
Q But you said last Thursday, did you not, that chiropractors don't generally work with people that have infectious illnesses, didn't you?
A Yeah, we're not a primary treatment for those patients.
Q When the ACAC decided to include mandatory masking for chiropractors in the Pandemic Directive in May of 2020, it did not consider the statutory human rights and constitutional rights of chiropractors regarding mandatory masking, did it?
A We were taking the direction of Public Health around the requirements to protect patients. So if you're asking about it in that situation, it was one of the discussions; however, the primary decider was that we have a responsibility to practice in the safest way possible for our patients.
Q Thank you for that answer, but you didn't answer my question. My question was when you were deciding what to put in the Pandemic Directive, and you decided to include mandatory masking, this is in May of 2020, you

did not consider the human rights and constitutional rights of chiropractors, did you?

A I would say that the rights of the patient and our responsibility to provide a safe environment were considered above those rights. So it's not that it was not considered, the consideration was specifically that the patient's safety in a situation like that should come first at this time.

Q Sir, you agree that the human rights and constitutional rights of patients are very important?

A I do agree that we have a responsibility. I don't know if I'm an expert -- able to speak about constitutional and human rights. I do know that we had a responsibility to provide a way for our practitioners to deliver safe care. So while you're asking me about that, I don't feel that I'm qualified to speak about the human rights here in the aspect that you're pursuing. And what you're seeking is my opinion, and I don't know if my opinion really matters in the regard of making a decision of what's best and safest for a patient.

Q But you would agree, just to confirm what you just said, you would agree that the rights of patients are paramount over the rights of chiropractors?

A That the safety of patients is paramount in making a decision about how to provide for safe practice.

Q Right, but what you just said is that the rights of chiropractors are less important than the rights of patients; is that not what you just said?
A I don't believe it is.
MR. KITCHEN: Well, Madam --
A I think I spoke about the safety of the patient.
MR. KITCHEN: Madam Reporter, can you help us out with that? Can we just go back to what Dr. Halowski said there just a moment ago?
COURT REPORTER: (by reading)
A I would say that the rights of the patient and our responsibility to provide a safe environment were considered above those rights. So it's not that it was not considered, the consideration was specifically that the patient's safety in a situation like that should come first at this time.
MR. KITCHEN: Thank you.
Q MR. KITCHEN: So, Dr. Halowski --
A Yeah.
Q -- you would agree can with me that, from your perspective, the rights of the patients are paramount to the rights of chiropractors?
A When you say "paramount", can you give me the definition of how you're describing "paramount"?

Q You would agree with me that you just said that the rights of patients are more important to you in your role as the Registrar than the rights of chiropractors?
A I would say that the rights -- if you're going to use those words, the right or the responsibility of the College is to ensure public protection, public safety, and practitioner competence, and I believe we met those requirements by the decisions that were made in May last year.

So we did say that paid practitioners must be masked to provide care, because the evidence at that time was that masking was an effective way to limit the transmission of COVID-19 to patients that were receiving care.

Q So you would agree with me that the Pandemic Directive does a good job of prioritizing the rights of patients over the rights of chiropractors?
A I would agree with that.
Q When the ACAC decided to include mandatory masking for chiropractors in its Pandemic Directive in May of 2020, it did not consult a scientist who was independent of the Alberta Government, did it?
A We were -- we did not, other than the advice and recommendations of Public Health, consult anybody outside of that organization.
Q And by "Public Health", you mean the Public Health of

the Government of Alberta?
A Correct, and also the recommendations of the Public Health Agency of Canada.
Q Now, when the ACAC reviewed and revised the Pandemic Directive in January of 2021, it didn't then consult a scientist who was independent of Government Public Health to review the mandatory masking, did it?
A No, we continued to put our trust in the recommendations and direction received from Public Health in Alberta as well as that from Public Health of Canada.
Q Exclusively, correct?
A Yes, correct.
Q You said last Thursday, that it would be, quote, oppressive for the ACAC to mandate too much PPE too often; isn't that right?
A In the context of reviewing the standard of practice, I believe that is correct. When we talked about all of the different things, i.e., having to wear gowns, having to wear gloves, having to wear splash shields, all those different things would have been an excessive amount of PPE in the context of what we knew about COVID at the time.
Q Now, I'm going to take you and the Tribunal to Exhibit F-2. If you could just let me know when you have that in front of you. This is CMOH Order 16-2020.

A I will let you know as soon as I have it. Okay.
THE CHAIR: Does everybody have it?
MR. KITCHEN: Thank you.
Q MR. KITCHEN: Dr. Halowski, you're there?
A Yeah.
Q Now, Section 2 of this order, CMOH Order 16-2020, Section 2 never applied to Dr. Wall, did it?
A You're saying Section 2 of the actual order or Section 2 of Appendix A? Because when I read Section 2 of the order: (as read)

> Effective May 4th and subject to Section 6 of this order, a regulated member of a college established -- [so Dr. Wall is a regulated member of a college] -- established under the Health Professions Act practicing in the community must comply with the attached Workplace Guidance for Community Health Care Settings to the extent possible when providing a professional service.

I would say that does apply to Dr. Wall.
Q Let me take you over to the next page then. You see Section 6 there?
A Yeah.
Q Now, I'm going to read it to you, and then I'm going to ask you a question: (as read)

> Section 2 of this order does not apply in

respect of a regulated member under the Health Professions Act whose college has published COVID-19 guidelines as required by Section 3 of this order.

A Yeah.

Q You would agree that the ACAC Pandemic Directive was implemented on May 4th?

A It was -- that's when members could return to practice under the CMOH order. It was -- that's when it was effected. It was provided to members before that.

Q All right. Okay, so let me ask you again -- let's go back to Section 2 --

A Okay.

Q You would agree with me then that Section 2 never applied to Dr. Wall?

A Section -- the way you're reading it, yes.

Q And that's because of Section 6 and the fact that the ACAC implemented the Pandemic Directive on May 4th, correct?

A Correct.

Q So at no time did Dr. Wall ever contravene Section 2 of CMOH Order 16-2020, did he?

A I am answering; I'm just reading to make sure my answer is consistent with what I'm reading right now.

Q That's fine.

A Yeah, at that time, he would be under the direction of

the College. So your answer -- I think the way you -- can you restate your question, and then I will answer it specifically?

Q At no time did Dr. Wall ever contravene Section 2 of CMOH Order 16-2020; isn't that correct?

A He would have been -- so, yes, he would have been under Section 6 of the CMOH -- of this order at 16-2020, because the College had its own guide, but the answer is, yes, that said that.

Q Thank you. I'll take you to Exhibit D-8, please. D-8, and that is CMOH Order 38-2020.

A Okay.

Q You're familiar with this? I believe we discussed this last Thursday.

A Yes.

Q And I'll take you over to page 6. Now, Section 27(c) of this CMOH Order 38-2020 orders that individuals are exempt from wearing a mask if they are: (as read)

> Unable to due to a mental or physical concern or limitation.

Isn't that right?

A That's what that says right there.

Q Just going to go back to the Pandemic Directive, and just so everybody knows, there's three versions of the directive, of course, I think it's C-20, C-21, and C-22. C-22 being the January 6th version.

Now, Dr. Halowski, none of these three versions of the Pandemic Directive requires that patients wear a mask, do they?

A I think the first and second did not. I believe in the third version, we did start speaking to the direction that was provided in the CMOH orders. I would have to confirm that.

Q Well, why don't you do that.

A In here, we did not speak to patients. I do know we did -- and so that's why I had to review. I do know we communicated to the ACAC around patients and how to manage and handle patients that were not masking because those were at the time Provincial or Municipal orders.

Q I appreciate that, but you'll confirm for me that never in the directive, in the Pandemic Directive, did you mandate that patients must wear a mask?

A No, we don't regulate patients. We did not mandate it in there.

Q And none of the three versions of the directive required chiropractors to enforce that their patients wear a mask, does it?

A That was -- no, we don't have anything in the Pandemic Practice Directive around enforcement for chiropractors to make their patients mask in the clinic.

Q Now, I'm at that Personal Protective Equipment section,

okay, which stays largely the same for the three versions. Now, you would agree with me that nowhere in the PPE or the Personal Protective Equipment section in the directive, you would agree with me that nowhere does it say anything about chiropractors contacting the ACAC regarding masking if they think they have a human rights concern regarding mandatory masking?

A We don't have anything in there about our practitioners contacting us. We do -- and this directive didn't include anything about them contacting, because the expectation was that they would always mask when providing close contact care.

Q I heard you say quite a few times in your answers to Mr. Maxston on Thursday that the protection of the public is the top priority and primary consideration for the ACAC?

A That is what directs our policy decisions, yes, that is -- when council meets and council makes decisions, that is the consideration that's made is what is best for the public. That is that council -- both between -- so I would say, yes, that is an appropriate assessment that we do speak to the need for regulating members with the perspective of public safety first.

Q You agree that a key aspect of protecting the public is protecting their health, do you not?

A Yes.

Q You agree that the principle of, first, do no harm is a vital part of protecting the health of members of the public; do you not?
A That would be part of what we do and aim to do with the provision of care as chiropractors.
Q You agree that each patient of every chiropractor is a member of the public, do you not?
A Yes.
Q You agree that the interests of each patient, each forms a part of the broader public interest; do you not?
A I would say I guess so if we're going down this -- where you're going is that each patient's, you know -- but again there, I'm trying to understand the reason of the question, other than, yeah, we have that each patient's safety is paramount, but we only interact with a patient that's in the office.
Q You agree from the perspective of the ACAC, because that's -- I'm not asking this question, I'm not asking any of these questions about you as a chiropractor. I know you've practiced; you mentioned that on Thursday.
A Yeah.
Q But you're here in your role as Registrar.
A Yeah.
Q Okay, so that's what I'm talking about.
A Okay.

Q So you would agree from the perspective of the ACAC that the interests of each patient, each chiropractor, each forms a small part of the broader public interest, correct?
A Yes. I would say the public as a whole, yes.
Q Do you think -- would you agree that if the interests of one individual patient were impacted, that in some small way the broader public interest as a whole is impacted?
A Perhaps. I mean, can you give me an example of a situation that you're thinking of? Because I can think there would be positive and negative for impact, I think that's a consideration.
Q If I did that, Mr. Maxston would tell me I can't ask you a hypothetical, so I'm not going to do that.
A Okay.
Q You would agree that the public interest is not merely an ideal, correct?
A The public interest, I think that's the decision-making, it's not -- it's meant to be realistic for the public and how they receive care or how we interact or how we provision for the -- it's meant to be realistic, yes.
Q Exactly, and the public is made up of many individuals, correct?
A It would be, yeah, everybody, like I said, the --

society in its entirety.
Q So the interests of each individual chiropractic patient, a conglomeration of those interests make up the public interest, correct?
A Perhaps, yes, that would be -- I guess so, yes.
Q The ACAC expects chiropractors to prioritize the protection of the health of their patients above all other priorities; isn't that right?
A That we do expect that they practice with safety as their primary concern, whether it's safety to deliver the care at that time, whether it's safe to -- safer to not provide care, whether it's safer to refer the patient. All of those are considerations that an individual chiropractor must make based on the presentation of the patient. So in the full context, yes.
Q Okay, thank you, but I didn't ask you about safety, so please try to listen to the words that I use.
A Okay.
Q And if you don't agree with me, that's okay, just say so, say, I don't agree with that, or just say, That's not right. You can give whatever answer you want, but I am asking you, and you are required to answer the question that I ask you.
A Okay.
Q The ACAC expects chiropractors to prioritize the

protection of the health of their patients above all other priorities; is that right or is that wrong?
A Yes, that's right.
Q Even above their own interests, correct?
A That would be -- I'm going to say there is context -- no, yes, that would be true.
Q You agree that the principle -- again I'm asking you in your capacity as the Complaints Director, okay? I'm not asking your personal opinion --
A I'm not the Complaints Director, but I'm the --
Q Sorry.
A -- Registrar, yeah.
Q Forgive me. That's exactly --
A That's okay. No, that's okay, I just wanted to make sure that that was clear that I'm not pretending to be the Complaints Director.
Q So you agree, from your perspective as the Registrar of the ACAC, that the principle of chiropractors protecting the public from harm is more important than the principle of protecting the reputation of the chiropractic profession, do you not?
A Public safety is what is the key and essential in the decision-making, so I don't know if I would separate the two because I do believe that protecting the patients protects the reputation of the profession. So that would be I disagree with the way you stated the

question.
Q Okay. As far as you're concerned, those two things could never come in conflict?
A So when you say "those two things", you're talking about patient safety and the public reputation. They, at times, they do come in conflict, and patient safety would be above the professional reputation at the time in the sense that, you know, we actually -- when we govern or when council governs under the Health Professions Act, their consideration is the public above the profession.
Q So you've agreed that public safety is above the reputation -- or above the interest of protecting the reputation of the profession. Do you agree that protecting the public from harm is also above protecting the reputation of the profession?
A I think that, in my mind, the protecting the public and protecting them from harm is very similar. I don't know if I understand the distinction you're trying to make there.
Q Well, again, I asked the question, and I didn't use the word "safety", but you used the word "safety" in answering, which --
A Okay, you said public -- versus public, protecting the public and protecting the public from harm, is that what you used?

Q That's exactly what I used.
A And so what's the distinction? To me, I see them as the same.
Q You see safety and protection from harm as the same things?
A Again, you put the word "safety" in there, I didn't. When I was restating your question, I said public and public harm. And so when you're saying protecting the public, I think that encompasses protecting them from harm as one of the components. So I guess I would say, yes, in that aspect.
Q You agree that there are other threats to the overall health and safety, health and well being of chiropractic patients besides COVID-19, do you not?
A Absolutely, yeah. You know, that is -- I would a hundred percent agree that COVID-19 is not the only health threat that our patients face at this time or the public faces, because I'm not speaking about my years as a practitioner.
Q You agree that chiropractors are obligated to comply with the ACAC's requirements of practice even if those requirements are harmful to the chiropractor, do you not?
A I would say that the -- that the chiropractor must deliver care in a safe way, which is that to reduce the risk of harm.

Q I appreciate that, but that's not what I asked you.
A Okay.
Q You agree, do you not, that chiropractors are obligated to comply with the ACAC's requirements of practice even if those requirements are harmful to the chiropractor?
A I disagree with the way you've asked the question, and I know you're going to tell me I have to answer the question, and so I would agree that the patient's safety comes -- is paramount in the delivery of chiropractic care, and we would not set it up so that our chiropractors were in a position to be in physical danger when providing the care.
Q Dr. Halowski, if you don't agree with my questions, it's perfectly acceptable for you to answer and say you don't agree.
A Okay.
Q But you don't get to ask yourself a different question. I'm the one asking questions. I'm asking you questions, and if you disagree with the question that I have asked you, if I ask you if you agree with something, I'm asking you to tell me whether or not you agree. I'm not asking for you to ask yourself a new question.
A Okay.
MR. MAXSTON: Mr. Chair, I've got to make a comment. Mr. Kitchen is phrasing his responses to

Dr. Wall's [sic] answer in the format of, You're not answering a question. He may not like the answer that Dr. Halowski has given, but this constant repeating of you have to answer my question, Dr. Halowski is answering. It's not a question of does Mr. Kitchen like the answers. Dr. Halowski is providing his answer, and I just -- I would ask Mr. Kitchen to refrain from the repeated rephrasing of a question when the answer has been given.

MR. KITCHEN: And I appreciate that. The problem is that what we're seeing is the witness is making up his own questions and answering them; he's not even attempting to answer my questions.

MR. MAXSTON: Mr. Kitchen, you and I disagree, but when I think when Dr. Halowski gives an answer, he gives an answer, and you don't have to like it. You can press him on it. But I think you're going beyond that in reminding him repeatedly about what his obligations are. He's answering questions.

MR. KITCHEN: Well, I'll refrain from that, and I won't give that reminder again.

THE CHAIR: I think, Mr. Kitchen, that and, Mr. Maxston, that Mr. Kitchen's questions are being asked to solicit a certain answer from Dr. Halowski, which -- and Dr. Halowski, from my perspective anyway, is trying to provide the

information in his answer the best way he can, and I think perhaps there is disagreement on how the answer should be worded between Mr. Kitchen and Dr. Halowski.

But I agree, let's try and move forward with this. We seem to be hung up on splitting hairs about the use of a particular word. Thank you.

MR. KITCHEN: Thank you.

Q MR. KITCHEN: Dr. Halowski, I'm just going to ask this question one more time, and whatever answer you give, we're going to move on.

I'm simply asking you whether or not you agree, do you agree that chiropractors are obligated to comply with the ACAC's requirements of practice even if those requirements are harmful to the chiropractor? Do you agree with that, or do you not?

A Patient safety comes first in the delivery of care, so I would say that if there's the risk for harm for a practitioner in providing care, they shouldn't be providing care at that time. If providing safe patient care is going to harm the practitioner, that practitioner should not be providing that care at that time.

Q And you would agree that it's impossible for the ACAC requirements of practice to ever result in a lack of safety to the patients?

A Can you repeat the question once more?

Q You would agree it's impossible that the ACAC's requirements of practice would be or would result in a lack of safety to patients?
A Can I -- I'm going to say how I heard your question, and so that the way we require care may result in an unsafe environment for patients?
Q No, I'm asking you, you in your role as the Registrar, you regard it as impossible that the requirements of practice from the ACAC could ever result in a lack of safety for patients?
A I think the Standards of Practice -- so I'm going to contextualize this, the way the Standards of Practice are established and direction is meant to provide the safest way for a patient to receive care. If somebody's not following that, it may introduce an environment where the patient is not safe in receiving care.
Q The ACAC is obligated by law to only impose requirements of practice that are lawful; isn't that right?
A So I would, listening to that, I think that there's more meaning behind the words than I would be able to speak to. I do know our responsibility is to set Standards of Practice and to govern the profession -- and Codes of Ethics and govern the profession according to the mandate that the legislation provides.

So when we do that, the consideration is to be lawful in how we set up our direction as well as Standards of Practice and Code of Ethics.

Q Well, since you take objection to the words, let me get a little more specific.

A Okay.

Q You would agree with me that the ACAC is obligated to only impose requirements of practice that are consistent with the Alberta Human Rights Act, correct?

MR. MAXSTON: Mr. Chair, I'm going to object to that. Dr. Halowski has no knowledge of Alberta human rights legislation or requirements. This may be a question for another witness but not Dr. Halowski.

And, I'm sorry, and I might add that's the ultimate question that may be before -- or one of the questions that may be before the Tribunal.

THE CHAIR: I think Mr. Maxston makes a good point. Dr. Halowski is an expert on the College's work; however, I don't think he should be held to be an expert on human rights legislation.

MR. KITCHEN: And I would agree, and I wasn't asking about the content.

Q MR. KITCHEN: I was merely asking do you agree, Dr. Halowski, that the ACAC is bound by the statutes of Alberta?

A To the extent that we have authority under the

legislation, we have a responsibility to -- council has a responsibility to govern, given the -- what the legislation provides for us to govern.

So I think that, yes, but there's context there that's really important to consider. Like I don't get to decide what happens in somebody's personal life but -- or our director or -- I say "us", the ACAC doesn't get to.

What we actually have to specifically consider is how the legislation should be applied for chiropractors that are practicing in Alberta, and "legislation" being specifically the Health Professions Act.

Q The ACAC is bound to act according to the Constitution of Canada; isn't that correct?

A Again, there I wouldn't be an expert in that. I think we are bound -- we are entitled with the legislation under the Health Professions Act and act according to the direction provided in that document.

Q So would you agree with me that the ACAC is bound by other pieces of legislation besides the Health Professions Act?

A There are other pieces of legislation that do speak to the chiropractic profession, specifically things like the Health Information Act. We also are responsible for PIPA in our own conduct. Our members are responsible PIPA in their own conduct. So there are

other pieces of legislation that direct the conduct of what we have an opportunity to provide guidance, direction, or regulation on.

Q Thank you. Now, last Thursday, in response to questions from Mr. Maxston, you discussed what was said in an initial call between yourself and Dr. Wall. This occurred in early December; you would agree?

A December 2nd from my records.

Q Thank you. Now, you told Dr. Wall, during that call, that a decision may be made that he either wear a mask or sit out from practicing for the rest of the pandemic, didn't you?

A I don't believe I made that. I said that we would have to go further in inquiry at that time. I don't actually get to make the decisions, but that would be one of the decisions that would have been possible to be raised, so -- I don't have the transcript nor a memory of every word that was said in that conversation.

Q Well, Dr. Wall remembers the conversation, and I'm just going to put it to you that he is going to say that you said to him in that phone call that he either wear a mask or sit out from practicing?

A I think that if it was prefaced that way, it would have been an ask not a demand: So would you consider not practicing at this time if you're not willing to mask.

Q Well, I'm going to put it to you, Dr. Wall is going to say that you made that as a statement.
A All right.
Q So let me ask you: Do you confirm or deny that you said to him on that phone call that he either wear a mask or sit out from practicing?
A I don't -- I would disagree that I said it that way.
Q And, Dr. Halowski, you said that COVID killed two Alberta chiropractors; you said that, correct?
A That is what was reported to us from their families, so, yes, I did report what was communicated from my family out to our colleagues, so that our colleagues were aware of the impact of COVID on these families and fellow colleagues.
Q So you haven't viewed the death certificates of these two individuals, have you?
A I did view the death certificate of one; the other, I received the obituary from the -- and it wasn't a death certificate, like the Government death certificate; it was the one, like a -- I don't know what it's called, but a certificate of death, but like the notice that a funeral home or a mortuary would provide, confirming that they are in possession of this body is what we received, and we require that for some form of confirmation -- or we require some form of confirmation, and that is what we received in that

case, and the other was the obituary.
Q That document that you viewed, you haven't produced that as an exhibit in this case, have you?
A No.
Q You have no evidence of what comorbidities these two chiropractors had at the time of their death, do you?
A I don't. I didn't. It wasn't my place to ask these families specifically what comorbidities or health, that's their personal health information. They just informed me that COVID had killed their -- one was their husband, and the other was their father.
Q So you don't have personal knowledge that COVID was the primary cause of death in these two people, do you?
A I have what was reported to me. Is that not considered personal knowledge before the -- like I don't know what your -- is "personal knowledge" is a legal word or not? Like I would call that personal when I spoke to the wife and said that her husband was in the hospital for close to six -- I think four weeks, six weeks, received care at both the Rockyview and the Foothills, but eventually succumbed to complications due to COVID.

And the other, there was reports that there was -- from them, not from that person directly, somebody else who knew them, indicated that they may have had comorbidities and -- but the son said, Yeah, no, COVID is what killed my father.

So I mean, that's information. I didn't enter that as exhibits, other than the fact that both those families declared to me, in different ways, that their loved ones had been killed by COVID or as a result of COVID-acquired infection.

Q The basis of your belief that these two individuals died of COVID is based on what you were told by other people, correct?

A Correct.

Q And you don't know how these two people contracted COVID if they did; isn't that correct?

A I didn't ask. It was moot to the conversation, and I didn't feel it was my place to ask that question, so that is correct.

Q But you did feel it was your place to say, as part of your testimony, that you believe that two Alberta chiropractors died of COVID?

A I believe the reports that were provided by those people, so, yes, I did. And I think, again, for our profession, it only illustrated to me, as well as to our colleagues, the severity of COVID in our community.

Q Dr. Halowski, how many chiropractors are there in Alberta?

A It -- that goes up or down. Do you want an exact number today or just an estimate?

Q Is it greater than 1100?

A Yes, it is, and it would have been, at the time, it would have been 1150 to 1180.

MR. KITCHEN: Those are all my questions.

THE CHAIR: Thank you, Mr. Kitchen. I'll ask, Mr. Maxston, if you have any questions in redirect for Dr. Halowski?

MR. MAXSTON: Mr. Chair, I do, I have a few, but I wonder if we could just take maybe a 10-minute break; I just need to go through my notes and organize my questions a little bit.

THE CHAIR: Okay, it's 10:00. I think that's a good idea. Let's come back, we'll give you 15 minutes, Mr. Maxston, so we'll reconvene at 10:15. We'll take a recess for now and see everybody in 15 minutes.

(ADJOURNMENT)

THE CHAIR: The hearing is back in session, and, Mr. Maxston, it's your opportunity for any redirect with respect to Dr. Halowski.

MR. MAXSTON: Yeah, I have about maybe five or six questions for Dr. Halowski. It will be pretty brief.

Mr. Maxston Re-examines the Witness

Q MR. MAXSTON: Mr. Kitchen engaged you in a discussion about chiropractors, and his statement to you was chiropractors don't generally work with

patients with infectious illnesses, and your response was I believe that chiropractors are not a primary treatment for those types of patients.

When it comes to COVID though, chiropractors don't know whether a patient is or isn't infectious, even if they're coming to you for an adjustment for their back; is that correct?

A That is correct. We do have the screening questions as part of our thing, because we were concerned, right from the get-go, with chiropractors trying to triage patients coming in with infections that they shouldn't be in the clinic in the first place, and then we were concerned that practitioners may try and triage their symptoms and go, Well, this sounds like a cold or this sounds like something else.

So we were very prescript to begin with and had maintained that for the duration of the pandemic that those screening questions are important in part of the consideration of whether it would be safe to provide care at that time and --

Q And -- sorry.

A Sorry. Or have that patient in the clinic environment.

Q Is it fair to say --

MR. KITCHEN: Mr. Maxston, that was a leading question, and this is a redirect. So if there's any more leading questions, I am going to

object.
MR. MAXSTON: Sure.
Q MR. MAXSTON: Dr. Halowski, patients can be asymptomatic when they attend, asymptomatic for COVID when they attend at a chiropractor's clinic?
A That is correct.
Q I'll take you to a discussion you had with Mr. Kitchen where he commented that the Pandemic Directive contains no requirements for patients to mask. You don't have jurisdiction over patients, do you?
A Correct.
MR. KITCHEN: I object to that; it's leading.
Q MR. MAXSTON: Oh, I'm sorry, I'll rephrase that. Does the College have jurisdiction over patients?
MR. MAXSTON: You're quite right, Mr. Kitchen.
A We have no jurisdiction over patients. We regulate chiropractors.
Q MR. MAXSTON: Would the CMOH orders enforce a time that required patients to mask?
A Yes, there was times where either municipalities and CMOH orders required masking.
Q For patients?
A For patients, for the public, which patients are a part

of.

Q Including Dr. Wall's patients?

A Including Dr. Wall's patients.

Q Mr. Kitchen took you through a part of the PPE section of the Pandemic Directive and mentioned that it said nothing about the chiropractor having a human rights concern. Do you recall last week, last Thursday, when I took you through the Chiropractic College notices, Exhibits C-1 to C-22?

A I do remember.

Q Are there comments in those notices --

A I could review and look off the top of my head. I am not sure. I do know, if that's what I -- you would like me to do, I can definitely look through and give a quick look about that.

Q My question was going to be --

MR. KITCHEN: Mr. Maxston --

Q MR. MAXSTON: -- were chiropractors invited to contact the College if they had questions or concerns?

MR. KITCHEN: Mr. Maxston --

A Oh, yes.

MR. KITCHEN: -- you asked that in direct, okay, last Thursday, okay? So this is not new, and redirect is for new issues and --

MR. MAXSTON: Well, you raised the human

rights concern, Mr. Kitchen, and I'm responding to that.

MR. KITCHEN: Okay, but then the question's going to have to be phrased to be specifically dealing with the human rights concern that I raised in cross, not going back and re-asking the same question you asked last Thursday.

Q MR. MAXSTON: Well, I'll ask another question. Dr. Halowski, could a chiropractor contact the College about a human rights concern?

A At all times, chiropractors were able to contact the ACAC.

Q Dr. Halowski, you engaged in a discussion with Mr. Kitchen and his reference to I think a generally accepted principle of, first, do no harm; do you recall that?

A I remember that.

Q Who does the "harm" refer to in that, first, do no harm?

A That would be in consideration of the patient, that our plans and our treatment is specifically around ensuring that the care we're providing is safe, that our -- how we're providing that we're making those considerations that patients can, one, in our treatment be safe but also in the environment we provide that they're safe.

Q And what was the College's determination about

practitioners not masking?
A The determination, based on the guidance from Public Health and the evidence that we had in making those decisions, was that masking posed a risk to the public because there was the risk for transmission from the practitioner to the patient if the practitioner was not masked inside of that 2 metres distance.
Q Okay. Thank you for that. Mr. Kitchen asked you a question, and I'll paraphrase here, does the College expect chiropractors to prioritize the health of patients above all other priorities. Why does the College create Standards of Practice or Code of Ethics?
A Standards of Practice and Codes of Ethics, look, the Standards of Practice represent the minimal acceptable level of performance for our practitioners in delivering care. It's meant to provide that framework so that the obligations for the practitioner is spelled out that the public knows what they're reasonably going to receive when they receive care. It makes considerations for public and patient safety in the provision of care.

And Code of Ethics represents the conduct or the ethical conduct that's expected out of regulated members of the chiropractic profession in Alberta.
Q You engaged in a discussion with Mr. Kitchen about his comment or question that preventing public harm is

above the reputation of the profession. I just want to be clear, where does the reputation of the profession come into the College's functions?

A The way that -- the reputation of the profession is paramount. Practicing in a safe way is how we protect that. If we made decisions that put the public at risk, that would damage the reputation of the profession.

And that also comes in in the reputation of the profession in the way that council deliberates and discusses. Our council currently is comprised of 25 percent public members, 75 percent practitioners. That is going to be expanding to 50/50 representation once the Government's provided enough public members of council.

But that reputation -- and reputation is based on the idea that, you know, the College is providing a safe way, and we've spent a considerable amount of effort to ensure that things like advertising have been in line -- you know, and that's significant because some of the things that members of our profession say publicly have and potentially damaged the profession in Alberta, have damaged it in other provinces, and so the reputation is really, really key, and we do that by regulating the members to practice safely and practice within the guidelines of what we're given to do under

the Health Professions Act.

Q I just have one final question. You talked with Mr. Kitchen about the initial phone discussion you had with Dr. Wall I think in early March of last year, I might have the date wrong, my apologies, but it was --

A December last year.

Q Pardon me, thank you --

A Oh, sorry, March was the one that I had with you, Mr. Maxston, but December was the one I had with Mr. -- or was the email that I had with, prior to the pandemic, with Dr. Wall, and December 2nd was the conversation after we became aware that he was not masking in his practice.

Q Yeah, and I'm referring to that December 2 --

A Yeah.

Q -- conversation, and I think a difference of opinion or a different recollection that Mr. Kitchen explored with you between your recollection of that conversation and what Dr. Wall's anticipated testimony is. During your phone conversation with Dr. Wall, did you explain the risks to him of not complying with the Pandemic Directive?

A I did. I said, realistically, if he's not willing to comply, I would have to refer him to -- on to the Complaints Director and make the Complaints Director aware, and the Complaints Director would -- may

proceed.

And we -- I am very specific with that in my language, and we don't use -- I can't determine the outcome of something ahead of time, but I do inform members that this may happen. So, for instance, you may be suspended, you may not be able to practice, you may -- all of those would be the language. So those would have been the warnings provided to Dr. Wall in that phone conversation, that if we proceeded down this path, those are things that may happen or could happen as a result of his decision to not wear a mask.

MR. MAXSTON: Those are all my questions, Mr. Chair.

THE CHAIR: Okay, do Members of the Tribunal have any questions for Dr. Halowski?

MR. MAXSTON: Mr. Chair, I don't mean to tell you what to do, but do you need a break to canvass that? I don't know if you had done that before.

THE CHAIR: I am going to see if we do need a break. I actually may have a question, so I think we will recess for a couple of quick minutes just to check on if there's any further questions for you, Dr. Halowski, so please bear with us. If we could put the members of the Hearing Tribunal into a break-out room. Thank you.

(ADJOURNMENT)

THE CHAIR: We're back in session. The Hearing Tribunal has discussed the testimony of Dr. Halowski, and a couple of questions have come to mind, and I will ask Dr. Aldcorn to present these questions to Dr. Halowski.

The Tribunal Questions the Witness

Q DR. ALDCORN: Thank you. Dr. Halowski, you referred to the ThoughtExchange as an opportunity for members to perhaps share, discuss concerns that they had. My question for you is that ThoughtExchange anonymous?

A It is anonymous, yeah, we don't keep a record of anybody. The only thing that shows up in a ThoughtExchange is IP addresses, but we don't keep a record of anybody's personal IP address, and so we don't know who is there or who is commenting. We assume, because it's distributed to members, that it's regulated members of the profession in Alberta.

Q Thank you. And the second question I have is just a quick comment that was made by you on Thursday, and you had commented, we were going through the Alberta Health Services G-3 personal protection report, and you had commented that, at some point, you had reached out to Alberta Health Services to find out if there was any exceptions, but my question to you is just when did that happen?

A That would have been in and around the fall. Actually we started speaking about PPE with Alberta Health I would say in August, and part of that was driven at the time because we started hearing reports of members that didn't have eye protection being required to isolate, which wasn't in our practice directive.

And when they had originally issued the practice directive, they said masking would be adequate, and then we saw this shift in what was being communicated. So I continually tried to inquire around there and looking for guidance and, specifically, was eye protection required for our profession.

And then we did have one member of our profession last -- who's on mat. leave and, last summer, inquiring about, you know, they were finding it increasingly difficult to practice while pregnant and wearing a mask. And so, you know, we were looking for ways, and the same guidance was given, that there isn't a safe way for you to provide care to a patient without a mask within 2 metres.

Q So that was August approximately you would say?

A That member, I would say about August, because I think they're just getting ready to come back to practice now.

DR. ALDCORN: Thank you, that's all I have.

Q THE CHAIR: And just to follow up,

Dr. Halowski. You said it started in August. This was an exchange of consultation?

A Yeah, we continued consultation until December, when Alberta Health said that they wouldn't provide any guidance on the requirement for the eyewear, so we did make the -- and that's why we only ever made the recommendation; there was no indication it would be a requirement for practitioners to wear eyewear.

And for context, other professions had at the time, but we had not.

THE CHAIR: Thank you. Thanks, Dr. Halowski.

I would ask counsel, are there any questions arising from these most recent responses? None.

Okay, Dr. Halowski, thank you very much for your testimony over the past two days. Your presence here is no longer required, and we very much appreciate your expertise, and you can leave at this time.

A Thank you very much, Mr. Chair. I do appreciate the opportunity to have spoken, and for the care and concern and attentiveness of the Hearing Tribunal, as well as Mr. Maxston and Mr. Kitchen in their questioning as well. So thank you for the opportunity to be here as a witness for this Tribunal.

THE CHAIR: Okay.

(WITNESS STANDS DOWN)