

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 4

VIA VIDEOCONFERENCE

Edmonton, Alberta

September 8, 2021

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

4

5 September 8, 2021 Morning Session

6

7 HEARING TRIBUNAL

8 J. Lees Tribunal Chair

9 W. Pavlic Internal Legal Counsel

10 Dr. L. Aldcorn ACAC Registered Member

11 Dr. D. Martens ACAC Registered Member

12 D. Dawson Public Member

13 A. Nelson ACAC Hearings Director

14

15 ALBERTA COLLEGE AND ASSOCIATION OF CHIROPRACTORS

16 B.E. Maxston, QC ACAC Legal Counsel

17

18 FOR DR. CURTIS WALL

19 J.S.M. Kitchen Legal Counsel

20

21 K. Schumann, CSR(A) Official Court Reporter

22

23 (PROCEEDINGS COMMENCED AT 9:03 AM)

24 THE CHAIR: Good morning everybody. We
25 will start this morning with Mr. Kitchen's examination
26 of Dr. Wall, and before we do that, we will have

1 Dr. Wall sworn by Karoline.

2 Discussion

3 MR. MAXSTON: Chair, it's Blair Maxston. I
4 have a quick housekeeping matter to attend to from
5 yesterday. When we concluded our -- if I could just
6 deal with that very briefly -- when we concluded our
7 discussion yesterday, there was a discussion about
8 whether the Complaints Director would seek to have the
9 recording of the interview entered and placed before
10 you. I have received instructions from Mr. Lawrence to
11 not to do that, so that won't be placed then before
12 you.

13 THE CHAIR: Okay, thank you for clarifying
14 that.

15 DR. CURTIS WALL, Sworn, Examined by Mr. Kitchen

16 MR. KITCHEN: Just to confirm, everyone can
17 hear me.

18 Q MR. KITCHEN: Dr. Wall, you can hear me?

19 A (NO VERBAL RESPONSE)

20 Q Good. Dr. Wall, just to confirm, can you give us your
21 full name for the record?

22 A Curtis Wall.

23 MR. KITCHEN: My fault, I apologize. Like I
24 said, I think we can make this work; I'm just going to
25 have to be diligent.

26 Q MR. KITCHEN: Now, Dr. Wall, when did you

1 first become a chiropractor?

2 A I attended Palmer College of Chiropractic in Davenport,
3 Iowa, and I graduated with a Doctor of Chiropractic in
4 1996.

5 MR. KITCHEN: Now, I apologize, I notice
6 that produced some feedback as well, so if this
7 continues, we might have to devise a separate way of
8 doing this, but I'm going to just keep trying it a
9 little bit longer. I had no way to really to test this
10 prior to doing this.

11 THE CHAIR: Mr. Kitchen, would it help if
12 there was maybe a couple of seconds pause between the
13 end of your question and Dr. Wall's replying? I gather
14 you're muting after you've spoken?

15 MR. KITCHEN: Yes, so that's what we're
16 going to try to do is have more of a time lag in
17 between each one. Just give me a second. Okay.

18 Q MR. KITCHEN: I'm just going to confirm,
19 because of that issue, it was, in fact, Palmer College
20 that you went to?

21 A That's correct.

22 Q All right, and, Dr. Wall, tell me why did you choose to
23 go to that particular college amongst all the
24 chiropractic colleges you could have gone to?

25 A That could be a long drawn-out answer. I'll give you a
26 few of the salient points. I have a Bachelor of

1 Religious Education degree from a Canadian college, and
2 in order to attend a Canadian chiropractic college,
3 CMCC, I would have needed to take quite a few more
4 credits in the social science end of things, and so I
5 began looking at American colleges to attend because
6 they did recognize my social science credits from the
7 college I had attended in Canada.

8 And also I went to a chiropractor who had gone to
9 Palmer College in Davenport, Iowa, and my wife attended
10 a -- went to see a chiropractic who also went to Palmer
11 College in Iowa. Another chiropractic friend, who --
12 whose practice I actually purchased, attended Palmer
13 College in Iowa. And so all those recommendations to
14 attend Palmer were the reasons why.

15 And Palmer College in Davenport is considered a
16 fountainhead. It was the original college that was
17 started by B.J. Palmer. And so it has a very strong
18 reputation for academic excellence, strong in
19 philosophy, the philosophy of chiropractic, so the
20 science, philosophy, and art were very strong
21 components of Palmer College. So those are some of the
22 specific reasons why I attended Palmer.

23 Q Thank you. Now, I heard you mention the philosophy of
24 chiropractic, which is interesting. I don't know that
25 I would have expected to hear that word. Can you just
26 elaborate a little bit on what the philosophy of

1 chiropractic was when you went there?

2 A Quite basically, I would say that the philosophy of
3 chiropractic is based on the fact that the body has an
4 innate ability to heal itself and that the nervous
5 system is a very strong component in the body's healing
6 capabilities.

7 At times, there are interferences to the nervous
8 system through spinal misalignments, and so the
9 chiropractic adjustment just removes those
10 interferences and helps the body to heal itself in a
11 manner.

12 And so those are some of the philosophical
13 understandings. Innate intelligence, the body was
14 created or made with an ability to heal itself, and so
15 yeah.

16 Q Thank you. Were there any core principles of
17 chiropractic that were taught to you when you were at
18 Palmer?

19 A Yes, core principles, basically stated what I was just
20 referring to, some of those principles being that the
21 body has innate intelligence, that there is a science
22 component to chiropractic. So that core understanding
23 is that the body is physical, and that, at times, we do
24 have spinal misalignments that interfere with the
25 nervous system and that chiropractic, through an
26 adjustment, can remove those interferences and help the

1 body to heal in a natural way.

2 Q Thank you. Now, let's back up a little bit. Why did
3 you want to become a chiropractor in the first place?

4 A Excuse my long answer. My initial intention with a
5 career path was to become a youth pastor. In the
6 process of doing that, my wife and I spent four years
7 in lay work in a church doing youth ministry work.

8 And in so doing, I was working at the University
9 of Calgary in the phys. ed. department, and I played
10 quite a bit of squash at the time. And at one point, I
11 was playing squash, and I ruptured my achilles tendon.
12 That put me in the hospital, and while I was in the
13 hospital for surgery, a friend of mine, a very close
14 friend of mine was in his first year at Palmer College
15 of Chiropractic in Davenport, and he sent me a
16 prospective student packet.

17 And I looked at that packet while I was in the
18 hospital, and I said to myself I wish I could do that.
19 I was very much interested in health, natural healing
20 processes, lifestyle choices. And I looked at that
21 packet, and I thought I would love to be a
22 chiropractor.

23 And all I can say is that the pieces of the puzzle
24 were being put together very specifically and
25 amazingly, which I won't go into detail, but that
26 unfolded the desire to pursue becoming a chiropractor,

1 and there's so much to the story, but, yeah, that's
2 basically how I got into it.

3 Q Thank you. Do you feel like then that chiropractic is
4 more than a mere occupation for you?

5 A Yes, I thoroughly enjoy what I do. I thoroughly enjoy
6 the privilege of helping assist people in their health
7 care goals. Yes, it is an occupation, but I love
8 coming to work. I love coming to work to help people
9 and to assist people in lifestyle choices, and the
10 basic understanding of removing nervous system
11 interference so that their bodies can carry out health
12 in the best possible way, so, yes, it is more than an
13 occupation, but that is one component of it.

14 Q Thank you. When did you first start practicing as a
15 chiropractor in Alberta?

16 A I first started practicing in Alberta in 1996, shortly
17 after graduation, perhaps early '97. I saw a few
18 patients in a colleague's office, began that way, and
19 then I started doing locums for a year or two, and then
20 I purchased a practice in 1998.

21 I had a young family. I decided that perhaps that
22 was a better way to go to have a patient base to start
23 with, and so in 1998, I purchased a practice, and
24 that's how I've practiced ever since.

25 Q When you started practicing in Alberta, did you think
26 the chiropractic profession in Alberta held to the same

1 principles emphasized at Palmer College when you went
2 to Palmer College?

3 A Yes, generally I would say so, yes.

4 Q When it comes to those principles, do you think things
5 have changed here in Alberta since then?

6 A I have seen, over the last 20 years, a slow but steady
7 change in chiropractic. I've seen a stronger role of
8 governance from the College of less perhaps freedom to
9 do some of the things that some chiropractors would
10 prefer to do. I understand some of the reasoning that
11 the College uses to create some of these restrictions
12 perhaps or boundaries, but I have seen a steady
13 decrease in the ability to do certain things that
14 perhaps 20 years ago would not have been an issue.

15 Q Do you know roughly how many patients you've seen over
16 the years that you've been a chiropractor?

17 A Very hard to tell, but several thousand for sure,
18 multiple thousands, yeah.

19 Q Wow. Okay, do you have any patients that you have been
20 treating for many years or even decades?

21 A Yes, yes, I have several patients that have started and
22 stayed with me right from the beginning, so up to 25
23 years, yes.

24 Q Now, let's go to the spring of 2020. Were
25 chiropractors ordered by the Alberta Government to stop
26 practicing in March of 2020?

1 A There were, yes, restrictions on our ability to
2 practice. We were told that we could only practice if
3 the situation was an emergency, and so that was a
4 regulation by the College to restrict only those people
5 who had an emergency situation.

6 Q And did the restrictions only come from the College, or
7 did they also come from any other sources?

8 A I believe the College placed that restriction in place
9 due to Alberta Health Services. I'm sure they worked
10 in collaboration with each other, so that's my
11 understanding.

12 Q And what was it like for you during that time that you
13 could only treat emergencies?

14 A Very challenging. My -- I support my family strictly
15 through chiropractic, and I have a large family, many
16 needs, and so when that happened, essentially my
17 practice load went just about to zero, and I perhaps
18 might see a patient in a day, maybe not. Some days
19 were blank for sure, but, yeah, it was a stressful
20 time.

21 Q Do you have any sense of what it was like for your
22 patients during that time?

23 A I had several people say that it was difficult because
24 they needed care, they needed to receive an adjustment
25 to relieve their discomfort or their ailment. And so,
26 yeah, many people were certainly -- had to wait, had to

1 wait it out or take painkillers or some other thing,
2 but, yeah, it was challenging for everybody I think.

3 Q And were you permitted to -- or were chiropractors
4 permitted to re-open and start practicing again?

5 A Yes, I believe -- I can't remember the exact date, but
6 I believe it was sometime in May that that occurred.

7 Q And did the College implement a directive in May that
8 imposed extra requirements for chiropractic practice
9 related to practicing under COVID?

10 A Yes, they did.

11 Q And do you recall the name of the document, and this is
12 in the record, but I'll ask you anyways, do you recall
13 the name of the particular document that contained all
14 these requirements and restrictions?

15 A It was called the Pandemic Practice Directive.

16 Q Thank you. And I'm just going to call it the Pandemic
17 Directive. Did the Pandemic Directive contain a
18 requirement that chiropractors wear a mask?

19 A Yes, it did.

20 Q And do you recall specifically what types of masks were
21 mandated in the directive to be worn?

22 A Yes, it would have been a surgical style mask, so the
23 blue type of mask, not a cloth mask, no homemade
24 materials, a surgical mask.

25 Q Now, we've heard a lot about how the Pandemic Directive
26 was not optional. Did you regard the Pandemic

1 Directive as optional?

2 A No, I did not.

3 Q Okay, thank you. Now, did you start wearing a mask
4 while treating patients once you became aware of the
5 mandatory mask requirement in the Pandemic Directive?

6 A Yes, I did off and on. It was very apparent to me
7 right from the start when I put on a mask that I did
8 experience mental concerns, and so -- but I did put the
9 mask on to treat patients, again off and on. It was
10 very quickly that I realized my mental concern.

11 Q And just to confirm, the Pandemic Directive at the
12 time, so this is spring of 2020, May of 2020, did you
13 have to wear the mask all the time, or was there only
14 certain times that you had to wear it according to the
15 directive?

16 A According to the directive, we were supposed to wear a
17 mask at all times unless we kept the physical distance
18 barrier of 2 metres.

19 Excuse us, sorry, we forgot to lock the door.

20 Q Now, I'm curious, did you have any prior experience to
21 regularly wearing a mask?

22 A None whatsoever.

23 Q So you didn't have any prior experience with being
24 required to wear a mask then, I take it?

25 A That's correct.

26 Q Now, did you eventually stop wearing a mask while

1 treating patients, and by that, I mean being within 2
2 metres of them?

3 A Yes, I did. Probably by the end of June, I made the
4 decision that, with my mental concern and limitation, I
5 decided that it was not productive for me to continue
6 wearing a mask, and so I did stop by the end of June
7 2020.

8 Q And did you try wearing a face shield after you stopped
9 wearing a mask?

10 A Yes, I actually went out and purchased a face shield to
11 see if that was also a problem, and when I put the face
12 shield on, I also experienced the same symptoms. And
13 so, yes, I did purchase a face shield and tried that
14 for several times.

15 Q Now, why was it that you decided to try that as opposed
16 to just taking off the mask and leaving it at that?

17 A A face shield, I would think, provides a little more
18 breathing room and space, and so that was my reasoning
19 behind that, and so that's why I went to the face
20 shield.

21 Q Did you attempt to -- at that time, did you attempt to
22 obtain a doctor's note that would provide you with a
23 medical exemption to wearing a mask?

24 A No, I did not.

25 Q Did you think there was any requirement that you do so?

26 A No, I didn't.

1 Q Did you understand the Pandemic Directive to include
2 any direction about reaching out to the College if you
3 were having problems with wearing a mask?

4 A No, I didn't see anything in the directive that stated
5 that. I initially -- my thought was that my health
6 information is private, between me and my doctor, and
7 so I didn't decide that that was privy information to
8 discuss with anybody at the time.

9 Q Did the College give you any reason to think that it
10 would be supportive and work with you if you had
11 reached out and told them your concerns about wearing a
12 mask?

13 A No, they did not. Of course, the College is always of
14 the stance that we should reach out if we have concerns
15 and -- but on the same note, from my calls with
16 Dr. Halowski and with Mr. Lawrence, it was apparent to
17 me that, even as I expressed my concerns, there was no
18 option with respect to the mask wearing.

19 Q Dr. Halowski mentioned an email that you had written to
20 him I think just a few months before all this. Did you
21 ever receive a response to that email?

22 A No, I did not.

23 Q Did that contribute to your apprehension about whether
24 or not the College would be supportive?

25 A Yes, it did. In fact, in addition to sending an email
26 to Dr. Halowski, I sent an email to a trusted, tenured

1 chiropractor, whom I've known for 30 years, and the
2 response I received back was also very vague and
3 disheartening when I expressed my concerns in that
4 email. So I was reluctant that the College was going
5 to have any, you know, understanding with my situation.

6 Q During this time, in the spring of 2020, did you have
7 some doubts or fears about the College penalizing you
8 or punishing you for what was going on?

9 A Yes, I did.

10 Q Did you think in the spring of 2020, so around this
11 time, that the so-called surgical or blue or medical
12 masks were effective at preventing the transmission of
13 respiratory viruses such as the COVID virus?

14 A I had done my own research, and it's not -- again, I
15 don't want to say that this is my word, this is
16 research that I -- as doctors, we all look into various
17 research, and so having researched this issue with
18 respect to masks, yes, I did have some very strong
19 concerns that they were effective at reducing the
20 transmission of viral particles, specifically COVID in
21 this situation, and I also had concerns about their
22 health risks to the person wearing them.

23 Q So you started being concerned about what you just
24 called the health risks right away then?

25 A Yes, I did.

26 Q And can you describe for me what some of those health

1 risks are?

2 A Specifically, when one wears a mask, there's decreased
3 oxygen that you're taking in, and there is an increase
4 in carbon dioxide intake. And whether perceptible or
5 not, these physical facts are certain, and, at varying
6 degrees, people will experience symptomatology, so,
7 yes, I'm very aware of these physical issues.

8 Q Now, have you, since the spring of 2020, developed any
9 other concerns or personal objections to wearing a
10 mask?

11 A Yes, I have. I would say that I do have religiously,
12 sincerely held religious beliefs that would preclude me
13 from wearing a mask. Specifically, I'm a Christian,
14 and that means that I am a born-again follower of Jesus
15 Christ. And as such, I adhere to the teachings and
16 requirements of the Holy Bible. And in Genesis 1:27,
17 it states that: (as read)

18 God created mankind in his own image, in the
19 image of God he created them, male and female
20 he created them.

21 So I believe that, number one, my face is sacred and
22 sacred to me and sacred to God, because it is -- it's a
23 manifestation of his image. So for me to cover up my
24 face, essentially places a barrier between me and
25 Jesus.

26 And for someone to require me to wear a mask,

1 who's in a position of authority, when there's no other
2 reason to put that mask on other than the fact that
3 they are telling me to, when I don't exhibit any
4 symptoms or any upper respiratory issue, to me, is
5 essentially fearing man and not God, and so that's one
6 aspect of it.

7 Also, as a Christian, I believe that I am to live
8 my life in the fullest measure and expression of faith.
9 And just to clarify that, I just want to read a couple
10 of, again, passages of the Bible that support my
11 religious conviction. Hebrews 11:6 says: (as read)

12 And without faith, it is impossible to please
13 God: for whoever comes to God must believe
14 that he exists and that he rewards those who
15 diligently seek him.

16 The 2nd Corinthians 5:7 says: (as read)

17 For we walk by faith and not by sight.

18 And Romans 14:23 says: (as read)

19 For whatever does not proceed from faith is
20 sin.

21 And so when I have to wear a mask, I am not living by
22 faith; I am living because someone in a position of
23 authority has told me, Put that mask on, whether it's
24 fear-based or whether it's for some other reason, it
25 violates my life of faith, and so that's one of the
26 aspects of my religious convictions.

1 Also, I would have to clarify to say that the
2 Canadian Charter of Rights and Freedoms and the Alberta
3 Human Rights Act protect my expression of my
4 religiously held beliefs, and it guards against anybody
5 discriminating against those beliefs, and so that's
6 kind of all wrapped up into that section.

7 Q Thank you. Why do you think it took you time to come
8 to that conclusion instead of that being instantly
9 apparent?

10 A Sometimes you don't know the significance of an issue
11 until or the significance of a freedom until it is
12 taken away, and this would apply in this situation.
13 Until our freedoms have been -- our health freedoms
14 have been slowly chipped away, you don't realize what
15 it is that you have or the significance of it, and so
16 that's how I would answer that question. It took some
17 time to formulate that and to recognize, listen, this
18 is going on.

19 Q Had you ever in your life before this thought about
20 masking or mandatory masking in the context of your
21 religious beliefs as a Christian?

22 A Never.

23 Q You just never had any reason to; is that it?

24 A That's correct.

25 Q Do you think mandatory masking interferes with bodily
26 autonomy?

1 A Yes, I do when it's mandated. I believe that, as a
2 chiropractor, I have been and we have all been trained
3 to respect the principles of, first, do no harm and the
4 principle of informed consent; extremely important
5 principles that we are required to carry out in our
6 profession every day.

7 So mandatory masking does violate those things.
8 Specifically, the College has never performed informed
9 consent to the issue of mask mandating, and this is a
10 medical procedure, wearing a mask is a medical
11 procedure because there is an imminent risk of mental
12 or physical harm by putting the mask on. And so I
13 believe that, essentially, the College has violated
14 that aspect of informed consent and the right to bodily
15 autonomy and, first, do no harm.

16 Putting on a mask harms me, and it harms my
17 patients. And so as a doctor, which means teacher, I
18 have to educate my patients; I have to tell them the
19 specific harms of a treatment, risks of potential
20 harms, and so that's all wrapped up in mandatory
21 masking. It's not following informed consent, and it's
22 not following, first, do no harm

23 Q Do you seek to obtain informed consent when you do your
24 treatments with patients?

25 A From every patient at the outset of their becoming a
26 patient, that is required, and if there's any changes

1 in treatment protocol or in their health picture, yes,
2 we have to keep informed consent updated.

3 And informed consent is not implied; it has to be
4 expressed, and so that's a very specific thing, it has
5 to be communicated. We have to say here are the risks
6 to this treatment, here are the benefits to this
7 treatment, and here are some alternatives that you can
8 do if you would like to investigate those. So these
9 are core principles for sure.

10 Q And are there some treatments -- generally speaking,
11 are there some treatments where the risks become quite
12 high and the benefits become quite tenuous, and there's
13 a difficult decision to make about whether you actually
14 proceed with that treatment?

15 MR. MAXSTON: Mr. Kitchen, I'm sorry to
16 interrupt, I've been a little bit liberal here; I think
17 you're asking some fairly leading questions --

18 MR. KITCHEN: Okay --

19 MR. MAXSTON: -- so I'm a little concerned
20 about that. Just thought I'd mention it.

21 MR. KITCHEN: That's fine. That one was ad
22 hoc, and it was a little leading, I'll admit. That's
23 fine.

24 Q MR. KITCHEN: Do you think wearing a mask
25 also impacts psychological illness?

26 A Yes, I do. It can.

1 Q I'm going to take you to -- talk a little more about
2 your patients. When you stopped wearing a mask, how
3 did your patients react?

4 A Most of my patients never said a thing. They were very
5 understanding. I would express to several patients,
6 who did ask me if I would be wearing a mask, that I did
7 have an exemption. And I would say 99 percent of those
8 patients were very understanding and unconcerned, and
9 there was the odd person who requested, you know, more
10 information, and if I was at liberty to discuss that, I
11 would. But, yes, 99 percent of my patients were
12 unconcerned and were okay with my not wearing a mask.

13 Q So for those who wanted more information, was there any
14 kind of discussion about why you weren't wearing one?

15 A Yeah, I -- for somebody that I felt in a trusted
16 position, I would talk about my mental concern, but
17 others, I would just, you know, give a very generalized
18 answer.

19 Q Why do you think so many of your patients were so
20 understanding?

21 A My patients know who I am. They know my character.
22 They know who I am as a chiropractor, that I believe in
23 their health. They trust me with their health. They
24 trust me as somebody who understands the health
25 process. And so I believe that it was a doctor/patient
26 trust relationship that enabled people to feel

1 comfortable and to understand that they were coming
2 into an office that was safe, and there was no risk of
3 harm from them by me not wearing a mask.

4 Q Now, let's jump forward six, seven months to December
5 of 2020. Did AHS close down your chiropractic office?

6 A Yes, it did.

7 Q Now, I'm going to take you and everybody else to that
8 closure order, which is Exhibit D as in dog, D-1. Now,
9 was there a CMOH order that was specified in that
10 closure order?

11 A Yes, there is.

12 Q And which one was it?

13 A That is CMOH Order 38-2020.

14 Q Now, I'm going to come back to all the things that
15 happened in December, but let's forward to early
16 January; did AHS permit your chiropractic office to
17 re-open?

18 A Yes, it did.

19 Q And was that done through another document that
20 rescinded the closure order?

21 A Yes, it was. I had to complete a re-opening template
22 and meet some of the requirements that were specified
23 with that template.

24 Q Okay, so I'll bring you to that notice; it's Exhibit
25 D-2. Now, did AHS permit you to continue treating
26 patients in person without wearing a mask?

1 A Yes, they did.

2 Q Did you provide AHS with a doctor's note verifying your
3 medical exemption from wearing a mask?

4 A I believe I did.

5 Q And why did -- looking at this rescind notice, why did
6 AHS permit you to practice without wearing a mask?

7 A I believe they recognized the doctor's -- the medical
8 doctor's note and decided that was sufficient grounds
9 to permit me to treat patients.

10 Q You said earlier that it was CMOH Order 38-2020 that
11 was mentioned in the closure order, so I'm going to
12 take you to CMOH Order 38-2020. Just got to get the
13 exhibit number. 38-2020 is Exhibit D-8. Now, I know
14 we've been over this, but let me ask you is there
15 anything in that order that provides for medical
16 exemptions to wearing a mask?

17 A Yes, there is. Yes, there is.

18 Q All right, let's go back now to December. Did you hear
19 from the College in early December?

20 A Yes, I did.

21 Q Did you receive a call from the Registrar, Todd
22 Halowski?

23 A Yes, I did.

24 Q And did Dr. Halowski say anything in that call about
25 how a decision may be made that you either wear a mask
26 or sit out from practicing?

1 A Yes, he did.

2 Q Did you receive a call from the Complaints Director,
3 David Lawrence?

4 A Yes, I did.

5 Q And did he say anything in that call about suspending
6 your licence?

7 A Yes, he did.

8 Q Did you ask him any questions about accommodation?

9 A Yes, I did. I asked him, I said I knew the College was
10 in a difficult place because of their desire to protect
11 the public, and I also said but they also had a role in
12 protecting its members; and so I discussed my mental
13 concern, that I was exempt, and left that on the table
14 and asked if there would be accommodation for that.

15 Q Did you mention anything about human rights?

16 A Yes, I did.

17 Q Did you say anything to him about how the literature
18 does not support wearing a mask?

19 A Yes, I did.

20 Q What was Mr. Lawrence's response when you made that
21 comment about the literature?

22 A I believe his response was that he didn't want to
23 debate me on the issues. He felt he just had a
24 responsibility to protect the public. He also said
25 that he disagreed with me, and he said that I was a
26 danger to the public and that he was going to initiate

1 this investigative process.

2 Q Did you say anything to Mr. Lawrence about the
3 percentage of the COVID recovery rate?

4 A Yes, I did. I stated that there was a 99.97 percent
5 recovery rate for people who were infected with COVID.

6 Q Did Mr. Lawrence say anything to you about making or
7 not making you wear a mask?

8 A Yes, he said he couldn't make me wear a mask, but that
9 if I was not going to wear a mask, he would have to
10 initiate this practice suspension, suspending my
11 licence.

12 Q And did Mr. Lawrence say anything to you about you
13 being free to not wear a mask?

14 A Yes, yeah, he said I was free to wear a mask, but there
15 would be the consequence, of course, of my licence
16 being suspended.

17 Q Did you understand this comment about "free" from
18 Mr. Lawrence to mean that the College's masking mandate
19 was actually optional?

20 A No, this mandate was not optional.

21 Q Do you think "mandate" and "optional" are contradictory
22 terms?

23 A I don't know the answer to that.

24 Q Did Mr. Lawrence say anything to you about your private
25 life or what you do in your private time during that
26 call?

1 A No, not to my knowledge. I can't remember him talking
2 about me and my private life or what I do with that.

3 No, I can't remember that. I don't think he did.

4 Q Now, after talking to Mr. Lawrence, did you feel like
5 you were free to decide whether or not to wear a mask?

6 A No, I did not feel like I was free. I felt that there
7 was a very strong arm of the College that was about to
8 step in and stop my practice.

9 Q And was this call with Mr. Lawrence around December 3rd
10 or 4th?

11 A That's correct.

12 Q Did Mr. Lawrence submit a request to suspend your
13 licence?

14 A Yes, he did.

15 Q Now, you said earlier that you did not attempt, in the
16 spring of 2020, to obtain a doctor's note in support of
17 your inability to wear a mask. Did you now at this
18 time, in December, attempt to obtain a doctor's note?

19 A Yes, I did. It seemed that there was an unspecified
20 requirement from the College that verification of a
21 mental or physical limitation or concern was required,
22 and so I did try to obtain one at that time, yes.

23 Q When you first told Mr. Lawrence that you had a medical
24 exemption, did you have doubts about whether or not he
25 believed you?

26 A M-hm, yes, I did have doubts.

1 Q Did you end up receiving a medical note from a medical
2 doctor regarding your inability to wear a mask?

3 A Yes, I did.

4 Q And do you recall when you received that?

5 A I can't remember the exact date in December, but
6 sometime after December 5th.

7 Q It's an exhibit in the records, so I could give it to
8 you to refresh your memory about when, but is it your
9 recollection that you provided this note to him before
10 Dr. Linford made a decision about Mr. Lawrence's
11 request?

12 A I can't remember the exact timeline, but, yes, I
13 believe it was before, but I'm unclear on the specific
14 dates.

15 Q Were you at all surprised that Dr. Lawrence forged
16 ahead with the request even though you gave him this
17 medical note?

18 A No, I wasn't surprised. Dr. Lawrence was very clear
19 that his role was to protect the public and that he
20 needed to initiate this process, and so, yeah, he was
21 going to do that, and so I wasn't surprised.

22 Q Did you feel like your medical concerns mattered at all
23 to the College?

24 A No, I didn't feel like they mattered.

25 Q And what actually were your medical reasons for not
26 being able to wear a mask?

1 A When I put on a mask, I experience feelings of anxiety
2 and a sense of claustrophobia, like somebody's cutting
3 off my air supply. And so what that does is it
4 decreases my concentration level, and it makes it
5 difficult for me when I am treating patients and
6 note-taking to maintain proper concentration and
7 provide the best possible care to my patients, and so
8 that specifically is what my mental concern was.

9 Q And were those things reflected in the medical
10 documentation you received from the doctor that you
11 saw?

12 A Yes, that was reflected in that doctor's note.

13 Q Now, of course, there's this original note from
14 Dr. Salem. Did the College ask -- I shouldn't say the
15 College, forgive me. Did the Complaints Director,
16 Mr. Lawrence, did he ask for further details from
17 Dr. Salem?

18 A Yes, he did.

19 Q And did Dr. Salem provide those?

20 A Yes, he did.

21 Q Was a decision made regarding Mr. Lawrence's request to
22 suspend your practice permit?

23 A Yes, a decision was made.

24 Q And who made that decision?

25 A I believe Dr. Linford had to make that decision.

26 Q And as part of Dr. Linford's written decision, did he

1 consider your medical note from Dr. Salem?

2 A Yes, he did.

3 Q So then were you permitted by Dr. Linford to continue
4 practicing without wearing a mask?

5 A Yes, I was permitted. There were further conditions
6 and restrictions placed on me at the time, but, yes, I
7 was permitted.

8 Q Did the College ever raise the possibility of you
9 practicing without a mask but with conditions?

10 A Yes, it did, after Dr. Linford's decision came out.

11 Q What about before?

12 A No, there -- no.

13 Q Let's just talk a little bit about your office. Have
14 you had any staff at your office since the spring of
15 2020?

16 A Yes, I employ members of my family in my office
17 occasionally, and so, yeah, my son was working in the
18 spring of 2020 up until December of 2020.

19 Q How old was he at that time?

20 A He was 17.

21 Q And as of December, just before he stopped working with
22 you in your office, was he wearing a mask when he was
23 working in your office?

24 A No, he wasn't.

25 Q And why is that?

26 A He has religious concerns and beliefs that preclude him

1 from wearing a mask.

2 Q Are those similar to yours?

3 A Yes, they are.

4 Q Yesterday, Mr. Lawrence read into the record as part of
5 his testimony that you did not tell him, during the
6 January 25th, 2021 interview, that you had any other
7 reasons that you did not mask. Did you tell
8 Mr. Lawrence you had other reasons for not masking
9 besides your issues with anxiety and claustrophobia in
10 that interview?

11 A I don't believe I did. Yeah, I'm unclear, but I don't
12 think I did.

13 Q And you had by now, by January 25th, you had made some
14 conclusions about your religious beliefs around
15 masking?

16 A Absolutely.

17 Q So why didn't you tell Mr. Lawrence about those beliefs
18 during that interview?

19 A I believe that the primary issue was my mental concern
20 and limitation. The religious beliefs are very strong,
21 but I didn't believe that that was to come into play at
22 the moment, so I left it at the mental concern, because
23 it appears to me, from the CMOH order, that the only
24 real exemptions that are provided are through physical
25 or mental concerns or limitations.

26 Q Just want to ask you a few questions about the

1 treatments you provide your patients. What is the
2 standard treatment you provide your patients when they
3 come in to see you?

4 A The standard type of treatment that I provide is a
5 chiropractic manual adjustment. And "chiropractic" is
6 a term that means chiro, it means hand, and practice,
7 which means work done by hand, and so that is my --
8 from day one, that's been my primary form of treating
9 patients.

10 Q Forgive my ignorance as a non-chiropractor, but did you
11 just tell me that "chiro" means hand, and the reason
12 it's chiropractic is because "practic" is a reference
13 to practice, is that what you just said?

14 A Yes.

15 Q So the name itself means using your hands to treat the
16 body of another?

17 A That is correct.

18 Q What system of the body does this treatment intend to
19 impact or improve?

20 A That's a loaded question. There are many aspects to a
21 person's body, many different systems, and so
22 essentially when you adjust a person, you're physically
23 adjusting the skeletal structure, but there are
24 far-reaching implications to that, because in the
25 chiropractic philosophy and science aspect of it,
26 you're also removing nervous system interference, and

1 you're also causing soft tissues to perhaps relax and
2 come into better function.

3 So you're dealing with multiple systems of the
4 body, but you're primarily adjusting, you know, the
5 skeletal soft tissue component from an outward
6 perspective.

7 Q This treatment, this physical manipulation, is this the
8 primary form of care you provide?

9 A Yes, it is.

10 Q Can you provide this treatment from a distance?

11 A No, you cannot.

12 Q Can you provide it over the phone?

13 A I wish, but no.

14 Q Can your patients providing this treatment to
15 themselves?

16 A No, they cannot.

17 Q Are there any treatments you can provide your patients
18 that are as effective as manual manipulation that do
19 not require you to be within 2 metres of your patients?

20 A No, there is not.

21 Q Do you think Telehealth is effective?

22 A It may have its place, but it doesn't -- it's not
23 effective in my situation for what I do.

24 Q Do you think your patients find it effective?

25 A I haven't had a single patient tell me that they've had
26 a Telehealth experience or treatment.

1 Q Do you think you'd be properly caring for your patients
2 if you could only provide them with Telehealth?

3 A Absolutely not.

4 Q Do you think it likely that some of your patients would
5 eventually have to seek care from a different
6 chiropractor if you could only provide Telehealth to
7 them?

8 MR. MAXSTON: Mr. Kitchen, I hate to
9 interrupt, but the last two questions in particular
10 aren't questions; they're leading questions in my view.
11 I'm sorry to interrupt you, but I've raised this
12 concern before, but those are loaded questions, they're
13 not a regular question.

14 MR. KITCHEN: All right, I'll rephrase.

15 THE CHAIR: Mr. Kitchen, this might be an
16 appropriate time to ask you how much longer you
17 anticipate your examination will be in terms of a
18 possible break. We've been going for an
19 hour-and-a-quarter, and we'd just like to get an idea.

20 MR. KITCHEN: Well, I might be about
21 halfway, so a break would make sense to me. I'm pretty
22 sure I'm on track here to finish by the lunch hour, as
23 you can see, Dr. Wall is not a big talker. So I --
24 yeah, I think now is fine for a break, and we should
25 not be in any jeopardy of not finishing by the lunch
26 hour.

1 THE CHAIR: Okay, I think that would be a
2 good idea. So let's take a break. It's 10:14 by my
3 watch. Let's come back at 10:30, and we'll continue
4 with Dr. Wall's testimony. So we'll convene for now,
5 and we'll see everybody in 15 minutes.

6 MR. KITCHEN: Thank you.

7 (ADJOURNMENT)

8 THE CHAIR: Okay, we're back in session,
9 and, Mr. Kitchen, the floor is yours.

10 MR. KITCHEN: Thank you. We're having some
11 technical difficulties. Just bear with me. Let's turn
12 your mic on.

13 (DISCUSSION OFF THE RECORD)

14 MR. KITCHEN: Sorry, my apologies.

15 Q MR. KITCHEN: Dr. Wall, before the break,
16 I'd asked you if you think you were properly caring for
17 your patients if you could only provide Telehealth, and
18 you answered no, and then the next question was
19 objected to.

20 So let me ask you this: Do you think your
21 patients are receiving the care they need from you if
22 you're only providing them with Telehealth?

23 A No, they would not.

24 Q Do you think your patients would need to seek manual
25 adjustment treatment from another private chiropractor
26 if they couldn't get it from you?

1 A Yes, I believe they would.

2 Q How do you think your ability to keep practicing and
3 earning an income would be impacted if all you could do
4 was provide Telehealth?

5 A I believe it would be severely impacted. Again,
6 hands-on procedure for me is the primary form of care
7 that I provide. Patients would go elsewhere, and so,
8 yeah, it would be severely impacted.

9 Q Do you care about more than just the musculoskeletal
10 health of your patients?

11 A Yes, I do. I believe that a person is not just
12 physical, there is an emotional and spiritual component
13 to it, so if that's what you're referring to, but --
14 so, yes.

15 Q Thank you. Do you feel like you owe any other duties
16 to your patients other than a duty to provide good
17 adjustments to their musculoskeletal system?

18 A That's a very good question. I'm sure there are other
19 duties. I would have to give that some thought, but
20 that would be a primary duty is to provide safe and
21 effective chiropractic care to my patients, so yeah.

22 Q When it comes to treating your patients, are there any
23 principles that come to mind that are important to you?

24 A Again, I touched on this earlier, but the principle of,
25 first, do no harm is an oath that we take when we
26 graduate, become chiropractors, and so that

1 encapsulates the principle of we are to very cautiously
2 and carefully and thoughtfully examine what we are
3 doing with our patients and teach and instruct them,
4 you know, lifestyle issues, but -- so that's a primary
5 principle. And, again, the principle of informed
6 consent is also paramount when it comes to dealing with
7 treating our patients.

8 Q Do you think those principles are engaged when it comes
9 to masking or the masking of your patients?

10 A I believe they're engaged in my office, so, yes, I
11 instruct my patients. If I see there's a potential for
12 something to cause harm, many times I'll have to
13 educate my patients on that, and so yes.

14 Q Do you permit your patients to not wear a mask in your
15 office?

16 A Yes, I do.

17 Q Why?

18 A I believe everybody has the responsibility to make
19 their own health choices. Health freedom is very
20 important to me, and, again, that is a decision that
21 has to be between that person and their personal health
22 belief, personal bodily autonomy, and so that's an
23 extremely important aspect of how I treat my patients.
24 So, yes, everybody that comes in has the freedom to
25 wear a mask or not to wear a mask based on their
26 personal decision.

1 Q Do you feel like the College's stance regarding
2 mandatory masking has placed you in a difficult
3 position regarding your patients?

4 A A very difficult position, yes.

5 Q Do you feel AHS's stance on mandatory masking has put
6 you in a difficult position?

7 A It appears that the Alberta Health Services has left
8 some room for people who have physical or mental
9 concerns to exercise those concerns and not wear a
10 mask.

11 It appears that the College has no wiggle room for
12 that expression. If somebody has a mental or physical
13 concern or disability, yeah, there's no wiggle room for
14 the College when it comes to that and the members of
15 the College.

16 Q Does the College require patients to wear a mask?

17 A No, it does not.

18 Q And you've given some thoughts on masks, you gave some
19 thoughts back in the spring of 2020, and, you know,
20 you've given some religious objections, but have your
21 thoughts changed at all regarding masks in the last 18
22 months?

23 A No, they have not.

24 Q Do you think, if you did require your patients to wear
25 a mask while you treated them in your office, that you
26 would be causing harm to them?

1 A Yes, I do. I believe that wearing a mask does decrease
2 oxygen levels, increase CO2 levels, and that, again,
3 whether perceptive to that person or not, the physical
4 fact remains, and it's to the extent physically that it
5 imposes a real imminent physical harm and danger.

6 Q Have you read or heard anything, whether in this
7 hearing or before, that has caused you to change your
8 mind on the ineffectiveness of masks?

9 A No, nothing I've heard would cause me to change my
10 mind.

11 Q Let's just discuss your office a little more. Are you
12 aware of any instance where COVID was transmitted in
13 your office?

14 A No, I am not.

15 Q Do you think you ever put any of your patients at a
16 higher risk of contracting COVID than they would
17 otherwise regularly encounter by treating them without
18 wearing a mask?

19 A No, I don't. I am asymptomatic. I come to work; I
20 have to adhere to the very same prescreening questions
21 that all patients must adhere to.

22 When it comes to treatment, I treat patients one
23 on one. There is no one else in the office but that
24 patient and myself. And so, no, I don't believe that
25 there is an increased risk.

26 Q Have you ever treated patients while being symptomatic

1 with COVID symptoms?

2 A No, I have not.

3 Q Do you think you've done anything since COVID that has
4 in any way threatened the health or safety of your
5 patients?

6 A Absolutely not.

7 Q Do you think your actions since March of 2020 have
8 caused any harm to any of your patients?

9 A No, I do not.

10 Q Just a quick side question here, did you ever receive a
11 ticket for not wearing a mask, contrary to the Calgary
12 mask bylaw?

13 A No, I did not.

14 Q Do you think you are a health care worker?

15 A Yes, I do.

16 Q Do you think there are different types of health care
17 workers?

18 A Yes, I do.

19 Q Do you think health care workers fall on the spectrum?

20 A Can you explain that question?

21 MR. MAXSTON: Mr. Kitchen, I hate to keep
22 interrupting, but that's a fairly leading question, a
23 fairly leading couple of questions, "Do you think".
24 I'd just ask you to rephrase that. I know where you're
25 going, but I think the introduction presupposes an
26 answer.

1 Q MR. KITCHEN: Now, Dr. Wall, you said that
2 you do think there are different types of health care
3 workers. Please explain, in as much detail as you can,
4 what you think those differences are?

5 A I would say that there are emergency room doctors,
6 there are paramedics, there are pathologists, all could
7 be classified, there are chiropractors, naturopaths,
8 all could be classed as health care workers, facing all
9 kinds of different situations and treatments and
10 patient needs. So, yes, there is a very wide spectrum
11 of health care workers.

12 Q And how would you say, you as a chiropractor, how would
13 you say that's different than, for example, being a
14 doctor in an ER?

15 A Quite different in the sense that, number one, I'm
16 seeing people one on one, I'm seeing people who have
17 been prescreened in this last year-and-a-half, and I am
18 seeing people who are asymptomatic obviously. And I
19 would say that somebody in the ER, a doctor, is seeing
20 more emergency types of situations with significant
21 potential for bodily fluid contact and so on. So I
22 would say it's a much different experience than what
23 I'm doing in my office.

24 Q Do you think your chiropractic office is a health care
25 setting?

26 A Yes, I do.

1 Q Do you think all health care settings are the same?

2 A No, I don't.

3 Q Could you describe for me how you think the health care
4 setting in your office is different than the health
5 care setting of a hospital?

6 A I believe the setting in my office is much more
7 personable if you're looking at it from an emotional
8 component perhaps, so it's much more welcoming; it's a
9 homier feel; it's I would say much smaller; there's
10 less fear involved in my office compared to perhaps a
11 hospital or an ER setting.

12 So -- and I'm treating people with chiropractic
13 care; I'm not treating people for cuts and stitches and
14 broken bones and these types of situations, so I would
15 say there's quite a big difference.

16 Q Is making your patients feel comfortable really
17 important to you?

18 A Yes, it is; it establishes a sense of trust and, yes,
19 so people want to come to my office. It's a very
20 important part.

21 Q Do you directly treat infectious illnesses?

22 A No, I do not.

23 Q Do patients come to you for you to directly treat
24 infectious illness?

25 A No, they do not.

26 Q Do you agree with Dr. Halowski that, generally, as a

1 chiropractor, you don't see people with infectious
2 illnesses?

3 A No, people will have infectious illnesses. So I will
4 see people with infectious illnesses, but I am not
5 treating them for infectious illnesses. If I could
6 clarify that also.

7 Q Go ahead.

8 A That's not a norm; that's a very rare thing. And,
9 again, in the last year-and-a-half, we have to
10 prescreen people. So if they are exhibiting any
11 symptoms, we are not allowed to treat them; you have to
12 reschedule them. And so in this last year-and-a-half,
13 I have not seen anybody that has exhibited a
14 symptomatic infectious illness.

15 Q You mentioned "prescreening" a lot; is it your
16 understanding that prescreening is something that's
17 quite important to the College?

18 A Yes, it is very important.

19 Q Have you received any communication from the College
20 that indicates which is more important between
21 prescreening and masking?

22 A No, I have not.

23 Q I'm going to shift gears a little bit here. Do you
24 think it's possible to know the scientific truth about
25 things like viruses?

26 A Yes, I do.

1 Q Including COVID?

2 A Yes.

3 Q Do you think there's a large amount of scientific
4 information now available about COVID?

5 A Yes, a lot of information.

6 Q Do you think it's enough to actually make an informed
7 determination on whether or not certain measures are
8 effective at preventing the transmission of COVID?

9 A Yes, I do.

10 Q And would that include masking as a measure?

11 A Are you asking if masking is an effective measure at
12 preventing COVID?

13 Q No, I'm just wondering if you think there's enough
14 scientific knowledge to actually make an informed
15 determination on whether or not masking is effective or
16 not?

17 A Yes, I do believe that.

18 Q Do you think there's enough scientific information to
19 make an informed determination on whether or not
20 physical distancing is effective?

21 A Yes, I do.

22 Q Do you think there's enough scientific information
23 available now to make an informed determination on
24 whether or not masking as a restriction is harmful to
25 the health of individuals?

26 A There is enough information, yes.

1 Q Would you agree with Dr. Hu that COVID Public Health
2 restrictions have probably killed more people than
3 COVID itself?

4 A Yes, I would agree with that. Yes, I would agree with
5 that.

6 THE CHAIR: I'm sorry, Mr. Kitchen, I
7 missed your question; would you mind repeating it,
8 please.

9 MR. KITCHEN: Sure, yeah.

10 Q MR. KITCHEN: Dr. Wall, do you agree with
11 Dr. Hu that COVID Public Health restrictions have
12 probably killed more people than COVID itself?

13 A Yes, my answer is yes.

14 THE CHAIR: Thank you.

15 Q MR. KITCHEN: And just to confirm, do you
16 agree with Dr. Hu that the COVID survival rate is 99
17 percent?

18 A Yes, I agree with that.

19 Q Do you think the College is making scientific knowledge
20 the top priority when they make decisions about
21 restricting the behaviour of chiropractors?

22 A I believe the College thinks they have. I think they
23 have consulted with Alberta Health Services, and they
24 believe that they are using information that is
25 accurate, but I believe it is inaccurate. And there's
26 too much conflicting scientific evidence that comes

1 from very credible, credible sources that would
2 contradict the measures that have been put in place.

3 I am not a lone wolf stating some of those
4 scientific issues. These scientific facts come from
5 people much more knowledgeable and skilled to be able
6 to represent that information in their fields of
7 expertise, and so, yeah.

8 Q Well, in fact, some of those people are going to
9 provide expert testimony.

10 Do you find it surprising that the College seems
11 so unwilling to consider other viewpoints like yours?

12 A Not really, because I understand that our College is
13 regulated by the Health Professions Act, which has a
14 strong medical model, and there is a certain mindset
15 about how legislation is formulated. So I can -- I'm
16 not surprised by it, but I wish it were different.

17 Q Do you think Alberta Public Health has generally gotten
18 it wrong when it comes to masking?

19 A Yes, I do.

20 Q Do you think Alberta Public Health has generally got it
21 wrong when it comes to other COVID restrictions?

22 A Yes, I do, and I wouldn't say that's just my opinion.
23 As we know, that will be backed up by our expert
24 witness, and it is a testimony of so many others in so
25 many different fields, not only health care, but
26 emergency preparedness within the military, it's been

1 demonstrated that what has happened in the last
2 year-and-a-half has not followed the methods that would
3 be acceptable for an emergency situation such as COVID.

4 Q Do you think there is fear to challenge the perspective
5 of Government Public Health?

6 A Yes, I do. Fear is a very big motivator in this
7 situation, always has been. And in this situation,
8 yes, if you stand up to the Public Health authority or
9 your regulatory body, you risk -- you risk being
10 censured, you risk your licence being suspended, and
11 nobody wants that, nobody wants to experience what I'm
12 experiencing right now. There are other chiropractors
13 out there who believe as I do, but they are afraid of
14 being in my situation.

15 I am the -- I would say one of the least likely
16 people to be in this situation right now. From the
17 standpoint that, if I can say, I am a very compliant
18 person, generally speaking. I do not like to make
19 waves. I do not like conflict. But a barrier was
20 crossed, my health freedoms were crossed, and I have to
21 say something, and I know I'm not the only one. I know
22 there are many others out there, but they're afraid.
23 And so, yes, that is a very accurate statement: Fear
24 is a huge motivator to not step out.

25 Q Do you feel like, as a professional, you have an
26 ethical obligation to speak the truth?

1 A Absolutely.

2 Q You described just a few minutes ago COVID being an
3 emergency, did you think it was an emergency last
4 spring?

5 A It was put out that way, but, no, I did not think it
6 was an emergency.

7 Q Do you think it's an emergency now?

8 A No, I do not.

9 Q Is your integrity something that's really important to
10 you?

11 A Extremely important.

12 Q If you were told that there was going to be an
13 application to suspend your licence, why didn't you
14 just put the mask on?

15 A Well, number one, as I've said, wearing a mask causes
16 me anxiety and the inability to concentrate properly to
17 do my -- the best work I can. So that's reason number
18 one.

19 But I also understand it to affect my physical
20 health. I know there's -- there are physical
21 limitations and harms about putting a mask on, and so I
22 had to -- I had to go with a personal health choice and
23 freedom, bodily autonomy. No informed consent was
24 provided to me by the College, and I had to stand up
25 for those basic rights and freedoms.

26 Q Even though doing so might risk your licence?

1 A Yes, that's correct. I would emphasize character over
2 reputation.

3 Q Do you think the College has violated your legal rights
4 over the last year-and-a-half?

5 A Yes, I do.

6 Q Do you think the College's mandatory masking directive
7 is unreasonable?

8 A Yes, I do insofar as other mandates, orders have
9 allowed provisions for exemptions, and the Pandemic
10 Directive has not allowed for any exemptions.

11 Q Do you think you've done anything unethical by
12 permitting your patients to leave their faces uncovered
13 when you treat them?

14 A No, I do not.

15 Q Who do you believe you owe your first loyalty to?

16 A First loyalty is to my patients. It's -- that's who I
17 come to see every day, and they're my priority. And
18 so, yeah, my ethical and moral responsibility is to my
19 patients primarily, not to the College.

20 Q What about government?

21 A Well, the same would go for that. Ethically and
22 morally, it's first to my patients, and if there's
23 something I see from the government that violates that,
24 I have to speak up, and I have to stick to treating my
25 patients and treating them with the utmost respect
26 first.

1 Q Do you think you've done any unethical by not wearing a
2 mask yourself when treating your patients?

3 A No, I don't.

4 Q Do you have any concerns about the future of the
5 chiropractic profession in Alberta?

6 A Yes. I have spoken about this to my wife. Over the
7 last ten years, I have seen the steady increase in
8 regulatory control, which has a veneer of protecting
9 the public with decreased freedom for the chiropractor,
10 and I've seen it occurring, and so, yes, I do have
11 concerns for the chiropractic profession at this time,
12 yes.

13 Q Do you think increased freedom for chiropractors to do
14 lawful things is good for patients?

15 A Yes, I do.

16 Q Do you think if chiropractors were less constrained by
17 the College that they would be more likely to engage in
18 sexual impropriety with their patients?

19 A No, I don't. Somebody who's going to engage in sexual
20 impropriety, whether there are restrictions or not, is
21 likely going to commit that offence.

22 Q Why do you think the College has done all that it's
23 done to you since December of 2020?

24 A I understand the College has a responsibility to
25 protect the public, and that, again, is what they
26 consider to be their highest mandate over protecting

1 the rights and freedoms of its members. And so I
2 think, based on the legislation that has come down from
3 the Public Health and the collaboration that has
4 happened to create our Health Professions Act has
5 created a difficult situation for the College whereby
6 they cannot make this distinction between protecting
7 the public and protecting the rights of its members.

8 And it's a very fine line. I think there needs to
9 be some renegotiating that occurs to balance that out.
10 I am not against rules and regulations, but I believe
11 in this situation, there has been a line that has been
12 crossed, so ...

13 Q Do you think mandating that chiropractors wear masks
14 while treating patients is in any way actually
15 protecting the public?

16 A No, I don't.

17 Q Do you think the College is trying to protect the
18 public?

19 A Yes, I do.

20 Q Do you think the College is very concerned with
21 pleasing the Chief Medical Officer of Health?

22 A Yes, I do. Again, I believe that much that has been
23 collaborated with the Alberta Health Services and the
24 College of chiropractic has created this dynamic, this
25 relationship whereby the College does want to please
26 authority, and so yeah.

1 Q Do you think when it comes to COVID, there is a tension
2 between the desire to please government and the duty to
3 protect patients?

4 A Are you referring to the College or to myself?

5 Q I'll ask it again. Do you think, in the context of
6 COVID and when it comes to the College, there is a
7 tension there between desiring to please the government
8 and desiring to protect the interests of patients?

9 A I don't think I'd be able to speak to that because I'm
10 not part of council, I'm not part of those people that
11 make those decisions. That would be a tough decision
12 for me to say. I don't think I could say that.

13 Q I asked you earlier if you ever received a ticket for
14 not wearing a mask contrary to the Calgary bylaw; did
15 you ever receive a ticket for not wearing a mask
16 contrary to a CMOH order?

17 A No, I have not.

18 Q Do you think you've actually breached any CMOH orders?

19 A No, I don't.

20 Q Have your patients expressed any thoughts to you about
21 the fact that you have -- that you're not wearing a
22 mask?

23 A Did you ask have they expressed any concerns that I'm
24 not wearing a mask?

25 Q No, I asked if your patients have expressed any
26 thoughts about the fact that you're not wearing a mask

1 when you treat them?

2 A Yeah, I've had a few patients express their thoughts,
3 so we have engaged in some discussion, and there are
4 some people that believe in mask wearing, there are
5 some people that don't believe in mask wearing, and so,
6 yeah, I have definitely interacted with both sides of
7 the fence with respect to that.

8 Q Do you think the fact that masks are mandated in spaces
9 like chiropractic offices, do you think that interferes
10 at all with that, an attempt by you to create an
11 emotionally welcoming environment?

12 A Yes, I do. I believe when you cover the face with a
13 mask, you are taking away a significant portion of
14 communication ability. You're not able to read lips.
15 You're not able to see facial expression as well. And
16 not only that, your voice is muffled. So many times
17 you can't hear or distinguish what the person is
18 saying. So, yeah, it definitely creates a less
19 welcoming environment, an environment for potential or
20 greater misunderstanding between you and the patient,
21 and, yeah.

22 MR. KITCHEN: Thank you, Dr. Wall. Those
23 are my questions.

24 A Thank you.

25 MR. KITCHEN: Now, I note we're at 11:20,
26 which is a little early for lunch, so, you know, I

1 guess we'll have to hear from Mr. Maxston what his
2 thoughts are about his cross. I doubt he wants to
3 break it up with a lunch break, so -- but I'm very
4 flexible.

5 THE CHAIR: Okay, thank you, Dr. Wall,
6 thanks, Mr. Kitchen.

7 Mr. Maxston, what are your thoughts on next steps?

8 MR. MAXSTON: Well, I'm going to propose
9 this potentially: Maybe we take a break for 10 or 15
10 minutes. What I -- because I'd like to press on with
11 Dr. Wall in just one respect.

12 I've been making notes of the direct examination,
13 and I have questions arising from that. I wonder if
14 it's a good idea for me to try and get through those
15 questions now while Dr. Wall's testimony is fresh in
16 everyone's mind, and then -- and I hope I can do that
17 before lunch. And then at 1:00 or 1:15, whatever
18 works, then I would start my planned questions if I can
19 describe it that way.

20 I'm just a little reluctant to -- I think
21 Mr. Kitchen's nodding his head -- I'm a little
22 reluctant to start lunch at 11:30. Maybe I can make
23 some headway at least with Dr. Wall in a good way in
24 terms of asking those questions now. I just need a
25 little bit of time to prep for that and consult with my
26 client.

1 THE CHAIR: Okay, Mr. Kitchen, I'll take
2 your nodding as agreement with that approach, so --

3 MR. KITCHEN: Yeah, if we could just have 10
4 minutes, because we've got to work on the technology on
5 our end too, so ...

6 MR. MAXSTON: I think even 15 minutes to be
7 honest, yeah.

8 THE CHAIR: It's 11:20, let's recess until
9 11:35. We'll reconvene then, and Mr. Maxston can start
10 his cross-examination.

11 (ADJOURNMENT)

12 THE CHAIR: We're back in session, and,
13 Mr. Maxston, the floor is yours.

14 MR. MAXSTON: I just want to be sure, is
15 Mr. Dawson in attendance? I don't know if he's gone --
16 if he's activated his camera.

17 THE CHAIR: Okay, yeah, we were having a
18 caucus during the break, so he might be a minute or two
19 late. Thank you, I didn't notice that. Let's just
20 wait for Mr. Dawson. He won't be long I'm sure.

21 (ADJOURNMENT)

22 THE CHAIR: Okay, not to interfere in the
23 exchange, but Mr. Dawson is back, so we'll resume the
24 session with Mr. Maxston and his cross-examination.

25 MR. MAXSTON: So again, Mr. Chair, what I'm
26 going to do now is I'm going to go through my questions

1 that I noted during Mr. Kitchen's direct examination,
2 and I'm going to stop at 12, regardless of where I'm
3 at, whether I'm finished or not. I'll finish after
4 1:00, if need be, with those questions, and I'll then
5 begin my more structured questions after that.

6 Mr. Maxston Cross-examines the Witness

7 Q MR. MAXSTON: Dr. Wall, in the beginning of
8 your questions with Mr. Kitchen, you talked about the
9 fact that, in your mind over 20 years, you've seen a --
10 I think you said a slow and steady decrease -- slow and
11 steady change, pardon me, in the College and I think an
12 increase in restrictions. Wouldn't it be fair to say
13 though that professions evolve and grow, and we become
14 better at regulating professionals over time?

15 A I would say we evolve and grow but not necessarily
16 better.

17 Q You had a discussion with Mr. Kitchen, and in fairness
18 to him, you talked about restrictions coming from the
19 College, and you said, well, they also came from
20 government; and you were talking there about the CMOH
21 orders and I think the re-opening order, that type of
22 thing. You're aware that all professions have to have
23 a re-opening plan and have to have some type of
24 restriction on masking; is that correct?

25 A Yes, I'm aware of that.

26 Q So it wasn't just this college or you as a

1 chiropractor?

2 A That's right.

3 MR. KITCHEN: Sorry, Mr. Maxston, I
4 sincerely apologize. I have another headset, and I'm
5 going to go quickly get that and put that on, because I
6 just want to make sure that there's no feedback that's
7 interfering with you; is that all right if I just run
8 and do that?

9 MR. MAXSTON: Oh, I don't I can continue
10 without that, Mr. Kitchen, so you've got to hear the
11 question, so, yeah, sure thing.

12 (ADJOURNMENT)

13 THE CHAIR: All right, we're back on the
14 record. Mr. Maxston.

15 Q MR. MAXSTON: Dr. Wall, you had a discussion
16 where Mr. Kitchen asked you did the Pandemic Directive
17 include direction to reach out to the College if there
18 were problems with masking, and I think your answer was
19 no.

20 Isn't it fair to say though that you can always
21 reach out to the College? You don't need, a standard
22 of practice, for example, doesn't have to say, Call us
23 if you have a question or a policy on this or that; you
24 can always reach out though, can't you?

25 A That's right.

26 Q You had an exchange with Mr. Kitchen about the

1 requirement to obtain a doctor's note, and you said
2 there was nothing in the Pandemic Directive requiring
3 that, and I think you also mentioned that your health
4 information is private between you and your doctor. If
5 you were to disclose that information to the College
6 though, it wouldn't become public, would it?

7 A Insofar as addressing it to the College is addressing
8 it to the public. The College is not my doctor, and so
9 I believe that's public.

10 Q But I guess what I'm getting at is if you send that
11 information to the College and you say, Look, I've got
12 a medical condition, that information is not
13 distributed to the public at large; it goes to the
14 College; isn't that correct?

15 A That would be correct.

16 Q You had a discussion about your March 3 email to
17 Dr. Halowski, and I believe you said you didn't receive
18 a response. This isn't a gotcha question, I just want
19 to say to you that Dr. Halowski, his recollection, is
20 that there was, in fact, a response, and it was a March
21 4 email to you, where he essentially said, Thank you
22 for your note, I'm going to send this to counsel. I'm
23 just asking if that refreshes your memory about getting
24 a response.

25 A Yes, that is very correct, but no further follow-up to
26 that.

1 Q Just wanted to be clear that it wasn't unanswered.

2 You had a discussion about I think your
3 apprehension with coming forward to the College, and
4 you said you were reluctant to do so because you felt
5 the College would not be supportive, but isn't it fair
6 to say from June until December, you really didn't
7 reach out to test the College's temperature, so to
8 speak, on this?

9 A That is correct, but I also, as previously stated, did
10 not believe that it was the College's position to hear
11 my private health information, and so that is another
12 reason why I didn't reach out to the College.

13 Q I think you'd agree with me though when you do your
14 annual practice permit renewal, there are questions
15 that go to your personal and private information. You
16 have to disclose fitness to practice issues and those
17 types of things, and you would routinely send that to
18 the College, wouldn't you?

19 A Did you say "fitness practice issues"?

20 Q Sorry, fitness to practice is what I said.

21 A Yes.

22 Q You had a discussion with Mr. Kitchen at a number of
23 points about consent and informed consent regarding
24 masking, and I think you said that the College's
25 mandatory masking requirement for you violated consent,
26 and I'm going to suggest to you that that's the wrong

1 way about looking at consent, and that patient consent
2 is the proper way to frame that phrase, and it's about
3 getting consent from a patient to treatment. So the
4 College doesn't have to get consent from members, do
5 they, to Standards of Practice or things like the
6 Pandemic Directive?

7 A I would disagree with that because my position would be
8 the wearing of a mask is a medical procedure or a
9 treatment, and, as such, it requires informed consent.

10 Q Aren't all of the College's requirements though, like
11 infection control, those kinds of things, wouldn't it
12 be a little unusual to say members have to consent to
13 all those types of things?

14 A I'd have to say that mandating a mask poses an imminent
15 risk to mental or physical harm, whereas infectious
16 measures perhaps don't carry that imminent risk to
17 harm, and so I would disagree with that.

18 Q Well, we'll agree to disagree on whether consent really
19 applies here then.

20 One thing to be clear though, the College in the
21 Pandemic Directive never said there must be masking for
22 patients, correct?

23 A That is correct.

24 Q You had a discussion about what happened when you
25 stopped masking and how patients reacted, and I think
26 you said most never said a thing, 99 percent were

1 unconcerned, but, Dr. Wall, isn't it fair to say that
2 patients don't vote on what standards apply to their
3 health care provider?

4 MR. KITCHEN: I take an issue with that,
5 because that's not a proper quote from what Dr. Wall
6 said, he didn't say anything about 99 percent. So
7 perhaps we need to go back to the record, but,
8 Mr. Maxston, I only object to that question because
9 you're putting words in Dr. Wall's mouth that aren't
10 his.

11 MR. MAXSTON: You know, I think he did say
12 99 percent, but that's really not the point of my
13 question, (INDISCERNIBLE) just forgetting than that
14 (INDISCERNIBLE) --

15 Q MR. MAXSTON: But I think you had a -- made
16 a comment that most of your patients never said a
17 thing, but, again, my question is then patients don't
18 vote on what you should or shouldn't apply as part of
19 your practice when it comes to your college; they don't
20 tell you what to do; is that not correct?

21 A That's correct.

22 Q You, in response to a question about why so many
23 patients were understanding, you mentioned that there
24 was patient trust and character, and you said that
25 there was no risk of harm to your patients. And I'm
26 going to suggest to you that that's, frankly, kind of

1 an astonishing statement to make. Are you absolutely
2 confident that not masking poses absolutely no risk to
3 your patients?

4 A Yes.

5 Q I want to turn to some of the questions you had with
6 Mr. Kitchen about the phone discussion you had with
7 Mr. Lawrence, and I think you mentioned that the
8 College was in a difficult place, but their role is
9 protecting the public. You've talked about literature
10 not supporting masking and kind of talked about what I
11 think you felt were Mr. Lawrence's -- the tone of his
12 comments. But I just want to be clear, Mr. Lawrence,
13 at that stage, is the Complaints Director; he's not
14 making any findings of unprofessional conduct, is he?

15 A That's --

16 Q I don't mean to trick you, that's the Hearing Tribunal,
17 isn't it?

18 A I would agree, yes.

19 Q So you talked to Mr. Kitchen about the commencement of
20 an investigation, and that's a discretion that a
21 Complaints Director has, correct?

22 A Yes.

23 Q And, again, this isn't a gotcha question, but Section
24 65 of the HPA allows a Complaints Director to seek a
25 suspension; is that not accurate?

26 A Yes.

1 Q And I think you said in response to, again, one of the
2 questions about Mr. Lawrence's interaction with you,
3 you said that Mr. Lawrence advised you that he was
4 fulfilling his public protection duty; is that
5 accurate?

6 A Yes.

7 Q Mr. Kitchen asked you a question about what happened
8 after your discussion with Mr. Lawrence. I think there
9 was a question about whether Mr. Lawrence asked you
10 anything about your private life, and you said no, and
11 the question was something along the lines --

12 MR. MAXSTON: -- Mr. Kitchen, you can jump
13 in --

14 Q MR. MAXSTON: -- did you then feel free to
15 decide to wear or not wear a mask, and your answer was,
16 no, you felt the strong arm of the College was about to
17 step in and stop your practice. But it really wasn't
18 the College that stepped in to stop your practice, it
19 was AHS, wasn't it?

20 A Well, it was AHS that closed my practice in December,
21 but it was the College that was ensuing the
22 investigation further and looking into the suspension
23 of my licence.

24 Q Again, what I think I was really getting at is your
25 wording was that you were afraid the College was going
26 to step in and stop you from practicing, but the

1 College never did that ultimately. Dr. Linford didn't
2 do that, and it was AHS that did that?

3 A Yes, but this is still an ongoing investigation, and
4 the College still has the possibility of shutting my
5 practice down if they deem so at the end of the
6 hearing.

7 Q And I guess I disagree with you a bit. I would say it
8 would be a Hearing Tribunal not the College, because
9 the Hearing Tribunal issues orders.

10 You talked about your son practicing at the
11 clinic, and you indicated that he wasn't masking. Did
12 he have a medical exemption note?

13 A No, he did not.

14 Q He didn't have a doctor's note then is what I'm getting
15 at?

16 A That's correct.

17 Q You talked with Mr. Kitchen about the standard
18 treatment you provide to patients, and you engaged in
19 an interesting discussion about hand and practice and
20 chiropractic, filling us all in on the nature of that,
21 but I really want to stress, I think this is consistent
22 with Dr. Halowski's testimony yesterday, you would
23 agree there are other elements of practice, like
24 educating patients?

25 A Absolutely.

26 Q And consulting them?

1 A Absolutely.

2 Q Yeah, and you can do that with social distancing?

3 A Absolutely.

4 Q Mr. Kitchen asked you questions about the principles
5 that you employ in your practice, which ones are
6 important to you, and I think you said the first one is
7 do no harm to patients. Have you ever considered what
8 the impact would be if you were wrong about masking?

9 A I'm confident in my understanding of masking to such an
10 extent that I know it's not harmful.

11 Q Mr. Kitchen asked you a question, do you permit
12 patients to not mask, and I believe you said yes, and
13 he said why, and you said about freedom to make their
14 own choices, something along those lines. I wonder if
15 you can go back to Exhibit D-2, which is the AHS
16 rescind order, which re-opened your clinic. And I'll
17 just give you and the Tribunal Members a couple of
18 minutes to go to that. Are you there, Dr. Wall?

19 A Yes, I am.

20 Q Okay. Order Number 4 says: (as read)

21 Dr. Curtis Wall must ensure that all patients
22 he treats continuously wear a mask that
23 covers their mouth and nose for the duration
24 of their time in the clinic, unless they are
25 able to provide evidence that they have been
26 granted a mask exemption.

1 I'm going to suggest to you that you're in breach of
2 that order, aren't you, because you don't require a
3 mask exemption order or letter?

4 MR. KITCHEN: Mr. Maxston, forgive me, I'm
5 going to object to your question only on the basis that
6 you just called this an order; it's not an order. If
7 you call it what it is, then I have no issue with your
8 question.

9 MR. MAXSTON: Well, you know what, it says
10 "following conditions".

11 Q MR. MAXSTON: So you're not in compliance
12 with Condition Number 4 then?

13 A That would be correct.

14 Q Yeah, and to be clear, the first line says: (as read)
15 Notice is to inform you, on January 5, 2021,
16 the undersigned Executive Officer of Alberta
17 Health Services rescinded an order.

18 So they're rescinding an order, and they're placing new
19 conditions on your practice; that's correct?

20 A Correct.

21 Q And, again, Order Number 4 -- sorry, Provision Number 4
22 is something you're not complying with? Correct?

23 A Correct.

24 Q You had a discussion --

25 MR. MAXSTON: I'm just mindful of time here;
26 I think I can wrap this up in just another maybe 5

1 minutes.

2 Q MR. MAXSTON: You had a discussion about
3 AHS, and you said that there was really no wiggle room
4 from the College as a result of AHS's I guess
5 pronouncements, but for seven months, you never
6 inquired about whether there was any wiggle room, did
7 you?

8 A No, I did not.

9 Q You had a discussion about requiring patients to mask
10 and causing them harm and discussed your concerns about
11 oxygen and carbon dioxide, and you said even -- I think
12 you said even if it's imperceptible, that is, imminent
13 physical harm and danger; isn't COVID also an imminent
14 physical harm and danger?

15 A If you look at the statistics of people who are dying
16 from COVID and the recovery rate, 99.97 percent of
17 people recover, and this is no different than an
18 average seasonal flu. And so if an average seasonal
19 flu is also an imminent risk or harm, then, yes, we
20 could say they're on the same level.

21 Q I think along the same lines a little later on, you
22 made a comment that COVID-19 isn't an emergency; is
23 that your recollection?

24 A Yes, it is.

25 MR. MAXSTON: This isn't in evidence, so,
26 Mr. Kitchen, you can object if you want.

1 Q MR. MAXSTON: But we hear on TV about the
2 fourth wave, you heard last year about the first,
3 second, third wave, and high ICU numbers and
4 hospitalizations. If COVID isn't an emergency, what
5 is?

6 MR. KITCHEN: I'm going to have to object.
7 It's a hypothetical, plus you're bringing in evidence
8 that's just not --

9 MR. MAXSTON: Sure, I'll rephrase it.

10 Q MR. MAXSTON: Why isn't COVID an emergency?

11 MR. KITCHEN: Okay, hold on. Again, you're
12 asking an opinion that's completely out of the scope to
13 give.

14 MR. MAXSTON: Well, Mr. Kitchen, your client
15 described COVID as not being an emergency, so he's
16 offered that view. I'm certainly allowed to question
17 him about that.

18 MR. KITCHEN: All right --

19 Q MR. MAXSTON: And I'll just base the
20 question: Why isn't it an emergency?

21 A I'm basing that on the research that I have heard. I'm
22 basing that on many people that are well beyond my
23 knowledge level with respect to emergency --
24 emergencies and emergency preparedness, and so that is,
25 again, an opinion based on other expert evidence, not
26 my own.

1 MR. MAXSTON: Mr. Chair, can you give me 5
2 minutes. I think I can finish up a little bit into the
3 lunch hour. Is that fair?

4 THE CHAIR: Yeah, that's fine.

5 MR. MAXSTON: Okay, I'll try to be quick.

6 Q MR. MAXSTON: You had an exchange with
7 Mr. Kitchen about whether there was any comment from
8 the College about which is more important, prescreening
9 or masking, and I think you said no, but you'll recall
10 when I took Dr. Halowski through Exhibits C-21 to C-22,
11 don't those contain numerous statements where the
12 College is inviting you to contact the College?

13 A Can you rephrase that question, please?

14 Q Yeah, you said that there was no comment from the
15 College about which is more important, prescreening or
16 masking. And I'm going to suggest to you that that
17 really isn't the issue; that you could have reached out
18 to the College and asked them what was more important.

19 A Yes.

20 Q You made some comments in response to a question that
21 you believed that the College consulted with AHS and
22 that it believes the information is accurate and that
23 it's relying on that, so would it be fair to say that,
24 in your view, the College is acting in good faith when
25 it's carrying out these pandemic steps?

26 A According to their idea of good faith, yes.

1 Q There were a number of questions Mr. Kitchen asked you
2 about were you surprised by the College doing this, or
3 the College created this step, did these things, and I
4 think my concern with that was isn't it fair that the
5 College is made up of chiropractors?

6 A Yes, a majority of chiropractors, and I believe there
7 are some public members.

8 Q Yeah, I think, in fairness, you're quite right on
9 council and on Hearing Tribunals, there are public
10 members, but I think my concern was that the way those
11 questions were phrased and the way your answers were
12 phrased, it made it sound like the College was sort of
13 a third-party entity out there, kind of hovering
14 around. The College is made up of chiropractors, and
15 don't chiropractors vote on these, as councillors, vote
16 on pandemic directives and standards of practice?

17 A I don't know if every individual chiropractor actually
18 voted on the Pandemic Directive.

19 Q I should have been more precise, you're right,
20 chiropractors on council.

21 A Yes.

22 Q So these are decisions, at least in part, where public
23 members made by chiropractors to apply to the
24 chiropractor profession?

25 A That's correct.

26 Q You talked about the Pandemic Directive being

1 unreasonable because there are no provisions for
2 exemptions. Do you recall Dr. Halowski's testimony
3 that, in his knowledge, no other college has exemptions
4 for masking?

5 A Yes, I do.

6 Q I'm almost there. Mr. Kitchen asked you a question to
7 the effect of is the College very concerned with
8 pleasing the CMOH, and you said -- I think you said
9 yes, and there's collaboration between CMOH and AHS and
10 the College. That's really your opinion though; you
11 don't -- haven't tendered any evidence to support that,
12 have you?

13 A No evidence tendered, but it stands to reason that
14 there has to be collaboration between the College and
15 Alberta Health Services.

16 Q One of Mr. Kitchen's final comments, and this is my --
17 I think my final question was do you believe you've
18 breached any CMOH orders, and you said no. But isn't
19 it fair that when we look at the AHS closure order,
20 they referred to CMOH orders being breached, and that's
21 why they closed the clinic?

22 MR. KITCHEN: Mr. Maxston, I don't know that
23 you're -- I think you're misleading here, because you
24 are saying --

25 MR. MAXSTON: (INDISCERNIBLE)

26 MR. KITCHEN: -- well, you're saying in your

1 question that there's a breach of a CMOH order. Well,
2 that's kind of an ultimate issue. If there was no
3 doctor's note from Dr. Wall verifying that he fell into
4 an exemption, I'd agree with you, but --

5 MR. MAXSTON: You know what I'm going to do,
6 I'm going to -- it's a fair comment, Mr. Kitchen.

7 Q MR. MAXSTON: Just very briefly, Dr. Wall,
8 can you go to the closure notice, which is Exhibit D-1.
9 I'll get everybody to do that, and, I'm sorry, this is
10 my last question.

11 And, Dr. Wall, let me know when you're there, and
12 I'll start my question then.

13 A Yeah, go ahead.

14 Q So what I was really getting at is (a) and (b) are kind
15 of mirror images, this is on page 1, but it says --
16 I'll just read item (a), and then there's a question:
17 (as read)

18 Practitioner does not wear a face mask while
19 providing care within 2 metres distance from
20 patients. This activity could contribute to
21 the spread of COVID-19. This is a breach of
22 Section 2(1) of the nuisance and general
23 sanitation regulation, which states that [I
24 won't read that out] and of Section 26 of the
25 CMOH-38-2020, which states that ...

26 So on the face of it, this order says you're breaching

1 a CMOH order.

2 A Yes, on the face of it.

3 MR. MAXSTON: Okay, those are all my
4 questions, Mr. Chair. Thank you for your indulgence in
5 going a little bit into the lunch hour.

6 I welcome Mr. Kitchen's comments, we could
7 reconvene at 1:00, we could reconvene at 1:15, whatever
8 your decision is.

9 THE CHAIR: Before we decide that, can we
10 get an idea of what the afternoon will look like?

11 MR. MAXSTON: I expect I will be a couple of
12 hours in questioning Dr. Wall. I don't know how long
13 of course Mr. Kitchen's cross-examination -- or, pardon
14 me, redirect will be, and then, of course, there's your
15 time for questions.

16 I'm hopeful we can get through Dr. Wall today
17 but --

18 Q MR. MAXSTON: And, Dr. Wall, you've given me
19 some very short answers at times, which is helpful for
20 moving ahead, but at other times, I'm sure you're going
21 to want to elaborate on some of my questions.

22 MR. MAXSTON: And, in fairness, I do have a
23 lot of questions for Dr. Wall.

24 THE CHAIR: Okay, Mr. Kitchen, is that
25 your vision of this afternoon? I don't see us calling
26 any other witnesses today, unless we get --

1 MR. KITCHEN: I have --

2 THE CHAIR: -- through more quickly.

3 MR. KITCHEN: Well, I have one witness
4 standing by, who is one of the four patient witnesses,
5 so it will be quick. Each one of these four patient
6 witnesses will be quick. Mr. Maxston and I have talked
7 about this.

8 So as I see it, we're likely to be done with
9 Dr. Wall by 3:30, 3:45. I'd like to use the entire day
10 to get one more witness in, considering how slow we're
11 moving and that -- you know, yesterday, we finished --
12 it's my fault, I understand this, but yesterday we
13 didn't quite use the full time; I'd like to try to use
14 the full time to get in that one extra witness, because
15 I cannot see that taking more than an hour total.

16 MR. MAXSTON: I think maybe, Mr. Kitchen,
17 I'd invite your comments, maybe just see where we're at
18 by, you know, 3:00, 3:30, and then -- I know it's tough
19 to have a witness hanging, but I'm going to be very
20 brief with that witness if we get to him or her today.

21 MR. KITCHEN: Okay, well, I, yeah, that's
22 important to me that we at least try to preserve that.

23 THE CHAIR: Okay, that's our objective.

24 So we will recess for lunch. It's 10 after 12, so
25 let's reconvene at 1:15, and we'll continue with
26 Mr. Maxston's cross-examination at that time. Thank

1 you.

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3 PROCEEDINGS ADJOURNED UNTIL 1:15 PM

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

4

5 September 8, 2021

Afternoon Session

6

7 HEARING TRIBUNAL

8 J. Lees

Tribunal Chair

9 W. Pavlic

Internal Legal Counsel

10 Dr. L. Aldcorn

ACAC Registered Member

11 Dr. D. Martens

ACAC Registered Member

12 D. Dawson

Public Member

13 A. Nelson

ACAC Hearings Director

14

15 ALBERTA COLLEGE AND ASSOCIATION OF CHIROPRACTORS

16 B.E. Maxston, QC

ACAC Legal Counsel

17

18 FOR DR. CURTIS WALL

19 J.S.M. Kitchen

Legal Counsel

20

21 K. Schumann, CSR(A)

Official Court Reporter

22

23 (PROCEEDINGS RECOMMENCED AT 1:15 PM)

24 THE CHAIR:

Okay, it's 1:15. Mr. Kitchen,

25 you're okay; your technology is okay?

26 MR. KITCHEN:

I'm ready to go.

1 THE CHAIR: Okay.

2 MR. KITCHEN: Can you hear me? Good.

3 THE CHAIR: Yes, we can hear and see you.

4 So, Mr. Maxston, the floor is yours.

5 Discussion

6 MR. MAXSTON: Sure. Mr. Chair, during the
7 break, I think about 12:15 or so, 12:20, I asked
8 Ms. Nelson to send Mr. Kitchen a document I intend to
9 rely on in cross-examination, and it is the email
10 exchange, the March 4 response from Dr. Halowski and
11 Dr. Wall's March 3 email to him.

12 I, frankly, don't intend to spend a lot of time
13 with that, but I, of course, wanted to send it to
14 Mr. Kitchen. I'm going to get to that probably 5 or 10
15 minutes into my examination. I wonder if Mr. Kitchen
16 will consent to Ms. Nelson sending that to the Hearing
17 Tribunal Members now.

18 MR. KITCHEN: Yeah, that's fine. Just
19 forward it to Dr. Wall, so he has a copy.

20 MR. MAXSTON: And, again, I don't intend to
21 spend a lot of time with that. I think it should
22 probably be marked as an exhibit, and I think we might
23 be up to H-4 or 5, if we are -- Mr. Chair, and
24 Ms. Nelson can do that; she can put it into the
25 Dropbox, and we'll ask the court reporter to mark that
26 as part of her --

1 MR. KITCHEN: I do have an issue with --
2 okay, let me just pull up what you sent me here,
3 because I think I might --

4 MS. NELSON: I also just want to hop on and
5 let you know, Walter Pavlic is not currently on the
6 call, so I'm just going to give him a call on his cell
7 phone and try to get him in the meeting. It looks like
8 he's dropped off.

9 THE CHAIR: Yeah, and my oversight. Thank
10 you, Amber.

11 MR. MAXSTON: Mine as well. Maybe,
12 Mr. Kitchen, we should not discuss this further until
13 Mr. Pavlic comes online.

14 MR. KITCHEN: That's fine. Yeah, no, but I
15 do want to discuss a point with you.

16 MR. MAXSTON: Yeah.

17 (ADJOURNMENT)

18 MR. MAXSTON: Mr. Pavlic, just before you
19 came on, I mentioned to the Chair that, I think about
20 12:15 or 12:30, I asked Ms. Nelson to send Mr. Kitchen
21 a document by email that I intend to rely on in
22 cross-examination, and it is the March 3, 2020 email
23 from Dr. Wall to Todd Halowski, and Dr. Halowski's
24 March 4 response. I'm going to briefly refer to that
25 in my cross-examination. I would like that to be
26 entered as an exhibit, and I understand Mr. Kitchen

1 might have some questions about that, so I'll turn the
2 floor over to him.

3 MR. KITCHEN: I received instructions from
4 my client, and there's no objection to putting that in
5 as is.

6 THE CHAIR: Okay, thanks, Mr. Kitchen. So
7 if we could have that document shared to the members of
8 the Hearing Tribunal and --

9 MS. NELSON: So what I'm going to do, I'm
10 going to add it to the Dropbox file, you should all
11 still have access to that file. I'm going to put it in
12 File H, so you can find it there. Just give me about 2
13 minutes to add that in, and I'll let you know when it's
14 there for your review.

15 THE CHAIR: Would it be possible to email
16 it?

17 MS. NELSON: Sure, yeah, I can email it
18 instead if that's easier for everyone.

19 THE CHAIR: It's certainly easier for me
20 than having to go in and getting into the Dropbox
21 again.

22 MS. NELSON: Okay, so what I'll do I'll
23 send everyone an email now, all the Tribunal Members,
24 so you have it, and then while the hearing's in
25 session, I'll still upload it to Dropbox, so, Karoline,
26 you'll be able to find it in File H.

1 EXHIBIT H-7 - Response to Curtis Wall Re -
2 Vaccinations

3 THE CHAIR: Excellent, thank you, Amber.

4 Mr. Maxston, are you going to start with this
5 document?

6 MR. MAXSTON: No, I think in about 10
7 minutes I'll get to it, and it will be very brief, so I
8 wonder if I might just start now, and when I get to
9 that, I'll get to that document, I'll make sure
10 everybody's been able to access it.

11 THE CHAIR: I think that's a wise idea.
12 Let's use the time.

13 DR. CURTIS WALL, Previously Sworn, Cross-examined by
14 Mr. Maxston

15 Q MR. MAXSTON: So, Dr. Wall, I'm just going
16 to ask you a couple of questions about your educational
17 background baed on what Mr. Kitchen said, and I
18 understand you graduated from Palmer College in
19 Davenport, Iowa, in 1996. Did you receive any public
20 health education at Palmer?

21 A Yes.

22 Q And was that health education in relation to public
23 disease management?

24 A No, it was not. It was a very basic course, going over
25 basic microbiology and discussing infectious diseases,
26 but not in management.

1 Q And do you have any advance training or degrees in
2 public health?

3 A No, I do not.

4 Q When you graduated from Palmer, do you recall taking an
5 oath that included, in part, an obligation to preserve
6 the integrity of the profession?

7 A Yes, I do.

8 Q You came a licensed chiropractor in 1996 in Alberta I
9 understand, and I believe you said this during your
10 discussion with Mr. Kitchen, but would you agree that
11 practicing in the profession of chiropractic is a
12 privilege not a right?

13 A Yes, I would.

14 Q And would you also agree that the chiropractic
15 profession is a self-regulating profession under the
16 Health Professions Act in Alberta?

17 A Yes, it is.

18 Q I'm not going to ask you to go to this, but are you
19 familiar with Section 3 of the Health Professions Act
20 and the public protection mandate it establishes for
21 colleges?

22 A I believe I've read through it, yes.

23 Q You're also, I'm assuming, familiar with the fact that
24 the College, as a regulator, governs the conduct of
25 chiropractors in their professional capacities?

26 A Yes, I'm aware of that.

1 Q Section 3 of the HPA, and, again I'm not asking you to
2 go there, talks about the College establishing and
3 enforcing requirements for the profession, and I just
4 want to take you through a couple of things quickly
5 here. You would agree that the College sets initial
6 registration requirements?

7 A Yes.

8 Q For the profession?

9 A Yes.

10 Q And that's mandatory?

11 A That's correct.

12 Q And happily, you met those requirements a few years
13 ago?

14 A Yes.

15 Q There are annual practice permit renewal requirements?

16 A Yes, there are.

17 Q And those are mandatory?

18 A Yes.

19 Q The College has a continuing competence program; is
20 that correct?

21 A Yes, it does.

22 Q And is that mandatory in order to keep practicing?

23 A Yes, it is.

24 Q You're aware that the College creates Standards of
25 Practice and Codes of Ethics?

26 A Yes, I am.

1 Q You're aware that the College creates practice visits?

2 A Yes.

3 Q For members?

4 A Yes.

5 Q And a participation and practice visit is mandatory,
6 isn't it?

7 A Can you explain a practice visit?

8 Q If the College sends someone out to do a practice visit
9 under the Health Professions Act, and they come to your
10 clinic and assess what's occurring at the clinic,
11 that's what I'm referring to.

12 A Yeah, I think there are definitely parameters
13 surrounding that. It's -- I'm not sure that the
14 College can just randomly come to a practice. I think
15 there has to be some reason behind it, to my knowledge.

16 Q Yeah, and I think I'm referring to the practice visit
17 program established under the HPA, and I think you're
18 quite right, there are some parameters for how practice
19 visits occur.

20 I'd like to ask you to go to the Standards of
21 Practice -- I'm just going to digress for a moment --
22 the Standards of Practice are in Exhibit A-11, and I'm
23 not going to be long on this, but once you're there on
24 A-11 and Tribunal Members are there, I'm going to ask
25 you to go to page 20 and the standard of practice for
26 recordkeeping. And that's Standard of Practice 5.1.

1 A Yeah, I'm there.

2 MR. MAXSTON: Mr. Chair, I'll assume, unless
3 someone waves their hand, everybody else is at Standard
4 5.1.

5 Q MR. MAXSTON: Dr. Wall, my purpose in taking
6 you to this, number one, to flag that it addresses
7 recordkeeping requirements, and it says: (as read)
8 Patient health records must be dated,
9 accurate, legible, and comprehensive.
10 You'd agree that's mandatory?

11 A Yes, I would.

12 Q (as read)

13 All services provided by the chiropractor
14 must be documented by the chiropractor and
15 entries must be clearly identifiable as
16 having been made by the chiropractor.

17 Again, a mandatory requirement, correct?

18 A Correct.

19 Q And if you skip down a couple of lines, there's a
20 paragraph that says: (as read)

21 All patient health records must include the
22 following information.

23 And there's some bullets, "Personal Information
24 History", "Physical Exam", "Findings", "Written
25 Diagnosis". You would agree that that's a mandatory
26 set of contents for your records?

1 A Correct.

2 Q Is it fair to say that, until you independently decided
3 that you weren't going to follow the Pandemic
4 Directive, that you always follow ACAC requirements?

5 A That's correct.

6 Q I think you describe yourself as a fairly compliant
7 person, and I'm not surprised to hear that. I'm
8 wondering if I can get you to go to the notice of
9 hearing, which is Exhibit A-1. It's the first
10 document. I just want to take you through it.

11 A I'm good to go.

12 Q Okay. So I want to be careful, Mr. Kitchen can jump in
13 here, but I don't think we ever heard -- we talked
14 about this at the beginning of the hearing, but I don't
15 think we ever heard from you whether you are denying or
16 contesting the charges and are saying they don't
17 constitute unprofessional conduct. I assume you're
18 going to agree that that's what you're doing in the
19 hearing?

20 A Can you repeat that, sorry?

21 Q Yeah, you're contesting the charges; you're arguing
22 that you did not commit unprofessional conduct?

23 A That is correct.

24 Q Okay. I'm going to take you through each of the
25 charges, and I want to be very clear, I'm not asking
26 you to make admissions of unprofessional conduct; I'm

1 more interested in the facts in the charges are the
2 factual foundation.

3 So Charge 1 says: (as read)

4 Beginning on or about June of 2020 and at the
5 Wall Chiropractic Clinic: (a), [you] failed
6 to use PPE, specifically failed to wear a
7 mask; (b), failed to observe the required 2
8 metres of social distancing when unmasked;
9 (c), until on or about December 2020, failed
10 to have a plexiglass barrier at the clinic
11 reception and/or did not require patients to
12 mask; [and then] when he interacted with
13 patients, members of the public, or both.

14 Do you dispute any of those facts?

15 A No, I do not.

16 Q And if we go to Charge Number 2: (as read)

17 Beginning on or about June of 2020 in the
18 clinic, one or more staff members of the
19 clinic, the staff, failed to use PPE,
20 specifically staff failed to wear masks; (b),
21 failed to observe the required 2 metres of
22 social distancing when unmasked and/or, (c),
23 did not require patients to be masked when
24 they interacted with patients, members of the
25 public, or both.

26 Again, I'm not asking you to make an admission of

1 unprofessional conduct, but do you accept those facts?

2 MR. KITCHEN: Mr. Maxston, I don't mind the
3 question, but, in general, I'm going to ask that you
4 break it up for each one of these pieces.

5 MR. MAXSTON: Sure, I'm happy to do that.

6 MR. KITCHEN: Okay, thank you.

7 MR. MAXSTON: Yeah.

8 Q MR. MAXSTON: Let's go to 2(a), do you
9 dispute those facts, Dr. Wall?

10 A No, I do not.

11 Q And similarly for 2(b)?

12 A No, I do not.

13 Q And similarly for 2(c)?

14 A No, I do not.

15 Q Okay, we go to Charge Number 3: (as read)

16 Beginning on or about June 2020, Dr. Wall
17 treated patients while not wearing a mask
18 and/or did not require patients to be masked,
19 and, (a), he did not advise patients of the
20 increased risk of transmission of COVID-19
21 due to masks being worn.

22 Do you agree with that factually?

23 A Like "masks not being worn" I believe is --

24 Q Yeah.

25 A -- what you meant?

26 Q Yeah, sorry, yeah.

1 A That's correct.

2 Q And (b): (as read)

3 He advised patients that masks were not
4 required.

5 Is that factually accurate?

6 A Correct.

7 Q And (c): (as read)

8 He advised patients that wearing masks had no
9 effect concerning transmission of COVID-19.

10 Is that accurate factually?

11 A Correct.

12 Q So if we go to Charge Number 4: (as read)

13 Beginning on or about June of 2020, Dr. Wall
14 failed to chart and/or failed to properly
15 chart communications with his patients about,
16 (a), him not wearing a mask.

17 Would you agree with that?

18 A Yes, I would.

19 Q (b): (as read)

20 His staff not wearing masks.

21 Would you agree with that?

22 A Yes, I would.

23 Q And (c): (as read)

24 His patients not wearing masks?

25 A Yes, I would.

26 Q And then, finally, Charge Number 5: (as read)

1 Beginning on or about June of 2020, Dr. Wall
2 and/or the staff, (a), failed to follow CMOH
3 orders regarding masking and COVID-19.

4 Do you accept that factually?

5 A Yes.

6 Q And (b): (as read)

7 Failed to follow the ACAC Pandemic Practice
8 Directive.

9 Do you agree with that factually?

10 A Partially, but, yes, with respect to masking; is that
11 what that (b) would be?

12 Q Yeah, I would -- yes, I think, in fairness to you, I'm
13 thinking of masking, social distancing, and the
14 plexiglass barrier.

15 A Correct, yeah.

16 Q Okay, thank you. So I think, Dr. Wall, it's fair to
17 say that you're arguing that you have an exemption to
18 masking, but you're also calling four experts who will
19 dispute the science behind masking, they'll argue that
20 masking causes harm, and argue that masking isn't
21 necessary. Is that your position as well; it's not
22 just that you have a medical exemption?

23 A That is correct.

24 Q And aside from any exemption for your anxiety disorder
25 personally not masking, is it not fair to say you don't
26 believe in masking generally in terms of COVID for a

1 number of reasons?

2 MR. KITCHEN: You're going to have to get a
3 little more specific. I don't necessarily object to
4 the question generally, but you're going to have to be
5 a little more specific about what you mean about
6 belief.

7 Q MR. MAXSTON: So I'll ask the question a
8 little differently. You don't believe in masking
9 generally in terms of COVID-19 as a preventative
10 measure?

11 A Correct.

12 Q And just to be clear, you don't believe that
13 chiropractors should have to mask or social distance or
14 use plexiglass barriers; is that fair?

15 A Correct.

16 Q I'd like to take you to Exhibit A-11, another standard
17 of practice, and specifically page 15, which is
18 Standard of Practice 4.3. And I'm sorry, Dr. Wall,
19 we're going to skip around a little bit with the
20 documents this afternoon, but I'll let you and the
21 Tribunal Members get to that document, and then I'll --
22 I've got a few questions for you.

23 THE CHAIR: Would you repeat that document
24 number, again, please.

25 MR. MAXSTON: Yes, Mr. Chair, it's A-11, the
26 Standards of Practice, and more specifically I'd like

1 you to go to page 15, which is 4.3, "Infection
2 Prevention and Control".

3 THE CHAIR: Thank you.

4 Q MR. MAXSTON: So, Dr. Wall, we heard
5 Dr. Halowski give some evidence about this standard,
6 and you'd agree with me that this standard was in place
7 before COVID?

8 A Yes, I would.

9 Q And you would agree that it was binding on you and is
10 binding on you?

11 A Yes.

12 Q You'll see at the end of the first paragraph, just
13 before the colon, it says "Chiropractors must", and
14 then it sets out a number of duties that you have -- I
15 shouldn't say "duties", I should say obligations.
16 Would you agree with me that those bullets that follow
17 are all musts, for lack of a better phrase?

18 A I'm sorry, are you still on 4.3?

19 Q Yeah, I'm just looking at that series of bullets. The
20 first one says: (as read)

21 Remain current and generally accepted routine
22 practices.

23 And I'm just looking at the -- just before that, it
24 says: (as read)

25 In their clinical practice, chiropractors
26 must ...

1 And my question was all those bullets are musts, if I
2 read this correctly; would you agree with that?

3 A Yes, I would.

4 Q And is it your evidence that you've complied with this
5 standard of practice at all times?

6 A Let me take a minute and just read those bullets,
7 please. It would appear that the protective barrier,
8 if that is referring to the plastic barrier, was
9 something that I did not do. So that one bullet,
10 there's --

11 Q You know, Dr. Wall, I'm not trying to sort of trick you
12 here. I had a question specifically, frankly, about
13 the second-last bullet. It says: (as read)

14 Must utilize appropriate personal protective
15 equipment in circumstances indicating such
16 measures.

17 I think you'd agree you're not complying with that
18 because you're not complying with the Pandemic
19 Directive?

20 A Correct.

21 Q And, again, on its face, to be fair to you. I'd like
22 to turn to the emails that were just entered as an
23 exhibit, and we have your March 3, 2020 email, and as I
24 asked you during my brief questions before, I asked you
25 to just refresh your memory, and you would acknowledge
26 now that Dr. Halowski did respond on March 4 to your

1 email?

2 A Yes, I would.

3 Q I'm looking at your email, and I just have a couple of
4 quick questions about it. The second paragraph says:
5 (as read)

6 I fully recognize the position chiropractors
7 are in with respect to being governed under
8 the HPA, and I intend to follow any
9 guidelines and rules put forth to our
10 profession through Standards of Practice and
11 bylaws.

12 Can you tell me why you said that?

13 MR. KITCHEN: Mr. Maxston, I understood that
14 you were putting this document in so that you could
15 discuss about whether or not there was a response. Now
16 you're asking a question about the substance of the
17 email.

18 MR. MAXSTON: I don't think I said I was
19 confining my questions; I was putting it in to be used
20 for cross-examination, and I only have a couple
21 questions.

22 MR. KITCHEN: Well, I don't think the
23 substance of the email is relevant. You and I have
24 both seen the email. There's nothing in there about
25 masking or the ACAC Pandemic Directive or any of that.
26 The contents of the email aren't relevant. It's not a

1 relevant question.

2 MR. MAXSTON: Well, I would disagree.
3 There's a comment in the second paragraph I'm taking
4 your client to about compliance with future
5 requirements of the College, so I guess we'll ask the
6 Tribunal to let us know whether I can ask that
7 question.

8 MR. KITCHEN: Well, I now admit I didn't ask
9 you this, but you did not indicate when you asked for
10 my consent to put this email in that you were going to
11 ask substantive questions on the content of what
12 Dr. Wall said in the email. I understood you to mean
13 you were putting it in to show that it was sent and
14 that Halowski -- Dr. Halowski sent a response, which I
15 have no issue with.

16 MR. MAXSTON: Well, I --

17 MR. KITCHEN: So I'm going to object to
18 questions on content, and I guess I'm going to have to
19 object to you putting the document in for the purposes
20 of asking substantive questions on the content of the
21 email that Dr. Wall sent, which is irrelevant to these
22 proceedings.

23 MR. MAXSTON: Well, I think it is, and when
24 I mentioned my intention to have this entered, I said I
25 intend to refer to it briefly during cross-examination.
26 I didn't put any parameters on it, and I --

1 MR. KITCHEN: Well, I was trying to be --
2 you know, because I don't want to unduly contest
3 things, okay? So that's why I didn't contest is
4 because I didn't understand you to mean, and you didn't
5 say you were going to ask questions on the contents.

6 MR. MAXSTON: Well, I'm just going to say
7 that in my experience when you tender a document to be
8 used in cross-examination, it's not limited. I don't
9 have to say that I'm going to ask questions on 'X',
10 'Y', and 'Z'; I simply say I intend to refer to this.

11 So, again, I think it's relevant, my client thinks
12 it's relevant, it talks about compliance issues, and
13 it's in March of 2020 just before COVID hits and the
14 directive comes out. I don't have a lot of questions,
15 but I'd like to ask them, so I think we'll have to ask
16 for the Tribunal to let us know what they --

17 MR. KITCHEN: Well, I'm going to object both
18 to the questions, but I'm going to go back to object to
19 the document being entered for substantive questions.
20 This is similar to the issue we faced last week when I
21 asked to have in the evidence that the studies that I
22 questioned Dr. Hu about exist, and I was limited to
23 asking procedural questions about their existence not
24 on contents. That's what I'm going to ask -- that's
25 how I ask this to be treated.

26 MR. MAXSTON: And I think the difference

1 from my perspective, Mr. Kitchen, is Dr. Hu is an
2 expert, and he was being confronted with expert reports
3 he didn't have any familiarity with, and I think, quite
4 properly, the Tribunal put some parameters on what
5 could be asked. This is an email exchange that your
6 client knows about, and it's relevant to the issues.
7 I'll let the Hearing Tribunal tell us what --

8 MR. KITCHEN: No, but if I had've known, if
9 you had've made your intentions about questioning a
10 little more clear, then I would have been in the
11 position to object to it being entered for broad
12 purposes as opposed to specific narrow purposes. I
13 wasn't given that opportunity.

14 MR. MAXSTON: Yeah, I think I said I was
15 going to refer to it. And, again, in my experience, in
16 cross-examination, when you tender a document, you
17 don't have to say what exactly you're going to ask
18 about.

19 Anyhow, I've made my submissions on this point.

20 THE CHAIR: Yeah, I think we'll take a
21 brief recess here so that the Tribunal can discuss this
22 and consult with our independent legal counsel. So if
23 we could be moved to a break-out room, please, and
24 we'll be back with everybody shortly. Thank you.

25 (ADJOURNMENT)

26 THE CHAIR: We've discussed this amongst

1 ourselves and with independent legal counsel. Our
2 decision is that the questioning can be allowed. We
3 feel the document is relevant. Cross-examination is
4 not limited in this regard. We don't feel that the
5 situation with Dr. Hu and the medical -- or the studies
6 is directly comparable. And, Mr. Kitchen, you have an
7 opportunity to address anything raised in redirect
8 examination of Dr. Wall. So on that basis,
9 Mr. Maxston, subject to any further objections from
10 Mr. Kitchen, please carry on.

11 MR. MAXSTON: Yeah, I'll be brief,
12 Mr. Chair.

13 Q MR. MAXSTON: Dr. Wall, I've taken you to
14 the second paragraph that says: (as read)

15 I fully recognize the position chiropractors
16 are in with respect to being governed under
17 the HPA, and I intend to follow any
18 guidelines and rules put forth to our
19 profession through Standards of Practice and
20 bylaws.

21 And my question to you was why did you make that
22 statement?

23 A I made that statement because I'm a compliant
24 chiropractor, and I, for the last 25 years, have upheld
25 the Standards of Practice and bylaws and the Code of
26 Ethics, but nobody could see what was coming around the

1 corner a month later, and here we are with different
2 Standards of Practice and bylaws through the Pandemic
3 Directive that have created the issue that's being
4 contested right now.

5 Q So you've changed your view I think is what you're
6 saying?

7 A Only to the point that it affects this particular
8 hearing.

9 Q And just briefly, this is in March, early March of
10 2020, before the directive, but you've got
11 Dr. Halowski's email address at that point, don't you?

12 A Yes, I do.

13 Q Dr. Wall, I'd like to take you to Exhibits D-8 and D-9,
14 the two CMOH orders, CMOH Order 38-20 and 42-20. I am
15 not going to take you through those in detail. I've
16 got some questions for you about them generally, but if
17 you want to have those in front of you, certainly
18 that's fine.

19 A Okay.

20 Q So just putting aside the Pandemic Directive for the
21 moment, was your understanding with CMOH Order 38-20
22 that you were required to mask when treating patients?

23 A That I was required to mask when treating patients?

24 Q M-hm.

25 A Yes, yes.

26 Q And in fairness to you, you also have taken the

1 position that there's an exemption or exception as well
2 in this CMOH order; is that correct?

3 A That is correct.

4 Q And when we look at CMOH Order 42-20, and I, again,
5 don't want you to go through that, I think it's also
6 fair to say that it essentially mirrors 38-20, and
7 would you agree there's an requirement for you to mask,
8 and then there's an exemption as well?

9 A Yes.

10 Q So I think the question I have or the thing I want to
11 explore with you is really timing. So in June of 2020,
12 you decided to not mask and not social distance and not
13 use barriers; that's fair to say?

14 A That's correct.

15 Q When we look at the CMOH orders, 38-20 is dated
16 November 14, 2020, and 42-20 is dated December 11,
17 2020. So my question to you is there wasn't a CMOH
18 order in force in June of 2020 that set out exemptions
19 for masking; is that correct?

20 A Correct.

21 Q And, again, I'm not going to take you through this in
22 detail, but Exhibit F-2 is CMOH Order 16-20, and you'll
23 probably recall that 16-20, again, is from May 3 of
24 2020, and it's what we discussed previously in the
25 hearing about requiring either adherence to the CMOH
26 schedule, which required masking --

1 MR. MAXSTON: -- and there's a question
2 coming, Mr. Kitchen --

3 Q MR. MAXSTON: -- or opting into a College
4 directive if they had one; is that your recollection?

5 A Yes, it is.

6 Q And would you agree that, when we look at that Exhibit
7 F-2, and then there's F-1, the Government of Alberta
8 safely staged COVID relaunch, that it was a requirement
9 for the College to establish a Pandemic Directive?

10 A Yes.

11 Q Just bear with me for a moment, Dr. Wall. Don't mean
12 to belabour this point, but on Exhibit F-1, which is
13 the government relaunch document, if I can get you to
14 go to that, it's Exhibit, again, F-1, "Alberta's safely
15 staged COVID-19 relaunch".

16 A Okay.

17 Q Page 2, the second bullet talks about: (as read)

18 Dental and other health care workers will be
19 allowed to resume services starting May 4, as
20 long as they are following approved
21 guidelines set by their professional
22 colleges.

23 You understand that that meant it was mandatory for you
24 to comply with the Pandemic Directive if you wanted to
25 re-open?

26 A Yes.

1 Q And when we look at CMOH Order 16-20, and, my
2 apologies, that's F-2 if you want to look at it, I have
3 a couple of quick questions for you.

4 Again, this is the CMOH order that talks about
5 colleges creating their own Pandemic Directives. This
6 CMOH order doesn't reference any exemptions, does it?
7 And I mean exemptions from masking and social
8 distancing.

9 A Not that I can see, yeah.

10 Q And you'd agree with me, of course, this is dated May
11 3, 2020, and it would have been in force in June of
12 2020 when you decided to not comply?

13 A Correct.

14 Q Dr. Wall, I'd like you to go to the Pandemic Directive
15 itself, and we've been using I think Exhibit C-22,
16 which is the, I'll call it, the most recent version,
17 January 26th, 2021, although the contents of it
18 relating to masking et cetera haven't changed. So I'll
19 just ask you to go to that, please.

20 A Okay.

21 Q So I think you may have discussed this with
22 Mr. Kitchen, but do you recall when you received the
23 Pandemic Directive?

24 A Are you referring to the very first one or this most
25 recent --

26 Q Thank you --

1 A -- one?

2 Q -- yes, thank you, the May 3, 2020 version, thank you.

3 A I believe it was in May, early May.

4 Q Yeah. And you would have received that as a regulated
5 member getting like I guess as part of the normal
6 communications from your college?

7 A Correct.

8 Q So I'd like you to go to page 1 of the -- pardon me,
9 page 2 of the Pandemic Directive. Page 1 is kind of an
10 introductory table of contents. Item number 1 in the
11 middle of the page, numbered item 1, says "Follow
12 all" -- I should go back, there's an opening
13 sentence -- or opening statement: (as read)

14 As regulated health professionals,
15 chiropractors are required to, 1, follow all
16 mandates and recommendations from Public
17 Health and the Government of Alberta
18 regarding your personal and professional
19 conduct. As a regulated health professional
20 you have a fiduciary responsibility to follow
21 all civil orders that originate from any
22 level of government.

23 Would you agree with that statement?

24 A Yes, I would.

25 Q And the second one is a little more specific, number 2,
26 it says, again chiropractors: (as read)

1 Read and adhere to all communications from
2 the ACAC.

3 Would you agree that that's intended to be a binding
4 direction from your college?

5 A Yes, I would.

6 Q Dr. Wall, I'm going to ask you to go to page 3 of the
7 Pandemic Directive, and in kind of the middle of that
8 page, there's a heading that says "Patient Screening",
9 and there's some comments there about: (as read)
10 Chiropractors must assess and screen patients
11 for symptoms of COVID-19 as per requirements
12 of Public Health.

13 Were you doing patient screening?

14 A Yes, I was.

15 Q Okay. If you skip head to page 4 of the Pandemic
16 Directive, and you go to the bottom of the page, there
17 is a heading "Hand Hygiene", and if we go to the next
18 page, there's a -- it's the first complete paragraph:
19 (as read)

20 When hands are visibly soiled, they must be
21 cleaned with soap and water, as opposed to
22 using alcohol hand-rub.

23 Again, the word "must" is used. Were you adhering to
24 the hand hygiene requirements in this Pandemic
25 Directive?

26 A Yes, I was.

1 Q If we skip ahead a couple of pages to page 6, at the
2 top of that page, Dr. Wall, there's a heading of
3 "Environment Cleaning and Disinfection", and then there
4 are some comments about proper disinfectant products
5 and some requirements there. Were you adhering to the
6 environment cleaning and disinfection part of the
7 standard?

8 A Yes, I was.

9 Q And if we go to page 7, there's a heading that says
10 "Required Clinic Environment Adaptions", and it's got
11 some interesting comments about books, magazines, toys,
12 et cetera. Were you adhering to that requirement?

13 A Yes, I was.

14 Q The next heading on that page is "Physical Distancing",
15 and I'm going to ask you a question about the very next
16 page, page 8, and that first black bullet on the top of
17 that page says: (as read)

18 Non-clinical employees and the public must be
19 2 metres from each other.

20 And then: (as read)

21 Reception and payment area -- [and there's a
22 question coming] -- if 2 metres cannot be
23 maintained at reception/payment area, either
24 staff must be continuously masked or the
25 installation of a plexiglass/plastic barrier
26 must occur to protect reception staff.

1 I'm assuming that you weren't following this part of
2 the Pandemic Directive; the only exception being after
3 December 20, you began using plexiglass; is that fair?

4 A That's correct.

5 Q So if we go to the next section on page 8, the heading
6 "Personal Protective Equipment", and there's a heading
7 "Staff and practitioner PPE", and it reads: (as read)

8 On April 23, 2020, AHS announced, effective
9 immediately, AHS is advising all health care
10 workers providing direct patient care in both
11 AHS and community settings to wear
12 surgical/procedure masks continuously at all
13 times and in all areas of the workplace if
14 they are involved in direct patient contact
15 or cannot maintain adequate physical
16 distancing from patients and co-workers.

17 I'm assuming you would say you weren't following that?

18 A That's correct.

19 Q And if we go to the next heading, "PPE requirements",
20 got three bullets: (as read)

21 Surgical or procedure masks are the minimum
22 acceptable standard; chiropractors and
23 clinical staff must be masked at all times
24 while providing patient care; [and then next]
25 nonclinical staff must be masked when a
26 physical distance of 2 metres cannot be

1 maintained.

2 I'm assuming you would agree that you weren't following
3 that aspect of the Pandemic Directive?

4 A That's correct.

5 Q And if we go to the very next page, that's page 9,
6 there are a series of steps for donning and doffing
7 masks. I'm assuming you couldn't have been following
8 those because you weren't masking; is that fair?

9 A That is correct.

10 Q Okay. Dr. Wall, I'd like you to go to the last page of
11 the Pandemic Directive, page 12, and that's a heading
12 "Resources". Do you recall whether you went through
13 and reviewed any of these resources?

14 A Yes, I did. I did click on them. I'm unfamiliar with
15 them now, but I did recall clicking on those at the
16 time.

17 Q Yeah, and I wasn't going to take you through them, I
18 just wondered if you'd accessed them.

19 Do you, in particular, remember whether you
20 accessed the three AHS ones that are listed under
21 "Personal Protective Equipment"?

22 A I'm positive that I looked at all of the resources,
23 but, yeah, so I would have come across it, I'm sure.

24 Q And I take it, Dr. Wall, I'm going to ask you a
25 question about what happens in a few weeks, but reading
26 those resources or accessing them didn't change your

1 mind later on about whether to comply?

2 A That is correct.

3 Q And this is a little housekeeping on my part, I think I
4 asked you this, but the Pandemic Directive does not
5 contain an exemption for masking; is that correct?

6 A That's correct.

7 Q And there's -- I should have been a little more
8 expansive -- there's no exemptions for social
9 distancing or plexiglass barriers?

10 A Correct.

11 Q Okay, I'd like to take you to the AHS closure and
12 rescind orders, and those are Exhibits D-1 and D-2.
13 I'm just wait for you to get to those and get the
14 Hearing Tribunal Members to those as well.

15 A I'm good.

16 Q So there's a couple "Whereas" paragraphs, and I went
17 through these with you a little bit in my prior
18 questions for you, but when we look at "Whereas"
19 paragraph 8, it says: (as read)

20 Practitioner does not wear a face mask while
21 providing care within 2 metres distance from
22 patients.

23 You'd agree with that, that's factually correct?

24 A Yes.

25 Q The next statement says: (as read)

26 This activity could contribute to the spread

1 of COVID-19.

2 Would you agree with that statement?

3 A No, I would not.

4 Q And if we go to item (b), "Whereas" Section (b): (as
5 read)

6 Practitioner does not implement continuous
7 masking by all staff and patients.

8 That's correct, isn't it?

9 A Yes, it is.

10 Q And: (as read)

11 Physical barrier at front desk reception is
12 also not available.

13 That was correct at that time?

14 A Correct, yeah.

15 Q And then we have another statement: (as read)

16 This activity could contribute to the spread
17 of COVID-19.

18 And again notwithstanding that this is Alberta Health
19 Services, you wouldn't agree with that, would you?

20 A No, I would not.

21 Q If we go to D-2, the rescind order -- oh, and I should
22 go back, you did close your clinic after receiving D-1?

23 A Yes, I did.

24 Q So you chose to comply with the AHS order?

25 A Yes.

26 Q I think I know the answer to this question, but did you

1 agree with the closure order?

2 A No, I did not.

3 Q And would it be fair to say that you strongly disagreed
4 with that order?

5 A Very strongly disagreed.

6 Q Would it be fair to say that, despite the references I
7 took you through in (a) and (b), you don't believe
8 there's a scientific basis for the conclusions in those
9 "Whereas" paragraphs?

10 A Correct.

11 Q And I suppose, a little more broadly, it would be fair
12 to say that you disagree with the CMOH orders and the
13 science they're based on?

14 MR. KITCHEN: If you specify a section, he
15 can answer, but --

16 MR. MAXSTON: Sure.

17 MR. KITCHEN: -- that's too broad.

18 MR. MAXSTON: Yeah, that's fair.

19 Q MR. MAXSTON: Do you agree with the CMOH
20 orders not having a scientific basis for masking and
21 social distancing and plexiglass barriers?

22 MR. KITCHEN: Again, when you went from all
23 to three, why don't you try them one at a time.

24 Q MR. MAXSTON: Dr. Wall, consistent with
25 Mr. Kitchen's advice, do you take issue with the
26 CMOH -- any science the CMOH orders are based on in

1 terms of masking?

2 A Yes, I do.

3 Q And any science in terms of social distancing?

4 A Yes, I do.

5 Q And any science in terms of plexiglass barriers?

6 MR. KITCHEN: You're going to have to point
7 us to what CMOH order requires plexiglass barriers?

8 MR. MAXSTON: I'll take that back; that may
9 be the Pandemic Directive alone, Mr. Kitchen, so I'll
10 leave that one.

11 Q MR. MAXSTON: I want to continue with
12 looking at the rescind order, and I think you told me
13 in some of the questions just before lunch you're not
14 in compliance with Order Number 4; is that correct?

15 A Correct.

16 Q And this is Exhibit D-2.

17 A Yeah.

18 Q There was a discussion yesterday about Orders 1 and 3,
19 Order 1 saying you must follow the Pandemic Directive,
20 which would include masking, and Order Number 3 that
21 says you can get consent to practice unmasked. Would
22 you agree that there's an inconsistency between those
23 two orders?

24 A Can you rephrase that or just --

25 Q Yeah, I'll break it down. Order number 1 says you have
26 to comply with the ACAC's requirements, which is the

1 Pandemic Directive, and that includes masking, doesn't
2 it?

3 A Yes, it does.

4 Q And if we look at Order Number 3, it says you must
5 inform the patient you will be unmasked while providing
6 services. And my question to you is there's an
7 inconsistency between those two orders, isn't there?

8 A Yes, it -- yes.

9 Q Okay. When your clinic was shut down, you said you
10 complied with the order, you didn't launch a court
11 challenge to it, did you?

12 A No, I did not.

13 Q So you were prepared to respect the authority of the
14 AHS? I'll rephrase it. Were you prepared to comply
15 with their direction?

16 A Yes, I was.

17 Q In terms of the re-opening order and the four orders,
18 was it your intention to comply with all of them?

19 A Are you referring to the four points under the rescind
20 notice?

21 Q Yeah, that's what I'm looking at, and in fairness to
22 you, we'll just call them the four points. Was it your
23 intention to comply with all four of those?

24 A I can see point number 4 talks about: (as read)

25 Ensuring all patients he treats continuously
26 wear a mask that covers their mouth.

1 At that point, I would say that I believe patients have
2 the need to exercise their own health freedom when it
3 comes to that point, in the same way that I would
4 exercise my own health freedom with respect to masking.

5 Q So would it be fair to say then that you re-opened, but
6 you weren't in compliance with that fourth point when
7 you re-opened?

8 A Yes.

9 Q I'd like you to go -- bear with me, Dr. Wall. I'd like
10 to take you back to the Standards of Practice, which
11 were Exhibit A-11 and specifically page 11. And,
12 again, no surprises, I want to talk to you about the
13 "Informed Consent", Standard 3.1.

14 A Go ahead.

15 Q Okay, there's under 3.1, we go to I think the third
16 paragraph, it says: (as read)

17 As part of the informed consent process,
18 chiropractors are responsible for disclosing
19 to each patient --
20 1 and 2 are diagnosis, purpose, nature of treatment,
21 but I'm curious about number 3: (as read)

22 The potential risks including those that may
23 be of a special or unusual nature.

24 First, would you agree that's a requirement for you to
25 do?

26 A Yes, I agree.

1 Q And when you talked to patients about masking, did you
2 tell them about the risks of you not masking?

3 A No, I didn't, because I didn't believe that there was a
4 risk to me not masking.

5 Q I take it then, when we go to the paragraph right after
6 that: (as read)

7 Chiropractors must private patients the
8 opportunity to ask questions concerning risks
9 [et cetera].

10 You really didn't engage in a Q-and-A then with
11 patients about masking, your masking?

12 A That is correct. And my understanding of this informed
13 consent process is that this is referring to
14 chiropractic care. I'm not sure that this is getting
15 into mask wearing per se. This looks like it's
16 regarding the treatment that is being proposed to the
17 patient. Wearing a mask in this situation seems
18 extraneous, but I could be wrong.

19 Q I just have one other quick question for you, if we go
20 to the final part of that page, it says: (as read)

21 Informed consent must -- [and then item 6] --
22 be present on all existing patient files if
23 verbal informed consent is noted from
24 previous treatment.

25 Did you take the position that you had to get consent
26 from a patient when you weren't masking?

1 A No, I did not.

2 Q And I'm going to skip around here a little bit. Order
3 Number 3 in the Exhibit D-2, the AHS rescind order,
4 says: (as read)

5 Prior to booking an appointment, Dr. Curtis
6 Wall must inform the patient he will be
7 unmasked while providing services.

8 And I'll just stop there. Were you complying with
9 that; prior to booking an appointment, were you
10 informing the patient that you would be unmasked?

11 A Yes, I was.

12 Q And then the second part is prior to booking an -- oh,
13 sorry, you: (as read)

14 -- must obtain a patient's explicit consent
15 to proceed with booking and undertaking said
16 services.

17 I take it you weren't getting the patient's explicit
18 consent based on what you were telling me before,
19 because you didn't think you had to do that?

20 A Okay, I understand now. Yes, I was getting there
21 consent, because I had to have them sign a form stating
22 that they were okay to be treated by me while I was not
23 wearing a mask. So perhaps I answered wrongly in the
24 first place, but, yes, I was following all the
25 conditions and restrictions on my practice, so that did
26 require a consent, you're right.

1 Q Okay, so if we were to look at every one of your files
2 after that rescind order, they'd have that patient
3 consent form on them?

4 A No, it wouldn't be in a form on every file. I had two
5 separate pieces of paper, each delineating -- one was
6 the prescreening questions, that they were all negative
7 to those questions, and the second form listed the
8 exemption that I had to wearing a mask and that that
9 patient was okay to be treated by me, so they would
10 sign that one too, yeah.

11 Q So that was -- the rescind order was dated January 5,
12 2021. Did you have those kinds of consents on your
13 charts before January 5, 2021?

14 A No, I did not.

15 Q And I don't want to put words in your mouth, is it fair
16 to say, if we looked at your charts then from June
17 onwards, we wouldn't see patient consent charted on,
18 patient to masking, you or you being unmasked?

19 A That is correct.

20 MR. KITCHEN: Hold on, just to clarify, you
21 mean June of 2020?

22 MR. MAXSTON: Did I say a different date?
23 My apologies.

24 MR. KITCHEN: No, you just said June. If we
25 had --

26 MR. MAXSTON: June of twenty --

1 MR. KITCHEN: -- (INDISCERNIBLE) to deal
2 with.

3 Q MR. MAXSTON: So I'll go back. From June of
4 2020 onward, we would see charting about -- on your
5 patient charts about you getting patient consent to you
6 not being masked?

7 MR. KITCHEN: Well, hold on, you're getting
8 confusing and misleading there, because he just said
9 that he does do it after he's been asked to do it. So
10 if you want to ask did he do it from June 2020 to when
11 he had to start doing it, that's fine.

12 MR. MAXSTON: Yeah, I was really asking
13 him --

14 MR. KITCHEN: But to try and -- okay.

15 MR. MAXSTON: Yeah, I was really asking that
16 because you sort of objected, so my point, I think the
17 answer was from June of 2020 onwards, there isn't
18 charting about Dr. Wall's masking or not being masked,
19 and I think Dr. Wall said that was correct.

20 A That is correct.

21 Q MR. MAXSTON: Dr. Wall, did you ever provide
22 patients with views about masking that were in
23 opposition to your own?

24 A I left it to the patient. If they were comfortable
25 with masking and believed in it, that they were very
26 willing to wear a mask, so we never engaged in strong

1 conversation about that.

2 Q Okay, and would that have applied to your decision to
3 mask as well; you didn't have a dialogue with them
4 about opposing views on that front?

5 A Only if a patient was really asking me questions about
6 it, then perhaps we would dialogue further.

7 Q Okay, so it was up to the patient to raise that; that
8 was your practice?

9 A Yeah, patients ask questions about all kinds of health
10 issues, and so, you know, in this situation, that was
11 no different.

12 Q Okay. I want to move now to your involvement with the
13 College, or the College's involvement with you is more
14 accurate, and I'd like you to go to Exhibits A-2 and
15 A-3, and, frankly, you could probably just go to A-3,
16 because A-3 includes A-2, which is Ms. Ho's email to
17 Dr. Halowski. Maybe just ask you to get there, and you
18 can let me know when you're ready to go.

19 A Okay, I'm on A-3.

20 Q And I'm going to refer to the email to Ms. Ho, even
21 though it's a separate exhibit, but I'm just going to
22 take you through it using A-3. I just have a couple of
23 questions about it.

24 So this was an email from Ms. Ho to you dated
25 December 1, 2020. Can you tell me if you have any
26 information about how that email was sent to you?

1 A Yes, I do. The email came to me, initially I thought
2 the email was spam quite honestly, and so I didn't
3 answer the email, and then it was followed up by a
4 telephone call, to which I took it.

5 Q I'm looking at the second paragraph, it says: (as read)

6 As per our phone conversation, you indicated
7 that you are [quote] mask exempt.

8 Is that a correct statement by Ms. Ho?

9 A Yes, it is.

10 Q And then: (as read)

11 As per CMOH 38-2020, please indicate which
12 exemption you would fall under; otherwise,
13 you are required to be masking within 2
14 metres distance with a patient.

15 Did you ever get back to her about your exemption?

16 A Yes, I did.

17 Q Okay. The next paragraph says: (as read)

18 As per your administrative staff, you
19 indicated that there is no plexiglass barrier
20 at reception and that staff are not masking.

21 Is that an accurate statement?

22 A Yes, it is.

23 Q If we go to the sort of tail end of that paragraph, it
24 says: (as read)

25 Your clinic must have control measures, eg.,
26 physical barrier, to promote physical

1 distancing at all times.

2 And you didn't have a physical barrier at that point,
3 did you?

4 A No, I did not.

5 Q And then it says: (as read)

6 Otherwise, the administrative staff must be
7 masked as per CMOH 38-2020.

8 Again, you'd agree with me that your administrative
9 staff wasn't masked?

10 A That's correct.

11 Q I'm looking at the letter that Dr. Halowski sent to
12 Mr. Lawrence, that's Exhibit A-3, and I just have one
13 question about it. At the very tail end of the email,
14 the second-last paragraph says: (as read)

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

19 Is that an accurate statement; that's an accurate
20 statement by Dr. Halowski of what you said?

21 A Yes.

22 MR. MAXSTON: Mr. Chair, I plan to go about
23 another 10, 15 minutes and take a break at 2:45, if
24 that works for everybody. And, Dr. Wall, if you need a
25 break sooner, you let me know, but we've been chatting
26 for about an hour and a bit now, so I'll just go about

1 another 10, 15 minutes, if that's okay.

2 THE CHAIR: That's okay, I believe,
3 Mr. Maxston. Thanks.

4 Q MR. MAXSTON: I'd like you to go to
5 Exhibit A-5, which is Mr. Lawrence's December 21, 2020
6 letter to you.

7 A Okay, I'm there.

8 Q And in paragraph 2, Mr. Lawrence is saying: (as read)
9 You [meaning you, Dr. Wall] would not be
10 taking steps to become compliant with these
11 requirements.

12 And that was what you had communicated to him?

13 A In respect of masking, is that what you're referring
14 to?

15 Q Yeah, I think so in the Pandemic Directive.

16 A Yeah, specifically to do with masking, yes.

17 Q And I guess, in fairness to you, and social distancing
18 and plexiglass barrier.

19 A Yeah. Is that prior to me installing the plexiglass
20 barrier or after?

21 Q Yeah, I think the plexiglass barrier is bit of a
22 variable, because I agree that after December of -- I
23 think it's December 20th, those came up, but my comment
24 to you was he accurate in saying you weren't going to
25 be taking steps then to become compliant?

26 MR. KITCHEN: Well, he's answered the

1 question; he said he's not going to be compliant with
2 masking, so it's fine if you want to get a little more
3 specific.

4 MR. MAXSTON: Well, I think I did.

5 Q MR. MAXSTON: Social distancing, you're not
6 going to be compliant with that?

7 A Correct.

8 Q And the plexiglass barriers referenced in the Pandemic
9 Directive, you're not going to be compliant with that?

10 MR. KITCHEN: Well, he's already answered --

11 A No, I've already put it --

12 MR. KITCHEN: -- that.

13 A Yeah, I've already put it up.

14 MR. MAXSTON: Okay. I was about to go on to
15 my next set of questions, but they're actually probably
16 going to be longer than 15 minutes. Mr. Chair, would
17 you want to take a 10- or 15-minute break now? I think
18 it would be --

19 THE CHAIR: Yeah, you know, if it makes
20 sense in terms of fluidity for your questioning, that's
21 fine. It's 2:30. Let's recess for 15 minutes and
22 reconvene at 2:45, and we'll continue with the
23 objective of meeting Mr. Kitchen's plans to have his
24 witness around 3:45.

25 MR. MAXSTON: We're going to follow the
26 accepted practice that, of course, Dr. Wall can't chat

1 about his testimony with Mr. Kitchen.

2 THE CHAIR: Yes, that's --

3 MR. MAXSTON: Thank you.

4 THE CHAIR: -- (INDISCERNIBLE). Okay,
5 we'll see you at 2:45.

6 (ADJOURNMENT)

7 THE CHAIR: Okay, we're back in session.

8 MR. MAXSTON: Sure.

9 Q MR. MAXSTON: Dr. Wall, I was just taking
10 you through your interactions with the College, and we
11 talked about Mr. Lawrence's letter. I'd like you to go
12 to Exhibit A-6, which is I think an undated, unless I
13 missed something, letter from you in response to
14 Mr. Lawrence, and I'd like to take you through that.

15 I think, in fairness, this document was received
16 by the College I think on January 11, but I'll ask you
17 to clarify when I start your questions, Dr. Wall, on
18 this when it was sent. I don't think there's a date on
19 it. So if you can let me know when you're at that
20 document. Again, A-6.

21 A Yeah, I'm there, and it does appear January 11th.

22 Q Yeah, okay. So, Dr. Wall, some of this we've covered
23 in some detail before, but I'm looking at the second
24 paragraph, and that's a summary, I believe, of your
25 comments about trying masking and trying a face shield,
26 and your decision in June of 2020 to not wear either;

1 is that fair to say?

2 A Yes, it is.

3 Q The next paragraph says: (as read)

4 I considered this decision to be reasonable
5 based on the information available to me and
6 based on my conclusion that the ACAC pandemic
7 practice directive could not be reasonably
8 interpreted to demand the wearing of a mask
9 if doing so was harmful to the member and
10 negatively impacted the member's ability to
11 provide the best possible patient care.

12 That's your interpretation without any consultation
13 with the College, correct?

14 A That's correct.

15 Q There's another paragraph just below that, beginning:
16 (as read)

17 The information available to me at the time
18 was that the benefit of masks vis-à-vis
19 reducing COVID-19 transmission was tenuous
20 and that mask wearing was an additional
21 precautionary measure, which was worth
22 implementing only if doing so did not result
23 in negative impacts that outweighed the
24 potential marginal benefits.

25 And you then say: (as read)

26 This has been borne out over time.

1 I just want to be clear here, this is stating the
2 obvious, but you're not a virologist or respirologist
3 or an epidemiologist?

4 A That's correct, yeah.

5 Q So this is your conclusion?

6 A That's correct.

7 Q The next paragraph says: (as read)

8 I did not think at the time that I should or
9 needed to obtain any sort of exemption to
10 wearing a mask or face shield from another
11 health care practitioner such as a medical
12 doctor.

13 And I'm going to suggest to you, Dr. Wall, that that's
14 really kind of an astonishing statement that, as a
15 health care provider, you would think you didn't need
16 to go see another health care practitioner. Can you
17 tell me why you would believe that, why you thought you
18 could self-diagnosis?

19 A Well, my very obvious symptoms of anxiety and
20 claustrophobia were very apparent to me. I didn't need
21 somebody to diagnose that. It was extremely obvious,
22 and so that would be my short answer.

23 Q The next paragraph you talk about a spring of 2020 AHS
24 report, and you quote from it briefly I think, or you
25 reference it. Do you recall Dr. Hu's testimony where
26 he said that masking guidance has changed since the

1 beginning of the pandemic?

2 A Yes, I do.

3 Q And would it be fair to say that when we look at those
4 three additional AHS documents, they do support
5 masking?

6 A I'm sorry, which three initial documents?

7 Q We had an application at the beginning of the hearing
8 where I asked three AHS documents be entered, and I
9 took Dr. Hu through them. Would you agree with me, and
10 I can take you through them, but I don't think I need
11 to, would you agree with me that those three AHS
12 documents are supportive of masking?

13 A I believe that's what they would believe, yes.

14 Q On the top of the next page, there's a closing
15 sentence: (as read)

16 Subsequent studies and reports have confirmed
17 that the benefits of masks is tenuous at
18 best.

19 Would you agree with me that there are other studies
20 that are strongly in support of masking?

21 A I think there are probably multiple studies that would
22 say that they are in strong support of masking. I
23 question some of the design flaws with respect to that,
24 but that is not my expertise, and so I'll leave it at
25 that.

26 Q Okay. The next paragraph talks about, in part, the

1 CMOH orders, and to use your wording: (as read)
2 Broadly worded exceptions and -- [sorry] --
3 broadly worded exceptions exempting
4 individuals from wearing masks if they had
5 mental concerns or limitations.

6 And then you talk about CMOH Order 38 and CMOH Order
7 42-2020, and we canvassed this before, but those orders
8 weren't in force until November and December of 2020;
9 isn't that correct?

10 A I believe so.

11 Q I'd like you to go to the -- I wish these pages were
12 numbered, it might be easier for me, but the top of
13 page 3 starts off with "Include exceptions for mental
14 conditions or limitations". Are you there, Dr. Wall?

15 A Yes, I am.

16 Q Okay. There is a -- the first complete sentence says:
17 (as read)

18 I have legitimate mental concerns and
19 limitations, and I'm, therefore, not bound by
20 any order of the CMOH to wear a mask.

21 You would agree with me that those were, again,
22 self-diagnosed mental concerns?

23 A Yes, I would. Initially.

24 Q If we go a little bit down, there's a paragraph
25 beginning: (as read)

26 As for the allegation I failed to comply with

1 the Pandemic Directive.

2 There's a closing statement, it says: (as read)

3 However, it appears the fact that I have not
4 been wearing a mask is the content of the
5 allegation I failed to comply with the ACAC
6 Pandemic Practice Directive.

7 And that's still your understanding, at least in part?

8 There's other issues, but ...

9 A That's correct.

10 Q You then say: (as read)

11 I acknowledge that, on its face, the Pandemic
12 Directive states that mask wearing is a
13 requirement of members. I further
14 acknowledge the fact that I have been not
15 wearing a mask, on its face, amounts to
16 noncompliance with the practice directive.

17 And you maintain those acknowledgments today, I assume?

18 A Yes, I do.

19 Q Final sentence in that paragraph says: (as read)

20 Any policy or directive of the ACAC that
21 imposes mandatory mask wearing upon members
22 but does not permit necessary exceptions is
23 unreasonable.

24 You never asked for an exception, did you?

25 A No, I did not.

26 Q The next paragraph: (as read)

1 I further submit it was reasonable of me to
2 conclude that a reasonable reading of the
3 ACAC Pandemic Directives requirement to wear
4 masks implicitly permitted necessary
5 exceptions such as for legitimate mental
6 health conditions, concerns, or limitations.
7 Again, that's your conclusion and your interpretation
8 alone?

9 A Correct.

10 Q Thank you, Dr. Wall, I don't have any further -- any
11 more questions on that document.

12 At this point or maybe it's happening already,
13 Mr. Lawrence is conducting the investigation into your
14 conduct under Part 4 of the HPA, and I'd like to take
15 you to the investigation report, which is Exhibit A-7.

16 A Okay, I'm there.

17 Q Okay. I'm looking at page 1, and the second paragraph
18 talks about a December 2, 2020 conversation with the
19 Registrar and December 3, 2020 conversation during
20 the -- with the Complaints Director. And we then have
21 some comments about masking, et cetera. I'm skipping
22 down to about the fourth-last line, there's a comment
23 which Mr. Lawrence: (as read)

24 He indicated -- ["he" meaning you] --
25 indicated that he did not believe he was
26 endangering the public, as the recovery rate

1 from COVID-19 is so high.

2 Is that your recollection of the statement you made as
3 well?

4 A Yes, it is.

5 Q You'd agree with me though that even if the recovery
6 rate is high, there are some individuals who have
7 serious medical complications because of COVID-19?

8 A Yes, I would.

9 Q And that it's fatal for some people?

10 A Correct.

11 Q Going to ask you to go to page 4 of the investigation
12 report, and this is a series of what Mr. Lawrence
13 describes as key points of the interview. Just got a
14 couple of questions for you about some of these,
15 because I think you've answered a lot of the questions
16 I was going to ask you. About the fifth bullet down
17 deals with your son working at the clinic, and the
18 second sentence says: (as read)

19 Dr. Wall indicated that he also did not
20 require his son to be masked and did not
21 think it necessary to install any barriers.

22 Is that accurate?

23 A Yes, it is.

24 Q And if it wasn't your son, if it was anyone else there,
25 would you take the same position?

26 MR. KITCHEN: That's a hypothetical. I

1 don't see the relevance.

2 Q MR. MAXSTON: Well, I'll ask you this: Did
3 you have anybody other than your son working at the
4 clinic during the time relating to the charges, working
5 as a receptionist?

6 A No, I did not.

7 Q Okay, well, that answers that question. And the next
8 arrow, there's a comment about Dr. Wall reiterated that
9 your son is a healthy individual, and he did not want
10 to wear a mask; that's accurate?

11 A That's correct.

12 Q I'm going to ask you, Dr. Wall, sort of a general
13 question, but would you agree that a chiropractor is
14 responsible for his staff members complying with the
15 requirements of practice for a chiropractic clinic?

16 A With respect to the mask wearing, I would tend to take
17 the same position that I've taken for myself. So if my
18 staff member, being my son, had legitimate concerns,
19 whether they were religious or physical or otherwise,
20 then we'd have to walk through that.

21 Q Okay, I was trying to be a little more precise there.
22 I'm thinking of things like the charting standard I
23 took you through. If you delegate charting to a staff
24 member, you're ultimately responsible, aren't you --

25 A That's correct.

26 Q -- for the charting?

1 A That's correct.

2 Q And the same would be true for Standards of Practice
3 and other College requirements; if staff do things,
4 you're ultimately responsible?

5 A Correct.

6 Q Dr. Wall, there's a bullet or an arrow about four from
7 the bottom, it says: (as read)

8 When asked if Dr. Wall ever alerted his
9 patients to the dangers of not being masked,
10 Dr. Wall replied that people are aware of the
11 dangers, and he did not explain any of the
12 dangers to patients of him not masking.

13 Is that sort of what you said to me before, that you
14 let patients raise things with you?

15 A If the conversation came up, yes.

16 Q And you rely on the patient to raise that discussion?

17 A As it pertained to mask wearing; is that what you're --

18 Q Yeah.

19 A -- referring to? Yes.

20 Q When you had -- I'm sorry, when you had your interview
21 with Mr. Lawrence, and I think it was a phone
22 interview, Mr. Kitchen was present, participated,
23 listened, I guess is maybe the best way, during the
24 interview; is that correct?

25 A Are you referring to the interview with Dr. Halowski
26 and Mr. Lawrence?

1 Q Yes, the one that would have occurred in -- oh, my
2 apologies, Dr. Wall, January 25, 2021.

3 A Yes, that's correct. Mr. Kitchen was present on that
4 call.

5 Q Okay, thank you. Would it be fair to say that when you
6 had that discussion during the interview that you
7 didn't mention the religious beliefs you talked about
8 today?

9 A I didn't; I don't think I did mention the religious
10 beliefs, yeah.

11 Q I'd like to turn to the Section 65 interim order
12 matters, and as you know from Exhibit -- I'm not going
13 to take you to this exhibit, but Exhibit D-1 was
14 Mr. Lawrence's December 3, 2020 letter to Mr. Linford.
15 I'd like to ask you though about the response letters
16 that Mr. Kitchen sent on your behalf, and those appear
17 as Exhibits B-3 and B-4. I'll take you to B-3 first,
18 which is the December 10, 2020 letter from Mr. Kitchen.

19 A Okay, I'm there.

20 Q So this was a letter written by Mr. Kitchen in response
21 to Mr. Lawrence's request for Section 65 suspension. I
22 take it you adopt the contents of this letter; you
23 instructed Mr. Kitchen to send this letter?

24 A Yes, I did.

25 Q Okay. I'm going to page 2, the second complete
26 paragraph says: (as read)

1 Any risk to Dr. Wall's patients as a result
2 of him not wearing a face covering is
3 speculative at best.

4 That's your position as well?

5 A Yes, it is.

6 Q And notwithstanding hearing from Dr. Hu, that's your
7 position still?

8 A Correct, yes.

9 Q And the next sentence, and I should go back,
10 notwithstanding looking at those AHS documents, that's
11 still your position?

12 MR. KITCHEN: You've asked that at least
13 once if not a couple times already, Mr. Maxston.

14 Q MR. MAXSTON: The next sentence says: (as
15 read)

16 There's a lack of scientific evidence that
17 face coverings have any measurable
18 effectiveness in preventing the transmission
19 of COVID-19.

20 Is that your position?

21 MR. KITCHEN: Again, Mr. Maxston, you've
22 asked that, and, obviously, his position, you've just
23 established, that this was sent on behalf of Dr. Wall
24 at his instructions, which means it is his position;
25 you've just established that. So now --

26 MR. MAXSTON: Well (INDISCERNIBLE) --

1 MR. KITCHEN: -- you're asking does Dr. Wall
2 agree that the sky is blue, does he agree that all the
3 sky is blue, you know, you don't get to -- I don't see
4 how you get to do that.

5 Q MR. MAXSTON: Well, I guess I could be more
6 global and say do you agree with every statement in
7 this letter that Mr. Kitchen has made about COVID and
8 masking and related matters?

9 MR. KITCHEN: You've already asked that --

10 MR. MAXSTON: Well --

11 MR. KITCHEN: -- and he's already given you
12 his answer.

13 MR. MAXSTON: I asked him whether he adopted
14 it but --

15 MR. KITCHEN: Yes, you did. And that means
16 that if he adopted it, he adopted all of it. And it's
17 his statement, not mine, so once he adopts it, it's
18 his, it's sent on his behalf by counsel.

19 MR. MAXSTON: I think even though he's
20 adopted it, I'm allowed to ask questions, but I'll move
21 on to something else.

22 Q MR. MAXSTON: I'm looking at the bottom of
23 page 2 of the letter, it says: (as read)

24 As a matter of factual clarity, Dr. Wall
25 employees [or "employees" I think should be
26 "employs"] no staff in his clinic that are

1 not members of his family.

2 You've confirmed that with me: (as read)

3 Dr. Wall reiterates that he has appropriately
4 installed the required plexiglass barriers at
5 his chiropractic office and will maintain
6 such barriers as long as they are required.

7 Why did you install the, quote, required plexiglass
8 barriers, Dr. Wall?

9 A I believe that was part of the re-opening process for
10 Alberta Health Services, that my plexiglass barriers be
11 up, so I did that.

12 Q So that was an aspect of the re-opening order that you
13 did choose to comply with?

14 A That's correct.

15 Q Okay, let's go to Exhibit B-4. That's Mr. Kitchen's
16 December 16, 2020 letter. I'll just ask you again, you
17 adopt this as your response?

18 A Yes, I do.

19 Q Okay I was going to ask you about item number 1, but
20 we've already dealt with why you installed the
21 plexiglass barriers. I'm curious about item number 2.
22 It says: (as read)

23 Attached to this letter as Appendix B is a
24 medical certificate from an M.D. exempting
25 Dr. Curtis Wall from being required to wear
26 any sort of face covering on the basis of a

1 mental disability.

2 At the time of this letter, December 16, I think the
3 only medical note we had was Exhibit A-8, Dr. Salem's
4 December 12th, 2020 letter.

5 MR. MAXSTON: I can ask Mr. Kitchen to help
6 out here, was that the enclosure you were referring to
7 in this letter, Mr. Kitchen? I don't think it's
8 attached as an exhibit. I think we probably didn't put
9 it in because it was redundant, but I just want to be
10 sure that --

11 MR. KITCHEN: It is (INDISCERNIBLE)
12 Exhibit A-8.

13 MR. MAXSTON: Yeah. When you -- in item 2,
14 when you --

15 MR. KITCHEN: You're asking this because
16 it's not contained in this letter, I take it, which --

17 MR. MAXSTON: Yeah, I just want to be sure,
18 in fairness to your client, I'm asking the right
19 question about the right document and --

20 MR. KITCHEN: (INDISCERNIBLE)

21 Q MR. MAXSTON: -- and we're digressing a
22 moment here, Dr. Wall --

23 MR. MAXSTON: --Mr. Kitchen, my sense is
24 that because your letter is dated December 16, 2020,
25 the only letter we can have from Dr. Salem is the one
26 from December 12. He didn't do his other letter

1 until --

2 MR. KITCHEN: Yeah, I can't object to that
3 as being factually inaccurate, so I'll let Dr. Wall
4 answer, but everything's --

5 MR. MAXSTON: Yeah.

6 MR. KITCHEN: -- everything's in order so
7 far.

8 MR. MAXSTON: Yeah, I think the other letter
9 from Dr. Salem is January 8, 2021, so I just want to be
10 clear I'm asking --

11 MR. KITCHEN: That's --

12 MR. MAXSTON: -- the right question.

13 MR. KITCHEN: That's right.

14 Q MR. MAXSTON: Okay, so if we're proceeding
15 then that the Appendix B that is being referred to in
16 this letter is Exhibit A-8, I'd just ask you to quickly
17 go to Exhibit A-8, Dr. Wall.

18 A Okay, go ahead.

19 Q I'm going to read this to you, if you want to go back,
20 but Exhibit B-4, the letter of December 16, 2020, item
21 2 says: (as read)

22 Appended to this letter as Appendix B is a
23 medical certificate from an M.D. exempting
24 Dr. Curtis Wall from being required to wear
25 any sort of face covering on the basis of a
26 mental disability, which, as you know, is a

1 protected ground under Section 4 [and they
2 have a reference to the Human Rights Act and
3 the Charter].

4 When I go to Exhibit A-8, I don't see any reference to
5 mental disability; would you agree with that?

6 A Yes, it is not included in that letter.

7 Q And it says "medical reasons" in Exhibit A-8; is that
8 correct?

9 A That is correct.

10 Q I would like to take you to Exhibit B-5, which is
11 Dr. Linford's decision on the Section 65 suspension.

12 A Sorry, can you clarify B dash what?

13 Q B dash 5, Bob dash 5, and it's the December 8th, 2020
14 decision letter from Dr. Linford, and specifically I'll
15 be taking you to page 2 when you get to it, Dr. Wall.

16 A Yeah, go ahead.

17 Q You would agree with me, I'm looking at the second
18 complete paragraph on page 2, Dr. Wall says: (as read)

19 The impact of COVID-19 on the Public Health
20 care system is undeniable.

21 That's correct?

22 A Correct.

23 Q At the end of that paragraph, the final two sentences
24 say -- and he's talking about full vaccination
25 occurring: (as read)

26 Until that time arrives, the COVID-19 virus

1 remains a real and imminent public health
2 threat.

3 You'd agree that's his statement?

4 A I'm sorry, where is that statement again?

5 Q Sorry, it's about two-thirds of the way down, it's the
6 second-last full sentence, beginning "Until that time
7 arrives", and it's in the same paragraph we were just
8 chatting about.

9 THE CHAIR: I think it's a third of the
10 way down the page, not two-thirds.

11 MR. MAXSTON: Yeah.

12 THE CHAIR: It's the third paragraph.

13 Q MR. MAXSTON: I don't know if it helps,
14 Dr. Wall, but I've taken you to the statement: (as
15 read)

16 The impact of COVID-19 on the public health
17 care system is undeniable.

18 I'm about five lines below that in the sentence
19 beginning "Until".

20 A Got it, yeah, I see that now.

21 Q Yeah, sorry, it's a little hard to follow, because
22 it's -- there's some incomplete paragraphs.

23 So I'm just asking you to confirm, Dr. Linford is
24 stating: (as read)

25 Until that time [I think he means full
26 vaccination] arrives, the COVID-19 virus

1 remains a real and imminent public health
2 threat.

3 Those are his words?

4 A Yes.

5 Q I take it you would disagree with that?

6 A Yes.

7 Q The next sentence is: (as read)

8 I find that the Complaints Director has a
9 legitimate concern of risk to the public by
10 Dr. Wall's decision to not wear a face mask
11 or face shield when seeing and treating
12 patients.

13 That's his statement?

14 A Yes, it is.

15 Q And you would disagree with it?

16 A Yes, I would.

17 Q We go to the next paragraph, there's a second sentence:
18 (as read)

19 I have decided that conditions on Dr. Wall's
20 practice permit will be sufficient to address
21 the risk to the public by Dr. Wall not
22 wearing a face mask or face shield when
23 seeing and treating patients.

24 So those are his words in identifying a risk to the
25 public?

26 A Correct.

1 Q And, again, you would disagree with that?

2 A No, he is saying that the conditions were sufficient to
3 address the risk to the public. That I agree, he
4 believes that the conditions on my practice would be
5 sufficient to meet -- to meet the risk to the public.

6 Q Okay, thanks for clarifying that. If we look at the
7 balance of the letter, there are a series of directions
8 on that page, and I'm using the word "directions"
9 because Dr. Linford uses that, he says: (as read)

10 Your practice permit will be subject to the
11 following practice -- I direct that

12 Dr. Wall's practice permit will be subject to
13 the following practice conditions pending
14 completion of this hearing.

15 There are, as I said, four directions from him then.

16 Would you agree that those are binding on you?

17 A Yes, I would.

18 Q And would you agree that they're still binding on you,
19 to be more clear?

20 A Yes.

21 Q And have you complied with those conditions or orders,
22 and are you continuing to comply with them?

23 A Yes, I have.

24 Q So in this case, you've determined that you will follow
25 a College requirement?

26 A Can you be more specific?

1 MR. KITCHEN: This isn't a College
2 requirement, or maybe it is, then we have to establish
3 that. It's obviously a requirement of Dr. Linford.

4 MR. MAXSTON: I'll rephrase my question.

5 Q MR. MAXSTON: This is a -- those are a
6 series of directions ordered by Dr. Linford under
7 Section 65 of the HPA; is that correct?

8 A Yes.

9 Q And Dr. Linford is appointed, pursuant to the HPA, to
10 make these kinds of decisions; would you agree with
11 that?

12 A Yes.

13 Q And my question was are you complying, are you
14 continuing to comply with the directions, the
15 conditions on your practice permit?

16 A Yes.

17 Q And my follow-up question was this is a situation where
18 you are complying with a direction from a College I'll
19 call him designate or officer?

20 A Correct.

21 Q And as you are likely aware, Section 65 of the HPA
22 contains a right for you to appeal a Section 65
23 direction to the courts. Did you launch any kind of
24 court deal concerning the Section 65 direction?

25 A No, I have not.

26 Q Dr. Wall, I want to switch gears now and talk about

1 your decisions you made, your decisions or independent
2 decisions in June of 2020 about not masking and not
3 social distancing, et cetera.

4 When you -- and I think we've covered this, but I
5 want to be clear -- when you decided in June of 2020
6 that you weren't going to wear a face mask or use
7 social distancing, you were aware that those choices
8 would contravene the Pandemic Directive as written?

9 MR. KITCHEN: Mr. Maxston, I'd have to say
10 that you've asked this and he's answered it, and the
11 answer's not controversial.

12 MR. MAXSTON: Well, I won't re-ask the
13 question on the basis that you're telling me your
14 client has already agreed to that.

15 Q MR. MAXSTON: Can you tell me, Dr. Wall,
16 when you started this review of, you know, the masking
17 issue for you? And by "review", I mean the inquiries
18 you made about efficacy of masking.

19 A Well, when the Pandemic Directive came into place for
20 chiropractors, I believe that was specific to May with
21 the Pandemic Directive, and so wearing a mask
22 immediately had me asking questions because I
23 experienced the symptoms that I was experiencing, so I
24 would have to say in early May.

25 Q Okay. When you did that, did you look for any articles
26 or studies that supported masking?

1 A I was looking, in general, at various articles, and so
2 I don't think I was looking for articles in support of
3 masking.

4 Q Did you consider any articles in support of masking
5 when you made your decision?

6 A Yeah, I've seen articles floating around supporting
7 masking, yes.

8 Q So I'm assuming then that you chose to discount those
9 articles or studies?

10 A That's correct. I have seen articles that support
11 masking, and then I've seen those particular articles
12 debunked, and so, yeah.

13 Q Did you contact any other organizations to get their
14 views on this masking efficacy question?

15 A No, I did not.

16 Q Specifically, did you contact the Canadian Chiropractic
17 Association?

18 A No, I did not.

19 Q Did you -- I should go back. Are you insured for
20 malpractice with the CCPA?

21 A Yes, I am.

22 Q Did you contact the CCPA about your decision?

23 A To not mask?

24 Q Yes.

25 A No.

26 Q Did you consult with any medical health care

1 professionals or specialists?

2 A Not until the time where I had to achieve a doctor's
3 note.

4 Q And I suppose this is an obvious question, but when you
5 made the decision in June of 2020, you didn't have the
6 four expert reports that are being tendered in this
7 hearing by you?

8 A That's correct.

9 Q Is it your position that it was professionally and
10 ethically acceptable for you to decide when and how the
11 Pandemic Directive applied to you?

12 A As it applied to masking, yes, and perhaps the social
13 distancing, like you mentioned.

14 Q Okay. I'm going to ask you to go to Exhibit A-8, we
15 went through this a little bit before, but I'm going to
16 ask you a little bit more detailed questions. That's
17 the letter from Dr. Salem, dated December 12th, 2020.
18 And I'll just wait till everybody's there. When did
19 you first contact Dr. Salem about an exemption letter?

20 A I believe I'd have to really look at my journal. It's
21 probably sometime in early December.

22 Q Was that after you had received an indication from the
23 College that there was a complaint?

24 A That is correct.

25 Q So it's fair to say that at least part of your
26 motivation in getting this letter was to be able to

1 respond to the College's complaint?

2 A To be supportive, and, yes, because I wasn't under the
3 understanding that there was a requirement to produce
4 some type of exemption letter, yes.

5 Q Is Dr. -- was Dr. Salem your regular family doctor at
6 the time?

7 A No.

8 Q So how did you choose him?

9 MR. KITCHEN: We're getting into something
10 that's pretty personal and private, and I'm not sure
11 that it's relevant.

12 MR. MAXSTON: Sure, I'll be a little more
13 general.

14 Q MR. MAXSTON: If he wasn't your regular
15 doctor -- I don't need any background -- did you sort
16 of pick him out of the phone book, so to speak? And I
17 remember when there were phone books or -- I'm just
18 wondering how you made your way to Dr. Salem; that's
19 what I'm really asking.

20 MR. KITCHEN: Again, personal, private, not
21 relevant.

22 Q MR. MAXSTON: When you made an appointment
23 with Dr. Salem and subsequently got this letter, were
24 you aware that Dr. Salem had ever issued any other
25 exemption letters?

26 A No, I'm not.

1 Q Was your attendance -- I think there were two
2 attendances with Dr. Salem, the but the first time you
3 saw Dr. Salem -- well, this is an obvious question, I
4 guess -- you'd never seen him for anything before,
5 anything other medical issues?

6 MR. KITCHEN: Again, this is personal, it's
7 private, it's not relevant.

8 Q MR. MAXSTON: Isn't it fair to say,
9 Dr. Wall, that you realized that your own
10 self-diagnosis of an anxiety issue wasn't going to
11 withstand scrutiny unless you had a doctor's letter?

12 A I would say that that's likely accurate, yes.

13 Q And you could have gone to a doctor like Dr. Salem in
14 May or June of 2020?

15 A I could have, yes.

16 Q When you were seeing Dr. Salem the first time, which
17 gave rise to the December 12th, 2020 letter, did he
18 perform any tests in terms of your anxiety issues?

19 A It was a consultation, and so we discussed at length my
20 issue.

21 Q Okay. Did he offer a prognosis to you?

22 A No.

23 Q Did he offer a treatment plan?

24 A No, he did not.

25 Q Did he recommend any steps to address the anxiety
26 disorder: Relaxation, anything like that?

1 A No.

2 Q If we go to the next document, Exhibit A-9, that's the
3 second letter, January 8, 2021 letter from Dr. Salem.
4 Just let you get to that, and I've just got a couple of
5 questions for you about it.

6 A Okay, go ahead.

7 MR. MAXSTON: Mr. Chair, I'm always just
8 pressing on. If someone hasn't got a document, raise a
9 hand or someone let me know if you're -- people haven't
10 quite gotten to where I am, but I'll just continue
11 here.

12 Q MR. MAXSTON: I'm looking at the first
13 paragraph, and it's -- this is a letter to David
14 Lawrence, and it says: (as read)

15 I am in receipt of your request for
16 information.

17 I think we've covered this, but this letter is coming
18 about because Mr. Lawrence is asking for something
19 further; is that correct?

20 A Yes.

21 Q Yeah, so you didn't ask for this letter is what I'm
22 getting at?

23 A Correct.

24 Q Okay. About a third of the way through, Dr. Salem
25 says: (as read)

26 There are no other pertinent documents to

1 satisfy your requests for [quote] tests
2 conducted or [quote] diagnostic information.
3 These items are not applicable to the nature
4 of Dr. Wall's medical issue. As you'll note
5 from my charting, the primary driver for his
6 inability to wear a mask is anxiety that is
7 precipitated by wearing a mask.

8 Just, again, to confirm, Dr. Salem doesn't ever mention
9 a medical disability in this letter, does he?

10 A Correct.

11 Q If we look at the following paragraphs, I'm going to
12 suggest to you that they are a summary of Dr. Salem's
13 views about the challenges that COVID presents and the
14 concerns he has about the validity of COVID testing,
15 and if we go to the next page, you'll see he talks
16 about AHS saying there's limited research, et cetera.
17 Would you agree with me that -- on masking -- would you
18 agree with me that a large chunk of Dr. Salem's letter
19 is dealing with his views on the efficacy of masking
20 and the science behind it?

21 A He does share his views, yes.

22 Q And it's fair to say that you and he are literally and
23 figuratively on the same page on those issues?

24 MR. KITCHEN: I think you're asking too much
25 about the mind of Dr. Salem. You're going to have to
26 get a little more specific here.

1 MR. MAXSTON: Sure, sure.

2 Q MR. MAXSTON: Dr. Wall, you agree with
3 Dr. Salem's comments in his letter about COVID and
4 masking, et cetera?

5 MR. KITCHEN: That's quite general. If you
6 want to get a little more specific, I'm not going to
7 take an issue.

8 MR. MAXSTON: Well, I don't think it's an
9 unfair question.

10 MR. KITCHEN: Well, it's only unfair because
11 it's so broad and vague. If you want to get more
12 specific, that's fine. What's --

13 Q MR. MAXSTON: Do you -- Dr. Wall, do you
14 agree with Dr. Salem's comments that mask wearing does
15 not reduce the transmission of COVID?

16 MR. KITCHEN: Well, hold on. Can you point
17 us to a specific comment, because --

18 MR. MAXSTON: Yeah.

19 MR. KITCHEN: -- is that supposed to be a
20 quote, or is that --

21 MR. MAXSTON: Third paragraph, first line:
22 (as read)

23 There are numerous studies that refute the
24 benefit of mask wearing in reducing the
25 transmission of respirator illnesses.

26 Q MR. MAXSTON: What I'm getting at -- I don't

1 want to have a debate about this -- Dr. Wall, again,
2 Dr. Salem's views, generally speaking, about masking
3 are consistent with yours?

4 MR. KITCHEN: Again, if you're asking if he
5 agrees with that statement that you just read, fair
6 question, but you brought it back as a very general,
7 vague question that I don't think is acceptable.

8 MR. MAXSTON: Well, I'm just going to move
9 on. I tried to establish that your client agrees with
10 Dr. Salem, but if you're going to object to that ...

11 Q MR. MAXSTON: In the second letter, would
12 you agree that there are still no mention of a
13 prognosis?

14 A I would agree.

15 Q And there is no mention of treatment options as next
16 steps?

17 A Yes, I would agree.

18 Q So I asked you before, you could have gotten the letter
19 from a doctor in May or June of 2020; why didn't you do
20 that?

21 A Well, at the time, I did not think it was a requirement
22 to get a doctor's note for a medical exemption. The
23 CMOH order does not specifically state that, and so
24 that's why I didn't get one.

25 Q I think that we've established though that those CMOH
26 orders don't come out until November or December, later

1 in the year.

2 MR. KITCHEN: Yes, you asked that, and
3 you've gotten the answer to it from before, nothing
4 controversial there.

5 MR. MAXSTON: Mr. Kitchen, I'm going to ask
6 a question, and unless you're going to object, I don't
7 think you can help your client with his answers, so I'm
8 moving along to a question.

9 MR. KITCHEN: I'm not trying to help; I'm
10 just objecting to questions that have already been
11 asked.

12 Q MR. MAXSTON: Wouldn't you agree, Dr. Wall,
13 that something as serious as an exemption to masking
14 would have required, from the very outset, some type of
15 medical verification?

16 A Perhaps our opinion about the seriousness of a mask
17 exemption is different. So, again, I, at the outset, I
18 thought my health information was a private matter and
19 that it was very specific to myself, and I didn't
20 believe that I needed to disclose that information at
21 the outset, so ...

22 Q So you don't have any training in anxiety disorders, do
23 you?

24 A No, I don't.

25 Q And, nonetheless, you reached a diagnosis that you had
26 an anxiety disorder sufficient to qualify you for some

1 type of exemption?

2 A Correct.

3 Q Do you believe it's appropriate for health care
4 providers to self-diagnose medical issues?

5 A Potentially.

6 Q Like an anxiety disorder?

7 A Potentially.

8 Q Dr. Wall, we've been chatting now I think for about an
9 hour and 15 minutes. I still have a fair number of
10 questions, do you need a quick break, and or do you
11 want to press on and just let me know when you need a
12 break?

13 A We can press on.

14 MR. MAXSTON: Okay, Mr. Chair, you can feel
15 free to jump in at any time if you need to direct a
16 break.

17 Q MR. MAXSTON: Dr. Wall, I want to switch
18 gears, and I want to go to the ACAC notices to you and
19 the profession that are set out at Exhibits C-1 to
20 C-22.

21 In my questioning of Dr. Halowski, I mentioned to
22 him that Exhibit C1, C-10, and C-13 relate to the
23 Telehealth option and the College council's ultimate
24 approval of that. I think your evidence with
25 Mr. Kitchen was you didn't feel that you could pursue
26 Telehealth; is that correct?

1 A That is correct. I actually did look at it, but it did
2 not fit my practice style. I'm a hands-on
3 chiropractor, and that was not the way I chose to go as
4 far as practicing.

5 Q I'm going to let your counsel decide if there is an
6 objection here, but I can take you through Exhibits C-2
7 onward and ask you specific questions about the College
8 saying you can contact them and asking for input, but
9 my question to you, to be more general and more
10 efficient, is would you agree that, throughout Exhibits
11 C-1 to C-22, there are numerous references to the
12 College asking for input and inviting members to
13 contact the College about the Pandemic Directive?

14 A Yes, I would agree with that.

15 Q So is it fair to say that you would have received all
16 of these documents?

17 A Yes, I did.

18 Q And you'd already had an email exchange with
19 Dr. Halowski, and you could have emailed him?

20 A Regarding what?

21 Q Regarding masking and the social distancing and I guess
22 your issues about the Pandemic Directive.

23 A Correct.

24 Q And just to be clear, you didn't participate in any of
25 the platform discussions on the Pandemic Directive?

26 A How many platform discussions were there?

1 Q You know, I can't recall. I think there's reference to
2 at least two in those exhibits. I'm just asking you if
3 you can recall whether you participated in any of those
4 exchanges.

5 A Yes, I believe I may have participated in the first
6 one, because I do recall -- and I may be corrected
7 here -- but I do recall the first draft included
8 vaguely perhaps specific terms about vaccine issues,
9 and that was a concern to me, and I think that's what
10 potentially precipitated the letter to Dr. Halowski,
11 but I may have participated in that first
12 ThoughtExchange that was regarding the first draft.

13 Q Okay. But other than that, no communication or contact
14 with the College?

15 A And then I also participated in a recent draft,
16 several -- perhaps a month-and-a-half to several months
17 ago.

18 Q Okay, I'm really concerned with the June to December
19 2020 time period. So just to be clear, other than your
20 participation on that one platform or ThoughtExchange,
21 you didn't have any communication with the College?

22 A That's correct.

23 Q Okay. I'm kind of switching gears a little bit here,
24 I've sort of got some general questions.

25 There's been comments about your human rights
26 being violated and Human Rights Act issues. You

1 haven't filed a complaint with the Alberta Human Rights
2 Commission though, have you?

3 A No, I have not.

4 Q I want to ask you some questions about your decision to
5 not comply with the Pandemic Directive, which I think
6 it's fair to say you've been very candid in indicating
7 that you haven't complied with certain parts of it. In
8 fairness, you said you have complied with others, I
9 don't want to be unfair. Is it your position that a
10 health care professional such as you, a chiropractor,
11 can decide when and if he'll follow a college's
12 requirements?

13 MR. KITCHEN: That's been asked and
14 answered.

15 MR. MAXSTON: Well, no, I don't think it
16 has. I've asked him about compliance with certain
17 specific things; that's a more general question, and
18 it's an important one.

19 MR. KITCHEN: Well, I understand you think
20 it's important, and I have no issue with you asking it
21 once, but you already asked him, and it's already been
22 answered. We've done a lot of that over the last few
23 hours.

24 MR. MAXSTON: I disagree.

25 Q MR. MAXSTON: My question for you,
26 Dr. Wall --

1 MR. MAXSTON: -- and I'll wait,

2 Mr. Kitchen --

3 Q MR. MAXSTON: -- is it your position that a
4 health care professional can decide when and if the
5 requirements of a profession apply to him?

6 MR. KITCHEN: That's fine. I won't object
7 to that, but we're going to have problems if you keep
8 going down this road because you've already been down
9 this road, but I won't object to this one.

10 MR. MAXSTON: Well, I --

11 MR. KITCHEN: (INDISCERNIBLE) ask it again.

12 MR. MAXSTON: I wonder if we can have the
13 court reporter repeat that question so I don't mangle
14 it and get an objection from you, Mr. Kitchen.

15 MR. KITCHEN: That's a good idea.

16 THE COURT REPORTER: (by reading)

17 Q Is it your position that a health care
18 professional such as you, a chiropractor,
19 can decide when and if he'll follow a
20 college's requirements?

21 A I believe if those requirements cause harm to the
22 member, then I do believe that the member has the right
23 to make those decisions. We are doctors of
24 chiropractic. We have spent a multitude of years
25 learning and applying science, logic, and reason. And
26 I believe that, in this situation regarding masks, if

1 there is harm being caused, yes, I do believe that a
2 member should be able to make a decision.

3 Q MR. MAXSTON: So if you personally decide
4 that a requirement of a college causes harm, your view
5 is you don't have to follow it?

6 A That is correct.

7 Q And that's if you personally make that decision?

8 A Yes, and I'm basing that on multiple studies, not my
9 own information only. It's based on other scientific
10 studies that corroborate what I believe, so ...

11 Q I'm going to suggest to you, Dr. Wall -- and I'm not
12 attacking your bona fides here, your sincerity -- but
13 if this happens, we don't have a governable profession
14 anymore, do we?

15 MR. KITCHEN: I think that's a hypothetical
16 that he can't answer.

17 Q MR. MAXSTON: Well, how do you think your --
18 if a chiropractor like you makes an independent
19 decision, how does that affect the College's role?

20 MR. KITCHEN: Well, I think that question's
21 fine, but you need to be a little more specific.

22 Q MR. MAXSTON: Dr. Wall, what I'm getting at
23 is would you agree or disagree with the statement that
24 health care providers making their own decisions about
25 requirements makes it challenging for a college to
26 govern its members?

1 A Yes, it may make it challenging.

2 Q We've gone through a number of situations where you
3 have chosen to follow and not follow certain
4 requirements from various authorities, so -- and
5 there's a question coming, but you've told me you
6 comply with some aspects of the Pandemic Directive but
7 not others; you've told me that you are complying with
8 some aspects of the re-opening order but not others; do
9 you think that's appropriate for a professional?

10 A To me, it always falls back to harm being done, the --
11 of course, the principle, first, do no harm applies
12 primarily to patients but, in this situation, wearing a
13 mask does harm. And in that situation, how can I
14 follow the College directive if it's causing harm? So
15 it makes it difficult for the College, but it doesn't
16 make it right.

17 Q And just to be clear, you've also chosen to not follow
18 the orders of -- the re-opening orders from AHS,
19 certain of them?

20 A Are you referring to the masking of patients?

21 Q Yes.

22 A Yeah, well, that would fall under the same category as
23 my understanding that wearing a mask causes harm.

24 Q You're going to be calling Dr. Gauthier as a lay
25 witness; is that correct?

26 A That is correct.

1 Q Your counsel, Mr. Kitchen, sent me something called a
2 will-say statement about what he anticipates
3 Dr. Gauthier will testify to. Because of the order of
4 witnesses that Mr. Kitchen has set out, we haven't
5 heard from Dr. Gauthier, but is it your understanding
6 that he has strong personal beliefs against masking?

7 MR. KITCHEN: Speaking to his mind and you
8 said "personal beliefs", if we go to the will-say
9 statement, you're going to see that Dr. Gauthier
10 disagrees with the Pandemic Directive, follows it,
11 disagrees with it. So if you want to question down
12 those lines, I think that makes sense.

13 MR. MAXSTON: Sure, I'll --

14 MR. KITCHEN: (INDISCERNIBLE)

15 MR. MAXSTON: -- rephrase that question.

16 MR. KITCHEN: Okay.

17 Q MR. MAXSTON: Do you understand that
18 Dr. Gauthier has concerns about complying with the
19 masking and social distancing requirements of the
20 Pandemic Directive?

21 A Yes, I believe so.

22 Q Is it your understanding that, nonetheless, he complied
23 with the Pandemic Directive?

24 A I can't speak to that.

25 Q Okay, we'll ask Dr. Gauthier about that then.

26 When we talked about you researching your decision

1 in June of 2020 to not comply with certain aspects of
2 the Pandemic Directive, wasn't it your obligation as a
3 professional to notify the College of your concerns and
4 your intention to breach parts of the Pandemic
5 Directive?

6 A I didn't see that anywhere in the Pandemic Directive
7 that stated I was supposed to consult the College
8 regarding my exemptions, and so ...

9 Q I guess what I'm saying to you is I mean we have, for
10 example, we have a standard of practice, and if you're
11 not going to follow the standard of practice, there
12 isn't anything in the standard of practice saying you
13 should call the College, but I'm asking you wasn't it
14 incumbent on you as a professional, a health care
15 provider, to reach out to your college in June of 2020
16 and tell them what you were intending to do?

17 MR. KITCHEN: Unless I'm wrong, I don't
18 think that is an allegation, and I may be wrong --

19 MR. MAXSTON: It's not an allegation; it's a
20 question --

21 MR. KITCHEN: But it's not -- no, no, no,
22 but it's not an allegation in the notice of hearing.

23 MR. MAXSTON: Mr. Kitchen --

24 MR. KITCHEN: So --

25 MR. MAXSTON: -- not every question I ask
26 has to be framed in the context of the exact charges,

1 and you've been objecting a fair bit to my questions,
2 and I'm going to ask for a ruling on this, because it's
3 another important question. I'm entitled to ask
4 Dr. Wall, as part of his views of his status as a
5 professional, what he views his obligations were in
6 that scenario.

7 MR. KITCHEN: But that's a question of the
8 ultimate issue, right? Is it unprofessional conduct to
9 not reach out. That's like an ultimate. You're asking
10 him a question about the ultimate issue, and an
11 ultimate issue that's not in the notice of hearing, so
12 I question the relevance of it. That's why I've
13 objected. I've objected because you've asked questions
14 that are worth objecting to.

15 MR. MAXSTON: Well, Mr. Chair, my question
16 is --

17 Q MR. MAXSTON: And, Dr. Wall, please don't
18 answer this question. You won't hear me say that very
19 often, but please don't answer this at this time,
20 wasn't it your obligation as a professional to notify
21 the College about your concerns with the Pandemic
22 Directive and that you were going to not follow it in
23 some respects?

24 MR. MAXSTON: So, Mr. Chair, I --
25 respectfully, the ultimate issue is whether not
26 following the -- certain things is unprofessional

1 conduct, but I think this is a fair question to ask,
2 because it goes to Dr. Wall's perception of what it
3 means to be a professional. So I've made some comments
4 about that question, and I'm going to ask for a ruling
5 on that.

6 THE CHAIR: And, Mr. Maxston, is that not
7 two questions? First question being the obligation to
8 notify the College, and then the second question, the
9 last part of your -- the last part of your statement,
10 is that a second question?

11 MR. MAXSTON: I can break it down into two:
12 wasn't it your obligation as a professional to notify
13 the College of your concerns about the Pandemic
14 Directive, and wasn't it your obligation as a
15 professional to notify the College of your intention to
16 ignore parts of it or not comply with parts of it.

17 MR. KITCHEN: So I'll just say two things:
18 One, Dr. Wall did answer by saying, I didn't see an
19 obligation in the Pandemic Directive, so he's provided
20 that answer. Nothing controversial there.

21 Secondly, we do have a relevance issue because
22 that's not about -- there is no allegation. And we've
23 talked a lot, which is kind of odd, and I haven't
24 objected much until this point, we've talked a lot
25 about whether or not Dr. Wall reached out. And that's
26 not really -- I don't know if that's a key issue until

1 now in this case, but that's not actually an
2 allegation. There is no allegation in the notice of
3 hearing that Dr. Wall engaged in professional
4 misconduct by not reaching out to the College.

5 So there is, for me, I think there's a lack of
6 relevance when we're making such a big deal out of this
7 issue when there's actually no allegation. If the
8 allegation was in there, that would make sense.
9 There's no allegation of that. So why are we going
10 down this road?

11 THE CHAIR: Okay, we will take a brief
12 recess while the Hearing Tribunal discusses this with
13 counsel, and we'll just ask you to give us a few
14 minutes, and if we could be moved to a break-out room,
15 thank you.

16 (ADJOURNMENT)

17 THE CHAIR: Thank you for your indulgence.
18 We've discussed the question or questions amongst
19 ourselves and with independent legal counsel. Our view
20 is that the question as posed as an obligation
21 pertaining to a health professional, so in a general
22 sense, and that this goes to what it means to be a
23 professional, what his obligations were.

24 We do feel that it's within the scope of
25 relevance, so we do agree with asking Dr. Wall to
26 respond to the question.

1 Q MR. MAXSTON: Well, I will try to be careful
2 in my wording here to capture exactly what I said
3 before, and it will be two questions, and those are my
4 last two questions, Dr. Wall. Wasn't it your
5 obligation as a professional to notify the College of
6 your concerns about the Pandemic Directive?

7 A I wish I could answer that simply. I will say yes.

8 Q The second question, wasn't it your obligation as a
9 professional to notify the College of your intention to
10 not comply with the Pandemic Directive?

11 A It's --

12 Q Pardon me --

13 A I'm sorry, go ahead.

14 Q Yeah, I'm sorry, I want to be fair to you, wasn't it
15 your obligation as a professional to notify the College
16 of your intention to partly not comply with the
17 Pandemic Directive, and I'm thinking of masking and
18 social distancing?

19 A Yeah, I -- with respect to masking, again, this was an
20 issue that was affecting my health, I believe it was
21 harmful to me, and so I didn't think that it was
22 necessary to respond to the College at the time.

23 MR. MAXSTON: Okay, those are my questions,
24 Mr. Chair.

25 Discussion

26 MR. MAXSTON: In terms of the remainder of

1 the day, my client and I certainly are prepared to stay
2 a little longer if we need time for Mr. Kitchen to do
3 his redirect and answer your questions. I think
4 probably about 4:30 or 5 is the latest we'd want to go,
5 and I know that may mean we're not finished with
6 Dr. Wall today, but my client's view and my view,
7 frankly, is that going any longer than 4:30 or 5 is a
8 little bit much for a Tribunal, even though we've got a
9 healthy, robust Tribunal here.

10 MR. KITCHEN: I have some thoughts on that.
11 One, my witness has arrived. He's Dr. Wall's witness.
12 He's left for now, because we're obviously not quite
13 there yet. I'm going to ask, because of the enormously
14 slow pace, and that's to no one's fault, but the
15 enormously slow pace at which we've moved that we press
16 ahead today and get in this witness after we're done
17 with Dr. Wall. I do have redirect, but I don't expect
18 to be long. So if we could get going at 4:30 with this
19 witness, I can't see that witness taking more than 45
20 minutes at most, which I understand that puts us past
21 5, but we've ended early quite a few days. We're
22 making pretty slow progress on evidence.

23 This particular witness, like I said, the reason I
24 wanted him here today is because he's the only witness
25 I have who cannot do virtual testimony, so I would ask
26 that the Tribunal to be gracious with Dr. Wall and I

1 and permit that witness today.

2 THE CHAIR: I think we'll make our best
3 efforts to achieve that. I don't personally have any
4 commitments that would prevent me from going to 5:15 if
5 we needed to. I'm not sure if anybody else -- perhaps
6 there are? One of the Tribunal Members --

7 DR. ALDCORN: Well, sorry, this is Leslie.
8 I'm actually seeing patients after we're done here. If
9 I knew we were done at 5:15, I could ask people to come
10 at 5:15 instead of 5:00. I would just need to know.

11 THE CHAIR: I think in the best interests
12 of not having to do this twice, let's decide that we
13 will go until 5:15 so that Dr. Aldcorn can make her
14 plans accordingly.

15 And I think it's a long time to go without a
16 break, I suggest we take maybe 10 minutes now and come
17 back at 5 after -- let's make it 10 after 4, and then
18 we'll plow through with Mr. Kitchen's redirect and then
19 any residual questions and then deal with Mr. Kitchen's
20 witness. Okay?

21 MR. MAXSTON: Mr. Chair, I just want to make
22 one comment, I'm very sensitive to Mr. Kitchen and his
23 witness's availability, but I do want to be clear that
24 I think -- in terms of chasing the clock, the Hearing
25 Tribunal shouldn't feel constrained about asking
26 questions of Dr. Wall and finishing quickly, and so I

1 really want to be -- I see Mr. Kitchen nodding, and I'm
2 glad, because I'm very sensitive to his witness, but
3 we've heard a lot from Dr. Wall today, and once he
4 stops testifying, Mr. Chair, you know this, your
5 colleagues know this, you can't ask him any other
6 questions, and there was some pretty important stuff
7 today. So I agree, let's press on and see where we're
8 at, but I think completing Dr. Wall today is the
9 priority, if we can.

10 THE CHAIR: Fair point, Mr. Maxston, and I
11 will share with both you and Mr. Kitchen that, during
12 our earlier breaks, we have discussed amongst ourselves
13 some questions with respect to Dr. Wall, and we are
14 holding back to determine which, if any, or all of them
15 are covered either through direct or cross-examine or
16 redirect. So, yes, the Hearing Tribunal may very well
17 have some questions for Dr. Wall, but we will cross
18 that bridge after we've dealt with the redirect.

19 So let's break now and come back at 10 after 4,
20 and we'll do our best, Mr. Kitchen.

21 MR. KITCHEN: Thank you.

22 (ADJOURNMENT)

23 THE CHAIR: Okay, I believe we are all
24 here, so the session is that we are reconvened, and,
25 Mr. Kitchen, you have the floor.

26 MR. KITCHEN: Thank you.

1 Mr. Kitchen Re-examines the Witness

2 Q MR. KITCHEN: Dr. Wall, that email that you
3 sent to Dr. Halowski, we talked about this, you said
4 earlier that Dr. Halowski sent you a response. Did you
5 ever get a response from council to your email?

6 A No, I did not.

7 Q Did you ever get a further response from Dr. Halowski?

8 A No, I did not.

9 Q And what was -- the one response you got from
10 Dr. Halowski, what did he say?

11 A I believe he was going to refer the matter to council,
12 and that was about the extent of it.

13 Q Do you think that was a substantive response?

14 A Not substantive. I'm fine if he wanted to have council
15 respond to it, but not a substantive response.

16 Q We've talked a lot about a risk from masking. I just
17 want to make sure everybody knows your position. Do
18 you think there is an increased risk beyond what
19 anybody already encounters in their daily life from you
20 not wearing a mask?

21 A No, I do not.

22 Q Did AHS close your office?

23 A Yes, they did.

24 Q Did AHS close -- did AHS take away your practice
25 permit?

26 A No, they did not.

1 Q The closure order, I'm going to take you there, that's
2 D-1, and Mr. Maxston can object to this if he wants to,
3 but I'm going to ask you to pick up -- do you see the
4 word "nuisance" in the middle of paragraph (a) there?

5 A Yes, I do.

6 Q Could you just read for me the rest of that sentence?

7 A I'll start: (as read)

8 This is a breach of Section 2(1) of the
9 Nuisance and General Sanitation Regulation,
10 which states that no person shall create,
11 commit, or maintain a nuisance, and of
12 Section 26 of the CMOH 38-2020, which states
13 that, subject to Section 27 of this order, a
14 person must wear a face mask at all times
15 while attending an indoor public place. For
16 greater certainty, an indoor public place
17 includes any indoor location where a business
18 entity is operating.

19 Q Do you think that you fall under Section 27? I can
20 take you to the Order 38 if you need me to. Do you
21 want me to do that?

22 A Yes, please, let's review that.

23 MR. MAXSTON: Mr. Kitchen, I'm not sure I'm
24 going to object to this question, but, with respect,
25 isn't it irrelevant; doesn't AHS decide who's subject
26 to it? It's not really your client.

1 MR. KITCHEN: Well, again, I don't know if
2 there's any controversy here. I think there probably
3 is going to be some controversy, because there's no
4 mention of CMOH 38 in the re-opening.

5 Q MR. KITCHEN: So, Dr. Wall, let me just ask
6 you this: We discussed that there's an exemption
7 clause in CMOH Order 38-2020 -- well, okay, is there a
8 general requirement to wear a mask in CMOH Order
9 38-2020?

10 A Yes, there is.

11 Q And there's an exemption, correct?

12 A That's correct.

13 Q Do you think you fell under the exemption?

14 A Yes, I do.

15 Q So do you think you breached the general requirement to
16 wear a mask?

17 A No, I don't.

18 Q Now, while I'm on this point, this is important
19 because -- so you just said now and you said earlier
20 that the -- you never breached any of the CMOH orders,
21 but when my learned friend asked you if you agreed
22 factually to the statement at 5(a) of the hearing
23 notice, that you failed to follow the Chief Medical
24 Officer of Health orders regarding masking and
25 COVID-19, you said, yes, that you agreed to that, so
26 let me ask you: Do you think that you failed to follow

1 any Chief Medical Officer of Health orders?

2 A No, I don't.

3 Q Dr. Wall, was there a CMOH order in place requiring
4 masking in June of 2020?

5 A I don't know the exact date of the CMOH order.

6 MR. MAXSTON: Mr. Kitchen, we have the
7 re-opening order. Are you referring to that, the CMOH
8 order that directed re-opening if guidelines were
9 followed from AHS or from CMOH or from the College? Is
10 that what you're referring to? I'm just asking because
11 I don't think we have any other exhibits to that
12 effect, and, clearly, the re-opening order would have
13 been in force.

14 MR. KITCHEN: Not --

15 MR. MAXSTON: 16-2020 is the re-opening
16 order.

17 MR. KITCHEN: Yes, right.

18 Q MR. KITCHEN: Well, Dr. Wall, you said to --
19 Mr. Maxston asked you, well, was there a CMOH order to
20 require masking and specifying exemptions before
21 November, and you said, no, there wasn't. We already
22 know that. So merely just asking, was there a CMOH
23 order in June of 2020 that generally required masking?

24 A No.

25 Q Do you think things like cleaning your office and
26 washing your hands are harmful?

1 A No, I don't.

2 Q Do you think preventing people from being within 2
3 metres of each other violates their personal liberty of
4 bodily autonomy?

5 A No, I don't.

6 Q So if you're told -- if your patients are told -- if
7 your patients are told that they have to stay 2 metres
8 away from you, do you think that violates their
9 personal liberty to come within 2 metres of you?

10 A They can choose to come within 2 metres of me, so I'm
11 not sure exactly of the -- maybe rephrase the question.

12 Q Well, let me ask you this -- and I'll leave it here, I
13 don't want to belabour the point -- but do you think
14 people's physical movements are restricted when they're
15 told that they cannot come within 2 metres of other
16 people?

17 A Yes, I do.

18 Q When -- and this goes back to a question Mr. Maxston
19 asked you about Dr. Linford's statements on risk, do
20 you agree with Dr. Linford that there is a risk to the
21 public from you not wearing a mask?

22 A No, I don't agree.

23 Q Now, you answered a question of Mr. Maxston about the
24 diagnosis or lack thereof in the December 12th note
25 from Dr. Salem, and of course, ultimately, there was
26 this note from January 11th. What was the ultimate

1 diagnosis in the January 11th letter?

2 MR. KITCHEN: While I'm here, I'll find it
3 for everybody's benefit.

4 MR. MAXSTON: Is it A-9, Mr. Kitchen?

5 MR. KITCHEN: It is A-9. I was just about
6 to say that.

7 Q MR. KITCHEN: So, yes, so this is the letter
8 that -- Mr. Maxston was questioning you on this letter.
9 This is the letter that Dr. Salem responds to
10 Mr. Lawrence. Does Dr. Salem discuss in this letter
11 the ultimate reason for why you couldn't wear a mask?

12 A Yes, he did.

13 Q And what was that reason?

14 A It was because of anxiety and dealing with
15 claustrophobia.

16 Q And is that consistent with what you thought about
17 yourself in June of 2020?

18 A Yes, it is.

19 Q Are the CMOH orders being challenged in court?

20 A I believe they are, yes.

21 Q Do you think a mandate from -- well, I'll ask you this:
22 Do you think a mandate that mandates somebody wear a
23 mask, do you think that violates that person's rights?

24 A Yes, I do.

25 Q Do you think if a mandate violates somebody's rights
26 that it's unlawful?

1 A Yes, I do.

2 Q Okay, almost done here. In the rescind notice from the
3 AHS, this is Exhibit D-2, we've talked about point 4,
4 Mr. Maxston asked you about that, do you regard point 4
5 as violating the rights of the patients?

6 A Yes, I do.

7 Q And do you regard point 4 as unlawful?

8 A Yes, I do.

9 Q Do you think it is professional to not comply with
10 requirements that are unlawful?

11 A Could you restate that, please, for me?

12 Q Sure. Do you think it is professional to not comply
13 with requirements that are not lawful?

14 A That was a lot of nots, I'm sorry.

15 Q No, no, it's okay, it's okay. It's no problem.

16 A Sorry, it is getting late in the day --

17 Q Do you think it's professionally acceptable to disobey
18 a requirement that is unlawful?

19 A Yes, I think that it is professionally (INDISCERNIBLE)
20 to (INDISCERNIBLE) a law that is --

21 THE COURT REPORTER: Dr. Wall, you're going to have
22 to speak up; you're not on speaker or something like
23 that. I'm finding you very quiet. So, sorry, could
24 you please restate your answer?

25 MR. KITCHEN: Madam Clerk, can you hear my
26 just fine?

1 THE COURT REPORTER: I can hear you fine, yeah.

2 MR. KITCHEN: I think what happened is he
3 turned the button, because he has to click it every
4 time so we don't get the feedback.

5 A I'm sorry.

6 THE COURT REPORTER: That's okay. Do you want me
7 to --

8 Q MR. KITCHEN: Do you want me to ask it
9 again, or are you ready to go?

10 A Go ahead and ask.

11 Q Okay. Do you think it is professionally acceptable to
12 disobey requirements that are unlawful?

13 A I think it is professionally (INDISCERNIBLE) --

14 THE CHAIR: We can't hear you, Dr. Wall.
15 Can't hear you at all.

16 A Sorry about that, yeah, I don't know what happened
17 there.

18 Q MR. KITCHEN: Well, I don't want to ask it a
19 third time, but I'm going to ask it a third time, and
20 I'm going to try to ask it exactly the same so that
21 there's nothing unfair here.

22 Do you think it is professionally acceptable to
23 disobey requirements that are unlawful?

24 A Yes, I do.

25 Q Do you think the masking mandate is unlawful?

26 A Yes, I do.

1 Q Last question, is it your understanding that Dr. Salem
2 recommended, as a means of dealing with your anxiety,
3 to not wear the mask?

4 A Yes, that's correct.

5 Q And I'm sorry, I have one more question. Do you think
6 not wearing a mask around your patients is a form of
7 treatment?

8 A No, it is not.

9 MR. KITCHEN: Okay, thank you, those are all
10 my redirect.

11 MR. MAXSTON: Mr. Chair, I'm going to ask my
12 friend's indulgence and yours, I do have one quick
13 follow-up question, and it relates to the second or
14 third-last question my friend asked because it was -- I
15 think it was something a little bit new. And maybe
16 I'll ask the question, if you're comfortable, Mr. Chair
17 and Mr. Kitchen, you'll let me know if you've got any
18 concerns.

19 MR. KITCHEN: Sure.

20 THE CHAIR: Okay.

21 MR. MAXSTON: And thank you for this
22 indulgence.

23 Mr. Maxston Re-cross-examines the Witness

24 Q MR. MAXSTON: Dr. Wall, this goes back to
25 the question that was repeated three times, so you're
26 probably pretty familiar with it, and I believe the

1 wording from my friend was do you believe it's
2 professionally acceptable to disobey requirements that
3 are unlawful, and I just want to be clear, who
4 determines whether they're unlawful?

5 A Well, I believe that -- sorry, I believe that there has
6 to be a higher standard. For example, I believe that
7 the Constitution, Charter of Rights and Freedoms, and
8 Alberta Human Rights are specifically aspects of the
9 law that would supersede, for example, a professional
10 regulatory body's requirements.

11 Q Sorry, just quickly, just to be clear, it's not the
12 professional who decides that though; it's the courts,
13 if it's the Charter or human rights?

14 A Yeah, well, a person has to go through those measures
15 for sure, and that's why I've obtained counsel, so,
16 yeah.

17 Q Yeah, I just wanted to be clear, when you talked about
18 "unlawful", I thought it was something I needed to kind
19 of clarify.

20 MR. MAXSTON: Thank you for that indulgence,
21 Mr. Chair and Mr. Kitchen.

22 MR. KITCHEN: You're welcome.

23 Mr. Kitchen Re-examines the Witness

24 Q MR. KITCHEN: I just want to ask one quick
25 re-cross [sic], which is, Dr. Wall, do you think you'd
26 ever be able to legally challenge these mandates if you

1 just went along with them and ignored them?

2 A No, I wouldn't be able to challenge them if I went
3 along with them and ignored them.

4 MR. KITCHEN: Okay, well, I guess it's back
5 to the Tribunal now.

6 THE CHAIR: Okay --

7 MR. KITCHEN: I just want to make a note, my
8 witness is in the room, so I want to give anybody an
9 opportunity to object if they -- I don't even know if
10 he can hear anything because we all have headsets on,
11 but I just -- I want to make a note of that if anybody
12 has any objections to him being in the room while we're
13 still doing this.

14 MR. MAXSTON: I don't, Mr. Kitchen, provided
15 he's not going to be asked questions about what
16 Dr. Wall is just testifying to.

17 MR. KITCHEN: I can't imagine. I have no
18 intention.

19 MR. MAXSTON: Okay, yeah, thank you.

20 THE CHAIR: Well, at this point, we're
21 going to take a brief recess so that we can discuss
22 whether Members of the Tribunal have any further
23 questions for Dr. Wall. So bear with us, we'll be back
24 to you as quickly as possible, and if we could go to a
25 break-out, please. Thank you.

26 (ADJOURNMENT)