

DISCIPLINE COMMITTEE OF THE COLLEGE OF HOMEOPATHS OF ONTARIO

IN THE MATTER OF a hearing directed
by the Inquiries, Complaints and Reports Committee of
the College of Homeopaths of Ontario
pursuant to Section 26(1) of the Health Professions Procedural Code
being Schedule 2 of the *Regulated Health Professions Act, 1991*,
S.O. 1991, c. 18, as amended.

BETWEEN:

THE COLLEGE OF HOMEOPATHS OF ONTARIO

- and -

SUKHDEV SINGH KOONER

DECISION AND REASONS FOR DECISION ON PENALTY AND COSTS

A panel of the Discipline Committee of the College of Homeopaths of Ontario (the “**Panel**”) held a penalty hearing on April 19, 2023. The hearing proceeded by videoconference pursuant to the *Regulated Health Professions Act, 1991 - Health Professions Procedural Code*, the *Hearings in Tribunal Proceedings (Temporary Measures) Act, 2020* and the Discipline Committee Rules. Justine Wong represented the College of Homeopaths of Ontario (the “**College**”). Sukhdev Singh Kooner (the “**Registrant**”) was self-represented. Elyse Sunshine acted as independent legal counsel (“**ILC**”) to the Panel.

FINDINGS OF PROFESSIONAL MISCONDUCT

By decision dated October 28, 2022, the Panel found that Mr. Kooner committed the following acts of professional misconduct as defined in one or more of the following paragraphs of section 1 of Ontario Regulation 315/12 made under the *Homeopathy Act, 2007* (the “**Act**”):

1. paragraph 1 (contravening, by act or omission, a standard of practice of the profession or failing to maintain the standard of practice of the profession);
2. paragraph 9 (failing to advise a patient or the patient’s authorized representative to consult another member of a health profession within the meaning of the *Regulated*

- Health Professions Act, 1991*, where the member knows or ought to know that the patient requires a service that the member does not have the knowledge, skills or judgment to offer or is beyond his or her scope of practice);
3. paragraph 28 (permitting the advertising of the member or his or her practice in a manner that is false or misleading);
 4. paragraph 48 (engaging in conduct or performing an act relevant to the practice of the profession that, having regard to all the circumstances, would reasonably be regarded by the profession as disgraceful, dishonourable or unprofessional); and
 5. paragraph 49 (engaging in conduct that would reasonably be regarded by members as conduct unbecoming a member of the profession).

The findings arose from Mr. Kooner's conduct pertaining to a sign posted outside of his clinic pertaining to vaccination, engaging in discussion with a patient regarding advice on vaccination and issuing an exemption certificate related to COVID vaccination.

At the conclusion of the penalty hearing, the Panel delivered its penalty order orally, with written reasons to follow.

COLLEGE SUBMISSIONS ON PENALTY AND COSTS

The College sought a penalty order which included:

1. a reprimand to be delivered at a date to be determined by the Registrar and;
2. an order directing the Registrar to suspend the Registrant's certificate of registration for a period of five months to become effective should the Registrant's certificate of registration ever be reinstated.

With respect to costs, the College asked that the Registrant pay to the College two thirds of all costs, including investigative, legal and hearing costs in this matter in the amount of \$42,601.59 to be paid over 48 months.

The College submitted that although the Registrant had resigned from the College, the Panel still had jurisdiction to impose the orders.

The College noted that an appropriate penalty should consider the principles of sanctioning: public confidence, specific deterrence, general deterrence, and remediation. The College submitted that the reprimand and suspension would serve the goals of public protection, specific and general deterrence. The reprimand would also be rehabilitative in nature because the Registrant would have an opportunity to learn why his conduct is unacceptable.

The College submitted that the Panel should consider the aggravating factor of the conduct itself in that the Registrant made unverifiable claims during a time when the public was very vulnerable. The College further submitted that there were no mitigating factors in this case.

The College also provided case law in support of their position that the proposed penalty was reasonable in light of the sentencing principles and nature of the conduct. These cases were:

1. *College of Naturopaths of Ontario v Natasha Turner, 2022*
2. *College of Dental Hygienists of Ontario v Saraiya, 2021 ONCDHO 1*
3. *College of Nurses of Ontario v Zorn, 2017 CanLII 49763*
4. *College of Massage Therapists of Ontario v Min, 2018 ONCMTO 27*
5. *College of Physicians and Surgeons of Ontario v Chadda, 2019 ONCPSD 29.*

With respect to costs, which was submitted is separate from penalty because it is not intended to be punitive, the College submitted evidence that it's total costs and expenses were \$63,584.47. The College asked that the Panel order the Registrant to pay two-thirds of that amount: \$42,601.59. The College submitted that this was an appropriate case for the Panel to order the Registrant to pay costs. The College noted that it had been entirely successful on the hearing on the merits and the Panel made all of the findings of professional misconduct in the Notice of Hearing. The College submitted that it was appropriate in the circumstances for the Registrant to pay a portion of the associated costs and not have them borne by the College's membership through its dues.

REGISTRANT SUBMISSIONS ON PENALTY AND COSTS

The Registrant submitted that there should be no penalty and that he should be entitled to costs. The Registrant submitted that he had proven the allegations against him were false. He submitted that because the Panel was composed of only one professional member and two public members, they did not understand his evidence. He further submitted that there was bias on the part of the Registrar and the investigation against him was flawed. He also submitted that the College elections had been problematic.

PENALTY DECISION

The Panel carefully considered the parties' submissions and the case law, and made the following order:

1. The Registrant is to appear before a panel of the Discipline Committee to be reprimanded on a date to be set by the Registrar;
2. The Registrar is directed to suspend the Registrant's certificate of registration for a period of five (5) months should he ever become reinstated by the College; and
3. The Registrant is required to pay to the College costs in the amount of \$42,601.59, payable in 60 equal monthly instalments of \$710.03 to start one month after the date of the order and continuing on that date every month thereafter until paid in full.

REASONS FOR DECISION ON PENALTY AND COSTS

The Panel recognizes that in determining an appropriate penalty, it must act in the best interests of the public and impose a sanction that will act both as a specific deterrent for Mr. Kooner, and a general deterrent for the membership at large. In addition, where appropriate, the Panel should consider a penalty which includes an opportunity for rehabilitation.

The Panel notes that a penalty hearing is not an opportunity to contest findings of professional misconduct. A penalty hearing is about what the appropriate penalty is in light of the Panel's findings. Any submissions about the merits of the findings are not relevant to penalty and were not considered by the Panel.

The suspension imposed is on the higher end of suspensions normally imposed for similar conduct. The Panel, notes, however, that in the prior cases involving similar conduct provided to us, the Registrant made admissions and there was a joint submission on penalty. Where members choose to engage with the College in such a manner that will act as a mitigating factor, such that the penalties imposed will typically be lower. Following a contested hearing on liability and a contested hearing on penalty, the Panel was satisfied that a five month suspension was appropriate.

The Panel considered the aggravating factor of the Member's conduct, which was unprofessional and dishonourable. He fell below the College's standards of practice and showed complete disregard for the public and College policy.

If the Member chooses to return to practice, the suspension and reprimand will ensure that the public is adequately protected and will provide the Member additional time to consider his conduct.

Section 53.1 of the Code gives the Panel the authority to make an order requiring a registrant to pay a portion of the costs incurred during the hearing and investigation process so that the full costs are not borne by the membership through their dues. The Panel found that two-thirds of the legal and hearing costs being sought by the College was reasonable. The College had provided evidence of the costs incurred.

The costs were appropriate given that the College had been entirely successful in proving all of the allegations of misconduct. The Registrant was not entitled to his costs given that the findings made and the fact there was no evidence that the proceedings were unwarranted as would be required under the Code. The Panel found that the Registrant's conduct in arguing extraneous matters, such as about College Council elections, was irrelevant to the matters at issue and unnecessarily prolonged the hearing.


In determining the payment schedule, the Panel considered that the Registrant was present at the penalty hearing, and while there was no evidence provided, the Panel did consider that the

amount of costs ordered is significant and therefore allowed the Registrant to have additional time to pay.

Dated in the City of Toronto on April 19, 2023.

DISCIPLINE PANEL

Anna Cardozo, Professional Member
Heather Broadhead, Public Member

Signed: 

Kamika Mclean, Chair