

**DISCIPLINE COMMITTEE OF THE  
COLLEGE OF KINESIOLOGISTS OF ONTARIO**

**IN THE MATTER** of the *Regulated Health Professions Act, 1991*, S.O. 1991, c.18, as amended, and the regulations thereunder, as amended;

**AND IN THE MATTER** of the *Kinesiology Act, 2007*, S.O. 2007, c. 10, Schedule O, as amended, and the regulations thereunder, as amended;

**AND IN THE MATTER** of allegations of professional misconduct/incompetence before the Discipline Committee of the College of Kinesiologists of Ontario as referred by the Inquiries, Complaints and Reports Committee against **Christopher Challenger**;

<b>BETWEEN:</b>	)	
	)	
<b>COLLEGE OF KINESIOLOGISTS OF ONTARIO</b>	)	<b>Rebecca Durcan</b> For the College of Kinesiologists of Ontario
	)	
<b>- and -</b>	)	<b>Brenda Kritzer and Cara Moroney</b> Attending for the College of Kinesiologists of Ontario
	)	
<b>CHRISTOPHER CHALLENGER (REGISTRATION #11189)</b>	)	<b>Nicole McAuley</b> For the Member
	)	
	)	<b>Christopher Challenger</b> In Attendance
	)	
	)	<b>Bonni Ellis</b> Independent Legal Counsel
	)	
	)	<b>Heard: January 16, 2017</b>
	)	<b>Decision Released: March 6, 2017</b>
	)	<b>Written Decision Date: March 1, 2017</b>

**Panel Members:**

**Mary Pat Moore, Chair, Public Council Member**

**Ken Alger, Public Council Member**

**Jennifer Pereira, R. Kin., Professional Council Member**

## **DECISION AND REASONS FOR DECISION**

### **I. INTRODUCTION**

[1] This matter was heard by a panel of the Discipline Committee (“the Panel”) of College of Kinesiologists of Ontario (“the College”) at the College in Toronto, Ontario, on January 16, 2017.

[2] The hearing proceeded by way of an Agreed Statement of Facts. The College and Christopher Challenger (“the Member”) also proposed a Joint Submission As To Penalty and Costs.

### **II. THE ALLEGATIONS**

[3] The allegations against the Member are set out in the Notice of Hearing (Exhibit #1), dated November 17, 2016.

[4] The allegations in the Notice of Hearing involve completing false or misleading insurance forms on twenty-three OCF 18 forms and thirty-four OCF 21 forms between July 2013 and November 2014, misleading the insurance company and failing to cooperate with its investigation, misleading the College and failing to cooperate with its investigations, completing false or misleading insurance forms between July 2013 and April 2016 by falsely identifying himself as an Ontario certified Psychotherapist, Physician, and/or MD with a false College registration number on insurance forms, and practising while suspended from October 19, 2015 to April 2016.

[5] Specifically, it is alleged in the Notice of Hearing that the Member engaged in professional misconduct pursuant to the following paragraphs of section 1 of Ontario Regulation 316/12 under the *Kinesiology Act, 2007*: paragraph 18 (issuing an invoice, bill or receipt for services that the member knows or ought to know is false or misleading); paragraph 26 (signing or issuing, in his professional capacity, a document that the member knows or ought to know contains false or misleading information); paragraph 27 (falsifying a record relating to the member's practice); paragraph 40 (contravening the *Kinesiology Act, 2007*); paragraph 43 (practising the profession while suspended); paragraph 44 (directly or indirectly benefitting from the practice of the profession while the member's certificate of registration is suspended); paragraph 50 (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 members as disgraceful, dishonourable or unprofessional); and/or paragraph 51 (engaging in conduct that would reasonably be regarded by members as conduct unbecoming a member of the profession).

### III. MEMBER'S POSITION

[6] The Member admitted the allegations set out in the Notice of Hearing as described in the Agreed Statement of Facts (Exhibit #2).

### IV. AGREED STATEMENT OF FACTS

[7] Counsel for the College advised the Panel that the parties were presenting an Agreed Statement of Facts (ASF) for the Panel's consideration, which provides as follows:

#### **THE MEMBER'S BACKGROUND**

##### ***The Member***

1. Christopher Challenger (the "Member") became a member of the College of Kinesiologists of Ontario (the "College") on or about April 11, 2013. Attached as Exhibit "A" is a copy of the College Register.
2. At the time of his application to the College and when the Member was registered, his registration number was 11189. This is the only number the Member was ever provided by the College.
3. The Member's certificate of registration was suspended for non-payment of fees on October 19, 2015.
4. The Member resigned his certificate of registration on April 7, 2016.
5. The Member is not a member of the College of Physicians and Surgeons of Ontario (CPSO) or the College of Registered Psychotherapists and Registered Mental Health Therapists of Ontario.
6. During all relevant times the Member operated Challenger Rehab on Wheels ("Challenger Rehab") with his wife, who acted as the business administrator.
7. The Member has no prior history of discipline or other outstanding complaints at the College.
8. The Member is currently in significant financial difficulty and has provided information to the College confirming this to be accurate.

***Challenger Rehab and the member's practice***

9. Challenger Rehab is located in Cambridge, Ontario and the Member provides driving therapy to individuals who have been in motor vehicle accidents and are experiencing pain and/or anxiety while driving.
10. Following a motor vehicle accident, a client can apply for coverage from his or her auto insurer for a rehabilitative program.

11. In order for a client to be eligible for insurance coverage, a Treatment and Assessment Plan, known as an OCF-18 Form, must be submitted. Attached as Exhibit "B" is a copy of an OCF-18 Form.
12. Part 5 of the OCF 18 Form asks for an assessment of the client's health and a detailed plan for treatment, including cost. A "regulated health professional", including kinesiologists, can complete this portion of the OCF 18 Form. The regulated health professional supervises the treatment and assessment plan. There is an option for "Other" when identifying the health practitioner. If "Other" is selected, the profession (such as kinesiologist) can then be manually inputted. Despite this, the Member sometimes completed Part 5 of the OCF-18 as a physician and/or MD.
13. Part 4 of the OCF 18 Form asks for a statement by a "health practitioner" which creates and approves the Treatment Plan. The health practitioner states that he or she is of the opinion that the treatment/assessments described in Part 5 are reasonable and necessary.
14. Only specified health professionals have the ability to make this determination and are permitted to complete Part 4 of the OCF-18 Form. Kinesiologists are not one of the identified health practitioners who can complete Part 4 of the OCF 18. Despite this, the Member sometimes completed Part 4 of the OCF-18 as a physician and/or MD.
15. If the Member were to testify, he would state that he understood that his registration with the College as a Registered Kinesiologist would permit him to complete part 4. The Member concedes that he was incorrect in his understanding.
16. If the Member were to testify as outlined in paragraph 15, the College would submit that the Member's belief is unsupported by the agreed facts. Part 4 of the OCF-18 Form has not changed during the time the member began submitting OCF forms in approximately 2010, and it did not change with the regulation of

kinesiologists in 2013. Only specified professions, which are clearly outlined and specified in the form, are able to complete this section. There is no option for 'other' as outlined in Part 5.

17. The OCF-18 Form is then sent to the insurer via the Health Claims for Auto Insurance (HCAI) system. If the Treatment Plan as set out on the OCF-18 Form is approved, the treatment is carried out by the "regulated health professional" identified in Part 5 of the OCF-18.
18. Invoices are submitted by said "regulated health professional" to HCAI on a form known as an OCF-21 Form. Attached as Exhibit "C" is a copy of an OCF-21 Form.
19. A health practitioner or regulated health professional must create a profile on the HCAI system which they can then use to submit all claims. The Member created at least 5 different profiles using various credentials and registration numbers as follows:
  - (a) a medical/surgical practitioner with registration number 26903;
  - (b) a rehabilitation counselor/therapist with registration number 26903;
  - (c) a kinesiologist with registration number 26903;
  - (d) a kinesiologist with registration number CK7743;
  - (e) a kinesiologist with registration number 11189
20. The Member concedes that, with the exception of paragraphs 19 (d) and (e), none of these profiles were an accurate representation of his credentials.
  - (a) 19(d) represents the Member's number with the Ontario Kinesiology Association.
  - (b) 19(e) represents the Member's number with the College.
21. If the Member were to testify, the Member would state that his creation of the profiles referred to in 19 (a), (b), and (c), were not an attempt on his part to

mislead anyone with respect to his professional designations. Rather, they were a result of the Member's confusion with the HCAI system.

22. If the Member were to testify, he would state that following the electronic submission of OCF-18 and OCF-21 forms to the insurers, he sent copies of the OCF-18 forms via facsimile to the insurers, which had been corrected by hand to indicate that he was a kinesiologist, and not a physician or MD. As well, the reports which were attached to the OCF-18 and OCF-21 forms indicated the Member's correct professional designations. However, the Member concedes that, as of today's date, Economical has not been able to locate the OCF forms sent by facsimile from the Member.

### ***Complaint by Economical Insurance Company***

23. Economical Insurance Company ("Economical") identified several OCF Forms that were submitted by the Member between July 2013 and November 2014, where [the Member] identified himself as a physician and/or MD with a College registration number – 26903.
24. The physician with CPSO registration number 26903 is retired and has never met the Member.

### ***Interactions with Economical***

25. Economical attempted to clarify this matter with the Member. It attempted to contact the Member via telephone between December 2014 and February 2015 to discuss their concerns with the insurance forms (namely the OCF-18 and OCF-21 Forms).
26. If the Member were to testify, he would state that he did not receive these voicemail messages from Economical for a period of time, as a result of his office being closed for Christmas holidays and then a family vacation that he took. The Member responded to Economical on February 17, 2015. The Member provided,

or adopted, the following explanations to Economical for the false information on the OCF forms:

- (a) The “College registration number” was his former Ontario College of Kinesiologists registration number;
- (b) The “College registration number” was his university student number; and
- (c) The “College registration number” was a temporary registration number.

27. The Member concedes that none of these explanations were accurate.

28. A complaint with the College was filed by Economical on July 21, 2015. The complaint alleged that the Member used the title “physician”, the designation “MD” along with a CPSO registration number 26903 when he submitted documents to Economical.

*Interactions with the College Investigator*

29. Subsequent to speaking with Economical, it is agreed the Member provided incorrect information to the College when he provided, or adopted, the following explanations to the College Investigator, for the false information on the OCF forms:

- (a) The Member never identified himself as a physician or MD;
- (b) The College registration number was his university student number; and
- (c) The College registration number was his Ontario College of Teachers registration number.

30. The Member concedes that none of these explanations as set out in paragraph 28 were accurate.

31. In addition to the above, Mr. Challenger provided incorrect information to the College when he advised the College Investigator that:

- (a) He completed the insurance forms in error and that he only did so “six or seven times”;
  - (b) That once he became aware of his error he immediately stopped; and/or
  - (c) That when he completed the insurance form he would select “other” and “physician” would immediately populate.
32. The Member concedes that none of the explanations as set out in paragraph 31 were accurate.
33. Only at the time the Member submitted his written response directly to the College’s Inquiries, Complaints and Reports Committee did he provide verifiable and accurate information that the number 26903 was his Waterloo Board of Education employee number.
34. It is agreed that is a standard of the profession to comply with the requirements as set out in s. 76(3) and (3.1) of the *Health Professions Procedural Code* which state that:
- 76(3) No person shall obstruct an investigator or withhold or conceal from him or her or destroy anything that is relevant to the investigation.*
- 76(3.1) A member shall co-operate fully with an investigator.*
- It is agreed that the Member contravened this standard in light of the above.
35. Teachers are not health care professionals authorized to sign off on any part of any OCF form.
36. The Member no longer worked for the Waterloo Board of Education at the time he commenced submitted OCF forms under the number 26903.
37. Between July 2013 and November 2014, the Member identified himself as a physician and/or MD with a false College registration number on twenty-three OCF 18 Forms submitted to Economical.

38. Between July 2013 and November 2014, the Member identified himself as a physician and/or MD with a false College registration number on thirty-four OCF 21 Forms submitted to Economical.
39. If the Member were to testify, he would state that he did not intend to mislead any person or make any misrepresentations with respect to his professional accreditations, although he acknowledges that this occurred as a result of his actions.
40. By signing and issuing or permitting the OCF-18 and OCF-21 Forms to be signed and issued the Member was paid approximately \$29,000 by Economical.
41. If the Member were to testify, he would state that all services that were paid for by Economical were performed by the Member.
42. It is agreed that it is a standard of the profession to represent oneself accurately and honestly to clients, insurers and all those that encounter a kinesiologist in a professional setting. It is agreed that the Member contravened this standard in light of the above.
43. While investigating the complaint, the College became concerned that the Member was (a) submitting false or misleading invoices and/or documents to various other insurance companies; (b) storing client files in a fashion that was not in accordance with College standards; and (c) practising while suspended. As a result, further Investigations were commenced.

***First Registrar's Investigation***

44. Records provided by HCAI to the College Investigator also listed OCF forms submitted by the member to various other insurance companies under the Member's various HCAI profiles. These records show the following:
  - (a) 378 OCF forms submitted as a medical/surgical practitioner with registration number 26903;

- (b) 75 OCF forms submitted as a rehabilitation counselor/therapist with registration number 26903;
- (c) 3 OCF forms submitted as a kinesiologist with registration number 26903;
- (d) 405 OCF forms submitted as a kinesiologist with registration number CK7743;
- (e) 189 OCF forms submitted as a kinesiologist with registration number 11189;
- (f) 36 OCF forms submitted as a kinesiologist with registration number 11189 after the Member was suspended for non-payment of fees.

### *Reporting Letters*

- 45. Prior to or at the end of the initial treatment program, a reporting letter is provided to the insurer summarizing the treatment completed, the progress made by the client and recommendations for continued treatment if required.
- 46. The Member submitted reporting letters to Economical as well as other insurance companies and clients. Certain reporting letters falsely identify the Member as an "Ontario Certified Psychotherapist." The term "psychotherapist" was not a protected title when utilized by the Member; however it is agreed his inference that he was a "certified" psychotherapist was false.
- 47. It is agreed that between July 2013 and April 2016, the Member incorrectly identified himself as Physician, and/or MD with an incorrect College registration number on insurance forms submitted to other insurance companies.

### *Record Keeping*

- 48. The College investigator attended at the Member's place of practice, which is also his home, on or about August 4, 2015 and January 14, 2016 and noted several irregularities with respect to the member's record keeping.

49. The College has a Practice Standard – Record Keeping which assists members as it explains how records are to be stored. Attached at Exhibit “D” is a copy of the Standard. The Standard includes (but is not limited to) the following:
- (a) Records must be secure and confidential
  - (b) Members will maintain equipment service record, financial record and patient/client health record
  - (c) Patient and Financial Records are to be retained for 10 years
  - (d) That records must be accurate and identifiable
50. It is agreed that Member failed to keep records in accordance with the profession by:
- (a) Storing client files in a cabinet which was unsecured;
  - (b) Storing client files in his car;
  - (c) Storing a client file and a stack of client attendance sheets in the back seat of his car;
  - (d) Storing several client files in the trunk of his car; and
  - (e) Failing to maintain an appointment record.
51. It is also agreed that between July 2013 and April 2016, the Member falsely identified himself as a physician and/or MD in client reports thereby further breaching the College’s record keeping standard.
52. It is further agreed that between July 2013 and April 2016, the Member incorrectly identified himself as an Ontario Certified Psychotherapist in client reports on five or six occasions, thereby further breaching the College’s record keeping standard.

## **Second Registrar’s Investigation**

### *Practising while suspended*

53. The Member was suspended as of October 19, 2015 for non-payment of fees. The suspension was never lifted and the Member resigned from the College as of April 7, 2016.
54. It is agreed that the Member identified himself, or permitted himself to be identified, as a “kinesiologist” and/or “kinesiologist (regulated)” on twenty-one OCF-21 Forms after October 19, 2015.
55. If the Member were to testify, he would state that he made such representations inadvertently and that once he became aware that such misrepresentations were made, he contacted all insurers to advise of this discrepancy.
56. The title “kinesiologist” is a protected title and only available to active members of the College.
57. It is agreed that by signing and issuing, or permitting the signing and issuing, of OCF-21 Forms, as described above, the Member was paid approximately \$4,629.69 by insurance companies.

#### **Admissions of Professional Misconduct**

58. The Member admits that he committed acts of professional misconduct, as set out in Ontario Regulation 316/12, section 1 of the *Kinesiology Act, 2007* in that, with respect to his submitting OCF Forms and other documents to Economical and other insurers through the HCAI system as described above, he contravened:
  - (a) 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);
  - (b) Paragraph 18 (issuing an invoice, bill or receipt for services that the member knows or ought to know is false or misleading);

- (c) Paragraph 26 (signing or issuing, in his professional capacity, a document that the member knows or ought to know contains false or misleading information); and
  - (d) Paragraph 50 (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 members as disgraceful, dishonourable or unprofessional).
59. The Member admits that he committed acts of professional misconduct, as set out in Ontario Regulation 316/12, section 1 of the *Kinesiology Act, 2007* in that with respect to his failing to cooperate with the investigation by Economical and the College, he contravened:
- (a) 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);
  - (b) Paragraph 40 (contravening, by act or omission, sections 76(3) and 76(3.1) of the Code); and
  - (c) Paragraph 50 (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 members as disgraceful, dishonourable or unprofessional).
60. The Member admits that he committed acts of professional misconduct, as set out in Ontario Regulation 316/12, section 1 of the *Kinesiology Act, 2007* in that with respect to his record keeping practices, he contravened:
- (a) 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);
  - (b) Paragraph 25 (failing to keep records in accordance with the standards of the profession); and

- (c) Paragraph 50 (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 members as disgraceful, dishonourable or unprofessional).
61. The Member admits that he committed acts of professional misconduct, as set out in Ontario Regulation 316/12, section 1 of the *Kinesiology Act, 2007* in that with respect to his using the protected title “kinesiologist” and holding himself out as a member of the College while his certificate of registration was suspended, he contravened:
- (a) Paragraph 18 (issuing an invoice, bill or receipt for services that the member knows or ought to know is false or misleading);
  - (b) Paragraph 26 (signing or issuing, in his professional capacity, a document that the member knows or ought to know contains false or misleading information);
  - (c) Paragraph 27 (falsifying a record relating to the member’s practice);
  - (d) Paragraph 40 (contravening the *Kinesiology Act, 2007*);
  - (e) Paragraph 43 (practicing the profession while suspended);
  - (f) Paragraph 44 (directly or indirectly benefitting from the practice of the profession while the member’s certificate of registration is suspended);  
and
  - (g) Paragraph 50 (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 members as disgraceful, dishonourable or unprofessional).
62. The Member acknowledges that he has had the opportunity to receive, and has in fact received, independent legal advice.

## V. PLEA INQUIRY

[8] Counsel for the Member presented a written Plea Inquiry executed by the Member (Exhibit #3), which confirmed that his admissions were voluntary, informed, and unequivocal.

## VI. DECISION ON FINDINGS

[9] The Panel finds that the Member committed the acts of professional misconduct as set out and admitted by the Member in the following paragraphs of the ASF: paragraph 57 (submitting OCF Forms and other documents to Economical and other insurers through the HCAI system), paragraph 58 (failing to cooperate with investigations by Economical Insurance Company and the College), paragraph 59 (his record keeping practices), and paragraph 60 (using the protected title “kinesiologist” and holding himself out as a member of the College while his certificate of registration was suspended).

[10] With respect to the allegations that the Member engaged in conduct that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, the Panel finds the Member’s conduct to be disgraceful, dishonourable and unprofessional.

[11] The Panel grants the College leave to withdraw the following allegations:

- a) Paragraph 27 of section 1 of Ontario Regulation 316/2 (falsifying a record relating to the Member’s practice) in relation to paragraph 25 on page 9 of the Notice of Hearing; and
- b) Paragraph 51 of section 1, of Ontario Regulation 316/2 (engaging in conduct that would reasonably be regarded by members as conduct unbecoming a member of the profession) in relation to paragraphs 10, 14, 21, 25, 27, and 32 of the Notice of Hearing.

## VII. REASONS FOR FINDING

[12] The Panel considered the Agreed Statement of Facts and finds that the facts set out in that document, together with the Member's admissions, support findings of professional misconduct. Having reviewed the Notice of Hearing and the Agreed Statement of Facts, together with the attachments and including the Member's admissions, and having heard the submissions of counsel and being satisfied that the Member's plea was voluntary, informed, and unequivocal, the Panel finds that the College discharged its onus to prove the allegations admitted to on a balance of probabilities. The Panel was also satisfied by the submissions of counsel that it was appropriate for the College to withdraw the allegations it requested. Finally with respect to the Panel's findings that the Member's conduct was disgraceful, dishonourable, and unprofessional, the Panel was satisfied that the Member's conduct was disgraceful, dishonourable and unprofessional. The Panel was satisfied that the Member's conduct was more than incompetent or careless. The Member knew or ought to have known that breaching professional standards by completing false or misleading insurance forms, failing to cooperate with investigations by Economical Insurance and the College, failing to keep records appropriately, and practicing while suspended from the College was a persistent disregard of professional standards. The Member's deceit and dishonesty in submitting false and misleading insurance forms demonstrated his inherent inability to discharge his duties.

[13] Specifically, the Panel finds that the Member committed the acts of professional misconduct as set out and admitted by the Member in the following paragraphs of the Agreed Statement of Facts: paragraph 57 (submitting false or misleading OCF Forms and other documents to Economical and other insurers through the HCAI system), paragraph 58 (failing to cooperate with investigations by Economical Insurance Company and the College), paragraph 59 (his record keeping practices), and paragraph 60 (using the protected title "kinesiologist" and holding himself out as a member of the College while his certificate of registration was suspended).

## VIII. JOINT SUBMISSION AS TO PENALTY AND COSTS

[14] Counsel for the College advised the Panel that an agreement had been reached with respect to the order that was being proposed by the parties regarding the appropriate sanction and costs.

[15] The Joint Submission as to Penalty and Costs (JSPC) (Exhibit #4), provides as follows:

The College of Kinesiologists of Ontario and Christopher Challenger (“the Member”) submit that, in view of the circumstances set out in the Agreed Statement of Facts, the Member’s admissions of professional misconduct and the Panel’s findings of professional misconduct, the Panel of the Discipline Committee (“the Panel”) should make an Order as follows and jointly submit that the Discipline Committee make an order:

1. Requiring the Member to appear before the Panel to be reprimanded at a date to be arranged but, in any event, within one (1) month of the date of this order.
2. Should the Member be granted a new certificate of registration by the College, directing the Registrar to suspend the member's certificate of registration for a period of ten (10) months. The Member’s certificate of registration shall be suspended as of the date he is granted a new certificate of registration. The suspension may be reduced by two (2) months if the Member complies with the provisions of paragraph 3 (with the exception of para 3(d)) within three (3) months of him receiving a new certificate of registration. In the event that the Member fails to successfully comply with paragraph 3, the balance of the suspension shall be served in its entirety immediately following the third month of the suspension and run continuously without interruption.

3. Should the Member be granted a new certificate of registration by the College, directing the Registrar to impose the following specified terms, conditions, and limitations on the Member's certificate of registration:

a. Requiring that the Member successfully complete within six (6) months of the date this suspension takes effect to the satisfaction of the Registrar and at his own expense:

- i. a record keeping course pre-approved by the Registrar; and
- ii. the College's Ethics and Professionalism e-learning module;

b. Requiring the Member to meet with a mentor, who is a member in good standing with the College, and pre-approved by the College, within three (3) months of the date this suspension takes effect at the Member's expense. The Member shall meet with the mentor to discuss the issues for which the Member was found to have committed professional misconduct and to discuss how to prevent such conduct from occurring in the future.

i. At this meeting, the mentor will develop and complete a learning plan regarding the allegations and breached standards, including a review of the incidents set out in the Agreed Statement of Facts and the Discipline Committee's reasons.

ii. The mentor will provide a report of his or her meeting with the Member, and in all subsequent meetings with the Member, to the College within fifteen (15) days of any meeting.

c. Requiring the Member, within one (1) month of the date that he first met with the mentor, to submit to an inspection of his record keeping and billing practices with the mentor and to review the learning plan.

d. Requiring the Member to submit to further inspections by a College approved inspector for a period of one (1) year at his own expense. The inspections shall

commence within 60 days of the Member returning to practice following his suspension. The inspections shall include no more than 3 sessions.

i. The inspector will provide a report to the College of all inspections within fifteen (15) days of the inspection.

4. For greater certainty, the Member's obligation to comply with the specified terms, conditions, and limitations on his certificate of registration contained in paragraph 3 is not relieved by serving the entire suspension referred to in paragraph 2 above.

5. The Member shall pay the College's costs fixed in the amount of \$5,000.00 within six (6) months of the date of this order.

6. The Member acknowledges that this Joint Submission as to Penalty and Costs is not binding upon the Discipline Committee.

7. The Member acknowledges that he has had the opportunity to receive, and has in fact received, independent legal advice.

## IX. SUBMISSIONS ON ORDER

### *The College*

[16] Counsel for the College submitted in support of the JSPC that:

- The Panel should consider the principles of general and specific deterrence, remediation and ensuring public confidence.
- Some of the mitigating factors that the Panel should consider include: this is his first time before a discipline panel; by his admissions, he likely shortened and reduced the costs of the hearing; he actually provided services to clients; and his beliefs were mistaken.
- With respect to aggravating factors, Counsel for the College asked the Panel to consider that: the conduct represents a pattern of behaviour (i.e., this is not an

isolated incident of submitting false claims); and he benefitted from his improper use of designations, including his use of the protected title “kinesiologist”, when he was suspended.

[17] In addition, Counsel for the College presented the Panel with a Book of Authorities, which contained six (6) decisions from discipline committees of four health regulatory colleges.

#### *Counsel for the Member*

[18] Counsel for the Member submitted in support of the JSPC that:

- This was the Member’s first time before the discipline committee.
- The Member was co-operative and saved the College time and money.
- The Member’s wrongdoing with respect to filling out the HCAI forms was inadvertent. He was unsure what he was permitted to do and is not expert.
- The payments he received related to work that was actually done; and
- The Member appreciates that the College was only seeking reimbursement of a small portion of the overall costs it incurred in this case (i.e. \$5,000.00).

#### **X. THE PANEL’S ORDER**

[19] The Panel accepts the JSPC presented by the parties and makes an Order as follows:

1. The Member is required to appear before the Panel to be reprimanded at a date to be arranged but, in any event, within one (1) month of the date of this order.
2. Should the Member be granted a new certificate of registration by the College, the Registrar is directed to suspend the member’s certificate of registration for a period of (10) months. The Member’s certificate of registration shall be suspended as of the date he is granted a new certificate of registration. The suspension may be reduced by two (2) months if the Member complies with the provisions of paragraph 3 (with the exception of para 3(d)) within three (3) months of him receiving a new certificate

of registration. In the event that the Member fails to successfully comply with paragraph 3, the balance of the suspension shall be served in its entirety immediately following the third month of the suspension and run continuously without interruption.

3. Should the Member be granted a new certificate of registration by the College, the Registrar is directed to impose the following specified terms, conditions, and limitations on the Member's certificate of registration:

a. The Member is required to successfully complete within six (6) months of the date this suspension takes effect to the satisfaction of the Registrar and at his own expense:

- i. a record keeping course pre-approved by the Registrar; and
- ii. the College's Ethics and Professionalism e-learning module;

b. The Member is required to meet with a mentor, who is a member in good standing with the College, and pre-approved by the College, within three (3) months of the date this suspension takes effect at the Member's expense. The Member shall meet with the mentor to discuss the issues for which the Member was found to have committed professional misconduct and to discuss how to prevent such conduct from occurring in the future.

i. At this meeting, the mentor will develop and complete a learning plan regarding the allegations and breached standards, including a review of the incidents set out in the Agreed Statement of Facts and the Discipline Committee's reasons.

ii. The mentor will provide a report of his or her meeting with the Member, and in all subsequent meetings with the Member, to the College within fifteen (15) days of any meeting.

c. The Member is required, within one (1) month of the date that he first met with the mentor, to submit to an inspection of his record keeping and billing practices with the mentor and to review the learning plan.

d. The Member is required to submit to further inspections by a College approved inspector for a period of one (1) year at his own expense. The inspections shall commence within sixty (60) days of the Member returning to practice following his suspension. The inspections shall include no more than 3 sessions.

i. The inspector will provide a report to the College of all inspections within fifteen (15) days of the inspection.

4. For greater certainty, the Member's obligation to comply with the specified terms, conditions, and limitations on his certificate of registration contained in paragraph 3 is not relieved by serving the entire suspension referred to in paragraph 2 above.

5. The Member shall pay the College's costs fixed in the amount of \$5,000.00 within six (6) months of the date of this order.

## XI. REASONS FOR ORDER

[20] The Panel is aware that when presented with an Agreed Statement of Facts and a JSPC, particularly when the agreement has been negotiated by experienced counsel, as is the case here, we are not to depart from such a joint submission "unless satisfied that the recommended disposition would be contrary to the public interest and would bring the administration of justice into disrepute."

[21] In deciding the appropriate order in this case, we remind ourselves that the primary purpose of these proceedings is protection of the public. In addition, we must consider both the interests of the profession as a whole as well as the particular circumstances of the member.

[22] In considering the public interest, we are mindful that the public must have confidence in the profession's ability to regulate itself effectively and in a manner that protects the public.

[23] When we consider the interests of the profession, we recognize that this Discipline Committee owes a duty to enforce and maintain the high standards of practice that the public expects of our members and that members expect of themselves. In each case, the Discipline Committee must consider the extent to which a message to the profession is required to make it clear that the conduct in question will not be tolerated.

[24] We must consider the unique and particular circumstances of Mr. Christopher Challenger. The order must be appropriate, fair, and reasonable to the Member's circumstances.

[25] In reaching our decision, the Panel considered the submissions of both the Member's counsel, as well as the College's counsel. We considered the following:

- (a) The magnitude of completing false or misleading insurance forms.
- (b) Misleading the Insurance Company and failing to cooperate with its investigation.
- (c) Misleading the College and failing to cooperate with its investigations.
- (d) Falsely identifying himself as an Ontario Psychotherapist, Physician and/or MD with a false College registration number.
- (e) Breaching the record keeping standards of the profession.
- (f) Practising as a Registered Kinesiologist when he was suspended from the College.

(f) The Member's admission that he committed the acts of professional misconduct as set out and admitted by the Member in the following paragraphs of the Agreed Statement of Facts: paragraph 57 (submitting false or misleading OCF Forms and other documents to Economical and other insurers through the HCAI system), paragraph 58 (failing to cooperate with investigations by Economical Insurance Company and the College), paragraph 59 (his record keeping practices), and paragraph 60 (using the protected title "kinesiologist" and holding himself out as a member of the College while his certificate of registration was suspended).

[26] In addition for completeness, we note:

1. The penalties are appropriate and based on similar findings of misconduct. It penalizes Mr. Challenger as well as serving as a deterrent.
2. Mr. Challenger has no prior disciplinary hearing with the College.
3. Mr. Challenger has taken responsibility for his actions and has admitted his guilt.

## XII. THE REPRIMAND

[27] During the hearing, questions regarding the format of the Member's reprimand arose.

[28] Specifically, the Panel was asked to consider and decide whether the reprimand would be delivered in public and/or on or off the record (i.e., delivered before the hearing was concluded and, as such, form part of the record of the proceedings). The Panel was also provided with submissions regarding the information that would be posted on the College's register.

[29] The Panel heard submissions from both parties on these issues as well as advice from its Independent Legal Counsel. Specifically, with respect to the issue of what would be on the College's register, the Panel considered the following:

- Neither *Health Professions Procedural Code* ("the Code") nor College by-laws stipulate the content of a reprimand. However, subsection 23(2) of the *Code* speaks to what must be posted on the College's register, including "The result, including a synopsis of the decision, of every disciplinary and incapacity proceeding, unless a panel of the relevant committee makes no finding with regard to the proceeding."
- The fact of the reprimand as well as any terms, conditions, and limitations imposed on the Member's certificate of registration must be on the website.
- In addition, paragraph 11 of subsection 23(2) of the *Code* provides that the register shall contain "information that a panel of the Registration, Discipline or Fitness to Practise Committee specifies shall be included."

[30] Thus, the Panel concluded it has the authority to order that the reprimand be included on the register.

[31] With respect to the question of whether the Member should receive any reprimand ordered by the Panel in public and/or on or off the record, the Panel considered the submissions of both counsel, which included the following points:

*College Counsel*

- The hearing is open to the public and being transcribed by a reporter. Such transparency instills confidence in the public.
- In addition, the content of the reprimand might figure in the Panel's decision.
- The College's mandate is to protect the public. While it may be difficult for the Member to receive his reprimand in public, doing so adds to deterrence.
- If the reprimand is delivered on the record, it will be transcribed by the court reporter.

- Subsection 36 (3) of the *RHPA* prevents this matter from being introduced in civil matters. However, the record of this hearing can be introduced in criminal matters.

*Counsel for the Member*

- The Member prefers the reprimand to be off the record.
- The Member prefers the content of the record not be on the College's website.
- Publication of reprimand on the website may be related to other legal actions and actions by other professionals.
- It has been a difficult day with spectators at the hearing.

[32] After considering the submissions of both counsel and the advice provided by its Independent Legal Counsel, the Panel decided to deliver the Member's reprimand in public and on the record.

[33] The Panel delivered the following reprimand to the Member:

1. Your conduct is unacceptable to your fellow kinesiologists and to the public. Of particular concern to us is the fact that your conduct involved misconduct set out in paragraphs 57, 58, 59 and 60 of the Agreed Statement of Facts.
2. The result of your misconduct is that you let down the public, the kinesiology profession, and yourself.
3. The fact that you have engaged in misconduct is a matter of significant concern that reflects poorly upon yourself and the profession. You have let down the public which places its confidence in members of this profession.
4. By your actions, you have caused significant damage to the reputation of the profession as a whole and cast a shadow over your own integrity.

5. It is necessary for us to impress upon you the seriousness of your misconduct.

6. We wish to make clear to you that, although the Order we imposed is appropriate in relation to our findings, a more significant Order will likely be imposed by another discipline panel in the event that you are ever found to have engaged in further professional misconduct.

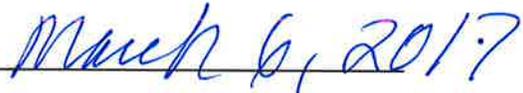
7. The practice of kinesiology is a privilege that carries with it significant obligations to the public, the profession, and to oneself. Through your conduct, you have failed in your obligations.

[34] The Member signed a waiver of appeal (Exhibit #6).

I, Mary Pat Moore sign this Decision and Reasons for Decision as Chairperson of this Discipline Panel and on behalf of the panel members listed below:



Chairperson



Date

Names of Panel members:

Jennifer Pereira, R. Kin.

Ken Alger