

IN THE MATTER OF THE VETERINARIANS ACT, S.B.C. 2010, c. 15

AND

**IN THE MATTER OF
THE COLLEGE OF VETERINARIANS OF BRITISH COLUMBIA and a
hearing before a DISCIPLINE PANEL
of the COLLEGE DISCIPLINE COMMITTEE**

AND

DR. PAVITAR BAJWA

This decision has been corrected at paragraphs 6, 11, 12, 14, 15, 30, 32, 36, 37, 38 and 42 and replaces the earlier version.

**Counsel for the Respondent
Counsel for the College**

**Clea Parfitt
Andrew Gay**

Panel Members

**Keith Bracken, Chair
Dr. Carsten Bandt
Dr. Teresa Cook**

Date of Decision

March 20, 2025

Final Decision of the Hearing Panel on a Citation

[1] The College of Veterinarians of British Columbia (“the College”) alleges that Dr. Bajwa committed professional misconduct by failing to cooperate with the College investigation into a complaint made against him by a member of the public. The College alleges he failed or refused to attend an interview requested by the investigator regarding the complaint. The complaint that caused the investigation is that Dr. Bajwa allowed unqualified staff members to treat the complainant’s dog “Archie”.

[2] Dr. Bajwa denies that he failed to cooperate and argues that the interview was unnecessary in the circumstances because the investigator had all the information it required from other sources.

[3] The Citation alleges that Dr. Bajwa's failure to cooperate in the investigation contravenes s. 52(3) of the Veterinarians Act, SBC 2010, c 15 (*the "Act"*) and constitutes professional misconduct. It further alleges that Dr. Bajwa's conduct violated the College's Professional Standard: "*Registrant Cooperation During Investigations and Accreditations*" (the "Professional Standard").

[4] Dr. Bajwa argues that the requested interview was unnecessary and unreasonable. He claims that he did cooperate with the investigation by offering to respond in writing to questions of the investigator.

[5] The allegations in this case require the panel to define the extent of the obligation of a registrant to cooperate with an investigation authorized by the College.

1. Background Facts

[6] The investigation arose from a complaint of unauthorized practice by a member of Dr. Bajwa's staff. The complaint was received on February 24, 2022, and resulted in an investigation file being opened and given file #22-020. During the investigation conducted by the College, the investigator, Dr. Smetschka, requested that Dr. Bajwa attend for an in-person interview.

[7] The request was made by letter to Dr. Bajwa from the College dated November 24, 2022. A response was requested by December 1, 2022. The letter was also forwarded to Dr. Bajwa's counsel.

[8] In the letter, the investigator referred to and quoted a provision of the Professional Standard that states:

"If requested, attendance at the CVBC for an interview at a mutually agreeable time for the purpose of addressing questions arising during the course of the investigation or accreditation."

[9] Ms. Parfitt, Dr. Bajwa's counsel, responded to the request for an interview by letter on December 9, 2022, and said that "...it is not appropriate or necessary for the College to interview Dr. Bajwa at this time. We ask that any further questions for Dr. Bajwa on this matter be provided in writing." Ms. Parfitt also raised the concern that any responses to questions would be used by the College in other proceedings involving Dr. Bajwa.

[10] Dr. Bergman, the Registrar of the College at that time, responded to Ms. Parfitt by letter dated December 14, 2022. In that letter, Dr. Bergman renewed the request that Dr. Bajwa attend for an interview and pointed out that Dr. Bajwa could have his counsel present for the interview. Dr. Bergman also noted that the interview would be recorded, a transcript would be prepared and made available to Dr. Bajwa. Dr. Bergman's letter also advised that Dr. Bajwa could object if any attempt was made to use the answers given by Dr. Bajwa in an inappropriate manner.

[11] During cross-examination at the hearing of this Citation, Dr. Bergman testified that the College had no intention to use the information beyond the investigation of file #22-020.

[12] It is apparent from the evidence that investigation file #22-020 remains outstanding but the College had not, as at the dates of this hearing, proceeded further with the matter. An order made pursuant to s. 65 of the Act respecting other proceedings involving Dr. Bajwa apparently remains in place, although it has been challenged by Dr. Bajwa.

[13] In a letter to Ms. Parfitt with a copy to Dr. Bajwa dated January 11, 2023, Dr. Bergman advised that if Dr. Bajwa refused or failed to attend for an interview, the matter would be referred to the Investigation Committee of the College for consideration of further discipline action.

[14] On January 16, 2023, Ms. Parfitt wrote to Dr. Bergman to say that Dr. Bajwa would not agree to an interview with respect to the investigation of file #22-020. She also advised Dr. Bergman that Dr. Bajwa was cooperating with the investigation and repeated the request that any necessary questions be put to him in writing.

[15] On January 26, 2023, the Investigation Committee directed the Registrar to issue this Citation alleging a failure to cooperate with the investigation of file #22-020. On February 8, 2023, legal counsel of the College wrote to Dr. Bajwa c/o Ms. Parfitt and advised her of the decision of

the Investigation Committee directing the Registrar to issue a new citation against Dr. Bajwa for failure to cooperate in investigation of the complaint giving rise to investigation file #22-020.

[16] On February 22, 2023, Dr. Bergman wrote to Dr. Bajwa with a copy of the letter to Ms. Parfitt and advised that Dr. Bajwa was required to attend an interview to be conducted virtually by Zoom on March 9, 2023. The College told Dr. Bajwa that he was welcome to have his counsel attend with him. The connection details for the virtual conference were provided to Dr. Bajwa and Ms. Parfitt on March 3, 2023.

[17] On March 8, 2023, Mr. Parfitt wrote to the College and reiterated Dr. Bajwa's objection to the scheduled interview and advised that Dr. Bajwa had undergone some dental work March 7, 2023, and that he was taking Tylenol and morphine and was not well enough to attend the interview. Ms. Parfitt again requested that any questions should be provided to Dr. Bajwa in writing.

[18] The College wrote to Ms. Parfitt to clarify whether Dr. Bajwa was willing to attend but was prevented from doing so by the effects of his dental work, or if he still maintained the position that he was not prepared to attend an interview with the College. Ms. Parfitt did not respond to that letter and the interview was never rescheduled.

[19] Dr. Bajwa did not testify at the hearing. There is no evidence to suggest that Dr. Bajwa was unaware that the College required him to attend for an interview or that he was unaware of the March 9, 2023 date when the College required him to attend.

2. The Position of the College

[20] The College submits it is responsible for the protection of the public and it carries out that responsibility through the admission to practice, regulation of its members, the setting of practice standards, investigation of complaints from the public and, where appropriate, the discipline of its members.

[21] Section 3 of the Act provides:

Duty and objects

- 3 (1) In carrying out its objects, the college must
- (a) protect the public interest, and
 - (b) exercise its powers and discharge its responsibilities under this Act in the public interest.
- (2) The objects of the college are as follows:
- ...
 - (b) to establish, monitor and enforce standards for the practice of veterinary medicine;
 - ...
 - (d) to supervise the practice of veterinary medicine;
 - (e) to receive and investigate complaints against registrants and former registrants and to deal with issues of discipline, professional misconduct, conduct unbecoming a registrant, incompetence and incapacity;
 - ...
 - (g) to govern registrants according to this Act, the regulations and the bylaws; and
 - (h) to administer the affairs of the college and perform other duties through the exercise of powers conferred under this Act.

[22] The College submits the courts have emphasized the importance of the responsibility of professional regulatory bodies to uphold the public interest. For example, in *Pharmascience Inc v Binet*, 2006 SCC 48 at para 36, LeBel J., writing for the majority said:

This Court has on many occasions noted the crucial role that professional orders play in protecting the public interest. As McLachlin J. stated in *Rocket v. Royal College of Dental Surgeons of Ontario*, [1990] 2 S.C.R. 232, “[i]t is difficult to overstate the importance in our society of the proper regulation of our learned professions” (p. 249). The importance of monitoring competence and supervising the conduct of professionals stems from the extent to which the public places trust in them...

[23] LeBel J. went on to refer to *Finney v. Barreau du Quebec*, 2004 SCC 36 at para. 16, where the court held that the primary objective of professional regulators was the protection of the public and not to provide services or to protect the collective interests of their members. The court then said:

The privilege of professional self-regulation therefore places the individuals responsible for enforcing professional discipline under an onerous obligation. The delegation of powers by the state comes with the responsibility for providing adequate protection for the public. *Finney* confirms the importance of properly discharging this obligation and the seriousness of the consequences of failing to do so.

[24] The College argues the importance of protection of the public can readily be seen in these statements from the Supreme Court of Canada. It argues that a self-governing profession is responsible for the expeditious investigation and resolution of complaints from members of the public. It says it is important that the procedure be fair, transparent and efficient and that the process not be sidetracked by the lack of cooperation of a registrant. *Syen (re), APEGBC*, File No T16-038 and T16-080, at para. 39.

[25] The College says registrants of the College must act in accordance with the Act and the Bylaws imposed pursuant to the Act. In addition, the College has published the Professional Standard for the guidance of registrants. That document was published in 2018 and is available to all registrants of the College.

[26] Section 52(3) of the Act provides:

52 (1) The investigation committee must investigate a complaint, other than a complaint dismissed under section 51 [*dismissal of complaint by investigation committee without investigation*].

...

(3) A registrant must cooperate with an investigation, including providing information or records requested by the investigation committee.

[27] The College points out the Bylaws of the College provide that if a registrant refuses to cooperate with an investigation the Investigation Committee may direct the Registrar to either add the allegation of failing to cooperate to the existing citation or, direct the Registrar to issue a separate citation against the registrant. In this case, the Registrar issued a separate citation.

[28] The Professional Standard sets out the expectations for registrants who are under investigation or inspection:

3. If requested, attendance at the CVBC for an interview at a mutually agreeable time for the purpose of addressing questions arising during the course of the investigation or accreditation.

[29] The College argues the Bylaws of the College and the Professional Standard provide guidance respecting the duties of a registrant involved in an investigation. At paragraph 207 the Bylaws state:

Duty to the college

Section 207

(1) A registrant must at all times conduct him or herself in a manner that demonstrates understanding of, respect for and a readiness to be bound by the Act, the regulations and the bylaws.

(2) A registrant must be familiar with and adhere to procedures and rules as may be approved by the council.

(3) A registrant must respond promptly and appropriately to any communication from the college where a response is requested.

3. Dr. Bajwa's Position

[30] Dr. Bajwa submits that the right of the College to conduct investigations into complaints from the public is not unlimited. He argues that the College is governed by the principles of procedural fairness, due process and reasonableness. Dr. Bajwa also submits that the College placed itself in the position of an adversary to Dr. Bajwa by its decision to pursue restrictions on his practice by way of the s. 65 application, and as a result was no longer a neutral and unbiased party respecting investigation file #22-020.

[31] Dr. Bajwa also argues that the Professional Standard upon which the College relies in part, is not a binding standard in that it has never been properly incorporated into the College Bylaws. He submits that in this proceeding, Dr. Bajwa's conduct cannot be assessed by that standard.

[32] Dr. Bajwa further submits that the College improperly combined proceedings related to complaint investigation file #22-020 and the proceedings related to the order pursuant to s. 65 of the Act and by so doing created a situation where attending for the requested interview would put Dr. Bajwa in an untenable and unfair situation.

[33] Dr. Bajwa does not dispute that he declined to attend the interview requested by Dr. Smetschka, the investigator for the College. He says that he had legitimate reasons to decline to attend the interview and argues that the determination of the College to pursue the in-person interview through a separate citation has resulted delay of more than two years in the initial investigation of the complaint of unauthorized practice. Dr. Bajwa submits that had the College agreed to put the questions it wanted answered to him in writing, the College would have received the information it wanted soon after the request for the interview was made.

[34] Dr. Bajwa says the requirements of due process and reasonableness also govern the investigative process. Dr. Bajwa argues that the right to have legal counsel to assist him during the investigation is part of the fundamental right to due process. He argues that assistance includes assistance in preparing responses to questions put to him by the investigator.

[35] Dr. Bajwa says that the investigation into the original complaint resulted in a restriction upon Dr. Bajwa's practice pursuant to s. 65 of the Act and the College also conducted inspections of his two clinics in Surrey, British Columbia. Thus, Dr. Bajwa argues he was in an adversarial position with the College at the time the interview on this matter was requested and was justified in not attending an interview.

[36] Dr. Bajwa argues that the actions of the College to obtain an order of the Investigation Committee imposing rules on his practice was different and more adversarial in nature than a standard investigation of a complaint from a member of the public. He argues that by using the s. 65 procedure, the College was "building a case" against him and the investigation was no longer being conducted in a neutral and objective manner.

[37] In addition, he argues that the interview was unnecessary because when the request for an interview was made the investigator was already in possession of a substantial body of information that exceeded the volume of information that would normally be available in an investigation. The College already had affidavits from the original complainant in investigation file #22-020, and others related to that complaint, as well as a statement and affidavit from Dr. Bajwa respecting the s. 65 Order, and his response to the original complaint letter as well as his clinical notes and records. He argues there was no need for any further information from him.

[38] He also says that it was made clear to him by the investigator that questions would be put to him about discrepancies that apparently existed between other accounts of events in the related proceedings and that the College intended to rely on all the information available in considering the investigation into file #22-020. He says another reason he declined to attend an in-person interview was because of the "multiplicity of legal proceedings" that were ongoing between him and the College.

[39] Dr. Bajwa says it was an improper purpose of the in-person meeting to attempt to reconcile certain parts of the evidence that appeared to be in conflict. He says that process required the investigator to make findings of credibility. He submits that it is not appropriate at the investigation

stage of a complaint for the investigator to make any findings of credibility. Rather, it is the role of the investigator to simply gather information in a fair and impartial way and not to make findings of any kind. Dr. Bajwa submits that the task of making findings of fact and assessing credibility of witnesses belongs exclusively to panels of the Discipline Committee hearing evidence respecting a citation.

[40] It is further argued that a potential court application could result in Dr. Bajwa being cross-examined on his answers to questions put to him by the investigator at an in-person interview. Dr. Bajwa argues that requiring him to attend an interview where he would be required to answer questions orally rather than responding to written questions would place him at an unfair disadvantage.

[41] He says that the request that he attend an interview in the face of the adversarial relationship between him and the College was an intentional attempt to interfere with his right to counsel in a situation where he was facing multiple legal proceedings and would have prevented him from providing fully considered responses to questions rather than being forced to answer them orally in “real time”. He further submits that the presence of legal counsel at an interview would not fully protect him from procedural unfairness.

[42] Next, Dr. Bajwa argues that the College’s failure to keep the proceedings arising from the original complaint under investigation file #22-020 separate allows the College to use the information obtained in one proceeding in the other proceedings thus putting Dr. Bajwa in the unfair position of being compelled to provide information in an interview that could be used against him in other proceedings. He further argues that is a violation of his rights under s.13 of Charter of Rights and Freedoms.

[43] This leads to the submission that there were no legitimate questions that had not already been answered. Dr. Bajwa says the College had several accounts of the facts related to the complaint File 22-020. Therefore, he argues that there was no longer any legitimate need for an interview.

[44] Dr. Bajwa also submits that published Professional Standard of the College is not binding upon registrants. He argues that the Practice Standard is not a statutory instrument in that it has not been passed as a Bylaw of the College and therefore it cannot create a duty upon which to base a claim that Dr. Bajwa failed to comply with a standard of practice.

[45] Dr. Bajwa says the only requirement to cooperate in an investigation is contained in s.52(3) of the Act that provides:

52(3) A registrant must cooperate with an investigation, including providing information or records requested by the investigation committee.

[46] He submits he has complied with the Act by providing his records as requested and by his willingness to answer questions put to him in writing. He says the Bylaws do not compel him to attend an interview and the Professional Standard is not binding.

[47] Dr. Bajwa says further that even if we find that he was required to attend an interview in person, that finding does not constitute professional misconduct. He says that this is an unusual and highly ambiguous situation where his conduct was intended only as an attempt to preserve his legal rights. He submits the Citation should be dismissed.

4. Issues

[48] The first issue is to determine the extent of a registrant's obligation to cooperate with an investigation resulting from a complaint. The second issue is whether Dr. Bajwa complied with the Professional Standard.

5. The Duty to Cooperate

[49] The authorities demonstrate that the investigatory powers of the College should not be interpreted narrowly. Several authorities establish the principles of interpretation respecting the duty of a registrant to cooperate with an investigation. *A Lawyer v. The Law Society of British Columbia*, 2021 BCSC 914, at paras. 63-65, aff'd 2021 BCCA 437. In that case, the court said that a "key principle" of the jurisprudence respecting professional regulators is that the powers of a regulator should not be interpreted narrowly "...as doing so may preclude it from employing the best means by which to uncover the truth and protect the public".

[50] It is also clear that self-regulated professionals have the fundamental obligation to cooperate with their profession's governing body. That obligation applies even if the registrant believes the investigation is unfounded or believes the request from the regulator is unnecessary or improper. The registrant cannot impose conditions upon the regulator.

[51] In *James v. Real Estate Council of Alberta*, 2024 ABQB 860, at paras. 36-37, aff'd 2006 ABCA 222, Macklin J. said:

36. It is important to note the fact that the real estate industry, like the legal profession and others, is self-regulating. R.E.C.A. was statutorily created, and one of its key functions is to ensure that its members, like Mr. James, abide by the rules and Code of Conduct set by R.E.C.A. for the purpose of protecting members of the public.

37. Crucial to its ability to regulate is its ability to rely on the co-operation of its members in any investigation of behaviour alleged to be contrary to the rules and code. ***That co-operation must be provided in all cases, regardless of the view the investigated member has of the merits of the complaint.*** Needless to say, if his or her view of the merits is right, the complaint will be dismissed, but that is not for the member to decide, nor is it to constitute a reason for the member not to co-operate. **(Emphasis added)**

[52] That principle applies in this case. Dr. Bajwa, through his counsel, tried to put conditions on his cooperation by saying that he was only prepared to answer questions from the investigator if they were put to him in writing. As was noted in *Wise v. Law Society of Upper Canada*, 2010 ONSC 1937, at paras. 20-24, such conditional cooperation from a registrant can impede the Regulator and play into the hands of a registrant who did not want to cooperate with the regulator.

[53] Similarly, we believe that a registrant is required to cooperate even if the conduct that is the subject of the complaint is also the subject of other ongoing investigations or proceedings. See *Re Chandra*, [2018] OCPD No. 27 at paras. 81, 84-86.

6. Does the Duty to Cooperate Require Attending an Interview?

[54] The first step in our analysis is to determine the extent of a registrant's obligation respecting the investigation of a complaint. Perhaps a useful starting point is s.52(3) of the Act that requires a registrant of the College to cooperate with an investigation.

[55] Dr. Bajwa says that the obligation upon a registrant pursuant to s.52(3) is to provide information legitimately required for an investigation and that it is not a requirement to comply with any request from the College "whether reasonable or unreasonable". He argues that s.52(3) does not create an obligation to attend an interview. He also says that the word "including" in the section should be construed as an indication of the nature of the registrant's obligation.

[56] We believe that the proper interpretation of s. 52(3) can be discerned from the plain language of the text. The section clearly has as its objective or purpose, the creation of an obligation upon a registrant to cooperate with an investigation. We do not accept the words “including providing information or records requested by the investigation committee” limit the scope of the obligation.

[57] We find support in our interpretation in the purpose of the Act as a statute dealing with the governance of a self-regulating profession that the purpose of the section is the protection of the public. As such, we believe the section should be given a liberal interpretation. Section 3 of the Act sets out the “scheme” of the Act and we find that section also supports our interpretation of s. 52(3).

[58] It is perhaps useful to consider the meaning of the word “cooperate”. The Concise Oxford English Dictionary (11th ed.) defines the word cooperate as:

“...to work together towards the same end – help someone or comply with their request.”

Applying that definition in the context of the Act, the “same end” is the protection of the public respecting the investigation of complaints against registrants of the College.

[59] It is also our view that even though the Professional Standard has apparently not been passed as a bylaw of the College, it is clearly intended to provide guidance to the registrants of the College respecting what is required of them if they are subject to an inspection or investigation. The Professional Standard stipulates that a registrant is expected to attend for an interview if requested during an investigation.

[60] The Professional Standard claims authority for the above provision can be found in the Act and s. 207 of the Bylaws. That section states:

207(1) A registrant must at all times conduct him or herself in a manner that demonstrates understanding of, respect for and a readiness to be bound by the Act, the regulations and the bylaws.

(2) A registrant must be familiar with and adhere to procedures and rules as may be approved by the council.

(3) A registrant must respond promptly and appropriately to any communication from the college where a response is requested.

[61] We accept the submissions of the College that the duty to cooperate with an investigation by a registrant of the College as contained in s.52(3) of the Act is mandatory. We find that the duty to cooperate constitutes a broad obligation which must be interpreted liberally and in a manner that is consistent with the obligation of the College to protect the public.

[62] Clearly, it is in the public interest to find and resolve any issues that put members of the public at risk. Even events that begin as small issues can have broad and serious consequences. It is therefore essential that a registrant and a regulator cooperate to identify a problem and correct any contributing conduct. An interview provides an early opportunity for the investigator and the registrant to have a full and frank discussion about what happened and to take steps to correct any problem found to exist.

[63] Next, Dr. Bajwa argues that his conduct after the date the Citation was authorized cannot be considered in reaching a decision in this matter.

[64] The Investigation Committee directed the Registrar to issue the Citation for failure to cooperate with the investigation on January 26, 2023. The Citation was not issued until March 27, 2023. Dr. Bajwa submits that his conduct after January 26, 2023, is not relevant to the Citation as it could not have been in contemplation of the Investigation Committee when the direction to the Registrar was issued.

[65] This is relevant to our analysis as it is alleged that the investigator issued a direction for Dr. Bajwa to attend an interview on March 9, 2023. The direction was contained in a letter from the Registrar to Dr. Bajwa and his legal counsel on February 22, 2023. The letter was written upon direction of the Investigation Committee as part of its resolution to open a new file and issue a Citation.

[66] It is clear from the letter that the direction to attend the March 9, 2023 interview originated with the Investigation Committee. It is also apparent that the direction was intended as a “last chance” to satisfy the requirement of cooperation with the investigation. As such, we find that the conduct of Dr. Bajwa in failing to attend is conduct that can be considered in reaching our conclusion.

[67] Having said that, we also find that Dr. Bajwa, through his counsel, had, prior to March 9, 2023, clearly failed or refused the interview request of Dr. Smetschka prior to the issuance of the Citation.

[68] Dr. Bajwa did not attend the scheduled interview on March 9, 2023. It had been scheduled to be conducted virtually and Dr. Bajwa was invited to have his legal counsel present. He was reminded of the appointment and the Zoom meeting ID and passcode by email to him and his counsel on March 3, 2023, and again on March 8, 2023.

[69] On March 8, 2023, his counsel wrote to the College and advised that Dr. Bajwa was unable to attend on March 9, 2023, as he had undergone dental treatment the day before and was "...on morphine and Tylenol" and he was not well enough to work. He offered to provide a doctor's note, but the College replied to say a note was not necessary.

[70] It was later shown through evidence from the practice investigation at his clinic that he had worked on March 9, 2023, and had performed surgery that day at his clinic.

[71] The letter from Dr. Bajwa's counsel left the College confused as to whether Dr. Bajwa was refusing to attend the interview or if he was unable to attend. In her letter of March 8, 2023, Ms. Parfitt repeated Dr. Bajwa's reasons for not wanting to attend an interview with the investigator.

[72] It is our view that the decision of the investigator to seek the cooperation of Dr. Bajwa by attending an interview was not a debatable suggestion of the investigator but an obligation pursuant to the duty to cooperate with the investigation. If a professional regulator must justify its request for an interview or other forms of cooperation, it will divert the investigation into debates over the request and delay the investigation and resolution of complaints. The inevitable delays in the processing of the complaint will also cause the public to lose confidence in the self-regulation authority of the College.

7. Was Dr. Bajwa Justified in Not Attending an Interview

[73] Dr. Bajwa continues to maintain his objections to the investigation and Citation in this case on various procedural grounds. Those objections have been ruled on in a previous application and will not be revisited here other than to say that we find it useful to refer to the decision in *Syed (Re)*, *supra.*, *citing Re Hartford, P. Eng. 2006 at para. 39*, where the panel commented:

As a self-governing profession that is responsible, in the public interest, for regulating members, it is important that complaints from the public are addressed expeditiously in a fair and transparent manner. It is not in the public interest or the interest of the Association, that the complaints procedure be stifled, because, for whatever reason, a member declines to respond to legitimate regulatory requests or maintains such scant records, that documents cannot be retrieved or examined.

[74] Another issue raised by Dr. Bajwa is that he had requested, but not fully received, disclosure of all relevant materials prior to the request for an interview. In her letter to the College of December 9, 2022, Ms. Parfitt said that Dr. Bajwa did not have full disclosure from the College respecting the s. 65 proceeding.

[75] On December 14, 2022, the Registrar wrote to Ms. Parfitt and said that the issue had been previously addressed by legal counsel for the College and would not be discussed further other than to say that the College does not provide “full disclosure” during the investigative stage of a file.” Ms. Parfitt wrote to the Registrar of the College again on January 16, 2023, and noted that in her letter of December 9, 2022, she requested materials related to the file be provided and said, “We will be unable to provide anything further on this complaint until those materials are provided.”

[76] In her testimony at the hearing, Dr. Bergman, the Registrar of the College at the time, testified that while some information related to the s. 65 application was provided to Ms. Parfitt, full disclosure is not provided until a citation is issued.

[77] We find the Registrar’s position on that issue to be reasonable. It is a similar practice followed in other contexts as well. For example, in a criminal case, where there is considerable protection of an accused’s rights, disclosure is not provided until the information charging the offence(s) has been filed with the court. Similarly, in a civil action disclosure occurs after the action is commenced, not before. An investigation cannot be properly managed if disclosure is provided before the investigation is complete. Early disclosure may compromise an investigation or result in delays or other problems.

[78] Dr. Bajwa also declined to agree to an in-person interview because he was concerned that anything he said in the interview would be used against him in other proceedings. He referred to s.13 of the Charter of Rights and Freedoms respecting this point. That section provides:

A witness who testifies in any proceedings has the right not to have any incriminating evidence so given used to incriminate that witness in any other

proceedings, except in a prosecution for perjury or for the giving of contradictory evidence.

[79] However, it is our view that section is intended to limit the use of evidence provided by a witness rather than create a risk of self-incrimination. There are also evidentiary rules that control the use of compelled testimony in any other proceeding. The College argues that concern is speculative, and the relevant information largely arises from Dr. Bajwa's appeal of the s. 65 Order made by the College. As already noted above, the process of a registrant answering questions at an interview does not fall within the meaning of the words "testifies in any proceedings" as those words are used in s.13 of the Charter.

[80] Dr. Bajwa also argues that there was no investigative need that required him to attend an interview. He says that the College had obtained all the information it required through the s. 65 application, and it was fully aware of all the information it required, including an affidavit filed by Dr. Bajwa in support of his appeal of the s. 65 order.

[81] Dr. Bajwa also says that he did cooperate with the investigation by providing his clinical records and offering to answer questions provided they were put to him in writing. Associated with this submission is the argument that one of the purposes of the interview was to assess credibility of potential witnesses which Dr. Bajwa says is the exclusive jurisdiction of the discipline panel at a hearing. He argues that an investigator has no responsibility or authority to consider or assess the credibility of potential witnesses.

[82] With respect, we disagree with both arguments. It is not the right of a registrant to decide how an investigation is to be conducted. By their nature, investigations do not proceed along defined, predictable lines. Each investigation is different, and the investigator must have the latitude to determine the direction of the investigation as it unfolds. The initial line of inquiry may turn out to be unfruitful and be abandoned in favour of a different direction. In the context of a complaint against a registrant this discretion is important. The registrant does not have the right to direct or control the investigation, nor should the investigator be required to debate the steps in the investigation or be subject to conditions imposed by the registrant.

[83] It is also our view that the investigator be able to consider issues of credibility as the investigation progresses. Surely, any investigation involves assessing whether the information available to the investigator is credible. It is doubtful that a registrant of a profession would agree

they should be subjected to a lengthy investigation upon information that the investigator did not believe was at least worthy of belief. Investigations of all types, by their very nature require some assessment of the credibility of information gathered. We do not agree that it is beyond the ambit of the investigator to assess credibility. It must be remembered that an assessment of credibility of the investigator is not final and conclusive.

[84] Dr. Bajwa argued that the investigator's authority is not unlimited. He refers to *Baker v. Canada*, [1999] 2 S.C.R. 817, at paras. 21 and 22, and *Kane v. Bd. Of Governors of U.B.C.*, [1980] 1 S.C.R. 1105. However, again with respect, it is our view that Ms. Parfitt conflates the investigation stage of a complaint and the hearing of a citation by the discipline panel.

[85] The protections provided by *Kane* at the hearing of a complaint exist to ensure that a discipline hearing is conducted with a high level of fairness given the professional jeopardy involved in a proceeding that could result in restrictions upon or the loss of a registrant's professional status. During the investigation stage the registrant is arguably not in any jeopardy and certainly not in the same jeopardy as a registrant is at the hearing of a citation.

[86] Dr. Bajwa referred to the decision in *Kuntz v. The Saskatchewan Association of Optometrists*, [1992] S.J. No 644 (QB). In that case, the court quashed a decision of the Discipline Panel that found Dr. Kuntz guilty of professional misconduct for failing or refusing to produce certain documents to a chartered accountant for the purpose of determining whether Dr. Kuntz had engaged in a conflict of interest.

[87] The court described the issue at para. 17:

In the case before me the investigator is a chartered accountant or other person designated by council. The investigation by such person is "for the purpose of ascertaining and reporting whether such member has engaged in a conflict of interest"[my emphasis]. The task is not simply the gathering of information for a decision to be made by some other body. **The investigator is required, with the assistance of the evidence received from the member, to make a decision as to whether the member has engaged in a conflict of interest, ie, an action which would place the member in breach of the bylaws of the Association.** (Emphasis Added)

[88] That is not the situation here. Dr. Bajwa was clearly advised of the nature of the investigation and was clearly aware of the purpose of the process. More importantly, the

investigator in this case was not required to make a finding that would lead directly to a breach of the Act or Bylaws, but rather to try and ascertain the facts underlying the complaint and to report what was found to the Investigation Committee.

[89] As the College points out in its reply submissions, fairness requirements are lower at the investigation stage of a proceeding than they are at a disciplinary proceeding. *Kuny v. College of Registered Nurses of Manitoba*, 2017 MBCA 111 at paras 22-33.

[90] Still, as the College accepts in its reply submissions, the College is not free to conduct itself in a manner that would "...amount to an abuse of process, or pursue an improper motive, or engage in discriminatory conduct, or take any action that is not authorized by statute or is otherwise unlawful." In any event, upon consideration of the evidence in this case, we do not find that the College has engaged in any improper conduct that would constitute an abuse of Dr. Bajwa's rights or that were contrary to the Act.

[91] Dr. Bajwa also notes in his submissions that the insistence of the College that he attend for an interview was responsible for the lengthy delay in the process related to File No. 22-020, the original complaint. No doubt there is delay, however, that delay could have easily been avoided had Dr. Bajwa simply attended for the interview with his counsel and answered any appropriate questions put to him.

[92] Upon our review of the evidence and submissions, we find that Dr. Bajwa failed or refused to comply with the requirement to attend for an interview as requested by the investigator. We also find that he had no reasonable excuse not to attend.

[93] The correspondence between the College and Dr. Bajwa's counsel clearly indicates that Dr. Bajwa was not prepared to attend an interview to be conducted virtually even with his counsel present. His suggestion that any questions from the investigator be put to him in writing was, in our view, an attempt to avoid answering questions directly put to him and an inappropriate effort by Dr. Bajwa to set the terms of the investigation.

[94] One of the requirements of a registrant in a self-regulated profession is to cooperate with any investigation of a complaint. That is clear from the decisions of *Pharmascience v. Binet*, and *Syed*. The purpose of the cooperation requirement is clearly public safety. The requirement to cooperate with an investigation includes the obligation to attend for an interview. That

requirement is set out in the Professional Standard, and we find that Standard gives meaning to the cooperation requirement in s. 52(3) of the Act.

[95] When a professional college is engaged in the investigation of a complaint, the obvious purpose is to determine whether there is merit in the complaint. The purpose of an interview is to have frank and fulsome discussion with the registrant who is the subject of the complaint to find out what happened so that steps can be taken to ensure that if any error occurred it does not happen again.

[96] By speaking directly with a registrant, an investigator can receive a first-hand explanation of what happened, and the registrant is given an early opportunity to clarify facts and to explain the course of conduct that gave rise to the complaint. It may be that the registrant's explanation of the facts will result in an early resolution of a complaint. It may also be that the interview may lead to a correction of a poor practice, even one that has been commonly followed without previous harm. In that way, the safety of the public is enhanced. The primary purpose of the interview is not to obtain admissions from the registrant to support a planned discipline proceeding. The purpose is determining what facts led to the complaint in the first place.

[97] We do not accept that the issuance to the s. 65 Order under the Act that placed restrictions on Dr. Bajwa's practice, or his yet to be heard appeal of that order created either a "multiplicity of proceedings" or an adversarial situation between Dr. Bajwa and the College or its investigator, such that it was impossible for Dr. Bajwa to attend an interview. We do not accept that a registrant has the right to have questions put in writing to be answered by counsel. We agree with the submission of the College that it is vital that investigators and the Investigation Committee receive full cooperation from registrants.

8. Conclusion

[98] We find that Dr. Bajwa was required to attend an interview as requested by Dr. Smetschka as part of his duty to cooperate with the investigation under the Act and that Dr. Bajwa failed to comply with that duty.

[99] We find that by failing to cooperate with the investigation Dr. Bajwa has committed professional misconduct. It is a clear violation of s. 52(3) of the Act, and the guidance provided

to all registrants of the College by the Professional Standard. Dr. Bajwa was given several opportunities to comply with the request to attend an interview and he declined to do so.

[100] The investigator agreed to conduct the interview virtually and in the presence of Dr. Bajwa's counsel. When he was provided with a final opportunity to attend, he said he was unable to because of dental treatment, but the dental treatment did not prevent him from working at his clinic and performing surgery on the day set for the interview.

[101] We find Dr. Bajwa breached s.52(3) of the Act by failing to cooperate with the investigation and by failing or refusing to attend an interview respecting the matter as requested by Dr. Smetschka. Accordingly, we find the allegations set out in paragraphs 1, 2, and 3 of Citation #23-012 have been proven by the College and the result is that Dr. Bajwa is guilty of professional misconduct.

[102] Pursuant to Section 61(6)(b)(ii) of the Act this Panel, having made an order under Section 61 of the Act, hereby notifies the Respondent that he has the right to appeal that order to the Supreme Court under s. 64 of the Act.

[103] The Panel directs the College to publish its decision as provided for in Section 68(1)(a) of the Act.

Keith Bracken

Mr. Keith Bracken

Carsten Bandt

Dr. Carsten Bandt

Teresa Cook

Dr. Teresa Cook