



**Name of Registrant:** - Emily Forbes  
(referred November 2, 2012)

**Dates of Hearing:** October 2-4 2013; continued October 16-18;  
January 6, 7 and 9 2014

**Decision and Reasons**

In a hearing held on October 2, 3, 4, 16, 17 and 18, 2013, and January 6, 7 and 9 2014, a Panel of the Discipline Committee found Ms. Forbes guilty of professional misconduct in that she contravened the *Dental Hygiene Act, 1991*, or the regulations thereunder in that she engaged in conduct that was disgraceful, dishonourable or unprofessional in that she contravened or failed to maintain the standards of practice of the profession and conferred a benefit to a person for the referral of a client.

### **Response to the Allegations**

Emily Forbes pleaded not guilty and denied the allegations in the Notice of Hearing.

### **Withdrawal of Registrant from Participation in the Hearing**

Ms. Forbes attended the first seven days of the hearing and was represented by legal counsel Mr. Leonard Max. However, on the morning of January 7, 2014, Mr. Max appeared before and informed the Panel that he was instructed to take no further part in the proceedings. He told the Panel that Ms. Forbes had exhausted her financial resources and was withdrawing from participation. (No evidence regarding financial resources was put before the panel). The Panel was concerned about the serious consequences of the registrant withdrawing from the case. It asked Mr. Max to communicate to Ms. Forbes that she has the opportunity to continue without legal counsel. After discussing the matter with Ms. Forbes, Mr. Max returned to inform the panel that Ms. Forbes thanked the Panel for this opportunity but declined it. It was her choice to withdraw from participating any further in the hearing. This put the Panel in the difficult situation of deciding how to deal with the evidence-in-chief of Ms. Forbes, which was untested by cross-examination on account of her withdrawal from the hearing (cross-examination of Emily Forbes had only just commenced on January 6, 2014). The Panel chose to proceed with the hearing in the public interest, despite the withdrawal, as it was legally entitled to do. The

Panel was advised by independent legal counsel, and understood that even in the absence of the Registrant, the burden of proof remains on the College. The College has the obligation in a discipline hearing to prove the allegations made to the requisite standard of proof, which is on the balance of probabilities.

The Panel determined that little or no weight could be given to the testimony of Ms. Forbes given her decision to withdraw from the hearing before her evidence could be tested by cross-examination.

### **The Evidence**

The Panel heard oral testimony from Dr. Barry Doerksen (an Ottawa dentist), Lisa Kelly (the College's expert witness on standards of practice in dental hygiene) and Sarah Marceau (College investigator). It also heard oral testimony from Emily Forbes, before her withdrawal from participation in the hearing. There was also extensive documentation including client charts admitted in evidence.

The Panel understood that on issues relating to the standard of practice of the profession, it must have evidence acceptable to the Panel on what the standards of practice are before a finding can be made that a dental hygienist has contravened or failed to maintain the standards. Ms. Lisa Kelly was accepted by the Panel as qualified to provide opinion evidence as an expert on the standards of practice of dental hygiene. Ms. Kelly is an educator as well as a clinical practitioner, treating a patient population in Sudbury. The Panel found her to be a fair and unbiased witness. She was thorough, clear and comprehensive. The Panel accepted her testimony as to what the standards of practice of dental hygiene are in Ontario and on the failure of Emily Forbes to maintain these standards in a number of areas described below.

The Panel understood that if there is a responsible and competent body of professional opinion that supports the registrant's practice standards, it would not find the Registrant guilty of failure to meet professional standards. However, no expert evidence was called on behalf of the Registrant, and there was no evidence whatsoever of a responsible minority opinion that supported the practice standards of Ms. Forbes.

The Panel understood that it was not to hold Ms. Forbes to a standard of perfection. The Panel accepted the evidence of Ms. Kelly that Ms. Forbes failed to maintain the minimum standards of practice of the profession.

### **Findings and Reasons for Findings**

**Allegation 3 – It is alleged that in or about 2010, 2011, Ms. Forbes failed to maintain the standards of practice of the profession in relation to one or more of the clients listed in Appendix A [to the Notice of Hearing], in that she:**

**Allegation 3(a) – Failed to place fillings and/or sealants despite documenting she did, or, in the alternative, improperly placed fillings or sealants.**

The College proceeded with the alternative allegation only, that Ms. Forbes improperly placed fillings or sealants (rather than that she falsely documented placing them when she did not actually place them).

The Panel heard the testimony of Dr. Barry Doerksen, a practicing dentist in the City of Ottawa Dental Program, that six clients had issues related to sealants or fillings shortly after they were seen by Ms. Forbes.

Dr. Doerksen went through the charts of these patients in his testimony, and said that the sealants or fillings for the following clients of Emily Forbes were not present when the clients were examined, despite Ms. Forbes indicating that she had placed sealants or fillings only a few weeks earlier.

Although it was recognized that sealants and fillings do sometimes fall out, Dr. Doerksen and Ms. Kelly both testified that this was a high number of failures since sealants often last for years and temporary fillings last for many months. The Panel accepted their testimony and found that this was a result of their improper placing by Emily Forbes.

The Panel found that Ms. Forbes improperly placed sealants or fillings in the following clients documented in Exhibit 3:

- LB (Tab 1) (temporary fillings missing on teeth 21 and 13)
- HI (Tab 2) (no sealant present on tooth 26)
- KM (Tab 3) (no temporary filling on tooth 26)
- AI (Tab 4) (no temporary fillings on tooth 36 - no sealant on tooth 46)
- KN (Tab 6) (no temporary fillings on teeth 51, 52, 61)
- CN (Tab 7) (no sealant on tooth 16)

The Panel found that this constitutes a failure to maintain standards under paragraph 2 of Section 15 of the Regulation.

If the Panel had not made that finding, it would have made the findings sought, in the alternative, under paragraph 3, 4, 5, or 52 of section 15 of Ontario Regulation 218/94.

### **Allegation 3(b) – Placing temporary fillings in clients’ teeth using permanent material**

The Panel accepted Lisa Kelly’s expert evidence that Ms. Forbes failed to maintain the standard of practice of the profession when she used permanent material for temporary fillings. The evidence was that she did this when placing temporary filling in both adults and children. These included AD (Tab 11), FK (Tab 15), MA (Tab 18), NA (Tab 19), JK-C (Tab 20), SG (Tab 21), R-SG (Tab 22), JJ (Tab 24), CM (Tab 25), and HM (Tab 26).

The Panel accepted the testimony of Ms. Kelly that she had not heard of dental hygienists using permanent filling material for temporary fillings, that there was no purpose in doing it, and that it could lead to further damage to a compromised tooth when that material later had to be removed to place the permanent filling.

Dr. Doerksen who was not a dental hygienist, did not testify as an expert on standards of practice of dental hygienists, but when asked in cross-examination he supported the opinion of Ms. Kelly on why permanent material was not appropriate for temporary fillings. He testified that there were multiple reasons why a practitioner would not use permanent material,

including the fact that permanent material does not have the properties one looks for when placing temporary restorations, such as malleability, ease of removal and medication. He was also concerned that using permanent material could lead to more damage to an already compromised tooth structure when the material was later removed in order to place the permanent filling.

The Panel was presented with a dental supply company commercial catalogue that offered a range of material to be used for permanent and temporary fillings. The Panel found that this did not establish a standard of practice and gave little weight to the argument that this created confusion. The use of this catalogue was not put to either Lisa Kelly or Dr. Barry Doerksen when they testified, and there was no expert evidence that supported the use of permanent material for temporary fillings.

The Panel found that Ms. Forbes' use of permanent filling material for temporary fillings for the above ten clients constitutes professional misconduct under paragraph 2 of section 15 [contravening or failing to maintain a standard of practice].

If the Panel had not made that finding, it would have made the findings sought in the alternative, under paragraph 3, 4, 5, or 52 of Section 15, of Ontario Regulation 218/94).

**Allegation 3(c) – Failed to ensure that appropriate referrals to a qualified medical or dental practitioner were made.**

The Panel accepted Lisa Kelly's expert evidence and the evidence in the charts that Emily Forbes failed to ensure that appropriate referrals were made to a dentist in a timely and appropriate manner in the following cases, where conditions warranted it: Clients KM (Tab 3) FK (Tab 15), AI (Tab 4), JK-C (Tab 20), AD (Tab 11), JJ (Tab 24), MA (Tab 18), and HM (Tab 26).

The evidence disclosed that some of those clients did see a dentist, because they were called by Ottawa Public Health to come in after Ottawa Public Health, as Payor, received Ms. Forbes' accounts for treatment to those clients. Ottawa Public Health was trying to ensure that the clients received the treatment needed. It was only by virtue of the fact that it was essentially

auditing Ms. Forbes, that those clients were seen by a dentist relatively soon after seeing Ms. Forbes. It was not as a result of a referral by Ms. Forbes.

The charts of Ms. Forbes are full of examples where no reference at all is made or some vague reference to suggesting the client should see a dentist is included, without a proper referral having been made.

The Panel found that Ms. Forbes failed to ensure that appropriate referrals were made to a qualified dentist and that this constituted professional misconduct under paragraph 2, for contravening or failing to maintain a standard of practice.

If the Panel had not made that finding, it would have made the findings sought in the alternative under paragraph 4, 5 or 52 of Section 15 of the Regulation.

### **Allegation 3(d) – Dispensed chlorhexidene for use by clients at home**

The Panel found that Ms. Forbes failed to maintain the standard of practice of the profession for dispensing chlorhexidene to client CM (Tab 25) when that clearly is not permitted.

Dental Hygienists may only dispense drugs in accordance with the drug regulations. At the time in question (and still to this day) there are no drug regulations in force under the *Dental Hygiene Act, 1991*, that would permit dental hygienists to dispense drugs.

The charting of Ms. Forbes for CM (Tab 25) is clear that she dispensed chlorhexidene twice to this client.

The Panel found that Ms. Forbes contravened or failed to maintain a standard of practice by dispensing chlorhexidene to CM and that this constitutes professional misconduct under paragraph 2 of Section 15 of the Regulation.

If the Panel had not made that finding, it would have made the findings sought in the alternative, under paragraphs 3, 4, or 52 of Section 15.

**Allegation 3(e) – Providing bruxism guards or grinding appliances to clients.**

The Panel heard from the College’s expert witness Lisa Kelly that “bruxism” is abnormal functioning of the teeth and that “filling or dispensing a dental prosthesis, orthodontic or periodontal appliances or a device used inside the mouth to protect teeth from abnormal functioning” is the 11<sup>th</sup> controlled act in section 27 of the Regulated Health Professions Act. Dentists have been granted the authority to perform that controlled act. Dental Hygienists have not. Accordingly, dental hygienists are not permitted to fit or dispense bruxism guards to their clients. It is outside the scope of practice of dental hygienists.

The evidence before the Panel demonstrates that Emily Forbes knows the difference between bruxism and sports guards. Ms. Marceau’s evidence was that Ms. Forbes told her she made two bruxism guards. In her charts she notes impression for mouth guards (sports) (FH Tab 13). At tab 26, it notes for HM “took impressions for new bruxism guard and mouth guard for sports free of charge”. The Panel finds that she clearly knew the difference. She advertised that she made grinding appliances (advertising itself is dealt with subsequently).

There is evidence of providing bruxism guards to the following four patients: HN (Tab 5), IA (Tab 9), AD (Tab 11), and HM (Tab 26).

The Committee found that Ms. Forbes failed to maintain the standard of practice of the profession and committed an act of professional misconduct by providing bruxism guards to patients, contrary to paragraph 2 of Section 15 of the Regulation.

If the Panel had not made that finding, it would have made the findings sought in the alternative, under paragraphs 3, 4, 5, or 52 of Section 15 of the Regulation.

**Allegation 4 – It is alleged that on or about 2010 Ms. Forbes failed to maintain the standard of practice of the profession in relation to client CI in that she performed orthodontic procedures on her.**

The Panel found on the basis of the documentary evidence on the chart of CI (a child) (Tab 23, page 60) and on the basis of Ms. Kelly’s expert opinion, that Ms. Forbes performed an orthodontic procedure outside of the scope of practice of a dental hygienist.

The Panel found that she replaced the arch wire on the client's braces, which is an orthodontic procedure that she is not authorized to perform.

In the circumstances she ought to have contacted a qualified dental practitioner to see this child on an emergency basis to deal with the presenting condition of pain. There were cases where she testified that she called a dental office regarding a patient she was seeing. There was no evidence before the Panel that she made any effort to get an immediate appointment for CI with a dentist/orthodontist, and could not. It is clearly unprofessional for a dental hygienist not to make efforts to refer a patient in pain for immediate attention. It is a breach of standards to attempt to repair or replace an orthodontic device, to offer comment on past treatment or to propose a future treatment plan.

The Panel found that in performing an orthodontic procedure Ms. Forbes contravened or failed to maintain a standard of practice of the profession under paragraph 2 of Section 15 of the Regulation, and thereby committed an act of professional misconduct.

If the Panel had not made that finding, it would have made the finding, sought in the alternative, under paragraph 3, 4, or 52 of the Regulation.

**Allegation 6 – It is alleged that in or about 2010 and/or 2011, in relation to one or more of the patients listed in Appendix A [to the Notice of Hearing], Ms. Forbes provided unnecessary treatment or in the alternative, failed to document the appropriateness of the treatment and/or the frequency of the treatment.**

The College proceeded with the alternative allegation only, that she failed to document sufficiently so as to justify the treatment she indicates she provided.

The Panel accepted the expert opinion of Lisa Kelly who reviewed all of the charts that are listed in Appendix A, that none of those charts met the minimum standards of practice of the profession. She testified that Ms. Forbes' charts are deficient in failing to document the various assessments that are to be done and documented by a dental hygienist practicing in Ontario (e.g. health and dental history, extra/intra-oral assessment, hard tissue assessment, periodontal/gingival assessment, indices and deposits assessments), Ms. Kelly testified that



without that documentation, it was impossible to determine whether a treatment was necessary or not.

The Panel found that the failure to document the assessments constituted a contravention of or failure to maintain the standard of practice of the profession under paragraph 2 of Section 15 of the Regulation, and that Ms. Forbes thereby committed an act of professional misconduct.

If the Panel had not made that finding, it would have made a finding, sought in the alternative, under paragraphs 5, 27 or 52 of Section 15 of the Regulation.

**Allegation 8 – It is alleged that on or about 2010 and/or 2011, in relation to one or more of the clients listed in Appendix A [to the Notice of Hearing] Ms. Forbes failed to maintain the standards of practice for record keeping.**

The Panel accepts the expert opinion of Lisa Kelly that Ms. Forbes failed to maintain the standards of practice of the profession for record keeping.

Specifically, the Panel found:

- (1) that she failed to document a complete medical and dental history for KN, AA, SM, KM, AI, HN, SD and J-AS.
- (2) that she failed to document an extra/intra-oral assessment for LB, HN, KN, CN, AA, IA, SD, AD, FH, FH, FK, SM, MA, NA, JC, SG, R-SG, CI, JJ, CM, HM and MR.
- (3) that she failed to document a hard tissue assessment for SD, SG, and MA.
- (4) that she failed to document a periodontal or gingival assessment for HG, FK, J-AS, SM, LB, MA, NA, JC, SG, R-SG, JJ, CM and MR.
- (5) that she failed to record an indices or deposits assessment for SD, A G-D, MA, JC, and CI;
- (6) that she failed to document any reference to the need for radiographs for KN, AA, IA, A G-D, HG, FH, FH, SM, J-AS, R-SG, CI and JJ.

- (7) that she failed to document a dental hygiene treatment plan for LB, HI, KM, AI, HN, KN, CN, AA, IA, SD, AGD, HG, FH, FK, SM, and J-AS.
- (8) that she failed to sufficiently identify who provided the treatment to LD, HI, KM, AI, HN, KN, CN, AA, IA, SD, AGD, HG, FH, FK, SM and J-AS.
- (9) that she failed to document informed consent forms that met the minimum standards of the profession for LB, HI, KM, AI, HN, KN, CN, AA, IA, SD, AGD, HG, FH, FK, SM and J-AS.

The College's record keeping regulation provides that members shall maintain a health client record for each client that contains:

- 12.1 (1) Subject to section 12.2, each member shall maintain a client health record for each client, that contains,
  - (a) the client's name, address, and date of birth;
  - (b) the date of each professional contact with the client, or the client's substitute decision-maker, and whether the contact was made in person, telephone or electronically;
  - (c) for each intervention, the amount of time the member spent providing dental hygiene care;
  - (d) the name and address of the client's primary care provider, if available;
  - (e) the name and address of the client's primary care dentist, if available, unless the record is shared with that dentist;
  - (f) the name and address of any referring health professional;
  - (g) an appropriate medical and dental history of the client;
  - (h) every written report received by the member respecting examinations, tests, consultations or treatments performed by any other person relating to the client;

- (i) a copy of every written communication sent by the member relating to the client;
- (j) each examination, clinical finding and assessment relating to the client;
- (k) any medication taken by the client as precondition to treatment or examination by the member for each intervention, including the name of the medication, the time it was taken, and if the medication was not administered to the client by the client, the name of the person who administered it to the client;
- (l) any dental hygiene treatment plan;
- (m) each treatment or procedure performed for each intervention, and the identity of the person applying the treatment if the person applying the dental hygiene treatment was not the member;
- (n) any advice given by the member including any pre-treatment or post-treatment instruction given by the member to the client or the client's substitute decision-maker;
- (o) every controlled act, within the meaning of subsection 27(2) of the *Regulated Health Professional Act, 1991*, performed by the member, including the source of the authority to perform the controlled act;
- (p) every referral of the client by the member to any other person;
- (q) every procedure that was commenced but not completed, including reasons for non-completion;
- (r) a copy of every written consent provided by the client, or the client's substitute decision-maker; and
- (s) every refusal of a treatment or procedure by the client, or the client's substitute decision-maker. O. Reg. 9/08, s. 1.

The Panel found that the failure to keep records constituted professional misconduct under paragraph 2 of Section 15, for a failure to maintain standards.

If the Panel had not made that finding it would have made the finding sought under paragraph 27 or 52, of the Regulation.

**Allegation 10 – It is alleged that in or about 2010 and/or 2011, in relation to the clients listed in Appendix A [to the Notice of Hearing] Ms. Forbes submitted false or misleading accounts by including “lab fees” and/or “expense services” on claim forms for mouth guards, or in the alternative, Ms. Forbes charged excessive fees for mouth guards.**

The Panel determined that there was insufficient evidence before it to meet the standard of proof, that on clear, cogent and convincing evidence, this allegation has been proved on the balance of probabilities. Accordingly, this allegation was dismissed.

**Allegation 12 – It is alleged that on or about 2010, Ms. Forbes acted unprofessionally by advertising grinding appliances.**

As the Panel found earlier in this Decision, dental hygienists are not permitted to dispense grinding appliances to clients. This is a controlled act under the RHPA and outside the scope of practice of dental hygienists.

Although CDHO Advertising Guidelines were not published at the time of the misconduct, the Committee found that they simply articulated the state of affairs in place in 2010 and 2011 when Ms. Forbes advertised that she was able to make grinding appliances for her clients. The Advertising Guidelines advise dental hygienists not to advertise services that are not within the scope of dental hygiene. This makes common sense: if a dental hygienist cannot dispense grinding appliances, then it is inappropriate to advertise that she can.

Furthermore, the College’s advertising regulation was in force in the relevant time period. Paragraph 6(1)(a) of that Regulation (Reg 218/94) provides that an advertisement with respect to a member’s practice must not contain anything that is false or misleading. The Panel finds that it is misleading for a dental hygienist to advertise grinding appliances when she is not authorized to fit or dispense them.

The Panel found that the advertising of grinding appliances by Ms. Forbes constituted disgraceful, dishonorable or unprofessional conduct under paragraph 52 of Section 15 of the Regulation.

If the Panel had not made that finding, it would have made a finding of professional misconduct sought in the alternative under paragraph 53 of Section 15 of the Regulation.

**Allegation 13 – it is further alleged that in or about 2010, Ms. Forbes acted unprofessionally by advertising free dental cleanings for parents who did not have insurance if they brought their children to Britannia Hygiene for dental hygiene appointments.**

The Panel found that by offering free services such as dental cleanings for parents who brought their children to her for dental hygiene care, Ms. Forbes was giving a benefit to a person for the referral of a patient.

Such inducement are prohibited and constitute professional misconduct as they may promote unnecessary services or the disruption of continuity of care (by encouraging people to move to other practitioners for the free benefit).

The Panel found that the conduct of Ms. Forbes in this regard constitutes professional misconduct under paragraph 40 of Section 15 of the Regulation, which makes it misconduct “to receive or confer a benefit to a person for the referral of a client or for any professional services respecting a client”.

If the Panel had not made that finding, it would have made a finding, sought in the alternative, under paragraph 52 or 53 of Section 15 of the Regulation.

**Allegation 16 – It is alleged that in or about 2011, Ms. Forbes acted unprofessionally by having IA and/or FK sign “Formal Harassment Complaints” in relation to inquiries that employees of Ottawa Public Health were making to her client about the services that Ms. Forbes was providing to them.**

The Panel found that Ms. Forbes acted unprofessionally by having IA and FK sign formal harassment complaints against the City of Ottawa.

It is inappropriate for dental hygienists as health professionals to involve their clients in disputes they may have with their regulator. Clients may be concerned that dental hygiene services to them may be affected or withdrawn if they do not co-operate. This is exacerbated where clients are members of a vulnerable patient population with limited resources at their disposal.

The Panel found that the conduct of Ms. Forbes in this regard is disgraceful, dishonorable and unprofessional, and thereby constitutes professional misconduct under paragraph 52 of Section 15 of the Regulation.

If the Panel had not made that finding, it would have made a finding of professional misconduct, sought in the alternative, under paragraph 53 of Section 15 of the Regulation.

**Allegation 17 – It is further alleged that in or about 2011, Ms. Forbes acted unprofessionally by having MR sign a document stating that he had not received a bruxism guard and that he had been told by Ms. Forbes to see a dentist.**

The Panel did not find that there was sufficient clear, cogent and convincing evidence to support this allegation, and the standard of proof had not been met. Accordingly, this allegation was dismissed.

### **Order on Penalty and Costs**

The College was seeking the revocation of the Certificate of Registration of Emily Forbes as the appropriate penalty for the findings made of professional misconduct.

Counsel submitted on the basis of the record of Emily Forbes in this case, and her prior record, that Ms. Forbes was ungovernable. A finding of ungovernability is not a precondition to revocation but it is a factor that panels have considered in determining the appropriateness of revocation as a penalty.

College counsel submitted that the only appropriate penalty for Ms. Forbes would be revocation of her Certificate of Registration, as anything less would not protect the public and

would send a wrong signal to the public, members of the profession and Ms. Forbes herself, regarding the very serious nature of her misconduct. Revocation would be a strong and appropriate denunciation of the professional misconduct found to have taken place in this case.

Counsel also submitted that the Panel must consider the principles of public protection, general deterrence and specific deterrence in making its decision.

It was submitted that the penalty order must uphold the dignity of the profession. The findings of professional misconduct in this case strike at the heart of self-regulation.

Counsel reminded the Panel that s. 72 of the Code permits a revoked health professional to apply for reinstatement after one year from the order of revocation.

Given that Ms. Forbes failed to maintain fundamental standards, the Panel concluded that only a revocation is sufficient to restore public confidence in the College's ability to govern. The misconduct is wide-ranging. This is the third time before the Discipline Committee for this Registrant who received her certificate in 2005. Ms. Forbes' persistent disregard for the authority of the College and for the well-being of her clients justified an order of revocation.

It is not safe to have members of the profession flouting the law and blatantly practicing outside the scope of their practice and in contravention of standards of practice.

The Panel recognizes that revocation is reserved for the most serious of cases and repeat offenders. This is a most serious case and involves a repeat offender.

Revocation is justified because the misconduct was wide ranging, involving multiple occurrences, numerous clients, a lack of integrity, acts outside the scope of practice, and there was a previous discipline history.

The prior record referenced a lack of insight in Ms. Forbes into her own practice, and signaled the potential danger to the public of her misconduct. Her prior history included a finding of misconduct for practicing without liability insurance and falsifying documents.

The Panel in a unanimous decision, concluded that Ms. Forbes by the proved misconduct is ungovernable and has forfeited her claim to a certificate of registration as a dental hygienist in Ontario.

Given the nature of Emily Forbes previous discipline history, the Panel's serious findings in the instant case and the Panel's finding that Ms. Forbes is ungovernable, the Panel concluded that Ms. Forbes' license should be revoked, effective immediately. Even without the discipline history, the appropriate penalty is revocation in the view of the Panel.

In summary, the factors justifying revocation as the appropriate penalty in this case are as follows:

- The public needs to be protected from an ungovernable member;
- The deficits in record keeping would make it impossible for another dental hygienist to continue an appropriate care plan in her absence;
- The misconduct includes the failure to maintain standards of practice involving a vulnerable client population which included children;
- The principles of effective self-regulation require the Panel to uphold the dignity of the profession and its ability to regulate in the public interest;
- The penalty of revocation satisfies the principle of general deterrence. It sends a message to the profession that such acts of professional misconduct by a registrant will not be tolerated;
- Revocation satisfies the principle of specific deterrence, on the basis of the serious findings of misconduct in this case and the prior history of professional discipline;
- There is a demonstrated lack of insight by Ms. Forbes into the seriousness of her conduct and the requirement that a health care provider must practice within her permitted scope of practice;



- A penalty of suspension would not be sufficient to assure the Panel that Ms. Forbes would not commit acts of professional misconduct in the future;
- The Panel concluded it should send a strong message that flagrant disregard for the College and standards of practice is unacceptable;
- Continued practice would put patients' health and well-being in jeopardy. Substandard practice, which fortuitously does not result in harm, is nonetheless serious when there is a real potential for harm, as there was in this case;
- The Panel concluded on her record that Ms. Forbes is a professional who finds it difficult to change and has demonstrated disregard for clients;

## **Costs**

### **Submissions on Behalf of the College**

Counsel for the College provided evidence to the Panel that the actual costs to the College of the Discipline proceeding was \$179,576.19. The College requested an Order that Ms. Forbes pay two-thirds of the costs, which amounts to \$119,000.00. The College further requested this amount be payable immediately.

## **Decision**

The Panel must make its decision on the evidence before it. The Panel reached a unanimous decision that the Registrant should pay two thirds of the costs of the Discipline proceeding, i.e. \$119,000.00, payable within 35 days of the date of the Committee's Order.

## **Reasons**

The Panel has authority under s.53.1 of the Code to award costs in an appropriate case. The Panel carefully reviewed the evidence before it and the relevant factors in determining whether this was an appropriate case to award costs. The Panel considered that the College overwhelmingly proved serious allegations of professional misconduct made against Ms. Forbes. Given the serious nature of the professional misconduct, the length and complexity of the

hearing, the number of witnesses, and the fact the Member was before her third Discipline Panel since 2007, the Panel was of the view this was an appropriate case to order costs payable by the Registrant to the College.

When the misconduct is caused solely by the member's actions, a requirement that the member pay two thirds of the costs is appropriate (fair and reasonable), in the Panel 's view. A member found guilty of serious professional misconduct should indemnify the College for a portion of its costs. Full indemnification for the costs of the proceeding may be ordered, but was not sought or ordered in this case.

There was no evidence from the Registrant of her personal financial circumstances. The Panel acted on the evidence before it and reached a unanimous decision on the payment of costs.

The Panel recognizes the amount is high, but on the evidence before it, and absent any evidence to the contrary, the Panel felt it reasonable and fair that the Member pay a significant portion of the actual verified costs. The Panel recognizes a full recovery of the actual costs could have been ordered, but rather the Panel ordered that two-thirds of the costs be paid by the Registrant. That means that one third of the costs will be borne by the members of the profession at large.

## **Order**

The finding of the Committee and its order as to penalty and costs were delivered in a written Order on January 9, 2014.