

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 0, 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 Kenneth Velacruz;

BETWEEN:)

)

COLLEGE OF KINESIOLOGISTS)
OF ONTARIO)

Maya Pearlston
Steinecke Maciura LeBlanc
for the College of Kinesiologists

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Kenneth Velacruz)
Registration No. 11300)

Self-Represented

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Kenneth Velacruz

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Emily Lawrence
Independent Legal Counsel

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Heard: March 10, 2021

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Decision Released: March 22, 2021

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Written Decision Date: March 18, 2021

Panel Members:

Mary Pat Moore, Chair, Public Council Member
Jennifer Pereira, R. Kin., Professional Council Member
Victoria Nicholson, Public Council Member

DECISION AND REASONS FOR DECISION

I. INTRODUCTION

[1] This matter was heard by a panel of the Discipline Committee (“the Panel”) on March 10, 2021 in the format of a video conference.

II. ALLEGATIONS

[2] As set out in the Notice of Hearing, marked as Exhibit 1, Kenneth Velacruz (the “Registrant”) was alleged to have engaged in professional misconduct pursuant to clause 51(1)(c) of the Code, as set out in the following paragraphs of section 1 of Ontario Regulation 316/12 made under the Kinesiology Act, 2007:

- a. Paragraph 45 – Failing to comply with an order of a panel of the College;
- b. Paragraph 46 – Failing to appear before a panel of the ICRC to be cautioned;
- c. Paragraph 48 – Failing to reply appropriately and within a reasonable time to a written inquiry or request from the College; 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.

[III] THE MEMBER’S PLEA

[3] The Registrant admitted the allegations of professional misconduct as set out in the Notice of Hearing, marked as Exhibit 1.

The Panel was satisfied that Registrant's admissions were voluntary, informed and unequivocal, as a result of his acknowledgements set out at paragraph 21 of the Agreed Statement of Facts (Exhibit 2), reproduced below.

[IV] THE EVIDENCE

[4] On consent of the parties, the College introduced into evidence an Agreed Statement of Facts (Exhibit 2) which the Panel substantiated the allegations. The Agreed Statement of Facts provides as follows:

The Registrant

1. Kenneth Velacruz (the "Registrant") became a member of the College of Kinesiologists of Ontario (the "College") in or around October 2014. Attached as Tab "A" is an excerpt of the Registrant's profile on the College Public Registry.
2. At all relevant times, the Registrant was a duly registered member of the College in the general class.

Quality Assurance Program

3. Pursuant to subsection 82(1) of the Health Professions Procedural Code, being Schedule 2 to the Regulated Health Professions Act, 1991 (the "Code") and subsection 4(1) of Ontario Regulation 29/13 under the Kinesiology Act, 2007 (the "Quality Assurance Program Regulation"), members in the general class are required to comply with the requirements of the College's Quality Assurance ("QA") Program, which includes self-assessments, continuing education and professional development activities annually. Attached as Tab "B" is an excerpt of the relevant statutory requirements.
4. Pursuant to section 7 of the Quality Assurance Program Regulation, a member shall undergo a peer and practice assessment ("PPA") if the member's records do not demonstrate that the member has engaged in adequate self-assessment, continuing education or professional development activities. Attached as Tab "C" is an excerpt of the relevant statutory requirement.
5. The Registrant was selected to complete the 2018 PPA after he failed to complete the 2017 Self-Assessment.

6. The Registrant failed to complete his 2018 PPA. The Registrant failed to complete the Prevention of Sexual Abuse e-Learning Module, which is a requirement for all members registered in the general class.

Referral to the Inquiries, Complaints and Reports Committee

7. As a result of the Registrant's failure to complete the 2018 PPA, the QA Committee referred the Registrant to the Inquiries, Complaints and Reports Committee (the "ICRC") on February 14, 2019.
8. On July 31, 2019, the ICRC ordered the Registrant to attend the College for an oral caution. The ICRC issued its decision and reasons on August 26, 2019. Attached as Tab "D" is a copy of the ICRC's decision dated August 26, 2019.
9. On September 4, 2019, a representative of the College contacted the Registrant to schedule the oral caution for September 16, 2019. The College contacted the Registrant via telephone and e-mail to remind him about the oral caution on September 10 and 13, 2019. The Registrant did not reply.
10. On September 16, 2019, the Registrant contacted the College and advised that he was ill and unable to attend the oral caution. The Registrant later provided a physician's note from his treating physician confirming the Registrant was ill.
11. Attached as Tab "E" is a copy of the relevant correspondence between the College and the Registrant as set out in paragraphs 9 and 10.

Failure to Comply with an Order of the ICRC

12. On October 4, 2019, a representative of the College contacted the Registrant via e-mail to reschedule the oral caution for December 2, 2019. The Registrant did not reply.
13. On October 9, 2019, a representative of the College contacted the Registrant via e-mail to confirm the oral caution for December 2, 2019. The Registrant did not reply.
14. On October 15, 2019, a representative of the College sent a letter by mail and e-mail to the Registrant informing him of the scheduled oral caution and the attempts made to contact him. The College asked the Registrant to confirm that he was aware of the newly scheduled date. The Registrant was informed that failure to attend for the oral caution is an act of professional misconduct and could lead to further investigation. It is agreed that the Registrant did not reply.

15. The Registrant failed to attend for the oral caution scheduled for December 2, 2019. On that date, a representative of the College contacted the Registrant and left a voicemail confirming that the Registrant had not arrived for the oral caution. The College representative told the Registrant that he could contact the College by phone or e-mail if he was intending to attend. It is agreed that the Registrant did not reply to the voicemail or attempt to contact the College to reschedule the oral caution.
16. Attached as Tab "F" is a copy of the relevant correspondence from the College to the Registrant as set out in paragraphs 12 to 15.
17. The Registrant has recognized his error. If the Registrant was to testify, he would advise the Discipline Committee that:
 - a. He was overwhelmed by the ICRC process, which contributed to his failure to attend the College for an oral caution as directed by the ICRC;
 - b. He recognizes the importance of complying with orders of committees of the College; and
 - c. He apologizes for his failure to respond to inquiries of the College and attend the oral caution on December 2, 2019.
18. As of May 7, 2019, the Registrant has completed the Prevention of Sexual Abuse e-Learning Module.

Admissions of Professional Misconduct

19. By this document, the Registrant admits to the truth of the facts referred to in paragraphs 1 to 18 above (the "Agreed Facts").
20. It is agreed that the Registrant engaged in professional misconduct pursuant to clause 51(1)(c) of the Code, as set out in the following paragraphs of section 1 of Ontario Regulation 316/12 made under the Kinesiology Act, 2007:
 - e. Paragraph 45 – Failing to comply with an order of a panel of the College;
 - f. Paragraph 46 – Failing to appear before a panel of the ICRC to be cautioned;
 - g. Paragraph 48 – Failing to reply appropriately and within a reasonable time to a written inquiry or request from the College; and

- h. 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.

21. By this document, the Registrant states that:

- a. He understands fully the nature of the allegations against him;
- b. He has no questions with respect to the allegations against him;
- c. He admits to the truth of the facts contained in this Agreed Statement of Facts and Admission of Professional Misconduct and that the admitted facts constitute professional misconduct;
- d. He understands that by signing this document he is consenting to the evidence as set out in the Agreed Facts being presented to the Discipline Committee;
- e. He understands that by admitting the allegations, he is waiving his right to require the College to prove the case against him at a contested hearing;
- f. He understands that the decision of the Discipline Committee and a summary of its reasons, including reference to his name, will be published in the College's annual report and any other publication or website of the College;
- g. He understands that any agreement between him and the College with respect to the penalty proposed does not bind the Discipline Committee; and
- h. He understands and acknowledges that he is executing this document voluntarily, unequivocally, free of duress and free of bribe and that he has been advised of his right to seek legal advice.

22. In light of the Agreed Facts and Admission of Professional Misconduct, the College and the Registrant submit that the Discipline Committee should find that the Registrant has committed professional misconduct.

[5] College counsel made the following submissions that members of the College have an obligation to comply with orders of the College and to communicate and respond to college inquiries. The public must be confident that the College can properly regulate its members.

[6] College counsel's submitted that the Member's conduct constitutes professional misconduct as set out in paragraph 20 of the ASF and paragraph 14 of the Notice of Hearing. In addition, the contents of the ASF and documents provide the Panel with necessary evidence to demonstrate professional misconduct as set out in the Notice of Hearing.

[7] The Registrant made the following submissions:

The Member stated that he did not want to add anything more to what is stated in the ASF. He apologized for his conduct. He was overwhelmed with the process.

[8] Emily Lawrence, Independent Legal Counsel, provided advice to the Panel for considering evidence to reach a deliberation for this matter.

V. DECISION AND REASONS FOR DECISION

[9] The Panel carefully reviewed the Agreed Statement of Facts and each of the documents appended thereto. The Panel notes that the Registrant admitted misconduct to the allegations as set out in the Notice of Hearing and did not dispute the facts presented in the Agreed Statement of Facts. The paragraphs cited below are from the ASF.

[10] The Panel was satisfied that the facts contained therein established that the Registrant failed to comply with an order of a panel of the College, being the ICRC's order of August 26, 2019 to attend an oral caution. The Registrant persistently disregarded communication from the College as set out in paragraphs 12-15. The Registrant admitted that he was overwhelmed by the ICRC process, recognized the importance of complying with orders of committees, and

apologized. His explanation of being overwhelmed with the ICRC process was not presented as a justification of his actions. In paragraph 20, the Registrant admits that he failed to comply with an order of a panel of the College. His comments at the hearing and the facts in the ASF demonstrate that he failed to comply with an order of a panel of the College.

[11] The Panel was satisfied that the facts contained therein established that the Registrant failed to appear before a panel of the ICRC to be cautioned on December 2, 2019. In paragraph 15, the Registrant was absent for the scheduled oral caution. He recognized his error due to being overwhelmed by ICRC process. In paragraph 20 he admits that he failed to appear before a panel of the ICRC to be cautioned. His comments at the hearing and the facts in the ASF demonstrate that he failed to comply with an order of a panel of the College. His disrespect for the College's regulation of his professional behaviour was unacceptable.

[12] The Panel was satisfied that the facts contained therein established that the Registrant failed to reply appropriately and within a reasonable time to a written inquiry or request from the College between October 4, 2019 and December 2, 2019. In paragraph 16, Tab "F" sets out the correspondence stating the College's expectation that the Registrant would attend an oral caution on Dec. 2, 2019. The Registrant admitted in paragraph 17 that he was overwhelmed by the ICRC process and ignored communication from the College. In paragraph 20, he admits to breaching Paragraph 48 failing to reply appropriately and within a reasonable time a written inquiry or request from the College. His conduct falls below the professional standards for kinesiologists to pay due regard to communications from the College.

[13] The Panel was satisfied that the facts contained therein established that, in doing the foregoing, the Registrant engaged in conduct or performed 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. At paragraphs 7-11, the Registrant was referred to the ICRC committee. He failed to appear for an oral caution on Dec. 2, 2019 as set out in paragraphs 12-16. The Registrant admits in paragraph 20 that he breached Paragraph 50 of the *Code* by engaging in conduct or performing an act relevant to the practice of the profession, that having regard to all the circumstances would reasonable regard by members as disgraceful, dishonourable or unprofessional. His persistent disregard of professional standards amounts to conduct which members of the profession would reasonably regard as unprofessional and dishonourable.

[14] The Panel finds that the Registrant engaged in professional misconduct as set out in the Notice of Hearing, the Agreed Statement of Facts, and the documents appended thereto for the following reasons:

[15] The Panel finds that the Registrant committed acts of professional misconduct as set out in paragraph 20 of the ASF and paragraph 14 of the NOH pursuant to subsection 51(1)(c) of the *Health Professions Procedural Code*, being Schedule 2 to the Regulated Health Professions Act, 1991, as set out in paragraph 45 (failing to comply with an order of a panel of the College); paragraph 46 (failing to appear before a panel of the Inquiries, Complaints and Reports Committee to be cautioned); paragraph 48 (failing to reply appropriately and within a reasonable time to a written inquiry or request from the College); and 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) of section 1 of Ontario Regulation 316/12 made under the *Kinesiology Act, 2007*.

[16] The Panel considered the evidence presented by the College and finds that the facts set out in that documents support findings of professional misconduct. Having reviewed Exhibits 1 and 2 (described above) and having heard the submissions of counsel and the Registrant, the Panel finds that the College discharged its onus to prove the specified allegations on a balance of probabilities. 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 unprofessional and dishonourable.

VI. PENALTY SUBMISSIONS

[17] The parties presented the Panel with a Joint Submission on Penalty (Exhibit 3), which provides as follows.

The College of Kinesiologists of Ontario (the "College") and Kenneth Velacruz (the "Registrant") agree and jointly submit that the following would be an appropriate order as to penalty and costs in this matter:

1. The Registrant is required to be reprimanded by a panel of the Discipline Committee immediately following the hearing.
2. The Registrar is directed to suspend the Registrant's Certificate of Registration for a period of one (1) month, commencing on a date to be selected by the Registrar, which suspension shall be remitted if the Registrant complies with the terms, conditions and limitations set out in paragraphs 4(a) to 4(c) below within two (2) months of the date of the Order.
3. If the remitted portion of the suspension referred to in paragraph 2 above is required to be served by the Registrant, the suspension shall continue until the Registrant completes the term, condition and limitation set out in paragraph 4(a) of the Order.
4. The Registrar is directed to immediately impose the following specified terms, conditions and limitations on the Registrant's Certificate of Registration:
 - a. Requiring the Registrant to comply with the outstanding requirements as directed by the Inquiries, Complaints and Reports Committee (the "ICRC") of the College in its decision dated August 26, 2019, including that the Registrant must attend for an oral caution before the ICRC, within three (3) months of the date of the Order;
 - b. Requiring the Registrant to successfully complete, to the satisfaction of the Registrar and at his own expense, a pre-approved ethics course, within three (3) months of the date of the Order;
 - c. Requiring the Registrant to review all written College standards and provide written confirmation of review to the Registrar, within three (3) months of the date of the Order; and
 - d. Requiring the Registrant to respond to all College communication within 15 days.
5. For greater certainty, the Registrant's obligation to comply with the proposed terms, conditions and limitations on his certificate of registration contained in paragraphs 4(a) to 4(c) is not relieved by serving the entire suspension referred to in paragraph 2.
6. The Registrant is required to pay to the College costs in the amount of \$1,000.00, to be payable in accordance with an installment plan authorized by the Registrar.

[18] College Counsel made the following submissions in respect of penalty:

a. Counsel for the College presented the Panel with a Brief of Legislation and Authorities which contained the relevant legislation and (3) Decisions from Health College Discipline Committees and the Law Society of Ontario. She submitted that the penalty is appropriate in light of sentencing principles.

b. College's Counsel set out the primary principles of sanction that apply to any order on penalty including public protection, general deterrence for the profession, specific deference of the Member, and remediation of the specific Member.

c. College Counsel submitted that the imposition of a suspension serves the goals of specific deterrence, general deterrence, and public protection. It sends a message to the Member not to engage in such conduct in the future.

d. With respect to remediation, College Counsel submitted that the remedial components of the proposed penalty (ethics course, review of the College's standards, and response to College communication within 15 days) serve goals of remediation and public protection. College Counsel drew the Panel's attention to *College of Dental Hygienists of Ontario and Pallas, 2016* to support her submission;

e. With respect to mitigating factors at play, College Counsel set out that the Member had been co-operative, has agreed that his conduct constitutes professional misconduct, and has saved the College that cost and time of a contested hearing. In addition, the Member has made efforts to schedule a meeting with ICRC for his oral caution. College Counsel drew the Panel's attention to *College of Dental Hygienists of Ontario and Aarons, 2018* to support her submission;

f. College Counsel submitted that the penalty supports the principles of

proportionality and consistency. She referred the Panel to the Book of Authorities (Tab 3). In addition, she stated the cases presented are not binding on the Panel, but provide context for the panel that the penalty is well within a reasonable range for the type of conduct in this matter.

g. Moving on to the cost aspect of the penalty, College Counsel put forward that costs are not meant to be punitive, but to partially compensate College for cost of protecting this matter. It is appropriate to look to specific Member to bear some of the costs of the discipline process rather to membership as a whole to bear the weight of costs.

h. The panel has the authority to impose costs under s. 53.1 of the *Health Professional Code*. College Counsel submitted that \$1,000.00 in costs was fair and reasonable in the circumstances. College Counsel referred to *Law Society of Upper Canada and Archambault, 2017* that cited *R. v. Anthony-Cook, 2016 SCC 43, [2016] 2. S.C.R. 204* for the principle that joint submissions should not be interfered with lightly.

[19] The Registrant did not have any submissions, but advised the Panel that he had been overwhelmed.

[20] College Counsel advised the Panel that the Registrant's certificate of registration is presently administratively suspended for non-payment of fees, which is Registrant confirmed. College Counsel submitted, by way of a draft order for the Panel, that the suspension and terms, conditions and limitations sought in the Joint Submission on Penalty, should be effective if and when the Registrant's Certificate of Registration is reinstated.

VII. PENALTY DECISION

[21] In light of the Joint Submission on Penalty, the Panel agreed and accepted the Joint Submission on Penalty and ordered that:

1. Requiring the Registrant to be reprimanded by a panel of the Discipline Committee immediately following the hearing.
2. Should the Registrant's Certificate of Registration be reinstated, directing the Registrar to suspend the Registrant's Certificate of Registration for a period of one (1) month, commencing on a date to be selected by the Registrar, which suspension shall be remitted if the Registrant complies with the terms, conditions and limitations set out in paragraphs 4(a) to 4(c) below within two (2) months of the date of reinstatement.
3. If the remitted portion of the suspension referred to in paragraph 2 above is required to be served by the Registrant, requiring the suspension to continue until the Registrant completes the term, condition and limitation set out in paragraph 4(a) of this Order.
4. Should the Registrant's Certificate of Registration be reinstated, directing the Registrar to impose the following specified terms, conditions and limitations on the Registrant's Certificate of Registration:
 - a. Requiring the Registrant to comply with the outstanding requirements as directed by the Inquiries, Complaints and Reports Committee (the "ICRC") of the College in its decision dated August 26, 2019, including that the Registrant must attend for an oral caution before the ICRC, within three (3) months of the date of reinstatement;
 - b. Requiring the Registrant to successfully complete, to the satisfaction of the Registrar and at his own expense, a pre-approved ethics course, within three (3) months of the date of reinstatement;
 - c. Requiring the Registrant to review all written College standards and provide written confirmation of review to the Registrar, within three (3) months of the date of reinstatement; and
 - d. Requiring the Registrant to respond to all College communication within 15 days.
5. For greater certainty, the Registrant's obligation to comply with the proposed

terms, conditions and limitations on his Certificate of Registration contained in paragraphs 4(a) to 4(c) is not relieved by serving the entire suspension referred to in paragraph 2.

6. Requiring the Registrant to pay to the College costs in the amount of \$1,000.00, to be payable in accordance with an installment plan authorized by the Registrar.

VIII REASONS FOR PENALTY DECISION

[22] The Panel understands that the penalty ordered should protect the public and enhance public confidence in the ability of the College to regulate kinesiologists. This is achieved through a penalty that addresses specific deterrence, general deterrence and, where appropriate, rehabilitation and remediation. In addition, we must consider both the interests of the profession as a whole, as well as, the particular circumstances of the Registrant.

[23] 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.

[24] 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.

[25] We must consider the unique and particular circumstances of the Registrant. The order must be appropriate, fair, and reasonable to the Member's circumstances. He is a registered kinesiologist suspended for non-payment of fees. We considered the efforts made by the College to contact the Registrant, so that he was aware of the requirement to attend the ICRC meeting on Dec. 2, 2019. We noted his consistent failure to respond to the College's requests over a lengthy period.

[26] The Panel is also mindful of the principle that joint submissions should not be interfered with lightly.

[27] The Panel was satisfied that the Joint Submission on Penalty was a fair, reasonable and proportionate penalty.

[28] In summary, the Panel reviewed the decisions of the *College of Dental Hygienists of Ontario and Pallas, 2016*; *College of Dental Hygienists of Ontario and Aarons, 2018*; *Law Society of Upper Canada and Archambault, 2017* and concluded that the penalty sought is in line with what has been ordered in previous cases by other regulators for similar conduct.

[29] The Panel reviewed the costs of \$1,000.00 sought by the Joint Submission on Penalty. It is the Panel's view that the submitted costs are not punitive, but partially compensatory to the College. The amount is reasonable.

[29] In reaching the decision, the Panel considered the submissions of the College's Counsel.

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:



March 18,2021

Chairperson

Date

Jennifer Pereira, R. Kin., Professional Council Member
Victoria Nicholson, Public Council Member Council Member

After the hearing concluded, Mr. Velacruz agreed to have the Oral Reprimand delivered to him. Ms. Moore delivered the Oral Reprimand.

1. Your conduct is totally unacceptable to your fellow kinesiologists and to the public. Of particular concern to us is the fact that your misconduct involved failure to comply with an ICRC order and failure to communicate with the College on a timely basis. We are pleased to see that you are here today and taking responsibility for your actions.
2. You have brought discredit to the kinesiology profession and to yourself.
3. Public confidence in this profession and its ability to regulate itself has been put in jeopardy.
4. The result of your misconduct is that you have let down the public, the kinesiology profession, and yourself.
5. It is necessary for us to impress upon you the seriousness of your misconduct.
6. 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.
7. 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.
8. We heard that you were overwhelmed. 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 by engaging in behaviour that showed serious and persistent disregard for professional obligations. Your behaviour you should know or ought to have known fell below the expectations for kinesiologists.