

**DISCIPLINE COMMITTEE  
OF THE COLLEGE OF AUDIOLOGISTS AND  
SPEECH-LANGUAGE PATHOLOGISTS OF ONTARIO**

**BETWEEN:**

**COLLEGE OF AUDIOLOGISTS AND  
SPEECH-LANGUAGE PATHOLOGISTS OF ONTARIO**

**-and-**

**CRAIG THOMAS**

<b>Panel Members:</b>	<b>Ruth Ann Penny</b>	Chair, Public Member of Council
	Jennifer Anderson	Audiologist and Elected Professional Member of Council
	Satpaul Singh Johal	Public Member of Council
<b>Present:</b>	Ms. Natasha Danson	Counsel for the College
	Mr. Bernard LeBlanc	Counsel for the College
	Mr. Michael Fraleigh	Counsel for the Member
	Mr. Jared Schwartz	Counsel for the Member
	Ms. Jill Dougherty	Independent Legal Counsel to the Panel
<b>Hearing Date:</b>	<b>April 3, 2018</b>	

**DECISION AND REASONS**

This matter was heard before a panel of the Discipline Committee ("**Panel**") on April 3, 2018 at the offices of the College of Audiologists and Speech Language Pathologists of Ontario, 5060-3080 Yonge Street, Box 71, Toronto ON M4N 3N1.

## **A. PRELIMINARY MOTION — PUBLICATION BAN**

Counsel for the College brought a preliminary motion, with the consent of Counsel for the Member, pursuant to subsection 45(3) of the *Health Professions Procedural Code*, that is Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18. Counsel requested a limited publication ban on identities of patients named in the documentation. Given the number of patients and the potential for error despite every effort to redact all names in all documents, the Panel was satisfied that personal or other matters may be disclosed at the hearing of such a nature that the harm created would outweigh the benefits of publication of those names.

Accordingly, the Panel made an order that there be a ban on the publication or broadcasting of any information identifying any patients named in this matter, or information that may reasonably identify those patients, pursuant to subsection 45(3) of the *Health Professions Procedural Code* being Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18.

## **B. ALLEGATIONS OF PROFESSIONAL MISCONDUCT**

### **Notice of Hearing**

The allegations as referred to the Discipline Committee against Craig Thomas, Audiologist ("**Member**"), as stated in the Notice of Hearing (**Exhibit #1**) were as follows:

1. Craig Thomas was, at all material times, an audiologist registered with the College of Audiologists and Speech-Language Pathologists of Ontario.
2. Mr. Thomas practised at, held an ownership interest in, and was a directing mind of Total Hearing Centre ("**THC**"). At all material times THC had a number of locations including Sault Ste. Marie, Kitchener, Mississauga, Fergus, Brantford, Tillsonburg, Woodstock, and Cambridge.

### **Improper OHIP Claims**

3. Between approximately June 1, 2004 and June 1, 2010, Mr. Thomas routinely conducted diagnostic hearing tests for clients at various THC locations.
4. Claims for many of these tests were submitted for funding to the Ontario Health Insurance Plan ("**OHIP**") using the billing number of Dr. DG, an otolaryngologist. However, Dr. DG retired from his medical office practice on or around June 1, 2004.
5. OHIP remittances for these tests were subsequently sent to Dr. DG, who in turn directly or indirectly remitted approximately 60% of such funds to Mr. Thomas.
6. Mr. Thomas knew or ought to have known that Dr. DG's OHIP number was used to obtain funding for these tests despite the fact that Dr. DG was retired, and that other OHIP requirements for funding the diagnostic hearing tests were not met.

7. Mr. Thomas thereby engaged in professional misconduct within the meaning of paragraph 2 (failing to maintain a standard of practice of the profession), 20 (falsifying a record relating to the member's practice), 22 (signing or issuing, in the member's professional capacity, a document that the member knows contains a false or misleading statement), 23 (submitting an account or charge for services that the member knows is false or misleading), 32 (contravening a federal, provincial or territorial law, a municipal by-law or a by-law or rule of a hospital as defined within the Public Hospitals Act if the contravention is relevant to the member's suitability to practise), and 37 (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 749/93 under the *Audiology and Speech-Language Pathology Act, 1991*, S.O. 1991, c. 19.

#### **Improper ADP Claims**

8. Between approximately June 1, 2004 and June 1, 2010, Mr. Thomas and/or THC staff members signed Dr. DG's signature on forms submitted to the Assistive Devices Program of the Ontario Ministry of Health and Long-Term Care ("**ADP**") to secure funding for hearing aids and other hearing devices provided to patients by THC.

9. As noted previously, Dr. DG retired from his medical office practice on or about June 1, 2004.

10. Mr. Thomas knew or ought to have known that Dr. DG's signature was being used, and that his signature was being forged, on the ADP forms improperly.

11. Mr. Thomas thereby engaged in professional misconduct within the meaning of paragraph 2 (failing to maintain a standard of practice of the profession), 20 (falsifying a record relating to the member's practice), 22 (signing or issuing, in the member's professional capacity, a document that the member knows contains a false or misleading statement), 23 (submitting an account or charge for services that the member knows is false or misleading), 32 (contravening a federal, provincial or territorial law, a municipal by-law or a by-law or rule of a hospital as defined within the Public Hospitals Act if the contravention is relevant to the member's suitability to practise), and 37 (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 749/93 under the *Audiology and Speech-Language Pathology Act, 1991*, S.O. 1991, c. 19.

#### **Other Irregular Billing Practices**

12. Between approximately 1998 and 2011, THC engaged in improper billing practices, including the following:

a. ADP forms were post-dated to improperly receive ADP funding;

b. ADP and Workplace Safety and Insurance Board of Ontario forms were falsified to obtain funding for patients who were not eligible for funding;

c. Veterans Affairs Canada and the Ontario Disability Support Program ("ODSP") were improperly billed;

d. ADP was not informed when hearing aids and other hearing devices were returned to THC;

e. THC patients who received funding from ODSP were charged higher rates than private patients; and

f. Invoicing was altered for private insurance companies in order for THC to receive funding.

13. Mr. Thomas knew or ought to have known that these irregular billing practices were occurring at THC.

14. Mr. Thomas thereby engaged in professional misconduct within the meaning of paragraph 2 (failing to maintain a standard of practice of the profession), 20 (falsifying a record relating to the member's practice), 22 (signing or issuing, in the member's professional capacity, a document that the member knows contains a false or misleading statement), 23 (submitting an account or charge for services that the member knows is false or misleading), 32 (contravening a federal, provincial or territorial law, a municipal by-law or a by-law or rule of a hospital as defined within the Public Hospitals Act if the contravention is relevant to the member's suitability to practise), and 37 (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 749/93 under the *Audiology and Speech-Language Pathology Act, 1991*, S.O. 1991, c. 19.

#### **Hearing Aids and FM Systems**

15. Between approximately 2006 and 2012, Mr. Thomas and THC prescribed, dispensed and sold FM system devices to patients who did not require them. Mr. Thomas and THC staff also provided inadequate counselling and follow-up care to patients who received hearing aids and/or FM systems from THC. In addition, several of the FM systems were not set up for optimal use with the hearing aids.

16. Mr. Thomas thereby engaged in professional misconduct within the meaning of paragraph 2 (failing to maintain a standard of practice of the profession), 7 (prescribing, dispensing, or selling equipment or materials for an improper purpose), and 37 (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 749/93 under the *Audiology and Speech-Language Pathology Act, 1991*, S.O. 1991, c. 19.

#### **Records**

17. Between approximately 1997 and 2012, Mr. Thomas failed to maintain accurate or complete patient health records in relation to services provided at THC in that he failed to:

a. Maintain patient health records that consistently contained the date and the provider of the services; and

b. Record sufficient information of services and products provided to the patient.

18. For these reasons, Mr. Thomas engaged in professional misconduct within the meaning of paragraph 2 (failing to maintain a standard of practice of the profession), 19 (failing to keep records as required), and 37 (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 749/93 under the *Audiology and Speech-Language Pathology Act, 1991*, S.O. 1991, c. 19.

Counsel for the College advised the Panel that the College was seeking to withdraw the following allegations in the Notice of Hearing:

- two of the allegations in paragraph 7 of the Notice of Hearing, namely: the allegation that the Member engaged in professional misconduct within the meaning of paragraphs 20 (falsifying a record relating to the member's practice) and 32 (contravening a federal, provincial or territorial law, a municipal by-law or a by-law or rule of a hospital as defined within the *Public Hospitals Act* if the contravention is relevant to the member's suitability to practise) of section 1 of Ontario Regulation 749/93 under the *Audiology and Speech-Language Pathology Act, 1991*, S.O. 1991, c. 19;
- all of the allegations in paragraph 11 of the Notice of Hearing;
- all of the allegations in paragraph 14 of the Notice of Hearing;
- one of the allegations in paragraph 16 of the Notice of Hearing, namely: the allegation that the Member engaged in professional misconduct within the meaning of paragraph 7 (prescribing, dispensing, or selling equipment or materials for an improper purpose) of section 1 of Ontario Regulation 749/93 under the *Audiology and Speech-Language Pathology Act, 1991*, S.O. 1991, c. 19; and
- one of the allegations in paragraph 17 of the Notice of Hearing, namely: the allegation in subparagraph 17(a) that the Member failed to maintain patient health records that consistently contained the date and the provider of the services.

The Panel accepted the withdrawal of the above allegations.

#### **Statement of Uncontested Facts and Plea of No Contest**

Counsel for the College advised the Panel that an agreement on the facts had been reached and introduced a Statement of Uncontested Facts and Plea of No Contest (Exhibit #2) which provided as follows:

1. Craig Thomas was, at all material times, an audiologist registered with the College of Audiologists and Speech-Language Pathologists of Ontario.

2. Mr. Thomas practised at and was a directing mind of Total Hearing Centre ("THC"). At all material times THC had a number of locations including Sault Ste. Marie, Kitchener, Mississauga, Fergus, Brantford, Tillsonburg, Woodstock, and Cambridge.

### **Improper OHIP Claims**

3. Between approximately June 1, 2004 and June 1, 2010, Mr. Thomas routinely conducted diagnostic hearing tests for clients at various THC locations.

4. Claims for many of these tests were submitted for funding to the Ontario Health Insurance Plan ("OHIP") using the billing number of Dr. DG, an otolaryngologist. However, Dr. DG retired from his medical office practice on or around June 1, 2004.

5. OHIP remittances for these tests were subsequently sent to Dr. DG, who in turn directly or indirectly remitted approximately 60% of such funds to Mr. Thomas. Attached hereto at Tab "A" is a copy of a Forensic Accounting Report & Analysis of Jaswinder S. Brar, CPA(IL), CFF, CGMA, dated September 10, 2013 (redacted and not including appendices and schedules).

6. Attached hereto at Tab "B" is a copy of the redacted transcript of a guilty plea of Dr. DG before the Honourable Justice Geer dated December 17, 2014 with the redacted attached Agreed Statement of Facts.

7. Mr. Thomas knew or ought to have known that Dr. DG's OHIP number was used to obtain funding for these tests despite the fact that Dr. DG was retired, and that accordingly, certain OHIP requirements for funding the diagnostic hearing tests were not met. Attached hereto at Tab "C" is a redacted copy of a letter from Dr. DG's spouse to Mr. Thomas dated June 14, 2007.

8. Mr. Thomas thereby engaged in professional misconduct within the meaning of paragraph 2 (failing to maintain a standard of practice of the profession), 22 (signing or issuing, in the member's professional capacity, a document that the member knows contains a false or misleading statement), 23 (submitting an account or charge for services that the member knows is false or misleading), and 37 (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 749/93 under the *Audiology and Speech-Language Pathology Act, 1991*, S.O. 1991, c. 19.

### **FM Systems**

9. Between approximately 2006 and 2008, Mr. Thomas provided inadequate counselling and follow-up care to patients who received FM systems from THC. In addition, several of the FM systems were not set up for optimal use with the hearing aids. Attached hereto at Tab "D" is a copy of the expert report of Ms. Shira Miller, Aud.D. (redacted and not including the appendices and the index of patient names).

10. Mr. Thomas thereby engaged in professional misconduct within the meaning of paragraph 2 (failing to maintain a standard of practice of the profession) and 37 (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 749/93 under the *Audiology and Speech-Language Pathology Act, 1991*, S.O. 1991, c. 19.

### **Records**

11. Between approximately 1997 and 2012, Mr. Thomas failed to maintain accurate or complete patient health records in relation to services provided at THC in that he failed to record sufficient information of services and products provided to the patient.

12. Mr. Thomas thereby engaged in professional misconduct within the meaning of paragraph 2 (failing to maintain a standard of practice of the profession), 19 (failing to keep records as required), and 37 (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 749/93 under the *Audiology and Speech-Language Pathology Act, 1991*, S.O. 1991, c. 19.

### **Plea of No Contest**

13. Mr. Thomas pleads no contest to the facts in paragraphs 1, 2, 3, 4, 5, 6, 7, 9 and 11 above.

14. Mr. Thomas pleads no contest to the allegations that he committed acts of professional misconduct under Ontario Regulation 749/93 under the *Audiology and Speech-Language Pathology Act, 1991*, S.O. 1991, c. 19. in paragraphs 8, 10 and 12 above.

15. Mr. Thomas understands the nature of the allegations that have been made against him and that by entering a plea of no contest, he waives his right to require the College to otherwise prove the case against him.

16. Mr. Thomas understands that the Discipline Committee can accept that the facts herein constitute professional misconduct.

17. Mr. Thomas understands that the decision of the Committee and/or 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.

18. Mr. Thomas understands that any agreement between him and the College and/or his plea of no contest does not bind the Discipline Committee.

19. Mr. Thomas acknowledges that he has had the opportunity to receive, and has in fact received, independent legal advice.

### **Member's Plea**

The Member entered a plea of no contest to the allegations in the Statement of Uncontested Facts (**Exhibit #2**) and the Notice of Hearing (**Exhibit #1**), as amended by the withdrawal of the allegations previously noted. The Panel conducted a plea inquiry and was satisfied that the Member's plea was voluntary, informed and unequivocal. A signed Plea Inquiry was included as part of the Statement of Uncontested Facts.

### **Decision on Allegations of Professional Misconduct**

The Panel considered the Statement of Uncontested Facts (**Exhibit #2**) and found the Member to have engaged in professional misconduct with the meaning of paragraph 2 (failing to maintain a standard of practice of the profession), 19 (failing to keep records as required), 22 (signing or issuing, in the member's professional capacity, a document that the member knows contains a false or misleading statement), 23 (submitting an account or charge for services that the member knows is false or misleading), and 37 (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 749/93 under the *Audiology and Speech-Language Pathology Act, 1991*, S.O. 1991, c. 19.

### **Reasons for Decision**

The Panel deliberated and after due consideration of all the facts and the Member's plea of no contest to the allegations within the Statement of Uncontested Facts (**Exhibit #2**), unanimously decided to accept the Statement of Uncontested Facts as presented, which substantiated the findings of professional misconduct made by the Panel.

The Panel found that the Member participated intentionally and over a long period of time in a scheme to improperly bill the Ontario Health Insurance Plan for his own financial benefit. The Panel also reasoned that since the improper billing occurred at several THC clinics across Ontario (at which the Member practised) and was the subject of a criminal proceeding against Dr. DG (in which the Member's involvement was referenced), the Member's actions brought the reputation of Audiologists province-wide into disrepute. Beyond these adverse consequences for his colleagues in the profession, Mr. Thomas's actions in falsely and dishonestly billing OHIP showed little regard for Ontario citizens in need of health care. It is the type of conduct that impedes the proper functioning of the health care system."]

Further, with regard to the allegations related to the provision of FM devices without proper counselling, follow-up care, and with disregard to their compatibility with the hearing aids, the panel found that Mr. Thomas's failure to maintain the standards of practice of the profession was of great concern. The attachment to Exhibit #2 (**Tab D**) was a report by Ms. Shira Miller, Au.D.reg. CASLPO, entitled "Analysis of Patient Files from Total Hearing Centers", prepared for the Health Fraud Investigation Unit of the Ontario Provincial Police. Counsel for the College



advised that the report was being provided to the Panel as expert evidence that the Member had breached the standard of practice of the profession. The Member's counsel indicated that the uncontested facts were the ones set out in the Statement of Uncontested Facts (Exhibit #2) and that the Member did not necessarily acknowledge everything contained in the attachments thereto (being Tabs A to D). However, paragraph 9 of the Statement of Uncontested Facts states that "between approximately 2006 and 2008, Mr. Thomas provided inadequate counselling and follow-up care to patients who received FM systems from THC. In addition, several of the FM systems were not set up for optimal use with the hearing aids". At paragraph 10 of Exhibit #2, the Member pleaded no contest to thereby engaging in professional misconduct by (among other things) failing to maintain a standard of practice of the profession. The report referenced in paragraph 9 of Exhibit #2 (**Tab D**) demonstrated to the Panel the broad scope of Mr. Thomas's careless approach to care and the associated risks to these patients. The report also detailed his failure to maintain accurate or complete records regarding the services or products provided to the patients. The Member also pleaded no contest to failing to maintain accurate or complete patient health records in relation to services provided at THC (as set out at paragraphs 11 and 12 of Exhibit #2). This disregard for the professional standards of care and record keeping demonstrated blatant professional misconduct.

### **C. PENALTY AND COSTS**

Counsel for the College advised the Panel that a Joint Submission as to Penalty and Costs ("**JSP**") had been agreed upon and requested that the Panel make the following Order:

1. The Member is required to appear before a panel of the Discipline Committee immediately following the hearing of this matter to be reprimanded, with the fact of the reprimand and the text of the reprimand to appear on the College's public register.
2. The Registrar is directed to revoke the Member's certificate of registration.
3. The Member is required to pay to the College costs in the amount of \$10,000.00, payable within three (3) months of the Order taking effect.
4. The Member acknowledges that the decision of the Discipline Committee and a summary of its reasons, including reference to his name, may be published in the College's annual report and any other publication of the College and will be posted on the College's website.
5. The Member acknowledges that any agreement between him and the College with respect to the penalty proposed does not bind the Discipline Committee.
6. The Member acknowledges that he is executing this document voluntarily, unequivocally, free of duress, free of inducement or bribe, and that he has been advised of his right to seek legal advice.

Counsel for the College advised the Panel that the JSP was appropriate to the case and outlined how the components of the JSP met the requirement that penalties provide both specific and general deterrence and protection for the public.

In addition, the following mitigating factors were noted:

- The Member pleaded no contest to the allegations; and
- The time and expense of a contested hearing was saved.

The JSP was in keeping with past decisions made by other Colleges governed by the *Regulated Health Professions Act*. A Brief of Authorities was submitted, and the eight cases were briefly reviewed by Counsel for the College.

Counsel for the Member agreed with the Counsel for the College and did not provide additional information.

### **Decision on Penalty and Costs**

The Panel deliberated and unanimously accepted the proposed penalty and order for costs. As such, the Panel ordered:

1. The Member is required to appear before a panel of the Discipline Committee immediately following the hearing of this matter to be reprimanded, with the fact of the reprimand and the text of the reprimand to appear on the College's public register.
2. The Registrar is directed to revoke the Member's certificate of registration.
3. The Member is required to pay to the College costs in the amount of \$10,000.00, payable within three (3) months of the Order taking effect.

### **Reasons for Decision on Penalty and Costs**

The Panel considered the submissions made by Counsel for the College and Counsel for the Member on the Joint Submission as to Penalty and Costs. The Panel found that the submission was within the range set out by the precedent cases put before them and therefore found that the order would not bring the administration of justice into disrepute and would not otherwise be contrary to the public interest. The cases considered by the Panel in reaching that conclusion were as follows:

*College of Physicians and Surgeons v. Scott*, 2002 ONCPSD 15 (CanLII)

*College of Physicians and Surgeons v. Marcin*, 2016 ONCPSD 7 (CanLII)

*College of Physicians and Surgeons v. Taylor*, 2016 ONCPSD 22 and 2017 ONCPSD 17 (CanLII)

*Ontario College of Pharmacists v. Mikhael*, 2017 ONCPDC 25 (CanLII)

*Ontario College of Pharmacists v. Ayigbe*, 2016 ONCPDC 3 (CanLII)

*College of Physiotherapists of Ontario v. Akuamoah-Boateng (2011), Discipline Committee of the College of Physiotherapists of Ontario (summary)*

Given the scope, duration and intentionality of Mr. Thomas's improper billing activities and his disregard for the well-being of his patients, his colleagues and the citizens of Ontario, the Panel found that revocation of Mr. Thomas's certificate of registration as an audiologist in Ontario was appropriate, this action being the most severe sanction that the governing legislation permits. The Panel determined that the public interest was best served by revocation of Mr. Thomas's certificate of registration. The Panel was also of the view that Mr. Thomas should bear as much of the cost of the hearing as precedent would permit, given the extensive preparatory work and negotiation necessary to bring this matter to the resolution set out in the Statement of Uncontested Facts.

Accordingly, the Panel accepted the Joint Submission as to Penalty and Costs.

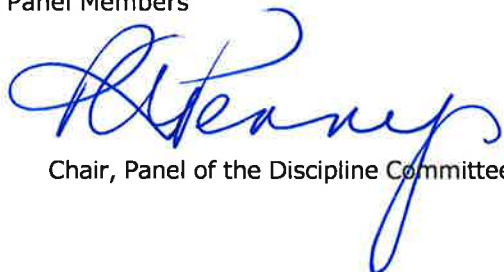
The Member waived his right of appeal and the public reprimand was delivered by the Panel Chair on April 3, 2018. The text of the reprimand is attached as Schedule "A" to this Decision and Reasons.

I, Ruth Ann Penny , Public Member of the Council of the College, sign this Decision as Chairperson of this Discipline Panel and on behalf of the Panel Members

Date: \_

May 9, 2018

Signed:



Chair, Panel of the Discipline Committee