

**IN THE MATTER OF** a Hearing of a panel of the Discipline Committee of the Royal College of Dental Surgeons of Ontario held pursuant to the provisions of the Health Professions Procedural Code which is Schedule 2 to the *Regulated Health Professions Act, 1991*, Statutes of Ontario, 1991, Chapter 18 (“Code”) respecting one **DR. JOHN OHORODNYK**, of the City of Cambridge, in the Province of Ontario;

**AND IN THE MATTER OF** the *Dentistry Act* and Ontario Regulation 853, Regulations of Ontario, 1993, as amended (“Dentistry Act Regulation”).

**AND IN THE MATTER OF** the *Statutory Powers Procedure Act*, Revised Statutes of Ontario, 1990, Chapter S.22, as amended; 1993, Chapter 27; 1994, Chapter 27.

**Members in Attendance:**

Dr. Richard Hunter – Chair  
Dr. Harpaul Anand  
Dr. Michael O’Toole  
Dr. Edelgard Mahant – Public Member  
Mr. Manohar Kanagamany – Public Member

**Appearances:**

Dayna Simon for the RCDSO  
  
Dr. John Ohorodnyk (unrepresented)  
  
Brian Gover, Independent Legal Counsel  
to the Discipline Committee of the RCDSO

**DECISION AND ORDER**

**Introduction:**

On October 26, 2015, a Panel of the Discipline Committee of the Royal College of Dental Surgeons of Ontario (“Panel”) conducted a hearing respecting allegations against Dr. John Ohorodnyk (“Member”), pursuant to the provisions of the *Health Professions Procedural Code* (“Code”), which is Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c.18.

The Panel received and reviewed the Notice of Hearing (filed as **Exhibit 1**), which contained three allegations of professional misconduct against the Member, together with associated particulars. When called upon to admit or deny the allegations, the Member admitted each of them. Because the Member was self-represented, the Chair directed the Panel's independent legal counsel to ask the Member questions to ensure that the Member's admissions of professional misconduct were voluntary, informed and unequivocal. These questions were asked on the record. In light of the Member's responses, the Panel was satisfied that the Member's admissions were in fact voluntary, informed and unequivocal, and that it could accept them.

The allegations of professional misconduct were as follows:<sup>1</sup>

- I. you committed an act or acts of professional misconduct as provided by s.51(1)(c) of the *Code*, in that, during the year(s) 2103 and 2014, you failed to comply with an order of a panel of the Discipline Committee or an order of a panel of the Fitness to Practice Committee, contrary to paragraph 52 of Section 2 of the Dentistry Act Regulation, as follows:
  - a) You breached the order of the Discipline Committee dated March 26, 2013.

Particulars:

- You failed to take reasonable steps to enrol in and complete the ProBE Program for Professional/Problem Based Ethics and the RCDSO's Recordkeeping course within the twelve months of the order of the Discipline Committee becoming final despite several attempts by the College.
- You failed to take reasonable steps to notify the College of your inability to enrol in and complete the Professional/Problem Based Ethics and the RCDSO's Recordkeeping course within the twelve months of the order of the Disciplined Committee becoming final.

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<sup>1</sup> A particular in relation to the second of these allegations (engaging in conduct or performing an act or acts that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable, unprofessional or unethical) was withdrawn at the request of College counsel. That particular stated that "You are ungovernable given your disregard for the timelines in the Discipline Committee Order dated March 26, 2013."

- You failed to successfully complete the ProBE Program for Professional/Problem Based Ethics and provide proof of successful completion in writing to the Registrar by March 26, 2014. While you did complete the course July 22-24, 2014, this is a breach of the Discipline Committee Order because it was not completed on time
  - You failed to successfully complete the RCDSO's Recordkeeping course in Recordkeeping and provide proof of successful completion in writing to the Registrar by March 26, 2014. While you did register for the course on May 23, 2014, you failed to attend; this is a breach of the Discipline Committee Order.
- b) You breached the order of the Discipline Committee as set out above despite several attempts made by the College dated: March 28, 2013, February 3, 2014, and March 7, 2014.
2. you committed an act or acts of professional misconduct as provided by s.51(1)(c) of the Code, in that, during the years 2012 and 2013, you engaged in conduct or performed an act or acts that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable, unprofessional or unethical, contrary to paragraph 59 of Section 2 of the Dentistry Act Regulation:
- a) You breached the order of the Discipline Committee dated March 26, 2013.

Particulars:

- You failed to take reasonable steps to enrol in and complete the ProBE Program for Professional/Problem Based Ethics and the RCDSO's Recordkeeping course within the twelve months of the order of the Discipline Committee becoming final despite several attempts by the College.
- You failed to take reasonable steps to notify the College of your inability to enrol in and complete the Professional/Problem Based Ethics and the RCDSO's Recordkeeping course within the twelve months of the order of the Disciplined Committee becoming final.

- You failed to successfully complete the ProBE Program for Professional/Problem Based Ethics and provide proof of successful completion in writing to the Registrar by March 26, 2014. While you did complete the course July 22-24, 2014, this is a breach of the Discipline Committee Order because it was not completed on time.
  - You failed to successfully complete the RCDSO's Recordkeeping course in Recordkeeping and provide proof of successful completion in writing to the Registrar by March 26, 2014. While you did register for the course on May 23, 2014, you failed to attend; this is a breach of the Discipline Committee Order.
- b) You breached the order of the Discipline Committee as set out above despite several attempts made by the College dated: March 28, 2013, February 3, 2014, and March 7, 2014.

**Agreed Statement of Facts:**

An Agreed Statement of Facts was filed as **Exhibit 2**. As will be seen, it was accompanied by a Document Book, which was filed as **Exhibit 3**. Together, the Agreed Statement of Facts and the Document Book were organized in a way that facilitated the Panel's understanding of the background and the specific facts admitted by the Member in relation to all of the allegations set out in the Notice of Hearing (**Exhibit 1**).

The Agreed Statement of Facts is set out in its entirety below:

**Background**

1. Dr. John Ohorodnyk first registered with the Royal College of Dental Surgeons (the "College") in 1983 as a general dentist.
2. Dr. Ohorodnyk received a Notice of Hearing dated December 11, 2014 and has reviewed same [**Tab 1 – Document Book**].
3. The Notice of Hearing particularizes two allegations of professional misconduct against Dr. Ohorodnyk which in summary are that he:

- **Failed to comply with an order of the panel of the Discipline Committee** by failing to fulfil certain aspects of the order by the date required and failing to complete other aspects at all; and engaged in
- **Disgraceful, dishonourable, unprofessional or unethical conduct** in respect of the same facts as the first allegation, which makes him ungovernable.

#### Withdrawals

4. The College seeks to withdraw the particular under Allegation #2, last bullet point, which alleges that Dr. Ohorodnyk is ungovernable. The College wishes to withdraw this particular due to Dr. Ohorodnyk's cooperation in the matter and his demonstrated willingness to be governed by the College.

#### Admissions

5. Dr. Ohorodnyk admits to Allegations #1 and #2 as set out in the Notice of Hearing dated December 11, 2014.
6. Dr. Ohorodnyk further admits that these allegations together with the particulars and facts set out in the Notice of Hearing, and this Agreed Statement of Facts, constitute professional misconduct, as set out in the professional misconduct regulation [**Tab 2 – Document Book**].

#### Facts

7. On March 26, 2013, Dr. Ohorodnyk pled guilty and was found guilty of professional misconduct by a panel of the Discipline Committee for failing to keep records as required, falsifying a record, issuing a false or misleading certificate, charging excessive fees, submitting a false account, failing to make reasonable efforts to collect the co-payment, all in respect of one patient. A copy of the decision and reasons of the Discipline Committee is attached [**Tab 3 – Document Book**].
8. The panel of the Discipline Committee accepted a joint submission on penalty and imposed the following penalty on Dr. Ohorodnyk:
  - reprimand;
  - 4 month suspension (which was served June 26, 2013 to October 25, 2013);

- Program for Professional/Problem Based Ethics (the “ProBe Course”), to be completed by March 26, 2014;
  - RCDSO course in recordkeeping (the “Recordkeeping Course”), to be completed by March 26, 2014;
  - practice monitoring for 24 months following completion of courses; and
  - \$3,000.00 in costs (payable to the College by March 26, 2014).
9. The deadline for completion of the above courses was agreed to by Dr. Ohorodnyk and his legal counsel in the joint submission on penalty and is clearly detailed in the decision of the Discipline Committee.
  10. As of June 10, 2014, some 15 months after the hearing, Dr. Ohorodnyk had not complied with the order of the Discipline Committee in that he did not complete the Recordkeeping Course and he completed the ProBe Course after the deadline.
  11. The College sent Dr. Ohorodnyk several written reminders of his penalty obligations. Specifically, on March 28, 2013, Ms. Lori Long, Manager-Inquiries, Complaints, Reports and Hearings, sent Dr. Ohorodnyk a letter detailing all of the specific obligations required in respect of the penalty. In this letter, regarding the ProBE Course, Ms. Long wrote in bold font “...**You must contact the course provider directly to make arrangements to register. I urge you to do so immediately, since it is infrequently offered in Toronto.**” The letter was copied to Dr. Rollin Matsui, who represented Dr. Ohorodnyk at the Discipline Hearing [Tab 4 – Document Book].
  12. On February 3, 2014, Ms. Long sent Dr. Ohorodnyk another letter reminding him that he was required to complete the Recordkeeping Course and the ProBe Course. Ms. Long noted that since the discipline hearing Dr. Ohorodnyk had not registered for the Recordkeeping Course that had been offered on June 21, 2013, September 27, 2013, and January 31, 2014. Ms. Long advised that the Recordkeeping Course may not be offered again prior to his deadline.
  13. Furthermore, Ms. Long noted that Dr. Ohorodnyk had not registered for the ProBe Course that was offered on August 16 to 18, 2013 nor had he registered for the upcoming ProBe Course offered on April 2 to 4, 2014 which was, in

any event, full. Dr. Ohorodnyk was provided with the July 2014 course dates but was advised that the July 2014 course dates were past his deadline [Tab 5 – Document Book].

14. On March 7, 2014, Ms. Long sent a letter by courier to Dr. Ohorodnyk and again set out the outstanding courses and how to register. In addition, Ms. Long advised Dr. Ohorodnyk that effective March 27, 2014, Dr. Ohorodnyk would be in breach of the order of the Discipline Committee and that Ms. Long was obligated to advise the Registrar of any breaches. [Tab 6 - Document Book].
15. Dr. Ohorodnyk registered for the Recordkeeping Course that was held on May 23, 2014, however he failed to attend. Dr. Ohorodnyk called the course provider on May 26, 2014 and advised that he did not attend due to a family emergency.
16. On May 27, 2014, Ms. Long again wrote to Dr. Ohorodnyk and advised him that she was aware that Dr. Ohorodnyk did not attend the Recordkeeping Course due to a family emergency. Ms. Long stated that the Recordkeeping Course was offered three times prior to the required completion date and that a small extension had been granted to allow him to attend the May 23, 2014 course date.<sup>2</sup>
17. In addition, Ms. Long advised Dr. Ohorodnyk that he now appeared to be in breach of the order of the Discipline Committee and that she was obligated to advise the Registrar. Ms. Long offered that if Dr. Ohorodnyk wished to provide a more detailed explanation to the Registrar he could do so [Tab 7 – Document Book].
18. On June 6, 2014, the College received a letter from Dr. Ohorodnyk where he apologized for missing the Recordkeeping Course and explained that he had missed the course due to a medical emergency in his family. Dr. Ohorodnyk advised that he would attend the next scheduled Recordkeeping Course and that he was registered for the ProBe Course scheduled for July 22-23, 2014 [Tab 8 – Document Book].
19. On June 10, 2014, Ms. Long advised the College Registrar, Mr. Irwin Fefergrad, that Dr. Ohorodnyk was in breach of the order of the Discipline

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<sup>2</sup> This paragraph of the Agreed Statement of Facts was amended during the hearing. Originally, it had concluded as follows: "... to allow him to attend the May 23, 2015 course date".

Committee in respect of the Recordkeeping Course and the ProBe Course. The Registrar considered this information and felt that he had reasonable and probable grounds to believe that Dr. Ohorodnyk had committed an act or acts of professional misconduct. The Registrar signed an endorsement on June 11, 2014 where he appointed Dr. Chris Swayze to conduct an investigation pursuant to section 75(1)(a) of the Code.

20. Dr. Swayze conducted an investigation and reported his findings to the Registrar. In summary, Dr. Swayze's section 75(1)(a) report recounted the history of the order of the Discipline Committee and the occasions that the courses were offered. Dr. Swayze also conducted a telephone interview with Dr. Ohorodnyk. At the time of the interview, Dr. Ohorodnyk stated that he had just completed the ProBe Course and had submitted his essay. Dr. Ohorodnyk stated that the earlier courses were full. With respect to the Recordkeeping course, he stated that he had not yet registered as he was told that the College would "give him a call". Shortly after the interview, Dr. Ohorodnyk called Dr. Swayze and told him that he was enrolled in the next Recordkeeping Course to be held at the College on August 29, 2014. Dr. Swayze asked if Dr. Ohorodnyk contacted the College to ask for additional time when he learned that earlier courses were full. Dr. Ohorodnyk said he did not.
21. Dr. Ohorodnyk attended and successfully completed the College's Recordkeeping Course on August 29, 2014 [**Tab 9 – Document Book**].
22. Dr. Ohorodnyk responded to the section 75(1)(a) report by letter, dated September 25, 2014. In the letter, he apologized to the College and stated that there were delays in completing the course due to both family and financial reasons. Dr. Ohorodnyk expressed that "this has been an extreme learning experience" and that in the future he would pursue the practice of dentistry with "care and respect" [**Tab 10 – Document Book**].
23. On October 30, 2014, a panel of the Inquiries, Complaints and Reports (ICR) Committee met to consider this matter, including the section 75(1)(a) report, submissions received and Dr. Ohorodnyk's prior decisions. During its discussion, the panel expressed very serious concerns about Dr. Ohorodnyk's conduct with respect to breach of the order of the Discipline Committee of the College. In particular, the panel was concerned that:
  - he was in breach of the order of the Discipline Committee dated May 23, 2013, in that he failed to complete the ProBE Course and the Recordkeeping Course;



- he failed to take reasonable steps to enroll in the above courses despite repeated reminders from the College; and
  - he failed to take reasonable steps to notify the College of his inability to enroll in and complete the above courses within the time period mandated by the order of the Discipline Committee.
24. Given its concerns related to Dr. Ohorodnyk's conduct, the Committee formed an intention to refer specified allegations of professional misconduct to the Discipline Committee.
  25. Dr. Ohorodnyk was advised of the intention of the Committee, as per the College's protocol, and was invited to attend at its next meeting to make submissions before the Committee made its final decision.
  26. On November 27, 2014, Dr. Ohorodnyk attended before the panel to make submissions. In summary, Dr. Ohorodnyk apologized and offered the panel further explanation regarding his financial issues and the family emergency that prevented him from attending the Recordkeeping Course.
  27. The panel considered the submissions of Dr. Ohorodnyk but was not persuaded that the matter could be resolved in any manner other than a referral of specified allegations of professional misconduct to the Discipline Committee.

#### **Summary**

28. Dr. Ohorodnyk admits to the facts as set out in Allegations#1 and #2 of the Notice of Hearing, to which he has pleaded guilty, and admits the facts as set out above.
29. Dr. Ohorodnyk further admits that these acts constitute professional misconduct.
30. Dr. Ohorodnyk has demonstrated his remorse by pleading guilty.

#### **Finding of Professional Misconduct:**

After receiving advice from its independent legal counsel (who advised that the Member's admissions of professional misconduct and the Agreed Statement of Facts provided an adequate basis on which to make findings of professional misconduct in relation to each of the

allegations of professional misconduct), the Panel deliberated, following which the hearing was reconvened and the Panel announced that it found the Member guilty of both of the allegations of professional misconduct set out in the Notice of Hearing (**Exhibit 1**).

**Joint Submission with respect to Penalty and Costs:**

The Panel was advised that the parties had entered into a Joint Submission with respect to Penalty and Costs ("Joint Submission"), which was filed as **Exhibit 4**. It was accompanied by an Exhibit Book, which was filed as **Exhibit 5** and most notably reflected that findings of professional misconduct had been made on two previous occasions.<sup>3</sup>

The Joint Submission provides as follows:

1. The Royal College of Dental Surgeons of Ontario ("College") and Dr. John Ohorodnyk (the "Member") jointly submit that this panel of the Discipline Committee impose the following penalty on the Member as a result of the panel's finding that the Member is guilty of professional misconduct, namely, that it make an order:

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<sup>3</sup> On April 3, 2000, the Member was found guilty of professional misconduct in treating a patient for a therapeutic, preventative, palliative, diagnostic, cosmetic or other health-related purpose in a situation in which consent is required by law, without such consent. The penalty order made in connection with that finding required the Member to take an approved course on the ethics and jurisprudence of informed consent, and to pay costs of \$1,500.00. More recently, in connection with a hearing held on May 26, 2013, the Member was found to have committed professional misconduct by: recommending and/or providing unnecessary dental service; failing to keep records as required by the Regulations; falsifying a record relating to his practice; signing or issuing a certificate, report or similar documentation that he knew or ought to have known contained a false, misleading or improper statement; charging a fee that was excessive or unreasonable; submitting an account or charge for dental services that he knew or ought to have known was false or misleading; and accepting an amount in full payment of an account or charge that was less than the full amount of the account or charge submitted by him to a third party payer without making reasonable efforts to collect the balance from the patient or to obtain the written consent of the third party payer. All of those allegations were in relation to the same patient. As summarized in paragraph 8 of the Agreed Statement of Facts (**Exhibit 2**), the Member was ordered to appear before the panel to be reprimanded, his certificate of registration was suspended for four (4) months, and terms, conditions and limitations were imposed on his certificate of registration that imposed monitoring of his practice for a period of twenty-four (24) months through inspections with results being reported to the College and required him to: successfully complete the ProBE program at his own expense within twelve (12) months of the order becoming final; successfully complete the RCDSO's course in recordkeeping, at his own expense, within twelve (12) months of the order becoming final; and cooperate with the College during the inspections and to pay \$600.00 per monitoring/inspection, to a maximum of \$2,400.00. The Member was also required to pay costs to the College in the amount of \$3,000.00, within twelve (12) months of the order becoming final.

- (a) requiring the Member to appear before the panel of the Discipline Committee to be reprimanded within ninety (90) days of this Order becoming final or on a date fixed by the Registrar;
- (b) directing the Registrar to suspend the Member's certificate of registration for a period of nine (9) months, to run consecutively, such suspension to commence within three (3) months of this Order becoming final;
- (c) that the Registrar impose the following terms, conditions and limitations on the Member's certificate of registration (the "Conditions"), which conditions shall continue until the suspension of the Member's certificate of registration as referred to in subparagraph 1(b) above has been fully served, namely:
  - (i) while the Member's certificate of registration is under suspension, the Member shall not be present in his dental office when patients are present, save and except for unforeseen non-patient related emergencies. Where the Member is required to attend for a non-patient related emergency, the Member shall immediately advise the Registrar of that fact including details of the nature of the emergency;
  - (ii) upon commencement of the suspension, the Member shall advise all of the Member's staff as well as any other dentist in the office that the Member engages in practice with, whether that Member is a principal in the practice or otherwise associated with the practice, of the fact that the Member's certificate of registration is under suspension;
  - (iii) during the suspension, the Member shall not do anything that would suggest to patients that the Member is entitled to engage in the practice of dentistry and shall ensure that the Member's staff is instructed not to do anything that would suggest to patients that the

Member is entitled to engage in the practice of dentistry during the suspension;

- (iv) the Member shall permit and co-operate with any office monitoring which the Registrar feels is appropriate in order to ensure that the Member has complied with this Order, and in that connection, the Member shall provide access to any records associated with the practice in order that the College can verify that the Member has not engaged in the practice of dentistry during the suspension; and
  - (v) the Conditions imposed in subparagraphs 1(c)(i)-(iv) above shall be removed at the end of the period for which the Member's certificate of registration is suspended.
- (d) directing that the Registrar also impose the following terms, conditions and limitations (the "conditions") on the Member's Certificate of Registration namely:
- (i) the Member's practice shall be monitored by the College for a period of three (3) years, by means of inspection(s) by a representative or representatives of the College, at such time or times as the College may determine with advance notice to the Member. The monitoring shall commence following the completion of monitoring that was ordered by the Discipline Committee on March 26, 2013;
  - (ii) that the Member shall cooperate with the College during the inspection(s) and further, shall pay to the College in respect of the costs of monitoring, the amount of \$600.00 per monitoring inspection, such amount to be paid immediately after completion of each of the inspections, provided that the overall cost of monitoring paid by the member shall not exceed \$2,400.00, regardless of the number of inspections performed;

- (iii) that the representative or representatives of the College shall report the results of those inspections to the Inquiries, Complaints and Reports Committee of the College and the Inquiries, Complaints and Reports Committee may, if deemed warranted, take such action as it considers appropriate;
  - (e) that the member pay costs to the College in the amount of \$10,000.00 in respect of this discipline hearing, such costs to be paid in full within twenty four (24) months of this Order becoming final.
- 2. The College and the Member further submit that pursuant to the Regulated Health Professions Act, 1991, as amended, the results of these proceedings must be recorded on the Register of the College and publication of the Decision of the panel would therefore occur with the name and address of the Member included.
- 3. A copy of the Member's prior decisions, as considered by the panel of the Inquires, Complaints and Reports Committee, that referred this matter to the Discipline Committee, is filed as an accompanying exhibit (**Exhibit 5**) to this joint submission and consists of two previous findings of professional misconduct by the Discipline Committee (2000 and 2013).

In her submissions, College counsel, Ms. Simon provided the Panel with insight into the process leading up to the hearing, and how that process afforded fairness to the Member. The Member was given an opportunity to respond to the complaint, to attend before the Inquiries, Complaints and Reports Committee and to make submissions to it, and after the specified allegations of professional misconduct were referred to Discipline, he was given full disclosure of the case.

Ms. Simon also made submissions support of the Joint Submission. In doing so, College counsel referred to the need to protect the public interest and to balance deterrence (both general and specific) with rehabilitation. Ms. Simon referred to the substantial period of

suspension called for by the Joint Submission (i.e., nine months) and submitted that it is appropriate in the circumstances, given the Member's discipline history.

The Member was afforded an opportunity to make submissions in support of the Joint Submission.

The Panel's independent legal counsel reminded the Panel of the principles relating to joint submissions on penalty. In exchange for agreeing to a joint submission, the parties are afforded some measure of certainty as to the outcome. The Panel should accept the Joint Submission unless by accepting it, the Panel would bring the discipline process into disrepute or otherwise act contrary to the public interest. That would only arise if the proposed penalty order was clearly outside the appropriate range of penalty, having regard to all of the circumstances of this case. Mr. Gover reviewed the components of the proposed penalty order and concluded by advising the Panel that the penalty order was within the appropriate range of penalty.

**Decision and Reasons as to Penalty:**

After deliberation, the Panel announced that it accepted the Joint Submission, and ordered that it be implemented.

The Panel's reasons for accepting the Joint Submission are as follows.

The Member pleaded guilty and was found guilty of professional misconduct pertaining to the two allegations as set out in the Notice of Hearing.

The Panel accepted that the proposed penalty was within the appropriate range for misconduct of this nature.

The Panel concluded that the penalty was fair and achieved the objectives of imposing penalties for acts of professional misconduct, namely: protecting the public; serving as a specific deterrent to the Member; serving as a general deterrent for the profession; serving to rehabilitate the Member and maintaining public confidence in the profession.

The reprimand, length and terms of the Member's suspension, costs awarded and publication of the decision provide an appropriate measure of deterrence for both the Member and the profession.

The requirement that the Member must submit to office inspections for a period of three years serves both to remediate the Member and to protect the public.

Although the Member has previously shown disregard for the College's authority in his failure to comply with an order of the Discipline Committee, the Member's admission of guilt demonstrates his acceptance of responsibility and remorse for his professional misconduct

**Administration of Oral Reprimand:**

At the conclusion of the hearing, the Member waived his right of appeal. Consequently, in accordance with subparagraph 1(a) of the Panel's penalty order, the Panel administered the oral reprimand to the Member.

November 14, 2015



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Dr. Richard Hunter, Chair  
on behalf of the Panel:

Dr. Harpaul Anand  
Dr. Michael O'Toole  
Dr. Edelgard Mahant – Public Member  
Mr. Manohar Kanagamany – Public Member