

**DISCIPLINE COMMITTEE OF
THE COLLEGE OF CHIROPODISTS OF ONTARIO**

B E T W E E N:

COLLEGE OF CHIROPODISTS OF ONTARIO

- and -

MICHAEL HENRY PATRICK DOHERTY

NOTICE OF HEARING

THE INQUIRIES, COMPLAINTS AND REPORTS COMMITTEE of the College of Chiropractors of Ontario (the "**College**") has referred specified allegations against **Michael Henry Patrick Doherty** (Registration #910338) to the Discipline Committee of the College. The allegations were referred in accordance with paragraph 26(1)1 of the *Health Professions Procedural Code*, being Schedule 2 to the *Regulated Health Professions Act, 1991*. Further information about the allegations is contained in the Statement of Allegations attached to this Notice of Hearing. A discipline panel will hold a hearing under the authority of sections 38 to 56 of the *Health Professions Procedural Code* for the purposes of deciding whether the allegations are true.

IF YOU DO NOT ATTEND AT THE HEARING IN ACCORDANCE WITH THE PRECEDING PARAGRAPH, THE DISCIPLINE PANEL MAY PROCEED IN YOUR

ABSENCE AND YOU WILL NOT BE ENTITLED TO ANY FURTHER NOTICE IN THE PROCEEDINGS.

If the discipline panel finds that you have engaged in professional misconduct, it may make one or more of the following orders:

1. Direct the Registrar to revoke your certificate of registration.
2. Direct the Registrar to suspend your certificate of registration for a specified period of time.
3. Direct the Registrar to impose specified terms, conditions and limitations on your certificate of registration for a specified or indefinite period of time.
4. Require you to appear before the panel to be reprimanded.
5. Require you to pay a fine of not more than \$35,000 to the Minister of Finance.

The discipline panel may, in an appropriate case, make an order requiring you to pay all or part of the College's costs and expenses pursuant to section 53.1 of the *Health Professions Procedural Code*.

You are entitled to disclosure of the evidence against you in accordance with section 42(1) of the *Health Professions Procedural Code*, as amended. You, or your representative, may contact the lawyer for the College in this matter:

Debra McKenna
WEIRFOULDS LLP
Barristers & Solicitors
4100-66 Wellington Street West
PO Box 35, TD Bank Tower
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You must also make disclosure in accordance with section 42.1 of the *Health Professions Procedural Code*, which states as follows:

Evidence of an expert led by a person other than the College is not admissible unless the person gives the College, at least ten days before the hearing, the identity of the expert and a copy of the expert's written report or, if there is no written report, a written summary of the evidence.

Date: June 11, 2020



Felecia Smith, LL.B., Registrar
College of Chiropodists of Ontario
180 Dundas Street West
Toronto, ON M5G 1Z8

TO: Michael Henry Patrick Doherty

STATEMENT OF ALLEGATIONS

1. At all material times, Michael Henry Patrick Doherty (“**Mr. Doherty**” or the “**Member**”) was a registered member of the College.

2. During the period of time from approximately January 2019 to October 2019 (the “**Relevant Period**”), Mr. Doherty engaged in professional misconduct within the meaning of the following paragraphs of section 1 of the *Professional Misconduct Regulation*, O. Reg. 750/93 under the *Chiropody Act, 1991*:
 - (i) paragraph 2 (failing to meet or contravening a standard of practice of the profession) and, in particular, the College’s standards pertaining to:
 - i. Assessment and Management;
 - ii. Patient Relations;
 - iii. Records;
 - iv. Prescription Custom Foot Orthoses; and/or
 - v. Prescription Footwear;

 - (ii) paragraph 10 (practising the profession while the member is in a conflict of interest);

- (iii) paragraph 14 (providing treatment to a patient where the member knows or ought to know that the provision of the treatment is ineffective, unnecessary or deleterious to the patient or is inappropriate to meet the needs of the patient);
- (iv) paragraph 17 (failing to keep records as required by the regulations);
- (v) paragraph 18 (falsifying a record relating to the member's practice);
- (vi) paragraph 20 (signing or issuing, in the member's professional capacity, a document that contains a false or misleading statement);
- (vii) paragraph 21 (submitting an account or charge for services that the member knows is false or misleading);
- (viii) paragraph 22 (charging a fee that is excessive in relation to the services or devices charged for);
- (ix) paragraph 30 (contravening the Act, the *Regulated Health Professions Act, 1991* or the regulations under either of those Acts), specifically:
 - i. Ontario Regulation 750/93 (Professional Misconduct) under the *Chiropractic Act, 1991*, as specified in this Notice of Hearing;
 - ii. Ontario Regulation 203/94 (General) under the *Chiropractic Act, 1991*, and, in particular, the Advertising (Part II) and Records (Part III);

- iii. section 51(1)(c) of the *Health Professions Procedural Code*, being Schedule 2 to the *Regulated Health Professions Act, 1991*; and/or

- (x) paragraph 33 (engaging in conduct or performing an act, in the course of practising the profession that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable, or unprofessional).

PARTICULARS OF THE ALLEGATIONS

1. At all material times, Mr. Doherty was a chiropodist registered with the College to practise chiropody in the Province of Ontario.
2. During the Relevant Period, the Member engaged in the practice of chiropody at the University Dundas Health Centre, also referred to as the University Foot Clinic, located in Toronto, Ontario (the “**Clinic**”).
3. On or about October 17, 2019, the College received a complaint from Manulife Financial about the Member (the “**Complaint**”).
4. As set out in the Complaint, Manulife conducted a client review and identified the Clinic as the source of a high volume of claims for orthotics and orthopaedic shoes. As a result, Manulife conducted an investigation.

A. Patient – “Anthony O’Neil”

5. As part of the investigation, a Manulife investigator (identifying himself under the alias Anthony O’Neill) contacted the Clinic to arrange an appointment. The investigator attended at the Clinic on or about January 23, 2019 and met with the Member.
6. The Member conducted an assessment, which was limited to the Member asking some questions and a hands-on examination of the investigator’s feet while the

investigator sat on the examination table. The Member also took foot impression of the investigator's feet with the use of a foam box.

7. No gait analysis was conducted by the Member.
8. At the conclusion of the assessment, the Member filled out some paperwork. Without prompting by the investigator, the Member advised what was covered by the investigator's benefits plan.
9. The Member then said words to the effect that, "Things are changing regarding the footwear. You are going to be the 'guinea pig' because insurance companies are cracking down on shoes and on the things they have to add to the shoes".
10. The Member then informed the investigator that he could select three pairs of "orthopedic shoes". The investigator asked if he could choose "normal shoes", to which the Member responded affirmatively. The investigator then indicated that he liked the Blundstone boots the Member was wearing and the Member advised him that the Clinic may have some in stock.
11. After the appointment with the Member, the investigator returned to the reception area and was advised by Clinic staff that he needed to pay \$35.00 for the chiropody assessment and \$500.00 for the orthotics. He was also told that the "orthopedic shoes" were a bit different and that the investigator required pre-approval from his insurer.

12. The receptionist then checked the Clinic stock and located a pair of Blundstone 585 boots for the investigator. At that point, the Member returned to the reception area and said words to the effect, "you found a pair". The investigator left the Clinic with the boots at no extra charge.
13. The Blundstone boots had a retail value of approximately \$219.95.
14. During the Relevant Period, the Member was aware and/or participated in the Clinic's practice of offering and/or providing free shoes with the purchase of orthotics.
15. The investigator returned to the Clinic on March 7, 2019, to pick up his orthotics. The investigator was seen by the Member who provided some advice to him on the fitting of his orthotics.
16. During the appointment, the Member also inquired whether the investigator had heard back from Manulife regarding the orthopedic shoe estimate.
17. The invoice provided by the Clinic did not make reference to free shoes and/or indicate that charge for the orthotics included the cost of the new shoes.
18. Subsequently, on or about July 16, 2019, the investigator returned to the clinic to follow-up on the orthopedic shoe purchase offer. The investigator ultimately chose three pairs of shoes. The investigator paid \$1,995.00 for the shoes.

19. On or about September 27, 2019, the investigator returned to the Clinic and was seen by the Member. The Member brought three pairs of shoes for the investigator to try on – two pairs of Clarks casual shoes and one pair of Merrell flip flops.
20. The Member did not mention any modifications were done to the shoes.
21. The investigator inquired about the invoice for the shoes and the Member stated words to the effect that, "Yasser" had submitted the claim to the insurer already and the invoice would be sent to the investigator's email.
22. The investigator received the following footwear:
 - Clarks UN/GEO Lace Navy Nubuck Size 10. Retail \$160.00
 - Clarks Cotrell Step Brown Oily Size 10. Retail \$130.00
 - Merrell Espresso Flip Flop Sandals Size 10. Retail \$100.00
23. The shoes were not modified in anyway.
24. The invoice provided to the investigator was for \$1,995.00. The invoice indicated that the investigator was provided with "custom modified orthopaedic shoes". The shoes were billed at \$975.00, with \$340.00 per pair for "modifications".
25. In addition, the invoice indicates that the investigator received three pairs of "Finn Comfort" shoes.

26. The investigator was never shown or directed to a Finn Comfort shoe store or website and the investigator did not receive any Finn Comfort shoes.
27. The Member was aware or ought to have been aware that the cost of the shoes was not an appropriate charge to be covered by insurance benefits and/or was excessive.

B. Patient – “Miranda Burch”

28. On or about March 19, 2019, a Manulife investigator, using the alias of Miranda Burch, attended the Clinic and met with the Member.
29. During the appointment, the Member asked the investigator if she had inserts before, to which the investigator replied she had not. The Member then performed an assessment and took a foam box impression of her feet.
30. The assessment did not include a gait analysis.
31. Once the assessment was completed, the Member made a comment to the effect that the investigator’s benefits plan had coverage for shoes. He advised that she could get three (3) pairs of orthopedic shoes. The Member further stated that these would be “modified” shoes. The investigator could receive Blundstones or he could modify what she chose.

32. The Member then accompanied the investigator to the reception area where she browsed shoes that were on display. The investigator commented about shoe style preferences to the Member.
33. The Member advised the investigator that he would provide her with a shoe list and, if there was something she wanted, she could speak to "Yasser" about it. The Member also stated words to the effect that, with the purchase of her orthotics, "they" could offer a shoe for \$50.00 as another option.
34. Ultimately, the investigator selected a pair of Ecco shoes, which had a price of \$120.00 written on the outside of the box. The investigator was then informed that, because she had a \$250.00 shoe allowance, she was entitled to a credit. The investigator was also told she could take the shoes with her that day.
35. The Investigator paid \$535.00 for the orthotics and the chiropody assessment by the Member. The invoice provided did not make reference to the free shoes received by the investigator and/or indicate that the charge for the orthotics included the cost of the new shoes.
36. The Clinic staff then requested the investigator's insurance details. A claim form was prepared, copied, and given to the Investigator to send to Manulife.
37. In response to reviewing the claim form, the investigator commented on the high amount of the estimate at \$1,995.00, to which the Clinic staff responded that "they

were trying to get the investigator that amount.” The staff further stated that “they” were trying to get her three pairs of custom modified shoes.

38. On or about April 16, 2019, the investigator returned to the Clinic to pick up her orthotics. The investigator was seen by the Member. At the time, the Member inquired whether the insurer had paid for her orthotics yet.
39. In recommending and providing treatment to Anthony O’Neil and Miranda Burch, the Member did not perform an adequate examination and/or assessment of the patient, but nonetheless prescribed or recommended orthotics and/or orthopedic shoes.
40. The Member failed to discuss other treatment options with the patient and/or determine if a different treatment was appropriate in the circumstance before prescribing orthotics and/or orthopaedic shoes, as required by the College’s standards.
41. The Member prescribed orthotics and/or orthopedic shoes without adequate documentation to explain the need for the prescription.
42. The Member prescribed and/or recommended orthotics and/or orthopedic shoes to patients who could not benefit from them.
43. In prescribing the orthotics, the Member failed to use a casting or imaging method that meets the College’s standards.

44. The Member's patient records did not record sufficient information to lead one to conclude that the use of orthotics and/or orthopedic shoes was clinically indicated.
45. The costs charged for the orthotics and/or orthopaedic shoes were excessive in the circumstances and the documentation with respect to those charges was false and/or misleading.
46. After dispensing the devices, the Member failed to provide adequate or any follow-up care to his patients.

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