

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

BETWEEN:

**COLLEGE OF CHIROPODISTS OF ONTARIO
("College")**

- and -

**MARZENA HARDY
("Ms. Hardy")**

Panel Members:	Allen Frankel Sousan Eissabigloo Wilhelmina E. Gonzales	Chair, Professional Member Public Member Public Member
Present:	Felecia Smith Julie Maciura Marzena Hardy John Hardy Alan L. Bromstein	Registrar of the College Counsel for the College In person (Not represented by counsel) Husband of Member Independent Counsel to the Panel
Hearing Date:	June 5, 2008	

**DECISION AND REASONS FOR THE DECISION
of the Panel of the Discipline Committee**

This matter came before a panel of the Discipline Committee ("Panel") at a Hearing which was held on June 5, 2008. Ms. Hardy was present but was not represented by legal counsel. Her husband, Mr. John Hardy, was present to provide support.

A Notice of Hearing dated February 15, 2008 containing a Statement of Allegations and an Affidavit of Service sworn the 3rd day of March, 2008 were filed together as Exhibit No. 1.

A Statement of Agreed Facts was filed on the consent of both parties as Exhibit No. 2. It contained the following agreed upon facts:

- "1 Ms. Marzena Hardy is a chiropodist duly registered in Ontario.
- 2 At all material times, Ms. Hardy worked at Academy Chiropody Clinics in Toronto, Ontario.

Insurance Claim for Mr. W

- 3, In or about April, 2006, Ms. Hardy submitted, or permitted to be submitted, a claim form for orthotics to Manulife Financial related to Mr. W. The claim form was dated April 13, 2006, and was signed by Mr. W.
4. Mr. W. had originally attended at Academy Chiropody Clinics in 2004 for the purpose of obtaining orthotics. At that time he was asked to sign a blank claim form to be used for his 2005 orthotics benefit.
5. Mr. W. did not attend at Academy Chiropody Clinics in 2006 and was not seen by Ms. Hardy prior to the completed claim form being submitted to Manulife Financial in April, 2006.
6. It is alleged that the claim form submitted to Manulife Financial in April 2006 was the claim form originally signed by Mr. W. in 2004 when it was blank.
7. Attached to the claim form when it was submitted to Manulife financial was a handwritten receipt dated April 13, 2006, indicating that \$575.00 had been paid by Mr. W. for the orthotics and a computer generated statement of account in Ms. Hardy's name indicating that \$575.00 had been paid by Mr. W. on April 13, 2006. In fact, Mr. W. did not pay Ms. Hardy or Academy Chiropody Clinics for any orthotics in April 2006.
8. Attached to the claim form was also a referral letter in Ms. Hardy's name dated April 13, 2006. The referral letter states "the orthotic devices have been dispensed to the patient today." In fact Mr. W. did not receive any orthotics from Academy Chiropody Clinics or from Ms. Hardy on April 13, 2006, or at any time in April 2006.
9. It is agreed that the above conduct constitutes professional misconduct pursuant to paragraph 20 (signing or issuing a document that contains a false or misleading statement of section 1 of Ontario Regulation 750/93, as amended, under the *Chiropody Act, 1991*.

Insurance Claim for Ms. B.

10. On or about January 24, 2007, Ms. B. attended at Academy Chiropody Clinics for the purposes of obtaining orthotics. Ms. B's husband wrote a cheque dated January 24, 2007, to Academy Clinics for \$575.00 for the payment of the orthotics. That cheque was not processed until March 2007.

11. Ms. Hardy submitted, or permitted to be submitted, to Manulife Financial on or about January 24, 2007, a claim form for orthotics for Ms. B. An invoice in Ms. Hardy's name accompanying the claim from ~~(sic)~~ indicated that the orthotics had been paid in full on January 24, 2007, when that was not the case.
12. An authorization form for prosthetic appliances that accompanied the claim was in Ms. Hardy's name despite the fact that Ms. Hardy did not assess Ms. B.
13. A referral form in Ms. Hardy's name accompanied the claim form and indicated that orthotics were dispensed to Ms. B. on January 24, 2007. In fact the orthotics were not dispensed to Ms. B. until on or about March 5, 2007.
14. It is agreed that the above conduct constitutes professional misconduct pursuant to paragraph 20 (signing or issuing a document that contains a false or misleading statement) of section 1 of Ontario Regulation 750/93, as amended, under the *Chiropody Act, 1991*.

Free Shoes Provided to Ms. B.

15. Ms. B. was also given a free pair of shoes with the orthotics that she received in March of 2007. None of the documentation in Ms. Hardy's name that was submitted to Manulife Financial by Ms. Hardy or Academy Chiropody Clinics indicated that shoes had been provided to Ms. B.
16. It is agreed that the above conduct constitutes professional misconduct pursuant to paragraph 21 (submitting an account or charge for services that the member knows is false or misleading) of section 1 of Ontario Regulation 750/93, as amended, under the *Chiropody Act, 1991*."

After giving both parties an opportunity to make submissions respecting the Statement of Agreed Facts, the Panel withdrew to deliberate.

DECISION ON FINDING OF PROFESSIONAL MISCONDUCT

The Panel was satisfied that the conduct described in paragraphs 3 to 9 of the Statement of Agreed Facts (Insurance Claim for Mr. W.) and the conduct described in paragraphs 10 to 14 of the said Statement (Insurance Claim for Ms. B.) constituted professional misconduct as defined by paragraph 20 (signing or issuing a document that contains a false or misleading statement) of section 1 of Ontario Regulation 750/93, as amended, under the *Chiropody Act, 1991*.

In its deliberation, the Panel had difficulty in understanding why the conduct as described in paragraph 15 of the Statement of Agreed Facts would constitute professional

misconduct as defined by paragraph 21 (submitting an account or charge for services that the member knows is false or misleading). The Panel sought legal advice from Mr. Bromstein in this regard and he advised the Panel that they should seek clarification from the parties.

The Panel asked for clarification upon reconvening the Hearing. Ms. Maciura, counsel for the College, explained that it was the College's position that providing free shoes may be seen as an incentive to purchase the orthotics or might be considered by the third party benefits provider as affecting the cost of the orthotics. Ms. Maciura suggested that the failure to refer in the account to the free shoes was therefore misleading. The Panel then withdrew to-deliberate further.

Upon reconvening, the Chair indicated the Panel was continuing to have difficulty in agreeing that the conduct described in paragraph 15 of the Statement of Agreed Facts would constitute professional misconduct as defined by paragraph 21 of section 1 of the College's Professional Misconduct Regulation. The Chair further indicated that the Panel was satisfied that the conduct did constitute professional misconduct under paragraph 33 of section 1 of that Regulation. Ms. Maciura pointed out that in the Notice of Hearing it has been alleged that the conduct described in paragraph 15 of the Statement of Agreed Facts was professional misconduct under paragraph 20 and paragraph 21 and/or paragraph 33 (disgraceful, dishonourable or unprofessional conduct) of section 1 of the College's Professional Misconduct Regulation. She indicated the College would have no difficulty in amending the Statement of Agreed Facts and specifically paragraph 16 to make reference only to paragraph 33 and to limit the reference to "unprofessional conduct". The Chair asked both parties if they wished to agree to make an amendment to paragraph 16 of the Statement of Agreed Facts, to read:

“16. It is agreed that the above conduct constitutes professional misconduct pursuant to paragraph 33 (unprofessional conduct) of section 1 of Ontario Regulation 750/93, as amended, under the Chiropody Act, 1991.”

Ms. Maciura, counsel for the College, advised that the College was satisfied with the amendment. Ms Hardy consulted with her husband Mr. John Hardy and subsequently advised that she also agreed with the amendment.

The amendment to paragraph 16 of the Statement of Agreed Facts (Exhibit No. 2) was made and initialled by both parties.

The Panel was satisfied that Ms. Hardy had committed professional misconduct described in the Statement of Agreed Facts (as amended) and therefore found that Ms. Hardy had committed acts of professional misconduct as set out therein.

JOINT SUBMISSION ON PENALTY AND COSTS

The parties filed a Joint Submission on Penalty and Costs, which was marked as Exhibit No. 3. The Joint Submission suggested that the following penalty and costs would be appropriate in the circumstances of this case:

- "1. Ms. Hardy will appear before a panel of the Discipline Committee to be reprimanded, the fact of which shall appear on the College register.
2. Ms. Hardy's certificate of registration will be suspended for two (2) months, on a date to be set by the Registrar.
3. Two (2) weeks of the suspension referred to in section 2 herein will themselves be suspended if Ms. Hardy successfully completes at her expense an ethics course and a jurisprudence course (or one course combining both subjects) acceptable to the Registrar, within six (6) months of the date the discipline panel's order becomes final. If Ms. Hardy fails to successfully complete the course or courses within the deadline, then the remaining two (2) weeks suspension will be served immediately thereon.
4. There will be a term, condition and limitation on Ms. Hardy's certificate of registration requiring her to submit to monitoring of her practice for a period of one (1) year, to begin after the completion of the suspension referred to in section 2 herein. This monitoring will be at Ms. Hardy's expense and will involve no more than two (2) visits by the monitor.
5. The term, condition or limitation set out in section 4 herein will be removed from Ms. Hardy's certificate of registration once the Registrar is satisfied that it has been fulfilled.
6. Ms. Hardy will be ordered to pay to the College a portion of its costs in the matter in the amount of \$3,000.00 to be paid in full in twelve (12) equal and consecutive monthly instalments of \$250.00, beginning no later than the 15th day of the first month after the conclusion of the suspension referred to in section 2 herein."

PENALTY DECISION

Ms. Maciura, counsel for the College, submitted that where a hearing involved a Joint Submission on Penalty, the Panel should accept the proposal if it is within a reasonable range of penalties for similar conduct. She also submitted that it was not the Panel's role to make minor changes to a penalty when that penalty had been jointly submitted and that so long as the penalty would not bring the administration of the proceedings into disrepute, the penalty should be accepted by the Panel. The Panel understood by this that it should accept the Joint Submission on Penalty and Costs unless the proposed result

would compromise the integrity of the process thereby causing the public to lose trust in the College's ability to self-regulate.

Ms. Maciura provided the Panel with copies of the decisions/summaries in two cases previously decided by the Discipline Committee of the College, namely, College of Chiropractors of Ontario and David Allison, and the College of Chiropractors of Ontario and Ivan Moravac.

The Panel subsequently withdrew to review the aforementioned cases as well as the submissions made by Ms. Maciura (no submissions were made by Ms. Hardy).

The Panel was of the view that the penalty and costs Order being jointly submitted for was appropriate having regard to the facts of this case. The Panel, therefore, accepted the Joint Submission on Penalty and Costs and issued that Order.

REASONS FOR THE PENALTY

In her submission, Ms. Maciura submitted that the Panel should consider four principles in determining what the appropriate penalty should be. She described those principles as

- Public protection
- General deterrence
- Specific deterrence
- Rehabilitation of the member

In the Panel's view, the penalty which was jointly submitted and ultimately imposed by the Panel was a fair one which balanced all of the principles of sentencing. It specifically took into account the following mitigating factors, namely:

- This was the first time Ms. Hardy had been brought before the Discipline Committee to face allegations of professional misconduct.
- Ms. Hardy fully co-operated with the College at every stage of the proceedings.
- Ms. Hardy entered a plea of guilty of the allegations thereby saving the College valuable time and expense in dealing with the case.

The Panel was also satisfied that the proposed Order was consistent with the previous decisions reviewed by the Panel and that the Order would act as a specific deterrent to Ms. Hardy as well as a general deterrent to the profession. As a result, the Panel accepted the Joint Submission on Penalty and Costs.

Before concluding the Hearing, Ms. Hardy waived her right of appeal and requested that the Panel administer the reprimand that day. The Panel agreed and following the completion of the Hearing administered the reprimand to Ms. Hardy.