

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

PANEL:	Cesar Mendez, Chair	Professional Member
	John Lanthier	Professional Member
	Sohail Mall	Public Member
	Wilhelmina Gonzales	Public Member

BETWEEN:

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)	
COLLEGE OF CHIROPODISTS)	Jill Dougherty – Counsel
OF ONTARIO)	for the College of Chiropractors
)	of Ontario
)	
- and -)	
)	
MARZENA HARDY)	Elyse Sunshine – Counsel
)	for the Member
)	
)	Heard: July 29, 2014

Also present at the hearing were:

Luisa Ritacca – Independent Legal Counsel to the Panel
Judy Cohen – Complaints Officer

DECISION AND REASONS

Introduction

A hearing before a Panel of the Discipline Committee (“Panel”) of the College of Chiropractors of Ontario (“College”) was held on July 29, 2014. The hearing concerned allegations of professional misconduct against a member of the College, Marzena Hardy (the “Member”). The College has a mandate to regulate the practice of the chiropractic profession and to govern its members and, in so doing, serve and protect the public interest.

The Allegations

The allegations against the Member were set out in the Notice of Hearing, dated October 30, 2013. The Amended Notice of Hearing was entered as Exhibit 1-1 at the hearing.

The allegations in respect of the Member's conduct were as follows:

1. Marzena Hardy was, at all material times, a chiropodist registered to practice chiropody in the province of Ontario. Ms. Hardy practiced at Academy Foot and Orthotic Clinics in Toronto, Ontario.
2. Between approximately January 2012 and January 2013, Ms. Hardy prescribed x-rays contrary to the *Healing Arts Radiation Protection Act*.
3. Ms. Hardy thereby engaged in professional misconduct within the meaning of paragraphs 2 (*provision withdrawn*); 20 (signing or issuing, in the member's professional capacity, a document that contains false or misleading statement), 31 (contravening a federal, provincial or territorial law, a municipal by-law or a by-law rule of a hospital, nursing home or other facility or agency that provides health services to the public if, i. the purpose of the law, by-law or rule is to protect the public health, or ii. The contravention is relevant to the member's suitability to practice), and 33 (engaging in conduct or performing an act, in the course of practicing 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 750/93 under the *Chiropody Act, 1991*.
4. Between approximately January 2012 and January 2013, Ms. Hardy used the title "doctor". Ms. Hardy also signed her name on x-ray requisition forms as the "Referring doctor".

5. Ms. Hardy thereby engaged in professional misconduct within the meaning of paragraphs 20 (signing or issuing, in the member's professional capacity, a document that contains false or misleading statement), 30 (contravening the Act, *Regulated Health Professions Act, 1991* or the regulations under either of those Acts), and 33 (engaging in conduct or performing an act, in the course of practicing 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 750/93 under the *Chiropody Act, 1991*.

Member's Plea

The Member admitted to the allegations as set out in the Amended Notice of Hearing and Agreed Statement of Facts, described below. The panel conducted a plea inquiry and was satisfied that the Member's admissions were voluntary, informed, and unequivocal.

Agreed Statement of Facts

The parties filed with the panel an Agreed Statement of Facts (Exhibit #1-3), which provided as follows:

Overview of the Member

1. Ms. Marzena Hardy (the "**Member**") was registered with the College of Chiropodists of Ontario (the "**College**") in 2001 after completing a three-year Diploma in Chiropody from the Michener Institute (the "**Michener**").
2. In 2006, the Member completed an additional year of study at the School of Podiatric medicine at New College Durham ("**Durham**") for which she received a Bachelor of Science in Podiatric Medicine. At all times relevant to the allegations as contained in the Notice of Hearing, the Member was registered to practice chiropody in the province of Ontario.

3. Since being registered with the College, the Member has practiced chiropody at the Academy Foot and Orthotic Clinic (the "**Clinic**") located at 752 Broadview Avenue in Toronto.

Prescribing X-Rays

4. Between January 2012 and January 2013, the Member prescribed x-rays to be taken of patients' feet, contrary to Section 6(1) of the *Healing Arts Radiation Protection Act*, R.S.O. 1990, c H.2 ("**HARP**"). Section 6(1) of HARP prohibits members of the College from prescribing x-rays unless they have graduated from a "four-year course of instruction in chiropody" as follows:

Instructions Required

6. (1) No person shall operate an X-ray machine for the irradiation of a human being unless the irradiation has been prescribed by,

(c) a member of the College of Chiropodists of Ontario who has been continuously registered as a chiropodist under the *Chiropody Act* and the *Chiropody Act, 1991* since before November 1, 1980 or who is a graduate of a four-year course of instruction in chiropody; or

5. The x-rays were prescribed on an "Imaging Requisition Form" of True North Imaging, a company which operates several ultrasound and radiology clinics in the Greater Toronto Area. Patients of the Member who were prescribed x-rays were permitted to attend at any location operated by True North Imaging to receive the x-ray.
6. Once a patient was x-rayed, the Member would receive a copy of the x-ray images along with a letter from a clinic radiologist indicating their examination findings. The Member would additionally receive a bill for diagnostic services. Attached as Exhibit "A" are copies of records that the Member received from True North Imaging (with identifying information regarding patients removed).
7. The Member acknowledges that she was not authorized to prescribe x-rays as she was not a "graduate of a four year course of instruction in chiropody".

8. If this matter were to proceed to hearing, the Member would indicate that she believed that she was entitled to prescribe x-rays as she had taken a three year course of instruction at Michener and a one year course at Durham.

Use of the Title Doctor

9. Between January 1, 2012 and January 1, 2013, the Member made use of the doctor title in contravention of Section 33(1) of the *Regulated Health Professions Act, 1991* which states:

Except as allowed in the regulations under this Act, no personal shall use the title "doctor", a variation or abbreviation or an equivalent in another language in the course of providing or offering to provide, in Ontario, health care to individuals. 1991, c. 18, s. 33(1).

10. In particular,
 - a) The Member inserted her own name under "Referring Doctor" heading of the "Imaging Requisition" forms used by True Imaging North and attached at Exhibit "A" in some cases without using the D.Ch designation following her name. The Member was additionally referred to as Dr. Marz Hardy" on the billing statements and in the radiological reporting letters issued (typed) by True North Imaging clinics. At no point did Ms. Hardy correct the use of the doctor title by any of the True North imaging clinics.
 - b) The Clinic provided to patients and prospective patients a document entitled "Understanding Extended Health Insurance" (the "Insurance Document") wherein it was noted that that fees were based on the "standard fee schedule published by the Ontario College of Chiropractors of Ontario". In two locations, the Insurance Document noted that the nature of the relationship with patients of the Clinic was that of "doctor-patient". Attached as Exhibit "B ' is a copy of the Insurance Document.

- c) The Member was indicated on the website "Yelp" as Dr. Marz Hardy under the Clinic's profile. The Member was additionally listed as the business owner. Attached as Exhibit "C" is a copy of the Yelp profile for the Clinic along with the Terms of Service which indicate that content on the website is generated by, and is the responsibility of, the user who creates a Yelp profile.

11. If this matter were to proceed to hearing, the Member would testify that:

- (a) The Rosedale Radiology Centre, one of the diagnostic clinics under the True North Imaging umbrella, and the primary provider of x-ray services to her patients, was aware that she was a chiropodist;
- (b) The Member did not generate the documents from the x-ray clinics which identified her as "doctor";
- (c) The Insurance Document was prepared by the Member's husband, Dr. John Hardy, who is the sole proprietor of the Clinic. However, Ms. Hardy was aware of the Insurance Document, knew that it was being given to patients and prospective patients and acknowledges that she alone has the responsibility for ensuring that she meets her professional obligations and complies with the provisions of the *Regulated Health Professions Act, 1991* and regulations concerning the use of the "doctor" title, and that any materials or information generated or distributed by Dr. Hardy or the Clinic which are relevant to Ms. Hardy's qualifications, title and practice are not inconsistent with those obligations.
- (d) Dr. Hardy submitted the Clinic's Yelp profile, although Ms. Hardy acknowledges that she is responsible for the accuracy of that profile, and, in particular, for the accuracy of the information describing her qualifications, title and practice.

12. The parties agree that these facts are substantially accurate.

13. The Member admits that by reason of the facts set out above, she engaged in professional misconduct as defined in section 51 of *Health Professions Procedural Code*, being Schedule 2 to the *Regulated Health Professions Act, 1991* as follows:

- (a) The Member admits that by prescribing x-rays contrary to HRP, she contravened section 1 of the Ontario Regulation 750/93 under the *Chiropractic Act, 1991*, in that:
 - (i) She signed or issued, in her professional capacity, a document that contains a false or misleading statement, contrary to subsection 20;
 - (ii) She contravened a provincial law where (i) the purpose of the law is to protect the public health, contrary to subsection 31; and
 - (iii) She engaged in conduct or performed an act, in the course of practicing the profession, that having regard to all the circumstances would reasonably be regarded by members as disgraceful, dishonourable or unprofessional contrary to subsection 33.

 - (b) The Member admits that by using the title "doctor", and by signing her name on x-ray requisition forms under the heading of "Referring doctor", she contravened section 1 of Ontario regulation 750/93 under the *Chiropractic Act, 1991*, in that:
 - (i) She signed or issued, in her professional capacity, a document that contains a false or misleading statement, contrary to subsection 20;
 - (ii) She contravened the *Regulated Health Professions Act*, contrary to subsection 30; and
 - (iii) She engaged in conduct or performed an act, in the course of practicing the profession, that having regard to all the circumstances would reasonably be regarded by members as disgraceful, dishonourable or unprofessional contrary to subsection 33.
14. The Member understands the nature of the allegations that have been made against her and that by voluntarily admitting to these allegations, she waives her right to require that the College to otherwise prove the case against her.
15. The Member understands that the Discipline Committee can accept that the facts herein constitute professional misconduct.

16. The Member understands that the panel's decision and reasons may be published, including the facts contained herein along with her name.
17. The Member understands that any agreement between her and the College does not bind the Discipline Committee.
18. The Member acknowledges that she has had the opportunity to receive, and in fact received independent legal advice.
19. The Member and the College consent to the panel viewing the Notice of Hearing, this Agreed Statement of Facts and the Joint Submissions as to Penalty prior to the start of the hearing.

Decision

Based on the Member's admissions, and the substantial documentation set out in the Agreed Statement of Facts (Exhibit #1), the panel finds that the Member engaged in professional misconduct as set out in the Amended Notice of Hearing and the Agreed Statement of Facts.

Reasons for Decision

In coming to this decision, the Panel considered the following; the Member's admission of professional misconduct, the Agreed Statement of Facts (Exhibit #1), and the parties' supporting documentation. Upon deliberating on these submissions, the Panel was satisfied that the conduct described in the Statement of Agreed Facts did constitute professional misconduct as alleged in the Amended Notice of Hearing.

Penalty and Costs

The parties filed a Joint Submission on Penalty and Costs, which provided as follows:

1. The College of Chiropractors of Ontario (the "College") and Ms. Marzena Hardy (the "Member") agree and jointly submit that the Discipline Committee make the following order:
 - a) An Order directing the Registrar to suspend the Member's certificate of registration for a period of five (5) months, two and a half (2.5) of which shall be remitted in the event that the Member complies with paragraph 1(b) of this Order within one (1) year from the date of the Penalty Order is signed by the Discipline Committee. The first two and a half (2.5) months of the suspension shall commence on the date that the Penalty Order is signed by the Discipline Committee and any further period of suspension which is not remitted shall be served beginning one (1) year after the Penalty Order is signed.
 - b) An Order directing the Registrar to impose a term, condition and limitation on the member's certificate of registration,
 - (i) Requiring that she complete the ProBe course in ethics, to the satisfaction of the Registrar and at the Member's own expense;
 - (ii) Permitting the College to conduct two (2) unannounced inspections and records reviews of her practice, at the Member's own expense, the cost of such inspections and records reviews not to exceed \$500 each.
 - c) An Order requiring the Member to appear before the panel to be reprimanded and the fact of the reprimand to be recorded on the Register of the College.
 - d) An Order requiring that Member to pay the College's costs fixed in the amount of \$12,000 to be paid according to the following schedule:
 - \$3,000 at the time the Penalty Order is signed,
 - \$3,000 within six (6) months of the date of the penalty Order is signed,
 - \$3,000 within nine (9) months of the date of the penalty Order is signed; and
 - \$3,000 within twelve (12) months of the date of the penalty Order is signed.

2. The Member acknowledges that pursuant to section 56 of the *Health Professions Procedural Code*, being Schedule 2 to the *Regulated Health Professions Act, 1991*, the decision and reasons, or a summary thereof, will be published in the College's annual report and may be published in any other publication of the College with the Member's name.
3. The Member acknowledges that this Joint Submission as to Penalty is not binding upon the Discipline Committee.
4. The Member acknowledges that she has had the chance to receive, and in fact has received, independent legal advice.

Penalty Decision

Having considered the Joint Submission on Penalty and Costs and the submissions of the parties, the panel hereby orders as follows:

1.
 - a) The panel directs the Registrar to suspend the Member's certificate of registration for a period of five (5) months, two and a half (2.5) of which shall be remitted in the event that the Member complies with paragraph 1(b) of this Order within one (1) year from the date of the Penalty Order is signed by the Discipline Committee. The first two and a half (2.5) months of the suspension shall commence on the date that the Penalty Order is signed by the Discipline Committee and any further period of suspension which is not remitted shall be served beginning one (1) year after the Penalty Order is signed.
 - b) The panel directs the Registrar to impose a term, condition and limitation on the member's certificate of registration,
 - (i) Requiring that she complete the ProBe course in ethics, to the satisfaction of the Registrar and at the Member's own expense;
 - (ii) Permitting the College to conduct two (2) unannounced inspections and records reviews of her practice, at the Member's own expense,

the cost of such inspections and records reviews not to exceed \$500 each.

- c) The Member shall appear before the panel to be reprimanded and the fact of the reprimand to be recorded on the Register of the College.
- d) The Member shall pay to the College's costs fixed in the amount of \$12,000 to be paid according to the following schedule:
 - \$3,000 at the time the Penalty Order is signed,
 - \$3,000 within six (6) months of the date of the penalty Order is signed,
 - \$3,000 within nine (9) months of the date of the penalty Order is signed; and
 - \$3,000 within twelve (12) months of the date of the penalty Order is signed.

Reasons for Penalty and Costs

The Panel's reasons for accepting the Joint Submission Regarding Penalty are as follows:

1. The penalty order proposed in the Joint Submission Regarding Penalty is reasonable in light of the professional misconduct admitted to in the Amended Notice of Hearing and the Agreed Statement of Facts (Exhibit #1) and in which the Panel found the Member engaged.
2. On the basis of the cases reviewed by College Counsel and reproduced in the Joint Brief of Authorities, the Panel was satisfied that the penalty order proposed by the parties is within the range of penalties imposed in cases involving similar findings of professional misconduct.
3. By admitting the allegations of professional misconduct and entering into the Agreed Statement of Facts and the Joint Submission, the Member has enabled the College and its witnesses to avoid the inconvenience and costs associated with a contested hearing.
4. The penalty incorporates a component of rehabilitation through the compulsory enrollment of the member in the ProBe ethics course, which as College Counsel

has described, is a superior course model which is customized to meet the concerns of the Discipline Panel.

5. The amount of the costs ordered, the unannounced inspections and records reviews of the Member's practice, and the publication and reporting of the case on the College website and in newsletters sent out by the College will act as general and specific deterrence.
6. The Panel was satisfied that the administration of justice would not be brought into disrepute by accepting the Joint Submission Regarding Penalty at this time and found it reasonable in the circumstances. The Panel found no basis for departing from the Joint Submission Regarding Penalty and accordingly imposed the same.
7. Notwithstanding the above points, while the Panel did accept the Joint Submission Regarding Penalty and Costs, the Panel notes that this penalty is on the low end of the reasonable range of penalties due to the following aggravating factors:
 - This is the second discipline decision against the Member by the College in the 13-year span the Member has been registered by the College. The first discipline decision was 6-years ago.
 - The professional misconduct was not an isolated incident; rather it consisted of an ongoing pattern over a 12-month period.
 - Not only did the Member use the title Doctor, but also aggravated this fact by consistently acting in a manner which reinforced this title in the eyes of her patients, the public, and other professionals. Even if the use of the title were initiated by True North Imaging, there was no effort shown to correct True North Imaging to cease using the title on documents related to the x-ray service. This use of the title doctor by the Member may have put patients at risk by having them believe that they had received more comprehensive care than they in fact may have received. The ongoing use of the title Doctor by this Member may have resulted in an unwarranted, and potentially dangerous, increase in influence on the member's recommendations by both patients and other professionals.

It should be noted that had this case been contested, the Panel would likely have ordered a more significant penalty.

Waiver of Appeal and Reprimand

At the conclusion of the hearing, the Member waived her right of appeal and indicated a preference that the Panel's order be administered immediately following the hearing. The reprimand was administered accordingly.

A copy of the reprimand is attached to these reasons at Schedule "A".

I, Cesar Mendez, sign this decision and reasons for the decision as Chair of this Discipline panel and on behalf of the members of the Discipline panel as listed below.



Cesar Mendez, Chair

Date: August 5, 2014.

Panel Members:

John Lanthier

Sohail Mall

Wilhelmina Gonzales

Schedule A

College Of Chiropodists of Ontario v. Marzena Hardy

Oral Reprimand: Delivered July 29, 2014

As you know, Ms. Hardy, as part of its penalty order, this Discipline panel has ordered you that you be given an oral reprimand. You agreed to this term of order as part of your joint submission on penalty filed during the course of the hearing. The Panel will now deliver its reprimand.

This reprimand will be part of the public portion of the Register and, as such, part of your record with the College.

Although you will be given an opportunity to make a statement at the end of the reprimand, this is *not* an opportunity for you to review the decision made by the Discipline panel, *nor* a time for you to debate the merits of our decision.

The panel has found that you have engaged in professional misconduct in 2 different ways. They are as follows:

1. In misusing and allowing others to hold yourself out as "Doctor"
2. In prescribing x-rays

It is a matter of profound concern to this panel that you have engaged in these forms of professional misconduct. By doing so, you have brought discredit to the profession and to yourself. Public confidence in this profession has been put in jeopardy. Moreover, the result of your misconduct is that you have let down your patients, the public, the profession, and yourself.

We need to make it clear to you that your conduct is unacceptable and that we are extremely and profoundly disappointed that you are once again in front of a Discipline panel as a result of your conduct.

This type of behaviour profoundly hurts not only the public's perception and trust of the profession as a whole, but also directly impacts the rest of the membership

individually. As you know, this is a small College. Your behaviour has required investigation and ultimately this hearing, all resulting in a significant economic cost which must now be shouldered by the rest of the membership.

In addition, not only is it illegal for you to hold yourself out as a “Doctor”, but this conduct has posed a real threat to public safety. Your patients may have believed they were receiving more comprehensive care than you could actually provide them, thus potentially delaying or preventing them from seeking further or required medical care.

We also want to make it clear to you that while the penalty that this panel has imposed upon you is a fair penalty, we believe that it is on the low end of the range of what is reasonable and that we intend to make that clear in our reasons for this decision and penalty. Certainly a more significant penalty will be imposed by another Discipline panel in the event that you are ever found to have engaged in professional misconduct again.

In conclusion, we sincerely hope that you take this opportunity to genuinely reflect on your practice priorities. These priorities should be fundamentally based on your patients’ best interests and not your own personal or professional gain.



Cesar Mendez, Chair

Date: July 29, 2014

Panel Members:
John Lanthier
Sohail Mall
Wilhelmina Gonzales