

APR 01 2016

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

PANEL:

Jim Daley, Chairperson
Agnes Potts
Peter Guy
Tony Merendino

BETWEEN:

COLLEGE OF CHIROPODISTS OF ONTARIO ("College"))	JORDAN GLICK for the College of Chiropractors of Ontario
)	
- and -)	
)	MARZENA HARDY (assisted by John Hardy)
)	
MARZENA HARDY)	LUISA RITACCA Independent Legal Counsel
)	
)	Heard: March 22, 2016
)	

DECISION AND REASONS

This matter came on for hearing before a panel of the Discipline Committee on March 22, 2016 at Victory Verbatim in Toronto.

The parties sought an order allowing that the allegations set out in the two Notices of Hearing (Exhibit #1, tabs 1-2) be dealt with together. The panel agreed to deal with both sets of allegations in one hearing.

The Allegations

The allegations against Marzena Hardy (the "Member") as stated in the Notices of Hearing dated November 13, 2014 (tab 1) and June 6, 2014 (tab 2) and are as follows:

IT IS ALLEGED THAT:

Notice of Hearing dated November 13, 2014 (“Notice of Hearing #1”)

1. Marzena Hardy was, at all material times, a chiroprapist registered to practise chiropody in the province of Ontario. Ms. Hardy practised at Academy Foot and Orthotic Clinics (the “Clinic”) in Toronto, Ontario.

2. Since 2011, Ms. Hardy has been advertising herself to be the owner of the Clinic. Between in or about December 2011 to in or about September 2014, Ms. Hardy was the face of the Clinic as pictures and videos of her were prominently displayed through Clinic advertising and, in particular, on the Clinic website www.academyclinics.com (“Clinic Website”).

3. Since January 2014, Ms. Hardy has advertised, or has permitted advertising, on the Clinic Website, suggesting that there are both doctors and chiroprapists on staff and/or employed by the Clinic, notwithstanding that she is not entitled to use the title “doctor” and there is no other regulated health professional practicing at the Clinic who is entitled to make use of the title “doctor” in the course of providing or offering to provide, in Ontario, health care to individuals.

4. Ms. Hardy thereby engaged in professional misconduct within the meaning of paragraph 30 (contravening the *Chiropody Act, 1991*, the *Regulated Health Professions Act, 1991* or the regulations under either of those Acts, specifically, subsections 7(1)(a) and 12 of O. Reg. 203/94 under the *Chiropody Act, 1991*) 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, dishonorable or unprofessional) of O. Reg 750/93 under the *Chiropody Act*.

5. Since December 2013, Ms. Hardy has advertised, or has permitted advertising, of the Clinic using the website and/or domain name www.ontariopodiatrists.info which links directly and automatically to the Clinic Website, notwithstanding that the Clinic has not employed a member registered as a podiatrist.

6. Ms. Hardy thereby engaged in professional misconduct within the meaning of paragraph 30 (contravening the *Chiropody Act, 1991*, the *Regulated Health Professions Act,*

1991 or the regulations under either of those Acts, specifically, subsections 7(1)(a), 8(1), 8(2)(b) and 12 of O. Reg. 203/94 under the *Chiropody Act, 1991*) 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, dishonorable or unprofessional) of O. Reg 750/93 under the *Chiropody Act*.

7. Since January 2014, Ms. Hardy has advertised, or has permitted advertising, on the Clinic Website, that she possesses an “advanced degree in podiatric medicine”.

8. Ms. Hardy thereby engaged in professional misconduct within the meaning of paragraph 30 (contravening the *Chiropody Act, 1991*, the *Regulated Health Professions Act, 1991* or the regulations under either of those Acts, specifically, subsections 7(1)(a), 9(a) and 12 of O. Reg. 203/94 under the *Chiropody Act, 1991*) 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, dishonorable or unprofessional) of O. Reg 750/93 under the *Chiropody Act*.

9. Since January 2014, Ms. Hardy has advertised, or has permitted advertising, on the Clinic Website that:

- (i) she is a “foot specialist” without also indicating her class of registration;
- (ii) she is a “highly educated primary health care specialist”;
- (iii) she is “Rated Number 1 Best Foot Specialist in the World, 8th Best Foot Specialist in the World and 2nd Best Foot Specialist and the number 1 Female Foot Specialist in Toronto by RATEMDS”;
- (iv) she is an “expert”;

10. Ms. Hardy thereby engaged in professional misconduct within the meaning of paragraph 30 (contravening the *Chiropody Act, 1991*, the *Regulated Health Professions Act, 1991* or the regulations under either of those Acts, specifically, subsections 7(1)(a), 7(1)(b) and 12 of O. Reg. 203/94 under the *Chiropody Act, 1991*) 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, dishonorable or unprofessional) of O. Reg 750/93 under the *Chiropody Act*.

11. Since January 2014, Ms. Hardy has advertised, or has permitted advertising, on the Clinic Website, that contains testimonials and/or endorsements by providing direct links to websites wherein testimonials and/or endorsements are provided including RateMDs and Yelp.

12. Ms. Hardy thereby engaged in professional misconduct within the meaning of paragraph 30 (contravening the *Chiropody Act, 1991*, the *Regulated Health Professions Act, 1991* or the regulations under either of those Acts, specifically, subsections 7(1)(c), 7(1)(d) and 12 of O. Reg. 203/94 under the *Chiropody Act, 1991*) 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, dishonorable or unprofessional) of O. Reg 750/93 under the *Chiropody Act*.

Notice of Hearing dated June 6, 2014 (“Notice of Hearing #2”)

1. Marzena Hardy was, at all material times, a chiropodist registered to practise chiropody in the province of Ontario. Ms. Hardy practised at Academy Foot and Orthotic Clinics (the “Clinic”) in Toronto, Ontario.

2. Between January 22, 2015 and March 31st, 2015, Ms. Hardy advertised, or permitted advertising, on the Clinic Website (www.academyclinics.com) by embedding within the meta-data of the website the following keywords:

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<meta name = “keywords” content = “Podiatrist, Chiropodist, Foot Care, Foot Clinic, Orthotics, Foot Specialist, Foot Doctor, Dr. Hardy, Marz Hardy, Podiatry, Chiropody, Podiatric Medicine, Orthotics” />
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3. Ms. Hardy thereby engaged in professional misconduct within the meaning of paragraph 30 (contravening the *Chiropody Act, 1991*, the *Regulated Health Professions Act, 1991* or the regulations under either of those Acts), specifically, subsections 7(1)(a), 8(1), 8(2)(b), and 12 of O. Reg. 203/94 under the *Chiropody Act, 1991* (advertising, or permitting advertising in a manner that is false, misleading or self-laudatory; holding herself out as a

podiatrist), section 33(1) of the *Regulated Health Professions Act* (using the title “doctor” in the course of offering to provide, In Ontario, health care to individuals) and section 33 of O. Reg 750/93 under the *Chiropody Act* (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, dishonorable or unprofessional).

4. Since January 2015, Ms. Hardy has advertised, or has permitted advertising, of the Clinic using the website and/or domain name www.ontariopodiatrists.com which links directly and automatically to the Clinic Website, notwithstanding that the Clinic has not employed a member registered as a podiatrist.

5. Ms. Hardy thereby engaged in professional misconduct within the meaning of paragraph 30 (contravening the *Chiropody Act, 1991*, the *Regulated Health Professions Act, 1991* or the regulations under either of those Acts), specifically, subsections 7(1)(a), 8(1), 8(2)(b) and 12 of O. Reg. 203/94 under the *Chiropody Act, 1991* (advertising, or permitting advertising in a manner that is false, misleading or self-laudatory; holding herself out as a podiatrist) and 33 of O. Reg 750/93 under the *Chiropody Act* (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, dishonorable or unprofessional).

6. Since January 2015, Ms. Hardy has advertised, or has permitted advertising, on the Clinic Website, that contains testimonials and/or endorsements by providing direct links and soliciting the posting of testimonials to RateMDs, a website that is dedicated to testimonials and/or endorsements for healthcare professionals.

7. Ms. Hardy thereby engaged in professional misconduct within the meaning of paragraph 30 (contravening the *Chiropody Act, 1991*, the *Regulated Health Professions Act, 1991* or the regulations under either of those Acts), specifically, subsections 7(1)(c), 7(1)(d) and 12 of O. Reg. 203/94 under the *Chiropody Act, 1991* (advertising, or permitting advertising by way of endorsement or testimonial) and 33 of O. Reg 750/93 under the *Chiropody Act* (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, dishonorable or unprofessional).

8. Since January 2015, Ms. Hardy has advertised, or has permitted advertising of herself as a podiatrist or as having the DPM designation at the following websites:

- (i) <http://www.findadoc.com/doctors/Ontario/Toronto/Podiatry/1017199-Marzena%20%20Hardy.aspx>
- (ii) <http://www.salespider.com/bp-59320924/marzena-hardy>
- (iii) <http://www.medicalindex.biz/company-hardy-marzena-dpm-in-scarborough-34213>
- (iv) http://toronto.yalwa.ca/ID_108090694/Hardy-Marzena-Dpm-lawrence-ave-e.html
- (v) <http://scarborough.cylex.ca/company/hardy--marzena-dpm-19419445.html>

9. Ms. Hardy thereby engaged in professional misconduct within the meaning of paragraph 30 (contravening the *Chiropody Act, 1991*, the *Regulated Health Professions Act, 1991* or the regulations under either of those Acts), specifically, subsections 7(1)(a), 8(1), 9(a), 9(b) and 12 of O. Reg. 203/94 under the *Chiropody Act, 1991* (advertising, or permitting advertising in a manner that is false, misleading or self-laudatory; holding herself out as a podiatrist; indicating after her name a diploma or degree not held by the member; indicating after her name the word “podiatrist” where the member is not a registered podiatrist) and 33 of O. Reg. 750/93 under the *Chiropody Act* (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, dishonorable or unprofessional).

Allegations not pursued

At the outset of the hearing, the College advised that it would not be pursuing the allegations set out at paragraphs 7, 8 and 9(ii) of Notice of Hearing #1. The parties called no evidence and as such the panel made no findings with respect to those allegations.

Member's Plea

Marzena Hardy admitted the allegations set out in the Notice of Hearing #1 (save for paragraphs 7, 8 and 9(ii)) and Notice of Hearing #2. The panel conducted an oral plea inquiry and was satisfied that the Member's admission was voluntary, informed and unequivocal.

Agreed Statement of Facts

Counsel for the College advised the panel that agreement had been reached on the facts and introduced an Agreed Statement of Facts (Exhibit 1, tab 6) which provided as follows:

THE MEMBER

1. Marzena Hardy ("**Ms. Hardy**" or the "**Member**") is, and was at all times relevant to the allegations in the Notices of Hearing dated November 13, 2014 and June 16, 2015, a registered member of the College of Chiropractors of Ontario (the "**College**").
2. At all times relevant to the allegations contained in Notices of Hearing dated November 13, 2014 and June 16, 2015, the Member practiced chiropractic at Academy Foot and Orthotics Clinics (the "**Clinic**") in Toronto, Ontario.

OWNERSHIP OF THE CLINIC

3. John Hardy ("**Dr. Hardy**") is Ms. Hardy's husband. He is also the current legal owner of the Clinic. From about 2012 until June of 2015, videos appeared on Youtube wherein Ms. Hardy stated that she was the owner of the Clinic. One of those videos, which was uploaded on December 21, 2011 to Youtube, also appeared on the Clinic Website but had been removed by 2012, before the complaint giving rise to the Notice of Hearing dated October 15, 2014 had been received by the College. The video was still available for viewing on Youtube on the date this Agreed Statement of Facts was signed. The Member takes the position that she did not load the video onto Youtube and has no control as to its removal.

ADVERTISING

4. The Clinic advertises using the website domain name www.academyclinics.com ("**Clinic Website**"). Between 2011 and 2015, pictures and videos of Ms. Hardy were prominently

displayed through Clinic advertising and on the Clinic Website. In late 2014, all pictures, videos and references to Ms. Hardy were removed from the Clinic Website. Ms. Hardy acknowledges that as a registered chiropodist, it was her obligation to ensure that all advertising relating to her practice conformed with College's legislation, whether or not she was legally the owner of the clinic. The College acknowledges that Ms. Hardy has taken various steps to correct the Clinic website and advertising since the issuance of the Notice of Hearing dated June 16, 2015.

5. Between January and June 2015, Ms. Hardy advertised or permitted advertising on the Clinic Website, suggesting that there is a doctor on staff at the Clinic, notwithstanding that she is not entitled to use the title "doctor" and there is no other regulated health professional practicing at the Clinic who is entitled to make use of the title "doctor" in the course of providing or offering to provide, in Ontario, health care to individuals.
6. Between December 2013 and June 2015, the Clinic used the website domain name www.ontariopodiatrists.info which linked directly and automatically to the Clinic Website.
7. Between January and November 2014, Ms. Hardy advertised or permitted advertising on the Clinic Website that:
 - (i) she is a "foot specialist" or that the Clinic employs foot specialists without also indicating a class of registration with the College;
 - (ii) she is "Rated Number 1 Best Foot Specialist in the World, 8th Best Foot Specialist in the World and 2nd Best Foot Specialist and the number 1 Female Foot Specialist in Toronto by RATEMDS";
 - (iii) chiropodists are "experts";
8. Between January 2014 and June 2015 the Clinic website contained links to sites such as RateMDs and Yelp where individuals are able to endorse Ms. Hardy. By including such links on the Clinic website, Ms. Hardy advertised or permitted advertising on the Clinic Website that contains endorsements.

9. Between January 22, 2015 and March 31st, 2015, Ms. Hardy advertised, or permitted advertising, on the Clinic Website by embedding within the meta-data of the website the following words: Podiatrist, Foot Specialist, Foot Doctor, Dr. Hardy, “Marz Hardy, Podiatry”, and Podiatric Medicine.
10. Between January and June 2015, the following sites contained advertisements of Ms. Hardy as a podiatrist or as having the DPM designation:
 - (i) <http://www.findadoc.com/doctors/Ontario/Toronto/Podiatry/1017199-Marzena%20%20Hardy.aspx>
 - (ii) <http://www.salespider.com/bp-59320924/marzena-hardy>
 - (iii) <http://www.medicalindex.biz/company-hardy-marzena-dpm-in-scarborough-34213>
 - (iv) http://toronto.yalwa.ca/ID_108090694/Hardy-Marzena-Dpm-lawrence-ave-e.html
 - (v) <http://scarborough.cylex.ca/company/hardy--marzena-dpm-19419445.html>

The Member takes the position that she did not authorize or permit the use of either her name or to misrepresent her as a podiatrist or DPM on any of these website. However, she does acknowledge that once she became aware of them, it was within her control to have those titles removed. Since June of 2015, Ms. Hardy has taken steps to remove the DPM designation or any reference to her being a podiatrist from these websites.

ADMISSIONS

The parties agree that the Discipline Committee of the College of Chiropractors of Ontario may accept the following facts as true:

11. By virtue of the above conduct, the Member admits to contravening:

- (i) Section 30 of Ontario Regulation 750/93 under the *Chiropractic Act, 1991* (contravening the *Chiropractic Act, 1991*, the *Regulated Health Professions Act, 1991* or the regulations under either of those Acts and specifically, subsections 7(1)(a), 7(1)(b), 7(1)(c), 7(1)(d), 8(1), 8(2)(b), 9(a), 9(b) and 12 of O. Reg. 203/94 under the *Chiropractic Act, 1991* relating to advertising);
- (ii) Section 30 of Ontario Regulation 750/93 under the *Chiropractic Act, 1991* (contravening the *Chiropractic Act, 1991*, the *Regulated Health Professions Act, 1991* or the regulations under either of those Acts and specifically section 33(1) of the *Regulated Health Professions Act* related to using the title “doctor” in the course of offering to provide, in Ontario, health care to individuals);
- (iii) Section 33 of Ontario Regulation 750/93 under the *Chiropractic Act, 1991* (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)

Decision

The panel considered the Agreed Statement of Facts and finds that the facts support findings of professional misconduct as set out in the Notice of Hearing and as admitted by the Member. With respect to a breach of section 33 of Ontario Regulation 750/93, the panel finds that the member’s conduct would reasonably be regarded by members of the profession as “unprofessional”.

Reasons for Decision

In coming to the decision, the Panel considered the following: the member’s admission of professional misconduct and the Agreed Statement of Facts (Exhibit #1, tab 6). The Panel was satisfied that the conduct described in the Agreed Statement of Facts did constitute professional

misconduct as alleged in the two Notices of Hearing. The Panel found that the Member's actions with regards to advertising, including the use of testimonials, use of the title "*podiatrist*", references to having "doctors" on staff, use of the word "expert", embedding among other words the words "doctor" and "podiatrist" in her clinic's web site meta data and also the use of "www.ontariopodiatrist.info" were all violations of Section 30 of Ontario Regulation 750/93 under the *Chiropody Act, 1991* as detailed in paragraph 11 (i and ii) above. In addition, the Panel found that the Member was also in contravention of Section 33 of Ontario Regulation 750/93 under the *Chiropody Act, 1991* as detailed in point 11 (iii) above. However while the Panel found that the Member's actions would reasonably be regarded by members as unprofessional they did not go so far as to represent disgraceful or dishonourable conduct and made that distinction in its decision.

Penalty

Counsel for the College advised the panel that a Joint Submission as to Penalty and Costs (Exhibit 1, tab 7) had been agreed upon. The Joint Submission provides as follows:

1. The College of Chiropractors of Ontario (the "**College**") and Ms. Marzena Hardy (the "**Member**") agree and jointly submit for the Discipline Committee to make the following order:
 - (a) Directing the Registrar to suspend the Member's certificate of registration for a period of six (6) months, two (2) months of which shall be remitted in the event that the Member complies with paragraph 1(b) of this Order.¹ The suspension shall begin the day the Order of the Discipline Committee is signed.
 - (b) Directing the Registrar to impose a term, condition and limitation on the Member's certificate of registration,
 - (i) Requiring the Member to review the College's Rules, Regulations, By-Laws and Guidelines relating to advertising as well as at least five (5) external sources (which may include, but is not limited to texts, legal

¹ For greater clarity, in the event that paragraph 1(b) is not complied with, the remaining two months of the suspension shall be served commencing April 1, 2018.

cases, policy papers) and draft an essay of no less than 1500 words explaining the reasons why rules regarding advertising are necessary within a regulated health profession and how the Member's conduct as outlined in the Notices of Hearing dated November 13, 2014 and June 16, 2015 is in violation of those rules and the negative impact that the violation of advertising rules may have on the profession. The essay must be provided to the Registrar no later than 60 days after the Order of the Discipline Committee is signed.ⁱⁱ

- (ii) For a period of two (2) years following completion of the suspension referred to in paragraph (a), above, and on the following basis, advertising relating to the Member's practice shall be supervised. The terms of the supervision are as follows:
 - (A) The supervisor shall be selected by the Registrar and approved by the Member and shall be a professional member of the College of Chiropodists of Ontario;
 - (B) The supervisor shall visit with the member every four (4) months at the Member's site(s) of practice or via telephone for a total of six (6) supervisory sessions. There must be no less than four (4) site visits;
 - (C) The supervisor shall determine the length of each visit;

ⁱⁱ For greater clarity, in the event that care is not taken by the Member with respect to the essay, and it is therefore not provided to the Registrar in a professional manner, the essay may be relied upon by the Registrar in considering whether there are reasonable and probable grounds to suggest that the Member has committed an act of professional misconduct and therefore request approval from the Inquiries, Complaints and Reports Committee of the appointment of an Investigator, pursuant to section 75(1)(a) of the *RHPA Procedural Code*.

- (D) In advance of every visit, the supervisor shall review internet advertising relating to the Memberⁱⁱⁱ and advertising in other forms (ie print, radio, television), where available. The supervisor shall identify any violations of the regulations or guidelines for discussion purposes with the Member;
- (E) In conducting site visits, the supervisor shall engage the Member in discussions regarding advertising rules, regulations and guidelines applicable to College members. The supervisor shall review advertising relating to the Member with the Member and identify any advertising that is in violation of the regulations or guidelines;
- (F) The Member shall take reasonable steps to correct any violations of the advertising rules, regulations and guidelines that were identified by the supervisor and must report the steps taken to correct the violations to the supervisor within one week of the supervisory visit;
- (G) The supervisor shall prepare a report to the Registrar every other session (for clarity, a report is to be generated every (8) months) detailing what occurred at the prior two (2) supervisory sessions. The report must include an outline of any violations of the advertising rules, regulations and guidelines that were identified and what steps the Member took to correct the violations.^{iv}

ⁱⁱⁱ For clarity, advertising relating to the Member includes any reference to the Member in any medium, whether the Member was actively involved in the publication of the advertising or not. This would include, for example, reference to the Member on websites that she has not actively taken steps to advertise on.

^{iv} For clarity, in the event that the supervisory reports suggest further professional misconduct by the Member for which the Member has not taken reasonable steps to address in accordance with section 1(B)(ii)(F) above, the supervisory reports may be relied upon by the Registrar in considering whether there are reasonable and probable grounds to suggest that the Member has committed an act of professional misconduct and therefore request approval from the Inquiries, Complaints and Reports Committee of the appointment of an Investigator, pursuant to section 75(1)(a) of the *RHPA Procedural Code*.

(H) The Member shall pay the costs of the supervision (to a maximum of \$300 per site visit, \$150 per telephone discussion and \$300 per supervisory report) and shall fully reimburse the College for these costs within thirty (30) days of receiving an invoice from the College for the supervision; and,

(c) Directing that the Member shall appear before the panel to be reprimanded and the fact of the reprimand to be recorded on the Public Register of the College.

(d) Directing the Member to pay the College's costs fixed in the amount of \$22,500 to be paid by certified cheque according to the following schedule and provided that this Joint Submission as to Penalty is accepted in its entirety:

(i) \$12,500 to be paid within 7 days of the hearing; and,

(ii) \$10,000 to be paid within 90 days thereafter.

In the event that the Member does not pay \$12,500 within 7 days of the hearing, the payment of the entire \$22,500 becomes immediately due and enforceable.

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 independent legal advice and did so before agreeing to this Joint Submission.

Penalty Submissions

The parties filed a joint submission as to penalty dated March 10, 2016 (Exhibit #1, tab 7). Counsel for the College submitted that the Panel should consider four principles in determining what the appropriate penalty should be. These principles were:

- To denunciate the conduct of the member
- Specific deterrence
- General deterrence
- Rehabilitation

College Counsel also submitted that the penalty should be in the public interest and be within a reasonable range, in light of other decisions from this Discipline Committee. Counsel submitted that the joint submission as to penalty met all of the necessary tests and as a result was appropriate.

The Member agreed that the proposed penalty was reasonable in the circumstances and in fact indicated that she would welcome the supervision outlined in the proposed penalty.

Penalty Decision

The panel accepts the Joint Submission as to Penalty and Costs and accordingly orders:

- (a) That the Registrar suspend the Member's certificate of registration for a period of six (6) months, two (2) months of which shall be remitted in the event that the Member complies with paragraph 1(b) of this Order.^v The suspension shall begin the day the Order of the Discipline Committee is signed.
- (b) That the Registrar impose a term, condition and limitation on the Member's certificate of registration,

^v For greater clarity, in the event that paragraph 1(b) is not complied with, the remaining two months of the suspension shall be served commencing April 1, 2018.

- (i) Requiring the Member to review the College's Rules, Regulations, By-Laws and Guidelines relating to advertising as well as at least five (5) external sources (which may include, but is not limited to texts, legal cases, policy papers) and draft an essay of no less than 1500 words explaining the reasons why rules regarding advertising are necessary within a regulated health profession and how the Member's conduct as outlined in the Notices of Hearing dated November 13, 2014 and June 16, 2015 is in violation of those rules and the negative impact that the violation of advertising rules may have on the profession. The essay must be provided to the Registrar no later than 60 days after the Order of the Discipline Committee is signed.^{vi}

- (ii) For a period of two (2) years following completion of the suspension referred to in paragraph (a), above, and on the following basis, advertising relating to the Member's practice shall be supervised. The terms of the supervision are as follows:
 - (A) The supervisor shall be selected by the Registrar and approved by the Member and shall be a professional member of the College of Chiropodists of Ontario;

 - (B) The supervisor shall visit with the member every four (4) months at the Member's site(s) of practice or via telephone for a total of six (6) supervisory sessions. There must be no less than four (4) site visits;

 - (C) The supervisor shall determine the length of each visit;

^{vi} For greater clarity, in the event that care is not taken by the Member with respect to the essay, and it is therefore not provided to the Registrar in a professional manner, the essay may be relied upon by the Registrar in considering whether there are reasonable and probable grounds to suggest that the Member has committed an act of professional misconduct and therefore request approval from the Inquiries, Complaints and Reports Committee of the appointment of an Investigator, pursuant to section 75(1)(a) of the *RHPA Procedural Code*.

- (D) In advance of every visit, the supervisor shall review internet advertising relating to the Member^{vii} and advertising in other forms (ie print, radio, television), where available. The supervisor shall identify any violations of the regulations or guidelines for discussion purposes with the Member;
- (E) In conducting site visits, the supervisor shall engage the Member in discussions regarding advertising rules, regulations and guidelines applicable to College members. The supervisor shall review advertising relating to the Member with the Member and identify any advertising that is in violation of the regulations or guidelines;
- (F) The Member shall take reasonable steps to correct any violations of the advertising rules, regulations and guidelines that were identified by the supervisor and must report the steps taken to correct the violations to the supervisor within one week of the supervisory visit;
- (G) The supervisor shall prepare a report to the Registrar every other session (for clarity, a report is to be generated every (8) months) detailing what occurred at the prior two (2) supervisory sessions. The report must include an outline of any violations of the advertising rules, regulations and guidelines that were identified and what steps the Member took to correct the violations.^{viii}

^{vii} For clarity, advertising relating to the Member includes any reference to the Member in any medium, whether the Member was actively involved in the publication of the advertising or not. This would include, for example, reference to the Member on websites that she has not actively taken steps to advertise on.

^{viii} For clarity, in the event that the supervisory reports suggest further professional misconduct by the Member for which the Member has not taken reasonable steps to address in accordance with section 1(B)(ii)(F) above, the supervisory reports may be relied upon by the Registrar in considering whether there are reasonable and probable grounds to suggest that the Member has committed an act of professional misconduct and therefore request approval from the Inquiries, Complaints and Reports Committee of the appointment of an Investigator, pursuant to section 75(1)(a) of the *RHPA Procedural Code*.

- (H) The Member shall pay the costs of the supervision (to a maximum of \$300 per site visit, \$150 per telephone discussion and \$300 per supervisory report) and shall fully reimburse the College for these costs within thirty (30) days of receiving an invoice from the College for the supervision; and,
- (c) Directing that the Member shall appear before the panel to be reprimanded and the fact of the reprimand to be recorded on the Public Register of the College.
- (d) Directing the Member to pay the College's costs fixed in the amount of \$22,500 to be paid by certified cheque according to the following schedule and provided that this Joint Submission as to Penalty is accepted in its entirety:
 - (i) \$12,500 to be paid within 7 days of the hearing; and,
 - (ii) \$10,000 to be paid within 90 days thereafter.

In the event that the Member does not pay \$12,500 within 7 days of the hearing, the payment of the entire \$22,500 becomes immediately due and enforceable.

Reasons for Penalty Decision

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 two Notices of Hearing and the Agreed Statement of Facts (Exhibit #1) and in which the Panel found the Member engaged as well as the fact this is the third and fourth time the Member has come before the Discipline Panel.
2. 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.

3. The penalty incorporates a component of rehabilitation through the submission of a 1500 word essay explaining the reasons why rules regarding advertising are necessary within a regulated health profession and compliance with the mandated two year supervision of the members practice advertising.
4. The requirement to prepare an essay, the supervised visits over a two year period and the publication and reporting of the case on the College website and in newsletters sent out by the College will act as a general and specific deterrence.
5. The Panel was satisfied that the administration of justice would not be brought into disrepute by accepting the Joint submission found it reasonable in the circumstances. The Panel found no basis for departing from the Joint Submission Regarding Penalty and accordingly imposed the same.
6. 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 high end based on the precedent case provided (Tab 9 of the Brief of Legislation and Authorities). However: a) as this is the third and fourth discipline decision against the Member by the College in the 15-year span the Member has been registered by the College. The last discipline decision was in 2014. As a result the penalty and costs were considered to be reasonable. b) The professional misconduct was not an isolated incident; rather it consisted of numerous violations of the Act and Regulations.

I, Jim Daley, sign this decision and reasons for the decision as Chairperson of this Discipline panel and on behalf of the members of the Discipline panel as listed below:



Jim Daley, Chairperson

MARCH 31 2016

Date

Agnes Potts
Peter Guy
Tony Merendino