

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

PANEL:

Jamie Maczko, Chairperson
Agnes Potts
Millicent Vorkapich-Hill

BETWEEN:

COLLEGE OF CHIROPODISTS OF ONTARIO ("College"))	JORDAN GLICK for the College of Chiropractors of Ontario
)	
- and -)	
)	SUNGMIN IM
)	
SUNGMIN IM)	LUISA RITACCA Independent Legal Counsel
)	
)	Heard: December 1, 2015
)	

DECISION AND REASONS

This matter came on for hearing before a panel of the Discipline Committee on December 1, 2015 at Victory Verbatim in Toronto.

The Allegations

The allegations against Sungmin Im (the "Member") as stated in the Notice of Hearing dated November 17, 2015 are as follows.

IT IS ALLEGED THAT:

1. Sungmin Im was, at all material times, a chiropractor registered to practise chiropractic in the province of Ontario. During the material times, Mr. Im provided chiropractic services to clients in their homes. He additionally provided foot care to residents of Christie Gardens, a retirement home in Toronto, Ontario.
2. In August and September of 2015, the College of Chiropractors of Ontario (the "College") received information that Mr. Im was not maintaining appropriate standards in respect of sterilization and infection control while providing chiropractic services to clients.

3. In September of 2015, a College investigation into Mr. Im's practice found that Mr. Im:
 - a) Failed to use a new pair of non-sterile examination gloves and a mask for each patient;
 - b) Failed to properly sterilize instruments;
 - c) Failed to use proper equipment to sterilize instruments;
 - d) Failed to sterilize instruments in instrument wraps, cases or disposable instrument pouches before use with each patient;
 - e) Used instruments that had not been properly sterilized in the course of providing care to patients;
 - f) Failed to use biological indicators to ensure proper sterilization;
 - g) Failed to dispose of single use / disposable items ("sharps" and/or "sterile blades") in a safe manner and in a manner that prevents the contamination of unused items;
 - h) Failed to pre-clean instruments in a timely manner;
 - i) Failed to make or maintain proper records with respect to sterilization;
 - j) Failed to create, maintain and store equipment service records;
 - k) Failed to properly label and monitor sterilization products to ensure effectiveness at time of use;
 - l) Failed to properly label hazardous materials;
 - m) Failed to provide or to use adequate facilities and equipment such as an autoclave that meets the standards of the College, a chair that can be wiped down, a floor that is not carpeted and proper cleaning solution;
 - n) Failed to wipe down the chair and sweep the floor between each patient;
 - o) Failed to store hazardous materials in a specific, safe and controlled area and dispose of them safely.

4. Mr. Im thereby engaged in professional misconduct within the meaning of paragraphs 2 (failing to meet or contravening a standard of practice of the profession) 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 O. Reg. 750/93 under the Chiropractic Act, 1991.

Member's Plea

Sungmin Im admitted the allegations set out in the Notice of Hearing. 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 which provided as follows.

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

MEMBER

1. Sungmin Im (the "Member") was, at all material times, a chiropractor registered to practise chiropractic in the province of Ontario. During the material times, Mr. Im provided chiropractic services to clients in their homes. He additionally provided foot care to residents of Christie Gardens, a retirement home in Toronto, Ontario.

CONCERNS REGARDING INFECTION CONTROL

2. In August and September of 2015, the College of Chiropractors of Ontario (the "College") received information that Mr. Im was not maintaining appropriate standards in respect of sterilization and infection control while providing chiropractic services to clients.
3. In September of 2015, a College investigation into Mr. Im's practice found that Mr. Im:
 - a) Failed to use a new pair of non-sterile examination gloves and a mask for each patient;
 - b) Failed to properly sterilize instruments;
 - c) Failed to use proper equipment to sterilize instruments;
 - d) Failed to sterilize instruments in instrument wraps, cases or disposable instrument pouches before use with each patient;
 - e) Used instruments that had not been properly sterilized in the course of providing care to patients;

- f) Failed to use biological indicators to ensure proper sterilization;
- g) Failed to dispose of single use I disposable items ("sharps" and/or "sterile blades") in a safe manner and in a manner that prevents the contamination of unused items;
- h) Failed to pre-clean instruments in a timely manner;
- i) Failed to make or maintain proper records with respect to sterilization;
- j) Failed to create, maintain and store equipment service records;
- k) Failed to properly label and monitor sterilization products to ensure effectiveness at time of use;
- l) Failed to properly label hazardous materials;
- m) Failed to provide or to use adequate facilities and equipment such as an autoclave that meets the standards of the College, a chair that can be wiped down, a floor that is not carpeted and proper cleaning solutionⁱ;
- n) Failed to wipe down the chair and sweep the floor between each patient;
- o) Failed to store hazardous materials in a specific, safe and controlled area and dispose of them safely.

Mr. Im acknowledges the above noted deficiencies to his practice. The investigative report is attached to this Agreed Statement of Fact as **Appendix "A"**. An expert report that considered and opined on whether Mr. Im's conduct fell below appropriate standards is attached as **Appendix "B"**.

- 4. On October 15th, 2015, a panel of the College's Inquiries, Complaints and Reports Committee ("ICRC") met to consider the investigative report. At that time, the ICRC referred specified allegations of professional misconduct to the Discipline Committee. The ICRC additionally imposed an Interim Order on the Member which was signed on October 16, 2015. The Interim Report is attached to this Agreed Statement of Fact as Appendix "C".

ADMISSIONS OF PROFESSIONAL MISCONDUCT

- 5. By virtue of the above conduct, the Member admits to contravening:
 - a) section 2 of Ontario Regulation 750/93 under the *Chiroprody Act*, 1991 (failing to meet or contravening a standard of practice of the profession) by reason of the deficiencies noted in his practice as outlined in paragraph 3 above.

ⁱ Mr. Im wishes to have noted that the facilities in question were provided to him by Christie Gardens in order to provide services to their clients. He no longer provides services to clients of Christie Gardens.

- b) section 33 of Ontario Regulation 750/93 under the *Chiropody 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) by reason of the deficiencies noted in his practice as outlined in paragraph 3 above.

MEMBER'S ACKNOWLEDGEMENTS

6. The Member understands the nature of the allegations that have been made against him and that by voluntarily admitting to these allegations, he waives his right to require the College to otherwise prove the case against him.
7. The Member understands that the Discipline Committee can accept that the facts herein constitute professional misconduct.
8. The Member understands that depending on any penalty ordered by the Discipline Committee, the panel's decision and reasons may be published, including the facts contained herein and his name.
9. The Member understands that any agreement between him and the College does not bind the Discipline Committee.

Decision

The Panel considered the Agreed Statement of Facts and finds that these Facts support findings of professional misconduct as set out in the Notice of Hearing and as admitted by the Member.

The Panel considered the facts as presented on December 1, 2015, and agree that the Member has contravened:

Section 2 of Ontario Regulation 750/93 under the *Chiropody Act*, 1991 (failing to meet or contravening a standard of practice of the profession) by reason of the deficiencies noted in his practice. Some examples include: wearing the same gloves to treat numerous patients; failure to properly sterilize instruments; failure to dispose of single use scalpel blades properly; failure to label hazardous materials properly;

Section 33 of Ontario Regulation 750/93 under the *Chiropody 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) by reason of the deficiencies noted in his practice previously in this document.

The Panel agreed that the Member's actions are not acceptable for himself, or any Chiropodist or Podiatrist, as Members of the College of Chiropodists of Ontario.

Penalty

Counsel for the College advised the panel that a Joint Submission as to Penalty and Costs had been agreed upon. The Joint Submissions provides as follows:

1. The College of Chiropractors of Ontario (the "**College**") and Mr. Sungmin Im (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 four (4) months, two (2) months of which shall be remitted in the event that the Member complies with paragraph 1(b)(i) and 1(b)(ii) of this Order. The first two month 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 immediately following the first month of the suspension in the event that the Member has not complied with paragraph 1(b)(i).ⁱⁱ
 - b) An Order directing the Registrar to impose a term, condition and limitation on the Member's certificate of registration,
 - i. requiring the Member to receive mentorship by a member of the College, at his expense, in infection control practices at least 3 times during the course of the first two (2) months of his suspension. The mentorship must include a **full** review of the Member's infection control practices and must also involve a review of the College's Standards pertaining to Infection Control and Safety and the Practice Environment, as well as training in appropriate sterilization techniques and infection control protocol. At the conclusion of the mentorship, the mentor shall provide a mentorship report of the Registrar.ⁱⁱⁱ
 - ii. requiring the Member to submit a detailed report to the Registrar within the first two months of his suspension, specifying the changes he has made and will continue to make to his practice relating to Infection Control, Safety and the Practice Environment;

ⁱⁱ The College notes that the suspension in this case takes into account that the Member has been under interim suspension since the referral of this matter to the Discipline Committee. Had it not been for the interim order suspension, the College would have sought a longer term of suspension.

ⁱⁱⁱ For clarity, in the event that the mentorship report in section 1(b)(i), the report of the Member that is provided for in section 1(b)(ii) or any of the supervisory reports identified in section 1(b)(iii) suggest further professional misconduct by the Member, those 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*.

iii. For a period of two (2) years following completion of the suspension referred to in paragraph (a), above, and on the following basis, the Member's practice shall be supervised. The terms of the supervision are as follows:

- A. The supervisor shall be appointed by the Registrar and shall be a professional member of the College of Chiropodists of Ontario;
- B. When asked by the supervisor, the Member must identify to the supervisor his schedule of practice for seeing patients and identify the locations where patients are seen and where patient records are kept. In the event that the Member's schedule changes, he must immediately identify such changes to his supervisor;
- C. 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;
- D. The supervisor shall determine the length of each visit;
- E. In conducting site visits, the supervisor shall review the Member's infection control practices and engage the Member in discussions regarding compliance with prescribed infection control standards and protocol;
- F. 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.³
- G. The Member shall pay the costs of the supervision (to a maximum of \$350 per site visit, \$150 per telephone discussion and \$300 per supervisory report) and shall fully reimburse the College for these costs within twenty (20) days of receiving an invoice from the College for the supervision; and,

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 the Member to pay the College's costs fixed in the amount of \$5,000 to be paid immediately.^{iv}
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 he has had the chance to receive independent legal advice but has declined to do so.

^{iv} The College acknowledges that the Member has provided information suggesting that the Member could not afford to pay a costs order that is higher than this stated amount and that otherwise, the costs order would have been higher.

Penalty Submissions

The Panel has accepted the Joint submissions on Penalty and Costs and they are consistent with other decisions reviewed by the Panel.

The Panel agrees that the penalty is fair because it reflects the following: Public protection; General deterrence; specific deterrence; rehabilitation of the Member. The proposed penalty also fairly takes into account the mitigation factors, including the fact that the Member agreed to admit the allegations which greatly sped up the process, he is a first time offender, he has been fully co-operative, and he is in agreement to complete a remedial program,

Penalty Decision

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

- a) The Registrar is directed to suspend the Member's certificate of registration for a period of four (4) months, two (2) months of which shall be remitted in the event that the Member complies with paragraph 1(b)(i) and 1(b)(ii) of this Order. The first two month 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 immediately following the first month of the suspension in the event that the Member has not complied with paragraph 1(b)(i).
- b) The Registrar is directed to impose a term, condition and limitation on the Member's certificate of registration,
 - i. requiring the Member to receive mentorship by a member of the College, at his expense, in infection control practices at least 3 times during the course of the first two (2) months of his suspension. The mentorship must include a **full** review of the Member's infection control practices and must also involve a review of the College's Standards pertaining to Infection Control and Safety and the Practice Environment, as well as training in appropriate sterilization techniques and infection control protocol. At the conclusion of the mentorship, the mentor shall provide a mentorship report to the Registrar.^v

^v The College notes that the suspension in this case takes into account that the Member has been under interim suspension since the referral of this matter to the Discipline Committee. Had it not been for the interim order suspension, the College would have sought a longer term of suspension.

^v For clarity, in the event that the mentorship report in section 1(b)(i), the report of the Member that is provided for in section I(b)(ii) or any of the supervisory reports identified in section 1(b)(iii) suggest further professional misconduct by the Member, those 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*.

- ii. requiring the Member to submit a detailed report to the Registrar within the first two months of his suspension, specifying the changes he has made and will continue to make to his practice relating to Infection Control, Safety and the Practice Environment;
 - iii. For a period of two (2) years following completion of the suspension referred to in paragraph (a), above, and on the following basis, the Member's practice shall be supervised. The terms of the supervision are as follows:
 - A. The supervisor shall be appointed by the Registrar and shall be a professional member of the College of Chiropodists of Ontario;
 - B. When asked by the supervisor, the Member must identify to the supervisor his schedule of practice for seeing patients and identify the locations where patients are seen and where patient records are kept. In the event that the Member's schedule changes, he must immediately identify such changes to his supervisor;
 - C. 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;
 - D. The supervisor shall determine the length of each visit;
 - E. In conducting site visits, the supervisor shall review the Member's infection control practices and engage the Member in discussions regarding compliance with prescribed infection control standards and protocol;
 - F. 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.
 - G. The Member shall pay the costs of the supervision (to a maximum of \$350 per site visit, \$150 per telephone discussion and \$300 per supervisory report) and shall fully reimburse the College for these costs within twenty (20) days of receiving an invoice from the College for the supervision; and,
- c) The Member is required to 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 is required to pay the College's costs fixed in the amount of \$5,000 to be paid immediately.^{vi}

Reasons for Penalty Decision

The panel concluded that the proposed penalty is reasonable and in the public interest. The Member has co-operated with the College and, by agreeing to the facts and a proposed penalty, has accepted responsibility for his actions.

The Panel agrees that the penalty issued to the Member for his inappropriate actions and lack of proper infection control standards, should act as a general deterrence to all Members. This penalty should also educate the Member to become a better chiropodist through rehabilitation and remediation, and remind all Members that they should examine their own professional infection control standards and procedures.

I, Jamie Maczko, 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:



Jamie Maczko, Chairperson

December 22, 2015
Date

Names of panel members
Agnes Potts
Millicent Vorkapich-Hill

^{vi} The College acknowledges that the Member has provided information suggesting that the Member could not afford to pay a costs order that is higher than this stated amount and that otherwise, the costs order would have been higher.