

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

PANEL:	Peter Stavropoulos, Chair Stephen Haber Ann-Marie McLaren Ray Ferraro Wilhelmina E. Gonzales	Professional Member Professional Member Professional Member Public Member Public Member
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BETWEEN:

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)	
COLLEGE OF CHIROPODISTS OF ONTARIO)	Mr. Bernard LeBlanc for the College of Chiropractors of Ontario
)	
- and -)	
)	
CHARLES MACMULL)	Self-Represented
)	
)	
)	Heard: December 5, 2013

Also present at the hearing were:

Ms. Luisa Ritacca – Independent Legal Counsel to the Panel
Ms. Vicky Graham – 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 December 5, 2013. The hearing concerned allegations of professional misconduct against a member of the College, Mr. Charles MacMull (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 4, 2013. The Notice of Hearing was entered as Exhibit 1 at the hearing.

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

1. Charles MacMull was, at all material times, a chiropodist registered to practise chiropody in the Province of Ontario. Mr. MacMull practiced at a number of locations in the Greater Toronto Area, including Forest Hill Foot Clinic (FHFC).
2. Mr. MacMull has failed to maintain appropriate standards in respect of sterilization and infection control. Among other things, Mr. MacMull:
 - a. Failed to properly sterilize instruments;
 - b. Failed to use proper equipment to sterilize instruments;
 - c. Used instruments that had not been properly sterilized in the course of providing care to patients;
 - d. Failed to use biological indicators to ensure proper sterilization;
 - e. Failed to properly monitor sterilization systems in his practice;
 - f. Allegation Withdrawn;
 - g. Failed to make or maintain proper records with respect to sterilization in his practice;
 - h. Allegation Withdrawn;
 - i. Failed to properly store medication; and,
 - j. Failed to provide proper or adequate facilities and equipment such as appropriate flooring, an autoclave, proper sinks, (word withdrawn) protective clothing and equipment, proper cleaning solutions, an oxygen tank, fire extinguishers and (word withdrawn).

3. Mr. MacMull 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 *Chiropody Act, 1991*.

4. Further, Mr. MacMull:

- a. Failed to store hazardous materials in a specific, safe and controlled area;
- b. Failed to properly label hazardous materials;
- c. Failed to maintain patient confidentiality in respect of patient health records; and,
- d. Failed to properly store patient records.

5. For each of these reasons, Mr. MacMull engaged in professional misconduct within the meaning of paragraph 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 *Chiropody Act, 1991*.

Member's Plea

The Member admitted the allegations, as set out in the Agreed Statement of Facts (Exhibit 2), described below. The Panel conducted a plea inquiry and was satisfied that the Member's admissions were voluntary and unequivocal.

Agreed Statement of Facts

1. Charles MacMull was, at all material times, a chiropodist registered to practise chiropody in the Province of Ontario. Mr. MacMull practiced at a number of locations in the Greater Toronto Area, including Forest Hill Foot Clinic (FHFC).
2. Mr. MacMull has failed to maintain appropriate standards in respect of sterilization and infection control. Among other things, Mr. MacMull:
 - a. Failed to properly sterilize instruments;
 - b. Failed to use proper equipment to sterilize instruments;
 - c. Used instruments that had not been properly sterilized in the course of providing care to patients;
 - d. Failed to use biological indicators to ensure proper sterilization;
 - e. Failed to properly monitor sterilization systems in his practice;
 - f. Failed to make or maintain proper records with respect to sterilization in his practice;
 - g. Failed to properly store medication; and,
 - h. Failed to provide proper or adequate facilities and equipment such as appropriate flooring, an autoclave, proper sinks, protective clothing and equipment, proper cleaning solutions, an oxygen tank, and fire extinguishers.
3. Had he testified, Mr. MacMull would have said that with respect to paragraphs 2(a), (b) and (c) above, he did in fact use procedures that he believed were appropriate, but he concedes that they did not meet the standards of practice of the profession.
4. For each of these reasons, Mr. MacMull 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 *Chiropody Act, 1991*.

5. Further, Mr. MacMull:

- a. Failed to store hazardous materials in a specific, safe and controlled area;
- b. Failed to properly label hazardous materials;
- c. Failed to maintain patient confidentiality in respect of patient health records; and,
- d. Failed to properly store patient records.

6. For each of these reasons, Mr. MacMull 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 *Chiropody Act, 1991*.

7. Attached here to at Tab "A" is a copy of the Investigation Report of August 21, 2013.

8. Attached hereto at Tabs "B" "C", and "D" are copies of the Expert Reports of Ms. Cindy Lewis dated August 21, August 23 and September 2, 2013, respectively.

9. Attached hereto at Tab "E" is a copy of the Investigation Report of September 22, 2013.

10. Attached hereto at Tab "F" is a copy of the Supplementary Expert Report of Ms. Cindy Lewis dated September 23, 2013.

11. The parties agree that these facts and opinions are substantially accurate.

12. Mr. MacMull understands the nature of the allegations that have been made against him and that by voluntarily admitting these allegations, he waives his right to require the College to otherwise prove the case against him.
13. Mr. MacMull understands that the Discipline Committee can accept that the facts herein constitute professional misconduct.
14. Mr. MacMull 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.
15. Mr. MacMull understands that any agreement between him and the College does not bind the Discipline Committee.
16. Mr. MacMull acknowledges that he has had the opportunity to receive, and has in fact received, independent legal advice.

The attachments described above have not been attached to these Reasons for Decision.

Decision and Reasons

Based on the admissions set out in the Agreed Statement of Facts and the Member's admission, the Panel finds that the Member engaged in professional misconduct within the meaning of paragraphs 2 and 33 of Ontario Regulation 750/93 of the *Chiropody Act*, 1991.

The Member's conduct certainly fell below the standards for sterilization and cleanliness expected for members of this profession. The Member acknowledged at the hearing that he was not familiar with the newest standards required for sterilizing equipment. This does not excuse the Member from his conduct or the state of his office and would

certainly be viewed by others in the profession as disgraceful, dishonourable or unprofessional.

In the circumstances, the Panel had no difficulty in reaching its decision in light of the evidence before it.

Penalty Submissions

Counsel for the College advised the Panel that the parties had reached an agreement as to penalty and costs. The parties filed a Joint Submission as to Penalty and Costs, which was marked as Exhibit 4, which provided as follows:

1. Mr. MacMull shall appear before the Panel of the Discipline Committee to be reprimanded, the fact of which shall be recorded on the public register of the College.
2. The Panel of the Discipline Committee shall direct the Registrar to suspend the member's certificate of registration for a period of one (1) month, such suspension itself to be remitted in the event that the member establishes to the satisfaction of the Registrar that he is in compliance with all relevant infection control standards by no later than December 31, 2013, failing which the suspension shall commence on a date to be set by the Registrar, such date to be no later than February 1, 2014.
3. The Panel of the Discipline Committee shall direct the Registrar to impose a specified term, condition and limitation on the member's certificate of registration whereby the member's practice will be inspected, without notice and at the member's expense, up to a maximum of four (4) occasions in the next twelve (12) months. Following each inspection, a report shall be provided to the Registrar with a copy to the member.

4. The member shall pay to the College its costs fixed in the amount of \$5,000.00 within twelve (12) months of the date of the hearing.
5. The member acknowledges that this Joint Submission as to Penalty and Costs is not binding upon the Discipline Committee.
6. The member acknowledges that he has had the opportunity to receive, and has in fact received, independent legal advice.

College Counsel submitted that the proposed penalty was appropriate in the circumstances of this case, which included significant evidence of the Member's efforts to change his sterilization practices. College Counsel explained that if the Member had not been so cooperative, the College would have sought a more significant period of suspension, but that in the circumstances, the proposed penalty was reasonable. The College also provided the panel with a number of prior decisions from this and other health colleges, wherein similar penalties were imposed in similar cases¹.

The Member agreed with the College's submissions and urged the panel to accept the joint submission.

Decision and Reasons on Penalty

The Panel accepts the joint submission on penalty and costs and orders accordingly.

Independent legal counsel advised that where provided a joint submission as to penalty, the panel should accept the proposal, if it is within a reasonable range of penalties for similar conduct. Counsel also submitted that it was not the Panel's role to make minor changes to a penalty, when the penalty had been jointly submitted. So long as the Panel was satisfied that the penalty would not bring the administration of the proceedings into disrepute, the Panel ought to be comfortable accepting the proposal.

¹ Including, *College of Chiropractors of Ontario and Gregory Armitage, 1999*

Following a brief period for deliberations, the Panel sought further submissions from the parties with regard to the proposal. College counsel provided the Panel with further information with respect to the Member's mitigating conduct throughout this process and reiterated his initial submission that 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, the Panel should accept the joint submission.

In coming to its decision, the Panel considered five principles of sentencing to be apposite in the circumstances:

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

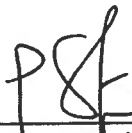
In the Panel's view, the proposed penalty is fair in that it balances the sentencing principles set out above. The Panel specifically took into account the following mitigating factors, namely:

- This was the first time Mr. MacMull had been brought before the Discipline Committee to face allegations of professional misconduct.
- Mr. MacMull fully co-operated with the College at every stage of the proceedings.
- Mr. MacMull 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 penalty was consistent with the other decisions reviewed by the Panel and that the penalty would serve as a specific deterrent to Mr. MacMull and as a general deterrent to the profession as a whole. As a result, the Panel accepted the Joint Submission on Penalty and Costs.

Having waived his rights of appeal, the Panel administered the Reprimand at the conclusion of the hearing. A copy of the reprimand is attached at Schedule "A" of these reasons.

I, **Peter Stavropoulos**, 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.



Peter Stavropoulos, Chair

Date: December 23, 2013.

Panel Members:

Stephen Haber
Ann-Marie McLaren
Ray Ferraro
Mina Gonzales

Schedule "A"

Oral Reprimand

Mr. MacMull, as part of your penalty the panel will now deliver its reprimand. This is not an opportunity for you to re-argue the case or to comment on the panel's decision. At the end of our comments you will be given the opportunity to make a statement if you wish.

Mr. MacMull, you have been found guilty of professional misconduct in that, among other things, you:

- a. Used instruments that had not been properly sterilized in the course of providing care to patients;
- b. Failed to use biological indicators to ensure proper sterilization;
- c. Failed to properly monitor sterilization systems in his practice;
- d. Failed to make or maintain proper records with respect to sterilization in his practice;
- e. Failed to properly store medication; and,
- f. Failed to provide proper or adequate facilities and equipment such as appropriate flooring, an autoclave, proper sinks, protective clothing and equipment, proper cleaning solutions, an oxygen tank, and fire extinguishers.
- g. Failed to store hazardous materials in a specific, safe and controlled area;
- h. Failed to properly label hazardous materials;
- i. Failed to maintain patient confidentiality in respect of patient health records; and,
- j. Failed to properly store patient records.

This conduct causes the panel significant concern. The Standards of Practice are not negotiable. They are proven and universally accepted by the College and other health

care professionals. As a member of the College you have a duty to stay current with the standards of practice. The standards exist to protect the public and to ensure confidence in self-regulation.

While we recognize and take into consideration the steps that you took after the College discovered the breaches of the standards, you should never have allowed things to get so far. Quite candidly, we were very disturbed by the photographs filed as part of Exhibit 3. This conduct has brought shame and disrepute to the profession.

While we believe the penalty imposed is reasonable, it is extremely fair to you. Should you appear again before the Discipline Committee on similar allegations we expect that you will face a more significant penalty.