

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

PANEL:	Wilhelmina Gonzales, Chair Sousan Eissabigloo James Maczko	Public Member Public Member Professional Member
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BETWEEN:

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)	
COLLEGE OF CHIROPODISTS)	Mr. Bernard LeBlanc
OF ONTARIO)	for the College of
)	Chiropodists
)	of Ontario
)	
- and -)	
)	
SALIMA THARANI)	Ms. Danna Fichtenbaum
)	for Ms. Salima Tharani
)	
)	Heard: October 11, 2012

Also present at the hearing were:

Mr. Brian Gover - Independent Legal Counsel to the Panel
Mr. Ray Macdonald - Court Reporter

DECISION AND REASONS

Introduction

A hearing before a panel of the Discipline Committee (the “Panel”) of the College of Chiropodists of Ontario (the “College”) was held on October 11, 2012. The College has a mandate to regulate the practice of the chiropody profession and to govern its members and, in so doing, serve and protect the public interest.

The Allegations

The allegations against Salima Tharani, (the "Member"), were set out in the Notice of Hearing, dated April 3, 2012. 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. Salima Tharani, D.Ch. was, at all material times, a chiroprapist registered to practise chiroprapy in the Province of Ontario. Ms. Tharani practised at Complete Foot Care Clinics in Toronto, Ontario.
2. During the course of an audit conducted by Manulife Financial ("Manulife") with respect to certain claims submitted by, or on behalf of, Ms. T and Mr. N ("the claimants"), Manulife discovered that the claimants submitted insurance claims for certain chiroprapy treatments by a JD on September 1, 6, 10 and 17, 2010 in the case of Ms. T, and September 3 and 17, 2010 in the case of Mr. N.
3. In fact, these claims were false as JD did not provide the services referred to on the claims to the claimants.
4. After receiving notice from Manulife that these claims were being investigated, the claimants attended at Complete Foot Care Clinics and obtained Ms. Tharani's agreement to issue false claims and create false records indicating that the claimants actually received the services in question from Ms. Tharani instead of JD.
5. Ms. Tharani knowingly created false records at the request of the claimants. In the alternative, Ms. Tharani ought to have known that her records were false or inaccurate.
6. Ms. Tharani thereby engaged in professional misconduct within the meaning of paragraphs 2 (failing to meet or contravening a standard of practice of the profession), 17 (failing to keep records as required by the regulations), 18 (falsifying a record relating to the member's practice), 20 (signing or issuing, in the member's professional capacity, a document that contains a false or misleading statement), 21 (submitting an account or charge for services that the member knows is false or misleading) and 33 (engaging in conduct or performing an act, in the course of practising the profession, that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or

unprofessional) of section 1 of O. Reg. 750/93 under the Chiropractic Act, 1991.

Member's Plea

The Member admitted the allegations. The Panel conducted a plea inquiry and concluded that the Member's admission was voluntary, informed and unequivocal.

Agreed Statement of Facts

College Counsel advised that an agreement had been reached on the facts and introduced an Agreed Statement of Facts (Exhibit #2) which provides as follows.

1. Salima Tharani, D.Ch. was, at all material times, a chiropractor registered to practise chiropractic in the Province of Ontario. Ms. Tharani practised at Complete Foot Care Clinics in Toronto, Ontario.
2. During the course of an audit conducted by Manulife Financial ("Manulife") with respect to certain claims submitted by, or on behalf of, Ms. T and Mr. N ("the claimants"), Manulife discovered that the claimants submitted insurance claims for certain chiropractic treatments by a JD on September 1, 6, 10 and 17, 2010 in the case of Ms. T, and September 3 and 17, 2010 in the case of Mr. N.
3. In fact, these claims were false as JD did not provide the services referred to on the claims to the claimants.
4. After receiving notice from Manulife that these claims were being investigated, the claimants attended at Complete Foot Care Clinics and obtained Ms. Tharani's agreement to issue false claims and create false records indicating that the claimants actually received the services in question on the above noted dates from Ms. Tharani instead of JD.
5. Ms. Tharani knowingly created false records at the request of the claimants. Ms. Tharani thereby engaged in professional misconduct within the meaning of paragraphs 2 (failing to meet or contravening a standard of practice of the profession), 17 (failing to keep records as required by the regulations), 18 (falsifying a record relating to the member's practice), 20 (signing or issuing, in the member's professional capacity, a document that contains a false or misleading statement), 21 (submitting an account or charge for services that the member knows is false or misleading) and 33 (engaging in conduct or performing an act, in the course of practising the profession, that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional) of section 1 of O. Reg. 750/93 under the Chiropractic Act, 1991.

6. Attached as Tab "A" to the Agreed Statement of Facts is a copy of the complaint of Mr. David H. Porter, Investigator for Manulife, dated April 30, 2011 (without attachments, except the relevant claims and receipts).
7. Attached as Tab "B" to the Agreed Statement of Facts is a copy of the report of Erin Fairbanks, D.Ch., dated February 20, 2012.
8. The parties agree that these facts are substantially accurate.
9. Ms. Tharani understands the nature of the allegations that have been made against her and that by voluntarily admitting these allegations, she waives her right to require the College to otherwise prove the case against her.
10. Ms. Tharani understands that the Discipline Committee can accept that the facts herein constitute professional misconduct.
11. Ms. Tharani 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 her name.
12. Ms. Tharani understands that any agreement between her and the College does not bind the Discipline Committee.
13. Ms. Tharani acknowledges that she has had the opportunity to receive, and has in fact received, independent legal advice.

Decision

Consistent with the Agreed Statement of Facts and in light of the parties' submissions, the Panel made the following finding:

THAT Salima Tharani engaged in professional misconduct within the meaning of paragraphs 2 (failing to meet or contravening a standard of practice of the profession), 17 (failing to keep records as required by the regulations), 18 (falsifying a record relating to the member's practice), 20 (signing or issuing, in the member's professional capacity, a document that contains a false or misleading statement), 21 (submitting an account or charge for services that the member knows is false or misleading) and 33 (engaging in conduct or performing an act, in the course of practising the profession, that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional) of section 1 of O. Reg. 750/93 under the Chiropractic Act, 1991.

Penalty Decision and Reasons

Counsel for the College advised the Panel that a Joint Submission as to Penalty (“Joint Submission”, Exhibit #3) had been agreed upon. The Joint Submission requested that the Panel make an order as follows:

1. The member 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 three (3) months, one month to be remitted in the event that the member complies with paragraph 3. The first two (2) months of the suspension shall commence on December 15, 2012. If the third month of the suspension must be served, it shall be served immediately following the first two (2) months of the suspension.
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 requiring that the member successfully complete, at her own expense and to the satisfaction of the Registrar, an ethics course, by no later than February 15, 2013. The course must be pre-approved by the Registrar.
4. The member shall pay to the College its costs fixed in the amount of \$5,000.00, \$3,000.00 of which must be paid within thirty (30) days of the date of the hearing and the remaining \$2,000.00 within three (3) months of the date of the hearing.¹

Upon deliberation, the Panel accepted the terms and conditions on the Joint Submission on Penalty and imposed the following order:

1. The Member 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.

¹ The Joint Submission contained two other elements that were not germane to the penalty order being sought, but are relevant considerations for the Panel. They are as follows:

The member acknowledges that this Joint Submission as to Penalty and Costs is not binding upon the Discipline Committee.

The member acknowledges that she has had the opportunity to receive, and has in fact received, independent legal advice.

2. The Registrar is directed to suspend the Member's certificate of registration for a period of three (3) months, one month to be remitted in the event that the member complies with paragraph 3. The first two (2) months of the suspension shall commence on December 15, 2012. If the third month of the suspension must be served, it shall be served immediately following the first two (2) months of the suspension.
3. The Registrar is directed to impose a specified term, condition and limitation on the Member's certificate of registration requiring that the Member successfully complete, at her own expense and to the satisfaction of the Registrar, an ethics course, by no later than February 15, 2013. The course must be pre-approved by the Registrar.
4. The Member shall pay to the College its costs fixed in the amount of \$5,000.00, \$3,000.00 of which must be paid within thirty (30) days of the date of the hearing and the remaining \$2,000.00 within three (3) months of the date of the hearing.

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

1. Before accepting the Joint Submission, the Panel sought advice from its independent legal counsel, Mr. Brian Gover, who advised the Panel that, the panel should accept proposal joint submission on penalty if it is within the appropriate range of penalties for similar conduct. We were advised that it was not the Panel's role to make minor changes to a joint submission on penalty and that so long as acceptance of the Joint Submission would not bring the administration of the proceedings into disrepute or otherwise be contrary to the public interest, the Panel should accept it. By this, the Panel understood that it should accept the Joint Submission unless the proposed result would be completely outside the appropriate range of penalty orders. The Panel therefore considered the range of penalties imposed by Discipline Committees of various colleges in similar cases contained in College counsel's Book of Authorities and decided that the penalty order set out in the Joint Submission was within the appropriate range and was otherwise reasonable in the circumstances.
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. At no time during these proceedings were the Member's skills or competency brought into question, and no findings of incompetency were considered by the panel.

4. There has been no allegation of an "organized scheme or financial benefit" regarding the Member's professional misconduct.
5. With respect to specific and general deterrence, the suspension of the Member's certificate of registration for three months sends a message to the Member and all members of the College, that professional misconduct of the kind committed by the Member will be treated seriously by the Committee.
6. In addressing the need for rehabilitation, Ms. Tharani has agreed to and has already explored options regarding "Ethics" programs, and will complete said program approved by the Registrar, within the time frame stipulated by the Joint Submission.
7. The award of costs of \$5,000.00, although moderate, will also provide a deterrent to other members of the College who may be inclined to engage in acts of professional misconduct similar to those engaged in by the Member..
8. The Member has no prior discipline history.
9. The Member's apparently genuine expression of remorse.

Administration of Reprimand

The Chair asked if a written notice of waiver of appeal or if an agreement had been signed with respect to the reprimand. Counsel for the Member stated on the record that the Member had waived her right of appeal. The reprimand was therefore administered to the Member on the same day, on the record.

I, **Wilhelmina Gonzales**, 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.

Wilhelmina E. Gonzales

Wilhelmina Gonzales, Chair

Date: October 25, 2012.

Panel Members:

Wilhelmina Gonzales, Chair
Sousan Eissabigloo
James Maczko