

College of Chiropractors v. Peter Wilson
Summary of the Decision of the Panel of the Discipline Committee

Summary -

This matter came on for hearing on April 24, 2003. The Discipline Panel considered the evidence filed and the joint submission made by counsel for the College and counsel for the member. The discipline panel found that Peter Wilson had engaged in professional misconduct contrary to clause 51(1)(a) of the *Health Professions Procedural Code*

The Discipline Panel ordered:

1. Mr. Wilson's certificate of registration to be suspended for a period of 12 months commencing on May 2, 2003.
2. Six month of that suspension would be suspended provided that the other terms of the order were fully complied with
3. Mr. Wilson to attend before the panel to be reprimanded after Mr. Wilson's release from incarceration.
4. That a term, condition and limitation be imposed on Mr. Wilson's certificate of registration that for a period of five years, commencing from the end of the suspension, he submit and fully cooperate with up to 2 inspections per year at his own expense (at \$250.00 per inspection) to review his records, including his financial records, and practice to ensure the he is fulfilling his professional responsibilities with honesty and integrity.
5. Mr. Wilson to pay to the College \$7,000 towards its costs and expenses for investigating and hearing this matter.

**DECISION AND REASONS FOR THE DECISION
of the Panel of the Discipline Committee**

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

B E T W E E N:

**COLLEGE OF CHIROPODISTS OF ONTARIO
("College")**

- and -

**PETER WILSON
("Mr. Wilson")**

Panel Members:	David Kerbl, D.Ch. [Chair]	Professional Council Member
	Sheldon Freelan DPM	Professional Council Member
	Sarah Kerwin D.Ch.	Professional Member
	Norm Baker	Public Council Member

Counsel Present:	Counsel for the College:	Richard Steinecke
	Counsel for Mr. Wilson:	Stephen Darroch
	Counsel for the panel of the Discipline Committee:	Alan L. Bromstein

Hearing Dates: April 24, 2003

This matter came before a panel of the Discipline Committee ("Panel") at a Hearing which was held on April 24, 2003.

A Notice of Hearing was filed as Exhibit No. 1. Within the Notice, there was a Statement of Allegations. In summary, the Allegations were that Mr. Wilson who was at all material times a registered chiropodist practising at the Toronto General Hospital [now the University Health Network] ("Hospital") and who held the position of Chief Chiropodist,

an Administrator of the Chiropody Program at the Hospital from 1993 to August 25, 2000 [at which time he was terminated] had defrauded his employer in an amount exceeding \$889,000.00. Mr. Wilson was convicted on or about September 9, 2002 of defrauding the Hospital of monies of a value exceeding \$5,000.00 contrary to the Criminal Code of Canada. This Statement of Allegations alleges that his conduct constituted professional misconduct in a number of respects including under clause 51(1)(a) of the Health Professions Procedural Code of the Regulated Health Professions Act, 1991 which defines professional misconduct as having been found guilty of an offence relevant to suitability to practise.

Exhibit No. 2 was tendered into evidence by the Solicitor for the College. It contained a Joint Submission on Finding, an Affidavit of Peter Wilson, a certified copy of Mr. Wilson's Conviction of September 9, 2002, a transcript of the criminal trial proceedings held before Madam Justice L. Marshall on September 9, 2002 and an endorsement of the Court of Appeal of Ontario dated March 14, 2003.

In the Joint Submission on Finding, the parties basically agreed that the Allegations as contained in the Notice of Hearing were true and jointly requested that the Panel find that the member had committed professional misconduct as defined under clause 51(1)(a) of the Health Professions Procedural Code. The documentation included in Exhibit No. 2 provided the Panel with particulars of the conduct.

Particulars of Conduct

A summary of the evidence to the Panel within Exhibit No. 2 is as follows:

- Mr. Wilson became an employee of the Hospital on March 8, 1982 and in the 1990 became the Chief Chiropodist or Administrator of the Chiropody Program of the Hospital. He had the authority to enter into contracts on behalf of the Program but pursuant to a policy, he was limited to contracts that did not exceed \$10,000.00. He also had the authority to approve the payment of invoices that were sent to the Program but again pursuant to policy, the invoices must have been for less than \$10,000.00.
- In 1993, he met an individual, Mr. X, who became a financial advisor to Mr. Wilson and his family. Also in 1993, Mr. Wilson filed for bankruptcy.
- In late Fall 1996, a scheme was discussed between Mr. Wilson and Mr. X to generate income by submitting fictitious invoices to the Hospital which would be authorized by Mr. Wilson. The first invoice in this regard was submitted in December 1996 in the approximate amount of \$3,000.00. Twenty-five percent of the amount was actually received by Mr. Wilson. The rest was used to pay taxes occasioned as a result of the

receipt of the money and to pay Mr. X. From 1996 to 2000, hundreds of false invoices were submitted. It was estimated that this activity defrauded the Chiropody Program of the Hospital of approximately \$785,000.00 in respect of which Mr. Wilson received approximately \$180,000.00.

- In addition to fictitious invoices, Mr. Wilson participated in a scheme to have certain invoices for construction projects at the Hospital inflated for which he would receive a cash benefit equalling approximately five to ten percent of the total value of the invoice. By doing so, Mr. Wilson received approximately \$26,000.00 in "kick backs".
- In 1999, Mr. Wilson submitted expenses, which were described as conference and travel expense [for himself and several staff] for a conference relevant to chiropody. In reality, Mr. Wilson and his family enjoyed a one-week ski holiday. This resulted in Mr. Wilson defrauding the Hospital of approximately \$21,000.00.
- On a number of occasions during the period 1998 to July of 2000, Mr. Wilson involved one of his immediate family members and others in schemes which resulted in the production of highly inflated invoices, payment of which was authorized by Mr. Wilson. As a result, Mr. Wilson received approximately \$6,000.00.
- During the period 1991 to 1998, Mr. Wilson arranged for the Hospital to be invoiced for over \$50,000.00 worth of computer equipment that he used at home for his own personal use.
- In total, Mr. Wilson defrauded the Hospital [through the Chiropody Program] of approximately \$889,000.00.
- Mr. Wilson was found guilty of the criminal offence of defrauding the Toronto General Hospital of monies of a value exceeding \$5,000.00 on September 9, 2002. An eighty-five page transcript of that day's proceeding was presented to the Panel. The trial judge, while expressing her view as to the seriousness of the events, was moved to leniency as a result of the conduct of Mr Wilson after he was arrested and charged with the offence. This conduct included a level of co-operation with the police which is generally not seen from accuseds. In the Crown's submission, he acknowledged that Mr. Wilson's conduct was "excellent" since he was arrested. He stated "he [Mr. Wilson] truly has gone as far as he would go in terms of mitigating his position. He came to the police, . . . explained how he had committed this fraud over the course of four years, and for that he gets credit". Part of Mr. Wilson's mitigating conduct was to make meaningful restitution of the loss suffered by the Hospital, having regard for Mr. Wilson's financial circumstances. Nevertheless, the prosecutor submitted that a jail sentence would be required in the circumstances of this case. The trial judge chose to follow the recommendations of the defence counsel and ultimately determined that the appropriate sentence in this case was a conditional sentence of two years less a day

with conditions which included two hundred and forty hours of community service and significant restrictions on his liberties. These restrictions included his confinement to his residence except for the purposes of work [between 7:00 a.m. and 6:30 p.m.] or to go to the doctor or deal with legal matters.

- The Crown appealed the decision respecting penalty to the Court of Appeal and on March 14, 2003, the penalty imposed by the trial judge was set aside and in its place a sentence of eighteen months imprisonment was ordered.

The solicitor for the member submitted a letter signed by Cameron A. Smith, Community Service Order Co-Ordinator showing that Mr. Wilson had already performed 161.5 hours of community service as had originally been ordered as part of the trial judge's decision which was marked as Exhibit No. 3. He also submitted a letter from Mr. Wilson addressed to the College of Chiropodists of Ontario apologizing for his conduct which was marked as Exhibit No. 4.

The Panel recessed to consider whether the evidence was sufficient for it to make a finding of professional misconduct.

The Hearing resumed and the Panel agreed to accept the Joint Submission on Finding and found that Peter Wilson was guilty of professional misconduct as defined in clause 51(1)(a) of the Health Professions Procedural Code which is Schedule 2 to the Regulated Health Professions Act, 1991, namely, that he had been found guilty of an offence relevant to his suitability to practise.

Reasoning for the Finding

In the Panel's view, Mr. Wilson's conduct related to the misuse of authority given to him as the Head of the Chiropody Program of the Toronto General Hospital. In the Panel's view, given the circumstances of his position, the offence clearly related to his suitability to practise chiropody. In addition, it was the Panel's view, that the offence of fraud goes to the heart of the honesty and integrity of the accused and where that accused is a regulated health professional, impacts the public trust, not only in that professional, but in the profession as a whole.

Penalty

The parties filed a document entitled "Joint Submission on Order" as Exhibit No. 5. In summary, the Joint Submission requested that the Panel's penalty involve five aspects.

1. That Mr. Wilson's Certificate of Registration be suspended for twelve months but with

the proviso that he given credit for the time he has been out of practice since March 31, 2003 [when he was incarcerated].

2. That six months of his suspension be remitted if he fully complies with the balance of the terms of the penalty.
3. That Mr. Wilson be required to attend before the Panel to be reprimanded.
4. That Mr. Wilson's Certificate of Registration have terms, conditions and limitations imposed upon it requiring his practice to be inspected, twice per year, at his own expense, which inspection would include a review of his records including financial records, to ensure that he is fulfilling his professional responsibilities honestly and with integrity.
5. That Mr. Wilson pay to the College \$7,000.00 towards the costs and expenses for investigating and hearing the matter pursuant to a jointly submitted repayment scheme.

After hearing submissions from both counsel and receiving a further Exhibit [No. 6] from counsel for Mr. Wilson, being a newspaper account published in a Burlington newspaper on March 28, 2003, the Panel retired to deliberate.

The Panel understood from the submissions that where a hearing involved a Joint Submission on Penalty, the Panel should accept that Order if it is within a reasonable range of penalties for similar conduct. It also understood that it was not its role to make minor changes to a penalty when jointly submitted and that so long as the penalty would not bring the administration of the proceedings into disrepute, it should accept the Joint Submission. It also recognized that Joint Submissions of this type are an important part of all levels of justice. In the context of a discipline proceeding, it is important that members can be reasonably assured when they agree to plead guilty and jointly submit for a stipulated penalty that panels of the Discipline Committee will, generally speaking, accept that penalty. This Panel understood that it is in both the College's and the accused member's best interest to resolve discipline proceedings in the most expeditious fashion provided the resolution does not compromise the integrity and public trust of the process.

The Panel carefully considered the submissions. It had no difficulty with those aspects of the penalty referred to in items 3, 4 and 5 above. The Panel was concerned, however, about the actual length of the suspension and about giving credit for the service of the suspension during a period preceding a finding of professional conduct and at a time when the member was incarcerated. The Panel was satisfied that a twelve-month suspension, given all of the mitigating circumstances of this case, was within the realm of reasonable and that such suspension should be accepted given the fact that it was contained within a Joint Submission. The Panel, however, felt that to give credit in respect of the suspension for a period of time prior to the finding of professional misconduct was so outside the norm as to

cause it to be prepared to reject the Joint Submission.

The Panel reconvened and advised the parties of its concerns. It then adjourned the Hearing to allow both parties to make further written Submissions. This resulted in both parties agreeing to amend the Joint Submission in a manner which was acceptable to the Panel. The Panel reconvened to consider the further Submissions on Friday, May 2, 2003 at which time it made the following Order:

- "1. The Discipline Panel orders that the Registrar be directed to suspend Mr. Wilson's certificate of registration for a period of 12 months commencing immediately (i.e., May 2, 2003).
2. The Discipline Panel orders that the Registrar be directed to suspend 6 months of that suspension provided that the other terms of the order are fully complied with (failing which, Mr. Wilson would serve the balance of his suspension).
3. The Discipline Panel orders that Mr. Wilson be required to attend before the panel to be reprimanded at a time to be determined by the Registrar after Mr. Wilson's release from incarceration.
4. The Discipline Panel orders that the Registrar be directed to impose a term, condition and limitation on the certificate of registration of Mr. Wilson that, for a period of five years from the end of the suspension imposed by this order, he submit and fully cooperate with up to 2 inspections per year at his own expense (at \$250 per inspection) to review his records, including his financial records, and practice to ensure that Mr. Wilson is fulfilling his professional responsibilities with honesty and integrity.
5. The Discipline Panel orders that Mr. Wilson pay to the College \$7,000 towards its costs and expenses for investigating and hearing this matter. Payment shall be made monthly in the amount of \$250 starting in December 2003. Mr. Wilson shall deliver post-dated cheques to the Registrar by May 31, 2003, with each cheque being \$250, and the first cheque dated December 15, 2003, and that subsequent cheques payable on the 15th day for each subsequent and consecutive month until the amount is fully paid. If payment is made according to this schedule without interruption, no interest would be charged."

Reasoning for Penalty

There are several audiences for the Order on Penalty.

- The public which has to be assured that the College takes this misconduct seriously and is capable of policing the profession.
- The profession which has to be sent a message that this behaviour is unacceptable.
- The member who must suffer significant enough consequences for his actions that this behaviour will not occur again.

The conduct in which the member was involved is of the most serious type. It was deliberate, motivated by greed, occurred over an extended period of time and involved a serious breach of public trust amounting to defrauding a public hospital of almost \$900,000.00. In addition, Mr. Wilson's position at the Hospital was one which caused him to be a role model for students of the Chiropody Program as well as other members of the profession. His actions cast public doubts not only on his own honesty and integrity but by implication on all members of the profession.

In the first instance, a panel of a Discipline Committee would have to consider revocation for conduct of this type. But the panel is also required to consider mitigating factors and in this particular case, there were extensive mitigating factors leading to a conclusion that Mr. Wilson should indeed be given a second chance. He has clearly suffered not only by commencing to serve the penalty originally ordered by the trial judge, but also as a result of his being incarcerated. The level of his co-operation both with the police [after his arrest] and with the College was exemplary. He has made restitution of \$150,000.00 which, given his current circumstances, had to be borrowed against his future earnings. He also agreed to assist the Hospital in its endeavours to collect monies from Mr. X.

In the Panel's view, the penalty imposed constituted a balance between the need to give Mr. Wilson a second chance and the need to send a message to both the public and the members of the chiropody profession that this conduct will not be permitted.

Mr. Wilson's conduct was serious because it resulted in a significant dollar amount of fraud, it occurred over an extended period of time, Mr. Wilson was in a position of trust in the Hospital and with the profession, being a role model to students of the Chiropody Program and because the misconduct was intentional and motivated by greed. Behaviour by chiropodists that results in the public questioning the profession's integrity must have a penalty associated with it which is considered to be severe.

Dated: November 10, 2003

Chair, Panel of the Discipline Committee