

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

BETWEEN:

COLLEGE OF CHIROPODISTS OF ONTARIO

- and -

DOMINADOR TOMINES

NOTICE OF HEARING

The Inquiries, Complaints and Reports Committee of the College of Chiropractors of Ontario has referred specified allegations against **DOMINADOR TOMINES** to the Discipline Committee of the College. The allegations were referred in accordance with paragraph 26(1)1 of the *Health Professions Procedural Code*, being Schedule 2 to the *Regulated Health Professions Act, 1991*. Further information about the allegations is contained in a Schedule of Allegations which is attached to this notice of hearing. A discipline panel will hold a hearing under the authority of sections 38 to 56 of the *Health Professions Procedural Code* for the purposes of deciding whether the allegations are true.

IF YOU DO NOT ATTEND AT THE HEARING IN ACCORDANCE WITH THE PRECEDING PARAGRAPH, THE DISCIPLINE PANEL MAY PROCEED IN YOUR ABSENCE AND YOU WILL NOT BE ENTITLED TO ANY FURTHER NOTICE IN THE PROCEEDINGS.

If the discipline panel finds that you have engaged in professional misconduct, it may make one or more of the following orders:

1. Direct the Registrar to revoke your certificate of registration.

2. Direct the Registrar to suspend your certificate of registration for a specified period of time.

3. Direct the Registrar to impose specified terms, conditions and limitations on your certificate of registration for a specified or indefinite period of time.

4. Require you to appear before the panel to be reprimanded.

5. Require of you to pay a fine of not more than \$35,000 to the Minister of Finance.

If the discipline panel finds that you are incompetent, it may make one or more of the following orders:

1. Direct the Registrar to revoke your certificate of registration.

2. Direct the Registrar to suspend your certificate of registration and to specify criteria to be satisfied for the removal of the suspension.

3. Direct the Registrar to impose specified terms, conditions and limitations on your certificate of registration for a specified or indefinite period of time, and to specify criteria to be satisfied for the removal of the terms, conditions and limitations.

The discipline panel may, in an appropriate case, make an order requiring you to pay all or part of the College's costs and expenses pursuant to section 53.1 of the *Health Professions Procedural Code*.

You are entitled to disclosure of the evidence against you in accordance with section 42(1) of the *Health Professions Procedural Code*, as amended. You, or your representative, may contact the solicitor for the College in this matter:

Jordan Glick
WEIRFOULDS LLP
Barristers & Solicitors
4100-66 Wellington Street West
PO Box 35, TD Bank Tower
Toronto, ON M5K 1B7

Telephone: (416) 947-5082
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You must also make disclosure in accordance with section 42.1 of the *Health Professions Procedural Code*, which states as follows:

Evidence of an expert led by a person other than the College is not admissible unless the person gives the College, at least ten days before the hearing, the identity of the expert and a copy of the expert's written report or, if there is no written report, a written summary of the evidence.

Date: August 30, 2017



Felecia Smith, LL.B.
Registrar
College of Chiropractors of Ontario
180 Dundas Street West, Suite 2102
Toronto, ON M5G 1Z8

TO: Dominador Tomines
c/o Jonah Arnold
Weinman, Arnold LLP
1202 - 390 Bay Street
Toronto, ON M5H 2Y2

Statement of Allegations

1. Dominador Tomines (the “**Member**”) was, at all material times, a chiroprapist registered to practise chiropody in the province of Ontario.
2. Between in or about December 2011 and in or about July 2015 (the “**Relevant Period**”), the Member engaged in the practice of chiropody at Healthy Fit, first located at 99 City Centre Drive in Mississauga (the “**Mississauga Location**”) and subsequently at 333 Wilson Avenue, Suite 503 in Toronto (the “**Wilson Location**”). Mr. Tomines worked for a period of eight hours most weeks and twelve hours for one week each month.
3. In July of 2015, an investigation conducted by Toronto Police Services (“**TPS**”) led to criminal charges being laid against the owner of Healthy Fit. The charges alleged that Healthy Fit defrauded an insurance company (the “**Insurer**”) of upwards of four million dollars through a benefits scam. The scam involved employees and family members of the Toronto Transit Commission (the “**TTC Employees**”) being issued prescriptions for unnecessary medical treatments and devices. The TTC Employees were assisted in making insurance claims to the Insurer where services were not provided and/or medical devices were not dispensed. Healthy Fit then shared the insurance money with the TTC Employees.
4. The TPS investigation revealed that benefits claims were commonly made for orthotics, orthopaedic shoes and/or compression stockings which were often prescribed to TTC Employees as well as their family members in a manner which maximized the insurance claim.
5. As part of the TPS investigation, an undercover police officer posing as a TTC employee attended at Healthy Fit. She was referred to Mr. Tomines who, it is alleged, without examination or discussion, took foam box impressions and provided a prescription for orthotics. Tomines’ prescriptions were ultimately submitted to the Insurer for both orthotics and orthopaedic shoes for a total claim of \$750. The undercover police officer paid \$700 to Healthy Fit and received \$550 in cash.

6. During the course of the police investigation, Mr. Tomines provided an interview to police wherein he advised, and it is alleged, that while he was employed at Healthy Fit:
 - a. he was paid \$100 per orthotic prescription and was otherwise not remunerated;
 - b. he met with patients for a few minutes, watched them walk and took a foam box impression and then wrote them a prescription;
 - c. a typical examination lasted ten to fifteen minutes;
 - d. he told every patient that they required orthotics;
 - e. he did not fit or dispense orthotics to any clients or engage in any follow-up at all;
 - f. he would prescribe orthotics to entire families including their children who were sometimes as young as four years old;
 - g. he would prescribe orthopaedic shoes to individuals provided they had coverage for shoes. If they did not have coverage, he would not prescribe them. He did not assist patients to select or fit the orthopaedic shoes;
 - h. he was aware that there was a room at Healthy Fit filled with orthotics and/or orthopaedic shoes that were never dispensed;
 - i. he did not know how Healthy Fit dealt with billing or what Healthy Fit charged for orthotics or orthopaedic shoes;
 - j. he did not retain or have access to any patient records relating to the clients that he provided services to at Healthy Fit.

7. The Insurer subsequently conducted its own undercover investigation. The Insurer's undercover investigator, who did not require orthotics or orthopaedic shoes, attended at Healthy Fit on or about July 11, 2014 wherein he met with Mr. Tomines for a period of less than ten minutes. It is alleged that during this appointment, foam box impressions were taken and the undercover investigator was issued a single prescription for orthotics. The undercover investigator never met with Mr. Tomines again. When the undercover

investigator returned a few weeks later, he was invited to purchase a pair of orthopaedic shoes for \$250 and was advised that if he did not want the shoes, he would be paid \$350 in cash. The undercover investigator requested the cash and, after paying \$250 by interac, was handed \$350 without being dispensed orthopaedic shoes.

8. Healthy Fit submitted two claim forms to the Insurer regarding the undercover investigator: a \$500 claim for orthotics and a \$250 claim for orthopaedic shoes, both accompanied by prescriptions signed by Mr. Tomines and dated July 11, 2014. The prescription for orthopaedic shoes was never provided to the undercover investigator and it is alleged that it was signed and backdated.
9. The TPS and Insurer investigations uncovered that during the Relevant Period, Mr. Tomines' prescriptions led to insurance claims in excess of \$1,000,000, the vast majority of which were made by TTC Employees. Of approximately 5000 prescriptions submitted by Healthy Fit to the Insurer, more than 2000 were issued by Mr. Tomines (the "TTC Patients").
10. It is alleged that with respect to prescriptions issued to some or all of the TTC Patients, Mr. Tomines overprescribed and/or gave patients unnecessary prescriptions for orthotics and/or orthopedic shoes in that:
 - a. The Member did not perform an adequate examination and/or assessment of the patient, but nonetheless prescribed and/or recommended orthotics, orthopedic shoes, and/or compression stockings for them; and/or,
 - b. The Member did not discuss other treatment options with the patient and/or determined if a different treatment was appropriate before prescribing orthotics and/or orthopaedic shoes as required per the standards.
11. With respect to prescriptions issued to some or all of the TTC Patients, Mr. Tomines prescribed and/or recommended orthotics and/or orthopedic shoes without:
 - a. taking an adequate patient history;
 - b. performing an adequate chiropody assessment;

- c. obtaining and documenting, in a timely manner, informed patient consent;
- d. providing a range of treatment options;
- e. using a casting or scanning procedure that meets the standards of practice;
- f. personally evaluating the casts or scans to ensure they were accurate or ensuring a another designated chiropodist or podiatrist did so. In particular, the Member did not ensure that the patient's foot was compared to the cast or scan to verify that it was an accurate reflection of the patient's condition and the contours of the patient's foot, as outlined in the standards of practice;
- g. personally fitting the orthotics and/or orthopedic shoes to ensure that the device met the prescription and the contours of the patient's foot and/or ensuring that those steps were performed by another chiropodist or podiatrist; and/or
- h. offering and/or conducting a follow-up after the orthotics and/or orthopedic shoes had been dispensed.

12. The prescriptions issued to some or all of the TTC Patients were inadequate in that:

- a. the Member did not evaluate and/or record the patient's medical history;
- b. a biomechanical examination was not performed;
- c. a gait analysis was not performed;
- d. a foot exam with appropriate measurements and observations was not taken and/or recorded;
- e. it did not contain the patient information required by the College's standards, including the weight, age, activity level, biomechanical data pertinent to the patient's deformity, and/or other information required for the creation of appropriate prescription custom foot orthoses under the College's standards;

- f. it did not involve an assessment and recording of the activities and environmental requirements of use;
 - g. appropriate casting or scanning techniques were not used; and/or
 - h. it did not contain the necessary information including, but not limited to, information required under the College's standards related to the materials to be used in the fabrication of the orthotic, the required flexibility, the posting correction required and/or the depth of the heel seat.
13. The Member did not take all reasonable steps necessary to ensure that his patient records were being kept in accordance with the regulations governing records and/or the College of Chiropractors of Ontario's Standards of Practice pertaining to Records. In particular, with respect to some or all of the TTC Patients, the patient record:
- a. did not contain a complete medical history of the patient;
 - b. did not contain a treatment plan;
 - c. did not contain a copy of every written informed consent and/or reasonable information that an informed consent was obtained;
 - d. did not accurately document the date(s) of the patient's visit(s), the date(s) of various examinations, assessments, fittings, and/or castings, and/or the date(s) on which the orthotics and/or orthopedic shoes were dispensed to the patient;
 - e. did not contain reasonable information about every examination performed by the Member and reasonable information about every clinical finding, diagnosis and assessment made by the Member;
 - f. did not contain reasonable information about all significant advice given by the member;

- g. did not contain reasonable information about every order made by the Member for examinations, tests, consultations or treatments to be performed by any other person;
- h. did not contain every written report received by the Member with respect to examinations, tests, consultations or treatments performed by other health professionals or any other person that provided services to the client in relation to the fitting and dispensing of orthotics and/or orthopedic shoes;
- i. inaccurately and/or misleadingly documented that casting for orthotics was performed, either in the Member's clinical notes, the patient invoice, the insurance documentation, or elsewhere in the patient record;
- j. did not document any follow-up appointment(s) that were offered to patients who received orthotics and/or orthopedic shoes;
- k. were not personally written by the Member at the time of the patient's appointment or within 24 hours thereafter; and/or
- l. did not contain proof of payment for charges related to chiropody services.

14. The Member's record keeping practices were additionally inadequate in that:

- a. he did not keep a daily appointment book listing the names of the patients he examined, treated, and/or to whom rendered any services; and/or
- b. he failed to maintain control over the location(s) and/or access to and/or manner of storage of his patients' files.

15. During the Relevant Period, for some or all of the TTC Patients:

- a. the patient invoice(s) and/or documents prepared for the patient's insurance company inaccurately and/or misleadingly represented that the Member had provided certain services to the patient when he had not done so; and/or,

- b. the Member submitted, or allowed to be submitted, invoices and receipts to one or more patients' insurers that did not accurately reflect the services provided, the individual who provided the services, the date on which the services were provided, and/or the method used to obtain models of the patient's foot for the fabrication of orthotics.

16. The Member failed to ensure that he was aware of and maintained control over the manner in which Healthy Fit billed patients for his chiropody services.

17. By reason of the conduct alleged in paragraphs 1-16 above, the Member engaged in professional misconduct in that he violated:

- a. the following subsections of Ontario Regulation 750/93 under the *Chiropody Act, 1991*:

- i. 1.2 (Failing to meet or contravening a standard of practice of the profession), and, in particular, the standards pertaining to:

1. Assessment and Management;
2. Orthotics and/or Prescription Custom Foot Orthoses;
3. Patient Relations
4. Prescription Footwear; and/or
5. Records;

- ii. 1.3 (Doing anything to a patient for a therapeutic, preventative, palliative, diagnostic, cosmetic, or other health-related purpose in a situation in which a consent is required by law, without such consent);

- iii. 1.14. (Providing treatment to a patient where the member knows or ought to know that the provision of the treatment is ineffective, unnecessary or deleterious to the patient or is inappropriate to meet the needs of the patient);

- iv. 1.17 (Failing to keep records as required by the regulations);
- v. 1.18 (Falsifying a record relating to the member's practice);
- vi. 1.20 (Signing or issuing, in the member's professional capacity, a document that contains a false or misleading statement);
- vii. 1.21 (Submitting an account or charge for services that the member knows is false or misleading);
- viii. 1.30 (Contravening the *Chiropody Act, 1991*, the *Regulated Health Professions Act, 1991*, or the regulations under either of those Acts) and, in particular:
 - 1. the provisions of Ontario Regulation 750/93 under the *Chiropody Act, 1991* specified in this Notice of Hearing,
 - 2. the provisions of Ontario Regulation 203/94 under the *Chiropody Act, 1991* specified in this Notice of Hearing; and/or
 - 3. section 51(1)(c) of the *Health Professions Procedural Code*, being Schedule 2 to the *Regulated Health Professions Act, 1991*.
- ix. 1.33 (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); and/or
- b. sections 13, 14, 16, and 17 of Ontario Regulation 203/94 under the *Chiropody Act, 1991*, pertaining to the required record-keeping practices.

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