

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

PANEL:

Cesar Mendez, Chair  
Allan Katz  
Ann-Marie McLaren

BETWEEN:

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	)	
	)	
COLLEGE OF CHIROPODISTS OF ONTARIO	)	DEBRA MCKENNA for the College
(the “College”)	)	
	)	
- and -	)	
	)	
ALISON MURAKAMI	)	LISA SPIEGEL, for the Member
	)	
	)	
	)	LUISA RITACCA, Independent Legal
	)	Counsel
	)	
	)	Heard: March 1, 2021
	)	

**DECISION AND REASONS**

This matter came on for hearing before a panel of the Discipline Committee on March 1, 2021 by way of videoconference hosted by Victory Verbatim in Toronto.

**The Allegations**

The allegations against the Member as stated in the Notice of Hearing dated March 6, 2020 are as follows:.

1. At all material times, Alison Murakami (“**Ms. Murakami**” or the “**Member**”) was a registered member of the College of Chiropractors of Ontario (the “**College**”).
2. During the period between approximately April 2018 to October 2018 (“**Relevant Period**”), the Member engaged in professional misconduct within the meaning of the

following paragraphs of section 1 of the *Professional Misconduct Regulation*, O. Reg. 750/93 under the *Chiropody Act, 1991*:

- a. paragraph 2 (failing to meet or contravening a standard of practice of the profession), and, in particular, the College's standards pertaining to:
  - i. Patient Relations;
  - ii. Assessment and Management;
  - iii. Records; and/or
  - iv. Prescription Custom Foot Orthoses;
- b. paragraph 10 (practising the profession while the member is in a conflict of interest);
- c. paragraph 17 (failing to keep records as required by the regulations);
- d. paragraph 18 (falsifying a record relating to the member's practice);
- e. paragraph 20 (signing or issuing, in the member's professional capacity, a document that contains a false or misleading statement);
- f. paragraph 21 (submitting an account or charge for services that the member knows is false or misleading);
- g. paragraph 22 (charging a fee that is excessive in relation to the services or devices charged for);
- h. paragraph 30 (contravening the *Chiropody Act, 1991*, the *Regulated Health Professions Act, 1991*, or the regulations under either of those Acts), and in particular:
  - i. Ontario Regulation 750/93 (Professional Misconduct) under the *Chiropody Act, 1991*, as specified in this Notice of Hearing;
  - ii. Ontario Regulation 203/94 (General); and/or

- iii. Section 51(1)(c) of the *Health Professions Procedural Code*, being Schedule 2 to the *Regulated Health Professions Act, 1991*; and/or
- i. paragraph 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).

### **Member's Plea**

The Member admitted that she engaged in professional misconduct as set out in the Notice of Hearing and as more fully described in the Agreed Statement of Facts.

The Panel conducted an oral plea inquiry and was satisfied that the Member's admissions were voluntary, informed and unequivocal.

### **Agreed Statements of Facts**

Counsel for the College and the Member advised the Panel that agreement had been reached on the facts and introduced an Agreed Statement of Facts, which provided as follows:

1. At all material times, the Member was a chiropodist registered with the College to practise chiropody in the Province of Ontario.
2. During the period from approximately April 2018 to October 2018, the Member was engaged in the practice of chiropody at the Stoney Creek Orthotic Centre at 410 Highway 8, Stoney Creek, Ontario (the "Clinic").
3. The Member has been registered with the College since July 20, 2001.
4. The Member's employment at the Clinic, which commenced in 2018, was her first position in a private clinic. Prior to that time, the Member had only practised in a not-for-profit setting.
5. Prior to this case, the Member had never been before the Discipline Committee.

### **A. Incident #1**

6. On or about April 26, 2018, an investigator from Manulife Financial Corporation ("Manulife") attended at the Clinic using the pseudonym Anthony O'Neil. The purpose of attending the Clinic was to inquire about orthotics.
7. During the initial visit, the investigator spoke with the Clinic staff who advised him that:

- a. the investigator would require a prescription from one of the practitioners on-site for a \$75.00 fee, which could then be submitted to insurance;
  - b. if the investigator currently had a prescription, one of the kinesiologists would be able to perform an assessment and a scan of his feet for the orthotics;
  - c. were the investigator to purchase orthotics, he could pay an additional \$50.00 for a pair of shoes from a catalogue or he could attend “The Boot Shop” and use a \$150.00 credit provided by the Clinic towards purchasing a pair of shoes;
  - d. the cost of orthotics was \$400.00.
8. On or about April 30, 2018, the investigator returned to the Clinic for an assessment. At the appointment, the investigator was asked to fill out a patient information sheet which included questions about insurance coverage for orthotics and stockings.
  9. The investigator then met with the Member, who conducted an examination of his feet and prescribed the investigator some orthotics.
  10. The Member did not discuss or record other treatment options before she prescribed orthotics to the investigator.
  11. After the appointment with the Member, a kinesiologist performed a 3D scan of the investigator’s feet. The kinesiologist then asked the investigator whether he had chosen between shoes from the catalogue, or the shoe store, or words to that effect.
  12. The investigator was provided with an “OOLab Orthotics” 2018 spring/summer shoe catalogue. The kinesiologist also told the investigator that, as of April 30, 2018, a \$50.00 fee would be charged for shoes or words to that effect.
  13. In relation to the discussion about shoes for the investigator, the Member made a comment to the effect that she thought the investigator was going to choose a running shoe for the orthotic shoe option.
  14. In addition, the discussion regarding the kinds of shoes that were available at The Boot Shop also took place in the presence of the Member, while she was at the front desk completing administrative work.
  15. The investigator paid a \$100.00 deposit for the orthotics and \$75.00 for a chiropody fee. He was then asked by Clinic staff to sign a blank insurance claim form for Manulife and was told that the Clinic would submit the claim to Manulife.
  16. The investigator was provided with a voucher for The Boot Shop in the amount of \$150.00. The voucher was valid for one pair of shoes.
  17. On or about May 9, 2018, the investigator attended at The Boot Shop and chose a pair of “Olukai” flip flop sandals. Payment and shipping for the investigator’s sandals was handled by the OOLabs – the orthotics manufacturer. If the Member were to testify, she would testify that she was unaware the investigator chose such shoes as she understood he was interested in a running shoe, as noted above in paragraph 13.

18. On or about June 7, 2018, the investigator re-attended at the Clinic and was provided with one pair of orthotics and one pair of “Olukai” flip flop sandals by the Clinic staff. The investigator was not seen by the Member or fitted with the orthotics by the Member or any other chiropractor. If the Member were to testify, she would testify that she was not working at the Clinic this day and was of the belief that another chiropractor was available at the Clinic to dispense on her behalf on days when she was not present at the Clinic.
19. The insurance form submitted by the Clinic to Manulife indicates the total claim amount of \$475.00.
20. The claim form did not disclose that the investigator received a pair of shoes with his orthotics. If the Member were to testify, she would testify that it was her misunderstanding that she was not required to itemize “shoes” on the insurance form, as insurance was not being claimed for the shoes.

## **B. Incident #2**

21. On or about September 25, 2018, a second investigator from Manulife attended at the Clinic using the pseudonym David Cousins.
22. Upon arriving at the Clinic, the investigator was advised by Clinic staff that:
  - a. orthotics were priced at \$500.00 but that there was a compassionate rate available of \$400.00 for those who did not have insurance;
  - b. the investigator could obtain shoes at an additional cost of \$50.00 by selecting shoes from a catalogue or from the “OOLab” website.
  - c. the investigator was advised that he would need a prescription from a family doctor or he could see a chiropractor at the Clinic for a fee a \$75.00
23. On or about October 3, 2018, the investigator attended at the Clinic. At that time, he was asked to fill out a patient information sheet which included questions about insurance coverage, foot size, and medical history.
24. The investigator then met with the Member, who conducted an examination of his feet and prescribed orthotics.
25. The Member did not discuss or record other treatment options before she prescribed orthotics to the investigator.
26. During the examination, the Member inquired about the investigator’s condition and the reason for his attendance. The Member then directed the investigator to walk up and down the hallway as she observed his walking patterns.
27. The investigator inquired about the type of shoes that would be best-suited to the orthotics. The Member advised the investigator that he could obtain shoes through the Clinic at the cost of \$50.00 or words to that effect.

28. The Member also advised the investigator that, previously, shoes were provided to patients at no cost, but that the insurance companies regarded that as an incentive, or words to that effect. As a result, the Member indicated that patients were now charged \$50.00 for shoes.
29. The Member informed the investigator that shoes could also be obtained through the “OOLab” website or the catalogue.
30. Following his assessment, the investigator paid \$75.00 for the appointment with the Member. He then selected a pair of “Blundstone” boots from the OOLab shoe catalogue and paid \$50.00 for the shoes.
31. On or about October 15, 2018, the investigator again attended at the Clinic. At that time, the investigator was provided with his boots and orthotics. After the investigator tried on the boots and was satisfied with them, he was advised by Clinic staff that he owed \$500.00 for the orthotics, which he paid by debit.
32. The investigator was not seen by the Member or fitted with the orthotics by the Member or any other chiropractor. If the Member were to testify, she would testify that it was her misunderstanding that the dispensing of the orthotics could be assigned by a chiropractor to a non-chiropractor.
33. The insurance claim was submitted to Manulife by the Clinic.
34. The insurance form submitted by the Clinic to Manulife indicates the total claim amount of \$500.00.
35. The claim form did not disclose that the investigator received a pair of boots with his orthotics. If the Member were to testify, she would testify that it was her misunderstanding that she was not required to itemize “shoes” on the insurance form, as insurance was not being claimed for the shoes.
36. The Member was aware of the Clinic’s policy to offer free shoes to patients with the purchase of orthotics.
37. The Member was also aware of the Clinic’s change in policy to offer a pair of shoes for \$50.00 with the purchase of orthotics.
38. To date, the Member remains listed as a service-provider for Manulife. The investigator acting under the pseudonym of “Anthony O’Neil” has stated in an email to the Member’s current employer that the Member appeared to be very honest with him concerning “her past working relationships in the Hamilton area” and that the Member understands the “importance of following her College’s guidelines in respect of incentives.” Attached is a copy of the email dated September 30, 2019.
39. The Member admits that the following are standards of the profession:
  - i. Patient Relations;
  - ii. Records; and
  - iii. Prescription Custom Foot Orthoses.

40. Based on the facts set out in paragraphs 1 to 39 above, the Member admits that she engaged in professional misconduct within the meaning of the following paragraphs of section 1 of the Professional Misconduct Regulation, O. Reg. 750/93:
- a. paragraph 2 (failing to meet or contravening a standard of practice of the profession), and, in particular, the College's standards pertaining to:
    - i. Patient Relations;
    - ii. Records; and
    - iii. Prescription Custom Foot Orthoses;
  - b. paragraph 10 (practising the profession while the member is in a conflict of interest);
  - c. paragraph 17 (failing to keep records as required by the regulations);
  - d. paragraph 20 (signing or issuing, in the member's professional capacity, a document that contains a false or misleading statement);
  - e. paragraph 21 (submitting an account or charge for services that the member knows is false or misleading);
  - f. paragraph 22 (charging a fee that is excessive in relation to the services or devices charged for);
  - g. paragraph 30 (contravening the *Chiropody Act, 1991*, the *Regulated Health Professions Act, 1991*, or the regulations under either of those Acts), and in particular:
    - i. Ontario Regulation 750/93 (Professional Misconduct) under the *Chiropody Act, 1991*, as specified in the Notice of Hearing;
    - ii. Ontario Regulation 203/94 (General); and/or
    - iii. Section 51(1)(c) of the *Health Professions Procedural Code*, being Schedule 2 to the *Regulated Health Professions Act, 1991*; and/or
  - h. paragraph 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).

### **Decision and Reasons**

Based on the Agreed Statement of Facts and the Member's admissions, the panel finds that the Member has engaged in professional misconduct as alleged.

In coming to this decision, the Panel considered the following: the Member's plea and her admission of professional misconduct as described in the Agreed Statements of Facts. The Panel was satisfied that the conduct described in the Agreed Statements of Facts constituted professional misconduct as alleged and as admitted. In particular, the Panel was satisfied that the conduct admitted amounted to a failure to meet the standards of the profession relating to orthotics; a failure to keep records as required; and practising the profession while in a conflict of interest. Additionally, the Panel found that members of the profession would reasonably regard the various business practices of the Member described in the Agreed Statements of Facts as disgraceful, dishonourable and unprofessional.

### **Penalty**

Counsel for the College and the Member presented the Panel with a Joint Submission as to Penalty and Costs. The Joint Submission as to Penalty and Costs provides that the Panel should make an order as follows:

1. An oral reprimand;
2. An order suspending the Member's certification of registration for a period of eight (8) months commencing on April 1, 2021 – three months of which will be remitted upon the Member completing the ProBe ethics course as outlined in paragraph 3(a) below;
3. An order directing the Registrar to impose terms, conditions, and limitations on the Member's certificate of registration requiring the following:
  - (a) Prior to returning to practice, the Member shall complete the ProBe ethics course at her own expense;
  - (b) The Member is prohibited from imaging, casting, prescribing, constructing, fitting, dispensing and/or ordering the fabrication of orthotics for a period of fifteen (15) months (the "**Restricted Period**"), which period will run for one (1) month from March 1 to March 31, 2021 and then re-commence for fourteen (14) months at the conclusion of the Member's suspension period referred to in paragraph 2 above. The Member is additionally not entitled to assign these duties to anyone else in her clinic, regardless of whether she receives a fee, during the Restricted Period, but shall refer such duties to another chiropodist in good



standing at another clinic not affiliated with the Member's clinic.

(c) At her own expense, the Member will receive supervision of her chiropody practice with a supervisor approved by the Registrar for a period of one (1) year from the date on which the Member returns to practise from the suspension. The terms of the supervision are as follows:

- The supervisor shall visit with the Member in person on at least four (4) occasions – twice in the first six months and twice in the last six months;
- The visits with the supervisor will be unannounced;
- The supervisor shall determine the length of each visit;
- In conducting the supervision, the supervisor shall discuss ethics, practice management, record-keeping and compliance with the College's standards with the Member;
- The supervisor shall prepare a report to the Registrar after the second (2) visit and after the fourth (4) visit;
- The Member shall obtain consent from her patients to share personal health information with her supervisor in order to allow the supervisor to review client files and engage in review;
- The Member shall provide the supervisor with the Discipline Committee's decision and then provide written confirmation to the Registrar, signed by the supervisor, that the supervisor has received and reviewed the final decision;

(d) In the event that the Member obtains employment during the twelve (12) months following the date that the Member is able to return to practise after her suspension, the Member shall:

- notify any current or new employers of the Discipline Committee's final decision, and;
- ensure the Registrar is notified of the name, address, and telephone number of all employer(s) within fifteen (15) days of commencing employment;
- provide her employer(s) with a copy of:
  - o the Discipline Committee's Order;
  - o the Notice of Hearing;
  - o the Agreed Statement of Facts;
  - o the Joint Submission on Penalty;
  - o a copy of the Discipline Committee's decision; and

- o have her employer forward a report to the Registrar within fifteen (15) days of commencing employment confirmation that the employer has received the documents noted above and agrees to notify the Registrar immediately upon receipt of any information that the Member is not complying with the College's standards;
- (e) An order that the Discipline Committee's decision be published, in detail with the Member's name, in the College's official publication, on the College's website, and/or on the College's public register;
- (f) An order directing the Member to pay costs to the College in the amount of \$15,000.00; and
- (g) The College and the Member agree that if the Discipline Committee accepts this Joint Submission as to Penalty and Costs, there will be no appeal or judicial review of the decision to any forum.

### **Decision and Reasons for Penalty**

The Panel is satisfied that the proposed penalty as set out in the Joint Submission on Penalty and Costs is reasonable and makes the order accordingly.

In reaching its decision on penalty, the Panel was well aware that it should not depart from a joint proposal unless granting it would bring this process into disrepute or otherwise be contrary to the public interest.

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

1. The Panel does not believe that the penalty imposed would bring its administration into disrepute nor does it believe that the proposed penalty is contrary to the public interest.
2. This was the Member's first time appearing before the College's Discipline Committee and the Member's admission of professional misconduct as described in Agreed Statements of Facts is limited to investigations involving two patients.

3. The Member's demonstrated remorse and has acknowledged her responsibility.
4. The penalty incorporates a component of rehabilitation and education through the compulsory enrollment in the ProBe ethics course and the subsequent period of supervision of the Member's practice of chiropractic.
5. The publication and reporting of the case on the College website and other publications sent out by the College will act as a specific deterrence to the Member and a general deterrence to the profession as a whole.
6. Further, the reporting of the case on the College website and in other publications is consistent with the College's mandate to protect the public and to do so in a fair and transparent manner.
7. The Panel is satisfied that the penalty is reasonable in light of the professional misconduct admitted to in the Notice of Hearing and the Agreed Statement of Facts and in which the Panel found the Member engaged.
8. The Panel is satisfied that the penalty order proposed in the Joint Submission as to Penalty is proportional to the admitted misconduct and aligned with the range of penalties imposed in similar cases.
9. Similarly, the panel is satisfied that the costs agreed to are proportional to the admitted misconduct and aligned with costs awarded in similar cases by this Discipline Committee.

At the end of the hearing, the Panel delivered its Reprimand, which is attached to these reasons as Schedule "A".

I, Cesar Mendez, 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:

March 4, 2021

A handwritten signature in black ink, appearing to read 'Cesar Mendez', with a long horizontal flourish extending to the right.

Cesar Mendez

Allan Katz  
Ann-Marie McLaren

**SCHEDULE A**

**COLLEGE OF CHIROPODISTS OF ONTARIO v. ALISON MURAKAMI**

As you know, Ms. Murakami, as part of its penalty order this Discipline panel has ordered that you be given an oral reprimand. You agreed to this term of order as part of your joint submission on penalty filed during the course of the hearing.

The fact that you have received this reprimand will be part of the public portion of the Register and, as such, part of your record with the College.

The panel has found that you have engaged in professional misconduct in different ways, including:

- Contravening more than one of the standards of the professions

The result of your misconduct is that you have let down the public, the podiatric profession, and yourself.

We need to make it clear to you that your conduct is unacceptable.

Of special concern to us is the fact that the professional misconduct in which you engaged has involved the use of incentives in connection with the prescription of orthotics, which as you know, has been a problem for the profession and the College for quite some time.

Consequently, it is necessary for us to take steps to impress upon you the seriousness of the misconduct in which you have engaged.

We also want to make it clear to you that while the penalty that this panel has imposed upon you is a fair penalty, a more significant penalty will be imposed by another Discipline panel in the event that you are ever found to have engaged in professional misconduct again.

We want to thank you for your comments earlier. It is clear to the panel that you are remorseful and that this experience has taught you a valuable lesson.

This concludes the hearing, we are adjourned.

Panel Members:

Cesar Mendez, Chair

Ann-Marie McLaren

Alan Katz