

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

PANEL:

Martin Hayles, Chair
Sasha Kozera
Aladdin Mohagheh

BETWEEN:

)	
)	DEBRA McKENNA for the College
COLLEGE OF CHIROPODISTS)	
OF ONTARIO)	
(the “College”))	
)	
- and -)	JERRY HERSZKOPF for the Member,
)	WAYNE BASSARAGH
)	
WAYNE BASSARAGH)	
)	LUISA RITACCA, Independent Legal
)	Counsel
)	
)	Heard: December 2-3, 2020
)	

1. This matter came on for the continuation of a hearing before this panel of the Discipline Committee on December 3, 2020 by way of videoconference hosted by Victory Verbatim in Toronto.
2. Earlier this year, the Member brought a preliminary motion before the Panelⁱ seeking a determination as to whether the mandatory revocation provisions set out in section 51(5.2) of the *Health Professions Procedural Code* (the “Code”) apply to this case.

ⁱ Agnes Potts, who was a member of the panel on the preliminary motion, did not take part in the continuation of the hearing and took no part in the decision set out herein.

3. In reasons dated July 24, 2020, this panel released its decision on the preliminary motion, finding that section 51(5.2) is applicable in the present circumstances. A copy of our decision on the preliminary motion is attached to the end of this decision as Appendix “A”.
4. Following the release of our decision on the preliminary motion, the parties confirmed that they were prepared to proceed to a full hearing on the merits of this matter. As set out below, the Member admitted the allegations of professional misconduct set out against him in the Notice of Hearing.

The Allegations

5. The allegations against the Member as stated in the Notice of Hearing dated September 30, 2019 (Exhibit 1, tab 1) are as follows:

STATEMENT OF ALLEGATIONS

1. At all material times, Wayne Bassaragh (“**Mr. Bassaragh**” or the “**Member**”) was a registered member of the College.
2. During the period in or about February 17, 2017 and November 5, 2018 (the “**Relevant Periods**”), 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 Chiropractic Act, 1991:
 - (i) paragraph 2 (failing to meet or contravening a standard of practice of the profession);
 - (ii) paragraph 31 (contravening a federal, provincial or territorial law, a municipal by-law or a by-law or rule of a hospital, nursing home or other facility or agency that provides health services to the public if, i. the purpose of the law, by-law or rule is to protect the public health, or ii. the contravention is relevant to the member’s suitability to practise); and/or
 - (iii) 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).

PARTICULARS OF THE ALLEGATIONS

3. During the Relevant Periods, Mr. Bassaragh was a chiropodist registered with the College to practise chiropody in the Province of Ontario.
4. In or about February 2017, the Member was engaged in the practice of chiropody at [REDACTED] (the “Clinic”). The Member had been employed at the Clinic since May 4, 1998.
5. On or about February 17, 2017, while the Member was working at the Clinic, he placed a thermos or canister in the bathroom at the Clinic. The bathroom was used by staff working at the Clinic.
6. The thermos placed in the Clinic bathroom by the Member had a hidden camera installed inside of it. The camera was placed in the bathroom by the Member to surreptitiously record the activities occurring in the Clinic bathroom.
7. The Member’s camera filmed approximately nine individuals who entered the Clinic bathroom and used the toilet.
8. All of the individuals recorded by the Member’s camera entered the washroom, lowered their pants, and sat on the toilet. The buttock area of each individual using the toilet was exposed and recorded by the Member’s camera. The genital area of many of the individuals was also exposed and filmed by the Member’s camera.
9. On or about February 17, 2017, one of the staff working at the Clinic discovered the thermos located in the bathroom. As a result, the Toronto Police Service was contacted and conducted an investigation.
10. On or about February 17, 2017, the Member was arrested by the Toronto Police Services and interviewed by police. He was subsequently charged with a number of offences, including ten counts of voyeurism contrary to section 162(1)(b) of the Criminal Code of Canada in relation to the Member’s camera being placed by him in the Clinic bathroom.
11. On or about February 21, 2017, the College received a mandatory report from [REDACTED] the Executive Director of the Clinic, pursuant to section 85.5(1) of the Health Professions Procedural Code.
12. On or about November 5, 2018, the Member pleaded guilty and was convicted by the court of four counts of voyeurism contrary to section 162(1)(b) – counts 1, 2, 3 and 13 of the indictment. Count 13 of the indictment was a charge of voyeurism arising from an incident unrelated to the Clinic bathroom that occurred in or about February 1 to February 29, 2016.

13. In pleading guilty to the offences, the Member admitted that on or about February 17, 2017, he did, without a lawful excuse, surreptitiously make visual recordings in a place which a person can reasonably be expected to expose their genitals and/or anal area and when that person had a reasonable expectation of privacy, for the purpose of recording the person in such a state, contrary to section 162(1)(b) of the Criminal Code of Canada.
14. On or about April 15, 2019, the Member appeared in court to be sentenced. He received a suspended sentence and three years of probation, pursuant to which he is subject to a number of conditions.

Member's Plea

6. The Member admitted that he engaged in professional misconduct as described in the Notice of Hearing.
7. The Panel conducted an oral plea inquiry and was satisfied that the Member's admissions were voluntary, informed, and unequivocal.

The Evidence

8. 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, Wayne Bassaragh ("Mr. Bassaragh" or the "Member") was a registered member of the College.
 2. In or about February 2017, the Member was engaged in the practice of chiropody at [REDACTED] (the "Clinic"). The Member had been employed at the Clinic since May 4, 1998.
 3. On or about February 17, 2017, while the Member was working at the Clinic, he placed a thermos or canister in the bathroom at the Clinic. The bathroom was used by staff working at the Clinic.
 4. The thermos placed in the Clinic bathroom by the Member had a hidden camera installed inside of it. The camera was placed in the bathroom by the Member to surreptitiously record the activities occurring in the Clinic bathroom.

5. The Member's camera filmed approximately nine individuals who entered the Clinic bathroom and used the toilet.
6. All of the individuals recorded by the Member's camera entered the washroom, lowered their pants, and sat on the toilet. The buttock area of each individual using the toilet was exposed and recorded by the Member's camera. The genital area of many of the individuals was also exposed and filmed by the Member's camera.
7. On or about February 17, 2017, one of the staff working at the Clinic discovered the thermos located in the bathroom. As a result, the Toronto Police Service was contacted and conducted an investigation.
8. On or about February 17, 2017, the Member was arrested by the Toronto Police Services and interviewed by police. He was subsequently charged with a number of offences, including ten counts of voyeurism contrary to section 162(1)(b) of the Criminal Code of Canada in relation to the Member's camera being placed by him in the Clinic bathroom.
9. On or about February 21, 2017, the College received a mandatory report from [REDACTED] [REDACTED] the Executive Director of the Clinic, pursuant to section 85.5(1) of the Health Professions Procedural Code.
10. On or about November 5, 2018, the Member pleaded guilty and was convicted by the court of four counts of voyeurism contrary to section 162(1)(b) – counts 1, 2, 3 and 13 of the indictment. Count 13 of the indictment was a charge of voyeurism arising from an incident unrelated to the Clinic bathroom that occurred in or about February 1 to February 29, 2016.
11. In pleading guilty to the offences, the Member admitted that on or about February 17, 2017, he did, without a lawful excuse, surreptitiously make visual recordings in a place which a person can reasonably be expected to expose their genitals and/or anal area and when that person had a reasonable expectation of privacy, for the purpose of recording the person in such a state, contrary to section 162(1)(b) of the Criminal Code of Canada.
12. On or about April 15, 2019, the Member appeared in court to be sentenced. He received a suspended sentence and three years of probation, pursuant to which he is subject to a number of conditions.

13. Based on the admitted facts in paragraphs 1 to 12 above, the Member admits that he 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 Chiropractic Act, 1991:
- (i) paragraph 2 (failing to meet or contravening a standard of practice of the profession);
 - (ii) paragraph 31 (contravening a federal, provincial or territorial law, a municipal by-law or a by-law or rule of a hospital, nursing home or other facility or agency that provides health services to the public if, i. the purpose of the law, by-law or rule is to protect the public health, or ii. the contravention is relevant to the member's suitability to practise); and/or
 - (iii) 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 for Decision

9. The Panel considered the Member's plea and the facts as admitted and finds that the Member engaged in professional misconduct as alleged in the Notice of Hearing. In particular, the Panel finds that the conduct amounts to a breach of section 51(1)(a) and (c) of the Code.
10. The Member was found guilty of voyeurism offences. The conduct took place at his clinic. His victims were his co-workers. In the Panel's view, the criminal conduct goes to the heart of the Member's suitability to practice.
11. The College's Code of Ethics is a set of principles that provide all members with direction and guidance in responsible conduct, and **ethical** and **moral** behaviour in professional practice. The principles of ethical conduct include: Accountability Confidentiality & Dignity. For those outside the profession, the Code of Ethics helps instill confidence in the profession and serves as a concrete reminder of the high

standards of ethical conduct that are synonymous with the practice of Chiropractic and Podiatry.

12. There is an expectation of moral behaviour by persons granted the privilege to practise as members of the College. The voyeurism engaged in by the Member was pre-meditated, deliberate, secretive, devious, intrusive, and demeaning. He placed a hidden camera in a bathroom used by his colleagues and staff at his clinic. The Member took care to disguise and place the recording device where it would not readily be identified. The engagement in voyeurism has demonstrated conduct that falls well below the expected standards of the profession, and is egregious and reprehensible conduct that wholly disregards the profession's Code of Ethics and the membership's obligation to act in the public interest as a whole. The actions were a gross breach of his co-workers' trust in circumstances in which they were most vulnerable and had the highest expectation of privacy.
13. Further, the Panel is satisfied that the conduct engaged in would reasonably be regarded by members of this profession as disgraceful, dishonourable, and unprofessional.

Penalty

14. Despite the Panel's decision on the preliminary motion, the Member sought to provide the Panel with evidence in support of his penalty position. While the College did not oppose the Panel receiving the evidence, it did note that in light of the decision made on the preliminary motion, the Panel was bound by s. 51(5.2) to order a reprimand and that the Member's certificate of registration be revoked in light of the findings of professional misconduct.
15. The Panel agreed to entertain the additional evidence and the parties' submissions on penalty.

Member's Evidence

16. The Member, Mr. Bassaragh read a prepared statement to the panel detailing his conduct from his perspective, and the consequences of his actions. He reiterated his remorse for

what he did, and the consequences including the impact on his family life, friendships, work life, and finances. He revealed his mental health issues that drove him to engaged in the misconduct, and the professional help he continues to seek to address them. He appreciated the panel's responsibility to mitigate risk but urged us to '*go out on a limb*' and offer him a '*second chance*' .

17. In cross examination, the Member admitted that some of the facts set out in his prepared statement were not true. For example, contrary to what he told the Panel, the member had not '*immediately*' announced his guilt to the police, upon his arrest and without '*legal representation*'. In addition, the Member admitted to not being honest about other parts of his statement.
18. The Member also called Dr. Julian Gojer, to provide his expert opinion with respect to the Member's conduct and risk of re-offending. Dr. Gojer is a well-known expert witness in the field of forensic psychiatry. The Panel accepted Dr. Gojer as an expert and allowed him to provide his opinion with respect to the Member's conduct.
19. Dr. Gojer testified that he had prepared two reports in connection with the Member's criminal proceedings, dated 15th April 2018 and 19th September 2018 respectively. Dr. Gojer explained that he conducted his assessment of the Member in 2018. He spent a total of 5-hours with him then and had an additional 30-minute virtual session with him prior to this hearing. Dr Gojer outlined that the Member suffers with '*sexual deviation voyeurism*'. His report indicates no evidence of psychopathy, anti-social personality disorder, major mental health disorder, or any substance abuse disorder. Dr. Gojer said that he believed that the Member had been compliant with various treatment interventions with a psychologist and therapist, but acknowledged that he was not involved in treated the Member himself. Dr Gojer opined that the Member was at a very low risk of re-offending, having shown remorse for actions and the effect of them.
20. In cross-examination, Dr. Gojer confirmed that the Member had demonstrated voyeuristic tendencies from when he was 20-years old. He also acknowledged that the Member's compulsive behaviour had intensified when he moved his voyeurism from outside his home to a public location. Dr. Gojer further acknowledged that if the

Member had been untruthful in his presentation to the Panel that would cause him some concern.

Submissions on Penalty

- 21.** Despite the Panel’s decision on the preliminary motion, the Member argued that, the Panel should use its “*discretion*” and order something less than revocation. The Member did not point to any legal authority or case to suggest that the Panel had any “discretion” beyond what is set out in the Code. Instead, the Member referred the Panel to the Reasons for Sentencing in his criminal matter, prepared by Justice Robertson, dated April 15th, 2020 (the “Reasons for Sentencing”), arguing that when considering the penalty, the Panel should be bound by the principles of specific and general deterrence, proportionality, aggravating and mitigating circumstances, as well as rehabilitative potential.
- 22.** The Member argued that a suspension of his certificate of registration for an indeterminate length was preferential to revocation. The Member did not suggest a length of suspension or any other alternative terms, limits or conditions for penalty. Further, the Member asked that if the Panel concluded that it was bound by the mandatory revocation provisions, that it not comment on what it would have considered as an alternative penalty had it not been so bound.
- 23.** The College’s position remained that revocation is mandatory. The College argued that the Panel is bound by s. 51(5.2) to order a reprimand and that the Member’s certificate of registration be revoked in light of the particular findings of professional misconduct made here. Although the College disagreed that an alternative penalty was even available, it nonetheless argued that revocation was an appropriate penalty in this case regardless of whether it was mandatory or not. The College argued that the Member’s conduct was of such a serious nature that removal from the profession was the only appropriate result. The College provided the Panel with case law from other health colleges to support its position.

Decision and Reasons for Penalty

24. The Panel considered the additional evidence from the parties on penalty despite its earlier ruling. The Panel concluded that it was bound by its earlier decision and finds that s. 51(5.2) applies to the present circumstances. As such, the Panel makes an order directing the Member to appear before the panel to be reprimanded and an order directing the Registrar to revoke the Member's certificate of practice.
25. Despite the Member's request that the Panel not state what it would have done had it not been bound by section 51(5.2), the Panel has concluded that in light of the evidence received and given the seriousness of the conduct at issue, it was important for it to make clear its conclusion on penalty in the event that it was not bound by section 51(5.2).
26. The protection of the public is the paramount principle guiding the imposition of penalty. Other key considerations are maintaining the integrity of the profession and public confidence in the College's ability to regulate the profession in the public interest. Further, the panel must be guided by denouncing wrongful conduct; specific deterrence as it applies to the member; general deterrence in relation to the membership as a whole; and, where appropriate, rehabilitating the member. A penalty which is fair, reasonable, and appropriate must consider the facts and circumstances of the case and weigh the penalty principles. The nature of the misconduct and aggravating and mitigating factors need to be considered. The penalty should be proportionate to the misconduct. Like cases should be treated alike and the panel should have regard to penalties imposed in similar cases, although it is not bound by prior decisions. Justice Robertson in his Reasons for Sentencing indicated the fundamental principal of sentencing is proportionality, reflecting the gravity of the offence and the moral blameworthiness of the offender.
27. On or about November 5, 2018, the Member pleaded guilty and was convicted by the court of four counts of voyeurism contrary to section 162(1)(b) – counts 1, 2, 3 and 13 of the indictment. Count 13 of the indictment was a charge of voyeurism arising from an incident unrelated to the Clinic bathroom that occurred in or about February 1 to February 29, 2016.

28. In pleading guilty to the offences, the Member admitted that on or about February 17, 2017, he did, without a lawful excuse, surreptitiously make visual recordings in a place which a person can reasonably be expected to expose their genitals and/or anal area and when that person had a reasonable expectation of privacy, for the purpose of recording the person in such a state, contrary to section 162(1)(b) of the Criminal Code of Canada.
29. On or about April 15, 2019, the Member appeared in court to be sentenced. He received a suspended sentence and three years of probation, pursuant to which he is subject to several conditions.
30. The Member's plea and the facts as admitted found that the Member engaged in professional misconduct as alleged in the Notice of Hearing. In particular, the Panel finds that the conduct amounts to a breach of section 51(1)(a) and (c) of the Code.
31. The offences committed by the Member were serious. He abused a position of trust, which the Panel finds was a significant aggravating factor.
32. The Member engaged in compulsive and progressive voyeurism over several years, continuing until he acted in a public place and where his actions were discovered by a co-worker in 2017.
33. The Member's placement of cameras in a public washroom was obviously planned and thought out, and was an egregious invasion of the privacy of unsuspecting individuals. It speaks to a high level of voyeurism and reckless behaviour. He took care to disguise and place the recording device where it would not readily be identified.
34. The Panel also notes, however, that the Member has had no other involvement with the discipline process of the College. While this is a mitigating factor, in light of the egregious nature of the misconduct at issue, the Panel puts limited weight on the Member's prior unblemished record.
35. The Member admitted the allegations of professional misconduct, thereby reducing the time and expense associated with the discipline process. This is commendable, but in

light of the criminal findings, it is difficult to imagine the Member deciding to fight the College allegations in the circumstances.

36. The Panel heard evidence, and was provided letters of reference, and other submissions to suggest that the Member is remorseful and has accepted full responsibility for his actions. The Panel was however troubled by the Members apparent lack of honesty during his witness statement.
37. Dr Gojer suggested that the Member is at low risk of reoffending and that he has been specifically deterred because of going through the criminal process and suffering other personal consequences.
38. The Member engaged in a significant breach of trust of the most significant type, involving multiple victims. The conduct calls into question public safety and public confidence in the College's ability to regulate its members. As such, the penalty imposed must reflect the Discipline Committee's condemnation of the conduct and overarching concern for public safety. The panel notes the comments made by a panel of the Discipline Committee of the College of Physicians and Surgeons of Ontario in *CPSO v. Gillen*, that "Public confidence is essential". Similarly, in *Adams v. The Law Society of Alberta*, 2000 ABCA 240 (CanLII), the Court concluded that "This public dimension is of critical significance to the mandate of professional disciplinary bodies."
39. With the monopolistic right of self-regulation, the College bears an extraordinary responsibility. The government and the public properly expect that the College will fulfill its role in self-regulation, including having due regard for the public confidence in how it goes about doing so.
40. The Panel acknowledges that the Member practised without any disciplinary action against him for over two decades. The panel finds, however, that the Member's behaviour has put public safety at risk and public confidence in jeopardy. The panel finds that public confidence in the profession would be seriously eroded if the Member's certificate of practice was not revoked.

41. The Panel is aware that it can be guided by previous decisions based on the principle that like decisions should attract like penalties, but that each penalty will be based on the unique facts of each case. No case was presented to the panel that fully resembles the Member's case. This is the first case to be heard by the College's Discipline Committee that involves criminal convictions for the act of voyeurism and the first case involving s. 51(5.2) of the Code.
42. The panel concludes that revocation is necessary and is consistent with other cases. This penalty provides for specific deterrence to the Member. It sends a strong message to the profession that this conduct will not be tolerated. It protects the public because the Member will be unable to practise for the foreseeable future.
43. As set out in our preliminary decision, on May 30, 2017 the *Protecting Patients Act, 2017*, S.O. 2017, c. 11 was enacted. This Act amended the Code, by adding section 51(5.2), which requires the mandatory revocation of a member's Certificate of Registration where that member has been found guilty of certain prescribed offences, relevant to his suitability to practise, including voyeurism. As stated above, the panel is bound by the mandatory provisions of the Code. It does not have "discretion" to order something different and in any event, would not do so in the circumstances of this case.
44. The Panel makes the following order as to penalty:
 - (i) The Member is required to appear before the Panel to be reprimanded within three months of the date that this Order becomes final.
 - (ii) The Registrar is directed to immediately revoke the Member's Certificate of Registration as provided for under the Code.
45. The Panel will entertain submissions on costs, in accordance with the Discipline Committee's Rules of Procedure. Submissions may be filed by sending a copy to the College hearings coordinator and to the Panel's independent legal counsel.

I, Martin Hayles, 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:



Martin Hayles, Chair

16th December 2020
Date

Sasha Kozera
Aladdin Mohagheh