

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

B E T W E E N:

COLLEGE OF CHIROPODISTS OF ONTARIO

(the “**College**”)

-and-

THOMAS JAMES HEWAK

(the “**Member**”)

NOTICE OF HEARING

THE INQUIRIES, COMPLAINTS AND REPORTS COMMITTEE (ICRC) of the College of Chiropractors of Ontario has referred specified allegations against **THOMAS JAMES HEWAK** (Registration #960432) to the Discipline Committee. The allegations were referred in accordance with paragraph 26(1)1 of the *Health Professions Procedural Code*, which is Schedule 2 to the *Regulated Health Professions Act, 1991* (the “*Code*”).

Further information about the allegations is contained in the Statement of Allegations attached to this Notice of Hearing. A discipline panel will hold a hearing, on a date to be fixed by the Chair of the Discipline Committee, at the offices of the College of Chiropractors of Ontario at 180 Dundas Street West, Suite 1901, Toronto, ON M5G 1Z8 or electronically via Zoom or other electronic means, 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 you to pay a fine of not more than \$35,000 to the Minister of Finance.

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:

Debra McKenna
WEIRFOULDS LLP
4100-66 Wellington Street West
P.O. Box 35, TD Bank Tower
Toronto, ON M5K 1B7
t. (416) 947-5080
e. dmckenna@weirfoulds.com

At the hearing, the College intends to introduce as business records, under section 35 and/or 52 of the *Evidence Act*, any writings or records that were made in the usual and ordinary course of business. Without limiting the generality of the foregoing, the College intends to introduce as business records the patient records, financial records, or other records that relate to the subject matter of the allegations.

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: June 12, 2023



Nicole Zwiers
Registrar and Chief Executive Officer
College of Chiropodists of Ontario
180 Dundas Street West, Suite 2102
Toronto, Ontario M5G 1Z8

TO: Thomas James Hewak

STATEMENT OF ALLEGATIONS

1. Thomas James Hewak (“**Member**”) was at all material times a registered member of the College.

2. It is alleged that during the period from approximately January 2020 to January 2023 (the “**Relevant Period**”), the Member engaged in conduct that constitutes professional misconduct pursuant to the following:
 - (a) Clause 51(1)(c) of the *Health Professions Procedural Code*, being *Schedule 2 to the Regulated Health Professions Act, 1991* and as defined in one or more of the following paragraphs of section 1 of the *Professional Misconduct Regulation (O. Reg. 750/93)* under the *Chiropody Act, 1991*:
 - (i) paragraph 2 – failing to meet or contravening a standard of practice of the profession) and, in particular, the College’s standards pertaining to:
 - a. Assessment and Management;
 - b. Patient Relations;
 - c. Records;
 - d. Prescription Custom Foot Orthoses; and/or
 - e. Prescription Footwear
 - (ii) paragraph 10 – practising the profession while the member is in a conflict of interest;

- (iii) paragraph 17 – failing to keep records as required by the regulations;
- (iv) paragraph 20 – signing or issuing, in the member’s professional capacity, a document that contains a false or misleading statement;
- (v) paragraph 21 – submitting an account or charge for services that the member knows is false or misleading;
- (vi) paragraph 22 – charging a fee that is excessive in relation to the services or devices charged for;
- (vii) paragraph 30 – contravening the *Chiropody Act, 1991*, the *Regulated Health Professions Act, 1991*, or the regulations under either of those Acts: specifically, Ontario Regulation 203/94 under the *Chiropody Act, 1991*, and, in particular, Records (Part III);
- (viii) 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.
- (ix) 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

A. Background

1. At all material times, the Member was registered with the College as a chiropodist to practise chiropody in Ontario. He was first registered with the College on or about September 30, 1996.
2. During the Relevant Period, the Member's primary practice location was reported to the College as being Hewak Foot Clinic, located at 60 Hatt Street, Dundas, Ontario.
3. In addition, the Member also practised at several secondary locations (collectively, the "**Clinics**"), including:
 - The Burlington Foot Clinic, 1960 Appleby Line, Burlington, Ontario
 - The Hamilton Foot Clinic, 1508 Upper James Street, Hamilton, Ontario
 - The Foot and Ankle Institute, 1508 Upper James Street, Hamilton, Ontario
4. The Member is also an officer and/or director and/or shareholder of The Hamilton Foot Clinic.
5. During the Relevant Period, the Member was ordinarily scheduled to work at the Clinics one or two days per week.

B. Green Shield Canada Complaint

6. On or about January 4, 2023, the College received a complaint from Green Shield Canada (“**GSC**”) about the Member (the “**Complaint**”).
7. As set out in the Complaint, GSC regularly conducts profiles of its service providers and their practices in prescribing services and/or products to its plan members and their dependents.
8. During the course of its verification process, GSC identified several flags and had cause to review claims submitted for prescription footwear and custom-made orthotics that identified the Member as the treating/dispensing chiropodist at the Clinics.
9. The GSC review encompassed 2,179 claims that had been submitted during the period from January 1, 2020 to September 30, 2022 (the “**Claims**”). The total value of the Claims was approximately \$907,778.87.
10. As a result of the Claims, \$726,359.50 was paid directly in the Member’s name via cheque or electronic funds transfer (EFT) to the Clinics.
11. The Claims were submitted manually to GSC using GSC Claim Form for Custom Foot Orthotics/Footwear. All the claim forms submitted to GSC were signed by the Member and reported that the services and/or treatments had been rendered by him.
12. All, or a majority, of the orthotics prescribed and dispensed at the Clinics during the Relevant Period were manufactured by 2364164 Ontario Inc. (“**236 Ontario**”) – a company operating under the business name of Kinetic Orthopaedic and

Orthotic Lab and/or KOOL. 236 Ontario is a company with common ownership with the Clinics.

13. To ensure that treatments had been appropriately prescribed and dispensed to its plan members, GSC initiated an onsite audit at the Clinics. Due to the volume of the Claims, GSC sought to review and obtain supporting documents for a subset of the benefit claims at issue.
14. Notice of the audit was issued on September 21, 2022. At that time, GSC also indicated that documents would be requested for additional plan members – a list of which would be provided once onsite.
15. The audit was conducted at the Clinics on October 4, 2022 (The Burlington Foot Clinic) and on October 5, 2022 (The Foot and Ankle Institute/The Hamilton Foot Clinic). A list of the patient records reviewed and obtained by GSC during onsite audits are attached as Appendix “A”.
16. In reviewing the records and details of the Claims, GSC determined that the Claims were made in respect of plan members belonging to the same group sponsored benefit plan – the terms of which included benefit coverage for two (2) pairs of orthopedic shoes every twelve (12) months and two (2) pairs of custom-made orthotics every three (3) calendar years per plan member.
17. The audit of the Claims further determined that:
 - Little to no chiropody services had been provided by the Member to the plan members and/or their dependents;

- Multiple plan members had exhausted their benefit coverage and had received two (2) pairs of orthopedic shoes and two (2) pairs of orthotics, including family members;
- Orthopedic shoes and/or orthotics were dispensed during the lockdown period from March 25, 2020 to May 26, 2020, contrary to the directive of Ontario's Chief Medical Officer made pursuant to the *Health Protection and Promotion Act* and its regulations;
- The Member's patient records for the Claims lacked the requisite information to determine that the treatments were medically necessary; and/or
- Claims had been submitted to GSC for treatments purportedly provided on the same day from multiple locations and/or on days on which the Member was not working at the Clinics.

C. Summary of the Allegations

18. In prescribing and/or purporting to prescribe orthotics and/or prescription footwear to his patients, the Member did not perform or document an adequate assessment of the patient and/or determine that the treatments were medically necessary, contrary to the College's standards.
19. In particular, the Member failed to:
 - (a) obtain and document an adequate and/or current patient history;
 - (b) conduct and document an adequate assessment;

- (c) obtain and/or document informed consent, including discussion with patients about the benefits and risks of various treatment options;
 - (d) determine if a different treatment plan was appropriate in the circumstances before prescribing orthotics and/or prescription footwear;
 - (e) discuss with patient and document the treatment plan;
 - (f) review scans of the patient's feet to ensure that scans were accurate and appropriate devices were manufactured to suit the needs of the patient;
 - (g) fit and dispense the orthotics and/ footwear to the patient; and/or
 - (h) provide appropriate follow-up care to the patient.
20. In prescribing and/or purporting to prescribe orthotics and/or prescription footwear to his patients, the Member failed to determine and/or adequately document why orthotics and/or prescription footwear were medically necessary for the patient and/or required for the prevention, treatment or management of a disease, disorder, or dysfunction of the foot.
21. In prescribing orthotics and/or footwear to his patients, the Member participated and/or was complicit in the practice of over-prescribing or over-utilizing specific treatment options in order to exhaust benefit coverage – a business practice that is contrary to the College's standards and/or conflict of interest policy.

22. In prescribing and/or purporting to prescribe orthotics and/or prescription footwear to his patients, the Member signed, issued, and/or submitted documents to GSC in support of the Claims that were false and/or misleading.
23. In prescribing and/or purporting to prescribe orthotics and/or prescription footwear to his patients, the Member signed, issued, and/or submitted biomechanical assessments, prescription forms, claim forms, and/or other patient records that were fabricated and/or were for assessments conducted by others, including individuals who were not members of the College.
24. In prescribing and/or purporting to prescribe orthotics and/or prescription footwear to his patients, the Member signed, issued, and/or submitted biomechanical assessments, prescription forms, claim forms, and/or other patient records for orthotics and/or footwear that were dispensed by others, including individuals who were not members of the College.
25. The Member failed to maintain patient records, including financial records, in accordance with the regulations and the College's standards.
26. Additional information and disclosure about the allegations against the Member will be provided in advance of the hearing.

APPENDIX "A" – THOMAS JAMES HEWAK

(Last Name, First Name)

The Hamilton Foot Clinic

List 1:

E. J.

List 2:

A. V.

M. A.

M. R.

N. W.

The Foot & Ankle Institute

List 1:

B. M.

C. L.

D. N.

E. J.

F. P.

G. J.

G. K.

J. J.

J. D.

J. H.

J. E.

M. L.

M. M.

M. J.

N. A.

P. A.

P. E.

P. F.

R. C.

W. T.

W. P.

Z. K.

List 2:

A. V.

B. W.

F. P.

G. I.
G. H.
H. I.
M. R.
M. E.
M. S.
M. M.
N. W.
S. A.

The Burlington Foot Clinic

List 1:

B. B.
G. L.
H. D.
J. M.
J. R.
M. S.
O. L.
R. N.
V. D.
W. S.
W. D.

List 2:

M. D.
M. C.
N. M.
R. M.

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Toronto, ON M5K 1B7

Debra McKenna

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Lawyers for the College of
Chiropractors of Ontario