

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

PANEL:

Nosheen Chaudhry, Professional Member, Chair  
Melanie Atkinson, Professional Member  
Millicent Vorkapich-Hill, Professional Member  
Winnie Linker, Public Member

BETWEEN:

	)	<b>DEBRA McKENNA</b> , for the
	)	College
COLLEGE OF CHIROPODISTS OF ONTARIO	)	
(the “ <b>College</b> ”)	)	
- and -	)	<b>KEVIN MITCHELL</b> for the Member
	)	<b>FRANCIS GERRARD KEOGH</b> ,
	)	not present
	)	
FRANCIS GERRARD KEOGH	)	
(the “ <b>Member</b> ”)	)	<b>LUISA RITACCA</b> , Independent
	)	Legal Counsel
	)	
	)	Heard: December 16, 2021
	)	

**Reason for Decision**

1. This matter came on for hearing before a Panel of the Discipline Committee on December 16, 2021. With the consent of the parties, this matter was heard by videoconference.
2. College counsel filed a motion record seeking a stay of the allegations contained in the Notices of Hearing, as described below. Counsel for the Member joined in this request.

3. At the conclusion of the hearing, the Panel advised the parties that it would grant the requested order. The Panel's reasons granting the motion are set out in brief.

### **The allegations**

4. Notices of Hearing were issued on April 23, 2021 and May 27, 2021 making allegations against Francis Gerrard Keogh (the "**Member**"). The full Notices of Hearing are attached to the end of this decision.

### **Motion**

5. The College moves for the following orders:

- (a) An order permanently staying the discipline proceedings against the Member;
- (b) An order directing the Registrar to post on the public register a summary of the allegations, as set out in the Notice of Hearings dated April 23, 2021 and May 27, 2021, and a notation that the allegations have been permanently stayed; and
- (c) An order directing the Registrar to post on the public register a summary of the signed undertaking provided by Mr Keogh dated December 7, 2021.

6. Further, the College requests an order directing Mr. Keogh to pay costs to the College in the amount of \$8,000.00, which costs shall be paid to the College in five equal payments as follows:

- \$4,000.00 – December 16, 2021
- \$1,333.33 – January 31, 2022
- \$1,333.33 – February 28, 2022

- \$1,333.34 – March 31, 2022

7. The Member consents to the orders being sought.

8. The Member currently lives in Nova Scotia. On December 7, 2021, the Member signed an Undertaking and Acknowledgement in which he agreed to permanently resign his registration with the College and never re-apply, on the basis that the College would seek an order staying these discipline proceedings. The Undertaking and Acknowledgment provides that, if the Member breaches it, the stay will be lifted and the allegations against him will be addressed by the Discipline Committee at a full hearing.

9. The Member has resigned from the College.

### **Reasons for decision**

10. The issue before this Panel is whether it would be consistent with the College's mandate to protect the public interest to resolve this proceeding by way of resignation and an undertaking not to reapply, rather than a full hearing at which the allegations of professional misconduct would be adjudicated.

11. This College has resolved other matters in a similar manner: *College of Chiropodists of Ontario v Bello*, 2018 ONCOCOO 1; and *College of Chiropodists of Ontario v Pak*, 2020 ONCOCOO 2.

12. The Panel is satisfied that Mr. Keogh's resignation and undertaking not to reapply will protect the public. As counsel submitted in the course of the hearing, the undertaking and agreement not to reapply represents a greater consequence for the Member than could be

imposed at a full hearing, since, even if his registration was revoked at a full hearing, he would be entitled to reapply in the future.

13. The College's obligation of public transparency will be served by the orders sought regarding the public register, and by these reasons.

14. The profession and the public will also avoid the costs of a full hearing.

15. The Panel is satisfied that the proposed disposition is consistent with the public interest. Accordingly, the Panel orders that the disciplinary proceedings against the Member are permanently stayed.

I, Nosheen Chaudhry, sign this Decision and Reasons for the decision as single member of this Discipline panel.



Nosheen Chaudhry, Professional Member

4<sup>th</sup>, January 2022

Date

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

**B E T W E E N:**

**COLLEGE OF CHIROPODISTS OF ONTARIO**

(the “**College**”)

-and-

**FRANCIS GERRARD KEOGH**

(the “**Member**”)

**NOTICE OF HEARING**

**THE INQUIRIES, COMPLAINTS AND REPORTS COMMITTEE** of the College of Chiropractors of Ontario has referred specified allegations against **FRANCIS GERRARD KEOGH** (Registration #850167) 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, which is attached to this Notice of Hearing. A discipline panel will hold a hearing on a date to be fixed by the Registrar, 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**  
Barristers & Solicitors  
4100-66 Wellington Street West  
P.O. Box 35, TD Bank Tower  
Toronto, ON M5K 1B7  
t. (416) 947-5080  
e. [dmckenna@weirfoulds.com](mailto:dmckenna@weirfoulds.com)

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:** April 23, 2021



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Julie Maciura  
Acting Registrar  
**College of Chiropodists of Ontario**  
180 Dundas Street West, Suite 2102  
Toronto, ON M5G 1Z8

**TO: Francis Gerrard Keogh**

**STATEMENT OF ALLEGATIONS**

1. Francis Gerrard Keogh (“**Mr. Keogh**” or the “**Member**”) was at all material times a registered member of the College.
  
2. It is alleged that during the period from approximately January 1, 2018 to January 8, 2020 (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; and/or
      - d. Prescription Custom Foot Orthoses;
    - (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, Advertising (Part II) and Records (Part III);
- (vi) 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. Overview**

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 3, 1985.
2. During the Relevant Period, the Member practised at eleven (11) different clinics in Ontario, including the following:
  - Foot Mech, 55 Ontario Street South, Milton, Ontario, L9T 2M3
  - Health First, 499 Main Street South, Brampton, Ontario L6Y 1N7
  - D & M Foot Care, 50 Kennedy Rd South, Brampton, Ontario L6W 3E7
3. On or about January 9, 2020, the College received a complaint from Green Shield Canada (“GSC”) about the Member (the “Complaint”).
4. As set out in the Complaint, GSC regularly conducts profiles of its service providers and their practices. During the course of standard claims verification, GSC began to review claims for footwear and custom-made orthotics prescribed by the Member at (11) locations.
5. The GSC review encompassed claims processed during the period from January 1, 2018 to July 31, 2019, with a total of 469 claims being reviewed. The total value

of the claims was \$173,963.00, with \$110,220.40 being paid to GSC plan members.

6. Upon review of the claim submissions, GSC noted the following:
  - There is little to no chiroprody services rendered by the Member, other than the assessment for custom-made foot orthotics;
  - Multiple family members received custom-made orthotics on the same day;
  - Multiple dates where the Member worked at more than one location.
7. In order to ensure that the products were appropriately rendered, GSC initiated three separate reviews focusing on the Member's primary locations.

**B. Foot Mech (Announced Onsite Audit)**

8. By letter dated September 19, 2019, the Member was advised that GSC would be conducting an onsite review on October 2, 2019, to review a number of patient records for its plan members.
9. The onsite review was later rescheduled for November 7, 2019.
10. Upon arrival at the clinic, the Member was provided with a comprehensive list of approximately forty-seven (47) plan members for review of their records.
11. Upon reviewing the documentation, GSC representatives noted that the patient record lacked pertinent information, including the following:

- Lack of reasonable information about all significant advice given by him to his patients;
- No record of dispensing for most, if not all custom-made foot orthotics;
- Where there is record of dispensing, it is located out of sequence and at the bottom of the page as a "foot note" thereby suggesting the record was not done at the time of the visit and/or within 24 hours as required;
- No record of any follow up to dispensing the custom-made foot orthotics;
- No record of any modifications;
- Lack of reasonable information regarding delegation and to whom;
- No appointment record with the date and time patient attended appointment;  
and
- No reference identifying the patient for each part of the health record.

12. In addition, GSC also noted that:

- All biomechanical assessment and gait analysis forms were photocopies and only the name and date on the forms were original;
- All information on the biomechanical assessment and gait analysis forms were the same from patient to patient;
- The patient record for family members were combined and included items rendered by Foot Mech and not by the Member.

13. When asked about the lack of documentation about dispensing during the audit, the Member advised GSC that he was the only one who dispensed at the location and, therefore, he did not feel he needed to document that information.
14. The Member also confirmed that on occasion he would dispense items to someone other than the patient. In addition, when asked about modifications, the Member stated that that was not necessary as his "orthotics are perfect".

**C. Health First (Unannounced Onsite Audit)**

15. On the morning of November 6, 2019, GSC representatives also attended Health First to obtain patient records for eight (8) plan members. Among the records requested by GSC were the records for a plan member who had advised GSC that she had not yet received her orthotics as billed.
16. Upon arrival at Health First, the clinic owner confirmed to GSC representatives that the Member no longer worked at the location and had not work there for at least a year.
17. When GCS requested the patient records for its plan members, the clinic owner was unable to locate and/or provide any of the records.
18. In response to the Complaint, the Member confirmed that he does not have the patients' records for that clinic location and the clinic is no longer in operation.

**C. D & M Foot Care (Undercover Operation and Unannounced Onsite Audit)**

19. On or about November 6, 2019, GSC also conducted an undercover investigation with respect to the Member's practice. Among other things, the purpose of the covert operation was to confirm whether incentives were being offered to patients and who at the clinic was dispensing the orthotics prescribed by the Member.
20. Upon attendance at the clinic, GCS confirmed that free and/or discounted shoes were provided with the purchase of orthotics and the Member did not dispense the orthotics as is indicated on the claim submission form to GSC.
21. The GCS claim submission form and patient records also did not document that the Member's patient received a pair of sandals with her orthotics, which were dispensed to the patient by clinic staff.
22. Later that same day, GSC representatives returned to the clinic unannounced and requested the patient records for twelve (12) of its plan members. Upon review, the patient records lacked the requisite information, as is outlined in paragraph 12 above.
23. As a result of the audit of the Member's practice, GSC delisted the Member as an eligible service provider for GSC plan members.

#### **D. Summary**

24. In prescribing orthotics to his patients, the Member was aware and/or participated in the practice of providing incentives to patients who purchased orthotics from the clinic – a business practice that is contrary to the College's advertising regulations and/or the College's standards.

25. The records created, issued and/or signed by the Member and provided to his patients to support their benefits claims do not disclose that the patients received free and/or discounted shoes and/or incentives with the purchase of orthotics.
26. In recommending and prescribing orthotic treatment to his patients, the Member did not perform or/and document an adequate assessment, but nonetheless recommended and prescribed orthotics to his patients.
27. In conducting the assessments, the Member failed to discuss and/or document other treatment options with his patients and/or determine if a different treatment was appropriate before prescribing orthotics.
28. In prescribing orthotics, the Member failed to adequately and clearly document why orthotics were clinically indicated and/or to establish a treatment plan for his patients.
29. The Member failed to provide and/or document any follow-up care for his patients and/or dispense the orthotics in accordance with the College's standards.
30. The Member failed to maintain patient records in accordance with the regulations and the College's standards.

**COLLEGE OF CHIROPODISTS OF ONTARIO**  
(the “College”)

- and -

**FRANCIS GERRARD KEOGH**  
(the “Member”)

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

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**NOTICE OF HEARING**

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Toronto, ON M5K 1B7

**Debra McKenna**

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Lawyers for the College of  
Chiropodists of Ontario



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

**B E T W E E N:**

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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:** May 27, 2021



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Nicole Zwiers  
**College of Chiropodists of Ontario**  
180 Dundas Street West, Suite 2102  
Toronto, ON M5G 1Z8

**TO:** Francis Gerrard Keogh

**STATEMENT OF ALLEGATIONS**

1. Francis Gerrard Keogh (“**Mr. Keogh**” or the “**Member**”) was at all material times a registered member of the College.
  
2. It is alleged that during the period from approximately January 2019 to May 2020 (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; and/or
      - d. Prescription Custom Foot Orthoses;
    - (ii) paragraph 10 – practising the profession while the member is in a conflict of interest;

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

1. At all material times, the Member was registered with the College as a chiroprapist to practise chiropody in Ontario. He was first registered with the College on or about September 3, 1985.
2. During the Relevant Period, the Member practised at a number of different clinics in Ontario, including the following:
  - Foot Mech, 55 Ontario Street South, Milton, ON, L9T 2M3
  - D & M Foot Care, 50 Kennedy Rd South, Brampton, ON L6W 3E7
  - Orient Orthotics, 17D – 7205 Goreway Drive, Mississauga, ON, L4T 2T9
  - Orthopedic Footcare, 1151 Dundas Street West, Mississauga, ON, L5C 1C6

### **B. Empire Life Complaint**

3. On or about May 22, 2020, the College received a complaint from Empire Life about the Member (the “**Complaint**”).
4. As set out in the Complaint, Empire Life conducts a standard claims verification process. Its routine claim adjudication and review process requires that Empire Life audit benefits periodically to ensure expenses being paid are “Eligible Expenses”.

5. Under the terms of its benefit agreements, Empire Life pays “Eligible Expenses” for a plan member that are medically necessary for the treatment of a sickness or injury. Medically necessary means a treatment, service or supply which is generally accepted by the medical profession as essential, effective and appropriate in the diagnosis, care or treatment of a specific medical condition.
6. To complete the review process additional information may be requested from a plan member or the provider. This information is then reviewed by Empire Life’s claims investigation team.
7. In the course of conducting its claims verification process for orthotics prescribed to its plan members, it was noted by Empire Life that the Member was the provider for numerous benefit claims. It was also noted that the Member had approximately 40 different identification numbers in Empire Life’s claims system.
8. A new identification number is assigned by Empire Life for each location where a provider has worked/is working.
9. Upon receipt and review of documents for two claims submitted to Empire Life, it was noted that the biomechanical assessments for the two plan members were identical. The checkmarks on the biomechanical assessment all appeared to be in the same place on the page.
10. As a result, on or about February 24, 2020, Empire Life requested and conducted a comprehensive audit of paper claims submitted from all clinics where the Member had practised for the prior year.

11. On upon review of the records provided to Empire Life, it was noted by Empire Life that two biomechanical assessment forms completed by the Member had been submitted in support of benefit claims for orthotics multiple times and from multiple clinics where the Member practised at the time, as follows:

Assessment	Claim ID	Clinic	Date of Service
<b>Biomechanical Assessment Form #1</b>	RGRE26112019-33	Orient Orthotics	29-Oct-19
	CEHE01032019-20	Foot Mechanics Milton	23-Jan-19
	CEHE01032019-23	Foot Mechanics Milton	23-Jan-19
	AVLE04032019-5	D&M Footcare	09-Feb-19
	JWZE17042019-8	D&M Footcare	31-Mar-19
	CEHE07112019-82	Orient Orthotics	17-Sep-19
	AVLE28062019-9	D&M Footcare	15-Jun-19
	BJHE26092019-65	D&M Footcare	18-Jul-19
	KTYE10012020-33	Orthopedic Footcare	19-Dec-19
	JWZE17042019-33	D&M Footcare	31-Mar-19
	EZME17052019-53	Foot Mechanics Milton	17-Apr-19
	AVLE04032019-2	D&M Footcare	09-Feb-19
	AVLE04032019-3	D&M Footcare	09-Feb-19
	AVLE04032019-4	D&M Footcare	09-Feb-19
	CEHE21012020-16	Orient Orthotics	23-Dec-19
	CEHE01032019-21	Foot Mechanics Milton	23-Jan-19
	FRVE31012020-71	D&M Footcare	10-Jan-20
		CFFE01042019-29	Foot Mechanics Milton
SPYE21062019-53		Foot Mechanics Milton	08-May-19
CFFE17062019-49		D&M Footcare	01-Jun-19



Assessment	Claim ID	Clinic	Date of Service
<b>Biomechanical Assessment Form #2</b>	CEHE28062019-11	D&M Footcare	15-Jun-19
	CEHE07112019-83	Orient Orthotics	17-Sep-19
	CEHE22110291-9	D&M Footcare	25-Oct-19
	CEHE01032019-22	Foot Mechanics Milton	23-Jan-19
	CFFE18022020-9	Orient Orthotics	21-Jan-20
	SPYE18022020-13	Orient Orthotics	21-Jan-20
	FRVE31012020-74	D&M Footcare	10-Jan-20
	FRVE31012020-72	D&M Footcare	10-Jan-20
	CFFE31012020-56	Orthopedic Footcare	09-Jan-20

12. During the course of Empire Life’s audit, it was further noted that, for some or all of the benefit claims, the examinations purportedly conducted by the Member and documented on the biomechanical assessment form and/or other records did not match the presentation of the plan member’s feet.
13. In prescribing and/or purporting to prescribe orthotics to his patients, the Member did not perform and/or document an adequate assessment contrary to the College’s standards.
14. In prescribing and/or purporting to prescribe orthotics to his patients, the Member failed to adequately and clearly document why orthotics were clinically indicated and/or establish a treatment plan, contrary to the College’s standards.
15. The Member failed to maintain patient records in accordance with the regulations and the College’s standards.

16. In prescribing and/or purporting to prescribe orthotics to his patients, the Member signed, issued and/or submitted documents to Empire Life that were false and/or misleading in support of benefits claims for orthotics.
17. In particular, the Member signed, issued and/or submitted biomechanical assessment forms to Empire Life that were fabricated and/or photocopied from other patient files.
18. In addition, orthotics were ordered by the Member and delivered to the clinic where he practised after claims were submitted to Empire Life and after Empire Life initiated its audit.

**COLLEGE OF CHIROPODISTS OF ONTARIO**  
(the “College”)

- and -

**FRANCIS GERRARD KEOGH**  
(the “Member”)

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

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**NOTICE OF HEARING**

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Chiropodists of Ontario