

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

PANEL:

Eliot To, Professional Member, Chair
Melanie Atkinson, Professional Member
Douglas Ellis, Public Member

BETWEEN:

	)	DEBRA McKENNA, for the
	)	College
COLLEGE OF CHIROPODISTS OF ONTARIO)	
(the “College”))	
- and -	)	DANIEL LIBMAN for the Member
)	
)	
ALAN LUSTIG (the “Member”))	
	)	LUISA RITACCA, Independent
	)	Legal Counsel
)	
	)	Heard: July 26, 2021
)	

Reason for Decision

1. This matter came on for hearing before a Panel of the Discipline Committee on July 26, 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 orders requested. These are the reasons for the Panel's decision.

The allegations

4. Notices of Hearing were issued on February 13, 2020, February 16, 2021 and April 9, 2021 making allegations against Alan Lustig (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 February 3, 2020, February 16, 2021 and April 9, 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 Lustig dated July 17, 2021.

6. The Member consents to the order sought by the College.

7. On July 17, 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.

8. The Member has resigned from the College.

Reasons for decision

9. 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.

10. This College has resolved other cases in a similar manner: *College of Chiropodists of Ontario v Bello*, 2018 ONCOCOO 1; *College of Chiropodists of Ontario v Pak*, 2020 ONCOCOO 2. So have other professional colleges operating under the *Regulated Health Professions Act*, 1991, SO 1991, c 18: *College of Massage Therapists of Ontario v Puniyanikodan*, 2021 ONCMTO 1; *Ontario College of Pharmacists v Saleh*, 2017 ONCPDC 19.

11. The Member's resignation and undertaking not to reapply will protect the public. This is actually 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.

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

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

14. Also, both parties are asking us to make the requested order. The Panel agrees with the parties that, where an order resolving a proceeding is requested by both parties, the Panel should make that order unless it is clear that the proposed order would bring the administration of justice into disrepute or would otherwise be contrary to the public interest.

15. The Panel finds that the requested orders are in keeping with the public interest. Accordingly, the Panel will make the orders requested by the parties. The disciplinary proceedings against the Member are permanently stayed.

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



Eliot To, Professional Member

August 23, 2021

Date

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

B E T W E E N:

COLLEGE OF CHIROPODISTS OF ONTARIO

-and-

ALAN MARK LUSTIG

NOTICE OF HEARING

THE INQUIRIES, COMPLAINTS AND REPORTS COMMITTEE of the College of Chiropractors of Ontario has referred specified allegations against **ALAN MARK LUSTIG** (Registration #730848) 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 the Statement 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 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
f. (416) 365-1876
e. 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: February 13, 2020



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

TO: Alan Mark Lustig
c/o Village Health
85 Laird Drive, Suite 201
Toronto, Ontario
M4G 3T7

STATEMENT OF ALLEGATIONS

1. Alan Mark Lustig (“**Mr. Lustig**” or “**Member**”) was at all material times a registered member of the College.

2. During the period in or about August 2017 to April 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; and/or
 - ii. Prescription Custom Foot Orthoses;

 - b. paragraph 10 (practising the profession while the member is in a conflict of interest);

 - c. paragraph 18 (falsifying a record relating to the member’s practice);

 - 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 28 (practising in the employment of or in association with a commercial business);
- g. paragraph 30 (contravening the *Chiropody Act, 1991*, the *Regulated Health Professions Act, 1991*, or the regulations under either of those Acts), specifically:
 - i. Ontario Regulation 750/93 (Professional Misconduct) under the *Chiropody Act, 1991*, as specified in this Notice of Hearing;
 - ii. Ontario Regulation 830/93 (Registration) under the *Chiropody Act, 1991*; 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).

PARTICULARS OF THE ALLEGATIONS

1. At all material times, the Member was a podiatrist registered with the College to practise chiropody in Ontario.
2. During the Relevant Period, the Member was engaged in the practice of chiropody at Village Health, located at 85 Laird Drive, Suite 201, Toronto, Ontario, M4G 3T7 (the "**Toronto Clinic**").
3. On or about November 6, 2017, R.C. attended with his 14-year-old daughter, R.C.E., at the Foot Clinic MD/Orleans Foot Clinic CDP located in Ottawa, Ontario (the "**Ottawa Clinic**").
4. R.C. attended at the Ottawa Clinic with his daughter as the Ottawa Clinic had advertised having a podiatrist on its website and his daughter required orthotics due to "flat feet".
5. During their appointment at the Ottawa Clinic, R.C. inquired if the practitioner conducting the assessment was a podiatrist. The practitioner ("**R.D.**") informed R.C. that she is a kinesiologist.
6. The Ottawa Clinic subsequently dispensed the orthotics to R.C.'s daughter. The orthotics were manufactured by The Orthotics Group ("**TOG**"), which is located at 160 Markland Street, Markham, Ontario, L6C 0C6.

7. Thereafter, R.C. submitted a claim to his benefits provider for the orthotics, but insurance coverage was declined by the insurer as the orthotics prescription was not provided by a medical doctor, chiroprapist, or podiatrist.
8. R.C. then contacted the Ottawa Clinic requesting the contact information for the podiatrist at the Ottawa Clinic. At that time, R.C. was advised that the Ottawa Clinic did not have a podiatrist on-staff. However, R.C. was provided with a gait analysis scan signed by the Member.
9. At no time during the assessment at the Ottawa Clinic on or about November 6, 2017, or thereafter, was R.C.'s daughter seen or assessed by the Member.
10. On or about February 8, 2018, R.C. contacted the College with respect to the gait analysis scan signed by the Member.
11. On or about April 6, 2018, the College commenced an investigation.
12. As outlined in Appendix "A" attached, during the period from on or about August 2017 to April 2018, the Member signed the gait analysis scans for approximately 44 patients from the Ottawa Clinic who were assessed by R.D.
13. In addition to his practice at the Toronto Clinic, during the Relevant Period the Member was also the medical director and on-staff podiatrist for TOG.
14. During the Relevant Period, or at any time, the Member did not disclose to the College that the TOG was one of his practice locations.

15. In his role at TOG, the Member provides the following services to TOG:
 - GaitScan Reviews
 - GaitScan Consultations
 - Orthotic addition/modification advice to practitioners
 - Education content for TOG
 - Advice and best practices for orthotics therapy
 - On-staff Podiatrist
16. For his services, the Member is compensated by TOG with a monthly retainer of \$4,333.33 plus HST and \$1,500 plus HST for any speaking engagements.
17. The Toronto Clinic is also a customer of TOG.
18. Payments to the Member for his services provided to TOG are made by way of set-off for the products that are purchased by the Toronto Clinic.

Appendix “A” – Confirmation Requests

Patient	Date of Birth	Scan Date	Practitioner	Address	CSG Reviewer
L.B.	May 19, 1963	August 28, 2017	Renee de Leseleuc	130 Rossingnol, Orleans, ON	Alan Lustig
P.T.	Feb. 28, 1953	September 5, 2017	Renee de Leseleuc	130 Rossingnol, Orleans, ON	Alan Lustig
A.Y.	July 10, 1979	September 11, 2017	Renee de Leseleuc	130 Rossingnol, Orleans, ON	Alan Lustig
R.D.	November 22, 1978	September 11, 2017	Renee de Leseleuc	130 Rossingnol, Orleans, ON	Alan Lustig
R.B.	May 12, 1987	September 13, 2017	Renee de Leseleuc	130 Rossingnol, Orleans, ON	Alan Lustig
J.H.M.	March 22, 1954	September 13, 2017	Renee de Leseleuc	130 Rossingnol, Orleans, ON	Alan Lustig
J.B.	December 18, 1976	September 25, 2017	Renee de Leseleuc	130 Rossingnol, Orleans, ON	Alan Lustig
L.M.	September 21, 1955	October 23, 2017	Renee de Leseleuc	130 Rossingnol, Orleans, ON	Alan Lustig
J.L.	February 29, 2004	October 23, 2017	Renee de Leseleuc	130 Rossingnol, Orleans, ON	Alan Lustig
M.D.	April 2, 1979	October 30, 2017	Renee de Leseleuc	130 Rossingnol, Orleans, ON	Alan Lustig
A.N.	July 12, 1973	October 30, 2017	Renee de Leseleuc	130 Rossingnol, Orleans, ON	Alan Lustig
L.P.	April 27, 1989	October 31, 2017	Renee de Leseleuc	130 Rossingnol, Orleans, ON	Alan Lustig
C.H.	August 22, 1978	November 1, 2017	Renee de Leseleuc	130 Rossingnol, Orleans, ON	Alan Lustig
R.C.E.	April 29, 2003	November 6, 2017	Renee de Leseleuc	130 Rossingnol, Orleans, ON	Alan Lustig
V.M.	March 23, 1966	November 10, 2017	Renee de Leseleuc	130 Rossingnol, Orleans, ON	Alan Lustig
S.G.	February 13, 1976	November 11, 2017	Renee de Leseleuc	130 Rossingnol, Orleans, ON	Alan Lustig
S.V.	March 10, 2004	November 14, 2017	Renee de Leseleuc	130 Rossingnol, Orleans, ON	Alan Lustig
F.P.	October 24, 1949	November 16, 2017	Renee de Leseleuc	130 Rossingnol, Orleans, ON	Alan Lustig
J.S.	February 24, 1972	November 16, 2017	Renee de Leseleuc	130 Rossingnol, Orleans, ON	Alan Lustig
C.D.	April 6, 1985	November 20, 2017	Renee de Leseleuc	130 Rossingnol, Orleans, ON	Alan Lustig
S.W.	December 10, 1985	November 21, 2017	Renee de Leseleuc	130 Rossingnol, Orleans, ON	Alan Lustig

Patient	Date of Birth	Scan Date	Practitioner	Address	CSG Reviewer
C.Z.	November 21, 1984	November 22, 2017	Renee de Leseleuc	130 Rossingnol, Orleans, ON	Alan Lustig
C.C.	March 7, 2007	November 30, 2017	Renee de Leseleuc	130 Rossingnol, Orleans, ON	Alan Lustig
A.L.	December 4, 1966	December 4, 2017	Renee de Leseleuc	130 Rossingnol, Orleans, ON	Alan Lustig
C.B.-L.	June 28, 1984	December 4, 2017	Renee de Leseleuc	130 Rossingnol, Orleans, ON	Alan Lustig
C.C.	April 15, 1976	December 4, 2017	Renee de Leseleuc	130 Rossingnol, Orleans, ON	Alan Lustig
C.C.	June 27, 1963	December 7, 2017	Renee de Leseleuc	130 Rossingnol, Orleans, ON	Alan Lustig
J.B.	December 1, 1986	December 11, 2017	Renee de Leseleuc	130 Rossingnol, Orleans, ON	Alan Lustig
A.N.	July 7, 1994	December 11, 2017	Renee de Leseleuc	130 Rossingnol, Orleans, ON	Alan Lustig
J.P.	May 2, 1972	December 11, 2017	Renee de Leseleuc	130 Rossingnol, Orleans, ON	Alan Lustig
P.L.	September 3, 1950	December 15, 2017	Renee de Leseleuc	130 Rossingnol, Orleans, ON	Alan Lustig
J.P.	June 14, 1973	December 18, 2017	Renee de Leseleuc	130 Rossingnol, Orleans, ON	Alan Lustig
S.L.	January 13, 1956	December 19, 2017	Renee de Leseleuc	130 Rossingnol, Orleans, ON	Alan Lustig
D.P.	September 21, 1967	December 19, 2017	Renee de Leseleuc	130 Rossingnol, Orleans, ON	Alan Lustig
M.K.	January 19, 1952	December 20, 2017	Renee de Leseleuc	130 Rossingnol, Orleans, ON	Alan Lustig
Y.H.	July 10, 1987	January 13, 2018	Renee de Leseleuc	130 Rossingnol, Orleans, ON	Alan Lustig
S.C.	March 10, 1985	January 19, 2018	Renee de Leseleuc	130 Rossingnol, Orleans, ON	Alan Lustig
R.B.	November 6, 1958	February 9, 2018	Renee de Leseleuc	130 Rossingnol, Orleans, ON	Alan Lustig
V.C.	July 15, 1997	February 15, 2018	Renee de Leseleuc	130 Rossingnol, Orleans, ON	Alan Lustig
K.B.	April 4, 1975	February 15, 2018	Renee de Leseleuc	130 Rossingnol, Orleans, ON	Alan Lustig
A.L.	November 28, 1959	February 15, 2018	Renee de Leseleuc	130 Rossingnol, Orleans, ON	Alan Lustig
M.G.	March 23, 1930	February 24, 2018	Renee de Leseleuc	130 Rossingnol, Orleans, ON	Alan Lustig
M.B.	February 6, 1962	March 3, 2018	Renee de Leseleuc	130 Rossingnol, Orleans, ON	Alan Lustig

Patient	Date of Birth	Scan Date	Practitioner	Address	CSG Reviewer
H.B.	September 30, 1952	March 14, 2018	Renee de Leseleuc	130 Rossingno, Orleans, ON	Alan Lustig

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

NOTICE OF HEARING

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

Debra McKenna
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Lawyers for the College of
Chiropractors of Ontario

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

B E T W E E N:

COLLEGE OF CHIROPODISTS OF ONTARIO

(the “**College**”)

-and-

ALAN MARK LUSTIG

(the “**Member**”)

NOTICE OF HEARING

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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.

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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: February 16, 2021



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

TO: ALAN MARK LUSTIG



STATEMENT OF ALLEGATIONS

1. Alan Mark Lustig (“**Mr. Lustig**” or the “**Member**”) was at all material times a registered member of the College.

2. During the approximate period from February 2020 to March 2020 (the “**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 *Chiropractic 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. Assessment and Management;
 - ii. Patient Relations;
 - 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 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;

- d. paragraph 17 – failing to keep records as required by the regulations;
- 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, specifically:
 - 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) under the *Chiropody Act, 1991*, and, in particular, Advertising (Part II) and Records (Part III);
 - 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.

PARTICULARS OF THE ALLEGATIONS

1. At all material times, the Member was a podiatrist registered with the College to practise chiropody in Ontario. He was first registered with the College on or about July 1, 1973
2. During the Relevant Period, the Member practised at Village Health – Foot Clinic, located at 85 Laird Drive, Suite 201, in the City of Toronto (the “**Clinic**”).
3. At all materials times, the Member was also the chief medical director, employee, and/or consultant at The Orthotic Group (“**TOG**”), an orthotics manufacturer located in Markham, Ontario.
4. On or about October 6, 2020, the College received a complaint from Manulife Financial (“**Manulife**”) about the Member (the “**Complaint**”). As described in the Complaint, Manulife identified the Clinic as having a high volume of claims for certain groups of insureds and, as a result, Manulife conducted an investigation in relation to the Member’s business practices.

A. Incident #1

5. As part of its investigation, a Manulife investigator (identifying himself as Chris Thomas) attended at the Clinic on or about February 25, 2020. The investigator attended to inquire about obtaining orthotics. The front desk attendant advised the investigator the following:
 - To complete an intake form and advise who referred him to the clinic;

- With the investigator's particular plan, he would be eligible for two pairs of orthotics and would get a pair of shoes with the purchase.
6. Among other information, the investigator's intake form stated that his chief foot complaint was "fatigue" and "just hoping orthotic might improve comfort".
 7. The investigator was first examined by an assistant who completed sensor pad foot testing and displayed the results on a computer screen for the investigator.
 8. Following the scan, the Member entered the treatment room where the Member assessed the investigator's feet and provided an explanation and comparison of a normal foot and a foot that required orthotic correction.
 9. During the examination, when discussing the investigator's benefit coverage, the Member remarked that the investigator's benefits coverage was "the best plan on the planet", or words to that effect.
 10. In particular, the Member commented that the average benefits plan provides for one pair of orthotics every 24 months, while the investigator's plan included two pairs of orthotics every year.
 11. The Member then retrieved a pair of Brooks running shoes off the display wall and discussed the quality of the shoes with the investigator.
 12. The investigator then asked the Member about the offer made by the receptionist about receiving free shoes with the purchase of two pairs of orthotics. The investigator also inquired whether he would receive the Brooks running shoes the

Member had shown him. In response, the Member advised that the cost for two pairs of orthotics would be \$700.00 and the Member would throw-in a pair of Brooks running shoes.

13. The Member provided the investigator with a sheet of paper listing recommended brands and models, as well opened a catalogue to a page with Brooks running shoes. The Member requested that the investigator select a pair of shoes.
14. The Member proceeded to “cast” the investigator’s feet with the use of a foam box and explained to the investigator the purpose for taking the “cast” while the investigator remained seated.
15. The Member then escorted the investigator to the reception area and advised him that the Clinic would be calling within a couple of weeks for the investigator to pick-up his products.
16. The investigator was charged \$750.00. The investigator received a transaction receipt, as well as a Clinic invoice for \$750.00 and the gait analysis report.
17. The investigator’s invoice and gait analysis report both reference a diagnosis that includes ankle pain. The investigator never complained to the Member or to anyone at the Clinic of any ankle pain.
18. In addition, the documents indicate that a 3D volumetric plaster cast technique was used to cast the orthotics.
19. The investigator’s orthotics were ordered by the Member from TOG.

B. Incident #2

20. On or about March 4, 2020, a second Manulife investigator (identifying himself as Colin Baker) attended at the Clinic. Upon arrival, the front desk attendant asked the investigator to complete an intake form and advise who referred him to the Clinic.
21. Among other information, the investigator's intake form indicated that his chief foot complaint was "right foot pain".
22. The investigator was first examined by an assistant who conducted some preliminary tests and asked some questions. The investigator was asked to walk across a 3D scanning mat.
23. The Member then came into the treatment room. He conducted a further assessment and recommended orthotics to the investigator.
24. The Member also gave the investigator a list of shoes he should consider getting. When the investigator inquired whether or not the shoes came with the orthotics, the Member stated they did not because the investigator was "retired", or words to that effect.
25. When the investigator clarified that he was still working and active, the Member remarked that that changed things and the investigator would get free shoes with the orthotics. The Member then brought the assistant back with some pictures of

shoes. The investigator chose a pair of Brooks running shoes to receive with the purchase of the orthotics.

26. The Member advised the investigator that he does not usually give shoes to “patients that are new”, but he would make an exception because the investigator knew someone who had received the same offer.
27. The Member further mentioned that he is the chief medical officer (or words to that effect) for the orthotic company where the orthotics would be made. He also indicated that he is a "dealer" for Brooks shoes and obtains a discount for shoes. When the investigator inquired what the Member’s cost was for the shoes, the Member stated around \$180.00.
28. After the assessment, the investigator paid \$550.00 for the orthotics and was provided with the paperwork by the Clinic to submit his claim.
29. The investigator’s orthotics were ordered by the Member from TOG.
30. In prescribing orthotics to both patients, the Member was aware and 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.
31. The records created, issued and/or signed by the Member and provided to the patients to support their benefits claims do not disclose that the patients received shoes from the Member with the purchase of their orthotics.

32. In recommending and prescribing orthotic treatment to both patients, the Member did not perform or/and document an adequate assessment for either patient, but nonetheless recommended and prescribed orthotics to both patients.
33. The Member failed to discuss other treatment options with his patients and/or determine if a different treatment was appropriate before prescribing orthotics.
34. In prescribing the orthotics, the Member failed to use a casting or imaging method that meets the College's standards.
35. In prescribing the orthotics, the Member failed to adequately and clearly document why orthotics were clinically indicated and/or to establish a treatment plan for either patient.
36. The Member failed to provide and/or document any follow-up care for his patients and/or to dispense the orthotics to his patients.

COLLEGE OF CHIROPODISTS OF ONTARIO
(the "College")

- and -

ALAN MARK LUSTIG
(the "Member")

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

NOTICE OF HEARING

WEIRFOULDS LLP
Barristers & Solicitors
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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:

COLLEGE OF CHIROPODISTS OF ONTARIO

(the “**College**”)

-and-

ALAN MARK LUSTIG

(the “**Member**”)

NOTICE OF HEARING

THE INQUIRIES, COMPLAINTS AND REPORTS COMMITTEE of the College of Chiropractors of Ontario has referred specified allegations against **ALAN MARK LUSTIG** (Registration # 730848) to the Discipline Committee of the College. 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 **July 26 to July 30, 2021**, 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:

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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: April 9, 2021

A handwritten signature in blue ink that reads "Julie Maciura". The signature is written in a cursive style and is positioned above a solid horizontal line.

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

TO: ALAN MARK LUSTIG

STATEMENT OF ALLEGATIONS

1. Alan Mark Lustig (“**Mr. Lustig**” or the “**Member**”) was at all material times a registered member of the College.

2. It is alleged that during the period from approximately October 2020 to November 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* (“*Code*”) 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. Patient Relations;

 - ii. paragraph 30 – contravening the *Chiropody Act, 1991*, the *Regulated Health Professions Act, 1991*, or the regulations under either of those Acts, specifically:
 - a. section 33 of the *Regulated Health Professions Act, 1991*, SO 1991 c. 18; and,

- b. sections 7(a) and 12 of General Regulation (O. Reg. 203/94)
under the *Chiropody Act, 1991*, SO 1991, c. 20

- 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

1. At all material times, the Member was registered with the College as a podiatrist to practise chiropody in Ontario. He was first registered with the College on or about July 1, 1973
2. During the Relevant Period, the Member practised at Village Health – Foot Clinic, located at 85 Laird Drive, Suite 201, in the City of Toronto (the “**Clinic**”).
3. At all materials times, the Member was also the chief medical director, employee, and/or consultant with The Orthotic Group (“**TOG**”), an orthotics manufacturer. TOG’s corporate head office and laboratory is located at 160 Markland Street in Markham, Ontario.
4. On or about November 18, 2020, information was brought to the attention of the College that the Member was using the restricted title of “Dr.” in relation to his practice, contrary to the provisions of the *Regulated Health Professions Act* and the College’s standards and regulations.
5. As a result of this information, a Registrar’s Investigation was commenced on or about November 27, 2020.
6. During the course of the investigation, it was confirmed that the email address used by the Member in relation to his practice at the Clinic was and/or continues to be “Dr. Lustig <drlustig@villagehealth.ca>”.

7. In addition, in relation to advertising for TOG, the Member is described on the TOG website (<https://www.tog.com/PractitionerSite/Home.aspx>) as a member of the Medical Team as follows:

Dr. Alan Lustig
Podiatrist
Chief Medical Director, TOG

Dr. Alan Lustig is a Podiatrist and Chief Medical Director of The Orthotic Group, the largest manufacturer of custom foot orthotic devices in Canada. He co-founded The Orthotic Group in 1986. Dr. Lustig graduated from the New York College of Podiatric Medicine. He has been in private practice as a Doctor of Podiatric Medicine and Surgery in Toronto for over 40 years. He co-founded one of Canada's premier hospital foot clinics at Sunnybrook Medical Centre in 1974. He specializes in lower extremity biomechanics and the treatment of abnormal gait conditions with custom foot orthotics and custom ankle foot orthotic leg braces. Dr. Lustig is presently practicing at the Village Health facility in the Leaside area of Toronto. For over 30 years, Dr. Lustig has lectured in over 50 cities across North America on biomechanics and foot orthotic therapy. He has one of the largest foot orthotic practices in North America. He has published numerous papers on lower extremity medicine and has written a book on computer gait analysis. He has worked extensively in the Canadian foot orthotic manufacturing industry for over 30 years.

COLLEGE OF CHIROPODISTS OF ONTARIO
(the "College")

- and -

ALAN MARK LUSTIG
(the "Member")

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

NOTICE OF HEARING

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

PANEL:

Eliot To, Professional Member, Chair
Melanie Atkinson, Professional Member
Douglas Ellis, Public Member

BETWEEN:

	)	DEBRA McKENNA, for the
	)	College
COLLEGE OF CHIROPODISTS OF ONTARIO)	
(the “College”))	
- and -	)	DANIEL LIBMAN for the Member
)	
)	
ALAN LUSTIG (the “Member”))	
	)	LUISA RITACCA, Independent
	)	Legal Counsel
)	
	)	Heard: July 26, 2021
)	

**Reasons for Decision
ADDENDUM- Released August 25th 2021**

1. On August 23, 2021, the Panel released its Reasons for Decision for this matter. This addendum should be read together with the reasons released on August 23rd.
2. The Panel inadvertently failed to address the College’s request for costs in the matter.

3. As the Panel confirmed at the end of the hearing on July 26, 2021, it is satisfied that this is an appropriate case for costs. Accordingly, the Panel makes the following order with regard to costs:

(a) Mr. Lustig is to pay costs to the College in the amount of \$25,000.00, which costs shall be paid to the College in five equal payments as follows:

- (i) \$5,000.00 – July 26, 2021
- (ii) \$5,000.00 – September 1, 2021
- (iii) \$5,000.00 – October 1, 2021
- (iv) \$5,000.00 – November 1, 2021
- (v) \$5,000.00 – December 1, 2021

I, Eliot To, sign this Addendum as a single member of this Discipline panel.



Eliot To, Professional Member

August 25, 2021

Date