

DISCIPLINE COMMITTEE OF THE COLLEGE OF CHIROPODISTS OF ONTARIO

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

IN THE MATTER OF a Hearing directed
by the Inquiries, Complaints and Reports Committee of
the College of Chiropractors of Ontario
pursuant to Section 26(1) of the *Health Professions Procedural Code*
being Schedule 2 of the *Regulated Health Professions Act, 1991*,
S.O. 1991, c. 18, as amended.

BETWEEN:

COLLEGE OF CHIROPODISTS OF ONTARIO

- and -

CHARLES MacMULL

PANEL MEMBERS:

| | |
|------------------|----------------------------|
| Eliot To | Chair, Professional Member |
| Melanie Atkinson | Professional Member |
| Allan Katz | Public Member |
| Riaz Bagha | Professional Member |

**COUNSEL FOR THE
COLLEGE:**

Benjamin Kates

**REPRESENTATIVE FOR THE
MEMBER:**

No one appearing for the Member, Charles MacMull

**INDEPENDENT LEGAL
COUNSEL:**

Luisa Ritacca

Hearing Dates:

March 6-7, 2023

Decision Date:

March 7, 2023

Release of Written Reasons:

March 14, 2023

DECISION AND REASONS

1. This matter came on for hearing before a panel of the Discipline Committee on March 6, 2023. It was scheduled to proceed over the course of 5-days. The matter proceeded by way of videoconference.

The Member's Failure to Appear

2. The Member was not present at the outset of the hearing. The College advised the Panel that it had reason to believe that the Member did not intend to participate in the hearing process.
3. The College provided the Panel with evidence that the Member had been properly served with the Notice of Hearing and was provided with the videoconference link in order to connect to the hearing. Further, the College provided the Panel with correspondence its counsel had received from a lawyer, who was retained to assist the Member in resolving this matter, but not for the hearing, that neither he (the lawyer) nor the Member intended to participate in the hearing.
4. Based on the information provided by the College, the Panel was satisfied that the Member had proper notice of the hearing and that he did not intend to participate. In the circumstances, the Panel proceeded with the hearing in the Member's absence.

The Allegations

5. The allegations made against the Member were set out in a Notice of Hearing, dated February 14, 2022, and are as follows:
 1. Charles Albert MacMull ("**Mr. MacMull**" or the "**Member**") was at all material times a registered member of the College.
 2. It is alleged that, during the period from approximately December 2019 to June 2021 (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 *Chiroprody 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 28 – practising in the employment of or in association with a commercial business;
- (ix) 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/or Records (Part III); and/or
- (x) 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 times material to the allegations, the Member was registered with the College to practise chiropody in Ontario. He was first registered with the College on or about July 15, 1998.
2. According to the Member, he is a “travelling chiropodist”. During the Relevant Period, the Member practised at numerous locations in and around the Toronto area, including Don Mills Orthotics (“**DMO**”), located at 1390 Don Mills Road, Unit 303, in North York, Ontario.
3. The Member was “well aware” that DMO was “principally a high end shoe store”.

B. Manulife Complaint

4. On or about June 17, 2021, the College received a complaint from Manulife about the Member (the “**Complaint**”).

5. As described in the Complaint, Manulife identified several flags with respect to DMO. In particular, concerns were raised about the possibility of benefits abuse and that DMO was essentially engaged in retail shoe sales.
6. As a result, a Manulife investigator (using the pseudonym, Lam Tran) attended at the Clinic in a covert capacity on March 31, 2021, and met with O.W. – the owner of DMO. During their discussion, Mr. Tran made it clear to O.W. that he did not need orthotics, but he had \$500.00 in benefits coverage and wanted to know if O.W. could do any kind of deal.
7. O.W. advised that he would need to dispense orthotics to Mr. Tran and also have Mr. Tran be seen by a “foot doctor”, but agreed that he could also include a pair of shoes. Mr. Tran agreed to be assessed and an appointment was booked for April 7, 2021.
8. On April 7, 2021, Mr. Tran returned to DMO for his scheduled appointment. Upon arrival, Mr. Tran was asked a number of preliminary questions by O.W. and O.W. also scanned the investigator’s feet.
9. Once the Member arrived at DMO, the Member directed Mr. Tran to the stock area at the back of the store. During the examination by the Member, Mr. Tran was asked to confirm some patient information and history, and then the Member said words to the effect, “tell me where the pain is”, to which Mr. Tran said, “it’s not much”.
10. At that point, the Member further stated words to the effect of:

Just tell me whatever it is, because I need to have it for the insurance.
If you don’t have a pain, then they don’t pay you. Even a small pain,
you just tell me.
11. At that point, Mr. Tran indicated that he had pain in his heel and also confirmed, when prompted by the Member, that he had pain in the morning when putting his foot down – to which the Member replied, “excellent”. Following these questions, the Member conducted a very brief biomechanical and gait analysis, which lasted mere seconds before the Member indicated to Mr. Tran that he was done.
12. After the assessment, the investigator attended at the front desk and paid O.W. \$100.00 for the chiropody assessment and \$500.00 for the orthotics.
13. After completing the transaction, Mr. Tran selected a pair of Ecco shoes, which O.W. retrieved from the stockroom. After trying on the shoes and confirming they fit, Mr. Tran left DMO with the Ecco shoes.
14. On April 22, 2021, Mr. Tran returned to DMO after receiving a text that his orthotics were ready for pickup. Upon arrival at DMO, O.W. obtained the orthotics from the stockroom and dispensed the orthotics to Mr. Tran.
15. For the period from about December 2019 to June 2021, Manulife identified approximately 250 claims for chiropody services provide by the Member at DMO. In

a review of 65 randomly-selected files for that period, it was determined by Manulife that the Member had prescribed orthotics to all but two of the claimants, as outlined in Schedule "A"¹.

C. Summary

16. In prescribing the orthotics to Mr. Tran, the Member did not conduct and/or document in his patient records an adequate assessment in accordance with the College's standards. In particular, the Member failed:
 - (a) to obtain an adequate patient history;
 - (b) to conduct an adequate biomechanical assessment and/or gait analysis;
 - (c) to obtain and/or document informed consent, including discussing with his patient the benefits and risks of various treatment options;
 - (d) to determine if a different treatment was appropriate in the circumstances before prescribing orthotics;
 - (e) to document and discuss with the patient the treatment plan;
 - (f) to evaluate the scans to ensure they were accurate and matched the contours of the patient's foot;
 - (g) to fit and dispense the orthotics to his patient and ensure that the devices matched the prescription and matched the contours of the patient's foot; and/or
 - (h) to provide appropriate follow-up care to his patient.
17. The Member also failed to maintain patient records in accordance with the regulations and the College's standards.
18. In prescribing orthotics to his patient, the Member signed, issued and/or submitted documents that were false and/or misleading in support of a benefits claim for orthotics that were not medically necessary.
19. In prescribing orthotics to his patient, the Member participated and/or was complicit in the practice of providing incentives to patients (in the form of free shoes) who purchased orthotics from DMO – a business practice that is contrary to the College's advertising regulations and/or the College's standards.
20. The records created, issued and/or signed by the Member and provided to his patient to support the benefits claims do not disclose that the patient received free shoes with the purchase of their orthotics, which were supplied by DMO.

¹ Schedule A to the Notice of Hearing has not been reproduced here.

The Member's Plea

6. In the Member's absence, the Panel entered a plea of not guilty on his behalf.
7. In the circumstances, the matter proceeded as a contested hearing.

Summary of the Evidence

Overview

8. The College filed affidavits from three fact witnesses and one expert witness in support of its case. The College advised the Panel that the witnesses were available for questioning, however upon review of the evidence, the Panel decided that it did not need to hear from any of the witnesses live.
9. In communications with the College, which were filed in the affidavit, Meghan Clarke, the Deputy Registrar and Manager, Professional Conduct and Hearings at the College, the Member conceded that since approximately 2012, he ceased practising at his own clinic and instead has become a "travelling chiropodist", who visits other clinics in and around Toronto.
10. There was no dispute in the evidence that during the relevant period, the Member provided chiropody services at Don Mills Orthotics ("DMO" or the "Premises"), as well as at other Toronto-area facilities. The Member admitted in communications with the College that DMO is principally a "high-end shoe store". As can be seen on the investigation video filed into evidence, DMO bears few characteristics of a medical clinic. It consists of a small retail showroom and stockroom.
11. The Member admitted that he has known DMO's principal, Mr. Wang, since approximately 2011 and that he has worked for Mr. Wang at the Premises since approximately 2017.
12. In correspondence with the College, the Member admitted that he would visit DMO "by appointment, to conduct assessments on his clients prior to generating prescriptions for custom orthotics, as and when his patients required them."

The Manulife Investigation

13. The Panel received affidavit evidence from John Lyall, an investigator in Health and Dental Risk Management for Manulife, the complainant in this matter. Mr. Lyall explained that in and around the winter of 2021, Manulife identified certain "red flags" regarding the business practices of DMO. Manulife was concerned that DMO had engaged in benefit abuse and was engaging like a retail shoe store.
14. As a result of its concerns, Manulife retained Dan Dao, a third party investigator with Xpera Investigations to conduct a "secret shopper" investigation of DMO. Mr. Dao's investigation took place between March 17 and May 5, 2021.
15. Mr. Dao attended DMO under a pseudonym as a prospective patient looking to obtain orthotics that could be claimed under insurance benefits. The evidence provided to the

Panel showed that Mr. MacMull was the chiroprapist involved with Mr. Dao throughout the course of his investigation.

16. In his affidavit, Mr. Dao explained that he attended DMO on four separate occasions between March and April 2021. On March 31, 2021, Mr. Dao attended the Premises and met with Mr. Wang. Mr. Dao (using the name Lam Tram) told Mr. Wang that he was looking into using his wife's insurance for orthotics and compression socks. Mr. Dao was clear with Mr. Wang from the outset that he did not in fact need orthotics, but that he was looking for a deal.
17. When Mr. Dao inquired about the price of orthotics, Mr. Wang did not give him an answer and instead asked him how much he had been charged previously. Mr. Dao told Mr. Wang that he had received one pair of orthotics and one pair of shoes for \$500.00. Mr. Wang agreed to the same deal on the same terms. Mr. Wang told Mr. Dao that he charges between \$400.00 and \$500.00 for orthotics, but will charge \$500.00 when the client is insured.
18. Mr. Dao testified in his affidavit that he was told by Mr. Wang that he would have to return to DMO with the required paperwork, including a "doctor's note" and to have his feet measured before his orthotics could be ordered. Mr. Wang also told Mr. Dao that if he just wanted to see a foot doctor, then he (Mr. Wang) could make the appointment for him.
19. Mr. Dao returned to DMO on April 6, 2021, with a prescription for orthopedic shoes. Mr. Wang told Mr. Dao that if he wanted orthotics, he would need a specific prescription. Mr. Wang further advised Mr. Dao that he could make orthotics and then just give Mr. Dao one pair of shoes.
20. Mr. Dao was told that he could make an appointment with a "foot doctor" who could come to DMO. An appointment was arranged for the next day.
21. On April 7, 2021, Mr. Dao attended at DMO and met with the Member. Prior to his meeting with the Member, Mr. Wang scanned Mr. Dao's feet in a process which took approximately five minutes. Mr. Wang also showed Mr. Dao different orthotic models to choose from.
22. Mr. Dao explained in his affidavit that his interaction with the Member lasted approximately five minutes. During the brief visit, Mr. MacMull asked Mr. Dao to remove his shoes and socks, asked two questions relating to Mr. Dao's medical history and conducted a visual inspection of Mr. Dao's feet.
23. Further, Mr. MacMull asked Mr. Dao to "tell me what is hurting you". Mr. Dao said that not much was hurting him, but Mr. MacMull insisted that he "tell (him) whatever" because he would need to have it for insurance purposes. Mr. MacMull told Mr. Dao that if he did not have pain, then the insurer would not pay.
24. Ultimately, after being pressed by the Member, the Mr. Dao indicated that he had pain in his right foot. Following that, Mr. MacMull inspected Mr. Dao's shoes and performed a gait analysis that lasted no more than six seconds.

25. After the Member completed his assessment and provided Mr. Dao with documents setting out his assessment, Mr. Dao returned to the DMO showroom to choose his free shoes consistent with the deal he had reached with Mr. Wang.
26. Mr. Dao explained that he paid DMO \$500.00 for the orthotics and \$100.00 for Mr. MacMull's assessment. Before he left DMO, Mr. Wang told Mr. Dao that if any insurer asks, he should tell them that he paid Mr. Wang \$500.00 for one pair of orthotics and to not say anything about the free shoes.
27. Mr. Dao returned to DMO on April 22, 2021, to pick up his orthotics. He did not see Mr. MacMull during this visit.
28. Mr. Dao prepared an audio and partial video recording of his interactions at DMO. The recording was filed into evidence and reviewed by the Panel. The recording was consistent with the testimony provided by Mr. Dao.
29. As part of its investigation, the College asked Manulife to provide it with copies of records for Mr. MacMull's assessments for the preceding two years that related to DMO. Manulife was asked to differentiate between those patient assessments by Mr. MacMull that were followed by an orthotics prescription and claim and those where Mr. MacMull did not prescribe orthotics.
30. Manulife confirmed that it identified a total of 250 claims, from which Manulife then examined a random sample of 64 claims. The review revealed that Mr. MacMull prescribed orthotics to all but two of the 64 claimants (i.e., a rate of 96.9%). In his response to the College, the Member indicated that in fact he has prescribed orthotics to all the claimants.

Expert Evidence

31. In addition to the fact evidence provided, the Panel received affidavit evidence from Tony Young, a registered chiroprapist retained by the College. Mr. Young provided the College with expert evidence regarding the relevant College standards, as well as his opinion as to the assessment and care provided by the Member in this case.
32. Prior to receiving Mr. Young's opinion, the Panel reviewed his qualifications. Mr. Young has been registered with the College since 1998. He has owned and operated the Orillia Foot Clinic and Wellness Centre since 2012 and throughout his career has provided footcare in a variety of settings including at Soldier's Memorial Hospital, Toronto Grace Hospital and Humber River Hospital. In addition, Mr. Young served as a clinical instructor to third-year students at the Michener Institute in 2020 and 2021.
33. The Panel was satisfied that Mr. Young had the necessary qualifications and experience to provide expert evidence in this matter.
34. In summary, Mr. Young testified as follows:

- (a) It is standard practice for the patient to be assessed by the chiropodist before any differential diagnosis or prescription ought to be made. Here, it appears that Mr. Dao had conversations with Mr. Wang about orthotics, pricing and the availability of insurance all before he was seen by Mr. MacMull. There should be no pre-assessments or analysis of the patient by the shop owner or anyone before a thorough patient examination can take place.
- (b) It was unlikely that the manner in which Mr. Wang scanned Mr. Dao's foot resulted in a proper orthotic.
- (c) Even as a "travelling chiropodist", Mr. MacMull was responsible for ensuring that everything that leads up to the consultation with the patient has been done properly. The chiropodist must be able to rely on the inputs that go into the assessment and prescription of the orthotic.
- (d) A proper patient assessment should involve:
 - (i) Taking the patient's background, such as their occupation, and a medical history, including any previous surgeries and injuries;
 - (ii) Identifying the patient's chief complaint;
 - (iii) Discussing different alternatives to treat the foot problem, including potentially orthotics;
 - (iv) Performing a biomechanical examination;
 - (v) Performing a gait analysis;
 - (vi) Delivering a differential diagnosis; and
 - (vii) Providing short- and long-term treatment options.
- (e) A chiropodist conducting a thorough qualitative examination will be able to decipher the extent of any symptoms experienced by the patient without having to prompt for answers.
- (f) A reasonably prudent chiropodist cannot complete a proper initial assessment and biomechanical examination in the time that Mr. MacMull interacted with Mr. Dao, as evidenced by the audio and video recording.
- (g) A chiropodist should be involved in the dispensing of a prescribed orthotic. The professional must ensure that the parameters of the orthotics fit the patient's foot. The patient should be given an opportunity to walk with the orthotics and a follow-up visit or phone call should be scheduled.

Decision and Reasons

35. In coming to our decision, the Panel was mindful of the onus and burden of proof applicable on a hearing before the Discipline Committee. The College bears the onus of proving on a balance of probabilities that the Member engaged in the conduct alleged. Even where, as here, the Member chose not to participate in the hearing process, the College's burden remains the same.
36. Having considered and reviewed the evidence presented, the Panel concluded that the College met its burden and established on a balance of probabilities that the Member engaged in professional misconduct as set out in the Notice of Hearing. With regard to the allegation at paragraph 2(a)(x), the Panel concluded that the Member's conduct would reasonably be regarded by other members of this profession as dishonourable and unprofessional.

Contravention of the Standards of Practice of the Profession

37. In his interaction and treatment of Mr. Dao, Mr. MacMull failed to meet his obligations as set out in the standards of practice of the profession.
38. With respect to the Assessment and Management Standard, the Member failed to conduct a proper patient history, asking Mr. Dao only about medication use and COVID. He failed to ask any pertinent questions regarding Mr. Dao's occupation or activity level, for example.
39. Further, Mr. MacMull failed to communicate a working diagnosis or differential diagnosis, as required both by the Assessment and Management Standard and the Patient Relations Standard. He did not communicate a treatment plan, including alternative treatment to orthotic therapy.
40. The Panel also notes that, contrary to the Assessment and Management Standard, Mr. MacMull failed to protect the patient's privacy, dealing with Mr. Dao in DMO's stock room, rather than in an office.
41. Further, as noted by Mr. Young in his evidence, rather than ask the patient open questions to elicit accurate and detailed information, Mr. MacMull asked leading questions to Mr. Dao, which suggested a diagnosis solely for insurance purposes.
42. Mr. MacMull also fell below the standards as set out in the Patient Relations Standard. He did not provide complete or accurate information regarding the patient's assessment, diagnosis, treatment, or prognosis. As set out above, he disregarded the patient's confidentiality and provided treatment (in this case a prescription for orthotics) which was inappropriate and did not meet the patient's stated needs.
43. Mr. MacMull's records were sparse at best. Contrary to the College's records standard, he failed to document a full patient history, failed to record reasonable information about all significant advice given (appears there was none) and failed to record the assessment fee charged to Mr. Dao.
44. The Panel finds that Mr. MacMull failed to adhere to the standards as they relate to the prescription of custom foot orthoses in his assessment and treatment of Mr. Dao. Contrary to the standard, he failed to conduct a thorough biomechanical examination with

appropriate measurements taken and record. He spent no more than five minutes assessing the patient. Mr. Young suggested that an experienced chiropodist can take approximately 30-minutes to conduct a thorough examination.

45. Mr. MacMull relied on the 3-D scan taken by Mr. Wang. There was no evidence that he checked to ensure that the scan was completed properly or that it accurately reflected Mr. Dao's feet.
46. Further, contrary to the standard, Mr. MacMull failed to dispense the orthotics to Mr. Dao, failed to fit the orthotics at the time they were dispensed and failed to provide Mr. Dao with break-in advice or a follow-up appointment.
47. In the circumstances, the Panel finds that contrary to paragraph 2 of section 1 of the *Professional Misconduct Regulation* (O. Reg. 750/93) under the *Chiropody Act, 1991* (the "Regulation"), Mr. MacMull failed to meet and contravened a number of standards of practice of the profession in his interaction with and treatment of Mr. Dao.

Practising the Profession while in a Conflict of Interest

48. For the reasons set out above, the Panel finds that the Member practised the profession while in the conflict of interest, contrary to section 1, paragraph 10 of the Regulation.
49. Mr. MacMull supplied Mr. Dao with orthotics that he did not need, for both his and DMO's financial benefit. The College's policy makes clear that providing care that is medically unnecessary is a conflict of interest.
50. The Panel was troubled by what appeared to be deceptive tactics used by DMO to supply free shoes to clients, by arranging for them to receive insurance coverage. While we did not have direct evidence of the extent of Mr. MacMull's knowledge of DMO's practices, it is clear from the evidence that Mr. MacMull understood that he was to provide orthotics to clients who seemingly came into DMO for shoes.

Providing treatment to a Patient where the Member knew or ought to have known that the Provision of the Treatment was Unnecessary

51. As set out above, the Member failed to take a proper patient history from or perform a thorough assessment of Mr. Dao. As such, he was not in a position to determine any appropriate treatment plan for the patient. He should not have prescribed the orthotics in the absence of a complete assessment.
52. Further, as was clear from the evidence, including the recording, Mr. MacMull manipulated the patient into confirming that he had heel pain as the reason for his need for orthotics. The patient, very deliberately, initially indicated that he had no pain and it was only after Mr. MacMull asked him several leading questions that Mr. Dao finally agreed to say he had heel pain.
53. Mr. MacMull failed to consider any kind of differential diagnosis or alternative treatments. It was clear from the interaction with Mr. Dao that Mr. MacMull was singularly focussed

on finding a reason for justifying the orthotics. He did so without considering the patients' needs or whether the treatment was necessary or appropriate. This was a clear violation of section 1, paragraph 14 of the Regulation.

Signing or Issuing a Document that contains a False or Misleading Statement

Submitting an account or charge for services that the Member knows is False or Misleading

54. The Panel reviewed the documentation completed by the Member following his assessment of Mr. Dao. Given how the Member's interaction with Mr. Dao unfolded, it was not appropriate for the Member to have indicated in the documentation that Mr. Dao suffered from heel pain. Mr. Dao did not say he suffered any pain and only when pressed, he suggested that his pain was in his ankle.
55. Further, the Member indicated in the documentation that the patient had "b/l plantar fasciitis and peroneal tendinitis." There was no discussion with Mr. Dao about either of these diagnoses. The only reason the Member would have included such information in the patient's documentation would have been to mislead the insurer.
56. In addition, the Member indicated in the documentation that he spoke to Mr. Dao about "footwear advice", when in fact no such conversation took place.
57. There was no reason to believe that Mr. Dao needed the orthotics he was prescribed. In the circumstances, the Panel finds that charging for the orthotics was in itself misleading and manipulative.
58. For these reasons, the Panel finds that Mr. MacMull breached section 1, paragraphs 20 and 21 of the Regulation.

Charging a Fee that is Excessive in Relation to the Services or Devices Received

59. The Panel does not find that fees of \$500.00 for orthotics and \$100.00 for an assessment are excessive. Where a member has conducted a proper assessment and has reasonably determined that orthotics are necessary, the fees in the range charged by Mr. MacMull in this case would not be problematic.
60. Unfortunately, here Mr. MacMull charged fees for orthotics which do not appear to have been necessary and for an assessment, which was wholly inadequate. As is clear from the recording filed into evidence, Mr. MacMull spent five-minutes with Mr. Dao. That was not enough time to complete a full and proper assessment or to determine that orthotics were necessary.
61. In the circumstances, the Panel concludes that the fees charged were excessive, contrary to section 1, paragraph 22 of the Regulation.

Practicing in Employment of or in Association with a Commercial Business

Contravening the Advertising and/or Records Regulation

62. For the reasons set out above, the Panel finds that Mr. MacMull worked in association with Mr. Wang's business, which was primarily a high-end shoe store and not a foot or medical clinic.
63. Further, the Panel finds that Mr. Wang essentially solicited business for Mr. MacMull, which is contrary to the College's advertising standard.

Dishonourable and Unprofessional Conduct

64. Mr. MacMull associated himself with a business operation he knew or ought to have known involved deceptive tactics.
65. Manulife's investigation of DMO revealed that Mr. MacMull prescribed orthotics to virtually every single client who attended at the store. The Panel does not accept Mr. MacMull's explanation to the College that he did not know about the incentives provided by Mr. Wang.
66. Mr. MacMull is a senior member of this profession. He was or ought to have been well aware of his obligations to guard against deceptive insurance practices. Attending at a high-end shoe store to provide cursory foot assessments so that orthotics could be ordered was unprofessional at minimum.
67. Mr. MacMull's involvement with DMO brings dishonour to his personal practice and to the profession as a whole.
68. Mr. MacMull's conduct fell well short of what the College and the public expect of members of this profession.

Penalty and Costs

69. The College sought an order as to penalty and costs in the form attached to this decision at Appendix A.
70. The Panel considered its findings and the College's submissions. It concluded that the order sought by the College was appropriate and accordingly granted the requested order.

Reasons for Penalty and Costs

71. The Panel recognizes that in determining an appropriate penalty, it must act in the best interest of the public and impose a sanction that will act both as a specific deterrent for Mr. MacMull and a general deterrent for the membership at large. In addition, where

appropriate, the Panel should consider a penalty which includes an opportunity for rehabilitation.

72. Here, the Member chose not to participate in the hearing process. This made it impossible for the Panel to assess whether the Member has any insight into or remorse for his actions. That said, the Panel was still prepared to impose a penalty that provides the Member with the opportunity to learn from this situation and reintegrate back into the profession, should he choose to do so.
73. The suspension imposed is on the higher end of suspensions normally imposed for similar conduct. The Panel, notes, however, that in the majority of the prior cases involving similar conduct, there were admissions and a joint submission on penalty. Where members choose to engage with the College in such a manner that will act as a mitigating factor, such that the penalties imposed will typically be lower.
74. Following a contested hearing, where the Member chose not to participate at all, the Panel was satisfied that a 12-month suspension was appropriate. The Member's conduct was unprofessional and dishonourable. He fell below the College's standards of practice and showed complete disregard for the College's zero tolerance policy as it relates to improper insurance practices.
75. If the Member chooses to return to practice, the imposition of practice monitoring and the prohibition against prescribing orthotics will ensure that the public is adequately protected and will provide the Member additional time to consider his conduct.
76. Finally, with regard to the costs, the Panel is satisfied that this is an appropriate case to order costs and that the amount sought is reasonable in the circumstances. The costs represent an approximately 2/3rds portion of the College's actual costs of prosecuting this case. It is appropriate for Mr. MacMull to share in some portion of the costs, otherwise the rest of the membership will unfairly bear the full burden.
77. While it was Mr. MacMull's right to deny the allegations and while it was his right to choose not to participate in the hearing process, the Panel notes that as a result, the College incurred additional preparation time, which could have been avoided if Mr. MacMull had been more engaged in the process.

I, Elliot To, sign this decision and reasons as Chairperson of this Discipline panel and on behalf of the members of the Discipline panel as listed below:

Eliot To, Chairperson

Date:

Panel Members:

Melanie Atkinson
Allan Katz
Riaz Bagha

Professional Member
Public Member
Profession Member

Appendix A

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

PANEL: Eliot To, Chair, Professional Member
Melanie Atkinson, Professional Member
Riaz Bagha, Professional Member
Allan Katz, Public Appointee

BETWEEN:

| | | |
|--|---|---|
| COLLEGE OF CHIROPODISTS OF ONTARIO (the “College”) |) | |
| |) | Benjamin Kates for the College |
| |) | |
| |) | |
| - and - |) | |
| |) | |
| CHARLES ALBERT MACMULL (the “Member”) |) | Not Present |
| |) | |
| |) | |
| |) | |
| |) | |
| |) | |
| |) | |
| |) | Luisa Ritacca, Independent Legal Counsel |
| |) | |

ORDER

WHEREAS the Inquiries Complaints and Reports Committee of the College referred specified allegations against the Member to the Discipline Committee of the College in accordance with paragraph 26(1)1 of the *Health Professional Procedural Code* (the “Code”), being Schedule 2 to the *Regulated Health Professions Act, 1991* (the “Act”);

AND WHEREAS the College issued a Notice of Hearing dated February 14, 2022 in respect of allegations that that the Member engaged in professional misconduct pursuant to clause 51(1)(c) of the Code as defined in one or more of the paragraphs of

section 1 of the Professional Misconduct Regulation (O. Reg. 750/93) under the *Chiropody Act, 1991*, S.O. 1991, c. 20;

AND WHEREAS the hearing on the merits of this matter took place on March 6, 2023 before a panel of the Discipline Committee (the “Panel”);

AND WHEREAS on March 7, 2023 the Panel made findings of Professional Misconduct against the Member and invited submissions from the parties with respect to an Order for Penalty and Costs pursuant to sections 51(2) and 53.1 of the Code;

ON READING and hearing the submissions of the College, the Panel Orders as follows:

1. The Member shall appear before the Panel to be reprimanded;
2. The Registrar shall be directed to suspend the Member’s Certificate of Registration for a period of twelve (12) months,¹ effective of the date of this Order, two (2) months of which will be remitted upon the Member completing the PROBE ethics course and the University of Toronto Record-Keeping course as set out at subparagraph 3(a) below;

¹ During the period of suspension, the Member is not permitted to practise chiropody and shall comply with the College’s Guideline for Suspension: www.cocoo.on.ca/pdf/guidelines/suspension_guideline.pdf. For the sake of clarity, this includes, among other things, the Member is not permitted to use the restricted title of chiropodist, or hold himself out as being able to practise, or hold himself out as a member of the College. The Member is not permitted to invoice or earn any income from the practice of chiropody (directly or through a health profession corporation) or be present at the Member’s primary practice location or any secondary practice location or attend at a practice setting where chiropody patients are in attendance, to be involved in or participate in any of the chiropody care to be provided to chiropody patients.

3. The Registrar shall be directed to impose terms, conditions, and limitations on the Member's certificate of registration requiring the following:
- (a) Prior to returning to practice from his suspension,² the Member shall successfully complete the (i) PROBE ethics course offered by the Center for Personalized Education for Professionals (CPEP) and the (iii) medical record-keeping course offered by the University of Toronto at his own expense and provide documentary evidence to the College of his successful completion of those courses to the satisfaction of the Registrar;³
 - (b) Upon returning to practice after his suspension, the Member is prohibited from imaging, casting, prescribing, constructing, fitting, dispensing and/or ordering the fabrication of orthotics for a period of twelve (12) months ("Orthotics Restricted Period"). For the purpose of clarity, the Member is not entitled to assign his patients to anyone else practising in his clinics during the Orthotics Restricted Period, regardless of whether or not he receives a fee, but shall refer such patients seeking orthotic assessment and treatment to another member of the College in good standing at a clinic unaffiliated with the Member's clinics.
 - (c) At his own expense, the Member will receive supervision of his chiropody practice with a supervisor selected by the Registrar for a period of eighteen

² For clarity, the Member shall not be permitted to return to practice until he successfully completes both the PROBE ethics court and the University of Toronto record-keeping course to the satisfaction of the Registrar.

³ The requirement to satisfy the conditions at paragraph 3(a) cannot be relieved by serving the remitted portion of the suspension referred to in paragraph 2.

(18) months from the date on which the Member returns to practice from the suspension. The terms of the supervision are as follows:

- (i) The supervisor shall visit with the Member in person on at least four (4) occasions – twice in the first six (6) months and twice in the last twelve (12) months;
 - (ii) Two (2) of the visits with the supervisor will be unannounced;
 - (iii) The supervisor shall determine the length of each visit;
 - (iv) In conducting the supervision, the supervisor shall discuss ethics, practice management, record-keeping and compliance with the College's standards with the Member;
 - (v) The supervisor shall prepare a report to the Registrar after the second (2nd) visit and after the fourth (4th) visit;
 - (vi) The Member shall provide the supervisor with the Discipline Committee's Misconduct Decision and Penalty Decision and then provide written confirmation to the Registrar, signed by the supervisor, that the supervisor has received and reviewed the final decision;
- (d) In the event that the Member obtains employment to provide chiropody services during the twelve (12) months following the date that the Member returns to practise after his suspension, the Member shall:

- (i) Notify any current or new employers of the Discipline Committee's Misconduct Decision and Penalty Decision;
 - (ii) Ensure the Registrar is notified of the name, address, and telephone number of all employer(s) within fifteen (15) days of commencing employment;
 - (iii) Provide his employer(s) with a copy of:
 - 1) The Discipline Committee's Misconduct Decision;
 - 2) The Discipline Committee's Penalty Decision;
 - 3) the Notice of Hearing; and
 - 4) have his employer forward a report to the Registrar within fifteen (15) days of commencing employment confirming that the employer has received the documents noted above and agrees to notify the Registrar immediately upon receipt of any information that the Member is not complying with the College's standards;
4. The Member shall pay the College is costs in the amount of \$60,000.00, in accordance with the following schedule:
- (a) \$25,000.00 – April 6, 2023;
 - (b) \$5,000.00 – July 6, 2023

- (c) \$5,000.00 – October 6, 2023
- (d) \$5,000.00 – January 6, 2024;
- (e) \$5,000.00 – April 6, 2024;
- (f) \$5,000.00 – July 6, 2024; and
- (g) \$5,000.00 – October 6, 2024; and
- (h) \$5,000.00 – January 6, 2025; and

5. The Discipline Committee's Misconduct and Penalty Decisions shall be published, in detail with the Member's name, in the College's official publications, on the College's website, on the College's public register, and on CanLII.

A handwritten signature in black ink, consisting of a stylized, cursive letter 'E' or similar character.

Date: March 7, 2023

COLLEGE OF CHIROPODISTS OF ONTARIO
(the “College”)

- and -

CHARLES ALBERT MACMULL
(the “Member”)

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

COSTS ORDER

WEIRFOULDS LLP

Barristers & Solicitors
Suite 4100-66 Wellington Street West
P.O. Box 35, TD Bank Tower
Toronto, ON M5K1B7

Benjamin Kates (LSO# 60481T)

t. (416) 947-5072

f. (416) 365-1876

e. bkates@weirfoulds.com

Counsel for the College of
Chiropractors of Ontario