

**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*, 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
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 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.

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Lawyers for the College of
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