

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

PANEL:

Jim Daley, Chair, Public Member
Matthew Doyle, Professional Member
Eliot To, Professional Member

BETWEEN:

COLLEGE OF CHIROPODISTS OF ONTARIO (the "College"))	DEBRA McKENNA, for the College
)	
- and -)	JOSH KOZIEBROCKI for the Member,
)	RICHARD PAK
)	
RICHARD PAK)	
)	LUISA RITACCA, Independent Legal
)	Counsel
)	
)	Heard: November 24, 2020
)	

Reason for Decision

This matter came on for hearing before a panel of the Discipline Committee on November 24, 2020. With the consent of the parties, this matter was heard electronically. At the outset, the parties advised that they would be seeking a stay of the allegations contained in the Notice of Hearing, as described below.

The Allegations

The allegations against Richard Pak (the "Member") as stated in the Notice of Hearing dated December 20, 2019, are as follows

IT IS ALLEGED THAT:

1. Richard Pak (“**Mr. Pak**” or “**Member**”) was at all material times a registered member of the College.
2. During the period in or about March 29, 2018 to May 8, 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 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 18 (falsifying a record relating to the member’s practice);
 - f. paragraph 20 (signing or issuing, in the member’s professional capacity, a document that contains a false or misleading statement);
 - g. paragraph 21 (submitting an account or charge for services that the member knows is false or misleading);
 - h. paragraph 22 (charging a fee that is excessive in relation to the services or devices charged for);
 - i. paragraph 30 (contravening the Chiropractic Act, 1991, the Regulated Health Professions Act, 1991, or the regulations under either of those Acts), specifically:
 - ii. Ontario Regulation 750/93 (Professional Misconduct) under the Chiropractic Act, 1991, as specified in this Notice of Hearing;
 - iii. Ontario Regulation 203/94 (General) under the Chiropractic Act, 1991, and, in particular, the Advertising (Part II) and Records (Part III);

- iv. Ontario Regulation 830/93 (Registration) under the Chiropractic Act, 1991; and/or
- v. section 51(1)(c) of the Health Professions Procedural Code, being Schedule 2 to the Regulated Health Professions Act, 1991; and/or
- 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

1. At all material times, the Member was a chiropractor registered with the College to practise chiropractic in Ontario.
2. During the Relevant Period, the Member was engaged in the practice of chiropractic at Medical Orthopedics Inc., located at 220 Royal Crest Road in Markham, Ontario (the "Clinic").
3. On or about September 18, 2018, the College received a complaint from Manulife about the Member (the "Complaint").
4. As set out in the Complaint, Manulife commenced a "secret shopper" investigation during the spring of 2018 in relation to the Clinic. The focus of the investigation related to patients at the Clinic being offered and receiving incentives in the form of free shoes with the purchase of orthotics.
5. As part of the investigation, a Manulife investigator (identifying himself under the alias Anthony O'Neill) contacted the Clinic to arrange an assessment for orthotics. During his initial call with the Clinic, the investigator was asked which patient had referred him to the Clinic and his occupation. Upon advising that he was a teacher, the investigator was asked to provide his plan and certificate number.
6. The investigator attended at the Clinic for his appointment on April 5, 2018.
7. Upon arrival, the investigator was greeted and asked by the Clinic reception staff to complete medical intake forms. After completing the forms, the investigator was asked by the Member to follow him into the treatment room.
8. While in the treatment room, the investigator informed the Member that he had "shooting pain" in his feet and expressed an interest in orthotics. In response, the Member asked the investigator a number of questions and completed an assessment.
9. The assessment conducted by the Member included measuring the investigator's feet for orthotics with the use of foam box impressions.

10. After completing his assessment, the Member asked the investigator how many pairs of orthotics he wanted and informed him that his insurance coverage included two pairs. The investigator replied that he wanted two pairs.
11. Subsequently, the investigator inquired whether his orthotics would include a free pair of shoes. In response, the Member said words to the effect that he was only there to conduct the assessments and that the investigator would have to inquire about this with the reception staff.
12. Upon returning to the reception, the investigator was instructed on completing her insurance forms – one form for the Member’s assessment for \$90.00 and a second form for the orthotics at \$700.00.
13. After paying for the \$90.00 assessment fee, the investigator was handed a plastic card by Clinic staff with a number “2” on it and then was directed to the adjoining shoe store, A Smart Step.
14. The investigator then attended the adjoining store and was greeted by staff. The investigator was informed by staff that he had a \$200 plus tax shoe allowance for any shoes in the store. In addition, the investigator was advised the store would order other shoes for him and the investigator requested a pair of Olukai sandals from Mountain Equipment Co-op.
15. On or about May 4, 2018, the investigator received an email from the shoe store indicating that his orthotics and shoes were ready for pick-up. Thereafter, on or about May 8, 2018, the investigator attended at the store.
16. Upon entering the store, the investigator was greeted by staff. After providing his name, the investigator was provided with a box containing his shoes and a bag with his orthotics. He was then directed to the Clinic reception where he paid \$700 for his orthotics and then signed and dated his claim form for the orthotics.
17. The Member was not involved in dispensing or fitting the investigator’s orthotics. In addition, no one from the Clinic, including the Member, has contacted the investigator afterwards for any follow-up.
18. During the Relevant Period or at any time, the Member did not disclose to the College that the Clinic was one of his practice locations.

Motion

The College brought a motion, with the consent of the Member for an order staying the allegations of professional misconduct, as contained in the Notice of Hearing. In addition, the College sought an order that costs in the amount of \$6000.00 be payable by the Member. Below are the panel’s reasons for decision:

1. This motion was agreed to and brought forward jointly by the College and Mr. Pak's counsel.
2. Mr. Pak has entered into an Undertaking with the College to resign permanently and to surrender his Certificate of Registration. The Undertaking provides that Mr. Pak will not seek membership with this College again and further provides that should he breach any provision of the Undertaking, these allegations of professional misconduct will be addressed by the Discipline Committee at a full hearing.
3. The Undertaking is consistent with the College's obligation to act in the public interest and to above-all, act in furtherance of public protection. Permanently removing Mr. Pak from practice meets the College's obligations.
4. The stay, the Undertaking and these reasons shall form part of the public register and shall be available to members of the College and the public at large.
5. An order for costs was appropriate in the circumstances. The parties have agreed to the amount of \$6,000.00. The Panel was content to make the amount payable on a timetable to be determined by the Registrar.

I, Jim Daley, sign this Decision and Reasons for the decision as Chairperson of this Discipline panel and on behalf of the members of the Discipline panel as listed below:



Jim Daley

24 NOVEMBER 2020
Date

Matthew Doyle, Professional Member
Eliot To, Professional Member