

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

BETWEEN:

**COLLEGE OF CHIROPODISTS OF ONTARIO
("College")**

- and -

**CORNELIUS GUCFA
("Mr. Gucfa")**

Panel Members:	Allen Frankel	Chair, Professional Member
	Meera Narenthiran	Professional Member
	Sousan Eissabigloo	Public Member
	Wilhelmina E. Gonzales	Public Member
Present:	Felecia Smith	Registrar of the College
	Julie Maciura	Counsel for the College
	Alan L. Bromstein	Independent Counsel to the Panel
Hearing Date:	September 11, 2008	

**DECISION AND REASONS FOR DECISION AND ORDER
of the Panel of the Discipline Committee**

This panel of the Discipline Committee ("Panel") convened on September 11, 2008 to hear allegations brought by the College against Mr. Gucfa. Mr. Gucfa was not present at the Hearing nor was he represented by legal counsel.

DECISION ON FINDING, PENALTY AND COSTS

Having heard and considered all of the evidence, the Discipline Committee found Mr. Gucfa guilty of professional misconduct as defined under each of

- (a) Paragraph 8 (discontinuing professional services);
- (b) Paragraph 12 (breaching an agreement with a patient);
- (c) Paragraph 18 (falsifying a record relating to the member's practice);
- (d) Paragraph 19 (failing to provide a report or certificate);

- (e) Paragraph 20 (signing or issuing a false or misleading document);
- (f) Paragraph 33 (disgraceful, dishonourable or unprofessional conduct);
- (g) Paragraph 34 (failing to reply to written enquiry from College);

of section 1 of O. Reg. 750/93 as amended, under the *Chiropody Act, 1991*.

Penalty

The Panel ordered that Mr. Gucfa's Certificate of Registration be revoked immediately.

Costs

The Panel determined that this was an appropriate case to order costs and the Panel ordered Mr. Gucfa to pay \$14,000.00 to the College to partially reimburse it for its legal costs and expenses, the costs and expenses incurred in investigating the matter, and the costs and expenses incurred in conducting the Hearing.

REASONS FOR FINDING

The Notice of Hearing dated July 4, 2008 containing a Statement of Allegations was filed along with two Affidavits of Service sworn on July 24, 2008 and September 5, 2008, respectively. All three documents were filed together as Exhibit No. 1. The Panel was satisfied, based on the Affidavits, that proper service of the Notice of Hearing had been made on Mr. Gucfa. As Mr. Gucfa was not present, the Panel directed that a plea of not guilty be entered in respect of all of the allegations and requested Ms. Macuira to proceed with the Hearing.

ALLEGATIONS

The Notice of Hearing contained the following Statement of Allegations:

- "1. Cornelius Gucfa was at all material times a podiatrist registered to practise in Ontario.
2. At all material times Mr. Gucfa practised podiatry at Hamilton Podiatry Associates in Hamilton, Ontario.
3. On or about March 20, 2007, Mr. Gucfa accepted \$595.00 from Ms. Leticia Robles for the purchase of orthotics. Mr. Gucfa did not provide the orthotics to Ms. Robles and did not refund her money despite repeated attempts by Ms. Robles to reach Mr. Gucfa.
4. Mr. Gucfa gave to Ms. Robles a letter signed by him that indicated that the orthotics had been dispensed on or about March 20, 2007, when this was not true.

5. On or about March 27 2007, Mr. Guafa accepted \$300.00 from Mr. George Hatjinickolaou as a deposit for the purchase of orthotics. Mr. Guafa did not provide the orthotics to Mr. Hatjinickolaou and did not refund his money despite repeated attempts by Mr. Hatjinickolaou to reach Mr. Guafa.
6. Mr. Guafa was evicted from his podiatry office premises on or about March 30, 2007.
7. In or about the late summer or early fall of 2007, after repeated telephone calls from Mr. Hatjinickolaou to Mr. Guafa's home, Mr. Guafa eventually provided the orthotics to Mr Hatjinickolaou after Mr. Hatjinickolaou paid Mr. Guafa an additional \$300.00.
8. Mr. Guafa gave to Mr. Hatjinickolaou a letter and a receipt signed by Mr. Guafa that indicated that the amount of \$595.00 had been paid by Mr. Hatjinickolaou and that the orthotics had been dispensed to him on or about April 13, 2007, when neither was true.
9. Mr. Hatjinickolaou asked Mr. Guafa, by way of telephone calls and letter dated November 30, 2007, to provide Mr. Hatjinickolaou with further information requested by his insurance company after he submitted his claim for the orthotics. As of April 2008, Mr. Guafa had failed to provide that information to Mr. Hatjinickolaou.
10. Mr. Guafa told Mr. Hatjinickolaou that he 'did not care how many documents the College sent him because he is retired now.'
11. Mr. Guafa did not provide the client records of Ms. Robles or Mr. Hatjinickolaou to the College despite having been asked to do so by two letters dated July 24, 2007.
12. Mr. Guafa did not respond to a telephone message left for him in or about September 2007, from a representative of the College regarding the complaints of Ms. Robles and Mr. Hatjinickolaou.
13. Mr. Guafa is ungovernable.
14. It is alleged that the conduct described above constitutes incompetence pursuant to section 52 of the *Health Professions Procedural Code*, being Schedule 2 to the *Regulated Health Professions Act, 1991*.
15. In the alternative, it is alleged that the conduct described above constitutes professional misconduct pursuant to paragraph 8 (discontinuing professional services); and/or paragraph 12 (breaching an agreement with a patient); and/or paragraph 18 (falsifying a record relating to the member's practice); and/or paragraph 19 (failing to provide a report or certificate); and/or paragraph 20 (signing or issuing a false or misleading document); and/or paragraph 33

(disgraceful, dishonourable or unprofessional conduct); and/or paragraph 34 (failing to reply to written enquiry from College) of O. Reg. 750/93, as amended, under the *Chiropody Act, 1991*."

EVIDENCE

Three witnesses gave evidence at the Hearing. The following summarizes the evidence given by each.

Ms. Leticia G. Robles ("Ms. Robles")

Ms. Robles testified that she attended on March 20, 2007 at the office of Mr. Gucfa called the Hamilton Podiatry Associates, a podiatric office she found in the yellow pages of the telephone directory. At that time, she was experiencing extreme pain in her feet because she was on her feet for extended periods of time working in food services as a food and dietary aide. She was advised when she made the appointment that the initial visit would cost \$30.00 which she brought to the appointment in cash as instructed by Mr. Gucfa's secretary.

She was examined by Mr. Gucfa and advised that she required orthotics. Mr. Gucfa's diagnosis and the fee for the orthotics, namely, \$595.00 was confirmed in a letter signed by him and dated March 20, 2007 which letter was marked as part of Exhibit No. 2.

Prior to leaving the office on that date, Ms. Robles was advised by the secretary that Mr. Gucfa would require payment in full in cash for the orthotics, namely, \$595.00. Ms. Robles was advised to go to an automated teller or to her bank and obtain the \$595.00 and to deliver it to the office before the office closed at 5:00 p.m. She complied because she was in so much pain and felt she needed the orthotics as quickly as possible.

Ms. Robles produced copies of two receipts from Mr. Gucfa's office, both dated March 20, 2007, the first in the amount of \$30.00 and the second in the amount of \$595.00. Both of those receipts were given to her on March 20, 2007 and were marked as part of Exhibit No. 2.

Ms. Robles advised the Panel that she never received the orthotics that were supposedly ordered for her. After March 20, 2007, she tried on numerous occasions to contact Mr. Gucfa's office to enquire as to when she could pick up the orthotics but she could not reach him. Later the telephone was disconnected. She received no communication from Mr. Gucfa's office. At the end of April 2007 she personally went to the office site and found the office had closed. The building was empty and there was a sign saying "Moving" posted on the door. It was suggested to her that she file a complaint with the College which she did.

Ms. Robles identified a copy of a claim form to Manulife Financial through which she had been reimbursed the sum of \$255.00 of the total amount which she had paid Mr. Gucfa. That form was marked as Exhibit No. 3. She felt that she had been "conned"

by Mr. Gucfa in that she did not receive the orthotics that she so badly needed. She decided to pursue this matter with the College so that other people would not suffer the same experience at the hands of Mr. Gucfa. She also confirmed that this experience with Mr. Gucfa has caused her to lose confidence in the profession in general.

Mr. George Hatjinickolaou ("Mr. Hatjinickolaou")

The second witness was Mr. Hatjinickolaou. Mr. Hatjinickolaou is a Senior Manager of Scotiabank in Hamilton. He gave evidence that he attended the office of Mr. Gucfa on March 27, 2007 to obtain orthotics for himself as he had had severe foot pain for a couple of months. Mr. Hatjinickolaou had been a patient of the former podiatrist at Mr. Gucfa's location, a Mr. Van Ryn [since 2001], however, Mr. Van Ryn had retired and Mr. Gucfa had taken over the practice.

When Mr. Hatjinickolaou attended at Mr. Gucfa's office on March 27, 2007, he was examined by Mr. Gucfa and measurements taken for the preparation of orthotics. Mr. Gucfa's secretary asked for a fifty percent deposit, namely, \$300.00 which he paid in cash. A receipt for \$300.00 was prepared but it was agreed that he would obtain a receipt for payment in full after he came and paid the balance of the account and picked up his orthotics. It was understood that he would pick up those orthotics on Monday, April 2, 2007 as he was leaving for a two week vacation on April 3, 2007.

On April 2, 2007 he telephoned the office to schedule a convenient time to pick up his orthotics but heard a pre-recorded message indicating the office was closed and would not reopen until after Easter [April 8, 2007]. He, therefore, did not have the orthotics during his vacation which caused him a great deal of pain. On return from his vacation, he went to Mr. Gucfa's office to find the door locked. A sign on the door indicate the landlord had locked the premises on March 30, 2007 due to non-payment of rent by the tenant [Mr. Gucfa]. Mr. Hatjinickolaou indicated that he believed that Mr. Gucfa must have known on March 27, 2007 when he took the \$300.00 deposit that the closure of his premises was imminent yet he still took the money.

Mr. Hatjinickolaou said that as luck would have it, he saw Mr. Gucfa's secretary in downtown Hamilton in the early part or second week of April and asked her to provide him with Mr. Gucfa's home telephone number which she did. He persistently called that home number and finally got Mr. Gucfa who agreed to meet with him on a street in Hamilton to provide him with the orthotics. They met on April 13, 2007, at which time he paid Mr. Gucfa the balance owed and Mr. Gucfa provided him with the orthotics, a receipt in the amount of \$595.00 and a letter to "whom it may concern" so that he could apply for reimbursement with his insurance company. A copy of a receipt dated April 13, 2007 in the amount of \$595.00 from Mr. Gucfa and a letter addressed to "whom it may concern" from Mr. Gucfa confirming the treatment and the cost of the treatment were filed as part of Exhibit No. 5.

Mr. Hatjinickolaou submitted the letter to his insurance company, Great West Life, however, Great West Life wrote to him by letter dated August 21, 2007 indicating that

they required additional information before paying the claim. A copy of that letter was also marked as part of Exhibit No. 5. Great West Life requested certain additional information in order to process the claim. That information needed to be provided by Mr. Guufa and as a result, Mr. Hatjinickolaou made calls to Mr. Guufa requesting the information. Despite Mr. Hatjinickolaou's efforts he was unable to get Mr. Guufa to provide the information. Mr. Hatjinickolaou indicated that he was able to speak to Mr. Guufa on one occasion and suggested that Mr. Guufa's continued failure to assist him might necessitate involving the College. Mr. Guufa indicated that he did not care how many letters the College sent him as he was retiring anyway. Mr. Hatjinickolaou confirmed that despite his efforts, Mr. Guufa never did provide any of the information which Mr. Hatjinickolaou required in order to obtain reimbursement from his insurance company.

Ms. Marilyn Bartlett ("Ms. Bartlett")

The third witness called by the College was Ms. Bartlett. Ms. Bartlett works for the College as an Investigator and Complaints Officer. She has done so since August 2003. She gave evidence that she had been appointed on July 24, 2007 to investigate certain complaints involving Mr. Guufa. She attempted to contact Mr. Guufa but was unable to do so. She confirmed that both Ms. Robles and Mr. Hatjinickolaou had made formal complaints to the College which she investigated. She identified a letter dated July 24, 2007, a copy of which was marked as Exhibit No. 6 and which was sent to Mr. Guufa at 4531 Frances Crk, Beamsville, Ontario, L0R 1B9. Attached to that Exhibit was a tracking slip which indicated that the item had been delivered on July 27, 2007. The correspondence asked Mr. Guufa to provide a copy of his records in respect of Ms. Robles and gave Mr. Guufa a date of August 28, 2007 to make any submission he may wish in respect of the complaint. No response was ever received from Mr. Guufa nor were any records of the client made available to the College.

A similar letter was sent by the College to Mr. Guufa in respect of the letter of complaint by Mr. Hatjinickolaou. It too was dated July 24, 2007 and a copy of the letter of complaint and tracking slip showing receipt on July 27, 2007 was marked as Exhibit No. 7. Again, the letter requested the original record of Mr. Hatjinickolaou's treatment and gave Mr. Guufa an opportunity until August 28, 2007 to provide a response to the complaint. Again, no record was received from Mr. Guufa nor was any response given.

Ms. Bartlett gave evidence that she believed the address specified in the letter, namely, 4521 Frances Crk, Beamsville, Ontario was his home address at that time. She believed this to be the case because she was able to obtain contact information from Dr. Guufa's former secretary to confirm that he lived in Beamsville and then searched for the address using Canada 411.

The Panel was satisfied by the evidence of Ms. Bartlett and Mr. Hatjinickolaou that Mr. Guufa's home address was indeed 4531 Frances Crk, Beamsville, Ontario at the time they wrote to Mr. Guufa and was satisfied that Mr. Guufa received the letters from the College marked as Exhibit Nos. 6 and 7.

The Panel heard clear, cogent and convincing evidence which established each of the facts set out in the Statement of Allegations. Those facts supported the Panel's view that:

1. Mr. Guufa had effectively abandoned both Ms. Robles and Mr. Hatjinickolaou in contravention of paragraph 8 of section 1 of the College's Professional Misconduct Regulation.
2. Mr. Guufa breached his agreement to supply orthotics to Ms. Robles in contravention of paragraph 12 of section 1 of that Professional Misconduct Regulation.
3. Mr. Guufa falsified a record relating to his practice in that he wrote "to whom it may concern letters" in respect of each of Ms. Robles and Mr. Hatjinickolaou indicating that orthotics had been designed, constructed and dispensed *[emphasis added]* on behalf of each of the patients when in fact that was a false statement as no orthotic had been constructed or dispensed as of the date of the letter and in the case of Ms. Robles, no orthotic was ever dispensed. In the Panel's view, letters prepared by members to assist in obtaining reimbursement from third party insurers were part of the record relating to the member's practice and the Panel was satisfied that this record had been falsified. This contravened paragraph 18 of section 1 of the College's Professional Misconduct Regulation.
4. Mr. Guufa had failed to provide a report or certificate for Mr. Hatjinickolaou after Mr. Hatjinickolaou requested additional information in order to assist him in obtaining reimbursement from Great West Life in violation of paragraph 19 of section 1 of the College's Professional Misconduct Regulation.
5. Mr. Guufa had signed a false and misleading document in respect of each of Ms. Robles and Mr. Hatjinickolaou, namely, a letter addressed "to whom it may concern" in respect of Ms. Robles dated March 20, 2007 in which he indicated that orthotics had been "designed, constructed and dispensed *[emphasis added]* to Leticia Robles" and one for Mr. Hatjinickolaou dated April 13, 2007 where he similarly stated that orthotics had been "designed, constructed and dispensed *[emphasis added]* to Mr. Hatjinickolaou". This constituted professional misconduct under paragraph 20 of section 1 of the College's Professional Misconduct Regulation.
6. Mr. Guufa's failure to respond to either of the College's letters each dated July 24, 2007 and specifically to provide the original records in respect of Ms. Robles and Mr. Hatjinickolaou constituted professional misconduct pursuant to paragraph 34 of section 1 of the College's Professional Misconduct Regulation.
7. Mr. Guufa's overall conduct in respect to his total disregard for the interests of his patients, including his failure to advise patients of where they could contact him, his failure to respond to patients' enquiries, and his accepting of payment at a time when he knew or ought to have known that he was going to cease to practise was conduct in the course of practising the profession that having regard to all of the circumstances

would reasonably be regarded by members as disgraceful, dishonourable or unprofessional. This constituted professional misconduct pursuant to paragraph 33 of section 1 of the College's Professional Misconduct Regulation.

PENALTY

The College called Marilyn Bartlett to give testimony in respect of this phase of the Hearing. Ms. Bartlett recounted information which she had reviewed from the College's records relating to Mr. Guufa's registration with the College and payment of his annual fees. Of particular note, however, was Mr. Guufa's previous disciplinary history. In this connection, Ms. Bartlett provided documentation which was marked as Exhibit No. 9 and Exhibit No. 10, respectively. Those documents disclosed the following history:

1. Mr. Guufa, pursuant to a Statement of Agreed Facts and Joint Submission, pleaded guilty to professional misconduct in April 1997. The misconduct involved, among other things, failure to respond promptly to clients and failure to respond to the College. As part of the resolution of that Discipline Hearing, Mr. Guufa gave an Undertaking to the College to take a particular course by September 30 1997; to supply proof that he had made a refund to a patient in the amount of \$270.00 within thirty days of the date of the Order of the Discipline Committee; to deliver to a patient an apology acceptable to the Registrar and deliver to the Registrar proof of the delivery of that apology within thirty days of the date of the Order of the Discipline Committee; and to respond appropriately and promptly to enquiries from his patients and to respond appropriately and, if requested, in writing within thirty days to every communication with the College. That Undertaking was signed on April 15, 1997.

2. Mr. Guufa was subsequently charged with professional misconduct and a Discipline Hearing took place on 11/12/98. He had been referred to the Discipline Committee for his failure to adhere to the Undertaking dated April 15, 1997 as referred to above. The allegations were that he had not undertaken the course, not provided the refund or apology within the time limit set out in the Decision, and not responded appropriately to correspondence from the College within thirty days. A panel of the Discipline Committee found him guilty of professional misconduct. He was ordered at that time to pay \$2,500.00 to the College for costs which he ultimately did pay and the following term, condition and limitation was placed on his Certificate, namely, that a two week suspension of his licence was to be imposed if
 - (i) there was a further breach of the Undertaking previously given to the College;
 - (ii) the member failed to respond appropriately and promptly to enquiries from the College; or
 - (iii) the member failed to respond within thirty days to the College if requested to do so in writing from the College.

Following the evidence from Ms. Bartlett, Ms. Maciura submitted that the appropriate penalty, in the circumstances of this case, was a revocation of Mr. Gucfa's Certificate of Registration. Ms. Maciura submitted that Mr. Gucfa had engaged in professional misconduct twice in the past and that certain of the conduct was either the same or of a similar nature. In addition, he had failed to live up to Undertakings given to the College. Despite warnings, he had shown himself unwilling to be regulated and in her submission, he had shown himself to be ungovernable. In this connection, she submitted that he had shown a cavalier disregard for the College in failing to provide records in respect of both clients that the College had requested and displayed a total disregard for his patients' welfare. He was clearly capable of providing the orthotics to Ms. Robles as he had done for Mr. Hatjinickolaou but he simply chose not to do so. It was Ms. Maciura's submission that the only appropriate penalty in the circumstances, i.e. the only penalty that would provide sufficient protection to the public, would be to revoke Mr. Gucfa's Certificate of Registration. Under the circumstances, Ms. Maciura submitted that rehabilitation which is an important factor in most discipline proceedings was not available in this case as Mr. Gucfa had shown himself to be an individual who had no interest in being governable.

The Panel carefully considered the submissions made on behalf of the College and concluded that in order to adequately protect the public, Mr. Gucfa's Certificate of Registration should be revoked. Mr. Gucfa had clearly shown himself to be unwilling to be governed by the College and there was nothing that the College would be able to do short of revocation which would ensure the future good behaviour of Mr. Gucfa. Therefore, revocation was necessary in order to protect the public and ensure competence in the profession. In addition, the Panel felt that revocation of Mr. Gucfa's Certificate of Registration would also send a strong signal to other members that ignoring the College authority would have serious consequences and hopefully would restore the public's faith in the profession.

COSTS

The College called Felecia Smith, Registrar of the College, to give evidence in connection with this phase of the Hearing. Ms. Smith indicated that the costs paid to date without including the costs associated with the Hearing day's attendance totalled \$12,225.23 and she anticipated the Hearing costs of the day would be approximately \$2,200.00. She gave evidence that the College had tried to resolve this matter with Mr. Gucfa by which he would agree to permanently resign as a member of the College. The resolution would have avoided, in her view, the costs of this Hearing. Mr. Gucfa refused to reply to any of her correspondence or return any of her telephone calls.

Ms. Maciura submitted that the conduct of the Member was relevant to whether this was an appropriate case for costs. She submitted that having regard for his conduct this was an appropriate case for an award of costs and that under the circumstances he ought to be responsible for paying \$14,000.00 towards the costs incurred by the College including its legal costs and expenses, the costs and expenses incurred in investigating the matter and

the costs and expenses incurred in conducting the Hearing. In her submission, the costs incurred by the College were incurred solely because of Mr. Gucfa's failure to live up to his professional obligation and that this was the type of case where the membership at large should not be paying for those failures.

The Panel considered the submission and agreed. In its view, the conduct of Mr. Gucfa which was found to be professional misconduct and the conduct of Mr. Gucfa in failing to respond to the College made this an appropriate case for an award of costs in favour of the College. Under the circumstances, it was the Panel's view that reimbursement in the amount of \$14,000.00 was appropriate and the Panel, therefore, made that order.