

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

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|------------------------|---|--------------------------------------|
| Mr. Allen Frankel |) | TUESDAY, THE 27 TH DAY OF |
| Mr. Ray Ferraro |) | |
| Ms. Sarah Kerwin |) | NOVEMBER, 2007 |
| Ms. Sousan Eissabigloo |) | |

B E T W E E N :

COLLEGE OF CHIROPODISTS OF ONTARIO

- and -

NILKANTHRA PATEL

ORDER

THIS HEARING was held on November 27, 2007, in Toronto, Ontario.

ON READING the notice of hearing and on hearing the submissions of counsel for the College of Chiropractors of Ontario ("College") and counsel for Mr. Patel.

1. **A. THE DISCIPLINE COMMITTEE FINDS** that Mr. Patel is guilty of professional misconduct pursuant to paragraph 51(1)(a) of the *Health Professions Procedural Code*, being Schedule 2 to the *Regulated Health Professions Act*, in that Mr. Patel has been found guilty of an offence that is relevant to his suitability to practise chiropractic.

B. THE DISCIPLINE COMMITTEE ORDERS THE FOLLOWING PENALTY:

1. Mr. Patel shall appear before a panel of the Discipline Committee to be reprimanded, the fact of which shall appear on the College register.
2. The Registrar shall suspend Mr. Patel's certificate of registration for nine (9) weeks, to be served in three (3) periods of three (3) weeks each, on dates to be set by the Registrar, but in any event the suspension will be fully served within nine (9) months of the date of the hearing.
3. The Registrar shall impose a term, condition and limitation on Mr. Patel's certificate of registration prohibiting him from being alone with a person under the age of sixteen (16) years during the practise of chiropody. This term, condition and limitation will remain on Mr. Patel's certificate of registration for as long as he practises chiropody.
4. The Registrar shall impose a term, condition and limitation on Mr. Patel's certificate of registration requiring him to be assessed by a registered mental health practitioner (a clinical psychologist or psychiatrist) approved by the Registrar as soon as possible and no later than two (2) months following the date of the hearing, for the purpose of determining whether it is safe for Mr. Patel to practise chiropody. The mental health practitioner will provide to the Registrar a report containing his or her opinion about the safety of Mr. Patel continuing to practise chiropody. Mr. Patel will execute any consent documents necessary to permit the mental health practitioner to release reports to the Registrar in accordance with this order of the discipline panel.

5. The Registrar shall impose a term, condition and limitation on Mr. Patel's certificate of registration requiring Mr. Patel to cease the practice of chiropody in the event that the mental health practitioner reports to the Registrar that it is not safe for Mr. Patel to continue to practise chiropody and Mr. Patel will refrain from the practise of chiropody until a mental health practitioner acceptable to the Registrar reports to the Registrar that it is safe for Mr. Patel to resume practise.
6. The Registrar shall impose a term, condition and limitation on Mr. Patel's certificate of registration requiring him to undergo additional assessments by a mental health practitioner acceptable to the Registrar and to provide a report to the Registrar at such frequency as shall be recommended by the mental health practitioner, subject to the following:
 - a. The assessments shall take place over a period of two (2) years following the date of this hearing unless the mental health practitioner recommends an extension of that period in which case the period shall be extended in accordance with that recommendation but with the proviso that it shall not be extended a period exceeding a total of three (3) years;
 - b. The frequency of the assessments shall be once every four (4) months or at such other frequency as shall be recommended by the mental health practitioner provided that the frequency shall not be greater than once every two (2) months or less than once per year.
7. The cost of any assessment or report required by this order shall be borne by Mr. Patel.
8. The terms, conditions and limitations set out in paragraphs 4, 5, and 6 herein shall be removed from Mr. Patel's certificate of registration once the Registrar is satisfied that they have been fulfilled.

9. Mr. Patel is ordered to pay to the College a portion of its costs in the matter in the amount of \$2500.00 to be paid in full within twelve (12) months of the date of this hearing.

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

BETWEEN:

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

-and-

**NILKANTHRA PATEL
("Mr. Patel")**

| | | |
|----------------|--|--|
| Panel Members: | Allen Frankel Sarah Kerwin Ray Ferraro Sousan Eissabigloo | Chair, Professional Member Professional Member Public Member Public Member |
| Present: | Julie Maciura Nilkanthra Patel Robert Boswell Alan L. Bromstein | Counsel for the College Represented by Counsel Mr. Patel's Legal Counsel Independent Legal Counsel to Panel |
| Hearing Date: | November 27, 2007 | |

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

This matter came before a panel of the Discipline Committee ("Panel") at a hearing which was held on November 27, 2007.

A Notice of Hearing containing a Statement of Allegations was filed as Exhibit No. 1.

A Statement of Agreed Facts was filed on the consent of both parties as Exhibit No. 2. It contained the following agreed upon facts:

- "1. Nilkanthra Patel is a chiropodist registered to practise in Ontario.
2. At all material times Mr. Patel practiced chiropody in Barrie, Ontario.

3. On or about November 14, 2006, Mr. Patel pled guilty and was found guilty of possession of child pornography, contrary to subsection 163.1(4) of the Criminal Code of Canada.
4. Mr. Patel received a six months conditional sentence order and 18 months probation.
5. The parties agreed that the conduct described above constitutes professional misconduct pursuant to paragraph 51(1)(a) of the *Health Professions Procedural Code*, in that Mr. Patel has been found guilty of an offence that is relevant to his suitability to practise."

DECISION ON FINDING OF PROFESSIONAL MISCONDUCT

The Panel was satisfied that the conduct described in the Statement of Agreed Facts constituted professional misconduct as defined by paragraph 51(1)(a) of the Health Professions Procedural Code. It, therefore, found Mr. Patel had committed professional misconduct.

PENALTY

The parties filed a Joint Submission on Penalty and Costs that was marked as Exhibit No. 3. The Joint Submission suggested that the following penalty would be appropriate in the circumstances of this case:

- "1. Mr. Patel will appear before a panel of the Discipline Committee to be reprimanded, the fact of which shall appear on the College register.
2. Mr. Patel will be suspended for nine (9) weeks, to be served in three (3) periods of three (3) weeks each, on dates to be set by the Registrar, but in any event the suspension will be fully served within nine (9) months of the date of the hearing.
3. The Registrar will be directed to impose a term, condition and limitation on Mr. Patel's certificate of registration prohibiting him from being alone with a person under the age of sixteen (16) years during the practise of chiropody. This term, condition and limitation will remain on Mr. Patel's certificate of registration for as long as he practises chiropody.
4. The Registrar will be directed to impose a term, condition and limitation on Mr. Patel's certificate of registration requiring him to be assessed by a registered mental health practitioner (a clinical psychologist or psychiatrist) approved by the

- Registrar as soon as possible and no later than two (2) months following the date of the hearing, for the purpose of determining whether it is safe for Mr. Patel to practise chiropody. The mental health practitioner will provide to the Registrar a report containing his or her opinion about the safety of Mr. Patel continuing to practise chiropody. Mr. Patel will execute any consent documents necessary to permit the mental health practitioner to release reports to the Registrar in accordance with the order of the discipline panel.
5. The Registrar will be directed to impose a term, conditions and limitation on Mr. Patel's certificate of registration requiring Mr. Patel to cease the practice of chiropody in the event that the mental health practitioner reports to the Registrar that it is not safe for Mr. Patel to continue to practice chiropody and Mr. Patel will refrain from the practice of chiropody until a mental health practitioner acceptable to the Registrar reports to the Registrar that it is safe for Mr. Patel to resume practise.
 6. The Registrar will be directed to impose a term, condition and limitation on Mr. Patel's certificate of registration requiring him to undergo follow-up assessments by a mental health practitioner acceptable. The assessments are to be conducted once every four (4) months over a two (2) year period following the date of the hearing unless:
 - a. The mental health practitioner recommends that Mr. Patel attend more frequently than once every four (4) months, in which case he could be required to attend as frequently as once every two (2) months;
 - b. The mental health practitioner concludes that Mr. Patel need not attend as frequently as once every four (4) months, in which case he could be required to attend as infrequently as once per year, so long as he is assessed at twelve (12) months following the hearing date and at twenty-four (24) months following the date of the hearing; or,
 - c. The mental health practitioner recommends that Mr. Patel continue to be assessed for a period longer than two (2) years, in which case he could be required to attend upon a mental health practitioner for a maximum period of three (3) years, pursuant to the schedule set out in paragraph 6 herein
 7. The terms, conditions and limitations set out in sections 4, 5 and 6 herein will be removed from Mr. Patel's certificate of registration once the Registrar is satisfied that they have been fulfilled.
 8. Mr. Patel will be ordered pay to the College a portion of its costs in the matter in the amount of \$2500.00 to be paid in full within twelve (12) months of the date of the hearing."

PENALTY DECISION AND REASONS

The Panel was advised that where a hearing involved a Joint Submission on Penalty, the Panel should accept the proposal if it is within a reasonable range of penalties for similar conduct. It was also advised that it was not its role to make minor changes to a penalty when one was jointly submitted and that so long as the penalty would not bring the administration of the proceedings into disrepute, it should accept the Joint Submission. This Panel was cautioned that it should not accept a Joint Submission as to Penalty where the penalty would compromise the integrity of the process thereby causing the public to lose trust in the College's ability to self-regulate.

The Panel recognized that Joint Submissions of this type are an important part of all levels of justice and that in the context of a discipline proceeding it is important that members can be reasonably assured when they enter into an agreement with the College that it will usually be accepted by the Discipline Committee.

Any penalty should address five important issues: protection of the public, maintaining the reputation of the profession, general deterrence, specific deterrence and rehabilitation. The Panel considered the aggravating circumstance of this case, namely, the nature of the offence and the mitigating factors which included, Mr. Patel's plea of guilty, that this was his first offence and that he had been cooperative.

The Panel concluded that the penalty being jointly submitted was both a serious penalty and appropriate having regard for the facts of this case. The Panel sought clarification as to who was to pay the costs associated with the assessments and reports required under the penalty and was advised that this was to be Mr. Patel's responsibility. The Panel requested that independent legal counsel draft language to be included in the penalty to clarify that matter as well as to clarify the intent of the parties with regard to certain aspects of the penalty. The proposed revised wording was provided to counsel for both parties for consideration and the parties agreed that the proposed wording was acceptable to them. As a result, the Panel ordered the following penalty and costs:

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7. The cost of any assessment or report required by this order shall be borne by Mr. Patel.
8. The terms, conditions and limitations set out in paragraphs 4, 5 and 6 herein will be removed from Mr. Patel's certificate of registration once the Registrar is satisfied that they have been fulfilled.

9. Mr. Patel shall pay to the College a portion of its costs in the matter in the amount of \$2500.00 to be paid in full within twelve (12) months of the date of the hearing.