

DISCIPLINE COMMITTEE  
OF THE COLLEGE OF CHIROPODISTS OF ONTARIO

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| PANEL: | Jamie Maczko, Chair<br>Wilhelmina Gonzales<br>Sousan Eissabigloo | Professional Member<br>Public Member<br>Public Member |
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BETWEEN:

COLLEGE OF CHIROPODISTS  
OF ONTARIO

)  
)  
) Mr. Bernard LeBlanc  
) for the College of  
) Chiropodists  
) of Ontario  
)

- and -

OMAR QURESHI

)  
) Mr. Shahzad Siddiqui  
) for Mr. Omar Qureshi  
)

) Heard: October 3, 4 and 5, 2012;  
) April 16, 17, 18 and 19, 2013  
)

Also present at the hearing were:

Mr. Brian Gover – Independent Legal Counsel to the Panel  
Ms. Judy Cohen – Complaints Officer  
Mr. Ray MacDonald – Court Reporter

DECISION AND REASONS

Introduction

A hearing before a panel of the Discipline Committee ("Panel") of the College of Chiropodists of Ontario ("College") was held on October 3, 4 and 5, 2012 and April 16, 17, 18 and 19, 2013. The hearing concerned allegations of professional misconduct against a member of the College, Mr. Omar Qureshi ("Member"). The College has a mandate to regulate the practice of the profession of chiropody and to govern its members and, in so doing, serve and protect the public interest.

On October 3, 2012, the Member denied the allegations, both parties' counsel made opening statements, and Mr. LeBlanc began presenting the College's case. The Panel then heard the testimony of four "fact witnesses": Mr. Ian Coady, Mr. Michael Gallegher, Ms. Anna Muller-Cheng and Ms. Melissa Haig. Mr. Coady, Mr. Gallagher and Ms. Muller-Cheng are teachers employed by the Durham Region Catholic School Board. Ms. Haig is a consultant in Sun Life Financial's investigative services unit.

Mr. LeBlanc then sought to qualify Ms. Anna Georgiou as an expert witness as to the standards of practice of the profession generally, and more particularly concerning appropriate billing practices and office policies. Ms. Georgiou is a former member of the Council of the College of Chiropractors of Ontario. In fact, she has served as both its Vice President and its President.

On October 4 and 5, 2012, the Panel heard evidence and submissions concerning the admissibility of Ms. Georgiou's expert opinion evidence. In order to permit the parties to take informed positions as to Ms. Georgiou's suitability to act as an expert witness, each of the panel members disclosed some degree of acquaintance with Ms. Georgiou.

On October 10, 2012, the Panel delivered its ruling as to whether Ms. Georgiou should be permitted to testify as an expert witness for the College. The Panel concluded that due to a number of factors, including the Panel's personal acquaintance with Ms. Georgiou, her current involvement with at least two College committees, and the fact she was Vice-President of the College in 2009 when the alleged incidents involving Mr. Qureshi took place and President when the allegations were referred to Discipline in 2010, Ms. Georgiou should be disqualified from offering expert opinion evidence due to the fact that her testimony would create an appearance of bias.

The Panel based its decision on the following test: what would an informed person, viewing the matter realistically and practically, and having thought the matter through, conclude? In our view, such a reasonable person would conclude that due to our

acquaintance with Ms. Georgiou and her various roles at the College during the relevant times, the Panel may be unable to objectively assess her evidence. The Panel therefore excluded Ms. Georgiou's proposed evidence on the basis that if admitted, it could or would create an appearance of bias (or, as the cases to which we were referred put it, a "reasonable apprehension of bias"). The Hearing was adjourned to allow the College the opportunity to secure a new expert witness.

The Hearing resumed on April 16, 2013. Mr. LeBlanc called Mr. Tony Young, who had been retained in the interim to provide expert evidence. The Panel ruled that Mr. Young was qualified to give expert opinion evidence, and received both his testimony and his report (Exhibit 8). The College then closed its case.

As part of the defence case, Mr. Siddiqui sought to call a chiropractor, Dr. Kim Ross, as an expert witness as to the standards of practice of the chiropractic profession. Mr. LeBlanc objected to Dr. Ross being permitted to give expert opinion evidence in this respect. The Panel ruled that Dr. Ross is not qualified to provide expert opinion evidence as to the standard of practice of the profession of chiropractic.

On April 17 and 18, 2013, the Panel heard the evidence of Mr. Qureshi. The defence then closed its case and final submissions were heard on April 19.

### The Allegations

The allegations against the Member were set out in the statement of allegations contained in the Notice of Hearing, dated September 6, 2011 ("Notice of Hearing"). The Notice of Hearing was entered as Exhibit 1.

The allegations in respect of the Member's conduct were as follows:<sup>1</sup>

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<sup>1</sup> Please note that aspects of the statement of allegations were withdrawn during the hearing at the request of College counsel. As reflected here, those aspects of the statement of allegations have been struck through.

1. Omar Qureshi was, at all material times, a chiropodist registered to practice chiropody in the province of Ontario.
2. In or about October, 2009, Mr. Qureshi organized and presented "Lunch and Learn" sessions for teachers at various schools, including schools in Durham Catholic School Board.
3. As inducements for receiving Mr. Qureshi's services and purchasing orthotics prescribed by Mr. Qureshi, Mr. Qureshi, directly or indirectly, ~~provided free lunches and~~ offered a free pair of orthopaedic shoes to attendees. Mr. Qureshi thereby engaged in professional misconduct within the meaning of paragraphs 2 (Failing to meet or contravening a standard of practice of the profession) and 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) of section I of Ontario regulation 750/93 under the *Chiropody Act, 1991*.
4. Mr. Qureshi invited attendees at these sessions to have "one on one" chiropody assessments on site, upon completion of the presentation, and Mr. Qureshi in fact performed a number of such assessments. Mr. Qureshi thereby engaged in professional misconduct within the meaning of paragraphs 2 (Failing to meet or contravening a standard of practice of the profession) and 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) of section I of Ontario regulation 750/93 under the *Chiropody Act, 1991*.

5. Mr. Quereshi purported to perform chiropody assessments for attendees, and issued prescriptions for orthotics for attendees, without:

- a. taking an adequate history;
- b. performing an adequate chiropody assessment;
- c. providing adequate privacy or confidentiality; or
- d. making adequate records.

6. Mr. Quereshi thereby engaged in professional misconduct within the meaning of paragraphs 2 (Failing to meet or contravening a standard of practice of the profession), 17 (Failing to keep records as required by the regulations) and 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) of section I of Ontario regulation 750/93 under the *Chiropody Act, 1991*.

~~7. Mr. Qureshi submitted accounts to attendees and their insurers that did not identify fees or charges for the orthotics that he prescribed. Mr. Qureshi thereby engaged in professional misconduct within the meaning of paragraphs 2 (Failing to meet or contravening a standard of practice of the profession), 17 (Failing to keep records as required by the regulations), 21 (Submitting an account or charge for services that the member knows is false or misleading), 23 (Failing to notify the patient of the fees charged for the member's services prior to rendering the services to the patient), 25 (Failing to itemize an account for professional services, ... ii. if the account includes a commercial laboratory fee or orthotics fee) and 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) of section 1 of Ontario regulation 750/93 under the *Chiropody Act*, 1991.~~

8. Mr. Qureshi used foam box impressions or paper tracing to cast orthotics. Mr. Qureshi thereby engaged in professional misconduct within the meaning of paragraphs 2 (Failing to meet or contravening a standard of practice of the profession) and 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) of section 1 of Ontario regulation 750/93 under the *Chiropody Act*, 1991.

9. Mr. Qureshi prescribed two (2) pairs of orthotics for approximately thirty (30) patients rather than prescribing one (1) initially, and later following up to determine whether a second pair was required after the patient tried the first pair. Mr. Qureshi thereby engaged in professional misconduct within the meaning of paragraphs 2 (Failing to meet or contravening a standard of practice of the profession), 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) and 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) of section 1 of Ontario regulation 750/93 under the *Chiropody Act*, 1991.

10. Mr. Qureshi submitted receipts for insurance claim purposes indicating that the client paid for the services and/or products when in fact the client had not yet done so. Rather, the client only paid for the services and/or products once



they received cheques from their insurer. The client would therefore receive the service and/or product before paying for it. In addition, Mr. Qureshi knew or ought to have known that false records were being submitted to insurers.

11. Mr. Qureshi thereby engaged in professional misconduct within the meaning of paragraphs 2 (Failing to meet or contravening a standard of practice of the profession), 17 (Failing to keep records as required by the regulations), 21 (Submitting an account or charge for services that the member knows is false or misleading), 23 (Failing to notify the patient of the fees charged for the member's services prior to rendering the services to the patient) and 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) of section I of Ontario regulation 750/93 under the *Chiropractic Act, 1991*.

#### Member's Plea

The Member denied all of the allegations set out in the Notice of Hearing. As noted previously, during the hearing, College counsel sought and obtained leave from the Panel to withdraw an aspect of paragraph 3<sup>2</sup> and the entirety of paragraph 7 of the statement of allegations.

### Decision and Reasons

The Panel found that the Member engaged in the forms of professional misconduct alleged in paragraphs 3, 4, 5/6, 8, 9, and 10/11 of the statement of allegations set out in the Notice of Hearing (Exhibit 1). For ease of reference, and to assist the reader in understanding our findings, those paragraphs are reproduced below. In making each of

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<sup>2</sup> In effect, the words "provided free lunches and" were deleted from paragraph 3.

these findings, the Panel was satisfied that the College met the standard of proof or on a balance of probabilities that is applicable in a professional disciplinary proceeding.

Paragraph 3:<sup>3</sup>

As inducements for receiving Mr. Qureshi's services and purchasing orthotics prescribed by Mr. Qureshi, Mr. Qureshi, directly or indirectly, offered a free pair of orthopaedic shoes to attendees. Mr. Qureshi thereby engaged in professional misconduct within the meaning of paragraphs 2 (Failing to meet or contravening a standard of practice of the profession) and 33 (Engaging in conduct or performing an act, in the course of practicing the profession, that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional) of section 1 of Ontario regulation 750/93 under the *Chiropractic Act*, 1991.

The Panel found that Mr. Qureshi engaged in professional misconduct by

- i. Failing to meet or contravening a standard of practice of the profession; and
- ii. 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

in that, as inducements for receiving his services and purchasing orthotics, that he prescribed, Mr. Qureshi directly or indirectly, offered a free pair of orthopaedic shoes to attendees.

Ian Coady, Michael Gallagher, and Anna Muller-Cheng, all teachers employed by the Durham Region Catholic School Board, were called as witnesses by College counsel. They were credible witnesses who gave thoughtful, honest and straightforward answers to questions posed by both College counsel and Mr. Siddiqui, counsel for Mr. Qureshi. The teachers did not exhibit any undue leanings toward the College, and by giving their evidence, stood to gain nothing from either of the parties. Further, each of these

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<sup>3</sup> This is as Paragraph 3 reads following deletion of the words "provided free lunches and" in the second line.



witnesses corroborated the evidence of the other two. Where there was inconsistency, the Panel looked at the totality of the evidence of the witnesses and assessed the impact of the inconsistency in that evidence.

The Panel believed that to some degree, Mr. Qureshi may have been misled or manipulated in these Lunch and Learn business opportunities by his employer, Mr. Naqvi. There were instances when Mr. Qureshi's evidence that he did not know or was not aware that free pairs of orthopaedic shoes had been offered to the attendees seemed plausible. But, the Panel concluded that as a chiropodist working for Medical Orthopedics, Mr. Qureshi ought to have known that the teachers had been told that free orthopedic shoes were part of these orthotic transactions. Common sense, coupled with the witnesses' evidence, led the Panel to the conclusion that "willful blindness" could not amount to a defence to the allegations of professional misconduct.

The evidence and common sense caused the Panel to conclude that Mr. Qureshi knew or ought to have known that the people who attended the Lunch and Learn sessions were motivated to be there because they were offered free pairs of orthopaedic shoes, either by himself or by Mr. Naqvi, who was both the owner of Medical Orthopedics, and the only other individual who was present at the Lunch and Learn sessions. Surprisingly, both Mr. Qureshi and Mr. Naqvi denied any knowledge of the free footwear being offered to the teachers. All three teacher witnesses stated that they were told that free shoes were part of the orthotic transactions. Mr. Gallagher and Ms. Muller-Cheng were referred to Finn Comfort Shoe website. Mr. Gallagher also ordered a pair of running shoes via a magazine with either Mr. Quershi or Mr. Naqvi, and Mr. Coady was referred to a Softwalk shoe store for free shoes. All three teachers testified that they did

not pay for their new footwear. The Panel was satisfied that the orthopaedic shoes were inducements for receiving Mr. Qureshi's services and purchasing the orthotics that he prescribed.

Paragraph 4:

Mr. Qureshi invited attendees at these sessions to have "one on one" chiropody assessments on site, upon completion of the presentation, and Mr. Qureshi in fact performed a number of such assessments. Mr. Qureshi thereby engaged in professional misconduct within the meaning of paragraphs 2 (Failing to meet or contravening a standard of practice of the profession) and 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) of section I of Ontario regulation 750/93 under the *Chiropody Act, 1991*.

The Panel found that Mr. Qureshi engaged in professional misconduct by

- i. Failing to meet or contravening a standard of practice of the profession; and
- ii. Engaging in conduct or performing an act, in the course of practicing the profession, that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonorable or unprofessional,

in that Mr. Qureshi invited attendees at these sessions to have "one on one" chiropody assessments on site, upon the completion of the presentation and that he in fact performed a number of such assessments.

Mr. Young stated that a school was not an appropriate place to conduct an assessment as it is a public facility, and therefore privacy and confidentiality could easily be compromised. The teachers should have been given options such as being referred to the Medical Orthopedics clinic or advised to see a chiropodist of their own choice. The Panel therefore makes multiple findings of professional misconduct in relation to this allegation in that they were conducted on site.

Ms. Muller-Cheng, Mr. Coady and Mr. Gallagher all testified that chiropody and orthotic

assessments were performed by Mr. Qureshi at their respective schools, beginning immediately after the Lunch and Learn sessions. These assessments took place either in the library or photocopy room without proper privacy or confidentiality. Mr. Qureshi performed very rudimentary and rather rushed (on average, fifteen minute long) biomechanical assessments. He then used a box foot impression system to obtain their biomechanical foot measurements. In view of the multiple number of patients whom Mr. Qureshi had to assess, the Panel concluded that these assessments were hastily executed. In fact, on both October 7 and 9, 2009 he saw numerous patients each afternoon, at an average of 15 minutes per assessment.

Mr. Young gave expert opinion evidence that when performed according to standards, the average chiropody orthotic assessment would usually take about 30 to 45 minutes per patient. Mr. Young also gave evidence that foam box impressions do not comply with the College's orthotics standards. The use of the foam box method was demonstrated and explained by the College's expert and Mr. Qureshi himself. The process appeared to the Panel to be much faster and a less accurate method of measurement when compared to the plaster of paris method. Although only three teachers were called as College witnesses to testify that their assessments were made after the Lunch and Learn presentation, the Panel considered documentary evidence and was satisfied that it was appropriate to make multiple findings of professional misconduct in that a number of such assessments took place based on upon documents contained in Exhibit 2, the Joint Document Brief. These documents included business records such as insurance claim forms submitted by a number of teachers who had attended one of the Lunch and Learn presentations.

Paragraphs 5/6:

Mr. Qureshi purported to perform chiropody assessments for attendees, and issued prescriptions for orthotics for attendees, without:

- a. taking an adequate history;
- b. performing an adequate chiropody assessment;
- c. providing adequate privacy or confidentiality; or
- d. making adequate records.

Mr. Qureshi thereby engaged in professional misconduct within the meaning of paragraphs 2 (Failing to meet or contravening a standard of practice of the profession), 17 (Failing to keep records as required by the regulations) and 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) of section I of Ontario regulation 750/93 under the Chiropody Act, 1991.

The Panel found that Mr. Qureshi engaged in professional misconduct by

- i. Failing to meet or contravening a standard of practice of the profession;
- ii. Failing to keep records as required by Part III of O. Reg 203/94 and
- iii. 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.

in that Mr. Qureshi performed chiropody assessments for attendees, and issued prescriptions for orthotics for attendees, without:

- a. taking an adequate history;
- b. performing an adequate chiropody assessment;
- c. providing adequate privacy or confidentiality; or
- d. making adequate records.

Mr. Coady, Mr. Gallagher and Ms. Muller-Cheng gave compelling witness evidence that intake forms were completed, and one by one, they were seen and assessed by Mr. Qureshi either at the library or the photocopy room and foam box impressions were taken. Mr. Qureshi issued prescriptions for two (2) pairs of orthotics for each witness.

Mr. Naqvi stated that the orthotics patient records were kept at the premises of Mr.

Naqvi's company, Medical Orthopedics, with access provided to Mr. Qureshi. As College counsel pointed out, while Mr. Qureshi claimed that he was promised and would be allowed access to the records for possible follow-up, he clearly had no means of enforcing it, particularly in the absence of any written agreement with Medical Orthopedics. Mr. Qureshi himself admitted on examination that in multiple respects, he did not keep records as required by the College's Record Keeping Regulation. Mr. Young, the expert witness, stated that the intake records gave insufficient information, and that chiropody assessments should be performed at the practitioner's office to ensure privacy and allow for a proper biomechanical assessment to be performed and clear, easy access to patient records for follow-up. Mr. Young further indicated that he never used foam box impressions as they simply do not comply with the standards of practice of the profession. In the absence of the evidence of a qualified expert witness called by the defence, Mr. Young's evidence is uncontroverted.

In cross-examination, Mr. Qureshi agreed that he was aware of the College's Record Keeping Regulation.<sup>4</sup> He admitted that in relation to the patients who attended the one-on-one sessions, he did not keep financial records, patient health records, or written consents. According to Ontario Regulation 203/94, section 17 (4) "The member shall be personally responsible for all things recorded in relation to a patient, including all treatments, orders, advice and referrals and the member responsible and author of the record should both be identified in the record." Mr. Qureshi admitted that he did not comply with these requirements.

Paragraph 8:

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<sup>4</sup> Part III (ss. 13 – 20) of Ontario Regulation 203/94.

It is important to repeat that in the absence of expert opinion evidence called on Mr. Qureshi's behalf, the evidence of Mr. Young, was uncontroverted as it relates to the orthotics standard. The use of foam box impressions does not meet that standard.

Paragraph 9:

Mr. Qureshi prescribed two (2) pairs of orthotics for approximately thirty (30) patients rather than prescribing one (1) initially, and later following up to determine whether a second pair was required after the patient tried the first pair. Mr. Qureshi thereby engaged in professional misconduct within the meaning of paragraphs 2 (Failing to meet or contravening a standard of practice of the profession), 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) and 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) of section I of Ontario regulation 750/93 under the *Chiropractic Act, 1991*.

The Panel found that Mr. Qureshi engaged in professional misconduct in

- i. Failing to meet or contravening a standard of practice of the profession;
- ii. 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;
- iii. 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.

in that he prescribed two (2) pairs of orthotics for approximately thirty (30) patients rather than prescribing one (1) initially and later following up to determine whether a second pair was required after the patient tried the first pair.

Mr. Young testified that he never would order two (2) pairs of orthotics for a new patient. He would have the patient try the first pair to be sure that the patient was satisfied with the results, and then come back for a second pair. The Panel accepts that this is the relevant standard of practice.



Mr. Qureshi admitted in cross-examination that he did not comply with the Orthotics Standards of Practice<sup>6</sup>, in that having taken foam box impressions, he did not fit his patients orthotics to ensure that the fit of the device he prescribed met the prescription, and fit the contours to the patients' feet. He did not provide advice/guidelines to his patients, such as for developing tolerance and acceptance of the devices, and the time frames to achieve potential results. In fact, he admitted that he did not meet any of the requirements stipulated by Section 4, numbers 1 through 5 of the Orthotics Standards of Practice.

Our findings of professional misconduct in this respect are based on the evidence of the three teachers and the documentary evidence.<sup>7</sup>

Paragraphs 10/11:

Mr. Qureshi submitted receipts for insurance claim purposes indicating that the client paid for the services and/or products when in fact the client had not yet done so. Rather, the client only paid for the services and/or products once they received cheques from their insurer. The client would therefore receive the service and/or product before paying for it. In addition, Mr. Qureshi knew or ought to have known that false records were being submitted to insurers.

Mr. Qureshi thereby engaged in professional misconduct within the meaning of paragraphs 2 (Failing to meet or contravening a standard of practice of the profession), 17 (Failing to keep records as required by the regulations), 21 (Submitting an account or charge for services that the member knows is false or misleading), 23 (Failing to notify the patient of the fees charged for the member's services prior to rendering the services to the patient) and 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) of section I of Ontario regulation 750/93 under the *Chiropody Act, 1991*.

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<sup>6</sup> The Orthotics Standard of Practice was filed as Exhibit 7. The relevant portion of the standard is found on page 3, in Section 4.

<sup>7</sup> Exhibit 2, Tab 2, page 1, showing tabulated information on 30 patients, names listed and service claimed (i.e., orthotics x 2).

The Panel concluded that a finding of professional misconduct is not warranted regarding the allegation that Mr. Qureshi "submitted receipts for insurance claim purposes indicating that the patient paid for the services and/or products when in fact the patient had not yet done so. The patient only paid for the services and/or products once they received cheques from their insurer."

The Panel concluded that as a chiropractor and an employee of Medical Orthopedics, Mr. Qureshi had a professional obligation to understand his employer's billing procedures. The Member therefore knew or ought to have known that false records were being submitted to insurers. Consequently, in relation to these paragraphs of the statement of allegations, findings of professional misconduct are made for:

- i. Failing to meet or contravening a standard of practice of the profession  
Failing to keep records as required by the regulations (Part III of O. Reg 203/94)
- ii. Failing to notify the patient of the fees charged for his services prior to rendering the services to the patient, and
- iii. 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.

As stated previously, willful blindness affords Mr. Qureshi no defence in these proceedings. The Panel has accepted that the Member was not involved with billings in that he did not submit receipts for insurance claim purposes indicating that the patient paid for the services and/or products when in fact the patient had not yet done so. As stated earlier, the patients only paid for the services and/or products once they received cheques from their insurer.

Mr. Qureshi knew that false records were being submitted to insurers. In the case of Muller-Cheng, she signed her extended insurance form without completing section 3.

Someone else filled it out, and sent it to the insurer, Sunlife Financial. Ms. Muller-Cheng said the provider was taking care of it, the same person who did the casting. In the case of Mr. Gallagher, he sent the insurance form, orthotic invoice, and Mr. Qureshi's assessment invoice to Sunlife himself.

If Mr. Qureshi was not actually part of the fraudulent activity, he was certainly aware that it was happening. He clearly knew that false records, and his invoices marked as being paid, were being submitted to their insurers for his services. He also knew that the teachers had not paid him for his services at the time of their assessments. During his evidence, Mr Qureshi stated that he was getting paid at the end of the month by Medical Orthopedics according to the number of patients he assessed during the month. The fact that Mr. Qureshi did not do billings affords him no defence: it does not excuse the fact that he allowed a non-regulated individual to bill for his services, keep his records, and basically perform many of the functions that he as a chiropractor should have done himself. It was not open to him to abdicate his professional responsibilities in that manner.

I, **Jamie Maczko**, sign this decision and reasons for the decision as Chair of this Discipline panel and on behalf of the members of the Discipline panel as listed below.

  
Jamie Maczko, Chair

Date: June 13, 2013.

Panel Members:

Jamie Maczko, Chair  
Wilhelmina Gonzales  
Sousan Eissabigloo

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

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| PANEL: | Jamie Maczko, Chair | Professional Member |
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) Mr. Bernard LeBlanc  
) for the College of  
) Chiropodists  
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- and -

OMAR QURESHI

)  
) Mr. Shahzad Siddiqui  
) for Mr. Omar Qureshi  
)  
) Mr. Brian Gover,  
) Independent Legal Counsel  
)

**AMENDED DECISION AND REASONS – PENALTY AND COSTS**

**Introduction**

In its Decision and Reasons, released to the parties on June 12, 2013, the Panel found Mr. Qureshi (the "Member") guilty of the forms of professional misconduct alleged in paragraphs 3, 4, 5/6, 8, 9, and 10/11 of the statement of allegations set out in the Notice of Hearing, which was Exhibit #1 in the hearing.

The Panel found that the Member thereby engaged in professional misconduct within the meaning of section 1 of Ontario Regulation 750/93 under the *Chiropody Act, 1991*, and specifically in relation to paragraphs

- 2 (Failing to meet or contravening a standard of practice of the profession)

- 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)
- 17 (Failing to keep records as required by the regulations)
- 21 (Submitting an account or charge for services that the member knows is false or misleading),
- 23 (Failing to notify the patient of the fees charged for the member's services prior to rendering the services to the patient) and
- 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).

The hearing reconvened on July 16, 2013 in order for the Panel to hear the parties' submissions on penalty. The Member was not present. His counsel, Mr. Siddiqui, explained that the Member's wife has experienced complications in a pregnancy. Both parties were content that the hearing on penalty and costs take place in the Member's absence.

#### **Parties' Submissions on Penalty and Costs**

In their submissions, both Mr. LeBlanc and Mr. Siddiqui dealt with the issues of penalty and costs together. Both counsel referred the Panel to cases in support of their submissions. The Panel appreciates their assistance.

On behalf of the College, Mr. LeBlanc referred us to the principles of penalty, which are denunciation, general deterrence, specific deterrence, rehabilitation (sometimes referred to as "remediation"), protection of the public and the totality principle.<sup>1</sup>

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<sup>1</sup> The totality principle holds that where, as here, a professional has been found to have engaged in numerous forms of professional misconduct, the aggregate penalty imposed should not be so harsh as to crush the prospects of the Member's rehabilitation and re-entry into the profession.

Mr. LeBlanc also identified a number of aggravating factors, including the Member's apparent choice to practice what Mr. LeBlanc called "drive by chiropody" by deliberately structuring his practice so as to abdicate his professional responsibilities. This was by design, Mr. LeBlanc contended, in order to allow the Member to "push through" as many patients as he could. However, the Member provided substandard care to the patients. They were not properly assessed, and without proper assessment, there cannot be proper care.

In support of his submission that the Panel should make an Order requiring the Member to pay a portion of the costs and expenses incurred by the College in legal fees and in investigating this matter and conducting the hearing, Mr. LeBlanc filed a summary setting out the College's costs and expenses in relation to this matter. This summary, which became Exhibit 1 on the penalty and costs hearing, indicated that the College's total costs and expenses in relation to this matter are \$131,980.65. This amount was not challenged or questioned by Mr. Siddiqui. Mr. LeBlanc pointed out that this amount does not include the portion of the hearing that related to the Member's successful challenge to the admissibility of the expert opinion evidence of Anna Georgiou.

It was Mr. LeBlanc's submission on behalf of the College that the Panel's Order as to penalty and costs should:

- Require the Member to appear before the Panel to be reprimanded;
- Direct the Registrar to suspend the Member's certificate of registration for a period of four (4) months, one (1) month of which would be suspended if the Member undertakes at his own expense and completes, to the satisfaction of the Registrar, courses in recordkeeping, ethics and practice management;
- Direct that the suspension of the Member's certificate of registration take effect one (1) month after the final disposition of this matter;



- Direct the Registrar to impose terms, conditions and limitations on the Member's certificate of registration, requiring him to undertake at his own expense and complete, to the satisfaction of the Registrar, courses in recordkeeping, ethics and practice management; and
- Require the Member to pay the College the sum of \$40,000 in order to partially reimburse the College for its legal costs and expenses, and its costs and expenses incurred in investigating the matter and in conducting the hearing.

On behalf of the Member, Mr. Siddiqui submitted that the Panel's Order as to penalty and costs should take into consideration mitigating factors such as the fact that the Member had no prior discipline history and also the Member's actions in going "above and beyond his professional duty" in taking care of a patient who had received orthotics from an individual who had fraudulently issued prescriptions in the Member's name and provided orthotics based on those prescriptions. Mr. Siddiqui submitted that these actions by the Member upheld the prestige of the chiropody profession and amounted to evidence of good character.<sup>2</sup>

Mr. Siddiqui made the following submissions regarding the elements of the Panel's Order as to penalty and costs in this matter:

- The Member does not oppose a requirement that the Member appear before the Panel to be reprimanded, but the reprimand should be "light in nature";
- The suspension of the Member's certificate of registration should be no longer than two (2) months; and

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<sup>2</sup> Mr. LeBlanc disputed this characterization of the evidence pertaining to the Member's actions. The Panel's independent legal counsel, Mr. Gover, advised us that while this does not constitute evidence of good character in the traditional sense in that it is not evidence of the Member's general reputation in the community, the Panel could take it into consideration as a mitigating factor in determining the appropriate Order as to penalty and costs.

- The amount of costs sought by the College (\$40,000) is excessive and not in line with the parties' expectations. In making this submission, Mr. Siddiqui pointed out that heretofore, the range of costs awarded to the College by Discipline panels has been between \$2,500 and \$8,000.

### **Decision on Penalty and Costs**

After deliberation and with the benefit of submissions from counsel for the parties and advice of its independent legal counsel, the Panel orders as follows:

1. The Member is required to appear before the Panel on a date to be set by the Registrar in order to be reprimanded, the fact of which will be recorded on the College's register.
2. The Registrar is directed to suspend the Member's certificate of registration for a period of four (4) months, commencing on a date to be set by the Registrar but in any event it must begin no later than ten (10) months from the date on which the Panel's order becomes final. The fourth month of this period of suspension will be suspended in the event that the Member successfully completes the courses specified in paragraph 4, below, prior to the beginning of the third month of the suspension.
3. The Registrar is directed to impose the following terms, conditions and limitations on the Member's certificate of registration:
  - i. For a period of two (2) years following completion of the suspension referred to in paragraph 2, above, and on the following basis, the Member's practice shall be supervised. The terms of the supervision are as follows:

1. The supervisor shall be appointed by the Registrar and shall be a professional member of the College of Chiropodists of Ontario;
  2. The supervisor shall visit with the member every four (4) months at the Member's site(s) of practice or via telephone, a total of six visits. There must be no less than four (4) site visits;
  3. The supervisor shall determine the length of each visit;
  4. In conducting site visits, the supervisor shall engage the Member in discussions regarding jurisprudence, ethics and ethical issues arising, practice management, record keeping, chart audits, orthotic and footwear regulation compliance, and practice site overview;
  5. The Member shall pay the costs of the supervision and shall fully reimburse the College for these costs within thirty (30) days of receiving an invoice from the College for the supervision; and
  6. This term, condition or limitation shall be removed from the Member's certificate of registration when it has been complied with.
4. Within six (6) months of the completion of the suspension referred to in paragraph 2 above, the Member shall successfully complete, at his own cost, courses acceptable to the Registrar in relation to (i) Ethics and Jurisprudence, (ii) Practice Management, and (iii) Record-keeping. This term, condition or limitation shall be removed from the Member's certificate of registration when it has been complied with.

5. The Member shall pay to the College costs in the amount of \$38,000.00, payment of which must be made in full within sixteen (16) months of the completion of the period of suspension referred to in paragraph 2 above. Payments shall be made monthly for sixteen (16) consecutive months in increments of no less than \$2,375.00, and the first of these monthly payments shall be made no later than the first day of the month following completion of the period of suspension, and subsequent payments shall be made no later than the first day of the following month.

### **Reasons for Decision**

In making its decision as to penalty and costs, the Panel took the following considerations into account.

#### *Penalty:*

In considering the principles of penalty, which are general and specific deterrence, protection of the public, denunciation, rehabilitation or remediation, as well as the "totality" principle, the Panel decided that since an order for costs, supervision, monitoring, and courses to be taken will be imposed, the imposition of a fine would be excessive and would crush the prospects of the Member's rehabilitation and re-entry into the profession. The Panel noted that Mr. LeBlanc did not ask for a fine.

The Panel ordered that Mr. Qureshi receive an oral reprimand in accordance with the requirements of legislation.<sup>3</sup> However, it was agreed by the parties' counsel and the Panel's independent legal counsel that reprimand by teleconference is also acceptable.

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<sup>3</sup> The Panel notes that s. 51(2)4 of the *Health Professions Procedural Code* (which sets out possible sanctions in consequence of findings of professional misconduct) provides that the Panel may make an order "(r)equiring the member to appear before the panel to be reprimanded".

The principles of general and specific deterrence, protection of the public and denunciation called for a relatively lengthy suspension of the Member's certificate of registration. The Panel concluded that a four-month suspension was necessary, one month of which would be suspended provided that the required courses were completed. In coming to this conclusion, the Panel took the following considerations into account:

- (a) The public has to be assured that the College takes the multiple findings of professional misconduct (which have been thoroughly proven in this case) seriously and that the College is capable of policing the profession and protecting the public.
- (b) The Member and the profession must be sent a message, in the strongest of terms, that this type of behaviour is totally unacceptable.
- (c) The Member engaged in multiple, serious breaches of his professional and ethical obligations. He must be deterred. He must suffer the consequences for his actions to ensure that his behaviour will not re-occur and at the same time, be provided with an incentive and an opportunity for rehabilitation through one month reduction of the effective period of the suspension, upon completion of the requirements set out in the Panel's order.

*Costs:*

In exercising its discretion as to the amount of the cost awarded, the Panel considered numerous factors. The College's total legal costs and expenses as well as the costs in conducting the investigation and hearing amounted to \$131,980.65. This amount was not challenged by Mr. Siddiqui. The Panel concluded that Exhibit 1, which itemized the

College's costs in that amount, was sufficient for the purposes of determining a reasonable costs award in this case. Mr. LeBlanc informed us, and it was not questioned by Mr. Siddiqui, that the amount reflected in Exhibit 1 did not include costs associated with the Member's successful challenge to the admissibility of the expert opinion evidence of Anna Georgiou.

At the end of the hearing, the College was successful in proving that the Member had engaged in numerous forms of professional misconduct. The hearing was lengthy (9 days). While the Member was entitled to deny the allegations and his denial amounts to the absence of a mitigating factor for the purposes of assessing penalty, that denial and its consequences – the length of the hearing and the multiple findings of professional misconduct – are all proper considerations for the Panel when assessing costs. Throughout the hearing, Mr. Qureshi steadfastly denied wrongdoing of any kind.

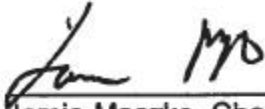
Although the costs award is much greater than most other cost awards made against members of the College, the Panel was guided by the principle that each costs decision turns on the particular facts of the case and the length of the investigation and conduct of hearing, the complexity, multiplicity of allegations involved in the case, and the seriousness of the professional misconduct successfully proven by the College.<sup>4</sup>

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<sup>4</sup> The Panel notes that in the Vivekanand case, one of the decisions of this Discipline Committee referenced in the Member's written submissions, the member was ordered to pay \$75,000.00 in costs. Mr. Vivekanand, (whose certificate of registration was revoked) was found to have engaged in professional misconduct by (1) providing treatment to a patient where he knew or ought to have known that the treatment was ineffective, unnecessary or deleterious, (2) failing to keep records as required by the regulations, (3) falsifying a record relating to his practice, and (4) signing a document containing a false or misleading statement.



I, **Jamie Maczko**, sign this decision and reasons for the decision as Chair of this Discipline panel and on behalf of the members of the Discipline panel as listed below.

  
\_\_\_\_\_  
Jamie Maczko, Chair

Date: October 7, 2013.

Panel Members:

Jamie Maczko, Chair  
Wilhelmina Gonzales  
Sousan Eissabigloo

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

|        |                     |                     |
|--------|---------------------|---------------------|
| PANEL: | Jamie Maczko, Chair | Professional Member |
|        | Wilhelmina Gonzales | Public Member       |
|        | Sousan Eissabigloo  | Public Member       |

BETWEEN:

COLLEGE OF CHIROPODISTS  
OF ONTARIO

- and -

OMAR QURESHI

|   |                           |
|---|---------------------------|
| ) |                           |
| ) |                           |
| ) | Mr. Bernard LeBlanc       |
| ) | for the College of        |
| ) | Chiropodists              |
| ) | of Ontario                |
| ) |                           |
| ) |                           |
| ) | Mr. Shahzad Siddiqui      |
| ) | for Mr. Omar Qureshi      |
| ) |                           |
| ) |                           |
| ) | Mr. Brian Gover           |
| ) | Independent Legal Counsel |

**RULING ON REQUEST TO AMEND DECISION ON PENALTY AND COSTS**

**Introduction**

The Panel released its Decision on Penalty and Costs to the parties on July 25, 2013. Subsequently, on August 20, 2013, College counsel emailed the panel's independent legal counsel (with a copy to the Member's counsel), advising that in the College's view, some aspects of what the Panel ordered are likely unenforceable. In particular, Mr. LeBlanc submitted as follows:

1. Subparagraph 3(a)(i) states that the terms of the supervision shall be set by the Registrar. However, in the College's view, the terms of the supervision must be set by the Discipline Committee as part of the imposition of terms, conditions and limitations, and it is impermissible to delegate such authority to the Registrar.
2. Subparagraph 3(a)(iii) states that in the event that there is a disagreement as to the reasonableness of the terms of supervision or the costs, such disputes

shall be brought back before a panel of the Discipline Committee for determination. However, in the College's respectful view, once the Panel issues a formal, signed Order it is *functus officio*. In essence, any disputes as to the administration of an order would need to be resolved either by way of judicial review (in the event that the member wished to challenge the College's manner of administering the Order, for example) or a further referral of allegations of professional misconduct to the Discipline Committee (in the event that the College was of the view that the member was in breach of his obligations under the Order).

3. Subparagraphs 3(a)(ii), 3(c)(iii) and the last sentence in paragraph 4, which provide for an automatic suspension in the event of non-payment of various costs and expenses, are likely contrary to the principle in *Amerato v. Ontario (Motor Vehicle Dealers Act)*, [2005] O.J. No. 3713 (C.A.) that a licence cannot be revoked (or suspended) without providing the member with a hearing. While admittedly the law is not entirely clear on the point, and the facts are different, the College is concerned that by mandating a suspension in the event of non-payment, the Panel, in the words of *Amerato*, "decided what the consequence of a breach [of the Order] would be without the benefit of a hearing to determine whether the breach had actually occurred and, if so, what the appropriate consequence ought to be [para 32]."

In addition, Mr. LeBlanc submitted that "(b)ecause no final Order has been signed, the College is of the view that the Panel is not yet *functus* and can therefore amend the Order in the event that it wishes to do so."

Subsequently, the Panel received written submissions from both Mr. LeBlanc on behalf of the College, and Mr. Siddiqui, on the Member's behalf. The Panel's ruling follows.

### Ruling

The Panel is not *functus officio* and retains jurisdiction. The Panel has determined that it is appropriate to revisit the Decision on Penalty and Costs by

1. specifying the terms and conditions of supervision and consequences for breaching those terms and conditions;
2. removing the paragraph requiring monitoring of the Member's practice; and
3. removing the provision for automatic suspension of the Member's certificate of registration in consequence of non-payment of costs and expenses (and recognizing that failure to do so would amount to

professional misconduct as defined in Ontario Regulation 750/93<sup>1</sup>), thus complying with the principles set out in *Amerato v. Ontario (Motor Vehicle Dealers Act)*.

### Reasons

As is usually done, in the course of their submissions on penalty and costs, counsel for the parties provided the Panel with a number of cases. The Panel read and considered all of those cases. To a large extent, the Panel patterned the administration of the terms and conditions of supervision and monitoring, as well as the consequences of any breach on one of the cases provided by College counsel, i.e., the *College of Chiropodists of Ontario v. Ivan Moravac*. The Panel contemplated that it involved the same College, and the same Registrar, and since there appeared to be no issues experienced in the administration and execution of the order in the *Moravac* case, it would be practical to adopt it as a precedent in this case. No one drew the Panel's attention to any of the issues College counsel now raises, including the issue of the rule in *Amerato*. However, the Panel considers that if (as it has found) jurisdiction exists to correct any errors rendering the Panel's Order unenforceable, it is appropriate to exercise that jurisdiction and amend that part of the Decision on Penalty and Costs that sets out its Order.

Below we have explained our consideration of the issues pertaining to whether we have jurisdiction to do so (or, to put it negatively, are *functus officio*); whether in following the precedent offered by *Moravac*, we impermissibly delegated the terms of supervision to the Registrar; and whether the Member must be afforded a further hearing before suspending his certificate of registration for non-payment of costs and expenses.

(a) *Jurisdiction/Functus Officio*: The Panel has not issued a signed Order, hence the principle of *functus officio* in *Chandler v. Alberta Association of Architects*<sup>2</sup> does not apply. Counsel for the College provided the Panel with copies of orders made in previous cases that satisfied us that orders are separate from the corresponding decisions and reasons. We have concluded that the practice of issuing a separate order is the final step in the process, the order itself being considered the final document; hence, where there is no order issued as in this case, the tribunal is not *functus officio* and can amend

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<sup>1</sup> This regulation is made under the *Chiropody Act, 1991*, SO 1991, c 2, and is commonly known as the "Professional Misconduct Regulation" for the purposes of this College's members. The Panel notes that s. 1, 36 of the Professional Misconduct Regulation renders a failure to comply with an order of the Discipline Committee an act of professional misconduct for the purposes of clause 51 (1) (c) of the *Health Professions Procedural Code*.

<sup>2</sup> [1989] 2 S.C.R. 848

its reasons to ensure that any resulting order is not unenforceable because of impermissible delegation or denial of hearing rights.

(b) Impermissible Delegation: The Panel acknowledged possible disputes between the parties with respect to the administration of the terms and conditions of supervision and consequences of breach. The Panel deliberated on whether or not revisiting the Decision on Penalty and Costs was *intra vires* and permissible. The Panel was guided by two cases cited by College counsel, i.e., *Law Society of Upper Canada v. Coady*<sup>3</sup>; and *College of Physiotherapists of Ontario v. Bayat*.<sup>4</sup> Therefore, and consistent with the manner in which this issue was addressed in those cases, the terms and conditions relating to supervision are now specified by the Panel, and the consequences on breach have also been revisited.

(c) Consequences of non-payment of costs and expenses: Applying the rule in *Amerato*, the Panel has concluded that it would be inappropriate to order suspension or revocation of the Member's certificate of registration as a consequence of a breach of the order to pay costs and expenses without affording the Member a hearing. Therefore, and consistent with the provisions of the *Regulated Health Professions Act* and regulations dealing with professional misconduct, it will be for the College to initiate an investigation of a further act or acts of professional misconduct, if a breach of the order occurs.

As noted above, the Panel has deleted the term requiring that the Member's practice be monitored. The Panel had included this requirement following the precedent offered by the *Moravac* case, and because it was our view that monitoring could serve to ensure implementation of lessons learned through supervision. After further consideration, the Panel concluded that the end result of monitoring could be achieved through the form of supervision that we have ordered. The Panel was also concerned that the monitoring requirement would cause unnecessary expense to the Member and an undue burden on the Registrar, who would have been responsible for overseeing the process and billing the Member.

Consequently, and contemporaneously with the release of this Ruling, the Panel has released its Amended Decision on Penalty and Costs.

  
Jamie Maczko, Chair

Date: October 7, 2013.

<sup>3</sup> [2005] L.S.D.D. No. 73 (Appeal Panel)

<sup>4</sup> unreported decision of the Discipline Committee, released July 29, 2013

**Panel Members:**

Jamie Maczko, Chair  
Wilhelmina Gonzales  
Sousan Eissabigloo