



**COLLEGE OF CHIROPODISTS ONTARIO**

**PUT YOUR BEST FOOT FORWARD**

**NEWSLETTER ~ Fall ~ 2016**



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## **ANNUAL MESSAGE FROM YOUR COUNCIL PRESIDENT**

Dear Members of the College,

As Council's activities come to a close for the 2016 council year, I would like to remark on some of the engagements we have pursued this year. We have faced a number of challenges and enjoyed a number of successes as we continue to evolve into a stronger and more influential and transparent College.

Building on the success of previous years, we will continue to offer ongoing process of continual improvement for the public and our members. This, coupled with quality of care enhancements for patients, affords us with the necessary tools to enhance care for decades to come.

Our Council has championed several successes over this challenging year, including:

- Driving additional transparency of finances through an independent audit committee.
- Increasing transparency with the public and our members through the release of the agendas ahead of council meetings and increased information on the public register.
- Actively pressuring the Minister for the release of the HPRAC report, through various channels.
- Developing a strategic planning committee that will help drive greater focus on long term strategic plans, which will not only help protect the public but will in the long run assist our own working members.
- Stimulating the process of improving our Council website for both the public and our members. For the public, this will serve, to clarify and strengthen our online presence so that it can be more clear and user friendly
- etc.

When it comes to opportunities for our College and our members, our Council has committed to various initiatives, both current and in the pipeline, that will drive innovation and better serve the public interest.

In light of opportunities, recent ICRC cases point to further areas for improvement. These cases primarily involve issues in infection control, documentation, and the prescribing of orthotics. I strongly urge our membership to review our standards of practice and to take an approach of continual education in these concerns and other key practice areas.

Recent attention in the media has reinforced the material threat of misconduct and the effect that this can have on the reputation of our College and its members and most importantly, the public. We will continue to deal with all complaints in the manner outlined in the Regulated Health Professions Act and make every effort to ensure that best practices are followed and that patient safety remains our ultimate priority. As always, our ICRC/Discipline processes will continue to deal with all complaints effectively and fairly through these required processes.

I am personally very pleased with the progress that we have made this year on a number of important fronts. We have streamlined financially and improved processes, while maintaining a high level of service to both College members and most importantly the patients we serve.

In closing, I wish to thank all members for their time and commitment to the interest of the College throughout the 2015/2016 year. In particular, I wish to thank the Executive Committee, members of Council, volunteers from the membership, the Registrar - Felecia Smith, legal counsel - Alan Bromstein and all other supporting members who remain committed in driving our organization to new heights with respect to efficiency, fairness and quality of care for the public.

Sincerely,

Sohail Mall, M.B.A, B.Sc

## College Membership Information

|                                 |            |
|---------------------------------|------------|
| Total Number of Chiropractors:  | 634        |
| Total Number of Podiatrists:    | 58         |
| <b>Total Number of Members:</b> | <b>692</b> |

Eleven members have thus far resigned in 2016. They are as follows:

Burton, Christine  
Carey, Margaret  
Costanzo, Gregory  
DiLonardo, Michaelangelo  
Goldberg, Robert  
Hartshorn, Dean  
Hoke, Stephen  
Karn, Joanne  
Rogers, Gary  
Smith, Henry  
Wirtz, Brittney

### HPRAC Update

As you are aware, HPRAC provided its report to the Minister of Health in August 2015. The Minister's Office has advised the College that it is not yet able to specify a date for release of HPRAC's report on the chiroprody and podiatry review. The College is awaiting the release of the report and is in regular communication with the Minister's office in that regard. As soon as we hear anything further, we will immediately advise you.

The College is scheduled to meet with the senior policy advisor to the Minister of Health in order to discuss moving forward the release of the report.

### Exploration of Clinic Regulation (Update)

Since early 2015, the College has been part of a special project to explore how to better protect patients through stronger oversight of clinics in Ontario. The Clinic Regulation Working Group conducted research into the issue and held consultations to gather input from our stakeholders. While regulated professionals are subject to strict rules that govern their practice and are accountable to a regulatory college, is the same true for an employer, particularly if the employer is not a regulated health professional? Similarly, what if the employer is an incorporated commercial business? What can you do if you are pressured into inappropriate billing, having support staff provide services that you should be providing or booking more services than a patient requires? What if your employer has not implemented appropriate infection control measures? It has long been a concern that regulated health professionals are oftentimes placed in situations which make it difficult to adhere to required standards of practice, regulations, by-laws or policies or guidelines. The present situation often results in regulated health professionals working in

clinics and being put in a position that could both compromise the quality of care offered to their patients and the regulatory requirements of the health professional.

The Working Group came to a consensus decision to make a submission to the Ministry of Health and Long-Term Care. The submission brings awareness to the gap in public protection that currently exists, discusses alternative solutions, and calls on the Ministry to take action to address the gap.

The submission was formally sent to the Minister of Health and Long-Term Care, Dr. Eric Hoskins, on September 19, 2016. We understand that there are a number of competing priorities for the Ministry, but it is our hope that once they have had an opportunity to review the submission, they will be interested in exploring the issue.

You can read the submission [here](#).

### **Sexual Abuse Task Force Initiative**

As we reported in the last newsletter, in December 2014, Ontario's Minister of Health and Long-Term Care, appointed a task force to begin its review in January 2015. The task force was to make recommendations to the Minister with respect to the prevention of sexual abuse of patients by regulated health professionals. The task force was co-chaired by human rights lawyer, Professor Marilou McPhedran.

On Friday, September 9, 2016, the Sexual Abuse Task Force Report (SATF) was finally released. The initiatives identified by the Ministry for which legislative amendments in the Fall of 2016 will be brought forward include the following:

- Add to the expanded list of acts that will result in the mandatory revocation of a regulated health professional's license
- Remove the ability of a college to allow a regulated health professional to continue to practice on patients of one gender after an allegation or finding of sexual abuse
- Increase fines for health professionals and organizations that fail to report a suspected case of patient sexual abuse to a college
- Increase transparency by adding to what colleges must report on their public register and website
- Clarify the time period after the end of a patient-provider relationship in which sexual relations are prohibited
- Fund patient therapy and counselling from the moment a complaint of sexual abuse is made.

In the immediate term, the government will also engage an expert to work with the province to improve the processes that health regulatory colleges must follow when dealing with sexual abuse complaints, investigations and disciplinary measures.

Ontario will bring forward further measures by winter 2017 to:

- Identify more ways for patients to participate in the complaints, investigation and discipline processes at health regulatory colleges
- Enhance knowledge and education among the public, patients and health professionals.

Another key component of the report is the handling of all sexual abuse complaints from self-regulatory bodies to a central, independent, public agency and separate hearing tribunal. That is a key recommendation that will not be implemented until 2017. The SATF also recommends that the new central, public agency and tribunal would be subject to oversight by an independent Council, similar to the Professional Standards Authority in the UK. The oversight Council would have representatives of government, the health sector, survivors of sexual abuse and advocates in the field.

There will be more information to follow about implementation of the report. If you wish to access the report in its entirety, it may be found at [http://www.health.gov.on.ca/en/common/ministry/publications/reports/sexual\\_health/default.aspx](http://www.health.gov.on.ca/en/common/ministry/publications/reports/sexual_health/default.aspx).

### **Radio Frequency Ablation**

The Technical Committee at the College prepared a report on radio Frequency Ablation. Council accepted the report and approved radio frequency ablation as being within the scope of practice for our members. The report is annexed to this newsletter as Appendix 1

### **Frequency Rhythmic Electrical Modulation System (FREMS)**

The College was asked whether Frequency Rhythmic Electrical Modulation System (FREMS) is a modality that the College approves of. Further, is this form of treatment within the scope of a registered Chiropractor? The Technical Committee researched and reviewed the questions and concluded that according to Ontario regulation 107/96 of the *Regulated Health Professions Act*, frequency rhythmic electrical modulation (FREMS) is a therapeutic modality that falls within the scope of a registered member of the College of Chiropractors of Ontario and can be utilized as a therapeutic modality. The report was approved by Council and is attached as Appendix 2 to this newsletter.

### **Cold Laser Therapy**

The Technical Committee was asked to research whether cold laser therapy was within the scope of practice of our members. The Committee concluded that Cold Laser Therapy /LLLT is within the scope of practice of a registered member of the College of Chiropractors of Ontario. Council accepted the report of the Committee. The report was approved by Council and is attached as Appendix 3 to this newsletter.

### **Platelet Rich Plasma (PRP)**

The Technical Committee was asked to consider whether this should be added to the proposed amended drug list. In this process a member would essentially draw blood from

the patient, spin it down and inject it and apply it to a wound, for example. There are no non- autologous PRP products listed. The problem in members using this lies in harvesting the PRP. Members cannot perform phlebotomy as per the RHPA. We should not consider adding it to our drug list because we would not get it. There is also no clinical data that is convincing. Therefore this will not be added to the drug amendments until the issues around phlebotomy are sorted out. The report was approved by Council and is attached as Appendix 4 to this newsletter.

**NOTE: The College has begun the process to create a guideline for the use of lasers by our members. Stay tuned for further information.**

### **Infection Control Standard of Practice**

This Standard of Practice is extremely important. It is absolutely critical that members read and familiarize themselves with the Standard of Practice and ensure its requirements are incorporated and met into every practice. The Standard can be found on the College's website at: <http://www.cocoo.on.ca/pdfs/standard-infection.pdf>

The Practice Working Group (PWG) is currently reviewing possible amendments to the Standard, including those specifically relating to IPAC's recommendation that biological testing must be done with each use of the autoclave. The College's current Standard indicates that:

*"Monitoring of sterilizers with biological indicators/process challenging devices shall be performed weekly to ensure that the appropriate level of microbial kill is being accomplished. Biological indicators must be placed in the same type of wrapping or pouch that is being used for the instruments for that particular cycle."*

The PWG will be making its recommendations to the Executive Committee and Council will discuss this and make a decision at their **February 24, 2017** meeting.

### **Capping Hotel Expenses for Council and Committee members**

Effective January 1, 2016, and in its continuing effort to ensure fiscal responsibility, the College has adopted a policy that it will reimburse hotel expenses to a maximum rate of \$200.00 per night for the room, excluding any tax or other charges, unless prior approval from the Registrar has been obtained. Council felt that the maximum rate established had achieved a balance and reasonable compromise between providing our volunteers with a reasonable maximum rate and maintaining tight controls on expenses. The College is very grateful to the many members who assist us with various endeavours throughout the year.

## **Public Protection and Transparency**

As reported in our last newsletter, on October 4, 2014, the newly elected Minister of Health, Dr. Eric Hoskins, wrote a letter to all the regulated health Colleges directing the Colleges to be more transparent in all their activities. The Colleges were required to report back to the Minister, no later than December 4, 2014, outlining what initiatives the College had undertaken in the past to be transparent and what activities they intended to undertake in the future. The College responded to the Minister's request on November 27, 2014. The Minister's letter and the College's response maybe found at <http://www.cocoo.on.ca/transparency.html>.

The College continues to focus its efforts on ensuring transparency in all our activities, subject to the requirements of confidentiality in the *Regulated Health Professions Act*. On a going forward basis, the draft agenda for the Council meeting will be now be posted in advance of the meetings. The agenda is subject to change at the meetings. As reported in the last newsletter, the College also amended its by-laws to expand the information reported on the public register.

## **Using the College's Logo on Member's Advertising**

The College is periodically asked whether a member is allowed to use the College logo on any of their advertising mediums. Members are reminded that they CANNOT use the College's logo on any of their materials – the logo belongs to the College.

## **The Strategic Planning and Registrar's Performance and Compensation Committee and the Audit Committee – Two New Standing Committees of the College.**

Council approved two new standing committees of the College - the Strategic Planning and Registrar's Performance and Compensation Committee and the Audit committee. The full description of the two committees can be found on the College's website at <http://www.cocoo.on.ca/pdfs/Bylaws-1.pdf>.

The function of the Strategic Planning and Registrar's Performance and Compensation Review Committee is found in the General By-law:

23.1.03 The Strategic Planning and Registrar's Performance and Compensation Review Committee's responsibilities include, but are not limited to

- i) in relation to its strategic planning function, identifying key strategic goals and actions that in its opinion will need to be taken by Council over the next five years and considering and making recommendations to Council on those goals and actions;
- ii) in relation to the Registrar's performance and compensation review function,

- a) annually conducting a performance review of the Registrar and presenting the results of that review to Council;
- b) annually conducting a compensation review for the Registrar;
- c) with the prior approval of the Executive Committee or Council, engaging a consultant to assist in determining the appropriate compensation [including salary and benefits]for the Registrar, including the performing of a market survey; and
- d) presenting to Council the results of all compensation reviews conducted by the Committee, including a copy of any market survey obtained by the Committee, along with any recommendations it has in connection with changes to the Registrar’s compensation; and
- iii) in relation to all of its functions, studying and making recommendations to Council on

Section 23.2.03 of the By-law outlines the Audit Committee’s responsibilities which include, but are not limited to,

- i) acting in an advisory capacity to Council on the financial affairs of the College and, without limiting the generality of the foregoing, the Committee shall
  - a) review interim financial statements;
  - b) review draft audit reports;
  - c) oversee the implementation of audit recommendations;
  - d) oversee the reserves of the College;
  - e) assist Council in the consideration of the College’s audited financial statements, including meeting with the College's auditors at least once before the audited annual financial statements are presented by the Committee for approval of Council; and
  - f) report at least annually to Council on the financial affairs of the College;
- and
- ii) studying and making recommendations to Council or the Executive Committee on any matter within its responsibility or any other matter referred to it by Council or the Executive Committee.

### **New Website and Database - Strategic Planning and Registrar’s Performance and Compensation Committee**

Council adopted this new Standing Committee to Council. The duties of the Committee are as outlined in its name. There are plans afoot to update the College’s website. The goal is to have it go live early in the New Year. The new website is a stepping stone for a new database. The College is also looking into replacing its current database. This replacement has been needed for many years. Currently we are using Access as the platform and it is inadequate with limited functionality. Once we have a new database, we will be able to do many things on line – annual renewal, payments and registration, quality assurance, updating information. This will all be

done on a secure members section. The budget is not inexpensive because there are annual software fees and a onetime set up fee. However, we are hoping to roll it out over a 1-4 year period. The College is obligated to do a Request for Proposals (RFP) and to obtain 3 quotations for the project. The goal is to be able to present the proposals to Council at their February 2017 meeting. Both these projects are a long time coming and we are excited about the potential that they both bring to the College.

### **Proposed Amendments to the College's Drug Regulation**

The College forwarded to the Ministry its proposed list of amended drugs and substances to be added to the Regulation. As you recall, the College circulated the proposed list to all members and other stakeholders. College Council reviewed all the comments that were received before finally approving a draft list of amended drugs and substances. The College has been in regular contact with the Ministry, responding to their questions in a very timely manner. This is the usual process and the same as when the initial Regulation was put into place. Once all questions have been responded to, the College will receive a redrafted Regulation from legislative counsel at the Ministry. Once we are satisfied that it meets all our requirements, the Regulation will be sealed and processed through the government.

### **Inhalation Standard of Practice**

The College continues to review and amend this Standard of Practice. In fact, the review is really focused on simplifying the process and procedure in one's office based on minimal sedation. The plan is to have the newly amended Standard of Practice brought back to Council at their February 2017 meeting and hopefully it will be finalized. Members who wish to use inhalation in their practice will still need to take the course that will be designed and pass the examination in relation to it.

### **2016 Election for Council**

This year, the election took place in Districts 1&2. The following are the results:

1. District 1 – Jamie Mandlsohn was acclaimed for a first three year term as a chiropractor member on Council.
2. District 2 – Sasha Kozera was acclaimed for a first three year term as a chiropractor member on Council.
3. A call for nomination for a podiatrist member in Districts 1 & 2, combined District 1 went out for the podiatrist member in the 2 districts. No podiatrist member came forward. A second call for nominations was again sent to all podiatrist members in districts 1 & 2. No podiatrist member came forward. A letter was then sent to all podiatrist members. Mr. Stephen Haber came forward and was appointed to Council at the October 21, 2016 meeting..

### **Appointment to Council**

Mr. Adrian Dobrowsky has been appointed to Council as a selected member of Council commencing at the October 21, 2016 meeting. Mr. Dobrowsky is employed by the Michener as a professor in the chiropody program. Mr. Haber was re-appointed to Council for a second 3-year term to Council.

### **Election for Executive Committee Positions**

Mr Sohail Mall was acclaimed for a second term as President of the College. Mr. Stephen Haber was also acclaimed for a second term as Vice-President of the College. Mr. Pete Guy was elected for a second term as a professional member on the Executive. Mr. Tony Merendino and Mr. Jim Daley will be serving their first terms on the Executive Committee.

### **EXECUTIVE**

Sohail Mall, Public Appointee (President)  
Stephen Haber, Podiatrist (Vice-President)  
Jim Daley, Public Appointee  
Pete Guy, Chiropodist  
Tony Merendino, Chiropodist

**The following is the composition for the other statutory committees approved by Council at its October 21, 2016 meeting:**

### **INQUIRIES, COMPLAINTS and REPORTS (ICRC)**

Millicent Vorkapich-Hill, Podiatrist (Chair)  
Riaz Bagha, Chiropodist  
Ed Chung, Podiatrist  
Donna Coyne, Public Appointee  
Jim Daley, Public Appointee  
Khalid Daud, Public Appointee  
Julie De Simone, Chiropodist  
Adrian Dobrowsky, Chiropodist  
Pete Guy, Chiropodist  
Stephen Haber, Podiatrist  
Grace King, Public Appointee  
Sylvia Kovari, Chiropodist, Non-Council  
Sasha Kozera, Chiropodist  
Irv Luftig, Podiatrist  
Sohail Mall, Public Appointee  
Jamie Mandlsohn, Chiropodist  
Cesar Mendez, Chiropodist  
Tony Merendino, Chiropodist  
Neil Naftolin, Podiatrist, Non-Council  
Agnes Potts, Public Appointee  
Nat Rave, Chiropodist, Non-Council

Stephanie Shlemkevich, Chiropodist, Non-Council  
Barbara Sliwa, Chiropodist, Non-Council  
Peter Stavropoulos, Podiatrist  
Ruth Thompson, Chiropodist  
Eddie Yuen, Chiropodist

## **DISCIPLINE**

Cesar Mendez, Chiropodist (Chair)  
Riaz Bagha, Chiropodist  
Ed Chung, Podiatrist  
Donna Coyne, Public Appointee  
Jim Daley, Public Appointee  
Khalid Daud, Public Appointee  
Julie De Simone, Chiropodist  
Adrian Dobrowsky, Chiropodist  
Pete Guy, Chiropodist  
Stephen Haber, Podiatrist  
Grace King, Public Appointee  
Sylvia Kovari, Chiropodist, Non-Council  
Sasha Kozera, Chiropodist  
John Lanthier, Podiatrist, Non-Council  
Irv Luftig, Podiatrist  
Jamie Maczko, Chiropodist, Non-Council  
Sohail Mall, Public Appointee  
Ann-Marie McLaren, Chiropodist, Non-Council  
Jamie Mandlsohn, Chiropodist  
Tony Merendino, Selected Member  
Neil Naftolin, Podiatrist, Non-Council  
Agnes Potts, Public Appointee  
Millicent Vorkapich-Hill, Podiatrist  
Peter Stavropoulos, Podiatrist

## **FITNESS TO PRACTICE**

Peter Guy, Chiropodist (Chair)  
Donna Coyne, Public Appointee  
Stephen Haber, Podiatrist  
Martin Hayles, Chiropodist  
Pauline Looi, Chiropodist  
Cesar Mendez, Chiropodist  
Kim Resmer, Chiropodist, Non-Council

## **PATIENT RELATIONS**

Stephen Haber, Podiatrist (Chair)  
Donna Coyne, Public Appointee  
Sylvia Kovari, Chiropodist, Non-Council

Pauline Looi, Chiropodist  
Sohail Mall, Public Appointee

## **QUALITY ASSURANCE**

Anna Georgiou, Chiropodist, Non-Council (Chair)  
Khalid Daud, Public Appointee  
Julie De Simone, Chiropodist  
Sohail Mall, Public Appointee  
Ann-Marie McLaren, Chiropodist  
Cesar Mendez, Chiropodist, Non-Council  
Millicent Vorkapich-Hill, Podiatrist  
Tony Zamojc, Podiatrist, Non-Council

## **REGISTRATION**

Tony Merendino, Chiropodist (Chair)  
Donna Coyne, Public Appointee  
Stephen Haber, Podiatrist  
Martin Hayles, Chiropodist  
Sasha Kozera, Chiropodist  
Agnes Potts, Public Appointee

### **Staff Changes**

Meghan Hoults, the College's Complaints Officer, is currently on maternity leave. She will be returning to the College in June 2017. The College welcomes Anub Simpson who is replacing Meghan while she is on maternity leave. Anub graduated from York University with a Bachelor's degree and received his law degree from Western Michigan University Cooley Law School. Anub's e-mail is [asimson@cocoo.on.ca](mailto:asimson@cocoo.on.ca)

### **Registration Examination**

The College's Registration took place this year on Thursday June 2nd for the written component and Friday, June 3rd for the OSCE. The supplemental exam took place on Thursday and Friday, August 11th and 12th. There were a total of 29 candidates who took the examination and 3 applicants took the supplemental examination, including the OSCE and written component.

### **Referrals to Discipline**

**Hearing scheduled** - Ali Bandali – December 1, 2016

Please also visit the College website at <http://www.cocoo.on.ca/discipline-referrals.html> for the individual Notice of Hearing:

## **Discipline Matters that Have Been Dealt with Since the last Newsletter**

For the full Reasons and Decision and Order, please visit the College's website at: <http://www.cocoo.on.ca/discipline-decisions.html> The information below has been summarized in some areas:

### **1. Michael Acosta (Heard December 1, 2015)**

#### **The Allegations**

The allegations against Mr. Acosta (the "Member") as stated in the Notice of Hearing dated April 7, 2015, are as follows.

#### **IT IS ALLEGED THAT:**

1. Michael Acosta is a chiropodist registered to practise chiropody in the Province of Ontario. At all material times, Mr. Acosta operated and practised at the Richview Foot Care Clinic in Etobicoke, Ontario.
2. From in or about July of 2011 until in or about July of 2012, Mr. Acosta treated his patient, J.J., for toenail fungus and warts (verrucae) on the toes of the right foot.
3. Initially, Mr. Acosta treated J.J.'s warts by debriding the lesion sites and applying caustic medications. In May of 2012, Mr. Acosta began treating the warts by using laser therapy.
4. Mr. Acosta failed to obtain and/or appropriately document J.J.'s prior informed consent to the use of laser therapy to treat the warts, in that Mr. Acosta:
  - (i) relied upon a consent to the commencement of treatment which was provided by the patient on or about July 29, 2011, without any discussion of the expected benefits, material risks and material side effects of laser wart therapy, the alternative courses of action and/or the likely consequences of not having laser wart therapy;
  - (ii) failed to discuss with J.J., prior to commencing laser wart therapy in or about May 2012, the specific risks and/or potential complications of that treatment, other than the formation of blisters; and/or
  - (iii) failed to appropriately document in J.J.'s patient records a summary of the information provided regarding laser wart therapy and to obtain and document J.J.'s informed consent to that specific method of treatment.

5. The Member engaged in professional misconduct within the meaning of the following subsections of Ontario Regulation 750/93 under the *Chiropody Act*, 1991:

- (i) 1.2 (Failing to meet or contravening a standard of practice of the profession),
- (ii) 1.3 (Doing anything to a patient for a therapeutic, preventative, diagnostic, cosmetic or other health-related purpose where consent is required by law, without such consent),
- (iii) 1.17 (Failing to keep records as required by the regulations),
- (iv) 1.30 (Contravening the *Chiropody Act*, 1991, the *Regulated Health Professions Act*, 1991, or the regulations under either of those Acts, including (but not limited to) section 17 of Ontario Regulation 203/94); and/or
- (v) 1.33 (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).

6. Mr. Acosta provided laser wart therapy to J.J. on or about May 27, 2012 and then provided J.J. with post-treatment care from on or about May 27, 2012 to in or about July of 2012.

7. The pre and post-treatment care provided by Mr. Acosta was insufficient, inappropriate and/or inadequately documented in that Mr. Acosta:

- (i) failed to appropriately assess J.J.'s pre-treatment warts and post-treatment wounds and to note and record with sufficient particularity any relevant characteristics of the warts and wounds, including (but not limited to):
  - (a) the location(s), dimensions, depth and appearance of the warts and/or wounds;
  - (b) any possible symptoms and aggravating factors associated with the warts and/or wounds; and
  - (c) the condition of the wound sites, the surrounding tissue and the affected toes and foot.
- (ii) failed to properly document, by means of contemporaneous

notes and with sufficient particularity, signs of post-treatment infection that were present at the time of the first post-treatment visit (on or about June 2, 2012) and/or during subsequent appointments; and/or

- (iii) failed to schedule follow-up visits with sufficient frequency after May 27, 2012 to properly assess and monitor the effectiveness of the post- treatment care (including, but not limited to, any antibiotics prescribed to J.J.) and to evaluate J.J.'s wounds for changes that might indicate progression of infection.
8. While J.J. was under Mr. Acosta's care from in or about May of 2012 to in or about July of 2012, he failed to obtain and record the relevant and pertinent information necessary to implement and evaluate the success of the treatment being provided.
  9. Mr. Acosta 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); 30 (Contravening the *Chiropody Act*, 1991, the *Regulated Health Professions Act*, 1991, or the regulations under either of those Acts, including (but not limited to) section 17 of Ontario Regulation 203194 ) 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. From in or about June of 2012 to in or about July of 2012, Mr. Acosta provided treatment to J.J. which he knew or ought to have known was ineffective or inappropriate to meet J.J.'s needs in that he treated the wounds primarily by means of debridement and antibiotics and continued to follow the same treatment plan, without making any, or any appropriate, changes to it, despite the fact that the wounds appeared not to be responding to the antibiotics prescribed and there appeared to be no significant improvement in J.J.'s condition after several weeks of treatment.
  11. By reason of the conduct described in paragraph 10 of this statement of allegations, Mr. Acosta 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), 30 (Contravening the *Chiropody Act*, 1991, the *Regulated Health Professions Act*, 1991, or the regulations under either of those Acts, including (but not limited to) section 17 of Ontario Regulation 203/94 ) 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 *Chiropody Act, 1991*.

12. On two occasions after the May, 2012 laser treatment, Mr. Acosta prescribed Tylenol 3 to J.J., as J.J. was experiencing pain in the right foot and toes, but failed to retain copies of those prescriptions in J.J.'s medical record. While J.J. was able to have the first prescription filled by a pharmacist, that pharmacist refused to fill the second prescription, on the basis that Mr. Acosta, as a chiropodist, lacked authority to prescribe that type of medication (namely, a narcotic).
13. By reason of the conduct described in paragraph 12 of this statement of allegations, Mr. Acosta engaged in professional misconduct within the meaning of paragraphs 2 (Failing to meet or contravening a standard of practice of the profession), 30 (Contravening the *Chiropody Act, 1991*, the *Regulated Health Professions Act, 1991*, or the regulations under either of those Acts, including (but not limited to) section 5(1) of the *Chiropody Act, 1991* and section 1 of Ontario Regulation 203194 ) 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 *Chiropody Act, 1991*.
14. From in or about June, 2012 to in or about July, 2012, Mr. Acosta failed to advise J.J. to consult with a physician or other regulated health professional concerning the wounds on the right foot and toes and/or to attend at a hospital emergency room. The Member failed to advise J.J. to consult with a physician or other regulated health professional, or to go to the hospital, notwithstanding that:
  - (i) there were signs that the wounds were infected and that the infection was progressing despite treatment with antibiotics; and/or
  - (ii) given the condition of the wounds and progress of the infection, Mr. Acosta recognized, or ought to have recognized, that J.J.'s condition or status fell outside of his scope of practice, competence or experience.
15. On or about July 6, 2012, J.J. attended the Wound Clinic at the Etobicoke General Hospital and was immediately admitted to hospital. J.J. was placed on intravenous antibiotics and seen by a wound specialist and an orthopaedic surgeon, both of whom suggested that J.J. would need to have at least some of the toes amputated.

16. J.J. was subsequently diagnosed with osteomyelitis involving the right forefoot, requiring the amputation of all toes on the right foot and a portion of all of the metatarsals of the right foot on or about July 12, 2012.
17. By reason of the conduct described in paragraphs 10 and 14, 15 and 16 of this statement of allegations, Mr. Acosta engaged in professional misconduct within the meaning of paragraphs 2 (Failing to meet or contravening a standard of practice of the profession), 15 (failing to advise the patient to consult with a physician or other regulated health professional where the member recognizes or ought to recognize a condition that is beyond the competence or experience of the chiropodist or that requires such consultation to ensure the proper care 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 under the *Chiropody Act*, 1991.

#### Member's Plea

Mr. Acosta admitted the allegations set out in the Notice of Hearing, as modified by the Agreement Statement of Facts, described below. The panel conducted an oral plea inquiry and was satisfied that the Member's admission was voluntary, informed and unequivocal.

#### Penalty Decision

The panel accepts the Joint Submission as to Penalty and Costs and accordingly orders:

1. This Panel of the Discipline Committee ("Panel") makes the following order:
  - a) the Member is to appear before the Panel to be reprimanded. This reprimand is to be made available on the College's website and/or Public Register;
  - b) the Registrar is directed to suspend the Member's certificate of registration for a period of six (6) consecutive months commencing on January 1, 2016; three (3) months of which shall be remitted if the Member complies with subparagraphs 1(c)(i) and (ii) of this Order within twelve (12) months from the date the Penalty Order is signed by the Discipline Committee. The first three (3) months of the suspension shall commence on January 1, 2016 and any further period of suspension which is not remitted shall be served beginning twelve (12) months after the Penalty Order is signed.

- (i) For greater certainty, the Member is required to comply with subparagraphs 1(c)(i) and (ii) of this Order, regardless of whether the final three (3) months of his suspension are remitted.
- c) the Registrar is directed to impose the following terms, conditions and limitations on the Member's certificate of registration:
- (i) the Member is to successfully complete the ProBe course in ethics, to the satisfaction of the Registrar, and at the Member's own expense, within the six (6) month period commencing on the date of the Order.
  - (ii) the Member is to successfully complete the University of Toronto's International Interprofessional Wound Care Course (IIWCC-CAN), to the satisfaction of the Registrar, and at the Member's own expense, within the twelve (12) month period commencing on the date of the Order.
  - (iii) the Member shall not assess or treat ulcerations beyond the level of the dermis, or ulcerations breaching the subcutaneous tissues of the foot, including fat, muscle, tendon, fascia, joint capsule, and beyond, until he submits proof of successful completion of the two courses noted above and until an Expert Report is submitted to the satisfaction of the Registrar as described in subparagraphs (v) and (vii)(B) below.
  - (iv) the Member shall, at his own expense and within the twelve (12) month period commencing on the date of the Order, attend six (6) mentoring sessions with a Chiropody I Podiatry expert approved by the Registrar who has expertise in the College's standards of practice ("Expert"). Such sessions may take place at the Member's Clinic or at the Expert's Clinic or Office. The sessions with the Expert shall address the following:

A. the College's standards of practice relating to:

1. Competence;
2. Infection Control;
3. Patient Relations; and,
4. Records.

- B. the Member's understanding of the College's standards of practice as set forth in paragraph 1(c)(iv)(A) above;
  - C. the Member's conduct as described in the Agreed Statement of Facts;
  - D. the consequences of that conduct to clients, patients, colleagues, the profession, and to himself;
  - E. strategies for preventing the aforementioned conduct from occurring again; and,
  - F. the Member's responsibilities as a member of a self regulated profession.
- (v) the Member shall provide a written direction to the Expert to forward his or her report to the Registrar within forty-five (45) days from the date of the last mentoring session. The Expert's report ("Report") shall:
- A. confirm the dates of all sessions attended by the Member;
  - B. confirm that the standards of practice referred to above were covered with the Member; and,
  - C. include an assessment of the Member's insight into his conduct as described in the Agreed Statement of Facts.
- (vi) All documents sent by the Member to the Registrar shall be made by verifiable method of delivery, the proof of which the Member shall retain.
- (vii) the terms, conditions and limitations referred to in paragraphs (i) to (vi) above shall be removed when the Registrar receives:
- A. satisfactory confirmation of successful completion of the two courses noted above; and,
  - B. a satisfactory report from the Expert confirming that the Expert is satisfied that the member has appropriate insight into his conduct as described in the Agreed Statement of Facts, such that it is likely that he

will practice chiropody in the future in accordance with the College's standards of practice.

- d) the Member is required to pay the College's costs fixed in the amount of \$12,000.

## **2. Marzena Hardy (heard March 22, 2016)**

### **IT IS ALLEGED THAT:**

#### **Notice of Hearing dated November 13, 2014 (“Notice of Hearing #1”)**

1. Marzena Hardy was, at all material times, a chiropodist registered to practise chiropody in the province of Ontario. Ms. Hardy practised at Academy Foot and Orthotic Clinics (the “Clinic”) in Toronto, Ontario.

2. Since 2011, Ms. Hardy has been advertising herself to be the owner of the Clinic. Between in or about December 2011 to in or about September 2014, Ms. Hardy was the face of the Clinic as pictures and videos of her were prominently displayed through Clinic advertising and, in particular, on the Clinic website [www.academyclinics.com](http://www.academyclinics.com) (“Clinic Website”).

3. Since January 2014, Ms. Hardy has advertised, or has permitted advertising, on the Clinic Website, suggesting that there are both doctors and chiropodists on staff and/or employed by the Clinic, notwithstanding that she is not entitled to use the title “doctor” and there is no other regulated health professional practicing at the Clinic who is entitled to make use of the title “doctor” in the course of providing or offering to provide, in Ontario, health care to individuals.

4. Ms. Hardy thereby engaged in professional misconduct within the meaning of paragraph 30 (contravening the *Chiropody Act, 1991*, the *Regulated Health Professions Act, 1991* or the regulations under either of those Acts, specifically, subsections 7(1)(a) and 12 of O. Reg. 203/94 under the *Chiropody Act, 1991*) 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, dishonorable or unprofessional) of O. Reg 750/93 under the *Chiropody Act*.

5. Since December 2013, Ms. Hardy has advertised, or has permitted advertising, of the Clinic using the website and/or domain name [www.ontariopodiatrists.info](http://www.ontariopodiatrists.info) which links directly and automatically to the Clinic Website, notwithstanding that the Clinic has not employed a member registered as a podiatrist.

6. Ms. Hardy thereby engaged in professional misconduct within the meaning of paragraph 30 (contravening the *Chiropody Act, 1991*, the *Regulated Health Professions Act, 1991* or the regulations under either of those Acts, specifically, subsections 7(1)(a), 8(1), 8(2)(b) and 12 of O. Reg. 203/94 under the *Chiropody Act, 1991*) 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, dishonorable or unprofessional) of O. Reg 750/93 under the *Chiropody Act*.

7. Since January 2014, Ms. Hardy has advertised, or has permitted advertising, on the Clinic Website, that she possesses an “advanced degree in podiatric medicine”.

8. Ms. Hardy thereby engaged in professional misconduct within the meaning of paragraph 30 (contravening the *Chiropody Act, 1991*, the *Regulated Health Professions Act, 1991* or the regulations under either of those Acts, specifically, subsections 7(1)(a), 9(a) and 12 of O. Reg. 203/94 under the *Chiropody Act, 1991*) 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, dishonorable or unprofessional) of O. Reg 750/93 under the *Chiropody Act*.

9. Since January 2014, Ms. Hardy has advertised, or has permitted advertising, on the Clinic Website that:

- (i) she is a “foot specialist” without also indicating her class of registration;

- (ii) she is a “highly educated primary health care specialist”;
- (iii) she is “Rated Number 1 Best Foot Specialist in the World, 8<sup>th</sup> Best Foot Specialist in the World and 2<sup>nd</sup> Best Foot Specialist and the number 1 Female Foot Specialist in Toronto by RATEMDS”;
- (iv) she is an “expert”;

10. Ms. Hardy thereby engaged in professional misconduct within the meaning of paragraph 30 (contravening the *Chiropody Act, 1991*, the *Regulated Health Professions Act, 1991* or the regulations under either of those Acts, specifically, subsections 7(1)(a), 7(1)(b) and 12 of O. Reg. 203/94 under the *Chiropody Act, 1991*) 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, dishonorable or unprofessional) of O. Reg 750/93 under the *Chiropody Act*.

11. Since January 2014, Ms. Hardy has advertised, or has permitted advertising, on the Clinic Website, that contains testimonials and/or endorsements by providing direct links to websites wherein testimonials and/or endorsements are provided including RateMDs and Yelp.

12. Ms. Hardy thereby engaged in professional misconduct within the meaning of paragraph 30 (contravening the *Chiropody Act, 1991*, the *Regulated Health Professions Act, 1991* or the regulations under either of those Acts, specifically, subsections 7(1)(c), 7(1)(d) and 12 of O. Reg. 203/94 under the *Chiropody Act, 1991*) 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, dishonorable or unprofessional) of O. Reg 750/93 under the *Chiropody Act*.

## Notice of Hearing dated June 6, 2014 (“Notice of Hearing #2”)

13. Marzena Hardy was, at all material times, a chiropodist registered to practise chiropody in the province of Ontario. Ms. Hardy practised at Academy Foot and Orthotic Clinics (the “Clinic”) in Toronto, Ontario.

14. Between January 22, 2015 and March 31<sup>st</sup>, 2015, Ms. Hardy advertised, or permitted advertising, on the Clinic Website ([www.academyclinics.com](http://www.academyclinics.com)) by embedding within the meta-data of the website the following keywords:

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<meta name = “keywords” content = “Podiatrist, Chiropodist, Foot Care, Foot Clinic, Orthotics, Foot Specialist, Foot Doctor, Dr. Hardy, Marz Hardy, Podiatry, Chiropody, Podiatric Medicine, Orthotics” />
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15. Ms. Hardy thereby engaged in professional misconduct within the meaning of paragraph 30 (contravening the *Chiropody Act, 1991*, the *Regulated Health Professions Act, 1991* or the regulations under either of those Acts), specifically, subsections 7(1)(a), 8(1), 8(2)(b), and 12 of O. Reg. 203/94 under the *Chiropody Act, 1991* (advertising, or permitting advertising in a manner that is false, misleading or self-laudatory; holding herself out as a podiatrist), section 33(1) of the *Regulated Health Professions Act* (using the title “doctor” in the course of offering to provide, In Ontario, health care to individuals) and section 33 of O. Reg 750/93 under the *Chiropody Act* (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).

16. Since January 2015, Ms. Hardy has advertised, or has permitted advertising, of the Clinic using the website and/or domain name [www.ontariopodiatrists.com](http://www.ontariopodiatrists.com) which links directly and automatically to the Clinic Website, notwithstanding that the Clinic has not employed a member registered as a podiatrist.

17. Ms. Hardy thereby engaged in professional misconduct within the meaning of paragraph 30 (contravening the *Chiropody Act, 1991*, the *Regulated Health Professions Act, 1991* or the regulations under either of those Acts), specifically, subsections 7(1)(a), 8(1), 8(2)(b) and 12 of O. Reg. 203/94 under the *Chiropody Act, 1991* (advertising, or permitting advertising in a manner that is false, misleading or self-laudatory; holding herself out as a podiatrist) and 33 of O. Reg 750/93 under the *Chiropody Act* (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).

18. Since January 2015, Ms. Hardy has advertised, or has permitted advertising, on the Clinic Website, that contains testimonials and/or endorsements by providing direct links and soliciting the posting of testimonials to RateMDs, a website that is dedicated to testimonials and/or endorsements for healthcare professionals.

19. Ms. Hardy thereby engaged in professional misconduct within the meaning of paragraph 30 (contravening the *Chiropody Act, 1991*, the *Regulated Health Professions Act, 1991* or the regulations under either of those Acts), specifically, subsections 7(1)(c), 7(1)(d) and 12 of O. Reg. 203/94 under the *Chiropody Act, 1991* (advertising, or permitting advertising by way of endorsement or testimonial) and 33 of O. Reg 750/93 under the *Chiropody Act* (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).

20. Since January 2015, Ms. Hardy has advertised, or has permitted advertising of herself as a podiatrist or as having the DPM designation at the following websites:

- (i) <http://www.findadoc.com/doctors/Ontario/Toronto/Podiatry/1017199-Marzena%20%20Hardy.aspx>
- (ii) <http://www.salespider.com/bp-59320924/marzena-hardy>

- (iii) <http://www.medicalindex.biz/company-hardy-marzena-dpm-in-scarborough-34213>
- (iv) [http://toronto.yalwa.ca/ID\\_108090694/Hardy-Marzena-Dpm-lawrence-ave-e.html](http://toronto.yalwa.ca/ID_108090694/Hardy-Marzena-Dpm-lawrence-ave-e.html)
- (v) <http://scarborough.cylex.ca/company/hardy--marzena-dpm-19419445.html>

21. Ms. Hardy thereby engaged in professional misconduct within the meaning of paragraph 30 (contravening the *Chiropody Act, 1991*, the *Regulated Health Professions Act, 1991* or the regulations under either of those Acts), specifically, subsections 7(1)(a), 8(1), 9(a), 9(b) and 12 of O. Reg. 203/94 under the *Chiropody Act, 1991* (advertising, or permitting advertising in a manner that is false, misleading or self-laudatory; holding herself out as a podiatrist; indicating after her name a diploma or degree not held by the member; indicating after her name the word “podiatrist” where the member is not a registered podiatrist) and 33 of O. Reg 750/93 under the *Chiropody Act* (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).

#### Member’s Plea

Marzena Hardy admitted the allegations set out in the Notice of Hearing #1 (save for paragraphs 7, 8 and 9(ii)) and Notice of Hearing #2. The panel conducted an oral plea inquiry and was satisfied that the Member’s admission was voluntary, informed and unequivocal.

#### Penalty

Counsel for the College advised the panel that a Joint Submission as to Penalty and Costs (Exhibit 1, tab 7) had been agreed upon. The Joint Submission provides as follows:

1. The College of Chiropractors of Ontario (the “College”) and Ms. Marzena Hardy (the “Member”) agree and jointly submit for the Discipline Committee to make the following order:
  - (a) Directing the Registrar to suspend the Member’s certificate of registration for a period of six (6) months, two (2) months of which shall be remitted in the event that the Member complies with paragraph 1(b) of this Order.<sup>1</sup> The suspension shall begin the day the Order of the Discipline Committee is signed.
  - (b) Directing the Registrar to impose a term, condition and limitation on the Member’s certificate of registration,
    - (i) Requiring the Member to review the College’s Rules, Regulations, By-Laws and Guidelines relating to advertising as well as at least five (5) external sources (which may include, but is not limited to texts, legal cases, policy papers) and draft an essay of no less than 1500 words explaining the reasons why rules regarding advertising are necessary within a regulated health profession and how the Member’s conduct as outlined in the Notices of Hearing dated November 13, 2014 and June 16, 2015 is in violation of those rules and the negative impact that the violation of advertising rules may have on the profession. The essay must be provided to the Registrar no later than 60 days after the Order of the Discipline Committee is signed.<sup>2</sup>

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<sup>1</sup> For greater clarity, in the event that paragraph 1(b) is not complied with, the remaining two months of the suspension shall be served commencing April 1, 2018.

<sup>2</sup> For greater clarity, in the event that care is not taken by the Member with respect to the essay, and it is therefore not provided to the Registrar in a professional manner, the essay may be relied upon by the Registrar in considering whether there are reasonable and probable grounds to suggest that the Member has committed an act of professional misconduct and therefore request approval from the Inquiries, Complaints and Reports Committee of the appointment of an Investigator, pursuant to section 75(1)(a) of the *RHPA Procedural Code*.

- (ii) For a period of two (2) years following completion of the suspension referred to in paragraph (a), above, and on the following basis, advertising relating to the Member's practice shall be supervised. The terms of the supervision are as follows:
- (A) The supervisor shall be selected by the Registrar and approved by the Member and shall be a professional member of the College of Chiropractors of Ontario;
  - (B) The supervisor shall visit with the member every four (4) months at the Member's site(s) of practice or via telephone for a total of six (6) supervisory sessions. There must be no less than four (4) site visits;
  - (C) The supervisor shall determine the length of each visit;
  - (D) In advance of every visit, the supervisor shall review internet advertising relating to the Member<sup>3</sup> and advertising in other forms (ie print, radio, television), where available. The supervisor shall identify any violations of the regulations or guidelines for discussion purposes with the Member;
  - (E) In conducting site visits, the supervisor shall engage the Member in discussions regarding advertising rules, regulations and guidelines applicable to College members. The supervisor shall review advertising relating to the Member with the Member and identify any advertising that is in violation of the regulations or guidelines;

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<sup>3</sup> For clarity, advertising relating to the Member includes any reference to the Member in any medium, whether the Member was actively involved in the publication of the advertising or not. This would include, for example, reference to the Member on websites that she has not actively taken steps to advertise on.

- (F) The Member shall take reasonable steps to correct any violations of the advertising rules, regulations and guidelines that were identified by the supervisor and must report the steps taken to correct the violations to the supervisor within one week of the supervisory visit;
  - (G) The supervisor shall prepare a report to the Registrar every other session (for clarity, a report is to be generated every (8) months) detailing what occurred at the prior two (2) supervisory sessions. The report must include an outline of any violations of the advertising rules, regulations and guidelines that were identified and what steps the Member took to correct the violations.<sup>4</sup>
  - (H) The Member shall pay the costs of the supervision (to a maximum of \$300 per site visit, \$150 per telephone discussion and \$300 per supervisory report) and shall fully reimburse the College for these costs within thirty (30) days of receiving an invoice from the College for the supervision; and,
- (c) Directing that the Member shall appear before the panel to be reprimanded and the fact of the reprimand to be recorded on the Public Register of the College.
  - (d) Directing the Member to pay the College's costs fixed in the amount of \$22,500 to be paid by certified cheque according to the following schedule

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<sup>4</sup> For clarity, in the event that the supervisory reports suggest further professional misconduct by the Member for which the Member has not taken reasonable steps to address in accordance with section 1(B)(ii)(F) above, the supervisory reports may be relied upon by the Registrar in considering whether there are reasonable and probable grounds to suggest that the Member has committed an act of professional misconduct and therefore request approval from the Inquiries, Complaints and Reports Committee of the appointment of an Investigator, pursuant to section 75(1)(a) of the *RHPA Procedural Code*.

and provided that this Joint Submission as to Penalty is accepted in its entirety:

(i) \$12,500 to be paid within 7 days of the hearing; and,

(ii) \$10,000 to be paid within 90 days thereafter.

In the event that the Member does not pay \$12,500 within 7 days of the hearing, the payment of the entire \$22,500 becomes immediately due and enforceable.

2. The Member acknowledges that pursuant to section 56 of the *Health Professions Procedural Code*, being Schedule 2 to the *Regulated Health Professions Act, 1991*, the decision and reasons, or a summary thereof, will be published in the College's annual report and may be published in any other publication of the College with the Member's name.
3. The Member acknowledges that this Joint Submission as to Penalty is not binding upon the Discipline Committee.
4. The Member acknowledges that she has had the chance to receive independent legal advice and did so before agreeing to this Joint Submission.

#### **4. Darcy Andrew Springer (Heard April 29, 2016)**

##### **The Allegations**

The allegations against Darcy Andrew Springer (the "Member") as stated in the Notice of Hearing dated May 27, 2015 (Exhibit 1, tab 1), are as follows.

##### **IT IS ALLEGED THAT:**

1. Darcy Andrew Springer (the "**Member**") was, at all material times, a chiropodist registered to practise chiropody in the province of Ontario.

2. The Member engaged in the practice of chiropody at Healthcare in Motion (“HCIM”) in Mississauga, Ontario. He also practised at a number of clinics, including Bayview North Medical Clinic (“BNM”) and Glazier Medical Centre (“GMC”).

3. Commencing in or about May or June of 2013, the Member worked alternate Saturdays at HCIM, conducting chiropody assessments and dispensing orthotics. The Member received compensation from HCIM in the amount of \$1,500.00 per day. The Member paid rent to HCIM of \$1.00 per year.

4. The premises of Healthcare in Motion was divided into two sections: a retail section (which sells orthopedic shoes, custom braces and/or orthotics) and a healthcare section (which offers acupuncture, massage therapy and chiropody services).

5. Employees in the retail section of HCIM referred patients to the Member at HCIM for chiropody assessments and/or services.

6. With rare exception, the Member always recommended orthotics for those patients referred to him at HCIM, often along with orthopedic shoes and/or compression stockings. From in or about June of 2013 to in or about December of 2013, the Member assessed only two (2) patients at HCIM for whom he did not prescribe and/or recommend orthotics. From in or about January of 2014 to in or about September of 2014, the Member assessed only five (5) patients at HCIM for whom he did not prescribe and/or recommend orthotics.

7. Most of the patients seen by the Member at HCIM for whom he prescribed and/or recommended orthotics ordered and purchased their orthotics (and in many cases orthopedic shoes and/or compression stockings) from the retail section of HCIM.

8. From in or about June of 2013 to in or about December of 2013, the Member provided the patients listed in Schedule “A”<sup>5</sup> hereto (hereinafter referred to as

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<sup>5</sup> Schedule “A” has not been included in these Reasons. While Schedule “A” to the Notice of Hearing lists 33 patients, there were five names and dates duplicated. As a result, Schedule A refers to 28 patients.

the “**Patients**”) with chiropody assessments, focussing on gait analysis and biomechanical assessment, and prescribed and/or recommended orthotics, orthopedic shoes or compression stockings for them without:

- (a) taking an adequate history;
- (b) *factual allegation withdrawn*;
- (c) *factual allegation withdrawn*;
- (d) *factual allegation withdrawn*; and/or
- (e) making adequate records.

9. The Member kept his records regarding patients seen by him at HCIM in an unlocked filing cabinet at HCIM which contained the files of other HCIM patients. The Member failed to maintain control over the location and/or access to and/or manner of storage of those patient files.

10. The Member failed to ensure that he was aware of and maintained control over the manner in which HCIM billed patients for his chiropody services.

11. By reason of the conduct alleged in paragraphs 1 to 10, the Member engaged in professional misconduct within the meaning of:

- (i) the following subsections of Ontario Regulation 750/93 under the *Chiropody Act, 1991*:
  - (a) 1.2 (Failing to meet or contravening a standard of practice of the profession),
  - (b) *Withdrawn*,
  - (c) 1.10 (Practising the profession while the member is in a conflict of interest)

- (d) 1.17 (Failing to keep records as required by the regulations)
  - (e) 1.27 (Sharing fees with any person who has referred a patient to a member or receiving fees from any person to whom the member has referred a patient or requesting or accepting a rebate or commission for the referral of a patient);
  - (f) 1.28 (Practising in the employment of or in association with a commercial business);
  - (g) 1.30 (Contravening the *Chiropody Act, 1991*, the *Regulated Health Professions Act, 1991*, or the regulations under either of those Acts)
  - (h) 1.33 (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); and/or
- (ii) sections 13 and 16 of Ontario Regulation 203/94 under the *Chiropody Act, 1991*.

#### Member's Plea

The Member admitted the facts as set out in the Agreed Statement of Facts and that these facts constitute professional misconduct as alleged in paragraph 11(i) of the Notice of Hearing, and constitute a breach of sections 13 and 16 of Ontario Regulation 203/94 under the *Chiropody Act, 1991*, as alleged in paragraph 11(ii) of the Notice of Hearing. The panel conducted an oral plea inquiry and was satisfied that the Member's admissions were voluntary, informed and unequivocal.

#### Penalty Decision

The panel accepts the Joint Submission as to Penalty and accordingly orders the following:

1. That the Registrar suspend the Member's certificate of registration for a period of four months, one month of which shall be remitted in the event that the Member complies with paragraph 2(a) of this Order and an additional one month of which

shall be remitted in the event that the Member complies with paragraph 2(b) of this Order.<sup>6</sup> The first two months of the suspension shall begin on a day to be chosen by the Member but shall not begin later than June 1<sup>st</sup>, 2016.

2. Directing the Registrar to impose a term, condition and limitation on the Member's certificate of registration:
  - (a) Requiring the Member to complete or have completed the ProBe ethics course at his own expense prior to or following the date on which the Penalty Order is signed by the Discipline Committee and subject to the exception below, provide proof thereof to the Registrar within 6 months after the date on which the Penalty Order is signed by the Discipline Committee. If a ProBe ethics course is not available in the Greater Toronto region within 6 months after the date on which the Penalty Order is signed by the Discipline Committee, proof of completion is to be provided to the Registrar within 4 weeks of the receipt of the certificate of completion of first available ProBe ethics course, there after, in the Greater Toronto region.<sup>7</sup>
  - (b) Requiring the Member to review the College's Conflict of Interest Policy, Code of Ethics Provisions and Professional Misconduct Regulation as well as at least five other sources (which may include, but is not limited to texts, legal cases, policy papers) and draft an essay of no less than 1000 words explaining the reasons why rules regarding conflict of interest are necessary within a regulated health profession, how the Member's conduct as outlined in the Notice of Hearing is in violation of those rules and the negative impact that the violation of conflict of interest rules may have on the profession. The essay must be provided to the Registrar before the completion of the compulsory two month term of suspension.<sup>8,9</sup>

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<sup>6</sup> In the event that either paragraph 2(a) or 2(b) is not complied with within the timeframe provided, any further period of suspension which is not remitted shall be served beginning twenty four (24) months after the conclusion of the compulsory two months suspension.

<sup>7</sup> For greater clarity, the Member must complete the ProBe ethics course whether or not the additional month of suspension is served.

<sup>8</sup> For greater clarity, in the event that care is not taken by the Member with respect to the essay, and it is therefore not provided to the Registrar in a professional manner, the essay may be relied upon by the Registrar in considering whether there are reasonable and probable grounds to suggest that the Member has committed an act of professional misconduct and therefore request approval from the Inquiries, Complaints and Reports Committee for the appointment of an Investigator, pursuant to section 75(1)(a) of the *RHPA Procedural Code*.

<sup>9</sup> The Member agrees that the essay may be published by the Registrar on a one time basis, in any publication to the College's membership so long as the Member receives notice of publication at least 14 days prior to publication. If the Member consents, the Registrar may publish the article in part. As well, if the Member consents, the Registrar may publish the essay more than once.

3. That the Member appear before the panel to be reprimanded and the fact of the reprimand to be recorded on the Public Register of the College.
4. That the Member to pay the College's costs fixed in the amount of \$15,000 to be paid by certified cheque according to the following schedule and provided that this Joint Submission as to Penalty is accepted in its entirety:
  - (i) \$10,000 to be paid within 7 days of the hearing; and,
  - (ii) \$5,000 to be paid within 120 days thereafter.

In the event that the Member does not pay \$10,000 within 7 days of the hearing, the payment of the entire \$15,000 becomes immediately due and enforceable.

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**As a regulated health professional, it is your responsibility to be aware of and uphold the College Standards, Regulations, Guidelines, and Policies. You are accountable to your patients, to your profession, and to the College. You are obligated to keep current on any revisions to Standards, Regulations, Guidelines or Policies. You must regularly check the website for new information and if you are uncertain about something, either e-mail or call the College. We are here to assist you.**

**Friday, February 24, 2017**

**Friday, June 23, 2017**

**Friday, October 27, 2017**

**Friday, February 23, 2018**

**Friday, June 22, 2018**

**Friday, October 26, 2018**

**Friday, February 22, 2019**

**Friday, June 21, 2019**

**October 25, 2019**

**Friday, February 21, 2020**

**Friday, June 26, 2020**

**Friday, October 23, 2020**

All Council meetings of the College of Chiropractors of Ontario are open to both the membership and the public. Everyone is welcome. Since space is limited, if you wish to

attend please contact Tera at ext. 226. The Council meetings are generally held in the Conference Room: 19<sup>th</sup> Floor at 180 Dundas Street West in Toronto. If they take place at a different location, you will be informed.

**Please Note:** The draft agenda for all Council meetings are now posted on the College's website prior to the meeting. Complete Council Minutes are posted on the College website once they have been approved at the following Council meeting.