

## ONTARIO CHIROPODISTS AND PODIATRISTS DISCIPLINE TRIBUNAL

**Citation:** *College of Chiropractors of Ontario v. Greenberg*, 2025 ONCPDT 2

**Date:** March 18, 2025

**Tribunal File No.:** 24-011-CP

### BETWEEN:

College of Chiropractors of Ontario

**College**

- and -

David Ervine Greenberg

**Registrant**

### FINDING AND PENALTY REASONS

**Heard:** March 4, 2025, by videoconference

#### **Panel:**

David A. Wright (Tribunal Chair)

Edward Chung (podiatrist)

Allan Katz (public)

#### **Appearances:**

Debra McKenna, for the College

Dylan Crosby, for the registrant

### RESTRICTION ON PUBLICATION

Pursuant to Rule 2.2.2 of the HPDT Rules of Procedure and ss. 45-47 of the Health Professions Procedural Code, no one shall publish or broadcast the names of patients or any information that could identify patients or disclose patients' personal health information or health records referred to at a hearing or in any documents filed with the Tribunal. There may be significant fines for breaching this restriction.

The Ontario Chiropractors and Podiatrists Discipline Tribunal is the Discipline Committee established under the Health Professions Procedural Code.

## **Introduction**

[1] A former patient sued David Greenberg, the registrant, in Ontario Superior Court over treatments Mr. Greenberg had provided him. Mr. Greenberg did not tell the College about this legal claim against him. What is more, he misled the College on two annual Renewal Declaration Forms when he failed to disclose the action despite being asked a specific question about whether he was the subject of proceedings related to his practice. He admits this was professional misconduct.

[2] Mr. Greenberg, who has been a podiatrist registrant for over 50 years, resigned from the College shortly before the hearing. He has undertaken never to reapply to the College or to practise chiropody or podiatry in any jurisdiction. The parties jointly submitted that in light of the resignation and undertaking, the appropriate penalty was a reprimand. They also agreed on costs of \$13,500.

[3] Our role when the parties have made a joint submission is limited. We must only depart from the parties' agreement if the proposed penalty is so unhinged that it would bring the professional discipline system into disrepute. This penalty is appropriate, and we made the agreed-upon order at the hearing. These are our reasons.

[4] Tribunal Chair David Wright conducted case management conferences and sits on this panel with the consent of both parties. Both parties also agreed to a reduced panel consisting of an experienced adjudicator, a registrant of the College and a public member, pursuant to s. 4.2.1(2) of the *Statutory Powers Procedure Act*, RSO 1990, c. s. 22.

## **Professional Misconduct**

[5] Section 44.02 of the College's By-Law No. 1 requires registrants to accurately complete and return their Renewal Declaration Forms each year. Section 44.06 requires a registrant to notify the College in writing within 30 days if any of that information changes.

[6] The patient started the civil action in July of 2019. Mr. Greenberg, through his legal counsel, filed a statement of defence in October of that year. In his 2022 and 2023 Renewal Declaration forms, he answered "no" to the following question, which he admits was false and misleading:

Are you the subject of any current investigation, inquiry or proceeding for professional misconduct, incompetence or incapacity or any similar finding in relation to any profession in any jurisdiction?

[7] He also misled the College when he certified in the forms that his answers were complete and correct.

[8] Mr. Greenberg also did not file a self-report about the claim in a timely fashion. He was required to do so because of his obligation in the By-Law to advise the College of any changes to his Renewal Declaration within 30 days.

[9] The College relies on registrants to provide it with correct information so that it can fulfil its role of protecting the public. The privilege of practising a regulated profession requires that registrants give their regulator the information required and that they be honest in doing so. Dishonesty toward the regulator diminishes public confidence in the College's ability to regulate the chiropody and podiatry professions in the public interest and the public's confidence in the professions and the College.

[10] The registrant agrees, and we find, that he committed the following acts of professional misconduct, contrary to the following paragraphs of s. 1 of O. Reg. 750/93 made under the *Chiropody Act, 1991*, SO 1991, c. 20:

20. Signing or issuing, in the member's professional capacity, a document that contains a false or misleading statement.

30. Contravening the Act, the *Regulated Health Professions Act, 1991* or the regulations under either of those Acts [by failing to follow the College's By-Laws.

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.

## **Penalty**

[11] The College and the registrant's agreement on penalty must be implemented unless it is so "unhinged from the circumstances" that implementing it would bring the administration of the College's professional discipline system into disrepute: *Bradley v.*

*Ontario College of Teachers*, 2021 ONSC 2303 (Div. Ct.) at paras. 9-12; *Ontario College of Teachers v. Merolle*, 2023 ONSC 3452 (Div, Ct.). The test is adapted from the Supreme Court’s analysis in the criminal law context in *R. v. Anthony-Cook*, 2016 SCC 43.

[12] There must be something completely unacceptable, unusual or unconscionable to reject a joint submission, not just the panel’s disagreement or belief that a different outcome would better serve the public interest or be a more fit penalty. The Tribunal may not “tinker” with a joint submission, which is the result of a careful balancing by the parties of the relevant considerations. It should take the joint submission “as is” and proceed on the basis that any aspects of penalty that were not included were intentionally excluded.

[13] In this case, because Mr. Greenberg has agreed not to practise chiropody, we do not need to consider the appropriate range of suspension for this type of misconduct. His agreement not to practise protects the public, and the reprimand and agreed-upon costs are reasonable and appropriate. Transparency is maintained through the publication of these reasons and of the undertaking itself.

## **Order**

[14] Our Order reads as follows:

### Penalty

1. The Registrant will be reprimanded by the Discipline Tribunal via an electronic hearing, and the fact and nature of the reprimand shall be recorded on the College’s public register for an unlimited period of time.
2. The finding, undertaking to permanently resign, and penalty of the Discipline Tribunal shall be published, with the Registrant’s name, online and/or in print, including, but not limited to, in the official publications of the College, on the College’s public register, and posted to CanLII.

Costs

3. The Registrant shall pay costs to the College in the amount of \$13,500.00, which amount shall be paid to the College within seven days of the Discipline Tribunal's order.