

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

B E T W E E N:

COLLEGE OF CHIROPODISTS OF ONTARIO

(the “**College**”)

- and -

DAVID ERVINE GREENBERG

(the “**Registrant**”)

NOTICE OF HEARING

THE INQUIRIES, COMPLAINTS AND REPORTS COMMITTEE of the College of Chiropractors of Ontario (the “**College**”) has referred specified allegations against you, **DAVID ERVINE GREENBERG** (Registration # 720841), to the Discipline Committee for a hearing. The allegations were referred to the Discipline Committee in accordance with paragraph 26(1)1 of the *Health Professions Procedural Code*, being Schedule 2 to the *Regulated Health Professions Act, 1991*.

Further information about the allegations is contained in the Statement of Allegations attached to this Notice of Hearing. A discipline panel will hold a hearing, on a date to be fixed by the Chair of the Discipline Committee, at the offices of the College of Chiropractors of Ontario at 180 Dundas Street West, Suite 1901, Toronto, ON M5G 1Z8 or electronically via Zoom or other electronic means, under the authority of sections 38 to 56 of the *Health Professions Procedural Code* for the purposes of deciding whether the allegations are true.

IF YOU DO NOT ATTEND AT THE DISCIPLINE HEARING IN ACCORDANCE WITH THE PRECEDING PARAGRAPH, THE DISCIPLINE PANEL MAY PROCEED IN YOUR ABSENCE AND YOU WILL NOT BE ENTITLED TO ANY FURTHER NOTICE IN THESE PROCEEDINGS.

If the discipline panel finds that you have engaged in professional misconduct, it may make one or more of the following orders:

1. Direct the Registrar to revoke your certificate of registration.
2. Direct the Registrar to suspend your certificate of registration for a specified period of time.
3. Direct the Registrar to impose specified terms, conditions and limitations on your certificate of registration for a specified or indefinite period of time.
4. Require you to appear before the panel to be reprimanded.
5. Require you to pay a fine of not more than \$35,000 to the Minister of Finance.

The discipline panel may, in an appropriate case, make an order requiring you to pay all or part of the College's costs and expenses pursuant to section 53.1 of the *Health Professions Procedural Code*.

You are entitled to disclosure of the evidence against you in accordance with section 42(1) of the *Health Professions Procedural Code*, as amended. You, or your representative, may contact the lawyer for the College in this matter:

Debra McKenna
WEIRFOULDS LLP
4100-66 Wellington Street West
Toronto, ON M5K 1B7
t. (416) 947-5080
e. dmckenna@weirfoulds.com

At the hearing, the College intends to introduce as business records, under section 35 and/or 52 of the *Evidence Act*, any writings or records that were made in the usual and ordinary course of business. Without limiting the generality of the foregoing, the College intends to introduce as business records the records or other documents that relate to the subject matter of these allegations, including but not limited to patient records and/or the records of the College.

You must also make disclosure in accordance with section 42.1 of the *Health Professions Procedural Code*, which states:

Evidence of an expert led by a person other than the College is not admissible unless the person gives the College, at least ten days before the hearing, the identity of the expert and a copy of the expert's written report or, if there is no written report, a written summary of the evidence.



Date: November 29, 2024

Nicole Zwiers, Registrar and CEO
College of Chiropodists of Ontario
180 Dundas Street West
Toronto, ON M5G 1Z8

TO: DAVID ERVINE GREENBERG

STATEMENT OF ALLEGATIONS

1. On or about July 1, 1972, **David Ervine Greenberg** (“**Registrant**”) was registered, in the podiatrist classification, as a member of the College.

2. It is alleged that, during the period from approximately June 2017 to December 2023, (the “**Relevant Period**”), the Registrant engaged in conduct that constitutes professional misconduct pursuant to the following:
 - (a) Clause 51(1)(c) of the *Health Professions Procedural Code*, being Schedule 2 to the *Regulated Health Professions Act, 1991*, and as defined in one or more of the following paragraphs of section 1 of the Professional Misconduct Regulation (O. Reg. 750/93) under the *Chiropractic Act, 1991*:
 - (i) paragraph 1 – contravening a term, condition or limitation imposed on the member’s certificate of registration;

 - (ii) paragraph 2 – failing to meet or contravening a standard of practice of the profession, including the College’s written standards relating to:
 - (a) Assessment and Management;

 - (b) Patient Relations;

- (c) Records;
 - (d) Competence; and/or
 - (e) Osseous and Subcutaneous Surgery;
- (iii) paragraph 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.
- (iv) paragraph 17 – failing to keep records as required by the regulations;
- (v) paragraph 20 – signing or issuing, in the member’s professional capacity, a document that contains a false or misleading statement;
- (vi) paragraph 30 – contravening the Act, the *Regulated Health Professions Act, 1991* or the regulations under either of those Acts, including, Ont. Reg. 203/94 and Ont. Reg. 830/93; and/or
- (vii) paragraph 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.

PARTICULARS OF THE ALLEGATIONS

1. During the Relevant Period set out in the Statement of Allegations, and at all times material to these allegations, David Ervine Greenberg (the “**Registrant**”) was a registered podiatrist and engaged in practice at Greenberg Podiatry, located at 770 Broadview Avenue, Unit 102, in Ottawa, Ontario (the “**Clinic**”).

A. Civil Proceedings

2. As a registrant of the College, the Registrant was required to comply with various reporting and/or other obligations to the College, as well as the standards of the profession in relation to his practice.
3. Among other obligations, the Registrant was required to self-report to the College any proceedings that were commenced against the Registrant with respect to his practice.
4. On or about July 23, 2019, D.S. (the “**Patient**”) commenced a civil action in the Ontario Superior Court of Justice in which the Patient sought damages and other remedies against the Registrant (identified as “Dr. David Greenberg”) arising from treatments the Patient had received from the Registrant in 2017 and 2018 (the “**Claim**”).

5. On or about October 23, 2019, the Registrant, through his legal counsel, served and filed a Statement of Defence in response to the Claim, and thereafter engaged in various steps in the litigation during the period from October 2019 to September 2024.
6. However, the Registrant failed to file a self-report with the College about the Claim in 2019, 2020, 2021, 2022, 2023 and/or in a timely fashion or at all.
7. In addition, the Registrant did not disclose the Claim to the College as part of his annual registration renewals for 2020, 2021, 2022 and/or 2023 and/or subsequent to submitting those annual registration renewals to the College.
8. To the contrary, in submitting his annual registration renewals to the College for the years 2020, 2021, 2022, and/or 2023, the Registrant answered “yes” to the following declaration:

I hereby certify that the statements made by me in this form are complete and correct. I understand that a false or misleading statement may be cause for revoking of my certificate of registration.
9. The Registrant did not disclose the Claim to the College until December 20, 2023, as part of his registration renewal for 2024, notwithstanding his obligation to do so earlier and the fact that the Registrant had been involved in litigating the Claim for upward of four years.

B. Treatment of the Patient

10. On or about June 6, 2017, the Patient was seen by the Registrant at the Clinic reporting pain in the left foot, including pain in the second metatarsal. X-rays were taken.
11. At that time, the Registrant diagnosed the Patient with a dropped metatarsal head. The Registrant advised the Patient, with words to the effect, that surgery was the only option and the problem could not be addressed with an orthotic and/or other treatments. No non-surgical treatments were recommended.
12. As a treatment plan, the Registrant recommended a Weil osteotomy, as well as a bunionectomy of the first metatarsal and a bunionectomy on the fifth metatarsal.
13. The Registrant failed to explain and/or document the benefits and risks of the surgery to the Patient, and/or the benefits and risks associated with alternative treatment options.
14. The Registrant performed the surgery on August 9, 2017, and, prior to the surgery, failed to obtain and/or document in the patient records informed consent from the Patient and/or explain to the Patient the benefits and risks in proceeding with the treatment plan, as well as the available alternative treatments.

15. Following surgery, the Patient continued to experience ongoing and/or worsening pain and/or diminished function in the foot. Subsequent x-rays of the foot revealed:
 - (i) hyperextension of the first toe – a failure to straighten the toe through the first bunionectomy;
 - (ii) a floating condition on the second toe;
 - (iii) the fifth metatarsal was misaligned;
16. Over the next several months, the Patient's condition did not improve and, on the Registrant's recommendation, the Patient was prescribed orthotics and other treatments to address the pain and/or function.
17. In addition, in or about February 2018, the Registrant also recommended that the Patient undergo further surgery for nerve decompression using a KorbyGard.
18. The surgery proceeded on February 23, 2018. Prior to the surgery, the Registrant failed to explain to the Patient and/or document such discussion in patient records the benefits and risks of the surgery and/or the benefits and risks associated with alternative treatments options.

19. In recommending and/or providing treatments to the Patient, the Registrant failed to meet the regulations and standards of practice of the profession, including the College's written standards identified in the Statement of Allegations above.

20. In providing treatments to the Patient at the Clinic, the Registrant breached the College's regulations and standards to ensure that treatments were medically necessary and/or required for the prevention, treatment or management of a disease, disorder, or dysfunction of the foot.

21. In particular, during the Relevant Period, the Registrant breached the standards of the profession, by:
 - failing to conduct and/or document an adequate assessment;

 - performing surgery without obtaining and/or documenting informed consent from the Patient;

 - performing surgery without documenting why surgery in the circumstances was clinically indicated and/or an appropriate treatment plan and/or medically necessary for the prevention, treatment or management of a disease, disorder, or dysfunction of the foot;

 - failing to explain to the Patient and/or document discussions with the Patient about the range of potential outcomes for the symptoms and/or their treatment; and/or

- failing to maintain records in accordance with the regulations and the standards of the profession.
22. Additional information and disclosure about the allegations against the Registrant will be provided in advance of the hearing.

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- and -

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

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Lawyers for the College of
Chiropractors of Ontario
