

DISCIPLINE COMMITTEE OF THE COLLEGE OF CHIROPODISTS OF ONTARIO

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

IN THE MATTER OF a Hearing directed
by the Inquiries, Complaints and Reports Committee of
the College of Chiropractors of Ontario
pursuant to Section 26(1) of the *Health Professions Procedural Code*
being Schedule 2 of the *Regulated Health Professions Act, 1991*,
S.O. 1991, c. 18, as amended.

BETWEEN:

COLLEGE OF CHIROPODISTS OF ONTARIO

- and -

THOMAS HEWAK

PANEL MEMBERS:

Cesar Mendez	Chair, Professional Member
Deborah Loundes	Professional Member
Reshad Nazeer	Public Member

**COUNSEL FOR THE
COLLEGE:**

Amy Block

**COUNSEL FOR THE
REGISTRANT:**

Zoe Hountalas

**INDEPENDENT LEGAL
COUNSEL:**

Luisa Ritacca

Hearing Date:

May 22, 2024

Decision Date:

May 22, 2024

Release of Written Reasons:

July 3, 2024

DECISION AND REASONS

1. This matter came on for hearing before a panel of the Discipline Committee on May 22, 2024. With the consent of the parties, this matter was heard electronically.

Publication Ban

2. At the outset of the hearing, the College sought an order banning the broadcasting and publication of the names or anything that could identify the names of patients referred to during the hearing, including in any documents filed. The Registrant did not oppose the request.
3. In the circumstances, the Panel was satisfied that a limited order banning the broadcasting and publication of the names or anything that could identify the names of patients referred to during the hearing, including in any documents filed was appropriate and made the order accordingly.

The Allegations

4. The allegations made against the Registrant were set out in a Notice of Hearing, dated June 12, 2023. The Notice of Hearing can be found at Tab 1 of Exhibit 1 and the allegations are as follows:
 1. Thomas James Hewak (“**Registrant**”) was at all material times a registered member of the College.
 2. It is alleged that during the period from approximately January 2020 to January 2023 (the “**Relevant Period**”), the Member 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 *Chiroprody Act, 1991*:
 - (i) paragraph 2 – failing to meet or contravening a standard of practice of the profession) and, in particular, the College’s standards pertaining to:
 - a. Assessment and Management;
 - b. Patient Relations;
 - c. Records;
 - d. Prescription Custom Foot Orthoses; and/or
 - e. Prescription Footwear

- (ii) paragraph 10 – practising the profession while the member is in a conflict of interest;
- (iii) paragraph 17 – failing to keep records as required by the regulations;
- (iv) paragraph 20 – signing or issuing, in the member’s professional capacity, a document that contains a false or misleading statement;
- (v) paragraph 21 – submitting an account or charge for services that the member knows is false or misleading;
- (vi) paragraph 22 – charging a fee that is excessive in relation to the services or devices charged for;
- (vii) paragraph 30 – contravening the *Chiropody Act, 1991*, the *Regulated Health Professions Act, 1991*, or the regulations under either of those Acts: specifically, Ontario Regulation 203/94 under the *Chiropody Act, 1991*, and, in particular, Records (Part III);
- (viii) paragraph 31 – contravening a federal, provincial or territorial law, a municipal by-law or a by-law or rule of a hospital, nursing home or other facility or agency that provides health services to the public if,
 - i. the purpose of the law, by-law or rule is to protect the public health, or
 - ii. the contravention is relevant to the member’s suitability to practise.
- (ix) 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

A. Background

1. At all material times, the Registrant was registered with the College as a chiropodist to practise chiropody in Ontario. He was first registered with the College on or about September 30, 1996.
2. During the Relevant Period, the Registrant’s primary practice location was reported to the College as being Hewak Foot Clinic, located at 60 Hatt Street, Dundas, Ontario.

3. In addition, the Registrant also practised at several secondary locations (collectively, the “**Clinics**”), including:

- The Burlington Foot Clinic, 1960 Appleby Line, Burlington, Ontario
- The Hamilton Foot Clinic, 1508 Upper James Street, Hamilton, Ontario
- The Foot and Ankle Institute, 1508 Upper James Street, Hamilton, Ontario

4. The Registrant is also an officer and/or director and/or shareholder of The Hamilton Foot Clinic.

5. During the Relevant Period, the Registrant was ordinarily scheduled to work at the Clinics one or two days per week.

B. Green Shield Canada Complaint

6. On or about January 4, 2023, the College received a complaint from Green Shield Canada (“**GSC**”) about the Registrant (the “**Complaint**”).

7. As set out in the Complaint, GSC regularly conducts profiles of its service providers and their practices in prescribing services and/or products to its plan members and their dependents.

8. During the course of its verification process, GSC identified several flags and had cause to review claims submitted for prescription footwear and custom-made orthotics that identified the Registrant as the treating/dispensing chiroprapist at the Clinics.

9. The GSC review encompassed 2,179 claims that had been submitted during the period from January 1, 2020 to September 30, 2022 (the “**Claims**”). The total value of the Claims was approximately \$907,778.87.

10. As a result of the Claims, \$726,359.50 was paid directly in the Registrant’s name via cheque or electronic funds transfer (EFT) to the Clinics.

11. The Claims were submitted manually to GSC using GSC Claim Form for Custom Foot Orthotics/Footwear. All the claim forms submitted to GSC were signed by the Registrant and reported that the services and/or treatments had been rendered by him.

12. All, or a majority, of the orthotics prescribed and dispensed at the Clinics during the Relevant Period were manufactured by 2364164 Ontario Inc. (“**236 Ontario**”) – a company operating under the business name of Kinetic Orthopaedic and Orthotic Lab and/or KOOL. 236 Ontario is a company with common ownership with the Clinics.

13. To ensure that treatments had been appropriately prescribed and dispensed to its plan members, GSC initiated an onsite audit at the Clinics. Due to the volume of

the Claims, GSC sought to review and obtain supporting documents for a subset of the benefit claims at issue.

14. Notice of the audit was issued on September 21, 2022. At that time, GSC also indicated that documents would be requested for additional plan members – a list of which would be provided once onsite.
15. The audit was conducted at the Clinics on October 4, 2022 (The Burlington Foot Clinic) and on October 5, 2022 (The Foot and Ankle Institute/The Hamilton Foot Clinic). A list of the patient records reviewed and obtained by GSC during onsite audits are attached as Appendix “A”.
16. In reviewing the records and details of the Claims, GSC determined that the Claims were made in respect of plan members belonging to the same group sponsored benefit plan – the terms of which included benefit coverage for two (2) pairs of orthopedic shoes every twelve (12) months and two (2) pairs of custom-made orthotics every three (3) calendar years per plan member.
17. The audit of the Claims further determined that:
 - Little to no chiropody services had been provided by the Registrant to the plan members and/or their dependents;
 - Multiple plan members had exhausted their benefit coverage and had received two (2) pairs of orthopedic shoes and two (2) pairs of orthotics, including family members;
 - Orthopedic shoes and/or orthotics were dispensed during the lockdown period from March 25, 2020 to May 26, 2020, contrary to the directive of Ontario’s Chief Medical Officer made pursuant to the *Health Protection and Promotion Act* and its regulations;
 - The Registrant’s patient records for the Claims lacked the requisite information to determine that the treatments were medically necessary; and/or
- Claims had been submitted to GSC for treatments purportedly provided on the same day from multiple locations and/or on days on which the Registrant was not working at the Clinics.

C. Summary of the Allegations

18. In prescribing and/or purporting to prescribe orthotics and/or prescription footwear to his patients, the Registrant did not perform or document an adequate assessment of the patient and/or determine that the treatments were medically necessary, contrary to the College’s standards.

19. In particular, the Registrant failed to:
 - (a) obtain and document an adequate and/or current patient history;
 - (b) conduct and document an adequate assessment;
 - (c) obtain and/or document informed consent, including discussion with patients about the benefits and risks of various treatment options;
 - (d) determine if a different treatment plan was appropriate in the circumstances before prescribing orthotics and/or prescription footwear;
 - (e) discuss with patient and document the treatment plan;
 - (f) review scans of the patient's feet to ensure that scans were accurate and appropriate devices were manufactured to suit the needs of the patient;
 - (g) fit and dispense the orthotics and/ footwear to the patient; and/or
 - (h) provide appropriate follow-up care to the patient.
20. In prescribing and/or purporting to prescribe orthotics and/or prescription footwear to his patients, the Registrant failed to determine and/or adequately document why orthotics and/or prescription footwear were medically necessary for the patient and/or required for the prevention, treatment or management of a disease, disorder, or dysfunction of the foot.
21. In prescribing orthotics and/or footwear to his patients, the Registrant participated and/or was complicit in the practice of over-prescribing or over-utilizing specific treatment options in order to exhaust benefit coverage – a business practice that is contrary to the College's standards and/or conflict of interest policy.
22. In prescribing and/or purporting to prescribe orthotics and/or prescription footwear to his patients, the Registrant signed, issued, and/or submitted documents to GSC in support of the Claims that were false and/or misleading.
23. In prescribing and/or purporting to prescribe orthotics and/or prescription footwear to his patients, the Registrant signed, issued, and/or submitted biomechanical assessments, prescription forms, claim forms, and/or other patient records that were fabricated and/or were for assessments conducted by others, including individuals who were not members of the College.
24. In prescribing and/or purporting to prescribe orthotics and/or prescription footwear to his patients, the Registrant signed, issued, and/or submitted biomechanical assessments, prescription forms, claim forms, and/or other patient records for orthotics and/or footwear that were dispensed by others, including individuals who were not members of the College.
25. The Registrant failed to maintain patient records, including financial records, in accordance with the regulations and the College's standards.

26. Additional information and disclosure about the allegations against the Registrant will be provided in advance of the hearing.

Registrant's Plea

5. The Registrant admitted that he engaged in professional misconduct as described in the Notice of Hearing, as set out above.
6. The Panel conducted an oral plea inquiry and was satisfied that the Registrant's admissions were voluntary, informed, and unequivocal.

Agreed Statement of Facts

7. The evidence at the hearing proceeded by way of agreement. The parties tendered an Agreed Statement of Facts which can be found at Tab 2 of Exhibit 1. The material portions of the Agreed Statement of facts provide as follows:

A. Background

1. At all material times, the Registrant was registered with the College as a chiropractor to practise chiropractic in Ontario. He was first registered with the College on or about September 30, 1996.
2. Between January 2020 and January 2023, (the "**Relevant Period**"), the Registrant's primary practice location was reported to the College as being Hewak Foot Clinic, located at 60 Hatt Street, Dundas, Ontario.
3. In addition, the Registrant also practised at several secondary locations (collectively, the "**Clinics**"), including:
 - The Burlington Foot Clinic, 1960 Appleby Line, Burlington, Ontario
 - The Hamilton Foot Clinic, 1508 Upper James Street, Hamilton, Ontario
 - The Foot and Ankle Institute, 1508 Upper James Street, Hamilton, Ontario
4. The Registrant is also an officer, director and/or minority shareholder of The Hamilton Foot Clinic.
5. During the Relevant Period, the Registrant's schedule varied per week. He would often see patients at two of the Clinics on the same day as he commuted between locations.

B. Green Shield Canada Complaint

6. On or about January 4, 2023, the College received a complaint from Green Shield Canada ("**GSC**") about the Registrant (the "**Complaint**"). Attached as **Exhibit "A"**¹ is a copy of the Complaint dated January 4, 2023.

¹ The Panel has not included any attachments from the Agreed Statement of Facts in these Reasons for Decision

7. As set out in the Complaint, GSC regularly conducts profiles of its service providers and their practices in prescribing services and/or products to its plan members and their dependents.
8. During the course of its verification process, GSC identified several flags and had cause to review claims submitted for prescription footwear and custom-made orthotics that identified the Registrant as the treating/dispensing chiropodist at the Clinics.
9. The GSC review encompassed 2,179 claims that had been submitted during the period from January 1, 2020 to September 30, 2022 (the “**Claims**”). The total value of the Claims was approximately \$907,778.87.
10. As a result of the Claims, \$726,359.50 was paid directly in the Registrant’s name via cheque or electronic funds transfer (EFT) to the Clinics.
11. The Claims were submitted manually to GSC using GSC Claim Form for Custom Foot Orthotics/Footwear. All the claim forms submitted to GSC were signed by the Registrant and reported that the services and/or treatments had been rendered by him.
12. All, or a majority, of the orthotics prescribed and dispensed at the Clinics during the Relevant Period were manufactured by 2364164 Ontario Inc. (“**236 Ontario**”) – a company operating under the business name of Kinetic Orthopaedic and Orthotic Lab and/or KOOL.
13. 236 Ontario is a company with common ownership with the Clinics. The Registrant is not an owner of 236 Ontario.
14. To ensure that treatments had been appropriately prescribed and dispensed to its plan members, GSC initiated an onsite audit at the Clinics. Due to the volume of the Claims, GSC sought to review and obtain supporting documents for a subset of the benefit claims at issue.
15. Notice of the audit was issued to the Registrant on September 21, 2022. At that time, GSC also indicated that documents would be requested for additional plan members– a list of which would be provided once onsite.
16. The audit was conducted at the Clinics on October 4, 2022 (The Burlington Foot Clinic) and on October 5, 2022 (The Foot and Ankle Institute/The Hamilton Foot Clinic). A list of the patient records reviewed and obtained by GSC during onsite audits are attached as **Appendix “A”**.
17. In reviewing the records and details of the Claims, GSC determined that the Claims were made in respect of plan members belonging to the same group sponsored benefit plan – the terms of which included benefit coverage for two (2) pairs of orthopedic shoes every twelve (12) months and two (2) pairs of custom-made orthotics every three (3) calendar years per plan member.
18. The audit of the Claims further determined that:
 - Little to no chiropody services had been provided by the Registrant

to the plan members and/or their dependents;

- Multiple plan members had exhausted their benefit coverage and had received two (2) pairs of orthopedic shoes and two (2) pairs of orthotics, including family members;
- Orthopedic shoes and/or orthotics were dispensed during the lockdown period from March 25, 2020 to May 26, 2020, contrary to the directive of Ontario's Chief Medical Officer made pursuant to the *Health Protection and Promotion Act* and its regulations;
- The Registrant's patient records for the Claims lacked the requisite information to determine that the treatments were medically necessary; and/or Claims had been submitted to GSC for treatments purportedly provided on the same day from multiple locations and/or on days on which the Registrant was not working at the Clinics.

C. Summary of the Allegations

19. The Registrant admits that in prescribing orthotics and/or prescription footwear to the patient listed in Appendix "A", the Registrant did not perform or document an adequate assessment of the patient or determine that the treatments prescribed to the patients were medically necessary.
20. The Registrant also admits that his conduct was contrary to the College's standards. In particular, the Registrant admits that he failed to:
 - (a) obtain and document an adequate and/or current patient history;
 - (b) conduct and document an adequate assessment;
 - (c) obtain and/or document informed consent, including discussion with patients about the benefits and risks of various treatment options;
 - (d) determine if a different treatment plan was appropriate in the circumstances before prescribing orthotics and/or prescription footwear;
 - (e) discuss with the patient and document the treatment plan;
 - (f) review scans of the patient's feet to ensure that scans were accurate and appropriate devices were manufactured to suit the needs of the patient; in some instances, fit and dispense the orthotics and/ footwear to the patient; and/or
 - (g) provide appropriate follow-up care to the patient.
21. In prescribing orthotics and/or prescription footwear to the patients listed in Appendix "A", the Registrant failed to determine or adequately document why orthotics and/or prescription footwear were medically necessary for the patient and/or required for the prevention, treatment or management of a disease, disorder, or dysfunction of the foot.
22. In prescribing orthotics and/or footwear to his patients, the Registrant participated and/or was complicit in the practice of over-prescribing or over-

utilizing specific treatment options in order to exhaust benefit coverage for the patients listed in Appendix “A” – a business practice that is contrary to the College’s standards and/or conflict of interest policy.

23. In prescribing orthotics and/or prescription footwear to the patients listed in Appendix “A”, the Registrant signed, issued, and/or submitted documents to GSC in support of the Claims that were false and/or misleading.
24. In prescribing orthotics and/or prescription footwear to the patients listed in Appendix “A”, the Registrant signed, issued, and/or submitted biomechanical assessments, prescription forms, claim forms, for assessments conducted by others at the Clinics, including individuals who were not registrants of the College.
25. In prescribing orthotics and/or prescription footwear to the patients listed in Appendix “A”, the Registrant signed, issued, and/or submitted biomechanical assessments, prescription forms, claim forms, and/or other patient records for orthotics and/or footwear that were dispensed by others by the Clinics, including individuals who were not registrants of the College.
26. The Registrant further admits that he failed to maintain appropriate patient records, including financial records, in accordance with the regulations and the College’s standards.
27. The following written standards of the College were standards of practice of the profession during the Relevant Period and are appended as Exhibits “**B**” to “**F**” to the ASF:
 - a. Assessment and Management;
 - b. Patient Relations;
 - c. Records;
 - d. Prescription Custom Foot Orthoses; and/or
 - e. Prescription Footwear
 - (i) Based on the facts set out above, the Registrant admits that he committed acts of professional misconduct within the meaning of the following paragraphs of section 1 of the *Professional Misconduct Regulation*, O. Reg. 750/93: paragraph 2 – failing to meet or contravening a standard of practice of the profession) and, in particular, the College’s standards pertaining to:
 - a. Assessment and Management
 - b. Patient Relations;
 - c. Records;
 - d. Prescription Custom Foot Orthoses; and
 - e. Prescription Footwear
 - (ii) paragraph 10 – practising the profession while the Registrant is in a conflict of interest;

- (iii) paragraph 17 – failing to keep records as required by the regulations;
- (iv) paragraph 20 – signing or issuing, in the Registrant’s professional capacity, a document that contains a false or misleading statement;
- (v) paragraph 21 – submitting an account or charge for services that the Registrant knows is false or misleading;
- (vi) paragraph 22 – charging a fee that is excessive in relation to the services or devices charged for;
- (vii) paragraph 30 – contravening the *Chiropody Act, 1991*, the *Regulated Health Professions Act, 1991*, or the regulations under either of those acts: specifically, Ontario Regulation 203/94 under the *Chiropody Act, 1991*, and, in particular, Records (Part III);
- (viii) paragraph 31 – contravening a federal, provincial or territorial law, a municipal by-law or a by-law or rule of a hospital, nursing home or other facility or agency that provides health services to the public if,
 - i. the purpose of the law, by-law or rule is to protect the public health,
 - ii. the contravention is relevant to the member’s suitability to practise.
- (ix) 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.

Decision and Reasons

8. Based on the Registrant’s admissions as set out in the Agreed Statement of Facts, the panel was satisfied on a balance of probabilities that the Registrant engaged in professional misconduct as alleged.
9. As set out in the Agreed Statement of Facts, the Registrant was the subject of an audit by GSC which revealed, among other things that in prescribing orthotics and/or prescription footwear, the Registrant did not perform or document an adequate assessment of the patients identified in the audit or determine whether the treatments she prescribed were medically necessary. This conduct is clearly contrary to the standards set out by the College and contrary to the interests of her patients.
10. Further, the agreed facts demonstrate that the Registrant participated and was complicit in the practice of over-prescribing specific treatment options in order to exhaust benefit coverage. This conduct is clearly contrary to the College’s standards and its zero-tolerance policy for over-prescribing and insurance abuse.
11. The Panel notes that the facts admitted reveal that the Registrant engaged in this practice of over-prescribing while holding an ownership interest in one of the clinics in which he

operated, which has common ownership interest with the orthotics manufacturer used by the Registrant for these prescriptions. The Panel was satisfied that these facts show a clear violation of the College's conflict of interest policy.

12. The facts presented also reveal that the Registrant dispensed orthotics during the provincial lockdown period in March through May 2020, in direct violation of the directive of Ontario's Chief Medical Officer, which was made pursuant to the *Health Protection and Promotion Act*, and its regulations. In engaging this conduct, the Registrant risked the health and safety of his patients, colleagues and the public at large.
13. In summary, the evidence received demonstrated a clear disregard for the College's standards and revealed conduct that having regard to all of the circumstances would reasonably be regarded by other members of this College as disgraceful, dishonourable or unprofessional.

Joint Submission on Penalty and Costs

14. The Panel received and considered a Joint Submission on Penalty and Costs from the parties (Exhibit 2) (the "**Joint Submission**") which sought the following:
 1. An oral reprimand;
 2. An order suspending the Registrant's certification of registration for a period of ten (10) months,² two (2) months of which will be remitted upon the Registrant completing the PROBE ethics course and the University of Toronto records course as outlined in paragraph 3(a) below;
 3. An order directing the Registrar to impose terms, conditions, and limitations on the Registrant's certificate of registration requiring the following:
 - (a) Prior to returning to practice, the Registrant shall successfully complete both the Probe ethics course and the University of Toronto medical record keeping course at his own expense and provide documentary evidence of his completion of those remedial steps to the satisfaction of the Registrar;
 - (b) Upon returning to practice after his suspension, the Registrant is prohibited from imaging, casting, prescribing, constructing, fitting, dispensing and/or ordering the fabrication of orthotics for a period of eight (8) months (the "**Restricted Period**") to any Patient (as that term is defined below). The Registrant is additionally not entitled to assign these duties to anyone else at any of his practice locations, regardless of whether he receives a fee, during the Restricted Period, but shall refer such duties to another Registrant of the College in good standing at

² The Registrant is bound by and shall comply with the College's Guideline for Suspension approved by Council February 25, 2022 as may be amended from time to time.

another clinic not affiliated with the Registrant's practice locations. For the purposes of this restriction:

- (i) "Patient" is defined as: (1) any individual who the Registrant saw, assessed or treated or purported to see, assess or treat for orthotic or orthopedic footwear services in the two years prior to the date of this Order; and (2) any individual who the Registrant is assigned on intake or otherwise sees for any purpose during the Restricted Period.
- (ii) The Registrant shall ensure a sign, in the form attached as **Appendix "A"**, is posted in a clearly visible and secure location in all waiting rooms, examination rooms, and consulting rooms of all practice locations, at all times during the Restricted Period, which states "Thomas James Hewak is prohibited from imaging, casting, prescribing, constructing, fitting, dispensing and/or ordering the fabrication of orthotics. Further information may be found on the College of Chiropodists of Ontario website at www.cocoo.on.ca";
- (c) At his own expense, the Registrant will receive supervision of his chiropody practice with a supervisor approved by the Registrar for a period of eighteen (18) months from the date on which the Registrant returns to practise from the suspension. The terms of the supervision are as follows:
 - The supervisor shall visit with the Registrant in person on at least four (4) occasions – twice in the first six months and twice in the last six months;
 - The supervisor shall determine the length of each visit;
 - In conducting the supervision, the supervisor shall discuss ethics, practice management, record-keeping and compliance with the College's standards with the Registrant;
 - The supervisor shall prepare a report to the Registrar after the second (2) visit and after the fourth (4) visit;
 - The Registrant shall provide the supervisor with the Discipline Committee's decision and then provide written confirmation to the Registrar, signed by the supervisor, that the supervisor has received and reviewed the final decision;
- (d) In the event that the Registrant obtains employment to provide chiropody services during the eighteen (18) months following the date that the Registrant is able to return to practise after his suspension, the Registrant shall:
 - notify any current or new employers of the Discipline Committee's final decision;
 - ensure the Registrar is notified of the name, address, and telephone number of all employer(s) within fifteen (15) days of commencing employment;

- provide his employer(s) with a copy of:
 - the Discipline Committee's Order;
 - the Notice of Hearing;
 - the Agreed Statement of Facts;
 - the Joint Submission on Penalty;
 - a copy of the Discipline Committee's decision; and
 - have his employer forward a report to the Registrar within fifteen (15) days of commencing employment confirmation that the employer has received the documents noted above and agrees to notify the Registrar immediately upon receipt of any information that the Registrant is not complying with the College's standards;
- 4. An order that the Discipline Committee's decision be published, in detail with the Registrant's name, in the College's official publication, on the College's website, and/or on the College's public register;
- 5. An order directing the Registrant to pay costs to the College in the amount of \$20,000 in accordance with the following schedule:
 - (a) \$6,666.67– the date of this Order;
 - (b) \$6,666.67 – in three months from the date of this Order;
 - (c) \$6,666.66 – in six months from the date of this Order;
- 6. The College and the Registrant agree that if the Discipline Committee accepts this Joint Submission on Penalty, there will be no appeal or judicial review of the decision to any forum.

Decision and Reasons for Penalty

- 15. The Panel reviewed the Joint Submission and received submissions from counsel. The Panel accepted the Joint Submission and made an order as to penalty and costs consistent with its terms before the conclusion of the hearing.
- 16. The Panel understands its obligations not to depart from a joint submission unless accepting the joint submission would bring the administration of the discipline process into disrepute. The Panel is satisfied that the proposed penalty is in keeping with the public interest and would certainly not bring this process into disrepute.
- 17. Mitigating factors considered by the Panel in reaching it's decision:
 - (i) This was the Registrant's first time appearing before the College's Discipline Committee.

- (ii) The Registrant has cooperated with the College throughout this process.
 - (iii) By admitting the allegations of professional misconduct and entering into an Agreed Statement of Facts and a Joint Submission as to Penalty, the Registrant has saved the College considerable time and expense, which would have been incurred had the matter proceeded on a contested basis.
 - (iv) The Registrant has shown that they have taken responsibility for their conduct and have proactively sought rehabilitation by entering into the University of Toronto medical record keeping course.
18. Aggravating factors considered by the Panel in reaching its decision:
- (i) The professional misconduct was not an isolated incident; rather it consisted of many incidents occurring over a lengthy period of time.
 - (ii) The Registrant's conduct was consistent with a deliberate pattern which appeared to be specifically motivated by financial gain rather than grounded in the best interest of patients.
19. The Panel is satisfied that the terms ordered fairly reflect the mitigating circumstances present in this case. The Panel is satisfied that the terms contained in the Joint Submission are reasonable, proportionate, within the range of penalties imposed in similar cases, and will maintain public confidence in Discipline Committee. The Panel is satisfied that the terms ordered fairly considers the fact that the Registrant has cooperated with the College throughout, thereby obviating the need for a full hearing, he admitted the allegations and entered into a reasonable joint proposal for penalty. The Panel was also advised that the Registrant has already undertaken rehabilitative steps and after a long career, this is his first time appearing before the Discipline Committee.
20. The significant period of suspension, followed by an orthotics prohibition and a period of monitoring will give the Registrant adequate time to reflect on his misconduct and will greatly minimize the risk that he will engage in the same conduct once he returns to practice.
21. The suspension, as well as the other elements of the penalty will also serve as a general deterrent for members of the College at large. The message is clear – members should not engage in conduct, which is misleading, contrary to their patients' best interests, and not in keeping with the interests of the profession as a whole simply in order to make a profit.
22. At the conclusion of the hearing, having confirmed that the Registrant waived any right to appeal, the Panel delivered an oral reprimand on the record. A copy of the reprimand is attached at the end of these Reasons for Decision.

Costs

- 23. Consistent with the Joint Submissions, the Panel orders the Registrant to pay costs to the College in the amount of \$20,000.00 in accordance with the payment schedule set out above.
- 24. Pursuant to section 53.1 of the Code, the Panel has jurisdiction to order costs in an appropriate case. The Panel finds that this is an appropriate case for costs – the parties have agreed that the Registrant’s ought to pay costs and the Registrant was found to have engaged in significant professional misconduct.
- 25. The membership of the College at large should not bear the full brunt of the costs associated with the investigation and prosecution of this matter. The fact that the Registrant cooperated thereby avoiding the need for a fully contested hearing is reflected in the relatively modest amount of costs sought by the College.
- 26. The costs as ordered by the Panel are in keeping with cost orders made by other panels of the Discipline Committee of the College in similar circumstances.

I, Cesar Mendez, sign this decision and reasons as Chairperson of this Discipline panel and on behalf of the members of the Discipline panel as listed below:



July 2, 2024

Cesar Mendez, Chairperson

Date:

Panel Members:

Deborah Loundes
Reshad Nazeer

Professional Member
Public Member

COLLEGE OF CHIROPODISTS OF ONTARIO v. JAMES HEWAK**REPRIMAND**

As part of its penalty order this Discipline panel has ordered that you be given this oral reprimand.

The fact that you have received this reprimand will be part of the public portion of the Register and, as such, part of your record with the College.

The panel has found that you have engaged in professional misconduct in several ways, including but not limited to the following:

1. You failed to meet several standards of practice of the profession including assessment and management, patient relations, records, prescription custom foot orthoses and prescription footwear.
2. You practised while in a conflict of interest.
3. You failed to keep records as required.
4. You submitted false and misleading statements, including financial records.
5. You contravened regulations under the *Chiropody Act*; and
6. You engaged in conduct in the course of practising the profession that would be regarded by members as disgraceful, dishonourable or unprofessional.

It is a matter of profound concern to this panel that you have engaged in these forms of professional misconduct. By doing so, you have brought discredit to the profession and to yourself. Public confidence in this profession has been put in jeopardy. Moreover, the result of your misconduct is that you have let down the public, the chiropody profession, and yourself.

We need to make it clear to you that your conduct is unacceptable.

Of special concern to us is the fact that the professional misconduct in which you engaged involved multiple breaches of several standards of the College, as well as breaches of the

regulations that regulate the practice of chiropodists and podiatrists. You conducted yourself in this manner clearly so that you could benefit financially, with no concern for your patients or the public at large. You misled your patients and their insurers, which puts at risk not only your ability to offer services covered by extended healthcare, but so too puts at risk the ability of the profession as a whole to do so.

It is necessary for us to use this reprimand as an opportunity to impress upon you the seriousness of your misconduct.