

ONTARIO CHIROPODISTS AND PODIATRISTS DISCIPLINE TRIBUNAL

Citation: *College of Chiropractors of Ontario v. Chan*, 2025 ONCPDT 5

Date: May 27, 2025

Tribunal File No.: 24-008-CP

BETWEEN:

College of Chiropractors of Ontario

College

- and -

Justin Cheuk Yin Chan

Registrant

FINDING AND PENALTY REASONS

Heard: May 1, 2025, by videoconference

Panel:

David A. Wright (Tribunal Chair)

Itraf Ahmad (public)

Deborah Loundes (chiropractor)

Brooke Mitchell (chiropractor)

Appearances:

Amy Block, for the College

Alisha Kapur and Lonny Rosen, 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] Before prescribing orthotics, a chiropodist or podiatrist must obtain a patient history, conduct an assessment that includes a physical exam, determine that orthotics are medically necessary and determine and discuss various treatment options, including those other than orthotics. Equally important, they must document having taken all these steps. When the College reviewed 34 of Mr. Chan's patient records, it found no indication that he had taken the required steps. Mr. Chan admits that he didn't follow College standards or keep proper records and that this was professional misconduct. We found professional misconduct as alleged and admitted.

[2] The College and the registrant agreed that the penalty for this misconduct should be a net suspension of four months, the requirement to complete various courses, supervision of his practice for 18 months after his suspension ends and the requirement that he give any current or future employers detailed information about this case, including our decision.

[3] When the parties make a joint submission, we must accept it unless there are exceptional circumstances, where it is so unhinged that it would bring the administration of the College's professional discipline system into disrepute. The penalty here is proportionate to those in other cases involving analogous misconduct and therefore we made the order requested at the hearing. These are our reasons for our finding and penalty.

[4] Tribunal Chair David Wright conducted case management conferences in this matter and sits on the panel with the consent of both parties.

Findings of Misconduct

[5] When a member of the public seeks treatment from a chiropodist, they expect the expertise of a well-trained, regulated health professional whose scope of practice is "the assessment of the foot and the treatment and prevention of diseases, disorders or dysfunctions of the foot by therapeutic, orthotic or palliative means":

Chiropody Act, 1991, SO 1991, c. 20, s. 4. When they identify themselves as registrants of this College, chiropodists and podiatrists are representing that they are applying their training, expertise, and the College's practice standards. Those standards are clear in relation to orthotic prescriptions. In a nutshell, before prescribing orthotics, the

chiropractor must conduct a complete assessment that includes specific components, consider and advise the patient about other treatment options, ensure that orthotics are the right treatment for the patient's condition and make and retain detailed records. By failing to do so, Mr. Chan committed serious professional misconduct.

[6] Both the General Regulation (O. Reg. 203/94 made under the *Chiropractic Act*) and the College's Records Standard establish specific requirements for chiropractors' records. Mr. Chan's had many deficiencies. They had incomplete or no patient histories, incomplete or no records of physical exams, and incomplete or no discussions of treatment options.

[7] When he prescribed orthotics without obtaining and/or documenting an adequate patient history, conducting an adequate assessment, conducting a physical exam, obtaining informed consent by discussing with his patient the benefits and risks of different treatment options, and not determining if a different treatment plan was appropriate before prescribing orthotics, he failed to meet the expectations set out in the College's Practice Standard on Prescription Custom Foot Orthoses.

[8] The parties have agreed, and we found, that these actions support the following overlapping findings of misconduct under s. 1 of the Professional Misconduct Regulation, O. Reg. 750/93 under the *Chiropractic Act*:

- Failing to meet or contravening standards of practice of the profession: notably those on Assessment and Management, Prescription Custom Foot Orthoses, and Records (para. 1);
- Failing to keep records as required by the regulations (para. 17);

[9] The same actions can form the basis for findings of misconduct in more than one category. The standards and record-keeping violations capture the core of what he did wrong. The parties have agreed that Mr. Chan also signed or issued a document that contains a false or misleading statement (because he issued accounts that were not based on a complete assessment, see *College of Chiropractors of Ontario v. MacMull*, 2023 ONCOCOO 3) and charged excessive fees (because he did not conduct or document an adequate assessment; also see *MacMull*). By failing to keep records, he contravened the regulations under the *Chiropractic Act* (para. 30). He also engaged in

conduct that would reasonably be regarded by registrants as disgraceful, dishonourable or unprofessional (para. 33).

Penalty

[10] The parties jointly propose that the penalty be a seven-month suspension, three months of which will be remitted (cancelled) if the registrant completes the University of Toronto medical record-keeping course while suspended. The requirement to take the record-keeping course will also be a term, condition or limitation on his certificate of registration. In essence, this is a four-month suspension, and when evaluating it, the net number of months should be compared with other cases. The parties also agreed to an oral reprimand, and that a supervisor approved by the Registrar will meet with Mr. Chan six times after he returns to practice to discuss practice management, record keeping and compliance with the College's standards including taking histories, conducting assessments and determining whether orthotics are indicated. He must also advise potential employers about the details of this case.

[11] When a registrant admits misconduct and the parties jointly propose a penalty, the panel's role is limited. We are not determining the penalty that we would have ordered. Rather, we must implement the parties' agreement unless to do so would bring the administration of the professional discipline system into disrepute. This is a very high bar; a joint submission must not be rejected unless it is "unhinged" from the circumstances. See *R. v. Anthony-Cook*, 2016 SCC 43; *Bradley v. Ontario College of Teachers*, 2021 ONSC 2303 (Div. Ct.) at paras. 9-12.

[12] This stringent standard encourages settlement by ensuring "a high degree of certainty" that the agreed penalty will be accepted, avoiding "the need for lengthy, costly and contentious" hearings: *R. v. Nahanee*, 2022 SCC 37 at para. 2. Other benefits include more expeditious action to protect the public, avoiding an "all or nothing" situation for either party, sparing witnesses the stress of testifying, certainty of when the penalty will start and the ability to reach "creative and meaningful, terms, conditions and limitations that would be difficult to order and implement without buy-in from both parties": *College of Audiologists and Speech-Language Pathologists of Ontario v. Dame*, 2023 ONCASP 3 at para. 9.

[13] In evaluating the seriousness of the misconduct, the nature of the registrant's actions is central. As mentioned above, the same actions may fall under more than one

head of misconduct, and the same head or heads of misconduct may capture misconduct of varying degrees of seriousness. Therefore, what the registrant did, rather than the number of categories or their labels, must be at the forefront.

[14] The parties rely on four previous discipline decisions from this Tribunal (formerly called the Discipline Committee) that show how cases with some similar aspects were treated. Other cases, even if not identical, are a helpful comparison to show the relevant penalty range. In *College of Chiropodists of Ontario v. Sliwa*, 2022 ONCOCOO 3, the penalty included a four-month net suspension, a 12-month restriction on prescribing orthotics and a requirement to take an ethics course. In addition to misconduct similar to that in this case, the registrant signed claims for off-the-shelf footwear provided by her clinic that she did not prescribe and did not herself dispense orthotics she prescribed. In *College of Chiropodists of Ontario v. Infanti*, 2021 ONCOCOO 11, the penalty included a five-month net suspension. That case also involved a finding of conflict of interest and the conclusion that “the Member’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” (para. 13). In both those cases, ethics courses and prohibitions on prescribing were ordered in addition to terms similar to those here. We agree with the College that the absence of those terms does not bring the administration of the professional discipline system into disrepute given the different and more serious nature of the misconduct in those cases.

[15] The College highlighted *MacMull*, where the penalty included a net ten-month suspension and 12-month prohibition on prescribing orthotics, largely because of the differences from this case. Unlike Mr. Chan, the registrant did not admit misconduct, reach a joint submission or even participate in the hearing. The College also highlighted other differences, which include that Mr. MacMull engaged in inappropriate business practices, intentionally misled the insurer and prescribed unnecessary orthotics. Finally, the College pointed us to *College of Chiropodists of Ontario v. Seecharan*, 2024 ONCOCOO 5, where the registrant received a net eight-month suspension, as a contrast with this case. There, the registrant signed various documents that were fabricated, including for orthotics and/or footwear dispensed by others, including non-registrants. We agree with the parties that the comparison with this more serious misconduct helps establish that this penalty does not bring the administration of the professional discipline system into disrepute. Mr. Chan’s misconduct is serious and

results in a significant penalty, but there is nothing improper about the fact that the parties' joint submission is at the low end of the range shown by the comparisons.

[16] Mitigating factors include Mr. Chan's admission of misconduct and agreement to the penalty, which demonstrate insight. Mr. Chan has no discipline history. In *College of Physicians and Surgeons of Ontario v. Parajian*, 2025 ONPSDT 15, released after the hearing but before these reasons, the Ontario Physicians and Surgeons Discipline Tribunal concluded that the absence of a discipline history is a neutral, rather than a mitigating factor. Given that *Parajian* was not available at the time of the hearing and does not affect the outcome, we do not need to address the question here.

[17] Considering the seriousness of the misconduct, comparable cases and the mitigating factors, this penalty falls well within the appropriate range, as do the costs and payment plan.

Order

[18] We made the following order:

Penalty

1. The Tribunal requires the Registrant to appear before the panel to be reprimanded.
2. The Tribunal directs the Registrar to:
 - a. suspend the Registrant's certificate of registration for a period of seven (7) months, three (3) months of which will be remitted upon the Registrant completing the University of Toronto records course prior to returning to practice, commencing May 2, 2025 at 12:01 a.m.
 - b. place the following terms, conditions and limitations on the Registrant's certificate of registration effective the date of this order:
 - i. Prior to returning to practice, the Registrant shall successfully complete the University of Toronto medical record keeping course at his own expense and provide documentary evidence of his completion of the course to the satisfaction of the Registrar;
 - ii. 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 practice from the suspension. The terms of the supervision are as follows:

- The supervisor shall visit the Registrant in person on six (6) occasions—two (2) times in the first six (6) months, two (2) times in the next six (6) months and two (2) times in the last six (6) months;
 - The supervisor shall determine the length of each visit;
 - In conducting the supervision, the supervisor shall discuss with the Registrant practice management, record-keeping and compliance with this College's standards including taking histories, conducting assessments and determining whether orthotics are indicated;
 - The supervisor shall prepare a report to the Registrar:
 - a. After the third (3) visit;
 - b. After the last (sixth) visit;
 - The Registrant shall provide the supervisor with the Discipline Committee's decision, and a copy of the Agreed Statement of Facts, and then provide written confirmation to the Registrar, signed by the supervisor, that the supervisor has received and reviewed the final decision and Agreed Statement of Facts;
- iii. 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 practice after his suspension, the Registrant shall:
- notify any current or new employers of the Discipline Tribunal'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 following:
 - the Discipline Tribunal's Order the Notice of Hearing;
 - the Agreed Statement of Facts;
 - the Joint Submission on Penalty;
 - a copy of the Discipline Tribunal's decision; and have his employer forward a report to the Registrar within fifteen (15) days of commencing employment confirming 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;
- c. publish the Discipline Tribunal's decision 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.

Costs

3. The Tribunal requires the Registrant to pay the College costs in total amount of \$23,000 in accordance with the following schedule:
- a. On May 1, 2025, the Registrant shall pay the College costs in the amount of \$4,600;
 - b. On August 1, 2025, the Registrant shall pay the College costs in the amount of \$4,600;
 - c. On November 1, 2025, the Registrant shall pay the College costs in the amount of \$4,600;
 - e. On February 1, 2026, the Registrant shall pay the College costs in the amount of \$4,600; and On May 1, 2026, the Registrant shall pay the College costs in the amount of \$4,600.