

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 -
HELMUT KELLEN D.Ch.**

PANEL MEMBERS:

Peter Ferguson	Chair, Professional Member
Riaz Bagha	Professional Member
Ramesh Bhandari	Public Member

COUNSEL FOR THE COLLEGE: Alexandra Wilbee

**REPRESENTATIVE FOR THE
MEMBER:** Charles Freed

INDEPENDENT LEGAL COUNSEL: Luisa Ritacca

Hearing Date: October 26, 2021
Decision Date: **October 26, 2021**
Release of Written Reasons: **November 8, 2021**

DECISION AND REASONS

This matter came on for hearing before a panel of the Discipline Committee on October 26, 2021.
With the consent of the parties, this matter was heard electronically.

The Allegations

1. The allegations against the Member were set out in two separate Notices of Hearing, dated May 29, 2020 and June 3, 2020 respectively. The allegations in the May 29th Notices of Hearing are as follows:
 1. Helmut Kellen (the “**Member**”) is a chiroprapist registered to practise chiroprapy in the province of Ontario, since as of May 26, 2009.
 2. The Member engaged in the practice of chiroprapy at a variety of locations including Ontario Orthotic Solutions (“**Ontario Orthotics**”) in Timmins, Ontario.
 3. During the time period from in or about 2004 until at least in or about 2015, the Member provided free shoes to patients of Ontario Orthotics. During that time period, the Member offered complimentary shoes with the purchase of orthotics to patients at Ontario Orthotics. The free shoes were displayed with catalogues and/or samples shown to patients at Ontario Orthotics.
 4. During the time period from in or about 2009 until in or about 2016, the Member over-prescribed or was otherwise involved with the over-prescription of orthotics and/or compression stockings to patients of Ontario Orthotics, where the Member knew or ought to have known that the provision of the treatment was ineffective, unnecessary or deleterious to the patient or was inappropriate to meet the needs of the patient. In particular, out of the records for the patients of Ontario Orthotics reviewed by the College’s investigator from the time period in or about 2009 until in or about 2016, all of the patients were prescribed multiple pairs of orthotics, and several patients also received prescriptions for compression stockings. The Member did not discuss other treatment options with the patient and/or determine if a different treatment was appropriate before prescribing orthotics and/or compression stockings, and/or the Member prescribed and/or recommended orthotics and/or compressions stockings to patients who did not require them.
 5. For the time period from in or about 2009 until in or about 2016, the Member failed to take all reasonable steps to ensure that the records for patients of Ontario Orthotics were being kept in accordance with the regulations governing records and/or the standards of practice pertaining to records, including but not limited to reasonable information supporting the need for orthotics and/or compression stockings, and/or documentation regarding the free shoes provided to patients of Ontario Orthotics.
 6. During the time period from in or about 2009 until in or about 2016, rather than the Member dispensing and fitting orthotics and/or shoes for patients of Ontario

Orthotics, orthotics and/or shoes were shipped directly from the manufacturers to patients.

7. By reason of the conduct alleged in paragraphs 1-6 above, the Member engaged in professional misconduct within the meaning of:

a. 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), and, in particular, the standards pertaining to:
 1. Orthotics and/or Prescription Custom Foot Orthoses;
 2. Patient Relations;
 3. Prescription Footwear; and/or
 4. Records;
- 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 a consent);
- iii. 1.10 (Practising the profession while the member is in a conflict of interest);
- iv. 1.14 (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);
- v. 1.17 (Failing to keep records as required by the regulations);
- vi. 1.30 (Contravening the *Chiropody Act, 1991*, the *Regulated Health Professions Act, 1991*, or the regulations under either of those Acts), and in particular the provisions in Part II (Advertising) and Part III (Records) of Ontario Regulation 203/94 under the *Chiropody Act, 1991*; and/or
- vii. 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).

2. The allegations against the Member as stated in the June 3rd Notice of Hearing are as follows:

1. Helmut Kellen (the "Member") was, at all material times, a chiropodist registered to practise chiropody in the province of Ontario.
2. Between in or about April 2015 and in or about July 2016 (the "Relevant Period"), the Member engaged in the practice of chiropody at a variety of locations including Ontario Orthotics Solutions ("Ontario Orthotics") in Timmins, Ontario.
3. During the Relevant Period, the Member and A.C., who are both chiropodists and chiropractors, provided chiropody and/or chiropractic services to some or all of the patients listed in Appendix "A". With respect to some patients listed in Appendix "A", the Member acted as chiropodist while for others he acted as chiropractor. Every patient listed in Appendix "A" received both chiropody and chiropractic services. While providing these services:
 - a. invoice(s), prescriptions and/or the patient record inaccurately and/or misleadingly represented that the Member had provided certain services to the patient when he had not done so; and/or,
 - b. invoices, prescriptions and/or the patient record did not accurately reflect the services provided and/or the individual who provided the services.
4. During the Relevant Period, the Member prescribed, recommended and/or invoiced for orthotics, orthopedic shoes and/or compression stockings for some or all of the patients listed in Schedule "A" while at Ontario Orthotics. With respect to some or all of the patients listed in Schedule "A", prescriptions and/or invoices were signed by the Member without him having performed a chiropody assessment. Some or all of the patients listed in Schedule "A" were not:
 - a. Fitted and dispensed the orthotics and/or orthopedic shoes and/or compression stockings by the Member and/or A.C. to ensure that the device met the prescription and the contours of the patient's foot. Instead, the orthotics and/or orthopedic shoes and/or compression stockings were mailed directly to the patient; and/or,
 - b. Followed-up with and/or re-assessed by the Member and/or A.C. within a reasonable time or at all after the orthotics and/or orthopedic shoes and/or compression stockings had been prescribed and were received by mail by the patient.

As the Member worked in conjunction with A.C., it is alleged that where the Member was not the prescriber and/or treating chiropractor, that he permitted and/or acquiesced to A.C. committing the conduct alleged.

5. In or about the year 2016, an insurance company conducted an audit of Ontario Orthotics and discovered that many of the patients listed in Appendix "A" had not been dispensed their orthotics despite insurance claims having been made, contrary to the policy of the insurance company. The insurance company therefore denied coverage to some or all of the patients listed in Appendix "A".
6. In response, the Member., A.C., and/or Orthotics Solutions agreed to buy back the orthotics, issue new prescriptions and have new orthotics manufactured for some or all of the patients listed in Appendix "A". In re-issuing the prescriptions, the Member:
 - a. Did not meet with the patients and/or re-assess and/or re-examine them;
 - b. Redrafted and backdated original prescriptions, invoices and/or parts of the patient record, including the gait analyses, to the original assessment date;
 - c. Signed and issued backdated prescriptions, invoices and/or parts of the patient record where the Member did not prepare and/or sign the original document;
 - d. Permitted the signing by A.C. of backdated prescriptions, invoices and/or supporting assessment records where the Member was the person who prepared and/or signed the original document;
 - e. Did not fit and/or dispense the new orthotics and/or orthopedic shoes and/or compression stockings but instead directed and/or permitted the manufacturer to send the orthotics directly to the patient; and/or,
 - f. Did not conduct follow-up within a reasonable time or at all after the orthotics and/or orthopedic shoes and/or compression stockings had been prescribed and were received by the patient.
7. By reason of the conduct alleged in paragraphs 1-6 above, the Member engaged in professional misconduct in that he violated:
 - a. the following subsections of Ontario Regulation 750/93 under the *Chiropractic Act, 1991*:
 - i. 1.2 (Failing to meet or contravening a standard of practice of the profession), and, in particular, the standards pertaining to:
 1. Orthotics and/or Prescription Custom Foot Orthoses; and/or,

2. Prescription Footwear.

- ii. 1.18 (Falsifying a record relating to the member's practice);
- iii. 1.20 (Signing or issuing, in the member's professional capacity, a document that contains a false or misleading statement);
- iv. 1.21 (Submitting an account or charge for services that the member knows is false or misleading);
- 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).

Member's Plea

- 3. The Member admitted that he engaged in professional misconduct as described in the Notices of Hearing.
- 4. The Panel conducted a plea inquiry and was satisfied that the Member's admissions were voluntary, informed, and unequivocal.

Agreed Statement of Facts

- 5. The parties advised that they had reached an agreement as to the facts, which was set out in the Agreed Statement of Facts tendered as an exhibit. The Agreed Statement of Facts provided as follows:
 - 1. Helmut Kellen (the "**Member**") is a chiropodist registered to practise chiropody in the province of Ontario, since as of May 26, 2009.
 - 2. The Member has engaged in the practice of chiropody at a variety of locations including Ontario Orthotic Solutions ("**Ontario Orthotics**") in Timmins, Ontario.
 - 3. The allegations of professional misconduct as referred by the Inquiries, Complaints and Reports Committee for the purpose of this hearing before this Panel of the Discipline Committee are set out in two Notices of Hearing, dated May 29, 2020 (**Notice of Hearing #1**) and June 3, 2020 (**Notice of Hearing #2**).
 - 4. By Order dated August 11, 2021, on the consent of the parties, the disciplinary proceedings regarding the allegations in both Notices of Hearing are to be dealt with together at the same hearing.

NOTICE OF HEARING #1

5. During the time period from in or about 2004 until at least in or about 2015, the Member provided free shoes to patients of Ontario Orthotics. During that time period, the Member offered complimentary shoes with the purchase of orthotics to patients at Ontario Orthotics. The free shoes were displayed with catalogues and/or samples shown to patients at Ontario Orthotics.
6. During the time period from in or about 2009 until in or about 2016, the Member over-prescribed or was otherwise involved with the over-prescription of orthotics and/or compression stockings to patients of Ontario Orthotics, where the Member knew or ought to have known that the provision of the treatment was ineffective, unnecessary or deleterious to the patient or was inappropriate to meet the needs of the patient. In particular, out of the records for the patients of Ontario Orthotics reviewed by the College's investigator from the time period in or about 2009 until in or about 2016, all of the patients were prescribed multiple pairs of orthotics, and several patients also received prescriptions for compression stockings. The Member did not discuss other treatment options with the patient and/or determine if a different treatment was appropriate before prescribing orthotics and/or compression stockings, and/or the Member prescribed and/or recommended orthotics and/or compressions stockings to patients who did not require them.
7. For the time period from in or about 2009 until in or about 2016, the Member failed to take all reasonable steps to ensure that the records for patients of Ontario Orthotics were being kept in accordance with the regulations governing records and/or the standards of practice pertaining to records, including but not limited to reasonable information supporting the need for orthotics and/or compression stockings, and/or documentation regarding the free shoes provided to patients of Ontario Orthotics.
8. During the time period from in or about 2009 until in or about 2016, rather than the Member dispensing and fitting orthotics and/or shoes for patients of Ontario Orthotics, orthotics and/or shoes were shipped directly from the manufacturers to patients.

NOTICE OF HEARING #2

9. Between in or about April 2015 and in or about July 2016 (the "**Relevant Period**"), the Member and AC., who are both chiropodists and chiropractors, provided chiropody and chiropractic services to the patients listed in Schedule "A"¹. With respect to some patients listed in Schedule "A", the Member acted as chiropodist while for others he acted as chiropractor. Every patient listed in Schedule "A" received both chiropody and chiropractic services. While providing these services:

¹ The panel has not included Schedule A in these Decision and Reasons.

- a. invoices, prescriptions and/or the patient record inaccurately and/or misleadingly represented that the Member had provided certain services to the patient when he had not done so; and/or,
 - b. invoices, prescriptions and/or the patient record did not accurately reflect the services provided and/or the individual who provided the services.
10. During the Relevant Period, the Member prescribed, recommended and/or invoiced for orthotics, orthopedic shoes and/or compression stockings for some or all of the patients listed in Schedule "A" while at Ontario Orthotics. With respect to some or all of the patients listed in Schedule "A", prescriptions and/or invoices were signed by the Member without him having performed a chiropody assessment. Some or all of the patients listed in Schedule "A" were not:
- a. Fitted and dispensed the orthotics and/or orthopedic shoes and/or compression stockings by the Member and/or A.C. to ensure that the device met the prescription and the contours of the patient's foot. Instead, the orthotics and/or orthopedic shoes and/or compression stockings were mailed directly to the patient; and/or,
 - b. Followed-up with and/or re-assessed by the Member and/or A.C. within a reasonable time or at all after the orthotics and/or orthopedic shoes and/or compression stockings had been prescribed and were received by mail by the patient.
- As the Member worked in conjunction with A.C., where the Member was not the prescriber and/or treating chiropodist, he permitted and/or acquiesced to A.C. committing the conduct alleged.
11. In or about the year 2016, an insurance company conducted an audit of Ontario Orthotics and discovered that many of the patients listed in Schedule "A" had not been dispensed their orthotics despite insurance claims having been made, contrary to the policy of the insurance company. The insurance company therefore denied coverage to some or all of the patients listed in Schedule "A".
12. In response, the Member, A.C., and/or Orthotics Solutions agreed to buy back the orthotics, issue new prescriptions and have new orthotics manufactured for some or all of the patients listed in Schedule "A". In re-issuing the prescriptions, the Member:
- a. Did not meet with the patients and/or re-asses and/or re-examine them;
 - b. Redrafted and backdated original prescriptions, invoices and/or parts of the patient record, including the gait analyses, to the original assessment date.
 - c. Signed and issued backdated prescriptions, invoices and/or parts of the patient record where the Member did not prepare and/or sign the original document.

- d. Permitted the signing by A.C. of backdated prescriptions, invoices and/or supporting assessment records where the Member was the person who prepared and/or signed the original document.
- e. Did not conduct follow-up within a reasonable time or at all after the orthotics and/or orthopaedic shoes and/or compression stockings had been prescribed and were received the patient.

RELEVANT LEGISLATION, REGULATIONS & STANDARDS

- 13. Clause 51(1)(c) of the *Health Professions Procedural Code*, that is Schedule 2 to the *Regulated Health Professions Act 1991, S.* 1991, c. 18, provides that:

51 (1) A panel shall find that a member has committed an act of professional misconduct if,

(c) the member has committed an act of professional misconduct as defined in the regulations.

- 14. *Ontario Regulation 750/93*, made pursuant to the *Chiropractic Act, 1991, S.O.* 1991, c. 20 (the "**Professional Misconduct Regulation**"), defines the following as acts of professional misconduct, as alleged in the Notices of Hearing:

2. Failing to meet or contravening a standard of practice of the profession.

3. Doing anything to a patient for a therapeutic, preventative, palliative, diagnostic, cosmetic or other health-related purpose in a situation in which a consent is required by law, without such a consent.

...

10. Practising the profession while the member is in a conflict of interest.

...

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.

17. Failing to keep records as required by the regulations.

18. Falsifying a record relating to the member's practice.

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

21. Submitting an account or charge for services that the member knows is false or misleading.

30. Contravening the Act, the *Regulated Health Professions Act, 1991* or the regulations under either of those Acts.

...

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.
15. The following written standards of the College are standards of practice of the profession at the relevant time:
- Orthotics;
 - Prescription Custom Foot Orthotics;
 - Patient Relations;
 - Prescription Footwear;
 - Records

ADMISSIONS

16. The Member admits to all of the allegations of professional misconduct as set out in both Notices of Hearing, dated May 29, 2020 and June 3, 2020.
17. Based on the facts set out above, the Member admits that committed acts of professional misconduct within the meaning of the following paragraphs of section 1 of the *Professional Misconduct Regulation*:
- a. 1.2 (Failing to meeting or contravening a standard of practice of the profession) and, in particular, the standards pertaining to:
- i. Orthotics and Prescription Custom Foot Orthoses, as alleged in Notice of Hearing #1 and Notice of Hearing #2;
 - ii. Patient Relations, as alleged in Notice of Hearing #1;
 - iii. Prescription Footwear, as alleged in Notice of Hearing #1 and Notice of Hearing #2; and
 - iv. Records, as alleged in Notice of Hearing #1;
- b. 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 a consent,) as alleged in Notice of Hearing #1;
- c. 1.10 (Practising the profession while the member is in a conflict of interest), as alleged in Notice of Hearing #1;
- d. 1.14 (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), as alleged in Notice of Hearing #1;
- e. 1.17 (Failing to keep records as required by the regulations), as alleged in Notice of Hearing #1;

- f. (Falsifying a record relating to the member's practice), as alleged in Notice of Hearing #2;
 - g. 1.20 (Signing or issuing, in the member's professional capacity, a document that contains a false or misleading statement), as alleged in Notice of Hearing #2;
 - h. 1.30 (Contravening the *Chiropody Act, 1991*, the *Regulated Health Professions Act, 1991*, or the regulations under either of those Acts), and in particular the provisions in Part II (Advertising) and Part III (Records) of Ontario Regulation 203/04 under the *Chiropody Act, 1991* as alleged in Notice of Hearing #1; and
 - j. 1.33 (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), as alleged in Notice of Hearing #1 and Notice of Hearing #2.
18. For greater clarity, for the purpose of paragraph 33 of section 1 of the Professional Misconduct Regulation, the Member specifically admits that his conduct was disgraceful, dishonourable and unprofessional.

ACKNOWLEDGEMENTS

- 19. The Member understands the nature of the allegations that have been made against him and that by voluntarily admitting these facts, he waives his right to require the College to otherwise prove these facts.
- 20. The Member understands that the Panel of the Discipline Committee can accept that the facts herein constitute professional misconduct, and in particular can accept the admissions by the Member that they constitute professional misconduct.
- 21. The Member understands that the Panel of the Discipline Committee can make orders as a result of a finding of professional misconduct, as described in the Notice of Hearing.
- 22. The Member understands that if the Panel makes a finding of professional misconduct, then the Panel's decision and its reasons, or a summary of its reasons, including the facts contained herein, and the Member's name may be published in the College's register and publications as well as the Canadian Legal Information Institute ("CanLII") database.
- 23. The Member acknowledges that he has been advised to obtain independent legal advice and that he had sufficient opportunity to do so. The Member further acknowledges that he is entering into this Agreed Statement of Facts freely and voluntarily, without compulsion or duress.
- 24. The Member irrevocably acknowledges and agrees that all the facts in this Agreed Statement of Facts are true and accurate.

25. The Member and the College agree that this Agreed Statement of Facts may be signed in counterparts.

Decision and Reasons on Liability

6. The Panel considered the evidence presented and the Member's admissions and found that the Member engaged in professional misconduct as alleged in the Notices of Hearing.
7. In coming to its decision, the Panel considered the Member's plea and his admission of professional misconduct as described in the Agreed Statements of Facts. The Panel was satisfied that the conduct described in the Agreed Statements of Facts constituted professional misconduct as alleged and as admitted by the Member. The Panel was satisfied that the admitted conduct amounted to a failure to meet the College of Chiropodists standards including prescription custom foot orthoses; a failure to keep records as required in the Records Standard; and practising the profession while in a conflict of interest.
8. Of additional concern is that the professional misconduct in which the Member engaged in has involved what the Panel view, as a gross violation of the public trust by misleading patients, insurance companies and the public at large. The Member brought disrepute to the entire profession for personal financial gain while placing the profession at risk given the Members unacceptable business practices.

Penalty

9. Counsel for the College, as well as the Member, advised the Panel that a Joint Submission as to Penalty had been agreed upon. The Joint Submission as to Penalty and Costs provides as follows:

THE PARTIES agree and jointly submit that the Discipline Committee make the following orders with respect to this matter:

1. an order requiring the Member to appear before the Panel of the Discipline Committee to be reprimanded on October 26, 2021;
2. an order directing the Registrar to suspend the Member's certificate of registration for a period of ten (10) months, commencing on November 16, 2021, two (2) months of which will be remitted upon the Member successfully completing the PROBE course as set out in paragraph 3(a) below (the "**Suspension Period**");

3. an order directing the Registrar to impose the following specified terms, conditions and limitations on the Member's certificate of registration:
 - a. Prior to July 16, 2022 and prior to returning to the practice of chiropractic, the Member shall successfully complete the PROBE (Professional, Problem-Based Ethics) course at his own expense;
 - b. Upon returning to the practice of chiropractic after July 16, 2022, the Member is prohibited from imaging, casting, prescribing, constructing, fitting, dispensing and/or ordering the fabrication of orthotics and/or orthopaedic shoes for a period of twelve (12) months from the conclusion of the Suspension Period (the "**Restricted Period**"). The Member is additionally not entitled to assign these duties to anyone else at his clinic, regardless of whether he receives a fee, during the Restricted Period, but shall refer such duties to another chiropractor in good standing at another clinic not affiliated with the Member's clinic.
 - c. At his own expense, the Member will receive supervision of his chiropractic practice with a supervisor approved by the Registrar for a period of twelve (12) months from the date on which the Member returns to the practice of chiropractic after July 16, 2022 (the "**Supervision Period**"). The terms of the supervision are as follows:
 - i. The supervisor shall visit with the Member in person on at least four (4) occasions – twice in the first six (6) months and twice in the last six (6) months;
 - ii. The visits with the supervisor will be unannounced;
 - iii. The supervisor shall determine the length of each visit;
 - iv. In conducting the supervision, the supervisor shall discuss ethics, practice management, record-keeping and compliance with the College's standards with the Member;
 - v. The supervisor shall prepare a report to the Registrar after the second visit and after the fourth visit;
 - vi. The Member shall seek and obtain consent from his patients to share personal health information with his supervisor in order to allow the supervisor to review client files and engage in review; and
 - vii. The Member shall provide the supervisor with the Decision and Reasons of this Panel of the Discipline Committee and then provide written confirmation to the Registrar, signed by the supervisor, that the supervisor has received and reviewed the decision; and
 - d. In the event that the Member obtains employment in chiropractic during the Restricted Period or the Supervision Period, the Member shall:
 - i. notify any current or new employers of the decision of this Panel of the Discipline Committee;

- ii. ensure the Registrar is notified of the name, address, and telephone number of his employer(s) within fifteen (15) days of commencing employment; and
 - iii. provide his employer(s) with a copy of:
 - a. the Order of this Panel of the Discipline Committee;
 - b. the Notice of Hearing;
 - c. the Agreed Statement of Facts;
 - d. the Joint Submission on Penalty and Costs;
 - e. the Decision and Reasons of this Panel of the Discipline Committee; and
 - f. 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 Member is not complying with the College's standards; and
4. an order requiring the Member to pay the College's costs in the amount of fifteen thousand dollars (\$15,000.00), by October 26, 2021.

Decision and Reasons on Penalty and Costs

- 10. The Panel recognized that when presented with a joint submission on penalty its role is limited. The case law makes clear that the Panel should not depart from a joint proposal unless the order being sought would bring the administration of justice into disrepute or is otherwise contrary to the public interest. Here, the Panel is satisfied that the proposed penalty and costs order is reasonable and well within the public interest.
- 11. (In reaching its decision on penalty, the Panel was conscious that it should not depart from the agreed statement of facts and the joint submission of penalty unless making the order requested would bring the process into disrepute or otherwise be contrary to the public interest.
- 12. The Panel is satisfied that the penalty is reasonable in light of the professional misconduct admitted to in the Notice of Hearing and the Agreed Statement of Facts and in which the

Panel found the Member engaged. Further, the Panel is satisfied that the penalty imposed is in the public interest and acts as a deterrent for other members of the College.

13. The penalty imposed is aligned with earlier cases and the costs (agreed upon and ordered) are reasonable and fair.
14. The Panel is further satisfied that the compulsory education requirements of the penalty incorporates a component of rehabilitation, which will serve to protect the public once the Member completes the ProBe ethics course and undergoes further supervision of his practice.
15. The publication of this matter on the College website and other College publications act as a specific deterrence to the Member as well as a general deterrence to the profession as to the seriousness of the admitted allegations and the associated consequences as a result of the Members actions.
16. At the end of the hearing, the Member waived his right to an appeal and the Panel therefore delivered its reprimand to the Member. The reprimand can be found at the end of these reasons, at Appendix A.

I, Peter Ferguson, sign this Decision and Reasons for the decision as Chairperson of this Discipline panel and on behalf of the members of the Discipline panel as listed below:

Peter Ferguson

Peter Ferguson, Chairperson

8th November 2021

Date

Riaz Bagha

Ramesh Bhandari

APPENDIX "A"

COLLEGE OF CHIROPODISTS OF ONTARIO v. HELMUT KELLEN

As you know, Dr. Kellen, as part of its penalty order this Discipline panel has ordered you that you be given an oral reprimand. You agreed to this term of order as part of your joint submission on penalty filed during the course of the hearing.

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.

Although you will be given an opportunity to make a statement at the end of the reprimand, this is *not* an opportunity for you to review the decision made by the Discipline panel, *nor* a time for you to debate the merits of our decision.

The panel has found that you have engaged in professional misconduct in several different ways. They have included serious breaches of the College's standards and inappropriate business practices.

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

Of special concern to us is that fact that the professional misconduct in which you engaged has involved what we view as a gross violation of the public trust. You misled patients, insurance companies and the public at large. You brought disrepute to the entire profession for personal financial gain and put the profession at risk given your problematic business practices. As well, it was clear in the evidence presented that your charting was substandard, misleading and in some instances absent entirely. Accurate and timely charting is a basic and essential requirement as a medical professional.

Consequently, it is necessary for us to take steps to impress upon you the seriousness of the misconduct in which you have engaged.

We also want to make it clear to you that while the penalty that this panel has imposed upon you is a fair penalty, a more significant penalty will be imposed by another Discipline panel in the event that you are ever found to have engaged in professional misconduct again.

As I have already stated, this is not an opportunity for you to review the decision or debate the correctness of the decision, which in any event, was agreed to by you and your counsel.

However, do you wish to make a statement?

Thank you for attending today.