

ONTARIO CHIROPODISTS AND PODIATRISTS DISCIPLINE TRIBUNAL

Citation: *College of Chiropractors of Ontario v. Ku*, 2025 ONCPDT 12

Date: December 9, 2025

Tribunal File No.: 25-007-CP

BETWEEN:

College of Chiropractors of Ontario

College

- and -

Vincent Ku

Registrant

MOTION REASONS

Heard: October 31, 2025, by videoconference

Panel:

David A. Wright (Tribunal Chair)

Appearances:

Debra McKenna, for the College

Jordan Glick, 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] The Inquiries, Complaints and Reports Committee (ICRC) referred various allegations of professional misconduct against the registrant, Vincent Ku, to the Tribunal. They fall under two broad categories. First, the College alleges that the registrant committed professional misconduct in his relationship with an orthotics manufacturer, Supreme Orthotics, where he was the “medical director.” Second, it alleges that in relation to multiple patients, he did not take the proper steps to ensure that orthotics prescriptions were necessary, document those steps, or follow up with patients.

[2] In this preliminary motion, the registrant submits that the Tribunal cannot hear or decide the orthotics prescribing allegations. He says that required procedures under the Health Professions Procedural Code, Schedule 2 to the *Regulated Health Professions Act, 1991*, SO 1991, c. 18 (Code), were not followed and his right to procedural fairness was violated. The registrant argues that the investigators exceeded their authority (at the ICRC’s direction) by investigating issues outside the scope of the authorized investigation. Moreover, he says, since the orthotics prescribing allegations were not “related to” the report of the investigation, the ICRC did not have the jurisdiction to refer them to the Tribunal. Finally, he submits, he was never given notice or an opportunity to respond to these allegations. The College states that the registrant takes too narrow a view of the scope of the investigation. It argues that the orthotics prescribing allegations were “related to” the report, which contained the patient records on which those allegations were based. Finally, it argues, there was no violation of procedural fairness and the registrant has a full opportunity to answer the allegations in the Tribunal process.

[3] I allow the registrant’s motion. I find that the Tribunal has no jurisdiction to hear or decide the orthotics prescribing allegations, since the ICRC did not have the jurisdiction to refer them. The orthotics prescribing allegations were not within the scope of the investigation authorized by the registrar and were not addressed in the report. The registrant was not given an opportunity to respond to them as required by the Code. Given my finding on the issue of jurisdiction, I do not need to address the common law procedural fairness arguments.

The Registrar's Appointment of Investigators and Definition of the Scope of the Investigation

Legal Principles

[4] Under the Code, investigations may arise from a complaint or, as here, the registrar may initiate them without a public complaint. This power is in s. 75(1)(a):

The Registrar may appoint one or more investigators to determine whether a member [registrant] has committed an act of professional misconduct... if the Registrar believes on reasonable and probable grounds that the member has committed an act of professional misconduct... and the Inquiries, Complaints and Reports Committee approves of the appointment.

[5] In *Sazant v. College of Physicians and Surgeons of Ontario*, 2012 ONCA 727, the Court of Appeal found at paras. 160-162 that the registrar's appointment must define the scope of the investigation based on the reasonable and probable grounds:

[W]hen appointing investigators under s. 75(1)(a), the registrar should provide a brief description of the act(s) of professional misconduct he or she believes on reasonable and probable grounds were committed... Such a requirement serves two important purposes..

First, it ensures that the necessary prerequisite to the appointment of investigators -- namely, the formation of reasonable and probable grounds to believe that the member has committed an act of professional misconduct or incompetence -- has been satisfied.

Second, it ensures that the scope of the investigation authorized under s. 75(1)(a) is clearly defined and that the corollary summons power under s. 76(1) can be exercised only to obtain information relevant to the authorized investigation.

[6] The court made clear at paras. 167-168 that while it is preferable that the scope of the investigation be defined in the registrar's appointment of investigators itself, it can also be inferred from the documents that were before her. As noted in *College of Physicians and Surgeons of Ontario v. Fagbemigun*, 2021 ONCPSD 23 at para. 45, the court's intention was to "emphasize that substance is more important than form. What is essential is that the scope of the investigation be clearly defined and that there be an indication that the registrar has considered the question of reasonable grounds." The registrar cannot authorize a general investigation into all areas of the registrant's

practice. The investigation must be limited to what is supported by the information before her.

What Happened in This Case

[7] Here, the registrar's appointment authorizes the investigators:

...to ascertain whether Vincent Ku has committed an act or acts of professional misconduct and in particular, though not limited to, that he violated the College's standards of practice and associated sections of the Professional Misconduct Regulation and the General Regulation with respect to practicing the profession while in a conflict of interest and failing to report a practice site to the College, among other concerns related to his involvement with Supreme Orthotics Lab.

[8] The memorandum to the registrar from the deputy registrar and manager, conduct and hearings, which requested the appointment of investigators, reads as follows:

In preparation for a recent ICRC matter, documentation was reviewed from Supreme Orthotic Lab. Among other concerns, it was confirmed from the attached document that orthotics were prescribed (by the member in question) and then manufactured by this provider with the use of a foam box – which is a manufacturing process that is noncompliant with the College's standards. You will note that the document from Supreme Orthotic Lab identifies Vincent Ku (a chiroprapist) as the medical director for the business. Mr. Ku does not include "Supreme Orthotic Lab" as one of his practice locations, although he does have nine other locations listed.

In addition, what also first stood out about this manufacturer was the use of a Gmail account for the business [email address omitted]. The business address [address omitted] is a residential address. A corporate search was conducted for the business. As you will note in the attached corporate profile Supreme Orthotic Lab is not a corporation – it is a business operated as sole proprietorship... The business names registration identifies the business address as... which, again from a Google search, shows up as a craft beer manufacturer - <https://www.smallbatchdispatch.com/>. Consequently, it is unclear where this orthotics manufacturer is located or where the orthotics in question were made. For your reference, attached are two photos of the orthotics – the clinic and patient name in question are redacted.

The College's standards (including the Prescription Custom Foot Orthoses Standard and Safety and Manufacturing of Orthotic Devices Standard) address manufacturing standards for orthotics –

both for the safety of members/staff and to ensure that quality, effective custom-made orthotics are provided to patients.

[9] Both the appointment of investigators and the memo in support of the appointment focus the investigation on the registrant's involvement with Supreme Orthotics, including its manufacturing processes, his failure to report it as a practice location, and his role as its medical director. There is no mention of issues related to orthotics prescribing or records.

The Investigation

Legal Principles

[10] The appointment of investigators triggers legal powers and obligations. The investigator has the power to issue a summons requiring someone to testify or to produce documents relevant to the subject matter of the inquiry: s. 76(1) of the Code and s. 33 of the *Public Inquiries Act, 2009*, SO 2009, c. 33, Sched. 6. The investigator can make "reasonable inquiries" of any person, including the registrant, on matters relevant to the investigation (s. 76(1.1)), and enter the registrant's place of practice to examine, copy and/or remove documents and things relevant to the investigation (ss. 76(2) and 78(1) and (2)). The registrant is required to cooperate with the investigation, and no one may conceal matters relevant to the investigation from the investigator (s. 76(3) and (3.1)).

[11] All these powers are limited by the concept of relevance. The court in *Sazant* explained that the scope of the investigation should be interpreted broadly, but that it is not unlimited, at paras. 164 and 165:

I agree with counsel for the College that the requirement that the registrar describe the acts of professional misconduct or incompetence he or she formed reasonable and probable grounds to believe were committed should not be interpreted in a manner that would frustrate the College's ability to carry out its statutory mandate.

For example, if the registrar authorizes an investigation based on reasonable and probable grounds to believe that a member is having sexual relations with an adult patient, the investigators' use of the s. 76(1) summons power is limited to that investigation. However, if the investigators uncover evidence that the member has had sexual relations with another, previously unknown, adult patient, a new appointment may not be necessary, given that the nature of the misconduct falls within the category of sexual

misconduct with a patient. On the other hand, if, during the same investigation, the investigators uncovered evidence of unrelated misconduct -- for example, that the member is trafficking narcotics in unrelated circumstances -- a new appointment would be required before the investigators could resort to the s. 76(1) summons power to pursue this new avenue.

[12] While the court was speaking specifically about the summons power, its comments address the definition of “relevance,” which applies to all aspects of the investigation. The court emphasized that new information that does not fall within the scope of the investigation can be investigated, but only following a new appointment of investigators by the registrar.

[13] The registrar must report “the results of an investigation” to the ICRC under s. 79(a) of the Code. Before the report of the investigation is considered by the ICRC, the registrant must be given notice of the receipt of the report (s. 25(6)(a)) and may make submissions within 30 days of receiving the notice (s. 25.2(1)).

What Happened in This Case

[14] The registrar signed the appointment of investigators, and the ICRC approved it on August 11, 2023. By memo dated the same day, the deputy registrar wrote to the outside investigation firm with instructions to investigate various issues about the registrant’s work with Supreme Orthotics:

1. Interview the Member:
 - a. What is his role with Supreme Orthotics?
 - b. How is he compensated?
 - c. Why does he not list Supreme Orthotics Lab as a practice location with the College?
 - d. Where are the orthotics manufactured?
 - e. Does the member and/or his employees use Supreme Orthotics lab?
 - f. What is the relationship between Supreme Orthotics and the craft beer manufacturer?
 - g. Why are orthotics being manufactured with the use of a foam box?
2. Whose residential address is: [address omitted]? Why is this listed as the business address for the lab?
3. Interview [the person listed as the sole proprietor of Supreme Orthotics on the Business Names Report]:

- a. Who is he?
 - b. What is his role at the lab?
 - c. What is his relationship with [sic] the Member?
 - d. Where are the orthotics manufactured?
 - e. What is the relationship between Supreme Orthotics and the craft beer manufacturer?
4. Who is [the person who authorized the filing of the business name registration]? What is his role at the lab? What is his relationship with the Member?
5. Attend the "lab" and take photos of orthotics manufacturing process? Where are the orthotics being produced? How are they produced? Take photos of orthotics manufacturing process.

[15] The investigator's report, dated September 12, 2023, identified three issues under investigation and included the registrant's and lab owner's statements in relation to each:

- **“Issue 1:** The Member might have practiced the profession while in a conflict of interest in his involvement as medical director of Supreme Orthotics Lab.”
- **“Issue 2:** The Member might have failed to report a practice site to the College in relation to his involvement with Supreme Orthotics Lab.”
- **“Issue 3:** The Member might have prescribed orthotics manufactured with the use of a foam box, which is a manufacturing process that is noncompliant with the College's standards.”

[16] The deputy registrar wrote to the registrant enclosing the report, indicating that it would be considered by the ICRC and asking for his response. She also followed up twice more with the registrant. He did not meet the November deadline for response, and the ICRC met to consider the report on December 12, 2023. The registrant takes no issue with the ICRC doing so, given that he had received the report and was asked for his response.

[17] At the December meeting, the ICRC asked the investigator to take further steps, which were formalized in an email from the deputy registrar to the investigator:

A panel of the ICRC met this afternoon to review file 2330 RI (Ku) and it requested that you conduct some additional investigation. In particular, the panel requested the following:

Additional Information from Supreme:

- Ask Supreme for a list of College registrants/members who use Supreme for orthotics
- Ask Supreme if all incoming casts are done using foam boxes

Additional Investigation from Other Sites:

- Call all 12 of the Registrant's practice sites to ask the following:
 - When does the Registrant work at each (i.e. what is his schedule), and obtain the relevant documentation, including copies of his schedule
 - How often does he work there, what types of patients does he see, how is he compensated by the clinic(s)
- Attend six of the Registrant's 12 practice sites to find out what the Registrant's capacity is at each site, including Central Orthotics and Oriole Physiotherapy And Rehabilitation Centre (the rest can be random)
 - Pull five random patient charts from each location for patients who were prescribed orthotics by the Registrant.

[18] The investigator produced an addendum to the investigation report dated January 31, 2024 (first addendum). The first addendum included the information requested by the ICRC; it also reported on phone calls with the registrant in January. The deputy registrar sent the registrant the first addendum and asked for his response, which he provided. None of these documents indicated that there were any new issues nor how the registrant's schedules, compensation, patient load or patient charts were relevant to the issues identified in the appointment of investigators.

[19] The investigator produced a second addendum dated April 26, 2024. The report summarized its background and purpose as follows:

On April 2, 2024, the investigator received instruction from the College to conduct additional inquiries into this matter due to

concern the Registrant worked at the same clinic [sic] on the same date/time, specifically:

- On November 30, 2023, the Registrant was reported to have seen four patients at Oriole Physiotherapy and Rehabilitation Centre from 1PM to 7PM and seven patients at PhysioFlow from 3PM to 7PM.
- On December 21, 2023, the Registrant was reported to have seen two patients at Ortho-Physio from 1:15PM to 1:45PM and four patients at Parkside Physio from 2PM to 7PM.
- On December 22, 2023, the Registrant was reported to have seen six patients at Oriole Physiotherapy and Rehabilitation Centre from 1PM to 7PM and nine patients at Kinatex from 1PM to 7PM.

The investigator was asked to attend the five clinics and collect the Registrant's complete schedule for the specified dates as well as the complete record of all patients seen on those dates.

[20] The investigator obtained these documents by issuing summonses to the clinics. She summarized the results as they related to scheduling in the second addendum and included the patient charts she had collected. The deputy registrar provided the second addendum to the registrant and asked him to respond. The investigator made some small revisions to the report and resubmitted it to the College. The ICRC did not refer any allegations related to the registrant's schedule.

The Referral

Legal Principles

[21] Section 26(1) of the Code spells out the ICRC's powers when considering a report:

26 (1) A panel, after investigating a complaint or considering a report, considering the submissions of the member and making reasonable efforts to consider all records and documents it considers relevant to the complaint or the report, may do any one or more of the following:

1. Refer a specified allegation of the member's professional misconduct or incompetence to the Discipline Committee if the allegation is related to the complaint or the report.
2. Refer the member to a panel of the Inquiries, Complaints and Reports Committee under section 58 for incapacity proceedings.

3. Require the member to appear before a panel of the Inquiries, Complaints and Reports Committee to be cautioned.

4. Take action it considers appropriate that is not inconsistent with the health profession Act, this Code, the regulations or by-laws

[emphasis added].

[22] In *Ontario College of Pharmacists v. Katzman*, 2002 CanLII 16887 (ON CA), the Court of Appeal addressed the interpretation of an earlier version of what is now s. 26(1). At the time, the provision referred only to complaints, not reports, and what is now the ICRC was called the Complaints Committee. Before 2009, the Complaints Committee dealt with referrals based on complaints and the Executive Committee dealt with referrals in other circumstances. The language in the current para. 1 of s. 26(1) is the same as that considered by the Court of Appeal, except for the addition of the words “or the report” at the end of the sentence.

[23] The court held, at paras. 31-32, that the words “if the allegation is related to the complaint” meant that the ICRC could only refer “an allegation concerning, in some way, the matter complained of.” In explaining its reasoning, the court emphasized that this protected the registrant’s “due process rights” to make submissions on the substance of the issues before the ICRC decides what action to take. The court noted that this interpretation does not prevent the referral to discipline of other misconduct uncovered in the course of the investigation, by beginning a new investigation into those allegations. This logic applies equally to the requirement that the referral be related to a report under the current s. 26(1), in the case of a registrar’s investigation.

[24] The court found that because the allegations referred were not sufficiently related to the complaints, the Complaints Committee did not have jurisdiction to refer them, and that “those allegations were not properly placed before the Discipline Committee.” (para. 42)

What Happened in This Case

[25] The Notice of Hearing, dated June 5, 2024, set out the orthotics prescribing allegations as follows:

(ii) Failure to Comply with the College's Standards

13. As part of its investigation, the College obtained copies of the Registrant's patient records, including but not limited to the patients identified in Appendix "A".

14. A review of the Registrant's records revealed that, during the Relevant Period, the Registrant failed to maintain proper patient records, including but not limited to financial records, in accordance with the College's regulations and standards.

15. In addition, the Registrant's records revealed that, during the Relevant Period, the Registrant did not engage in a full scope of chiropractic practice at his various clinic locations. Rather, the Registrant participated in and/or was complicit in overprescribing orthotics – a business practice contrary to the College's standards and/or conflict of interest policy.

16. In prescribing orthotics to his patients, the Registrant failed to perform and/or document an adequate assessment of the patients and/or determine whether that the treatments were medically necessary, but nonetheless prescribed orthotics to his patients.

17. In particular, contrary to the College's standards, the Registrant failed to:

(a) obtain and/or document an adequate and/or current patient history;

(b) conduct and/or document an adequate assessment of the patient;

(c) obtain and/or document informed consent to treatment, 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;

(e) discuss with the patient and/or document the treatment plan;

(f) accurately document the date(s) of patient visits, the date(s) of various examinations, assessments, fittings, and/or casting, and/or the date(s) on which the orthotics were dispensed;

(g) document reasonable information about the examinations performed by the Registrant and/or reasonable information about clinical findings, diagnosis, and assessments by the Registrant; and/or

(h) provide appropriate follow-up care to patients.

18. The Registrant failed to determine and/or adequately document why or how the orthotics he prescribed to the patients were necessary for the prevention, treatment or management of a disease, disorder, or dysfunction of the foot.

19. In prescribing orthotics to his patients, the Registrant signed, issued, and/or submitted documents that contained false and/or misleading information.

[26] None of these issues was mentioned or analyzed in the report and addenda before the ICRC. Nothing in the report and addenda indicated that the charts were being used to evaluate the registrant's prescribing practices.

Analysis and Conclusion

[27] The ICRC and the Tribunal only have the powers granted by the Code, which require specific procedures to be followed. Unless there is a complaint, the investigation begins when the registrar believes on reasonable and probable grounds that the registrant has committed misconduct, appoints investigators, and this is approved by the ICRC. The investigation must have a defined scope, limited to the issues that were the basis for the reasonable and probable grounds, interpreted generously. Investigative powers can only be exercised in relation to matters within that scope. Allegations referred to the Tribunal must relate to the report, which the registrant has received and had the opportunity to comment on.

[28] The College focuses its arguments that the orthotics prescribing allegations fall within the scope of the investigation on the registrar's specific reference in the Appointment of Investigators to the registrant practising while in a conflict of interest. When a registrant fails to take the necessary steps to ensure that orthotics are the proper treatment, or overprescribes orthotics, this is a conflict of interest because they are preferring their own financial interests to those of the patient. The College's conflict of interest policy, in s. 2(h), deems it a conflict of interest to sell or supply an orthotic device to a patient for a profit "unless the orthotic device is required for the prevention, treatment or management of a disease, disorder or dysfunction of the foot." It analogizes this to the Court of Appeal's hypothetical in para. 165 of *Sazant*, where it said that if the registrar authorizes an investigation based on reasonable and probable grounds to believe that a member is having sexual relations with an adult patient, uncovering sexual

relations with a different adult patient would not require a second appointment of investigators.

[29] : In my view, the new issues in this matter are of a different character than those in the court's hypothetical example in *Sazant*. The concerns that led to the appointment of investigators were about the registrant's business relationship with an orthotics manufacturer, his role as medical director and how the lab manufactured orthotics. The registrant's schedule and patient records and whether he complied with the College's orthotics prescription requirement are fundamentally different kinds of issues from those that formed the registrar's reasonable and probable grounds. They relate to prescribing, not manufacturing, and to the care of patients, not practice locations, lending his name to a lab, or having his patients' orthotics manufactured by a lab in which he has an interest.

[30] Failure to follow the required steps before prescribing orthotics may be recognized as falling under several heads of misconduct, including conflict of interest. It is, however, fundamentally an issue of standard of practice and, usually, record keeping. In *College of Chiropractors of Ontario v. Chan*, 2025 ONCPDT 5, a case about prescribing practices, the panel made findings under four additional heads of misconduct: signing or issuing a document that contains a false or misleading statement (because he issued accounts that were not based on a complete assessment), charging excessive fees (because he did not conduct or document an adequate assessment), contravening the regulations by failing to keep records and disgraceful, dishonourable or unprofessional conduct. The panel noted, at para. 9, that "the standards and record-keeping violations capture the core of what he did wrong."

[31] In my view, it would not be consistent with the logic of *Sazant* to find that a different type of issue factually unrelated to the reasonable and probable grounds can be investigated without a new appointment by the registrar, even if it might be characterized as falling under the same head of misconduct. What should be considered is the nature of the issues being investigated as a whole. The reasonable and probable grounds to believe the registrant had an improper relationship with Supreme Orthotics were unconnected to the registrant's prescribing practices. They were not, in my view, within the scope of the investigation as defined by the registrar.

[32] Moreover, the orthotics prescribing allegations were not “related to the report” because the report did not outline any concerns or investigation about the registrant’s orthotics prescriptions or records, and he did not have the opportunity to respond to a report on these issues. Although the charts were in the report, that did not mean that the ICRC could refer any allegations based on the information in the charts. The intention of the legislation, as emphasized in *Katzman*, is that the report will identify the concerns being investigated, among other reasons, to allow the registrant to respond to them before the ICRC makes its decision.

[33] Even if these issues of concern had been contained in the report, they did not fall within the scope of the authorized investigation. As explained above, the report must relate to the issues that formed the basis for the registrar’s reasonable and probable grounds. As the orthotics prescribing investigations were outside the scope of the investigation into possible conflict of interest and other matters related to the registrant’s relationship with an orthotics manufacturer, the ICRC did not have the power to refer them, and they are therefore not properly before the Tribunal. The Tribunal has no jurisdiction to hear or decide them.

[34] The Code does not prevent the investigation of new issues that arise during an investigation. However, the registrar must first be asked to appoint investigators, and the ICRC must approve the appointment. They must then be investigated, a report prepared that addresses the allegations, and the registrant provided an opportunity to respond. Because that did not happen in this case, the referral of the orthotics prescribing allegations is not valid.

Order

[35] The motion is granted. The Tribunal has no jurisdiction to hear or decide allegations 13-19 in the Notice of Hearing. The Tribunal Office will schedule a case management conference to set a hearing date or dates for the remaining allegations.