

**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 -**

**ALAN MARK LUSTIG**

**PANEL MEMBERS:**

Jim Daley	Chair, Public Member
Allan Katz,	Public Member
Tobi Mark	Professional Member
Murtaza Najmudin	Professional Member
Jannel Somerville	Professional Member

**COUNSEL FOR THE COLLEGE:** Amy Block

**REPRESENTATIVE FOR THE  
MEMBER:** Self-represented

**INDEPENDENT LEGAL  
COUNSEL:** Justin Safayeni

**Hearing Date:** November 15, 2024

**Decision Date:** November 15, 2024

**Release of Written Reasons:** November 20, 2024

## DECISION & REASONS

1. This matter came on for hearing before a panel of the Discipline Committee on November 15, 2024. With the consent of the parties, this matter was heard electronically.
2. The Panel was advised that the parties had reached an agreement and as such this matter proceeded as an uncontested hearing.
3. At the outset of the hearing, College counsel requested a publication ban over any information that would tend to identify any patients, including but not limited to information set out in Tab "G" of the Agreed Statement of Facts (described in further detail below). The Member did not object to this request. The Panel considered such a targeted publication ban to be appropriate considering the importance of protecting patient privacy, and considering that it will not impede the public's ability to know and understand what occurred in this proceeding as it relates to the Member. Accordingly, the Panel orders a publication ban over any information that would tend to identify any patients in this proceeding.

### **The Allegations**

4. The allegations made against the Member were set out in a Notice of Hearing, dated December 20, 2023. At the hearing, College counsel requested to withdraw the allegation in paragraph 3(a)(i) of the Notice of Hearing. The Panel granted this request.
5. The Notice of Hearing was marked as Exhibit 1 and the allegations are as follows:
  1. On or about July 1, 1973, Alan Mark Lustig (the "Registrant" and/or "Mr. Lustig") was registered, in the podiatrist classification, as a member of the College.
  2. At all times material to the allegations, Mr. Lustig was registered with the College.
  3. It is alleged by the College that, during the period from approximately July 2021 to January 2022 (the "**Relevant Period**"), the Registrant engaged in conduct that constitutes professional misconduct pursuant to the following:
    - (a) Clause 51(1)(c) of the *Health Professions Procedural Code*, being Schedule 2 to the *Regulated Health Professions Act, 1991*, and as defined in one or more of the following paragraphs of section 1 of the *Professional Misconduct Regulation* (O. Reg. 750/93) under the *Chiropractic Act, 1991*:

- (b) 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 1 – contravening a term, condition or limitation imposed on the member’s certificate of registration;
  - (ii) paragraph 30 – contravening the Act, the Regulated Health Professions Act, 1991 or the regulations under either of those Acts;
  - (iii) 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.
  - (iv) paragraph 36 – failing to comply with an order of the Complaints Committee, the Discipline Committee or the Fitness to Practise Committee; and/or
  - (v) paragraph 37 – failing to carry out a requirement of the Complaints Committee, the Discipline Committee or the Fitness to Practise Committee or breaching an undertaking given to one of those committees or to the Registrar.

### **PARTICULARS OF THE ALLEGATIONS**

1. On or about July 1, 1973, Alan Mark Lustig (the “**Registrant**” and/or “**Mr. Lustig**”) was registered, in the podiatrist classification, as a member of the College.
2. On February 13, 2020, February 16, 2021, and April 9, 2021, the College issued Notices of Hearing setting out allegations of professional misconduct against Mr. Lustig.
3. Among other concerns, the allegations in the former discipline proceedings against Mr. Lustig included multiple breaches of the College’s standards, inappropriate business practices, practicing while in a conflict of interest, and misuse of the restricted title of “Dr”, contrary to section 33(1) of the *Regulated Health Professions Act, 1991*.
4. On July 17, 2021, Mr. Lustig signed and provided an undertaking to the College (the “**Undertaking**”) wherein he agreed to permanently resign his registration with the College, cease to practise as a podiatrist, and never re-apply to the College,

5. In exchange for the Undertaking, the College agreed to bring a motion and seek an order from the Discipline Committee staying the outstanding discipline proceedings against Mr. Lustig.
6. The hearing of the motion proceeded before a panel of the Discipline Committee on July 26, 2021, at which time the panel granted the order and stayed the outstanding discipline proceedings against Mr. Lustig (the "**Discipline Decision**").
7. However, notwithstanding the Undertaking and the Discipline Decision on July 26, 2021, Mr. Lustig did not cease practising – notwithstanding that Mr. Lustig had led the College to believe that he would do so.
8. Contrary to his obligations to the College, Mr. Lustig continued to practise between the period from about July 2021 to January 2022. In particular, Mr. Lustig continued, uninterrupted, in his role as the chief medical director of Orthotic Holdings Inc. ("**OHI**") and/or The Orthotics Group ("**TOG**") – a position that Mr. Lustig held prior to signing the Undertaking.
9. In the period after July 17, 2021, Mr. Lustig breached the Undertaking by continuing to refer to himself as a "podiatrist" in his role at OHI and/or TOG, and holding himself out to the public as being eligible to practise chiropody. This included, among other things, conducting seminars about chiropody and/or podiatry on behalf of TOG and/or OHI.
10. Contrary to the Undertaking, Mr. Lustig also saw patients and/or provided "podiatry recommendations" as to whether a patient should be prescribed orthotic treatment, including communicating a diagnosis with respect to those patients.
11. In addition to using the restricted title of podiatrist, Mr. Lustig also continued to use the restricted title of "Dr", which constituted a violation of section 33 of the *Regulated Health Professions Act, 1991*. This was the very subject matter of one of the discipline proceedings that were stayed in July 2021 as a result of the Undertaking signed by Mr. Lustig.
12. Such conduct by Mr. Lustig, as outlined above, violated both the Undertaking and the Discipline Decision, and constituted professional misconduct by the Registrant.
13. Additional information and disclosure about the allegations against the Registrant will be provided in advance of the hearing.

### **Member's Plea**

4. The Member admitted that he engaged in professional misconduct as described in the Notice of Hearing, as set out above.
5. Given that the allegation in paragraph 3(a)(i) of the Notice of Hearing was withdrawn, the Member's admissions concerned the allegations in paragraphs 3(a)(ii)-3(a)(v) of the Notice of Hearing.

6. The Panel conducted an oral plea inquiry and was satisfied that the Member'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 was marked as Exhibit 2, and which reads as follows:

**THE COLLEGE AND THE REGISTRANT** agree that the following facts may be accepted as true and proven by the Discipline Committee in this matter:

#### **A. The Registrant's Background**

1. The Registrant was registered with the College in the podiatrist class on July 1, 1973. He resigned his certificate of registration on July 17, 2021, in the circumstances described below.
2. In the years after his resignation, until January 2022, the Registrant held the role as the chief medical director of The Orthotics Group ("TOG") and/or Orthotic Holdings Inc. ("OHI"), related corporations.

#### **B. 2021 Discipline Proceedings**

3. On February 13, 2020, February 16, 2021, and April 9, 2021, the College issued Notices of Hearing setting out allegations of professional misconduct against the Registrant (referred to collectively as the "2021 Discipline Proceedings").
4. Among other concerns, the allegations in the 2021 Discipline Proceedings included that the Registrant breached the College's standards in multiple respects, engaged in inappropriate business practices, practiced while in a conflict of interest, and misused the restricted title of "Dr.", contrary to section 33(1) of the *Regulated Health Professions Act, 1991* (the "**RHPA**").<sup>1</sup>
5. Some of the particulars alleged in the Notices of Hearing include:
  - The Registrant was the Medical Director and on-staff podiatrist for TOG— an orthotics manufacturer located in Markham, Ontario, a practice location which he had failed to disclose to the College;
  - In his role at TOG, the Registrant provided services at TOG that included the following: GaitScan Reviews; GaitScan Consultations;

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<sup>1</sup> [S.O. 1991, c.18](#) ("RHPA")

Orthotic addition/modification advice to practitioners; Education content for TOG; Advice and best practices for orthotics therapy; and on-staff Podiatrist;

- For his services, the Registrant was compensated a monthly retainer fee of \$4333.33 plus HST, and \$1500 plus HST for any speaking engagements;
- The Registrant signed gait analysis scans for an individual who had been seen at the Ottawa Clinic by a practitioner who was not a chiropodist. At no time did the Registrant see or assess R.C.E.;
- The Registrant used the title "Dr." in his role at TOG and in his practice.

### **C. Resolution of the 2021 Discipline Proceedings and the Registrant's Undertaking to Resign and Not Re-apply**

6. The parties negotiated a resolution to the three Notices of Hearing underlying the 2021 Discipline Proceedings. Resolution discussions were ongoing as of July 6, 2021. By July 17, 2021, a resolution was reached.
7. On July 17, 2021, the Registrant, who was represented by counsel at the time, signed and provided an undertaking to the College (the "Undertaking") agreeing, among other things, to:
  - permanently resign his registration with the College;
  - refrain from practising chiropody;
  - refrain from using titles "chiropodist" or "podiatrist" and holding himself out as a chiropodist or podiatrist; and
  - never re-apply to the College, or in any jurisdiction, to practice as a chiropodist or podiatrist.

A copy of the Undertaking is attached at **Tab A**.

8. In exchange for the Undertaking, the College agreed to bring a motion and seek an order from the Discipline Committee staying the 2021 Discipline Proceedings against the Registrant.
9. The hearing of the motion proceeded before a panel of the Discipline Committee on July 26, 2021, at which time the panel granted the order, staying the 2021 Discipline Proceedings (the "2021 Discipline Decision and Order"). A

copy of the 2021 Discipline Decision and Order made July 26, 2021, together with the addendum released August 25, 2021, is attached as **Tab B**.

**D. Resolution of the 2021 Discipline Proceedings and the Registrant's Undertaking to Resign and Not Re-apply**

10. As set out above, in or about July 6, 2021, the Registrant, through his counsel, engaged in settlement negotiations with College counsel.
11. On July 6, 2021, the Registrant forwarded an email from his legal counsel to the TOG/OHI CEO, Paul Joyce. The email provided a summary of the College's position on settlement. In his cover email to Mr. Joyce, the Registrant advised Mr. Joyce that the College felt his work for TOG – signing the clinic's gait analyses when he did not personally see or assess patients - was professional misconduct, and that his role at TOG/OHI, working in association with a commercial business, was professional misconduct. The Registrant viewed this as a "witch hunt".
12. On learning that the Registrant's issues with the College were escalating, in an email dated July 7, 2021, Mr. Joyce proposed that "a formal separation from the company" was in order, to protect the Registrant's best interests. A copy of the communication in paragraphs 11 and 12 herein is attached at Tab C.
13. The very next day, on July 9, 2021, the Registrant advised Mr. Joyce of "good news". The Registrant stated that his College case was "settling... with no penalties". This was inaccurate and misleading. Mr. Joyce responded "that is good news". A copy of the exchange is attached at Tab D.
14. Throughout this time, the College and the Registrant continued to negotiate the resolution, which entailed that the Registrant would, among other things, permanently resign, agree never to reapply as a chiropractor or podiatrist in any jurisdiction, refrain from practicing chiropractic, and using of protected titles "chiropractor" and "podiatrist."
15. Accordingly, notwithstanding that the Registrant was representing to the College that he was agreeable to permanently resign in exchange for a stay, and executed an Undertaking to that effect, he was simultaneously representing to TOG that the case was resolving with "no penalty", securing his continued working relationship with TOG. The Registrant negotiated in bad faith and had no intention of complying with his undertaking.
16. As set out in the internal communications attached at Tab E and Tab F, TOG/OHI understood at that in January 2022, the Registrant was voluntarily "closing his practice". At no time did the Registrant make TOG/OHI aware that on July 17, 2021, he agreed to permanently resign his registration and refrain from practicing chiropractic in any jurisdiction on the basis that the College seek to stay the 2021 Discipline Proceedings.

**E. The Registrant Breached the Undertaking, Practised Chiropody, Used Title and Held Himself Out Contrary to Undertaking, the 2021 Discipline Committee Order and the Regulatory Scheme**

17. After resigning July 17, 2021, and after the 2021 Discipline Committee and Order dated July 26, 2021, the Registrant continued to practice chiropody/podiatry at TOG. The Registrant admits that he continued to see and treat patients in his private practice until August 31, 2021.
18. In addition, between July 17, 2021 and the end of January 2022, through his work at TOG, the Registrant continued to use the title “Dr”., use the title podiatrist and variations/abbreviations thereof, and hold himself out to the public as a person qualified to practice in Ontario as a podiatrist, in the very same manner as he had before resigning his registration.
19. The Registrant breached his Undertaking, contravened the Discipline Committee’s order and breached regulatory title prohibitions, including by:
- Continuing in his role at TOG/OHI, identifying himself as “Dr. Alan Lustig D.P.M.”, providing podiatric and orthotic clinical support until the end of January 2022;
  - Providing “podiatry recommendations” for patients, identifying himself as “Dr. Alan Lustig, D.P.M.” and “Podiatrist” and “Supervising Podiatrist” which included a clinical review of foot scans, clinical advice and recommendations on appropriate footwear for patients. The College obtained **718** “podiatry recommendations” from TOG dated between July 26, 2021 and January 14, 2022, a sampling of which are attached at **Tab G**;
  - Providing seminars related to the practice of chiropody and/or podiatry for TOG, holding himself out as a podiatrist and a Doctor;
  - Issuing invoices for services as “Dr. Lustig” and/or “Alan Lustig D.P.M.” and the “Chief Medical Director” of TOG and Langer Biomechanics Group.
20. The Registrant continued to be remunerated by TOG on a monthly basis just as he had prior to his signing the Undertaking. He received a monthly fee of \$4333.33 plus HST for his consulting services provided from July 2021 to January 2022, and received a monthly fee of \$1150.00 plus HST for OHI Webinars delivered during this period.



21. 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:
- (i) paragraph 30 – contravening the Act, the Regulated Health Professions Act, 1991 or the regulations under either of those Acts;
  - (ii) 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;
  - (iii) paragraph 36 – failing to comply with an order of the Complaints Committee, the Discipline Committee or the Fitness to Practise Committee; and/or
  - (iv) paragraph 37 – failing to carry out a requirement of the Complaints Committee, the Discipline Committee or the Fitness to Practise Committee or breaching an undertaking given to one of those committees or to the Registrar.

## **ACKNOWLEDGEMENTS**

22. The Registrant 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.
23. The Registrant understands that the panel of the Discipline Committee can accept the facts herein constitute professional misconduct and, in particular, can accept his admissions that they constitute professional misconduct.
24. The Registrant 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 dated December 20, 2023.
25. The Registrant also understands that if the panel makes a finding or findings of professional misconduct against him, then the panel's decision and its reasons, and/or a summary of its reasons, including the facts contained herein, and the Registrant's name will be published, including but not limited to, in the College's publications, on the College's public register, on the College's website, and/or on CanLII (the website operated by the Canadian Legal Information Institute).
26. The Registrant has had the opportunity to obtain independent legal advice and was encouraged to do so by the College. He further acknowledges that he is entering into this ASF freely and voluntarily, without compulsion or duress.

### **Decision and Reasons**

8. The Panel carefully considered the evidence presented in this case as outlined in the Agreed Statement of Facts. Following deliberations, and based on the Member's admissions as set out in the Agreed Statement of Facts, the Panel was satisfied that the Member engaged in professional misconduct as alleged in paragraphs 3(a)(ii)-3(a)(v) of the Statement of Allegations forming part of the Notice of Hearing. The Panel found that members of the profession would reasonably regard the conduct admitted as disgraceful, dishonourable or unprofessional.

### **Joint Submission on Penalty and Costs**

9. The Panel received and considered a Joint Submission on Penalty and Costs from the parties (the "**Joint Submission**"), marked as Exhibit 3 at the hearing, which stated as follows:

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

1. An oral reprimand;
2. Revocation of the Registrant's certificate of registration to take effect immediately;
3. 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 \$23,000 in accordance with the following schedule:
  - a) \$11,500.00 due the date of this Order;
  - b) \$11,500.00 due the first day of the third month after the date of this Order;
6. The College and the Registrant agree that if the Discipline Committee accepts this Joint Submission on Penalty and Costs, there will be no appeal or judicial review of the decision to any forum.

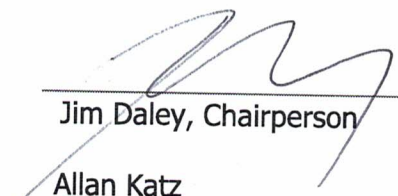
### **Decision and Reasons for Penalty and Costs**

10. The Panel reviewed and considered the Joint Submission, together with submissions from College counsel. The Panel recognized that the penalty should maintain high professional standards, preserve public confidence in the ability of the College to regulate its members, and, above all, protect the public. This is

achieved through a penalty that considers the principles of general deterrence, specific deterrence and, where appropriate, rehabilitation and remediation of the Member's practice. The latter consideration is less relevant here, given that the Member will not be practicing as a member of the profession.

11. The Panel is satisfied that the terms contained in the Joint Submission reflects these principles. The Panel also considers the Joint Submission to be reasonable, proportionate and sensitive to the aggravating and mitigating factors in this case.
12. The evidence and the facts of this case as presented by College counsel, and as outlined in the Agreed Statement of Facts, were a matter of serious concern to the panel. However, the Panel also considered the fact that the Member readily admitted his guilt, expressed remorse and cooperated in bringing this matter to a resolution. In coming to its decision to accept the Joint Submission, the Panel considered the evidence of this specific case, the case law put forward by the College regarding other similar matters, and the purposes of penalties, including in particular the need for general deterrence in this case. All these things considered, the Panel believes that the Joint Submission is just and appropriate, and does not satisfy the high threshold for rejecting a joint submission.
13. At the conclusion of the hearing, having reviewed the Joint Submission confirming that the Member waived any right to appeal or judicial review, the Panel delivered an oral reprimand on the record. A copy of the reprimand is attached here at Appendix A.

I, Jim Daley, sign this decision and reasons as Chairperson of this Discipline Panel and on behalf of the members of the Discipline Panel as listed below:

  
\_\_\_\_\_  
Jim Daley, Chairperson

November 20, 2024

\_\_\_\_\_  
Date

Allan Katz  
Tobi Mark  
Murtaza Najmudin  
Jannel Somerville

**APPENDIX A****COLLEGE OF CHIROPODISTS OF ONTARIO v. ALAN MARK LUSTIG**

As you know, Mr. LUSTIG as part of its penalty, this Discipline Panel has ordered you be given an 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.

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 the following ways:

1. You contravened the *Chiropody Act, 1991*, the *Regulated Health Professions Act, 1991* or the regulations under either of those Acts
2. You engaged in conduct which would reasonably be regarded by other members of this profession as disgraceful, dishonourable or unprofessional.
3. You failed to comply with an order of the Discipline Committee;
4. You failed to carry out a requirement of the Discipline Committee or breached an undertaking given to one of those committees or to the Registrar

The fact that you engaged in professional misconduct is a matter of profound concern. You have brought discredit to the entire chiropody and podiatry professions and to yourself. Public confidence in this profession has been put in jeopardy. The result of your misconduct is that you have let down the public, the chiropody and podiatry professions, and yourself.

Your conduct is totally unacceptable to your fellow chiropractors and podiatrists, and to the public. Of special concern to us was your repeated use of the term "Doctor" and other restricted titles, as well as your blatant disregard for the undertaking that you provided to the College as part of your earlier discipline proceedings.

We appreciate that you have taken responsibility here and that you were willing to admit misconduct. We certainly hope that means you have recognized the error of your ways and that you will not repeat this conduct in the future.

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 likely be imposed by another Discipline Panel in the event that you are ever found to have engaged in professional misconduct again.

As you heard earlier, you will now be given an opportunity to respond if you wish. Remember this is not an opportunity for you to review the decision or debate its correctness. Do you wish to make any comments?

Thank you for attending today. We are adjourned.