

**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 -

ERWIN MENDOZA

PANEL MEMBERS:

| | |
|-------------------|----------------------------|
| Peter Guy | Chair, Professional Member |
| Ann-Marie McLaren | Professional Member |
| Edward Chung | Professional Member |
| Ramesh Bhandari | Public Member |

**COUNSEL FOR THE
COLLEGE:**

Debra McKenna

**REPRESENTATIVE FOR THE
MEMBER:**

Ada Jeffrey

**INDEPENDENT LEGAL
COUNSEL:**

Edward Marrocco

Hearing Date:

March 2, 2022

Decision Date:

March 2, 2022

Release of Written Reasons:

April 11, 2022

DECISION AND REASONS

This matter came on for hearing before a panel of the Discipline Committee on March 2, 2022. With the consent of the parties, the matter was heard electronically.

The Allegations

1. The allegations against the Member were set out in a Notice of Hearing, dated November 8, 2021. The Notice of Hearing can be found at Tab 1 of Exhibit 1 and the allegations contained in it are as follows:
 1. Erwin Mendoza (“**Mr. Mendoza**” or the “**Member**”) was at all material times a registered member of the College.
 2. It is alleged that, during the period from approximately March 2021 to May 2021 (the “**Relevant Period**”), the Member engaged in conduct that constitutes professional misconduct pursuant to the following:
 - (a) Clause 51 (1)(c) of the *Health Professions Procedural Code, being Schedule 2 to the Regulated Health Professions Act, 1991* and as defined in one or more of the following paragraphs of section 1 of the *Professional Misconduct Regulation* (O. Reg. 750/93) under the *Chiropody Act, 1991*:
 - (i) paragraph 2 - failing to meet or contravening a standard of practice of the profession) and, in particular, the College's standards pertaining to:
 - a. Assessment and Management;
 - b. Patient Relations;
 - c. Records; and/or
 - d. Prescription Custom Foot Orthoses;
 - (ii) paragraph 10 - practising the profession while the member is in a conflict of interest;
 - (ii) paragraph 17 - failing to keep records as required by the regulations;
 - (iv) paragraph 18 - falsifying a record relating to the member's practice;
 - (v) paragraph 20 - signing or issuing, in the member's professional capacity, a document that contains a false or misleading statement;
 - (vi) paragraph 21 - submitting an account or charge for services that the member knows is false or misleading;
 - (vii) paragraph 30 - contravening the *Chiropody Act, 1991*, the *Regulated Health Professions Act, 1991*, or the regulations under either of those

Acts: specifically, Ontario Regulation 203/94 under the *Chiropody Act, 1991*, and, in particular, Advertising (Part II) and/or Records (Part III);

- (viii) paragraph 33 - engaging in conduct or performing an act, in the course of practising the profession that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable, or unprofessional.

Particulars of the Allegations

A. Overview

1. At all times material to the allegations, the Member was registered with the College to practise chiropody in Ontario. He was first registered on or about September 3, 2004.
2. During the Relevant Period, the Member practised at the Cordasco Chiropractic Clinic, located at 4407 Montrose Road, in Niagara Falls, Ontario (the "Clinic"). The Member was the only chiropodist practising at the Clinic and he worked at the Clinic one day a week.
3. During the Relevant Period, the Member also practised at the following locations:
 - Toronto Western Hospital, 440 Bathurst Street, Toronto, Ontario
 - Belmont House Retirement Home, 5 Belmont Street, Toronto, Ontario

B. Manulife Complaint

4. On or about May 28, 2021, the College received a complaint from Manulife about the Member (the "Complaint").
5. As described in the Complaint, on or about July 18, 2019, a Manulife investigator (using the alias "Colin Baker") attended at the Clinic and was examined by Dr. Anthony Papetti - a chiropractor.
6. During the examination, Mr. Baker inquired about obtaining free shoes with his orthotics. Mr. Baker was advised by Dr. Papetti that the Clinic did not provide free shoes anymore because insurance companies were delisting providers for doing so. As a result, the Clinic had changed its practice and now offered shoes at a discounted price.
7. On or about March 13, 2020, Mr. Baker contacted the Clinic again to inquire whether the same offer was still available - that is, the ability to obtain discounted shoes with the purchase of orthotics.
8. Mr. Baker was informed by Clinic staff that the offer was still available and Mr. Baker was provided with instructions on how to choose his shoes from the Atlas Orthotics Lab website - the manufacturer from whom the Clinic ordered orthotics.

9. The investigator selected a pair of New Balance shoes on the Atlas Orthotics Lab website. Mr. Baker then confirmed that the shoes had a retail value of \$169.99 on the New Balance Canada website.
10. In or about early March 2021, the Clinic was identified by Manulife as having a high utilization rate by plan members employed by a certain Manulife client. As a result, Mr. Baker contacted the Clinic again. He was told that the orthotics and shoes were still available, but he required an examination and assessment by the Member.
11. On or about April 6, 2021, the Member had a video chat with Mr. Baker, which the Member described as a "consult".
12. The Member directed Mr. Baker to focus the camera on his cellphone to the area of his arches - so the Member could examine Mr. Baker's arches. The Member then directed Mr. Baker to stand up and walk back and forth - all the while holding the cellphone focusing on the investigator's feet. That was the extent of the Member's examination.
13. During the video chat, the Member also spoke with Mr. Baker about the shoes he had chosen and whether the orthotics manufacturer would still have that model in stock.
14. Following the assessment conducted by the Member, Mr. Baker was provided with a biomechanical and gait analysis report, which was signed by the Member and dated April 6, 2021.
15. Mr. Baker was also provided with a printout of a foot scan dated April 6, 2021. The scan report identified the Member as the "practitioner".
16. A second investigator, identified as a friend of Mr. Baker, was tasked to pick up and pay for Mr. Baker's orthotics and shoes at the Clinic. On or about April 9, 2021, the investigator attended at the Clinic and was provided with the orthotics and the shoes by the Clinic staff.
17. In two separate transactions, the investigator paid \$475.00 for the orthotics and \$65.00 for the shoes. There was no mention of shoes supplied by the orthotics manufacturer on the invoice provided by the Clinic, which included the Member's name and College registration number.
18. In prescribing and/or purporting to prescribe orthotics to his patient, the Member did not perform and/or document in his patient records an adequate assessment in accordance with the College's standards. In particular, the Member failed:
 - (a) to meet with the patient in-person and conduct a physical examination;
 - (b) to obtain an adequate patient history;
 - (c) to perform an adequate biomechanical assessment and/or gait analysis;
 - (d) to obtain and/or document informed consent;

- (e) to provide a range of treatment options to the patient and/or determine if a different treatment was appropriate before prescribing orthotics;
 - (f) to document and discuss with the patient the treatment plan;
 - (g) to perform an appropriate casting or scanning procedure;
 - (h) to evaluate the casts or scans to ensure they were accurate and matched the contours of the patient's foot;
 - (i) to fit and dispense the orthotics to his patient and ensure that the devices matched the prescription and matched the contours of the patient's foot;
- and/or
- (j) to provide appropriate follow-up care to his patient.
19. The Member also failed to maintain patient records in accordance with the regulations and the College's standards.
 20. In prescribing and/or purporting to prescribe orthotics to his patient, the Member signed, issued and/or submitted documents that were false and/or misleading in support of a benefits claim for orthotics.
 21. In prescribing orthotics to his patient, the Member was aware and/or participated in the practice of providing incentives to patient (in the form of discounted shoes) who purchased orthotics from the Clinic - a business practice that is contrary to the College's advertising regulations and/or the College's standards.
 22. The records created, issued and/or signed by the Member and provided to his patient to support their benefits claims do not disclose that the patient received discounted shoes with the purchase of their orthotics, which were supplied to the Clinic by Atlas Orthotics Lab.

Member's Plea

2. At the outset of the hearing, the College sought leave to withdraw allegation 2(a)(iv) of the Notice of Hearing. The Panel granted leave and the allegation was withdrawn. The Member admitted to the remaining allegations set out in the Notice of Hearing. The Panel conducted an oral plea inquiry at the hearing. The Panel was satisfied that the Member's admissions were voluntary, informed and unequivocal.

Agreed Statement of Facts

3. The parties tendered an Agreed Statement of Facts into evidence which is found at Tab 2 of Exhibit 1. The Agreed Statement of Facts provided as follows:

1. Erwin Mendoza (“**Mr. Mendoza**” or the “**Member**”) was at all material times a registered member of the College. He was first registered on or about September 3, 2004 and, prior to these proceedings, Mr. Mendoza had no prior discipline history.
2. During the Relevant Period, the Member practised at the Cordasco Chiropractic Clinic, located at 4407 Montrose Road, in Niagara Falls, Ontario (the "Clinic"). The Member was the only chiropodist practising at the Clinic and he worked at the Clinic one day a week.
3. During the Relevant Period, the Member practised at the following locations:
 - Toronto Western Hospital, 440 Bathurst Street, Toronto, Ontario
 - Belmont House Retirement Home, 5 Belmont Street, Toronto, Ontario
4. On or about May 28, 2021, the College received a complaint from Manulife about the Member (the “**Complaint**”).
5. As described in the Complaint, on or about July 18, 2019, a Manulife investigator (using the alias Colin Baker) attended at the Clinic and was examined by Dr. Anthony Papetti - a chiropractor.
6. During the examination, Mr. Baker inquired about obtaining free shoes with his orthotics. Mr. Baker was advised by Dr. Papetti that the Clinic did not provide free shoes anymore because insurance companies were delisting providers for doing so. As a result, the Clinic had changed its practice and now offered shoes at a discounted price.
7. On or about March 13, 2020, Mr. Baker contacted the Clinic again to inquire whether the same offer was still available - that is, the ability to obtain discounted shoes with the purchase of orthotics
8. Mr. Baker was informed by Clinic staff that the offer was still available and Mr. Baker was provided with instructions on how to choose his shoes from the Atlas Orthotics Lab website - the manufacturer from whom the Clinic ordered orthotics.
9. The investigator selected a pair of New Balance shoes on the Atlas Orthotics Lab website. Mr. Baker then confirmed that the shoes had a retail value of \$169.99 on the New Balance Canada website.
10. In or about early March 2021, the Clinic was identified by Manulife as having a high utilization rate by plan members employed by a certain Manulife client. As a result, Mr. Baker contacted the Clinic again. He was told that the orthotics and shoes were still available, but he required an examination and assessment by the Member.
11. On or about April 6, 2021, the Member had a video chat with Mr. Baker, which the Member described as a “consult”.
12. The Member directed Mr. Baker to focus the camera on his cellphone to the area of his arches - so the Member could examine Mr. Baker's arches. The Member then directed Mr. Baker to stand up and walk back and forth - all the while holding the cellphone focusing on the investigator's feet.
13. During the video chat, the Member asked Mr. Baker if anything had changed from his previous visit, and asked if he had sustained any injuries or had any surgeries between the

last appointment and the current appointment. The Member then asked what type of shoes Mr. Baker intended to use the orthotics in.

14. Mr. Baker responded he would use the orthotics in running shoes and asked Mr. Mendoza whether the orthotics manufacturer would still have that model in stock. The Member suggested that Mr. Baker should ask Dr. Papetti regarding the availability of shoes. The Member also asked whether Mr. Baker was still employed by the LCBO, as the receptionist had asked for this clarification. Attached as **Exhibit "A"** to the Agreed Statements of Facts is an audio recording of the video chat between Mr. Baker and the Member.
15. Following the assessment, Mr. Baker was provided with a biomechanical and gait analysis report, which was signed by the Member and dated April 6, 2021.
16. Mr. Baker was also provided with a report for a foot scan, which was dated April 6, 2021. The scan report identified the Member as the "practitioner", although the Member did not scan Mr. Baker's feet. A scan was conducted on July 18, 2019, when Mr. Baker previously attended the Clinic and was assessed by Dr. Papetti.
17. A second investigator, identified as a friend of Mr. Baker, was tasked to pick up and pay for Mr. Baker's orthotics and shoes at the Clinic.
18. On or about April 9, 2021, the investigator attended at the Clinic and was provided with Mr. Baker's orthotics and the shoes by the Clinic staff.
19. If the Member were to testify it would be his evidence that he was unable to attend the Clinic for Mr. Baker's scheduled pick-up as he was not informed by the Clinic staff about the pick-up until after the orthotics and shoes had been collected.
20. In two separate transactions, the investigator paid \$475.00 for the orthotics and \$65.00 for the shoes. There was no mention of shoes supplied by the orthotics manufacturer on the invoice provided by the Clinic, which included the Member's name and College registration number.
21. The Member's last day of work at the Clinic was February 22, 2022, and is now only working at Toronto Western Hospital where his practice does not involve the prescription of orthotics.
22. The Member admits that he did not perform and/or document in his patient records an adequate assessment for the prescription of orthotics in accordance with the College's standards. In particular, the Member failed to:
 - (a) meet with the patient in-person and conduct a physical examination;
 - (b) obtain an adequate patient history;
 - (c) perform an adequate biomechanical assessment and/or gait analysis;
 - (d) to obtain and/or document informed consent;
 - (e) provide a range of treatment options to the patient and/or determine if a different treatment was appropriate before prescribing orthotics;
 - (f) document and discuss with the patient the treatment plan;
 - (g) perform an appropriate casting or scanning procedure;
 - (h) evaluate the casts or scans to ensure they were accurate and matched the contours of the patient's foot;

- (i) fit and dispense the orthotics to his patient and ensure that the devices matched the prescription and matched the contours of the patient's foot; and
 - (j) provide appropriate follow-up care to his patient.
23. The Member also admits that he failed to maintain patient records in accordance with the regulations and the College's standards. In particular, the Member signed, issued and submitted documents that were false or misleading in order to support of a benefits claim to Manulife for the orthotics.
24. The Member was aware of the Clinic's practice of providing incentives (in the form of discounted shoes) to patients who purchased orthotics from the Clinic. The Member did not set the policies of the Clinic nor did he personally encourage Mr. Baker to purchase shoes. Nonetheless, the Member acknowledges that he was aware that the Clinic's business practice was contrary to the College's advertising regulations and/or the College's standards.
25. The records created, issued or signed by the Member, or on his behalf, do not disclose to Manulife that the patient received discounted shoes with the purchase of their orthotics, both of which were supplied by the orthotics manufacturer, Atlas Orthotics Lab.
26. The following written standards of the College are standards of practice of the profession at the relevant time and are appended as Exhibits "B" to "E" to the Agreed Statement of Facts:
- a. Assessment and Management;
 - b. Patient Relations;
 - c. Records; and
 - d. Prescription Custom Foot Orthoses.
27. Based on the facts set out above, the Member 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 under the *Chiroprody Act, 1991*:
- (i) paragraph 2 - failing to meet or contravening a standard of practice of the profession) and, in particular, the College's standards pertaining to:
 - a. Assessment and Management;
 - b. Patient Relations;
 - c. Records; and/or
 - d. Prescription Custom Foot Orthoses;
 - (ii) paragraph 10 - practising the profession while the member is in a conflict of interest;
 - (iii) paragraph 17 - failing to keep records as required by the regulations;
 - (iv) paragraph 20 - signing or issuing, in the member's professional capacity, a document that contains a false or misleading statement;
 - (v) paragraph 21 - submitting an account or charge for services that the member knows is false or misleading;
 - (vi) paragraph 30- contravening the Chiroprody Act, 1991, the Regulated Health Professions Act, 1991, or the regulations under either of those Acts:

- specifically, Ontario Regulation 203/94 under the *Chiropody Act, 1991*, and, in particular, Advertising (Part II) and/or Records (Part III);
- (vii) paragraph 33 - engaging in conduct or performing an act, in the course of practising the profession that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable, or unprofessional.

Decision and Reasons on Liability

4. In coming to its decision, the Panel considered the Member's admission of professional misconduct in the course of the plea inquiry, the evidence contained in the Agreed Statement of Facts, and the submissions of counsel.
5. The Panel is satisfied that the conduct described in the Agreed Statement of Facts constitutes professional misconduct as alleged in the remaining allegations in the Notice of Hearing and as admitted by the Member. The member failed to meet standards of practice of the profession in the following areas: (a) assessment and management; (b) patient relations; (c) records; and (d) prescription custom foot orthoses. The misconduct found in this matter would reasonably be regarded by the profession as dishonourable and unprofessional.

Penalty

6. A Joint Submission on Penalty and Costs (the "**Joint Submission**") was put forward by the parties. The Joint Submission confirmed that the parties were jointly seeking the following:
1. An oral reprimand;
 2. An order, effective as of March 7, 2022, suspending the Member's certification of registration for a period of eight (8) months, two (2) months of which will be remitted upon the Member completing the ProBe ethics course and the University of Toronto record-keeping course as outlined in paragraph 3(a) below;
 3. An order directing the Registrar to impose terms, conditions, and limitations on the Member's certificate of registration requiring the following:
 - (a) Prior to returning to practice, the Member shall complete both the ProBe ethics and the University of Toronto record-keeping course at his own expense;
 - (b) Upon returning to practice after his suspension, the Member is prohibited from imaging, casting, prescribing, constructing, fitting, dispensing and/or ordering the fabrication of orthotics for a period of fifteen (15) months (the "Restricted Period"). The Member is additionally not entitled to assign these duties to anyone else in his clinic, regardless of whether he receives a fee, during the

Restricted Period, but shall refer such duties to another member of the College 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 eighteen months (18) from the date on which the Member returns to practice from the suspension. The terms of the supervision are as follows:
- The supervisor shall visit with the Member in person on at least four (4) occasions - twice in the first six months and twice in the last twelve months;
 - The visits with the supervisor will be unannounced;
 - The supervisor shall determine the length of each visit;
 - In conducting the supervision, the supervisor shall discuss ethics, practice management, record-keeping and compliance with the College's standards with the Member;
 - The supervisor shall prepare a report to the Registrar after the second (2) visit and after the fourth (4) visit;
 - The Member shall seek 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;
 - The Member shall provide the supervisor with the Discipline Committee's decision and then provide written confirmation to the Registrar, signed by the supervisor, that the supervisor has received and reviewed the final decision;
- (d) In the event that the Member obtains employment to provide chiropractic services during the eighteen (18) months following the date on which he is able to return to practice after his suspension, the Member shall:
- notify any current or new employers of the Discipline Committee's final decision;
 - ensure the Registrar is notified of the name, address, and telephone number of all employer(s) within fifteen (15) days of commencing employment;
 - provide his employer(s) with a copy of:
 - o the Discipline Committee's Order;
 - o the Notice of Hearing;
 - o the Agreed Statement of Facts;
 - o the Joint Submission on Penalty;
 - o a copy of the Discipline Committee's decision; and
 - o have his employer forward a report to the Registrar within fifteen (15) days of commencing employment confirmation that the employer has received the documents noted above and agrees to notify the Registrar

immediately upon receipt of any information that the Member is not complying with the College's standards;

- (e) An order that the Discipline Committee's decision be published, in detail with the Member's name, in the College's official publication, on the College's website, and/or on the College's public register;
- (f) An order directing the Member to pay costs to the College in the amount of \$6,000.00, which amount will be paid in installments as follows:
 - \$2,000.00 on March 2, 2022;
 - \$333.33 on April 1, 2022;
 - \$333.33 on May 1, 2022;
 - \$333.33 on June 1, 2022;
 - \$333.33 on July 1, 2022;
 - \$333.33 on August 1, 2022;
 - \$333.33 on September 1, 2022;
 - \$333.33 on October 1, 2022;
 - \$333.33 on November 1, 2022;
 - \$333.33 on December 1, 2022;
 - \$333.33 on January 1, 2023;
 - \$333.33 on February 1, 2023; and
 - \$333.37 on March 1, 2023.

Decision and Reasons on Penalty and Costs

7. The Panel reviewed the Joint Submission and received submissions from counsel in the course of the hearing. The Panel is satisfied that the order proposed in the Joint Submission does not bring the discipline process of this College into disrepute and is not contrary to the public interest. In the circumstances, the penalty proposed is reasonable and was so ordered by the Panel before the conclusion of the hearing.
8. The terms contained in the Joint Submission are reasonable and commensurate with the seriousness of the misconduct found in this case.
9. The Member's actions were financially motivated. His conduct brings shame upon all members of the College and lowers the public perception of the profession. This behaviour can also create a negative perception of the profession within the insurance industry. The Member's conduct required an investigation and ultimately resulted in the within hearing. The costs of both the investigation and the hearing create significant economic consequences that other members of the College bear.
10. The Joint Submission contemplates rehabilitation and deterrence. The suspension of the Member's certificate of registration for eight (8) months, in combination with the ability to

have two (2) months remitted subject to completion of the ProBE ethics course strikes an appropriate balance. The Member will complete the ProBe ethics course at his own expense and provide proof thereof to the Registrar before the completion of the eight (8) months term of suspension.

11. Similarly, there will be a financial impact on the Member by way of the limitation prohibiting the Member from imaging, casting, prescribing, constructing, fitting, dispensing and/or ordering fabrication of orthotics, prescription footwear, custom shoes and/or modified orthopaedic shoes for a period of fifteen (15) months, which period begins at the end of the eight (8) months suspension period. The Member is not entitled to assign these duties to anyone else, regardless of whether he receives a fee, during the fifteen (15) months where the restriction applies.
12. The public can be reassured by the fact that the Member's practice will be supervised for a period of eighteen (18) months at the conclusion of the suspension period, at the expense of the Member, in accordance with the conditions outlined in the Joint Submission.
13. The Panel acknowledges that this was the first time the Member appeared before the College's Discipline Committee. By admitting the allegations of professional misconduct and entering into an Agreed Statement of Facts and the Joint Submission, the Member has saved the College the considerable time and expense which would have been incurred had the matter been contested.
14. The Panel also notes that as part of the Joint Submission, the Member has agreed to pay the College a portion of its costs incurred to investigate and prosecute this matter. While these costs are not part of the penalty, the Member's agreement to make this payment is not unnoticed.
15. In its totality, the order made pursuant to the Joint Submission sends a strong message that the College will not tolerate the types of misconduct which occurred in this matter and that message will discourage other members from engaging in similar acts for personal financial gain.
16. At the conclusion of the hearing, having confirmed that the Member waived any right to appeal, the Panel delivered an oral reprimand on the record.

I, Peter Guy, sign this Decision and Reasons as Chairperson of this Discipline Panel and on behalf of the members of the Discipline Panel as listed below:



Peter Guy, Chairperson

April 11, 2022

Ann-Marie McLaren
Ed Chung
Ramesh Bhandari