

**DISCIPLINE COMMITTEE
OF THE COLLEGE OF CHIROPODISTS OF ONTARIO**

PANEL:

Martin Hayles, Chair
Peter Ferguson, Professional Member
Andrew Gassmann, Public Member

BETWEEN:

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)	
)	
COLLEGE OF CHIROPODISTS OF ONTARIO))	DEBRA MCKENNA for the College
(the “College”))	
)	
- and -)	
)	
FLORDELIZA SY (the “Member”))	ED CORRIGAN
)	for the Member
)	
)	FREDRICK SCHUMANN, Independent
)	Legal Counsel
)	
)	Heard: July 15, 2021
)	
)	Court Reporter is Alyssa Sega

DECISION AND REASONS

1. This matter came on for hearing before a panel of the Discipline Committee on July 15, 2021 by way of videoconference hosted by Victory Verbatim in Toronto.

The Allegations

2. The allegations against the Member are set out in the Notice of Hearing dated April 24, 2020 are as follows:

1. At all material times, Flordeliza Adorna Sy (“**Ms. Sy**” or the “**Member**”) was a registered member of the College of Chiropodists of Ontario (the “**College**”).
2. During the period from approximately July 2019 to December 2019 (the “**Relevant Period**”), the Member engaged in professional misconduct within the meaning of the following paragraphs of section 1 of the Professional Misconduct Regulation, O. Reg. 750/93 under the Chiropody Act, 1991:
 - (a) paragraph 2 (failing to meet or contravening a standard of practice of the profession), and the College’s standards pertaining to:
 - (i) Patient Relations;
 - (ii) Assessment and Management;
 - (iii) Records; and/or
 - (iv) Prescription Custom Foot Orthoses;
 - (b) paragraph 10 (practising the profession while the member is in a conflict of interest);
 - (c) paragraph 17 (failing to keep records as required by the regulations);
 - (d) paragraph 20 (signing or issuing, in the member’s professional capacity, a document that contains a false or misleading statement);
 - (e) paragraph 21 (submitting an account or charge for services that the member knows is false or misleading);
 - (f) paragraph 22 (charging a fee that is excessive in relation to the services or devices charged for);
 - (g) paragraph 30 (contravening the Chiropody Act, 1991, the Regulated Health Professions Act, 1991, or the regulations under either of those Acts), and in particular:

- (i) Ontario Regulation 750/93 (Professional Misconduct) under the Chiropractic Act, 1991, as specified in this Notice of Hearing;
 - (ii) Ontario Regulation 203/94 (General), and in particular Part II and Part III therein; and/or
 - (iii) Section 51(1)(c) of the Health Professions Procedural Code, being Schedule 2 to the Regulated Health Professions Act, 1991; and/or
- (h) 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).

3. Counsel for the College requested the removal of item f. paragraph 22 (charging a fee that is excessive in relation to the services or devices charged for) from the allegations. This point was supported by Member. The Discipline panel approved the removal of item f. from the allegations.

Member's Plea

4. The Member admitted that she engaged in professional misconduct as set out in the Notice of Hearing and as more fully described in the Agreed Statement of Facts.

5. The Panel conducted an oral plea inquiry and was satisfied that the Member's admissions were voluntary, informed, and unequivocal.

Findings on professional misconduct

6. The member and College filed an Agreed Statement of Facts ("ASF") in which the member admitted certain facts and admitted that those facts amounted to professional misconduct.

7. The first issue was whether the conduct admitted in the ASF constituted professional misconduct as alleged.

Agreed Statement of Facts

8. Counsel for the College and the Member advised the Panel that agreement had been reached on the facts and introduced an Agreed Statement of Facts, which provided as follows:

Background

1. At all material times, the Member was a chiropodist registered with the College to practise chiropody in the Province of Ontario. The Member was first registered with the College on May 12, 2009.
2. During the period from July 2019 to December 2019, the Member was engaged in the practice of chiropody at the Lambeth Footcare and Orthotics Centre, located at 2320 Main Street, London, Ontario (the "Clinic").
3. In addition to the Clinic, the Member also engaged in the practice of chiropody at the Clarkson Footcare and Orthotic Centre at 1375 Southdown Road, Unit 31 in Mississauga, Ontario.

B. The Complaint

4. On or about July 31, 2019* the College received a complaint from a chiropodist ("AC") with respect to the Member (the "Complaint").
5. In the Complaint, AC advised that she had received an advertisement in the mail about the opening of the Clinic and expressed concerns about the contents of the advertisement (the "Flyer"). A copy of the Flyer is attached as Appendix "A".
6. In particular, the Flyer stated as follows:

Promotion: FREE SHOES FOR EVERY ORTHOTICS for the first 100 Clients. (PIs bring this flyer) Covered by Extended Health Insurance. Can do Direct Billing.

College's Investigation

7. The Clinic was opened in or about October 2018.
8. In or about July 2019, the Member began an advertising initiative to promote her practice and the opening of the Clinic. The purpose of the advertising initiative was to increase the number of patients at the Clinic.
9. As part of the advertising, the Member extended an offer to potential patients via the Flyer, indicating that patients would receive free shoes with any orthotics dispensed by the Clinic,
10. The Flyer was mailed to households in the Lambeth neighbourhood in London.
11. A similar promotion of free shoes was also offered at the Mississauga Clinic, which was advertised on the website for the Mississauga Clinic.
12. When patients attended at the Clinic with the Flyer, the Member conducted an assessment to provide orthotics. Patients were charged \$600;00. which included \$100.00 for the Member's assessment and \$500.00 for the orthotics.
13. The Member then provided six patients with free shoes with their orthotics at the time of dispensing.
14. If the Member were to testify her evidence would be that patients received "sports" shoes with their orthotics.
15. Patients were required to pay for the Member's assessment and orthotics upfront and the Member then submitted benefits claim to the patient's insurer on their behalf.

16. if the Member were to testify her evidence would be that she submitted the benefits claim forms as an added service for her patients.
17. Six individuals responded to the Flyer and subsequently obtained orthotics and free shoes from the Member, including LB, MB} OP, OP. LA, and DA. All the patients were prescribed orthotics.
18. After receiving their orthotics and free shoes, none of the patients (LB, MB, OPI OP, LA, and DA) were seen and/or contacted by the Member for any follow-up care. The patients attended at the Clinic for only one or two reasons (i) to be assessed and (ii) to be dispensed orthotics and free shoes.
19. The Member's patient records do not indicate that any other alternative treatment options were discussed with the patients.
20. The benefit forms and patient records prepared and/or submitted, and/or signed by the Member do not disclose that the patients received free shoes with their orthotics.
21. If the Member were to testify, it would be her evidence that the insurance company was not billed for the "free shoes" and the Member covered the expense of the shoes herself.
22. If the Member were to testify her evidence would be that she placed the Flyer in the patient record to signify that that patient had received sports shoes.
23. The following standards of the College are the standards of practice of the profession within the meaning of paragraph 2 of section 1 of the Professional

Misconduct Regulation, O. Reg. 750/93:

- (i) Patient Relations.
- (ii) Assessment and Management.
- (iii) Records; and/or

(iv) Prescription Custom Foot Orthoses.

24. Based on the facts set out in paragraphs 1 to 23 above, the Member admits that she engaged in professional misconduct within the meaning of the following paragraphs of section 1 of the Professional Misconduct Regulation, O. Reg.750/93:

- (a) paragraph 2 — failing to meet or contravening a standard of practice of the profession, and the College's standards pertaining to:
 - (i) Patient Relations.
 - (ii) Assessment and Management.
 - (iii) Records; and/or
 - (iv) Prescription Custom Foot Orthoses.
- (b) paragraph 10 — practising the profession while the member is in a conflict of interest.
- (c) paragraph 17 — failing to keep records as required by the regulations.
- (d) paragraph 20 — signing or issuing, in the member's professional capacity, a document that contains a false or misleading statement.
- (e) paragraph 21 — submitting an account or charge for services that the member knows is false or misleading.
- (f) paragraph 30 — contravening the Chiropody Act, 1991, the Regulated Health Professions Act, 1991, or the regulations under either of those Acts, and in particular:
 - (i) Ontario Regulation 750/93 (Professional Misconduct) under the Chiropody Act, 1991, as specified in this Notice of Hearing.
 - (ii) Ontario Regulation 203/94 (General), and in particular Part II and

Part III therein; and/or

- (iii) Section 51 (1) of the Health Professions Procedural Code, being Schedule 2 to the Regulated Health Professions Act, 1991; and/or
- (g) 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, dishonorable or unprofessional

Decision and Reasons

9. Based on the Agreed Statement of Facts and the Member's admissions, the panel finds that the Member has engaged in professional misconduct as alleged. In coming to this decision, the Panel considered the following: the Member's plea and her 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. In particular, the Panel was satisfied that the conduct admitted amounted to a failure to meet the standards of the profession relating to orthotics; a failure to keep records as required; and practising the profession while in a conflict of interest.

10. Incentivization through the provision of 'free' footwear with foot orthoses is a clear situation of creating overuse of services. Specifically, s. 7 (g) of the General regulation of the College (O. Reg. 204/93) on advertising which states that '*An advertisement with respect to a member's practice must not contain...(g) anything that promotes or is likely to promote the excessive or unnecessary use of services. O. Reg. 746/94, s. 2*'. The College has a well-defined position regarding the Policy in relation to selling shoes. The College understands that Members wish to be able to better assist their patients by selling or supply shoes when and if necessary. In reviewing the issue from a public protection perspective, the College Conflict of Interest Policy

s. 3(g) allows members to sell or supply a product that is medically necessary and is required for the prevention, treatment or management of a disease, disorder, or dysfunction of the foot.

However, the threshold was not met in this case, the 'free' footwear was not targeted towards patients for any specific reason indicated in the policy. The Member also acknowledged the supplied footwear was not specific to the patients' requirements but the same manufacturer and model for each patient. The Member's records and billing practices also failed to counter this opinion and fell below the expected Standards of the profession. Additionally, the Panel found that members of the profession would reasonably regard the various business practices of the Member described in the Agreed Statements of Facts as disgraceful, dishonourable, and unprofessional.

Decision on penalty and costs

11. The parties informed the panel that they had reached an agreement on penalty and costs and filed a signed joint submission on penalty and costs ("JSP").

12. The terms of the JSP were the following:

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

1. An oral reprimand.
2. An order 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 records 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 records course at her own expense.
- (b) The Member is prohibited from imaging, casting, prescribing, constructing, fitting, dispensing and/or ordering the fabrication of orthotics for a period of twelve (12) months (the "**Restricted Period**"). The Member is additionally not entitled to assign these duties to anyone else in her clinic, regardless of whether she 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 her own expense, the Member will receive supervision of her chiropody practice with a supervisor approved by the Registrar for a period of one (1) year from the date on which the Member returns to practise 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 six 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 obtain consent from her patients to share personal health information with her supervisor 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 during the twelve (12) months following the date that the Member is able to return to practise after her suspension, the Member shall:
- notify any current or new employers of the Discipline Committee's final decision, and;
 - ensure the Registrar is notified of the name, address, and telephone number of all employers (s) within fifteen (15) days of commencing employment;
 - provide her employer(s) with a copy of:
 - the Discipline Committee's Order.
 - the Notice of Hearing.
 - the Agreed Statement of Facts.
 - the Joint Submission on Penalty.

- a copy of the Discipline Committee's decision; and
 - have her 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 \$10,000.00, which amount shall be paid on the following schedule:
- \$5,000.00 on September 1, 2021
 - \$1,000.00 on October 1, 2021
 - \$1,000.00 on November 1, 2021
 - \$1,000.00 on December 1, 2021
 - \$1,000.00 on January 1, 2022
 - \$1,000.00 on February 1, 2022
- (g) The College and the Member agree that if the Discipline Committee accepts this Joint Submission as to Penalty and Costs, there will be no appeal or judicial review of the decision to any forum.

13. Counsel for the College reviewed case law related to penalty and costs relevant to the Members case. The issues surrounding specific and general deterrence was outlined, their relationship to the College mandate of protecting the Public and keeping trust in the profession. Among other concerns raised in Counsels Submissions on Penalty and Costs, paragraph 14 notes 'Inappropriate business practices undermine the repute of the profession. Indeed, the pervasiveness of this misconduct has reached a tipping point for the College and, while not in place at the time of the Member's misconduct, the Council has since passed a zero-tolerance policy, noting the following:

14. Honesty and integrity are a fundamental attribute for every member of this College. As a result, the College has adopted a zero-tolerance policy toward inappropriate business practices. By taking this step, the College is reflecting the importance of following appropriate business practices that reflect the expectations and confidence of the Ontario public. The College takes this matter extremely seriously.

15. The issue for the Panel was whether to accept the joint submission and impose it as the penalty.

Decision and Reasons for Penalty

16. The Panel is satisfied that the proposed penalty as set out in the JSP is reasonable and makes the order accordingly.

17. The Panel's reasons for accepting the JSP are as follows:

- (a) The Panel does not believe that the penalty imposed would bring its administration into disrepute nor does it believe that the proposed penalty is contrary to the public interest.

- (b) This was the Member's first time appearing before the College's Discipline Committee and the Member's admission of professional misconduct as described in Agreed Statement of Facts
- (c) The penalty incorporates a component of rehabilitation and education through the compulsory enrollment in the ProBe ethics course and the subsequent period of supervision of the Member's practice of chiropractic.
- (d) The publication and reporting of the case on the College website and other publications sent out by the College will act as a specific deterrence to the Member and a general deterrence to the profession as a whole.
- (e) Further, the reporting of the case on the College website and in other publications is consistent with the College's mandate to protect the public and to do so in a fair and transparent manner.
- (f) The Panel is satisfied that the penalty is reasonable considering 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.
- (g) The Panel is satisfied that the penalty order proposed in the Joint Submission as to Penalty is proportional to the admitted misconduct and aligned with the range of penalties imposed in similar cases.
- (h) Similarly, the panel is satisfied that the costs agreed to are proportional to the admitted misconduct and aligned with costs awarded in similar cases by this Discipline Committee.

18. At the end of the hearing, the Panel delivered its Reprimand, which is attached to these reasons as Schedule “A”.

19. At the hearing, counsel for the Member requested that the suspension begin on October 1, 2021.

20. They noted that the joint submission did not specify the date on which the suspension started. It was articulated that the Member did not wish to ‘abandon’ patient care in the middle of a treatment course and the several months would give time to ‘wind-up’ the practice in a controlled fashion.

21. Counsel for the College responded by noting that the suspension component of the penalty was to be enacted immediately upon the Discipline panel rendering its decision. It was highlighted that the request surrounding delaying suspension was only raised the night before the Panel hearing and not throughout the negotiations towards the final joint submission on penalty and costs. Counsel noted that a JSP must be taken in its entirety and not piecemeal. To do so would void the JSP and require penalty and costs to be ‘renegotiated’ Also of note was that the Member was aware of the pending hearing and penalty for over 4 weeks so had been given sufficient time to inform patients and wind up their care.

22. In reaching its decision on penalty, the Panel understood it should not depart from a joint proposal unless granting it would bring this process into disrepute or otherwise be contrary to the public interest. The professional misconduct issues surrounding termination or abandonment of patient care were not deemed to be applicable in the case of a penalty enacted by the College. In this case the Member would not be withdrawing care on their own volition but rather by an instruction from the College.

23. Accordingly, the Panel makes an order in the terms of the parties' joint submission.

I, Martin Hayles 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:

Martin Hayles, Chairperson

Date

Peter Ferguson

Andrew Gassman

SCHEDULE "A" – ORAL REPRIMAND

COLLEGE OF CHIROPODISTS OF ONTARIO v. FLORDELIZA ADORNA SY

As you know, Ms. Sy, as part of its penalty order this Discipline panel has ordered 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 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.

The panel has found that you have engaged in professional misconduct in different ways, including:

Contravening more than one of the standards of the professions

The result of your misconduct is that you have let down the public, the Chiropody profession, and yourself. We need to make it clear to you that your conduct is unacceptable. Of special concern to us is the fact that the professional misconduct in which you engaged has involved the

use of incentives in connection with the prescription of orthotics, which as you know, has been a problem for the profession and the College for quite some time. Consequently, it is necessary for us to take steps to impress upon you the seriousness of the misconduct in which you engaged and that you accept you committed

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 if you are ever found to have engaged in professional misconduct again.