

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 -

JONATHAN BRYCE TOMINES

PANEL MEMBERS:

Cesar Mendez, Chair, Professional Member
Riaz Bagha, Professional Member
Reshad Nazeer, Public Member
Guransh Brar, Public member

**COUNSEL FOR THE
COLLEGE:**

Debra McKenna, Allory Cramp-Waldinsperger also in
attendance as articling student

**REPRESENTATIVE FOR THE
REGISTRANT:**

Robert Barbiero

**INDEPENDENT LEGAL
COUNSEL:**

Luisa Ritacca

Hearing Date:

December 2, 2024

Decision Date:

December 16, 2024

Release of Written Reasons:

December 16, 2024

DECISION AND REASONS

1. This matter came on for hearing before a panel of the Discipline Committee on December 2, 2024. With the consent of the parties, this matter was heard electronically.

The Allegations

2. The allegations made against the Registrant were set out in a Notice of Hearing, dated September 7, 2023. The Notice of Hearing can be found at Tab 1 of Exhibit 1 and the allegations are as follows:
 1. On or about July 4, 2012, Jonathan Bryce Tomines (the “**Registrant**”) was first registered as a member of the College in the chiropodist classification.
 2. It is alleged that, during the period from approximately October 2021 to November 2021 (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 *Chiropody Act, 1991*:
 - (i) paragraph 2 – failing to meet or contravening a standard of practice of the profession and, in particular, the College’s written standards pertaining to:
 - i. Assessment and Management;
 - ii. Nail and Cutaneous Soft Tissue Surgery;
 - iii. Competence;
 - iv. Patient Relations; and/or
 - v. Records;
 - (ii) (*Allegation withdrawn*) paragraph 14 – providing treatment to a patient where the member knows or ought to know that the provision of the treatment is ineffective, unnecessary or deleterious to the patient or is inappropriate to meet the needs of the patient;
 - (iii) paragraph 15 – failing to advise the patient to consult with a physician or other regulated health professional where the member recognizes, or ought to recognize, a condition that is beyond the competence or experience of the chiropodist or that requires such a consultation to ensure the proper care of the patient;
 - (iv) paragraph 17 – failing to keep records as required by the regulations;
 - (v) paragraph 30 – contravening the *Act*, the *Regulated Health Professions Act, 1991* or the regulations under either of those Acts, and specifically Ontario Regulation 203/94 (General) under the *Chiropody Act, 1991*; and/or

- (vi) 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

1. On or about July 4, 2012, Jonathan Bryce Tomines (the “**Registrant**”) was first registered as a member of the College in the chiropodist classification.
2. During the Relevant Period, the Registrant practised chiropody at the Mississauga Foot Clinic, located at 250 Dundas Street West, Suite 305, in Mississauga, Ontario (the “**Clinic**”).
3. The Registrant established the Clinic in about 2017 or 2018. The Registrant was and/or remains the sole owner of the Clinic and was responsible for, among other things, setting operational and/or clinical policies for the Clinic.
4. During the Relevant Period, S.M. (the “**Patient**”) was assessed and treated by Julie Wellman, a chiropodist who practised at the Clinic. Specifically, Ms. Wellman performed nail avulsion surgery on the Patient’s right toe on or about October 9, 2021.
5. In accordance with Clinic policy, the Patient was directed to email photos to the Clinic during the Relevant Period that depicted the post-operative condition of his right toe.
6. Because Ms. Wellman was absent when the Patient provided his photos to the Clinic, the Registrant was involved in the Patient’s post-operative care.
7. Specifically, the Registrant was involved in the Patient’s one-week and five-week follow-up care after his nail surgery and the Registrant reviewed the photos provided by the Patient.
8. However, in reviewing the photos and being responsible for the follow-up care, the Registrant failed to meet with the Patient and/or assess the Patient and/or identify, in a timely way or at all, that the Patient had developed melanoma on the right toenail – a condition that ultimately resulted in the Patient having his right toe amputated.
9. In providing chiropody care to the Patient during the Relevant Period, the Registrant breached the standards of the profession and other provisions of the Professional Misconduct Regulation by:
 - failing to conduct and/or document appropriate post-surgery follow-up for the Patient;
 - failing to maintain records in accordance with the regulations and the College’s standards;
 - failing to recognize, in a timely way and/or at all, that the Patient’s condition required professional help that was beyond the Member’s scope of practice, education, or experience;

- failing to explain to the Patient and/or have any discussions with him about the range of potential outcomes for his symptoms and/or their seriousness, including his presentation with Hutchinson's sign nail; and/or
- failing to refer the Patient, in a timely way, to a physician or other health professional for a biopsy and/or other assessments to ensure that the Patient received proper and timely care.

Withdrawal of Allegations

3. At the outset of the hearing, the College advised that it did not intend to proceed with the allegation as set out at paragraph 2(a)(ii) of the Notice of Hearing. The Panel was content to withdraw the allegation.

Registrant's Plea

4. The Registrant admitted that he engaged in professional misconduct as described in the Notice of Hearing, save for the allegation withdrawn at paragraph 2(a)(ii).
5. The Panel conducted an oral plea inquiry and was satisfied that the Registrant's admissions were voluntary, informed, and unequivocal.

Agreed Statement of Facts

6. The evidence at the hearing proceeded by way of agreement. The parties tendered an Agreed Statement of Facts which can be found at Tab 2 of Exhibit 1. The material portions of the Agreed Statement of facts provide as follows:
 1. On or about July 4, 2012, Jonathan Bryce Tomines (the "**Registrant**") was first registered as a member of the College in the chiropodist classification.
 2. The Registrant has no prior history of complaints or discipline at the College.
 3. During the Relevant Period, the Registrant practised chiropody at the Mississauga Foot Clinic, located at 250 Dundas Street West, Suite 305, in Mississauga, Ontario (the "**Clinic**").
 4. The Registrant was responsible for, among other things, setting operational and/or clinical policies for the Clinic.
 5. During the Relevant Period, S.M. (the "**Patient**") was assessed and treated by Julie Wellman, a chiropodist who practised at the Clinic ("**Ms. Wellman**"). Specifically, Ms. Wellman performed nail avulsion surgery on the Patient's right toe on or about October 9, 2021.
 6. Prior to the surgery with Ms. Wellman, the Patient's right toe was discoloured as well as irritated, and part of the toenail had been torn off.
 7. In accordance with Clinic policy, the Patient was directed to email photos to the Clinic during the Relevant Period that depicted the post-operative condition of his right toe.
 8. Because Ms. Wellman was absent when the Patient provided his photos to the Clinic, the Registrant was involved in the Patient's post-operative care.

9. Specifically, the Registrant was involved in the Patient's one-week and five-week follow-up care after his nail surgery and the Registrant reviewed the photos provided by the Patient.
10. If the Registrant were to testify it would be his evidence that, upon review of the photos provided, the Registrant thought that the toe was healing within normal limits. The Registrant believed that any defects in the toe related to the toe's initial presentation pre-surgery.
11. However, in reviewing the photos and being responsible for the follow-up care, the Registrant admits that he failed to meet with the Patient and/or properly assess the Patient. The Registrant acknowledges the Patient was subsequently diagnosed in 2022 with melanoma of the right toe – a condition that ultimately resulted in the Patient having his right toe amputated.
12. Aside from these two (2) encounters, the Registrant was not involved in the Patient's care. Rather, both prior to and after the Registrant's review of the photos, Ms. Wellman was scheduled to, and did, look after the Patient. Indeed, Ms. Wellman saw the Patient for follow-up appointments on January 21, 2022 and April 13, 2022.
13. In providing chiropody care to the Patient during the Relevant Period, the Registrant admits that he breached the standards of the profession and other provisions of the Professional Misconduct Regulation by:
 - failing to conduct and/or document appropriate post-surgery follow-up for the Patient;
 - failing to maintain records in accordance with the regulations and the College's standards;
 - failing to recognize, in a timely way and/or at all, that the Patient's condition required professional help that was beyond the Registrant's scope of practice, education, or experience;
 - failing to explain to the Patient and/or have any discussions with him about the range of potential outcomes for his symptoms and/or their seriousness, including his presentation with Hutchinson's sign nail; and/or
 - failing to refer the Patient, in a timely way, to a physician or other health professional for a biopsy and/or other assessments to ensure that the Patient received proper and timely care.
14. The following written standards of the College were standards of practice of the profession during the Relevant Period and are appended as **Exhibits "A" to "E"** to the Agreed Statement of Facts:
 - a. Assessment and Management;
 - b. Nail and Cutaneous Soft Tissue Surgery;
 - c. Competence;
 - d. Patient Relations; and
 - e. Records.

15. 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 2 – failing to meet or contravening a standard of practice of the profession and, in particular, the College’s written standards pertaining to:
 - i. Assessment and Management;
 - ii. Nail and Cutaneous Soft Tissue Surgery;
 - iii. Competence;
 - iv. Patient Relations; and/or
 - vi. Records;
 - (ii) paragraph 15 – failing to advise the patient to consult with a physician or other regulated health professional where the member recognizes, or ought to recognize, a condition that is beyond the competence or experience of the chiroprapist or that requires such a consultation to ensure the proper care of the patient;
 - (iii) paragraph 17 – failing to keep records as required by the regulations;
 - (iv) paragraph 30 – contravening the *Act*, the *Regulated Health Professions Act, 1991* or the regulations under either of those Acts, and specifically Ontario Regulation 203/94 (General) under the *Chiroprapist Act, 1991*; and/or
 - (v) 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.

Acknowledgements

16. The Registrant understands the nature of the allegations that have been made against him and that, by voluntarily admitting these facts and allegations, he waives his right to require the College to otherwise prove the allegations.
17. The Registrant understands that the panel of the Discipline Committee can accept that the facts and allegations herein constitute professional misconduct and, in particular, can accept his admissions that they constitute professional misconduct.
18. 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. The Registrant understands that if the panel makes a finding or findings of professional misconduct against him, 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, in the College’s register, on the College’s website, and/or on CanLII (a website operated by the Canadian Legal Information Institute).
19. The Registrant acknowledges that he has had the opportunity to obtain legal advice. He further acknowledges that he is entering into this Agreed Statement of Facts freely and voluntarily, without compulsion or duress.

Decision and Reasons

7. Based on the Registrant's admissions as set out in the Agreed Statement of Facts, the Panel was satisfied that the Registrant engaged in professional misconduct as alleged.
8. While the Registrant did not perform the nail surgery on the Patient, the Registrant did undertake to care for the Patient's post-operatively. In doing so, the Registrant had an obligation to ensure that he provided adequate and reasonable post-op care, in keeping with the College's standards, including those relating to assessment and management, surgery, patient relations and records. The Registrant failed to meet with the Patient following the surgery, relying only on photographs of the Patient's toe to assess post-op healing.
9. The Panel understands that it was in accordance with the Registrant's clinic policy for the Patient to email photos for the assessment of his toe post-surgery. In the circumstances where the Registrant was not the practitioner who performed the surgery and where the Registrant had not met with the Patient pre-surgery, the Registrant's decision to rely solely on the photographs amounted to a failure to meet the College's standards.
10. The Panel finds that as a result of the Registrant's failure to properly assess the Patient's condition post-operatively, he missed the opportunity to refer the Patient in a timely way to another health professional for a biopsy or other assessment. We understand that if the Registrant were to have testified, he would have told the Panel that upon a review of the photos provided, he thought that the toe was healing within normal limits and that any defects presented were related to the toe's initial presentation pre-surgery. Unfortunately, because the Registrant did not interview the patient or assess the toe in person at any point in time, he was not in the best position to make the assumption he did upon reviewing the photos.
11. Finally, the Panel finds that the Registrant's conduct would reasonably be regarded by other members of this College as disgraceful, dishonourable, or unprofessional.

Joint Submission on Penalty and Costs

12. The Panel received and considered a Joint Submission on Penalty and Costs from the parties (the "**Joint Submission**") which sought the following:
 1. An oral reprimand;
 2. An order suspending the Registrant's certification of registration, commencing on January 1, 2025, for a period of seven (7) months, 1 two (2) months of which will be

¹ While suspended, the Registrant is required to comply with the College's Guideline for Suspension (<https://hmkc22.p3cdn1.secureserver.net/pdf/guidelines/suspensionguideline.pdf>). However, the College and the Registrant agree that, during the Registrant's suspension, the Registrant will be permitted to attend the clinic to address matters in relation to the clinic construction only. This exception to the Suspension Guideline is permitted on the condition that the Registrant make reasonable efforts to minimize his attendance at the clinic and, during his attendance at the clinic while suspended, the Registrant will not interact with patients in any way. In addition, the Registrant will be required to provide, with his monthly suspension report to the Registrar, the dates and length of time that the Registrant was present in the clinic during each month and respond promptly to any requests for information from the Registrar about his attendance at the clinic.

remitted upon the Registrant successfully completing, to the Registrar's satisfaction, the remedial work outlined in paragraph 3(a) below;

3. An order directing the Registrar to impose terms, conditions, and limitations on the Registrant's certificate of registration requiring the following:
 - (a) Prior to returning to practice, the Registrant shall successfully complete the following courses at his own expense:
 - Medical Record-Keeping, University of Toronto (www.cpd.utoronto.ca/recordkeeping/)
 - Dermatology – Lower Extremity, PRESENT e-Learning Systems (www.podiatry.com/lecturehall/description/6144/Dermatology-Lower-Extremity/)
 - Distinctiveness of Pedal Melanoma, PRESENT e-Learning Systems (www.podiatry.com/lecturehall/description/6953/Distinctiveness-of-Pedal-Melanoma/)
 - (b) For greater certainty, the Registrant is required to successfully complete the courses in paragraph 3(a) regardless of whether the two months of his suspension are remitted, and the Registrant will not be permitted to return to practice until he does complete those courses.
 - (c) Upon returning to practice after completion of the suspension, an order requiring the Registrant to attend, at his own expense, six (6) mentoring sessions over a period of twelve (12) months with a mentor, approved by the Registrar, who has expertise in the College's standards of practice. The terms of the mentoring sessions are as follows:
 - The mentor shall visit with the Registrant in person on at least six (6) occasions – three times in the first six months and three times in the last six months;
 - The mentor shall determine the length of each visit;
 - In conducting the mentorship, the mentor shall discuss patient care, record-keeping, and compliance with the College's standards with the Registrant;
 - The mentor shall prepare a report to the Registrar after the third (3rd) visit and after the sixth (6th) visit;
 - The Registrant shall seek consent from his patients to share personal health information with his mentor in order to allow the mentor to review patient files and engage in review of the Registrant's practice;
 - The Registrant shall provide the mentor with the discipline panel's decision and then provide written confirmation to the Registrar, signed by the mentor, that the mentor has received and reviewed the decision;

- (d) In the event that the Registrant obtains employment to provide chiropractic services during the twelve (12) months following the date on which he is able to return to practise after his suspension, the Registrant shall:
- notify any current or new employers of the Discipline Committee's 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:
 - the Discipline Committee's Decision;
 - the Notice of Hearing;
 - the Agreed Statement of Facts;
 - the Joint Submission on Penalty and Costs; and
 - have his employer forward a report to the Registrar within fifteen (15) days of commencing employment confirming that the employer has received the documents noted above and agrees to notify the Registrar immediately upon receipt of any information that the Registrant is not complying with the College's standards;
4. 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 \$20,000.00, which will be paid to the College on the following timetable:
 - \$5,000.00 on December 2, 2024
 - \$5,000.00 on April 2, 2025
 - \$5,000.00 on August 5, 2025
 - \$5,000.00 on December 2, 2025
 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

13. The Panel reviewed the Joint Submission and received submissions from counsel. The Panel accepted the Joint Submission and made an order consistent with its terms before the conclusion of the hearing.

14. The Panel is satisfied that the terms contained in the Joint Submission are reasonable, proportionate, and will maintain public confidence in Discipline Committee.
15. This is the Registrant's first time before the Discipline Committee. He admitted his misconduct and cooperated with the College, thus avoiding the need for a full contested hearing. The Registrant's admissions further reveal that he has insight into his mistakes and the Panel is confident that with time and with the remediation ordered, the Registrant can resume his podiatric career. The circumstances of this case are unfortunate and unlikely to repeat, given the Registrant's insight and remorse.
16. The costs agreed upon are appropriate and in keeping with similar decisions from this Committee.
17. At the conclusion of the hearing, having confirmed that the Registrant waived any right to appeal, the Panel delivered an oral reprimand on the record.

I, Cesar Mendez, sign this decision and reasons as Chairperson of this Discipline panel and on behalf of the members of the Discipline panel as listed below:



Cesar Mendez, Chairperson

Date: December 16, 2024

Panel Members:

Riaz Bagha, Professional Member
Reshad Nazeer, Public Member
Guransh Brar, Public Member

COLLEGE OF CHIROPODISTS OF ONTARIO v. Jonathan Bryce Tomines

As you know, Mr. Tomines 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 breached the standards of the profession and other provisions of the Professional Misconduct Regulation by
 - a. Failing to conduct and/or document appropriate post-surgery follow-up for the Patient
 - b. Failing to maintain records in accordance with the regulations and the College's standards
 - c. Failing to recognize, in a timely way and/or at all, that the Patient's condition required professional help that was beyond the Registrant's scope of practice, education, or experience.
 - d. Failing to explain to the Patient and/or have any discussions with him about the range of potential outcomes for his symptoms and/or their seriousness, including his presentation with Hutchinson's sign nail; and/or

- e. Failing to refer the Patient, in a timely way, to a physician or other health professional for a biopsy and/or other assessments to ensure that the Patient received proper and timely care.
2. You breached a number of written standards of the profession as listed in the Agreed Statement of Facts presented earlier this morning.
3. You engaged in conduct which would reasonably be regarded by other members of this profession as disgraceful, dishonourable or unprofessional.

We appreciate that you have taken responsibility here and that you were willing to admit misconduct, and we hope that this means you will not find yourself in this situation again.

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.