

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 -

DENESH UTHAYAKUMAR

PANEL MEMBERS:

Brooke Mitchell	Chair, Professional Member
Ed Chung	Professional Member
Melanie Atkinson	Professional Member
Reshad Nazeer	Public Member

**COUNSEL FOR THE
COLLEGE:**

Debra McKenna

**COUNSEL FOR THE
REGISTRANT:**

Richard Posner

**INDEPENDENT LEGAL
COUNSEL:**

Luisa Ritacca

Hearing Date:

June 17, 18, 20, 2024

Decision Date:

August 14, 2024

Release of Written Reasons:

August 14, 2024

DECISION AND REASONS

1. This matter came on for hearing before a panel of the Discipline Committee on June 17, 18 and 20, 2024 (the “Panel”). This matter was heard electronically, by way of videoconference.
2. At the outset of the hearing, the parties sought, and the Panel agreed to make an order excluding witnesses from the hearing, until such time as they had provided their evidence.

The Allegations

3. The allegations made against the Mr. Uthayakumar (referred to herein as the “Member” or “Registrant”) were set out in a Notice of Hearing, dated September 29, 2023, which was marked as Exhibit 1. The allegations set out in the Notice of Hearing are as follows:

STATEMENT OF ALLEGATIONS

1. On or about February 10, 2023, Denesh Uthayakumar (the “**Member**”) was registered, in the chiropodist classification, as a member of the College.
2. It is alleged that, during the period from approximately September 2022 to April 2023, (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 1 – contravening a term, condition or limitation imposed on the member’s certificate of registration;
 - ii. paragraph 2 – failing to meet or contravening a standard of practice of the profession, including the College’s written standards relating to:

- a. Patient Relations; and/or
- b. Competence;
- iii. paragraph 20 – signing or issuing, in the member’s professional capacity, a document that contains a false or misleading statement;
- iv. paragraph 30 – contravening the Act, the *Regulated Health Professions Act, 1991* or the regulations under either of those Acts, including, Ontario Regulation 830/93; 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.

PARTICULARS OF THE ALLEGATIONS

1. On or about February 10, 2023, Denesh Uthayakumar (the “**Member**” or “**Mr. Uthayakumar**”) was registered, in the chiropodist classification, as a member of the College.
2. The Member first applied for registration with the College in or about 2021, but was denied registration at that time as he did not meet the eligibility requirements set out in sections 3(1) and 4(1) of Ontario Regulation 830/93. In particular, the Member had not successfully completed the registration examinations approved by Council.
3. Mr. Uthayakumar subsequently relocated and began practicing in Manitoba in or about March 2022, having registered with the College of Podiatrists of Manitoba (“**COPOM**”)
4. In approximately August or September 2022, Mr. Uthayakumar contacted the College again and requested information about writing the fall exams. At that time, Mr. Uthayakumar paid the re-application fee and provided updated documents to the College for registration, now applying to the College as an applicant with an out-of-province certificate.

5. Mr. Uthayakumar's application was referred by the Registrar to the Registration Committee in accordance with sections 15(1) and 15(2) of the *Health Professions Procedural Code*.
6. Mr. Uthayakumar was advised of the referral to the Registration Committee on or about September 26, 2022.
7. On or about December 22, 2022, Mr. Uthayakumar was informed of the Registration Committee's decision that any certificate of registration issued to him by the College would be subject of terms, conditions, and limitations ("TCLs") restricting his practice in Ontario.
8. Mr. Uthayakumar confirmed his agreement to accept the Registration Committee's proposed TCLs on or about January 9, 2023. At that time, Mr. Uthayakumar was advised that the Registration Committee would issue a final decision and the next steps required of him to complete his registration with the College.
9. On or about January 10, 2023, a complaint was filed against Mr. Uthayakumar with the COPOM by a patient relating to treatment provided by Mr. Uthayakumar in or about October and/or November 2022 ("**the Complaint**").
10. Mr. Uthayakumar was advised of the Complaint by COPOM on or about January 16, 2023.
11. It was a non-exemptible registration requirement that, to be registered with the College, an applicant shall be in "good standing" in every jurisdiction where they hold an out-of-province certificate.
12. As set out in the registration requirements of Ontario Regulation 830/93, the term "good standing" means that the applicant is not the subject of "any discipline or fitness to practise order or of any proceeding or ongoing investigation or of any interim order or agreement as a result of a complaint, investigation or proceeding."
13. An applicant shall be deemed not to have satisfied the requirements for registration if the applicant has made a false or misleading statement or representation in their application.

14. On or about February 10, 2023, Mr. Uthayakumar completed the required steps of his registration with the College, including, among other things,
 - submitting his registration forms and declarations to the College;
 - submitting his evidence of liability insurance to the College; and,
 - paying his registration fees to the College
15. In completing his registration forms and/or subsequent to registration, the Member failed to report the Complaint, in a timely fashion and/or at all, to the College. In particular, the Member did not disclose to the College and/or provide any response for the declarations required for his registration.
16. In addition, the Member did not submit, in a timely fashion or at all, a self-report to the College with respect to the Complaint and/or provide any details or information about the Complaint until compelled to do so by the section 75(1)(a) investigation.

The Registrant's Plea

4. The Registrant denied the allegations as set out in the Notice of Hearing.

Overview

5. The Registrant is alleged to have engaged in various acts of professional misconduct as it relates to his application for registration with the College, and in particular, his failure to self-report and provide details of a complaint that had been filed against him in Manitoba with the College of Podiatrists of Manitoba ("COPOM").
6. In particular, the College alleges the following:
 - (a) Prior to his registration with the College, the Registrant did not notify the Registration Committee that he had committed a clinical error during a foot surgery performed in Manitoba, while he was practicing as a podiatrist, which ultimately resulted in a complaint to the COPOM.

- (b) Upon becoming aware of that complaint, the Registrant did not report this to the College or the Registration Committee.
 - (c) In completing his registration form declarations prior to being admitted as a member, the Registrant indicated that he had not been the subject of an “investigation, inquiry or proceeding for professional misconduct, incompetence or incapacity”.
7. In response to the allegations, the Registrant takes the position that at the time the Registration Committee’s decision to issue him a certificate of registration on January 9, 2023 was made, he was unaware that a complaint had been made against him at the COPOM. Further, he argues that he was not under any statutory or legal duty to report the isolated clinical error to the College at the time it occurred. With respect to the allegation that he misled the College in the manner in which he completed his registration form, the Registrant takes the position that the complaint filed with the COPOM was the subject of a review and not an investigation and therefore he was not required to disclose it on any form provided to the College.
8. The Panel heard from five witnesses, including the Registrant and received several documents into evidence. As is set out in more detail below, the Panel finds that the Registrant engaged in professional misconduct as alleged in paragraphs 2(a) (iii), (iv), and (v) of the Notice of Hearing. With regard to the balance of the allegations set out in paragraph 2(a), the Panel finds that the College has not discharged its burden and therefore makes no findings of professional misconduct as alleged therein.

The Evidence

Burden of Proof

9. In assessing the evidence, the Panel notes that the College bears the burden of proving the allegations set out in the Notice of Hearing. The Registrant has no burden of disproving

the allegations. The College must prove the allegations on a balance of probabilities standard.

10. This means that, after considering all the evidence, the Panel had to decide whether it was “more probable than not” that the Registrant engaged in the conduct as alleged. In reaching our decision, the Panel scrutinized the evidence carefully and where findings were made, we were satisfied that the evidence presented was sufficiently clear, convincing, and cogent.

Credibility of Witnesses

11. Much of the evidence presented was not contested, however where the Panel was required to weigh competing evidence, the Panel considered both the reliability and credibility of the witnesses who testified, including the Registrant.
12. The Panel assessed the credibility of the witnesses on a principled basis. We considered the following factors in our assessment:
 - (a) Did the witness seem honest?
 - (b) Did the witness have an interest in the outcome of the case, or any reason to give evidence that was more favourable to one side than to the other?
 - (c) Did the witness seem able to make accurate and complete observations about the event? Did he or she have a good opportunity to make those observations? What were the circumstances in which those observations were made? What was the condition of the witness at that time? Was the event that was observed or witnessed unusual or routine?
 - (d) Did the witness seem to have a good memory? Did the witness have any reason to remember the things about which he or she testified?
 - (e) Did any inability or difficulty that the witness had in remembering events seem genuine, or did it seem made up as an excuse to avoid answering questions?

- (f) Did the witness seem to be reporting what they saw or heard, or simply putting together an account based on information obtained from other sources – i.e., what they may have heard from other witnesses – rather than personal observations?
 - (g) Did the witness’ testimony seem reasonable and consistent as they gave it? Was it similar to or different from what other witnesses said about the same events? Did the witness say or do something different on an earlier occasion?
 - (h) Did any inconsistencies in the witness’ evidence make the main points of the testimony more, or less, believable, and reliable? Was the inconsistency about something important, or a minor detail? Did it seem like an honest mistake? Was it a deliberate lie? Was the inconsistency because the witness said something different, or because he or she failed to mention something? Was there any explanation for it? Did the explanation make sense?
13. Lastly, the Panel notes that all evidence referred to in this decision and reasons was examined by the members of the Panel.

The Undisputed Evidence

14. The Registrant attended the University of Brighton in England and graduated in 2021 from its podiatry program. Following his graduation, the Registrant applied for registration with the College, but was denied registration as he did not meet the eligibility requirements set out in sections 3(1) and 4(1) of Ontario Regulation 830/93 (the “Registration Regulation”). In particular, the Registrant had failed his registration exams in the Fall 2021.
15. In March 2022, the Registrant relocated to Manitoba where he was registered with the COPOM and employed at the Winnipeg Foot Clinic, which is operated by Amar Gupta, a witness in these proceedings, and the current Chair of the COPOM.
16. In September 2022, the Registrant contacted the College and again sought to be registered this time as a labour mobility applicant with an out-of-province certificate. Nicole Zwiers,

the Registrar referred the Registrant's application to the Registration Committee for consideration.

17. On November 15, 2022, the Registrant was involved in a clinical incident with a patient at the Winnipeg Foot Clinic. The Registrant burned the patient's skin, on both feet, with phenol, while providing treatment for ingrown toenails.
18. On December 8, 2022, the Registrant was notified that he had successfully passed the College's jurisprudence exam. A panel of the Registration Committee met on December 21, 2022, to consider the Registrant's application and submissions, which were filed earlier in the Fall. The Registrant did not provide additional submissions in support of his request and in particular did not provide the Registration Committee with information about the November 15th incident.
19. On December 22, 2022, the Registration Committee Chair wrote to the Registrant advising him that the Committee was prepared to direct the Registrar to issue a certificate with terms, conditions and limitations, including that he be required to work in association with another registrant of the College, approved by the Registrar who would act as his supervisor.
20. On January 9, 2023, Mr. Uthayakumar wrote to the College advising that he accepted the Registration Committee Chair's offer of a certificate with terms, conditions, and limitations.
21. On January 13, 2023, the COPOM's Registrar reported to the College that a complaint was filed against the Registrant.
22. On January 16, 2023, the College wrote to the COPOM to seek further information as to the nature of the complaint. The Registrar of the COPOM advised that the complainant has accused Mr. Uthayakumar of "doing a bit of a hatchet job" during a nail surgery.
23. On the same day, the Registrant received notice of the complaint from COPOM. Both he and Mr. Gupta testified that Mr. Uthayakumar reported the complaint to Mr. Gupta, who advised him to cooperate with the Complaints Committee in Manitoba, that the complaint

would likely resolve informally, and that the COPOM Registrar would report the complaint to the College in Ontario.

24. The Registrant did not himself advise the College of the complaint registered with the COPOM in January 2023 or in his declarations for registration which he filed on February 20, 2023. In that filing, the Registrant indicated that he was not subject to “an investigation, inquiry, or proceeding for professional misconduct, incompetence or incapacity.”
25. On March 3, 2023, the Registrant received notice that the COPOM’s Complaints Committee decided to resolve the complaint against him informally.
26. On April 24, 2023, the Registrar of the College appointed Benard + Associates to conduct an investigation under section 75(1)(a) of the *Health Professions Procedural Code*, into whether the Registrant had engaged in professional misconduct with respect to failing to report a complaint/investigation in another jurisdiction to the College. Mr. Uthayakumar was interviewed by the appointed investigator on May 4, 2023.
27. On May 19, 2023, the Registrant was advised by the COPOM that the complaint against him had been closed by way of informal resolution and that he continued to remain in good standing.
28. The Registrant is no longer registered with the College, having resigned his certificate earlier this year.

The College’s Evidence

29. In addition to filing several documents, including correspondence exchanged with the COPOM, the Registrant and his counsel, the College called three witnesses: the College’s Registrar, Nicole Zwiers, the College’s Deputy Registrar, Meghan Clarke, and Benard + Associates investigator, Brenda Benard.
30. Ms. Zwiers testified that there are approximately 824 members registered with the College and 4 full-time employees tasked with overseeing the management and administration of the College’s mandate. She explained the College’s statutory obligation to maintain a

public register and that the College relies on its members to provide accurate information to be included on the register.

31. Ms. Zwiers also took the Panel through the Registration Regulation which sets out the requirements each applicant for registration must meet in order to be registered with the College.
32. As Ms. Zwiers described, Mr. Uthayakumar was initially denied registration because he had failed to successfully complete the examinations set by the College's Council. When he subsequently sought registration as a labour mobility applicant with an out-of-province certificate in the Fall of 2022, Ms. Zwiers referred the Registrant's application to the Registration Committee for consideration.
33. Ms. Zwiers explained that while she is not involved in the decision-making process of the Registration Committee, she is aware that in addition to considering the submissions of the applicant and the relevant circumstances of each request, the Registration Committee considers the eligibility requirements set out in the Registration Regulation, including section 4.1 which provides in part that applicants seeking registration who already have an out-of-province certificate, must be in "good standing" in every jurisdiction where they hold an out-of-province certificate. In order to be in "good standing", the applicants must, among other things, not be the subject of any discipline or fitness to practise order or of any proceeding or ongoing investigation or of any interim order or agreement as a result of a complaint, investigation or proceeding.
34. Ms. Zwiers confirmed that by the late fall of 2022, the Registrant had passed his College examinations. In all his communications with the College and with the Registration Committee that same fall, however, Mr. Uthayakumar did not advise of the fact that he had been involved in injuring a patient in Manitoba, and in January 2023, he did not advise the College that he was the subject of a complaint as a result of that injury.
35. Ms. Zwiers acknowledged that the College became aware of the complaint against the Registrant in mid-January 2023, but by that point, the Registration Committee had already decided to offer Mr. Uthayakumar a certificate to practice with terms, conditions and

limitations. Ms. Zwiers said that had the Registrant advised of the injury to the patient back in November 2022 and/or had the Registration Committee been made aware of the complaint earlier, that would have impacted the decision of the Registration Committee.

36. Ms. Zwiers testified that the Registrant had an obligation to advise the College of the complaint, once he became aware of it in mid-January 2023. The fact that the COPOM advised the College of the complaint did not absolve Mr. Uthayakumar from the responsibility of doing it himself.
37. Under cross-examination, Ms. Zwiers acknowledged the following:
 - (a) After the College received notice from the COPOM of the complaint filed against Mr. Uthayakumar, the College sought an opinion from legal counsel as to the impact of the complaint on the Registration Committee's decision to offer Mr. Uthayakumar a certificate of registration.
 - (b) The opinion from legal counsel, as described by a former College employee in a memo to Ms. Clarke, was that the complaint did not impact Mr. Uthayakumar's registration because the Registration Committee panel had already made the decision to issue a certificate of registration with terms, conditions and limitations.
 - (c) The fact of the complaint did not in and of itself make Mr. Uthayakumar ineligible for registration. If the College believed that the Registrant was not in "good standing" with the COPOM, as required by the Registration Regulation, they would not have provided Mr. Uthayakumar with a certificate of registration.
 - (d) Upon learning of the complaint filed in Manitoba, Ms. Zwiers did not write to or direct anyone else to write to the Registrant to ask him to keep the College apprised of the outcome of that complaint.
 - (e) Prior to the Registrant filing a response in this matter, the College's website directed its members to report if they were the subject of any investigation,

inquiry or proceeding by another College in Ontario or in any other jurisdiction. Sometime after the receipt of the Registrant's response submissions, the College's website was edited to include that members should also report any "complaints" filed against them at another College in Ontario or in any other jurisdiction.

38. The College's Deputy Registrar, Ms. Clarke confirmed during her testimony that subsequent to this matter being referred to the Discipline Committee there was a change to the College's website, with the addition of the word "complaints". Ms. Clarke acknowledged that she did not have any independent recollection of making the change or discussing it with anyone at the College. Ms. Clarke also candidly acknowledged that while she did not have an independent recollection of doing so, she believed that she would have most likely have been the person to make the change.
39. Under cross-examination, Ms. Clarke denied that she would have made the change to the College's website simply in reaction to the Registrant's submissions in relation to this matter.
40. Finally, the College called Ms. Benard who described the steps she took as part of her investigation, including corresponding with staff at the COPOM and interviewing the Registrant which was video-recorded and played for the Panel.
41. Ms. Benard explained that despite asking the COPOM for information regarding the nature of the complaint filed against Mr. Uthayakumar, including copies of the complaint, the investigation and all correspondence between the Registrant and the COPOM and a copy of the decision and outcome of the complaint. Ms. Benard testified that the Registrar of the COPOM responded to her request by advising that they were not in a position to provide her with the information she sought as the matter was still ongoing. The Registrar further explained to Ms. Benard that once the matter was concluded, she would be happy to provide Ms. Benard with "any information that our legal council (*sic*) advises that I am able to do so".

42. Ms. Benard confirmed that she did not receive a further response or any of the specific information she requested from the COPOM.
43. Ms. Benard testified that she met with the Registrant over videoconference on May 1, 2023. In advance of the meeting, Mr. Uthayakumar provided her with a document setting out his response to the matters being investigated. She confirmed that the Registrant readily agreed to be videotaped, even though he was not required to do so.
44. Ms. Benard confirmed that the purpose of her investigation was to deal with the fact of the complaint in Manitoba and the Registrant's alleged failure to report that complaint to the College. She was not asked to, nor did she investigate, whether the Registrant had accurately described the nature of the complaint or whether and to what extent had his patient suffered injuries.
45. Finally, Ms. Benard testified that while she did not receive any documentation from the COPOM, she did ultimately receive many of the documents she had originally sought from the Registrant instead. She said that the documents were provided to her in redacted form (i.e. contact information for the complainant was redacted), but that she had everything she needed to complete her investigation.

The Registrant's Evidence

46. In response to the College's case, the Registrant testified on his own behalf and called Amar Gupta, Chair of the COPOM to give evidence.
47. The Registrant, Mr. Uthayakumar, holds a bachelor's degree in science, which he obtained through a University of Guelph/Humber College program. In addition to membership in the COPOM, the Registrant is a member of the College of Kinesiologists of Ontario.
48. As set out above, following his graduation from the podiatry program at the University of Brighton, the Registrant applied for registration with the College in 2021. The Registrant testified that his application was denied as he had failed to successfully complete his examinations as required by the Registration Regulation.

49. Having failed to obtain registration in Ontario, Mr. Uthayakumar found an opportunity to work in Manitoba and in March 2022 started working at the Foot and Ankle Clinic in Winnipeg, at which time he was also registered as a member of the COPOM.
50. Mr. Uthayakumar testified that it was always his goal to return to Ontario to practise chiropody. He is from Ontario and his family still lives in the province. He explained that this is why he was willing to accept the Registration Committee's proposal to offer him a certificate with terms, limitations and conditions in January 2023.
51. With respect to the complaint received by the COPOM and the events leading up to the complaint, the Registrant testified that he had no idea that a complaint was imminent or even likely at the time his patient was injured. While he acknowledged that the patient was upset following the November 2022 incident, he believed that ultimately the patient and their family doctor were content with the care provided by him and Mr. Gupta. Mr. Uthayakumar admitted that he did not think to advise the College's Registration Committee about the November 2022 incident at the time. His main concern was to rectify the issue with the patient. He did not consider the incident to be a "regulatory issue".
52. Once he received word of the complaint in January 2023, Mr. Uthayakumar said he was upset and anxious about it. He spoke with Mr. Gupta, who is his employer and Chair of the COPOM "right away". Mr. Gupta told the Registrant to be cooperative, provide all documentation requested and that from his experience he thought the complaint would most likely be resolved informally. Mr. Uthayakumar was also told that the Registrar of the COPOM would advise the College in Ontario about the complaint.
53. The Registrant testified that at the time, he did not believe he had a legal or professional obligation to personally report the fact of the complaint to the College, since he knew that it had already been reported by the Registrar of the COPOM.
54. With respect to the allegation that he falsified his declarations upon registration to the College by not reporting the complaint, Mr. Uthayakumar explained that he believed that the "complaint" did not amount to an "investigation, inquiry, or proceeding", and as such was not required to report the COPOM complaint in his filings.

55. In support of this position, the Registrant noted that when filling out his insurance forms, he was specifically asked about any outstanding complaints and that in that instance he did report the Manitoba complaint.
56. Mr. Uthayakumar explained that he did not keep the College apprised of the resolution of the complaint because again he believed that since the matter was resolved informally, he did not have any obligation to report to the College.
57. The Registrant explained that during the investigation into this matter, he was willing to provide his records to the College investigator, but he understood that the COPOM had concerns about confidentiality and so they required him to redact the information he shared with the College.
58. In cross-examination, the Registrant conceded the following:
- (a) With respect to the “clinical error” that resulted in patient injury in November 2022, he burned the patient’s skin on both her feet with phenol acid, during ingrown toenail procedure. He acknowledged that it was a “pretty serious error”.
 - (b) The complaint received in January 2023 could have proceeded to discipline at the COPOM.
 - (c) He did not think to provide his charts of the November 2022 incident to the Registration Committee.
 - (d) The resolution of the Manitoba complaint included a period of supervision.
 - (e) The earliest that the Registrant knew that the Manitoba complaint was likely to be resolved informally was on February 20, 2023.
59. The Registrant also called Amar Gupta to testify. Mr. Gupta is the Registrant’s employer and current Chair of the COPOM. He received a post-graduate certificate in podiatric medicine from Glasgow and has been in practice for over 24-years. He testified that Mr. Uthayakumar had recently been appointed to act as Treasurer of the COPOM as well.

60. With respect to the November 2022 incident involving injury to a patient, Mr. Gupta was aware of the incident and was involved in dealing with the patient afterward. He was also aware of the January 2023 complaint and confirmed that he advised the Registrant to cooperate and that based on his experience, most of these complaints tend to be resolved informally.
61. Mr. Gupta explained to the Panel that in this instance, the complaint never went forward to a formal investigation and instead was resolved informally through a 4-step resolution process, as provided for in Manitoba's *Podiatrists Act*, CCSM, c P93.
62. While Mr. Gupta acknowledged that the injury to the patient was serious, he was satisfied that the complaint was resolved appropriately, as the Registrant's error could have happened to anyone.
63. In cross-examination, Mr. Gupta agreed that it is an important part of being in a regulated profession to be candid, forthright and cooperative. He further agreed that he never told the Registrant that he did not have to abide by his reporting obligations in Ontario. However, Mr. Gupta noted that in his view if the College had questions about the complaint, they could have followed up with him.
64. Finally, in answer to questions from the Panel, Mr. Gupta explained that under the Manitoba legislation, once a complaint is received, it is up to the complaints committee to decide whether the matter can be dealt with on an informal basis or whether an investigation is warranted. Where the matter is resolved informally, no investigation takes place.

Decision and Reasons

65. Based on the evidence presented, the Panel is satisfied that the College has proven on a balance of probabilities that the Registrant engaged in professional misconduct, as summarized above.

66. First, the Panel finds that in completing his declarations at the time of his registration, the Registrant should have advised the College of the Manitoba complaint he received in January 2023. The Panel was not persuaded by the suggestion that the language in the Registration Regulation excludes the need to report “complaints” or that the provision is only limited to formal investigations.
67. While the Panel understands that the use of the word “investigations” in the Manitoba legislation may connote a more limited meaning, the intent of the wording of the Registration Regulation is clear – applicants for registration who are the subject of any other regulatory process, need to inform the College. The fact that the complaint in this case was resolved informally, does not mean that the COPOM’s complaints committee undertook no assessment or inquiry of the complaint before reaching its decision. While the Panel is sympathetic to the Registrant’s confusion, he ought to have erred on the side of caution and included in his declarations reference to the complaint.
68. Further, while the Panel understands that the College was in fact aware of the Manitoba complaint at the time it was finalizing Mr. Uthayakumar’s registration, that did not absolve the Registrant from his obligation to report the complaint upon completing his declarations. There was no evidence presented to suggest that Mr. Uthayakumar confirmed that the College had in fact received information about the complaint from the Registrar at the COPOM. At best, the Registrant was told by his employer that the COPOM would be reporting to the College, but he did not have any confirmation of that. Nonetheless, he relied on the fact that the COPOM would tell the College about the complaint as a reason why he thought that he didn’t have to do so himself. In doing so, he failed to abide by his professional obligations.
69. The moment the Registrant received notice of the complaint from the COPOM, it is the Panel’s understanding that his registration with the College had already been approved by the Registration Committee, but he had not completed the payment and necessary paperwork to obtain his certificate. The Panel understands that the College was aware of the complaint before the paperwork was finalized, it nonetheless concludes that the Registrant had a professional obligation to follow-up with the College about the complaint.

The Panel believes that had there be such follow-up, the Registrant might have been able to avoid these proceedings entirely.

70. While there may be some question as to why the College did not follow-up with the Registrant upon receipt of the complaint or upon receipt of his incomplete declarations, the Panel notes that the College – as a self-governing profession – cannot function unless its members provide accurate and timely information as they are required to do. It is the Registrant’s obligation to report – not the College’s obligation to follow-up.
71. The Panel is satisfied that in failing to report the complaint on his declarations, the Registrant engaged in professional misconduct as defined in paragraphs 20 and 30 of the Professional Misconduct Regulation (O. Reg 750/93). He signed a document in his professional capacity that he knew or ought to have known contained false or misleading statements. He failed to include reference to the Manitoba complaint in completing his declarations. While he may have been confused about whether he was the subject of an “investigation or inquiry”, he certainly knew that a complaint had been received and that it was being considered by the complaints committee at the COPOM. He knew that the complaints committee was gathering information from both him and the complainant and that a further decision would be made – including whether to launch a formal investigation.
72. Further, the Panel is satisfied that the Registrant engaged in professional misconduct as defined in paragraph 33 of the Professional Misconduct Regulation, in that his failure to report the complaint would reasonably be regarded by other members of the College as unprofessional. The Panel does not find that the Registrant’s conduct rises to the level of “disgraceful” or “dishonourable” conduct. The Panel is satisfied that the Registrant believed that he did not have to disclose the complaint both because he thought the College knew about it and because he believed that the complaint was something different that “an investigation, inquiry or proceeding”. The Registrant was wrong to believe these things and ought to have erred on the side of full disclosure to the College, however we do not find that his actions were malicious or intending to deceive.
73. We do not find, as the College urged us to do, that the Registrant had an obligation to disclose the November 2022 incident to the Registration Committee at the time it occurred. Further, we do not find that the Registrant failed to provide complete information to the

College's investigator. Mr. Uthayakumar was responsive to the requests, and it is clear from the correspondence reviewed that both he and his counsel were balancing the need to respond to the College's requests, with the concerns regarding confidentiality being raised by the COPOM.

- 74. Finally, as noted above, the Panel is not satisfied that the College proved the allegations as set out at paragraphs 2(a) (i) and (ii) of the Notice of Hearing. The Panel had insufficient evidence to find that there was a breach of the standards in this case or that the Registrant had breached a specific term of his certificate.
- 75. The Panel directs the parties to contact the Manager of Professional Conduct to schedule the penalty hearing.

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



Brooke Mitchell, Chairperson

Date: August 14, 2024

Panel Members:

Ed Chung

Professional Member

Melanie Atkinson

Professional Member

Reshad Nazeer

Public Member