

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 and Gavin Fior

**REPRESENTATIVE FOR THE
MEMBER:**

Richard Posner, T. Moore (Articling Student)

**INDEPENDENT LEGAL
COUNSEL:**

Luisa Ritacca

Hearing Date:

November 11, 2024

Decision Date:

January 7, 2025

Release of Written Reasons:

January 7, 2025

**DECISION AND REASONS
on Penalty and Costs**

1. On August 14, 2024, this Panel released its Decision and Reasons, wherein it found that Denesh Uthayakumar engaged in 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”).
2. Following the release of the Decision and Reasons, the parties returned before this Panel on November 11, 2024, to provide their submissions on penalty and costs.
3. Our decision and reasons on penalty and costs are set out below.

Position of the Parties

The College

4. The College argued that a significant penalty was appropriate in this case in light of the findings the Panel made against the Member.
5. In particular, the College sought the following order:
 - (i) An order that Mr. Uthayakumar receive an oral reprimand from the Panel;
 - (ii) An order directing the Registrar to revoke Mr. Uthayakumar’s certificate of registration;
 - (iii) An order that Mr. Uthayakumar pay costs to the College of in the amount of \$70,000.00, which amount will be paid to the College within ten days of the date of the Panel’s order.
6. In support of its position, the College argued that this Panel must impose a penalty that reflects the seriousness of Mr. Uthayakumar’s misconduct and deter both him and the membership at large from engaging in similar misconduct in the future.
7. Further, the College argued that each aspect of the College’s proposed penalty has been carefully considered, are in keeping with the goals of penalty, proportional and reasonable.
8. With respect to the request for an order revoking Mr. Uthayakumar’s certificate, the College argues that the former Registrant has been found guilty of

misconduct that is serious and, as such, should attract a serious penalty that is meaningful and appropriate in the circumstances.

9. In support of its request for revocation, the College relied on several cases from other Colleges where revocation was imposed in circumstances where the member had failed to disclose accurate information when applying for membership and/or in their annual renewals. These cases involved more than one instance of non-reporting and for the most part involved non-reporting of criminal offences.
10. The College also relies on its Zero Tolerance Policy to support its request for revocation. While the Zero Tolerance Policy deals with inappropriate business practices – something not present in this case – the College nonetheless argues that the Policy was developed in an effort to eradicate unethical conduct writ large, and which would encompass Mr. Uthayakumar's conduct here.
11. Finally, with respect to revocation, the College notes that since Mr. Uthayakumar is presently not a member of this College, a suspension will have no effect and so revocation is the only appropriate penalty.
12. With respect to the College's request for costs, the College submits that this Panel should exercise its broad discretionary power to make orders for costs. The full costs of these proceedings should not be borne exclusively by other registrants of the College.
13. Further, the College submits that the costs sought are in keeping with cost awards made in similar cases and while the costs sought are significant, they reflect approximately two-thirds of the actual costs incurred, exclusive of the penalty hearing itself.

The Registrant

14. The Registrant argues that the College's request for revocation is beyond inappropriate and that even a suspension is likely unwarranted in light of this Panel's findings.

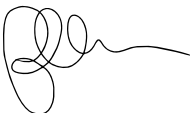
15. In support of his position that a suspension is not warranted, the Registrant argues that he was new to the profession at the time he engaged in the misconduct at issue, he has remained in good standing in Manitoba since his registration there, and he was not found to have engaged in any misleading or deceptive conduct.
16. With respect to costs, the Registrant argues that this is not an appropriate case to make any award of costs. He submits that the College's success in this case was narrow in scope and that the length and complexity of the proceedings was the result of the College's ill-considered theory of liability. The College chose to call viva voce evidence and to make lengthy submissions to portray the Registrant as a liar who betrayed his professional obligations to cooperate with the investigation. This theory was rejected by this Panel.
17. Further, the Registrant argues that if the College took proper account of this Panel's findings there would have been a joint position on penalty and costs. It has been the College who has chosen to aggressively pursue the Registrant.

The Panel's Decision and Reasons

18. The Panel reviewed the parties' submissions, together with the books of authorities. The Panel does not believe that this is an appropriate case for revocation. This Panel made findings of misconduct as against Mr. Uthayakumar, but in doing so made clear that the misconduct arose primarily as a result of the Registrant's confusion and a failure to follow-up to confirm his professional obligations. While this Panel found the conduct to be unprofessional, we were not persuaded that the conduct rose to the level of being disgraceful or dishonourable.
19. The Panel makes the following order as to penalty:
 - (i) The Registrant shall appear before the Panel to be reprimanded.
 - (ii) In the event that the Registrant chooses to reapply for membership with the College and is granted membership, the Registrar is directed to suspend the Registrant's certificate for a period of three-months.
 - (iii) In the event that the Registrant chooses to reapply for membership and is granted membership, and completes his suspension period described above, his certificate shall be subject to the terms, conditions and limitations imposed by the Registration Committee in January 2023.

20. The Panel is satisfied that the penalty imposed meets the primary objective of ensuring public protection, deterrence, and remediation. Should Mr. Uthayakumar wish to return to practise in Ontario, he must fulfil this penalty order and abide by the original terms, conditions and limitations imposed upon him by the Registration Committee. Those conditions, which include working in association with another member of the College and supervision, will help ensure that the Registrant is working safely and providing professional services to patients in Ontario.
21. With respect to costs, the Panel is satisfied that this is an appropriate case for costs. The rest of the College membership should not bear the full cost of these proceedings. While the Panel was sympathetic to Mr. Uthayakumar's circumstances, he did engage in professional misconduct.
22. Having found the Registrant guilty of professional misconduct under three out of five allegations advanced by the College, the Panel finds that an appropriate order of costs is \$50,000.00. The costs are payable in twelve equal instalments (\$4166.67) and payments should commence within 30-days from the date of this Panel's penalty and costs order.
23. The Panel believes that it is appropriate to order costs, but as all allegations put forward by College Counsel were not proven in full, the College's request of ordering costs of \$70,000 due within 10 days of receiving the Panel's order is not appropriate.
24. Should the parties require a formal order, they can submit it via the Panel's independent legal counsel.

I, Brooke Mitchell, 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:



Brooke Mitchell, Chair
Ed Chung
Melanie Atkinson
Reshad Nazeer

January 7th, 2025

Date