

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

PANEL:

Jim Daley,	Chairperson
Peter Guy	Member
Agnes Potts	Public Member
Adrian Dobrowsky	Member

BETWEEN:

COLLEGE OF CHIROPODISTS OF ONTARIO)	ALEX WILBEE for the College
(the "College"))	
- and -)	
)	COREY BERGSTEIN
)	for the Member,
)	ALI BANDALI
)	
ALI BANDALI, D.Ch.)	
)	LUISA RITACCA, Independent Legal
)	Counsel
)	
)	Heard: December 1, 2016
)	

DECISION AND REASONS

This matter came on for hearing before a panel of the Discipline Committee on December 1, 2016 at Victory Verbatim, in Toronto.

The Allegations

The allegations against Ali Bandali (the "Member") as stated in the Notice of Hearing dated April 15, 2016, (Exhibit 1, Tab 1), are as follows.

IT IS ALLEGED THAT:

1. Ali Bandali (the "Member") was, at all material times, a chiropodist registered to practise chiropody in the province of Ontario.

2. The Member engaged in the practice of chiropody at First Step Chiropody in Pickering, Ontario. He also practised at a number of clinics, including Physio First and Pro Mobility Foot Clinic, where Shawn Bandali, a physiotherapist and relative of the Member, also practised.

3. In or about June 11, 2013, the Member organized and presented a "Lunch and Learn" session for teachers at St. Paschal Baylon School in North York, Ontario (the "School"), to provide information, education and chiropody services to attendees.

4. The Member arranged for Shawn Bandali to attend the Lunch and Learn session with him, to assist attendees who wished to obtain orthotics. For that purpose, the Member and Shawn Bandali brought to the session foam box moulds and a computer scanner used to generate a static foot analysis and gait analysis.

5. At the Lunch and Learn session, the Member communicated individually with current and potential patients regarding chiropody services and the benefits of orthotics, in an attempt to solicit business.

6. The Member, directly or indirectly, offered a free pair of orthopaedic shoes to attendees who purchased orthotics, as an inducement for receiving the Member's services and purchasing orthotics prescribed by the Member.

7. At the session, after completing his presentation, the Member provided a number of the attendees with "one on one" chiropody assessments (focussing on gait analysis and biomechanical assessment) and immediately issued prescriptions for orthotics to some of them without:

- (a) taking an adequate history;
- (b) performing an adequate chiropody assessment;
- (c) providing adequate privacy or confidentiality;
- (d) obtaining and documenting, in a timely manner, informed patient consent; and/or
- (e) making adequate records.

8. In the case of the attendees listed below, the Member provided the above assessments and/or prescribed orthotics notwithstanding that he had conducted a biomechanical assessment and gait analysis on the same individuals and/or prescribed orthotics to them within the previous 12 months (or less):

- (a) J.D.-L.;
- (b) A.F.;
- (c) C.L.;
- (d) J.R.; and
- (e) J.W.

9. At the same Lunch and Learn session, Shawn Bandali took foam box moulds and/or scans of a number of the attendees, for the orthotics which Ali Bandali had just prescribed.

10. The Member subsequently attended at the School with Shawn Bandali, to deliver and dispense the orthotics to attendees who had ordered them at the previous Lunch & Learn session.

11. Claims were submitted to the attendees' insurer, Great West Life, in respect of the chiropody services provided by the Member (and, in two instances, the orthotics prescribed and dispensed by him) to:

- (a) A.F.;
- (b) J.R.;
- (c) J.W.;
- (d) J.D.-L.;
- (e) L.L.P.;
- (f) C.L.; and
- (g) J.P.

12. Great West Life later conducted an audit of those claims and for that purpose, sent questionnaires to the attendees. After Great West Life contacted the attendees, the Member obtained written consents from them regarding the services previously provided.

13. By reason of the conduct alleged in paragraphs 1 to 12, the Member engaged in professional misconduct within the meaning of:

- (i) the following subsections of Ontario Regulation 750/93 under the *Chiropody Act, 1991*:
 - (a) 1.2 (failing to meet or contravening a standard of practice of the profession),
 - (b) *Allegation Withdrawn*,
 - (c) *Allegation Withdrawn*,
 - (d) 1.17 (failing to keep records as required by the regulations)
 - (e) 1.30 (Contravening the Chiropody Act, 1991, the Regulated Health Professions Act, 1991, or the regulations under either of those Acts)

(f) 1.33 (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 unprofessional); and/or

(ii) *Allegation Withdrawn.*

Member's Plea

The Member admitted the allegations as modified by the Agreed Statement of Facts.

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

Agreed Statement of Facts

Counsel for the College and Member advised the panel that agreement had been reached on the facts and introduced an Agreed Statement of Facts (Exhibit 2) which provided as follows.

FACTS

1. Ali Bandali (the "Member") was, at all material times, a chiroprapist registered to practise chiropody in the province of Ontario as a registered member of the College of Chiroprapists of Ontario (the "College").
2. The Member engaged in the practice of chiropody at First Step Chiropody in Pickering, Ontario. He also practised at a number of clinics, including Physio First and Pro Mobility Foot Clinic.
3. On or about June 11, 2013, the Member organized and presented a "Lunch and Learn" session for staff at St. Paschal Baylon School in North York, Ontario (the "School") for the purposes of providing information and education concerning chiropody services to the attendees.
4. A physiotherapist attended the Lunch and Learn session with the Member. Foam box moulds and a computer scanner used to generate a static foot analysis and gait analysis were brought to the session for use with those attendees who wished to obtain orthotics.
5. At the Lunch and Learn session, the Member communicated with the attendees regarding chiropody services and the benefits of orthotics, a collateral benefit of which was to foster business relationships.
6. At the session, after completing his presentation, the Member provided a number of the attendees with "one on one" chiropody assessments (focussing on gait

analysis and biomechanical assessment) and issued prescriptions for orthotics to some of them without:

- (a) properly documenting an adequate history;
- (b) performing and documenting an adequate chiropody assessment;
- (c) providing adequate privacy or confidentiality, as the assessments were conducted in a partially sectioned-off area of the staff room at the School;
- (d) documenting, prior to treatment, informed patient consent; and/or
- (e) making adequate records.

7. The Member provided the above assessments and/or prescribed orthotics to the following attendees who were current patients of the Member, to whom the Member had previously provided services, including conducting a biomechanical assessment and gait analysis, and to whom the Member had previously prescribed orthotics within the previous 12 months (or less):

- (a) J.D.-L.;
- (b) A.F.;
- (c) C.L.;
- (d) J.R.; and
- (e) J.W.

8. At the same Lunch and Learn session, foam box moulds and/or computer scans were taken of a number of the attendees, for the orthotics which the Member had just prescribed.

9. Claims were submitted to the attendees' insurer, Great West Life, in respect of the chiropody services provided by the Member (and, in two instances, the orthotics prescribed and dispensed by him) to:

- (a) A.F.;
- (b) J.R.;
- (c) J.W.;
- (d) J.D.-L.;
- (e) L.L.P.;
- (f) C.L.; and
- (g) J.P.

10. Great West Life later conducted an audit of those claims and for that purpose, sent questionnaires to the attendees. After Great West Life contacted the attendees, the Member obtained written consents from them regarding the services previously

provided. If the Member were to testify, he would say that he obtained consent orally from each patient prior to performing the assessments, and that this was confirmed in writing subsequent to the assessments.

ADMISSIONS OF PROFESSIONAL MISCONDUCT

11. By virtue of the above conduct, the Member admits that he engaged in professional misconduct within the meaning of the following subsections of Ontario Regulation 750/93 under the Chiropractic Act, 1991:

- a) 1.2 (Failing to meet or contravening a standard of practice of the profession);
- b) 1.17 (Failing to keep records as required by the regulations);
- c) 1.30 (Contravening the Chiropractic Act, 1991, the Regulated Health Professions Act, 1991, or the regulations under either of those Acts); and
- d) 1.33 (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 unprofessional).

MEMBER'S ACKNOWLEDGEMENTS

12. The Member understands the nature of the allegations that have been made against him and that by voluntarily admitting to these allegations, he waives his right to require the College to otherwise prove the case against him.

13. The Member understands that the Discipline Committee can accept that the facts herein constitute professional misconduct.

14. The Member understands that depending on any penalty ordered by the Discipline Committee, the panel's decision and reasons may be published, including the facts contained herein and his name.

The Member understands that any agreement between him and the College does not bind the Discipline Committee.

Decision

The panel considered the Agreed Statement of Facts and the parties' submissions. It concluded that the facts support a finding of professional misconduct as set out in paragraph 11 of the Agreed Statement of Facts.

The panel agreed to withdraw the allegations set out at paragraphs 13(i)(b),(c), and (ii) of the Notice of Hearing.

Reasons for Decision

In coming to this decision, the panel considered the following; the Member's admission of professional misconduct, the joint submission of the Agreed Statements of Facts, and the parties' submissions. Following deliberations, the Panel was satisfied that the conduct described in the Agreed Statement of Facts did constitute professional misconduct as alleged in the Notice of Hearing and as admitted by the Member. The Panel found that members of the profession would reasonably regard the conduct admitted as unprofessional and that the Member failed to meet the standards of practice of the profession by providing one on one chiropody assessments, including gait analysis and biomechanical assessment, and issued prescriptions for orthotics without: a) documenting records in accordance with the regulations, b) performing and documenting an adequate chiropody assessment, c) providing adequate privacy, and by providing biomechanical assessments, gait analysis and/or prescribed orthotics to current patients that had previously been prescribed orthotics within the previous 12 months or less.

Penalty

Counsel for the parties advised the panel that a Joint Submission as to Penalty and Costs had been agreed upon. The Joint Submission as to Penalty and Costs provides as follows:

1. The parties agree and jointly submit that an appropriate order in respect of Ali Bandali (the "Member") is as follows:
 - (a) An Order requiring the Member to appear before the panel of the Discipline Committee to be reprimanded, the fact of which will be recorded on the College's register.
 - (b) An Order directing the Registrar to suspend the Member's certificate of registration for a period of three (3) months, one (1) month of which shall be remitted on the condition that the Member successfully completes the courses as specified in paragraph (c)(i) below. The suspension shall be served commencing on January 1, 2017 and shall continue until February 28, 2017, inclusive. If the balance of the suspension is required to be served by the Member because he has failed to complete the courses as specified in paragraph (c)(i), that portion of the suspension shall be served commencing on January 1, 2018 and shall continue until January 31, 2018, inclusive.
 - (c) An Order directing the Registrar to impose the following specified terms, conditions and limitations on the Member's certificate of registration:
 - (i) The Member shall undertake at his own expense and successfully complete, to the satisfaction of the Registrar, courses in 1) record-keeping, 2) ethics, and 3) practice management, by December 31, 2017. This term, condition or limitation shall be removed from the Member's certificate of registration when it has been complied with.

(ii) The Member's practice shall be supervised for a period of six (6) months following completion of the initial suspension, from March 1, 2017 to August 31, 2017. The terms of the supervision are as follows:

(1) The supervisor shall be appointed by the Registrar and shall be a professional member of the College;

(2) The supervisor shall visit the Member's practice on three (3) occasions, one (1) of which shall be without advance notice to the Member and the other two (2) of which shall be on reasonable notice to the Member. If the supervisor reasonably determines that one (1) or two (2) additional visit(s) is/are necessary, the supervisor may conduct such additional visits on reasonable notice to the Member;

(3) The supervisor shall determine the length of each visit;

(4) When conducting site visits, the supervisor shall conduct chart audits and shall engage the Member in discussions regarding jurisprudence, ethics, practice management, record keeping and chiropractic assessments;

(5) The Member shall pay the actual costs of supervision up to a maximum of five hundred dollars (\$500) per full day visit, and shall reimburse the College for such costs within thirty (30) days of receiving an invoice from the College for such supervision; and

(6) This term, condition or limitation shall be removed from the Member's certificate of registration when it has been complied with.

(d) An Order requiring the Member to pay the College's costs in the amount of eight thousand dollars (\$8,000), payable in sixteen (16) equal monthly instalments of five hundred dollars (\$500) each, due by the first day of each month commencing on April 1, 2017 and ending on July 1, 2018.

2. The Member acknowledges that pursuant to section 56 of the *Health Professions Procedural Code*, being Schedule 2 to the *Regulated Health Professions Act, 1991*, the decision and reasons, or a summary thereof, will be published in the College's annual report and may be published in any other publication of the College with the Member's name.

3. The Member acknowledges that this Joint Submission as to Penalty and Costs is not binding upon the Discipline Committee.

4. The Member acknowledges that he has received independent legal advice from Corey Bergstein.

Penalty Submissions

The parties filed a Joint Submission as to Penalty and indicated that the proposed penalty represents an appropriate balance of interests in this matter. Counsel referenced one case from this College as support for the proposition that this penalty is in keeping with penalties imposed in past similar cases. Counsel advised the panel ought not to depart from the joint submission unless the panel concluded that accepting the joint submission would be contrary to the public interest and bring the administration of the discipline process into disrepute.

Mitigating factors to consider:

1. This was the Member's first time appearing before the College's Discipline Committee.
2. By admitting the allegations of professional misconduct and entering into an Agreed Statement of Facts and a Joint Submission as to Penalty, the Member has saved the College considerable time and expense, which would have been incurred had the matter proceeded on a contested basis.

Penalty Decision

The panel accepts the Joint Submission as to Penalty and accordingly makes an order accordingly.

Reasons for Penalty Decision

The panel concluded that the proposed penalty is reasonable and in the public interest and accepted the Joint Submission as to Penalty. The Panel's reasons for accepting the Joint Submission as to Penalty are as follows:

1. The penalty order proposed in the Joint submission is reasonable in light of 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.
2. The penalty incorporates a component of rehabilitation through the requirement to attend courses on record keeping, ethics and practice management, and through the supervised visits over a six month period.
3. The requirement to attend courses on record keeping, ethics and practice management, the supervised visits over a six month period and the publication and reporting of the case on the College website and in newsletters sent out by the College will act as a general and specific deterrent

4. Completion of the required courses and supervision of the Member's practice should ensure that the Member adheres to professional standards and that in the interim, the suspension of the Member's licence for the initial 2-month period will provide the Member the opportunity to avail himself of the courses necessary to meet current professional standards thus sufficiently protecting the public.

5. The Panel was satisfied that the administration of justice would not be brought into disrepute by accepting the Joint submission and found it reasonable in the circumstances. The Panel found no basis for departing from the Joint Submission Regarding Penalty and accordingly imposed the same.

6. Finally, the Panel notes that that as part of this resolution the Member agreed to pay the College a portion of its costs to investigate and prosecute this matter. While the costs are not part of the penalty, it is worth recognizing that the Member agreed to make this payment.

Reprimand

At the conclusion of the hearing, having confirmed that the Member waived any right to appeal, the panel delivered its reprimand.

I, Jim Daley, 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:



Jim Daley, Chairperson

12-01-2016

Date

Peter Guy
Agnes Potts
Adrian Dobrowsky

Member
Public Member
Member