

**DISCIPLINE COMMITTEE  
OF THE COLLEGE OF CHIROPRACTORS OF ONTARIO**

|        |                        |                     |
|--------|------------------------|---------------------|
| PANEL: | Dr. D. Arciero (Chair) | Professional Member |
|        | Dr. E. Gabison         | Professional Member |
|        | Dr. D. Starmer         | Professional Member |
|        | Ms. K. Bourdeau        | Public Member       |
|        | Mr. D. Cressman        | Public Member       |

BETWEEN:

|  |   |                                     |
|--|---|-------------------------------------|
| COLLEGE OF CHIROPRACTORS OF<br>ONTARIO | ) | Mr. Chris Paliare and               |
|  | ) | Ms. Karen Jones for the             |
|  | ) | College of Chiropractors of Ontario |
| - and -                                | ) |                                     |
|  | ) |                                     |
| Dr. David Lee                          | ) | Ms. Valerie Wise                    |
|  | ) |                                     |
|  | ) | Heard: January 7, 2019              |

Also present at the hearing were:

Mr. Colin Stevenson- Independent Legal Counsel to the Panel  
Ms. Jo-Ann Willson - Registrar and General Counsel, CCO  
Ms. Dayna Snell- Court Reporter

**DECISION AND REASONS**

**INTRODUCTION**

A hearing into allegations of professional misconduct against Dr. David Lee (“Dr. Lee”, or the “Member”) took place before a panel of the Discipline Committee (the “Panel”) of the College of Chiropractors of Ontario (the “College” or “CCO”) on January 7, 2019. The College has a mandate to regulate the practice of the chiropractic profession and to govern its members and, in so doing, serve and protect the public interest.

For the reasons that follow the Panel found that the Member engaged in professional misconduct.

The Panel accepted a joint submission on penalty and costs and ordered that its terms be implemented.

## THE ALLEGATIONS

The allegations against the Member are set out in the Notice of Hearing, dated August 17th, 2018, filed as Exhibit 1 which provided:

1. You have committed an act of professional misconduct as provided by subsection 51(1)(b. 1) of the Health Professions Procedural Code of the *Chiropractic Act*, 1991, S.O. 1991, c. 21, as amended, in that during the period March – April 2015, while working as a chiropractor at the Adelaide Health Club in Toronto, Ontario, you sexually abused a patient known as “Patient A”.
2. You have committed an act of professional misconduct as provided by subsection 51(1)(c) of the Health Professions Procedural Code of the *Chiropractic Act*, 1991, S.O. 1991, c.21, as amended, and paragraph 1(2) of Ontario Regulation 852/93, in that during the period March – April 2015, while working as a chiropractor at the Adelaide Health Club in Toronto, Ontario, you contravened a standard of practice of the profession or failed to maintain the standard of practice expected of members of the profession respecting a patient known as “Patient A”.
3. You have committed an act of professional misconduct as provided by subsection 51(1)(c) of the Health Professions Procedural Code of the *Chiropractic Act*, 1991, S.O. 1991, c. 21 as amended, and paragraph 1(5) of Ontario Regulation 852/93, in that during the period March – April 2015, while working as a chiropractor at the Adelaide Health Club in Toronto, Ontario, you abused a patient known as “Patient A” physically and/or psychologically and/or emotionally.
4. You have committed an act of professional misconduct as provided by subsection 51(1) (c) of the Health Professions Procedural Code of the *Chiropractic Act*, 1991, S.O. 1991, c. 21, as amended, and paragraph 1(23) of Ontario Regulation 852/93, in that during the period March – April 2015, while working as a chiropractor at the Adelaide Health Club in Toronto, Ontario, you engaged in conduct or performed an act or acts, that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional with respect to a patient known as “Patient A”.

The Member agreed to the facts set out in the Resolution Agreement (Part 1: Agreed Statement of Facts), which was filed on consent as Exhibit 2. The Agreed Statement of Fact contained admissions by the Member with respect to allegations 2 and 4 in the Notice of Hearing (Exhibit 1). Allegation 4 was restricted to unprofessional conduct; ie. the allegations of disgraceful and dishonourable conduct were withdrawn by the CCO as were allegations 1 and 3.

## THE EVIDENCE

Part 1 of the Resolution Agreement (Agreed Statement of Facts), Exhibit 2, sets out the relevant evidence in the form of an agreed statement of facts which provided in part:

## **“BACKGROUND**

1. Dr. David Lee (“Member”) became a member of the College of Chiropractors of Ontario (“CCO”) in 2002.
2. During the relevant time, the Member practiced chiropractic at the Adelaide Club Health Clinic (“Clinic”) in Toronto, Ontario.
3. “Patient A” began receiving chiropractic treatment from the Member on March 30, 2015. She was complaining of neck and back pain that were related to a fall from a trampoline. Patient A had previously been treated for the pain with acupuncture and massage therapy, and she had performed stretching exercises. The Member diagnosed Patient A as having mechanical neck and upper back pain after performing a selective functional movement assessment. He also charted “tension in the chest”.
4. The member provided treatment to Patient A on March 30, 2015, April 1, 2015 and April 13, 2015. Treatment consisted of active tissue release (“ART”), fascial distortion model (“FDM”), spinal adjustments, breathing exercises, and stretching.
5. On February 15, 2017, Patient A was seen by a naturopath. Patient A told the naturopath that she had been touched inappropriately by the Member. As a result, the naturopath made a mandatory report of sexual abuse of a patient to the CCO, which was investigated.
6. During the course of the investigation, Patient A advised the CCO that during one of her appointments with the Member, he advised her that her back pain was related to tight muscles in her chest and he offered to treat the area. She agreed, and the Member massaged her chest area. Patient A was uncomfortable with the massage but voiced no complaints.
7. During a second treatment, the Member repeated the chest massage. Patient A was again uncomfortable with the massage but voiced no complaints. She stopped seeing the Member for treatment.
8. Had the Member testified, he would have said that he had no specific recollection of treating Patient A. However, according to his documentation, as part of his FDM treatment of Patient A, he used the “squeegee” method on Patient A’s chest. The squeegee method consisted of a broad hand contact, sweeping across the pectoral

muscles. He also treated Patient A's anterior intercostal muscles, by applying pressure to the muscles between her ribs moving his thumbs from the patient's sternum to her sides.

9. The Member denied touching Patient A's chest in an inappropriate or non-clinical manner.

## **CCO STANDARDS OF PRACTICE AND GUIDELINES**

10. CCO Standard of Practice S-001 Chiropractic Scope of Practice requires a member to provide relevant, safe, supportive patient-centered quality care, and to document legible and accurate notes capturing any unique aspects of treatment.
11. CCO Standard of Practice S-002 Record Keeping requires a member to maintain accurate and complete patient records that contain comprehensive information about the initial examination and all assessments, the diagnosis or clinical impression, and a plan of care for the patient. The record must contain a copy of the patient's consent to any course of care, and reasonable information about advice and treatment given to the patient.
12. CCO Standard of Practice S-013 Consent requires a member to obtain consent to care or a plan of care that is fully informed, voluntarily given, related to the patient's conditions and circumstances, and documented in the patient health record.
13. CCO Guideline G-001 Communication with a patient requires a member to ensure that a patient, at all times, understands what is being done and why. The member has an obligation to respect a patient's dignity and personal space and demonstrate particular awareness when touching a sensitive area of the body.

## **ADMISSIONS**

14. The Member admits that he failed to adequately explain to Patient A the nature of the treatment he was proposing to provide to her chest area and the reason for it. He did not obtain informed consent for the treatment. He did not appropriately document the treatment, or the reason for the treatment in the patient's chart.
15. The Member admits that, based on the facts set out above, he committed acts of professional misconduct as set out in the Notice of Hearing dated August 17, 2018 ("Notice of Hearing"), because he:
  - a. contravened a standard of practice of the profession or failed to maintain the standard of practice expected of members of the profession, as described in Allegation 2; and
  - b. engaged in conduct or performed acts that, having regard to all the circumstances would reasonably be regarded by members as unprofessional, as described in Allegation 4.

## **OTHER**

16. The CCO withdraws allegations 1 and 3 in the Notice of Hearing.”

## **INDEPENDENT LEGAL ADVICE**

Dr. Lee acknowledged that he received advice from his counsel, Ms. Valerie Wise, prior to entering into the Resolution Agreement and that he had signed the Agreed Statement of Facts freely and voluntarily.

## **FINDINGS OF PROFESSIONAL MISCONDUCT**

After a brief recess to consider our decision, the Panel accepted that the Agreed Statement of Facts (Exhibit 2) provided a sufficient basis for making the findings of professional misconduct that the parties invited the Panel to make. Consequently, we find that the Member engaged in the forms of professional misconduct set out in the allegations (2 and 4 as amended) in the Notice of Hearing (Exhibit 1).

## **SUBMISSIONS ON PENALTY AND COSTS**

The parties presented the Panel with a Joint Submission on Penalty and Costs (Resolution Agreement Part 2- Joint Submission which was filed on consent as Exhibit 3) which provides:

" Further to the pre-hearing conference of November 21, 2018 held before Dr. Drew Potter and in view of the Agreed Statement of Facts and the findings of professional misconduct, and the Undertaking attached to this Joint Submission and Exhibit "A", the College of Chiropractors of Ontario ("CCO") and Dr. Lee ("Member") jointly request that the panel of the Discipline Committee make an Order:

1. Requiring the Member to appear before the panel to be reprimanded.
2. Directing the Registrar and General Counsel ("Registrar") to suspend the Member's certificate of registration for a period of three months ("Suspension") beginning on March 1, 2019.
3. Directing the Registrar to impose the following terms, conditions and limitations ("Conditions") on the Member's certificate of registration:
  - a. By May 1, 2019, the Member must:
    - i. review, and undertake in writing to comply with, all CCO regulations, standards of practice, policies and guidelines, including but not limited to CCO Standard of Practice S-001: Chiropractic Scope of Practice; CCO Standard of Practice S-002: Record Keeping; CCO Standard of Practice S-

013: Consent, and CCO Guideline G-001: Communication with Patients; and

- ii. Provide evidence that he has successfully completed, at his own expense, the Legislation and Ethics Examination and the Record Keeping Workshop.
- b. Requiring the Member to be peer assessed at his own expense within six months of returning to practice after the lifting of the Suspension.
4. Directing the Registrar to suspend one month of the Suspension if the Member completes the Conditions set out in Paragraph 3a., by May 1, 2019.
5. Requiring that the results of the proceeding be recorded in the public portion of the Register and published in the Annual Report or other publications at the discretion of the College of Chiropractors of Ontario.”

The CCO and the Member also requested that the Panel make the following order regarding costs:

1. “Requiring the Member to pay \$9,500.00 to the CCO to partially pay for its costs of the investigation and the costs and expenses of the hearing and of legal counsel.”

Dr. Lee acknowledged that he had received advice from his counsel, Ms. Valerie Wise, prior to entering into this Resolution Agreement, affirmed that he had signed the Joint Submission on Penalty and Costs freely and voluntarily and that he would not appeal or seek judicial review of the decision of the Discipline Committee regarding the allegations set out in the Notice of Hearing so long as the panel of the Discipline Committee accepted the Joint Submission on Penalty contained in the Resolution Agreement.

Mr. Paliare and Ms. Wise both made submissions in support of the Joint Submission. In her submission, Ms. Wise provided a brief background on Dr. Lee, who had been working as a chiropractor at the relevant time, March – April 2015 at the Adelaide Health Club in Toronto. Ms. Wise advised that Dr. Lee had not been the subject of any previous Discipline Committee hearing, that this was an isolated incident and that he had an unblemished record. She noted that Dr. Lee had acknowledged the misconduct and cooperated with the investigation. She appealed to the Panel to consider this background when considering the appropriate penalty.

Mr. Stevenson reminded the Panel that we should not reject a Joint Submission negotiated by the parties unless we believed it was contrary to the public interest.

#### **DECISION AS TO PENALTY AND COSTS**

The Panel accepted the Joint Submission and ordered that its terms be implemented. The Panel therefore orders:

1. Dr. Lee to appear before the panel to be reprimanded.
2. The Registrar and General Counsel (“Registrar”) to suspend the Member’s certificate of registration for a period of three months (“Suspension”) beginning on March 1, 2019.
3. The Registrar to impose the following terms, conditions and limitations (“Conditions”) on the Member’s certificate of registration:
  - a. By May 1, 2019, the Member must:
    - i. Review, and undertake in writing to comply with, all CCO regulations, standards of practice, policies and guidelines, including but not limited to CCO Standard of Practice S-0001: Chiropractic Scope of Practice; CCO Standard of Practice S-002: Record Keeping; CCO Standard of Practice S-013 Consent, and CCO Guideline G-001: Communication with Patients; and
    - ii. Provide evidence that he has successfully completed, at his own expense, the Legislation and Ethics Examination and the Record Keeping Workshop.
  - b. Requiring the Member to be peer assessed at his own expense within six months of returning to practice after the lifting of the Suspension.
4. The Registrar to suspend one month of the Suspension if the Member completes the Conditions set out in Paragraph 3a. above, by May 1, 2019.
5. That the results of the proceeding be recorded in the public portion of the Register and published in the Annual Report or other publications at the discretion of the College of Chiropractors of Ontario.
6. The Member to pay \$9,500.00 to the CCO to partially pay for its costs of the investigation and the costs and expenses of the hearing and of legal counsel.

The panel concluded that the proposed penalty order was both fair and reasonable, as it falls within the range of penalties appropriate based on the admissions and findings in this matter. We acknowledge that it was negotiated by counsel for both parties and we are satisfied that the review of CCO guidelines, regulations, standards of practice and policies as well as taking the record keeping workshop and legislation and ethics exam will be effective remediation tools. The Panel believes that by making this order, the public interest is served through a strong message of deterrence and a clear assurance of the College’s commitment to the public protection.

## REPRIMAND ADMINISTERED

As noted above, Dr. Lee expressly undertook not to appeal or seek judicial review if we accepted the Joint Submission. Therefore, at the conclusion of the hearing, the Panel administered the oral reprimand required by its penalty order.

I, Daniela Arciero, sign this decision and reasons as chair of this Discipline Panel and on behalf of the members of the Discipline Panel listed below:

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Dr. D. Arciero, Chair

Date: January 17, 2019

Panel Members:      Ms. K. Bourdeau  
                             Mr. D. Cressman  
                             Dr. E. Gabison  
                             Dr. D. Starmer