

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

PANEL:	Dr. Elisheva Gabison, Chair	Professional Member
	Dr. Daniela Arciero	Professional Member
	Dr. David Starmer	Professional Member
	Ms. Karoline Bourdeau	Public Member
	Mr. Doug Cressman	Public Member

BETWEEN:

COLLEGE OF CHIROPRACTORS OF ONTARIO)	Mr. Chris Paliare and
)	Ms. Karen Jones for the
)	College of Chiropractors of Ontario
- and -)	
)	
Dr. Ahmad Rostayee)	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 Wilson - Registrar and General Counsel, CCO
Ms. Dayna Snell- Court Reporter

DECISION AND REASONS

INTRODUCTION

A hearing into allegations of professional misconduct against Dr. Ahmad Rostayee (“Dr. Rostayee”, 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 December 8, 2017 filed as Exhibit 1 which provided:

1. 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 (“Code”), and paragraph 1(2) of *Ontario Regulation 852/93*, in that you contravened a standard of practice of the profession or failed to maintain the standard of practice expected of members of the profession with respect to your billing regarding a patient known as “Patient A” and your accepting of payment for services that were not provided.
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(20) of *Ontario Regulation 852/93*, in that in or about December 2016, on one or more occasions, you falsified a record relating to your practice with respect to your billings regarding 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(22) of *Ontario Regulation 852/93*, in that in or about December 2016, on one or more occasions, you signed or issued, in your professional capacity, a document you knew contained a false or misleading statement with respect to a patient known as “Patient A.”
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 in or about December 2016, on one or more occasions, you submitted an account or charge for services that you knew were false or misleading with respect to patient known as “Patient A.”
5. 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, c. 21 as amended, and paragraph 1(33) of *Ontario Regulation 852/93*, in that in or about December 2016, on one or more occasions, you engaged in conduct or performed an act, that, having regard to all the circumstances, would reasonably be regarded by member as disgraceful dishonourable or unprofessional with respect to your making false claims regarding a patient known as Patient A. and your accepting Payment for the false claims from Manulife.

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 3. The agreed Statement of Fact contained admissions by the Member with respect to the allegations in the Notice of Hearing (Exhibit1). A second, duplicative Notice of Hearing (Exhibit 2) was withdrawn by the College.

THE EVIDENCE

Part 1 of the Resolution Agreement (Agreed Statement of Facts), Exhibit 3, sets out the relevant evidence in the form of an agreed statement of facts which provided in part:

"BACKGROUND

1. Dr. Ahmad Rostayee ("Member") became a member of the College of Chiropractors of Ontario ("CCO") in 2010
2. During the relevant time, the Member practiced chiropractic at Hands-On Healing Chiropractic & Wellness Centre ("Clinic") in Milton, Ontario.
3. The Resolution Agreement involved two notices of Hearing:
 - (i) A notice of Hearing dated August 17, 2018, which arises from a complaint from registered massage therapist "M.G." ("NOH#1"), and
 - (ii) A Notice of Hearing dated August 17, 2018 which arises from a complaint from an insurance company ("NOH #2").
4. The two Notices of Hearing arise from the same set of facts and involve similar questions of fact, law, and policy. The CCO and the Member have consented to the panel of the Discipline Committee combining the proceedings regarding the two Notices of Hearing in one hearing.
5. On January 11, 2017, "Patient A" was at the Clinic receiving a massage. Following the massage, Patient A. Went to the Clinic reception desk where the Clinic receptionist submitted an electronic bill for the service. Patient A. became very upset, and said he had an arrangement with Dr. Rostayee. Patient A explained that he gave Dr. Rostayee permission to bill his insurer for any appointment he had missed in 2016 and that, in exchange, he would receive treatment for free in 2017.
6. The receptionist reviewed Patient A.'s billings in the Clinic system and noted that there had been six billings in December 2016 to Patient A.'s insurance company for massage treatments provided to Patient A. by M.G., a Registered Massage Therapist ("RMT"). The receptionist knew that the RMT had not provided the massage treatments at issue. She alerted the RMT to the billings.

7. The receptionist and the RMT met with the Member, who admitted that he was responsible for the false billings. The Member advised them that Patient A. had missed 6 appointments in 2016. It was Clinic policy for patients to pay for missed appointments. However, rather than require Patient A. to pay for the missed appointments, the Member had billed them to Patient A.'s insurance company as massage therapy treatments under the RMT's name.
8. Had the Member testified he would have said that he offered the arrangement to Patient A to appease him, as he was a long-standing patient who did not want to pay for the missed appointments in 2016.
9. The insurance company paid the Member \$591.99 for the six massage therapy treatments that were never provided.
10. On January 19, 2017, the Member contacted Patient A.'s insurance company, advised it that the six December 2016 claims for massage therapy had been made in error, and refunded the insurance company the money it had paid him for the claims.
11. On February 13, 2017, the RMT complained to the CCO about the false claims, which resulted in NOH #1. On August 21, 2017, the insurance company complained to the CCO about the same false claims, which resulted in NOH #2."

OTHER

Dr. Rostayee also acknowledged that he had obtained independent legal advice from his lawyer, Ms. Valerie Wise, prior to signing the Agreed Statement of Facts, 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 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 all allegations in the remaining 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 4) which provides:

" Further to the pre-hearing conference of December 5, 2018 held before Dr. Frazer Smith 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. Rostayee ("Member") jointly request that the panel of the Discipline Committee make an Order:

1. Requiring Dr. Rostayee 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 eight 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 July 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 the business practices portion of the Misconduct Regulation, CO Guideline G-008; Business Practices; and CCO Standard of Practice S-002; Record Keeping; 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 four months of the Suspension if the Member completes the Conditions set out in Paragraph 3a. above, by July 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:

- “6. Requiring the Member to pay \$7,500.00 to the CCO by December 31, 2019 to partially pay for its costs of the investigation and the costs and expenses of the hearing and of legal counsel, with payment made by way of post-dated cheques provided at the hearing as follows:
- a. Cheque dated January 31, 2019 for \$2,500.00;
 - b. Cheque dated September 1, 2019 for \$2,500.00; and
 - c. Cheque dated December 31, 2019 for \$2,500.00.”

Dr. Rostayee also acknowledged that he had received advice from his counsel, Ms. Valerie Wise, prior to entering into this Resolution Agreement, and affirmed that he was signing the Joint Submission on Penalty and Costs freely and voluntarily.

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. Rostayee who had worked as a chiropractor from 2010 at Hands-On Healing Chiropractic & Wellness Centre in Milton. Ms. Wise advised that Dr. Rostayee had not been the subject of any previous Discipline Committee hearing and that he had negotiated pre-payment for the later provision of services with a long term pre-existing patient, who had missed appointments but did not wish to pay for those missed sessions unless he received the services in the next year without additional charge. 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. Rostayee 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 eight 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 July 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 the business practices portion of the Misconduct Regulation, CO Guideline G-

008; Business Practices; and CCO Standard of Practice S-002; Record Keeping; 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 four months of the Suspension if the Member completes the Conditions set out in Paragraph 3a. above, by July 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 \$7,500.00 to the CCO by December 31, 2019 to partially pay for its costs of the investigation and the costs and expenses of the hearing and of legal counsel.

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 public protection. While the penalty falls within the usual range, it also acts as a deterrent to Dr. Rostayee and to the profession against similar conduct. The penalty will help rehabilitate Dr. Rostayee and sends a clear message that the profession will not tolerate the demonstrated behavior.

REPRIMAND ADMINISTERED

Dr. Rostayee 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, Elisheva Gabison, sign this decision and reasons for the decision as chair of this Discipline Panel and on behalf of the members of the Discipline Panel listed below:

Dr. Elisheva Gabison, Chair



Date:

January 11, 2019

Panel Members: Dr. David Starmer
Dr. Daniela Arciero
Ms. Karoline Bourdeau
Mr. Doug Cressman