

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

<b>PANEL:</b>	Mr. Robert MacKay (Chair)	Public Member
	Dr. Daniela Arciero	Professional Member
	Dr. Colin Goudreau	Professional Member
	Ms. Robyn Gravelle	Public Member
	Dr. Murray Townsend	Professional Member

<b>BETWEEN:</b>	)	Appearances: <sup>1</sup>
	)	
<b>COLLEGE OF CHIROPRACTORS</b>	)	Mr. Chris Paliare and
	)	Ms. Karen Jones for the College
<b>OF ONTARIO</b>	)	of Chiropractors of Ontario
	)	
<b>- and -</b>	)	
	)	
<b>DR. ALLEN GUTTMAN</b>	)	Mr. Allan Freedman and
(Registration #2143)	)	Ms. Katherine Tersigni for
	)	Dr. Guttman
	)	
	)	Heard: October 02, 2020
	)	

**DECISION AND REASONS**

---

<sup>1</sup> Also in attendance at the hearing were: Mr. Colin Stevenson, Independent Legal Counsel to the Panel; Ms. Jo-Ann Willson, Registrar and General Counsel CCO; and Ms. Dayne Snell, Court Reporter.

## DECISION AND REASONS

### Introduction

This was a hearing before a panel of the Discipline Committee (the "Panel") of the College of Chiropractors of Ontario (the "College") held on October 02, 2020. 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.

The Hearing was held virtually using video conferencing with the consent of the parties to comply with Provincial physical distancing recommendations.

### The Allegations

The allegations against Dr. Allen Guttman (the "Member") were set out in the Notice of Hearing, dated February 28, 2020. The Notice of Hearing was entered as Exhibit 1 at the hearing and the allegations contained in the Notice of Hearing are attached as Appendix "A" of the Panel's Decision and Reasons.

Mr. Paliare on behalf of the College stated that discussions with the Member had resulted in a Resolution Agreement. The College and the Member would therefore be jointly presenting an Agreed Statement of Facts and, if that was accepted by the Panel, a Joint Submission as to Penalty and Costs would then be made.

### Agreed Statement of Facts

The Agreed Statement of Facts<sup>2</sup> which had been signed by the parties was entered as Exhibit 2. During the course of the submissions that followed, Mr. Paliare reviewed the Agreed Statement of Facts in its entirety. The Agreed Statement of Facts, Exhibit 2, provided as follows:

---

<sup>2</sup> 24 hours before the Hearing, exhibits 2 and 3 were delivered to the Panel members in the interests of hearing economy and on consent of the parties.

## **Background**

1. Dr. Allen Guttman ("Member") became a member of the College of Chiropractors of Ontario ("CCO") in 1986.
2. During the relevant time, the Member practice chiropractic at his clinic in Thornhill, Ontario ("Clinic").

## **The Complaint**

3. In February 2018, CCO received a complaint from Green Shield Canada ("GSC") regarding the Member's conduct in providing and billing orthotics and orthopaedic shoes. In 2017, GSC had conducted an audit of 793 claims submitted to GSC between January 1, 2017 – June 30, 2017 ("Period"), totalling \$195,225.00 where the Member was the provider. As part of the audit, GSC sent questionnaires to 168 of the plan members, and reviewed 107 patient records obtained from the Member.
4. GSC found that almost all of the claims were from Toronto Transit Commission ("TTC") employees, and virtually all the claims were for orthotics and orthopaedic shoes. In almost all cases, the orthotics or orthopaedic shoes had been prescribed by the same chiropodist, "Mr. W." GSC also noted that there were a number of consistent anomalies in the patient records regarding the nature and type of information documented.

## **Relevant CCO Standards of Practice**

5. CCO Standard of Practice S-012 Orthotics requires a member to:
  - only prescribe orthotics for an individual when, based on the member's clinical judgment, orthotics are required to improve health and/or wellness;

- conduct a relevant assessment and examination;
- obtain written informed consent from a patient who has been fully informed of the purpose, benefits and risks of orthotics;
- provide advice to the patient regarding appropriate use of orthotics;
- advise patients to seek follow-up and assessment from the provider who prescribed the orthotics;
- disclose to the patient the fees for the service provided, including a fee not payable by the patient before the service is provided;
- only bill the normal fee billed to a private patient for similar services, and only bill a fee that is reasonably related to the time, expertise and costs to the member;
- disclose the interest and make sure the patient knows he/she can choose another supplier and their quality of care will not suffer when a member refers patients to a service supplier where the member gains a benefit.

6. CCO Standard of Practice S-002 Record Keeping requires a member to maintain accurate, current personal health records for each patient that include, among other things:

- patient information including name, address, birth date and gender;
- date of each treatment;
- a reference identifying the patient and chiropractor on each page;
- a patient history including chief complaint and supporting data, and the patient's past health history;
- reasonable information regarding the initial examination including documentation of the current condition, diagnosis and plan of care and clinically indicated assessment procedures;
- a written and signed patient consent;
- reasonable information about the care was provided and the name of the provider;
- reasonable information about each visit and all advice given to the patient, all assessments, all diagnostic tests; and
- all written reports received from other health care practitioners.

7. CCO Standard of Practice S-013 Consent requires a member to obtain informed, written consent to a treatment, after providing the patient with complete and accurate information regarding the options of treatment, alternative treatment and no treatment, including the effects, risks and side effects.

8. Guideline G-008 Business Practices requires that members:
- charge fees that are fair and reasonable;
  - only charge for care that is diagnostically or therapeutically necessary;
  - disclose all billing practices to the patient in advance of providing care;
  - bill third-party payors the same fees as are billed to uninsured patients for similar services;
  - bill all third-party payors the same amount, regardless of insurance coverage.

### **The Member's Practice**

#### **A. *Inadequate Documentation***

9. The Member's clinical records showed:
- there was no patient contact information included in each file;
  - there was no reference identifying the patient and chiropractor on each page. Documents in each patient file might contain a patient's first name, or no identifying information;
  - there were handwritten notes regarding an assessment and the dispensing of a device or devices in each patient file. The notes are brief and cursory, generally illegible, and codes are used, although there are no legends in the records to decipher the codes;
  - most assessments and all dispensing notes are the same for all patients;
  - consent forms simply indicate that the patient consented to the Member prescribing and dispensing orthotics and/or orthopaedic shoes to the patient and/or spouse and dependants. The consents do not evidence that the patients were fully informed of the purpose, benefits and risks of orthotics;
  - receipts for chiropractic services consist of forms where dates are circled, along with a list of fees being charged. There is no information in the receipts regarding which services that were provided;
  - there are consolidated invoices for each family that list the devices dispensed to each family member and the cost of each device; and
  - all records pertaining a family were maintained in one file folder. The patients' last names and the family address were written in the file folder itself.

10. The Member admits that it would not be possible for a third party to review the records and understand the patients' past and current health history as well as future health goals.
11. The Member admits that his record keeping failed to maintain the standards of practice of the profession and was in breach of CCO Standard of Practice S-002 Record Keeping and CCO Standard of Practice S-012 Orthotics.
12. The Member also admits that the written consent forms do not evidence that patients were fully informed of the purpose, benefits and risks of orthotics and provided informed consent as required by CCO Standard of Practice S-012 Orthotics and CCO Standard of Practice S-013 Consent.

**B. Free Shoes**

13. As part of his practice, the Member provided patients with free non-orthopaedic shoes with every pair of orthotics. If a patient had insurance coverage for orthopaedic shoes and ordered a pair of orthopaedic shoes, the patient could also order a pair of non-orthopaedic shoes at no cost.
14. The Member admits that it was unprofessional to offer an incentive, such as free shoes, for patients to use their insurance coverage for orthotics and orthopaedic shoes. Such an incentive could result in excessive and unnecessary demands and claims for medical devices. In addition, the cost of shoes that were free to patients were ultimately incorporated into the fee the Member charged to the insurer, ultimately resulting in the insurer paying for the cost of shoes that were not a benefit in the plan and were not itemized in any invoice or claim form.

**C. Prescriptions for Medical Devices**

15. In order to be eligible for insurance coverage, GSC required all orthotics and/or orthopaedic shoes to be prescribed by a podiatrist or a chiropractist.
16. The Member offered a service to his patients where he would refer them to a chiropractist, Mr. W., to get a prescription for orthotics and/or orthopaedic shoes. The Member would pay the fee that Mr. W. charged for a prescription, which, depending on the circumstances, ranged from \$50.00 - \$100.00 per prescription. The Member had no discussions with his patients regarding Mr. W.'s fee, including who would pay for it and whether it could be claimed from the insurer. He would simply tell patients to go to Mr. W. for a prescription.
17. The Member would send a fax to Mr. W. with the patient's name and contact information. Mr. W. would contact the patient and set up an appointment at the patient's home. Once Mr. W. saw the patient and

issued a prescription, he would bill the Member directly and be paid by the Member.

18. Of the 136 patient records reviewed by GSC, 118 of the patients had prescriptions for orthotics and/or orthopaedic shoes signed by Mr. W. 11 of those patients had chiroprapist coverage in their insurance plans. 2 of the 11 patients submitted claims for Mr. W.'s services. For the remaining 116 patients, the Member paid Mr. W. to prescribe orthotics and/or orthopaedic shoes for the patients. No claim forms for orthotics and/or orthopaedic shoes sent to GSC included payment of Mr. W.'s fee. However, Mr. W.'s fee was ultimately incorporated into the fee the Member charged to the insurer, resulting in the insurer paying for Mr. W.'s services, although such services were not a benefit in most of the patients' insurance plans and Mr. W.'s fee was not itemized in any invoice.
19. The Member admits that he should have, and failed to, disclose Mr. W.'s fee to his patients. Pursuant to CCO Guideline G-008 Business Practices, he should have disclosed all billing practices to patients in advance of providing care, ensured that patients had accurate and complete information regarding fees and their right to choose and/or refuse billing arrangements, and also ensured that patients understood his policies and procedures for billing third-party payors. The Member also should have, and failed to, advise each patient that they could obtain a prescription from the regulated health professional of their choice, and that their choice would not affect the quality of the health services provided by the Member.

**D. Variable Billing**

20. During the period 2003 – 2018, the Member was in a "Preferred Provider Arrangement" ("PPA") with GSC. Specific fees for specific services were stipulated in the PPA. For example, orthotics could be billed for \$325.00. GSC had a "usual and customary" rate of \$450.00 for orthotics and \$300.00 for orthotic shoes. GCS noted on its audit of the claims that the Member changed his fees depending on the amounts patients were permitted to claim in their insurance plans.
21. The Member admits that his pricing for services varied depending on the amounts insurers provided for services in different plans varied. At the time, the Member mostly dealt with three different insurance companies and he generally charged the maximum each plan allowed for each service or item. He likely never charged less than an insurance plan limit.
22. The Member admits this billing practice was in breach of CCO Guideline G-008 Business Practices, which requires that members bill third-party payors the same fees as are billed to uninsured patients for similar

services and bill all third-party payors the same amount, regardless of insurance coverage.

#### **E. Reuse of Casts**

23. The Member had a practice of re-using foam casts for orthotics, even if they had been on file for many years. He would only make new casts for a patient's orthotics if the patient told him they had new complaints or conditions.
24. The Member charged the patient (and subsequently the insurer) the same amount whether he re-used a cast or made a new one. In addition, he admits that he should have made new casts even if a patient did not mention a new complaint or condition, as their feet could have changed over the years so that the old cast no longer represented the patient's foot shape.
25. The Member's practice of re-using foam casts is in contravention of CCO Standard of Practice S-012 Orthotics, which requires a member to conduct a relevant assessment and examination before providing orthotics, and Guideline G-008 Business Practices, which requires that members charge fees that are fair and reasonable and related to the services provided to the patient.

#### **F. Billing for Chiropractic Services**

26. The Member admits that he frequently charged between \$15.00 and \$75.00 for "chiropractic services" on the same day that he provided and charged for orthotics and/or orthopaedic shoes, even though he did not provide any chiropractic treatment to patients.
27. The Member admits that the "chiropractic services" included taking the patient's history, performing an examination and providing a diagnosis, prognosis, exercises and referral recommendation. At the same time, his fee for providing orthotics/orthopaedics included a health history, performing an examination, providing advice regarding orthotic use, and foam casting.
28. The Member admits that the services covered by his fee for "chiropractic services" were duplicative of the services covered by his fee for orthotics/orthopaedics. The Member also admits that he claimed different amounts to insurers for "chiropractic services" because each insurance company paid different rates.



29. The Member admits that his charging a fee for "chiropractic services" was unreasonable and misleading when the chiropractic services were the same as the services he provided for orthotics and/or orthopaedic shoes, and that his conduct was in breach of CCO Standard of Practice S-012 Orthotics and CCO Guideline C-008 Business Practices.

30. The Member admits that he should have, and failed to, disclose to patients the fact that he charged "chiropractic services" fees in conjunction with fees for orthotics/orthopaedic shoes. Pursuant to CCO Guideline C-008 Business Practices, he should have disclosed all billing practices to patients in advance of providing care, ensured that patients had accurate and complete information regarding fees and their right to choose and/or refuse billing arrangements, and also ensured that patients understood his policies and procedures for billing third-party payors.

**Admissions of Professional Misconduct**

31. The Member admits, based on the facts and admissions set out above, he committed acts of professional misconduct as set out in the Notice of Hearing dated February 28, 2020, and in particular he:

a) contravened a standard of practice or failed to maintain the standard of practice expected of members of the profession with respect to his assessment, treatment, documentation and billing, as set out in allegation 1, because he:

- a. failed to assess and/or treat in accordance with the standards of practice;
- b. failed to provide care that was diagnostically or therapeutically necessary;
- c. failed to maintain patient records, including failing to properly document examinations, assessments, and/or treatments;
- d. failed to obtain written informed consent to treatment;
- e. failed to provide patients with accurate, complete information regarding fees and billing practices in advance of providing treatment;
- f. failed to charge fees that were fair and reasonable;
- g. billed patients depending on their insurers and insurance coverage;
- h. charged excessive fees for unit billing; and
- i. failed to provide accurate and appropriately itemized accounts.

b) provided treatment without informed consent, as set out in allegation 2;

c) failed to keep records as required by the regulations, as set out in allegation 3;

d) signed or issued, in his professional capacity, documents he knew contained false and misleading statements as set out in allegation 4;

e) submitted accounts or charges for services that he knew were false or misleading as set out in allegation 5;

f) failed to disclose fees for services before the service was provided as set out in allegation 6; and

g) engaged in conduct that was dishonourable, disgraceful and unprofessional with his respect to his assessment, treatment, documentation and billing as set out in allegation 7.

32. Based on the facts set out above and the Member's admissions, the CCO and the Member ask that the panel of the Discipline Committee make findings of professional misconduct in the Notice of Hearing.

#### **Independent Legal Advice**

33. The Member acknowledges that he received advice from his counsel, Allan Freedman, prior to entering into this Resolution Agreement. The Member agrees that he is entering into this Resolution Agreement and signing the Agreed Statement of Facts freely and voluntarily.

#### **Member's Plea**

The Member admitted all the Allegations contained in the Notice of Hearing (Exhibit 1) namely 1, 2, 3, 4, 5, 6, and 7. A plea inquiry was conducted by the Panel Chair. At the conclusion of that process, the Panel was satisfied that the admissions of professional misconduct by the Member were voluntary, informed, and unequivocal.

#### **Decision**

The Panel heard submissions by Mr. Paliare on behalf of the College, and Mr. Freedman on behalf of the Member with respect to the Agreed Statement of Facts.

During the course of those submissions the parties highlighted the admitted facts and invited the Panel to make findings against the Member. In addition, the Panel sought and obtained advice from its independent legal counsel, who reminded the Panel that the Agreed Statement of Facts could form the basis for their findings at this hearing.

After deliberation, the Panel was satisfied that the admissions of professional misconduct made by the Member were supported by the agreed-upon facts contained in the Agreed Statement of Facts.

Consequently, we made findings of professional misconduct against Dr. Allen Guttman in relation to the allegations set out in the Notice of Hearing (Exhibit 1). In particular, the Panel found that the Member has:

1. 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 in during the period January 1, 2017 to June 30, 2017, while practicing as a chiropractor in Thornhill, Ontario, he 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 one or more patients because he:
  - a. failed to assess and/or treat in accordance with the standards of practice;
  - b. failed to provide care that was diagnostically or therapeutically necessary;
  - c. failed to maintain patient records, including failing to properly document examinations, assessments, and/or treatments;
  - d. failed to obtain written informed consent to treatment;
  - e. failed to provide patients with accurate, complete information regarding fees and billing practices in advance of providing treatment;
  - f. failed to charge fees that were fair and reasonable;
  - g. billed patients depending on their insurers and insurance coverage;
  - h. charged excessive fees for unit billing; and/or
  - i. failed to provide accurate and appropriately itemized accounts.
2. 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(3) of *Ontario Regulation 852/93*, in that during the period January 1, 2017 to June 30, 2017, while practicing as a chiropractor in Thornhill, Ontario, on one or more occasions, he did anything for one or more patients for a therapeutic, preventative, palliative, diagnostic, cosmetic or other health-related purpose in a situation in which a consent is required by law, without such a consent.

3. 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(19) of *Ontario Regulation 852/93*, in that during the period January 1, 2017 to June 30, 2017, while practicing as a chiropractor in Thornhill, Ontario, he failed to keep records as required by the regulations regarding one or more patients.
4. 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 during the period January 1, 2017 to June 30, 2017, while practicing as a chiropractor in Thornhill, Ontario, he signed or issued, in his professional capacity, a document he knew contained a false or misleading statement regarding one or more patients.
5. 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 January 1, 2017 to June 30, 2017, while practicing as a chiropractor in Thornhill, Ontario, he submitted an account or charge for services that he knew were false or misleading regarding one or more patients.
6. 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(24) of *Ontario Regulation 852/93*, in that during the period January 1, 2017 to June 30, 2017, while practicing as a chiropractor in Thornhill, Ontario, he failed to disclose to one or more patients the fee for a service before the service was provided, including a fee not payable by the patient.
7. 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(33) of *Ontario Regulation 852/93*, in that during the period January 1, 2017 to June 30,

2017, while practicing as a chiropractor in Thornhill, Ontario, he engaged in conduct or performed an act, that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable and unprofessional because he:

- j. failed to assess and/or treat in accordance with the standards of practice;
- k. failed to provide care that was diagnostically or therapeutically necessary;
- l. failed to maintain patient records, including failing to properly document examinations, assessments, and/or treatments;
- m. failed to obtain written informed consent to treatment;
- n. failed to provide patients with accurate, complete information regarding fees and billing practices in advance of providing treatment;
- o. failed to charge fees that were fair and reasonable;
- p. billed patients depending on their insurers and insurance coverage;
- q. charged excessive fees for unit billing; and
- r. failed to provide accurate and appropriately itemized accounts.

In reaching its decision the Panel reminded itself of s. 49 of the *Health Professions Procedural Code* and therefore relied exclusively on the evidence presented at the hearing as contained in the Agreed Statement of Facts (Exhibit 2). The Panel found the facts contained in it provided a sufficient foundation for the findings of professional misconduct.

#### Penalty and Costs

Counsel for the College advised the Panel that a Joint Submission as to Penalty and Costs had been agreed upon. The Joint Submission was entered as Exhibit 3. Mr. Paliare and Mr. Freedman made submissions in support of the Joint Submission. In addition, the Panel sought and obtained advice from its independent legal counsel concerning the approach that Discipline panels should take when joint submissions are placed before them.

The Joint Submission invited the Panel to make an order regarding penalty:

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 nine months ("Suspension") with the Suspension to take effect on November 1, 2020;
3. Directing the Registrar to impose the following terms, conditions and limitations ("Conditions") on the Member's certificate of registration:
  - a. Within six months of the date the Suspension takes effect, 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; CCO Standard of Practice S-002: Record Keeping; CCO Standard of Practice S-012 Orthotics; CCO Standard of Practice S-013 Consent; and CCO Guideline G-008: Business Practices; and
    - ii. provide evidence that he has successfully completed, at his own expense, the CCO's 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 the practice of chiropractic after the Suspension is lifted with the focus of the peer assessment being the Member's documentation and billing.
4. Directing the Registrar to suspend three months of the Suspension if the Member completes the Conditions set out in Paragraph 3a, above, within six months of the date the Suspension takes effect.

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 College and the Member also request that the Panel make the following order regarding costs:

1. Requiring the Member to pay \$ 20,000.00 to the CCO to partially reimburse it for its costs of the investigation and the costs and expenses of the hearing and of legal counsel, to be paid by December 31, 2020 with post-dated cheques for the amount to be provided to the Registrar at the hearing.

The Joint Submission as to Penalty, which was signed by Dr. Guttman, also contained the following:

The Member acknowledges that he received advice from his counsel, Allan Freedman, prior to entering into this Resolution Agreement, and affirms that he is signing the Joint Submission on Penalty and on Costs freely and voluntarily

#### Penalty Decision and Reasons

The Panel was of the view that the parties had come to a fair and equitable resolution, having carefully balanced the issues of protection of the public interest and remediation of the Member and his practice. Based on the agreed facts and the submissions we can deduce that the Member has cooperated with the College and, by agreeing to the facts has accepted responsibility for his actions. Dr. Guttman has avoided the delay and expense that would have been incurred in resolving the allegations at a contested hearing.

The Panel therefore made 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 nine months ("Suspension") with the Suspension to take effect on November 1, 2020;

3. Directing the Registrar to impose the following terms, conditions and limitations ("Conditions") on the Member's certificate of registration:
  - a. Within six months of the date the Suspension takes effect, 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; CCO Standard of Practice S-002: Record Keeping; CCO Standard of Practice S-012 Orthotics; CCO Standard of Practice S-013 Consent; and CCO Guideline G-008: Business Practices; and
    - ii. provide evidence that he has successfully completed, at his own expense, the CCO's 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 the practice of chiropractic after the Suspension is lifted with the focus of the peer assessment being the Member's documentation and billing.
4. Directing the Registrar to suspend three months of the Suspension if the Member completes the Conditions set out in Paragraph 3a, above, within six months of the date the Suspension takes effect.
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.




6. Requiring the Member to pay \$ 20,000.00 to the CCO to partially reimburse it for its costs of the investigation and the costs and expenses of the hearing and of legal counsel, to be paid by December 31, 2020 with post-dated cheques for the amount to be provided to the Registrar at the hearing.

#### Administration of Reprimand

It was noted on the record that the Joint Submission on Penalty (Exhibit 3) contained an Undertaking<sup>3</sup> marked as Exhibit "A", that among other things expressly waived the Member's right of appeal<sup>4</sup> of any decision by the Discipline Committee in relation to the February 28, 2020 Notice of Hearing, (Exhibit 1). Further, the Panel confirmed that the Member was prepared for the oral reprimand to be administered immediately following the hearing. Consistent with the necessity to conduct the hearing via videoconference the Panel administered the oral reprimand in the same manner at the conclusion of the hearing.

I, **Robert MacKay**, sign this decision and reasons for the decision as Chair of this Discipline Panel and on behalf of the members of the Discipline Panel as listed below.



---

Mr. Robert MacKay, Chair

---

Date: October 06, 2020

#### Panel Members:

Mr. Robert MacKay  
Dr. Daniela Arciero  
Dr. Colin Goudreau  
Ms. Robyn Gravelle  
Dr. Murray Townsend

---

<sup>3</sup> Appendix "B" of this Decision and Reasons.

<sup>4</sup> Paragraph 3 Appendix "B"

**Appendix "A"**  
**Allegations contained in the Notice of Hearing,  
regarding Dr. Allen Guttman (Exhibit 1)**

**TAKE NOTICE THAT IT IS ALLEGED THAT:**

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 in during the period January 1, 2017 to June 30, 2017, while practicing as a chiropractor in Thornhill, Ontario, 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 one or more patients because you:

- a. failed to assess and/or treat in accordance with the standards of practice;
- b. failed to provide care that was diagnostically or therapeutically necessary;
- c. failed to maintain patient records, including failing to properly document examinations, assessments, and/or treatments;
- d. failed to obtain written informed consent to treatment;
- e. failed to provide patients with accurate, complete information regarding fees and billing practices in advance of providing treatment;
- f. failed to charge fees that were fair and reasonable;
- g. billed patients depending on their insurers and insurance coverage;
- h. charged excessive fees for unit billing; and/or
- i. failed to provide accurate and appropriately itemized accounts.

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(3) of *Ontario Regulation 852/93*, in that during the period January 1, 2017 to June 30, 2017, while practicing as a chiropractor in Thornhill, Ontario, on one or more occasions, you did anything for one or more patients for a therapeutic, preventative, palliative, diagnostic, cosmetic or other health-related purpose in a situation in which a consent is required by law, without such a consent.

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(19) of *Ontario Regulation 852/93*, in that during the period January 1, 2017 to June 30, 2017, while practicing as a chiropractor in Thornhill, Ontario, you failed to keep records as required by the regulations regarding one or more patients.

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, S.O. 1991, c. 21, as amended, and paragraph 1(22) of *Ontario Regulation*

852/93, in that during the period January 1, 2017 to June 30, 2017, while practicing as a chiropractor in Thornhill, Ontario, you signed or issued, in your professional capacity, a document you knew contained a false or misleading statement regarding one or more patients.

6. 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 January 1, 2017 to June 30, 2017, while practicing as a chiropractor in Thornhill, Ontario, you submitted an account or charge for services that you knew were false or misleading regarding one or more patients.

7. 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(24) of *Ontario Regulation 852/93*, in that during the period January 1, 2017 to June 30, 2017, while practicing as a chiropractor in Thornhill, Ontario, you failed to disclose to one or more patients the fee for a service before the service was provided, including a fee not payable by the patient.

8. 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(33) of *Ontario Regulation 852/93*, in that during the period January 1, 2017 to June 30, 2017, while practicing as a chiropractor in Thornhill, Ontario, you engaged in conduct or performed an act, that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional because you:

- a. failed to assess and/or treat in accordance with the standards of practice;
- b. failed to provide care that was diagnostically or therapeutically necessary;
- c. failed to maintain patient records, including failing to properly document examinations, assessments, and/or treatments;
- d. failed to obtain written informed consent to treatment;
- e. failed to provide patients with accurate, complete information regarding fees and billing practices in advance of providing treatment;
- f. failed to charge fees that were fair and reasonable;
- g. billed patients depending on their insurers and insurance coverage;
- h. charged excessive fees for unit billing; and/or
- i. failed to provide accurate and appropriately itemized accounts.

**Appendix "B"**

**UNDERTAKING**

**Exhibit "A"**

**To: The Registrar and General Counsel ("Registrar")  
of the College of Chiropractors of Ontario ("CCO")**

I, Dr. Allen Guttman, undertake to the Registrar and agree to do the following:

1. On or before April 2, 2021, I will:

a. review, and undertake in writing to comply with, all CCO regulations, standards of practice, policies and guidelines, including but not limited to: 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; CCO Standard of Practice S-002: Record Keeping; CCO Standard of Practice S-012 Orthotics; CCO Standard of Practice S-013 Consent; and CCO Guideline G-008: Business Practices; and

b. provide evidence that I have successfully completed, at my own expense, the CCO's Legislation and Ethics Examination and the Record Keeping Workshop.

2. I will pay to the CCO a total of \$20,000.00 for the partial payment of its costs and expenses related to the investigation, hearing and legal costs by December 31, 2020 and will providing post-dated cheques for that amount on October 2, 2020.

3. I agree not to appeal or ask for a judicial review of the decision of the Discipline Committee.

4. I acknowledge that failure to abide by any of the terms of this Undertaking could result in the referral of specified allegations of professional misconduct to the Discipline Committee.

5. I acknowledge that I have been advised by the CCO to obtain legal advice prior to executing this Undertaking and have obtained the advice of my

counsel, Allan Freedman. I am executing this Undertaking freely and voluntarily after reading and understanding its contents.

Signed this      day of September, 2020

---

Dr. Allen Guttman

---

Witness Signature