

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

PANEL:	Ms. Karoline Bourdeau, Chair	Public Member
	Mr. Robert MacKay	Public Member
	Dr. Daniela Arciero	Professional Member
	Dr. Murray Townsend	Professional Member
	Dr. Steven Lester	Professional Member

BETWEEN:

COLLEGE OF CHIROPRACTORS OF ONTARIO)	Mr. Chris Paliare for the
)	College of Chiropractors of Ontario
)	
- and -)	
)	
Dr. Dirk Keenan)	Mr. Allan Freedman
)	
)	Heard via Zoom videoconferencing on May 14, 2020

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. Lydia Pak- Court Reporter

DECISION AND REASONS

INTRODUCTION

A hearing into the allegations of professional misconduct against Dr. Dirk Keenan D.C. (Member) took place before a panel of the Discipline Committee (Panel) of the College of Chiropractors of Ontario (College) or (CCO) on May 14, 2020. The College has the mandate to regulate the practice of the chiropractic profession and to govern its members and, in doing so, serve and protect the public interest. As a preliminary matter we granted the College's request for an Order under subs. 45(3) of the Health Professions Procedural Code banning the publication of patients' names in respect of the matters disclosed at this hearing. This Order was not opposed by counsel for the Member.

THE ALLEGATIONS

The allegations against the Member are set out in the Notice of Hearing, dated January 14, 2020 filed as Exhibit 1. The hearing proceeded in relation to the following allegations:

1. You have committed an act or acts of professional misconduct pursuant to section 10 of Regulation 248 under the *Drugless Practitioners Act*, R.S.O. 1980, c. 127, and in particular, during the period June 1988 to April 1989, while practising chiropractic in Ottawa, Ontario, on one or more occasions with respect to a patient known as "Patient A.", you:
 - (a) told the patient she had beautiful eyes;
 - (b) commented on the patient's appearance;
 - (c) called the patient, "My sweet";
 - (d) told the patient information regarding your personal life, including who you dated and how you lost your virginity;
 - (e) made the patient promise not to get you in trouble;
 - (f) took a picture of the patient on a treatment table when she only had underwear on;
 - (g) attempted to take a picture of the patient's bare buttocks;
 - (h) hugged the patient;
 - (i) kissed the patient on her mouth;
 - (j) tried to kiss the patient's breasts;
 - (k) held hands with the patient;
 - (l) asked the patient to sit on your lap for a hug;
 - (m) asked the patient about her sex life, including but not limited to asking whether she had sex with former boyfriends;
 - (n) drove the patient home from appointments;
 - (o) asked the patient out on a date, including but not limited to taking her to the movies;
 - (p) invited the patient to your home;
 - (q) asked the patient to spend the night with you in your home;

- (r) encouraged the patient to be naked during treatments; and/or
- (s) took the patient's panties off during a treatment so that she was naked when you massaged her.

EXHIBITS

- 1. Notice of Hearing.
- 2. Agreed Statement of Facts.
- 3. Joint Submission on Penalty and Costs.

AGREED STATEMENT OF FACTS

Background

- 1. Dr. Dirk Keenan ("Member") became a member of the College of Chiropractors of Ontario ("CCO") in 1984.
- 2. During the relevant period between June 1988 to April 1989, the Member practiced chiropractic at his clinic in Ottawa, Ontario ("Clinic").

Treatment of Patient A.

- 3. During the period June 1988 to April 1989, the Member provided approximately thirty-three treatments to a patient known as "Patient A."
- 4. At the time when she first started receiving treatment from the Member, Patient A. was a 20 year old university student on a work term in Ottawa who was suffering from a sore back. The Member's clinic was near her workplace.
- 5. If Patient A. had testified, she would have said:
 - (a) on June 21, 1988, during Patient A.'s first treatment, the Member told her she had beautiful eyes, called her "my sweet," and said he would give her an almost 50% discount on fees. He took a photo of her lying on the table in her underwear. The Member had asked Patient A. to remove her underpants for the photo and she refused;
 - (b) on June 23, 1988, the Member asked Patient A. if she wanted a "real massage" which she understood to mean she should be naked, and she refused;
 - (c) on July 4, 1988, the Member gave Patient A. a massage during which she wore only panties and a gown;
 - (d) on July 5, 1988, Patient A's 21st birthday, the Member said to Patient A., "You are not going to get me in trouble for this, are you?" When Patient A. said she

wouldn't, the Member asked Patient A. to close her eyes while she sat on the treatment table and he gave her a deep "birthday kiss";

- (e) on July 12, 1988, the Member offered to give Patient A. a total body massage and when she refused, he told her to grow up. He also asked Patient A. why her boyfriend didn't stay in her room. During subsequent treatments, the Member frequently asked Patient A. for information about her sex life, including whether she had sex with her former boyfriends;
- (f) on July 20, 1988, the Member made a number of comments about how cute Patient A. was and told her that she could be a natural beauty. He was flirty and told her she could sit in his car if she wanted. He offered to drive her home after her next appointment;
- (g) over the next month, the Member flirted with Patient A. during her treatments. He invited her to go sailing with him, which she declined;
- (h) on August 11, 1988, the Member asked Patient A. about her sex life, and asked her if she loved her boyfriends physically or mentally;
- (i) on two occasions, the Member drove Patient A. home after treatments;
- (j) on August 16, 1988, the Member told Patient A. that she looked nice. He invited Patient A. to go to the movies with him and she agreed to go. During the movie, he put his arm around her and put his hand on her leg. As they left the movies, he put his arm around her, and when Patient A. reminded him that he had a girlfriend, the Member said, "It's not as if I am married or engaged." The Member held her hand on the way to his home, sat her on his lap, told her about his sexual history, tried to kiss her breast and asked her to sleep with him, saying that "nothing would happen." She refused and went home;
- (k) on August 25, 1988, the Member asked to take a picture of Patient A. naked so he could compare it to an earlier picture he took of her bum. He hugged her and they kissed;
- (l) on April 1, 1989, the Member told Patient A. that she had to be naked for a soft tissue massage and rolled his eyes and grimaced when she refused. Patient A. left her panties on and lay prone on the table for the massage. When the Member came into the room, he took her panties off, which Patient A. found very upsetting; and
- (m) on April 25, 1989, during her last appointment with the Member, the Member kissed Patient A.

The Member's Position on the Evidence and Allegations

6. The conduct at issue in this matter occurred in 1988 and 1989, when the Drugless Practitioners Act and Regulation 248 were in force. Regulation 248 provides at section 10:

10(1) The Board may, after a hearing, suspend or cancel the registration of any person found to be guilty of professional misconduct or to have been ignorant or incompetent.

7. The Member does not contest the evidence of Patient A.
8. If the Member had testified, he would have said that when he asked Patient A. to remove her clothes to be photographed, it was for the purpose of using the photographs to make a diagnosis pursuant to a particular technique.
9. The Member admits that in 1988 and 1989, it would be considered professional misconduct for a chiropractor to:
- (a) kiss a patient;
 - (b) ask a patient about their sex life;
 - (c) take pictures of a patient in their underwear;
 - (d) ask a patient to remove all of their clothes for a massage;
 - (e) ask a patient out on a date;
 - (f) tell a patient about details of the chiropractor's sex life;
 - (g) sit a patient on his lap;
 - (h) try to kiss a patient's breast;
 - (i) ask a patient to sleep with him;
 - (j) attempt to take pictures of a naked patient; and
 - (k) take off a patient's panties when the patient refused to be naked for a massage

DECISION AND ORDER

After the Agreed Statement of Fact (ASF) was presented, the Panel retired to consider whether to make the proposed findings of professional misconduct. Even though the discussion was lengthy and difficult, we followed the advice of Counsel and decided to accept the proposal. The Panel accepted that the facts and admissions provided a sufficient basis for making the findings of professional misconduct as presented to the Panel by the parties.

Upon our return into the hearing, we then heard submissions on the following resolution Agreement.

PART 2 – JOINT SUBMISSION ON PENALTY AND ON COSTS

Further to the pre-hearing conference of April 27, 2020 held before Dr. Drew Potter and in view of the Agreed Statement of Facts, the findings of professional misconduct made by the panel of the Discipline Committee, the Undertaking which is attached as Exhibit "A", the Reasons for Decision of the Board of Directors of Chiropractic dated April 6, 1991, which is attached as Exhibit "B" and the Inquiries, Complaints and Reports Committee Decision and Reasons dated April 24, 2018, which is attached as Exhibit "C", the College of Chiropractors of Ontario ("CCO") and Dr. Dirk Keenan ("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 nine months (Suspension) with the Suspension to take effect on May 31, 2020;
3. directing the Registrar to impose the following terms, conditions and limitations ("Conditions") on the Member's certificate of registration:
 - (a) by November 30, 2020, 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; CCO Standard of Practice S-014: Prohibition of a Sexual Relationship with a Patient; and CCO Guideline G-001: Communication with Patients; and
 - (ii) provide evidence that he has successfully completed, at his own expense, the CCO's Legislation and Ethics Examination and its Record Keeping Workshop;
4. directing the Registrar to suspend two months of the Suspension if the Member completes the Conditions set out in paragraph 3a, above, by November 30, 2020; and
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 request that the Panel make the following order regarding costs:

6. Requiring the Member to pay \$12,000.00 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 postdated cheques for the amount to be provided to the Registrar at the hearing.

PENALTY AND COSTS

Having retired to consider these submissions and having regard to the fact that the Panel's findings were made in the context of legislation which is different from the current Health Professions Procedural Code the Panel accepted the proposed penalty was in the public interest and ordered the following:

- (a) the Member shall appear before the panel to be reprimanded;
- (b) the Registrar and General Counsel ("Registrar") shall suspend the Member's certificate of registration for a period of nine months ("Suspension") with the Suspension to take effect on May 31, 2020;
- (c) the Registrar shall impose the following terms, conditions and limitations ("Conditions") on the Member's certificate of registration;
by November 30, 2020, 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 S002: Record Keeping; CCO Standard of Practice S-013 Consent; CCO Standard of Practice S-014: Prohibition of a Sexual Relationship with a Patient; and CCO Guideline G-001: Communication with Patients, and
 - (ii) provide evidence that he has successfully completed, at his own expense, the CCO's Legislation and Ethics Examination and its Record Keeping Workshop,
- (d) the Registrar shall suspend two months of the Suspension if the Member completes the Conditions set out in paragraph (c), above, by November 30, 2020;
- (e) the results of the proceeding shall 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; and
- (f) the Member shall pay \$12,000.00 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, which shall be paid by December 31, 2020 with post dated cheques for the amount to be provided to the Registrar at the hearing.

Dr. Dirk Keenan undertook not to appeal or seek judicial review if we accepted, as we did, the Joint Submission on penalty and costs. Consequently, at the conclusion of the hearing the Panel administered the reprimand required by paragraph (a) of the Order.

REPRIMAND ADMINISTERED

I, Karoline Bourdeau, sign this decision and reasons for the decision as Chair of this Discipline Panel on behalf of the members of the Discipline Panel as listed above.

October 8, 2020



MS. KAROLINE BOURDEAU