

CITATION: College of Chiropractors of Ontario v. Stephen Dies, 2014 ONSC 6867
COURT FILE NO.: 06-CV-306413-PD2
DATE: 20141230

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: COLLEGE OF CHIROPRACTORS OF ONTARIO, Applicant/Moving Party

AND:

STEPHEN DIES, Respondent/Responding Party

BEFORE: STEWART J.

COUNSEL: *Gregory Ko and Karen Jones*, for the Applicant/Moving Party

David B. Cousins, for the Respondent/Responding Party

HEARD: October 2, 2014

ENDORSEMENT

Nature of the Motion

[1] The College of Chiropractors of Ontario (the “College”) brings this motion against Stephen Dies (“Dies”). The College seeks an order that he be found in contempt of the Order of Smith, J. dated May 19, 2006.

Background Facts

[2] A previous motion for a contempt order was brought in 2013 by the College. Those proceedings were settled on terms, one of which was that Dies would immediately and fully comply with the Order of Smith, J. made on May 19, 2006.

[3] The May 19, 2006 Order prohibits Dies from (a) using the title “doctor”, (b) using the title “chiropractor”, (c) holding himself out as a chiropractor, and (d) performing any controlled acts, including spinal adjustment/manipulation.

[4] In the settlement of the earlier contempt proceedings, Dies admitted that he has breached the Court Order and acknowledged that any further breach would permit the College to introduce that admission and rely upon it in any necessary proceedings.

[5] In order to settle the earlier contempt proceedings, Dies entered into Minutes of Settlement which included a series of specific agreements and undertakings. Under the Minutes, Dies agreed to:

- (a) fully and immediately comply with the May 19, 2006 Order;
- (b) immediately cancel any pending appointments with patients;
- (c) immediately communicate to all patients treated since May 19, 2006 that he has not been a member of the College since 1998, that he is not entitled to practice chiropractic and that he no longer has a chiropractic practice;
- (d) immediately remove and discontinue any and all promotional materials in which he holds himself out as a chiropractor or as a doctor, or in which he offers to perform chiropractic treatments or controlled acts; and
- (e) pay the College's costs in the amount of \$20,000.

[6] Dies also agreed to comply with random inspections of his Clinic by the College and to produce any and all documents to the College for the purpose of determining his compliance with the provisions of the settlement.

[7] Dies understood that if he breached any of the settlement terms, the College was entitled to reinitiate the contempt proceedings against him on the basis of the record filed in the earlier proceedings.

[8] Dies is content that this contempt motion be dealt with on the affidavit materials before the Court. He accepts that a fair and adequate hearing is afforded to him as a result of this process.

Current Motion

[9] Despite his undertaking to immediately comply fully with the 2006 Order, I find that the evidence demonstrates beyond a reasonable doubt that Dies has continued to breach the terms of the settlement and the 2006 Order by continuing to operate a full-time chiropractic practice.

[10] The evidence on this motion also clearly demonstrates beyond any reasonable doubt that Dies has knowingly and wilfully acted in breach of the 2006 Order by:

- (a) using an abbreviation of the title "doctor" in the course of providing and offering to provide in Ontario health care to individuals;
- (b) holding himself out as a person who is qualified to practice in Ontario as a chiropractor;

- (c) performing controlled acts, including communicating diagnoses and carrying out spinal adjustments and manipulations; and
- (d) treating and advising persons with respect to their health in circumstances in which it is reasonably foreseeable that serious bodily harm may result from the treatment or advice or from an omission from them.

[11] Dies' continuing breach of the 2006 Order is proven by, among other evidence:

- (a) his appointment book and 32 patient files provided by Dies to the College following an investigation on July 23, 2014;
- (b) the Affidavit of Joanne DiRocco which states that Dies provided chiropractic services to her on July 2, 2014 and on other dates in July 2014; and
- (c) the Affidavit of Brenda Robbins stating that Dies provided chiropractic services to her on July 23, 2014.

[12] The foundation for these conclusions is found in the evidence filed by the College on this motion. DiRocco and Robbins unequivocally detail in their sworn evidence their attendances upon Dies, what they were told and what he did to them. Expert opinion was proffered by the College which characterizes the activities carried on by Dies as being those which are clearly proscribed. Dies therefore purported to function as a chiropractor and hold himself out as same in contravention of a Court Order.

[13] Dies has not cross-examined any of the College's affiants. He does not retract any part of the affidavit he swore on May 7, 2014 in which he admits to breaching the 2006 Order by operating a full-time chiropractic practice between May 25, 2006 and May 7, 2014. He does not deny that since May 7, 2014, he has continued to use the abbreviation "D.C." (Doctor of Chiropractic) on his receipts and in his promotional materials in the course of providing medical "therapies". He does not deny that since May 7, 2014 he has communicated diagnoses to patients. Dies does not deny that he saw 450 patients at his Clinic between May 7 and July 23, 2014, as recorded in his appointment book.

[14] Dies' weak and inadequate explanation of what he did to treat DiRocco and Robbins is nonsensical in face of the overwhelming evidence of the nature of his activities and the clear descriptions provided by those individuals. He should not be conducting any of the activities described as they all contravene the Order.

[15] It is evident that Dies did and has continued to hold himself out as a chiropractor and to practice chiropractic despite the Order forbidding him to do so. Accordingly, he must be found to be in contempt of the May 19, 2006 Order, as the College submits.

Conclusion

[16] A finding of contempt is hereby made in the terms requested by the College. The Order of Smith, J. is clear and unequivocal and continues to be in effect. Dies must comply. His demonstrated failure to do so invites this finding and exposes him to serious sanctions.

Penalty and Costs

[17] Counsel for the parties are directed to contact my assistant to arrange an early date to attend before me to make final submissions as to penalty and to address the issue of costs.

STEWART J.

Date: December 30, 2014