

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

PANEL:	Mr. Robert MacKay (Chair)	Public Member
	Dr. Elisheva Gabison	Professional Member
	Ms. Robyn Gravelle	Public Member
	Dr. Steven Lester	Professional Member
	Dr. Matthew Tribe	Professional Member

BETWEEN:)	Appearances: ¹
)	
COLLEGE OF CHIROPRACTORS)	Mr. Chris Paliare and
)	Ms. Karen Jones for the College
OF ONTARIO)	of Chiropractors of Ontario
)	
- and -)	
)	
DR. JAMES EMMETT)	Ms. Monick Grenier for
(Registration #2867))	Dr. Emmett
)	
)	
)	Heard: October 26, 2020
)	

DECISION AND REASONS

¹ 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. Beverly Killen, 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 26, 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. James Emmett (the "Member") were set out in the Notice of Hearing, dated August 10, 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 Facts² 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:

² 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. James Emmett ("Member") became a member of the College of Chiropractors of Ontario ("CCO") in 1994.
2. At the relevant time, the Member practiced chiropractic at Centrum Chiropractic Clinic ("Centre") in Orleans, Ontario.

Patient "A."

3. In 2011, Patient A. began receiving chiropractic treatment from the Member for back pain and stiffness. She continued to receive chiropractic treatment from the Member until October 2018.
4. In 2011, the Member and Patient A. developed a personal and romantic relationship ("Relationship"). The Relationship included kissing, hugging, holding hands, and over the clothes touching. The Member invited Patient A. to his home on a number of occasions, and they hung out together, cooked together and worked on projects together. On one occasion, they travelled to the United States together, and returned to Canada the same day.
5. The Relationship continued until 2013, when the Member advised Patient A that he wanted to end it, something that was very painful to Patient A.
6. The Member and Patient A. resumed their Relationship in 2016, which lasted until 2017, when the Member advised Patient A. that he wanted the Relationship to end.

7. In October 2018, Patient A. terminated the doctor-patient relationship with the Member.
8. Had the Member testified, he would have said that, although his Relationship with Patient A. included touching of a sexual nature described in paragraph 4, and behaviour and remarks of a sexual and/or flirtatious nature towards Patient A., it did not include sexual intercourse or other forms of physical sexual relations, and in particular, did not include any of the acts listed in subsection 51(5)3. of the Health Professions Procedural Code ("Code") which is Schedule 2 to the *Regulated Health Professions Act*.

CCO Standards and Guidelines

9. Sexual abuse is defined in subsection 1.(3) of the Code:

In this Code, "sexual abuse" of a patient by a member means:

- a) sexual intercourse or other forms of physical sexual relations between the member and the patient;
 - b) touching, of a sexual nature, of the patient by the member; or
 - c) behaviour or remarks of a sexual nature by the member towards the patient.
10. CCO Standard of Practice S-014 Prohibition of a Sexual Relationship with a Patient prohibits chiropractors from sexualizing a professional relationship, including by sexual remarks, behaviour and touching.

Admissions

11. The Member admits that he had a concurrent sexual and doctor-

patient relationship with Patient A. during the period 2011 – 2017 (the professional relationship continued to 2018), as described above, and further admits that he committed the following acts of professional misconduct, as alleged in the Notice of Hearing dated August 10, 2020:

- a. he sexually abused Patient A. as set out in allegation 1;
- b. 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 his conduct towards Patient A. as set out in allegation 2;
- c. he abused Patient A. verbally and/or psychologically and/or emotionally as alleged in allegation 3 by ending the Relationship in 2013 only to restart it again later;
- d. he 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 and unprofessional with respect to his conduct towards Patient A as set out in allegation 4.

Other

12. The Member acknowledges that he received advice from his counsel, Monick Grenier 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, and 4. 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 Ms. Grenier 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. James Emmett in relation to the allegations set out in the Notice of Hearing (Exhibit 1). In particular, the Panel found that:

- a. he sexually abused Patient A. as set out in allegation 1;
- b. 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 his conduct towards Patient A. as set out in allegation 2;
- c. he abused Patient A. verbally and/or psychologically and/or emotionally as alleged in allegation 3 by ending the Relationship in 2013 only to restart it again later;
- d. he 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 and unprofessional with respect to his conduct towards Patient A as set out in allegation 4.

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 Ms. Grenier 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 twelve months ("Suspension"), with the Suspension to take effect on November 9, 2020.
3. Directing the Registrar to impose the following terms, conditions and limitations ("Conditions") on the Member's certificate of registration:
 - a. By September 9, 2021, 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-014 Prohibition of a Sexual Relationship with a Patient;
 - ii. provide evidence that he has successfully completed, at

his own expense, the Legislation and Ethics Examination and the Record Keeping Workshop;

iii. provide evidence that he has successfully completed, at his own expense, a course or courses in professional boundaries and ethical patient care approved of by the Registrar.

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 two months of the Suspension if the Member satisfactorily completes the Conditions set out in Paragraph 3a. by September 9, 2021.

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 \$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. The Member shall pay \$6,000.00 by December 31, 2020, with the remaining \$6,000.00 to be paid by March 30, 2021, and the Member shall provide post-dated cheques for the costs by October 26, 2020.

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

Dr. Emmett acknowledges that he received advice from his counsel, Monick Grenier, 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. Mr. Paliare stated the Member has cooperated with the College and, by agreeing to the facts has accepted responsibility for his actions. Dr. Emmett 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 twelve months ("Suspension"), with the Suspension to take effect on November 9, 2020.
3. Directing the Registrar to impose the following terms, conditions and limitations ("Conditions") on the Member's certificate of registration:
 - a. By September 9, 2021, 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-014 Prohibition of a

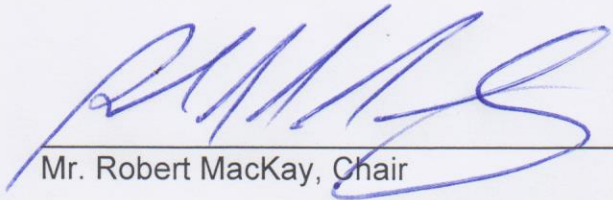
Sexual Relationship with a Patient;

- ii. provide evidence that he has successfully completed, at his own expense, the Legislation and Ethics Examination and the Record Keeping Workshop;
 - iii. provide evidence that he has successfully completed, at his own expense, a course or courses in professional boundaries and ethical patient care approved of by the Registrar.
 - 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 two months of the Suspension if the Member satisfactorily completes the Conditions set out in Paragraph 3a. by September 9, 2021.
 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 \$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. The Member shall pay \$6,000.00 by December 31, 2020, with the remaining \$6,000.00 to be paid by March 30, 2021, and the Member shall provide post-dated cheques for the costs by October 26, 2020.

Administration of Reprimand

It was noted on the record that the Joint Submission on Penalty (Exhibit 3) contained an Undertaking³ marked as Exhibit "A", that among other things expressly waived the Member's right of appeal⁴ of any decision by the Discipline Committee in relation to the August 10, 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 listed below.



Mr. Robert MacKay, Chair

Date: November 19, 2020

Panel Members:

Mr. Robert MacKay
Dr. Elisheva Gabison
Ms. Robyn Gravelle
Dr. Steven Lester
Dr. Matthew Tribe

³ Appendix "B" of this Decision and Reasons.

⁴ The "second" paragraph numbered 3 of Appendix "B"

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

TAKE NOTICE THAT IT IS ALLEGED THAT:

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 2011 – 2018, while you were practising as a chiropractor at Centrum Chiropractic in Orleans, Ontario, on one or more occasions, you sexually abused a patient known as "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 2011 – 2018, while you were practising as a chiropractor at Centrum Chiropractic in Orleans, Ontario, on one or more occasions, 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 treatment of and/or conduct towards "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 2011 – 2018, while you were practising as a chiropractor at Centrum Chiropractic in Orleans, Ontario, on one or more occasions, you abused a patient known as "A." verbally and/or 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(33) of *Ontario Regulation 852/93*, in that during the period 2011 – 2018, while you were practising as a chiropractor at Centrum Chiropractic in Orleans, 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 your treatment of and/or conduct towards a patient known as "A."

Appendix "B"

UNDERTAKING

Exhibit "A"

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

I, Dr. James Emmett, undertake to the Registrar and agree to do the following:

1. On or before September 9, 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 CCO Standard of Practice S-014 Prohibition of a Sexual Relationship with a Patient;
 - b. provide evidence that I have successfully completed, at my own expense, the Legislation and Ethics Examination and the Record Keeping Workshop;
 - c. provide evidence that I have successfully completed, at my own expense, a course or courses in professional boundaries and ethical patient care approved of by the Registrar.
2. I will be peer assessed at my own expense within six months of returning to practice after the lifting of the suspension imposed by the panel at my Discipline Committee hearing.
3. I will pay to the CCO a total of \$12,000.00 for the partial payment of its costs and expenses related to the investigation, hearing and legal costs. I will pay \$6,000.00 by December 31, 2020, with the remaining \$6,000.00 to be paid by March 30, 2021, and shall provide the College with post-dated cheques for the costs by October 26, 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, Monick Grenier. I am executing this Undertaking freely and voluntarily after reading and understanding its contents.

Signed this day of October, 2020

Dr. James Emmett

Witness Signature