

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

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|---------------|-----------------------------|---------------------|
| PANEL: | Dr. Daniela Arciero (Chair) | Professional Member |
| | Mr. Robert MacKay | Public Member |
| | Dr. Janit Porter | Professional Member |
| | Mr. Shawn Southern | Public Member |
| | Dr. Janine Taylor | Professional Member |

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|---------------------------------|---|---------------------------------|
| BETWEEN: |) | Appearances: ¹ |
| |) | |
| COLLEGE OF CHIROPRACTORS |) | Mr. Chris Paliare and |
| |) | Ms. Karen Jones for the College |
| OF ONTARIO |) | of Chiropractors of Ontario |
| |) | |
| - and - |) | |
| |) | |
| DR. JONATHAN FORBES |) | Mr. Daniel Libman |
| (Registration #4544) |) | for Dr. Forbes |
| |) | |
| |) | |
| |) | Heard: December 7, 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. Lydia Pak, 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 December 7, 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. Jonathan Forbes (the “Member”) were set out in the Notice of Hearing, dated July 15, 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 there had been discussions with the Member that had resulted in a Resolution Agreement. The College and the Member would therefore be jointly presenting an Agreed Statement of Facts and, if 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. Jonathan Forbes ("Member") became a member of the College of Chiropractors of Ontario ("CCO") in 2003.
2. At the relevant time, the Member practiced chiropractic at an office in Brampton, Ontario.

CCO requirements for Insurance

3. In 2003, when the Member became a member of the CCO, there was no requirement for CCO members to have practice insurance. CCO members were, however, asked to indicate on annual renewal forms whether they had malpractice insurance.
4. In 2009, the *Regulated Health Professions Statute Law Amendment Act, 2009*, amended the Health Professions Procedural Code to require every member of a regulated health profession to be personally insured against professional liability:

13.1 (1) No member of a College in Ontario shall engage in the practice of the health profession unless he or she is personally insured against professional liability under a professional liability insurance policy or belongs to a specified association that provides the member with personal protection against professional liability.

(2) A member mentioned in subsection (1) shall comply with the requirements respecting professional liability insurance or protection against professional liability specified by the College and prescribed in the regulations made under the health profession Act governing the member's health profession or set out in the by-laws.

(3) In addition to the grounds set out in subsection 51 (1), a panel of the Discipline Committee shall find that a member has committed an act of professional misconduct if the member fails to comply with subsection (1) or (2).

5. Beginning in 2009, CCO members were required to have professional liability insurance in the amount prescribed by CCO By-law 16: Professional Liability Insurance.
6. From 2011 and on, CCO members were required, pursuant to Ontario Regulation R-003 Registration, to maintain professional liability insurance in accordance with the by-laws. Section 17 of Ontario Regulation R-003 provides:

17. It is a condition of every general certificate of registration and of every temporary certificate of registration that the member continue, (a) to maintain professional liability insurance in accordance with the by-laws; or (b) to belong to an association that is specified in the by-laws as providing the member with personal protection against professional liability.

The Member's Annual Renewal Forms 2005 – 2017

7. In 2005 and 2006, the Member indicated on his annual renewal forms that he was insured through the CCPA. Thereafter, from 2007 – 2017, he indicated on every annual renewal form that he had malpractice insurance or professional liability insurance with Walter Roberts.

8. On every annual renewal form submitted by the Member from 2005 – 2012, the Member affirmed that the information he provided on the form was true and complete.
9. From 2012 - 2017, each annual renewal form signed by the Member contained a declaration which the Member signed, indicating the information he provided was true and complete, and acknowledging that it was an act of professional misconduct to provide false information.

Admissions of Professional Misconduct

10. The Member admits that during the period 2005 – 2017, he did not have any professional liability insurance.
11. The Member admits that during the period 2005 – 2017, he provided false information to the CCO on his annual renewal forms because he indicated he had professional liability insurance when he did not.
12. As a result of the facts set out above and the Member's admissions, the Member admits that he committed acts of professional misconduct as described in the Notice of Hearing dated July 15, 2020 ("Notice of Hearing"), and in particular:
 - a) during the period 2009 - 2017, while practicing as a chiropractor in Brampton, Ontario, he engaged in the practice of chiropractic when he was not personally insured against professional liability under a professional liability policy and did not belong to an association that provided him with personal protection against professional liability and he did not comply with the requirements respecting professional liability insurance or protection against professional liability specified by the College of Chiropractors of Ontario and prescribed in CCO By-Law 16: Professional Liability Insurance and/or paragraph 17 of O. Reg. 137/11-Registration, as described in allegation 2;

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 failure to carry professional liability insurance, as described in allegation 3;

c) 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 failure to carry professional liability insurance, as described in allegation 4.

Other

13. The CCO withdraws allegation 1 in the Notice of Hearing and the particulars in allegations 3 and 4 that refer to his treatment of and conduct towards Patient "A".

14. The Member acknowledges that he received advice from his counsel, Daniel Libman 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 the Allegations as amended and contained in the Notice of Hearing (Exhibit 1), namely 2, 3b and 4b. 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. Libman 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, findings of professional misconduct were made against Dr. Jonathan Forbes in relation to the outstanding allegations set out in the Notice of Hearing (Exhibit 1). In particular, the Panel found that the Member had:

- A. committed an act of professional misconduct as provided by subsection 13.1(3) of the Health Professions Procedural Code of the *Chiropractic Act*, 1991, S.O. 1991, c. 21, as amended, in that in during the period 2009 - 2017, while practicing as a chiropractor in Brampton, Ontario, he:
 - I. engaged in a practice of chiropractic when he was not personally insured against professional liability under a professional liability policy and did not belong to an association that provided personal protection against professional liability, and
 - II. did not comply with the requirements respecting professional liability insurance or protection against professional liability specified by the College of Chiropractors of Ontario and prescribed in CCO By-Law 16: Professional Liability Insurance and/or paragraph 17 of O. Reg. 137/11-Registration.
- B. 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 on one or more occasions, while practicing as a chiropractor in Brampton, 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 failure to carry professional liability insurance during the period of 2009-2017.
- C. 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 on one or more occasions while practicing as a chiropractor in Brampton, 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 with respect to his failure to carry professional liability insurance during the period 2009-2017.

Keeping in mind s. 49 of the *Health Professions Procedural Code*, the Panel relied exclusively on the evidence presented at the hearing as contained in the Agreed Statement of Facts (Exhibit 2) in reaching its decision. 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. Libman made submissions in support of the Joint Submission. In addition, the Panel sought and obtained advice from its independent legal counsel, Mr. Colin Stevenson. Mr. Stevenson provided guidance 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 December 7, 2020;
3. Directing the Registrar to impose the following terms, conditions and limitations ("Conditions") on the Member's certificate of registration:
 - a. By October 7, 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 the business practices portion of the Misconduct Regulation; 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 CCO's 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; and
- iv. provide evidence that he has obtained professional liability insurance in accordance with the by-laws and Ontario Regulation R-003.

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.

- 4. Directing the Registrar to suspend two months of the Suspension if the Member satisfactorily completes the Conditions set out in Paragraph 3a, above, by October 7, 2021.
- 5. Requiring the Member to reimburse the CCO for funding provided for Patient A. under the program required under section 85.7 of the Health Professions Procedural Code.
- 6. 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:

1. Requiring the Member to pay \$ 15,000.00 to the CCO to partially pay for its costs of the investigation and the costs and expenses of the hearing and of legal counsel, with the Member to pay \$7,500.00 to the CCO by December 7, 2020, and the remaining \$7,500.00 paid by December 31, 2021 with the Member to provide a post-dated cheque for that amount on December 7, 2020.

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

Dr. Forbes acknowledges that he received advice from his counsel, Daniel Libman, 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 indicated that the Member had acknowledged wrong-doing and took the issue seriously. The Member has cooperated with the College and, by agreeing to the facts, has accepted responsibility for his actions.

Dr. Forbes has no prior history of being the subject of a discipline hearing. By cooperating with the CCO, he has avoided the delay and expense that would have been incurred in resolving the allegations at a contested hearing.

The requirement to have professional liability insurance is fundamentally important in protecting the public interest. The Panel felt the need for rehabilitation is addressed by this penalty. The panel felt that the length of the suspension was appropriate due to the long period of time that the misconduct occurred and noted that both parties agreed to the suspension. The Panel agreed that each of the elements of the penalty order sought by the parties supports the protection of the public interest.

The Panel therefore made an order:

1. Require 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 December 7, 2020;
3. Directing the Registrar to impose the following terms, conditions and limitations (“Conditions”) on the Member’s certificate of registration:
 - a. By October 7, 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 CCO’s 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, and
 - iv. provide evidence that he has obtained professional liability

insurance in accordance with the by-laws and Ontario Regulation R-003.

- 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.
4. Directing the Registrar to suspend two months of the Suspension if the Member satisfactorily completes the Conditions set out in Paragraph 3a, by October 7, 2021.
5. Requiring the Member to reimburse the CCO for funding provided for Patient A. under the program required under section 85.7 of the Health Professions Procedural Code.
6. 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.
7. Requiring the member to pay \$15,000 to the CCO to partially pay for its costs of the investigation and the costs and expenses of the hearing and of legal counsel, with the Member to pay \$7,500 to the CCO by December 7, 2020, and the remaining \$7,500 paid by December 31, 2021, with the Member to provide a post-dated cheque for that amount on December 7, 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

³ Appendix "B" of this Decision and Reasons.

⁴ Paragraph 3 Appendix "B"

July 15, 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, **Dr. Daniela Arciero**, 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.



Dr. Daniela Arciero, Chair

16/12/20 & 22/12/20

Date: December 16, 2020

Corrected reasons December 22, 2020

Panel Members:

Dr. Daniela Arciero
Mr. Robert MacKay
Dr. Janit Porter
Mr. Shawn Southern
Dr. Janine Taylor

Appendix "A"
**Allegations contained in the Notice of Hearing,
regarding Dr. Jonathan Forbes (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.l) of the Health Professions Procedural Code of the *Chiropractic Act, 1991*, S.O. 1991, c. 21, as amended, in that during the period 2003 -2016, while practicing as a chiropractor in Brampton, Ontario, on one or more occasions, you sexually abused a patient known as "Patient A."

2. You have committed an act of professional misconduct as provided by subsection 13.1(3) of the Health Professions Procedural Code of the *Chiropractic Act, 1991*, S.O. 1991, c. 21, as amended, in that during the period 2009 - 2017, while practicing as a chiropractor in Brampton, Ontario, you:

a. engaged in the practice of chiropractic when you were not personally insured against professional liability under a professional liability policy and you did not belong to an association that provided you with personal protection against professional liability; and/or

b. did not comply with the requirements respecting professional liability insurance or protection against professional liability specified by the College of Chiropractors of Ontario and prescribed in CCO By-Law 16: Professional Liability Insurance and/or paragraph 17 of O. Reg. 137/11-Registration.

3. You have committed an act of professional misconduct as provided by subsection 51(l)(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 on one or more occasions, while practicing as a chiropractor in Brampton, 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:

a. your assessment and/or treatment and/or documentation and/or conduct towards a patient known as "Patient A." during the period 2003 - 2016; and/or

b. your failure to carry professional liability insurance during the period 2009 -2017.

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 on one or more occasions while practicing as a chiropractor in Brampton, 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 with respect to:

a. your assessment and/or treatment and/or documentation and/or conduct towards a patient known as "Patient A." during the period 2003 -2016; and/or

b. your failure to carry professional liability insurance during the period 2009- 2017.

AND TAKE NOTICE THAT the said allegations respecting misconduct will be heard and determined by a panel of the Discipline Committee of the College of Chiropractors ("Panel") **on seven days notice** in 2020 at the offices of the College of Chiropractors of Ontario, 59 Hayden Street, Suite 800, Toronto, Ontario, M4Y 0E7 and that you are entitled to appear in person or by counsel before the Panel with your witnesses, if any, and to adduce evidence and make submissions, at the aforesaid time and place.

AND TAKE NOTICE THAT should you fail to appear on the date and place aforesaid, the hearing may proceed and a decision may be made in your absence and you will not be entitled to any further notice in the proceedings.

The *Code* provides that if a Panel finds you to have committed an act of professional misconduct, it may make an Order doing any one or more of the following:

- i) directing the Registrar to revoke your Certificate of Registration;
- ii) directing the Registrar to suspend your Certificate of Registration for a specified period of time;
- iii) directing the Registrar to impose specified terms, conditions, and limitations on your Certificate of Registration for a specified or indefinite period of time;

- iv) requiring you to appear before the Panel to be reprimanded;
- v) requiring you to pay a fine of not more than \$35,000.00 to the Minister of Finance;
- vi) require you to reimburse the College for funding provided for a patient that was sexually abused under the program required under section 85.7 of the Health Professions Procedural Code;
- vii) require you to post security acceptable to the College to guarantee the payment of any amounts you may be required to reimburse the College for funding under the program required under section 85.7 of the Health Professions Procedural Code;
- viii) requiring you to pay all or part of the following costs and expenses:
 - a. the College's legal costs and expenses,
 - b. the College's costs and expenses incurred in investigating the matter, and
 - c. the College's costs and expenses incurred in conducting the hearing.

Furthermore, the Panel may suspend the effect of its Order for a specified period of time and on specified conditions, and where it makes an Order under paragraph (ii) or (iii) above, it may specify criteria to be satisfied for the removal of the suspension or the removal of terms, conditions and limitations imposed by the Order on your Certificate of Registration.

AND TAKE NOTICE THAT you may obtain disclosure of the written or documentary evidence to be used at the hearing by contacting the solicitor for the College, Mr. Chris Paliare, Paliare Roland Rosenberg Rothstein LLP, 155 Wellington St. West, 35th Floor, Toronto, ON M5V 3H1, by telephone at (416) 646-4318, or by facsimile at (416) 646-4338.

DATED at Toronto, this 15th day of July, 2020.

Jo-Ann Willson, Registrar and General Counsel
College of Chiropractors of Ontario

Appendix "B"

UNDERTAKING Exhibit "A"

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

I, Dr. Jonathan Forbes, undertake to the Registrar and agree to do the following:

1. On or before October 7, 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 CCO's 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; and

d. provide evidence that I have obtained professional liability insurance in accordance with the by-laws and Ontario Regulation R-003.

2. I will be peer assessed at my own expense within six months of returning to practice after the lifting of the suspension referred to in the Resolution Agreement at my Discipline Committee hearing.

3. I will reimburse the CCO for funding provided to Patient A. under the program required under section 85.7 of the Health Professions Procedural Code.

4. I will pay to the CCO a total of \$15,000.00 for the partial payment of its costs and expenses related to the investigation, hearing and legal costs by paying the CCO \$7,500.00 by December 7, 2020 and the remaining \$7,500.00 by December 31, 2021. I will provide a post-dated cheque for the latter payment by December 7, 2020.

5. I agree not to appeal or ask for a judicial review of the decision of the Discipline Committee.
6. 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.
7. 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, Daniel Libman. I am executing this Undertaking freely and voluntarily after reading and understanding its contents.

Signed this day of December, 2020

Dr. Jonathan Forbes

Witness Signature