

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

PANEL:	Mr. Robert MacKay (Chair)	Public Member
	Dr. Colin Goudreau	Professional Member
	Ms. Robyn Gravelle	Public Member
	Dr. Murray Townsend	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. CARLY BUTTERWORTH)	Mr. Lad Kucis for
(Registration #6454))	for Dr. Butterworth
)	
)	Heard: February 22, 2021
)	

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. Calypso Shincariol, 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 February 22, 2021. 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. Carly Butterworth (the “Member”) were set out in the Notice of Hearing, dated November 04, 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” to the Panel’s Decision and Reasons.

Mr. Paliare on behalf of the College stated 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. Carly Butterworth (“Member”) became a member of the College of Chiropractors of Ontario (“CCO”) in 2013.
2. At the relevant time, the Member practiced chiropractic at her clinic, Westend Family Chiropractic and Wellness (“Clinic”) in Orangeville, Ontario, which she opened in 2018.
3. The Member has no prior complaint or discipline history at the CCO.

Selling Orthotics at the Clinic

4. Prior to 2018, the Member worked at another chiropractic clinic in Orangeville. Had she testified, she would have said that it was common at that clinic to provide patients who purchased orthotics with free shoes that patients could select from the orthotics manufacturer.
5. When the Member opened the Clinic in 2018, she offered patients who purchased orthotics the opportunity to obtain free footwear from Atlas Orthotics Lab (“Atlas”), the company who supplied orthotics for the Clinic. Patients who participated in the promotion were charged \$500.00 for each pair of orthotics and advised that they could select a free pair of shoes or other footwear from Atlas. Atlas would then charge the Clinic \$150.00 for the footwear. The patient paid \$500.00 for the orthotics and received a receipt for \$500.00.
6. Had she testified, the Member would have said that in the Spring of 2019, as a result of patients complaining about the limited choice of footwear available from Atlas, she revised the promotion whereby any patient who purchased orthotics would be offered the opportunity to purchase footwear from either Atlas or another retailer of their choosing. If a patient chose to obtain footwear from Atlas, the Member would follow the protocol described above. However, if a patient chose to obtain footwear from another retailer, the patient was initially provided with a receipt for \$500.00, despite not having paid any money for the orthotics. If they purchased the footwear on their own and provided the Member with a receipt of proof of purchase of footwear, the Member would reimburse the patient up to \$150.00 for the footwear. In this latter scenario, the patient

would then be required to pay the Member at least \$350.00 for the orthotics, depending on the cost of the footwear (i.e. \$500.00 minus the cost of the footwear).

7. The Member advertised that patients could receive custom orthotics for \$500.00 and the price included \$150.00 for a “complimentary shoe allowance”. Patients were advised to ask their insurers whether the insurer would pay for a chiropractor to dispense orthotics and ascertain coverage limits for orthotics prior to attending the Clinic to purchase orthotics.
8. Had the Member testified, she would have said that she was unaware of any CCO standard or guideline that prohibited chiropractors from providing patients with complimentary footwear.
9. On August 15, 2019, Manulife had an undercover investigator attend at the Clinic. The undercover investigator indicated he was looking for orthotics. He was advised by a Clinic staff person to obtain a prescription from a doctor for the orthotics, and to contact his insurance company to confirm whether he had coverage for orthotics, and if so, the coverage amount, how often he could claim, and whether the insurer would pay for orthotics dispensed by a chiropractor. The undercover investigator was advised orthotics would cost \$500.00 and he would be given a \$150.00 shoe allowance.
10. On September 3, 2019, the undercover investigator returned to the Clinic with a prescription for orthotics. He was assessed by the Member, and asked her about the offer of free shoes. He was advised by the Member that he could select footwear on the Atlas website or alternatively he could purchase footwear from a retailer of his choosing, with a value of up to \$150.00 and to return to the Clinic with the receipt for the footwear he had purchased. Before he left the Clinic, the undercover investigator was given documentation by a staff person at the Clinic, including a receipt showing he had paid \$500.00 for orthotics, and a letter signed by the Member indicating he had ordered and paid \$500.00 for orthotics. The undercover investigator had not paid any money for orthotics.
11. On September 24, 2019, the undercover investigator purchased a pair of shoes at a retailer for \$135.55. He went to the Clinic, presented the

receipt for the shoes, and was provided with a pair of orthotics. The undercover investigator paid \$350.00 to the Clinic for the orthotics.

12. Manulife subsequently made a complaint dated October 9, 2019 to the CCO regarding the Member's business practices.
13. During the course of investigating the complaint, the CCO investigator interviewed the Member, who confirmed that a patient who bought 2 pairs of orthotics would receive a "shoe allowance" of up to \$300.00. In addition, according to the Member, if insurance coverage for a pair of orthotics was less than \$500.00, the Clinic would still issue a receipt indicating (falsely) that the patient had paid \$500.00 for the orthotics and would pay up to \$150.00 for foot wear (in the case of the revised promotion that commenced in the Spring of 2019). For example, if a patient's insurance coverage for orthotics was \$400.00, the patient would be provided with a receipt indicating they had paid \$500.00 for orthotics. The Clinic would pay the patient up to \$150.00 for the shoe allowance, and the patient would pay the Clinic \$250.00 for orthotics.
14. The CCO investigator obtained from Manulife a list of all claims for orthotics made by Clinic patients during the period November 1, 2018 – November 8, 2019. Among other things, the CCO investigator determined that during that period, Manulife had paid \$15,300.00 in relation to the Member's complimentary footwear promotions.

Relevant CCO Standards of Practice and Guidelines

15. CCO Standard of Practice S-012 Orthotics requires a member to comply with:
 - the business practices provisions in the Professional Misconduct Regulation under the *Chiropractic Act, 1991*, including the requirement to disclose to a patient the fee for a service before the service is provided, including a fee not payable by the patient, and to itemize an account; and
 - CCO Guideline G-008: Business Practices which provides that a member may not bill any payor fees in excess of his/her normal fee billed to a private patient for similar services.

In addition, the cost of the orthotics must reasonably relate to the time and expertise of, and cost to, the member. A member shall only issue a receipt for payments that have been received.

16. CCO Standard of Practice S-016: Advertising permits a chiropractor to advertise fees for chiropractic services under certain circumstances, including:

- the advertisement contains accurate, complete and clear disclosure of what is and what is not included in the fee;
- there are no hidden fees/costs;
- the member does not bill a third-party payor for the complimentary portion of the diagnostic or treatment service; and
- the advertisement is presented in a professional manner that maintains the dignity of the profession.

17. CCO Guideline G-008 Business Practices requires that members:

- charge fees for chiropractic care that reflect and are consistent with the examination and care that is recommended, provided and documented in the patient health record;
- charge fees that are fair and reasonable;
- only charge for care that is diagnostically or therapeutically necessary;
- provide an account for professional services that is itemized where the account includes a fee for a product or device or a service other than care;

- 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; and
- have a discussion with a patient of the member's involvement with billing third-party payors to ensure the patient is fully aware of their own responsibilities regarding reimbursement from any third-party payor.

Other

18. The Member co-operated fully with the CCO investigation. In addition, she has voluntarily and proactively taken a number of steps to improve her practice, including:

- a. reviewing relevant CCO standards and guidelines, including the Professional Misconduct Regulation; CCO Standard of Practice S-012: Orthotics; CCO Guideline G-008: Business Practices; CCO Standard of Practice S-016: Advertising, and CCO Guideline G-016: Advertising;
- b. taking courses regarding orthotics, marketing and recordkeeping; and
- c. changing practices at the Clinic, including issuing receipts that reflect the amount paid by the patient after payment has been received, ceasing to provide complimentary footwear, ensuring that insurers are not billed either directly or indirectly for complimentary services or products, itemizing accounts for professional services as required, and ensuring that her advertising reflects appropriate practices and is consistent with CCO requirements regarding advertising.

Admissions

19. The Member acknowledges that offering an incentive, such as free shoes, for patients to use their insurance coverage for orthotics could result in excessive and unnecessary demands and claims for medical devices. In addition, as the cost of the shoes that were free to patients were incorporated into the claims that were submitted to the insurer, the

Member now recognizes that the insurer effectively paid for the cost of shoes that were not a benefit of its insurance plans and were not itemized in any invoice or claim form.

20. As a result of the facts set out above, the Member admits that she committed acts of professional misconduct as described in the Notice of Hearing dated November 4, 2020 (“Notice of Hearing”), and in particular she:

- a. contravened a standard of practice of the profession or failed to maintain the standard of practice expected of members of the profession, as described in allegation #1;
- b. falsified a record or records relating to her practice, as described in allegation #2;
- c. signed or issued, in her professional capacity, a document she knew contained a false or misleading statement, as described in allegation #3;
- d. submitted an account or charge for services that she knew was false or misleading, as described in allegation #4; and
- e. 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, as described in allegation #5.

21. The Member acknowledges that she received advice from her counsel, Lad Kucis prior to entering into this Resolution Agreement. The Member agrees that she is entering into this Resolution Agreement and signing the Agreed Statement of Facts freely and voluntarily.

Member’s Plea

The Member admitted the Allegations contained in the Notice of Hearing (Exhibit 1) namely 1, 2, 3, 4, and 5. A plea inquiry was conducted by the Panel Chair. At the

conclusion of that process, the Panel was satisfied that the Member's admissions of professional misconduct were voluntary, informed and unequivocal.

Decision

The Panel heard submissions by Mr. Paliare on behalf of the College, and Mr. Kucis on behalf of the Member with respect to the Agreed Statement of Facts. During the course of the 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. Carly Butterworth in relation to allegations set out in the Notice of Hearing (Exhibit 1). In particular, the Panel found that the Member has:

- a. contravened a standard of practice of the profession or failed to maintain the standard of practice expected of members of the profession, as described in allegation #1;
- b. falsified a record or records relating to her practice, as described in allegation #2;
- c. signed or issued, in her professional capacity, a document she knew contained a false or misleading statement, as described in allegation #3;
- f. submitted an account or charge for services that she knew was false or misleading, as described in allegation #4; and

- g. 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, as described in allegation #5.

Taking into account 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 that the facts it contained 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. Kucis 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 eight months (“Suspension”), with the Suspension to take effect on March 1, 2021.
3. Directing the Registrar to impose the following terms, conditions and limitations (“Conditions”) on the Member’s certificate of registration:
 - a. By August 1, 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 Professional Misconduct Regulation; CCO Standard of Practice S-002: Record Keeping; CCO Standard of Practice S-012 Orthotics; CCO Standard of Practice S-016 Advertising; CCO Guideline G-016: Advertising; and CCO Guideline G-008: Business Practices; and
 - ii. provide evidence that she has successfully completed, at her own expense, the Legislation and Ethics Examination and the Record Keeping Workshop;
 - b. Requiring the Member to be peer assessed at her own expense within six months of returning to practice after the lifting of the Suspension.
4. Directing the Registrar to suspend three months of the Suspension if the Member satisfactorily completes the Conditions set out in Paragraph 3a.
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:

1. Requiring the Member to pay \$10,000.00 to the CCO to partially pay for its costs of the investigation and the costs and expenses of the hearing and of legal counsel by December 31, 2021, with the Member to provide post-dated cheques to the CCO for that amount by February 22, 2021.

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

Dr. Butterworth acknowledges that she received advice from her counsel, Lad

Kucis, prior to entering into this Resolution Agreement, and affirms that she 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, remediation of the Member and her practice, as well as ensuring specific and general deterrence. The Member had cooperated with the College and, by agreeing to the facts, has accepted responsibility for her actions. Dr. Butterworth has avoided the unnecessary 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 eight months (“Suspension”), with the Suspension to take effect on March 1, 2021.
3. Directing the Registrar to impose the following terms, conditions and limitations (“Conditions”) on the Member’s certificate of registration:
 - a. By August 1, 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 Professional Misconduct Regulation; CCO Standard of Practice S-002: Record Keeping; CCO Standard of Practice S-012 Orthotics; CCO Standard of Practice S-016 Advertising; CCO

Guideline G-016: Advertising; and CCO Guideline G-008: Business Practices; and

- ii. provide evidence that she has successfully completed, at her own expense, the Legislation and Ethics Examination and the Record Keeping Workshop;
 - b. Requiring the Member to be peer assessed at her own expense within six months of returning to practice after the lifting of the Suspension.
4. Directing the Registrar to suspend three months of the Suspension if the Member satisfactorily completes the Conditions set out in Paragraph 3a.
 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 \$10,000.00 to the CCO to partially pay for its costs of the investigation and the costs and expenses of the hearing and of legal counsel by December 31, 2021, with the Member to provide post-dated cheques to the CCO for that amount by February 22, 2021.

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 appeal of any decision by the Discipline Committee in relation to the November 04, 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

³ Appendix "B" of this Decision and Reasons.

the Panel administer the oral reprimand in the same manner at the conclusion of the hearing.

I, **Dr. Colin Goudreau**, sign this decision and reasons for the decision on behalf of the members of the Discipline Panel as listed below.



Dr. Colin Goudreau



Date: February 26, 2021

Panel Members:

Mr. Robert MacKay (Chair)
Dr. Colin Goudreau
Ms. Robyn Gravelle
Dr. Murray Townsend
Dr. Matthew Tribe

Appendix “A”
Allegations contained in the Notice of Hearing,
regarding Dr. Carly Butterworth (Exhibit 1)

TAKE NOTICE THAT IT IS ALLEGED THAT:

1. 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 November 1, 2018 – November 8, 2019, at Westend Family Chiropractic in Orangeville, 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 claim or claims for orthotics made to Manulife and/or reimbursing a patient or patients for the purchase of shoes.
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(20) of *Ontario Regulation 852/93*, in that during the period November 1, 2018 – November 8, 2019, at Westend Family Chiropractic in Orangeville, Ontario, you falsified a record or records relating to your practice with respect to claims made to Manulife for orthotics.
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(22) of *Ontario Regulation 852/93*, in that during the period November 1, 2018 – November 8, 2019, at Westend Family Chiropractic in Orangeville, Ontario, on one or more occasions, you signed or issued, in your professional capacity, a document you knew contained a false or misleading statement with respect to claims made to Manulife for orthotics.
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(23) of *Ontario Regulation 852/93*, in that during the period November 1, 2018 – November 8, 2019, at Westend Family Chiropractic in Orangeville, Ontario, on one or more occasions, you submitted an account or charge for services that you knew were false or misleading to Manulife for orthotics.
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(33) of *Ontario Regulation 852/93*, in that during the period November 1, 2018 – November 8, 2019, at Westend Family Chiropractic in Orangeville, Ontario, on one or more occasions, 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 your making claims to Manulife with respect to a claim or claims for orthotics and/or reimbursing a patient or patients for the purchase of shoes.

Appendix “B”

UNDERTAKING

Exhibit “A”

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

I, Dr. Carly Butterworth, undertake to the Registrar and agree to do the following:

1. On or before August 1, 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-016 Advertising; CCO Guideline G-008: Business Practices; and CCO Guideline G-016: Advertising;

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 \$10,000.00 for the partial payment of its costs and expenses related to its investigation, hearing and legal costs by December 31, 2021 and will providing post-dated cheques for that amount to the CCO on or before February 22, 2021.

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, Lad Kucis. I am executing this Undertaking freely and voluntarily after reading and understanding its contents.

Signed this day of February, 2021

Dr. Carly Butterworth

Witness Signature