DISCIPLINE COMMITTEE
OF THE COLLEGE OF CHIROPRACTORS OF ONTARIO

PANEL: Mr. Robert MacKay, Chair
Dr. Michaela Cadeau
Dr. Heather Jones
Ms. Judith McCutcheon
Dr. Bryan Wolfe

Public Member
Professional Member
Professional Member
Public Member
Professional Member

BETWEEN:

} Mr. Chris Paliare and
} Ms. Karen Jones for
} College of Chiropractors of Ontario

} Dr. Shahin Pourgol
} (REGISTRATION #3045)
} Mr. Calvin Barry
} for Dr. Pourgol

} Heard: September 16, 2010

Also present at the hearing were:

Mr. Brian Gover - Independent Legal Counsel to the Panel
Ms. Jo-Ann Willson - Registrar and General Counsel CCO
Ms. Andrea Smoley - Court Reporter

DECISION AND REASONS

Introduction

This was an uncontested hearing before a panel of the Discipline Committee (the "Panel") of the College of Chiropractors of Ontario (the "College") held on September 16, 2010. 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 Allegations

The allegations against Dr. Pourgol (the "Member"), were set out in the Notice of Hearing, dated April 21, 2010. The Notice of Hearing was entered as Exhibit 1 at the hearing.

The allegations in respect of the Member's conduct were as follows:

1. You have committed an act of professional misconduct as provided by subsection 51(1)(c) of the Health Professionals 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 you contravened a standard of practice of the profession or failed to maintain the standard of practice expected of members of the profession.

2. You have committed an act of professional misconduct as provided by subsection 51(1)(c) of the Health Professionals Procedural Code of the Chiropractic Act, 1991, S.O. 1991, c. 21, as amended, and paragraph 1(3) of Ontario Regulation 852/93, in that you did anything to a patient for a therapeutic, preventative, palliative, diagnostic, cosmetic or other health-related purpose in a situation in which consent is required by law, without such consent.

3. You have committed an act of professional misconduct as provided by subsection 51(1)(c) of the Health Professionals Procedural Code of the Chiropractic Act, 1991, S.O. 1991, c. 21, as amended, and paragraph 1(7) of Ontario Regulation 852/93, in that you discontinued professional services that were needed when the patient had not requested the discontinuation and/or alternative services had not been arranged and/or the patient had not been given a reasonable opportunity to arrange alternative services.

4. You have committed an act of professional misconduct as provided by subsection 51(1)(c) of the Health Professionals Procedural Code of the Chiropractic Act, 1991, S.O. 1991, c. 21, as amended, and paragraph 1(9) of Ontario Regulation 852/93, in that you practised the profession while you were in a conflict of interest.

5. You have committed an act of professional misconduct as provided by subsection 51(1)(c) of the Health Professionals Procedural Code of the Chiropractic Act, 1991, S.O. 1991, c. 21, as amended, and paragraph 1(11) of Ontario Regulation 852/93, in that you breached an agreement with a patient relating to professional services for the patient or fees for such services.
6. You have committed an act of professional misconduct as provided by subsection 51(1)(c) of the Health Professionals Procedural Code of the *Chiropractic Act*, 1991, S.O. 1991, c. 21, as amended, and paragraph 1(14) of *Ontario Regulation 852/93*, in that you provided a diagnostic or therapeutic service that was not necessary.

7. You have committed an act of professional misconduct as provided by subsection 51(1)(c) of the Health Professionals Procedural Code of the *Chiropractic Act*, 1991, S.O. 1991, c. 21, as amended, and paragraph 1(18) of *Ontario Regulation 852/93*, in that you used a name, other than your name as set out in the register, in the course of providing or offering to provide services within the scope of practice of the profession.

8. You have committed an act of professional misconduct as provided by subsection 51(1)(c) of the Health Professionals Procedural Code of the *Chiropractic Act*, 1991, S.O. 1991, c. 21, as amended, and paragraph 1(19) of *Ontario Regulation 852/93*, in that you failed to keep records as required by the regulations.

9. You have committed an act of professional misconduct as provided by subsection 51(1)(c) of the Health Professionals 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 you falsified a record relating to your practice.

10. You have committed an act of professional misconduct as provided by subsection 51(1)(c) of the Health Professionals Procedural Code of the *Chiropractic Act*, 1991, S.O. 1991, c. 21, as amended, and paragraph 1(21) of *Ontario Regulation 852/93*, in that you failed without reasonable cause to provide a report or certificate relating to an examination or treatment performed by you within a reasonable time after a patient requested such a report or certificate.

11. You have committed an act of professional misconduct as provided by subsection 51(1)(c) of the Health Professionals 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 signed or issued, in your professional capacity, a document that you knew contained a false or misleading statement.

12. You have committed an act of professional misconduct as provided by subsection 51(1)(c) of the Health Professionals 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 you submitted an account or charge for services that you knew was false or misleading.
13. You have committed an act of professional misconduct as provided by subsection 51(1)(c) of the Health Professionals Procedural Code of the Chiropractic Act, 1991, S.O. 1991, c. 21, as amended, and paragraph 1(26) of Ontario Regulation 852/93, in that you failed to itemize an account for professional services when requested to do so by the patient or the person or agency who was to pay, in whole or in part, for the services, or the account included a fee for a product or device or a service other than a treatment.


15. You have committed an act of professional misconduct as provided by subsection 51(1)(c) of the Health Professionals Procedural Code of the Chiropractic Act, 1991, S.O. 1991, c. 21, as amended, and paragraph 1(29) of Ontario Regulation 852/93, in that you contravened a federal, provincial or territorial law, a municipal by-law or a by-law or rule of a hospital within the meaning of the Public Hospitals Act, and the contravention was relevant to your suitability to practise.

16. You have committed an act of professional misconduct as provided by subsection 51(1)(c) of the Health Professionals 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 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.

The College indicated that it was withdrawing allegations 2, 3, 4, 5, 6, 9, 10, 12, 13, 14, and 15 the Notice of Hearing. The remaining allegations 1, 7, 8, 11, and 16 were being pursued.

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 be jointly presenting an Agreed Statement of Facts and a Joint Submission on Penalty.
The Agreed Statement of Facts which had been signed by the parties was entered as Exhibit 2.

Mr. Paliare indicated that this resolution was consistent with what the College would have been able to establish at a contested hearing.

**Member’s Plea**

The Member admitted the allegations in the Notice of Hearing as amended. The Panel was satisfied that the Member’s admission was voluntary, informed and unequivocal.

**Agreed Statement of Facts**

The Agreed Statement of Facts, Exhibit 2, was presented to the Panel. It provided as follows:

1. Dr. Shahin Pourgol ("Member") has been a member of the College of Chiropractors of Ontario ("College") since August 15, 1995.

2. During the relevant period, the Member controlled, ran, managed, or had close family connections to a number of clinics that provided legal, assessment or rehabilitation services. The clinics primarily served persons who had been involved in motor vehicle accidents and were eligible for benefits pursuant to the Ontario Statutory Accident Benefits Schedule.

3. On November 1, 2003, legislative amendments were made to the Ontario Statutory Accident Benefits Schedule, including amendments that required every provider to declare conflicts of interest, and permitted insurers to refuse to pay a claim if there was a conflict of interest.

4. Following November 1, 2003, the Member began signing certain statutory reports and documents, including Treatment Plans, Applications for Approval of an Assessment or Examination, and Auto Insurance Standard Invoices in his capacity as a chiropractor, using the names Shahin P. Kharat, Pourgol Kharat, and/or Shahin Pourgol Kharat. The Member also began identifying himself to insurers and others using the names Shawn Palys or Shawn Kharat.

5. The Member's use of names other than his name as set out in the College's register in the course of providing or offering to provide services within the scope of practice of the profession, meant that certain insurers, amongst others, were
either unable or were handicapped in their ability to review and audit insurance claims and applications.

Admissions

6. The Member admits that by using names other than his name as set out in the College’s register in the course of providing or offering to provide services within the scope of practice of the profession, he committed acts of professional misconduct by:

(i) contravening a standard of practice of the profession or failing to maintain the standard of practice expected of members of the profession, as alleged in paragraph 1 of the Notice of Hearing;

(ii) using a name, other than his name as set out in the register, in the course of providing or offering to provide services within the scope of practice of the profession, as alleged in paragraph 7 of the Notice of Hearing;

(iii) failing to keep records as required by the regulations as alleged in paragraph 8 of the Notice of Hearing;

(iv) signing or issuing, in his professional capacity, documents that he know contained false or misleading statements as alleged in paragraph 11 of the Notice of Hearing; and

(v) engaging in conduct or performing an act or acts that, having regard to all the circumstances, would reasonably be regarded by members as dishonourable and unprofessional, as alleged in paragraph 16 of the Notice of Hearing.

Other

7. The College withdraws allegations 2, 3, 4, 5, 6, 9, 10, 12, 13, 14, and 15 of the Notice of Hearing.

8. The Member acknowledges that he has obtained advice from his counsel, Calvin Barry, prior to entering into this Resolution Agreement signing this Agreed Statement of Facts. He is entering into this Agreed Statement of Facts and Resolution Agreement freely and voluntarily.
Decision

The Panel heard submissions by Mr. Paliare on behalf of the College, and Mr. Barry on behalf of the Member, with respect to the Agreed Statement of Fact. Following brief deliberation, the Panel accepted the Agreed Statement of Facts.

Consequently, we made findings of professional misconduct against Dr. Shahin Pourgoil in relation to allegations set out in the Notice of Hearing (Exhibit 1) as amended. In particular, the Panel found that the Member:

1. committed an act of professional misconduct as provided by subsection 51(1)(c) of the Health Professionals 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 he contravened a standard of practice of the profession or failed to maintain the standard of practice expected of members of the profession;

2. committed an act of professional misconduct as provided by subsection 51(1)(c) of the Health Professionals Procedural Code of the Chiropractic Act, 1991, S.O. 1991, c. 21, as amended, and paragraph 1(18) of Ontario Regulation 852/93, in that he used a name, other than his name as set out in the register, in the course of providing or offering to provide services within the scope of practice of the profession;

3. committed an act of professional misconduct as provided by subsection 51(1)(c) of the Health Professionals Procedural Code of the Chiropractic Act, 1991, S.O. 1991, c. 21, as amended, and paragraph 1(19) of Ontario Regulation 852/93, in that he failed to keep records as required by the regulations;

4. committed an act of professional misconduct as provided by subsection 51(1)(c) of the Health Professionals 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 he signed or issued, in his professional capacity, a document that he knew contained a false or misleading statement; and

5. committed an act of professional misconduct as provided by subsection 51(1)(c) of the Health Professionals 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 he 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.
In reaching its decision, the Panel relied exclusively on the evidence presented at the hearing.

Penalty

Counsel for the College advised the Panel that a Joint Submission as to Penalty had been agreed upon. The Joint Submission was entered as Exhibit 3 and it invited the Panel to make an order:

1. Requiring the Member to appear before the Panel to be reprimanded.

2. Directing the Registrar to suspend the Member’s certificate of registration for a period of two months.

3. Directing the Registrar to impose the following specified terms, conditions and limitations (“Conditions”) on the Member’s certificate of registration:

   (i) the Member shall successfully complete a legislation and ethics examination;

   (ii) the Member shall review all College Standards, including but not limited to, S-002: Record Keeping and the College’s proposed regulations on billing and conflict of interest, and provide proof to the Registrar that he has done so; and

   (iii) the Member shall be peer assessed within 6 months of his return to practice.

4. Suspending one month of the suspension if the Member completes the Conditions set out in paragraph 4(i) and 4(ii) above, within one month of the date of this decision.

5. Requiring the Member to pay a portion of the College’s investigative and legal costs in the amount of $15,000.00, payable by January 15, 2011.

6. Requiring that any dispute with respect to the interpretation and implementation of the Resolution Agreement be referred to a panel of the Discipline Committee, which shall have the power to resolve the dispute.

7. Providing that in the event the College investigates further matters which are similar to the matters in the Notice of Hearing, the Resolution Agreement, including the Agreed Statement of Facts and the Joint Submission on Penalty will, at College’s option, be provided to the Inquiries, Complaints and Reports Committee.

8. 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.
**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 and remediation of the Member and his practice. We note that the Member has cooperated with the College and, by agreeing to the facts has accepted responsibility for his actions. Dr. Pourgol has avoided unnecessary delay and expense in resolving the allegations at a full hearing. The proposed penalty is reasonable and in the public interest. The Panel therefore made an order:

1. Requiring the Member to appear before the Panel to be reprimanded.
2. Directing the Registrar to suspend the Member's certificate of registration for a period of two months.
3. Directing the Registrar to impose the following specified terms, conditions and limitations ("Conditions") on the Member's certificate of registration:
   - (i) the Member shall successfully complete a legislation and ethics examination;
   - (ii) the Member shall review all College Standards, including but not limited to, S-002: Record Keeping and the College's proposed regulations on billing and conflict of interest, and provide proof to the Registrar that he has done so; and
   - (iii) the Member shall be peer assessed within 6 months of his return to practice.
4. Suspending one month of the suspension if the Member completes the Conditions set out in paragraph 4(i) and 4(ii) above, within one month of the date of this decision.
5. Requiring the Member to pay a portion of the College's investigative and legal costs in the amount of $15,000.00, payable by January 15, 2011.
6. Requiring that any dispute with respect to the interpretation and implementation of the Resolution Agreement be referred to a panel of the Discipline Committee, which shall have the power to resolve the dispute.
7. Providing that in the event the College investigates further matters which are similar to the matters in the Notice of Hearing, the Resolution Agreement, including the Agreed Statement of Facts and the Joint Submission on Penalty will, at College's option, be provided to the Inquiries, Complaints and Reports Committee.
8. 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.

Administration of Reprimand

At the conclusion of the hearing, the Panel administered the reprimand required by paragraph 1 of the penalty order.

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 as listed below.

Mr. Robert MacKay, Chair

Panel Members:
Mr. Robert MacKay
Dr. Michaela Cadeau
Dr. Heather Jones
Ms. Judith McCutcheon
Dr. Bryan Wolfe

Date: January 24, 2011