

DISCIPLINE COMMITTEE
OF THE COLLEGE OF CHIROPRACTORS OF ONTARIO

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| PANEL: | Dr. Angela Barrow, Chair | Professional Member |
| | Ms G. Allan | Public Member |
| | Ms. K. Bourdeau | Public Member |
| | Dr. B. Budgell | Professional Member |
| | Dr. C. Goudreau | Professional Member |

BETWEEN:

| | | |
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| COLLEGE OF CHIROPRACTORS OF ONTARIO |) | Mr. Chris Paliare and |
| |) | Ms. Karen Jones for the |
| |) | College of Chiropractors of Ontario |
| - and - |) | |
| |) | |
| Dr. Edward Hayes |) | Self - Represented |
| (Registration # 2923) |) | |
| |) | Heard: September 6, 2018 |

Also present at the hearing were:

| | |
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| Mr. Colin Stevenson- | Independent Legal Counsel to the Panel |
| Ms. Jo-Ann Willson - | Registrar and General Counsel, CCO |
| Ms. Shari Corkum - | Court Reporter |

DECISION AND REASONS

INTRODUCTION

A hearing into allegations of professional misconduct against Dr. Edward Hayes ("Dr. Hayes", or the "Member") took place before a panel of the Discipline Committee (the "Panel") of the College of Chiropractors of Ontario (the "College" or "CCO") on September 6, 2018. 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.

For the reasons that follow, the Panel found that the Member engaged in professional misconduct related to fraudulent activity, documentation and billing, record keeping, falsification of records, signing documents containing false or misleading statements, charges submitted for services known to be false or misleading and contravention of a federal law.

THE ALLEGATIONS

The allegations against Dr. Edward Hayes were set out in two Notice of Hearings dated January 4, 2018 and March 14, 2018 which were entered as Exhibit 1 and 2 respectively. The allegations were as follows:

Notice of Hearing Exhibit 1: The Aviva Complaint

1. You have committed an act of professional misconduct as provided by subsection 51(1)(a) of the Health Professionals Procedural Code of the *Chiropractic Act*, 1991, S.O. 1991, c. 21, as amended, in that on or about January 30, 2017, you were found guilty of an offence that is relevant to your suitability to practise by a judge of the Ontario Court of Justice in the City of Toronto, and in particular, between August 8, 2014 and November 13, 2014 in the City of Toronto by deceitful, falsehood or other fraudulent means, you were found to have defrauded Aviva Canada Insurance of monies of a value not exceeding \$5,000.00 contrary to section 380(1)(b) of the Criminal Code of Canada.
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(2) of *Ontario Regulation 852/93*, in that during the period August 8, 2014 to January 23, 2015, 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, documentation and billing regarding patients known as "Patient A", "Patient B" and/or "Patient C."
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(19) of *Ontario Regulation 852/93*, in that during the period August 8, 2014 to January 23, 2015, on one or more occasions, you failed to keep records as required by the regulations regarding patients known as "Patient A", "Patient B" and/or "Patient C."

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(20) of *Ontario Regulation 852/93*, in that during the period August 8, 2014 to January 23, 2015, on one or more occasions, you falsified a record relating to your practice regulations regarding patients known as "Patient A", "Patient B" and/or "Patient C."

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(22) of *Ontario Regulation 852/93*, in that during the period August 8, 2014 to January 23, 2015, on one or more occasions, you signed or issued, in your professional capacity, a document you knew contained a false or misleading statement regarding patients known as "Patient A", "Patient B" and/or "Patient C."

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(23) of *Ontario Regulation 852/93*, in that during the period August 8, 2014 to January 23, 2015, on one or more occasions, you submitted an account or charge for services that you knew was false or misleading regarding patients known as "Patient A", "Patient B" and/or "Patient C."

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(29) of *Ontario Regulation 852/93*, in that during the period August 8, 2014 to November 13, 2014 in the City of Toronto, you contravened a federal law and the contravention was relevant to your suitability to practise, and in particular, by deceitful, falsehood or other fraudulent means, you defrauded Aviva Canada Insurance of monies of a value not exceeding \$5,000.00 contrary to section 380(1)(b) of the Criminal Code of Canada.

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(33) of *Ontario Regulation 852/93*, in that during the period August 8, 2014 to January 23, 2015, 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 treatment, documentation and billing regarding patients known as "Patient A", "Patient B" and/or "Patient C."

Notice of Hearing Exhibit 2: The Registrar's Investigation

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 during the period 2012 to 2016, 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, documentation and billing regarding one or more patients known as "Patient 1", "Patient 2", "Patient 3", "Patient 4", "Patient 5", "Patient 6", "Patient 7", "Patient 8", "Patient 9" and "Patient 10."
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(19) of *Ontario Regulation 852/93*, in that during the period 2012 to 2016 on one or more occasions, you failed to keep records as required by the regulations regarding one or more patients known as "Patient 1", "Patient 2", "Patient 3", "Patient 4", "Patient 5", "Patient 6", "Patient 7", "Patient 8", "Patient 9" and "Patient 10."
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(20) of *Ontario Regulation 852/93*, in that during the period 2012 to 2016, on one or more occasions, you falsified a record relating to your practice regarding patients known as "Patient 1", "Patient 2", "Patient 3", "Patient 4", "Patient 5", "Patient 6", "Patient 7", "Patient 8", "Patient 9" and "Patient 10."
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(22) of *Ontario Regulation 852/93*, in that during the period 2012 – 2016, on one or more occasions, you signed or issued, in your professional capacity, a document you knew contained a false or misleading statement regarding one or more patients known as patients known as "Patient 1", "Patient 2", "Patient 3", "Patient 4", "Patient 5", "Patient 6", "Patient 7", "Patient 8", "Patient 9" and "Patient 10."
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(23) of *Ontario Regulation 852/93*, in that during the period 2012 – 2016, on one or more occasions, you submitted an account or charge for services that you knew was false or misleading regarding one or more patients known as "Patient 1", "Patient

2", "Patient 3", "Patient 4", "Patient 5", "Patient 6", "Patient 7", "Patient 8", "Patient 9" and "Patient 10."

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(33) of *Ontario Regulation 852/93*, in that during the period 2012 – 2016, 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 treatment, documentation and billing regarding one or more patients known as patients known as "Patient 1", "Patient 2", "Patient 3", "Patient 4", "Patient 5", "Patient 6", "Patient 7", "Patient 8", "Patient 9" and "Patient 10."

THE EVIDENCE

An Agreed Statement of Facts signed by both parties was entered as Exhibit 3. Counsel for the College, Mr. Paliare, reviewed the Agreed Statement of Facts which provides as follows:

A. The Member

1. Dr. Edward Hayes ("Member") was licensed to practise chiropractic in the State of Michigan during the period November 29, 1984 – November 30, 1994. He voluntarily surrendered his State of Michigan chiropractic license on July 11, 1995.
2. The Member was convicted of mail fraud on March 17, 1993 in Detroit Michigan in relation to his paying persons to come to his chiropractic clinic and have x-rays taken. He was sentenced to 12 months imprisonment with 2 years probation, a fine of \$5,767.00, restitution to Blue Cross/Blue Shield in the amount of \$140,000.00, and a \$50.00 special assessment. On October 4, 1993, the Member was transferred to Canada for execution of sentence.
3. He became a member of the College of Chiropractors of Ontario ("CCO") in 1994.
4. The Member has not been the subject of a previous CCO Discipline Committee hearing.

B. The Two Notices of Hearing

5. The CCO's Inquiries, Complaints and Reports Committee ("ICRC") has referred allegations of professional misconduct to the Discipline Committee concerning the Member in two separate Notices of Hearing.

6. The Notice of Hearing dated January 4, 2018 concerns issues raised by complainant insurer Aviva Canada ("Aviva Complaint").
7. After the CCO received the Aviva Complaint, the CCO Registrar and General Counsel appointed an investigator to determine whether the Member committed other acts of professional misconduct or was incompetent ("Registrar's Investigation"). The ICRC referred allegations of professional misconduct arising from the Registrar's Investigation which are contained in the Notice of Hearing dated March 14, 2018.
8. The Member and the CCO agree that the two Notices of Hearing involve the same or similar questions of fact, law and policy and they consent to the proceedings being combined in this hearing, pursuant to section 9.1(1)(a) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22.

C. The Aviva Complaint

9. On August 8, 2014, "D.S." was driving the car of his friend, "R.L." [identified as "Patient A" in the Notice of Hearing dated January 4, 2018]. R.L. was a passenger in the car. D.S. lost control of the car and hit a tree. No one was hurt in the accident. R.L. did not have collision insurance for his car so was not covered for repairs.
10. D.S. told R.L. that he knew of a rehabilitation clinic where they could get money for repairs to the car.
11. D.S. took R.L. to the Wellness Centres of Ontario at 3500 Dufferin Street in Toronto ("Clinic") on August 14, 2014. The Member was the only chiropractor and registered health professional at the Clinic. During the relevant time, the Member was responsible for the Clinic's operations.
12. If R.L. had testified, he would have said that when he attended the Clinic on August 14, 2014, he told the receptionist that he had not been hurt in the accident. She had him sign a number of forms. The receptionist told R.L. to complain of certain injuries, including headaches, dizziness and nausea. She also told him he did not need to attend for treatment but instead had him sign a number of dated appointments on a sign-in sheet.
13. R.L. then saw the Member. The Member examined him, made notes, and arranged for him to have a massage.
14. Had R.L. testified, he would have said he was then directed by the receptionist to a lawyer's office down the hall, where he met with an unknown male. R.L. made it clear to the unknown male that he had not been injured. He signed some documents and the male congratulated him and said they would get a settlement in a year of about \$10,000.00.

The lawyer's office and Clinic would keep \$7,000.00 and he would get \$3,000.00.

15. R.L. did not receive any treatment from the Member or at the Clinic. The Member provided him with an initial consultation and examination.
16. The Member submitted an invoice to Aviva for \$3,500.00 for 14 treatments he purportedly provided to R.L. between August 14, 2014 and November 7, 2014. The Member also created SOAP notes for R.L.'s chiropractic file indicating he had provided 13 chiropractic treatments. He signed other documents, including a Copy of Statutory Declaration, in which the Member attested to the fact that he had personally conducted the full assessment and treatment for R.L.
17. On August 24, 2014, R.L. called his insurance broker and advised him that he wanted to stop the insurance claim as he had not been injured in the August 8, 2014 accident. The insurance broker then contacted Aviva.
18. Because R.L. cancelled his claim, Aviva only paid out \$200.00 for the claim.
19. Aviva then hired two private investigators, D.K. [identified as "Patient B" in the Notice of Hearing dated January 4, 2018] and I.M. [identified as "Patient C" in the Notice of Hearing dated January 4, 2018]. The private investigators attended at the Clinic undercover and secretly videotaped their interactions with the Member and the Clinic receptionist. They also went to the lawyer's office down the hall from the Clinic where they met with a paralegal.
20. The interactions the private investigators had with the Clinic and the law office resulted in a similar fraudulent scheme as with R.L. Similar to R.L., the receptionist had the private investigators sign forms and a sign-in sheet for multiple days. She had them sign using different colours of ink to make it appear as though they attended the clinic on different days. She also counselled the private investigators on the signs and symptoms they were to report experiencing to the insurance company.
21. The Member saw both private investigators. He gave them a brief exam and made notes. He suggested to them the injuries and symptoms they should claim to be experiencing. They left the Clinic and did not receive any treatment subsequent from the Member.
22. The Member billed Aviva for multiple services on different dates for treating the investigators, even though he only saw the investigators on one occasion. For D.K., the Member submitted an invoice to Aviva for \$4,500.00 for 21 treatments he said he provided between April 2, 2015

and November 16, 2016. He also created SOAP notes in D.K.'s file indicating he treated D.K. 27 times, and he completed several insurance forms which contain false information, even though he knew he was responsible for providing accurate and complete information to the insurer. Based on the Member's claims, Aviva paid out \$2,400.00.

23. For I.M., the Member submitted an invoice to Aviva for \$3,500.00 for 21 treatments he said he provided between April 2, 2015 and November 16, 2016. The Member created SOAP notes in I.M.'s chart indicating he provided treatment on 21 occasions, as well as various insurance documents, including a Copy of Statutory Declaration in which the Member attested to the fact that he had personally conducted the full assessment and treatment for I.M. Aviva paid out \$2,400.00 for the claims.
24. The total loss suffered by Aviva (including the \$200.00 paid out for R.L.) was \$4,800.00.
25. On March 30, 2016, the Member was charged with 2 counts of fraud under \$5,000.00.
26. On January 30, 2017, the Member pled guilty to having defrauded Aviva Canada Insurance of monies of a value under \$5,000.00 contrary to section 380(1)(b) of the Criminal Code of Canada. He was sentenced to 6 months house arrest and 12 months of probation. He was also required to pay a victim fine surcharge. The Member admits that this offence is relevant to his suitability to practice chiropractic.

D. Admissions re: The Notice of Hearing dated January 4, 2018 (Aviva Complaint)

27. The Member admits that, based on the facts set out above, he committed the acts of professional misconduct alleged in the Notice of Hearing dated January 4, 2018, and in particular, he
 - a. was found guilty of an offence that is relevant to his suitability to practise by a judge of the Ontario Court of Justice in the City of Toronto on January 30, 2017, and in particular, between August 8, 2014 and November 13, 2014, he was found to have defrauded Aviva Canada Insurance of monies of a value not exceeding \$5,000.00 contrary to section 380(1)(b) of the Criminal Code of Canada in the City of Toronto by deceitful, falsehood or other fraudulent means, as set out in allegation 1;
 - b. contravened a standard of practice of the profession or failed to maintain the standard expected of members of the profession, as set out in allegation 2;

- c. failed to keep records as required by the regulations, as set out in allegation 3;
- d. falsified a record relating to his practise as set out in allegation 4;
- e. signed or issued, in his professional capacity, a document he knew contained a false and misleading statement as set out in allegation 5;
- f. submitted an account or charge for services that he knew was false and misleading, as set out in allegation 6;
- g. contravened a federal law, and the contravention was relevant to his suitability to practise, as set out in allegation 7; and
- h. 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 set out in allegation 8.

E. The Registrar's Investigation

- 28. On February 4, 2016, the CCO was informed that the 32 Division Fraud Squad of the Toronto Police Services was going to execute a search warrant at the Clinic. Investigators were appointed by the Registrar and General Counsel to ascertain whether the Member had committed acts of professional misconduct.
- 29. The investigators attended at the Clinic on February 5, 2016 while the Toronto Police Services executed a warrant. The Member was at the Clinic when the investigators arrived. The investigators seized 22 bankers boxes of documents from the Clinic office. Their review focussed on 42 patient files that were found on the Member's desk and patient sign-in sheets found in the reception area. Ultimately, the investigators reviewed the sign in sheets and 10 of the patient files in detail.
- 30. The 10 patients whose files were reviewed in detail are identified as Patient 1 – Patient 10 in the Notice of Hearing dated March 14, 2018.
- 31. Many anomalies were found in the sign in sheets, including:
 - a. of the sign-in sheets for 287 patients that were collected:
 - i. 180 of the patients had sign-in sheets that were pre-signed although there were no attendance dates on the sheets; and
 - ii. 26 of the sheets contained dates of attendances but no patient signatures.
- 32. Many anomalies were found in the 42 patient files, including:
 - a. 23 of the patient files had incomplete clinical notes;
 - b. 10 of the patient files contained clinical notes that had been newly created and had been back dated;
 - c. 29 of the patient files contained pre-signed and undated patient attendance sign in sheets, sign in sheets that contained duplicate

date entries, and sign in sheets containing inconsistent signatures or that had been altered; and

- d. 3 of the patient files contained documents (e.g., sign-in sheets, patient assessments, OCF-3, OCF-18s, OCF-23s etc.) that were dated after February 4, 2016.
33. The investigators selected 10 of the patient files for a more detailed review, and also attempted to contact the patients. They were only able to contact patients for two of the files: "A.M. [identified as Patient 1 in the Notice of Hearing dated March 14, 2018] and "O.A." [identified as Patient 2 in the Notice of Hearing dated March 14, 2018].
 34. Both A.M. and O.A. confirmed they had received treatment from the Member following motor vehicle or motor cycle accidents. A.M. had received 7 or 8 treatments and O.A. had received approximately 25 treatments.
 35. Had A.M. and O.A. testified, they would have said that, as part of the investigation, they were asked to review their chiropractic records. Further, they would have testified that their chiropractic records contained documents that they appeared to have signed. However, they had not signed the documents and they identified the signatures as false signatures.
 36. There were no notes of any chiropractic treatment provided to A.M. in his chiropractic file.
 37. There were notes of chiropractic treatments in O.A.'s chiropractic record for treatments from the Member that had not been provided.
 38. A.M. and O.A. would also have testified that their insurers had received claims from the Clinic for many more treatments than were actually provided. A.M.'s insurer had received and paid for claims for 24 treatments provided by the Member. O.A.'s insurer had received and paid for 161 claims for treatments provided by the Member.
 39. With respect to the other 8 patient files that were reviewed in detail:
 - a. the files contained either no SOAP notes or incomplete SOAP notes;
 - b. the files contained patient sign-in sheets that contained anomalies including:
 - i. signatures but not dates;
 - ii. varied signatures;
 - iii. treatment dates that were signed in advance of treatment including dates that post-dated the seizure of the records), pre-signed but undated sheets etc.;

- c. the files contained claims for services made by the Clinic and records of payment for services to the Clinic, although there was no documentation confirming the services had been provided;
- d. the files contained directions to pay and patient signature pages from various OCFs that were signed but not dated. In some files, signature pages were signed and post dated.

F. Admissions re: The Registrar's Investigation

40. The Member admits that, based on the facts set out above, he committed the acts of professional misconduct alleged in the Notice of Hearing dated March 14, 2018, and in particular, he
- a. contravened a standard of practice of the profession or failed to maintain the standard expected of members of the profession, as set out in allegation 1;
 - b. failed to keep records as required by the regulations, as set out in allegation 2;
 - c. falsified a record relating to his practise as set out in allegation 3;
 - d. signed or issued, in his professional capacity, a document he knew contained a false and misleading statement as set out in allegation 4;
 - e. submitted an account or charge for services that he knew was false and misleading, as set out in allegation 5; and
 - f. 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 set out in allegation 6.

OTHER

41. The Member acknowledges that he has been advised by the CCO to obtain independent legal advice and has had sufficient opportunity to do so.

Findings of Professional Misconduct

The Panel Chair asked a number of questions directly to the Member and we determined that he understood the allegations against him, that he was aware of the potential consequences of his admitting the allegations, and that he had voluntarily decided to admit the allegations. The Chair then asked Independent Legal Counsel for advice and gave both Counsel for the College and the Member an opportunity to respond.

Following a brief recess the Panel accepted the facts as set out in the Agreed Statement of Facts, Exhibit 3, and decided that the Member's express

admissions and the Agreed Statement of Facts provided a sufficient basis for making the findings of professional misconduct that the parties invited the Panel to make.

Consequently, we found that the Member engaged in the forms of professional misconduct set out in Allegations 1-8 of Exhibit 1 and Allegations 1-6 of Exhibit 2. We noted that in the Agreed Statement of Facts the Member had agreed that his behaviour would reasonably be regarded by Members as disgraceful, dishonourable and unprofessional.

PENALTY SUBMISSIONS

Counsel for the College presented the Panel with Written Submissions of the College of Chiropractors of Ontario with Respect to Penalty. The College included four cases from the College of Pharmacists, the Law Society of Upper Canada, the College of Nurses of Ontario and the College of Physicians and Surgeons of Ontario in support of its submissions.

The College of Chiropractors of Ontario ("CCO") submitted that the Panel of the Discipline Committee should make an Order:

- a. requiring Dr. Hayes to appear before the panel of the Discipline Committee to be reprimanded;
- b. directing the Registrar to revoke Dr. Hayes' certificate of registration; and
- c. directing that the results of the proceeding be recorded in the public portion of the register and that the decision of the Discipline Panel be published in the CCO annual report and other communications of the CCO in the ordinary course.

Counsel for the College made a lengthy submission with respect to this proposed penalty. The Member did not agree with the penalty requested by the College and made submissions specifically as to why his registration should not be revoked.

Mr. Paliare, the College's Counsel, reminded the Panel that the primary objective of any penalty is to protect the public interest. He argued that the proposed sanction in this case will send a message not only to the Member, but also to the public and the profession, that serious misconduct and dishonesty will not be tolerated by the chiropractic profession. He outlined that in tailoring the appropriate sanction under section 51(2) of the Health Professions Procedural Code, the following factors may be considered:

- (i) the nature of the misconduct;
- (ii) aggravating factors;
- (iii) mitigating factors; and
- (iv) sanctions imposed for similar misconduct.

In Dr. Hayes' submissions on his own behalf he admitted that as the only regulated healthcare professional at the Wellness Centre where he was employed, it was his responsibility to make certain that the records, including examination and treatments, as well as billing records, were intact and accurate. He went on to say that due to the intense pressure by the clinic manager and administrative billing agent, he falsified clinical records and signed statutory documents.

PENALTY DECISION

After a recess and deliberations, the Panel found the penalty requested by the college to be appropriate and in the public interest and therefore made the order requested by the College. The Panel's decision was made based on the following considerations:

The Nature of the Misconduct: Dr. Hayes committed many acts of professional misconduct related to insurance fraud. This was not a one time occurrence. The Discipline Panel takes this kind of repeated behaviour very seriously. The chiropractic profession depends heavily on having unquestionable integrity and trustworthiness. Dr. Hayes' lack of honesty and deceitfulness go completely against the fundamental requirements of CCO Members to maintain a high standard of integrity and honesty. Dr. Hayes' premeditated criminal conduct and dishonesty shake the public's confidence and trust in chiropractors. This has a serious negative impact on the profession as a whole.

Aggravating Factors: The Panel considered the likelihood of the Member re-offending. After being previously convicted of insurance fraud in 1993 in the State of Michigan, receiving a significant penalty, including jail time, a monetary fine and the requirement to repay an insurer \$140,000.00, it did not deter Dr. Hayes from engaging in insurance fraud again in 2017. Dr. Hayes provided no evidence which would suggest to the Panel that he would not engage in fraudulent acts in the future.

The Registrar's investigation of the Member was expansive, involving many patient files. The investigation found that there was extensive falsification of documents, indicating an elaborate pre-planned scheme. This fraudulent scheme resulted in money being paid to the Clinic and Member for services that were not provided. This shows a complete lack of integrity and honesty and is a serious breach of trust that negatively affects the reputation of the entire chiropractic profession.

Dr. Hayes has not reimbursed the insurance companies for the money he received through his fraud. This lack of restitution is another reason for the Panel to believe the penalty against Dr. Hayes is appropriate.

Generally, the Discipline Committee considers sanctions imposed in cases of a similar nature. However, there has never been a case at the College before

where a member has been criminally convicted on two separate occasions for insurance fraud. The Panel therefore turned to cases of a similar nature before other regulatory bodies in Ontario to assist it in its consideration of the penalty where there has been repeated criminal conduct. In these circumstances, in our view revocation was the appropriate outcome for premeditated, deliberate, repetitive, dishonest conduct, in the issuing of documents containing false and misleading statements and false billing for many patients over an extended period of time.

Dr. Hayes knowingly engaged in fraudulent conduct. He was convicted on two separate occasions. He has demonstrated that he cannot be trusted and is likely to act dishonestly again in the future.

The public must be confident not only in a chiropractor's skills but also in a chiropractor's honesty. A chiropractor who is not honest and will not act ethically and with integrity should not be in the profession.

Finally and perhaps most importantly, revocation serves the purpose of maintaining public protection and confidence in the profession. Revocation sends a clear message to the membership and the public that chiropractors who engage in fraud and other dishonest conduct do not merit the privilege of being a Member of this profession.

COSTS

The College asked for an order that Dr. Hayes pay \$15,000.00 as costs within six months from the date of the hearing. The member submitted that he needed more than six months; indeed possibly years to pay the costs as he is no longer employed as a chiropractor and did not have any other financial means. The College was prepared to extend the payment date to December 31, 2019 with post-dated cheques. Once again the member claimed he had no ability to pay if the penalty included revocation. The panel questioned the College as to the total cost of the case. Although College counsel did not have a precise total for the cost of the investigation, legal fees etc., it noted that costs for a hearing day are typically in the order of \$12,000.00/day. Thus the \$15,000.00 the College was asking from the Member was significantly less than 50% of the total costs.

The Panel sought advice from its Independent Legal Counsel who provided insight into costs and highlighted the fact that during Dr. Hayes' submissions, the Member did not object to the amount of the costs but to the time given to pay them.


After another recess and deliberations, the Panel awarded costs to the College payable by Dr. Hayes in the amount of \$15,000.00 to be paid on or before December 31, 2019. It was left to Dr. Hayes to pay the costs without mandatory post dated cheques.

ORDER

The Panel therefore made the following orders:

1. Dr. Hayes is to appear before the panel of the Discipline Committee to be reprimanded;
2. The Panel directs the Registrar to revoke Dr. Hayes' certificate of registration;
3. The results of the proceeding are to be recorded in the public portion of the register and the decision of the Discipline Panel is to be published in the CCO annual report and other communications of the CCO in the ordinary course; and
4. Dr. Hayes shall pay to the College costs in the amount of \$15,000.00 on or before December 31, 2019.

I, Angela Barrow, 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.

 October 15, 2018

Dr. Angela Barrow, Chair

Order made September 6, 2018
Reasons released October 15, 2018

Panel Members: Dr. Angela Barrow
Ms. Georgia Allan
Ms. Karolyn Bourdeau
Dr. Colin Goudreau
Dr. Brian Budgell