

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

PANEL:	Mr. Doug Cressman, Chair	Public Member
	Ms. Judith McCutcheon	Public Member
	Dr. Angela Barrow	Professional Member
	Dr. Colin Goudreau	Professional Member
	Dr. Pat Tavares	Professional Member

BETWEEN:

	)	
	)	
COLLEGE OF CHIROPRACTORS	)	Mr. Chris Paliare and
OF ONTARIO	)	Ms. Karen Jones for the
	)	College of Chiropractors of Ontario
- and -	)	
	)	
Dr. Michael Reid	)	Mr. Zameer Hakamali
(REGISTRATION #2639)	)	for Dr. Reid
	)	
	)	
	)	Heard: January 29, 2018

Also present at the hearing were:

Mr. Paul Le Vay - Independent Legal Counsel to the Panel  
Ms. Jo-Ann Willson - Registrar and General Counsel CCO  
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”). 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.

After carefully considering all of the evidence, the Panel finds that Dr. Reid has committed three acts of professional misconduct as alleged in the Notice of Hearing below, namely,

1. failing to maintain the standard of practice expected of members of the profession,
2. failing to comply with an order of the Discipline Committee, and
3. engaging in conduct that would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

These findings relate to his failure to comply with an order to pay costs awarded to the College in a previous decision by another Discipline Panel. Our reasons are set out below.

### **The Allegations**

The allegations against Dr. Michael Reid, (the "Member"), were set out in the Notice of Hearing, dated June 26, 2017. 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 ("Code"), 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 by failing to pay costs ordered by a panel of the Discipline committee on August 26, 2015 and/or by breaching the Discipline Committee Order dated August 26, 2015 requiring you to pay the College of Chiropractors of Ontario \$166,194.50.
2. You have committed an act of professional misconduct as provided by subsection 51(1)(c) of the Code, and paragraph 1(31) of Ontario Regulation

852/93, in that you failed to comply with an August 26, 2015 order of the Discipline Committee requiring you to pay the College of Chiropractors of Ontario \$166,194.50.

3. You have committed an act of professional misconduct as provided by subsection 51(1)(c) of the Code, 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 because you breached the August 26, 2015 order of a panel of the Discipline Committee requiring you to pay the College of Chiropractors of Ontario \$166,194.50 in costs by not paying the costs.

### **Member's Response to the Allegations**

The Member was not present at the hearing. His counsel confirmed that he had received notice of the hearing and counsel was prepared to proceed in his client's absence. At the outset of the hearing, the Member, through his counsel, denied the allegations contained in the Notice of Hearing (Exhibit 1). Thus, the College was required to prove the allegations on a balance of probabilities.

### **Summary of the Evidence**

The Panel admitted 13 exhibits into evidence, including decisions of previous Discipline Panels as well as of appellate courts related to Dr. Reid's prior discipline proceeding. These decisions set out the costs awards made against the Member and the comments of appellate courts on that issue. The exhibits also included related emails between the parties. The Panel heard from one witness, Ms Tina Perryman, manager of the Inquiries, Complaints and Reports Committee of the College who was called by the College. Her CV was admitted into evidence (Exhibit 2). The Panel found Ms. Perryman to be a credible witness and that her evidence was reliable.

Mr. Hakamali did not call any evidence on behalf of Dr. Reid.

The evidence established that Dr. Reid is a member of the College of Chiropractors of Ontario (CCO). In November 2014, he was found to have committed acts of professional misconduct (Exhibit 3). The panel held a hearing on penalty in February

2015 and, on March 18, 2015 imposed certain penalties upon the Member and invited the parties to make submissions on costs (Exhibit 4). In August, 2015, a Discipline Panel ordered the Member to pay costs to the College of \$166,194.50, which, that Panel held, amounted to approximately 51% of the College's bill of costs (Exhibit 5).

Dr. Reid appealed all aspects of the Panel's decision (liability, penalty and costs) to Divisional Court. In reasons dated June 13, 2016 (Exhibit 6), the Divisional Court dismissed the Member's appeal and upheld the decisions of the Discipline Panel, including in respect of costs. Dr. Reid subsequently sought leave to appeal the Divisional Court's decision to the Court of Appeal for Ontario. However, he missed the deadline for seeking leave to appeal and had to bring a motion to the Court of Appeal to extend the time for doing so. In a decision dated October 24, 2016 (Exhibit 7), the Court of Appeal dismissed that motion on the basis of the lack of merit of the proposed appeal, including with respect to costs.

To date, Dr. Reid has not paid costs, nor has he communicated any type of offer, nor a plan to pay the costs. After a series of emails over the course of more than a year, the CCO referred the matter back to the Inquiries, Complaints and Reviews Committee (ICRC), who then referred it to Discipline.

### **The Issues**

1. Does a failure to pay costs constitute professional misconduct as a failure to maintain a standard of practice of the profession?
2. Does a failure to pay costs constitute professional misconduct in failing to comply with an order of a Discipline Committee?
3. Does a failure to pay costs constitute conduct that would reasonably be regarded by members as disgraceful, dishonourable or unprofessional?

### **Submissions by the College**

The College contended that failure to pay costs awarded by a previous Discipline Panel constitutes professional misconduct as outlined in the Notice of Hearing, Exhibit 1.

The College submitted that this was a simple case. The evidence established that a Discipline Panel made an order on August 26, 2015, that costs payable by Dr. Reid to the College were set at \$166,194.50 (Exhibit 5).

The College contends that costs are payable when an order is final and that following the release of the Court of Appeal's decision on October 24, 2016 dismissing the Member's motion to extend the time for leave to appeal (Exhibit 7), the cost order became final and therefore owing. Mr. Paliare submitted that the emails (Exhibits 8 through 13) show an exchange between CCO counsel and Dr. Reid's counsel, beginning October 28, 2016 through to December 5, 2016, which demonstrate that Dr. Reid, despite knowing of his obligation with respect to costs has not paid costs, nor has he submitted any proposal to do so.

The College submits that this conduct satisfies all three definitions of professional misconduct alleged. It is clearly the failure to comply with an order of the Discipline Committee made August 26, 2015 (Allegation #2). With respect to the question of whether the conduct amounts to a failure to meet the standard of practice (Allegation #1), the College relied upon College Guideline G-009 that deals with the Code of Ethics. This Guideline requires members to comply with the Regulated Health Professions Act and the Code. In the unusual circumstances of this case, the College submits that the Panel can and should evaluate Dr. Reid's conduct and find he has failed to maintain the standard of practice expected of members of the profession by failing to comply with regulations and failing to comply with the Discipline order. With respect to Allegation #3, the College argues that the failure to pay the costs is clearly unprofessional because it shows a disregard for his professional obligations, that it is dishonourable because it demonstrates moral failing and that it is disgraceful because it shows an ongoing failure by him to own up to his obligations and responsibilities as a member of a self-governing profession, and an intentional breach of the regulations governing chiropractic. It shows that Dr. Reid is advancing his own interests, and that of his own pocketbook over his regulator and his colleagues who have to bear the burden of paying for his professional misconduct.

### **Submissions by Dr. Reid**

Mr. Hakamali on behalf of Dr. Reid submitted that since there was no specific date prescribed for payment, the date of the obligation was not perfectly clear and therefore a finding of professional conduct cannot follow. He further submitted, by making reference by analogy to the law of contempt in civil litigation, that a finding of professional misconduct for failing to comply with an order of the Discipline Committee ought not to apply to orders in respect of the payment of money and that, in respect of such orders, the College ought to be restricted to the steps it has available to it for collection in the event of non-payment.

### **Decision and Reasons**

In the matter before the Panel, the College must establish on the balance of probabilities that Dr. Reid's failure to pay costs is an act of professional misconduct in that:

1. it contravenes an expected standard of the profession,
2. there has been a failure to comply with an earlier order of a Discipline Panel, and
3. that it constitutes behaviour that would be reasonably regarded by members as disgraceful, dishonourable and/or unprofessional.

**Issue 1.** Does a failure to pay costs constitute professional misconduct as a failure to maintain a standard of practice of the profession?

College counsel agreed that most cases about failing to meet the standard of the profession relate to whether the member's clinical practice, chiropractic technique, or other professional practice issues such as record keeping meet the standard of the profession. In such cases there is usually a requirement to produce an expert witness in order to establish the standard. However, in this case, Mr. Paliare argued that, the definition of "standard" also includes the concept of what ethical conduct is expected of

members of the profession, and that an expected standard would therefore include complying with an order of a Discipline Panel.

Dr. Reid's counsel does not dispute that costs have not been paid. Mr. Hakamali argued that since no prescribed standard can be cited in respect of the payment of costs, therefore there is no failure to maintain a standard of practice.

The Panel's ILC, Mr. LeVay, advised us that standards generally relate to clinical conduct. However, he advised that a standard of practice is something that is ordinarily expected of a reasonably competent practitioner in the field. In that context, he asked the Panel to consider whether failing to pay costs amounts to this kind of an issue of competence.

After hearing from both counsel and our own ILC, the Panel agrees with the College that Dr. Reid's failure to pay costs ordered by a previous Panel does constitute professional misconduct in that he has failed to "maintain the standard of practice expected of members of the profession". The Panel accepts that although a competency standard may not have been breached, members would reasonably hold as a standard of the profession the need to comply with orders of a Discipline Panel. It is a matter of public interest that members conduct themselves not only with clinical competence but with integrity, and take responsibility to follow through with the consequences of their actions. Self-regulation is a privilege, and compliance with orders by the regulatory body is indeed a standard of practice expected by members of the profession.

**Issue 2.** Does a failure to pay costs constitute professional misconduct in failing to comply with an order of a Discipline Committee?

College counsel established through proven exhibits and a credible witness, Ms Tina Perryman, that there was an outstanding costs order and that there has been no payment, nor attempt made at establishing a plan for payment of costs, by Dr. Reid. Costs are payable when the order is final, in this case, October 24, 2016. Dr. Reid has had more than a year to attend to the matter of paying costs and has not done so.

Counsel for Dr. Reid argued that it is not clear that nonpayment of costs constitutes professional misconduct. He further argued that since there was no time line established by the College, therefore it could not be established that Dr. Reid has failed to pay costs. As outlined above, he made the argument that an analogy should be made to contempt of court and that since no date had been set by the College for the payment, the College could not hold Dr. Reid in contempt and so cannot find him guilty of professional misconduct. Mr. Hakamali further argued that the College does not have the authority to determine what constitutes a reasonable date for payment and that it is unfair for the Panel to make an order of professional misconduct in the absence of a clear date of expectation for payment. Finally, Mr. Hakamali submitted that Dr. Reid is under no obligation to make a proposal for payment of the costs.

The Panel's ILC, Mr. LeVay, advised us that the order of the previous Discipline Committee is valid and it is inappropriate to question the reasonableness of the order. There is an order to pay costs, and payment has not been made. He further advised us that the argument involving the law of contempt is irrelevant. That remedy is available to judges in particular circumstances. The panel does not have contempt power and its decision power about professional misconduct is not analogous to contempt.

After hearing from both counsel and our own ILC, and having deliberated the issue, the Panel finds that Dr. Reid has committed an act of professional misconduct in that he has failed to comply with the order of a previous Discipline Committee (August 26, 2015). The Panel is satisfied that Dr. Reid has had ample opportunity to make payment or to make arrangements to make payment, and that, although Dr. Reid has no obligation to bring forward a plan to pay the costs, he does so at his own peril. The Panel rejects arguments that there is any lack of clarity about Dr. Reid's obligations, and further rejects that the College has any obligation to provide Dr. Reid with clear direction as to how and when he is to pay the costs that he has been ordered to pay. The Panel sees the option of a payment arrangement as a gesture of good will towards Dr. Reid on behalf of the College, not anything the College has any obligation to do.



**Issue 3.** Does a failure to pay costs constitute conduct that would reasonably be regarded by members as disgraceful, dishonourable or unprofessional?

College counsel described the non-payment of costs as evidence of an intentional breach of the ethics regulation governing chiropractic, and characterized this as disgraceful behaviour. Dr. Reid is trying to advance his own interests versus those of the regulator's (College) of which he is a member. Further, failing to pay costs is, in effect, putting the costs of his previously found unprofessional behaviour onto the profession as a whole and as such, constitutes dishonourable conduct. Finally, failure to abide by the order of a Discipline Panel is unprofessional.

Mr. Hakamali argued that not paying costs does not constitute professional misconduct; that there is ambiguity as to when and how an order is to be enforced, and therefore there is no evidence of disgraceful, dishonourable or unprofessional conduct.

Mr. LeVay advised the Panel to consider whether persistent disregard and failure to honour a Discipline order would reasonably be considered dishonourable or unprofessional conduct. Does Dr. Reid's conduct meet the bar of engaging in conduct that would reasonably be regarded as members of the profession as disgraceful, dishonourable or unprofessional?

After deliberation, the Panel ruled that Dr. Reid's failure to pay costs after more than a year indeed does meet that bar, and therefore finds Dr. Reid did indeed engage in disgraceful, dishonourable or unprofessional conduct by not paying costs as ordered by a panel of the Discipline Committee on August 26, 2015.

Dr. Reid is a member of the College. As such, he has a professional obligation to abide by the standards of the profession, including abiding by orders of a Discipline Committee. Failure to do so undermines the integrity of the privilege of self-regulation, and by extension, constitutes an attack on the College's mandate to serve and protect the public interest. That mandate is threatened when its own members refuse to be governed.

The parties are directed to make the necessary arrangements to attend for a penalty hearing.

A handwritten signature in black ink, appearing to read "Doug Cressman". The signature is fluid and cursive, with a long horizontal stroke at the end.

March 22, 2018

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Mr. Doug Cressman, Chair

Panel Members:

Mr. Doug Cressman  
Ms. Judith McCutcheon  
Dr. Angela Barrow  
Dr. Colin Goudreau  
Dr. Pat Tavares