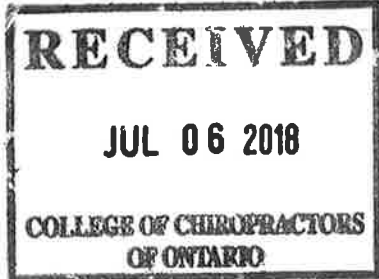


**DISCIPLINE COMMITTEE
OF THE COLLEGE OF CHIROPRACTORS OF ONTARIO**

PANEL:



Mr. D. Cressman, Chair	Public Member
Dr. A. Barrow	Professional Member
Ms. K. Bourdeau	Public Member
Dr. B. Budgell	Professional Member
Dr. C. Goudreau	Professional Member

BETWEEN:

COLLEGE OF CHIROPRACTORS OF ONTARIO)	Mr. Chris Paliare and
)	Ms. Karen Jones for the
)	College of Chiropractors of Ontario
- and -)	
)	
Dr. Allen Turner)	Mr. Matthew Sammon and
)	Ms. Sarah Bittman
)	Heard: June 7, 2018

Also present at the hearing were:

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

DECISION AND REASONS

INTRODUCTION

A hearing into allegations of professional misconduct against Dr. Allen Turner ("Dr. Turner", 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 June 7, 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 the professional misconduct described below.

The Panel accepted a joint submission on penalty and costs and ordered that its terms be implemented.

THE ALLEGATIONS

The allegations against the Member are set out in four Notices of Hearing, dated, respectively, July 28, 2015, filed as Exhibit 1 (Re: Report regarding Treatment of Diabetes and Other Conditions), March 3, 2016, filed as Exhibit 2 (Re: S.S.J. Complaint), April 26, 2016, filed as Exhibit 3 (Re: Taddle Creek Complaint about Treatment of I.P.) and March 29, 2017, filed as Exhibit 4 (Re: Patient K. Complaint). The parties agreed to present all four Notices of Hearing together to the Panel and proceed with a Resolution Agreement based on the allegations taken together. As presented in the Resolution Agreement, Part 1, Agreed Statement of Facts:

“4. The four Notices of Hearing involve similar questions of fact, law, and policy. The CCO and the Member have consented to the panel of the Discipline Committee combining the Proceedings regarding the four Notices of Hearing in one hearing.”

The hearing proceeded only in relation to the following allegations: 1 and 6 of Exhibit 1, 1,4,5,9,10,12 of Exhibit 2, 1,4,5,6 of Exhibit 3, and 1,4,5,6 of Exhibit 4. The remainder of the allegations were withdrawn by the College.

From Exhibit 1:

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 in 2013, on one or more occasions, you contravened a standard of practice of the profession or failed to maintain the standard of practice expected of members of the profession.
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 in 2013, 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.

From Exhibit 2:

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 in

during the period 2013 - 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 the scope of your practice and/or your assessment, treatment, documentation and billing regarding a patient known as "S.S.J."

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(14) of *Ontario Regulation 852/93*, in that in 2013, you provided diagnostic and/or therapeutic services that were not necessary to a patient known as "S.S.J."

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(19) of *Ontario Regulation 852/93*, in that in during the period 2013 - 2015, you failed to keep records as required by the regulations regarding a patient known as "S.S.J."

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(24) of *Ontario Regulation 852/93*, in that in 2013 and/or 2014, you failed to disclose to a patient known as "S.S.J." the fee for a service before the service was provided.

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(25) of *Ontario Regulation 852/93*, in that in 2013, you charged a block fee to a patient known as "S.S.J." when the unit cost per service was not specified and/or you did not agree to refund to the patient the unspent portion of the block fee calculated by reference to the number of services provided multiplied by the unit cost per service.

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(33) of *Ontario Regulation 852/93*, in that during the period 2013 - 2015, 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 assessment, diagnosis, treatment, documentation and/or billing regarding a patient known as "S.S.J."

From Exhibit 3:

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 in during 2013 and/or 2014, 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 the scope of your practice and/or your assessment, treatment and/or documentation regarding a patient known as "I.P."

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(14) of *Ontario Regulation 852/93*, in that during the period 2013 and/or 2014, you provided diagnostic and/or therapeutic services that were not necessary to a patient known as "I.P."

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(19) of *Ontario Regulation 852/93*, in that in during 2013 and/or 2014, you failed to keep records as required by the regulations regarding a patient known as "I.P."

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 2013 and/or 2014, 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 assessment, diagnosis, treatment and/or documentation regarding a patient known as "I.P."

From Exhibit 4:

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 in during the period December 2013 – June 2014, 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 the scope of your practice and/or your assessment, treatment, documentation and billing regarding a patient known as "Patient K."

4. You have committed an act of professional misconduct as provided by subsection 51(1)(c) of the Code, and paragraph 1(14) of *Ontario Regulation 852/93*, in

that during the period December 2013 – June 2014, you provided diagnostic and/or therapeutic services that were not necessary to a patient known as “Patient K.”

5. You have committed an act of professional misconduct as provided by subsection 51(1)(c) of the Code, and paragraph 1(19) of *Ontario Regulation 852/93*, in that during the period December 2013 – June 2014, you failed to keep records as required by the regulations regarding a patient known as “Patient K.”

6. 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 during the period December 2013 - June 2014, 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 assessment, diagnosis, treatment, documentation and/or billing regarding a patient known as “Patient K.”

THE EVIDENCE

Resolution Agreement, Part 1- Agreed Statement of Facts (ASF), was entered as Exhibit 5. It is a lengthy document and has been summarized for the purposes of this Decision. It provided as follows:

Background

The Member

Dr. Allen Turner has been a member of the College of Chiropractors of Ontario since 1981. He owns and practices at the Stouffville Health Centre in Stouffville, Ontario. He has not been the subject of a previous Discipline Committee hearing.

Notice of Hearing regarding Treatment of Diabetes and Other Conditions (Exhibit 1)

The agreed facts related to Exhibit 1 indicate that for some time, Dr. Turner had been offering free seminars on the topic of Type 2 diabetes. A report had been received by CCO in December, 2013 expressing concerns. Dr. Turner ceased offering these seminars in 2015. “At the time of the CCO investigation, the Member’s web site had individual pages for 4 different diseases or conditions: diabetes, FM (fibromyalgia), hypothyroidism and CFS (chronic fatigue syndrome). The Member claimed on his website that he was ‘uniquely skilled and experienced at treating the root physiological, biochemical and hormonal imbalances associated with Type II diabetes, hypothyroidism, FM, and CFS.’ As well, the Member advertised he used ‘breakthrough diagnostic testing’ to “uncover the hidden causes of why a person may be experiencing the diseases of diabetes, hypothyroidism and FM.” (ASF: 21,22)

The "breakthrough diagnostic testing" the Member referred to in his advertising was an EIS Scan. He distributed materials which indicated an EIS Scan was a Health Canada registered Class III Medical Device. While the EIS Scan was previously approved by Health Canada, at the time, an EIS Scan was not a Health Canada registered medical device licensed for sale. An EIS Scan was not a diagnostic procedure taught in the core curriculum, post-graduate curriculum or continuing education division of an accredited educational institution. An EIS Scan measures heart rate variability and oxygen saturation, among other things.

The Member acknowledges that it is outside the scope of practice of a chiropractor to diagnose or treat Type II diabetes, hypothyroidism, FM, and CFS, and to use an EIS Scan to diagnose. Had the Member testified, he would have said that he did not diagnose patients with diabetes. He would have said that diagnostic testing was used to assess if the health of individuals suffering from diabetes could be improved with regular chiropractic treatment.

The Member admits that members of the public who saw his advertising or web site or attended his seminars could have been confused as to his scope of practice and may have been misled by his advertising.

As such, the Member admits that he committed acts of professional misconduct, and in particular, with respect to the Notice of Hearing dated July 28, 2015 re: Report Regarding Treatment of Diabetes and Other Conditions, he:

- a. contravened a standard of practice of the profession or failed to maintain the standard of practice expected of members of the profession regarding his advertising, as set out in Allegation #1;
- b. engaged in conduct or performed an act, that, having regard to all the circumstances, would reasonably be regarded by members as unprofessional and dishonourable as set out in Allegation #6.

In light of the Member's admissions, the CCO withdrew Allegations #2, #3, #4 and #5 in the Notice of Hearing. (ASF: 24,25,26,27)

Notice of Hearing regarding the S.S.J. Complaint

Summarizing from the Agreed Statement of Facts, S.S.J. went to Dr. Turner for treatment of Type 2 diabetes in March, 2013. S.S.J. was presented with a treatment plan with an associated cost of \$6,275, to be discounted by 15% if paid up front. S.S.J. paid Dr. Turner \$5,334 up front. S.S.J. was not provided with a written agreement explaining the costs. Dr. Turner did not document S.S.J.'s right to be refunded any unspent portion of the block fee. A monthly administrative fee was also not disclosed. (ASF: 33)

S.S.J.'s chiropractic record does not contain adequate documentation of an assessment and the Member did not document a diagnosis or clinical impression or plan of care for

the patient. The chart indicates that the Member conducted a thermal scan, and three EIS Scans. There is no information in S.S.J.'s chiropractic file regarding the diet, meal plans, supplements, coaching, or seminars provided by the Member, although the Member did retain copies of the standard meal plan handout that he provided to his patients, including S.S.J. The chiropractic record itself is illegible and consists of notations of dates and times and what appears to be a record of adjustments provided on those dates. There are no recorded re-assessments after every 24 treatments. (ASF: 37)

S.S.J. stopped attending Dr. Turner's clinic for treatment in July, 2013. S.S.J. requested a refund for the unused portion of his block fee and received a cheque for \$770. More than 8 weeks of a six-month treatment plan costing \$5,334 were remaining.

As is explained in detail in the ASF, paragraphs 42 to 48, there are a number of inconsistencies found in S.S.J.'s clinical and financial records.

The Member admits that, based on the facts set out above, he committed acts of professional misconduct as alleged in the Notice of Hearing dated March 3, 2016 re: S.S.J. Complaint, and in particular, he:

- a. contravened a standard of practice of the profession or failed to maintain the standard of practice expected of members of the profession with respect to his assessment, treatment, documentation and billing as set out in Allegation #1;
- b. provided diagnostic or therapeutic services that were not necessary as set out in Allegation #4;
- c. failed to keep records as required by the regulations as set out in Allegation #5;
- d. failed to disclose a fee for a service before the service was provided as set out in Allegation #9;
- e. charged a block fee when the unit cost was not specified and did not agree to refund the unspent portion of the block fee calculated by reference to the number of services provided multiplied by the unit cost per service as set out in Allegation #10; and
- f. engaged in conduct or performed an act, that, having regard to all the circumstances, would reasonably be regarded by members as unprofessional as set out in Allegation #12.

Given the Member's admissions, the CCO withdrew allegations #2, #3, #6, #7, #8, and #11. (ASF: 49, 50)

Notice of Hearing re Taddle Creek Complaint

The details in the ASF regarding this notice indicate a pattern of consistency with the other notices and can be found in Section F. This notice involves interactions with a high risk, elderly patient known only as I.P. The pattern of inadequate record keeping, including both the clinical and financial records is consistent with the other complaints. From a public protection standpoint, it is troubling that in this situation the patient was elderly and had a complex medical condition, "including Type 2 diabetes, stage 4 chronic kidney disease, osteopenia, hypertension, hypothyroidism, hearing impairment, Parkinson's disease, osteoarthritis, asthma and mobility issues." (ASF: 51) The Member understands that he was not sufficiently proactive in communicating with the patient's physicians, and agrees that a number of supplements he provided were not supplements that benefited diabetes management.

The Member admits that, based on the facts set out above, he committed acts of professional misconduct as alleged in the Notice of Hearing dated April 26, 2016 re: the Taddle Creek Complaint about the Treatment of I.P., and in particular, he:

- a. contravened a standard of practice of the profession or failed to maintain the standard of practice expected of members of the profession with respect to his assessment, treatment, documentation and billing as set out in Allegation #1;
- b. provided diagnostic or therapeutic services that were not necessary as set out in Allegation #4;
- c. failed to keep records as required by the regulations as set out in Allegation #5; and
- d. engaged in conduct or performed an act, that, having regard to all the circumstances, would reasonably be regarded by members as unprofessional as set out in Allegation #6.

Given the Member's admissions, the CCO withdrew Allegations #2 and #3 in the Notice of Hearing. (ASF 64,65)

Notice of Hearing re Patient K. Complaint

The agreed facts pertaining to this notice of hearing are described in the ASF, paragraphs 66-80 and are consistent with respect to issues of assessment, treatment, documentation and billing outlined in the cases above. The agreed facts indicate deficiencies in clinical and financial records, and unnecessary diagnostic or therapeutic services provided.

The Member admits that, based on the facts and admissions set out above, he committed acts of professional misconduct as alleged in the Notice of Hearing dated March 29, 2017 re: Patient K. Complaint, and in particular, he:

- a. contravened a standard of practice of the profession or failed to maintain the standard of practice expected of members of the profession with respect to his assessment, treatment, documentation and billing as set out in Allegation #1;
- b. provided diagnostic or therapeutic services that were not necessary as set out in Allegation #4;
- c. failed to keep records as required by the regulations as set out in Allegation #5; and
- d. engaged in conduct or performed an act, that, having regard to all the circumstances, would reasonably be regarded by members as unprofessional as set out in Allegation #6.

Given the Member's admissions, the CCO withdrew allegations #2 and #3. (ASF 79,80)

CCO STANDARDS AND GUIDELINES

The relevant CCO Standards and Guidelines are set out below:

(i.) CCO Standard S-001: Chiropractic Scope of Practice

1. CCO Standard of Practice S-001: Chiropractic Scope of Practice sets out the requirements when chiropractors provide services to patients and respond to general health-related questions from patients. This standard applies to all chiropractors in Ontario regardless of their philosophy of care.
2. According to Standard S-001, all activities and services performed by chiropractors in Ontario must relate to the chiropractic scope of practice as set out in the *Chiropractic Act, 1991*.
3. The chiropractic scope of practice is defined in section 3 of the *Chiropractic Act, 1991*:

The practice of chiropractic is the assessment of conditions related to the spine, nervous system and joints and the diagnosis, prevention and treatment, primarily by adjustment, of,

- (a) dysfunctions or disorders arising from the structures or functions of the spine and the effects of those dysfunctions or disorders on the nervous system; and
- (b) dysfunctions or disorders arising from the structures or functions of the joints.

4. Section 30(1) of the *Regulated Health Professions Act, 1991* (“*RHPA*”) restricts when chiropractors can treat or advise patients outside the chiropractic scope of practise:

No person, other than a member treating or advising within the scope of practice of his or her profession, shall treat or advise a person with respect to his or her health in circumstances in which it is reasonably foreseeable that serious bodily harm may result from the treatment or advice or from an omission from them.

5. CCO members are required to take reasonable steps to ensure that any proposed diagnostic or therapeutic procedure provided to patients relates to the chiropractic scope of practice. For a diagnostic or therapeutic procedure to be acceptable for clinical purposes, it must be taught in the core curriculum, postgraduate curriculum or continuing education division of an accredited educational institution. If a diagnostic or therapeutic procedure does not relate to the chiropractic scope of practice, a chiropractor should not use it in his or her professional capacity. Chiropractors must obtain a patient’s informed consent to the use of a diagnostic or therapeutic procedure.
6. Chiropractors in Ontario may also use adjunctive diagnostic and therapeutic procedures that are in the public domain (i.e., are not controlled acts as defined in the *RHPA, 1991*), including nutritional counselling, prescribing orthotics, and giving advice on lifestyle and exercise. Such adjunctive diagnostic and therapeutic procedures are also subject to the provisions of section 30(1) of the *RHPA*.
7. Chiropractors who provide information to patients that relates to controlled acts outside the chiropractic scope of practice, including the prescribing of drugs, are required to advise patients that the performance of the act is outside the chiropractic scope of practice and the patient should consult with a health professional who has the controlled act within his/her scope of practice. The chiropractor must respond in a professional, accurate and balanced manner in the context of providing primary health care to the patient consistent with the chiropractic scope of practice.

(ii) CCO Standard S-016: Advertising

CCO Standard S-016: Advertising prohibits chiropractors from communicating messages outside their offices, including on their web sites, that are intended to influence a person's choice of service or service provider unless the communication is accurate, factual and contains verifiable information. A chiropractor cannot claim a service, technique or product is superior, and any references to specific diagnostic and therapeutic procedures must comply with CCO Standard S-001 Chiropractic Scope of Practice. Communications regarding a chiropractor's practice must not include false or misleading information or compare a chiropractor's practice, qualifications or expertise to that of other health care providers.

(iii) CCO Standard S-002: Record Keeping

CCO Standard S-002 Record Keeping, requires a chiropractor to maintain patient records that:

1. are accurate, legible and comprehensive;
2. contain a record of care for the patient that includes: (i) an initial examination that is sufficiently comprehensive for the chiropractor to document evidence of the patient's current condition, diagnosis or clinical impression and plan of care for the patient; (ii) evidence of procedures and assessment demonstrating a need for care; (iii) reasonable information about care provided, procedures performed, reports received and advice given by the chiropractor; and (iv) a reassessment conducted as necessary and in any event at least once every 24 visits that is sufficiently comprehensive for the chiropractor to evaluate the patient's condition, assess the effectiveness of care and affirm or revise the patient's diagnosis or clinical impressions and plan of care.

(iv) CCO Guideline G-008: Business Practices

1. CCO Guideline G-008 Business Practices requires a chiropractor who is charging a block fee (i.e., a fee for multiple treatments charged at any other time than when the treatments are provided) to ensure there is a signed, written agreement between the chiropractor and the patient that, among other things, discloses to the patient the regular unit cost per service and the unit cost per service established by the block fee, and fully informs the patient of his right to opt out of the block fee at any time during care, and to receive a refund of the unspent portion of the block fee.
2. As well, Guideline G-008 requires chiropractors to disclose all billing practices in advance of any care.

OTHER

Dr. Turner agreed that he had obtained independent legal advice from his lawyer, Matthew Sammon, prior to signing the Agreed Statement of Facts and had signed it freely and voluntarily.

The Panel chair asked a number of questions directly to the Member to determine 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 to the allegations.

FINDINGS OF PROFESSIONAL MISCONDUCT

Following a brief recess to review the facts set out in the Resolution Agreement, Part 1: Agreed Statement of Facts (Exhibit 5), we accepted that 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 professional misconduct set out in Allegations 1 and 6 of Exhibit 1, Allegations 1,4,5,9,10 and 12 of Exhibit 2, Allegations 1,4,5 and 6 of Exhibit 3, and Allegations 1,4,5 and 6 of Exhibit 4. We note that the parties had agreed- and so do we- that the behaviour of the Member in Exhibits 2,3 and 4 would reasonably be regarded by members as unprofessional, and the behaviour described in Exhibit 1, unprofessional or dishonourable.

PENALTY AND COSTS SUBMISSIONS

The parties presented the Panel with Resolution Agreement: Part 2- Joint Submission on Penalty and Costs, Exhibit 6, which proposed 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 3 months of the Suspension to be suspended if the Member completes the Conditions described in paragraph 3(a) below. The Suspension will begin on August 1, 2018.
3. Directing the Registrar to impose the following terms, conditions and limitations ("Conditions") on the Member's certificate of registration:
 - a. within five months of the start of the Suspension, the Member must:
 - (i) successfully complete the Legislation and Ethics Examination and CCO's Record Keeping Workshop at his own expense and provide evidence of successful completion to the Registrar; and

(ii) review, and agree in writing to comply with, all CCO regulations, standards of practice, guidelines, and policies, including but not limited to S-001: Chiropractic Scope of Practice, S-002: Record Keeping; S-013: Consent; S-016: Advertising; G-008 Business Practices, and the business practices portion of the Professional Misconduct Regulation.

b. for a two year period after the Member returns to practise after the lifting of the Suspension, at the discretion of the CCO and the expense of the Member, the CCO may monitor the Member's practice up to three times. The Member will cooperate fully with the monitoring and will provide any information or documentation requested relevant to the monitoring. The monitoring will entail a review of a sample of the Member's patient records and accounts and an analysis of their compliance with CCO standards of practice, guidelines, and policies.

4. Requiring the Member to pay the CCO a portion of its costs and expenses related to the investigation and prosecution of these matters in the amount of \$25,000 with \$5,000.00 provided to the CCO by way of a certified cheque on June 11, 2018. The remaining costs are to be paid by December 31, 2018 with post-dated cheques for the remaining costs to be provided on June 11, 2018.
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 CCO publications at the discretion of the CCO.

The Member agreed that he had obtained independent legal advice from his lawyer, Matthew Sammon, prior to signing the Joint Submission on Penalty and Costs, and that he had entered into the Resolution Agreement freely and voluntarily.

Counsel for both parties made submissions in support of the Joint Submission.

Mr. Paliere (for the College) argued that the penalty deals with both specific and general deterrence. Both the Member and other members of the profession will know by this penalty that the conduct described above is unacceptable, and will not be tolerated by the regulatory body, or the public it serves. There is a punitive component as shown by suspension and fine, but also a rehabilitative/educational component, demonstrated by a requirement to complete courses, review relevant documentation and have the practice closely monitored by the College for two years. Mr. Paliere also noted that the Member has had no prior record of discipline by the College, entered voluntarily into this process, thereby not requiring the College to call evidence and prove its case, and that the Member has been cooperative throughout this process. He assured us that Dr. Frazer Smith (pre-hearing conference chair) was supportive of the joint submission.

In his submissions on behalf of the Member, Mr. Sammon highlighted the remedial nature of the joint submission, reminded us that there had been no prior complaints, and agreed that the penalty adequately served the public interest.

Both parties urged us to accept the joint submission.

Mr. Stevenson also encouraged the Panel to accept the Joint Submission on Penalty and impose costs as agreed. He reminded us that in cases where both parties agree on a penalty, panels should accept the joint submission unless, by accepting it, the panel would be bringing the administration of justice into disrepute or otherwise be acting contrary to the public interest. He indicated no reason why we should not accept it.

DECISION AND REASONS

After deliberation, the Chair announced that the Panel accepted the Joint Submission and ordered that its terms be implemented. In determining that it should accept the Joint Submission, the Panel concluded that the proposed penalty order was both fair to the Member, as it falls within the range of penalties appropriate to the admissions in this matter, and reasonable. We recognized that it was negotiated by counsel for both parties. The Panel believes that the order sends a strong message of deterrence to members of the profession and also specifically to the Member, thus serving and protecting the public interest. We are satisfied that the review of guidelines, regulations, standards and policies, as well as taking the Record Keeping Workshop and Legislation and Ethics Exam will be effective remediation tools. We are further satisfied that monitoring the Member's practice over two years will provide both support to the Member and adequate assurance to the public that the probability of re-offending is very low. The Panel therefore orders that:

1. the Member appear before the panel to be reprimanded.
2. the Registrar and General Counsel ("Registrar") suspend the Member's certificate of registration for a period of eight months ("Suspension"), with 3 months of the Suspension to be suspended if the Member completes the Conditions described in paragraph 3(a) below. The Suspension will begin on August 1, 2018.
3. the Registrar impose the following terms, conditions and limitations ("Conditions") on the Member's certificate of registration:
 - a. within five months of the start of the Suspension, the Member must:
 - (i) successfully complete the Legislation and Ethics Examination and CCO's Record Keeping Workshop at his own expense and provide evidence of successful completion to the Registrar; and
 - (ii) review, and agree in writing to comply with, all CCO regulations, standards of practice, guidelines, and policies, including but not limited to S-001: Chiropractic Scope of Practice, S-002: Record Keeping; S-013: Consent; S-016: Advertising; G-008 Business Practices, and the business practices portion of the Professional Misconduct Regulation.

- b. for a two year period after the Member returns to practise after the lifting of the Suspension, at the discretion of the CCO and the expense of the Member, the CCO may monitor the Member's practice up to three times. The Member will cooperate fully with the monitoring and will provide any information or documentation requested relevant to the monitoring. The monitoring will entail a review of a sample of the Member's patient records and accounts and an analysis of their compliance with CCO standards of practice, guidelines, and policies.
4. the Member pay the CCO a portion of its costs and expenses related to the investigation and prosecution of these matters in the amount of \$25,000 with \$5,000.00 provided to the CCO by way of a certified cheque on June 11, 2018. The remaining costs are to be paid by December 31, 2018 with post-dated cheques for the remaining costs to be provided on June 11, 2018.
 5. the results of the proceeding be recorded in the public portion of the Register and published in the Annual Report or other CCO publications at the discretion of the CCO.

REPRIMAND ADMINISTERED

A waiver was introduced as Exhibit 7, in which the Member freely and voluntarily waived his right to appeal or seek judicial review if the Panel accepted the Joint Submission. Consequently, at the conclusion of the hearing, the Chair administered the oral reprimand on behalf of the Panel, as required by its penalty order.

I, Douglas Cressman, 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.



Douglas Cressman

July 6, 2018

Panel members:

Dr. A. Barrow

Dr. B. Budgell

Ms. K. Bourdeau

Dr. C. Goudreau