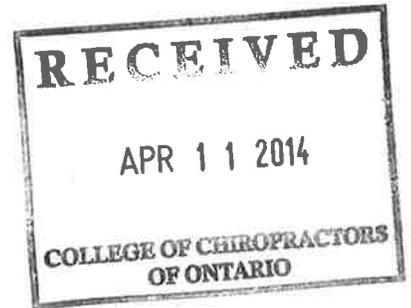


**DISCIPLINE COMMITTEE
OF THE COLLEGE OF CHIROPRACTORS OF ONTARIO**

PANEL:	Dr. Peter Amlinger, Chair	Professional Member
	Dr. Angela Barrow	Professional Member
	Mr. Robert MacKay	Public Member
	Ms. Judith McCutcheon	Public Member
	Dr. Vikas Puri	Professional Member



BETWEEN:

**COLLEGE OF CHIROPRACTORS
OF ONTARIO**

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

and

**Dr. Shahin Pourgol
Registration Number 4798**

Ms. Mateen Pourgol
for Dr. Pourgol

Heard: January 9, 2014

Also present at the hearing were:

Mr. Aaron Dantowitz- Independent Legal Counsel to the Panel
Ms Jo-Ann Willson - Registrar and General Counsel CCO
Ms. Barbara Barr - Court Reporter

DECISION AND REASONS

Introduction

On February 14, 2014, a hearing was held 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 chiropractic and to govern its members and, in doing so, to serve and protect the public interest.

The Allegations

The allegations against Dr. Shahin Pourgol, (the "Member"), were set out in a Notice of Hearing, dated October 11, 2013, which was entered as Exhibit 1.

The hearing proceeded relative to the allegations in Exhibit 1, as set out below:

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, including, but not limited to, breaches of S-016 Standard of Practice Advertising with respect to your advertising of yourself and/or the National Academy of Osteopathy and/or breaches of section 9 of the *Medicine Act, 1991*.

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(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, and in particular, you breached section 9 of the *Medicine Act, 1991* by using the title "osteopath" and holding yourself out as someone qualified to practise in Ontario as an osteopath.

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(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 with respect to your advertising of yourself and/or the National Academy of Osteopathy and/or by using the title "osteopath" and/or by holding yourself out as someone qualified to practise in Ontario as an osteopath when you are not a member of the College of Physicians and Surgeons of Ontario.

Mr. Paliare, on behalf of the College stated that there had been discussions with the Member that had resulted in a Resolution Agreement. The Resolution Agreement, **Part**

1 - AGREED STATEMENT OF FACTS, which had been signed by both parties, was entered as Exhibit 2. The College and the Member's counsel then jointly presented the Agreed Statement of Facts, in which the member made admissions of professional misconduct.

Agreed Statement of Facts

The Agreed Statement of Facts, Exhibit 2, provided as follows:

The Member

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

2. He currently holds a retired class of registration.

The Complaint

3. On August 29, 2012, the CCO received a complaint that the Member was improperly using the protected title "Osteopath" and was providing false and misleading information in his advertising of the National Academy of Osteopathy ("NAO"), a private school owned and operated by the Member.

"Osteopath" and Title Protection

4. The title "osteopath" is a protected title in Ontario. Pursuant to section 9 of the *Medicine Act, 1991*, only a member of the College of Physicians and Surgeons of Ontario ("CPSO") can hold him or herself out as a person who is qualified to practise in Ontario as an osteopath, and only a member of the CPSO can use the title "osteopath" or a variation of the title.

5. The Member is not a member of the CPSO.

6. During the relevant time, the Member used the title "osteopath" and held himself out as a person qualified to practise in Ontario as an osteopath.

Advertising

7. At the relevant time, the Member's advertising for the NAO included the following:

(i) NAO graduates could sit for examinations administered by the Canadian Manual Osteopathy Examining Board ("CMOEB");

(ii) if successful in CMOEB exams, NAO members could join the International Osteopathic Association ("IOA");

- (iii) all graduates of NAO have to become members of the IOA in order to receive a license;
- (iv) a license from IOA was required to practise osteopathy in Ontario;
- (v) a license from IOA was required to practise manual osteopathy in Ontario.

8. The Member admits the advertising was false and misleading as the IOA cannot license persons to practise osteopathy in Ontario.

9. The Member also admits the advertising was false and misleading as a license from IOA is not required to practise manual osteopathy in Ontario.

10. The CCO's Standard of Practice regarding Advertising, S-016 ("Standard") requires any advertising:

- (i) be accurate, factual and contain verifiable information;
- (ii) be in the public interest;
- (iii) ensure that the public has information to make rational choices; and
- (iv) maintain a professional image.

Admissions

11. The Member admits, based on the above facts, that he committed the following acts of professional misconduct, as set out in the Notice of Hearing dated October 11, 2013, and in particular, he:

- (i) contravened a standard of practice of the profession or failed to maintain the standard of practice expected of members of the profession, related to breaches of S-016 Standard of Practice Advertising with respect to his advertising of himself and the National Academy of Osteopathy, and breaches of section 9 of the *Medicine Act, 1991*, as set out in allegation 1;
- (ii) 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 his suitability to practise, and in particular, he breached section 9 of the *Medicine Act, 1991* by using the title "osteopath" and holding himself out as someone qualified to practise in Ontario as an osteopath as set out in allegation 2; and
- (iii) 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 with respect to his

advertising of himself and the National Academy of Osteopathy, and by using the title "osteopath" and holding himself out as someone qualified to practise in Ontario as an osteopath when he was not a member of the College of Physicians and Surgeons of Ontario.

Other

12. The Member agrees that he was advised by the CCO to obtain independent legal advice prior to his signing this Agreed Statement of Facts, and he had ample opportunity to do so. The Member agrees that he is entering into this Resolution Agreement freely and voluntarily.

Member's Plea

In paragraphs 8, 9, and 11 of the Agreed Statement of Facts the member admitted to engaging in acts of professional misconduct as set out in allegations 1, 2 and 3 in the Notice of Hearing entered as Exhibit 1. The Chair confirmed with the Member's counsel, Ms. Pourgol, on behalf of the Panel, that the Member's admissions of professional misconduct were voluntary, informed, given after he had obtained advice from his counsel and were unequivocal.

Decision

The Panel then invited submissions from Mr. Paliare on behalf of the College and Ms. Pourgol on behalf of the member, regarding the Agreed Statement of Facts. The Panel then obtained advice from its independent legal counsel, Mr. Aaron Dantowitz on the role of the panel in reviewing an Agreed Statement of Facts, and as to whether the facts as set out in the resolution agreement were sufficient for the panel to come to a finding of professional misconduct. After a brief deliberation the Panel accepted the evidence as presented in the Agreed Statement of Facts as being sufficient to support the admissions of professional misconduct.

Based upon these admissions and agreed upon facts the Panel made findings of professional misconduct against Dr. Shahin Pourgol relative to the allegations set out in the Notice of Hearing contained in Exhibit 1, paragraphs 1, 2 and 3. In reaching its

decision, the Panel relied exclusively on the facts and admissions contained in the Agreed Statement of Facts (Exhibit 2).

Penalty

Mr. Paliare, on behalf of the College, advised the Panel that a joint submission on penalty had been agreed upon by the parties. The document: **RESOLUTION AGREEMENT PART 2 - JOINT SUBMISSION ON PENALTY** was entered as Exhibit 3.

The Joint Submission 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 six months ("Suspension") with the suspension to take effect on the date of the hearing.
3. Directing the Registrar to impose the following terms, conditions and limitations on the Member's certificate of registration:
 - (i) he will not use the title "osteopath";
 - (ii) he will not hold himself out as a person who is qualified to practice in Ontario as an osteopath;
 - (iii) he will not use the title "osteopath" in the course of providing or offering to provide health care to individuals in Ontario;
 - (iv) he will not perform any of the controlled acts set out in section 27(2) of the *Regulated Health Professions Act, 1991*;
 - (v) he will resign his membership with the CCO within six months of the date of the Panel's decision in this matter.
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 \$15,000.00, paid by way of certified cheque on the date of the hearing.
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.

6. The Member agrees that he was advised by the CCO to obtain independent legal advice prior to his signing this Joint Submission on Penalty and he had ample opportunity to do so. The Member agrees that he is entering into this Resolution Agreement freely and voluntarily.

The Member's counsel confirmed to the panel that Dr. Pourgol had obtained independent legal advice prior to signing this Joint Submission on Penalty, and that he was entering into the Resolution Agreement freely and voluntarily.

An undertaking signed by Dr. Pourgol formed part of Exhibit 3 and was marked as Appendix "A" to it. It is attached as Appendix "A" to this document.

Mr. Paliare made submissions in support of the penalty, as did Ms. Pourgol, on behalf of the Member. The Panel then obtained advice from independent legal counsel, Mr Dantowitz. The Panel was reminded of the applicable principles, including the guidance from the Courts relative to the approach that Discipline panels should take when deliberating on joint submissions.

Penalty Decision and Reasons

The Panel then deliberated, taking time to carefully consider the parties' submissions and the advice we had received from our counsel. After weighing all the submissions we had received, the Panel accepted the Joint Submission on Penalty.

In accepting the Joint Submission the panel finds that the parties have come to a fair and reasonable resolution after going through a process of diligent and informed negotiations. Dr. Pourgol has no prior allegations or discipline findings against him, he admitted to the allegations and acknowledged his wrongdoing. By doing so, he took full responsibility for his actions. The Panel finds that the penalty being sought will bring to the Member's attention the need to review and understand regulations, standards and guidelines of practice. The Panel is satisfied that the proposed penalty sufficiently addresses the principles of remediation and deterrence. For these reasons, the Panel

is satisfied that the penalty is within the appropriate range and serves the public interest.

Therefore, the Panel orders that:

1. The Member appear before the panel to be reprimanded.
2. The Registrar suspend the Member's certificate of registration for a period of six months ("Suspension") with the suspension to take effect on the date of the hearing.
3. The Registrar impose the following terms, conditions and limitations on the Member's certificate of registration:
 - (i) he will not use the title "osteopath";
 - (ii) he will not hold himself out as a person who is qualified to practice in Ontario as an osteopath;
 - (iii) he will not use the title "osteopath" in the course of providing or offering to provide health care to individuals in Ontario;
 - (iv) he will not perform any of the controlled acts set out in section 27(2) of the *Regulated Health Professions Act, 1991*;
 - (v) he will resign his membership with the CCO within six months of the date of the Panel's decision in this matter.
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 \$15,000.00, paid by way of certified cheque on the date of the hearing.
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.

Administration of Reprimand

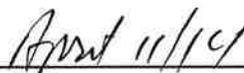
As set out in paragraph 9 of the Undertaking attached to the Joint Submission on Penalty, Dr. Pourgol waived his right of appeal. As Dr. Pourgol was not present at the proceeding the matter was concluded.

Dr. Pourgol appeared before the Panel on Thursday, March 6, 2014, at which time the oral reprimand was administered.

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



Dr. Peter Amlinger, Chair



Date: April 11, 2014

Panel Members:

- Dr. Peter Amlinger
- Dr. Angela Barrow
- Mr. Robert MacKay
- Ms. Judith McCutcheon
- Dr. Vikas Puri

APPENDIX "A"

UNDERTAKING

**To: The Registrar
College of Chiropractors of Ontario**

I, Dr. Shahin Pourgol, a member of the College of Chiropractors of Ontario ("CCO"), undertake to the Registrar and agree to do the following:

1. Within six months of the date of the Discipline Committee hearing arising from the October 11, 2013 Notice of Hearing, I shall resign my membership with the CCO.
2. I shall not be entitled in the future to seek membership in the CCO having resigned permanently from membership in the CCO and having irrevocably surrendered my Certificate of Registration pursuant to the undertaking in paragraph 1 above.
3. Once I have resigned my membership with the CCO, I shall no longer use the title "chiropractor", hold myself out as a chiropractor or a retired chiropractor, or engage in the practice of chiropractic in any capacity whatsoever.
4. I shall not use the title "osteopath".
5. I shall not hold myself out as a person who is qualified to practice in Ontario as an osteopath.
6. I shall not use the title "osteopath" in the course of providing or offering to provide health care to individuals in Ontario.
7. I shall not perform any of the controlled acts set out in section 27(2) of the *Regulated Health Professions Act, 1991*.
8. I shall pay the CCO \$15,000.00 as partial payment of its investigative and legal costs by way of a certified cheque on the date of the hearing.
9. I shall not appeal or request a review of the decision of the panel of the Discipline Committee regarding its findings and/or penalty made as a result of the hearing into the allegations set out in the Notice of Hearing.
10. I agree that any dispute with respect to the interpretation and implementation of the penalty decision of the Discipline Committee shall be referred to a panel of the Discipline Committee, which shall have the power to resolve the dispute.

I acknowledge that failure to abide by any of the terms of this Undertaking could result in the referral of specified allegations of professional misconduct to the Discipline Committee.

I acknowledge that I was advised by the CCO to obtain independent legal advice prior to my signing this Undertaking, and I had ample opportunity to do so. I agree that I am entering into this Undertaking freely and voluntarily.

Signed this _____ day of January 2014

Dr. Shahin Pourgol

Witness Signature

Witness name (please print)