

**DISCIPLINE COMMITTEE OF THE COLLEGE OF KINESIOLOGISTS OF ONTARIO**

**IN THE MATTER** of the *Regulated Health Professions Act*, 1991, S.O. 1991, c.18, as amended, and the regulations thereunder, as amended;

**AND IN THE MATTER** of the *Kinesiology Act*, 2007, S.O. 2007, c. 10, Schedule 0, as amended, and the regulations thereunder, as amended;

AND IN THE MATTER of allegations of professional misconduct/incompetence before the Discipline Committee of the College of Kinesiologists of Ontario as referred by the Inquiries, Complaints and Reports Committee against **James Reeves**;

**BETWEEN:** )

)

**COLLEGE OF KINESIOLOGISTS  
OF ONTARIO** )

**Jordan Glick**  
for the College of Kinesiologists

-and-) )

**Eric Bruce**  
Attending for the College of  
Kinesiologists

**JAMES REEVES  
(Registration Number 19002)** )

**Yaroslav Oboudhov**  
for the Member

)

**James Reeves**  
In attendance

)

**Cynthia Kuehl**  
Independent Legal Counsel

)

**Heard: January 24, 2020 Decision**

)

**Released: February 20, 2020**

)

**Written Decision Date: February 19, 2020**

**Panel Members:**

**Mary Pat Moore, Chair, Public Council Member**  
**Teresa Bendo, Public Council Member**  
**Jennifer Pereira, R. Kin., Professional Council Member**  
**Katie St. Denis, R. Kin., Professional Council Member**  
**Pamela Paquette, R. Kin., Member at Large**

**DECISION AND REASONS FOR DECISION**

**I. INTRODUCTION**

[1] This matter was heard by a panel of the Discipline Committee (“the Panel”) on January 24, 2020.

[2] The hearing proceeded by an Agreed Statement of Facts. The College and James Reeve (“the Member”) also proposed a Joint Submission As To Order.

**II. ALLEGATIONS**

[3] The allegations against the Member are set out in the Notice of Hearing dated October 25, 2019 contained in the Hearing Brief of Documents (Exhibit #1, Tab 1).

[4] The allegations in the Notice of Hearing are set out in paragraph 6, in which it is alleged that the Member submitted and/or directed his employees to submit false and/or misleading claims to an insurance company; created and/or directed his employees to create false and/or misleading invoices; failed to ensure that fees charged accurately reflected the services provided; and failed to monitor and document invoices and billings practices at the Clinic to ensure their accuracy. In paragraph 7, it is further alleged that the Member failed to keep proper patient records for patients listed in Appendix A (23 individuals).

[5] Specifically, it is alleged in paragraph 8 of the Notice of Hearing that the Member engaged in professional misconduct pursuant to section 51(1) (c) of the *Health Professions Procedural Code*, being Schedule 2 to the *Regulated Health Professions Procedural Code* (“Code”), and in particular, the following subsections of Ontario Regulation 316/12 under the *Kinesiology Act, 2007*:

1(1): contravening, by act or omission, a standard of practice of the profession or failing to maintain the standard of practice of the profession;

1(18): issuing an invoice, bill, or receipt for services that the member knows or ought to know is false or misleading,;

1(25): failing to keep records in accordance with the standards of the profession;

1(26): signing or issuing, in his professional capacity, a document that the member knows or ought to know contains false or misleading information;

1(27): falsifying a record relating to the member’s practice; and

1(50): engaging in conduct or performing an act relevant to the practice of the profession, that having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

### III. MEMBER’S POSITION

[6] The Member admitted the allegations set out in the Notice of Hearing as described in the Agreed Statement of Facts (Exhibit #1, Tab 4).

### IV. AGREED STATEMENT OF FACTS

[7] Counsel for the College advised the Panel that the parties were presenting an Agreed Statement of Facts (ASF) for the Panel’s consideration which provides as follows:

1. At all material times, Mr. James Reeves (the “**Member**”) was a registered member of the College and the owner and operator of The Athlete’s Zone (the

“Clinic”) in Mississauga, Ontario. The Member engaged in the practice of kinesiology at the Clinic.

2. PS is a registered member of the College of Physiotherapists of Ontario. From March 2013 to June 2013, PS worked as a physiotherapist at the Clinic. Since 2013, PS has not worked at the Clinic in any capacity nor has he treated any patients at the Clinic.
3. From July 2016 to December 2018, the Clinic submitted 601 claims for payment to Sun Life Assurance Company of Canada (“Sun Life”) under PS’s name and registration number. For each of these claims, an invoice was created which listed PS as the treating physiotherapist and contained his registration number. Sun Life paid the Clinic \$21,512.81 for the 601 claims submitted under PS’s name and registration number.
4. With respect to the patients listed in Appendix “A” for whom the 601 claims were made to Sun Life, the Member acknowledges that he:
  - a. Submitted false and misleading claims and directed his employees to submit false and misleading claims under PS’s name and registration number;
  - b. Created false and misleading invoices and directed his employees to create false and misleading invoices that listed PS as the treatment provider and included PS’s registration number;
  - c. Failed to ensure that fees charged accurately reflected the services provided; and,
  - d. Failed to monitor and document invoices and billings practices at the Clinic to ensure their accuracy.
5. The Member additionally acknowledges that with respect to the patients listed in Appendix “A”, he failed to keep proper patient records in accordance with the standards of practice, in that he failed to:

- a. Record the date and purpose of each professional contact with the patient;
- b. Record reasonable information about each examination, assessment, and/or reassessment;
- c. Record reasonable information about each treatment performed; and,
- d. Create or retain a patient record.

### **Acknowledgement of Professional Misconduct**

- 6. As a result of the conduct described above, the Member acknowledges that he engaged in professional misconduct in that he violated section 51(1)(c) of the *Health Professions Procedural Code*, being Schedule 2 to the *Regulated Health Professions Act, 1991*, and in particular, the following subsections of Ontario Regulation 316/12 under the *Kinesiology Act, 2007*:
  - a. 1(1): Contravening, by act or omission, a standard of practice of the profession or failing to maintain the standard of practice of the profession;
  - b. 1(18): Issuing an invoice, bill or receipt for services that the member knew or ought to have known was false or misleading;
  - c. 1(25): Failing to keep records in accordance with the standards of the profession;
  - d. 1(26): Signing or issuing, in his professional capacity, a document that the member knew or ought to have known contained false or misleading information;

- e. 1(27): Falsifying a record relating to the member's practice; and
- f. 1(50): Engaging in conduct or performing an act relevant to the practice of the profession that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

### **Further Acknowledgements**

- 7. The Member understands the nature of the allegations that have been made against him.
- 8. The Member understands that, by voluntarily admitting to these allegations, he waives his right to require the College to otherwise prove the case against him.
- 9. The Member understands that the Discipline Panel can accept that the facts herein constitute professional misconduct.
- 10. The Member understands that the Panel's decision and reasons may be published, including the facts contained herein along with his name.
- 11. The Member understands that any agreement between him and the College does not bind the Discipline Panel.
- 12. The Member acknowledges that he has had the opportunity to seek independent legal advice and retain counsel and that he has done so. He further acknowledges that he is entering into this Agreed Statement of Facts freely and voluntarily after consulting with his legal counsel.

### **V. PLEA INQUIRY**

[8] The Chair of this Discipline Committee panel asked the Member questions and the Member replied. His answers confirmed that his admissions were voluntary, informed, and unequivocal. (Exhibit #2).

## VI. DECISIONS ON FINDINGS

[9] The Panel finds that the Member committed the acts of professional misconduct as set out and admitted by the Member in the following paragraphs of the ASF:

- o paragraph 6 - submitted and/or directed his employees to submit false and/or misleading claims to an insurance company; created and/or directed his employees to create false and/or misleading invoices; failed to ensure that fees charged accurately reflected the services provided; and failed to monitor and document invoices and billings practices at the Clinic to ensure their accuracy.
- o paragraph 7 - failed to keep proper patient records for patients listed in Appendix A (23 individuals).

[10] With respect to the allegations that the Member engaged in conduct that having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable and unprofessional, the Panel finds the Member's conduct to be disgraceful, dishonourable and unprofessional.

## VII. REASONS FOR FINDING

[11] The Panel considered the ASF and finds that the facts set out in that document, together with the Member's admissions, support findings of professional misconduct. Having reviewed the Notice of Hearing and the ASF, together with the attachments and including the

Member's admissions, and having heard the submissions of counsel and being satisfied that the Member's plea was voluntary, informed, and unequivocal, the Panel finds that the College discharged its onus to prove the allegations admitted to on a balance of probabilities.

[12] Finally, the Panel was satisfied that the Member's conduct was disgraceful, dishonourable, and

unprofessional. The Panel was satisfied that the Member's conduct was more than incompetent or careless. The Member knew or ought to have known that breaching professional standards by completing false or misleading insurance forms and failing to keep records appropriately was a persistent disregard of professional standards. Moreover, as an owner and operator of a clinic, he directed employees to submit false and/or misleading claims and invoices. Such conduct was disgraceful. The Member's deceit and dishonesty in submitting false and misleading insurance forms demonstrated his inherent inability to discharge his duties.

#### VIII. JOINT SUBMISSIONS AS TO ORDER

[13] Counsel for the College advised the Panel that an agreement had been reached with respect to the order that was being proposed by the parties.

[14] The Joint Submission as to Order (JSO) (Exhibit #1, Tab 5) provides as follows:

The College of Kinesiologists of Ontario ("the College") and James Reeves ("the Member") agree and jointly submit for the Discipline Panel to make the following Order ("Order"):

1. Requiring the Member to appear before a Panel of the Discipline Committee to



be reprimanded:

2. Directing the Registrar to suspend the Member's certificate of registration for a period of 10 months, 1 month of which shall be remitted if the terms, conditions and limitations imposed within paragraph 3 below are completed to the satisfaction of the Registrar within 9 months of the making of this Order:
3. Directing the Registrar to impose specified terms, conditions, or limitations on the Member's certificate of registration, including:
  - (a) The Member must successfully complete, with an unconditional pass, at his own expense and within 12 months of the date the Order is imposed, the ProBe Program on professional/problem-based ethics for health care professionals offered by the Centre for Personalized Education for Physicians; or
  - (b) In the alternative to paragraph 3(b), the Member must successfully complete another educational program as agreed to with the College.
4. Directing the Member to pay the College's costs in the amount of \$1,000.00. \$500 of the costs must be paid within 7 days of the date the Order being imposed. The remaining \$500 must be paid within 6 months of the day this Order is imposed.
5. Directing that the finding and the Order of the Discipline Committee be published in detail or in summary with the name of the Member, online and/or in print, including, but not limited to the official publications of the College and on the College's website.

#### **Clarity Note**

6. The Registrar is empowered, in her discretion, to grant a request for an extension of time to complete the remedial steps set out in paragraphs 3 (a) and 3 (b) if the Registrar is of the view that it would be in the interests of fairness to do so and that it would not be contrary to the College's mandate to serve and protect the public

interest.

### Acknowledgements

7. The Member acknowledges that this Joint Submission as to Order is not binding upon the Discipline Committee.
8. The member acknowledges that he has had the chance to receive independent legal advice.

### IX. SUBMISSIONS ON ORDER

#### *Counsel for the The College*

[15] Counsel for the College also made the following submissions:

- This is a lawful and appropriate order for the Panel to order.
- The cost of \$1,000.00 is appropriate for costs in this case. They are an indemnity for the College.
- The publication of the decision is not discretionary for the Panel.
- The Panel should consider the principles of general and specific deterrence, rehabilitation, and ensuring public confidence.
- The Panel should consider rehabilitation for the Member.
- Counsel for the College submitted that the Joint Submission as to Order addressed the principles above by compliance with sec. 52( 2) for Orders in the *Code*; the agreed-to costs are an indemnity for the Collge; in compliance with sec. 56 (1) of the *Code* that requires publication of decisions; sends a message to other Members of penalty awaiting them should they commit professional misconduct; and finally, addresses issues and rehabilitation of member.

### *Counsel for The Member*

[16] Counsel for the Member cited *R v Anthony-Cook*, 2016 SCC 43 for the proper test for counsel making a joint submission on order. [Counsel for the College relied on this authority as well.]

- The Panel should consider the principles of general and specific deterrence, rehabilitation, and ensuring public confidence.
- The Member was co-operative and saved the College time and money.
- This is the Member's first time before the Discipline Committee.
- The proposed Order is proportional to the offence.
- Counsel for the Member submitted that the Joint Submission as to Order addressed the principles above by warning other Members of the penalty for fraudulent conduct; by admitting misconduct, he saved the College of Kinesiology effort; and the penalty falls in an appropriate range based on caselaw review.

### X. THE PANEL'S ORDER

[17] The Panel accepts the JSO presented by the parties and makes an Order as follows:

1. Requiring the Member to appear before a Panel of the Discipline Committee to be reprimanded;
2. Directing the Registrar to suspend the Member's certificate of registration for a period of 10 months, 1 month of which shall be remitted if the terms, conditions and limitations imposed within paragraph 3 below are completed to the satisfaction of the Registrar within 9 months of making this Order:
3. Directing the Registrar to impose specified terms, conditions, or limitations, on the Member's certificate of registration, including:
  - (a) The Member must successfully complete, with an unconditional pass, at

his own expense and within 12 months of the date the Order is imposed, the ProBe Program on professional/problem-based ethics for health care professionals offered by the Centre for Personalized Education for Physicians; or

(b) In the alternative to paragraph 3(b), the Member must successfully complete another educational program as agreed with the College.

4. Directing the Member to pay the College's costs in the amount of \$1,000.00. \$500 of the costs must be paid within 7 days of the date the Order being imposed. The remaining \$500 must be paid within 6 months of the day this order is imposed.

5. Directing that the finding and the Order of the Discipline Committee be published in detail or in summary with the name of the Member online and/or in print, including, but not limited to the official publications of the College and on the College's website.

#### **Clarity Note**

6. The Registrar is empowered, in her discretion, to grant a request for an extension of time to complete the remedial steps set out in paragraphs 3 (a) and 3 (b) above, if the Registrar is of the view that it would be in the interests of fairness to do so and that it would not be contrary to the College's mandate to serve and protect the public interest.

#### **XI. REASONS FOR ORDER**

[18] The Panel is aware that when presented with a JSO particularly when the agreement has been negotiated by experienced counsel, as is the case here, we are not to depart from such a joint submission "unless satisfied that the recommended disposition would be contrary to the public interest and would bring the administration of justice into disrepute." *R v Anthony-Cook*, 2016 SCC 43.

[19] In deciding the appropriate Order in this case, we remind ourselves that the primary purpose of these proceedings is protection of the public. In addition, we must consider

both the interests of the profession as a whole as well as the particular circumstances of the Member, including his position as an employer of kinesiologists and an owner and operator of a clinic.

[20] In considering the public interest, we are mindful that the public must have confidence in the profession's ability to regulate itself effectively and in a manner that protects the public.

[21] When we consider the interests of the profession, we recognize that this Discipline Committee owes a duty to enforce and maintain the high standards of practice that the public expects of our members and that members expect of themselves. In each case, the Discipline Committee must consider the extent to which a message to the profession is required to make it clear that the conduct in question will not be tolerated.

[22] We must consider the unique and particular circumstances of Mr. James Reeves. The order must be appropriate, fair, and reasonable to the Member's circumstances.

[23]. The Panel agreed the proposed Order was reasonable and appropriate having regard for the facts of the case. The Panel thinks that the Order adequately addressed the issues of public protection, sent a message of general deterrence to the membership, and provided specific deterrence to the Member.

[24] The Panel also considered the Order to be consistent with the need to deal harshly with regard to inappropriate business practices and views that by making this Order, the public's confidence in the College's ability to regulate its members should be maintained.

[25] The Panel considers that the Order gave due consideration to both the aggravating and mitigating circumstances in this case and by giving each factor the appropriate weight, struck an acceptable balance among the factors.

[26] In reaching our decision, the Panel considered the submissions of both the Member's counsel, as well as the College's counsel.

I, Mary Pat Moore sign this Decision and Reasons for Decision as Chairperson of this Discipline Panel and on behalf of the panel members listed below:

 February 19, 2020  
Chairperson \_\_\_\_\_ Date

Teresa Bendo, Public Council Member  
Jennifer Pereira, R. Kin., Professional Council Member  
Katie St. Denis, R. Kin., Professional Council Member  
Pamela Paquette, R. Kin., Member at Large

XII. APPENDIX

Appendix A: The Panel delivered the following reprimand to the Member on Jan. 24, 2020:

1. Your conduct is totally unacceptable to your fellow kinesiologists and to the public. Of particular concern to us is the fact that your conduct involved misconduct set out in paragraphs 4, 5, and 6 of the Agreed Statement of Facts.
2. You have brought discredit to the kinesiology profession and to yourself.
3. Public confidence in this profession has been put in jeopardy.
4. The result of your misconduct is that you let down the public, the kinesiology profession, and yourself.
5. It is necessary for us to impress upon you the seriousness of your misconduct.

7. The fact that you have engaged in misconduct is a matter of significant concern that reflects poorly upon yourself and the profession. You have let down the public which places its confidence in members of this profession.

8. We wish to make clear to you that, although the Order we imposed is appropriate in relation to our findings, a more significant Order will likely be imposed by another Discipline panel in the event that you are ever found to have engaged in further professional misconduct.

9. By your actions, you have caused significant damage to the reputation of the profession as a whole and cost a shadow over your own integrity.

10. The practice of kinesiology is a privilege that carries with it significant obligations to the public, the profession, and to oneself. Through your conduct, you have failed in your obligations.

