

**DISCIPLINE COMMITTEE OF
THE COLLEGE OF PHYSIOTHERAPISTS OF ONTARIO**

BETWEEN:

COLLEGE OF PHYSIOTHERAPISTS OF ONTARIO

- and -

H. DOUGLAS FEARMAN, Registration Number 04261

NOTICE OF HEARING

The Inquiries, Complaints and Reports Committee of the College of Physiotherapists of Ontario has referred specified allegations against H. Douglas Fearman to the Discipline Committee of the College. The allegations were referred in accordance with paragraph 26(1)1 of the *Health Professions Procedural Code*. The statement of allegations is attached to this notice of hearing. A discipline panel will hold a hearing under the authority of sections 38 to 56 of the *Health Professions Procedural Code*, as amended, for the purposes of deciding whether the allegations are true. A **pre-hearing conference** may be held at the offices of the College of Physiotherapists of Ontario at 375 University Avenue, Suite 800, Toronto, Ontario, at a date and time to be fixed by the Registrar. A discipline panel will subsequently convene at the offices of the College of Physiotherapists of Ontario at 375 University Avenue, Suite 800, Toronto, Ontario, also at a date and time to be fixed by the Registrar, for the purposes of conducting the **hearing**.

IF YOU DO NOT ATTEND AT THE HEARING IN ACCORDANCE WITH THE PRECEDING PARAGRAPH, THE DISCIPLINE PANEL MAY PROCEED IN YOUR ABSENCE AND YOU WILL NOT BE ENTITLED TO ANY FURTHER NOTICE IN THE PROCEEDINGS.

If the discipline panel finds that you have engaged in professional misconduct, it may make one or more of the following orders:

1. Direct the Registrar to revoke the member's certificate of registration.
2. Direct the Registrar to suspend the member's certificate of registration for a specified period of time.
3. Direct the Registrar to impose specified terms, conditions and limitations on the member's certificate of registration for a specified or indefinite period of time.
4. Require the member to appear before the panel to be reprimanded.
5. Require the member to pay a fine of not more than \$35,000 to the Minister of Finance.

The discipline panel may, in an appropriate case, make an order requiring you to pay all or part of the College's costs and expenses pursuant to section 53.1 of the *Health Professions Procedural Code*.

You are entitled to disclosure of the evidence against you in accordance with section 42(1) of the *Health Professions Procedural Code*, as amended. You, or your representative, may contact the solicitor for the College, Joanna Birenbaum, in this matter at:

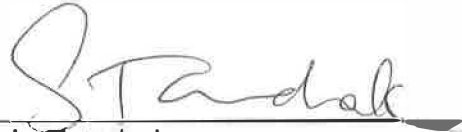
Ursel Phillips Fellows Hopkinson LLP
555 Richmond St. West, Suite 1200
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Telephone: (416) 968-3333
Facsimile: (416) 968-0325
Email: jbirenbaum@upfhlaw.ca

You must also make disclosure in accordance with section 42.1 of the *Health Professions Procedural Code*, which states as follows:

Evidence of an expert led by a person other than the College is not admissible unless the person gives the College, at least ten days before the hearing, the identity of the expert and a copy of the expert's written report or, if there is no written report, a written summary of the evidence.

Date: January 31, 2018

A handwritten signature in black ink, appearing to read 'S. Tanchak', written over a horizontal line.

Shenda Tanchak
Registrar & CEO
College of Physiotherapists of Ontario

Statement of Allegations

1. At all material times H. Douglas Fearman (the “Member” or “Mr. Fearman”) was registered as a Physiotherapist in the Province of Ontario, providing services through Alliston Physiotherapy and Sports Rehab (the “Clinic”) in Alliston, Ontario.

2. Between the period of May 1, 2017 and June 30, 2017, Mr. Fearman engaged in professional misconduct within the meaning of the following paragraphs of section 1 of the *Professional Misconduct Regulation*, O. Reg. 388/08:
 - a. paragraph 1 (failing to maintain the standards of the profession);
 - b. paragraph 10 (sexually abusing a patient);
 - c. paragraph 18 (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);
 - d. paragraph 19 (conduct unbecoming a physiotherapist);
 - e. paragraph 32 (submitting an account or charge for services that the member knows or ought to know is false or misleading);
 - f. paragraph 33 (failing to take reasonable steps to ensure that any accounts submitted in the member’s name or billing number are fair and accurate).

3. During the period of May 1, 2017 to June 30, 2017, Mr. Fearman committed an act of professional misconduct under ss. 1(3), 1(4) and s.51(1)(b.1) of the Health Professions Procedural Code, being Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c.18 (the “Code”).

PARTICULARS OF THE ALLEGATIONS

1. At all material times, Mr. Fearman was a registered Member of the College of Physiotherapists of Ontario (the "College"), providing physiotherapy services at Alliston Physiotherapy and Sports Rehab (the "Clinic") in Alliston, Ontario.
2. In or about May 25, 2017, Patient A attended at the Clinic for an initial physiotherapy assessment and physiotherapy treatment with Mr. Fearman, following surgery on her left knee.
3. During the assessment, Mr. Fearman made comments to Patient A of a sexual nature that were unwelcome to Patient A.
4. In addition, during the assessment, Mr. Fearman initiated a conversation with Patient A about her difficulties conceiving, and offered to provide, and did provide, acupuncture treatment to Patient A, advising her that the purpose of the acupuncture was to treat infertility.
5. Patient A attended at the Clinic for follow-up appointments with Mr. Fearman on three additional occasions on May 30, June 1, and June 6, 2017. During one of these appointments, Mr. Fearman again made comments of a sexual nature to Patient A that were unwelcome to her.
6. Further, in the appointment on or about June 6, 2017, Mr. Fearman removed his pants in the presence of Patient A, purportedly to demonstrate quadriceps / patellar tracking exercise to Patient A. Following this incident, Patient A did not attend at the Clinic again for physiotherapy or acupuncture treatments with Mr. Fearman.

Sexual Abuse

7. The conduct set out in paragraphs 2-6 above constitute behavior or remarks of

a sexual nature and professional misconduct under paragraph 10 of the *Professional Misconduct Regulation* O.Reg. 388/08 and ss.1(3),(4), 51(1)(b.1) of the Code.

8. In addition, or in the alternative, the acts set out in paragraphs 2-6 above, of the Member making comments of a sexual nature to Patient A and of the Member removing his pants in the presence of Patient A during the course of a physiotherapy treatment, were inappropriate, were not clinically indicated, failed to respect Patient A's personal boundaries, fell below the standards of practice of the profession with respect to physiotherapists maintaining professional and ethical boundaries, were undertaken without Patient A's informed consent, and otherwise constitute conduct unbecoming a physiotherapist and conduct that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable and/or unprofessional.

Acupuncture for Infertility is not a Physiotherapy Treatment

9. At each of the four appointments with Patient A, Mr. Fearman provided two separate services to Patient A: (1) physiotherapy treatment to Patient A for her left knee; and (2) acupuncture services to Patient A for infertility.

10. Mr. Fearman invoiced Patient A for the acupuncture treatments as physiotherapy services under Mr. Fearman's name and College registration number.

11. The practice of physiotherapy is the assessment of neuromuscular, musculoskeletal and cardio respiratory systems, the diagnosis of diseases or disorders associated with physical dysfunction, injury or pain and the treatment, rehabilitation and prevention or relief of physical dysfunction, injury or pain to develop, maintain, rehabilitate or augment function and promote mobility (*Physiotherapy Act, 1991* S.O. 1991, c.37 (as amended), s.3).

12. The use of acupuncture to treat infertility in respect of Patient A was not a treatment within the scope of practice of physiotherapy under the *Physiotherapy Act, 1991*.

13. The acupuncture services for the treatment of infertility provided by Mr. Fearman to Patient A do not qualify as physiotherapy and could not be invoiced as a physiotherapy service or treatment under Mr. Fearman's registration number.

14. By submitting invoices to Patient A for acupuncture for infertility as physiotherapy services under the Member's name and registration number, Mr. Fearman engaged in professional misconduct pursuant to s.1, paragraphs 1, 18, 19, 32 and 33 of the *Professional Misconduct Regulation, O. Reg. 388/08*.

15. Mr. Fearman had no knowledge or qualifications in the use of acupuncture for the treatment of infertility.

16. Mr. Fearman did not advise Patient A of the risks or benefits of acupuncture. Nor did Mr. Fearman inform Patient A that he did not have knowledge or skill in the provision of acupuncture for the treatment of infertility.

17. In respect of the allegations set out in paragraphs 9-13 and 15-16 above, Mr. Fearman engaged in professional misconduct pursuant to s.1, paragraphs 1 (failure to obtain informed consent; providing a treatment or service for which the Member did not have knowledge or skill or was otherwise not qualified; providing a treatment to Patient A as a physiotherapy treatment when that treatment was not within the scope of practice of physiotherapy), 18, 19, 32 and 33 of the *Professional Misconduct Regulation, O. Reg. 388/08*.

APPENDIX

1. Take notice that the documents that have been and will later be disclosed to you will be tendered as business documents pursuant to the *Evidence Act* of Ontario.
2. All documents that are disclosed to you in this matter are disclosed on the basis that they are to be used solely for the purpose of this proceeding and for no other purpose.