

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

BETWEEN:

COLLEGE OF PHYSIOTHERAPISTS OF ONTARIO

- and -

KANG-MING (JOHNNY) CHEUNG, Registration Number 07398

NOTICE OF HEARING

The Inquiries, Complaints and Reports Committee of the College of Physiotherapists of Ontario has referred specified allegations against Kang-Ming (Johnny) Cheung 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
Toronto, ON M5V 3B1

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: November 7, 2018



Rod Hamilton
Registrar
College of Physiotherapists of Ontario

TO: Gary Srebrelow

Legal counsel for Mr. Cheung

Statement of Allegations

1. At all materials times, Kang-Ming (Johnny) Cheung (Mr. Cheung) was a registered member of the College.

2. During the period January 1, 2012 and August 31, 2017, Mr. Cheung 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 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);

 - c. paragraph 26 (failing to keep records in accordance with the standards of practice of the profession)

 - d. paragraph 27 (falsifying a record);

 - e. paragraph 28 (signing or issuing a document containing a statement that the member knows or ought to know contains a false or misleading statement);

 - f. paragraph 32 (submitting an account or charge for services that the member knows or ought to know is false or misleading); and

 - g. 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).

PARTICULARS OF THE ALLEGATIONS

1. At all materials times, Kang-Ming (Johnny) Cheung (Mr. Cheung) was a registered member of the College and the owner of Care Best Health Physiotherapy and Rehab ("Care Best"). Mr. Cheung was also affiliated with another clinic, Markham Wellness Centre ("Markham Wellness"), located in the same commercial complex as Care Best. Mr. Cheung provided physiotherapy services at Markham Wellness and had a business/referral relationship with them. Markham Wellness offered a variety of services, including spa services such as facials.

Fraudulent and/or False Issuance of Physiotherapy Receipts for Spa Services

2. Between July 2014 and October 2014, an undercover investigator (the "Investigator") for an insurer attended at Markham Wellness for spa services, which services were invoiced as massage therapy services under the name and registration number of a member of the College of Massage Therapists of Ontario.
3. In or about November 10, 2014, the Investigator asked staff at Markham Wellness whether her next spa package could be invoiced as physiotherapy services, for the purposes of reimbursement by a third party insurer. The Markham Wellness staff member indicated that this was possible. The Investigator paid \$490.00 in cash to Markham Wellness for a spa package on this basis.
4. On December 6, 2014, the Investigator attended at Markham Wellness for spa services. Following the spa service, the Investigator was taken by a staff member of Markham Wellness to Care Best for a physiotherapy assessment. The Investigator was advised that she needed to see a physiotherapist in order for her spa services to be invoiced as physiotherapy treatments.
5. At Care Best, the Investigator met with Mr. Cheung. The Investigator reported to Mr. Cheung that she had no health problems. Mr. Cheung did not perform a legitimate and/or adequate assessment of the Investigator. Mr. Cheung indicated to the Investigator that the assessment was to ensure that the Investigator would be paid.

6. The Investigator did not attend for any follow up physiotherapy treatments with Mr. Cheung after December 6, 2014, nor were any recommended by Mr. Cheung.
7. On December 12, 2014, the Investigator attended at Markham Wellness and was provided with a receipt for physiotherapy services under Mr. Cheung's name and registration number, in the amount of \$490.00. The invoice purported to be for six physiotherapy treatments provided by Mr. Cheung during the period of October 1, 2014 and October 31, 2014. No physiotherapy treatments were provided to the Investigator by Mr. Cheung during this period.
8. Mr. Cheung approved the issuance of the physiotherapy receipt by Markham Wellness to the Investigator for services that were not provided in October 2014 or at all.
9. Mr. Cheung knew or ought to have known that the invoice in question was provided to the Investigator by Markham Wellness and that the invoice was inaccurate, misleading and false.
10. In his business relationship with Markham Wellness, Mr. Cheung knew or ought to have known that patients/clients of Markham Wellness, and the Investigator specifically, were provided physiotherapy or massage therapy invoices to cover the cost of spa services, when no massage therapy or physiotherapy services were in fact provided.

Fabrication of Patient Records

11. Following December 12, 2014, the insurer requested the patient records for the physiotherapy services provided to the Investigator by Mr. Cheung in October 2014.
12. Mr. Cheung fabricated the patient records in question and specifically fabricated an assessment dated October 1, 2014, and five treatment notes dated October 7, 13, 18, 25 and 31, 2018.

False, Misleading or Inaccurate Accounts

Failing to Maintain the Standards of Practice of the Profession: Record Keeping

13. In or about February 2016, the College collected patient charts for patients who were

invoiced for physiotherapy services provided by Mr. Cheung at Care Best and Markham Wellness.

14. It is the responsibility of the physiotherapist to document a treatment in the patient's chart, including for the purposes of patient safety, continuity and quality of patient care, and to demonstrate that the service was in fact provided.

15. For numerous patients, there were no patient records to support multiple invoices for services provided:

Care Best patients:

Patient #13, #15, #16, #17, #19, #20, #23, #26, #27, #28, #29, #30, #31, #41, #42, #44, #45, #47, #49

Markham Wellness patients:

Patient #51, #52, #54, #56, #58, #62, #63, #64, #65, #68, #69, #70, #71, #72, #73, #75, #76, #77, #79, #80, #81, #82, #83, #84, #85, #87, #93, #97, #99, #100

16. In respect of the above patients, invoices were issued to patients for physiotherapy treatments under Mr. Cheung's name and registration number where no chart notation exists and where no service was in fact provided either on the date in question or at all.

17. In the alternative, Mr. Cheung's failure to maintain records for treatments provided to the above patients, fell below the standards of practice of the profession for record keeping.

18. In respect of the following patients, invoices were issued to patients under Mr. Cheung's name and registration number that did not correspond with the dates on which treatments were provided as set out in the clinical records:

Care Best:

Patient #1, #3, #7, #9, #10, #11, #12, #13, #15, #19, #20, #22

Markham Wellness:

Patient #50, 51, #52, #54, #56, #57, #58, #62, #63, #64, #65, #67, #68, #69, #70, #71, #72, #73, #74, #75, #76, #77

19. For the patients charts that contained clinical notes, Mr. Cheung failed to maintain the standards of practice of the profession for record keeping, including by:

Assessments were inadequate, including by failing to contain any or adequate subjective or objective data:

Care Best:

Patient #13, #14, #15, #20, #21, #26, #27, #28, #31, #32, #35,
#41, #42, #44, #45, #49

Markham Wellness:

Patient #51, #54, #56, #58, #62, #64, #65, #68, #70, #71, #73,
#77, #79, #81, #82, #83, #84, #85, #90, #97, #100

Treatment plans were not included in the assessment and/or were inadequate and/or incomplete and/or vague:

Care Best:

Patient #13, #14, #15, #16, #17, #20, #23, #26, #27, #28, #30,
#31, #32, #35, #36, #41, #42, #44, #45, #49

Markham Wellness:

Patient #51, #54, #56, #58, #62, #63, #64, #65, #67, #68, #69,
#71, #72, #73, #75, #76, #77, #78, #79, #80, #81, #82, #83, #84,
#85, #87, #90, #93, #96, #97, #99, #100

Failed to Maintain the Standards of Practice of the Profession: Assessments and Re-Assessments

20. Assessments were inadequate, including by failing to contain any or adequate subjective or objective data:

Care Best:

Patient #13, #14, #15, #20, #21, #26, #27, #28, #31, #32, #35,
#41, #42, #44, #45, #49

Markham Wellness:

Patient #51, #54, #56, #58, #62, #64, #65, #68, #70, #71, #73,
#77, #79, #81, #82, #83, #84, #85, #90, #97, #100

21. In respect of the following patients, Mr. Cheung failed to perform re-assessments in a timely manner or at all:

Care Best:

Patient #13, #14, #15, #16, #17, #18, #19, #20, #23, #25, #26, #27, #28,
#29, #30, #31, #32, #35, #36, #37, #38, #41, #42, #43, #44, #45, #47,
#49

Markham Wellness:

Patient #50, #51, #52, #54, #56, #58, #59, #62, #63, #64, #65, #67, #68,
#69, #70, #71, #72, #73, #75, #76, #77, #78, #79, #80, #81, #82, #83,
#84, #85, #87, #88, #89, #90, #91, #92, #93, #95, #96, #97, #98, #99,
#100

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.