

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

BETWEEN:

COLLEGE OF PHYSIOTHERAPISTS OF ONTARIO

- and -

MICHAEL POLING, Registration Number 12205

**NOTICE OF HEARING**

The Inquiries, Complaints and Reports Committee of the College of Physiotherapists of Ontario has referred specified allegations against Michael Poling 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](mailto: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: December 10, 2018



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Rod Hamilton  
Registrar  
College of Physiotherapists of Ontario

TO: Michael Poling

## Statement of Allegations

1. During the period of October 1, 2007- March 31, 2009 and August 1, 2012 – October 31, 2012, Mr. Poling engaged in professional misconduct:
  - a. within the meaning of the following paragraphs of section 1 of the *Professional Misconduct Regulation*, 0. Reg. 861/93, in effect at the material times: paragraph 2 (failing to maintain the standards of the profession); paragraph 14 (falsifying a record); paragraph 16 (signing or issuing a document that the member knows or ought to know contains a false or misleading statement); paragraph 18 (submitting an account or charge for services that the member knows or ought to know is false or misleading); and paragraph 25 (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); and
  - b. within the meaning of the following paragraphs of section 1 of the *Professional Misconduct Regulation*, 0. Reg. 388/08, in effect at the material times: paragraph 1 (failing to maintain the standards of the profession); 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); paragraph 28 (signing or issuing a document that the member knows or ought to know contains a false or misleading statement); paragraph 27 (falsifying a record); and paragraph 32 (submitting and account or charge for services that the member knows or ought to know is false or misleading).
2. In the alternative to paragraph 1 above:
  - A. In respect of his treatment of Patient A during the period of October 1, 2007 - March 31, 2009 and August 1, 2012 - October 31, 2012, Mr. Poling:

a. Engaged in professional misconduct within the meaning of the following paragraphs of section 1 of the *Professional Misconduct Regulation*, O. Reg. 861/93 in effect at the material times: paragraph 2 (failing to maintain the standards of practice of the profession); paragraph 8 (practicing the profession while the member is in a conflict of interest); paragraph 16 (signing or issuing a document that the member knows or ought to know contains a false or misleading statement); paragraph 18 (submitting an account or charge for services that the member knows or ought to know is false or misleading; and paragraph 25 (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); and

b. Engaged in professional misconduct within the meaning of the following paragraphs of section 1 of the *Professional Misconduct Regulation*, O. Reg. 388/08, in effect at the material times: paragraph 1 (failing to maintain the standards of the profession); paragraph 5 (practicing the profession while the member is in a conflict of interest); and 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).

B. In his respect of his/the Clinic's records relating to Patient A during the period October 1, 2007 and June 30, 2017, Mr. Poling:

a. Engaged in professional misconduct within the meaning of the following paragraphs of section 1 of the *Professional Misconduct Regulation*, O. Reg. 861/93 in effect at the material times: paragraph 2 (failing to maintain the standards of practice of the profession); paragraph 13 (failing to keep records in accordance with the standards of practice of the profession); paragraph 24 (contravening a federal, provincial or territorial law relevant to the member's suitability to

practice the profession); paragraph 25 (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); and paragraph 29 (failing to supervise an auxiliary appropriately or in accordance with the regulations);

b. Engaged in professional misconduct within the meaning of the following paragraphs of section 1 of the *Professional Misconduct Regulation*, O. Reg. 388/08, in effect at the material times: paragraph 1 (failing to maintain the standards of the profession); paragraph 15 (Contravening a federal, provincial or territorial law relevant to the member's suitability to practice the profession); 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); paragraph 26 (failing to keep records in accordance with the standards of practice of the profession); paragraph 28 (signing or issuing a document that the member knows or ought to know contains a false or misleading statement); paragraph 32 (submitting and account or charge for services that the member knows or ought to know is false or misleading); 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); and paragraph 41 (failing to supervise in accordance with the standards of practice of the profession).

## PARTICULARS OF THE ALLEGATIONS

1. At all material times Mr. Poling (the “Member”) was a registered member of the College of Physiotherapists of Ontario (the “College”), an owner or co-owner of Fairway Physiotherapy located in Thunder Bay, Ontario (the “Clinic”), and a practicing physiotherapist at the Clinic. Another owner of the Clinic and practicing physiotherapist at the Clinic, was Jason Taddeo.
2. The allegations in this matter are pled in the alternative. In June of 2017, the College received a complaint that the Member and/or his Clinic had submitted invoices to a third party insurer for physiotherapy services that had never in fact been provided to the patient in question. The invoices were issued under the name and registration number of Mr. Poling. The patient stated she had never received physiotherapy services from Mr. Poling. The patient also complained that she was not provided copies of her clinical records in a timely way or at all.
3. The patient in question was at all material times the spouse of Jason Taddeo.
4. In response to the complaint, the Member advised the College that he had assessed the patient in Mr. Taddeo’s home in October 2007. He further advised the College that the physiotherapy services provided to patient A over the subsequent period of five years that were invoiced under his name and registration number, were in fact provided by Mr. Taddeo under an “indirect consultative model of supervision” with Mr. Poling.
5. As set out below, on the basis of the complaint received by the College with respect to invoices for physiotherapy services that were not in fact provided, the Member engaged in misconduct relating to false and misleading invoices and accounts.
6. In the alternative, as set out below, if the physiotherapy services in question were in fact provided by Mr. Taddeo to his spouse under the supervision or

direction of the Member, and invoiced to the third party insurer under Mr. Poling's name and registration number, the Member engaged in misconduct relating to: failing to maintain the standards of practice of the profession, boundaries/ethics, conflict of interest, false and misleading accounts and record keeping.

***False and Misleading Invoices Submitted to a Third Party Insurer***

7. In the period of October 1, 2007 - March 31, 2009 and August 1, 2012 – October 31, 2012, invoices issued under the Member's name and registration number were submitted by the Member and/or the Clinic, to a third party insurer in respect of treatments provided to Patient A.
8. No clinical records exist that document any assessment of, treatment plan for, or treatments provided to, Patient A in the period October 1, 2007 - March 31, 2009, and August 1, 2012 – October 31, 2012.
9. With the exception of an appointment for orthotics on August 15, 2008, the patient did not receive physiotherapy services on any of the dates in question during this period from the Member or any other physiotherapist at the Clinic.
10. The invoices submitted by the Member and/or the Clinic to the third party insurer during this period were false and misleading, in that Patient A did not receive any physiotherapy assessment or treatment from the Member or any other physiotherapist at the Clinic during the period October 1, 2007- March 31, 2009 and August 1, 2012 – October 31, 2012.
11. The Member submitted false and misleading invoices to the third party insurer, and/or knew or ought to have known that invoices were submitted by his Clinic to a third party insurer for physiotherapy services for Patient A, when in fact no physiotherapy services were provided to Patient A by the Member or by any other physiotherapist during the relevant period.



12. The Member and/or the Clinic submitted the invoices in question to the third party insurer under his name and registration number so as to avoid alerting the insurer and/or others to the fact that the invoices in question related to treatment by Mr. Taddeo of his wife and/or family member.

***Failure to Maintain the Standards of Practice of the Profession, Ethics, Conflict of Interest***

13. In the alternative to the allegations set out in paragraphs 7-12 above, and if the Member did in fact delegate and/or supervise physiotherapy treatments to Patient A during the period October 1, 2007 - March 31, 2009 and August 1, 2012 – October 31, 2012, as invoiced to the third party insurer, the Member engaged in misconduct as follows:

- a. The Member improperly approved, facilitated, and supervised the treatment of Patient A by a physiotherapist who was in a sexual relationship with Patient A and who was otherwise in a conflict of interest and ethically unable to treat Patient A;
- b. The Member permitted and/or approved the issuance of invoices under the Member's name and registration number for physiotherapy services provided to Patient A by Mr. Taddeo, because the Member knew that the treatment of Patient A by Mr. Taddeo was prohibited by the *Regulated Health Professions Act, 1991*, as amended, and/or the College;
- c. The Member failed to assess or reassess Patient A (either adequately or at all), over a treatment period spanning over five years;
- d. As the supervising physiotherapist under whose name and registration number physiotherapy invoices were issued, the Member failed to supervise, either adequately or at all, the treatment of Patient A

provided by another health care provider;

- e. Having regard to (c) and (d) above, the Member was not in fact the supervising physiotherapist responsible for Patient A's care or otherwise a treating physiotherapist for Patient A, and as such invoices for physiotherapy services could not be issued under his name and registration number;
- f. The Member knew or ought to have known that invoices issued in respect of these physiotherapy treatments, under his name and registration number, were false, misleading and/or inaccurate having regard to (c), (d) and (e) above; and
- g. The Member failed to obtain the informed consent of Patient A to the treatment of Patient A by another physiotherapist (and in particular Mr. Taddeo) under an "indirect consultative model of supervision" as described by the Member, in which the Member was the supervising physiotherapist.

14. Further, the Member knew or ought to have known that invoices issued in respect of these treatments under his name and registration number were false, misleading and/or inaccurate in that they indicated dates and/or times of treatments at the Clinic when in fact the treatments did not occur at the Clinic or during the time(s) in question.

### ***Failure to Maintain Records***

15. If the Clinic did in fact provide physiotherapy services to Patient A during the period in question and/or if the Member did in fact provide, or was involved in the provision of, physiotherapy treatments to Patient A during the material times, the Member failed to document those treatment sessions and/or his involvement in the patient's care, and failed to properly store, secure and

retain, the clinical records in accordance with the standards of practice of the profession and the Member's obligations under the *Personal Health Information Protection Act, 2004*, S.O. 2004, c.3, as amended.

## 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.