

Chiropractic complaints and disciplinary cases in Canada

E Audrey Toth, DC*

Douglas M Lawson, BA, DC*

Jim W Nykoliation, BSc, DC, FCCS(C)†

This paper retrospectively reviews various complaints and disciplinary cases that have appeared before chiropractic provincial regulatory boards throughout Canada, and have resulted in a significant outcome. This information was compiled by the Disciplinary Records Committee of the Canadian Federation of Chiropractic Regulatory Boards. Annually, the committee recorded the following: jurisdiction, year of disciplinary decision, nature of charge/allegation, specific mitigating factors, findings/outcome, penalties imposed, costs related to proceedings, who costs were attributed to, formal or informal proceeding(s). A total of 99 complaints are reviewed. In addition to demographic analysis of the data, a series of descriptive cases are included. This information is provided for the purpose of examining any parallels that might exist when chiropractic regulatory boards evaluate cases so they might arrive at conclusions in a fair and reasonable manner. Consistency in the application of rules and sanctions is a desirable objective of all chiropractic regulatory boards. While this paper is disseminated for informative purposes, ultimately each provincial regulatory board must exhibit good judgement with respect to case-specific issues.

(JCCA 1998; 42(4):229-242)

Le présent article passe en revue les plaintes et les cas d'inconduite qui ont été présentés aux organismes provinciaux de réglementation en matière de chiropratique partout au Canada et qui ont donné lieu à des décisions importantes. L'information a été recueillie par le comité des dossiers disciplinaires de la Canadian Federation of Chiropractic Regulatory Boards. Le comité enregistre chaque année les éléments suivants : le territoire où se tient la cause, l'année où est rendue la décision disciplinaire, la nature des plaintes ou des allégations, les facteurs atténuants particuliers, les faits et l'issue, les sanctions imposées, les coûts liés aux délibérations, la partie condamnée aux dépens, les délibérations officielles et non officielles. Quarante-deux-neuf plaintes au total ont été passées en revue. À l'analyse démographique des données s'ajoute une série de cas descriptifs. La présentation de ce type d'information a pour objet de relever les parallèles qui pourraient exister lorsque des organismes de réglementation en matière de chiropratique évaluent des cas pour en arriver à des conclusions valables suivant un processus juste et raisonnable. Il serait souhaitable que tous les organismes de réglementation en matière de chiropratique appliquent de façon uniforme les règlements et les sanctions. Bien que le présent article soit diffusé à titre d'information, il n'en reste pas moins que chaque organisme provincial de réglementation doit faire preuve de jugement quand vient le temps d'étudier un dossier en particulier.

(JACC 1998; 42(4):229-242)

KEY WORDS: chiropractic, regulation, discipline, misconduct, self-governance, legislation.

MOTS CLÉS : chiropratique, réglementation, discipline, inconduite, autogestion, législation.

* Chair, Disciplinary Records Committee, Canadian Federation of Chiropractic Regulatory Boards, and Registrar, Manitoba Chiropractors Association.

** Registrar, College of Chiropractors of Alberta.

† Immediate Past President, Canadian Federation of Chiropractic Regulatory Boards.

Contact: Dr. JW Nykoliation, DC, c/o Lenore Chiropractic Clinic, 6-123 Lenore Drive, Saskatoon, Saskatchewan S7K 7H9.

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Introduction

The Canadian Federation of Chiropractic Regulatory Boards (CFCRB) was established as a corporate body by the Canadian chiropractic profession in 1978, with the mandate of providing national level education, networking, and informational support concerning matters of licensure, testing, and discipline of chiropractors, to its member provinces and jurisdictions.

In Canada, authority for the regulation of health care providers including chiropractors resides with the provinces. Each province has its own legislation pertaining to the practice of chiropractic, setting out matters such as regulations for licensure, scope of practice, professional standards, and disciplinary procedures.¹ As self-governing bodies, each of the provincial regulatory boards has a mandate to regulate chiropractic in the public interest.

This paper retrospectively reviews recent professional disciplinary matters that have appeared before provincial chiropractic regulatory boards throughout Canada, and have resulted in a significant outcome.

Methodology

The data presented here was compiled by the Disciplinary Records Committee (DRC) of the CFCRB. This committee has the objective of obtaining, on a regular basis, pertinent information about disciplinary actions from each provincial jurisdiction, and is responsible for collating and presenting it to the CFCRB.

Since 1994, the DRC has conducted a retrospective review of major disciplinary issues coming before provincial chiropractic regulatory boards in recent years. The committee recorded the following; jurisdiction, year of decision, nature of charge/allegation, specific mitigating factors, findings/outcome, penalties imposed, costs related to proceedings, who costs were attributed to, and whether it was a formal or an informal proceeding. This information was requested annually from the registrars of every provincial chiropractic regulatory board in Canada. Participation by each provincial registrar was voluntary. All provinces except British Columbia participated by communicating with the DRC.

Table 1
CFCRB provincial regulatory boards, and number of cases submitted*

Provincial Regulatory Board	Acronym	Number of Cases submitted
British Columbia College of Chiropractors	BCCC	None**
College of Chiropractors of Alberta	CCOA	38
Chiropractors' Association of Saskatchewan	CAS	5
Manitoba Chiropractors' Association	MCA	4
College of Chiropractors of Ontario	CCO	10
Ordre du Chiropraticiens du Quebec	OCQ	17
New Brunswick Chiropractors Association	NBCA	7
Nova Scotia Chiropractic Board	NSCB	8
Prince Edward Island Chiropractic Association	PEICA	0***
Newfoundland and Labrador Chiropractic Board	NLCB	10
Total		99

* Yukon and the North West Territories do not have legislative status.

** The British Columbia College of Chiropractors has been in a position of withdrawal as a participant in activities of the CFCRB since 1995.

*** No recorded disciplinary cases in Prince Edward Island.

Data was excluded from consideration of this paper if the information provided to the DRC did not contain sufficient detail to warrant its use. The only instances where this occurred were submissions that did not have a clearly defined complaint that triggered the action(s) by the provincial regulatory board. As a result, 2 submissions were excluded.

The provincial regulatory boards participating in the study and the number of cases each contributed, are summarized in Table 1. All cases were categorized into one of nine groups, based on the nature of the alleged misconduct (Table 2). The complaints, by groups, as well as a comment on disposition and penalty, are provided in Tables 3–12. Abbreviations used to indicate licensing jurisdictions are as follows:

BCCC – British Columbia College of Chiropractors
CCOA – College of Chiropractors of Alberta

CAS – The Chiropractors' Association of Saskatchewan
MCA – Manitoba Chiropractors' Association
CCO – College of Chiropractors of Ontario
OCQ – Ordre des Chiropraticiens du Québec
NSBC – Nova Scotia Board of Chiropractors
NLCB – Newfoundland and Labrador Chiropractic Board
NBCA – New Brunswick Chiropractors' Association
PEICA – Prince Edward Island Chiropractic Association

Only 2 complaints of misconduct concerning office administrative/accounting procedures were noted. There were 2 complaints that dealt with consent issues, 19 cases dealing with lack of professionalism/uncooperativeness, 6 complaints of practising outside the scope of chiropractic practice, 16 complaints regarding advertising is-

Table 2
Summary of categories of disciplinary actions, and number of cases reported

Category	Number of Cases
Office Administrative / Accounting Issues	2
Consent Issues	2
Lack of Professionalism / Uncooperativeness	19
Practising Outside Scope of Profession	6
Advertising	16
Unskilled Practice / Excessive Billing	19
Fraud	14
Sexual Innuendo / Remarks / Gestures / Touching	14
Sexual Relations / Intercourse with Patients	7
Total Number of Cases	99

Table 3
Office Administrative / Accounting Issues

Board	Year	Comments/Penalty
OCQ	1991	Complaint about D.C.'s handling of office administrative/accounting procedures. Fine \$500.00 + costs + reprimand.
NSBC	1992	Complaint about overcharge to patient. Case dismissed.

sues, 19 cases regarding unskilled practice/excessive billing, 14 cases of alleged fraud, 14 cases of alleged sexual innuendo/remarks/gestures/touching, and 7 cases of

complaints derived when a chiropractor was alleged to be having sexual relations/intercourse with a patient. A total of 99 complaints were reviewed.

Table 4
Consent Issues

Board	Year	Comments/Penalty
CCOA	1996	Complaint derived because D.C. did not obtain consent to treat patient. Fine \$1,000.00 + costs.
NSBC	1993	Alleged breach of confidentiality. Counseling.

Table 5
Lack of Professionalism /Uncooperativeness
Complaints forwarded when D.C. refused to cooperate with the regulatory board in the process of dealing with or investigating complaints received, or when D.C. engaged in acts which could be reasonably regarded as unprofessional, dishonorable or lacking in integrity; 19 cases on record.

Board	Year	Penalty
OCQ	1992	Fine \$500.00 + reprimand.
NSBC	1992	Counseling.
NBCA	1993	Case dismissed.
NBCA	1993	Letter of apology.
NBCA	1993	Case dismissed.
OCQ	1994	Fine \$600.00 + reprimand.
NLCB	1994	Complaint dismissed.
NLCB	1994	Complaint resolved without penalty.
MCA	1995	Fine \$1,000.00 + costs + reprimand.
NSBC	1995	Counseling.
NBCA	1995	Case dismissed.
CCOA	1996	Fine \$1,000.00 + costs.
OCQ	1996	Fine \$3,000.00.
NBCA	1997	Letter of apology.
CAS	1997	Fine \$500.00 following inquiry.
CAS	1997	Fine \$500.00 following inquiry.
CAS	1997	Fine \$750.00 + costs (\$250.00).
OCQ	1997	Fine \$1,000.00 + reprimand.
OCQ	1997	Fine \$1,000.00 + reprimand.
Summary of Penalties:		Average Fine: \$985.00, Median Fine: \$1,000.00.

Table 6
Practising Outside Scope of Profession
Complaints forwarded when D.C. engaged in activities which were found to be outside the scope
of the defined practice of chiropractic in each jurisdiction: 6 cases on record.

Board	Year	Penalty
CCOA	1990	Fine \$2,000.00 + costs.
CCOA	1992	Fine \$200.00 + costs.
CCOA	1992	Fine \$350.00 + costs.
CCOA	1993	Fine \$750.00 + costs.
CCOA	1995	Fine \$650.00.
CCOA	1996	Fine \$7,500.00 + costs (repeat offense).
Summary of Penalties: Average Fine: \$1,908.33, Median Fine: \$700.00.		

Table 7
Advertising
Complaints forwarded when D.C. engaged in unauthorized advertising practices: 16 cases on record.

Board	Year	Penalty
CCOA	1990	Fine \$1.00 + costs.
CCOA	1990	Fine \$1.00 + costs.
CCOA	1990	Fine \$100.00 + costs.
CCOA	1990	Fine \$500.00 + costs.
CCOA	1990	Fine \$500.00 + costs.
CCOA	1991	Fine \$500.00 + costs.
OCQ	1994	Fine \$1,200.00 + reprimand to remain on record (2 counts).
CCO	1992	Reprimand to be published to profession and maintained on file.
OCQ	1994	Reprimand to remain on record.
NLCB	1994	Case resolved without fine.
NLCB	1994	Reprimand published to public and maintained on file.
NLCB	1995	Reprimand on file (1 count), not guilty (2 counts).
NCLB	1995	Reprimand to remain on record.
MCA	1995	Fine \$2,500.00 + costs + reprimand.
NSBC	1996	Fine was levied and then rescinded.
OCQ	1997	Fine \$2,000.00 + reprimand.
Summary of Penalties: Average Fine: \$811.33, Median Fine: \$500.00.		

Table 8
Unskilled Practice / Excessive Billing
Complaints forwarded when D.C. performed diagnostic procedures, rendered diagnoses, or made
treatment plan recommendations which were found to be outside of acceptable standards of the profession:
19 cases on record.

Board	Year	Penalty
OCQ	1991	Reprimand to remain on record + costs.
CCOA	1991	Fine \$500.00 + costs.
OCQ	1991	Fine \$500.00 + reprimand to remain on record.
CCOA	1991	Fine \$1,500.00 + costs.
CCOA	1991	Fine \$2,000.00 + 2 month suspension from practice.
CCO	1992	Reprimand to remain on record.
CCOA	1992	Fine \$800.00 + costs.
OCQ	1992	Fine \$3,000.00 + costs + reprimand.
CCOA	1992	Fine \$5,000.00 + costs.
CCO	1993	Reprimand to remain on record.
OCQ	1994	Fine \$600.00 + reprimand to remain on record.
OCQ	1994	Fine \$2,000.00 + reprimand to remain on record.
CCOA	1994	Fine \$10,000.00 + costs + order to reimburse Alberta Health \$8,000.00.
NSBC	1994	Case dismissed.
NLCB	1995	Reprimand to remain on record + costs.
NLCB	1995	Case dismissed.
CCOA	1995	Fine \$2,000.00 + costs; on appeal, fine reduced to \$1,000.00 but costs were doubled.
MCA	1995	Fine \$5,000.00.
OCQ	1996	Fine \$600.00 + reprimand to remain on record.
Summary of Penalties: Average Fine: \$2,576.92, Median Fine: \$1,500.00, Suspension of two months noted in one case, Order to Reimburse noted in one case.		

Table 9
Fraud

Complaints forwarded when D.C. has engaged in fraudulent billing practices, made false statements so that a patient could derive a material benefit, or commissioned an unqualified/unlicensed individual to perform a chiropractic act and received payment for same; 14 cases on record.

Board	Year	Penalty
CCOA	1992	Fine \$2,000.00 + costs + practice reviews + reimbursement (unspecified).
CCOA	1992	Fine \$2,500.00 + costs + continuing education requirements + practice reviews.
CCOA	1992	Fine \$4,100.00 + costs + continued education requirements + practice reviews.
CCO	1992	Suspension of two weeks.
CCO	1992	Licence cancelled.
CCO	1993	Suspension of four weeks.
CCO	1993	Suspension of four months.
CCOA	1993	Fine \$6,000.00 + suspension of two months + psychological counseling + reimbursement (unspecified).
CCOA	1994	Reimburse Alberta Health (unspecified amount).
CCOA	1994	Fine \$6,250.00 + costs + reimbursement (unspecified).
CCOA	1994	Fine \$10,000.00 + suspension of three months + reimbursement (unspecified) + costs + psychological counseling.
CCOA	1994	Licence cancelled + fine \$6,250.00 + costs.
OCQ	1995	Fine \$1,000.00 + reprimand to remain on record.
CCOA	1996	Fine \$2,000.00 + costs + suspension of three months; on appeal fine and costs were sustained but suspension reduce to two months.
<p>Summary of Penalties: Average Fine: \$4,455.56, Median Fine: \$4,100.00, Average Suspension: 2.08 months, Median Suspension: 2 months, Practice Reviews: noted in three cases, Psychological Counseling: noted in two cases, Order to Reimburse: noted in five cases, Cancellation of Licence: noted in two cases.</p>		

Table 10
Sexual Innuendo / Remarks / Gestures / Touching
Complaints forwarded when D.C. made unwelcome comments, touched patient
inappropriately during examination or during other venue; 14 cases on record.

Board	Year	Penalty
CCOA	1991	Fine \$500.00 + costs + practice restrictions.
CCOA	1991	Fine \$4,500.00 + costs + practice restrictions.
CCOA	1992	Fine \$1,000.00 + costs.
NLCB	1992	Not within board jurisdiction.
NLCB	1992	Not within board jurisdiction.
CCO	1993	Apology to patient + psychological assessment and counseling (D.C. responsible to pay for same) + costs.
CCOA	1993	Suspension three months + practice restrictions.
CCOA	1993	Cancellation of licence (for two years) + costs + psychological counseling.
NSBC	1993	Case dismissed.
CAS	1994	Suspension three years and seven months + member must re-apply for licensure.
NSBC	1995	Counseling.
NBCA	1995	Insufficient evidence to proceed.
NBCA	1995	Insufficient evidence to proceed.
MCA	1997	Cancellation of licence.
<p>Summary of Penalties: Average Fine: \$2000.00, Median Fine: \$1000.00, Average Suspension: 23 months (these are based on only 2 cases), Median Suspension: 23 months (based on 2 cases), Practice Restrictions: noted in three cases, Psychological Counseling: noted in two cases, Cancellation of Licence: noted in two cases.</p>		

Table 11
Sexual Relations / Intercourse with Patients
Complaints forwarded when D.C. was found to be having sexual relations / intercourse with patients;
7 cases on record.

Board	Year	Penalty
CCO	1993	Suspension of one month + reprimand to remain on record + noted psychological counseling.
CCO	1993	Suspension of three months + reprimand to remain on record.
CCOA	1993	Cancellation of licence + costs.
OCQ	1995	Fine \$2,500.00.
CCOA	1995	Fine \$2,500.00 + costs + suspension of four months.
CCOA	1995	Fine \$5,000.00 + costs + suspension of six months.
CAS	1997	Plead of guilty following inquiry. Fine \$1,000.00 + costs (\$250.00).
<p>Summary of Penalties: Average Fine: \$2,750.00, Median Fine: \$2500.00, Average Suspension: 3.5 months, Median Suspension: 3.5 months, Psychological Counseling: noted in one case, Cancellation of Licence: noted in one case.</p>		

Review of cases

What follows is a series of cases that are examples of the issues that often confront chiropractic regulatory boards across Canada. The finding of guilty or not guilty, and a short synopsis of penalties imposed (if any), are noted. To preserve confidentiality, we have omitted identification of the province in which the regulatory action occurred; however, these cases include examples from all the contributing provinces.

Case One –

Chiropractic Regulatory Board vs. D.C. (1993)

Allegation of sexually assaulting a patient – The complainant alleged that the chiropractor arranged to meet her for dinner and then treat her at her home before he left town for an extended period of time. She further alleged that, upon their arriving at her apartment after dinner, the chiropractor instructed her to remove her dress and lie down on her bed, whereupon he raped her. Two members of the regulatory board found that the evidence with respect to the incident was detailed, credible and believable. In the absence of any evidence to contradict the account of the complainant, they found the chiropractor guilty of misconduct. The remaining two members of the regulatory board held that, when an allegation is made that a registrant is guilty of what amounts to a criminal offense, the

Table 12
Manner of Disposition of Complaints (n = 186)

	Not Actionable	Dismissed	Dismissed with Reprimand, Counseling, Apology, Cont. Ed., Other	Fine	Suspension	Costs
Office Administration/ Accounting Issues		1	1	1		1
Consent Issues			1	1		1
Lack of Professionalism / Uncooperativeness		4	10	10		3
Practising Outside Scope				6		5
Advertising Issues		2	10	10		7
Unskilled Practice / Excessive Billing		2	9	13	1	9
Fraud			12	9	8	7
Sexual Innuendo / Remarks/ Gestures / Touching	4	1	9	3	4	5
Sexual Relations			3	4	5	4
Total Number of Cases + (%)	4 (2.15)	10 (5.38)	55 (29.57)	57 (30.65)	18 (9.68)	42 (22.58)
Note: any given case may have more than one item of disposition (i.e. a case might be dismissed with reprimand, a fine, and costs).						

prosecution bears the burden of proof and the allegation must be proven beyond a reasonable doubt or to a standard so close to the criminal standard that there is no practical difference between them. Weighing the evidence, they found that the alleged facts had not been made out to the required standard and the charge of misconduct had not been proven. Registrant was found not guilty of misconduct.

Dismissal of Complaint – The decision of the regulatory board was “not guilty.”

**Case Two –
*Chiropractic Regulatory Board vs. D.C. (1994)***

Allegation of fraudulent billing practices to third party paying agencies – A member of D.C.’s staff (his wife) would see patients on first visit. She was not a chiropractor. The office billed for the first visit and the patient did not see the chiropractor until the second visit. Also, the provincial Department of Health was billed for radiographs taken by his wife who was not duly qualified.

Informally resolved and dismissed from hearing when D.C. paid back the Department of Health.

D.C. reimbursed the Department of Health amounts which were billed.

**Case Three –
*Chiropractic Regulatory Board vs. D.C. (1993)***

Allegations of misconduct and ignorance – Inappropriate sexual remarks towards a patient (“luv” and “sweetheart”) when the patient indicated preference to her own name. She further alleged that he suggested “*getting together if her husband were not around,*” as well as having made inappropriate comments about her attire, inappropriate touching of a patient (patting her on the buttocks and legs), failure to protect a patient’s privacy (inadequate gowning procedures), failure to respond appropriately to a patient’s expressions of concern (when she informed the D.C. of her concerns, he responded by inferring that she had “*problems in her relations with men.*”)

Agreed to terms of settlement by counsel for the board, the counsel for the registrant and the complainant.

Written apology + psychological assessment and counseling (at D.C.’s cost) + authorization for the registrar to receive quarterly reports from psychologist + costs.

**Case Four –
*Chiropractic Regulatory Board vs. D.C. (1992)***

Allegation of practicing outside the scope of chiropractic 9(1)a, live cell blood analysis.

Finding of Guilty of Misconduct, Registrar Direction.
Fined \$350.00 + Costs (\$150.00).

**Case Five –
*Chiropractic Regulatory Board vs. D.C. (1991)***

Allegations that D.C. breached Code of Ethics in that the registrant carried out a chiropractic act without first having made a basic examination consisting in particular of an appropriate history, sufficient research of pathology or anomaly in compliance with standards of actual practice, and an unequivocal indication of an appropriate chiropractic therapy.

Finding of Guilty of Misconduct.

Fined \$500.00 + Reprimand Held on Permanent Records.

**Case Six –
*Chiropractic Regulatory Board vs. D.C. (1996)***

Allegation of failure to obtain consent to treat.

Finding of Guilty of Misconduct

Fined \$1000.00 + Costs (\$1763.14).

**Case Seven –
*Chiropractic Regulatory Board vs. D.C. (1995)***

Allegation of an associate chiropractor tampering and altering the computer data base belonging to a chiropractor in order to procure a mailing list of all patients. The mailing lists were then utilized to advertise the new location to where the associate doctor was moving. The advertisement was also found to be in contravention of the provincial legislation governing the profession as it advertised the services of a chiropractor who had not yet been licensed to practice in the province.

Acceptance of Plea of Guilty of Misconduct.

Fined \$1000.00 + Costs + Reprimand to be noted in D.C.’s Records.

Case Eight –

Chiropractic Regulatory Board vs. D.C. (1995)

Allegation of unskilled practice, poor records, and excessive care.

Finding of Guilty of Misconduct.

Fined \$2000.00 (Appeal reduced to \$1000.00) + Costs (\$9995.49 – appeal reduced to \$3000.00).

Case Nine –

Chiropractic Regulatory Board vs. D.C. (1995)

Multiple allegations – badgering patients into expensive pre-payment plans for chiropractic care and refusing to return monies to patients who discontinued care, exaggerative claims with respect to cures offered by chiropractic care, practice management and style of advertisements which did not maintain the level of standard of practice, etc. Matter was informally resolved before proceeding to inquiry.

Acceptance of a Plea of Guilty of Misconduct.

Registrant agreed to a series of undertakings, which altered the style of practice management + fine of \$5000.00 to offset the costs involved in the investigation and preparation for inquiry.

Case Ten –

Chiropractic Regulatory Board vs. D.C. (1993)

Allegation of practicing when registrant had a substance abuse problem with alcohol – treating patients at office with the smell of alcohol on his breath, engaging in inappropriate sexual conduct in relation to a patient or former patient.

Acceptance of a Plea of Guilty of Misconduct.

Suspended licence for one month + submission of quarterly reports by his physician to the registrar for a period of one year setting out the registrant's alcohol rehabilitation progress + option to have registrant evaluated by Provincial Health Professionals Assistance Program + registrant directed to refrain from physical contact of a sexual nature with his patients.

Case Eleven –

Chiropractic Regulatory Board vs. D.C. (1993)

Allegation of misconduct and incompetence – submitting bills to provincial Department of Health for treatment not rendered and failing to maintain accepted standards of practice with respect to record keeping.

Acceptance of a Plea of Guilty of Misconduct.

Suspended licence for two months on the charge relating to billing irregularities to the Department of Health + second two month suspension to run concurrent with the first on the charge relating to failure to maintain records + requirement for random practice inspection and review.

Case Twelve –

Chiropractic Regulatory Board vs. D.C. (1995)

Allegation of verbal, physical and emotional abuse – The complainant reported that the chiropractor refused to stop treatment when told that the area on which the chiropractor was working was very painful; that the registrant spoke of exorcisms and/or divine intervention during treatments; that the registrant's secretary was called into the treatment room during a session and asked to comment on the patient's condition and; that on one occasion, subsequent treatment after which she was very distressed, the registrant performed a demonstration on another patient in the waiting room displaying the effects of sugar on the human body. This demonstration was peculiar and stressful to her.

Formal disciplinary hearing, with the following outcome:

- 1) *Guilty of permitting the secretary to dispense advice to the patient over the phone and in the office, contrary to the regulations.*
- 2) *Guilty of engaging in improper conduct in that the chiropractor discussed the concept of exorcisms with the patient.*
- 3) *Guilty of demonstrating the claimed effects of external stimuli on the body by usage of sugar in the hand of another patient in the waiting room of the clinic.*
- 4) *Not Guilty of physically abusing the patient.*
- 5) *Not guilty of verbally abusing the patient.*

The chiropractor was sent a letter of reprimand with notice that a more severe penalty would be considered if found guilty of a similar offense in the future. In the absence of similar complaints, the letter of reprimand will be removed from the chiropractor's file in five years. The D.C. was required to pay full costs incurred by the Board associated with the disciplinary hearing in the amount of \$6718.59.

**Case Thirteen –
Chiropractic Regulatory Board vs. D.C. (1993)**

Allegation of professional misconduct – a physician complained about alleged antagonistic phraseology in two letters written to the physician.

Case resolved.

The chiropractor was required to write a letter of apology and submit it to the Discipline Committee for approval prior to forwarding it to the physician.

Discussion

This information is provided for the purpose of expressing any parallels that may exist when chiropractic disciplinary cases have been concluded. Publishing and consistently applying disciplinary guidelines gives chiropractors fair notice of the potential consequences of transgression. It also helps to protect regulatory boards from charges of arbitrary and capricious behavior in the application of discipline.

Consistency in the application of rules and sanctions is a desirable objective of all chiropractic regulatory boards. Violation of a rule should result in the same consistency and fairness for any chiropractor, regardless of which provincial jurisdiction he/she may reside in. Provincial regulatory boards require discretion in applying penalties to allow for case – specific circumstances such as repeated violations, conscious avoidance, intentional disregard, misunderstanding of the rule, or inexperience.

Procedures which protect the chiropractor's rights, while allowing regulatory boards to conscientiously enforce rules, are essential to an effective self – disciplinary profession. Fairness and the right to due process are important elements in processing a complaint against a registrant, and must be respected at all times by the regulatory board. Chiropractic regulatory boards conduct professional discipline in a manner consistent with the Canadian judicial system using powers granted by provincial enabling legislation. This includes imposing various penalties, with procedure and penalty subject to appeal to the courts. For example, various regulations usually empower a provincial chiropractic regulatory board to cause an investigation into alleged misconduct on the part of the registrant, and to proceed to conduct a hearing to determine whether, in fact, the chiropractor in question has been guilty of misconduct as alleged, and if so, to then impose a penalty. In addition to the powers of the regulatory board

defined by legislation, common law requires that boards act fairly. There are two basic principles which common law requires to be observed and followed:

- The regulatory boards must be impartial.
- Regulatory boards must afford a reasonable opportunity to the registrant alleged to be guilty of misconduct to state his/her case and present evidence in support of it. This includes the right to address the regulatory board with respect to penalty.

Our data does not include all complaints that have come before Canadian chiropractic provincial regulatory boards each year, but rather, includes only those cases, that, in the opinion of the participating registrar from each province, amounted to significant effort and consequence on the part of the regulatory board and to the registrant. Hence, these cases reflect only a small number of the cases that come before chiropractic regulatory boards each year. This distinction allows the DRC to focus on significant cases that might be instructive, especially in regard to penalty, for future reference.

As an example of the amount of work that comes before regulatory boards, in Ontario, during the 1996 calendar year, the CCO received 69 complaints. Throughout the course of the year, the complaints committee of the CCO processed 33 complaints (16 that had been carried forward from the previous year and 17 that were initiated in 1996). Of the 33 complaints processed, the nature by which they were disposed are as follows; 7 were not actionable, 11 were deemed not to require further action, 2 were disposed with interim conditions, 1 was disposed of with a verbal caution to the registrant and a referral to attend a gender-sensitivity course, 7 were disposed with letters of caution, 1 was referred to the Quality Assurance Committee, 3 were referred to the Executive Committee, and 1 was referred to the Discipline Committee.² As another example, in Saskatchewan, in 1995, 22 complaints were received, 16 were resolved after investigation without formal hearing, 2 were sent for formal disciplinary hearings, and 4 remained under investigation.³

Complaints originate from the general public (for the most part), but also come from other practitioners (chiropractic and/or non-chiropractic), government agencies, third party payers, employees, and others. Excluded from this paper is any data that might be available from various quality/quantity assurance committees (such as Saskatch-

ewan's Joint Chiropractic Peer Review Committee and the Chiropractic Review Committee of Ontario) because these proceedings occur under the mandate of legislation other than chiropractic legislation.⁴ In other circumstances, given the nature of the allegations (i.e. fraud or sexual abuse), chiropractors may find themselves involved not only with the proceedings of the provincial regulatory board, but also with civil and/or criminal proceedings. Parallel proceedings such as these are not unusual, and often complicate the resolution of the matter before the boards. The DRC did not track these issues.

Although our data does not deal with the issue of rate of occurrence of complaints, it is the general impression of the DRC that the number of complaints about chiropractors practising in most Canadian provinces has been rising. One suggested reason for this perceived increase in complaint activity is the fact that chiropractic is becoming steadily more accepted as a self-regulated profession in the eyes of the public. As such, the public appears more cognizant of regulatory bodies and where to forward complaints. Another possibility is the ever increasing number of chiropractors within Canada. On the other hand, the DRC is aware that Alberta has seen a 50% decrease in complaints (1997 over 1996), and this seems to be holding for 1998. An explanation which should be considered is the significant pro-active efforts which have been undertaken in Alberta by the regulatory board with respect to the education of registrants regarding disciplinary issues and processes.

Once a complaint has been initiated, the regulatory board is compelled to see the matter through to its resolution, whatever that might be. The manner by which regulatory boards dispose of complaints is at the discretion of the board, and depends to no small degree on the circumstances of the individual case. The most common manner of disposition of complaints is that the case is either dismissed, the complaint is withdrawn, or does not proceed due to lack of proper process of the part of the complainant. While some complaints against health care practitioners may appear to be of a frivolous nature, most are due to breakdown in communications than any particular wrongdoing on the part of the practitioner. Chiropractors alleged with any complaint are well-advised to cooperate with the regulatory board that is overseeing the matter, as the board is charged with protecting the rights of practitioners as well as the rights of the public. Also, chiropractors should

avail themselves of sound record keeping habits, good communication methods, and other risk management procedures recommended by the Canadian Chiropractic Protective Association.^{5,6}

Other than dismissal, the most common methods of disposition are summarized in Table 12. A point of clarification is in order; Table 12 includes those cases that were dismissed after considerable effort on the part of the regulatory boards, including both investigative procedures and formal hearings. The data in Table 12 does not include those cases that are routinely dismissed at an early point in the case. The most common methods of disposition of cases are fines, reprimands, and suspension of licenses.

Gotlib notes that penalty imposition as prescribed by administrative tribunals in the health field, including chiropractic regulatory boards, should satisfy the following directives:

- 1 Set specific deterrents to the particular member;
- 2 Set general deterrents to the profession at large;
- 3 Provide for remediation of the member.

Fulfilling these criteria with respect to penalty allows for the public interest to be protected, hence the fulfilment of the mandate of regulatory boards.⁷

A significant issue, for both regulatory boards and registrants coming before them, is the cost of the proceedings. These can be considerable, even in relatively routine matters. Most chiropractic regulatory boards in Canada are empowered by their legislation to ask the courts to adjudicate costs of the proceedings to be paid by a guilty registrant.

In an effort to avoid high legal costs, and long formal hearings that are often emotionally difficult for everyone concerned, many regulatory boards are now initiating Alternative Dispute Resolution (ADR) procedures where possible. This process involves a trained mediator who consults with both sides in the dispute to try and determine their underlying interests, and aids in arriving at an acceptable resolution for both parties. While not all cases may lend themselves to ADR, ADR may result in more meaningful participation by the parties, more meaningful settlement for the participants, and lower costs.⁸

Conclusions

Canadian chiropractic regulatory boards are entities responsible to the public and the profession, compelled by

law to enforce the standards derived by the chiropractic profession, with potential consequences to offending practitioners. Regulations, enacted by the profession in a democratic fashion, and formulated in accordance with the legislature governing the province on behalf of the public, need to be obeyed by the practitioners who are governed as such. Regulatory boards should be conscious of fairness in the application of the disciplinary process. Disciplinary penalties which are consistent and predictable ensure fairness while protecting the health, safety, and welfare of the public, as well as serving the legislative mission of chiropractic regulatory boards. The ability to self-regulate our profession should be acknowledged as a privilege, not a right.

This paper presents preliminary data on the most significant disciplinary issues that have come before provincial regulatory boards in recent years, to aid chiropractic regulatory boards in determining appropriate and consistent penalties. As well, the cases and data presented here may

serve the chiropractic profession by making the field practitioner more aware of the kinds of infractions commonly seen by the regulatory boards.

The findings of this paper are intended only to be informative. Regulatory boards must exercise good judgement when evaluating the issues in each discipline case.

Acknowledgments

The authors gratefully acknowledge the participation of provincial registrars who provided the data for this paper. The financial assistance of the Canadian Federation of Regulatory Boards is greatly appreciated.

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