



COLLEGE OF
CHIROPRACTORS
— OF ALBERTA —

Agreement and Undertaking Admission and Orders of:

Dr. Jerry Smuszko

On:

May 12, 2020

Posting expiration date:

May 12, 2030

AGREEMENT AND UNDERTAKING

BETWEEN

Jerry Smuszko
("Dr. Smuszko")

--and--

The Alberta College and Association of Chiropractors
("The College")

WHEREAS:

1. The College is a body incorporated pursuant to the *Health Professions Act*, R.S.A. 2000, c. H-7 ("*HPA*") and is the regulatory body for the profession of chiropractic;
2. Dr. Smuszko is a regulated member of the College;
3. To ensure compliance with the advertising requirements set out in the *Health Professions Act* Section 102 on Advertising, and sections 1, 1a, 1e, 8, and 11 of the *Canadian Code of Advertising Standards*, regulated by Advertising Standards Canada, and the *College Standards of Practice*, 1.0 Advertising, Promotions and presentations, the *Advertising Directive* was approved by Council and adopted on March 1, 2019.
4. In response to repeated examples of non-compliance, to the Advertising Directive, by Dr. Smuszko, the Complaints Director, of the College, pursuant to s. 56 of the *HPA*, treated that information as a complaint (the "*Complaint*") and opened an investigation into Dr. Smuszko under the grounds of unprofessional conduct as follows:
 - a. Dr. Smuszko has provided advertising and communication in contravention of the:
 - i. *Health Professions Act*
 - ii. *Standards of Practice*
 - iii. *College Advertising Directive*
5. By way of communication, the College, has communicated the statutes to members and provides resources, through the College website, of the relevant legislation. Dr. Smuszko received communication, from the College, on December 11, 2019, February 12, 2020, March 3, 2020 and March 25, 2020 (*Note that this is not an exhaustive list*). The Complaints Director opened ACAC Complaint 20-06 on March 27, 2020 as a result. A letter dated March 27, 2020 was emailed to Dr Smuszko opening complaint number 20-06. The Complaints Director sought a response to the Complaint from Dr. Smuszko.
6. The Complaints Director emailed Dr. Smuszko, on March 31, 2020, as confirmation of the March 27, 2020 had not been received as requested.
7. The College received an email from Dr. Smuszko, on March 31, 2020 in response to Complaint 20-06 and indicating receipt of the original complaint as requested.

8. On April 7, 2020 the Complaints Director emailed Dr. Smuszko to confirm that the March 31, 2020 email, sent by Dr. Smuszko, was his response to ACAC Complaint 20-06, and advising that he could submit a written response. As no response was received from Dr. Smuszko the March 31, 2020 was accepted as the response.
9. Based on the Complaint, the Complaints Director believes that there is sufficient evidence of unprofessional conduct to refer this matter to a hearing, but no referral has been made as of yet.
10. The Complaints Director, pursuant to section 55 (2) (a.1) of the HPA, has proposed this Agreement and Undertaking, to Dr. Smuszko, in an attempt to resolve the Complaint, as an alternative to this matter proceeding to a hearing.

IN CONSIDERATION OF the terms and conditions set out herein, the College and Dr. Smuszko hereby agree as follows:

1. Dr. Smuszko hereby acknowledges that he:
 - a. Contravened the *Health Professions Act* S. 102 by engaging in advertising that is untruthful, inaccurate or otherwise capable of misleading or misinforming the public.
 - b. Contravened the *Standards of Practice 1.0 Advertising, Promotions, and Presentations* by providing communication that was not considerate of the overall integrity and reputation of the profession.
 - c. Contravened the *College Advertising Directive* by suggesting Chiropractic treatment not compliant with the Directive.

and further acknowledges and admits that his conduct constitutes unprofessional conduct and is deserving of sanction.

2. Dr. Smuszko hereby acknowledges that, in consideration of the acknowledgements and admissions noted above and the College staying a referral of the Complaint to a Part 4 HPA Hearing Tribunal, he agrees to the following:
 - a. Dr. Smuszko will review the Advertising Directive and Standards of Practice 1.0 to ensure that no further compliance issues will occur.
 - b. That as per ACAC Bylaw 13, and the requirements of the HPA, the conduct that resulted in this Agreement and Undertaking must be published.
 - c. Concurrent with the execution of this Agreement and Undertaking, Dr. Smuszko will, within 30 days of receipt of invoice, pay the College the costs incurred by it on this matter, which for the purpose of this Agreement are defined as \$1000.00. Failure to pay these costs will result in debt owing to the College, and payment of those costs shall be a requirement for completion of Dr. Smuszko's annual practice permit renewal.
 - d. The College will be at liberty to publish any, or all, of the information contained in this Agreement and Undertaking (including Dr. Smuszko's name), in the Registrar's Annual Report to the membership, as well the monthly Registrar's Report.
 - e. In the event that Dr. Smuszko fails to comply with the terms of this Agreement and Undertaking, Dr. Smuszko agrees and acknowledges that the Complaints Director may refer that non-compliance and the Complaint to a hearing before a Hearing Tribunal pursuant to Part 4 of the HPA.

- f. If a further complaint is received by the College, after the date of this Agreement and Undertaking, and the complaint results in a hearing before the Hearing Tribunal, with a finding of unprofessional conduct being made against Dr. Smuszko, that the circumstances surrounding the Complaint and this Agreement and Undertaking may be provided to, and considered by, the Hearing Tribunal for the purpose of determining a penalty.

I, Jerry Smuszko, have had the opportunity to seek legal advice in relation to this matter, and hereby acknowledge that I voluntarily enter into this Agreement and Undertaking with the College.

May 11 2020
Date

Dr. Jerry Smuszko
Dr. Jerry Smuszko

May 12, 2020
Date

Alberta College and Association of Chiropractors

David Lawrence
David Lawrence, Complaints Director