



COMPLAINTS COMMITTEE
(the "Committee")
OF THE COLLEGE OF CHIROPRACTORS OF ONTARIO

BETWEEN:

Dr. Antony Hammer

Complainant

- and -

Dr. Brian Nantais

Registrant

Complaint

Dr. Hammer wrote in a letter dated February 4, 2001 that Dr. Nantais *has* failed to maintain standards of practice by:

- Posting misleading information on his web site about medical conditions that can be helped through chiropractic care without credible scientific evidence to support such claims;
- Practising outside his scope of practice by treating conditions which are unrelated to the spine or joints;
- Posting patients' testimonials on his web site in contravention of the College's advertising standards.

In a letter dated June 12, 2002, Dr. Hammer states that his complaint "relates to the very basis of "straight" chiropractic (sic), including the existence of subluxations, the theory that they influence nerve conduction and the body's capacity to heal itself and the role of the C.C.O. in permitting chiropractors to make claims that cannot be substantiated by evidence-based science."

In an undated letter received by the College of Chiropractors of Ontario ("CCO") on August 20, 2001, Dr. Hammer expands on his original letter of complaint against the Member, stating that:

- Dr. Nantais has chosen 46 "conditions" on his website and misleads the general public into believing that there is scientific, evidence-based proof of his treatment's effectiveness. Dr. Hammer chooses epilepsy and asthma as two of the most obvious examples of conditions on Dr. Nantais' list for which, "there is

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- Dr. Nantais has chosen 46 "conditions" on his website and misleads the general public into believing that there is scientific, evidence-based proof of his treatment's effectiveness. Dr. Hammer chooses epilepsy and asthma as two of the most obvious examples of conditions on Dr. Nantais' list for which, "there is absolutely no credible scientific evidence which assessed in its entirety, would lead any reasonable person, court of law or regulating body to conclude that chiropractic (sic) plays any beneficial role in treatment. Dr. Nantais' personal experience changes this not at all.";
- Dr. Nantais' yellow page advertisement offers a free initial consultation, free consultative services if a patient is not "totally satisfied," a guarantee of success of services provided and the offer of patient testimonials by calling a toll free number;
- Dr. Hammer urges the Committee to instigate a review of Dr. Nantais' OHIP billings to ensure that when a patient has been dissatisfied with the consultation service provided and this consultation has been funded by OHIP that OHIP has been refunded its fee for service.

Registrant's Response

Dr. Nantais responded to the initial letter of complaint on May 17, 2001. He notes that, currently, there are no regulations or policy concerning the use of web sites within the profession and he considers his web site to be an in-office informational program for his patients and himself. Dr. Nantais comments that the content is general regarding chiropractic and is not about himself and that the testimonials acknowledge the effectiveness of chiropractic and not his personal success.

Dr. Nantais responds to the allegation of posting misleading information or practising outside his scope of practice by stating that he has seen in his own practice, the conditions he lists as being helped by chiropractic care and that he knows personally and has met hundreds of chiropractors who have had the same successful results with these conditions. Dr. Nantais states that he believes there is scientifically sound evidence that chiropractic care and more specifically, the restoration of normal nervous system function has helped these conditions. Dr. Nantais re-states that it is through the "restoration of the normal nerve system function that the body can use its own reparative process to regain proper function."

Additional Information

In the letter received by CCO on August 20, 2001, Dr. Hammer disagrees that Dr. Nantais' web site is an in-office informational program for his patients because the web site is referred to in Dr. Nantais' yellow page advertisement and is open to public view. Dr. Hammer provides examples of how information contained in Dr. Nantais' web site contravenes CCO Advertising standards.

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On October 5, 2002, CCO received a letter dated September 30, 2002 from Dr. Nantais stating that he had changed a page on his web site to state, "Chiropractic May Help" from "Chiropractic Commonly Helps." On October 12, 2002, CCO received a facsimile from Dr. Hammer attaching a copy of a page of Dr. Nantais' web site indicating that Dr. Nantais had not changed his web site completely and that he continues to mislead the public. The web site page states, "Conditions Chiropractic Helps." The Committee reviewed a copy of information downloaded from Dr. Nantais' web site and noted that it stated, "Conditions Chiropractic Helps," contrary to the information provided by Dr. Nantais.

On January 11, 2002, the Committee requested that Dr. Nantais sign an undertaking with respect to issues related to his web site and yellow page advertisement. Dr. Nantais raised issue with one of the provisions of the undertaking.

On February 18, 2002, CCO received a letter from Dr. Hammer enclosing a copy of a tape recording he made at noon on February 14, 2002. The recording documented Dr. Nantais reciting patient testimonials on a message related to an information line regarding his chiropractic practice. At the February 19, 2002 Committee meeting, the Committee confirmed that Dr. Nantais' phone message still contained such patient testimonials.

On March 23, 2002, Dr. Nantais signed an undertaking to the Registrar and Committee, a copy of which is attached as Appendix "A" to this decision.

The Committee investigated Dr. Nantais' compliance with the provisions of the undertaking. The Committee reviewed a downloaded copy of Dr. Nantais' web site information as of April 30, 2002 and noted that Dr. Nantais had complied with the first provision of the undertaking. On May 7, 2002, the Committee contacted Dr. Nantais' office to request his information line telephone number. Dr. Nantais stated that he could not recall or locate the number but would get back to the Committee promptly. In the intervening time, the Committee located the number and called it to confirm that it had been changed as per the signed undertaking. It was noted that the testimonials continued to be played. Subsequently, Dr. Nantais telephoned CCO to say the message was changed and the Committee confirmed that the testimonials had been removed. The Committee notes that Dr. Nantais had not acted on fulfilling this provision of the undertaking until he was prompted by the telephone call from the Committee.

No confirmation was received from Dr. Nantais with respect to compliance with the second provision of the undertaking regarding his yellow page advertisement.

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Allegations



In disposing of this complaint, the Committee considered the following possible allegations of professional misconduct as defined in S. 51 of the *Health Professions Procedural Code*, Schedule 2 to the *Regulated Health Professions Act, 1991*, (the "Code") and in particular, a breach of the following sections of Ontario Regulation 852/93- *Professional Misconduct*:

Allegation 1

- S. 2, Contravening a standard of practice of the profession or failing to maintain the standard of practice expected of members of the profession, and in particular, contravening Standard of Practice S - 003 Advertising (the "Advertising Standard of Practice") and Guideline G - 003 Advertising Code (the "Advertising Code");

Allegation 2

- S. 28, Contravening the *Chiropractic Act*, the *Regulated Health Professions Act, 1991* (the "RHPA") or the regulations under either of those acts, and in particular, practising outside the scope of chiropractic practice;

Allegation 3

- S.31, Failing to comply with an order of, or breaching an undertaking given to, the Complaints, Discipline or Fitness to Practise Committees or to the Registrar of the College;

Allegation 4

- S.32 Failing to carry out an agreement entered into with the College; and

Allegation 5

- S.33 Engaging in conduct or performing an act that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

Issues

In determining how to exercise its discretion pursuant to S. 26 of the *Code*, the Committee considered the following:

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- i) Whether the nature of the allegations, if true, warranted a discipline hearing in all of the circumstances;
- ii) If the allegations did warrant a discipline hearing, was the information in support of the allegations of sufficient quality and quantity to require a hearing and;
- iii) If the allegations were not referred to a hearing, was some other action by the Committee appropriate.

Investigation

The investigation by the Committee included a review of:

- 1. Letter to CCO from Dr. Hammer dated February 4, 2001
- 2. Letter to Dr. Hammer from CCO dated March 13, 2001
- 3. Authorization of Dr. Hammer dated April 5, 2001
- 4. Letter to Dr. Hammer from CCO dated April 18, 2001
- 5. Letter to Dr. Nantais from CCO dated April 18, 2001
- 6. Letter to CCO from Dr. Nantais dated May 17, 2001
- 7. Letter to Dr. Nantais from CCO dated May 31, 2001
- 8. Letter to Dr. Hammer from CCO dated May 31, 2001
- 9. Letter to CCO from Dr. Hammer dated June 12, 2001
- 10. Letter to Dr. Hammer from CCO dated June 22, 2001
- 11. Letter to CCO from Dr. Hammer dated August 18, 2001
- 12. Letter to Dr. Hammer from CCO dated August 22, 2001
- 13. Letter to Dr. Nantais from CCO dated August 22, 2001
- 14. Letter to CCO from Dr. Nantais dated September 13, 2001
- 15. Letter to Dr. Nantais from CCO dated September 27, 2001
- 16. Letter to Dr. Hammer from CCO dated September 27, 2001
- 17. Letter to CCO from Dr. Hammer dated September 22, 2001
- 18. Facsimile to CCO from Dr. Hammer dated October 12, 2001
- 19. Letter to Dr. Hammer from CCO dated October 18, 2001
- 20. Information from Dr. Nantais' web site
- 21. Facsimile to CCO from Dr. Hammer dated December 21, 2001
- 22. Letter to Dr. Hammer from CCO dated January 2, 2002
- 23. Facsimile to CCO from Dr. Hammer dated January 7, 2002
- 24. Letter to Dr. Nantais from CCO dated January 11, 2002
- 25. Letter to Dr. Hammer from CCO dated January 14, 2002
- 26. Facsimile to CCO from Dr. Nantais dated January 24, 2002
- 27. Letter to Dr. Nantais from CCO dated January 31, 2002
- 28. Letter to CCO from Dr. Hammer dated January 31, 2002
- 29. Letter to CCO from Dr. Hammer dated February 14, 2002
- 30. Letter to Dr. Hammer from CCO dated February 28, 2002
- 31. Letter to Dr. Nantais from CCO dated February 28, 2002

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32. Facsimile to CCO from Dr. Hammer dated March 4, 2002
33. Facsimile to CCO from Dr. Hammer dated March 7, 2002
34. Facsimile to CCO from Dr. Nantais dated on March 6, 2002
35. Letter to Dr. Nantais from CCO dated March 19, 2002
36. Facsimile to CCO from Dr. Hammer dated March 18, 2002
37. Signed Undertaking signed by Dr. Nantais dated March 23, 2002
38. Letter to Dr. Hammer from CCO dated March 28, 2002
39. Letter to Dr. Nantais from CCO dated April 10, 2002
40. Facsimile to CCO from the Health Professions Appeal and Review Board dated April 10, 2002
41. Letter to James Terry of the Health Professions Appeal and Review Board dated April 18, 2002
42. Letter to Dr. Nantais from CCO dated April 30, 2002
43. Copies of Information from Dr. Nantais' website on April 30, 2002

Decision and Reasons

The Committee decision and reasons with respect to the allegations is outlined in the paragraphs below.

Allegation 1

- *S. 2. Contravening a standard of practice of the profession or failing to maintain the standard of practice expected of members of the profession, and in particular, contravening the Advertising Standard of Practice and Advertising Code*

The Committee cautions Dr. Nantais to comply with the Advertising Standard of Practice and Advertising Code, and in particular the provisions which prohibit advertisements from containing anything false or misleading, anything that, because of its nature cannot be verified, a testimonial except within the practitioner's office, a guarantee as to the success of the services provided and any offer of free consultative, diagnostic or treatment services.

Dr. Nantais' undertaking, and compliance with paragraphs 1 and 4 of the undertaking, addresses to the Committee's satisfaction the allegation relating to a breach of the Advertising Standard of Practice and Advertising Code, in that he amended his web site to read "Conditions Chiropractic May Help," to comply with the Advertising Standard of Practice and Advertising Code which prohibit the inclusion of false or misleading information in advertisements, and following prompting from the Complaints Committee has changed his office phone greeting to remove testimonials. The Committee reminds Dr. Nantais that any advertisement including public information on a web site must conform to the Advertising Standard of Practice and

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Advertising Code and that references to supportive research should be provided to fully inform the public.

Allegation 2

- *S. 28, Contravening the Chiropractic Act, the RHPA or the regulations under either of those acts, and in particular, practising outside the scope of chiropractic practice*

The Committee decision is to take no further action with respect to allegation 2.

The scope of practice of chiropractic and the controlled acts authorized to chiropractors are outlined in sections 3 and 4 of the *Chiropractic Act, 1991* (copies of which are attached as Appendix B). The scope of practice statement and authorized acts refer to the spine, nervous system and joints. Dr. Nantais has amended his web site to read "Conditions Chiropractic May Help" and in the Committee's view, this is an acceptable resolution.

There is evidence in the chiropractic literature that improvement in neuro-spinal integrity and associated structures may have an effect in assisting with the expression of other illnesses, although the Committee emphasises that the primary function of chiropractic is to evaluate the patient's neuromuscular spinal integrity and to care for and improve neuro-musculo-skeletal and biomechanical function. In the process of performing such care, there is evidence that improvement can occur in other areas of patient health. This is the case with both adults and children.¹

¹ Blanks RHI, Schuster TL, Dobson M.; A retrospective assessment of network care using a survey of self-rated health wellness and quality of life. *Journal of Vertebral Subluxation Research*. 1997 1(4):15

Owens EF, Holtris KT, Burd D., Changes in general health status during upper cervical chiropractic care. PBR progress report, *Chiro Research Journal*. 1998;6:84

Lauro A, Mouch B., Chiropractic effects of athletic ability. *Chiropractic Journal of Research and Clinical Investigation*. 1991; 6:34

Peterson KB. The effects of spinal manipulation on the intensity of emotional arousal in phobic subjects exposed to a threat stimulus; a randomized, controlled double blind clinical trial. *Journal of Manipulative and Physiological Therapeutics*. 1997; 20:602

Selano, JL, Hightower BC, Pflieger B., et al., The effects of specific upper cervical adjustments on the CD4 counts of the HIV positive patients, *Chiropractic Research Journal* 1994; 3(1):32.

Masarsky CS and Todres-Masarsky M, *Somatovisceral Aspects of Chiropractic: An evidence based approach*. 2001 Churchill Livingstone ISBN: 0-443-06120-3

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The Committee considered Dr. Hammer's various submissions and took note of the medical opinion of Dr. W. Rajkumar regarding chiropractic treatment of asthma and Dr. Allan Donner's review of clinical studies regarding the effects of chiropractic manipulation. In the Committee's view, Dr. Hammer's literature review was incomplete in that there is evidence that appropriate chiropractic care may help patients with asthma, particularly since a component of asthma involves the aberrant movement of the thoracic spine and rib cage with associated muscles of breathing (diaphragm, scalenes, intercostals, etc.). Although chiropractors do not treat asthma according to a medical paradigm, chiropractic care as directed to improving biomechanical function of the spine and rib cage assists with a patient's ability to breathe and reduction in asthma symptoms, and the associated improvement in quality of life.²

There is also evidence that patients with certain seizure disorders may respond favourably to chiropractic care, which the Committee recognizes, may be appropriately delivered simultaneously with the care of other health professionals.³ Finally, although in the Committee's view it would be inaccurate to state that chiropractic care cures epilepsy, there are case studies citing improvement and/or abatement of epileptic symptoms for patients under chiropractic care for improvement in biomechanical function.⁴ The presence of a medical disease does not preclude treatment of the spine,

² Graham, R.L. and Pistolesse R.A., An impairment rating analysis of asthmatic children under chiropractic care. *Journal of Vertebral Subluxation Research*: 1997; 1(4):41

Killinger L.Z., Chiropractic care in the treatment of asthma, *Palmer Journal of Research* 1995; 2:74.

Balon J. et al., A comparison of active and simulated chiropractic manipulation as adjunctive treatment for childhood asthma. *New England Journal of Medicine*. 1998; 339: 1013

Pallon J.M., The role of the chiropractic adjustment in the care and treatment of 332 children with otitis media. *Journal of Clinical Chiropractic Pediatrics*. 1997; 2(2): 167-

³ Pistolesse R.A., Epilepsy and seizure disorders: A review of the literature relative to chiropractic care of children. *Journal of Manipulative and Physiological Therapeutics* 2001 March/April; 24(3): 199-205

Golden L. M., Van Egmond CA., Longitudinal clinical case study: multi-disciplinary care of a child with multiple functional and developmental disorders. *Journal of Manipulative and Physiological Therapeutics* 1994; 17:279

⁴ Hyman C.A., Chiropractic adjustments and the reduction of the Petits Mal Seizures in a five year old male; A case study. *Journal of Clinical Chiropractic Pediatrics*. 1996; 1(1):28-32

Hospers L.A., EEG and CEEG studies before and after upper cervical or SOT category II adjustments in children after head trauma in epilepsy and in hyperactivity. *Proceedings of the National Conference on Chiropractic and Pediatrics*, Arlington, VA: International Chiropractors Association 1992:84-139

Goodman R., Mosby J. Cessation of a seizure disorder: correction of the atlas subluxation complex. J. *Chiro Res and Clin Investg*. 1990 July; 6(2): 43-46

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related joints and nervous system by a chiropractor, as outlined in the scope of practice statement for chiropractic.

Fundamental to Dr. Hammer's complaint appears to be either a lack of understanding or disagreement with the principles and paradigm of chiropractic care. In the Committee's view, the disposition of the complaint before it is not the appropriate forum to debate the medical versus chiropractic paradigm, and the Committee's role with respect to this complaint is to consider the allegations against Dr. Nantais in the context of the existing legislation, and the standards of practice and guidelines approved by CCO, which is the self-governing body for chiropractic in Ontario, with the same responsibilities as the other self-governing bodies for health care professionals under the *RHPA*.

It is the CCO to whom Dr. Nantais is accountable, and accordingly, the Committee does not view Dr. Hammer's reference to the Policy Statement on Complementary Medicine approved by the College of Physicians and Surgeons ("CPSO") to be relevant to his complaint. The CPSO of course, regulates physicians in Ontario.

Finally, the Committee considered Dr. Hammer's commentary in his complaint that *"one of the principle points of the Regulated Health Professions Act, 1991, was to incorporate common professional, ethical and scientific standards throughout the medical professions in Ontario. Surely, to exempt chiropractors from these standards and allow them to base their practices on scientifically unsubstantiated anecdotal evidence and implausible, unverifiable theories, backed only by surveys of "patient satisfaction," is to relegate the profession to the status of astrology and Voodoo."*

Dr. Hammer is entitled to a personal opinion. The Committee disagrees with Dr. Hammer's opinion and agrees instead with the fundamental purposes of professional regulation as articulated in the Recommendations of the Health Professions Legislation Review in *"Striking a New Balance: a Blueprint for the Regulation of Ontario's*

Thomas MD and J Wood, Upper cervical adjustments may improve mental function. *Journal Manual Medicine*. 1992; 6:215-216

Langley C., Case study: epileptic seizures, *Chiro Pediatrics* 1994; 1(1):22

Young G, Chiropractic success in epileptic conditions. *Journal Chiro*. 1982; 19(4): 62-63

Anderson C.D., Patridge J.E., Seizures plus attention deficit hyperactivity disorder: A case report *International Chiropractors Association Int Rev Chiropr*. 1993; 49:35-37

Alcantara J. et al., Chiropractic management of a patient with subluxation, low back pain and epileptic seizures. *Journal Manipulative and Physiological Therapeutics*. 1998; 21: 410-418

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Health Professions" which resulted in proclamation of the *RHPA* in 1993, and in particular, the Committee agrees with the following purposes of self regulation:

- *Permitting the public to exercise freedom of choice of health care provider within a range of safe options; and*
- *Promoting evolution in the roles played by individual professions and flexibility in how individual professionals can be utilised, so that health services are delivered with maximum efficiency.*

Allegation 3

- *S.31, Failing to comply with an order of, or breaching an undertaking given to, the Complaints, Discipline or Fitness to Practise Committees or to the Registrar of the College*

Allegation 4

- *S.32 Failing to carry out an agreement entered into with the College; and*

Allegation 5

- *S.33 Engaging in conduct or performing an act that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.*

The Committee refers allegations 3, 4, and 5 to the Discipline Committee, in that despite agreeing to do so, Dr. Nantais did not submit a revised yellow page ad to the Advertising Committee for pre-approval to ensure compliance with the Advertising Standard of Practice and Advertising Code and further he did not comply with removing the testimonials from his office phone greeting until prompted by the Complaints Committee.

Finally, the Committee considered the issue raised by Dr. Hammer, that the Committee instigate a review of Dr. Nantais' OHIP billings to ensure that when a patient has been dissatisfied with the consultation service provided and this consultation has been funded by OHIP that OHIP has been refunded its fee for service. The General Manager of OHIP addresses perceived billing irregularities by health professionals entitled to bill OHIP through the review committees under the Health Insurance Act. The Committee does not have the jurisdiction to instigate a review of Dr. Nantais' OHIP billings.

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The Committee rendering this decision is composed of professional members, Dr. Keith Thomson, Committee Chair, Dr. Gilles Lamarche, and Dr. Elizabeth Anderson-Peacock and public member, Ms Regina Willmann.

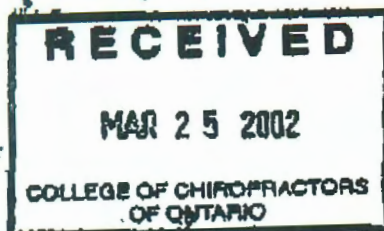


Dr. Keith Thomson
(Chair)

Dated this 30th day of July 2002

To: Kristine Mulak,

APPENDIX A



COLLEGE OF CHIROPRACTOR OF ONTARIO

UNDERTAKING

RE: Complaint by Dr. Anthony Hammer, Nautais 2798 01-FE-13

To: The Complaints Committee and the Registrar

From: Dr. Brian Nantais

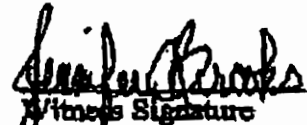
I, Dr. Brian Nantais, a member of the College of Chiropractors of Ontario ("CCO"), understand and agree to the following:

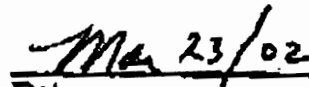
1. I will change my website within 30 days of signing this undertaking in the following way:
 - correct the menu section where it reads, "Conditions Chiropractic Helps," to read, "Chiropractic May Help," and remove the sections related to, "Guarantee," "Testimonials," and "Offer to New Patients;"
 - remove point 7 and 9 in the "10 Reasons to Choose Our Clinic for your Health Needs," relating to "Hundreds of Satisfied Patrons Because We Care," and "Complimentary Consultation;"
2. I will submit a revised yellow page ad to the Advertising Committee for pre-approval and provide confirmation that I have done so to the Complaints Committee within 30 days of signing this undertaking and, immediately thereafter, I will revise my yellow page advertisement in accordance with the Advertising Committee's direction for the next available printing;
3. With respect to any future advertising, I will submit my advertisements to the Advertising Committee for review before printing or posting for a period of 1 year from the date of signing this undertaking;
4. I will exclude from my office phone greeting all patient testimonials.
5. I understand that in the event that the College of Chiropractors of Ontario investigates further matters which are similar to the matter addressed in this complaint, this undertaking and other relevant information will, at the CCO's option, be provided to the Complaints Committee and/or to the Executive Committee;

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6. I understand that failure to comply with this undertaking will be grounds for professional misconduct as defined by the Professional Misconduct Regulation under the *Chiropractic Act, 1991*.


Dr. Brian Nantais


Witness Signature


Date