

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

B E T W E E N :

COLLEGE OF PHYSIOTHERAPISTS OF ONTARIO

- and -

BRIAN EMPEY, Registration Number 10938

**NOTICE OF HEARING**

The Inquiries, Complaints and Reports Committee of the College of Physiotherapists of Ontario has referred specified allegations against Brian Empey 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, 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: June 23, 2023



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Craig Roxborough, Registrar & CEO  
College of Physiotherapists of Ontario

TO: Brian Empey

### **Statement of Allegations**

1. At all material times Brian Empey (the “Registrant”) was a registered physiotherapist with the College of Physiotherapists of Ontario and the owner of Be In Motion Physiotherapy located in Oakville, Ontario (the “Clinic”).
2. In the period September 1, 2021 to June 30, 2022, the Registrant 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 practice 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 22 (assisting a person who is not a member of the profession to hold themselves out as a member registered to practice in Ontario);
  - d. paragraph 28 (signing or issuing a document containing a statement that the member knows or ought to know is false or misleading);
  - e. paragraph 32 (submitting an account or charge for services that the member knows or ought to know is false or misleading);
  - f. 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
  - g. paragraph 41 (failing to supervise in accordance with the standards of practice of the profession).

## **PARTICULARS OF THE ALLEGATIONS**

1. At all material times Brian Empey (the “Registrant”) was a physiotherapist registered with the College of Physiotherapists of Ontario, and the owner and principal of Be In Motion Physiotherapy in Oakville, Ontario (the “Clinic”) where the Registrant practices physiotherapy.
2. In the period of December 3, 2021 to June 28, 2022, the Clinic website represented an individual who was an athletic therapist, but not a physiotherapist, as a physiotherapist providing services at the Clinic. At all material times, the Registrant was responsible for the content of the website and/or was the employer of the athletic therapist.
3. In the period September 1, 2021 to June 30, 2022, an athletic therapist employed or contracted by the Registrant and/or the Clinic, performed initial assessments for patients of the Clinic, which were invoiced to patients as “Athletic Therapy Assessment.” Subsequent treatments provided to patients by the athletic therapist following the Athletic Therapy Assessment, were invoiced to patients and/or submitted to third party insurers as physiotherapy treatments under the Registrant’s name and College Registration number when the Registrant had not assessed the patient and/or developed a treatment plan and/or otherwise been involved in the patient’s care.
4. At all material times, the Registrant failed to maintain the standards of practice of the profession in accordance with the College’s *Working with Physiotherapist Assistants* Standard, which standard provides, among other things that: physiotherapists cannot delegate assessments, reassessments or the development of treatment plans to physiotherapist assistants (“PTAs”); physiotherapists must supervise the PTA, including to ensure that the treatment plans are being followed and are not being changed/alterd by the PTA; and physiotherapists must establish a written communication protocol with PTAs providing services under the physiotherapist’s supervision.
5. Treatments or services provided by the athletic therapist as set out in paragraphs 3 and 4 above, did not constitute or qualify as physiotherapy provided by or under the supervision of a registered physiotherapist and could not and should not have been billed to patients as such by the Registrant and/or under the Registrant’s name and College registration number.
6. The Registrant directly and/or indirectly held out the athletic therapist as a Registrant of the College to patients of the Clinic and members of the public including by:
  - a. Describing and/or promoting the athletic therapist as a physiotherapist on the Clinic website; and
  - b. Assigning and/or permitting the athletic therapist to assess patients for follow-up treatments that were invoiced to patients as physiotherapy treatments.

**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.