

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

B E T W E E N :

COLLEGE OF PHYSIOTHERAPISTS OF ONTARIO

- and -

JEFF WHELAN, Registration Number 09138

NOTICE OF HEARING

The Inquiries, Complaints and Reports Committee of the College of Physiotherapists of Ontario has referred specified allegations against Jeff Whelan 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 by electronic means or 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 by electronic means or at the offices of the College of Physiotherapists of Ontario at 375 University Avenue, Suite 800, Toronto, Ontario, on a date and time to be fixed by the Registrar.

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 registrant's certificate of registration.
2. Direct the Registrar to suspend the registrant's certificate of registration for a specified period of time.
3. Direct the Registrar to impose specified terms, conditions and limitations on the registrant's certificate of registration for a specified or indefinite period of time.
4. Require the registrant to appear before the panel to be reprimanded.
5. Require the registrant 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

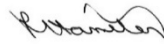
Telephone: (416) 968-3333
Facsimile: (416) 968-0325
Email: jbirenbaum@upfhlaw.ca

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.

The Discipline Committee's Rules of Procedure can be found on the College's website.

Date: December 8, 2021



Rod Hamilton
Registrar
College of Physiotherapists of Ontario

TO: Rebecca M. Young
Damien Frost & Associates LLP
1073 Bloor St. West
Toronto, ON
M6H 1M6

Counsel for the Registrant:
Jeff Whelan

Statement of Allegations

1. At all material times Jeff Whelan was a registrant of the College of Physiotherapists of Ontario holding an Independent Practice certificate of registration.

2. On or about June 23, 2021, Jeff Whelan 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 10 (abuse of a patient);
 - c. 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); and
 - d. paragraph 26 (failing to keep records in accordance with the standards of practice of the profession).

3. In or about June 23, 2021, Jeff Whelan committed an act of professional misconduct under ss. 1(3), 1(4) and s.51(1)(b.1) of the Health Professions Procedural Code, which is Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c.18 (the "Code") in that they engaged in sexual abuse of a patient by making remarks of a sexual nature.

PARTICULARS OF THE ALLEGATIONS

1. At all material times Jeff Whelan was a registrant of the College of Physiotherapists of Ontario (the “College”), practicing at Active Recovery Sports Injury and Rehabilitation Clinic in Courtice, Ontario (the “Clinic”).
2. On June 23, 2021, Patient A attended at the Clinic for the assessment and treatment of a knee injury. This was Patient A’s first time attending an appointment with Jeff Whelan.
3. In the assessment and treatment of Patient A, Jeff Whelan discussed kegel exercises with Patient A. Patient A confirmed that they were familiar with kegel exercises. Nevertheless, Jeff Whelan did not refer to the exercise by name and instead, on approximately six occasions during the treatment, told Patient A to “close” their “holes.” This language was not clinically indicated or appropriate to the service provided and was offensive to Patient A.
4. In the assessment of Patient. A, Jeff Whelan referred to Patient A’s legs as a “9 out of 10” and then as an “8 out of 10” because they had “no bum.” These comments were not clinically indicated or appropriate to the service provided and were offensive to Patient A.
5. Jeff Whelan did not provide Patient A any diagnosis of their knee pain. Jeff Whelan did not explain to Patient A, or in the alternative adequately explain to Patient A, the connection between kegel exercises and addressing their knee pain.
6. In the course of the treatment, Jeff Whelan put his hand on Patient A’s abdominal muscles. Patient A did not consent to this touching and in the context of the comments and conduct set out in paragraphs 3, 4 and 5 above, experienced the touching as sexual in nature.

7. Jeff Whelan did not document the assessment and treatment of Patient A in keeping with the standards of practice of the practice profession.

8. In addition and/or in the alternative, in respect of the acts set out in paragraphs 3 to 6 above, Jeff Whelan failed to respect Patient A's personal boundaries, fell below the standards of practice of the profession with respect to physiotherapists maintaining professional boundaries and communicating with patients, and engaged in conduct which, having regard to all the circumstances, would reasonably be regarded by members of the profession as disgraceful, dishonourable and/or unprofessional.

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.