

THE QUEEN'S BENCH
Winnipeg Centre

BETWEEN:

MANITOBA CHIROPRACTORS ASSOCIATION,

Plaintiff,

-and-

COLLEGE OF PHYSICIANS & SURGEONS OF MANITOBA,

Defendant.

STATEMENT OF CLAIM

FILED
QUEEN'S BENCH
APR 05 2019
LAW COURTS
WINNIPEG

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File No. 180358

THE QUEEN'S BENCH
Winnipeg Centre

BETWEEN:

MANITOBA CHIROPRACTORS ASSOCIATION,

-and-

Plaintiff,

COLLEGE OF PHYSICIANS & SURGEONS OF MANITOBA,

Defendant.

STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a Manitoba lawyer acting for you must prepare a Statement of Defence in Form I8A prescribed by the Queen's Bench Rules, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it in this Court Office WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Manitoba.

If you are served in another Province or Territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

DATE: April 5, 2019

Issued by: _____

W. Friesen
Deputy Registrar
100C – 408 York Avenue
Winnipeg, MB R3C 0P9

TO: COLLEGE OF PHYSICIANS & SURGEONS OF MANITOBA
1000 – 1661 Portage Avenue
Winnipeg, Manitoba
R3J 3T7

CLAIM

1. The plaintiff claims as against the defendant:
 - a. A declaration that the defendant is in violation of an agreement entered into between the parties in March 2003;
 - b. In order in the nature of a mandatory injunction to compel the defendant to comply with the aforesaid agreement;
 - c. Damages in an amount to be determined by this Honourable Court;
 - d. Interest as in *the Court of Queen's Bench Act*;
 - e. Costs;
 - f. Such further and other relief as counsel may advise and this Honourable Court may permit.

2. The plaintiff is an unincorporated association created by Act of the legislature of the Province of Manitoba to represent the interest of chiropractors in Manitoba.

3. The defendant is an unincorporated association created by Act of the legislature of the Province of Manitoba to act as a regulatory body on behalf of physicians and surgeons in Manitoba.

4. The plaintiff states that it caused a lawsuit to be filed by itself against the defendants on February 5, 1998, alleging, amongst other things, that the defendant herein had defamed the institution of the plaintiff and chiropractors generally.
5. The plaintiff states that an agreement was entered into in March 2003, which the Plaintiff begs leave to refer to in the trial of this action; it appended a joint statement for publication which is appended to this Statement of Claim.
6. The agreement in question directed both plaintiff and defendant to enter into co-educational activities and to refrain from criticisms by each institution of the other, and the plaintiff takes leave to refer to the aforesaid agreement in its entirety.
7. The plaintiff states that the aforesaid agreement, under paragraph 2, on page 2, required a committee to be struck of the two institutions of the plaintiff and the defendant that in essence related to co-education.
8. Under the fifth bulleted point of the aforesaid paragraph 2, the following language was created:

“Identifying external barriers which prevent members of each profession from working cooperatively to improve and enhance the level of care in their patients including:

iii) relevant legislation”

9. The plaintiff states that the registrar of the defendant, Dr. Anna Ziomek, on November 28, 2016, wrote a letter to the Manitoba Health Professions Advisory Council which was entirely offside the aforesaid provision.
10. The plaintiff states that the aforesaid agreement compelled continuing education between the two institutions which has become entirely ignored by the defendant.
11. The plaintiff states that the sixth bulleted point under paragraph 2 on page 2 of the aforesaid agreement required in a detailed fashion conduct of each organization that would relate to the other and the plaintiff states that the defendant is entirely off side in this respect and seeks to refer the aforesaid agreement in detail in relation to the letter of November 28, 2016 authored by the registrar of the defendant.
12. In said letter, Ziomek stated that:

“The resulting clinical conditions can be quite serious and life threatening. The adverse effects can include: vertebral fracture, vertebral artery dissection and brain stem stroke, acute spinal cord injury, nerve root injury with motor and sensory deficit. The literature shows that there are reports of vertebral artery dissection and carotid artery dissection causing cerebral vascular accidents as well as lesser adverse effects such as tiredness, dizziness, nausea, ringing in the ears etc. The spine surgeons note that the administration of a

force to a spinal segment can be deleterious, when a spinal nerve root, spinal cord and vertebral arteries are adjacent to an arthritic facet joint. They also point out that the quantification of a force to the spine would be quite variable and affected by age, gender and ethnicity and would be difficult to control."

And:

"To Summarize, based on the feedback the CPSM has received from physician leaders in the related areas of medicine, the CPSM has serious reservations about the proposal by the Chiropractors Association that "administering a high velocity, low amplitude thrust to move a joint of the spine within its anatomical range" be a reserved act for chiropractors under the RHPA. The CPSM believes the onus should be on the Chiropractors Association to demonstrate scientifically the safety and efficacy of this particular treatment. The onus should be on the chiropractors to approach all procedures with the same scientific rigor as is required for medical treatments and devices in order to ensure patient safety, especially when the consequences of the risks are so profound and include quadriplegia and death."

These comments were both inaccurate and more fundamentally, a complete violation and repudiation and retraction of the agreement referred to in paragraph 5 above. She purported to challenge the standards of care of chiropractic generally and challenged the institution of chiropractic to satisfy the government of Manitoba of its scientific justification, which again, is not only unfounded but a clear and egregious violation of the aforesaid agreement.

13. These comments are also in fact and were intended by Ziomek, who spoke for the defendant, to be a direct challenge to the practice of chiropractic; chiropractic is legislatively sanctioned by an Act of the Legislature of Manitoba, and is scientifically accepted and established. Indeed, the governing legislation pertaining to the practice of medicine in Manitoba, under which the defendant operates, acknowledges the practice of chiropractic in Section 2(2) of the Medical Act of Manitoba. The agreement of 2003 accepted the legitimacy of the practice of chiropractic and agreed never again to take a contrary position.

14. The plaintiff states further that when the letter of November 28, 2016 was brought to the attention of the plaintiff, a meeting occurred with the plaintiff between representatives of the plaintiff and Dr. Ziomek, said meeting occurring on October 25, 2018.

15. The plaintiff states that at said meeting, Dr. Ziomek, on behalf of the defendant, indicated that her only concern about the letter of November 28, 2016 was that she had

intended it to be confidential and took offence about the fact that the plaintiff was aware of it.

16. The plaintiff states that it made a demand of the defendant that it withdraw the letter and the remarks made within it.

17. The plaintiff states that the defendant has refused to withdraw its remarks in the aforesaid letter, which essentially, challenged the practice of chiropractic in Manitoba.

18. The plaintiff accordingly seeks an Order compelling the defendant to comply with the aforesaid agreement and a declaration that it has been offside this agreement.

19. The plaintiff additionally seeks damages against the defendant for violating the aforesaid agreement.

Date: April 5, 2019

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Solicitors for the Plaintiff

Joint Statement of CPSM and MCA

The College of Physicians & Surgeons of Manitoba ("CPSM") is responsible for establishing and maintaining professional standards of medical practice in Manitoba pursuant to The Medical Act, C.C.S.M, c. M90 [ss.36(1)(i)]. The Manitoba Chiropractors' Association ("MCA") is responsible for developing, establishing and maintaining standards for the practice of chiropractic in Manitoba pursuant to The Chiropractic Act, C.C.S.M c. C100[ss.26(b)].

The Manitoba Chiropractors' Association ("MCA") and The College of Physicians & Surgeons of Manitoba ("CPSM") recognize and acknowledge that each organization has a role to play in ensuring an effective and safe system of health care for the benefit of all Manitobans. To promote cooperation and good relations between them and so that each organization can properly make their contribution to the Manitoba health care system, the organizations have established a liaison committee to be called the MCA/CPSM Inter-professional Relations Committee, consisting of the Registrars, Presidents and Presidents Elect of each organization.

The MCA/CPSM Inter-professional Relations Committee will meet not less than once per year to discuss any issues of concern to either organization. The Committee's objectives will include:

- continuing education and understanding of both the medical and chiropractic professions by each organization;
- continuing education and professional development of the members of each organization relating to the contribution of each profession to health care;
- promoting co-operation and good relations between the two organizations and their members;
- facilitating the minimizing of barriers, where appropriate, and within the jurisdiction of each organization which prevent members of each profession from working cooperatively to improve and enhance the level of care to their patients;
- identifying external barriers which prevent members of each profession from working cooperatively to improve and enhance the level of care to their patients, including:
 - i. Manitoba Health billing requirements and/or procedures;
 - ii. legal liability and liability insurance issues;
 - iii. relevant legislation.
- reviewing and discussing the existing professional guidelines of each organization which impact upon the practice of the other organization's members, whether in the form of legislation, codes of conduct, guidelines, statements, policies or otherwise.