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JULIA M. LE
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Court File No. CV-16-126595-00

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

YUEXIAO (PATRICK) ZHANG
as represented by his Litigation Guardian,
Jing Liu

Plaintiff

- and -

DR. PIERRE DUPONT,
COLLEGE OF CHIROPODISTS OF ONTARIO
and OTTAWA FOOT PRACTICE INC.

Defendants

Issued Under the Class Proceedings Act, 1992

AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS

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 an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

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.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

ISSUE DATE: May 4, 2016.

Issued by "A. Rows"
Local Registrar

Address of court office:

50 Eagle Street West
Newmarket, Ontario
L3Y 6B1

TO: PIERRE DUPONT
Ottawa Foot Practice
28 Deakin Street
Suite 101
Ottawa, Ontario
K2E 8B7

AND TO: COLLEGE OF CHIROPODISTS OF ONTARIO
180 Dundas Street West
Suite 2012
Toronto, Ontario
M5G 1Z8

AND TO: OTTAWA FOOT PRACTICE INC.
110 Ashgrove Crescent
Ottawa, Ontario
K2G 0T3

1. **THE PLAINTIFF, YUEXIAO (PATRICK) ZHANG BY HIS LITIGATION GUARDIAN, JING LIU, CLAIMS ON BEHALF OF HIMSELF AND OTHERS SIMILARLY SITUATED IN CANADA:**
 - (a) damages in the amount of \$15,000,000.00;
 - (b) prejudgment interest pursuant to the provisions of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
 - (c) costs on a substantial indemnity basis, including HST; and,
 - (d) such further and other relief as this Honourable Court deems just.

THE PLAINTIFF

2. The Plaintiff, Yuexiao (Patrick) Zhang, is a minor born on February 14, 2005, who resides in the Town of Richmond Hill, in the Province of Ontario. This Plaintiff brings this action by his Litigation Guardian and mother, Jing Liu.

THE DEFENDANTS

3. The Defendant, Dr. Pierre Dupont, is a health practitioner licensed to practise chiropody in Ontario by the College of Chiropodists of Ontario. At all material times, the College of Chiropodists of Ontario represented that Dr. Pierre Dupont was experienced in, and qualified to carry out, the practice of chiropody in the Province of Ontario.
4. The Defendant, College of Chiropodists of Ontario (the "College"), is a body corporate without share capital established under the *Regulated Health Professions Act*, 1991, S.O. 1991, c.18 (the "*Regulated Health Professions Act*")

and the *Chiropody Act*, 1991, S.O. 1991, c. 20 (the "*Chiropody Act*"). The College regulates the practice of the chiropody in the Province of Ontario and governs chiropodists in accordance with legislation, including the *Regulated Health Professions Act*, the *Health Professions Procedural Code*, the *Chiropody Act*, and its regulations and by-laws.

5. The Defendant, Ottawa Foot Practice Inc. (the "Ottawa Foot Practice"), is a body corporate duly authorized to carry on business in the Province of Ontario. The Plaintiff was at all material times a patient of Dr. Dupont and received treatment at the Ottawa Foot Practice.

THE CLASS

6. In bringing this action on behalf of a class of people in Canada who were implanted by Dr. Dupont with a foot stent (hereinafter referred to as the "Stent Procedure"), the Plaintiff pleads and relies upon the provisions of the *Class Proceedings Act*, 1992, S.O. 1992, c.6., as amended.

DR. DUPONT

7. Dr. Dupont practised medicine as a dentist in the Province of Québec from approximately 1992 until 2005. During this period, several complaints were filed against Dr. Dupont by his patients. During that period, Dr. Dupont treated at least 10 of his dental patients negligently and/or in a manner not in accordance with the applicable standard of care, resulting in more than 30 instances of negligent and/or the substandard provision of dental services and ultimately

resulted in the Ordre des dentistes du Québec, the organization that oversees dentists in Québec, suspending Dr. Dupont for life in or around March of 2005.

8. The revocation of Dr. Dupont's authority to practice dentistry in the Province of Quebec was reported on by the media during the period from 2003 to 2005.

9. In or around 2006, and as a consequence of no longer being able to practise as a dentist in Quebec, Dr. Dupont enrolled in the podiatry program at the University of Québec at Trois Rivières ("UQTR"). After Dr. Dupont enrolled and was accepted at UQTR, the University attempted to suspend Dr. Dupont from its podiatry program on the basis that he had allegedly made incomplete or misleading statements in the admissions process to UQTR's podiatry program, including failing to disclose his history of misconduct as a dentist and his suspension by the Ordre des dentistes du Québec.

10. UQTR was unsuccessful in its attempt to suspend Dr. Dupont, as Dr. Dupont brought a successful legal proceeding against UQTR with the result that Dr. Dupont was permitted to continue his studies and thereafter graduate from UQTR's podiatry program.

11. The attempt by UQTR to remove Dr. Dupont from its podiatry program, including Dr. Dupont's resulting legal proceeding, as well as the relationship of that proceeding to the revocation of Dr. Dupont's authority to practise dentistry in Quebec was reported on by the media in or around 2008.

12. In or around 2010, following his Graduation from UQTR, the Québec College of Podiatrists ("the Ordre des Podiatres") refused to issue Dr. Dupont a licence to practise podiatry in the Province of Québec due to Dr. Dupont's past misconduct as a dentist in Québec.

13. Dr. Dupont appealed the decision made by the Ordre des Podiatres, and in or around 2011, it was decided by the administrative regulatory tribunal who heard Dr. Dupont's appeal that Dr. Dupont was entitled to practise as a Podiatrist in Québec, although Dr. Dupont elected not to do so.

14. Dr. Dupont subsequently moved to Ontario, where he applied for and was granted a "Certificate of Registration" to practise as a chiropodist by the College (the College no longer admits new members as podiatrists, only chiropodists). He began practising as a chiropodist in Ottawa, Ontario.

15. At the outset, Dr. Dupont's ability to practise as an Ontario chiropodist was subject to restrictions imposed upon him by the College, whereby, for a period of two years:

- (a) he was not to work as a chiropodist more than 4 days per week;
- (b) he was to not own or control, directly or indirectly, a chiropody practice in Ontario; and,
- (c) he was to work only as an employee or associate of another member of the College.

16. Dr. Dupont commenced his practice as an Ontario chiropodist as an employee or associate of another member of the College, and he did not initially

own or control a chiropody practice in Ontario, in accordance with the restrictions on his registration with the College.

17. However, in or about 2012, Dr. Dupont stopped working as an employee or associate of another member of the College, and he opened up and began owning and controlling a chiropody practice in Ontario.

THE COLLEGE

18. The College regulates chiropractors in Ontario pursuant to the *Regulated Health Professions Act*, the *Health Professions Procedural Code* and the *Chiropody Act* (collectively the "Legislation"). According to the *Health Professions Procedural Code* (the "Code"), the objectives of the College include:

- (a) to regulate the practice of the profession and to govern its members in accordance with the Legislation;
- (b) to develop, establish and maintain standards of qualification for persons to be issued Certificates of Registration;
- (c) to develop, establish and maintain programs to assist individuals to exercise their rights under the Code and the *Regulated Health Professions Act*, 1991;
- (d) to develop, establish and maintain programs and standards of practice to assure the quality of the practice of the profession;
- (e) to develop, establish and maintain standards of knowledge and skill and programs to promote continuing evaluation, competence and improvement among the members;
- (f) to develop, establish and maintain standards of professional ethics for the members; and,
- (g) to develop, establish, and maintain standards and programs to promote the ability of members to respond to changes in practice environments, advances in technology and other emerging issues.

19. According to the *Regulated Health Professions Act* and the Code, the College, in carrying out its objectives has a duty to serve and protect the public interest.

20. According to its own Mission Statement, the College has a duty to serve and protect the public interest by:

- (a) Regulating the practice of the profession and governing the members in accordance with the *Chiropody Act*, the *Regulated Health Professions Act* and the regulations and by-laws;
- (b) Establishing standards of practice;
- (c) Establishing educational requirements for entry to practise and continuing competence;
- (d) Addressing any concerns from the public; and,
- (e) Educating and providing information to the public about chiropody and podiatry.

21. The work of the College is directed by a Council whose job it is to represent the interests of the public, i.e. the patients who seek the services of a member.

22. Among the primary functions of the College are registration, quality assurance, complaints and discipline, and setting standards. Those functions interact to assure the public that anyone using the title "Chiropodist" meets defined standards of practice, education, and competence and is a safe, ethical and competent practitioner.

23. With respect to its registration function, the College is supposed to ensure that only competent and qualified individuals are registered with the College.
24. With respect to its quality assurance function, the College is supposed to ensure that, once registered, members are to maintain ongoing competence (i.e. the knowledge, skills and judgment), by ensuring that members engage in ongoing learning by providing tools to evaluate their practice including onsite practice assessments and mandatory continuing education.
25. With respect to its complaints and discipline function, the College uses the requirements outlined in the *Regulated Health Professions Act* to ensure that a fair and transparent process is followed when a complaint about a member is received.
26. With respect to its setting standards function, the College sets professionals standards to improve the quality and safety of patient care and defines the standard of practice for the profession, as part of its mandate of protecting the public interest.
27. According to the College itself, its requirement for registration in Ontario as a chiropodist is that the applicant must not have been found guilty of professional misconduct, incompetence or incapacity, in Ontario in relation to another health profession, or outside Ontario in relation to chiropody or another health profession.

28. Despite its own requirements and Dr. Dupont's past misconduct and lifetime suspension by the Ordre des dentistes du Québec, the College failed to act in good faith in the performance of its duties and exercise of its powers by granting Dr. Dupont a Certificate of Registration to practise as a chiropodist in Ontario and by allowing Dr. Dupont to practise as a chiropodist in Ontario.

DUPONT'S PRACTICE IN ONTARIO

29. In the course of his practice as a chiropodist in Ontario, Dr. Dupont recommended to Class Members, including the Plaintiff, the Stent Procedure to correct foot ailments, including "flat footedness".

30. In the course of performing the Stent Procedure, Dr. Dupont used Unapproved Stents without the consent of his patients. Dr. Dupont developed and manufactured the Unapproved Stents and profited from their sale.

THE REPRESENTATIVE PLAINTIFF'S CLAIM

31. On or about July 23, 2015, the Plaintiff was implanted using the Stent Procedure with an Unapproved Stent in his right foot. It was intended that the same procedure would subsequently be performed on his left foot though this was never performed. The Plaintiff was advised by Dr. Dupont that the Stent Procedure would correct his flat footedness.

32. At that time neither the Plaintiff, nor his parents as his guardians, were aware of Dr. Dupont's history of misconduct as a dentist and health professional in the Province of Quebec, his dealings with Ordre des dentistes, his dealings with UQTR, his dealings with the Ordre des Podiatres, and the restrictions that

had initially been placed on his Ontario chiropody practice. Had the Plaintiff and his parents as his guardians been aware of those facts and circumstances, they would not have consulted with or agreed to be treated by Dr. Dupont.

33. The Plaintiff was not advised that Dr. Dupont was using an Unapproved Stent, which Dr. Dupont developed, manufactured and profited from, in performing the Stent Procedure. Had the Plaintiff, and his parents as his guardians, been aware of this, they would not have allowed the Plaintiff to undergo the Stent Procedure.

34. Following the Stent Procedure and implantation of the Unapproved Stent, the Plaintiff developed pain and discomfort in his right foot which caused irritation, irregular gait and loss of balance. As a result of these and other side effects and failure, the Plaintiff has been forced to remove the Unapproved Stent from his right foot.

35. The Plaintiff states that the aforementioned serious and permanent personal injury and damage and those of the Class were caused or contributed to by the joint and several negligence, medical malpractice, breach of fiduciary duty and/or breach of contract of the Defendants, the particulars of which are as follows:

A. AS TO THE DEFENDANT, DR. DUPONT:

SURGERY AND CARE

- (a) he misrepresented the risks and benefits of the Stent Procedure in a manner designed for him and his company to profit from the Stent Procedure;
- (b) he implanted an Unapproved Stent in the Plaintiff's right foot, which he developed, manufactured and profited from the sale of;
- (c) he failed to inform the Plaintiff that he was implanting an Unapproved Stent, which was not approved for use by Health Canada;
- (d) he failed to get informed consent from the Plaintiff prior to implanting the Unapproved Stent in the Plaintiff;
- (e) he was not adequately trained, experienced and/or licensed to perform the Stent Procedure;
- (f) he recommended and performed the Stent Procedure on the Plaintiff when he knew or ought to have known that the Plaintiff was not a suitable candidate for the surgery and that it was unsafe to perform the surgery in the circumstances;
- (g) he recommended and performed the Stent Procedure on the Plaintiff's right foot when he knew or ought to have known that it was unsafe and/or inappropriate to do so in the circumstances;
- (h) he recommended the Stent Procedure when it was not proven appropriately safe and effective and when the Stent Procedure had not been authorized to be performed by him and/or other Ontario Health Professionals;
- (i) he failed to properly perform the Stent Procedure with the necessary care and skill required of a medical professional performing such a procedure;
- (j) in performing the Stent Procedure he failed to take reasonable care to prevent injury to the Plaintiff;
- (k) he failed to use due skill and care in the pre-operative, operative and post-operative periods;
- (l) he failed to provide any or appropriate follow-up care to the Plaintiff;
- (m) he failed to provide appropriate treatment to the Plaintiff;

- (n) he failed to employ and/or supervise properly the servants, agents and/or employees of the Ottawa Foot Practice; and,
- (o) he delegated tasks to persons whom he knew or ought to have known were inexperienced, untrained and incompetent and who ought not to have provided care or treatment to the Plaintiff;

INCOMPETENCE

- (p) he was an incompetent medical professional who should not have attempted to treat the Plaintiff;
- (q) he was an incompetent chiropodist lacking in the knowledge, skill and experience necessary to recommend or conduct the treatment provided to the Plaintiff;
- (r) he misrepresented to the Plaintiff his training, experience, competence and abilities, generally, and/or in regard to Stent Procedure;
- (s) he misrepresented to the Plaintiff the nature of the medical products used in the Stent Procedure, the risks involved in the Stent Procedure and in particular the use of an Unapproved Stent which he developed, manufactured and profited from the sale of;
- (t) in his treatment of the Plaintiff he fell below the standard of care required of a competent chiropodist practising chiropody in the Province of Ontario;
- (u) he had deficient clinical ability in areas relevant to the treatment provided by him to the Plaintiff and should not have engaged in the practice of chiropody and/or the Stent Procedure;
- (v) he knew or ought to have known that he was incompetent, that his clinical and surgical skills were deficient and below the standard required of a competent chiropodist practising in the Province of Ontario, and that to provide treatment to the Plaintiff in the circumstances was an act of professional misconduct;
- (w) he knew or ought to have known of his high complication rate and knew or ought to have known that this rate was the result of his pattern of poor technique and practice;
- (x) he failed to investigate or identify the causes of his high complication rate and he continued to practise and conduct, *inter alia*, Stent Procedures and other chiropody treatments thereby subjecting the Plaintiff to an unacceptable risk of harm;

- (y) he showed a total, reckless, wanton and willful disregard for the health, safety and wellbeing of the Plaintiff; and,
- (z) he behaved with arrogance and high-handedness and showed a conscious and reckless disregard for the health, safety and wellbeing of the Plaintiff;

B. AS TO THE DEFENDANT, THE COLLEGE AND ITS SERVANTS, AGENTS AND EMPLOYEES, FOR WHOSE NEGLIGENCE THE COLLEGE IS IN LAW RESPONSIBLE:

- (a) it knew or ought to have known that Dr. Dupont had been found guilty of professional misconduct in a health profession and granted him a Certificate of Registration at the College, when it was unreasonable (and against its own policies to do so), certifying him to practise chiropody in Ontario;
- (b) it granted Dr. Dupont a licence to practise / Certificate of Registration in Ontario when it knew or ought to have known that Dr. Dupont was incompetent and a danger to the Plaintiff and the Class;
- (c) it knew or ought to have known that Dr. Dupont was incompetent and failed to maintain adequate monitoring and/or supervision of his practice to the detriment of the Plaintiff and the Class;
- (d) it knew or ought to have known that Dr. Dupont was an incompetent medical professional with a history of misconduct and it failed to take appropriate steps to prevent further misconduct by Dr. Dupont to the detriment of the Plaintiff and the Class;
- (e) it failed to develop, establish and maintain standards of qualification of persons to be issued Certificates of Registrations to the detriment of the Plaintiff and the Class;
- (f) it knew or ought to have known that Dr. Dupont was incompetent and/or had a history of misconduct and failed in its duty to investigate allegations against Dr. Dupont in good faith, and take appropriate action;
- (g) it knew or ought to have known that Dr. Dupont committed professional negligence in his capacity as a dentist in Quebec as well as of many occasions of negligence that resulted in serious injury to his patients;

- (h) it knew or ought to have known that as a result of Dr. Dupont's negligence and failure to properly treat his dental patients in Quebec, the Ordre des dentistes had found that Dr. Dupont had engaged in professional misconduct;
- (i) it knew or ought to have known that, as a result of Dr. Dupont's negligence and failure to properly treat his dental patients in the Province of Quebec, the Ordre des dentistes had revoked Dr. Dupont's registration and authority to practise dentistry in Quebec on a permanent basis;
- (j) it knew or ought to have known that UQTR had been opposed to Dr. Dupont continuing in his podiatry studies at that institution and had sought to remove him from its podiatry program;
- (k) it knew or ought to have known that Dr. Dupont's initial application for registration with the Ordre des Podiatres had been rejected on the basis of Dr. Dupont's past misconduct as a dentist;
- (l) it failed to properly consult with or collaborate with the Ordre des dentistes and/or the Ordre des Podiatres, prior to issuing a Certificate of Registration to Dr. Dupont;
- (m) it failed to properly investigate Dr. Dupont's past misconduct and make a determination that a Certificate of Registration should not be issued to Dr. Dupont;
- (n) it failed to ensure that only competent and qualified individuals were registered with the College, by allowing Dr. Dupont to be registered with the College at a time when he was incompetent and/or unqualified;
- (o) it issued a Certificate of Registration to Dr. Dupont despite being prohibited from doing so on the basis of Dr. Dupont having been the subject of a finding of professional misconduct or incompetence while registered and licensed as a dentist in the Province of Québec;
- (p) it made an operational decision to issue a Certificate of Registration to Dr. Dupont notwithstanding all of the above facts and circumstances, thereby permitting him to practise as chiropodist in Ontario;
- (q) its decision to issue a Certificate of Registration to Dr. Dupont was made with serious carelessness and recklessness, in view of all of the facts and circumstances that the College was aware of or ought to have been aware of, and which ought to have led to the College refusing to issue such a Certificate of Registration to Dr. Dupont;

- (r) it did not act in good faith in the performance of its duty and/or in the exercise of its power under the *Chiropody Act* and/or *Regulated Health Professions Act*, and/or the regulations and by-laws enacted thereunder, by issuing a Certificate of Registration to Dr. Dupont;
- (s) it acted in bad faith in the performance of its duty and/or in the exercise of its power under the *Chiropody Act* and/or *Regulated Health Professions Act* and/or the regulations and by-laws enacted thereunder, by issuing a Certificate of Registration to Dr. Dupont;
- (t) it failed to follow up, enforce and or continue the restrictions that it had initially placed upon Dr. Dupont's practice of chiropody, pursuant to which he was not to own or control, directly or indirectly, a chiropody practice in Ontario;
- (u) it failed to follow up, enforce and/or continue the restriction that it had initially placed on Dr. Dupont's practice of chiropody, pursuant to which his work as a chiropodist was only to be done as an employee or associate of another member of the College;
- (v) it failed to, after a Certificate of Registration had been issued to Dr. Dupont, ensure that Dr. Dupont was competent and demonstrated proper knowledge, skill and judgment, including by failing to conduct on-site practice assessments which would have resulted in a situation whereby Dr. Dupont would not have performed surgical procedures on the Plaintiff;
- (w) it failed to have in place adequate systems to monitor the competence of the chiropodists practising in Ontario, such as Dr. Dupont, including their complication rates and history of professional misconduct and incompetence, to the detriment of the Plaintiff and the Class;
- (x) it permitted Dr. Dupont to perform invasive surgical procedures such as the Stent Procedure, when such surgeries were not properly performed by any Ontario chiropodist, including Dr. Dupont;
- (y) it failed to monitor and oversee Dr. Dupont's advertising and marketing of the Stent Procedure, which was on offer to the Plaintiff;
- (z) it failed to take appropriate action following receipt of complaints regarding Dr. Dupont to the detriment of the Plaintiff and the Class;
- (aa) it failed to have in place adequate systems to monitor the use of unapproved products in practice environments and the safety thereof, to the detriment of the Plaintiff and the Class;

- (bb) it failed to develop, establish or maintain standards of professional ethics for its members as is necessary to protect the Plaintiff and the Class;
- (cc) it failed to regulate the profession and govern its members in accordance with its governing legislation to the detriment of the Plaintiff and the Class;
- (dd) it did not act in good faith in the performance of a duty or in the exercise of a power under the *Chiropody Act, 1991*, and/or *Regulated Health Professions Act, 1991*, and/or the regulations and by-laws enacted thereunder, in the manner described above, including by allowing Dr. Dupont to continue to practice as a chiropodist unsupervised;
- (ee) it acted in bad faith in the performance of a duty or in the exercise of a power under the *Chiropody Act, 1991* and/or the *Regulated Health Professions Act, 1991*, and/or the regulations and by-laws enacted thereunder, in the manner described above, including by allowing Dr. Dupont to continue to practise as a chiropodist, unsupervised;
- (ff) its aforementioned acts and omissions, including allowing Dr. Dupont to practise as a chiropodist, issuing Dr. Dupont a Certificate of Registration and allowing Dr. Dupont to continue practising without supervision of another member of the College, were seriously careless and reckless;
- (gg) its aforementioned acts and omissions took place in circumstances where the College was aware that its acts and omissions could result in harm to Dr. Dupont's patients and at a time when the College had undertaken to protect patients who were seeking Dr. Dupont's services; and,
- (hh) it knew or ought or ought to have known that Dr. Dupont was a danger to the Plaintiff and the Class and failed to take appropriate action.

C. AS TO THE DEFENDANT, OTTAWA FOOT PRACTICE, AND ITS SERVANTS, AGENTS AND EMPLOYEES, FOR WHOSE NEGLIGENCE AND BREACH OF CONTRACT THIS DEFENDANT IS IN LAW RESPONSIBLE:

- (a) it knew or ought to have known that Dr. Dupont was using/implanting Unapproved Stents and failed to prevent the use and/or implantation of Unapproved Stents by Dr. Dupont;

- (b) it failed to have appropriate or any policies or procedures in place to ensure that they were not utilizing and/or implanting Unapproved Stents;
- (c) it failed to have the appropriate or any policies or procedures in place to ensure that the Stent Procedure performed by Dr. Dupont was reasonably safe;
- (d) it knew or ought to have known that Dr. Dupont was performing patient treatment in an unsafe manner and failed to prevent him from doing so;
- (e) it failed to have appropriate policies or procedures in place for the conduct of the Stent Procedure;
- (f) it employed incompetent and/or improperly trained and/or inexperienced servants, agents, and/or employees, including Dr. Dupont, to treat and care for the Plaintiff and it failed to inform the Plaintiff of their lack of qualifications;
- (g) it failed to maintain adequate systems of observation of the care provided by the Defendant, Dr. Dupont;
- (h) it knew or ought to have known that Dr. Dupont failed to provide proper or any post-operative care or treatment to patients and it failed to remedy this deficiency;
- (i) it knew or ought to have known that Dr. Dupont had a history of medical misconduct and failed to take the appropriate steps to monitor and/or supervise his practice;
- (j) it knew or ought to have known that Dr. Dupont was an incompetent medical professional with a history of misconduct and it failed to take the appropriate steps to prevent further misconduct by Dr. Dupont;
- (k) it failed to have in place adequate systems to monitor the competence of medical professionals, including Dr. Dupont, practising at the Ottawa Foot Practice, including their complication rates and history of professional misconduct and incompetence;
- (l) it failed to take appropriate action following receipt of complaints regarding Dr. Dupont;
- (m) it permitted Dr. Dupont to perform medical procedures including the Stent Procedure when it knew or ought to have known he was incompetent to perform such procedures, including the Stent Procedure performed on the Plaintiff;

- (n) it failed to bring to the attention of the College that Dr. Dupont had deficient clinical ability in the areas of treatment provided to the Plaintiff such that he ought not to have been engaged in the practice of chiropody and/or the procedure performed on the Plaintiff;
- (o) it failed to implement and/or follow appropriate protocols, guidelines and policies regarding monitoring, documenting and reporting patient treatment;
- (p) it failed to provide proper or any training to its medical staff;
- (q) it failed to have in attendance competent and capable medical doctors to attend to the Plaintiff; and,
- (r) in the treatment rendered to the Plaintiff, it fell below the reasonable standard of care required of competent physicians, healthcare professionals and/or healthcare facilities in the circumstances.

36. The Plaintiff further claims that the Defendant, Dr. Dupont, breached his duty of informed consent owing to the Plaintiff and the Class pursuant to the provisions of the *Health Care Consent Act*, 1996, S.O. 1996, c. 2, in performing the Stent Procedure on the Plaintiff and the Class and by misrepresenting the risks, benefits and nature of the Stent Procedure.

37. The Plaintiff claims that Dr. Dupont deprived him of the ability to give informed consent to the treatment rendered to him by failing to disclose fully the nature, possible effects, risks, and the use of the Stent Procedure and the Unapproved Stent as well as the fact that Dr. Dupont developed, manufactured and profited from the sale of the Unapproved Stent.

38. The Plaintiff claims that, had he been properly advised of the nature of the Stent Procedure including the use of Unapproved Stents, he would not have

undergone the Stent Procedure nor would a reasonable person have in the circumstances.

39. The Plaintiff claims that his relationship with Dr. Dupont was one of trust and confidence. Dr. Dupont was in a position of power relative to the Plaintiff and owed him a fiduciary duty to act with the utmost good faith. Dr. Dupont was obliged to act in the Plaintiff's best interests without regards for his own interests. Dr. Dupont breached this fiduciary duty by implanting the Plaintiff with an Unapproved Stent, which he developed and manufactured on his own and personally profited from.

40. The Plaintiff further claims that his relationship with the Defendants, the College and the Ottawa Foot Practice, and/or their servants, agents and employees were relationships of trust and confidence. These Defendants had an obligation to ensure that the Plaintiff received safe and competent health care. They knew or ought to have known that the Plaintiff was not receiving safe and competent health care from Dr. Dupont who should never have been licensed to practise chiropropody in the Province of Ontario. They held a position of superior knowledge and power relative to the Plaintiff regarding Dr. Dupont's past misconduct and owed the Plaintiff a fiduciary duty to act with the utmost good faith.

41. The Plaintiff further claims that the Defendant, Dr. Dupont breached fiduciary duties owed to the Plaintiff and the Class, the particulars of which are as follows:

- (a) he used Unapproved Stents in the Stent Procedure which he developed and manufactured on his own and personally profited from;
- (b) he failed to disclose information that a reasonable person in the Plaintiff's circumstances would have wanted to know by performing the Stent Procedure using Unapproved Stents;
- (c) he failed to disclose information with respect to his past medical errors and/or complaints made with respect to his medical practices to the College;
- (d) at all material times, Dr. Dupont knew or ought to have known that he had deficient clinical, surgical and/or other chiropody-related skills and was an incompetent medical professional lacking in the knowledge, skill and experience necessary to treat the Plaintiff, the particulars of which are as follows:
 - (i) he failed to take any steps to remediate his deficient clinical, surgical and/or other chiropody-related skills; and,
 - (ii) he failed to advise the Plaintiff that he was not properly qualified and/or had a history of medical misconduct and/or incompetence;
- (e) he breached the duties imposed on him by the *Chiropody Act*; and,
- (f) the Plaintiff repeats and relies on the allegations contained in paragraph 35(A), above.

42. The Plaintiff further pleads that the Defendants, the College and the Ottawa Foot Practice, breached their fiduciary duties owed to the Plaintiff and the Class, the particulars of which are as follows:

- (a) they permitted Dr. Dupont to practise chiropody in the Province of Ontario when he was not qualified and not permitted to do so;
- (b) they failed to disclose to the public information about Dr. Dupont that a reasonable person in the Plaintiff's circumstances would have wanted to know;
- (c) they failed to take appropriate action with respect to Dr. Dupont's past misconduct and/or complaints;

- (d) at all material times, they knew or ought to have known that Dr. Dupont had deficient clinical, surgical and/or other chiropody-related skills and was an incompetent medical professional lacking in the knowledge, skill and experience necessary to treat the Plaintiff, the particulars of which are as follows:
 - (i) they failed to take any steps to remediate Dr. Dupont's deficient clinical, surgical and/or other chiropody-related skills;
 - (ii) they failed to advise the Plaintiff that Dr. Dupont was not properly qualified and/or had a history of medical misconduct and/or incompetence; and,
 - (iii) they failed to advise the Plaintiff of Dr. Dupont's lack of knowledge, experience and training;
- (e) they breached the duties imposed on them by the *Chiropody Act*; the *Regulated Health Professionals Act* and the Health Professions Procedural Code; and,
- (f) the Plaintiff repeats and relies on the allegations contained in paragraph 35 (B) and (C), above.

43. The Plaintiff claims that, had the Defendants discharged their fiduciary duties, he would not have undergone the Stent Procedure, nor would a reasonable person have in his circumstances.

44. The Plaintiff claims that the Defendants, Dr. Dupont and the Ottawa Foot Practice, impliedly or expressly contracted with the Plaintiff to exercise due care:

- (a) in assessing and diagnosing the Plaintiff's condition;
- (b) in prescribing and administering pre-operative, operative and post-operative treatment to the Plaintiff;
- (c) in selecting medical products, which were approved for use; and,
- (d) in carrying out the Stent Procedure.

45. The Plaintiff further claims that the Defendants jointly and/or severally breached their respective contracts with the Plaintiff and the Ontario *Sale of Goods Act*, R.S.O. 1990, c. S.1., in respect of the treatment and care provided to him and the implantation of the Unapproved Stent, which was not reasonably fit for its intended use.

46. It was an implied term of the contract made between the Plaintiff and Dr. Dupont/Ottawa Foot Practice that the Dr. Dupont/Ottawa Foot Practice would fully and adequately inform the Plaintiff of all material risks associated with the Stent Procedure and would provide to him adequate and proper advice regarding its advisability and the manner in which it would be performed. The Defendants, Dr. Dupont/Ottawa Foot Practice, breached that term of the contract.

DAMAGES

47. The Class' injuries and damages were caused by the Defendants' misconduct above and the negligence, breach of fiduciary duty, medical malpractice, failure to obtain informed consent and breach of contract of the Defendants, and their servants and agents as described above.

48. As a result of the Defendants' said misconduct, the Class has suffered and continues to suffer serious personal injuries and pain and suffering.

49. As a result of the said misconduct of the Defendants, the Class has suffered and continues to suffer expenses and special damages, including medical and rehabilitation expenses and expenses associated with corrective procedures, of a nature and amount that will be particularized prior to trial.

50. The Class has sustained and will continue to sustain injuries on a continuing basis by virtue of the Stent Procedure, which has continued to cause injuries from the date of the procedure to the present.

51. The damages sustained by the Class include but are not limited to special and general damages for pain and suffering, physical and emotional losses, as well as past and future loss of earnings and earning capacity, housekeeping and home maintenance expenses and monetary damages and medical and other bills and expenses.

52. As a result of the said misconduct of the Defendants, the Class has incurred out-of-pocket expenses and losses relating to the Stent Procedure, the nature and amount of which will be particularized prior to trial.

53. Some of the expenses related to the medical treatment that the Class have undergone, and will continue to undergo, have been borne by the various provincial health insurers including the Ontario Health Insurance Plan ("OHIP"). As a result of the misconduct of the Defendants, the various provincial health insurers have suffered and will continue to suffer damages, which are claimed in this action.

54. The Plaintiff pleads and relies on the *Chiropody Act*; the *Regulated Health Professionals Act*; the *Health Care Consent Act*, 1996, S.O. 1996, c. 2, as amended; the *Negligence Act*, R.S.O. 1990, c.N.1, as amended; the *Health Professions Procedural Code*; and the *Sale of Goods Act*, R.S.O. 1990, c. S.1.

PLACE OF TRIAL

55. The Plaintiff proposes that this action be tried at the Town of Newmarket, in the Province of Ontario.

DATE OF ISSUE: May 4, 2016.

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Court File No. *CV-16-126585-20*

ONTARIO

SUPERIOR COURT OF JUSTICE

Proceeding Commenced at Newmarket

AMENDED STATEMENT OF CLAIM

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