

Discipline Hearing Summary – Chunxing (David) Zhuang, RMT (Toronto, ON) October 15, 2015

The Discipline hearing before a Panel of the Discipline Committee of the College of Massage Therapists of Ontario (CMTO) was held on October 15, 2015.

Allegations of Professional Misconduct

Mr. Chunxing (David) Zhuang, a Registered Massage Therapist (RMT), was found to have engaged in the following acts of professional misconduct:

- Sexual abuse of a client;
- Contravening a standard of practice of the profession; and
- Engaging in disgraceful, dishonourable or unprofessional conduct

The Facts

The facts of the case were established by an Agreed Statement of Facts, which set out the following:

A letter of complaint was submitted to the College and as a result an investigation was undertaken. This matter was referred from the Inquiries, Complaints and Reports Committee (ICRC) to the Discipline Committee on August 18, 2014. The concerns arose in relation to a treatment received by the complainant with Mr. Zhuang on February 21, 2014.

The complainant previously received thirteen treatments with Mr. Zhuang throughout 2013 and 2014. On February 21, 2014, treatment commenced as usual until Mr. Zhuang adjusted the draping in such a way that approximately one inch of the complainant's breast tissue was exposed. Mr. Zhuang continued to treat the complainant's neck and shoulders and then her clavicle area. While treating the clavicle area Mr. Zhuang started making circular motions sweeping both hands at the same time from the middle of the complainant's chest outward towards her shoulders while her upper chest was exposed.

Mr. Zhuang asked the complainant if this was "okay." In response, she confirmed that it was. Mr. Zhuang moved his hands further under the draping and continued to massage in a circular motion, eventually moving both hands under the draping and massaging both breasts at the same time.

Again, Mr. Zhuang asked the complainant if this was alright and she said it was. Mr. Zhuang moved his hands back to the complainant's sternum and started to make increasingly larger circular motions, moving from the complainant's sternum to her breast tissue. The circular motions continued to become larger until Mr. Zhuang massaged the complainant's areolae, nipples and breast tissue. Mr. Zhuang then pinched both of the complainant's nipples between the thumb and forefinger of each hand. These

actions resulted in the sexual stimulation of the complainant. Mr. Zhuang continued to move his hands back and forth across the complainant's nipples multiple times before moving his hands upwards from her breasts to her pectoralis muscle.

At no time did Mr. Zhuang discuss with the complainant the need to perform a breast massage, nor was a breast massage clinically indicated for the complainant on the date of the treatment.

On February 24, 2014, the complainant contacted the clinic manager about her concerns. In response, the manager interviewed Mr. Zhuang, who admitted to stroking inferiorly over the pectoralis major belly, along the lateral side of the chest and out laterally. Mr. Zhuang could not produce an explanation as to where he had learned this technique for treating chest muscles. Following the interview, Mr. Zhuang's employment at the clinic was terminated on the grounds that his actions showed gross incompetence.

Mr. Zhuang made two phone calls to the complainant's home upon learning that she had complained to the clinic management. He apologized, asked for forgiveness and offered the complainant a free treatment.

Mr. Zhuang did not contest nor did he admit to the facts relating to the sexual abuse allegations. Therefore, he entered a no contest plea to the sexual abuse allegation.

Mr. Zhuang acknowledged and admitted to all other allegations of professional misconduct as alleged.

Findings of the Panel, Penalty Order and Cost Award Imposed

Based on the Agreed Statement of Facts and the admissions together with Mr. Zhuang's no contest to the facts relating to the sexual abuse allegations, the Panel unanimously found that Mr. Zhuang engaged in the acts of professional misconduct as alleged.

After reviewing the differing submissions made by both the College and Counsel for Mr. Zhuang, the Panel, carefully considering the case law presented by the parties and imposed the following Penalty Order:

1. Suspension of Mr. Zhuang's Certificate of Registration for 12 months;
2. Imposition of the following terms, conditions and limitations on Mr. Zhuang's Certificate of Registration:
 - Mr. Zhuang must attend counselling for a period of at least 12 months at a frequency not less than monthly at his expense;
 - The counsellor must provide a report to the College concerning the completion of the counselling session, also at Mr. Zhuang's expense;
 - Mr. Zhuang must provide to the College a written report following completion of the counselling indicating what he has learned and how his conduct reflects on him and the profession, the report may be published at the discretion of the Registrar; and

- Mr. Zhuang must successfully complete an ethics and boundaries course, which may include the College's Professionalism Workshop or the PRObe Program at his expense;
3. A public and recorded reprimand that Mr. Zhuang will attend in person; and
 4. The Panel order Mr. Zhuang to pay \$5,000 for security for funding for counselling for the complainant. If counselling is not sought by the complainant within three years of the Panel's decision, payments will be returned to Mr. Zhuang.

Cost Award

The Panel imposed a cost award in the amount of \$2,500 for partial payment towards the College's investigation and prosecution costs.

Panel's Reasons for Decision

In determining the length of the suspension, the Panel reviewed a number of previous decisions of the College. These cases involved similar misconduct, which provided a range of what is reasonable and appropriate in the circumstances of Mr. Zhuang's case as well as addressed the principles of penalty which include public protection, general deterrence and specific deterrence.

The Panel considered the following cases: *George McPhail (2006)*, *Olekandr Kravchenko (2008)*, *Glenn Bunting (2009)*, *Youssef Elaridi (2010)*, *Glenn Martin (2011)*, *Sanjay Sharma (2011)* and *Kunal Chatterjee (2012)* as it contemplated an appropriate length of suspension.

The Panel concluded that the 12-month suspension will ensure that the public is protected while Mr. Zhuang completes his counselling and remedial coursework, serving as both specific deterrence to Mr. Zhuang and general deterrence to the profession. The lengthy suspension reflects the gravity of the findings. Sexual abuse of a client is absolutely unacceptable behaviour for any healthcare professional.

Since the matter necessitated an investigation and hearing, it is appropriate that the registrant contribute costs in the amount of \$2,500 to be paid in the manner described in the imposed penalty.

It is also ordered that Mr. Zhuang pay \$5,000 for security for funding for counselling for the complainant.

At the conclusion of the hearing, Mr. Zhuang waived his right to appeal and an oral reprimand was delivered by the Panel.