

## **Executive Summary – Michael Faklan, RMT July 31, August 1 and 2, 2013**

Summary of the Discipline hearing before a Panel of the Discipline Committee of the College of Massage Therapists of Ontario held on July 31, August 1 and 2, 2013

### **Allegations of Professional Misconduct and Plea**

Mr. Faklan plead not guilty to the following allegations of professional misconduct:

- inappropriately using the title “Doctor” and or an abbreviation while practising;
- failing to keep records as required;
- contravening a standard of practice;
- performed a treatment without obtaining client consent; and
- engaging in disgraceful, dishonourable or unprofessional conduct

### **THE PLEA**

The Member entered a not guilty plea to all the remaining allegations of professional misconduct.

### **THE FACTS**

The Panel heard evidence from 7 witnesses, including Mr. Faklan.

The complainant came forward with a complaint to the College in relation to her attendance at Mr. Faklan’s practice on February 23, 2010. She was asked to complete a package of forms which included a statement to the effect that she was not an agent for any federal, provincial or municipal agency, or competitor on a mission of entrapment or investigation (the “Statement”). The package of forms also contained a consent to treatment form.

She stated she was directed to a treatment room and she informed Mr. Faklan of her concerns with her shoulder and he in turn advised her of a proposed treatment whereby she would lie under heat lamps for 30 minutes, naked, with her legs, buttocks and back exposed, and thereafter she would receive a full body massage for 30 minutes. The complainant testified that she was uncomfortable with her conversation with Mr. Faklan and stated she explained to Mr. Faklan that she only wanted she stated that she had had this treatment before and wanted it again. K.Y. testified that the Member responded that if she did not want the treatment he had proposed, she could leave. K.Y. then got up and left the Clinic.

A College investigator testified that he attended at the Clinic on March 1, 2010. He obtained the client file for K.Y. and took photographs of the Clinic.

The Member testified that upon meeting K.Y., he told her what treatment would be best, and explained that she would be placed under a sheet and covered at all times. The Member testified that K.Y. cut him off, at which point he told K.Y. that she could leave.

The Member further testified that he is a practitioner of Traditional Chinese Medicine (“TCM”), and that all TCM practitioners call themselves “Doctor”. The Member testified that in 2005, he had been notified by an Inspector for the College of Physicians and Surgeons of Ontario (the “CPSO”) that he was not allowed to use the title “Doctor”. As a result, the Member put stickers on all material and photographs that referred to him as a “Doctor”. The Member could not explain what had happened to the stickers.

With respect to the Statement, the Member testified that he was unsure why this phrase was part of the package of forms provided to clients. He testified that his Clinic forms have been changed and the Statement has been omitted. Revised forms were not provided.

### **FINDING OF GUILT**

The Panel found the Member guilty on allegations 1(b) and (c), and 7(a), (b), and (c).

In respect of the first allegation of improper use of the title “Doctor”, the Panel concluded that there was sufficient evidence to support a finding that the Member had used the title “Doctor” while engaged in the practice of massage therapy. This finding was based on the photographs taken by the College investigator in 2010. In addition, the Member conceded that he had been notified by the CPSO in 2005 that he was not permitted to use the title “Doctor”.

With respect to the second allegation, the Panel concluded that the Member had committed acts of professional misconduct in that he had refused to perform a focused shoulder and neck massage despite the client’s request, he requested that the client sign a consent form prior to completing an assessment, and he requested that the client sign the Statement. The Member’s failure to provide the treatment requested was deemed unprofessional. The Panel also held that K.Y. had been made to sign a consent form prior to the Member’s assessment, which was unprofessional. Finally, the Panel concluded that at the time of K.Y.’s treatment, the Statement was completed by K.Y. and the Member had not led any evidence to prove that the package of documentation provided to clients had been changed to remove the Statement. The Panel concluded that the Member’s failure to ensure updated versions of his documents were available at all times was unprofessional and contrary to the standards of practice.

### **PENALTY**

The College and the Member presented submissions on penalty to the Discipline Panel.

The College proposed a penalty order which included the following terms:

1. The Member’s Certificate of Registration shall be suspended for a period of three (3) months;

2. The following terms, conditions and limitations:
  - a. The Member shall enrol in and successfully complete, at his own expense, the College's Record-Keeping Course or a Registrar-approved record-keeping course, within one year;
  - b. The Member shall enroll in and successfully complete, at his own expense, the College's Professionalism Workshop within one year;
3. The Member shall submit to two inspections of his practice, at his own expense;
4. A public and recorded reprimand and publication of the Discipline Committee's Decision in the ordinary course;
5. Costs in the amount of \$4,000.00.

The Member submitted that the appropriate penalty was a reprimand. Counsel for the Member argued that neither a suspension nor costs were warranted in this case. She further asked that the Decision not be published in the ordinary course. The Panel rejected this request as publication is required by law.

The Panel imposed the following penalty:

1. The Member's Certificate of Registration shall be suspended for a period of two (2) months with the suspension to commence as of August 13, 2013;
2. The following terms, conditions and limitations shall be imposed on Mr. Faklan's Certificate of Registration:
  - (a) Within six (6) months of the date of the Panel's Decision, Mr. Faklan shall enroll in and successfully complete, at his own expense, the College's Record-Keeping Course or a Registrar-approved record-keeping course, and shall provide satisfactory evidence of the same;
  - (b) Within six (6) months of the date of the Panel's Decision, Mr. Faklan shall enroll in and successfully complete, at his own expense, the College's Professionalism workshop and shall provide satisfactory evidence of the same;
  - (c) The Member will not use the terms "Doctor" and all abbreviated forms including but not limited to "Dr." and "D". This clause is subject to the Member's right to seek a variation of this term in the event of a legislative change or of the Member obtaining membership in a College that would permit him to use the title Doctor.

3. Mr. Faklan shall complete the courses referred to in paragraph 2(a) and 2(b) above within one year of the date of the Panel's Decision;
4. The Member shall submit to two (2) inspections of his practice at his own expense. The first is to be completed within six (6) months of his resumption to practice and the second, 24 months of resuming practice. The cost of each inspection shall not exceed \$500.00;
5. A public and recorded reprimand of the Panel's Decision in the ordinary course;
6. The Member shall reimburse the College in the amount of \$1,500.00, towards the cost of its investigation and hearing, to be paid within nine (9) months of the Panel's Decision; and
7. Publication of the results of the Hearing, in the usual course.

In its Reasons for the penalty, the Panel affirmed that the use of the title "doctor" in any form constitutes a breach of section 33(1) of the *Regulated Health Professions Act*. The Member had been advised by the CPSO that he was not one of the designated professionals entitled to use that title.

The Panel noted that it had found no cogent evidence regarding what forms or procedures the Member or his Clinic staff were using. Accordingly, the Panel felt it was appropriate that the Member enrol in the College's Professionalism Workshop and Record-Keeping Course to reinforce the College's requirements.

The suspension, coursework and future inspection of the Member's practice should reinforce to the Member and the public the importance of maintaining the College's standards of practice and will ensure that public safety is not at risk.