

Executive Summary – Paul Schillaci, RMT January 16, 2013

Summary of the Discipline hearing before a Panel of the Discipline Committee of the College of Massage Therapists of Ontario held on January 16, 2013

Allegations of Professional Misconduct and Plea

Mr. Schillaci entered a guilty plea in relation to the following allegations:

- Failed to keep records as required;
- Contravened a federal or provincial law - failed to remit HST; and
- Engaged in disgraceful, dishonourable or unprofessional conduct

Mr. Schillaci entered a not guilty plea in relation to the following allegations;

- Failed to cooperate with a peer assessment;
- Failed to cooperate with an authorized representative of the College conducting an investigation.

The Facts

The College and Mr. Schillaci entered an Agreed Statement of Facts which set out the following facts.

Mr. Schillaci was assigned to participate in College's peer assessments on three separate occasions however the peer assessments were never completed. Also, Mr. Schillaci was required to complete a Continuing Education Units ("CEU") Reporting Form for the time period of November 1, 2005 to October 31, 2008, but did not do so by the deadline.

A College appointed investigator met with Mr. Schillaci and received ten client files for review. The review of the client health records revealed a number of record keeping deficiencies as required by the College Standards. Additionally, it was noted that since the imposition of the Harmonized Sales Tax replacing the Federal Goods and Services Tax (GST) and the provincial sales tax (PST), Mr Schillaci adjusted his prices to reflect the inclusion of the HST however, he did not register with the government nor did he remit the HST collected.

Submissions of the College and Mr. Schillaci in relation to the allegations of which he entered a not guilty plea include:

The College's Case

A College investigator attended the Member's office on September 21, 2010, but the Member said he was busy and made an appointment to speak with the investigator at 2 p.m. the next day. The College investigator remained nearby and observed that the Member went away, but returned in one hour. The Member subsequently tried to cancel the appointment for the next day by facsimile; however, the investigator advised that they were not available on that day suggested by Mr. Schillaci.

The College investigator again attended at Mr. Schillaci's office, this time with a search warrant which had been obtained based on information that Mr. Schillaci had been working while

suspended. The Member was not cooperative with the investigation. The College's Investigation Specialist thereafter attended with two police officers and the search warrant was executed.

Mr. Schillaci was served with a summons to attend at the College and asked to bring his client files, records, appointment books and computers. Mr. Schillaci attended as required by the summons however he did not bring his laptop as requested by the summons.

The Member's Case

Mr. Schillaci testified that he had felt that the College investigator's attitude was aggressive. He contacted the College to obtain information as to the investigator's identity and felt he should have heard from the College first.

Mr. Schillaci stated that he had stressful issues in his personal life during the time of the investigation. He also stated that when he tried to renew his registration in the Fall of 2009 there was a problem with the online renewal but he did not follow-up. He stated that due to problems at home he had been using the HST money as a temporary loan and was working to address the issue with the government.

Mr. Schillaci conceded that he might have appeared uncooperative with the peer assessors, but that he was busy with moving clinics and rearranging appointments, as well as studying.

Decision of the Panel and Penalty Imposed

The College and Mr. Schillaci made submissions respecting penalty.

The Panel imposed the following Penalty and Cost Award:

1. The Registrar suspend Mr. Schillaci's Certificate of Registration for a period of nine months with the suspension to continue indefinitely until he complies with all the terms, conditions and limitations imposed on his Certificate of Registration as set out below;
2. The Registrar will remit three months of the suspension if Mr. Schillaci complies with the terms, conditions and limitations on his Certificate of Registration as set out below;
3. The Registrar impose the following terms, conditions and limitations on Mr. Schillaci's Certificate of Registration:
4. Mr. Schillaci must complete a Registrar approved Record Keeping Course, and the College's Professionalism Workshop; and
5. Mr. Schillaci must, within 30 days of completing each course, advise the Registrar in writing that he has completed and passed the courses;
6. The Registrar impose the following terms, conditions and limitations of Mr. Schillaci's Certificate of Registration:

7. Mr. Schillaci must undergo one inspection of his practice at his own expense within six months after the suspension of his Certificate of Registration;
8. Mr. Schillaci pay the College's investigation and prosecution in the amount of \$2,500.00 over a period of two years;
9. Mr. Schillaci appear before the College to receive a public and recorded reprimand on a date to be set by the Registrar; and
10. The results of this proceeding be published in the usual course.

Panel's Reasons for Decision

The Panel noted that Mr. Schillaci submitted that he was not aware of his obligations as a member of the College and did not realize the serious sanctions that could be imposed. The Panel seriously considered revocation based on what they perceived to be Mr. Schillaci's ungovernability. Ultimately, given the number of allegations that Mr. Schillaci was found guilty and the serious nature of the allegations, the Panel felt that nine month suspension was appropriate. The Panel noted that it is a very serious offence to practice massage therapy without a valid registration.

The Panel further noted that the Schillaci Decision demonstrates that two important points: (i) practising while under suspension is a serious offence that will attract a serious sanction; and (ii) a member's ignorance of their obligations to the College will not mitigate their failure to meet the requirements of their Certificate of Registration or to cooperate with the College.