

## Discipline Decisions 2006

**Member:** George McPhail, RMT

**Hearing Date(s):** May 3, 4, 5 July 12, August 1, 2, 3, and October 17, 2006

**Charge(s) of Professional Misconduct:**

- Sexual abused of a client;
- Failed to maintain the standards of practice;
- Engaged in disgraceful, dishonourable or unprofessional conduct;
- Failed to maintain records required to be kept.

**Brief Synopsis of Facts**

A full evidentiary hearing was commenced in this matter. A summary of the evidence is as follows:

- The client testified that she came to see the member initially for knots and tension in her shoulders and back but she was then convinced that she would benefit from having her pectorals and abdomen massaged.
- The client testified she did not have any concerns with her first six treatments with the member other than with the draping techniques employed during the treatments. She stated that during treatments to her pectorals, the towel, that was used as draping would slip off her chest and expose her breast. She further testified that she had to readjust the towel continuously to ensure that her breasts were covered.
- The client testified during her seventh visit, the member brushed her nipple with his hand. She stated she gave the member the benefit of the doubt, that the occurrence was not intentional.
- The client testified that on her eighth session, which took place over a five-hour period, at the end of the massage, the member rubbed his hand over her entire breast. She stated she thereafter terminated treatment.
- The client also testified that the member would regularly cause her to put her hands on his lap while massaging her shoulders.
- The member gave evidence acknowledging that the towel employed would repeatedly fall off the client during treatments but he denied that he either deliberately or accidentally touched her nipple or breast tissue. He stated that as the client's towel continuously fall off during treatments he assumed the client was comfortable with this as she eventually left the towel off.
- The member testified that he believed that he had obtained the client's consent to the treatment either in writing or verbally and that from time to time he would check in with the client during a treatment and she never made a complaint.
- The member denied he was in breach of any standards.
- The opinions of the expert witnesses differed in relation to some aspects of the case, however both acknowledged substantial deficiencies in the treatment rendered to the client, the records kept and the standards of practice as they related to draping. The member's expert described the member's pattern of practice as "cookie cutter".

**Decision:**

The panel found the member not guilty of sexual abuse but guilty of the remaining charges.

**Penalty:**

1. Reprimand to be public and recorded on the public portion of the register;
2. 12 months suspension, with 2 months of the suspension is to be remitted, if the member enters into an Undertaking with the College where he agrees not to engage in massage-like activity during the period of his suspension.
3. An additional 2 months of the suspension will be remitted, if the member enters into an Undertaking to enter into therapy with a therapist approved by the Registrar on not less than a monthly basis, at the member's expense, which therapy is to continue for a period of 24 months. During the period of the therapy the therapist shall provide progress reports to the College on a twice-yearly basis.
4. The imposition of the following terms, conditions and limitations on the member's certificate of registration,
  - a. To attend, and successfully complete, at the member's expense, the following courses subject to the approval of the Registrar:
    - i. Ethics and Boundaries
    - ii. Assessment
    - iii. Draping Techniques
    - iv. Professional Standards
    - v. Record-keeping
    - vi. The College's Refresher Course
  - b. During the period of suspension the member shall not engage in the practice of massage therapy.
  - c. Notwithstanding the expiration of the 12-month suspension contemplated in paragraph 1 above, the member's certificate of registration shall remain suspended unless and until the conditions set out in paragraph 4(a) above have been completed to the satisfaction of the Registrar.
  - d. The member is to submit to one inspection of his practice by a designated representative of the College during the 18-month period following the completion of his suspension and resumption of active practice.
  - e. The member is to submit to a Peer Assessment to be performed under the auspices of the Quality Assurance Committee during the 24-month period following the completion of his suspension and resumption of active practice.
5. Costs of \$7,500.

**Panel's reasons for Decision and Penalty**

The panel noted they had a very difficult decision. They accepted the complainant's evidence about what occurred, but was not convinced to the evidence established a clear, cogent and compelling case, that the alleged touching in this case was deliberate and therefore amounted to sexual abuse. The panel was extremely concerned with both the careless manner in which the client was draped and the member's disregard for the client's sensitivities.

The panel found there were substantial deficiencies in the treatment, draping and record keeping of the member. The panel was of the view that the member deviated grossly from the Standards of Practice and that his treatment and conduct amounted to a degree of incompetence, which

could place his client's at risk. The panel therefore concluded significant remediation in the circumstance was appropriate.