

Discipline Decisions 2008

Member: Steven Nagy, RMT

Hearing Date(s): January 23, 2008

Allegation(s) of Professional Misconduct:

1. Failure to keep records as required and
2. Engaging in disgraceful, dishonourable and unprofessional conduct.

Brief Synopsis of Facts:

The evidence was presented by way of an Agreed Statement of Facts and a guilty plea. The Agreed Statement of Facts set out the following:

- The Member was registered with the College since August 1996 with no prior complaints to the College. The matter came to the attention of the College by way of a complaint filed by a female client that had been receiving massage therapy treatments with the Member since December 1999.
- The client's standard treatment included massage therapy to the upper chest area, including her breasts and appropriate consent was obtained by the Member with respect to the treatment to this area.
- On October 7, 2006 the complainant attended for a scheduled massage therapy appointment and during this treatment the complainant alleged that the member touched her in an inappropriate manner, caressing and grabbing her breasts and nipples.
- The member in response to the complaint acknowledged that he lost his concentration and mentally "drifted off" during the appointment. He stated he believed that he continued to administer the treatment during this time but that his touch became less intense. He further stated that he immediately stepped away from the table and believes that he indicated to the complainant that he temporarily lost his professional concentration, but he denied touching the client inappropriately or that he grabbed or caressed her as alleged. The Member attributed his temporary loss of concentration to stress and fatigue related to a family illness.
- The complainant returned to the Member's practice on December 2, 2006 and requested a refund for the cost of the treatment. The Member refunded the fee to the complainant.
- The Member acknowledged that his temporary loss of concentration during the treatment and any inadvertent touching that resulted, constituted conduct that would reasonably be regarded by members as disgraceful, dishonourable or unprofessional conduct.
- The Member maintained client health records relating to the complainant but he acknowledged that the records were not kept to the required Standard.

Decision:

The Panel accepted the Agreed Statement of Facts and the Member's guilty plea and therefore found the Member guilty of the allegations of professional misconduct.

Penalty:

The parties submitted a joint submission with respect to the penalty. The Panel accepted the Joint submissions with one change relating to the amount of cost award. The panel reduced the amount of the costs from \$4000 to \$2,500.

The Penalty imposed included:

- (a) 3 months suspension of the Member's Certificate of Registration;
- (b) The full period of the suspension to be remitted, in the event that the Member complies with the Terms, Conditions and Limitations imposed on his Certificate of Registration.
- (c) The imposition of the following Terms, Conditions and Limitations on the Member's Certificate of Registration:
 - i. The Member must enroll in the College's Ethics and Boundaries Workshop within one month and completion of the course within 6 months;
 - ii. The Member must enroll in a Registrar-approved record-keeping course within one month and completion of the course within 6 months;
- (d) Costs of \$2,500;
- (e) The Member must appear before a panel of the Discipline Committee to receive a public and recorded Reprimand; and
- (f) Publication of the results of the hearing

The Reprimand

Immediately following the Hearing, Mr. Nagy waived his right of appeal and a public reprimand was administered by the panel.

Panel's reasons for Decision and Penalty:

The Panel unanimously found that the conduct set out in the Agreed Statement of Facts supported a finding of professional misconduct. The Panel felt the joint submission regarding penalty, in particular the cost award, was excessive when compared to previous cases. It was held in the interest of ensuring consistency with previous decisions. \$2500 was an appropriate amount in the circumstances of this case. It was noted by the Panel that the member mitigated his circumstances by cutting back on his practice time to care for his ill family member. As well, the Member was noted to be experiencing significant emotional stress at the time in question which resulted in the need to seek psychotherapy for a brief period.

The Panel was of the opinion that the penalty imposed protects the public interest in the circumstances, as the Member must complete remediation in the areas of professional ethics and boundaries as well as record keeping. Additionally, the Member would be required to serve a suspension of his registration if he did not complete his course work as required. The Panel was of the view that the course work would appropriately address the issues of concern raised in this matter.

Of particular importance to the Panel was that a clear message would be sent to the Member involved as well as the profession as a whole. As health professionals, Members cannot permit personal problems to affect their performance while practising the profession and the penalties imposed in this case are severe enough to deter the Member and others in the profession from engaging in similar unprofessional behaviour.

EDITORIAL NOTE

The *Nagy* decision emphasizes the importance of adhering to standards of practice of the College and maintaining professional care of clients, irrespective of the personal problems facing a Member. The Panel also reflected on the importance of the reputation of the College as being a fair and consistent body in dealing with disciplinary matters, and commented on the fact that financial penalties for any investigation should take into account the Member's circumstances and what constitutes a considerable financial penalty for a massage therapist. Ultimately, members are reminded to maintain behaviour and attitudes that are respectful of colleagues and clients, and that they cannot let personal problems affect their conduct.