

**EXECUTIVE SUMMARY – MONICA PASINATO-FORCHIELLI, RMT  
DISCIPLINARY HEARING CONDUCTED  
SEPTEMBER 28 AND 29, 2011 AND JULY 26, 2012**

The Member, Monica Pasinato-Forchielli, RMT, was charged with three counts of professional misconduct:

1. Contravening the Massage Therapy Act, 1991, S.O. 1991, by failing to submit to the College a mandatory report as required by section 85.1 of the Health Professions Procedural Code, contrary to section 26, paragraph 41 of Ontario Regulation 544/94, as amended;
2. Engaging in conduct or performing an act in the course of practicing the profession, that having regard to all of the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, contrary to section 26, paragraph 44 of Ontario Regulation 544/94 as amended; and
3. Engaging in conduct that would be reasonably be regarded by members as conduct unbecoming a Massage Therapist, contrary to section 26, paragraph 49 of Ontario Regulation 544/94, as amended.

**THE PLEA**

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

**THE FACTS**

The Hearing Panel heard evidence from two witnesses on behalf of the College, the complainant (SO) and the investigator appointed by the College Investigator. The Hearing Panel also heard evidence from the Member, Ms. Pasinato-Forchielli. The Hearing Panel found that on September 17, 2009, SO told Ms. Pasinato-Forchielli that another RMT that practised at the same clinic as Ms. Pasinato-Forchielli had touched her inappropriately when she had a treatment with him. Ms. Pasinato-Forchielli asked SO if she was physically hurt her, to which SO replied no. In her emotional state, SO was not forthcoming with respect to the details of her incident with the Member and Ms. Pasinato-Forchielli had no reason to believe that there had been a sexual assault at that time.

Ms. Pasinato-Forchielli told SO that she was busy with a conference and would not be available for two weeks. She also asked that SO call her back when she returned, so they could then talk.

When Ms. Pasinato-Forchielli spoke to the Member, she did not ask for any details of what happened and chose not to deal with SO's complaint at that time.

**FINDING OF GUILT**

The Panel of the Discipline Committee found the Member guilty of two of the three allegations of professional misconduct.

The Member was found not guilty of failing to submit to the College a Mandatory Report as required by section 85.1 of the Health Professions Procedural Code. The Member was found guilty of engaging in conduct or performing an act in the course of practicing the profession, that having regard to all of the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional as well as engaging in conduct that would reasonably be regarded by members conduct

unbecoming a Massage Therapist.

While there was no need to submit a mandatory report to the College, the Member did not deal with SO's concerns appropriately and the Member should have made time to talk to SO and get the full story from her.

### **THE SENTENCING HEARING**

The Member and the College presented a Joint Submission on Penalty to the Panel of the Discipline Committee and submissions were made with respect to penalty. Based upon these submissions, the Panel ordered as follows:

1. The Member shall receive a public and recorded reprimand immediately following the conclusion of the Penalty Hearing;
2. A 60 day suspension of the Member's Certificate of Registration. However, such suspension shall be remitted for a period of up to 30 days if the Member complies with the terms, conditions and limitations imposed upon her Certificate of Registration below;
3. The following terms, conditions and limitations shall be imposed upon the Member's Certificate of Registration:
  - (a) Prior to September 25, 2012, the Member shall enroll in and successfully complete, at her own expense, the College's Professionalism Workshop, and shall provide satisfactory evidence of same;
  - (b) The Member agrees that the College is entitled to contact the facilitators of the above-listed course, and request a report to the Registrar outlining the Member's participation in the course, which if unsatisfactory will constitute a breach of term (a) above; and
  - (c) Within 15 days of completing the Professionalism Workshop, the Member shall make written reflective submissions to the College setting out the lessons learned from the Professionalism Workshop with respect to the issues raised in the Notice of Hearing.
4. The Member shall pay costs to the College in the amount of \$1,200.00, to be paid within 30 days of the Order with respect to Penalty; and
5. Publication of the Discipline Committee's decision in the usual course.

While the Panel accepted the Joint Submission on Penalty, it noted that the penalty was on the light side of the available options given the seriousness of the behaviour. It was also the first case of its kind and the Panel stated that this type of behaviour could have more serious consequences.

### **CASE COMMENT**

The Pasinato-Forchielli Decision emphasizes that a member who chooses not to deal with a client's complaint about inappropriate touching may face a serious penalty, including a suspension of several months.