

Discipline Decisions 2008

Member: Joseph Strauch, RMT
Hearing Date(s): November 12, 2008

Allegation(s) of Professional Misconduct:

1. Was found guilty in the criminal courts of a criminal offence relevant to the Member's suitability to practice massage therapy;
2. Contravened the provisions of the *Criminal Code* by being found guilty of committing an indecent assault on his patient, S.M.;
3. Sexually abused a patient, S.M.; and
4. Engaged in disgraceful, dishonourable or unprofessional conduct.

Brief Synopsis of Facts:

Evidence was presented by means of an Agreed Statement of Facts. The Agreed Statement of Facts set out the following:

Member became registered with the College in 1996

The Complainant, S.M. received treatments for approximately 2 years with the Member as a result of back and neck injuries she sustained in several car accidents.

During a treatment with the Member on December 19, 2002, approximately 30 minutes into the treatment while S.M. was lying face down on the examination table, the Member masturbated himself with one hand while continuing to massage the client's leg with his other hand. S.M. heard sounds that she thought resembled masturbation but, terrified, remained still and said nothing. S.M. felt the Member's sperm land on the sheet and her right leg at which point the Member resumed using both of his hands to continue massaging S.M.'s neck, shoulders and face for a few more minutes. Upon completion of the massage, and after the Member left the room, S.M. smelled the sheet and believed that the smell was that of semen.

S.M. contacted the police as soon as she got home, and the Member was arrested and charged with sexual assault later the same day.

Following the Member's arrest, the sheets from the massage table and swabs taken from S.M.'s leg were forwarded to the Centre of Forensic Sciences ("CFS") for a DNA analysis. The results of the tests confirmed the presence of the Member's semen on the massage therapy sheet and on S.M.'s leg.

On November 19, 2003, the Member wrote to the College indicating that it was his intention not to renew his registration and, in January 2004, the Member surrendered his Certificate of Registration to the College.

On February 5, 2004, Member pleaded guilty in criminal court to one count of performing an indecent act contrary to s. 173(1) of the *Criminal Code*. The Member received a conditional discharge and probation for 18 months.

Based on these facts, the Member agreed to enter a plea of guilty to four counts of professional misconduct: being found guilty of a criminal offence (committing an indecent assault on S.M.), sexually abusing a patient, contravening the provisions of the *Criminal Code* and disgraceful, dishonourable or unprofessional conduct.

Decision:

The Panel found the member guilty of all four counts of professional misconduct on the basis of the Member's guilty plea and acceptance of the Statement of Facts.

Penalty:

The Member and the College presented a joint submission respecting penalty and the Panel accepted the submissions and imposed the following penalty:

- (a) An Order directing the Registrar to revoke the Member's Certificate of Registration;
- (b) An Order requiring the Member to reimburse the College for the payment of any funding provided for S.M. under the program required under section 85.7 of the *Code* within thirty (30) days following the Member's receipt of invoices in respect thereof;
- (c) Costs of \$7,500;
- (d) Public and Recorded Reprimand; and
- (e) Publication.

The Reprimand

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

Panel's reasons for Decision and Penalty

The Panel unanimously accepted the joint submission on penalty in its entirety. The panel felt that, for his disgraceful, dishonourable and unprofessional conduct (which the Panel described as "despicable"), Mr. Strauch is paying the "ultimate price" by having his Certificate of Registration revoked by the Registrar. The Panel also felt that the Member's removal from the profession would protect the public. With respect to Mr. Strauch's client, S.M., the panel was concerned that she may require counseling to fully recover from the experience. Accordingly, it was appropriate that the Member reimburse the College for any costs that may arise if the client ever seeks treatment.

The Panel stated that the revocation would hopefully send a very strong message to other members of the professions that the College's policy of zero tolerance for sexual abuse is taken seriously.

Editorial Note

The *Strauch* case is one of the worst examples of sexual abuse that the College has come across and, accordingly, the Member has been removed from the profession. This case sends an important message to all members of the profession. While the College's Zero Tolerance Policy for sexual abuse has been in place for many years, some members are still not getting the message. Where the facts are significantly

egregious, the College will now, in addition to lengthy suspensions and in some cases revocation of a member's certificate of registration, be seeking an order for funding of therapy to a victim of sexual abuse.

By way of summary, s. 85.7 of the *Code* provides that the College must establish a program to provide funding for therapy and counseling for patients, such as S.M., who have been sexually abused by massage therapists. A person is eligible for just over \$10,000 in funding if a discipline committee finds that the person, while a patient, was sexually abused. The patient is not required to undergo a psychological or other assessment before receiving funding. The fund for therapy is administered by the patient relations committee of the College. The maximum period for funding is 5 years from the finding of sexual abuse against the massage therapist.

In cases such as this, the College will not hesitate to look to the member to reimburse it for these costs.