

Discipline Decisions 2008

Member: Oleksandr Kravchenko, RMT

Hearing Date(s): March 5, 2008

Allegation(s) of Professional Misconduct:

1. Sexual abuse of a patient, S.C.;
2. Failure to keep records as required;
3. Falsifying records in relation to a member's practice; and
4. 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 in relation to allegations 2, 3 and 4. Count 1 was withdrawn by the College at the commencement of the Hearing.

The Agreed Statement of Facts set out the following:

- The Member practiced massage therapy at a clinic located in Markham, Ontario prior to October 2004. During this time the Member provided massage therapy to the Complainant S.C. on three occasions for neck and back pain.
- The Member left this practice setting and commenced practice at another clinic located in Toronto. The Complainant on her own initiative located the member and received treatments with him at his new practice location from October 22, 2004 to March 9, 2005 receiving approximately 21 massage therapy treatments with the Member.
- For the first 18 sessions with the Member, S.C. continued to request and received massages primarily in relation to ongoing neck and back pain. In the latter stages of her treatments with the Member S.C. began to complain of increasing pain and stiffness in her gluteal muscles.
- On February 10, and 23, 2005 and March 9, 2005, S.C. attended the Member's clinic with complaints of stiffness in her gluteus maximus and gluteus medius muscles. On each of those occasions the Member provided gluteal massage using more pressure than was clinically necessary in the circumstances.
- On March 9, 2005 the Member treated S.C. in the area of the gluteal cleft, manipulated her underwear thereby exposing her buttock and without consent massaged her inner and upper thigh while using less than rigorous draping.
- The Member acknowledged that by engaging in such conduct, he committed an act of professional misconduct in that his behaviour would reasonably be viewed by other massage therapists as disgraceful, dishonourable or unprofessional.
- After receiving notice of the complaint, the Member entered additional comments into his clinical records relating to S.C. and provided them to the College as part of his response to the complaint without any comment. During the course of the College's Complaints Committee's investigation, the College's Investigator interviewed the member in order to determine when the additional clinical entries were inserted and the Member indicated that the notes were written before he received the complaint. As a result of this statement, the College retained a forensic documents examiner to provide an opinion as to whether or not the additions to the clinical entries were recorded contemporaneously or otherwise. Following receipt of the handwriting analysis report, the Member acknowledged the fact that he did add to his notes after he received the notice of

complaint in an attempt to mislead the College's Investigator. In the circumstances the Member pleaded guilty to falsifying a record.

- The College also retained experts to review the Member's client health records and the experts were of the opinion that the notes and records were incomplete, vague, and in violation of the Standards. The Member admitted that he failed to keep records as required.

Decision:

The Panel accepted the Agreed Statement of Facts and the Member's guilty plea and 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.

The Penalty imposed included:

- (a) 3 months suspension of the Member's Certificate of Registration;
- (b) The imposition of the following Terms, Conditions and Limitations:
 - (i) The member must complete the College's Professionalism Workshop within 4 months;
 - (ii) Within 30 days of completing the course work, the Member must provide a written report to the College describing what he has learned through the course, how his conduct reflects upon himself and the profession; and how his conduct relates to the Charter of Professionalism. The report, in whole or in part, or a summary thereof, may be published in the College Standard or such other College publication deemed appropriate;
 - (iii) Within 30 days of the hearing the member must write a letter of apology to S.C. and provide a copy to the College;
 - (iv) The member must pay the treatment costs incurred by S.C. as a result of his conduct within 30 days of receiving the invoice;
 - (v) Following the completion of the Member's suspension, the Member must submit to inspections of his practice, at his own expense, by a designated representative or representatives of the College, and the same will occur within 24 months
- (c) Costs of \$4196.00;
- (d) Public and Recorded Reprimand;
- (e) Publication.

The Reprimand

Immediately following the Hearing, Mr. Kravchenko 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 was extremely troubled by the facts of the case, in particular, the application of more pressure to the client's buttocks than was clinically necessary, and the Member's attempt to mislead the College's Investigator were particularly offensive. Combined with the fact that the Member's records were incomplete, vague, and in violation of numerous provisions of the Standards, the Panel was of the view that a significant penalty was warranted and appropriately imposed in this matter. The Panel was of the view that the penalty communicates the message to the profession that the conduct in this case will not be tolerated. In its decision not to impose a stricter penalty, the Panel took into consideration the fact that the Member did not have a prior discipline history and that he pleaded guilty relatively early in the proceedings.

EDITORIAL NOTE

The *Kravchenko* decision sends a very powerful message to members of the profession about the College's policy of zero tolerance for failing to maintain professional boundaries. In all such cases, members will receive a significant period of suspension and be forced to account for their actions to the College (in the form of a written report along with a considerable financial contribution), their clients (in the form of a direct and meaningful written apology) and to the profession at large (by a public reprimand and publication of any findings of professional misconduct).

The decision of the Panel in this case also reflects the fact that the College recognizes that appropriate record-keeping is crucial to quality health care, and takes violations of record-keeping requirements very seriously. Any attempt to alter clinical notes and records will be met with a significant penalty.