

Discipline Decisions 2008

Member: Thomas Freeman, RMT

Hearing Date(s): March 5, 2008

Allegation(s) of Professional Misconduct:

1. Sexual abuse of a patient, V.A.;
2. Contravening a standard of practice of the profession or published standard of the College;
3. Abused V.A. verbally or physically; 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 3 and 4. Counts 1 and 2 were withdrawn by the College at the commencement of the Hearing. The Agreed Statement of Facts set out the following:

- The Member had been registered with the College (and its predecessor, the Board of Directors of Masseurs) since 1987.
- The member practices in Cambridge, Ontario and is the only massage therapist in the Cambridge area on the Workplace Safety and Insurance Board's (WSIB) list of approved massage therapy providers.
- The Complainant, V.A., was a direct care worker working in the Waterloo Region. In early 2005 she was physically assaulted by two individuals whom she was working with and she sought medical attention, which included massage therapy, for primarily her neck and back following the incidences.
- V.A. was referred to the Member for massage therapy treatments by a WSIB nurse and she arranged her first appointment with the Member on January 29, 2005. V.A. had only received one previous massage therapy treatment.
- Despite the fact that the Member was aware of V.A.'s history of physical abuse by young men under her charge and her sensitivity in that regard, the Member made a number of inappropriate remarks, namely:
 - The Member commented favourably on V.A.'s tattoo;
 - The Member told V.A, " you have beautiful hair" and " how nice and soft your hair felt"
 - The Member sprayed the Complainant with "Homeopathic anti-inflammatory" and told her "I don't do that for everyone".
 - The Member told V.A. that "you must be seeing someone. How could anyone let you go"; and
 - During the treatment the Member lifted V.A. 's left arm and the tail of her left breast was exposed. In response the Member stated: "Oops, we don't want to play hide and seek

- During V.A.'s second visit the Member made the following remarks:
 - He informed V.A. that he did “full body massages from the top of your head to the tip of your toes and it includes breasts”;
 - He stated that “women really enjoy getting their breasts massaged, it’s very relaxing”- The member admitted that at the time of the massage, there was no clinical indications present for the performance of a breast massage or any clinical rationale present to justify engaging in such a conversation;
 - He informed V.A. that “ a lot of men like breasts, but not me. I’m not really a breast man. I find a woman’s abdomen most attractive”; and
 - He told V.A. that he was on his second marriage and that she “wouldn’t have liked him back then”.
- After the second treatment V.A. cancelled all her future appointments and informed a number of people about the events that concerned her.
- The College's Zero Tolerance Policy published in November 2003 issued the following statements respecting Verbal Abuse:

Verbal

Verbal abuse may include rude, sarcastic, demeaning or seductive remarks. It is also important to note that the tone of verbal communications will also characterize how words are perceived. Members of the profession must be aware that age, culture, socio-economic status and particular sensitivities affect how a client may perceive communications with a member.

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 finding that the penalty was appropriate in the circumstances and satisfied the objectives for a penalty.

The Penalty imposed included:

- (a) 3 months suspension of the Member’s Certificate of Registration;
- (b) Imposition of the following Terms, Conditions and Limitations on the Member’s Certificate of Registration;

- (i) To complete the College's Professionalism Workshop within 4 months of the date of the Order;
 - (ii) Within 30 days following the completion of 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 College's Charter of Professionalism. The report, in whole or in part, or a summary thereof, may be published in the *College Standard* or other College publications as deemed appropriate;
 - (iii) Within 30 days following the hearing the Member must write a letter of apology to V.A., and provide a copy of the letter to the College;
3. If the Member complies with the Terms, Conditions and Limitations within the timeframes stipulated, 2 months of his 3 month suspension will be remitted;
 4. Costs of \$1000;
 5. A Public and Recorded Reprimand; and
 6. Publication.

The Reprimand

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

Panel's Reasons for Decision and Penalty:

In its reasons for imposing the sentence, the Panel took into account the fact that, following her second treatment with the Member, V.A. cancelled all of her future appointments with him and she was informed by a representative from WSIB that there was not another massage therapist in Cambridge on the WSIB list. Accordingly, following the February 1, 2005 appointment, the Complainant was unable to access massage therapy in the Cambridge area from a WSIB approved massage therapist and was unable to continue with the massage therapy that she required.

The panel also permitting the Member the opportunity to have 2 months of his 3 month suspension remitted, due to his extraordinary long service to the profession, that was confirmed by several extremely favourable character and reference letters and the fact the Member did not have a discipline history. The panel also noted that, while the conduct of the Member was reprehensible, he took full responsibility for his conduct and had already registered in the Professionalism workshop and prepared a written apology to the Complainant at the time of the hearing. The panel noted that the Member had also agreed to enter into an Agreement and Undertaking with the College not to engage in active practice as a massage therapist, or engage in any massage-like activity whether or not within the scope of practice of a massage therapist, with or without a fee, during the suspension of his Certificate of Registration. Finally, the panel was mindful of the fact that the Complainant was consulted throughout the process, and she supported the joint recommendations on penalty.

EDITORIAL NOTE

The *Freeman* decision is intended to send a message to the profession that the college maintains a zero tolerance towards verbal abuse, including rude, sarcastic, demeaning or seductive remarks of any kind. The College views its role in the regulation of the practice of massage therapy in Ontario to include ensuring that the public is protected from members who fail to maintain professional boundaries. Any member who is found to be engaged in this kind of behaviour can expect to, among other things, receive a significant period of suspension and be forced to address their actions both in a written apology to the Complainant and in written report to the College.