

Discipline Decision

Heard date: October 29, 2018

Decision date: November 30, 2018

Reporting date: December 6, 2018

Introduction

The Hearing Tribunal of Physiotherapy Alberta - College + Association (the College) conducted a hearing into allegations that a member engaged in unprofessional conduct.

Charge

The allegations as laid out in the Notice of Hearing included:

Allegation #1: On or about February 2017, the member did one or more of the following while providing physiotherapy and/or lymphatic drainage to patient *[Redacted]*:

- a. On one or more occasions applied a towel soaked in hot water to *[Redacted]*'s coccyx and in between the cheeks of her buttocks, which is not a recognized treatment technique;
- b. On one occasion provided ultrasound to *[Redacted]* for treatment of an injury to her coccyx while she was on all fours in a "knee chest" position;
- c. On one or more occasions applied ultrasound for treatment of an injury to *[Redacted]*'s coccyx at or near the distal end of the coccyx;
- d. Offered to cook dinner for *[Redacted]* on one occasion;
- e. Offered *[Redacted]* snacks on one or more occasions following treatment;
- f. Performed lymphatic drainage on *[Redacted]* on one occasion without proper or adequate clinical reasoning;
- g. Performed lymphatic drainage on *[Redacted]* without ensuring there was adequate draping;
- h. After member performed lymphatic drainage on *[Redacted]*, member touched head or forehead to *[Redacted]*'s head or forehead without obtaining adequate informed consent.

Allegation #2: It is further alleged that the conduct referred to above constitutes a boundary violation.

Allegation #3: On or about February 2017, the member failed to maintain adequate chart notes with respect to the treatment provided to [Redacted], and in particular failed to adequately describe the treatment that provided to her.

It is further alleged that the above referenced conduct constitutes unprofessional conduct pursuant to s. 1(l)(pp) of the *Health Professions Act*, R.S.A. 2000, c. H-7 (the "HPA"). In particular, it is alleged that the conduct breaches one or more of the following statutes or provisions:

- Sections 1(l)(pp)(i), (ii), and (xii) of the HPA
- Code of Ethics
- Standards of Practice: Client Assessment, Diagnosis, Interventions, Client- Centered Care; Consent: Professional Boundaries; and Documentation and Record Keeping.

Findings

The hearing proceeded by way of an agreed statement of facts and acknowledgement of unprofessional conduct. The hearing tribunal accepted the Agreed Statement of Facts and Acknowledgment of Unprofessional Conduct. The Hearing Tribunal found the alleged conduct is proven and constitutes unprofessional conduct.

ALLEGATION # 1

In respect to Allegation 1 a, the Hearing Tribunal identified the conduct of the member as unskilled practice and poor judgment which constituted unprofessional conduct. The treatment provided by the member using a hot towel as described in Allegation 1 a is not a recognized physiotherapy treatment. If heat is to be applied, it should have been applied using a hot pack or ultrasound. The use of the hot towel in this area of the body also raised boundary issues that the member should have been aware of.

The Hearing Tribunal also finds the "knee chest" position for ultrasound treatment referred to in Allegation 1 b was not appropriate and was unnecessary for the treatment provided. Using this unnecessary position was a boundary violation which made the patient very uncomfortable. The positioning of the patient was thought to constitute unskilled practice and was not acceptable.

In respect to Allegation 1 c, the Hearing Tribunal finds that while ultrasound is an approved treatment, applying ultrasound near the distal end of the coccyx is not clinically indicated and was not an appropriate treatment. This created boundary issues and the presence of a third person of the same sex as the patient should have been used. The Hearing Tribunal identified the same concerns as in Allegation 1 b. The use of ultrasound on the distal end of the coccyx was inappropriate indicating unskilled practice.

In respect to Allegations 1 d and 1 e, the Hearing Tribunal finds the offer to cook dinner and the offering of snacks on several occasions were clear boundary violations.

In respect to Allegation 1 f, the Hearing Tribunal agreed that there was no documentation showing any justification or need for this lymphatic drainage treatment and found that the treatment made no clinical sense. As a result, the Tribunal agreed that the lymphatic drainage treatment admitted to was not appropriate for this patient indicating unskilled practice.

In respect to Allegation 1 g, the Hearing Tribunal agreed that the draping provided was not adequate or appropriate for the treatment. The Tribunal also found that carrying out the lymphatic drainage procedure without proper patient draping was a boundary violation and constituted unskilled practice.

In respect to Allegation 1 h, the touching of the member's forehead to the forehead of the patient after the lymphatic drainage procedure was complete was not part of any recognized therapeutic technique and was particularly inappropriate when no consent to this action was requested or provided.

ALLEGATION # 2

For the reasons outlined above, the Hearing Tribunal agrees that the conduct admitted to in the Allegation 1 constituted a series of boundary violations and that this conduct constituted unprofessional conduct.

ALLEGATION # 3

The Hearing Tribunal agreed that the charting done by [Redacted] fell well below the minimum standards set for the profession. The Hearing Tribunal identified the lack of documentation and the failure to maintain adequate chart notes, that could be needed by another practitioner who might have to continue treatment for the patient, as unskilled practice.

As a result, the Hearing Tribunal finds that the conduct admitted to and contained in the allegations listed in the Amended Notice of Hearing and the Agreed Statement of Facts constituted unprofessional conduct as defined in the *Health Professions Act* section I(pp)(i), section I(pp)(ii) and section I(pp)(iii).

Conclusion

The Hearing Tribunal makes the requested orders on Sanctions as follows:

- a. [Redacted] shall receive a reprimand and the Hearing Tribunal's decision shall serve as the reprimand.
- b. A copy of the Hearing Tribunal's written decision will be provided to the College's Registrar.
- c. [Redacted] will pay partial costs of the investigation and hearing in the amount of \$5,000.00, subject to the following terms:
 - i. [Redacted] will make payments in equal monthly installments over a period of twenty-four months, or within such other period of time as agreed to by the Complaints Director.
 - ii. The first payment will be due 30 days after [Redacted] is registered with a physiotherapy regulatory body in another jurisdiction, or within twelve months of the Hearing Tribunal's written decision being provided to [Redacted], whichever occurs first.
- d. [Redacted] will not be eligible for registration with the College until he has complied with the following:

- i. *[Redacted]* must provide proof to the Complaints Director that he has successfully completed a Professional Boundaries course approved in advance by the Complaints Director, offered by Professional Boundaries Inc. (PBI) or Center for Personalized Education for Professionals (CPEP), to be taken at his own cost.
 - ii. *[Redacted]* has demonstrated that he has paid the costs referred to in paragraph (c), or is in the process of complying with the costs order pursuant to the payment schedule set out above, or as agreed to with the Complaints Director.
- e. Once *[Redacted]* has complied with the orders set out above at paragraph (c), the Complaints Director will notify the Registrar that *[Redacted]* is eligible for registration. In order to be registered, *[Redacted]* will have to meet all other requirements set out in the *Health Professions Act* and the *Physical Therapy Profession Regulation* at the time that he seeks to register.
- f. Prior to commencing practice as a regulated member, *[Redacted]* will:
 - i. Provide the Complaints Director with a letter from the prospective employer that:
 - a. Advises of the anticipated employment setting and workplace;
 - b. Indicates the name of the proposed supervisor;
 - c. Confirms that the proposed supervisor has read the Hearing Tribunal's decision; and
 - d. Confirms that the supervisor is prepared to comply with the requirements set out below.
- g. Once *[Redacted]* has complied with all of the requirements set out above, and meets all other registration requirements, he will be eligible for registration, subject to a condition on his practice permit requiring him to practice under supervision for a period of 12 months, subject to the following terms:
 - i. *[Redacted]*'s supervisor must be a regulated member of the College or another regulatory body that regulates the practice of physiotherapy in North America and must be approved in advance by the Complaints Director;
 - ii. The supervisor must be onsite and available for consultation at all times that *[Redacted]* is working;
 - iii. The supervisor must directly observe *[Redacted]* providing treatment to 5 patients each month, and must provide *[Redacted]* with feedback regarding the treatment provided;
 - iv. The supervisor must review a random sample of 10 of *[Redacted]*'s patient charts every month, and provide feedback to *[Redacted]* with respect to whether

[Redacted]'s charting meets the College's Standards of Practice or whether there are any concerns;

- v. The supervisor will submit three performance evaluations to the Complaints Director every four months commenting on all of the following:
 - a. The Supervisor's observations of the treatment *[Redacted]* provided to his patients and whether the Supervisor has any concerns regarding the issues identified in the Hearing Tribunal's decision;
 - b. Whether *[Redacted]*'s charting meets the College's Standards of Practice; and
 - c. Whether the supervisor has any other concerns.
- h. *[Redacted]* is prohibited from working as a physiotherapist in any circumstances except the supervised practice setting described above in paragraph (g) until the period of supervised practice has been successfully completed.
- i. If, at the conclusion of the period of supervised practice the Supervisor indicates that there are no concerns regarding his practice, the condition on his practice permit requiring *[Redacted]* to practice under supervision will be removed.
- j. If the supervisor identifies any concerns regarding *[Redacted]*'s practice, the Complaints Director may:
 - i. Extend the period of supervised practice for an additional six months; or
 - ii. Treat the information as a complaint in accordance with section 56 of the *Health Professions Act*.
- k. A copy of the Hearing Tribunal's written decision will be provided to the regulatory bodies for physiotherapists in all Canadian provinces and territories.
- l. If any member of the public, including a regulatory body in another jurisdiction, makes any inquiries regarding *[Redacted]*'s discipline history, the College will be at liberty to provide a copy of the Hearing Tribunal's written decision.
- m. The Hearing Tribunal will retain jurisdiction in the event that there is any dispute regarding the implementation of any of the orders referred to above.

The decision is available on Canlii - www.canlii.org