

THE COLLEGE OF OCCUPATIONAL THERAPISTS OF MANITOBA

IN THE MATTER OF: *THE OCCUPATIONAL THERAPISTS ACT, C.C.S.M. c.05*

AND IN THE MATTER OF: A Member, an occupational therapist registered with The
College of Occupational Therapists of Manitoba

PANEL MEMBERS: Linda Bailes, Occupational Therapist (Chair)
Barbara Siemens, Occupational Therapist
G.J. Sawisky (Public Representative)

APPEARANCES: Counsel for the College of Occupational Therapists of
Manitoba:

Vivian E. Rachlis

Counsel for the Member:

David I. Marr

**REASONS FOR DECISION OF THE INQUIRY COMMITTEE
OF THE COLLEGE OF OCCUPATIONAL THERAPISTS OF MANITOBA**

INTRODUCTION

An occupational therapist has a professional responsibility to establish and maintain proper boundaries with clients. There is a deemed power imbalance in the therapist/client relationship. Failure to respect the power imbalance can lead to an erosion of the public trust in the profession in a general sense and creates the potential for perceived abuse of the client.

The Member, an occupational therapist under the provisions of the Occupational Therapists Act (the "Act") and a member of the College of Occupational Therapists of Manitoba (COTM), was charged with professional misconduct for violating proper therapist/client boundaries. The Member conceded that the Panel had jurisdiction to hear the charges.

At the commencement of the hearing, the Member pled guilty to:

1. failing to maintain proper therapist/client boundaries,
2. failing to fulfill professional responsibility for safe, ethical and effective practice, by failing to maintain appropriate relations and boundaries with a client, and
3. failing to demonstrate sensitivity to power imbalance.

The question for consideration by the Panel was to determine the proper penalty for the conduct. Counsel for COTM argued that the proper penalty would include a minimum suspension of six to twelve months during which time the Member would be required to complete an assessment dealing with professional boundaries. Counsel for the Member argued that the Member had already been punished by virtue of the loss of the Member's job and subsequent period of unemployment.

It is the decision of the Panel that the Member does require an assessment to explore the Member's responsibility in respecting professional boundaries. The Member will be suspended from COTM until the assessment has been completed to the satisfaction of COTM. No time limit is set for the period of suspension. It will last as long as it takes the Member to satisfy COTM that the assessment has been properly completed. Details of terms of the assessment will be set out in these reasons.

FACTS

The Member has been a member of COTM since 1997. The Member was employed by the Agency as a case manager. The matter involved a long-time client of the Agency. In October, 2012, the client was hired by the Agency to work in one of its programs. The Member became the client's case manager. At the end of March, 2013, the Member's supervisor confronted the Member with rumors that she had heard about the Member and the client. The Agency removed the client from the Member's caseload on March 28, 2013.

On April 2, 2013, a team meeting was held with the supervisor and other staff, to reinforce to the Member the Agency's expectations and concern regarding professional boundaries.

On April 14, 2013, the supervisor was advised that it appeared as if the relationship was still continuing. On April, 15, 2013, the Member admitted to wrong-doing and that the relationship was

developed. The Agency terminated the Member's employment. The Member asked for the opportunity to apologize to coworkers and did so.

The agency reported the Member's termination to COTM. COTM commenced an investigation. The member admitted to wrong-doing and was cooperative throughout the investigation. There was no dispute in the hearing that the relationship had become sexual in nature prior to the termination of employment by the Agency.

THE POSITION OF THE PARTIES WITH RESPECT TO PENALTY

COTM's position with respect to penalty

Counsel for COTM argued that the Member has breached the Act, the Code of Ethics and Essential Competencies of Practice. COTM submits that the question of penalty should be considered in the context of the Jaswal case, specifically in relation to:

- i) the need to promote specific and general deterrence and, thereby, to protect the public and ensure the safe and proper practice of occupational therapy, and
- ii) the need to maintain the public's confidence in the integrity of the profession

Boundary violations were considered in the College of Physicians and Surgeons of Manitoba case (2005 CanLII 60072 MB CPSDC). The College and physician made a joint recommendation that the physician's licence be suspended for a minimum period of 6 months and remain suspended until undergoing an assessment by an individual or program acceptable to the College.

COTM's position was that this was a breach of the Act that required a penalty that would reflect the seriousness of the matter and in particular that the Panel had to consider the issue of general and specific deterrence.

In the present case, COTM seeks a suspension of the Member's licence for a minimum of 6-12 months. In addition, COTM proposed a detailed assessment process that would have to be completed by the Member. Finally, COTM asked that the costs of \$2000 be ordered to be paid by the Member.

Member's position with respect to penalty

The Member has had no disciplinary proceedings prior to this incident. The Member acknowledged that professional boundaries were violated. There was an indication that the Member sought professional help prior to the termination.

Counsel for the Member raised a number of mitigating issues. The Member's employment was terminated by the Agency and the Member was without employment for two months. These events occurred during a difficult time in the Member's marriage. Counsel for the Member pointed out and Counsel for COTM agreed that the Member had been entirely co-operative with COTM during its investigation. Counsel for the Member argued that the loss of job and loss of income is sufficient penalty to the Member. Given the circumstances, a suspension was not required. Counsel asked that the Member's name not be published for the sake of the children. Counsel suggested that an amount of \$2,000.00 as a contribution to costs was excessive and that a lesser amount be considered.

At the conclusion of Counsel's submission, the Member addressed the Panel directly. The Member acknowledged misconduct, and acknowledged that COTM had to incur time and cost by virtue of the misconduct.

REASONS FOR THE DECISION

The Member admitted to misconduct. The Panel considered the factors set out in the Jaswal case. The Panel notes that the Member has pled guilty to serious allegations of boundary violation. This is a first complaint against the Member. The Member co-operated fully in the investigation and admitted wrong-doing. The Member has suffered financial and employment consequences. The Panel gave specific consideration to:

- i) the need to promote specific and general deterrence and, thereby, to protect the public and ensure the safe and proper practice of occupational therapy, and
- ii) the need to maintain the public's confidence in the integrity of the profession.

In particular, the Panel did not agree with the submission that there was no need for a penalty other than a reprimand. In the view of the Panel, the conduct of the Member requires a period of suspension. Boundary violations that involve a sexual relationship are a serious breach of the professional responsibility of an occupational therapist.

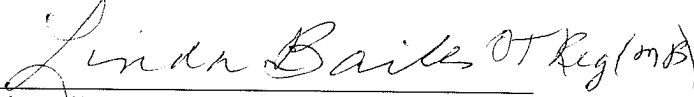
A period of suspension serves the need to promote specific and general deterrence. The Panel believes that a period of suspension will provide the appropriate penalty to the Member. In addition, the period of suspension will act as general deterrence to other members of the profession with respect to boundary violations. The length of the suspension will be discussed below.

The Panel believes that the most important part of the disciplinary process is to ensure that the Member gains insight into the seriousness of the boundary violation. The Panel believes it is necessary that the Member learns from this mistake. The Panel is satisfied that the assessment process sought by COTM is appropriate. The Panel orders therefore that:

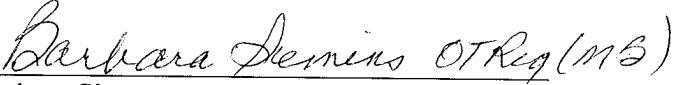
- 1) The Member will undergo an assessment by an individual or program ("the Assessor"), acceptable to COTM, for the following purposes:
 - a) (i) To assist the Member in understanding why the Member violated boundaries:
 - (ii) To determine the risk, if any, of further boundary violations by the Member and what, if any, terms and conditions the Assessor recommends should apply to the Member's practice to minimize that risk; and
 - (iii) To determine what, if any, remediation plan the Assessor recommends the Member follow either before returning to the practice of occupational therapy or while the Member practices occupational therapy.

- b) The Member must fully and frankly discuss with the Assessor all conduct pertaining to the Member's conduct underlying the charges and the admissions made at the Inquiry, including any and all admissions inherent in the charges to which the Member pleaded guilty.
- c) The Member must authorize the Assessor to provide a copy of his/her report or reports directly to COTM.
- d) Prior to reinstatement, the Member must provide evidence satisfactory to COTM that all conditions, programs, treatment, courses and remediation stipulated by the Assessor are fulfilled.
- 2) Prior to reinstatement, the Member must attend or fulfill a course of study, training program or self-study exercise, dealing with ethical, boundary and professional matters inherent in the therapist/client relationship, approved by the Assessor and acceptable to COTM, and provide evidence satisfactory to COTM that all requirements of such a course of study, training program or self-study exercise have been fulfilled.
- 3) The Member must pay for all fees, charges and costs associated with items 1) and 2).
- 4) The Panel orders that the period of suspension be in effect until such time that the Member has completed items 1) and 2) to the satisfaction of the Assessor and COTM.
- 5) Costs in the amount of \$2000.00 be paid by the Member to COTM.
- 6) The name of the Member will not be published.

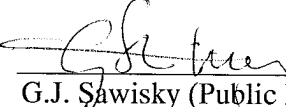
DATED this 20th day of November, 2013.



Linda Bailes, Occupational Therapist (Chair)



Barbara Siemens, Occupational Therapist



G.J. Sawisky (Public Representative)