

**JUDICIAL SUBCOMMITTEE OF THE CANADIAN ATHLETIC THERAPIST
ASSOCIATION**

Summary of Penalty - Member Erin Smith

Respondent: Erin Smith

Complainant: Public

Case Number: #ES04072015

Date: September 28, 2016

Introduction

On April 8, 2015, a public member made a complaint to the Association concerning Mrs. Erin Smith. The Complainant alleged that Mrs. Smith had violated various provisions of the Association's Code of Ethics or Code of Conduct (the "Code of Conduct") because she had completed patient assessments as a Physiotherapy Support Personnel ("PSP") without a Registered Physiotherapist being present. It was alleged that the invoices for these patients indicated that a Physiotherapist had conducted the patient assessments (the "Complaint").

The Complaint alleged that Mrs. Smith had violated the following provisions of the Code of Conduct:

- (a) i. Members act with honesty and integrity;
- (b) iii. Members provided competent care consistent with the requirements and the limitations of the profession;
- (c) v. Members provide only those services for which they are qualified;
- (d) vii. Members support the mission of the Association and adhere to the by-laws, the Scope of Practice, the Membership Binder, the CATA Policies and Procedures, and the Code of Conduct;
- (e) viii. Members comply with the law; and
- (f) B. xx. Members shall not make a document or statement that is false or misleading.

By letter dated May 4, 2015, Mrs. Smith was advised by the Association of the Complaint, the allegations contained in the Complaint, that an Investigative Subcommittee (the "IC") would be appointed and conducting an investigation into the Complaint, how the investigation would proceed, and that the alleged violations contained in the Complaint could be modified by the IC. As part of these proceedings Mrs. Smith agreed that:

- (a) she often treated patients as a PSP under the supervision of her co-owner;
- (b) she always introduced herself to patients as an Athletic Therapist;
- (c) she never introduced herself to patients as a PSP when those patients were being invoiced for physiotherapy treatments;
- (d) she did not sign or record her Athletic Therapist credentials on patient charts when acting as a PSP;
- (e) she did not indicate on patient charts when she was acting as a PSP; and
- (f) patients receiving treatments from Mrs. Smith as a PSP did not receive invoices indicating that Mrs. Smith performed the treatment as a PSP. Rather, invoices for patients receiving physiotherapy treatments contained her co-owner's name, designation, and Physiotherapist registration number.

The following alleged violations of the Code of Conduct were referred to a hearing before the Judicial Subcommittee of the Association:

- (a) 2. (i.) Members act with honesty and integrity;
- (b) 2. (vi.) Members are transparent and candid in all of their communications. For example, Members do not misrepresent in any manner their skills, training, professional credentials, identity or services;
- (c) 2. (vii.) Members support the mission of the Association and adhere to the by-laws, the Scope of Practice, the Membership binder, the CATA Policies and Procedures, the Code of Ethics and the Code of Conduct;
- (d) 3. B. (x.) Members shall maintain appropriate documentation for all clients; and
- (e) 3. B. (xx.) Members shall not make a document or statement that is false or misleading.

The Judicial Subcommittee was advised by counsel for the Association that Mrs. Smith cooperated fully with the IC's investigation and agreed to forego a formal hearing and elected to proceed directly to a penalty hearing. The penalty hearing was heard on September 28, 2016. The facts which were relied on by the Judicial Subcommittee in their decision on penalty were set out in the Agreed Statement of Facts in these proceedings. At the penalty hearing, the IC withdrew allegations 2. (i), 2. (vii), and 3. B. (x).

The Judicial Subcommittee Decision

On September 28, 2016, a penalty hearing was conducted and counsel for the IC and Mrs. Smith made a Joint Submission on the appropriate penalty in this matter. At the penalty hearing the written Joint Submissions on penalty prepared by counsel for the IC and Mrs. Smith was entered.

At the penalty hearing, Mrs. Smith agreed that, as an Athletic Therapist, she was responsible for:

- (a) complying with the minimum standards set forth in the Code of Conduct;
- (b) ensuring patients are aware of her credentials as an Athletic Therapist
- (c) ensuring that patient invoices accurately reflect who provided treatment and the designation the treatment was provided under;
- (d) ensuring that patient charts indicate who treated the patient and contain proper credentials; and
- (e) ensuring the accuracy of information provided to patients by administrative or clinic staff.

At the penalty hearing, Mrs. Smith admitted, based on the facts set out above, that she had violated the Code of Conduct as follows:

- (a) failed to be transparent and candid in all of her communications with patients as to whether she was providing treatment as an Athletic Therapist or as a PSP, contrary to section 2. (vi) of the Code of Conduct; and
- (b) made patient chart notes and invoices that were false and misleading in that they did not indicate that she had provided services as a an Athletic Therapist contrary to section 3. B. (xx.) of the Code of Conduct.

It should also be noted that the IC confirmed that there was no evidence of intentional misconduct on behalf of Mrs. Smith.

Penalty Decision and Reasons

Taking into consideration the Agreed Statement of Facts and the Joint Submissions on penalty and having regard to the following sentence considerations:

- (a) the nature and gravity of the offences;
- (b) the absence of any previous complaints or convictions against Mrs. Smith;
- (c) the number of times that the offences were proven to have occurred;

- (d) the admission by Mrs. Smith to two (2) breaches;
- (e) the impact of the incident on the complainant;
- (f) the protection of the public; and
- (g) the integrity of the Association and its members,

the Judicial Committee agreed by majority vote that the following penalties would be imposed against Ms. Smith:

1. Mrs. Smith received a reprimand. The Judicial Subcommittee's decision on this matter served as the reprimand.
2. Mrs. Smith was directed to be mentored by a senior member of the Association for a period of six (6) months to commence within three (3) months following the Association's decision. The mentoring was directed to occur once per month, and was to address the role of a Certified Athletic Therapist including accepted procedures on how to practice within the Association's Code of Ethics and Code of Conduct. The cost of such mentoring was to be borne by Mrs. Smith, including travel cost for the member to attend Mrs. Smith's clinic if necessary.
3. Mrs. Smith was directed to prepare a document for Association members outlining how members should represent their role to clients when providing treatment, and how to chart and invoice such clients. Mrs. Smith was directed to provide a copy of the document to the chairperson of the Judicial Subcommittee within three (3) months of the date of the Judicial Subcommittee's decision. The Judicial Subcommittee was to review the document and provide its comments to Mrs. Smith within thirty (30) days of receipt of the document from Mrs. Smith. If necessary, Mrs. Smith was to revise the document in accordance with any comments made by the Judicial Subcommittee within thirty (30) days of receiving the Judicial Subcommittee's comments. The document may, at the sole option of the Association, be produced on the Association's website as a resource for other members.
4. Mrs. Smith was directed to reimburse the Association in the amount of \$2,000.00 towards the cost of its investigation and hearing in this matter. This amount was to be payable within thirty (30) days of the Judicial Subcommittee's decision.

Further the JC directed that should Mrs. Smith fail to comply with any of the items outlined in paragraphs 1, 2, 3, or 4, or the time period provided for therein, Mrs. Smith's membership in the CATA would automatically be suspended until those items had been completed or paid.