

JUDICIAL SUBCOMMITTEE OF THE CANADIAN ATHLETIC THERAPIST ASSOCIATION

Summary of Penalty - Member John Hayward

Respondent: John Hayward

Complainant: Public

Case Number: JHMay32016

Complaint Date: March 15, 2016

Introduction

On March 15, 2016, a member of the public (the “Complainant”) made a complaint to the Manitoba Athletic Therapist Association concerning Mr. Hayward. The Complainant filed her complaint with the Manitoba Athletic Therapists Association (“MATA”) on March 15, 2016 (the “Complaint”). In the Complaint, the Complainant alleged that Mr. Hayward violated the following provisions of the Manitoba Athletic Therapists Association Code of Ethics:

- a) Section 7 - Professional Misconduct
- b) Section 1 - Practice in General

The Complaint indicated there “may be other sections that also apply” and that the Complainant was “not very familiar with the Code of Ethics”.

By letter dated June 22, 2016, Mr. Hayward was advised by the Canadian Athletic Therapists Association (the “Association”) of the Complaint, allegations contained in the Complaint, that an Investigative Subcommittee (the “IC”) would be appointed in 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. The IC investigated the Complaint to determine whether there had been a breach of various sections of the Association’s Code of Ethics and Code of Conduct (collectively the “Code”).

As part of these proceedings Mr. Hayward agrees that as a Certified Athletic Therapist, he was responsible for:

- a) Complying with the minimum standards set forth in the Code.
- b) Ensuring that he obtains consent for treatment in advance of providing the treatment.
- c) Ensuring that he maintains a complete written record of the assessment and treatment notes dated and signed by the practitioner.
- d) Ensuring he provides a reasonable and complete explanation to the patient as to the treatment that will be provided including the methodology and hand placement, in particular when treating private areas of the body, and ensuring that during the treatment

process, he is listening and taking cues from the patient to ensure that they understand and consent to the treatment being provided.

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

Code of Ethics:

- i. Members act with honesty and integrity.
- ii. Members provide competent care consistent with the requirements and the limitations of the profession.
- iii. Members support the mission of the Association and adhere to the Constitution, the Scope of Practice, the CATA Policies and Procedures, and the Code.
- iv. Members conduct themselves in a manner that merits the respect of society, the profession and its members.
- v. Members participate in the promotion of the profession through advocacy, research and maintenance of the highest possible standards of practice.
- vi. Members keep their professional commitments by integrating the Athletic Therapy principles into their daily practice.

Code of Conduct:

B. Responsibilities to the Client:

- i. Members shall respect the client's dignity, needs, values and wishes.
- ii. Members shall maintain the generally accepted standards of practice.
- iii. Members shall maintain appropriate documentation for all clients.
- iv. Members shall not physically, emotionally or sexually abuse or harass a client or any other person.
- v. Members shall not engage in conduct that is relevant to the practice of Athletic Therapy that would reasonably be regarded by Members as disgraceful, dishonourable or unprofessional.
- vi. Members shall not engage in conduct unbecoming of an Athletic Therapist.

The Judicial Subcommittee was advised by counsel for the Association that Mr. Hayward cooperated fully with the IC's investigation, agreed to forego a formal hearing, and elected to proceed directly to a penalty hearing. The penalty hearing was heard on April 9, 2018. The facts which were relied upon by the Judicial Subcommittee in their decision on penalty were set out in an Agreed Statement of Facts and Stipulations entered as Exhibit 1 in these proceedings. At the

penalty hearing, the IC withdrew allegations (i), (x), (xii), and (xiv) of the Code of Ethics and Part B, Responsibilities to the Client, (xvii), (xxii), and (xxiii) of the Code of Conduct.

The Judicial Subcommittee's Decision

On April 9, 2018, a penalty hearing was conducted and counsel for both the IC and Mr. Hayward made Joint Submissions on the appropriate penalty in this matter. At the penalty hearing, the written Joint Submissions on Penalty prepared by counsel for the IC and Mr. Hayward was entered.

At the penalty hearing, Mr. Hayward agreed that, as an Athletic Therapist, he was responsible for:

- a) Complying with the minimum standards set forth in the Code.
- b) Ensuring that he obtains consent for treatment in advance of providing the treatment.
- c) Ensuring that he maintains a complete written records of the assessment and treatment notes dated and signed by the practitioner.
- d) Ensuring he provides a reasonable and complete explanation to the patient as to the treatment that will be provided including the methodology and hand placement, in particular when treating private areas of the body, and ensuring that during the treatment process, he is listening and taking cues from the patient to ensure that they understand the consent to the treatment being provided.

At the penalty hearing, Mr. Hayward admitted, based on the facts set out above, that he had violated the Code as follows:

- i. Members provide competent care consistent with the requirements and the limitations of the profession (to wit, failing to adequately communicate and explain treatment and maintain adequate chart notes for the Complainant).
- ii. Members support of the mission of the Association and adhere to the Constitution, the Scope of Practice, the CATA Policies and Procedures, and the Code.
- iii. Members shall respect the client's dignity, need, values, and wishes.
- iv. Members shall maintain the generally accepted standard of practice (to wit, failing to adequately communicate and explain treatment and maintain adequate chart notes for the Complainant).

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

Penalty Decision and Reasons

After carefully reviewing the Agreed Statement of Facts and Stipulations and the Joint Submissions and 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 Mr. Hayward;
- c) the number of times that the offences were proven to have occurred;
- d) the admission by Mr. Hayward to four (4) breaches of the Code;
- 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 unanimous vote that the following penalties would be imposed against Mr. Hayward:

- a) Mr. Hayward's membership in the association shall be surrendered immediately and be terminated indefinitely and he shall have no right to reapply for membership in the Association thereafter.
- b) Mr. Hayward shall reimburse the Association in the amount of \$5,000.00 towards the costs of its investigation and hearing in this matter. The amount should be payable within 21 days of this decision.
- c) The Agreed Statement of Facts and stipulations along with the above penalty would be posted on the Association's website.