

IN THE MATTER OF THE *HEALTH PROFESSIONS ACT* RSBC 1996, c.183

BETWEEN:

The College of Massage Therapists of British Columbia

(the "College")

AND:

Stephen Bartlett

(the "Respondent")

REASONS FOR DECISION

Date and Place of Hearing:

May 16 to 19, 2022
Vancouver (Charest Reporting)

Panel of the Discipline Committee

Marilynne Waithman, Chair
Emily Bissonnette, RMT
Michael Wiebe, RMT

Counsel for the College:

Elizabeth Allan

For the Respondent:

Appearing on his own behalf

Counsel for the Panel:

Susan Precious

A. INTRODUCTION

1. A panel of the Discipline Committee (the “Panel”) of the College of Massage Therapists of British Columbia (the “College” or “CMTBC”) conducted a hearing pursuant to section 38 of the *Health Professions Act* RSBC 1996 c.183 (the “Act” or the “HPA”), to determine whether Stephen Bartlett (the “Respondent”) failed to comply with the HPA or a bylaw, failed to comply with a standard imposed under the HPA, and committed professional misconduct or unprofessional conduct.
2. For the reasons that are set out below, the Panel finds that the allegations in paragraphs 1(b), 1 (c), 1(d), 1(e), 1(f), 2(b), 3 (a), 3(b), and 3(c) of the amended citation dated March 7, 2022 (the “Citation”) were proved to the requisite standard. The Panel has determined that the Respondent committed professional misconduct, failed to comply with the College’s Consent Standard and Boundaries Standard, and breached the College’s Bylaws. The Panel dismissed the allegations in paragraphs 1(a) and 2(a) of the Citation.
3. The particulars of the allegations against the Respondent are set out in the Citation as follows:
 1. On or about August 12, 2019, in the course of providing massage therapy services to A.A., you:
 - a) Disputed her surgeon's diagnosis of her medical condition and provided your own diagnosis;
 - b) Made comments and/or statements of an unprofessional, inappropriate and/or personal nature to her, particularized by one or more of the following:
 - i. Informing her that she had never had a treatment like yours before and that you were smarter than all of your colleagues, or using words to that effect;
 - ii. Asking her if she had issues with incontinence;
 - iii. Asking her if she liked to “party” and then asking her if she was a Vancouver Australian or a Whistler Australian and providing your opinion on the difference between the two;
 - iv. Asking her if she had a romantic partner, or using words to that effect;
 - v. When she confirmed that she was in a romantic relationship, asking her if she was happy in her relationship and/or

- suggesting that she and her partner go to the Rocky Mountains as it was a romantic place to go, or using words to that effect;
- vi. Told her your views on romantic relationships including that they are “really difficult” and that your experience was that it was “hard to meet people”, or using words to that effect; and/or
 - vii. Told her details about one or more of your previous romantic relationships, including details about your sex life and break-up with one particular woman from another country;
- c) Manipulated her neck without any, or, in the alternative, adequate, consent and after she had instructed you not to do so;
 - d) Failed to adequately communicate the treatment plan to treat her pectoral muscles and serratus anterior, including that this treatment would be at or near her breasts;
 - e) Failed to obtain any, or, in the alternative, adequate, consent to treat at or near her breasts; and
 - f) Failed to adequately adjust treatment and communicate with her after she expressed that she was experiencing pain while you were treating at or near her breasts;
2. On or about September 21, 2020, in the course of providing massage therapy services to B.B., you:
- a) Made comments and/or statements of an unprofessional, inappropriate and/or personal nature to him, particularized by one or more of the following:
 - i. Informing him that you thought he was a “girl” with the name of [REDACTED];
 - ii. Referring to him as a “girl” during the appointment, despite his intake paperwork and his verbal confirmation that he identified as male;
 - iii. Asking about his hormone routine, including whether his dose was enough and/or how it was delivered;
 - iv. Commenting on his gender affirming surgery, in particular that you “saw what was going on here” referring to his chest and/or that you usually only see a mastectomy when a patient has had cancer, or using words to that effect;
 - v. Failing to provide the therapeutic rationale for asking about scarring from his gender surgery and/or questioning the lack thereof; and/or
 - vi. Asking him about his knowledge about the difference between men and women and discussing the difference between a man’s and woman’s pelvis and/or hips including that B.B.’s hips were a certain way because he was “born female”, or using words to that effect;

- b) During the assessment and while he was clothed, touched his low back, hips, buttocks and/or gluteal cleft without any, or, in the alternative adequate, consent; and/or
3. From or about November 7, 2019 and thereafter, stated online, that you:
 - a) “specialize in structural alignment, specifically spinal and pelvic alignment”;
 - b) are an “osteopath”, which is a reserved title under section 2(2) of the *Medical Practitioners Regulation* for registrants of the College of Physicians and Surgeons of British Columbia; and/or
 - c) are an “Arthrokinetic therapist”.

It is alleged:

1. that you have not complied with the Act or a bylaw;
2. that you have not complied with a standard imposed under the Act, that is, CMTBC’s Code of Ethics and/or Standards of Practice; and
3. that you have committed professional misconduct or unprofessional conduct.

B. SERVICE OF CITATION

4. Service of the Citation was not raised as an issue. The Panel is satisfied that the Respondent was properly served with the Citation.

C. LAW

Burden of Proof

5. The College bears the burden of proof and must prove its case on a “balance of probabilities”. The leading authority, *F.H. v. McDougall*, 2008 SCC 53, states that the “evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test.” This standard has been adopted in professional disciplinary hearings including those of CMTBC (see *CMTBC v. Martin*, 2015 CMTBC 01; *CMTBC v. Gill*, 2019 CMTBC 01; *CMTBC v. Anderson*, May 18, 2022).

HPA

6. Under section 39(1) of the HPA, on completion of a hearing, the Discipline Committee may dismiss the matter, or determine that the Respondent:

39(1)...

- (a) has not complied with this Act, a regulation or a bylaw,

- (b) has not complied with a standard, limit or condition imposed under this Act,
- (c) has committed professional misconduct or unprofessional conduct,
- (d) has incompetently practised the designated health profession, or
- (e) suffers from a physical or mental ailment, an emotional disturbance or an addiction to alcohol or drugs that impairs their ability to practise the designated health profession.

Bylaws, Standards of Practice and Code of Ethics

7. Section 19 of the HPA provides the College with the authority to enact bylaws establishing the standards and limits for the practice of the profession.
8. Section 19(8) of the HPA requires a registrant to practice the profession in accordance with the College's bylaws:

Bylaws for college

19 (1) A board may make bylaws, consistent with the duties and objects of a college under section 16, that it considers necessary or advisable, including bylaws to do the following:

..

- (k) establish standards, limits or conditions for the practice of the designated health profession by registrants;

..

(8) A registrant must not practice a designated health profession except in accordance with the bylaws of the college.

9. Pursuant to this authority, the College enacted a Code of Ethics and Standards of Practice for the profession. The College has Standards of Practice set out as a Schedule to the College's Bylaws, as well as stand-alone Standards of Practice that relate to specific topics.
10. Section 75 of the College's Bylaws requires that every registrant must comply with the Code of Ethics and the Standards of Practice.
11. A violation of the Code of Ethics constitutes a failure to comply with the Bylaws for purposes of section 39(1) of the HPA. A violation of the Code of Ethics also

constitutes a failure to comply with a standard imposed under the Act for purposes of section 39(1) of the HPA.

12. Section 78 of the College's Bylaws provides the following regarding registrants' use of titles:

Use of titles in advertising

78.7 (1) In a marketing activity or advertisement to promote her massage therapy practice, a Registrant may use only those occupational titles that have been reserved to Registrants under the Act or otherwise have been approved by the Board.

...

Restriction on specialist titles

78.8 Unless otherwise authorized under the Act, a Registrant must

- (a) not use the title "specialist" or any similar designation, term or reference that suggests a recognized special status, accreditation or practice on any letterhead or business card or in any other marketing activity,
- (b) take all reasonable steps to discourage use, in relation to the Registrant by another person, of the title "specialist" or any similar designation suggesting a recognized special status or accreditation in any marketing activity, and
- (c) in any advertisement, identify herself as being responsible for the practice advertised.

13. The Code of Ethics in place at the material times provided:

Duty to Patients

General Duties

- 2. Massage therapists must act in the best interest of the patient.
- 4. Massage therapists must treat the patient with respect and uphold the patient's dignity.

Treatment

- 9. Massage therapists must obtain informed consent for therapeutic services.

Boundaries

- 19. Massage therapists must set and maintain appropriate professional boundaries with a patient.

Duty to Society

- 25. Massage therapists must comply with all applicable laws and regulations relating to the practice of massage therapy.

29. Massage therapists must conduct themselves in a manner as to merit the respect of society for the profession, massage therapists, and other health care professionals.

14. The Standards of Practice set out at Schedule "D" of the College's Bylaws provide:

Professionalism

9 A Registrant must

- (a) maintain personal hygiene and professional appearance,
- (b) differentiate between personal and professional beliefs and behaviours,
- (c) evaluate strengths and weaknesses as a therapist, and set goals for improvement, and
- (d) maintain awareness of, and practice within, the current scope of practice of massage therapy in British Columbia.

15. The scope of practice for the profession of massage therapy in British Columbia is found in the *Massage Therapists Regulation*, B.C. Reg. 280/2008 (the "Regulation"). The Regulation does not authorize registrants to make a diagnosis.

16. The Consent Standard (January 15, 2019) was in place at the material times. It provided:

- 1. An RMT recognizes, respects and supports each patient's right to make decisions about the patient's own health care by:
 - a. engaging in shared decision-making with the patient; and
 - b. respecting the patient's autonomy.

3. An RMT:

- a. obtains consent prior to delivery of massage therapy (including assessment, treatment and re-assessment);
- b. addresses the patient's goal(s) and expectation(s) in seeking massage therapy;
- c. monitors and renews consent where appropriate throughout treatment; and
- d. discontinues treatment if the patient withdraws consent.

4. An RMT provides sufficient information to enable the patient, (or, where required, parent or legal guardian or substitute decision-maker) to make an informed decision about treatment by:

- a. describing the proposed treatment including:
 - i. initial intake of the patient,
 - ii. a treatment plan,
 - iii. assessment,
 - iv. massage therapy during a first session,
 - v. massage therapy during a subsequent session, and/or
 - vi. home care;
- b. providing information about:
 - i. areas of the patient's body where treatment will be delivered,
 - ii. the anticipated benefits and possible negative effects of the treatment,
 - iii. the therapeutic rationale for the proposed treatment,
 - iv. options for disrobing, and

v. options for draping during treatment; and

8. An RMT seeks patient feedback during treatment and modifies treatment in response to verbal or non-verbal indications of pain or discomfort from the patient.

9. Before the delivery of a subsequent treatment, an RMT renews consent if appropriate. If renewal of consent is not necessary, an RMT reminds the patient to ask questions about the treatment at any time, or to end the treatment at any time if the patient feels uncomfortable.

17. The Boundaries Standard (July 1, 2018) in place during the material times provided:

An RMT:

1. establishes and maintains professional boundaries with a patient before, during and at the termination of the therapeutic relationship, including by:
 - a. providing patient-centred care at all times;
 - b. demonstrating respect for the patient;
 - c. establishing a professional rapport with the patient; and
 - d. maintaining an appropriate level of professional objectivity;
2. advises and redirects a patient if a boundary crossing occurs by:
 - a. recognizing that it is always the responsibility of the RMT to establish and maintain professional boundaries;
 - b. re-establishing professional boundaries with the patient; and
 - c. using professional judgment to determine whether and when to terminate a therapeutic relationship in accordance with the CMTBC Code of Ethics;
4. recognizes and respects the obligations set out in the CMTBC Code of Ethics never to sexualize the treatment environment or the therapeutic relationship through words, touch, or any other form of explicit or implicit sexual conduct (which constitutes sexual misconduct), or to permit a patient to do so;
12. communicates verbally and non-verbally with patients in a manner that:
 - a. meets patient needs;
 - b. avoids professional jargon or overly technical language;
 - c. is professional and respectful; and
 - d. demonstrates unconditional positive regard.
13. Discloses personal information to the patient only to the extent required for the provision of patient centred care;
14. Recognizes and is accepting of individual and cultural differences based on factors such as age, gender, religion, sexual orientation, ethnicity, cultural beliefs, ability, values or lifestyle;
19. Communicates the intent of therapeutic touch to the patient before and during delivery near potentially sexualized areas of a patient's body;

20. Obtains and documents the patient's informed consent to treatment, both initial and ongoing;

Professional Misconduct and Unprofessional Conduct

18. Section 26 of the HPA contains the following definitions:

"professional misconduct" includes sexual misconduct, unethical conduct, infamous conduct and conduct unbecoming a member of the health profession;

[...]

"unprofessional conduct" includes professional misconduct.

19. The term unprofessional conduct is defined in the HPA to include professional misconduct.
20. The most cited definition of "professional misconduct" in professional regulation matters in British Columbia is from *Law Society v. Martin*, 2005 LSBC 16 which described it as a "marked departure from the standard expected of a competent" registrant.
21. In *Pearlman v. Manitoba Law Society Judicial Committee*, [1991] 2 S.C.R. 869, the Supreme Court of Canada described it as "conduct which would be reasonably regarded as disgraceful, dishonourable, or unbecoming of a member of the profession by his well-respected brethren in the group – persons of integrity and good reputation amongst the membership."
22. In *Salway v. Association of Professional Engineers and Geoscientists of British Columbia*, 2010 BCCA 94, the Court of Appeal held that it is the discipline committee of a professional organization that sets the professional standards for that organization. Those standards may be written or unwritten. See also: *Lysons v. Alberta Land Surveyors' Association*, 2017 ABCA 7.
23. Several cases decided by this Discipline Committee and by other health profession regulators have held that "professional misconduct" is generally more serious than "unprofessional conduct". In *CDSBC re Jobanputra* 2013 Canlii 100907, the discipline committee reasoned:

[10] In her submissions, counsel for the CDSBC addressed the difference in meaning between *unprofessional conduct* and *professional misconduct*. She suggested that *professional misconduct* generally refers to misconduct that is more egregious than *unprofessional conduct*. The Panel has considered the definitions in section 26 and has decided to characterize conduct that it regards to be of a more serious or egregious nature as *professional misconduct*, rather than *unprofessional conduct*, since the definition of that phrase includes *unethical conduct* and *infamous conduct*. This is consistent with the approach in *re Duvall*, supra.

24. This approach was also adopted in *Re Morgan*. The Panel adopts the above approach in this case too.

Credibility

25. The assessment of a witness's credibility is done by considering a number of factors. In *Faryna v. Chorny*, (1952) 2 D.L.R. 354 (BCCA), the Court of Appeal described that assessment as follows:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

26. *Bradshaw v. Stenner*, 2010 BCSC 1398 (which applied *Faryna v. Chorny*) also sets out the following helpful approach to the assessment of credibility:

[186] Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides (*Raymond v. Bosanquet (Township)* (1919), 1919 CanLII 11 (SCC), 59 S.C.R. 452, 50 D.L.R. 560 (S.C.C.)). The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally (*Wallace v. Davis*, [1926] 31 O.W.N. 202 (Ont.H.C.); *Faryna v. Chorny*, 1951 CanLII 252 (BC CA), [1952] 2 D.L.R. 354 (B.C.C.A.) [*Faryna*]; *R. v. S.(R.D.)*, 1997 CanLII 324 (SCC), [1997] 3 S.C.R. 484 at para.128 (S.C.C.)). Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time (*Faryna* at para. 356).

[187] It has been suggested that a methodology to adopt is to first consider the testimony of a witness on a 'stand alone' basis, followed by an analysis of whether the witness' story is inherently believable. Then, if the witness testimony has survived relatively intact, the testimony should be evaluated based upon the consistency with other witnesses and with documentary evidence. The testimony of non-party, disinterested witnesses may provide a reliable yardstick for comparison. Finally, the court should determine which version of events is the most consistent with the "preponderance of probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions" (*Overseas Investments (1986) Ltd. v. Cornwall Developments Ltd.* (1993), 1993 CanLII 7140 (AB QB), 12 Alta. L.R. (3d) 298 at para. 13 (Alta. Q.B.)). I have found this approach useful.

27. The College also cited *Ontario (College of Massage Therapists of Ontario) v. Tchepourov*, 2019 ONCMTO 4, which described the factors to assess credibility as follows:

[C]redibility of the witnesses should be assessed according to the factors set out in *Re Pitts* [*Re Pitts and Director of Family Benefits Branch of the Ministry of Community & Social Services*, 1985 CanLII 2053]. These factors include:

- a. the witness' opportunity to observe events;
- b. the witness' interest in the outcome;
- c. any bias on the part of the witnesses;
- d. whether the witness' evidence accords with common sense/the probability or improbability of the witness' story;
- e. whether the witness' evidence was consistent with other evidence;
- f. whether the witness' evidence was internally consistent; and
- g. the appearance and demeanour of the witnesses.

28. The Panel agrees with the approach for the assessment of witness credibility as set out in *Faryna v. Chorny* and considers that the factors described in the above cases inform that analysis.

Browne v. Dunn

29. The College relies upon the rule in *Browne v. Dunn*, in which the House of Lords in the United Kingdom held that if a party intends to impeach a witness, they must give the witness an opportunity to explain themselves or respond at the time they are giving evidence. The Supreme Court of Canada in *R. v. Lyttle*, 2004 SCC 5 confirmed that the principle is sound and may be applied at the discretion of the trial judge. This rule promotes fairness to the witness and allows the tribunal to have

access to all the relevant information that may inform the assessment of a witness's credibility or reliability.

30. The Panel recognizes the principle and is also aware that the rule is applied flexibly. If the principle is engaged, the Panel is not required to reject the evidence of a party on a point which was not put to a witness. It is also open to the Panel to accord that evidence less weight.
31. This issue arose in this case as the Respondent chose not to cross-examine the complainants on their evidence, however, provided evidence that contradicted their accounts. The College submits that the Panel should place less weight on explanations offered by the Respondent where the witness was not confronted with those things and allowed an opportunity to respond. The Panel agrees.

Hearsay

32. As an administrative tribunal, the Panel is not bound by the strict rules of evidence, including the rule against the admission of hearsay statements (see *Canadian Recording Industry Association v. Society of Composers, Authors and Music Publishers of Canada*, 2010 FCA 322). The Panel may consider any relevant evidence and assign that evidence the weight it considers to be appropriate in the circumstances (see *Hale v. B.C. (Superintendent of Motor Vehicles)*, 2004 BCSC 1358).

Post Event Demeanour

33. Evidence of a complainant's behavior and reactions following the events giving rise to the complaint may be admissible as it may be relevant to the assessment of a complainant's credibility (see *R. v. J.A.A.*, 2011 SCC 17 and *R. v. Greif*, 2021 BCCA 187). Post-event demeanour has been admitted in professional regulatory proceedings (see *Schwarz v. The College of Physicians and Surgeons of Ontario*, 2021 ONSC 3313).

D. EVIDENCE and ANALYSIS

Citation Paragraph 1 – A.A.

1. ***On or about August 12, 2019, in the course of providing massage therapy services to A.A. you:***
 - a) ***Disputed her surgeon's diagnosis of her medical condition and provided your own diagnosis;***
 - b) ***Made comments and/or statements of an unprofessional, inappropriate and/or personal nature to her, particularized by one or more of the following:***
 - i. ***Informing her that she had never had a treatment like yours before and that you were smarter than all of your colleagues, or using words to that effect;***
 - ii. ***Asking her if she had issues with incontinence;***
 - iii. ***Asking her if she liked to "party" and then asking her if she was a Vancouver Australian or a Whistler Australian and providing your opinion on the difference between the two;***
 - iv. ***Asking her if she had a romantic partner, or using words to that effect;***
 - v. ***When she confirmed that she was in a romantic relationship, asking her if she was happy in her relationship and/or suggesting that she and her partner go to the Rocky Mountains as it was a romantic place to go, or using words to that effect;***
 - vi. ***Told her your views on romantic relationships including that they are "really difficult" and that your experience was that it was "hard to meet people", or using words to that effect; and/or***
 - vii. ***Told her details about one or more of your previous romantic relationships, including details about your sex life and break-up with one particular woman from another country;***
 - c) ***Manipulated her neck without any, or, in the alternative, adequate, consent and after she had instructed you not to do so;***
 - d) ***Failed to adequately communicate the treatment plan to treat her pectoral muscles and serratus anterior, including that this treatment would be at or near her breasts;***
 - e) ***Failed to obtain any, or, in the alternative, adequate, consent to treat at or near her breasts; and***
 - f) ***Failed to adequately adjust treatment and communicate with her after she expressed that she was experiencing pain while you were treating at or near her breasts;***

34. The College called four witnesses to give evidence relating to this allegation. The complainant, A.A.; Witness 1 (A.A.'s mother); Witness 2 (A.A.'s best friend); and Witness 3 (A.A.'s fiancé).

35. The College also introduced the evidence of Mark Finch in relation to this allegation. The Panel qualified Mr. Finch as an expert in the fields of anatomy, massage therapy technique, scope of practice, and standards on informed consent and patient communication. Mr. Finch provided evidence in a written expert report, supplemented by oral testimony. Mr. Finch was subject to cross-examination by the Respondent. The Panel found that Mr. Finch's evidence was "relevant, necessary and appropriate" (See *Re Morgan*).
36. A.A. testified that she is a speech language pathologist and has been a registrant of the College of Speech and Hearing Professionals of British Columbia since 2018. She grew up in Australia and moved to Vancouver approximately four years prior to the hearing. A.A. testified about her understanding of the concepts of boundaries and consent as a health professional.
37. A.A. saw the Respondent in relation to her scoliosis. A.A. has seen many health care providers in several countries over the years in relation to her scoliosis. One of the reasons that A.A. chose to see the Respondent was because of her understanding that he used osteopathic techniques, something which had worked for her in past.
38. A.A. testified about her appointment with the Respondent on August 12, 2019. A.A.'s scoliosis was diagnosed at a young age and has been corrected by physicians and surgeons. She is aware that her present status may not display the severity of her condition. A.A. testified that she has an image of her x-ray on her cell phone. She did not give evidence of any other radiologist's report or other medical information which she keeps on her cell phone.
39. A.A. testified that she showed the image to the Respondent. A.A. testified that the Respondent said that her scoliosis "couldn't be in [her] thoracic"... "it had to come from the lumbar." A.A. testified that the Respondent did not provide her with any information supporting this statement. The statement was contrary to what A.A. had been told by her health care practitioners over many years. A.A. testified that the Respondent's comments took her aback. She felt the comments were outside of the Respondent's scope and made her doubt his treatment generally.

40. A.A. testified that during her appointment with the Respondent on August 12, 2019, he stated the following:
- a. her scoliosis “couldn’t be in [her] thoracic” and that it “had to have come from the lumbar”;
 - b. “you've never had a treatment like the one you're about to get”;
 - c. “I made this new technique and, you know, I was much smarter than all my peers and no one else was -- no one else was as good as me and I found it really easy to study so I just started making my own technique and it's much better than anything you've had before.”;
 - d. The Respondent asked A.A. if she ever experienced urine leakage and incontinence;
 - e. The Respondent made a comment about A.A. being Australian and he commented that there are a lot of Australians in Whistler and “they like to party”. A.A. said that Australians in Whistler are different than the ones who live in Vancouver. The Respondent asked A.A. which type of Australian she is and whether she likes to party.
 - f. The Respondent asked A.A. whether she had a “partner”;
 - g. The Respondent asked A.A. if she was “happy in her relationship”, stated that “relationships can be really hard”, and that “it’s really hard to meet people”;
 - h. The Respondent told A.A. that she should go to the Rocky Mountains with her partner because it was “very romantic”.
 - i. The Respondent talked at “great length” about “dating a woman from Thailand who worked in a berry picking farm south of Vancouver and that she was paid really badly and lived in really terrible conditions...[the Respondent] gave her a place to live and was kind of her protector but then when she moved in with him... she'd come home from work and she would just go straight to bed... he implied that she was always so tired that she wouldn't have time to be intimate with him.”

41. A.A. testified that she felt “very uncomfortable” and thought it was “incredibly inappropriate”.
42. The College is not asking for a finding that the Respondent practised outside of the scope of practice of an RMT and breached the Regulation. The College submits that the Respondent performed treatment on A.A. which he did not have her consent to perform and which she had specifically instructed him not to do. Accordingly, the College submits that the Respondent did not have adequate or any consent.
43. Mr. Finch testified that the word “manipulation” means various different things to various health professionals. It commonly refers to a “high velocity low amplitude thrust” which means “taking the joint past its normal physiological range of motion” and “applying a very fast impulse with the intention of making the joint crack.” Mr. Finch distinguished this from a scenario where occasionally joints may crack in normal physiological movements during massage therapy techniques. Those however occur inside the normal range of motion and there is no high velocity thrust applied.
44. A.A. testified that she specifically asked the Respondent not to crack her neck during the appointment:

When -- by this point, you know, I'd been in the room for at least half an hour -- longer, I think it would be closer to 40 minutes and I was really -- I was not confident at all in his ability as an RMT and I felt like he'd already thought of himself as more than that and I was worried about what kinds of treatments he would you know, what might happen next so I specifically said to him, please, don't crack my neck. I felt he had his hands on my neck and that I've only had people kind of hold that like that when they're going to treat -- when they're going to crack my neck and on that as well, in all the people I've seen for therapy, I've only ever had two different practitioners crack my neck...

One of -- after -- sorry, I have to -- so he was holding my neck like he was going to crack it and I asked him, please, don't do that. Sorry -- I said please, don't crack my neck. I feel uncomfortable with you cracking my neck and he said no, no, no, don't worry; I'm not going to; I'm going to massage your upper traps and I said, okay.

45. A.A. testified that the Respondent treated her neck as follows:

And he was holding my neck and he really quickly twisted it to the left and it did crack and it was -- I was honestly really shocked because I had just said, please, don't do that, yeah, and I -- I remember just being, yeah, very overwhelmed at that moment.

46. When asked about the Respondent's suggestion that he said he was going to treat A.A.'s neck, moving it left to right and pushing her head against his hands, A.A. responded:

I didn't consent to cracking, either implicitly or, yeah, verbally. In fact, I explicitly said I don't want my neck cracked so if he thinks I consented to a neck cracking, that's not what I consented to.

47. In response to the suggestion that the Respondent told her he was going to perform a muscle energy technique, A.A. testified that she has never heard of a muscle energy technique, and she did not recall him discussing that with her.
48. A.A. further testified that the Respondent did not ask for consent to manipulate her neck and she did not provide consent for that.
49. The Respondent did not question A.A.
50. The definition of "massage therapy" in section 1 of the *Massage Therapists Regulation* provides that some manipulation falls within the practice of massage therapy:

"massage therapy" means the health profession in which a person provides, for the purposes of developing, maintaining, rehabilitating or augmenting physical function, or relieving pain or promoting health, the services of

(a) assessment of soft tissue and joints of the body, and

(b) treatment and prevention of physical dysfunction, injury, pain and disorders of soft tissue and joints of the body by manipulation, mobilization and other manual methods.

51. The College argues that the use of the word "manipulate" in the Citation therefore does not require the Panel to adjudicate on whether the action fell within the scope of practice. Rather, it is for the Panel to decide whether it accepts A.A.'s evidence that the Respondent turned her neck quickly to the left resulting in a crack, and whether that was an act that A.A. had asked the Respondent not to perform. The College submits that if those facts are established, the allegation is proved on a balance of probabilities. The Panel agrees that it is not necessary for it to determine whether any manipulation that did occur fell within the scope of practice. Rather, the

issue is whether the Respondent manipulated A.A.'s neck without any or adequate consent, after she instructed him not to do so.

52. A.A. testified that while she was lying face up on the table and had her clothes on, the Respondent "took his hands and went between [her] breasts down between [her] breastbone, up and down several times." She said that he did not touch her breasts but was close to the area. A.A. described feeling surprised as the Respondent provided no warning to her.
53. A.A. testified that the Respondent did not ask her for consent to touch or massage between her breasts, or near her breasts under her armpit. She also testified that she did not provide consent for the Respondent to touch or massage between her breasts, or near her breasts under her armpit.
54. A.A. testified that the Respondent took both of his hands and pressed very hard at the top over near her right breast. She stated that he held both hands down until it was very painful. She had tears in her eyes. She told the Respondent that it "really hurts" and closed her eyes. The Respondent continued pressing very hard, longer than he had at any other point in her whole body. The Respondent said to A.A. "yeah, yeah, it's really tight here." A.A. testified that she kept "scrunching" her eyes and was breathing through it as the Respondent kept pushing. She described being "really shaken because it hurt so much." She described it as being "incredibly painful." She testified that she looked at him and he had an unusual expression, and described that it "felt really creepy." A.A. denied being asked by the Respondent whether she could handle the pressure or hold on for 30 seconds, stating that is "not what I recall."
55. A.A. described being very shaken up after the appointment. She was physically shaking. She immediately messaged her boyfriend to tell him that she had a very bad appointment. A.A. cancelled the rest of her appointments that day at work. Over lunch she replayed everything in her head and realized that she did not know the Respondent's last name. A.A. emailed the clinic to ask for a copy of her invoice which she expected would contain the Respondent's last name. While she awaited that information, A.A. telephoned her mother who was visiting from Australia. A.A. was on the verge of tears. Her mother was not in a position to speak as she was in

the car and said she would call her back. A.A. then received the invoice from the clinic containing the Respondent's last name. She conducted an internet search and learned there was a complaint against the Respondent. A.A. then messaged her best friend, Witness 2, stating that she "just had the most awful experience with the RMT/osteo". On August 21, 2019, A.A. filed a complaint with the College.

56. Witness 2 testified that she is A.A.'s best friend. She lives in Australia. She and A.A. stay in contact through various messaging platforms. They have also visited each other in person since living in different countries. Witness 2 testified about waking up one morning in August 2019 to a message from A.A. in which she was extremely distressed. A.A. wrote "I just had the most awful massage experience"; "he tried to massage my boobs and was so horrifically painful when he did this manipulation on my shoulder. I asked him not to manipulate my neck and he still did"; "He spent the whole time talking about his ex-girlfriend who was a mail order bride from Thailand"; "Asked me all about my own relationship and made me feel super uncomfortable...." Witness 2 testified that this was unusual and that she never received similar messages from A.A. in past. Witness 2 spoke with A.A. on the phone. She described A.A.'s demeanour as being upset and in a state of shock. A.A. sounded angry and a bit more aggressive than she would normally.
57. A.A.'s mother, Witness 1, also testified. She lives in Australia but was visiting British Columbia at the material times. Witness 1 testified about receiving a phone call from A.A. while she was driving from Whistler to Vancouver. She described A.A. as being upset and crying. She had never received a similar call from A.A. in the past. Witness 1 did not want to continue the conversation in the car because she was with another person and the conversation was private. She met A.A. later that day in Vancouver. By that time, A.A. had calmed down but was still upset about her appointment.
58. A.A.'s fiancé, Witness 3, testified. He has known A.A. since 2018. They were not living together at the material times. On August 12, 2019, Witness 3 received a text message from A.A. stating that she had a bad experience with an RMT. He had dinner with A.A. that night and observed that she was "off" and quieter than usual. Witness 3 described that A.A. was shaken up, angry and scared. Witness 3 testified

that A.A.'s appointment with the Respondent was a setback and demotivated her in seeking out other treatment for her scoliosis until she came to terms with what happened.

59. The Respondent testified that A.A. had "quite an imagination". On cross-examination he testified that A.A. "invented" her account.
60. The Respondent introduced photographs of his treatment room showing certificates on his wall and books, including a 2008 certificate for a course on osteopathic techniques. He testified the certificates were on the wall at the time of A.A.'s appointment. The Respondent did not put those photographs to A.A. On cross-examination, the Respondent acknowledged that the photographs were taken after A.A.'s appointment. A.A. testified she saw certificates relating to massage and she did not testify about any books.
61. The Respondent testified that A.A. testified that she "refused" to get undressed during the appointment. The Respondent testified that he never asks his patients to get undressed and he never asked A.A. to get undressed. A.A.'s testimony however did not describe a refusal. She testified that the Respondent did not discuss her undressing. She decided in her own mind that she would keep her clothes on irrespective.
62. The Respondent testified about his initial communications with A.A. and his clinical notes. The Respondent testified about his familiarity with scoliosis. With respect to A.A.'s scoliosis diagnosis, the Respondent testified, "So I completely agreed with everything the surgeon had said but I just added what he'd left out which was that there was going to be lumbar problems as well, so lower back discrepancy as well. And we see that with the measurements I took of the pelvis which will distort the lumbar spine." He added "the MRI that she had a T8 wedge so there's that but the examination shows that there was also lumbar problems as well. So all I did in her case was I just said, no, there's a little bit more here." The Respondent testified that he wanted to leave "no stone unturned" and wanted to offer A.A. the best treatment that he could. He suggested some lower back treatment and A.A. was not opposed to that. The Respondent testified that A.A. had developed the idea that he refuted

her surgeon's diagnosis, and this coloured how she looked at the rest of the appointment.

63. The Respondent referenced viewing a radiology report rather than viewing a copy of A.A.'s x-ray image. He agreed that radiographs are often difficult to interpret unless you have training. He testified that he did not view or interpret an x-ray. The Respondent subsequently agreed he may have viewed an x-ray.
64. The Respondent was cross-examined on the scope of practice of massage therapists to make diagnoses. In his view, the scope of practice for massage therapy is broad. He did not see any issue with viewing A.A.'s x-ray and providing an opinion about her scoliosis after viewing the x-ray. He would not agree that "adding" to the surgeon's diagnosis was a "differential diagnosis" or "supplemental diagnosis" instead characterizing it as an "opinion" and he simply said, "you have a little extra here". The Respondent added that whether it was a radiology report or an x-ray, he saw a "T8 wedge" and maintains that he was correct in his opinion about A.A.'s scoliosis.
65. With respect to his comments during the appointment, the Respondent testified that he pioneered new manipulations, methods and techniques in his field, but testified that he did not recall telling A.A. about that. He agreed that he told A.A. that he did not have to study for anatomy and physiology when he was in school. He denied telling A.A. that he was smarter than his peers. The Respondent agreed that he told A.A. his treatment might be different than what she was accustomed to as he wanted to prepare for her a different experience. The Respondent agreed he would have asked A.A. about incontinence as part of a "weeding out process". He acknowledged it may have been while she was face down on the treatment table.
66. The Respondent did not have a memory of telling A.A. the rationale for asking about any incontinence. The Respondent denied asking A.A. about being Australian, and about any differences between Whistler and Vancouver Australians. The Respondent denied asking A.A. if she liked to party.
67. The Respondent testified that he asked A.A. general questions such as "tell me about yourself; you married; do you have kids; a dog; a cat; a fish...". He denied

specifically asking A.A. whether she had a boyfriend. The Respondent testified that A.A. told him that she had a boyfriend, and she might have mentioned meeting him after she had moved to Canada. The Respondent denied asking her if she was happy in her relationship. The Respondent testified that he asked A.A. what she had seen of Canada and that he tells everyone they should see the Rocky Mountains. The Respondent acknowledged that he told A.A. that she and her partner should take a drive through the Rocky Mountains and could not recall if he said that it was romantic but agreed that it was possible.

68. The Respondent denied telling A.A. that it was difficult to meet people or that dating is difficult as those have never been an issue for him. He testified that A.A. asked him about himself to which replied he was single. The Respondent said that A.A. said she found that hard to believe as he has a good job and so on. He responded that he is a “a little gun shy”. The Respondent testified that he tried to “keep it at that” as he tries not to be too forthcoming regarding his life. He stated that he was vague in his comments. The Respondent testified that he told A.A. about dating a woman from Thailand, though suggested it was primarily in response to questions posed by A.A. The Respondent stated that the woman’s work visa was ending, and she had a family member with a serious illness, so the decision was made to return to Thailand in 2018. The Respondent testified this woman did not live with him but did spend the night at his place.
69. The Respondent testified that he did not manipulate A.A.’s neck but performed myofascial traction to the area. He testified that he did “turn [A.A.’s] neck to the left” and gave it a “little bit of a twist” resulting in a “release”. On cross-examination, the Respondent testified that the release was a small crack.
70. The Respondent testified that at the beginning of the appointment, A.A. told him that she was “not okay with cervical manipulation”. He said that he was prepared for that and proposed a “muscle energy technique”. The Respondent testified that he described that to A.A., she agreed to that technique in advance, and after it was performed, she indicated, “that was fine”. The Respondent testified that A.A. asked

that he not manipulate her neck and what he performed was not a “direct manipulation” of her neck.

71. The Respondent testified that he did not run his hands down the middle of A.A.’s chest between her breasts. He stated that A.A. had a white blouse on which was completely buttoned up and there was therefore no opportunity for that. In any event, he testified he does not “perform those things.” On cross-examination, the Respondent testified that he described the treatment to A.A. which he would be performing prior to doing it. When asked whether he told her the treatment would be near the breast, the Respondent testified that he pointed to the area. He said that he did not use the word “breast” because “I wouldn’t use those terms because the last thing I want to do is have somebody thinking I’m thinking it’s sexualized.” The Respondent testified that he was working in the serratus region.
72. The Respondent testified that when he was treating near her breast, A.A. made the comment to him that it was “very sore”. The Respondent testified that one does not want to come out of trigger point therapy or a myofascial release too quickly so generally he reduces the pressure slightly and asks the patient if they can stay with him. The Respondent testified that he asked A.A. “can you handle it?”. The Respondent testified A.A. responded that she could handle it. On cross-examination it was put to the Respondent that he did not in fact adjust the pressure at all, to which he responded, “No. It may have been close – it may have been close but I adjusted the pressure.” The Respondent acknowledged on cross-examination that throughout this exchange, A.A. showed signs of being uncomfortable. He did not know if she was grimacing and agreed she may have been breathing heavily. He did not think that her eyes were closed. The Respondent testified that he is an extremely strong person.

1(a) Disputed her surgeon's diagnosis of her medical condition and provided your own diagnosis

73. The Panel accepts the evidence of Mr. Finch and agrees that it is neither necessary nor appropriate for an RMT to dispute a surgeon’s diagnosis of a condition or to provide their own diagnosis. The CMTBC Bylaws require registrants to maintain

awareness of and practice within the scope of practice of massage therapy in British Columbia. The scope of practice for massage therapy does not include providing a diagnosis.

74. There is no definition of “diagnosis” contained in the HPA, the Regulation, or the College’s Bylaws. Mr. Finch did not provide a definition of the meaning of that term, and the parties did not make submissions on that point. In this case, the Panel considers the meaning of “diagnosis” in the Citation to be the identification of a disease, condition or disorder.
75. The Panel agrees with the College’s submission that there are inconsistencies in the Respondent’s testimony. For example, the Respondent gave three different versions of the document that he viewed on A.A.’s phone. He testified about viewing an MRI, a radiology report, and an x-ray. The reasons the Respondent originally provided for recalling the document to be a radiology report lack credibility given his later acknowledgement that it may have been an x-ray.
76. The Panel found A.A.’s testimony to be specific, consistent and clear throughout. She repeatedly stated that she showed the Respondent a screen shot of an x-ray (not a radiology report or an MRI) on her phone. A.A. was firm in her testimony about the surgeon’s diagnosis of her medical condition, and what the Respondent told her during her appointment. A.A.’s testimony was also consistent with the testimony of her mother, best friend, and partner. The testimony of A.A. and the Respondent is aligned in many respects. Where the Respondent and A.A. differ, the Panel prefers the evidence of A.A.
77. Nevertheless, the Panel finds that this testimony is insufficient to establish on a balance of probabilities that the Respondent disputed A.A.’s surgeon’s diagnosis of her medical condition, and that the Respondent provided his own diagnosis.
78. The surgeon’s diagnosis of A.A.’s medical condition was scoliosis. The Respondent did not dispute this diagnosis or provide his own diagnosis of her medical condition.
79. While A.A. testified that the Respondent told her that her scoliosis “couldn’t be in [her] thoracic”, the fuller context and focus of A.A.’s testimony was in relation to the

Respondent's comments that her scoliosis "had to have *come from* the lumbar." To some extent, this is consistent with what the Respondent says that he told A.A. The Respondent testified that he did not dispute the surgeon's diagnosis of her scoliosis but that he identified lumbar problems in addition to the thoracic ones.

80. The Respondent did not only view the radiology imaging on A.A.'s phone. The Respondent's clinical records demonstrate that on examination of A.A., he identified dysfunction in her lumbar region. While the Respondent identified additional dysfunction and issues in A.A.'s lumbar region and referenced those in relation to A.A.'s scoliosis, the Panel finds that does not constitute the provision of a diagnosis in this case. The Panel recognizes that the provision of a supplementary diagnosis could amount to a diagnosis. Likewise, the identification of the origin, source or cause of a previously diagnosed medical condition could also amount to a diagnosis. While the Respondent's comments came close to those points, the Panel finds that the totality of the evidence in this case was more nuanced. The Panel finds that the thrust of the Respondent's comments was that he observed dysfunction and discrepancies in A.A.'s lumbar region rather than that he diagnosed scoliosis in A.A.'s lumbar spine.

81. The Panel finds that this allegation has not been proved on a balance of probabilities.

1 (b) Made comments and/or statements of an unprofessional, inappropriate and/or personal nature

82. The Panel is not obligated to find that all the statements particularized in paragraph 1(b) of the Citation were made in order for the College to establish this allegation on a balance of probabilities. The College is required to establish that the Respondent made comments and/or statements of an unprofessional, inappropriate and/or personal nature to A.A. That may include any single such statement or comment. In this case, however, the Panel does find that the Respondent made all the comments and statements that were particularized in paragraph 1(b). The Panel finds those comments and statements to be unprofessional, inappropriate and of a personal nature.

83. With respect to all of the statements and comments, the Panel found A.A.'s testimony to be consistent and clear. The words A.A. attributed to the Respondent were plausible in the context of the appointment events. They also align with much of what the Respondent agreed he stated, and the Respondent's choice of words during his testimony before the Panel. A.A.'s testimony is also consistent with the testimony of her mother, best friend and partner.
84. The Panel finds that the Respondent informed A.A. that she had never had a treatment like his before and that he was smarter than all of his colleagues, or words to that effect. The Respondent agreed that he pioneered new manipulations, methods, and techniques. The Respondent agreed that he told A.A. his treatment might be different than what she was accustomed to as he wanted to prepare for her a different experience. These are words to the effect of "she has never had a treatment like yours before". The Respondent denied telling A.A. that he was smarter than his colleagues, but he agreed telling her that he did not have to study for anatomy and physiology in school. The Panel accepts A.A.'s evidence over that of the Respondent and finds that he told A.A. that he was smarter than all of his colleagues. In any event, the Panel finds that telling A.A. he did not have to study for anatomy and physiology in school (which would have been with his peers) are words to the same effect.
85. The Panel agrees with the College's submission that the implication that the Respondent can obtain results not achievable by other College registrants is contrary to section 78.2(2)(c)(i) of the College's Bylaws and section 29 of the Code of Ethics.
86. The Panel finds that the Respondent asked A.A. if she had issues with incontinence when she was lying face down on the massage therapy table. The Respondent agreed that he probably would have asked A.A. this question. The Panel agrees with the College's submission that questions about A.A.'s urine leakage and incontinence were personal and inappropriate because they took place after the Respondent's assessment was complete and the Respondent did not describe to A.A. any rationale or connection for the questions with this assessment or treatment plan.

87. The Panel finds that the Respondent asked A.A. if she liked to party and whether she was a Vancouver Australian or a Whistler Australian and provided the difference between the two. A.A.'s testimony was extremely specific on these points. It is an unusual statement and one that she would plausibly recall. A.A. is Australian, which is apparent from her accent when speaking, something the Respondent acknowledged. The Panel found the Respondent's testimony that he did not know any other Australians to be unlikely and inconsistent (he initially stated that he has never personally known anyone from Australia and later acknowledged that he had met one person from Australia). This line of conversation was unprofessional and disrespectful and contrary to section 12 and 14 of the Boundaries Standard.
88. The Panel finds that the Respondent asked A.A. if she had a romantic partner or words to that effect. The Respondent admitted that he asks every patient about whether they are married when he stated, "tell me about yourself; *you married*; do you have kids; a dog; a cat; a fish..." The Respondent also admitted that A.A. told him about her boyfriend so there was a discussion that took place between the Respondent and A.A. about her partner. The Respondent said that it was A.A. who brought up her boyfriend. The Panel finds it more likely that it was the Respondent who asked A.A. about having a romantic partner given his admission that he asks all of his patients whether they are married. This line of conversation was non-therapeutic, unprofessional and of a personal nature and contrary to section 12 of the Boundaries Standard.
89. The Panel finds that the Respondent asked A.A. if she was happy in her relationship and/or suggested that she and her partner go to the Rocky Mountains as it would be a romantic place to go, or words to that effect. The Respondent acknowledged that he told A.A. that she and her partner should take a drive through the Rocky Mountains and could not recall if he said that it was romantic but agreed that it was possible. While the Respondent denied asking A.A. if she was happy in her relationship, the Panel finds A.A.'s account to be more credible and more likely. The question is specific and plausible, fits in with the conversation which the Respondent acknowledged did take place about A.A.'s partner, and is consistent with the other types of informal, unprofessional and personal questions that the Respondent asked

A.A. This was non-therapeutic and unprofessional and contrary to section 12 of the Boundaries Standard.

90. The Panel finds that the Respondent shared his views on romantic relationships with A.A. including that they are “really difficult” and his experience that it was “hard to meet people” or using words to that effect. The Respondent denied making these statements, rationalizing, “It’s never been an issue for him”. However, the Respondent acknowledged that he told A.A. he was single, and when he says she expressed surprised, he stated that he attributed his single status to being “gun shy”, something that suggests apprehension and difficulty with interacting with others. The Panel prefers the evidence of A.A. which it found to be more credible. The Panel finds that it was plausible and more likely that the Respondent did speak to A.A. about struggles in his personal and romantic life. This is also the case given that the Respondent admitted that he disclosed to A.A. about the breakdown of his romantic relationship with a woman from Thailand. In that regard, the Panel also finds that the Respondent told A.A. about his previous romantic relationship. While the Panel does not find that the Respondent shared details about his sex life *per se*, the Panel does accept A.A.’s evidence that the Respondent told her about his former romantic partner coming home from work suggesting that she was too tired to be intimate. The Respondent acknowledged that he shared details of the break-up of their relationship. While the Respondent and A.A. differ on the details for this woman’s return to Thailand, they were unified in the fact that she did return to Thailand resulting in the end of their relationship. The Panel does not accept the Respondent’s account that he provided vague answers in response to a line of questioning from A.A. The information he did share was specific and it is more likely that the Respondent initiated that discussion. The Panel accepts A.A.’s evidence that she was incredibly uncomfortable. The Panel finds the Respondent’s disclosures of his romantic life were unsolicited, unwelcome, unprofessional disclosures about his personal life which was not relevant to patient centred care and contrary to section 12 and 13 of the Boundaries Standard.
91. The Panel finds that this allegation has been proved on a balance of probabilities.

92. The Panel has determined that the Respondent has contravened the College's Boundaries Standard pursuant to section 39(1)(a) of the HPA.
93. The College also seeks a determination that the Respondent committed professional misconduct based upon the range and variety of inappropriate comments which it says amount to a marked departure from the behaviour expected of a registrant. The Panel agrees that there were several comments that crossed professional boundaries, but the Panel finds that those comments do not rise to the threshold of professional misconduct in this case. The Panel chooses to make a single determination of a breach of the Boundaries Standard in relation to this allegation.

1(c) Manipulated her neck without any, or, in the alternative, adequate, consent and after she had instructed you not to do so

94. As outlined earlier in these reasons, it is not necessary for the Panel to determine whether any manipulation that did occur fell within the scope of practice. Rather, the issue is whether the Respondent manipulated A.A.'s neck without any or adequate consent, after she instructed him not to do so.
95. The Panel prefers the evidence of A.A. over the evidence of the Respondent where they depart. The Panel found A.A.'s evidence to be clear and consistent. The Panel finds that the Respondent was holding A.A.'s neck and quickly twisted it to the left causing it to crack. The Respondent's evidence is largely aligned with A.A.'s evidence. While he disputes the characterization of his treatment as a "manipulation", the Respondent acknowledges that he did "turn [A.A.'s] neck to the left" and gave it a "little bit of a twist" resulting in a "release" and that the release was a "small crack". The Respondent did not have to intend to "crack" A.A.'s neck for him to have manipulated it. It is also not necessary for the Panel to consider whether his acts were inside or outside of his scope of practice for the purposes of this allegation. The Panel is satisfied that in performing the movement described by both A.A. and the Respondent himself, the Respondent manipulated A.A.'s neck.
96. The Panel finds that the Respondent manipulated A.A.'s neck without adequate or any consent after she had instructed him not to do so. A.A. was clear that the Respondent did not ask for consent to manipulate her neck and she did not provide

consent for that. A.A. was clear that she told him not to crack her neck. The Respondent testified that at the beginning of the appointment, A.A. told him that she was “not okay with cervical manipulation”. He said that he was prepared for that and proposed a “muscle energy technique”. This does not assist the Respondent. The Respondent did not seek any or adequate consent to perform the movement in which he manipulated A.A.’s neck and A.A. had specifically instructed him not to manipulate her neck.

97. The Panel finds that this allegation has been proved on a balance of probabilities.
98. Section 1 and 3 of the Consent Standard set out that consent to treatment is the cornerstone of patient-centred health care. An RMT is required to respect the patient’s autonomy and must obtain consent prior to delivery of massage delivery. The Panel has determined that the Respondent contravened the Consent Standard pursuant to section 39(1)(a) of the HPA.
99. The Panel also agrees with Mr. Finch’s expert opinion that if a patient expresses that they do not want an area of their body treated, it is never appropriate to treat that area. The Respondent’s disregard for A.A.’s clear and unambiguous request not to manipulate her neck shows a lack of respect for his patient and her well being and represents a marked departure from what is expected of a College registrant. The Panel has determined that the Respondent has also committed professional misconduct pursuant to section 39(1)(c) of the HPA.

1(d) Failed to adequately communicate the treatment plan to treat her pectoral muscles and serratus anterior, including that this treatment would be at or near her breasts

100. A.A.'s evidence was clear and consistent on this allegation as well. The Panel accepts A.A.'s testimony that the Respondent touched between her breasts and near her right breast, and that the Respondent did not tell her that the treatment would be at or near her breasts.
101. The Panel found the Respondent's account to be vague and unlikely. He testified that he did communicate the treatment plan to A.A., at the same time he acknowledged that he did not use the word "breast" to A.A. and he "pointed" to the area, which indicates that he did not communicate the treatment plan to treat A.A.'s pectoral muscles and serratus anterior and that this treatment would be at or near her breasts. To the extent that there was minimal communication, it was not adequate.
102. The Panel finds that this allegation has been proved on a balance of probabilities.
103. Section 19 of the Boundaries Standard requires heightened duty to communicate when working in an area of the body that is sexualized. This applies to the area at or near a patient's breasts. Section 4 of the Consent Standard requires an RMT to provide sufficient information to enable the patient to make an informed decision about treatment by, amongst other things, describing the proposed treatment and providing information about the areas of the patient's body where treatment will be delivered. The Respondent did not comply with these requirements. The Panel has determined that the Respondent contravened the Boundaries Standard and the Consent Standard pursuant to section 39(1)(a) of the HPA.
104. The College submits that the Respondent's disregard for A.A.'s autonomy and the fact that the treatment in this case took place very near to her breasts, a sexualized body part, constitutes a marked departure of the conduct expected of a College registrant. The Panel agrees and has determined that the Respondent committed professional misconduct pursuant to section 39(1)(c) of the HPA.

1(e) Failed to obtain any, or, in the alternative, adequate, consent to treat at or near her breasts

105. The Panel accepts A.A.'s evidence that the Respondent did not ask for consent to touch or massage between A.A.'s breasts or near her right breast under her armpit.

106. As noted above, the content of the Respondent's communications about his intended treatment was inadequate. In addition, the Panel finds that the Respondent did not actually seek and obtain consent to treat at or near A.A.'s breasts. Even by his own account, the Respondent did not ask for and receive A.A.'s consent, rather he was focussed on what was in his mind and not in hers:

Q My question is more concerned with the consent process and I think you agree with me, you didn't ask her about that before you started to treat her in that area; right?

A No, I told her exactly what I was going to do.

Q Fair to say, though, that you didn't tell her this treatment was going to be at her near her breast?

A I pointed to -- I pointed to the area where I was going to go.

107. The Panel finds that this allegation has been proved on a balance of probabilities.

108. Section 3 of the Consent Standard requires that RMTs obtain consent prior to delivery of massage therapy (including assessment, treatment and re-assessment). The Respondent did not comply with that requirement. The Panel has determined that the Respondent contravened the Consent Standard pursuant to section 39(1)(a) of the HPA.

109. The College submits that the Respondent's disregard for A.A.'s autonomy and the fact that the treatment in this case took place very near to her breasts, a sexualized body part, constitutes a marked departure of the conduct expected of a College registrant. The Panel agrees and has determined that the Respondent committed professional misconduct pursuant to section 39(1)(c) of the HPA.

1(f) Failed to adequately adjust treatment and communicate with her after she expressed that she was experiencing pain while you were treating at or near her breasts

110. Section 8 of the Consent Standard sets out how RMTs are required to inquire about and handle expressions of pain from patients. An RMT is required to seek patient feedback during treatment and modify treatment in response to verbal or non-verbal indications of pain or discomfort from the patient. This was also described in greater detail by Mr. Finch in his expert evidence, with which the Panel agrees.
111. The Panel accepts A.A.'s testimony. She was clear, consistent, and detailed. A.A.'s description of the pain that she experienced was striking. The pressure was extremely painful, she closed her eyes, scrunched her eyes, tried to work through the pain with her breathing and told the Respondent that it really hurt.
112. The Respondent's testimony largely aligns with A.A.'s testimony. He testified that A.A. made the comment to him that it was "very sore". The Respondent acknowledged that A.A. showed signs of being uncomfortable including that she may have been breathing heavily. He did not think that her eyes were closed. While A.A. and the Respondent differ about whether the Respondent checked with her about continuing, by the Respondent's own account, any pressure adjustment he made may have only been "close" to the original pressure which caused her pain. The Panel accepts A.A.'s account and finds that the Respondent did not stop or adjust his pressure after A.A. complained to him about the pain she was experiencing. Rather, the Respondent continued with treatment as he saw fit.
113. The Panel finds that this allegation has been proved on a balance of probabilities.
114. The Panel has determined that the Respondent contravened the Consent Standard pursuant to section 39(1)(a) of the HPA.
115. The College submits that the Respondent's callous disregard for A.A.'s obvious expressions of pain without stopping treatment constitute a marked departure of the conduct expected of a College registrant. The Panel agrees and has determined that the Respondent committed professional misconduct pursuant to section 39(1)(c) of the HPA.

Citation Paragraph – B.B.

2. On or about September 21, 2020, in the course of providing massage therapy services to B.B., you:

a. Made comments and/or statements of an unprofessional, inappropriate and/or personal nature to him, particularized by one or more of the following:

i. Informing him that you thought he was a “girl” with the name of [REDACTED];

ii. Referring to him as a “girl” during the appointment, despite his intake paperwork and his verbal confirmation that he identified as male;

iii. Asking about his hormone routine, including whether his dose was enough and/or how it was delivered;

iv. Commenting on his gender affirming surgery, in particular that you “saw what was going on here” referring to his chest and/or that you usually only see a mastectomy when a patient has had cancer, or using words to that effect;

v. Failing to provide the therapeutic rationale for asking about scarring from his gender surgery and/or questioning the lack thereof; and/or

vi. Asking him about his knowledge about the difference between men and women and discussing the difference between a man’s and woman’s pelvis and/or hips including that B.B.’s hips were a certain way because he was “born female”, or using words to that effect;

b. During the assessment and while he was clothed, touched his low back, hips, buttocks and/or gluteal cleft without any, or, in the alternative adequate, consent; and/or

116. The College called two witnesses in relation to this allegation: B.B. and his partner, Witness 4. The College also relies upon the evidence of Mr. Finch for this allegation.

117. B.B. testified that he is a professional artist. He seeks massage therapy treatment because of his desk work. B.B. has seen approximately 10 to 12 different massage therapists due to residential moves. In September 2020, B.B. decided to see the Respondent because the clinic was close to where B.B. lived and because the clinic was identified as LGBTQ friendly, something he expressed was important as a transgender man.

118. B.B. attended an appointment on September 21, 2020. B.B. outlined in his evidence various aspects of his conversation during that appointment which he found to be upsetting and uncomfortable:
- a. The Respondent expressed confusion about B.B.'s gender and stated that he thought B.B.'s name was [REDACTED]. B.B. had written his name on the intake form and stated that he was male.
 - b. The Respondent asked B.B. specific questions about his testosterone medication, including what kind it was, how he was taking it, and whether or not he was taking enough.
 - c. After noticing B.B.'s testosterone intake and that he had undergone a double mastectomy, the Respondent stated words to the effect of "I see what's going on here."
 - d. The Respondent commented that he "usually only sees that [i.e. mastectomy surgery] when somebody has cancer."
 - e. The Respondent discussed B.B.'s top surgery, including the lack of scarring.
 - f. The Respondent told B.B. that he had "wide hips" because "they're female hips" and that he needed to measure them.
119. B.B. testified that he was surprised by these comments and questions and had not previously been asked them in other massage therapy appointments. B.B. described feeling uncomfortable, stressed, and anxious. He did not feel particularly safe.
120. B.B. testified about his assessment. B.B. said that the Respondent asked him to stand up and turn facing away from the Respondent who was seated. The Respondent ran his fingers down B.B.'s spine to his buttocks. The Respondent then placed one finger on B.B.'s right buttocks, then in the cleft of his buttocks, and then on his left buttocks. B.B. testified that the Respondent had not asked to touch him in this manner and B.B. had not given consent for the Respondent to touch him in this manner.

121. B.B. felt anxious and uncomfortable. The Respondent asked B.B. to sit on the massage therapy table for further assessment. B.B. decided that he did not want to proceed with the assessment and needed to leave as soon as possible. B.B. told the Respondent that he was uncomfortable and that he was going to leave. The Respondent repeated what B.B. told him “oh you are uncomfortable...”. B.B. left the room and went to the receptionist. He told the receptionist he was leaving and that the Respondent is not professional. B.B. said the clinic could charge him if they wanted. The receptionist seemed confused and concerned. She offered to return B.B.’s intake form, which B.B. took with him. B.B. later realized he did not have the Respondent’s name so telephoned the clinic to request the Respondent’s name.
122. B.B. sent a message to a group chat which included his partner and three of his friends. He stated that he was upset with the Respondent. B.B. also called his partner and asked her to come home from work.
123. B.B. submitted a complaint to CMTBC later that night.
124. B.B. described feeling reluctant to see other massage therapists and unsafe in his community and later moved. B.B. was not cross-examined.
125. Witness 4 testified. She is B.B.’s partner. She met B.B. approximately five years ago and they moved in shortly thereafter. They lived together at the time of B.B.’s appointment with the Respondent.
126. B.B.’s partner testified that B.B. had gone a longer than normal time without a massage therapy appointment due to the COVID-19 lockdown and sought out a therapist in his neighbourhood to provide some relief for his shoulder and arm. He found the Respondent’s clinic and it was important that the clinic was LGBTQ friendly. B.B.’s partner identified the text messages in the group chat. She testified that B.B. had never previously asked her to come home early from work. She was not able to leave work immediately but returned around her usual time. When she returned, she found B.B. in bed. He was on the phone and distracted and would not engage with her. B.B.’s partner tried to speak to B.B. about what occurred. She says that she recognized what B.B. shared as a “violation that could be reported” and assisted B.B. to organize his thoughts. B.B. filed a complaint with CMTBC that night.

B.B.'s partner observed that B.B. did not want to walk in the direction of the Respondent's clinic and only sought out another appointment with an RMT when they moved cities. B.B.'s partner was not cross-examined.

127. The Respondent testified about his appointment with B.B. He acknowledged that he called B.B. "██████" when they first met. He said that this was an "honest mistake." He had never seen the name ██████ spelled with a "█" and thought the intake form said "██████". The Respondent wondered if he looked at the form too quickly. He said that he apologized to B.B. for the error.
128. The Respondent testified that it was appropriate for him to ask B.B. about his testosterone route and dosage. He explained that it is important to know what medications a patient is taking and how much of them in case an ambulance comes as they would need to be provided with that information. The Respondent denied asking B.B. whether the testosterone dosage was sufficient.
129. The Respondent agreed that he asked B.B. about the mastectomy scarring as it that is important information to canvass. The Respondent also agreed that he asked for more information on B.B.'s top surgery and he asked about cancer because he noted that there was no reference to cancer on the form.
130. In relation to the comment "I see what's going on here", the Respondent testified that he said words to the effect of "I see why these two are combined" referring to the testosterone and the mastectomy. The Respondent agreed that this information led him to confirm B.B. was a transgender man and he asked B.B. to confirm this.
131. The Respondent denied saying that B.B. had "female hips" though he did remark that his pelvis had a high angulation and explained to B.B. this was because he was "previously female" or "born female".
132. In relation to the physical assessment, the Respondent denied touching B.B.'s back and low back down to the tailbone. He agreed that he touched B.B.'s buttocks and that he had his thumb in B.B.'s gluteal cleft when touching the coccyx.
133. The Respondent testified that he did ask B.B. whether he could touch his buttocks when he was checking his tailbone, but he did not ask it "that way". He testified, "I

didn't put it that way. I said, you know, I'm just going to go down and check -- he allowed me to do everything else. I'm just going to check. I'm just going to go check tailbone. He said okay. He knows what I was going to do.”

134. The Respondent agreed that B.B. left the appointment early and stated he was uncomfortable. The Respondent expressed surprise by this complaint.

2(a) Made comments and/or statements of an unprofessional, inappropriate and/or personal nature to him, particularized by one or more of the following:

135. The Panel finds that the Respondent did refer to B.B. by the name “██████████”. This was admitted by the Respondent. The Panel accepts the Respondent’s evidence as to the further context of that comment, specifically, that he was not familiar with the male version of the name being spelled with a “█” and was looking at the day sheet. As will be discussed below, B.B.’s testimony on this point was consistent with the Respondent’s testimony.

136. In relation to “referring to [B.B.] as a girl during the appointment, despite his intake paperwork and his verbal confirmation that he identified as male”, B.B.’s testimony about the reference to being a “girl” specifically related to the initial interaction with the Respondent described above. B.B. testified “I see he was looking at my form, my information on it. He said something to the effect of thinking that I was a girl and I'm not sure why. I think maybe he was confused about my name, thought maybe my name was ██████, instead of ██████, and expressing confusion about my gender”. This testimony aligns with the Respondent’s testimony about his lack of familiarity with the name and that he was looking at the day sheet at the time of the interaction. The Panel views that error as different from “referring to him as a girl during the appointment” which is what is alleged. Moreover, B.B. took the intake paperwork with him on his departure from the clinic and it was not before the Panel so the Panel cannot make any determinations as to what was recorded in it. The Panel does not find that this particular was proved.

137. The Panel finds that the Respondent did ask B.B. about his hormone routine including his dose and how it was delivered. The Respondent admitted this.

138. The Panel finds that the Respondent commented on B.B.'s gender affirming surgery and used words to the effect of he "saw what was going on here" referring to B.B.'s chest and that he usually only sees a mastectomy when a patient has had cancer. The Respondent admitted asking about whether the mastectomy was due to cancer and admitted connecting B.B.'s testosterone use and mastectomy to him being a transgender man, which are words to the effect alleged.
139. The Panel finds that the Respondent did not provide a therapeutic rationale for asking about scarring from gender affirming surgery. The Respondent admitted to asking those questions and testified that knowledge of scarring is relevant for an RMT's treatment. He did not however testify that he provided any therapeutic rationale to B.B.
140. The Panel finds that the Respondent did comment about B.B.'s hips including that they were a certain way because he was "born female" or words to that effect. The Respondent admitted this.
141. While the Panel finds that the Respondent made several of the comments particularized in allegation 2(a), the Panel does not consider those comments to be unprofessional, inappropriate or of a personal nature in the specific context of this case. As noted above, the comments at subparagraphs (i) and (ii) relate to the same interaction which took place due to a spelling unfamiliarity and the Respondent looking at his day sheet as he uttered the wrong name in error. While an unfortunate error, this was not unprofessional or inappropriate. The communications at subparagraphs (iii), (iv), (v) and (vi) need to be considered in the context of their underlying therapeutic rationale. Asking about medication history and dosage, as well as scarring is appropriate for massage therapists. The precise rationale the Respondent offered for asking about hormone dosage and route was not persuasive to the Panel (e.g., an ambulance would need to know), however, the Respondent's misapprehension in that regard does not in and of itself establish that the comment was otherwise unprofessional and inappropriate. The College suggested a number of other ways that the Respondent could have asked B.B. about his scarring. The Panel agrees those would have been more appropriate and the phrasing that the

Respondent used was not optimal however, inquiring about B.B.'s scarring was still therapeutically justified. Similarly, it was not inappropriate for the Respondent to share his assessment findings with B.B. regarding his pelvic/hip measurements and the reason for those findings. All of these comments were necessarily personal because they relate to B.B.'s health history which also relates to his gender. Clearly those matters are deeply personal for B.B. In that regard, the Panel found the Respondent to have been cavalier, casual and overly familiar with his language. The Panel is sympathetic to why a communication breakdown took place and how B.B. would have been affronted by the comments that were made, particularly given the Respondent's lack of communication about any therapeutic rationale. Nevertheless, in considering the specific comments that were made, and the specific allegation made in relation to those comments, the Panel does not find that they rise to the level of being unprofessional and inappropriate, and therefore this allegation is not proved on a balance of probabilities.

2(b) During the assessment and while he was clothed, touched his low back, hips, buttocks and/or gluteal cleft without any, or, in the alternative adequate, consent; and/or

142. The Panel finds that the Respondent touched B.B.'s back and low back, down to the tailbone, and had his thumb in B.B.'s gluteal cleft during his assessment.
143. The Panel finds that the Respondent did not obtain consent for this assessment. While the Respondent maintains that B.B. did provide consent, the Respondent's own testimony indicates otherwise. The Respondent said, "I'm just going to go down and check the tailbone" and that B.B. "knows what I was going to do." He did not pose the question, "may I touch you on the buttocks?". The Panel found B.B. to be a credible witness. His testimony was consistent and clear. The Panel accepts B.B.'s evidence that he did not consent to being touched in those parts of his body.
144. This allegation is proved on a balance of probabilities.
145. Section 1 and 3 of the Consent Standard provide that consent to treatment is the cornerstone of patient-centred health care. An RMT is required to respect the patient's autonomy and must obtain consent prior to delivery of massage delivery.

The Panel has determined that the Respondent contravened the Consent Standard pursuant to section 39(1)(a) of the HPA.

146. In addition, the Panel has determined that the Respondent contravened section 19 of the Boundaries Standard which requires registrants to communicate the intent of therapeutic touch to the patient before and during treatment delivery near potentially sexualized areas of the patient's body. B.B.'s buttocks and gluteal cleft are sexualized areas. The Respondent did not communicate the intent of therapeutic touch to B.B. before and during touching those areas of B.B.'s body. The Panel has determined that the Respondent contravened the Boundaries Standard pursuant to section 39(1)(a) of the HPA.
147. The College submits that touching a potentially sexualized part of B.B.'s body without his consent constitutes a marked departure from the conduct expected of a College registrant. The Panel agrees and has determined that the Respondent has committed professional misconduct pursuant to section 39(1)(c) of the HPA.

Citation Paragraph 3

- 3. From or about November 7, 2019 and thereafter, stated online, that you:**
- a) “specialize in structural alignment, specifically spinal and pelvic alignment”;**
 - b) are an “osteopath”, which is a reserved title under section 2(2) of the Medical Practitioners Regulation for registrants of the College of Physicians and Surgeons of British Columbia; and/or**
 - c) are an “Arthrokinetic therapist”.**

148. The College presented evidence from two witnesses in relation to this allegation: Michael Apps, a College investigator; and Kate Parisotto, the College's Deputy Registrar and Director of Inquiry, Discipline and Quality Assurance.
149. Mr. Apps is an investigator employed by the College and appointed under the HPA. He has conducted over 100 investigations. Mr. Apps was assigned to investigate the complaint filed by B.B. On November 7, 2019, Mr. Apps conducted a review of the Respondent's internet presence. The materials he reviewed were attached to his affidavit and show:

- a. The Respondent's Twitter profile (under the username "SBartlettRMT") stated in the description: "Osteopathy, Arthrokinetic Therapy. Specialize in body alignment Currently Single."
 - b. The Respondent's Facebook page for "Stephen M Bartlett, RMT" stated "I am a practicing therapist based in Osteopathy and Arthrokinetic Therapy. I specialize in structural alignment, specifically spinal and pelvic alignment."
 - c. The Respondent's LinkedIn profile stated, "Osteopath and Arthrokinetic Therapist."
150. When Mr. Apps reviewed the Respondent's Twitter and Facebook pages on February 16, 2022, they were unchanged. As of February 16, 2022, the Respondent had removed public access or deleted his LinkedIn profile.
151. Ms. Parisotto gave evidence that College registrants are not permitted to advertise themselves as "specialists". The College is concerned about this issue because of the potential to give the public the impression that one registrant has a special status or education above and beyond other registrants. There are no specialist designations in the profession of massage therapy. Ms. Parisotto also testified that the College is concerned about the use of protected titles because of the potential to confuse the public. While some registrants may use osteopathic techniques, it is not permissible for registrants to use the title "Osteopath" because that is a reserved title for osteopathic physicians under the *Medical Practitioners Regulation*. With respect to the title "Arthrokinetic Therapist", there is no such designation afforded in the profession or by the College. The College is concerned with the use of this description due to the potential to give the public the impression that a registrant has a special status or education which does not exist.
152. The Respondent testified about his belief that "Osteopath" is not a reserved title in British Columbia. The Respondent testified about a website that he understood to allow the use of the title in British Columbia. On cross-examination, the British Columbia legislation was put to the Respondent and his response was that "...there is confusion with this....one thing says one thing, another says another and, you know, who is it made by? Do they really understand this stuff? Often it's just

somebody behind a desk coming up with this stuff. They make mistakes so what am I supposed to do?..." The Respondent confirmed on cross-examination that he views himself as an osteopath.

153. The Respondent testified that he was aware that there was a Bylaw prohibiting the title "specialist", but he understood that the use of the words "specializes in" are acceptable.

154. The Respondent testified that he was not aware that he had a Twitter account. On cross-examination, he testified that he "may have signed up for it one time" but that he did not know and did not recall signing up for it. On cross-examination, the Respondent was asked about several hockey tweets from the account bearing his name. The Respondent testified that he did not realize he was tweeting those replies. He suggested that he may have been automatically signed in and that when it comes to social media, he is at a "kindergarten level." When pressed, the Respondent was asked the following question and gave the following answer:

Q So is it your evidence that somebody else created this Twitter profile in your name with your RMT designation and your picture and tweeted from it?

A Let's say somebody because I've had trouble over the years after my accident so somebody might have, maybe my sister or, you know, could be anybody -- may have, hey, do you want to do this; okay, just agree to it. I don't know. I don't remember. This is nothing I would intentionally sign up for. I may have done it. I don't know.

155. The Respondent testified that he did create a Facebook account. He testified that he deleted it. He testified that he could not recall when he deleted his Facebook account, including whether he deleted it within 24 hours of testifying at the hearing. The Respondent testified that he signed up for a LinkedIn account but forgot about it and never ended up using it. The Respondent agreed that anyone searching "Stephen Bartlett RMT" on the internet would be able to view these social media profiles.

156. During the proceedings, the Respondent referred to himself as a "spinal therapist", a "myofascial therapist", a "pelvic therapist", and an "osteopathic therapist".

3(a) “specialize in structural alignment, specifically spinal and pelvic alignment”

157. As noted above, section 78 of the College’s Bylaws prohibits registrants from using the term “specialist” or “any similar designation, term or reference”:

Restriction on specialist titles

78.8 Unless otherwise authorized under the Act, a Registrant must

- (a) not use the title "specialist" or any similar designation, term or reference that suggests a recognized special status, accreditation or practice on any letterhead or business card or in any other marketing activity,
- (b) take all reasonable steps to discourage use, in relation to the Registrant by another person, of the title "specialist" or any similar designation suggesting a recognized special status or accreditation in any marketing activity, and
- (c) in any advertisement, identify herself as being responsible for the practice advertised.

158. The following definitions apply:

“advertisement” means the use of space or time in any type of public medium including but not limited to the internet, or the use of a commercial publication such as a brochure or handbill, to communicate with the general public or a segment thereof, for the purpose of promoting professional services or enhancing the image of the advertiser;

“marketing activity” includes

- (a) an advertisement,
- (b) any publication or communication in any medium with any patient, prospective patient or the public generally in the nature of an advertisement, promotional activity or material, a listing in a directory, a public appearance or any other means by which professional services are promoted,
- (c) contact with a prospective patient initiated by a Registrant, and
- (d) use of the name of a Registrant's clinic or business;

“unprofessional” means a marketing activity that is contrary to the best interest of the public or tends to diminish the profession's ability to provide service of the highest quality.

159. These sections must also be read together with the general rule found in section 78.2(1) of the Bylaws which states:

78.2 (1) Any marketing activity undertaken or authorized by a Registrant in respect of her professional services must not be

- (a) false,
- (b) inaccurate,
- (c) reasonably capable of misleading the recipient or intended recipient, or
- (d) unverifiable.

160. Accordingly, a registrant's advertising includes the use of space on the internet to communicate with the general public or a segment thereof to promote services or enhance the image of the advertiser. Advertising is conduct which is included in the definition of "marketing activity."
161. There are no recognized specializations in the profession of massage therapy in British Columbia. Registrants are prohibited from identifying themselves as specialists and are required to take all reasonable steps to discourage others from identifying them as specialists. The underlying reason is to prevent misleading the public. The Panel accepts Ms. Parisotto's unchallenged evidence regarding the risk of suggesting one registrant holds a different or higher qualification than another, and the risk of misleading or confusing the public.
162. In *College of Midwives of British Columbia v. MaryMoon*, 2020 BCCA 224, the Court of Appeal discussed the public interest importance of reserved titles:

[102] An appropriate articulation of the objective of s. 12.1(1), in my view, is set out in the *Safe Choices Report* as follows:

Reserved titles afford a mean for consumers to identify the different types of health care providers, to distinguish the qualified from the unqualified, and to differentiate those practitioners who are regulated from those who are not. Titles must adequately serve the public in describing the practitioner and the services being provided and must distinguish the practitioner from others performing services outside the jurisdiction of the college.

[103] There is no question this is a pressing and substantial objective. In *Rocket* (at 249), the Court addressed a different objective but some of its comments are apposite:

It is difficult to overstate the importance in our society of the proper regulation of our learned professions. Indeed, it is not disputed that the provinces have a legitimate interest in regulating professional advertising. The maintenance of professionalism and the protection of the public are at the heart of such regulations. ...

163. The College submits that there is an important public interest in providing patients with accurate information to allow them to identify the different types of health care providers and seek treatment accordingly. Advertising, including marketing activity, that undermines that objective by using misleading or inaccurate descriptions is

contrary to the best interest of the public and is unprofessional within the definition set out in the College Bylaws. The Panel agrees with this submission.

164. The Panel finds the evidence clear that the Respondent's Twitter and Facebook pages prominently identified him as an RMT, stating that he "specialize[s]" in body alignment or structural alignment, "specifically spinal and pelvic alignment." The Respondent acknowledged the Facebook account was his and did not deny the postings on his page. The Panel does not accept the Respondent's testimony about his Twitter account. It was inconsistent; ranging from a denial to having created an account, to a lack of recollection of having created an account, to an acknowledgement that he may have done so, to a suggestion that he was automatically signed in, and finally, to a suggestion that someone else may have tweeted on his behalf. The Panel finds it implausible that someone else tweeted from an account bearing the Respondent's handle given that the content of the tweets relates to him, and that the account handle is the same one he acknowledged using in other social media profiles. There is no evidence that anyone other than the Respondent created and used his Twitter account. Moreover, the Respondent acknowledged he may have created the Twitter account and could have tweeted from it.
165. The Panel finds that from or about November 7, 2019 and thereafter, the Respondent stated online, that he specialized in structural alignment, specifically spinal and pelvic alignment. This allegation is proved on a balance of probabilities.
166. The Respondent does not hold a specialization in body alignment or structural alignment, specifically spinal and pelvic alignment because no such specialization exists. The Respondent's use of language contravenes the prohibition in section 78.8 of the Bylaws on the use of a term or reference that suggests a recognized special status, accreditation or practice. It is also misleading contrary to section 78.2 of the Bylaws. The Panel has determined that the Respondent has contravened the College's Bylaws pursuant to section 39(1)(a) of the HPA. The College has requested that the Panel also determine that this constitutes unprofessional conduct

pursuant to section 39(1)(c). The Panel considers the singular determination of a breach of the Bylaws is most appropriate in relation to this allegation.

3(b) are an “osteopath”, which is a reserved title under section 2(2) of the Medical Practitioners Regulation for registrants of the College of Physicians and Surgeons of British Columbia

167. As noted above, section 78.7 of the College’s Bylaws provides that registrants may only use certain titles:

Use of titles in advertising

78.7 (1) In a marketing activity or advertisement to promote her massage therapy practice, a Registrant may use only those occupational titles that have been reserved to Registrants under the Act or otherwise have been approved by the Board.

168. The College Board has not approved any additional titles for use in advertising. A registrant may use only the titles set out in the Regulation which are: massage therapist, registered massage therapist, massage practitioner, registered massage practitioner. The use of the title “Osteopath” is not permitted by a registrant.

169. In addition, the use of the title "Osteopath" engages section 12.1 of the HPA which provides:

Prohibition and limitation — use of reserved titles

12.1 (1) If a regulation under section 12 (2) (b) prescribes a title to be used exclusively by registrants of a college, a person other than a registrant of the college must not use the title, an abbreviation of the title or an equivalent of the title or abbreviation in another language

(a) to describe the person's work,

(b) in association with or as part of another title describing the person's work, or

(c) in association with a description of the person's work.

(2) If a regulation under section 12 (2) (b.1) prescribes a limit or condition respecting the use of a title, the title must not be used except in accordance with the regulation.

(3) A person other than a registrant of a college must not use a name, title, description or abbreviation of a name or title, or an equivalent of a name or title in another language, in any manner that expresses or implies that he or she is a registrant or associated with the college.

170. Section 2(2) of the *Medical Practitioners Regulation* provides that the title “Osteopath” is reserved for exclusive use by osteopathic physicians, who are a class of registrants in the College of Physicians and Surgeons of British Columbia.
171. The Panel finds the evidence is clear that the Respondent used the title “Osteopath” on his LinkedIn page during the material times. He acknowledged doing so, expressed a belief that it was permitted, and testified that he considers himself to be an osteopath. This title is not listed in the Regulation and has not been approved by the College Board. This allegation has been proved on a balance of probabilities.
172. The Respondent has contravened section 78.7 of the College’s Bylaws. The title is also misleading to the public and the Respondent has therefore contravened section 78.2 of the College’s Bylaws. The Panel has determined that the Respondent has contravened the College’s Bylaws pursuant to section 39(1)(a) of the HPA. The Panel has decided to make the singular determination in relation to this allegation as well.

3(c) are an “Arthrokinetic therapist”

173. As noted above, section 78.7 of the College’s Bylaws provides that registrants may only use certain titles:

Use of titles in advertising

78.7 (1) In a marketing activity or advertisement to promote her massage therapy practice, a Registrant may use only those occupational titles that have been reserved to Registrants under the Act or otherwise have been approved by the Board.

174. The College Board has not approved any additional titles for use in advertising. A registrant may use only the titles set out in the Regulation which are: massage therapist, registered massage therapist, massage practitioner, registered massage practitioner.
175. The Panel finds the evidence is clear that during the material times, the Respondent used another title in his LinkedIn profile: Arthrokinetic Therapist. This title is not listed in the Regulation and has not been approved by the College Board. This allegation has been proved on a balance of probabilities.

176. The Respondent has contravened section 78.7 of the College's Bylaws. The title is also misleading to the public and the Respondent has therefore contravened section 78.2 of the College's Bylaws. The Panel has determined that the Respondent has contravened the College's Bylaws pursuant to section 39(1)(a) of the HPA. The Panel has decided to make the singular determination in relation to this allegation as well.

F. ORDER

177. In summary, the Panel finds that the College has proven the allegations in paragraphs 1(b), 1(c), 1(d), 1(e), 1(f), 2(b), 3(a), 3(b), and 3(c) of the Citation to the requisite standard. The allegations in paragraphs 1(a) and 2(a) of the Citation are dismissed.

178. Pursuant to section 39(1) of the HPA, the Panel has determined that the Respondent:

- a. Has not complied with the College's Boundaries Standard in relation to the allegation at paragraph 1(b) of the Citation;
- b. Has not complied with the Consent Standard and has committed professional misconduct in relation to the allegation at paragraph 1(c) of the Citation;
- c. Has not complied with the Boundaries Standard and the Consent Standard and has committed professional misconduct in relation to the allegation at paragraph 1(d) of the Citation;
- d. Has not complied with the Consent Standard and has committed professional misconduct in relation to the allegation at paragraph 1(e) of the Citation;
- e. Has not complied with the Consent Standard and has committed professional misconduct in relation to the allegation at paragraph 1(f) of the Citation;

- f. Has not complied with the Consent Standard and the Boundaries Standard and has committed professional misconduct in relation to the allegation at paragraph 2(b) of the Citation;
- g. Has not complied with the Bylaws in relation to the allegation at paragraph 3(a) of the Citation;
- h. Has not complied with the Bylaws in relation to the allegation at paragraph 3(b) of the Citation; and
- i. Has not complied with the Bylaws in relation to the allegation at paragraph 3(c) of the Citation.

Schedule for Submissions on Penalty and Costs

179. The Panel directs that the parties provide written submissions regarding the appropriate penalty and costs.

180. The Panel directs that the parties provide the written submissions in accordance with the following schedule:

- a. Submissions must be delivered by counsel for the College to the Respondent and the Panel by no later than September 22, 2023;
- b. Submissions must be delivered by the Respondent to counsel for the College and the Panel by no later than October 13; and
- c. Reply submissions may be delivered by counsel for the College to the Respondent and the Panel by no later than October 20.

181. The written submissions can be delivered by email to the Panel's legal counsel.

Delivery and Public Notification

182. The Panel reminds the College of the requirements in section 39(3)(c) of the HPA.

183. The Panel directs that pursuant to sections 39.3(1)(d) of the Act, the Registrar notify the public of the determination made herein.

184. The Panel directs that pursuant to section 39.3(3)(a) of the Act, the Registrar withhold part of the information otherwise required to be included in the public

notification under this section as the Panel considers it necessary to protect the interests of the complainants and other persons affected by the matter. The Panel refers specifically to the complainants' names and identifying information, and the names and identifying information of the College's non expert witnesses. The College may make such redactions as are necessary to comply with their legislative obligations. The College may return to the Panel for further direction as to implementation regarding section 39.3(3)(a) if required.

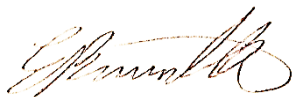
Notice of Right to Appeal

185. The Respondent is advised that under section 40(1) of the Act, a respondent aggrieved or adversely affected by an order of the Discipline Committee under section 39 of the Act may appeal the decision to the Supreme Court. Under section 40(2), an appeal must be commenced within 30 days after the date on which this order is delivered.

Dated: August 31, 2023



Marilynne Waithman, Chair



Emily Bissonnette, RMT



Michael Wiebe, RMT