IN THE MATTER OF A HEARING BY
THE DISCIPLINE COMMITTEE OF THE COLLEGE OF MASSAGE THERAPISTS
OF BRITISH COLUMBIA CONVENED PURSUANT TO THE PROVISIONS OF
THE *HEALTH PROFESSIONS ACT* RSBC 1996, c.183

BETWEEN:

College of Massage Therapists of British Columbia

(the "College")

AND:

Leonard Krekic

(the "Respondent")

REASONS FOR DECISION

Date and Place of Hearing:	March 9 to 12, 15 to 19, and 22 to 23, 2021, April 26 to 30, 2021, September 29, October 1, 28, and 29, 2021 By video-conference
Panel of the Discipline Committee (the "Panel")	Arnold Abramson, Chair Elisa Peterson, RMT Michael Wiebe, RMT
Counsel for the College:	Elizabeth Allan Greg Cavouras
Counsel for the Respondent:	Scott Nicoll Gurleen Randhawa
Counsel for the Panel:	Susan Precious

Introduction

1. On August 5, 2020, the College of Massage Therapists of British Columbia (the "College") issued a citation pursuant to section 37 of the *Health Professions Act* RSBC 1996 c. 183 (the "HPA" or "Act") naming Leonard Krekic as Respondent (the "Citation").

2. This panel of the College's discipline committee (the "Panel") conducted a discipline hearing on March 9 to 12, 15 to 19, and 22 to 23, 2021, April 26 to 30, 2021, September 29, October 1, 28, and 29, 2021 (the "Discipline Hearing") to determine whether the Respondent failed to comply with the Act or a bylaw, failed to comply with a standard imposed under the Act, that is, the College's Code of Ethics and/or Standards of Practice, or committed professional misconduct or unprofessional conduct.

3. For the reasons set out below, the Panel finds that the College has proven all of the allegations in the Citation to the requisite standard, with the exception of the allegations at paragraphs 4 (a) (ii), 4 (b) (iv) and 6 (b) (ii) ii. which were not proven to the requisite standard. The College did not pursue the allegations at paragraphs 4(b)(iii) and 6(a)(i) of the Citation.

Background

4. The particulars of the allegation against the Respondent were set out in the Citation as follows:

> 1. In the course of providing massage therapy services to Patient 1,
>
> (a) In or about 2012, you:
>
> (i) Engaged in inappropriate and unprofessional conduct by hugging her;
>
> (ii) Made statements and/or inquiries of an unprofessional, inappropriate and/or personal nature including asking her if you could pray for her and/or praying for her in her presence;
>
> (iii) Placed your hand(s) under her undergarment or otherwise moved her undergarment without her consent;
>
> (iv) Massaged or otherwise touched her mons pubis and/or labia for a non-therapeutic and/or sexual purpose; and/or

(b) In or about November 2012, you inserted your finger(s) into her anus for a non-therapeutic and/or sexual purpose;

2. In the course of providing massage therapy services to Patient 2,

(a) On or about March 20, 2014, you:

(i) Made comments and/or statements of an unprofessional, inappropriate and/or personal nature by sharing overly personal details about your life including that your eldest daughter had “daddy issues” and/or your belief that God works through you to heal people; and/or

(ii) Massaged or otherwise touched her mons pubis for a non-therapeutic or sexual purpose;

(b) On or about March 28, 2014, you:

(i) Made comments and/or statements of an unprofessional, inappropriate and/or personal nature including stating that God works in mysterious ways;

(ii) Placed your hand(s) under her undergarment or otherwise moved her undergarment without her consent;

(iii) Massaged or otherwise touched her mons pubis and/or labia for a non-therapeutic or sexual purpose; and/or

(iv) For a non-therapeutic or sexual purpose, you;

i. Directed her to the edge of the massage table and to spread her legs open;

ii. When she did so, you placed yourself between her legs and had her straddle you, facing you and while you were seated; and/or

iii. In this position, you pressed your groin into her groin;

3. In the course of providing massage therapy services to Patient 3,

(a) Between about 2009 and 2014, you massaged or otherwise touched her mons pubis and/or labia for a non-therapeutic or sexual purpose; and/or

(b) On or about November 10, 2016, you pressed your groin against her hand;

4. In the course of providing massage therapy services to Patient 4,

(a) On or about February 8, 2019, you:

(i) Failed to provide appropriate disrobing options and/or appropriately drape her and caused her to sign a consent form while she was undressed and prone which exposed her breasts; and/or

(ii) Pressed your groin against her hand for a non-therapeutic or sexual purpose;

(b) On or about February 15, 2019, you:

(i) Failed to appropriately drape her and exposed her buttocks without her consent;

(ii) Massaged or otherwise touched her groin area without her consent;

(iii) Massaged or otherwise touched her labia for a non-therapeutic or sexual purpose; and/or

(iv) Pressed your groin against her hand for a non-therapeutic or sexual purpose;

5. In the course of providing massage therapy services to Patient 5,

(a) On or about February 15, 2019, you pressed your groin against her hand for a non-therapeutic or sexual purpose; and/or

(b) On or about March 12, 2019, you placed your hands underneath her undergarment and massaged her breasts for a non-therapeutic or sexual purpose;

6. In the course of providing massage therapy services to Patient 6,

(a) On or about March 14, 21, and 28, 2019, you:

(i) Pressed your groin into her hand for a non-therapeutic or sexual purpose;

(ii) Massaged or otherwise touched her mons pubis and/or labia for a non-therapeutic and/or sexual purpose;

(iii) Massaged or otherwise touched her groin area for a non-therapeutic and/or sexual purpose,

(iv) Made statements and/or inquiries of an unprofessional, inappropriate and/or personal nature including initiating faith-based conversations, asking her if you could pray for her and/or praying for her in her presence; and/or

(v) Engaged in inappropriate and unprofessional conduct by hugging her;

(b) Between about April 4, 2019 and September 2019 you:

(i) Made statements of an unprofessional, inappropriate and/or personal nature by praying for your chaperone during her treatment;

(ii) For a non-therapeutic and/or sexual purpose you:

i. Directed her to the edge of the massage table and to spread her legs open;

ii. When she did so, you placed yourself between her legs and rested your elbows on her knees and your head near her groin; and/or

iii. In this position, your upper bodies came into contact;

(c) Massaged or otherwise touched her gluteal cleft and/or perineum for a non-therapeutic and/or sexual purpose; and/or

(d) On or about October 2 and 10, 2019, you pressed your groin against her hand for a non-therapeutic or sexual purpose;

7. From about August 23, 2019 through November 21, 2019, you entered into a close personal relationship and engaged in inappropriate and unprofessional communications with Patient 6, particularized by one or more of the following:

(a) Communicated with her by text message and email about matters outside of massage therapy treatments;

(b) Offered to rent her a suite connected to your house at a reduced price if she would help you clean and/or rent out another property or properties that you own;

(c) Instructed her to rent the property or properties using the name "[redacted]" and an email address that did not contain her real name so that the CMTBC would not be able to discover that she was your patient;

(d) Instructed her to tell those who inquired that you knew each other through her parents and to not mention their personal relationship during massage therapy appointment in front of the chaperone;

(e) Instructed her to stay in her rental unit when his housekeeper, who was also one of his chaperones, was at his house;

(f) Became her landlord;

(g) Repeatedly entered into her suite with limited notice and/or without express consent;

(h) Informed her that if she and her boyfriend ended their relationship that you would like to pursue her romantically;

(i) Initiated physical contact including hugging her, massaging her neck while she was sitting on the couch and/or putting your arm around her while watching television; and/or

(j) Attended at her place of work without express permission.

8. You breached the Order made April 5, 2019 pursuant to section 35 of the Act by:

(a) Failing to inform CMTBC immediately of any new locations where you were providing massage therapy services;

(b) During the months of July and August 2019, failing to provide reports each week with each patient you consulted, assessed, examined or treated and the name of the person who acted as a chaperone for each of those patients;

(c) During an appointment in late July or early August 2019, failing to have a chaperone present at all times during the consultation, assessment, examination or treatment of a female patients; and/or

(d) Failing to ensure that at the completion of any consultation, assessment, examination or treatment of a patient that the

chaperone records their full name, signature and date in the corresponding patient chart entry;

9. You failed to provide treatment records for three female patients in response to the CMTBC's June 14, 2019 request within a reasonable time period and did not do so until September 5, 2019; and
10. You practiced massage therapy without liability insurance between November 1 and 16, 2019.

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.

5. During the Discipline Hearing, the College advised that it would not be pursuing the allegation at paragraph 6(a)(i) of the Citation. In its closing submissions, the College advised it would not be pursuing the allegation set out at paragraph 4(b)(iii) of the Citation.

6. On February 17, 2021, this Panel directed that the Discipline Hearing be held in private, that any transcript of the Discipline Hearing that is made available to the public be redacted such that the names and all related identifying information of all non-expert witnesses be withheld; that the Discipline Hearing be conducted by video-conference; and that the College's protocol be used for the Discipline Hearing. [redacted]

7. The Discipline Hearing took place by video-conference, hosted by Charest Reporting. The parties led evidence and delivered opening and closing submissions.

8. The Respondent acknowledged service of the Citation in this matter and the Panel is satisfied that the Citation was properly served.

Admissions

9. The Respondent advised both the College and the Panel that he has made some admissions and some partial admissions.

10. The Respondent's admissions are:

Mr. Krekic has admitted the allegations in paragraphs 7(a)-(b), 7(d)-(f), 8(a)-(d), 9 and 10 of the Citation, namely that:

7(a): Mr. Krekic admits that he communicated with [Patient 6] by text message and email about matters outside of massage therapy treatments.

7(b): Mr. Krekic admits that he offered to rent [Patient 6] a suite connected to his house at a reduced price if she would help him clean and/or rent out another property or properties that he owned.

7(d): Mr. Krekic admits that he instructed [Patient 6] to tell those who inquired that they knew each other thought their parents and to not mention their personal relationship during massage therapy appointments in front of the chaperone.

7(e): Mr. Krekic admits that he instructed [Patient 6] to stay in her rental unit when his housekeeper, who was also one of his chaperones, was at his house cleaning.

7(f): Mr. Krekic admits that he became [Patient 6]'s landlord.

8(a): Mr. Krekic admits that he failed to inform the CMTBC immediately of any new locations where he was providing massage therapy services.

8(b): Mr. Krekic admits that during the months of July and August 2019, he failed to provide reports each week with each patient he consulted, assessed, examined or treated and the name of the person who acted as a chaperone for each of those patients.

8(c): Mr. Krekic admits that during an appointment in late July or early August 2019, he failed to have a chaperone present at all times during the consultation or assessment of female patients.

8(d): Mr. Krekic admits that he failed to immediately enter the chaperone's full name, signature and date in the corresponding patient chart entry information at the completion of any consultation, assessment, examination or treatment of a patient.

9: Mr. Krekic admits he failed to provide treatment records for three female patients in response to the CMTBC's June 14, 2019 request within a reasonable time period and did not do so until September 5, 2019.

10: Mr. Krekic admits he practiced massage therapy without liability insurance between November 1 and 16, 2019.[1]

11. The Respondent's partial admissions are:

Mr. Krekic has made partial admissions with respect to the allegations in paragraphs 6(b)(i), 7(g), 7(i), 7(j) of the Citation, namely he has admitted that:

6(b)(i): Mr. Krekic admits that he prayed for his chaperone during [Patient 6]'s treatment.

7(g): Mr. Krekic admits that he entered into [Patient 6]'s suite with notice that was agreed upon.

7(i): Mr. Krekic admits that he initiated physical contact with [Patient 6]'s including hugging her and putting his arm around her while watching television.

[1] Written Closing Submissions of the Respondent page 4

7(j): Mr. Krekic admits that he attended [Patient 6]'s place of work, specifically school grounds, in the course of walking a dog, and texted her to let her know he was there.[2]

12. The College submits the following in relation to the Respondent's admissions:

    a. With respect to paragraphs 7(a), 7(b), 7(d), 7(e), 7(f), 8(a), 8(b), 8(c), 8(d), 9, and 10 in the Citation, the Respondent has admitted to the conduct alleged in the Citation. The College accepts these admissions.

    b. With respect to paragraphs 6(b)(i) and 7(i) in the Citation, the Respondent has partially admitted to the conduct alleged in the Citation. The College accepts these admissions to the extent that they concede some of the conduct alleged, but submits that in both cases the entire allegation was proven at the hearing, not only the portions the Respondent admits to.

    c. With respect to paragraphs 7(g) and 7(j) in the Citation, the Respondent has selectively admitted some of the conduct alleged in the Citation and added exculpatory facts, many of which are contested. These proposed admissions fundamentally re-cast the conduct alleged, and the College does not accept the version of events that the Respondent purports to "admit".

Legal Framework

Burden and Standard of Proof

13. The burden of proof is on the College and remains on the College at all times.

14. The parties dispute the applicable standard of proof in this matter. The College submits that it must prove its case on a balance of probabilities and argues that the law on this point is well established. The College relies upon *F.H. v. McDougall*, 2008 SCC 53, which it says is the leading authority on point. In *F. H. v. McDougall*, the Supreme Court of Canada held that the applicable standard was on a balance of probabilities and that "evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test".

15. The College argues that since 2008, this standard has been adopted in professional discipline proceedings, including those conducted by this Discipline Committee. The College argues that *F.H. v. McDougall* has been cited over 6000 times by courts and tribunals.

[2] Written Closing Submissions of the Respondent page 4-5

16. The Respondent also cites *F.H. v. McDougall*, however, the Respondent argues that "The College bears the burden to prove the allegations against the Respondent on more than a bare balance of probabilities. It must prove the allegations through by a fair and reasonable preponderance of credible evidence that is clear, convincing and cogent."

17. The Respondent also cited *X v. College of Teachers (British Columbia)*, 2004 BCSC 1593 underlining the passages below which state that something more than a balance of probabilities is required:

> [27] At p. 123 of the Final Report, the Panel noted the appropriate standard of proof. In this respect the Panel quoted from *Jory v. College of Physicians and Surgeons of British Columbia*, [1985] B.C.J. No. 320 (S.C.) at ¶ 14:
>
> > The standard of proof required in cases such as this is high. It is not the criminal standard of proof beyond a reasonable doubt. But it is something more than a bare balance of probabilities. The authorities establish that the case against a professional person on a disciplinary hearing must be proved by a fair and reasonable preponderance of credible evidence: *Regina v. Discipline Committee of the College of Physicians and Surgeons of the Province of Saskatchewan, Ex parte sen* (1969), 1969 CanLII 615 (SK CA), 6 D.L.R. (3d) 520, 69 W.W.R. 201 (Sask. C.A.). The evidence must be sufficiently cogent to make it safe to uphold the findings with all the consequences for the professional person's career and status in the community: *Hirt v. College of Physicians and Surgeons of B.C.* (1985), 1985 CanLII 462 (BC SC), 63 B.C.L.R. 185, [1985] B.C.J. No. 2739 (S.C.) at 206.
>
> [emphasis added by Respondent]

18. The Panel finds that the standard of proof is on a balance of probabilities. The question of whether there exists an intermediate standard of proof was before the Supreme Court of Canada in *F.H. v. McDougall* in 2008, a decision decided four years after the *X* decision, cited by the Respondent. The Supreme Court of Canada unequivocally put that question to rest:

> [40] Like the House of Lords, I think it is time to say, once and for all in Canada, that there is only one civil standard of proof at common law and that is proof on a balance of probabilities. Of course, context is all important and a judge should not be unmindful, where appropriate, of inherent probabilities or improbabilities or the seriousness of the allegations or consequences. However, these considerations

do not change the standard of proof. I am of the respectful opinion that the alternatives I have listed above should be rejected for the reasons that follow.

…

[44] Put another way, it would seem incongruous for a judge to conclude that it was more likely than not that an event occurred, but not sufficiently likely to some unspecified standard and therefore that it did not occur. As Lord Hoffmann explained in *In re B* at para. 2:

> If a legal rule requires a fact to be proved (a "fact in issue"), a judge or jury must decide whether or not it happened. There is no room for a finding that it might have happened. The law operates a binary system in which the only values are zero and one. The fact either happened or it did not. If the tribunal is left in doubt, the doubt is resolved by a rule that one party or the other carries the burden of proof. If the party who bears the burden of proof fails to discharge it, a value of zero is returned and the fact is treated as not having happened. If he does discharge it, a value of one is returned and the fact is treated as having happened.

In my view, the only practical way in which to reach a factual conclusion in a civil case is to decide whether it is more likely than not that the event occurred.

[45] To suggest that depending upon the seriousness, the evidence in the civil case must be scrutinized with greater care implies that in less serious cases the evidence need not be scrutinized with such care. I think it is inappropriate to say that there are legally recognized different levels of scrutiny of the evidence depending upon the seriousness of the case. There is only one legal rule and that is that in all cases, evidence must be scrutinized with care by the trial judge.

[46] Similarly, evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test. But again, there is no objective standard to measure sufficiency. In serious cases, like the present, judges may be faced with evidence of events that are alleged to have occurred many years before, where there is little other evidence than that of the plaintiff and defendant. As difficult as the task may be, the judge must make a decision. If a responsible judge finds for the plaintiff, it must be accepted that the evidence was sufficiently clear, convincing and cogent to that judge that the plaintiff satisfied the balance of probabilities test.

…

[49] In the result, I would reaffirm that in civil cases there is only one standard of proof and that is proof on a balance of probabilities. In all civil cases, the trial judge must scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred.

[emphasis added]

19. *F. H. v. McDougall* has been repeatedly applied by Canadian courts and tribunals, including in British Columbia. This Discipline Committee has consistently adopted the balance of probabilities standard as set out in *F.H. v. McDougall*; for example, in *CMTBC v. Martin*, 2015 CMTBC 01 and *CMTBC v. Gill*, 2019 CMTBC 01. The Panel sees no reason to depart from that standard in this case.

Jurisdiction over Former Registrant

20. The Respondent was a registrant at the time of the conduct that is the subject of the Citation. He was no longer a registrant at the time of the Discipline Hearing.

21. No question about jurisdiction over the Respondent has been raised by the parties and none exists. The Discipline Committee has jurisdiction over the Respondent as a former registrant under the HPA. Section 26 of the HPA, which applies to Part 3 of the Act dealing with inspections, inquiries and discipline, expressly defines "registrant" for the purposes of that section to include a "former registrant".

Action following a Discipline Hearing

22. Pursuant to section 39 of the HPA, on completion of a discipline hearing, the Panel must either dismiss the matter or make a determination regarding the Respondent's conduct:

> Action by discipline committee
> 39 (1) On completion of a hearing, the discipline committee may, by order, dismiss the matter or determine that the respondent
>
> (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.

23. In the following sections of these reasons, the Panel sets out the applicable legal framework for the concepts identified in section 39(1) of the HPA.

Act, Regulation and Bylaws

24. 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. Section 19 (8) of the HPA requires a registrant to practise 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.

25. Pursuant to this authority, the College enacted the Code of Ethics and Standards of Practice for the profession of massage therapy.

26. Section 75 of the College's Bylaws requires that every registrant must comply with the Code of Ethics and the Standards of Practice.

Code of Ethics

27. The Code of Ethics defined "sexual misconduct" in section 1 as follows:

> **"sexual misconduct"** means:
>
> (a) sexual intercourse or other forms of physical sexual relations between a massage therapist and a patient,
>
> (b) touching, of a sexual nature, of a patient by a massage therapist,
>
> (c) behaviour or remarks of a sexual nature by a massage therapist towards a patient, or
>
> (d) sexualizing the treatment environment,
>
> but does not include touching, behaviour and remarks by a massage therapist to a patient that are of a clinical nature appropriate to the massage therapy service being provided**.**

28. The Code of Ethics provides:

> General duties
>
> 2. Massage therapists must act in the best interest of the patient.
>
> 3. Massage therapists must recognize and disclose any conflicts of interest that may arise in the therapeutic relationship and resolve them in the patient's best interest.
>
> 4. Massage therapists must treat the patient with respect and uphold the patient's dignity.
>
> Boundaries
>
> 19. Massage therapists must set and maintain appropriate professional boundaries with a patient.
>
> 20. Massage therapists must refrain from taking advantage of a patient for the massage therapist's own personal, sexual, emotional, social, political, or financial interest or benefit.
>
> 21. Massage therapists must not engage in sexual misconduct with a patient.
>
> 22. A massage therapist must refrain from entering into a close personal relationship with a former patient unless:
>
> (i) a reasonable period of time has elapsed since the therapeutic relationship with the former patient was terminated, and
>
> (ii) the massage therapist is reasonably satisfied that the power differential inherent in a therapeutic relationship no longer exists.
>
> Duty to Society
>
> 25. Massage therapists must comply with all applicable laws and regulations relating to the practice of massage therapy.
>
> Duty to the Profession
>
> 27. Massage therapists must recognize that professional self-regulation is a privilege that each massage therapist has a continuing responsibility to merit by upholding the honour, dignity and credibility of the profession.
>
> 28. Massage therapists must respond to any inquiries, requests and directions from the College in a professional, responsive and timely manner.
>
> 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.

Professional Standards

29. The Consent Standard provides:

> Definition
>
> Consent to treatment is a cornerstone of patient-centred health care. Informing patients and involving them in decisions about their treatment is integral to care delivery.
>
> Obtaining consent requires ongoing communication between the RMT and the patient. It is the RMT's legal and professional responsibility to make sure that this communication occurs, and that the patient's consent to treatment is both informed and voluntary. Patient consent supports good clinical decision-making, patient safety, and predictable and desired treatment outcomes.
>
> […]
>
> Requirements
>
> 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.
>
> 2. In obtaining consent, an RMT acts with integrity and in the patient's best interests, and does not use coercion, fraud or misrepresentation.
>
> 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

[…]

7. During treatment, an RMT is aware of and responsive to any indication that the patient wishes to ask questions, or to modify or end the treatment.

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.

10. An RMT renews consent when the treatment approach changes for any reason and revises the treatment plan or creates a new one.

11. An RMT documents the patient's consent, both initial and ongoing, or refusal to consent in the health care record for that patient. (See the guidance in the "application to practice" section of this standard.)

[…]

30. The Boundaries Standard provides:

Definition

Boundaries separate professional and therapeutic behaviour from non-professional and non-therapeutic behavior. It is the RMT's responsibility to establish and maintain boundaries that are appropriate to a therapeutic relationship. A therapeutic relationship between a patient and an RMT is based on trust, respect and the patient's best interests. Professional boundaries specify the behaviours that are appropriate within the therapeutic relationship and set clear behavioural expectations for RMTs.
The physical nature of massage therapy requires clear boundaries to ensure that the patient's safety, comfort and dignity are upheld. Clear boundaries allow patients to know what to expect when they seek care from an RMT.

Requirements

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;

[…]

5. does not enter into a close personal relationship with a patient;

[…]

11. recognizes the power imbalance within the therapeutic relationship and does not use the therapeutic relationship for inappropriate personal or financial gain;

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;

[…]

16. regularly checks in with the patient regarding his or her level of comfort with physical contact and treatment delivery, and monitors the patient's presentation for signs of discomfort (including non-verbal signs);

17. employs touch only with therapeutic intent;

18. does not initiate non-therapeutic touch or hugging with a patient and, before receiving non-therapeutic touch such as a hug, considers whether it would be appropriate, supportive and welcome;

19. communicates the intent of therapeutic touch to the patient before and during treatment delivery near potentially sexualized areas of a patient's body;

[…]

21. recognizes and takes steps to minimize the occurrence of unintentional or incidental physical contact with potentially sexualized areas of a patient's body;

22. only undrapes the area of the patient's body where treatment is delivered;

23. if unintentional or incidental physical contact with potentially sexualized areas of the patient's body occurs, stops treatment, obtains patient consent before continuing with treatment, and documents the incident in the patient record;

24. takes steps to prevent the occurrence of unintentional or incidental physical contact with the patient's body by potentially sexualized areas of the RMT's body;

[…]

31. The Boundaries Standard contains the following definitions for terms used in the requirements above:

> Close personal relationship: A relationship with a person that has elements of exclusivity, privacy or emotional intimacy which occur outside of the therapeutic context.
>
> Dual relationships: When an RMT has a business or personal relationship with a patient outside of his or her practice.
>
> Therapeutic relationship: The relationship between a health professional and a patient, which is characterized by a power imbalance. It is the responsibility of the health professional to recognize and manage this power imbalance in order to provide safe, effective and patient-centred care.

Points in time of College's Bylaws, Code of Ethics and Standards

32. The Code of Ethics was enacted on April 16, 2016. This was updated on January 15, 2021. The provisions set out above are from the version that was in place between April 16, 2016, and January 14, 2021.

33. The Boundaries Standard was approved by the College's Board on July 1, 2018. The Consent Standard was approved by the College's Board on January 15, 2019. Accordingly, those versions of the Code of Ethics and the Standards were all in place at the time of the conduct alleged in paragraphs 4 (Patient 4), 5 (Patient 5), 6 (Patient 6), and 7 (Patient 6) of the Citation. The Code of Ethics was also approved prior to the conduct alleged in paragraph 3(b) (Patient 3) of the Citation.

34. The publication of the Code of Ethics and the Standards occurred after the conduct alleged in paragraphs 1 (Patient 1), 2 (Patient 2), and 3 (a) (Patient 3) of the Citation.

35. Prior to the Code of Ethics and the Standards, the Bylaws contained a prohibition on sexual misconduct. The Bylaws that were in force as of January 25, 2001 (the "2001 Bylaws") defined "professional misconduct" to include "an act of sexual misconduct." "Sexual conduct" was defined as "sexual intercourse or other forms of physical sexual activity, speech and gestures of a sexual nature". Schedule "C" to the 2001 Bylaws was the "Code of Ethical Conduct". Section 1(a) of the Code of Ethical Conduct required a registrant to "act in the best interest of a patient". Section 2 of the Code of Ethical Conduct provided:

> *Sexual Conduct Prohibited*
> 2. A Registrant shall not
> (a) engage in sexual conduct with a patient,
> (b) engage in sexual conduct with a former patient within one year of termination of massage therapy, or
> (c) make any inquiry into a patient's sexual history, unless such an inquiry is directly related to the assessment or treatment of the patient's condition.

36. The 2001 Bylaws apply to the conduct alleged in paragraph 1 (Patient 1) and 3 (a) (Patient 3) of the Citation.

37. The Bylaws in force as of December 10, 2013 (the "2013 Bylaws") did not contain the definition of "professional misconduct" outlined above. The 2013 Bylaws provided a definition of "professional misconduct of a sexual nature" for purposes of the Patient Relations Committee. That definition read:

> 28 (4) In this section, "professional misconduct of a sexual nature" means
>
> (a) sexual intercourse or other forms of physical sexual relations between the Registrant and the patient,
>
> (b) touching, of a sexual nature, of the patient by the Registrant, or
>
> (c) behaviour or remarks of a sexual nature by the Registrant towards the patient, but does not include touching, behaviour and remarks by the Registrant towards the patient that are of a clinical nature appropriate to the service being provided.

38. Section 2 of the Code of Ethical Conduct (found at Schedule "C" of the 2013 Bylaws) contained the same "sexual conduct prohibition" as quoted above in the 2001 Bylaws.

39. The 2013 Bylaws apply to the conduct alleged in paragraph 2 (Patient 2) and 3 (a) (Patient 3) of the Citation.

40. As noted earlier, section 75 of the Bylaws in force as of April 16, 2016 (the “2016 Bylaws”) required every registrant to comply with the Code of Ethics (which was no longer contained in the Bylaws by that time), and the Standards of Practice. The 2016 Bylaws apply to the conduct alleged in paragraphs 3(b) (Patient 3), 4 (Patient 4), 5 (Patient 5), 6 (Patient 6) and 7 (Patient 6) of the Citation.

Professional Misconduct and Unprofessional Conduct

41. 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.

42. The term unprofessional conduct is defined in the HPA to include professional misconduct. The term professional misconduct is defined to include sexual misconduct.

43. Unprofessional conduct is broader than professional misconduct and is generally understood to be less egregious than professional misconduct. This approach was confirmed in *College of Massage Therapists of British Columbia v. Morgan* (June 8, 2021) and *College of Dental Surgeons of British Columbia v. Jobanputra,* 2013 Canlii 100907, which stated:

> [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 conduc*t. This is consistent with the approach in *re Duvall*, supra.

44. In *Pearlman v. Manitoba Law Society Judicial Committee*, [1991] 2 SCR 869, the Supreme Court of Canada held that professional misconduct is a “wide and general

term" which encompasses conduct that would reasonably be considered by members of the profession to be "dishonorable, disgraceful, or unprofessional".

45. In *College of Massage Therapists of British Columbia v. Martin*, 2015 CMTBC 01, a panel of the Discipline Committee approved the definition in *Pearlman*, and described professional misconduct as a departure from the expected standards of the profession:

> [191] The common law definition of professional misconduct encompasses conduct that would reasonably be considered by members of the profession as dishonorable, disgraceful, or unprofessional (see R. Steinecke, *A Complete Guide to the Regulated Health Professions Act*). The meaning of professional misconduct, and the definition of a professional standard of practice, need not be expressly set out in writing, whether in a regulation, bylaw, (written) standard or a code of ethic. Where a professional standard is not explicitly set out in writing, it may be determined "by reference to evidence of a common understanding within the profession as to expected behavior of a reasonable professional, or by deducing it from the profession's fundamental values" (*Walsh v. Council for Licensed Practical Nurses*, (2010) 317 D.L.R. (4th) 152 (N.L.C.A.); *Yazdanfar v. College of Physicians and Surgeons of Ontario*, 2013 ONSC 6420.

46. The concept of professional misconduct has also been defined in *Law Society v. Martin*, 2005 LSBC 16 as a "marked departure" from the expected standard:

> [140] The real question is whether on the facts before us, it can be found that the Respondent, in reviewing and approving the Reyat children's accounts, acted in a manner that was a marked departure from the standard expected of a competent solicitor acting in the course of his profession, and therefore amounted to professional misconduct.

47. Both the College and the Respondent placed significant reliance on the "marked departure" test set out in *Martin*. The Panel agrees with the parties that it is one of the most commonly cited definitions for professional misconduct in this province and, as with the other authorities outlined above, sets out the definition to be applied.

48. Unprofessional conduct was described in *College of Massage Therapists of British Columbia v. Gill,* 2019 CMTBC 01 with reference to the following definition from *Millar v. College of Physicians and Surgeons of British Columbia*, [1994] BCJ No. 967: "that which violates ethical code or rules of profession or such conduct which is unbecoming member of profession in good standing." In *Gill*, the Respondent was found to have demonstrated unprofessional conduct for failing to respond to College communications.

49. The concepts of unwritten standards were raised by the parties. The Respondent argues that he should have notice of any unwritten rule that exists. The College argues that a finding a professional misconduct does not require a specific breach of a written standard. Professional standards may be unwritten, and the Panel has discretion in assessing the Respondent's conduct. The College underlined that it is not asking the Panel to apply a written standard retroactively. Rather, the College argues that the lack of a written standard during a particular period does not mean the conduct in question was not prohibited at that time. The conduct could fall within the concepts of "professional misconduct" or "unprofessional conduct".

50. In *Salway v. Association of Professional Engineers and Geoscientists of British Columbia*, 2010 BCCA 94, the Court of Appeal held that courts will show significant deference to disciplinary decisions of professional regulatory tribunals regarding the interpretation of their professional standards, and expressly identifies that professional standards may be written or unwritten:

> [30] The jurisprudence, therefore, would seem to dictate that courts adopt a significant degree of deference to disciplinary decisions of professional tribunals concerning the interpretation of their professional standards, regardless of whether those standards are written or unwritten. This degree of deference accords with the reasonableness standard of review.

51. In *Martin*, this College's Discipline Committee also clarified that the meaning of professional misconduct and the definition of a professional standard of practice need not be expressly set out in writing. Where it is not set out in a regulation, bylaw, standard or code of ethics, the standard may be determined by reference to a common understanding within the profession as to behavior or fundamental values.

52. The Panel agrees with the reasoning expressed in *Salway* and in *Martin.* It is the disciplinary body of the professional organization that sets the professional standards for that organization, both written and unwritten. In assessing whether conduct is professional misconduct or unprofessional conduct, the Panel must use its own judgment and expertise and should be guided by the content of the College's bylaws and standards.

Considerations Specific to Sexual Allegations

53. The Panel agrees with the following reasoning by the Supreme Court of Canada in *R. v. D.D.*, 2000 SCC 43 that there is no inviolable rule on how people who are the victims of trauma like sexual assault will behave:

> 65 A trial judge should recognize and so instruct a jury that there is no inviolable rule on how people who are the victims of trauma like a sexual assault will behave. Some will make an immediate complaint, some will delay in disclosing the abuse, while some will never disclose the abuse. Reasons for delay are many and at least include embarrassment, fear, guilt, or a lack of understanding and knowledge. In assessing the credibility of a complainant, the timing of the complaint is simply one circumstance to consider in the factual mosaic of a particular case. A delay in disclosure, standing alone, will never give rise to an adverse inference against the credibility of the complainant.

54. This College's Discipline Committee panel in *Martin* set out the following list of additional factors that are relevant considerations in alleged sexual misconduct cases. The Panel agrees with the following list:

> [223] The College submitted that in addition to the above considerations, there are also "special factors" that should be considered in cases of alleged sexual misconduct. The first is that, in light of the degree of trust that a patient places in a health-care provider, an initial reaction to a perceived improper sexual touch may be, and is likely to be, confusion or shock: *Li (Re)*, [2002] O.C.P.S.D. No. 45. Second, the College submits, it should not be considered unusual for a female patient not to object immediately to inappropriate touching. Third, patients may try to convince themselves that they have misinterpreted the health professional's conduct and, may even return to the professional after such conduct has occurred, and that doing so should not be seen as diminishing their credibility if the patient provides a reasonable explanation for returning: *Noriega (Re)*, [2014] O.C.P.S.D. 27. Fourth, evidence in sexual misconduct cases may involve perception based on senses other than vision. For example, in Li, the hearing panel accepted the evidence of a patient who described feeling Dr. Li's body pressed against her buttocks, and that what she felt was not a reflex hammer, a pen or a stethoscope, but was his erect penis pressing through both their clothing. In *Markman (Re),* [1999] O.C.P.S.D. No. 6, the Committee found that the doctor had thrust his genitals or pelvic area into the back or buttocks of two complainants, based on their evidence of having perceived such contact through touch.

55. The Panel considers that the timing of the reporting of the alleged incidents alone is not a basis to discount the credibility of the complainants: *R. v. Lacombe*, 2019 ONCA 938 and *Ontario (College of Massage Therapists of Ontario) v Schoelly*, 2018

ONCMTO 36; nor is the fact that a patient has returned for treatment: *Ontario (College of Massage Therapists of Ontario) v. Al-Shamlah*, 2020 ONCMTO 5.

56. The post-event demeanour of a sexual assault victim can be used as circumstantial evidence to corroborate their version of events: *R. v. J.A.A.*, 2011 SCC 17, *R. v. D.G.A.*, 2020 BCSC 1948, *Schwarz v. The College of Physicians and Surgeons of Ontario*, 2021 ONSC 3313.

57. As set out earlier in these reasons, the definitions for “sexual misconduct” in the Code of Ethics includes “touching, of a sexual nature; and the definition of “professional misconduct of a sexual nature” in section 28(4) of the Bylaws includes “touching, of a sexual nature, of the patient by the Registrant”.

58. The College submits that the Panel may consider criminal law decisions to assist in determining whether touching is “of a sexual nature”. The College cites the following passage from *R. v. Chase*, [1987] 2 S.C.R. 293 which sets out that the test to determine whether conduct is sexual in nature is an objective one:

> 11. Applying these principles and the authorities cited, I would make the following observations. Sexual assault is an assault within any one of the definitions of that concept in s. 244(1) of the Criminal Code which is committed in circumstances of a sexual nature, such that the sexual integrity of the victim is violated. The test to be applied in determining whether the impugned conduct has the requisite sexual nature is an objective one: "Viewed in the light of all the circumstances, is the sexual or carnal context of the assault visible to a reasonable observer" (Taylor, supra, per Laycraft C.J.A., at p. 269). The part of the body touched, the nature of the contact, the situation in which it occurred, the words and gestures accompanying the act, and all other circumstances surrounding the conduct, including threats which may or may not be accompanied by force, will be relevant (see S. J. Usprich, "A New Crime in Old Battles: Definitional Problems with Sexual Assault" (1987), 29 Crim. L.Q. 200, at p. 204.) The intent or purpose of the person committing the act, to the extent that this may appear from the evidence, may also be a factor in considering whether the conduct is sexual. If the motive of the accused is sexual gratification, to the extent that this may appear from the evidence, it may be a factor in determining whether the conduct is sexual. It must be emphasized, however, that the existence of such a motive is simply one of many factors to be considered, the importance of which will vary depending on the circumstances.

59. The above approach was followed in *Martin*, in which a panel of this Discipline Committee held:

> [197] The same principle applies in the regulatory context. The two key questions to determining whether intentional conduct of a sexual nature occurred are (1) was the conduct that took place, viewed objectively, of a sexual nature? And (2) did the person who is alleged to have committed the conduct in fact intend that conduct? This test may be particularly difficult to apply in the massage therapy context, as the practice of the profession inherently involves physical contact. Therefore, in order to determine whether conduct is "objectively" of a sexual nature, a Panel must scrutinize with care all evidence about the conduct at issue, including whether or not any touch alleged to be sexual in nature may have had a therapeutic rationale, or may have been accidental.

60. The College also argues, and the Panel agrees, that in some cases the body part in question is effectively determinative of whether the touching is objectively "of a sexual nature". In *R. v. Mastronardi,* 2014 BCCA 302, the Court of Appeal held:

> [19] However, in some cases, of which I would include this one, the part of the body that is subjected to non-consensual touching is effectively determinative of the sexual nature of the assault: see *R. v. Nicolaou*, 2008 BCCA 300, *R. v. V. (K.B.)*, 1993 CanLII 109 (SCC), [1993] 2 S.C.R. 857, and *R. v. Bernier* (1997), 1997 CanLII 9937 (QC CA), 119 C.C.C. (3d) 467 (Que. C.A.), aff'd 1998 CanLII 830 (SCC), [1998] 1 S.C.R. 975. Simply put, a vagina is a sexual organ. Mastronardi digitally penetrated the victims' vaginas without their consent. Irrefutably his admitted non-consensual touching of their genitals necessarily violated their sexual integrity and constitutes a sexual assault.

61. The College submits that allegations of sexual misconduct are proven if the College establishes that:

    a. Touching that is objectively of a sexual nature, without a therapeutic justification – keeping in mind that there is no therapeutic justification for touching some parts of the body (and that touch which is said to be therapeutic must be accompanied by informed consent); and

    b. An intention to touch, regardless of actual motive – there is no need for the Panel to make a finding that the Respondent actually sought or obtained any sexual gratification as a result.

62. The Panel agrees that there may be circumstances where it is helpful to consider criminal law decisions to assist in interpreting similar concepts involving sexual touch. Nevertheless, there are notable distinctions in criminal law cases, namely the requirement to establish a mental element, and the standard of proof beyond a reasonable doubt and those differences should be borne in mind.

63. The Panel agrees that in this context, the assessment of whether or not touch is "sexual in nature" is objectively determined and involves a scrutiny of all of the evidence about the conduct at issue. Whether the touch may have had a therapeutic rationale is an important consideration in that assessment. The specific body part touched in a non-consensual manner may be determinative of whether the touch was "sexual in nature". The absence of gratification or sexual purpose does not preclude a finding that touch was "sexual in nature".

Credibility

64. 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.

65. The College cited *Bradshaw v. Stenner*, 2010 BCSC 1398 (which applied *Faryna v. Chorny*). *Bradshaw* 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.) [*Farnya*]; *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 (*Farnya* 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.

66. 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.

67. The College argues that the assessment of the consistency of evidence is particularly important in the assessment of witness credibility, and cited the following guidance from *R. v. M.G.*, 1994 Canlii 8733 (ONCA):

> [27] Probably the most valuable means of assessing the credibility of a crucial witness is to examine the consistency between what the witness said in the witness-box and what the witness has said on other occasions, whether on oath or not. Inconsistencies on minor matters or matters of detail are normal and are to be expected. They do not generally affect the credibility of the witness. This is particularly true in cases of young persons. But where the inconsistency involves a material matter about which an honest witness is unlikely to be mistaken, the inconsistency can demonstrate a carelessness with the truth. The trier of fact is then placed in the dilemma of trying to decide whether or not it can rely upon the testimony of a witness who has demonstrated carelessness with the truth.

68. The Respondent also relies upon *Faryna v. Chorny*, as well as *Frame v. Rai,* 2012 BCSC 1876 and *Re Novac Estate*, 2008 BSSC 283. Both *Frame* and *Re Novac* reiterate the principles in *Faryna v. Chorny*.

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

70. The Respondent made the following general argument with respect to the complainants' credibility in his closing submissions:

> 734. If the Panel finds that the complainants are credible, Mr. Krekic respectfully submits that the complainants' evidence though credible, is not reliable for the following reasons:
> a. some of the complainants made complaints after seeing the news articles;
> b. some of the complainants made inferences about what they thought Mr. Krekic was doing, when they didn't actually see him do it;
> c. the passage of time posed a challenge to accurately recall and recount the alleged events; and
> d. they could be honestly mistaken.

71. As is set out in the reasons below, the Panel found each of the complainants to be reliable and credible witnesses. The Respondent has not satisfied the Panel that the above arguments have any merit. The Respondent has not satisfied the Panel that the complainants altered their evidence if they did see news articles. Where some of the complainants did not observe an aspect of an incident with their vision, they did observe with other senses and their complete testimony was reliable and credible. The Panel is not satisfied that the passage of time posed a challenge to any of the complainants' ability to accurately recall and recount the alleged events in a manner that undermined their evidence. The Panel did not find that any of the complainants were honestly mistaken in this case.

72. The Respondent on the other hand presented as a witness with significant reliability and credibility issues. The Panel has set out the principal credibility issues with the Respondent's evidence under its analysis of each allegation.

Reliability

73. Both of the parties rely upon the following passage from *R. v. Morrissey*, 1995 Canlii 3498 (ONCA) which describes the difference between credibility and reliability:

> Testimonial evidence can raise veracity and accuracy concerns. The former relate to the witness's sincerity, that is, his or her willingness to speak the truth as the witness believes it to be. The latter concerns relate to the actual accuracy of the witness's testimony. The accuracy of a witness's testimony involves considerations of the witness's ability to accurately observe, recall and recount the events in issue. When one is concerned with a witness's veracity, one speaks of the witness's credibility. When one is concerned with the accuracy of a witness's testimony, one speaks of the reliability of that testimony. Obviously a witness whose evidence on a point is not credible cannot give reliable evidence on that point. The evidence of a credible, that is, honest witness, may, however, still be unreliable. In this case, both the credibility of the complainants and the reliability of their evidence were attacked on cross-examination.

74. The Panel agrees with the approach described in *Morrissey* for the assessment of the reliability of testimonial evidence.

75. The Panel also agrees with the College's submission about *R. v. Paterson*, 2017 BCSC 536. A witness who admits to having a poor memory generally may not be seen as a reliable witness when they provide detailed accounts of events. Likewise, a witness whose memory significantly improves after learning they will be charged may be found to be unreliable: *R. v. Manahan*, 2018 BCPC 246.

Browne v. Dunn

76. 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. The Supreme Court of Canada in *R. v. Lyttle*, 2004 SCC 5 has confirmed the principle is sound and may be applied at the discretion of the trial judge.

77. 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.

Hearsay

78. As an administrative tribunal, the Panel is not bound by the strict rules of evidence, including the rule against the admission of hearsay statements. The Panel may

consider any relevant evidence and assign that evidence the weight it considers to be appropriate in the circumstances.

Similar Fact Evidence

79. The College has asked the Panel to consider evidence of several of the complainants about the Respondent's conduct as evidence with respect to the allegations in the Citation pertaining to one or more of the other complainants.

80. The parties cited *R. v. Handy*, 2002 SCC 56 as the leading authority on similar fact evidence. Similar fact evidence is an exception to the rule that a decision-maker cannot use bad character evidence unrelated to the charge before them as circumstantial proof of conduct. The primary concern is propensity reasoning based solely upon bad character. The similar fact evidence rule allows the admission of that evidence where it is so highly probative of the issues in the case as to outweigh the prejudice it may cause. This Discipline Committee described the rule in *Martin* as follows:

> [220] What emerges from the case law is the principle that similar fact evidence is admissible where the similarity of the acts demonstrates a pattern of conduct or behaviour that is unlikely to be attributable to coincidence or accident, and therefore is inferentially probative of intent. In the words of *Phipson on Evidence* (as cited with approval in the *Stewart* decision, *supra*), similar fact evidence can be used to "establish the animus of the act and to rebut the obvious defences of ignorance, accident, mistake or other innocent state of mind". This is because if, for example, conduct on one occasion is sufficiently or "distinctively" similar to conduct on another occasion, this similarity renders the conduct less likely to be coincidental or accidental and more likely to be intentional. Evidence of similar conduct can establish a "pattern of conduct" or "pattern of behaviour" that is unlikely to have occurred by accident. While the similarities need to be scrutinized carefully, determining what types of similarities may be significant will depend on, as the Ontario Court of Appeal stated in *R. v. L.B.,* a "contextual assessment in each particular case". The surrounding circumstances may be as significant as the specific facts.

81. While the Panel sets out the leading authority on similar fact evidence, the Panel did not consider it necessary to engage that rule in this case.

Collusion

82. The Respondent submits that the public nature of the complaints and media attention raises questions of collusion in this case. The Respondent submits that an

analysis of collusion should be undertaken in conformity with the principles set out in *R. v. Shearing*, 2002 SCC 58:

> 44 The evidence here is far more speculative than in *Handy*. In that case, there was consultation between the complainant and the similar fact witness *prior* to the alleged offence about the prospect of financial profit. Here, there is some evidence of opportunity for collusion or collaboration and motive, but nothing sufficiently persuasive to trigger the trial judge's gatekeeper function. There is no reason here to interfere with the trial judge's decision to let the collusion issue go to the jury. He instructed the jury to consider "all of the circumstances which affect the reliability of that evidence including the possibility of collusion or collaboration between the complainants". He defined collusion as the possibility that the complainants, in sharing their stories with one another, intentionally or accidentally allowed themselves to change or modify their stories in order that their testimony would seem more similar or more convincing. It was for the jury to make the ultimate determination whether the evidence was "reliable despite the opportunity for collaboration" or that "less weight or no weight should be given to evidence which may have been influenced by the sharing of information".

83. The Respondent urges the Panel to consider whether there has been collusion and tainting of the evidence in these proceedings due to the public nature of the complainants and media attention. The Respondent has not introduced evidence or made submissions that satisfy the Panel that there was collusion between the complainants. The Panel finds the assertion in this case is merely speculative. The Panel also notes that public notification is mandated under the HPA.

Evidence

84. The College called the following witnesses:

    a. Patient 1

    b. Patient 2

    c. Witness B

    d. Patient 3

    e. Patient 4

    f. Witness C

    g. Witness D

    h. Patient 5

i. Witness E

j. Patient 6

85. The Respondent testified on his own behalf and called the following additional witnesses:

a. Witness A

b. Michael Dixon

c. Witness F

86. The evidence is discussed below in relation to each of the allegations from the Citation.

Analysis

Allegation 1: Patient 1

1. In the course of providing massage therapy services to Patient 1,

(a) In or about 2012, you:

(i) Engaged in inappropriate and unprofessional conduct by hugging her;

(ii) Made statements and/or inquiries of an unprofessional, inappropriate and/or personal nature including asking her if you could pray for her and/or praying for her in her presence;

(iii) Placed your hand(s) under her undergarment or otherwise moved her undergarment without her consent;

(iv) Massaged or otherwise touched her mons pubis and/or labia for a non-therapeutic and/or sexual purpose; and/or

(b) In or about November 2012, you inserted your finger(s) into her anus for a non-therapeutic and/or sexual purpose;

87. Patient 1 testified that she is a former dancer. Patient 1 was enrolled in a four-year dance program and was dancing five days a week. Her priority was to become a professional dancer. Patient 1 was experiencing tight hips, and regular aches and pains from her demanding dance schedule. Patient 1 started seeing the Respondent at his North Surrey Massage Therapy clinic for treatment following a

recommendation from an instructor at her [redacted] dance school. The Respondent was recommended to Patient 1 because he had worked on several other dancers, and he understood that they were looking for treatment that allowed them to continue to dance. Patient 1 identified her intake paperwork and testified that she saw the Respondent for nine appointments from March 23, 2009, to November 23, 2012. [redacted]

88. Patient 1 testified that during the first appointment, the Respondent told her to wear a sports bra and shorts. Patient 1 identified a photograph of herself from her first appointment in which she was wearing a sports bra, t-shirt, spandex shorts, and cut-off sweatpants. She wore thong underwear underneath. Patient 1 testified she wore similar attire for her other appointments with the Respondent.

89. Patient 1 testified she typically attended appointments with the Respondent late in the day. She did not have extended health insurance and the Respondent offered to charge her a lower rate for appointments that were later in the day.

90. Patient 1 testified about the layout of the rooms at the clinic and the placement of the furniture in the rooms. One room had a window, one did not. One of the rooms had a sink. Patient 1 was not sure if the other room had a sink. Patient 1 described a speaker that played Christian worship music.

91. Patient 1 testified that her initial discussions with the Respondent were “normal chitchat”. They discussed things such as [redacted], and Patient 1’s dance program. Patient 1 testified that what stood out to her about the nine appointments was that the Respondent spoke a lot about his personal life during the appointments, “lots about his dating and not dating.” While she described the years as being “pretty blurry”, she was definite that personal discussions took place in 2012. Patient 1 recalled specifics of the conversations, such as the Respondent unsuccessfully pursuing online dating, and later, that the Respondent was in a relationship with a woman who subsequently became his wife.

92. Patient 1 testified that at the beginning of her appointments with the Respondent, he would always ask her for a hug. She described this as a “friend hug”. This happened multiple times. Patient 1 testified that she “absolutely [did] not” ever ask the

Respondent for a hug. She was emphatic on that point because she is “not a hugger in any way shape or form”. Patient 1 does not hug her friends and rarely hugs her husband. It is not something that comes naturally to her, she just does not do it, let alone with a health care professional. Patient 1 denied that there was a level of comfort that allowed for hugging and that she consented to hugging the Respondent. Patient 1 agreed that she did hug the Respondent back and wished she could tell her 10-year younger self that she did not have to do that.

93. Patient 1 testified that the Respondent prayed for her at the end of her appointments. While she could not provide specific dates of when that occurred, Patient 1 testified that it happened “pretty much every time” except perhaps not the first appointment. The Respondent prayed while he was massaging Patient 1. Patient 1 could not recall if the Respondent asked if he could pray for her, but stated he probably did, and she probably replied that he could. Patient 1 testified she would never ask a medical professional to pray for her and did not ask the Respondent to pray for her. Patient 1 testified that it made her feel uncomfortable, and that she could not say no. Patient 1 disagreed that there was a level of comfort that allowed for prayer during the treatment.

94. Patient 1 recalled on occasion when the Respondent was massaging her shoulders and her chest area while he was praying for her. This made her feel uncomfortable because he was massaging underneath her sports bra. The Respondent did not ask for consent to go underneath her sports bra.

95. Patient 1 testified that the majority the Respondent’s treatment was focussed on her hip and buttock areas. While Patient 1 was lying on her back, the Respondent touched Patient 1 in the hip flexor pubic bone area. Before he did that, he would say, “I’m going to press on your pubic bone now.” The Respondent did not provide any explanation as to why he was going to press on her pubic bone. Patient 1 probably said “okay”. However, Patient 1 testified that sometimes it was not “okay”. Patient 1 described the Respondent made her feel uncomfortable as he would often have his eyes closed, and he touched her underneath her shorts and underwear using his fingertips. The Respondent used a lot of pressure. He pressed down very hard for

several minutes. Patient 1 described the exact area as being “super low, just above my vagina”, “just above” her ”vaginal lips”, on the “centre left” side. Patient 1 testified that this occurred approximately five or six times. Patient 1 identified a diagram of the female body on which she had drawn the areas where the Respondent had touched her. The diagram was originally used during the College investigation process.

96. Patient 1 testified that the Respondent did not give her any option of touching her pubic bone above her clothing. The Respondent did not explain why he needed to touch Patient 1 in that area and did not speak while he did touch Patient 1 in that area. Patient 1 testified that the Respondent did not ask permission or tell her that he was going to be underneath her shorts or underwear, stating “no, I don’t think so”. Patient 1 testified that she found the experience embarrassing and recalled, “I’m thinking I [am] really glad I got a wax because this would be very embarrassing”.

97. Patient 1 testified about her last appointment with the Respondent, which took place on November 23, 2012. Patient 1 described that during the appointment, “it was the same kind of situation with…underneath the clothes and that kind of thing.” Then, while lying on her side, the Respondent was massaging her gluteal area and Patient 1 recalled his touch getting closer and closer to “the middle”. Patient 1 described she then experienced a “super painful” sensation. Patient 1 felt “pressing in” followed by the Respondent inserting his fingers into her anus. Patient 1 said that the Respondent pressed very hard. She felt “pushing”, “pinching”, “a sharp pain”. Patient 1 described it as “excruciatingly painful”. Patient 1 felt the Respondent’s fingers were inserted about one to two inches deep into her anus. Patient 1 estimated this lasted approximately one minute. Patient 1 felt the Respondent’s fingers exit her anus, which is when she says she “knew it had actually happened.” The Respondent went to wash his hands. Patient 1 saw the Respondent wash his hands and heard the tap and the water. The Respondent’s body was blocking her view of the sink. The appointment ended shortly thereafter. Patient 1 identified a diagram used during the College’s investigation on which she had previously indicated the location where the Respondent inserted his fingers into her anus.

98. This event stuck out in Patient 1's memory. She remembered having to leave the appointment approximately halfway through to go to the washroom as she was not feeling well. Her departure was for a long time, and she expected that on her return there would not be enough time to finish the appointment. However, the event with the Respondent inserting his fingers into her anus took place after Patient 1's return from the washroom.

99. Patient 1 described the position she was in on the massage therapy table. She was lying on her right side. Her right leg was extended, and her left leg was bent at a 90-degree angle, facing the direction of the sink and the speaker in the room. The room was the one which did contain a window. The Respondent was standing behind Patient 1, towards the middle of her body.

100. Patient 1 did not recall a discussion about the Respondent massaging her gluteal muscles.

101. Patient 1 testified the Respondent was using his hands while massaging in that area, though she could not recall whether it was one or both of his hands. Patient 1 testified that the Respondent reached her anus by moving his hands underneath her clothing and underwear. Specifically, he reached from the bottom of her shorts and not from the top of the waistband. Patient 1 testified that there was no discussion with the Respondent about him moving her shorts or her underwear.

102. Patient 1 described thinking at the time that she wanted the experience to be over. She described feeling "completely mortified" and just wanting to leave. Patient 1 recalled the Respondent telling her he would be attending an upcoming dance show. Patient 1 did not recall whether he attended that specific performance. Patient 1 did recall seeing the Respondent in the audience while she was performing at a dance show which took place after the November 23, 2012 appointment. [redacted]. Patient 1 decided not to see the Respondent again after her November 23, 2012 appointment.

103. Patient 1 told her husband and a friend of hers about what the Respondent had done, though she did not share all of the details. Patient 1 contacted the College by phone in 2018 and delivered a written complaint in 2019. Patient 1 described

wanting to make the complaint because she is a mother and has a responsibility to protect her children and other members of the public.

104. The Respondent testified that the treatment he provided to Patient 1 was due to her hip pain, knee pain and back issues. The Respondent recalled working on Patient 1's iliopsoas muscle quite a bit to relieve pressure on her lower back. The Respondent testified that Patient 1 complained of pain in the hip flexor area. The Respondent knew Patient 1 was a dancer and he was aware that dancers have issues with hip flexors. The Respondent also recalled working on Patient 1's back, and that she had some weakness in her hips.

105. The Respondent did not recall very much about his assessment of Patient 1 but testified that he did perform an assessment on her during her first appointment. The Respondent was taken to his clinical records. He testified that he would "hopefully" create the chart entries on the day of the treatment, but it might be within "a day or so." He made assessment notes on the same day as the treatment.

106. The Respondent reviewed his notes, including a standing and sitting assessment in which he noted Patient 1's pelvis was rotated, and that her gluteal muscles were not engaging correctly. The Respondent testified that the treatment plan was to work on releasing some of the tension around Patient 1's pelvis to help her activate those muscles, and to work on her back and hips.

107. The Respondent used a mannequin as a visual aid during the hearing to demonstrate various treatment techniques, both respect to the allegations concerning Patient 1, as well as the other allegations set out in the Citation. During those portions of his testimony, the Respondent frequently fluctuated between what he says occurred during a particular moment of a specific treatment, what his usual practice was, and even, what the best practice might be. In answer to a question regarding his technique treating Patient 1's "sit bones", for example, the Respondent gave a lengthy explanation and stated, "as you get more experienced, you get to feel with your elbow…I monitor with the patient that they were ok with the pressure." The Respondent was then asked, "is this how you treated it in Patient 1's case?", to

which the Respondent replied, “That’s commonly how I treat it – I may have used my elbow or may have used thumbs, I honestly can’t remember.”

108. The Respondent testified that he explained the anatomy, assessment, and areas he would be working on to Patient 1. The Respondent said that he showed Patient 1 relevant areas on anatomical charts and skeletons in his office.

109. The Respondent testified his treatment of Patient 1 included treating her adductor muscles, her iliopsoas, and her lumbar erectors. The Respondent testified that if he was treating the psoas minor, he could have exerted pressure on the top of Patient 1’s pubic bone, however, he explained “the focus” would not be the pubic bone but the attachment of the tendon on the pubic bone.

110. The Respondent testified that he prayed for Patient 1. He could not recall when he did so. The Respondent testified that he “would not pray for anyone without asking if it was ok first.” The Respondent testified, “If she consented, I would have prayed for her.” The Respondent testified he could not recall if Patient 1 asked him to pray for her. He testified they spoke about prayer because of their shared [redacted] faith. The Respondent stated, “it was a long time ago, I don’t remember details of any discussions.”

111. The Respondent was asked whether he hugged Patient 1. The Respondent testified that he did not remember specifics, but he knew he would not hug anyone if they were not comfortable. The Respondent would ask if it was ok to hug a patient. He described that as a “mutual hug”. The Respondent was presented with an affidavit he swore prior to the Discipline Hearing in which he stated that there was a “level of comfort” in their relationship because of their faith that allowed for the hug. The Respondent did not recall if Patient 1 initiated the hug with him. The Respondent was brought to the transcript from a College investigation interview in which he stated, “I don’t recall hugging her but if I did hug her, it would have been her initiating the hug.” On cross-examination, the Respondent adopted the interview answer on the basis that his memory was clearer at that time.

112. The Respondent denied that he treated under Patient 1’s underwear. He said that his fingers did not and would never have gone below the top of Patient 1’s sports

bra or underneath it. The Respondent testified he would have asked for permission to move Patient 1's clothing.

113. The Respondent testified that he worked on Patient 1's gracilis muscle because it is part of the adductor muscles. The Respondent testified his fingers did not come any closer to Patient 1's vaginal area and mons pubis than from the crease of where the leg meets the torso, two inches down from the pubic bone and one inch from the genitalia.

114. The Respondent testified that he did not recall whether the treatment that day was through Patient 1's shorts or skin on skin. The Respondent was then asked, "And [Patient 1] gave evidence that you moved her shorts and worked on her glutes underneath her shorts. No reason to disagree with that?" to which the Respondent answered, "No. I did ask for consent if I did that."

115. The Respondent denied that his fingers or thumbs contacted or went inside Patient 1's anus. He testified, "I would never do that. It is not part of the technique. I would never go into the anus with that technique. I would never go into the anus with any technique."

116. The Respondent denied that he washed his hands during Patient 1's treatment, and that generally he would not wash his hands. The Respondent testified that there is no sink in the treatment room and there never has been. The Respondent testified that he had never had hand sanitizer available to him in his treatment room. On cross-examination, he was presented with a photograph of treatment room 2, which shows a hand sanitizing station. The Respondent testified that he did not remember it being there and he had never used it.

117. The Respondent called Michael Dixon as a witness. Mr. Dixon is a registered massage therapist. He prepared an expert report dated February 22, 2021. Mr. Dixon was qualified to give expert opinion evidence pertaining to acceptable practices for registered massage therapists, education, including courses and training for registered massage therapists, recognized and appropriate treatment in massage therapy and pain and sensation referral during massage treatments.

118. In response to the question, “given the treatment administered to Patient 1, is it possible that she could have felt that something was inserted into her anus?”, Mr. Dixon gave the opinion: “Inconclusive. Trigger point referral for the obturator internus and adductor magnus can refer a sensation to the pelvic floor and anus however I do not have an opinion about the sensation of something being inserted into the anus.”

119. Mr. Dixon’s report suggested that touching the mons pubis area may be necessary to assess the pubic symphysis joint. He admitted the Respondent’s clinical records make no reference of such an assessment on Patient 1.

120. Mr. Dixon testified that a patient’s clothing is a “boundary for treatment”, and it is generally not appropriate for a massage therapist to touch a patient underneath the patient’s clothing. Mr. Dixon testified that moving a patient’s underwear requires the patient’s express consent. It was Mr. Dixon’s opinion that a massage therapist always asks before making an adjustment of a patient’s underwear.

121. The Respondent also called Witness A as a fact witness.[3] Witness A is a massage therapist who worked at the North Surrey Massage clinic from 2003 to 2014. He testified that in 2009, the clinic moved to a different location within the same building. Witness A described the layout and contents of the treatment rooms. Witness A testified that there has never been a sink in any of the treatment rooms at the clinic. He testified that he did not recall seeing hand sanitizer in any of the clinic’s treatment rooms.

122. In general, the Panel found Patient 1 to be a credible and reliable witness. Her testimony was straightforward, clear, and specific. She acknowledged where she generally had some “blurry” memory due to the passage of time and was emphatic about specific recollections from specific periods of time. Patient 1’s testimony was consistent. The Panel does not accept the Respondent’s submission that Patient 1 would not have returned to the Respondent if she had actually felt uncomfortable during that time. As outlined earlier in this decision, that reasoning has been rejected

[3] The Respondent sought to also call Witness A as an expert witness. The Panel’s decision declining to qualify Witness A as an expert witness is the subject of a separate written decision dated June 18, 2021.

in decisions such as *Ontario (College of Massage Therapists of Ontario) v. Al-Shamlah*. The Panel finds this reasoning should be rejected here too as it relies on a myth about how a victim of sexual assault ought to be behave.

123. The Panel found the Respondent generally lacked credibility and was an unreliable witness. In terms of reliability, the Respondent had very little in the way of independent recollections of the events in question. His clinical records generally did not assist on the material points. From a credibility perspective, there were several issues. The Respondent often gave testimony that presented as alternative and conflicting positions. For example, the Respondent testified he would never have touched below the top of Patient 1's sports bra or underneath it, but also testified that if he did do so, he would have requested permission. Moreover, there were many instances in which the Respondent's version of events expressed in the College investigation, and his testimony during his direct examination and cross-examination were inconsistent. For example, the Respondent's testimony regarding whether he hugged Patient 1 was inconsistent in those three instances.

1 (a) in or about 2012, you:

124. The Panel finds that Patient 1 saw the Respondent for massage therapy services five times during 2012: January 16 and 23, February 7, October 17 and November 23.

1(a)(i) Engaged in inappropriate and unprofessional conduct by hugging her

125. The Panel prefers Patient 1's evidence to the Respondent's evidence. Patient 1 had actual recollections about the Respondent hugging her. Her testimony was consistent, clear and specific, and was not shaken on cross-examination. The Panel accepts Patient 1's testimony she is "not a hugger in any way shape or form". Patient 1 was adamant on this point, and this evidence was not undermined. The Panel finds that the Respondent initiated hugs with Patient 1 on multiple occasions during her treatments with the Respondent in 2012. The Respondent hugged Patient 1 at the end of her appointments with him.

126. The Respondent had little to no recollection of whether he hugged Patient 1 yet asserted that if he did, he would have had her consent. His testimony on whether hugging took place was inconsistent. In a sworn affidavit, the Respondent described that there was a "level of comfort that allowed for a hug"; in his direct examination, the Respondent described a "mutual hug" with Patient 1; yet on cross-examination, the Respondent stated it was "possible" that he hugged Patient 1 – suggesting a possibility that it did not occur at all.

127. While Patient 1 may have [redacted] some similarities in faith, the Panel finds it unlikely that Patient 1 would have conveyed the level of comfort the Respondent asserts, given her strong preference against hugging generally.

128. The Panel does not accept the Respondent's argument that Patient 1 consented to and welcomed the Respondent's hugs in 2012 and now feels differently and seeks to retroactively retract her consent. The Panel finds that the Respondent initiated the hugging with Patient 1 and that even if Patient 1 hugged the Respondent back, she was not comfortable doing so and the Respondent's hugs were unwelcome at that time.

129. The Panel finds that hugging a patient, when that conduct is not initiated by the patient and/or is unwelcome, is unprofessional conduct now and was when it occurred in or around 2012 as well. The Boundaries Standard provides that a registrant must not "initiate non-therapeutic touch or hugging with a patient and, before receiving non-therapeutic touch such as a hug, considers whether it would be appropriate, supportive and welcome". This prohibition describes the Respondent's conduct as he initiated the hugs, and they were unwelcome.

130. While the Boundaries Standard was enacted on July 1, 2018, the Panel agrees with the College's submission that hugging a patient did not become impermissible overnight merely with the passage of the written standard. The Panel agrees with the College's submission about the reasoning expressed in *Ontario (College of Physicians and Surgeons of Ontario) v. Malette*, 99 2020 ONCPSD 2. In that case, the respondent hugged a patient both before and after the passage of a written standard prohibiting hugging. That tribunal found the respondent's conduct was

"aggravating" as it continued during the period after the written standard was released. There is nothing in the decision that suggests that the hugging which occurred prior to the issuance of the written standard was permissible.

131. The same rationale applies here. The profession of massage therapy is about therapeutic touch. The requirement to establish and maintain appropriate boundaries with patients has always existed in the profession. It is foundational to the massage therapist / patient relationship, and to the requirements of a massage therapist to act professionally and in the patient's best interests. Section 1(a) of the Code of Ethical Conduct, which was in place at the time of the Respondent's hugging of Patient 1, required a registrant to "act in the best interest of a patient". Initiating unwelcome hugs towards a patient is not acting in the best interests of a patient. Not only does the conduct risk the patient interpreting the hug as romantic or sexual, but it does also not respect a patient's boundary and autonomy to not to engage in that type of social interaction. Patient 1 was not a "hugger" and the Respondent was required to act in her best interest as a patient and respect that boundary. The Panel does not accept the Respondent's argument that there was some kind of therapeutic interest to Patient 1 in extending her hugs. There was no evidence led of that fact, other than the assertion of that point by the Respondent. Similarly, while the Respondent asserts the atmosphere allowed for a hug, he clearly misread that atmosphere, which is precisely the issue with the conduct. It is not the Respondent's comfort in hugging that matters, but the patient's. The Respondent should not have asked Patient 1 to hug him. The Panel finds that the Respondent engaged in inappropriate and unprofessional conduct by hugging Patient 1. The College has proven this allegation to the requisite standard.

132. The Panel has determined that the Respondent committed unprofessional conduct because he failed to act in the patient's best interest, and he failed to respect her boundaries and autonomy as a patient.

1(a)(ii) Made statements and/or inquiries of an unprofessional, inappropriate and/or personal nature including asking her if you could pray for her and/or praying for her in her presence;

133. The Panel prefers Patient 1's evidence to the Respondent's evidence on this allegation for many of the same reasons outlined above. Patient 1 had clear memories, and gave specific and consistent evidence. The Respondent had few to no recollections and gave inconsistent testimony. Initially, the Respondent testified that he did not recall praying for Patient 1 during one or more of her appointments in 2012. He then testified he had a "vague recollection" of praying for Patient 1. The Respondent also testified he did pray for Patient 1. When presented with a prior inconsistent statement from an affidavit and an interview transcript denying ever having prayed for people during a treatment when they did not ask him to do so, the Respondent testified, "I didn't say that I didn't pray for her."

134. The Panel finds that the Respondent prayed for Patient 1 at the end of the majority of her appointments, with the exception of the first appointment. Given the dates of Patient 1's appointments, the Panel finds that the Respondent prayed for Patient 1 at the end of her appointments in or about 2012. The Panel finds that the Respondent initiated the prayer. Neither Patient 1's evidence nor the evidence of the Respondent was strong with respect to whether the Respondent asked Patient 1 whether he could pray for Patient 1. The Panel finds that the Respondent may have asked Patient 1 whether he could pray for her, and she may have responded affirmatively.

135. The Panel also accepts that the Respondent spoke to Patient 1 about his dating life including his lack of success with online dating. The Panel is not, however, satisfied that those conversations took place in or about 2012 given that they preceded when he dated and married his wife in 2011.

136. The Boundaries Standard provides that a registrant "discloses personal information to the patient only to the extent required for the provision of patient-centred care." As noted above, the Boundaries Standard was published after the conduct that is the subject of this allegation. As also noted above, the Panel finds that the conduct outlined in the Boundaries Standard did not become impermissible merely with the passage of the written standard. The requirement to establish and maintain appropriate boundaries with patients has always existed in the profession. It is

foundational to the massage therapist / patient relationship, and to the requirements of a massage therapist to act professionally and in the patient's best interests. Section 1(a) of the Code of Ethical Conduct, which was in place at the time of the Respondent's praying during Patient 1's appointments in 2012, required a registrant to "act in the best interest of a patient".

137. In *College of Physicians and Surgeons of Ontario v Glumac*, 2016 ONCPSD 14, a discipline committee found that a physician's self-disclosure of his religion to a patient and engaging in prayer with the patient, amongst others, amounted to disgraceful, dishonourable or unprofessional conduct. The College also cited two other cases involving unprofessional personal disclosures dating back to 2006: *College of Nurses of Ontario v Jones*, 2006 CanLII 81729; *Ontario (College of Physicians and Surgeons of Ontario) v. Lukezich*, 2006 ONCPSD 17.

138. The Respondent argues that:

> The act of praying for a patient who is open with you about their own faith and who has consented to you doing so is not an inappropriate act. It is not the crossing of any boundary between the personal and professional. As noted above, Mr. Krekic has been trained in how the non-physical components of a person, such as their faith, can play an important role in their treatment and recovery. This panel should not seek to exclude the role of faith in the treatment of RMT patients where both the patient and the therapist recognize and subscribe to its efficacy and consent to its inclusion in the treatment plan, as was the case in this instance. Faith has a role to play in the recovery of those patients for whom it is important, including being a source of strength and confidence in the ultimate success of their recovery efforts.

139. The Panel agrees with the College's submission that "the Panel does not need to make a statement that categorically excludes the role of faith in treatment in this matter. The Respondent's use of faith with these specific patients in the manner in which he did so is the problem. The evidence is clear that he did so in a way that made his patients uncomfortable. The fact that he now says he thought it was welcome underscores the problem with this type of conduct." In this case, the Respondent's use of prayer and discussions of faith were focussed on him and not his patients. The Respondent approached discussions about faith and use of prayer in a manner that did not centre his patients and that did not act in their best interests.

With respect to Patient 1, the Respondent assumed because she may have shared a faith, that she would want to discuss faith with him and engage in prayer with him. She did not. Patient 1 was uncomfortable and she felt like she could not say no to the Respondent. The Respondent placed Patient 1 in that uncomfortable position by initiating discussion and use of prayer that was unwelcome to Patient 1.

140. The Panel finds that the Respondent made statements and/or inquiries of an unprofessional, inappropriate and/or personal nature when he asked Patient 1 if he could pray for her and did pray for her in her presence. The Panel has determined that by making these statements the Respondent has committed unprofessional conduct. The College has proven this allegation to the requisite standard.

141. The Panel has determined that the Respondent committed unprofessional conduct because he failed to act in the patient's best interest, and he failed to respect her boundaries and autonomy as a patient.

1(a)(iii) Placed your hand(s) under her undergarment or otherwise moved her undergarment without her consent

142. The Panel prefers the evidence of Patient 1 to the Respondent with respect to this allegation.

143. Patient 1's evidence on this point was again clear, specific and consistent. Patient 1 testified that the Respondent told Patient 1, "I'm going to press on your pubic bone now" and, without further explanation or presentation of any options, he pressed on her pubic bone. He did that underneath Patient 1's shorts and underwear without permission or explanation. The Respondent pushed Patient 1's shorts down, used his fingertips and applied a significant amount of pressure. She testified this occurred five or six times.

144. By contrast, the Respondent's evidence was vague and inconsistent. The Respondent testified that he worked on Patient 1's gracilis muscle because it is part of the adductor muscles. The Respondent testified his fingers did not come any closer to Patient 1's vaginal area and mons pubis than from the crease of where the

leg meets the torso, two inches down from the pubic bone and one inch from Patient 1's genitalia.

145. This evidence is inconsistent with what the Respondent told the College investigator; namely that he did not treat around the pubic bone area on Patient 1 and that he did not treat near the vaginal area at all. The Panel does not accept the Respondent's explanation that he did not know what the investigator meant by "around" or that that College investigator should have posed the question as to whether he touched within one inch of Patient 1's labia.

146. The Panel does not find that there was clear, express consent as Mr. Dixon described is required in circumstances where a registered massage therapist is seeking permission to lower an undergarment to expose skin that the therapist will be treating.

147. The Panel does not accept the Respondent's evidence that he did ask Patient 1 for consent to move her shorts and work underneath her shorts. That evidence is inconsistent with the Respondent's testimony that he did not recall whether the treatment that day was delivered through Patient 1's shorts or skin on skin.

148. The Panel finds Patient 1's evidence more consistent, more plausible and more likely than the Respondent's evidence. The Panel finds that the Respondent stated to Patient 1, "I'm going to press on your pubic bone now" and he pressed on Patient 1's pubic bone. The Respondent did that underneath Patient 1's shorts and underwear. The Respondent used a lot of pressure. He pressed down very hard for several minutes in the area just above Patient 1's vaginal lips. The Panel finds that the Respondent did not ask Patient 1's permission, he did not give Patient 1 any option of touching her pubic bone above her clothing, and he did not explain why he needed to touch Patient 1 in that area. The Respondent did not speak while he did touch Patient 1 in that area. The Panel finds this occurred five or six times on or about 2012. The Panel finds that the Respondent placed his hand under Patient 1's undergarment or otherwise moved her undergarment without her consent. The College has proven this allegation to the requisite standard.

149. The Panel previously outlined the meaning of professional misconduct. The Panel finds that the Respondent's conduct falls within the meaning of professional misconduct. Touching Patient 1 underneath her shorts and underwear, in the location the Respondent did; without consent, explanation, or presentation of options would reasonably be considered by members of the profession to be dishonourable, disgraceful and unprofessional. It is a marked departure from the standard expected of a registered massage therapist. The Panel has determined that the Respondent committed professional misconduct.

1(a)(iv) Massaged or otherwise touched her mons pubis and/or labia for a non-therapeutic and/or sexual purpose; and/or

150. The evidence of Patient 1 and the Respondent about where the Respondent touched Patient 1 is set out above. The Panel prefers the evidence of Patient 1 to that of the Respondent for the reasons set out above.

151. As noted in the findings in 1 (a)(iii) above, the Panel finds that the Respondent stated to Patient 1, "I'm going to press on your pubic bone now" and he pressed on Patient 1's pubic bone. The Respondent did that underneath Patient 1's shorts and underwear. The Respondent used a lot of pressure. He pressed down very hard for several minutes in the area just above Patient 1's vaginal lips. Patient 1's testimony and the drawing completed by Patient 1 are consistent in identifying the area in question as being Patient 1's labia. In any event, if it is not Patient 1's labia, it is her mons pubis. The Panel finds that the Respondent did not ask Patient 1's permission, he did not give Patient 1 any option of touching her pubic bone above her clothing, and he did not explain why he needed to touch Patient 1 in that area. The Respondent did not speak while he did touch Patient 1 in that area. The Panel finds this occurred five or six times on or about 2012. The Panel finds that the Respondent placed his hand under Patient 1's undergarment or otherwise moved her undergarment without her consent.

152. The Panel set out the applicable principles with respect to sexual touching earlier in these reasons. Applying those principles, the Panel finds that objectively looking at

the totality of the circumstances, the Respondent touched Patient 1's labia and/or mons pubis for a non-therapeutic and sexual purpose because:

a. The Respondent did not ask permission or obtain consent to move Patient 1's shorts or underwear and place his hands on her skin underneath her undergarments.

b. The Respondent touched Patient 1 on her pubic bone, just above her vaginal lips without permission, explanation or any offer of touching the area above her clothing.

c. The part of Patient 1's body which the Respondent touched is inherently sexual.

d. The Respondent's testimony was unreliable and lacked credibility.

e. There is no therapeutic purpose to touching a patient's mons pubis or labia in the manner described by Patient 1.

f. Mr. Dixon's report suggested that touching the mons pubis area may be necessary to assess the pubic symphysis joint. He admitted the Respondent's clinical records make no reference of such an assessment on Patient 1.

153. The College has proven this allegation to the requisite standard.

154. The Code of Ethical Conduct at Schedule "C" in the 2001 Bylaws provided that a registrant must not "engage in sexual conduct with a patient". "Sexual conduct" was defined as "sexual intercourse or other forms of physical sexual activity, speech and gestures of a sexual nature." The definition of sexual conduct is very broad. It covers the entire spectrum of conduct from sexual speech to sexual intercourse. The Respondent's conduct of touching Patient 1's labia or mons pubis for a non-therapeutic and sexual purpose meets this definition. The Panel has determined that the Respondent has not complied with the 2001 Bylaws.

155. The Panel finds that the Respondent's conduct is a serious breach of trust. Touching of Patient 1's mons pubis and/or labia for a non-therapeutic purpose and a sexual purpose fall squarely within the definition set out above for professional misconduct.

The Respondent's conduct would reasonably be considered by members of the profession to be dishonourable, disgraceful and unprofessional. It is a marked departure from the standard expected of a registered massage therapist. The Panel has determined that the Respondent committed professional misconduct.

1 (b) In or about November 2012, you inserted your finger(s) into her anus for a non-therapeutic and/or sexual purpose;

156. The accounts of Patient 1 and the Respondent are set out above. The Panel prefers the evidence of Patient 1 to that of the Respondent. With respect to this allegation, Patient 1's evidence was again clear, consistent, and specific. The incident stuck out in Patient 1's memory. She described the incident taking place after her return from the washroom, towards the end of the appointment. She described the specific treatment room (with a window), her exact body position, where the Respondent was located in relation to her body, the insertion and exit of the Respondent's fingers in her anus, the painful physical sensation of that touch, and how she felt emotionally at that moment.

157. The Respondent had no recollection of this appointment, acknowledged treating Patient 1 in the gluteal region and working skin on skin that day, but denied inserting his fingers into Patient 1's anus. The Respondent's evidence was inconsistent. He told the College investigator that he did not treat Patient 1's "anal area." On cross-examination, the Respondent admitted that he treated Patient 1 one inch from her anus yet he refused to admit this was her "anal area." The Respondent stated, "Not necessarily. Depends on what your definition is of the "anal area"; "I'm not an expert on the anus"; and "I don't know what the anal area means." The Panel does not accept that the Respondent does not know what "anal area" means. The Respondent also told the College investigator that when treating Patient 1's sacrotuberous ligament, he was the width of a palm from the outside of his index finger to the outside of his pinky finger away from anal entry. On cross-examination, the Respondent refused to admit that distance is inconsistent with being one inch from her anus. The Panel finds both of those statements to be inconsistent.

158. The Panel finds that in or about November 23, 2012, while lying on her side, the Respondent was massaging her gluteal area. The Respondent gained access to her anus by moving his hands underneath her clothing and underwear from the bottom of her shorts. He inserted his fingers into her anus. The sensation was extremely painful. The Respondent then removed his fingers. The Respondent turned his back to her, and while facing the wall, made a motion which Patient 1 perceived to be handwashing. The Respondent told her he would be attending an upcoming dance performance. The appointment ended shortly thereafter.

159. The Panel agrees with the College's submission that the Respondent did not put the proposition to Patient 1 that there was no sink in the treatment room during her appointment of November 23, 2012. Patient 1 did not have an opportunity to respond to the evidence the Respondent would later lead in that regard. The Panel is left with differing accounts about whether there was a sink in the treatment room on November 23, 2012. The Panel does find that there was a hand sanitizer station in the treatment room.

160. The Panel does not consider Patient 1's evidence regarding having seen the Respondent wash his hands to be inconsistent. She admitted that she saw the Respondent's back and the movement his body was making, and she understood him to be washing his hands. This would not necessarily explain the sounds of the tap and water, though there may be other explanations for those sounds as suggested by the College. Patient 1 was not given the opportunity to provide evidence on those points because the proposition that the sink was not in the room was not raised until after she was dismissed as a witness. Ultimately, the Panel does not consider the question of whether or not there was a sink in the room to be determinative of this allegation. Patient 1's evidence was consistent on the central points of the allegation.

161. Mr. Dixon's evidence regarding Patient 1 feeling a sensation in her anus due to a possible trigger point referral was "inconclusive". On cross-examination, Mr. Dixon agreed that he was not aware of any evidence to support this proposition and he

has never had that experience in 35 years. The Panel discounts this possible explanation for Patient 1's sensation in her anus.

162. The Panel finds that objectively looking at the totality of the circumstances, that the Respondent inserted his finger(s) into Patient 1's anus for a non-therapeutic and sexual purpose because:

    a. The Respondent inserted his fingers into Patient 1's anus.

    b. The part of Patient 1's body which was touched is inherently sexual.

    c. The Respondent's testimony was unreliable and lacked credibility.

    d. There is no therapeutic purpose for a registered massage therapist to insert their fingers into Patient 1's anus in the manner described by Patient 1 and none was raised by the Respondent as he denied it occurred at all.

163. The College has proven this allegation to the requisite standard.

164. The Code of Ethical Conduct at Schedule "C" in the 2001 Bylaws provided that a registrant must not "engage in sexual conduct with a patient". "Sexual conduct" was defined as "sexual intercourse or other forms of physical sexual activity, speech and gestures of a sexual nature". The definition of sexual conduct is very broad. It covers the entire spectrum of conduct from sexual speech to sexual intercourse. The Respondent's conduct of touching Patient 1's anus for a non-therapeutic and sexual purpose meets this definition. The Panel has determined that the Respondent has not complied with the 2001 Bylaws.

165. The Panel finds that the Respondent's conduct is a serious breach of trust. The Respondent inserting his fingers into Patient 1's anus for a non-therapeutic purpose and a sexual purpose falls squarely within the definition set out above for professional misconduct. The Respondent's conduct would reasonably be considered by members of the profession to be dishonourable, disgraceful and unprofessional. It is a marked departure from the standard expected of a registered massage therapist. The Panel has determined that the Respondent committed professional misconduct.

Allegation 2: Patient 2

2. In the course of providing massage therapy services to Patient 2,

   (a) On or about March 20, 2014, you:

      (i) Made comments and/or statements of an unprofessional, inappropriate and/or personal nature by sharing overly personal details about your life including that your eldest daughter had “daddy issues” and/or your belief that God works through you to heal people; and/or

      (ii) Massaged or otherwise touched her mons pubis for a non-therapeutic or sexual purpose;

   (b) On or about March 28, 2014, you:

      (i) Made comments and/or statements of an unprofessional, inappropriate and/or personal nature including stating that God works in mysterious ways;

      (ii) Placed your hand(s) under her undergarment or otherwise moved her undergarment without her consent;

      (iii) Massaged or otherwise touched her mons pubis and/or labia for a non-therapeutic or sexual purpose; and/or

      (iv) For a non-therapeutic or sexual purpose, you;

         i. Directed her to the edge of the massage table and to spread her legs open;

         ii. When she did so, you placed yourself between her legs and had her straddle you, facing you and while you were seated; and/or

         iii. In this position, you pressed your groin into her groin;

166. Patient 2 testified that she is a counselor. She has been married to her husband for [redacted] years. [redacted]

167. Patient 2 testified that she began seeing the Respondent in 2014. She testified about her extensive history with health care providers whom she saw to address her chronic migraines. Patient 2 had seen massage therapists, an acupuncturist, an osteopath, chiropractors, physiotherapists, doctors, naturopaths and nutritionists. Patient 2 estimated that prior to the Respondent, she had seen approximately ten to fifteen other massage therapists. A colleague had recommended that Patient 2 see the Respondent. That colleague also mentioned that the Respondent was Christian, though Patient 2 testified this was not a deciding factor in her seeing the Respondent.

168. Patient 2 saw the Respondent twice. Her first appointment was on March 20, 2014. Her second appointment was on March 28, 2014. Patient 2 identified her intake form, which she completed by hand several days before her first appointment. Patient 2 testified about the appearance and layout of the clinic.

169. Patient 2 described her first appointment, on March 20, 2014, with the Respondent. She testified that she and the Respondent sat at the back of the treatment room initially and spent approximately 30 minutes reviewing her medical history. Patient 2 got emotional at one point regarding all of her efforts to seek relief. The Respondent was sympathetic and was adamant he could help her. The Respondent told Patient 2 that he had been successful in treating his wife's migraines.

170. Patient 2 testified that the Respondent also talked about God and that he believed that "God would use him" to help Patient 2. She described that, at that moment, she felt very "seen by him". The Respondent commented to Patient 2 that she must be desperate and that he is going to help her. The Respondent told Patient 2 that she just needs to trust him, and he believes that God has "gifted him."

171. The Respondent then performed a postural assessment. The Respondent told Patient 2 that if her hips were misaligned, this could be a contributing factor to migraines.

172. Patient 2 testified that the Respondent told her to lie face up on the massage therapy table. She was wearing jeans and a blouse. The Respondent first worked on Patient 2's shoulders. She testified that the Respondent was talkative and asked Patient 2 a lot of questions about herself: whether she was married, what her husband did for a living, and where she worked. Patient 2 testified that the Respondent talked a lot about his wife and children. She specifically recalled him speaking about how he was experiencing difficulties with his eldest child, who is his stepdaughter. The Respondent said his daughter had "daddy issues". Patient 2 testified that the phrase "daddy issues" was a direct quote from the Respondent. She specifically recalled that term because she did not expect to hear it used by a professional in this setting. On cross-examination, Patient 2 stated she is confident the Respondent said "daddy

issues" because the term is not part of her vernacular and she found it very striking at the time. Patient 2 described feeling uncomfortable.

173. Patient 2 testified she initially answered the Respondent's questions but increasingly gave short and simple answers to discourage conversation. Patient 2 testified she did not tell the Respondent that she was Christian. [redacted] Patient 2 testified that as the Respondent's conversation progressed, she found his references to faith to be "cliché" and "cheesy". Patient 2 described "getting irritated" because it seemed like a repetitive topic and she "felt confused" about why the Respondent "kept spiritualizing everything." Patient 2 denied the proposition that she was devout and open about her faith, and that the Respondent's comments were in response to Patient 2's espoused beliefs. She said that the most personal thing she shared with the Respondent was that she was "desperate and feeling hopeless" but she did not discuss her relationship with God.

174. Patient 2 testified that after the Respondent finished working on her shoulders, he began working on her abdomen. He commenced with palpations and pressed down on her abdomen. Patient 2 recalls the Respondent said, "I'm just going to tug down your pants a little bit." Using both hands, the Respondent tugged down Patient 2's pants and her underwear in the same motion, moving them lower onto her pelvis. Patient 2 testified that the Respondent did not ask her if he could do this. The Respondent did not explain why he was going to pull down her pants. The Respondent then slid one hand underneath Patient 2's underwear and pants on the left side, without any warning. Patient 2 believed it was the Respondent's left hand. The zipper and button on Patient 2's pants were fully done up. Patient 2 felt the Respondent's fingertips pressing down, palpating, and making a "rubbing down motion". Patient 2 described the area the Respondent touched as being "just inside my pubic mound on the upper left-hand side…where my pubic hair started…just inside of that on the left." It was higher than her labia majora, approximately four inches to the left of the crest of her labia. Patient 2 said that the Respondent was not speaking with her at this point. She found the pressure to be "quite intense" and

"borderline painful". Patient 2 testified that the Respondent's touch felt "methodical", "not like an accidental brush". Patient 2 identified a diagram she had completed during the College investigation in which she marked the areas on her body where the Respondent had touched her. Patient 2 testified the pelvic portion of the appointment lasted two to three minutes. She later testified it lasted one to two minutes.

175. Patient 2 described feeling in a "double bind". On the one hand, she felt shocked and startled. On the other hand, the Respondent asked her to trust him, and she thought it might be therapeutic touch. Patient 2 testified that she decided to trust that the Respondent was touching her in a therapeutic manner. Part of the reason she did so was because of how calm the Respondent was.

176. The appointment finished with the Respondent stating he would like to see Patient 2 return again.

177. Patient 2 returned home and told her husband about the appointment. She told him that she felt "really uncomfortable" that the Respondent touched her pelvis, and that she was "a bit creeped out" by the Respondent's demeanour and their conversation, including all of the questions he asked her. Patient 2 told her husband about the "daddy issues" comment, and that she was uncomfortable that the Respondent kept bringing up God and saying that "God would use him" and that "it would be his privilege". They discussed whether Patient 2 should return to see the Respondent and they agreed that she would book another session.

178. Patient 2's second appointment with the Respondent was on March 28, 2014. Patient 2 testified that she was uncomfortable and reluctant to return. The Respondent asked Patient 2 how she had been doing since the last appointment. She remarked that she felt a little bit better. Patient 2 recalled the Respondent answering, "God works in mysterious ways" or "God moves in mysterious ways." This comment made Patient 2 feel uncomfortable. She also felt it was manipulative of the Respondent to use spiritual language and ideas relating to himself and his abilities.

179. The Respondent spent approximately 20 to 30 minutes doing stretches and exercises. They returned to the treatment room, where Patient 2 got onto the massage therapy table lying face up. The Respondent started working on Patient 2's shoulders and then moved to her pelvis. Patient 2 testified that again, without warning, the Respondent slid his hand under Patient 2's pants and underwear. She believes it was his left hand. On this occasion, however, she described that he went "substantially further". Patient 2 testified that the Respondent "went down as far as…where the lips of [her] labia meet…an inch to the left of that." Patient 2 said it was "way down…the middle left of my pelvis…as low as the top of my labia." Patient 2 identified a diagram where she had indicated where the Respondent had touched her.

180. Patient 2 testified that the Respondent touched Patient 2 in that area with his fingertips. The Respondent touched Patient 2's pubic hair. The Respondent did not ask for permission or consent. He did not make a comment about tugging her pants or underwear. The Respondent did not tell her why he was touching her in this area.

181. Patient 2 testified that the touch felt like pressing down very hard with a lot of repeated pressure, as well as a "rubbing down" motion. Patient 2 described thinking at the time that "this can't be right or appropriate" and feeling "horrified." Patient 2 estimates this lasted between three and five minutes. Patient 2 asked the Respondent, "what is the name of this method?" to which he responded, "myofascial release." On cross-examination, Patient 2 denied the proposition that this was therapeutic touch.

182. Following the pelvic portion of the treatment, the Respondent then worked on several postures with Patient 2. She was sitting up on the massage table, with her legs to the right side of the table facing the wall. The Respondent was sitting in front of her on a black stool with wheels. The Respondent had explained the importance of breathing. The Respondent told Patient 2 to move to the edge of the table. She moved forward and the Respondent said to her, "keep coming, keep coming" until she was "perched on the very edge of the table." The Respondent then wheeled towards Patient 2 and said, "I'm going to need you to spread your legs." When she

did not move her legs apart, the Respondent put one hand on each of her knees and said, “I’m going to need you to open your knees.” Patient 2 did so. The Respondent then put his knees together and slid into the space between her legs and “right up against [her] pelvis.” The Respondent asked Patient 2 to continue to move forward until her buttocks were off the table and resting on his knees. The Respondent told Patient 2 to continue to move forward until their pelvises were making contact. Patient 2 felt that the Respondent had an erection. Patient 2 was confident she felt an erection because of the location, the distinct pressure against her pelvis and because she is familiar with male anatomy.

183. Patient 2 testified that once in this position, the Respondent placed his hands under her shirt, on her back, and was “bracing” her. He moved his pelvis in a rocking motion which coincided with increases and reductions of pressure she felt against her pelvis. The Respondent told Patient 2 to “just relax, breathe” and lean into him. Patient 2 estimated this rocking motion lasted approximately one to two minutes.

184. The Respondent then asked if he could roll up the front of Patient 2’s shirt. Patient 2 said that he could. The Respondent did not explain why he was rolling up her shirt. The Respondent instructed Patient 2 to lean into him and place her left arm over his left shoulder so that her breasts were pushed up against his chest and her arm was horizontal across his left shoulder. The Respondent palpated her lower rib cage with both hands moving his fingertips and palms. Patient 2 estimated this lasted approximately five minutes. Patient 2 continued to feel the Respondent’s erection against her pelvis, and her breasts being pressed up against the Respondent. Patient 2 could also feel the Respondent breathing on her neck. Patient 2 testified she felt “shocked” and “frozen,” as though she was watching this happen from above. She recalled it hurting and asking the Respondent whether it was supposed to hurt. Patient 2 testified she made up an excuse to leave the appointment. She looked at the clock and said that she forgot she had an appointment and had to go. Patient 2 denied the Respondent ever telling her he was treating her diaphragm. Patient 2 strenuously denied the Respondent’s touch could have been inadvertent because it was repeated contact over a period of time. In response to the suggestion

that the pressure she felt in the groin did not occur, Patient 2 responded, “I know exactly what I felt…his erection and him rocking his pelvis back and forth.”

185. Patient 2 identified photos in which she re-enacted the postures with her husband.

186. Patient 2 testified that she paid for her appointment, as well as a foam cube, and left the clinic. She described her hands shaking. She threw the foam cube in the trunk and dropped an exercise sheet in a puddle by her car. Patient 2 drove to a Christian bookstore. While parked there, she called her husband. She was hyperventilating and crying. Patient 2 went into the store to look at books and purchased a CD. She then drove to a craft store where she walked around briefly. Patient 2 then went to a previously scheduled counseling appointment. As she was early, she googled “myofascial release”. A link to another massage therapy clinic came up. Patient 2 called that clinic and asked whether treatment would ever involve straddling the practitioner. The woman on the phone suggested Patient 2 report the incident.

187. After the counseling appointment, Patient 2 returned home. She told her husband that the Respondent touched her, and she felt violated, sick, and extremely distressed. She asked her husband to throw out the foam cube, and later asked him to throw out the CD as well. Patient 2 showered because she felt “violated” and “dirty” and “humiliated”. Patient 2 threw out the clothes she was wearing that day.

188. After speaking with her husband, Patient 2 decided to make a complaint to the College but she wanted to do it anonymously. Her husband phoned the College and was told it is not possible to make an anonymous complaint. A few days later, on March 31, 2014, Patient 2 made a written complaint in her name. Patient 2 withdrew her cooperation for a period because she wanted to move on. She then resumed participation on learning another complainant had come forward. At that point, Patient 2 [redacted] was no longer worried about running into the Respondent.

189. Patient 2 filed a police report, which she identified. Patient 2 also contacted the clinic, told them something inappropriate occurred and asked them to destroy her file or redact her contact information.

190. Patient 2 testified about how she felt in the period following these events and the impact that it had on her relationship with her husband.

191. Witness B also testified. He is Patient 2's husband. [redacted] He described Patient 2's migraine history. He recalled a colleague recommended Patient 2 see the Respondent because of Patient 2's migraines. Patient 2's husband described his interactions with Patient 2 following the first appointment on March 20, 2014. Patient 2 told him that she was a bit uncomfortable and "creeped out." They discussed whether she should return. Patient 2 returned because she had only seen the Respondent once and others had obtained migraine relief from the Respondent.

192. Witness B testified about his interactions with his wife following her second appointment on March 28, 2014. When Patient 2 phoned him, she was very distraught, overwhelmed, hyperventilating, and was struggling to tell him what occurred. He was confused and worried. He testified it was not typical for Patient 2 to call him in the middle of the day or to be overwhelmed with emotion. Witness B was concerned about her driving home. He assisted Patient 2 to de-escalate her emotions and ground herself. He offered to come and meet her and drive her home. She said that she felt better and would go to a bookstore and a counseling appointment. Patient 2 called her husband after leaving the bookstore and said that she felt better and was able to drive home.

193. Witness B testified about his observations of Patient 2 when she returned home. She was crying and overwhelmed emotionally again. He found it very odd that his wife did not want him to hug her. Patient 2 told her husband that the Respondent touched her underneath her pants and pulled her up close to him. She asked her husband to throw out the foam cube. Patient 2's husband described the following days as being a "roller-coaster". Patient 2 expressed that she was scared because the Respondent knew her address. Patient 2's husband described their conversations about making a College complaint, and that he called the College to ask if he could make a complaint on her behalf or if she could file an anonymous

complaint. Patient 2's husband testified about accompanying his wife to the police station to make a report.

194. The Respondent testified that on March 20, 2014, he performed an extensive intake on Patient 2. He recalled discussions with Patient 2 about her faith, the college she attended, and her husband [redacted] The Respondent indicated that because of those things he felt "more free and open" to speak about his relationship with God, and Patient 2 did not seem opposed to that. The Respondent testified that Patient 2 told him about all the massage therapy and acupuncture appointments she had attended and how she was frustrated that she had not been able to obtain relief for her migraines. The Respondent testified that he felt confident he could help Patient 2. He stated faith was part of the hope he had for people that their bodies would be restored back to the original way God intended their bodies to be. The Respondent told Patient 2 that God had used him before, and he would try his best to do everything he could to help her. The Respondent told Patient 2 he would not just look at her symptoms but also what was causing her discomfort. The Respondent swore an affidavit prior to the hearing in which he stated that any comments he may have made about faith were in response to Patient 2's espoused beliefs. On cross-examination, the Respondent conceded he could not recall who was asking the questions, and that it was possible he was asking the questions.

195. The Respondent testified that he told Patient 2 he had a wife and two children, and a stepdaughter with whom he was struggling to transition a bit. The Respondent shared that being married with two young babies around the house was challenging. The Respondent testified that he was making small talk to put Patient 2 at ease. He said, "I was trying to make her feel more comfortable by sharing more about me and we were having a mutual conversation." The Respondent did not recall using the term "daddy issues" as that is not a term he normally uses. If he did use it, he feels badly about using that term. He expressed that he tries to be as professional as possible with his patients. He doubted that he used that term.

196. The Respondent testified that on March 20, 2014, he performed a traction technique on Patient 2's jaw and worked on her temporal mandibular joint. The Respondent

recalled treating Patient 2's left hip flexor, as her body was rotated forward. The Respondent testified about the assessment he performed to determine that, including the notations on his form to indicate Patient 2's left side frontward rotation. The Respondent testified that his focus was on releasing Patient 2's pelvis as that is where the distortion can be the most impactful. The Respondent understood Patient 2 to be open to trying something new as the other approaches had not improved her condition.

197. The Respondent testified that he treated Patient 2's psoas muscle. He treated the area from Patient 2's bellybutton down to her pants. The Respondent did remember asking Patient 2 for consent to move her pants down "an inch or two." The Respondent testified that Patient 2 consented and that she never indicated verbally or non-verbally that she wanted the Respondent to stop working on her pelvis. The Respondent agreed it was possible he treated in this area for two to three minutes. The Respondent acknowledged, "I can't say that if I was focusing on treating the hip flexor muscle that there wasn't any contact with any pubic hair."

198. The Respondent estimated that the hands-on portion of the treatment lasted approximately 25 to 30 minutes as the interview and assessment took quite a long time during this initial appointment.

199. In relation to the March 28, 2014 appointment, the Respondent testified that he would often bring up God "if somebody came in and there's talk about Christianity" and "if they were referred by someone who is Christian", the Respondent "would often bring in talk about God." He testified that it can be helpful for people to have hope about whether their condition will improve. The Respondent testified that he definitely recalled having some discussions about God with Patient 2. The Respondent acknowledged it is possible he expressed that God had "gifted" him, as he feels that this is the case. The Respondent did not specifically recall stating, "God works in mysterious ways" but acknowledged it is something he could have said as he also believed that to be true.

200. The Respondent testified that he adopted the same treatment approach for the second appointment with Patient 2. Patient 2 had indicated that she felt slightly

better on the second appointment, so he knew they were on the right track. His focus remained on targeting the hip flexor. The Respondent testified that he treated the iliopsoas muscle and he would have attempted to target the psoas muscle as well, working closer to the pubic bone.

201. The Respondent testified that he did talk to Patient 2 about hip flexors at the beginning. He asked her while she was on the massage therapy table whether it was ok to uncover her belly, work on her hip flexor and move her pants down slightly. She indicated that it was fine. The Respondent testified when he was working on Patient 2's hip flexor, he was working at the border of her pants. He acknowledged that he sometimes closes his eyes while working on patients and does not have as much awareness of his hands as he should, and there is a chance that his fingers went underneath Patient 2's underwear by "one to two inches". The Respondent believed that his fingers were about 3 inches from Patient 2's genitals. On cross-examination, the Respondent stated that he did not know if it was more than two inches. On cross-examination, the Respondent also acknowledged, "I don't know if I moved her underwear, and I don't know if my hands went under her jeans. It's possible. If it did, it shouldn't have happened." On cross-examination, the Respondent stated, "I don't know if my hands were where she's saying they were."

202. When asked whether he touched Patient 2's pubic hair, the Respondent answered "I don't generally focus on touching the public hair, that is not something that is important during a treatment. If I did come into contact, then it was an accident…I don't recall touching her pubic hair." On cross-examination, the Respondent acknowledged the possibility of contact with Patient 2's pubic hair: "I can't say that if I was focusing on treating the hip flexor muscle that there wasn't any contact with any pubic hair. No, I can't say that. But that wouldn't be my focus."

203. The Respondent testified that Patient 2 asked him the name of the technique he was delivering, and he told her, "myofascial release."

204. The Respondent testified that he treated Patient 2's diaphragm because it was part of the line of tension creating Patient 2's problems. He obtained consent to treat Patient 2's diaphragm. The Respondent testified he has performed the diaphragm

treatment technique hundreds of times on patients. The Respondent testified that he asked Patient 2 to sit on the edge of the massage therapy table after working on her hip flexor. He told Patient 2 they were going to work on her diaphragm in the seated position. The Respondent took Patient 2 through the positioning step by step. He adjusted the height of the table so that Patient 2 was higher than the Respondent. The Respondent instructed Patient 2 to bring her knees out so that he could bring his knees straight together and his knees would go under the table. The Respondent testified that if a person was sitting with their knees straight, he would ask them to bring their knees apart.

205. The Respondent asked Patient 2 to bring her shoulder down onto his shoulder so the front of her body would relax, and he could work underneath the ribs. Patient 2's right arm rested on the Respondent's right shoulder. The Respondent described the formation as a "teepee". The Respondent recalled Patient 2 asking him whether it was supposed to be sore. He could not recall his response. The Respondent testified he rolled up Patient 2's shirt so that he could get underneath her ribs with no resistance. The Respondent testified he asked Patient 2 whether he could do that, and she consented. The Respondent explained that he was trying to pull Patient 2's ribs forward and create more force from the back of the ribs. He pushed into the diaphragm with his front hand and pulled the ribs forward with his back hand. The Respondent testified that there was some rocking motion involved.

206. The Respondent testified that Patient 2 never moved off the table during the diaphragm technique. He denied that Patient 2 was ever seated on his knees during the treatment. He said that the angle between them was never less than approximately 30 degrees. The Respondent testified the closest Patient 2's abdomen was to the Respondent's abdomen was approximately six inches. The Respondent denied that their pelvises ever touched. The Respondent testified that he does not remember Patient 2's breasts pushing up against his chest. He acknowledged that it could have happened incidentally, but he tries to "avoid it at all costs." The Respondent testified "if and when that happens", he "would ask the person if they could lean forward a little more" and "relax their body" and he "would roll back a little bit" so their bodies were "not quite as close during the technique."

The Respondent recalled Patient 2 being quite stiff during the technique but did not recall telling her to relax. When the Respondent was questioned about having an erection, he responded “it wouldn’t have happened I was too far away.” He then denied having an erection during the treatment.

207. The Respondent testified that Patient 2 left the appointment after the diaphragm technique.

208. Mr. Dixon also testified in relation to the allegations pertaining to Patient 2’s treatment. With respect to the diaphragm technique, he agreed on cross-examination that when performing the technique, it would be better if a male RMT was not positioned between the spread legs of a female patient. Mr. Dixon agreed that this positioning potentially sexualizes the treatment environment. Mr. Dixon agreed that this positioning can be modified. Mr. Dixon agreed that the positioning depicted by the Respondent is not appropriate. Mr. Dixon agreed that the positioning depicted by the Complainant was clearly not appropriate.

2(a) On or about March 20, 2014, you:

209. There is no dispute between the parties regarding the dates of Patient 2’s two appointments with the Respondent during March 2014. The Panel finds that the first appointment was March 20, 2014 and the second was March 28, 2014.

2(a)(i) Made comments and/or statements of an unprofessional, inappropriate and/or personal nature by sharing overly personal details about your life including that your eldest daughter had “daddy issues” and/or your belief that God works through you to heal people; and/or

210. Patient 2 was very clear in her evidence that the Respondent used the specific phrase, “daddy issues” during her appointment on March 20, 2014.

211. The Respondent admitted to sharing personal details about his life with Patient 2 during her appointments. He admitted to discussing his wife, his two young children, and the challenge that posed during the appointment on March 20, 2014. The Respondent did not recall using the phrase “daddy issues”. He said it is not a term he would use. He agreed that if he did use it, he should not have done so.

212. The Panel prefers the testimony of Patient 2 over the Respondent's testimony and finds it more likely that the Respondent did tell Patient 2 that his eldest daughter (his stepdaughter) had "daddy issues." Patient 2 presented as a credible and reliable witness. She was very precise in delivering her evidence carefully, in a detailed and extremely clear manner. Her evidence on this was confident and compelling, she testified this statement was a "direct quote" and she recalled the term because it was "striking" to her. The Respondent did not deny using the term, he had no recollection of having made the statement. In addition, the Panel finds it plausible and likely that the Respondent did make that statement given its context within the broader conversation that the Respondent recalled and admitted. The Respondent was identifying the different members of his family and the challenges that the dynamics posed to him.

213. Patient 2's evidence about the Respondent's statements about God during the March 20, 2014 appointment was also clear. Patient 2 testified the Respondent stated, "God would use [him] to help" Patient 2 and "God has gifted [him]".

214. The Respondent acknowledged speaking "openly and freely" to Patient 2 about religion on March 20, 2014. The Respondent testified on direct examination that he told Patient 2 that God had used him before, and he would try his best to do everything he could to help her. On cross-examination, the Respondent then stated he did not recall exactly saying those words, though he acknowledged it was possible if he knew the patient was Christian. The relevant portion of the transcript of the Respondent's direct testimony was then read to the Respondent, after which he agreed, stating: "okay, I said that."

215. The Respondent's submissions do not dispute that the Respondent made the statements at issue. Rather, he takes the position that the Panel should not accept Patient 2's evidence that she felt uncomfortable about the Respondent's comments about God. She testified she felt seen by the Respondent and the Respondent's faith was one of the reasons she decided to return on March 28, 2014.

216. The Panel again prefers the testimony of Patient 2 to the Respondent's. Patient 2's testimony about her recollection was clear and specific. Her evidence was

consistent. The Respondent was inconsistent in this testimony on this point, ultimately agreeing that he did tell Patient 2 that God had used him before, and he would try his best to do everything he could to help her. The Panel finds that by stating “God would use [him] to help [Patient 2]” and “God has gifted [him]”, the Respondent expressed his belief to Patient 2 that God works through him to heal people.

217. The Panel does not accept the Respondent’s argument that Patient 2 was not made uncomfortable by the Respondent’s statements. Her testimony about how the statements made her feel was unshaken on cross-examination. While she initially said she “felt seen”, that sentiment changed to discomfort. Moreover, Patient 2 was clear that it was the Respondent who initiated the discussions, and that as the first appointment progressed, she began providing shorter responses to try to discourage further conversation. This behaviour, which was not disputed by the Respondent, is consistent with Patient 2’s testimony that she was feeling progressively uncomfortable, irritated and confused by the Respondent’s conversation as the appointment went on. Patient 2 did decide to return for a second appointment, but it was clear from Patient 2’s testimony and the testimony of her husband, that it was a decision with which she wrestled.

218. Whether Patient 2 was in fact uncomfortable is not determinative in any event as to whether the comments were unprofessional, inappropriate or personal in nature.

219. As noted earlier in these reasons, the Boundaries Standard provides that a registrant “discloses personal information to the patient only to the extent required for the provision of patient-centred care.” The Boundaries Standard was published after the conduct that is the subject of this allegation. The Panel finds that the conduct outlined in the Boundaries Standard did not become impermissible merely with the passage of the written standard. The requirement to establish and maintaining appropriate boundaries with patients has always existed in the profession. It is foundational to the massage therapist / patient relationship, and to the requirements of a massage therapist to act professionally and in the patient’s best interests. Section 1(a) of the Code of Ethical Conduct, which was in place at the material times

required a registrant to "act in the best interest of a patient". Section 9 of the Standards of Practice, in Schedule D of the 2013 Bylaws, required a registrant to exercise professionalism by "differentiat[ing] between personal and professional beliefs and behaviours."

220. The decisions of *College of Physicians and Surgeons of Ontario v Glumac*, 2016 ONCPSD 14; *College of Nurses of Ontario v Jones*, 2006 CanLII 81729; *Ontario (College of Physicians and Surgeons of Ontario) v. Lukezich*, 2006 ONCPSD 17 are also relevant to this allegation, and establish that a professional's self-disclosure may be unprofessional, including specifically where that self-disclosure involves their religion and their family matters.

221. The Panel does not accept the Respondent's testimony that his comments were intended to make Patient 2 comfortable. The Respondent's statements about God and his disclosure of personal family matters to Patient 2 were focussed on him and not on Patient 2. He approached these discussions in a manner that did not centre on his patient and that did not act in her best interests. The Respondent's testimony was that he felt free to speak to Patient 2 about *"his* relationship with God." The Respondent assumed because Patient 2 may have shared a faith with him, that she would want the Respondent to discuss his faith with her. She did not.

222. The Panel finds that on or about March 20, 2014, the Respondent made comments or statements of an unprofessional, inappropriate and personal nature by sharing overly personal details about his life including that his eldest daughter had "daddy issues" and his belief that God works through him to heal people. The Panel finds those comments to be unprofessional, inappropriate and personal in nature. The College has proven this allegation to the requisite standard.

223. The Panel has determined that the Respondent committed unprofessional conduct because he failed to act in the patient's best interest, and he failed to respect her boundaries and autonomy as a patient.

2(a)(ii) Massaged or otherwise touched her mons pubis for a non-therapeutic or sexual purpose;

224. The Panel finds Patient 2's evidence and the Respondent's evidence about the location the Respondent touched her on March 20, 2014 was substantially the same. Patient 2 testified the Respondent touched "just inside [her] pubic mound" on the "upper left hand side…where [her] pubic hair started", higher than the labia majora, approximately four inches to the left of the crest of her labia. The Respondent testified he touched up to four inches down from where Patient 2's waistband would normally be, on the left-hand side, working skin on skin. The Respondent agreed it was possible he treated in this area for two to three minutes. The Respondent acknowledged, "I can't say that if I was focusing on treating the hip flexor muscle that there wasn't any contact with any pubic hair."

225. The Panel finds that the location the Respondent touched was Patient 2's mons pubis. The Panel finds that the Respondent made contact with Patient 2's pubic hair. The Panel accepts Patient 2's evidence, which was not undermined on cross-examination, that the Respondent pressed down in that location with a significant amount of pressure for a period of minutes.

226. The Panel prefers Patient 2's evidence to the Respondent's evidence with respect to whether he obtained any consent. Patient 2 was clear about the Respondent having acted "without warning" and that she was "shocked" and "startled". Patient 2's evidence on those points was not undermined on cross-examination. The Panel finds it is unlikely she would have been surprised had the Respondent explained where he would be touching and had he obtained Patient 2's consent. The Panel finds that the Respondent did not tell Patient 2 he would touch her mons pubis, he did not seek or obtain consent to treat in the area, and he did not explain what treatment he was going to perform. The Panel finds that the Respondent did not obtain Patient 2's consent to pull down her pants and underwear, because he did those actions as, or immediately after, he stated he would be doing so.

227. The Panel finds that objectively looking at the totality of the circumstances, the Respondent touched Patient 2's mons pubis for a non-therapeutic and sexual purpose because:

    a. The Respondent touched underneath Patient 2's pants and underwear.

b. The body party involved was Patient 2's mons pubis which is a sexual body part.

c. The Respondent touched Patient 2's pubic hair.

d. The Respondent exerted pressure on Patient 2's mons pubis for a period of minutes.

e. There was no therapeutic justification to touch Patient 2's mons pubis.

f. The Respondent did not inform Patient 2 that the proposed to touch in the region of her mons pubis.

g. The Respondent did not seek consent or obtain Patient 2's consent. He did not explain what treatment he was going to perform or obtain consent to pull down Patient 2's pants and underwear; he told her he was tugging her pants and underwear down.

228. The College has proven his allegation to the requisite standard.

229. Section 2(a) of Schedule C of the 2013 Bylaws prohibited a registrant from engaging in sexual conduct with a patient. The Panel finds that the Respondent's non-therapeutic and sexual touching of Patient 2 outlined above amounts to sexual conduct. The Panel has determined that the Respondent has not complied with the Code of Ethical Conduct in the 2013 Bylaws.

230. The Panel finds that the Respondent's conduct is a serious breach of trust and would reasonably be considered by members of the profession to be dishonourable, disgraceful and unprofessional. It is a marked departure from the standard expected of a registered massage therapist. The Panel has determined that the Respondent committed professional misconduct.

2(b) On or about March 28, 2014, you

(i) Made comments and/or statements of an unprofessional, inappropriate and/or personal nature including stating that God works in mysterious ways

231. Patient 2's evidence was specific, clear and consistent that the Respondent told her on March 28, 2014 that "God works in mysterious ways" or "God moves in

mysterious ways". Patient 2 was careful to note that the words the Respondent used were either "works in" or "moves in". This demonstrates the precise and careful manner in which Patient 2 offered her testimony. The Panel sees no material difference between those words in the statement.

232. The Respondent did not deny making the statement. The Respondent testified he did not recall making that statement, but admitted it was something that he could have said, and that he believed to be true.

233. The Panel finds that on March 28, 2014, the Respondent said to Patient 2 "God works in mysterious ways" or "God moves in mysterious ways".

234. The Panel agrees with the College's submission that the Respondent spiritualized the massage therapy treatment by attributing his ability to treat Patient 2 to a higher power. The Panel finds that the comments were unprofessional, inappropriate and personal in nature for the reasons outlined in allegation 2(a)(i). The Panel does not accept the Respondent's arguments that "He brought it up because he thought it could be helpful to rely on their faith to provide hope. He also did it to help make the patient feel more comfortable" for the reasons outlined in the Panel's findings relating to allegation 2(a)(i).

235. The College has proven this allegation to the requisite standard.

236. The Panel has determined that the Respondent committed unprofessional conduct because he failed to act in the patient's best interest, and he failed to respect her boundaries and autonomy as a patient.

2(b)(ii) Placed your hand(s) under her undergarment or otherwise moved her undergarment without her consent

237. Patient 2's evidence on this allegation was clear, consistent, and specific. Patient 2 testified that on March 28, 2014, without warning, the Respondent slid his hand under Patient 2's pants and underwear, he did not ask for permission or consent to do that, he did not make a comment about tugging her pants or underwear, and he did not tell Patient 2 why he was touching her in this area.

238. The Respondent's evidence was inconsistent and implausible. He indicated that on March 28, 2014, he asked Patient 2 if it was ok to move her pants down slightly and that she agreed. However, the Respondent also acknowledged that he sometimes closes his eyes while working on patients and does not have as much awareness of his hands as he should. The Respondent testified that there is a chance that his fingers did go underneath Patient 2's underwear. This is inconsistent with the Respondent's general testimony on direct examination that he was drawn to massage therapy because of his "accuracy in manual dexterity" of his hands and that he is very deliberate and precise during treatment. In addition, despite the Respondent's stated lack of awareness of his hands, he provided a specific estimate of how far his fingers did extend under Patient 2's underwear ("one to two inches") if that did occur. When asked whether he touched Patient 2's pubic hair, the Respondent answered "I don't generally focus on touching the public hair, that is not something that is important during a treatment. If I did come into contact then it was an accident…I don't recall touching her pubic hair." The Panel finds it implausible that the Respondent has a vague recollection of the event generally, a firm memory of having obtained consent, a reduced awareness of where his hands are when his eyes are closed, a lack of "focus" about Patient 2's pubic hair, but a firm recollection of the precise location where he did touch Patient 2 under her underwear in the event that he did so accidentally.

239. The Panel prefers the evidence of Patient 2 to the Respondent's evidence on this allegation. The Panel finds that on March 28, 2014, the Respondent placed his hand under Patient 2's undergarment without her consent.

240. As noted above, Mr. Dixon testified that a patient's clothing is a "boundary for treatment", and it is generally not appropriate for a massage therapist to touch a patient underneath the patient's clothing. Mr. Dixon testified that moving a patient's underwear requires the patient's express consent. It was Mr. Dixon's opinion that a massage therapist always asks before making an adjustment of a patient's underwear. The Panel accepts this evidence and finds that the Respondent did not respect Patient 2's clothing as a boundary and obtain the necessary consent in the circumstances.

241. The College has proven this allegation to the requisite standard.

242. The Code of Ethical Conduct at Schedule “C” in the 2013 Bylaws prohibited a registrant from engaging “in sexual conduct with a patient”. The Panel finds that by placing his hand under Patient 2’s underwear without consent, the Respondent engaged in sexual conduct with a patient.

243. The Panel finds that the Respondent’s conduct falls within the meaning of professional misconduct. Touching Patient 2 underneath her underwear without consent would reasonably be considered by members of the profession to be dishonourable, disgraceful and unprofessional. It is a marked departure from the standard expected of a registered massage therapist. The Panel has determined that the Respondent committed professional misconduct.

2(b)(iii) Massaged or otherwise touched her mons pubis and/or labia for a non-therapeutic or sexual purpose

244. Patient 2’s evidence about where the Respondent touched her on March 28, 2014 was clear, specific and consistent. She testified the Respondent went “substantially further” than on March 20, 2014. Patient 2 testified the Respondent “went down as far as…where the lips of [her] labia meet…an inch to the left of that.”; “way down…the middle left of my pelvis”; and “as low as the top of my labia.” Patient 2 identified a diagram on which she had indicated where the Respondent had touched her. Patient 2’s evidence is that the Respondent touched her labia, and her mons pubis, which is a broader area. Patient 2 described the nature of the touch as being a rubbing down motion, with significant pressure for three to five minutes.

245. The Respondent’s evidence about this portion of the treatment on March 28, 2014 was inconsistent and implausible. Regarding the location of his touch, he testified that he did not know if his hands were where Patient 2 described, that he was working at the border of her pants, that he sometimes closes his eyes and does not have as much awareness of his hands as he should, that there is a chance that his fingers went underneath Patient 2’s underwear by one to two inches; that he

estimated that his fingers were about 3 inches from Patient 2's genitals; and that it was possible that he touched her pubic hair.

246. The Panel does not accept the Respondent's submission that Patient 2 was guessing as to the location that the Respondent had touched her. The Panel found Patient 2 to be very precise and careful with her evidence. She took her time, she avoided exaggeration and where she was unsure of something, she said so. Patient 2's testimony about the location of the Respondent's touch was not undermined on cross-examination. The Respondent submits that he was not guessing in his own evidence, however for the reasons outlined in allegation 2(b)(ii), the Respondent's evidence was implausible and unlikely. The Respondent testified that he treated the iliopsoas muscle, and he would have attempted to target the psoas muscle as well. He estimated that his fingers were three inches from Patient 2's genitals. However, the Respondent's evidence about the location he touched on Patient 2 is not credible or reliable given his weak recollection generally but specific testimony that there is a "chance" his fingers went under Patient 2's underwear by one to two inches and that his fingers may have come in contact with Patient 2's pubic hair. The Panel agrees with the College's submission that it is difficult to reconcile the Respondent's evidence that he could have been two inches under Patient 2's underwear but three inches away from the edge of her labia.

247. The Panel prefers the evidence of Patient 2 and finds that on March 28, 2014, the Respondent touched Patient 2's labia. The Panel finds in any event that the Respondent's touch was in the greater mons pubis area. The Panel finds that the Respondent touched Patient 2's pubic hair. The Panel accepts Patient 2's evidence that the Respondent applied significant pressure, using a rubbing down motion, for a period of approximately three to five minutes.

248. The Panel finds that objectively looking at the totality of the circumstances, the Respondent touched Patient 2's labia, and mons pubis, for a non-therapeutic or sexual purpose because:

    a. The Respondent touched underneath Patient 2's pants and underwear.

b. The body party involved was Patient 2's labia and mons pubis which are sexual body parts.

c. The Respondent touched Patient 2's pubic hair.

d. There was no therapeutic justification to touch Patient 2's labia or mons pubis.

e. The Respondent used a rubbing down motion in this area, with significant pressure, for approximately three to five minutes.

f. The Respondent did not inform Patient 2 that the proposed to touch in the region of her labia or mons pubis.

g. The Respondent did not seek consent or obtain Patient 2's consent. He did not explain what treatment he was going to perform or obtain consent to pull down Patient 2's pants and underwear, he told her he was tugging her pants and underwear down.

249. The College has proven this allegation to the requisite standard.

250. Section 2(a) of Schedule C of the 2013 Bylaws prohibited a registrant from engaging in sexual conduct with a patient. The Panel finds that the Respondent's non-therapeutic and sexual touching of Patient 2 amounts to sexual conduct. The Panel has determined that the Respondent has not complied with the Code of Ethical Conduct in the 2013 Bylaws.

251. The Panel finds that the Respondent's conduct falls within the meaning of professional misconduct. Touching Patient 2's labia, and mons pubis, for a non-therapeutic or sexual purpose would reasonably be considered by members of the profession to be dishonourable, disgraceful and unprofessional. It is a marked departure from the standard expected of a registered massage therapist. The Panel has determined that the Respondent committed professional misconduct.

2(b)(iv) For a non-therapeutic or sexual purpose, you

(i) Directed her to the edge of the massage table and to spread her legs open;

(ii) When she did so, you placed yourself between her legs and had her straddle you, facing you and while you were seated; and/or

(iii) In this position, you pressed your groin into her groin;

252. Patient 2 and the Respondent's testimony align with respect to several aspects that are relevant to this allegation. On March 28, 2014, at the end of the appointment, the Respondent had Patient 2 sit on the edge of the massage therapy table, to perform a seated posture with him.

253. Both Patient 2 and the Respondent testified that the Respondent directed Patient 2 to the edge of the table and directed Patient 2 to spread her legs open (albeit the Respondent used the word "open"). The Panel finds that the Respondent directed Patient 2 to the edge of the massage table and to spread her legs open.

254. Both Patient 2 and the Respondent agree that when Patient 2 did open her legs, the Respondent, who was seated on a stool with wheels, brought his knees together and moved into the space between Patient 2's legs. The Respondent differed in stating that his knees went under the table. Patient 2's testimony was that she continued to move forward until she was eventually straddling the Respondent and sitting on his knees.

255. The Panel prefers the evidence of Patient 2 to that of the Respondent. Patient 2 was certain that she was straddled with her legs spread and seated on the Respondent's body. Her testimony was very specific and detailed and was not undermined on cross-examination. The Panel finds that when Patient 2 moved to the edge of the massage therapy table and spread her legs, the Respondent placed himself between her legs and had her straddle him, facing him and while he was seated.

256. Patient 2's testimony about the Respondent pressing his groin into her groin was also clear and consistent. She described with the precision the exact contact points and sensations she experienced. She was clear that her pelvis contacted the Respondent's pelvis. Patient 2 was adamant that she felt the Respondent had an erection. She described the rocking motion that the Respondent performed during this portion of the posture. Patient 2's testimony about ending the appointment

abruptly and what she did in period immediately after the appointment is consistent with her testimony about what occurred. The Respondent acknowledged there was a rocking motion. As the College points out, the Respondent had never mentioned the rocking motion prior to Patient 2's testimony during the Discipline Hearing. The Respondent's testimony about Patient 2 never being less than at a 30-degree angle from Patient 2 and their abdomens not being closer than six inches is not plausible on the Respondent's account of their respective body positions. The Respondent testified that he had performed this technique hundreds of times, firmly denied the contact, yet testified about how he handles incidental touching when that does occur.

257. In addition, the Panel accepts Mr. Dixon's testimony that the depictions of the positioning of the technique by both Patient 2 and the Respondent were not appropriate.

258. The Panel prefers Patient 2's testimony over the Respondent's and finds that the Respondent pressed his groin into Patient 2's groin. The Respondent had an erection and moved his body in a rocking motion.

259. Looking objectively at the totality of the circumstances, the Panel finds that the Respondent performed the conduct in paragraph 2(b) (iv) i., ii., and iii. for a non-therapeutic and sexual purpose because:

    a. The Respondent had Patient 2 positioned facing him, straddled, sitting on his lap, with their groins touching. He rocked his body and had an erection.

    b. The body parts involved are inherently sexual.

    c. There was no therapeutic reason for Patient 2's groin and her breast to touch the Respondent.

    d. The Respondent's technique positioning was not appropriate and sexualized the treatment environment.

    e. It was open to the Respondent to modify the technique in a manner that would have avoided contact with Patient 2's groin and breast.

260. The Panel finds that the College has proven this allegation to the requisite standard.

261. Section 2(a) of Schedule C of the 2013 Bylaws prohibited a registrant from engaging in sexual conduct with a patient. The Panel finds that the Respondent's non-therapeutic and sexual touching of Patient 2 amounts to sexual conduct. The Panel has determined that the Respondent has not complied with the Code of Ethical Conduct in the 2013 Bylaws.

262. The Panel finds that the Respondent's conduct falls within the meaning of professional misconduct. The proven conduct by the Respondent set out above, including having a patient straddle him, pressing his groin against Patient 2 with an erection, rocking his body, and having Patient 2's breast contact him, would reasonably be considered by members of the profession to be dishonourable, disgraceful and unprofessional. It is a marked departure from the standard expected of a registered massage therapist. The Panel has determined that the Respondent committed professional misconduct.

Allegation 3: Patient 3

> 3. In the course of providing massage therapy services to Patient 3,
>
> (a) Between about 2009 and 2014, you massaged or otherwise touched her mons pubis and/or labia for a non-therapeutic or sexual purpose; and/or
>
> (b) On or about November 10, 2016, you pressed your groin against her hand;

263. Patient 3 is a [redacted] woman, who is married and has three teenage children.

264. Patient 3 first had massage therapy treatment when she was 17 years old. Over the years, Patient 3 sought massage therapy for several reasons: relaxation, to address neck and shoulder tension following a motor vehicle accident, bad knees, and aches and sprains from dance. Patient 3 began seeing the Respondent in 2011. She had started taking dance classes in 2008 or 2009 and was given the Respondent's name by the owner of the dance studio. The owner had told Patient 3 that massage therapy treatments with the Respondent had helped her.

265. Patient 3 saw the Respondent between 2011 and 2014. Patient 3 identified her intake form at the clinic and testified that she saw the Respondent approximately four times a year over a period of four years. The treatment records commence on

November 4, 2011. Patient 3 attended the same clinic for all treatments, though the name changed during that period. Patient 3 described the treatment room and its contents in detail. Each appointment was scheduled for 45 minutes but the Respondent would often spend longer than the scheduled time with Patient 3.

266. She was told to bring shorts (which she described as big, black, ratty and gross sweat shorts) and a sports bra. She wore those to her appointments with the Respondent. There was never any draping.

267. Patient 3 testified that the Respondent often worked on her right hip. He would grab her shorts and ask if he could move her shorts. Patient 3 would say yes. The Respondent never asked to move Patient 3's underwear but did move her underwear. On cross-examination, Patient 3 acknowledged that she told a College investigator that the Respondent asked her for consent to move both her shorts and her underwear. Patient 3 testified there was no discussion about the treatment in the area, and the Respondent did not request or obtain consent to treat her groin.

268. Patient 3 testified that the Respondent's hip would be closest to the table, he would place her right leg on his right shoulder, so that the back of her right knee was resting on his right shoulder and her lower leg was hanging down behind him. Patient 3 testified the Respondent used his thumbs to massage her. The located the Respondent touched was where Patient 3's "leg joins [her] torso and into [her] groin" …"close to [her] pubic area." Patient 3 testified that at times he would touch her pubic hair and was millimetres aware from her labia. Patient 3 agreed on cross-examination that she had earlier told a College investigator that the Respondent's thumbs were one to two centimeters away from her outer vaginal lips. Patient 3 disagreed with the proposition that the distance was in fact the width of the Respondent's palm. Patient 3 identified a diagram on which she had indicated where the Respondent touched her. The markings are in the narrow space between her outer labia and the side of her leg. Patient 3 estimated that the touching lasted approximately 10 to 15 minutes. Patient 3 testified this touching occurred approximately every second appointment with the Respondent from 2011 to 2014, though not on the last appointment on November 10, 2016.

269. Patient 3 recalled this treatment being painful. On one occasion she cried. When the Respondent noticed Patient 3's tears, he told her, this is the "seat of your emotions."

270. Patient 3 attempted to see the Respondent in 2015 in relation to motor vehicle injuries. Her husband called to make an appointment but was advised the Respondent was not taking female patients. Patient 3 contacted the clinic again in 2016 and was advised the Respondent was taking female patients again. She booked an appointment for November 10, 2016.

271. On November 10, 2016, Patient 3 attended an appointment with the Respondent. She commented that he now had a beard. They hugged. She went to change into her shorts and sports bra.

272. Patient 3 testified that the appointment started with her laying on her stomach while the Respondent worked on her shoulders and back. She flipped over to lay on her back and was subsequently asked to lie on her stomach again so the Respondent could work on her left shoulder. Her arms were in the arm rests facing the head of the massage therapy table. The Respondent moved her left arm and placed it at her side. Patient 3 described her left arm being partially on and partially off the massage therapy table. It was angled out slightly. The midpoint between her elbow and her wrist was on the edge of the table. Patient 3's palm was facing upwards. Patient 3 recalled it was uncomfortable to not have her right arm in the same position, so she moved her right arm to her side as well. On cross-examination, Patient 3 agreed that the Respondent moved her arm twice not once.

273. Patient 3 testified that the Respondent used his thumbs and the heels of his hands to perform pressure point therapy on her shoulder. Patient 3 described the Respondent's positioning of his body relative to her: "So he's half facing my body, half facing the window. His right hip is closest to the table."

274. Patient 3 made a complaint on February 18, 2018 to the College. This was two weeks after having a memory of the Respondent's penis being in her hand during her November 10, 2016 appointment. Patient 3 recalled this memory following [redacted] being in a similar position. Patient 3 described this memory as being a "flash", a "picture", and "like a mini movie." Patient 3's memory was that

"Yeah, so – this is the hard part. While he was working on my shoulder and my palm was face up, he–- I felt his groin in my hand–- yeah. I–- okay. So it was specifically I could feel a bulge in the palm of my hand and a zipper flap where–- on his pants." Patient 3 said that she felt the Respondent's penis in the palm of her hands between her wrist and the bottom of her two middle fingers. She testified, "the penis is a very specific part of the body, and it was a semi-erect penis." She felt a thin layer of fabric between the Respondent's penis and her hand. Patient 3 felt the zipper flap on polyester slacks which were black. Patient 3 testified this lasted for five to ten minutes. The November 10, 2016 appointment was Patient 3's last appointment with the Respondent.

275. In her interview with the College's investigator, Patient 3 stated, "And he moved my left arm so it was at my side and sort of hanging off the table. And then he was working on my shoulder and I had noticed that my hand was on his penis, but I thought it was incidental." On cross-examination, Patient 3 agreed that at that time, she initially thought the contact was incidental. Patient 3 did not agree with the proposition that because she initially thought the contact was incidental, that she did not in fact believe the Respondent's penis was semi-erect.

276. The Respondent swore an affidavit stating that he saw Patient 3 from 2009 to 2014. The Respondent admitted those dates were in error and that he copied the wording from the Citation.

277. The Respondent testified that there was quite a lot of discussion about treatment of Patient 3's groin. The Respondent testified that if he did move Patient 3's underwear, he would have asked her for consent, and it would have likely been in combination with her shorts.

278. The Respondent agreed with Patient 3's description of certain positioning but he testified that he was treating her hamstring not her groin. The Respondent testified that he treated Patient 3's hamstring performing myofascial release. The Respondent would place her right leg over his right shoulder and then he would treat Patient 3's hamstring muscle down to the "sit bone". The Respondent testified that his thumbs would be "right at the border" of where Patient 3's groin and hamstring

meet. On cross-examination, the Respondent was confronted with having given the opposite testimony to the College during the investigation – namely that he did treat Patient 3's groin but did not put her leg over his shoulder when treating the area. The Respondent explained that what he meant was that he did not put Patient 3's leg over his shoulder while treating her groin. The Respondent further explained that he must have missed the point about treating her hamstring during the investigation. The Respondent also testified that the technique in which he places a patient's leg over his shoulder is one he performed often but "it's not that I can exactly remember doing that technique on her."

279. The Respondent testified about the closest distance he was to Patient 3's vaginal area. In a College interview, he stated it was the distance of his hand. During the hearing, he stated that he was approximately ¾ inch from Patient 3's labia majora. On cross-examination, the Respondent stated the second measurement was the correct one. The Respondent did not confirm or deny that he touched Patient 3's mons pubis. In an affidavit sworn prior to the hearing, he denied touching her mons pubis. The Respondent stated that he does not "focus" on the pubic hair. The Respondent testified that he would work down to the attachment of the psoas minor on the pubic bone and if there happened to be pubic hair there, he probably would have touched it. The Respondent also testified he could not say for sure if he touched pubic hair and he tries to avoid doing so.

280. The Respondent testified he thought that Patient 3's estimate about how many times he treated her with her leg over his shoulder was incorrect. He could not say how many times he did it or whether it was every second appointment.

281. The Respondent testified about the "seat of emotions" comment. The Respondent testified he took coursework on the connection between the body and emotions and may have made a statement to that effect but does not recall the exact words. He also testified that "seat of emotions" is not a term he uses. The Respondent testified that when this did occur, they talked about it and worked through it. On cross-examination, the Respondent stated he did not remember the exact communication but described his standard practice. The Respondent testified he would have

checked in with the patient, asked if he could adjust the pressure, and check with them again about the adjusted pressure. The Respondent agreed that the proper course of action was to stop and re-establish consent.

282. The Respondent stated that after 2011, he bought two or three pairs of Under Armour black pants which he wore to work. Those do not contain a zipper. On cross-examination, the Respondent agreed that he had other athletic pants during the material times, and that he may not have worn his athletic pants to work if he had other commitments on a particular day.

283. The Respondent set out certain memories of the November 10, 2016 appointment in an affidavit. He told the Inquiry Committee during a section 35 meeting that he did not have any recall about the incident and had flashes of memory about portions of the treatment session. During the hearing, the Respondent testified that he had a vague recollection of the appointment and most of the details he previously provided to the College's investigator was what he "would have done".

284. The Respondent testified that when working in the shoulder or back area, he generally does not touch a patient's arm unless it falls off the side of the massage therapy table. In that case, he would place the patient's arm back on the table and beside their hip. He did not recall whether that occurred here.

285. The Respondent testified that his penis would not have been in Patient 3's hand as that would never happen during a treatment. If there was contact, it was accidental, and he did not notice it. The Respondent agreed it is his responsibility to make sure accidental contact of that nature does not occur. He stated that at times he may not be aware of what his body is doing if he is focusing on a particular area. The Respondent testified he did not feel his penis in Patient 3's hand. The Respondent said that it is possible that Patient 3's hand came in contact with his pocket which may have contained something she mistook for a penis, such as a phone, chap stick or massage tool. The Respondent denied having an erection during this appointment.

3. In the course of providing massage therapy services to Patient 3,

(a) Between about 2009 and 2014, you massaged or otherwise touched her mons pubis and/or labia for a non-therapeutic or sexual purpose; and/or

286. The Panel found Patient 3 to have been a credible and reliable witness. She gave clear and specific testimony which was not shaken under cross-examination. The Panel appreciates that there were some variations in Patient 3's testimony: whether the Respondent asked to move her shorts and underwear or only her underwear; and whether the Respondent was "millimetres" or "one to two centimeters" away from her labia. The Panel does not consider those to be fundamental inconsistencies that affect the central aspects of Patient 3's testimony. Moreover, when confronted about those points on cross-examination, she readily admitted the differences and provided plausible explanations.

287. The Panel found the Respondent lacked credibility and reliability. His recollections were vague, and his testimony was inconsistent. The Panel agrees with the College's argument in its closing submissions regarding the Respondent's changing testimony about his positioning of Patient 3 with her right leg over the Respondent's right shoulder and his thumbs working into her groin line, touching her pubic hair at times:

> The Respondent initially did not dispute that he placed [Patient 3] in this position, but seemed to say that he did so in order to treat part of her hamstring at the border of her groin rather than in her groin. He stated that he may have touched [Patient 3's] pubic hair while treating her. He then at one point stated that he had no actual memory of treating [Patient 3] in this position, but that it was a position that he used frequently to treat the hamstring. He then disagreed with [Patient 3's] assessment as to how many times he treated his in this position (despite, apparently, having no memory of treating her in this position at all). He agreed that he worked on any one area of [Patient 3's] body for between five and 10 minutes.

288. In addition, the Respondent testified that he placed Patient 3 in this position to treat her hamstring, yet he also testified that they extensively discussed treatment in the groin area.

289. Where Patient 3 and the Respondent differed in their accounts, the Panel prefers the testimony of Patient 3.

290. The Panel finds that the Respondent provided massage therapy services to Patient 3 from about November 4, 2011 to November 10, 2016. In the course of that period, the Respondent performed a technique several times in which he positioned Patient 3 with her right leg over the Respondent's right shoulder. He used his thumbs to massage Patient 3 in the area where Patient 3's "leg joins [her] torso and into [her] groin" …"close to [her] pubic area." The Panel finds that the Respondent touched Patient 3's pubic hair. The Panel finds that the Respondent touched Patient 3 a distance of millimetres from her labia. The Panels sees no significant difference between "millimetres" (plural) and "one to two centimeters". Depending upon the number of millimetres, that might well be one centimeter. The important feature is that the distance was very small. This is consistent with Patient 3's diagram, which was not undermined on cross-examination, and which shows the Respondent's contact being very close to the outer labia and running from the groin line to the mons pubis. The Panel finds that while providing massage therapy services to Patient 3 between about 2011 and 2014, the Respondent massaged or otherwise touched Patient 3's mons pubis.

291. Looking objectively at the totality of the circumstances, the Panel finds that the Respondent massaged or otherwise touched Patient 3's mons pubis for a non-therapeutic and sexual purpose because:

    a. The body parts involved are inherently sexual.

    b. There was no therapeutic reason to touch Patient 3's pubic hair.

    c. There is no therapeutic reason for the Respondent to have Patient 3's leg over his shoulder while touching and massaging on her mons pubis and very close to her labia.

292. The College has proven this allegation to the requisite standard.

293. Section 2(a) of Schedule C of the 2001 Bylaws prohibited a registrant from engaging in sexual conduct with a patient. The Panel finds that the Respondent's non-therapeutic and sexual touching of Patient 3 amounts to sexual conduct. The Panel has determined that the Respondent failed to comply with the Bylaws.

294. The Panel finds that the Respondent's sexual touching of Patient 3 is a serious breach of trust and would reasonably be considered by members of the profession to be dishonourable, disgraceful and unprofessional. It is a marked departure from the standard expected of a registered massage therapist. The Panel determines that the Respondent committed professional misconduct.

3(b) On or about November 10, 2016, you pressed your groin against her hand;

295. The College notes that this allegation does not contain express language that the conduct at issue was done "for a non-therapeutic or sexual purpose." The College submits that "Although this language is not expressly used in the Citation, this is an oversight, and it is implied language as there can be no therapeutic purpose for this act." The Respondent did not oppose these submissions by the College. At paragraph 429 of the Respondent's closing submissions, the Respondent argues, "Accordingly, the Panel should accept Mr. Krekic's evidence and find that there is insufficient evidence to find that Mr. Krekic pressured his groin against [Patient 3]'s hand at all, *let alone for a non-therapeutic and/or sexual purpose*." The Panel takes from this submission that the Respondent agrees the language about a non-therapeutic or sexual purpose is implied in this allegation.

296. The Panel accepts that the language about the conduct being for a non-therapeutic or sexual purpose was inadvertently omitted and may be implied in this particular allegation. Any concerns about notice to the Respondent are obviated by the fact that the Respondent did not oppose the College's position in his responding closing submissions, and instead made submissions on whether the conduct was done for a non-therapeutic or sexual purpose.

297. Irrespective, under section 39(1) of the HPA the Panel may determine, amongst other things, that the Respondent has committed professional misconduct or unprofessional conduct. As previously noted, professional misconduct includes sexual misconduct. An analysis of whether conduct was done for a non-therapeutic purpose, or a sexual purpose is relevant in the assessment of those determinations.

298. The Panel prefers the evidence of Patient 3 to the Respondent's evidence. Patient 3's evidence that the Respondent pressed his groin against her hand on November

10, 2016 was clear and convincing. Patient 3 specified the appointment date, the position she was lying in on the massage therapy table, and where her arms and hands were located at the time of the incident. Patient 3 was precise about how she knew it was the Respondent's groin: she felt "a bulge", "in the palm of [her] hand", she felt a zipper flap, she felt the Respondent's "semi-erect penis", she described the exact location of the Respondent's penis on the palm of her hand (between her wrist and the bottom of her two middle fingers), and how long it was placed there (for five to ten minutes).

299. The Respondent's testimony about the strength of his recollection of the November 10, 2016 appointment has changed over time. The most that can be said is that he has a "vague recollection" of the appointment. The details the Respondent did provide are what he "would have done" and not what occurred.

300. The Panel again finds the Respondent's testimony was both inconsistent and implausible and undermines his credibility. He asserted that he has a vague recollection of the appointment but firmly denied his penis would have been in Patient 3's hand as "that would never happen during a treatment." At the same time, the Respondent also testified that if it did happen, then it was accidental. The Panel finds it difficult to reconcile the Respondent's firm denial of the possibility of contact with his testimony that at times he is not aware of what his body is doing, and that it is possible Patient 3's hand came in contact with his pocket which may have contained an item she mistook for a penis. The Panel is not satisfied there was any evidence of any objects in the Respondent's pocket on this particular day that Patient 3 could have mistaken for the Respondent's semi-erect penis. Patient 3 was very clear it was the Respondent's semi-erect penis and no other object.

301. The Respondent places significant emphasis on the fact that his Under Armour pants did not contain a zipper, however, the evidence did not establish that the Respondent was wearing those pants during the November 10, 2016 appointment.

302. The Respondent argues that Patient 3 told the College that she thought the Respondent's touching was incidental. Patient 3, however, stated that "at that time" she thought it was incidental; meaning on her initial assessment not at the time she

was interviewed by the College. Her thinking clearly evolved from her initial assessment until the time of this Discipline Hearing, as she firmly resisted the proposition put to her on cross-examination that the Respondent's penis was not in fact semi-erect. The Panel does not view that evolution as being inconsistent testimony. This was listed among the considerations specific to sexual assault victims that was set out in the *Martin* decision.

303. The Respondent also urges the Panel to prefer his evidence because Patient 3's recollection of the events returned to her as a flashback [redacted] The Panel is not prepared to discount Patient 3's evidence on that basis because her testimony was not undermined with respect to either reliability or credibility.

304. The Panel finds that the Respondent pressed his groin against Patient 3's hand on November 10, 2016. The Panel finds that the Respondent's placed his semi-erect penis in the palm of Patient 3's hand for five to ten minutes.

305. Looking objectively at the totality of the circumstances, the Panel considers the Respondent's conduct was for a non-therapeutic and sexual purpose because:

    a. There is no therapeutic reason for a massage therapist to place their penis in a patient's hand.

    b. The contact was not accidental or incidental because the Respondent's penis was in Patient 3's hand for five to ten minutes.

    c. The body part (the Respondent's penis) is inherently sexual.

    d. Contact between a massage therapist's sexual body part and a patient is sexual in nature.

306. The College has proven this allegation to the requisite standard.

307. While the Boundaries Standard was not yet published at the time of this conduct, the Code of Ethics prohibited registrants from engaging in sexual misconduct with a patient. Sexual misconduct was defined to include "touching of a sexual nature of a patient by a massage therapist and "sexualizing the treatment environment." The

Panel considers both of those definitions include the placement of an RMT's penis (semi-erect or not) on any part of a patient's body.

308. The Panel agrees with the College's submission that this conduct is similar to that in *Physiotherapy Alberta – College + Association v Gilboa*, 2020 ABPACA 1, where on two occasions a physiotherapist purposefully allowed his penis to contact a patient's hand during treatment. The conduct was found to be unprofessional conduct as it harmed the profession, breached standards of practice and the Code of Ethics, and breached the trust of patients and the public.

309. The Panel finds that the Respondent's conduct is a serious breach of trust and would reasonably be considered by members of the profession to be dishonourable, disgraceful and unprofessional. It is a marked departure from the standard expected of a registered massage therapist. The Panel has determined that the Respondent committed professional misconduct.

Allegation 4: Patient 4

4. In the course of providing massage therapy services to Patient 4,
    (a) On or about February 8, 2019, you:
        (i) Failed to provide appropriate disrobing options and/or appropriately drape her and caused her to sign a consent form while she was undressed and prone which exposed her breasts; and/or
        (ii) Pressed your groin against her hand for a non-therapeutic or sexual purpose;
    (b) On or about February 15, 2019, you:
        (i) Failed to appropriately drape her and exposed her buttocks without her consent;
        (ii) Massaged or otherwise touched her groin area without her consent;
        (iii) Massaged or otherwise touched her labia for a non-therapeutic or sexual purpose; and/or
        (iv) Pressed your groin against her hand for a non-therapeutic or sexual purpose;

310. Patient 4 testified as a witness. She is a registered nurse. [redacted] At the time of her appointments with the Respondent, Patient 4 was living with her roommate, Witness D.

311. Patient 4 commenced massage therapy with a different massage therapist in 2018. She had been experiencing chronic back pain from work and a dislocated shoulder. After approximately one year, her massage therapist went on maternity leave. The Respondent was that massage therapist's replacement. Patient 4 booked an appointment for February 8, 2019.

312. Patient 4 testified that the Respondent was approximately 15 minutes late for her February 8, 2019 appointment. She estimated that it commenced at 2:00 p.m. The Respondent was wearing track pants and a polo shirt. Patient 4 was wearing Lululemon tights and a shirt. Patient 4 testified about the treatment room appearance and where various objects were located in the room. Christian music was playing.

313. Patient 4 testified she spoke with the Respondent about her problem areas which were her right back and right shoulder. Patient 4 told the Respondent she had had massage therapy before and had had intramuscular stimulation ("IMS"). The Respondent told Patient 4 that IMS was not very helpful and that he could get her better. The Respondent then performed an assessment of Patient 4. Part of the assessment involved her bending over to touch her toes while the Respondent was standing behind her. The assessment was approximately 15 to 20 minutes.

314. After the assessment, the Respondent told Patient 4 she would need to sign a consent form. He told her to undress to her comfort level and left the room. Patient 4 was not wearing a bra that day and undressed to her thong and socks. She lay face down on the massage therapy table and covered herself to midway up her back with a sheet.

315. Patient 4 testified the Respondent returned into the room. While she was lying on the table, the Respondent showed her the consent form on his computer. She signed it. Patient 4 testified that to sign the consent form she had to prop herself up on her forearms, like in a sphinx yoga position. She said that this exposed her chest but not

her nipples, which were covered. At this time, the Respondent was sitting on a stool at the head of the table, “to the right of her” …” just off centre to the right.” Patient 4 testified that she did not notice where the Respondent was looking as she was signing the consent form. She was uncomfortable and was concerned he may have seen her breasts. The Respondent did not present Patient 4 with any options around signing the consent form, such as allowing her to get dressed or offering to leave the room or positioning himself away from Patient 4. Patient 4 denied the suggestion that the Respondent got up and moved and faced the window while she signed the consent form. Patient 4 identified her electronic signature on the consent form and agreed the 2:22 pm time stamp reflected the time she would have signed the consent form.

316. While Patient 4 was lying face down on the massage therapy table, the Respondent began working on Patient 4’s back. He was positioned to the right side of the table. Patient 4 had her hands tucked into her sides with her palms facing up. The table was positioned below the Respondent’s hips and waist; “probably mid-thigh area.” The Respondent was working on her lower right back up to her mid and high back. He was making “really big movements up and down with both of his hands.” He used a rocking motion. Patient 4 testified she could feel his pants brushing against the outside of her pinky. She described feeling the sensation of his pants directly on her skin. Patient 4 recalled thinking it was “weird” the Respondent would be touching her hand at all. Patient 4 testified she tucked her hands in a bit closer to her body: “I just tucked my hands in a little bit further towards, like, under my body a bit so that he wouldn't be rubbing his inner thigh or groin on my pinky.” She estimated this occurred for five or ten minutes before she tucked her hands in further. Patient 4 estimated that there was four to five inches of space between her hand and the edge of the table before she tucked her hands closer to her body. Patient 4 disagreed with the proposition that the Respondent was bracing himself against the table.

317. The appointment finished 45 minutes late. The time stamp on Patient 4’s receipt for payment of the appointment was 3:52 p.m. Patient 4 estimated the hands-on portion of the treatment was 90 minutes.

318. Patient 4 told both her husband and her roommate that the Respondent was “gung-ho” on getting Patient 4 better and that the appointment had run late.

319. Patient 4 testified that she had a second appointment scheduled for February 15, 2019. The Respondent asked Patient 4 how she was feeling and performed a shorter assessment which again involved her bending over and touching her toes. Patient 4 and the Respondent discussed that he would work on her right shoulder, right back, right quad, and right hip flexor. The Respondent left the room. Patient 4 undressed to her thong and socks. She lay face down on the table with a sheet covering her back.

320. Patient 4 testified the Respondent started the treatment on February 15, 2019 working on her back with similar motions to the first appointment. Patient 4 testified she was in the centre of the massage therapy table and there was space between the edge of her right hand and the table. Patient 4 recalled having her hands tucked into her body with the palms facing up. Patient 4 could feel the Respondent’s pants touching her pinky finger. She could not recall if her hands were under or on top of the sheet. She recalled feeling the Respondent’s pants touching her:

> A It was something that I did during the appointment. Like, shortly after he started massaging my lower back, then I remembered that, like, his pants were touching my pinky. So that's when I remembered to just tuck them in a little bit closer to me.
>
> Q And could you feel any part of his body touching you?
>
> A No, I couldn't. Just pants. But it was about, like, groin height, the table, and he was kind of doing the same motions that he had done at the previous appointment.

321. Patient 4 testified the Respondent was massaging her back for approximately 10 to 15 minutes, though she did not feel his pants on her pinky for the duration of that time. Patient 4 could not recall how long she felt the Respondent’s pants on her pinky

322. Patient 4 testified that when the Respondent worked on her right gluteal muscles, while she was wearing a thong, the sheet did not cover her right buttock. Her “whole right butt was out and [her] leg too.” The Respondent used his elbow directly on “my

glute muscle, like, my butt". Patient 4 denied the Respondent ever gave her an option or asked for her consent to expose her gluteal region. Patient 4 was uncomfortable and a bit shocked with this as she had normally had a sheet covering her.

323. The Respondent then massaged Patient 4's right quadricep and hip flexor as she was laying face up on her back. Patient 4's left leg and chest were covered by a sheet and her entire right leg and hip were exposed. Patient 4 testified that the Respondent massaged her hip flexor and then "moved down" to her groin and massaged her inner thigh "towards her labia". She said the Respondent did not touch her labia, but he massaged "right next to it". The Respondent used "a fair amount of pressure" and circular motions with his fingertips, with skin-on-skin contact. She estimated this portion of the treatment lasted longer than a minute, but she did not know if it was longer than five minutes. Patient 4 observed the Respondent would look at her in her eyes, then down to her groin and then close his eyes, which made her uncomfortable. Patient 4 identified a diagram which she completed during the investigation in which she noted where the Respondent had touched her.

324. Patient 4 testified that the Respondent did not speak to her during the groin treatment. On cross-examination she was confronted with an earlier statement she made to the College during the investigation in which she stated, "He asked if it was tight in there. I responded with 'yes, it's very sore.'" Patient 4 then agreed that the Respondent did speak to her during the groin treatment.

325. Patient 4 testified at one point the sheet moved and she felt as though her labia were "a bit exposed." The Respondent did put the sheet back in place.

326. Patient 4 testified that she learned about obtaining consent in university and during her nursing training. She testified that "I consented to having my hip flexors massaged but definitely not my groin." Patient 4 disagreed with the Respondent's notations in her clinical record that he had obtained consent to treat her groin and chest. Patient 4 disagreed the Respondent showed her on his own body with his hand where he would be treating: "that did not happen." Patient 4 testified that the

Respondent did not discuss working skin on skin and did not present her with the option of working through a sheet.

327. The Respondent then worked on Patient 4's right shoulder and neck and the appointment then ended.

328. Patient 4 had another appointment booked with the Respondent but cancelled it.

329. Patient 4 spoke with her then boyfriend (now husband) that night and told him about the appointment. She told him where the Respondent touched her: "And I was just sitting up on his counter while I was telling him and describing it to him. And then I touched actually on myself as to where Mr. Krekic had massaged me, and then I just kind of broke down because I knew that wasn't a place where I wanted to be massaged and I definitely knew that something was wrong with that appointment." Patient 4 recalled that she and her husband went for a walk, and she could not stop crying, she described being in shock and very overwhelmed.

330. Patient 4 went to a workout class with her roommate the next day and told her about the incident. Patient 4's roommate supported Patient 4 in making a complaint to the College. Patient 4 identified the complaint and noted that she forgot to include details about the Respondent's pants touching her pinky.

331. Patient 4 described the impact of these events upon her. She no longer seeks massage therapy and is off work on long term disability because of panic attacks. She described struggling with anxiety, depression, and post-traumatic stress disorder.

332. Patient 4's husband, Witness C, testified as a witness. [redacted]. At the time of the events in question, Patient 4 and Witness C were not married or living together but were dating and saw each other several times a week.

333. Patient 4's husband recalled interactions with Patient 4 regarding both of her appointments with the Respondent. Following the first appointment, Patient 4 told her husband the appointment had gone 45 minutes past the scheduled time, and that the Respondent had accessed her differently than other RMTs had done in past. Following the second appointment, Patient 4 appeared very "stiff", "rigid" and not

"her normal self". He described that after they spoke a bit, she "started to kind of have a breakdown." Patient 4 did not provide many details but her husband said it sounded like it was in the nature of a sexual assault. Patient 4 then had a panic attack. The following day, Patient 4 provided her husband with the details about the treatment session. They discussed various options including making a complaint to the College.

334. Witness D testified as a witness. She was Patient 4's roommate. She is a [redacted] She was roommates with Patient 4 [redacted]

335. Patient 4's roommate testified she remembered Patient 4's appointment with the Respondent on February 8, 2019. She recalled that Patient 4 was supposed to be home at a certain time and returned home an hour later. She recalled that Patient 4 was optimistic about her appointment with the Respondent, that he had been very positive, and that Patient 4 had a second appointment scheduled.

336. Patient 4's roommate testified that she saw Patient 4 the morning after her second appointment with the Respondent. Witness D testified that Patient 4 "did not seem like herself at all" and was "very distant". They attended a workout class together. On the drive home, Witness D inquired about the massage therapy appointment. Patient 4 said that it was not a good appointment. When they returned home, Patient 4 shared what had taken place at the second appointment with the Respondent. Witness D described Patient 4 as very upset and emotional. Patient 4 demonstrated where the Respondent had touched her. On cross-examination, Witness D was asked to agree that Patient 4 had never told her that the Respondent touched her labia. Witness D disagreed and said she recalled Patient 4 telling her that the Respondent touched her labia. Witness D and Patient 4 discussed whether the area in which Patient 4 was touched was appropriate for hip flexor treatment. They discussed Patient 4's options on next steps, including making a complaint to the College. Patient 4 decided to proceed with a complaint. She prepared the written document and Witness D reviewed it for clarity. Witness D recalled Patient 4

delivered the complaint to the College within about a day from speaking with Witness D about the events.

337. The Respondent testified about his appointments with Patient 4. The Respondent testified that he was running late for Patient 4's first appointment. The Respondent recalled Patient 4 was a nurse, had a chronic back injury, played soccer in the past and attended exercise classes.

338. The Respondent described his assessment of Patient 4. He stated that he was looking for pelvic alignment and recalled hers was asymmetrical. The Respondent performed a forward flexion test in which he had Patient 4 bend over.

339. After the assessment, the Respondent left the room to allow Patient 4 to get undressed to her comfort level. The Respondent completed paperwork and asked Patient 4 to sign it when he returned to the treatment room. He testified that he did not ask Patient 4 to sign the consent form prior to undressing because it was a new procedure and he wanted to be efficient. He also stated, "It probably wasn't the best way of doing things and I see that now."

340. The Respondent testified that when he re-entered the room, he placed a stool with wheels to the side of Patient 4's right shoulder. He then placed the computer on the stool, rolled it towards the face rest and asked Patient 4 to sign with an electronic pen. The Respondent testified that once he put the computer on the stool, Patient 4 started to come up onto her elbows prompting the Respondent to turn away so he would not see anything. The Respondent added the following details, "But as soon as she started to get up, I turned my head so I didn't see more detail at that point. I wouldn't have seen it anyway because I was behind the stool. I wasn't in front of her…I was looking out the window." The Respondent testified that the sheet covered Patient 4's neck and arms. On cross-examination, the Respondent added that as Patient 4 was starting to get up, he noticed she was stabilizing the draping which was around her neck. He said she was holding the edges of the sheet in front of her with her two hands. The Respondent testified he did not see Patient 4's breasts.

341. During a section 35 hearing before the Inquiry Committee in March 2019, the Respondent stated "And I have my stool beside the table, so I sat down on the stool

beside her approximately at her shoulder -- in line with her shoulder. And I just -- I held out the pad and I said [Patient 4], would you mind signing this? This is what we went through. And I showed her the -- where I typed out the consent." The Respondent was asked by his counsel during the section 35 hearing, “You’re holding the tablet in your hand?”. The Respondent answered, “I'm holding it in my left hand. I'm sitting to her right side, beside her shoulder. Her shoulder's here. And she said, yeah, no problem, I'll sign it and I held it in front of her." The Respondent acknowledged making those statements at the hearing which was held approximately one month after his appointment with Patient 4. The Respondent agreed the two versions of events are different. He testified the correct version is the later version - his testimony at the Discipline Hearing. The Respondent agreed on cross-examination that the detail about Patient 4 holding the draping in front of her was shared for the first time at the Discipline Hearing. He explained the omission by stating that the Inquiry Committee did not ask him about that.

342. The Respondent testified that he did not intentionally press any part of his body other than his hands against Patient 4 during either of her treatments. He also testified with respect to both appointments:

> I'm saying that it's possible that my leg could have brushed up against the side of the table and if her pinky was in that proximity, she would have felt my pants brushing up against her pinky. But that's not something that -- again, with my body mechanics when I am working on the intrascapular shoulder area, I probably wasn't paying attention to where her hand was because her hand was underneath the sheet. And if I did have a blanket on her, which I did with most people, then it would have been underneath that and I wouldn't have been able to feel where her hand was.

343. On cross-examination, the Respondent testified that he recalled Patient 4’s hands were under the sheet and a blanket was tucked in. The Respondent was confronted with a statement in his College investigation interview with the College on September 6, 2019, in which he stated that it was standard positioning to have the patient’s hands underneath a sheet and a blanket but that he could not recall how Patient 4’s hands were placed during her February 15, 2019 appointment. The Respondent answered that “There’s no reason for me to believe that I didn’t do that.”

344. The Respondent agreed that he treated Patient 4's gluteal muscles undraped. He testified he did so with Patient 4's consent. The Respondent testified that he knew that Patient 4 had not had her lower legs worked on before so he asked Patient 4 if it was okay to treat her in that region, and she said, yes. The Respondent testified that he asked Patient 4 if it was okay to undrape her glute, she said yes. The Respondent testified he then worked on her entire leg, calf, hamstring and glute.

345. The Respondent testified that he treated her through a sheet on the first session. He also testified that he had a conversation about treating skin-on-skin on February 8, 2019. He later testified he spoke with Patient 4 about skin-on-skin treatment during both appointments. The Respondent was cross-examined about evidence he provided to the College during the investigation in which he stated he could not recall how he treated Patient 4's gluteal muscles or whether he obtained her consent. The Respondent answered that "I would not work on anyone's glute without asking for consent" and "I don't have any reason to believe that I didn't ask for consent."

346. The Respondent denied he treated Patient 4's groin without consent. He testified that he could have taken further measures to ensure that Patient 4 understood he would be treating her groin area. He described consent as a "two-way communication" and that it is not the therapist's responsibility to read the patient's mind. The Respondent said that he pointed to areas on his body which he would be treating. Specifically, he pointed to the groin area on his body. During a section 35 hearing before the Inquiry Committee, he stated that he asked Patient 4 whether she was okay with him treating the front of her right hip. The Respondent said he pointed to his groin, and Patient 4 responded "yes". On cross-examination, the Respondent was challenged as follows: "But you can't point on yourself to one inch within the labia. You're not saying you did that." The Respondent testified, "Yes I did". The Respondent was confronted with the fact that his testimony two years later during the Discipline Hearing contained more details that the information he provided to the College during the investigation. The Respondent acknowledged he did not share enough of the details he remembered earlier in the process, and that he did not remember some of it until later on. One of those details is that the Respondent wrote in his clinical records that Patient 4 consented to treatment in the groin region

and that the Respondent remembered making that note right in front of Patient 4 at the time.

347. The Respondent testified that when he treated Patient 4 in the groin area, her genitalia were not exposed because he had her fully draped. The Respondent tucked the sheet around Patient 4 and into her underwear and it was anchored securely. The Respondent testified that the closest he was to Patient 4's vaginal lips was about one to two inches away. The Respondent was confronted with having told the College in his interview that he was about a palm width away. The Respondent testified that he was mistaken in stating it was a palm width away and explained the mistake in this way, "I was trying to somehow say how far it was and that was the only thing I could think of was with the palm of my hand. But I'm correcting that now and saying that it was probably about two inches away."

4 In the course of providing massage therapy services to Patient 4,

(a) On or about February 8, 2019, you

(i) Failed to provide appropriate disrobing options and/or appropriately drape her and caused her to sign a consent form while she was undressed and prone which exposed her breasts

348. In order for the College to prove this allegation, it must establish that in the course of providing massage therapy services to Patient 4 on February 8, 2019, the following three things occurred: the Respondent (1) failed to provide appropriate disrobing options to Patient 4 (or appropriately drape Patient 4); (2) caused her to sign a consent form while she was undressed and prone; and (3) exposed her breasts.

349. There is no dispute in the evidence between Patient 4 and the Respondent, and the Panel finds, that on February 8, 2019, in the course of providing massage therapy services to Patient 4, the Respondent told Patient 4 to undress to her comfort level and left the treatment room. Patient 4 did undress and lay face down on the massage therapy table with at least a sheet on her back. When the Respondent

returned to the room, he asked Patient 4 to sign a consent form on his computer. Patient 4 propped herself up on her elbows in a sphinx-like yoga pose to do so.

350. The Panel finds that the Respondent did not provide any disrobing options to Patient 4, he simply told her to disrobe. The Respondent did tell Patient 4 to disrobe to her comfort level, however, she was never provided with the option of not disrobing at all. The Panel agrees with Mr. Dixon's testimony that in no situation is it required that a patient remove their clothes for treatment.

351. The Panel finds that the Respondent caused Patient 4 to sign a consent form while she was undressed and prone on the massage therapy table.

352. The Panel also finds that Patient 4's breasts were exposed. Her testimony that her chest was exposed but not her nipples was clear and consistent. The fact that she made sure to note that her nipples were not exposed is evidence of her precision. The Respondent's central argument on this allegation is that he did not see Patient 4's breasts, however, the allegation of exposure does not require the Respondent to have seen Patient 4's breasts. The Respondent testified that he was looking away from Patient 4 towards the window, therefore he would not have seen whether Patient 4's breasts were exposed.

353. The Panel also prefers Patient 4's testimony to the Respondent's because she was a more credible witness than the Respondent. Patient 4's testimony was consistent and not undermined on cross-examination. The Respondent's testimony was inconsistent. With respect to this allegation, the Respondent's account of where he was positioned when he asked Patient 4 to sign the consent form has changed over time. His earlier statements that he was sitting on the stool and held the computer for Patient 4 to sign is significantly different than his testimony at the Discipline Hearing that he placed the computer on the stool, wheeled it Patient 4, stood behind her and looked toward the window as she signed.

354. The Panel finds that in the course of providing massage therapy services to Patient 4, on or about February 8, 2019, the Respondent failed to provide appropriate disrobing options and appropriately drape her and caused her to sign a consent form

while she was undressed and prone which exposed her breasts. The College has proven this allegation to the requisite standard.

355. Section 4(b)(iv) of the Consent Standard required an RMT to provide a patient with information about options for disrobing. The Panel finds that in failing to provide Patient 4 with disrobing options. The Panel has determined that the Respondent breached the Consent Standard.

4(a)(ii) Pressed your groin against her hand for a non-therapeutic or sexual purpose

356. The Panel accepts all Patient 4's evidence with respect to this allegation. She was both credible and reliable in her account, which did not waver.

357. Patient 4's testimony does not, however, cover the allegation made. Patient 4's evidence is that she felt the Respondent's pants in the palm of her hand. She did not testify that she felt his groin against her hand.

358. The College submits that Patient 4 testified that "She thought that it was the Respondent's thigh or inner groin that was touching her because of the height of the table." However, that is not exactly what Patient 4 said. She stated, "And I thought it was just kind of weird that he would be touching my hand at all, but I just tucked my hands in a little bit further towards, like, under my body a bit *so that he wouldn't be rubbing his inner thigh or groin on my pinky*." Patient 4 did testify that the height of the table was at the level of the Respondent's groin, she testified that she felt his pants in her palm, and she testified that she tucked her hands in so that he would not rub his inner thigh or groin on her pinky. She did not testify that he did do so.

359. The College has not proven this allegation to the requisite standard, and it is dismissed.

4(b) On or about February 15, 2019, you:

(i) Failed to appropriately drape her and exposed her buttocks without her consent

360. Patient 4 and the Respondent agree, and the Panel finds, that during the February 15, 2019 treatment appointment, the Respondent exposed Patient 4's gluteal region

and treated her skin on skin. Their accounts depart as to whether there was consent to undrape Patient 4's glutes and treat the area skin on skin.

361. The Panel prefers the evidence of Patient 4. She was clear that in her testimony about the placement of the draping which exposed her "whole right butt was out and [her] leg too." She was clear that the Respondent used his elbow directly on her buttocks. Patient 4 was firm that the Respondent did not provide her with an option or ask for her consent to expose her gluteal region. Patient 4 is a registered nurse and described her knowledge and training in obtaining consent from patients. She was precise about when the Respondent did and did not obtain her consent. For example, Patient 4 said the Respondent did obtain consent to treat her gluteal muscles however he did not obtain consent to treat them undraped. Patient 4 described being uncomfortable and a bit shocked with the area being exposed as she had normally had a sheet covering her. This is consistent with an absence of consent.

362. The Respondent submits that Patient 4's evidence changed with respect to her recollections about consent. The Panel disagrees with the Respondent's characterization. Patient 4's evidence was consistent. She did not waver during cross-examination with respect to the absence of consent to undrape her gluteal region during her second appointment.

363. The Panel finds that the Respondent's testimony was inconsistent. The Respondent's testimony about when he spoke with Patient 4 about exposing the area and treating her skin on skin changed. More importantly, the Respondent's accounts about whether he obtained consent have changed over time. The Respondent told the College during the investigation that he could not recall how he treated Patient 4's gluteal muscles or whether he obtained her consent. During cross-examination, he explained this inconsistent statement by saying, "I would not work on anyone's glute without asking for consent" and "I don't have any reason to believe that I didn't ask for consent." These responses are inconsistent with the Respondent's direct testimony of specific recollections of having obtained consent. The Panel finds that the Respondent's evidence lacks reliability and credibility.

364. The Panel finds that the Respondent did not provide Patient 4 with options for draping, including the option to treat her gluteal muscles through a sheet. The Respondent failed to obtain consent to undrape the region and treat Patient 4's glutes skin on skin, The Panel finds that the Respondent undraped her buttock and her leg and treated her glute with his elbow skin and on skin. The Panel finds that on or about February 15, 2019, the Respondent failed to appropriately drape Patient 4 and exposed her buttocks without her consent. The College has proven this allegation to the requisite standard.

365. Section 4(b)(v) of the Consent Standard required an RMT to provide patients with options for draping during treatment. The Panel has determined that in failing to appropriately drape Patient 4 and exposing buttocks without her consent, the Respondent breached the Consent Standard.

366. The Panel finds that undraping a potentially sexualized area of the body without consent does not respect the dignity and autonomy of a patient. It is a form of sexualized conduct. It is a marked departure from the standard expected of a registered massage therapist. The Panel has determined that the Respondent committed professional misconduct.

4(b)(ii) Massaged or otherwise touched her groin area without her consent;

367. Patient 4 and the Respondent's both agree, and the Panel finds that, on February 15, 2019, the Respondent massaged or touched Patient 4's groin. Their accounts depart with respect to whether there was consent to do so. On this point of departure, the Panel prefers and accepts the evidence of Patient 4.

368. Patient 4's evidence was specific, clear, and consistent. She presented as a credible and reliable witness. She described the exact location where the Respondent massaged and touched her: he massaged her hip flexor and then "moved down" to her groin and massaged her inner thigh "right next to" her labia. Patient 4 was adamant she did not consent to the Respondent massaging or touching her groin: "I consented to having my hip flexors massaged but *definitely not my groin*." When pressed on cross-examination, she strongly disagreed with the Respondent's

suggestions about notations in the Respondent's clinical record, and about the Respondent pointing to his own body: "that did not happen."

369. Patient 4's husband and roommate observed Patient 4's post event demeanour and testified about her not being herself, having a panic attack and being very emotional. They both presented as strong, reliable and credible witnesses.

370. The Respondent submits Patient 4's evidence should not be accepted because she changed her account as to whether the Respondent spoke to her during the groin treatment. The Panel agrees she did change her account on that point but is not prepared to reject her evidence on that basis. First, when confronted with her earlier statement, she readily acknowledged that on cross-examination. Second, the fact that the Respondent spoke to Patient 4 while touching her groin falls short of establishing that he initiated treatment in that region with her consent.

371. The Panel finds it implausible that the Respondent pointed to within one inch of a woman's labia on his own body to demonstrate to Patient 4 where he would touch her. The Panel finds it unlikely that the Respondent checked off the consent box on the clinical record at the same time as Patient 4 gave her consent to massage her groin. This detail was provided by the Respondent for the first time during the Discipline Hearing and was absent from the earlier accounts he set out during the section 35 hearing before the Inquiry Committee, the College investigation, and in his affidavit. Even if one were to accept the Respondent's account of checking off the consent box, that would not be determinative of whether consent was in fact obtained from Patient 4.

372. Moreover, the Respondent's evidence that he is not a mind reader is concerning. The Panel agrees with Mr. Dixon that establishing informed consent is the registrant's responsibility, that in circumstances where informed consent is properly obtained, one would not expect a patient to be surprised, and that an RMT must provide a detailed and clear explanation of what they will be doing and where they will be treating if they are treating a female patient near her vagina. The Panel finds that the Respondent did not provide a detailed and clear explanation of what he would be doing and where he would be treating Patient 4 near her vagina.

373. The Panel finds that on February 15, 2019, the Respondent massaged or otherwise touched Patient 4's groin without her consent. The College has proven this allegation to the requisite standard.

374. Section 1 of the Consent Standard requires an RMT to recognize, respect and support each patient's right to make decisions about the patient's own health care by engaging in shared decision-making with the patient and respecting the patient's autonomy. Section 3(a) of the Consent Standard requires an RMT to obtain consent prior to delivery of massage therapy (including assessment, treatment, and re-assessment). Section 4(b)(i) of the Consent Standard requires an RMT to provide information about areas of the patient's body where treatment will be delivered. In massaging or otherwise touching Patient 4's groin without her consent, the Panel has determined that the Respondent breached sections 1, 3(a) and 4(b)(i) of the Consent Standard.

375. The Panel finds that the Respondent touching Patient 4's groin without consent is a serious breach of trust and would reasonably be considered by members of the profession to be dishonourable, disgraceful and unprofessional. It is a marked departure from the standard expected of a registered massage therapist. The Panel determines that the Respondent committed professional misconduct.

4(b)(iii) Massaged or otherwise touched her labia for a non-therapeutic or sexual purpose

376. The College has indicated that it is not pursuing this allegation.

4(b)(iv) Pressed your groin against her hand for a non-therapeutic or sexual purpose

377. Both Patient 4's and the Respondent's testimony on this allegation is very similar to their testimony relating to allegation 4(a)(ii).

378. With respect to the February 15, 2019 appointment, Patient 4 again testified that she felt the Respondent's pants against her pinky, but her testimony was not that she felt his groin against her pinky:

> A It was something that I did during the appointment. Like, shortly after he started massaging my lower back, then I remembered that, like, his pants were touching my pinky. So that's when I remembered to just tuck them in a little bit closer to me.
>
> Q And could you feel any part of his body touching you?
>
> A *No, I couldn't*. Just pants. But it was about, like, groin height, the table, and he was kind of doing the same motions that he had done at the previous appointment.
>
> [emphasis added]

379. The College submits that Patient 4's evidence should be preferred because of the difficulties with the Respondent's testimony; specifically, about whether the Respondent used a blanket with Patient 4 and tucked her hands in, and his testimony allowing for the possibility of incidental touch. The Panel agrees those issues are present with the Respondent's testimony and undermine both his credibility and his reliability.

380. Nevertheless, the Panel finds that the College has not proven this allegation to the requisite standard because Patient 4 did not testify that the Respondent pressed his groin into her hand. This allegation is dismissed.

Allegation 5: Patient 5

> 5. In the course of providing massage therapy services to Patient 5,
>
> (a) On or about February 15, 2019, you pressed your groin against her hand for a non-therapeutic or sexual purpose; and/or
>
> (b) On or about March 12, 2019, you placed your hands underneath her undergarment and massaged her breasts for a non-therapeutic or sexual purpose;

381. Patient 5 testified as a witness. [redacted]

382. Patient 5 testified that she has an extensive history of health treatments including massage therapy, following a motor vehicle accident in [redacted] and a work injury in [redacted] Patient 5 underwent [redacted] surgery.

383. Patient 5 first saw the Respondent because he offered weekend appointments and his location was convenient. Patient 5 testified she saw the Respondent three to four times in February and March 2019. Patient 5 agreed that the entries in the clinical

records for visits on February 7, 9, 15 and March 12, 2019 correspond with when she saw the Respondent.

384. Patient 5 testified that she attended February 15, 2019 with her daughter. They had appointments with the Respondent one after another. Patient 5 testified she was probably wearing scrubs that day as she came from work with a sports bra underneath. She only had two kinds of sports bras; both go over your head. Patient 5 testified she would have had her top off, and her sports bra on, during the treatment. She could not recall if she removed her bottoms and was only in her underwear.

385. Patient 5 testified that at the end of the appointment on February 15, 2019, while she was lying face down on the massage therapy table with her palms facing up, she felt the Respondent's "full frontal…. penis" in her hands. She clarified she felt it in her right hand. Patient 5 felt the Respondent's testicles. She described the Respondent's penis as not erect but not soft either. Patient 5 felt the Respondent's pants which she described as black polyester jogging pants. She looked through the face piece in the massage therapy table to see if the Respondent had both feet on the ground. Patient 5 only saw one of the Respondent's legs on the ground. She thought the other leg must be on the bed. Patient 5 disagreed on cross-examination that her vision was limited by the headrest. Patient 5 felt the motion the Respondent was making on her back changed to "more of a caressing motion." She testified that is where she realized this did not felt right and "it wasn't an accident." Patient 5 estimated this took place for about three to five minutes.

386. Patient 5 testified that there was space on the table between her body and the side of the table. She did not feel the Respondent's leg touching her leg, she was focussed on what she felt in her hand. Patient 5 testified that there was no sheet covering her upper back during this portion of the treatment. Patient 5 testified that she was afraid to move or provoke a situation.

387. Patient 5 disagreed with the proposition that the Respondent was pressing his thigh up against the treatment table to brace himself and that any contact was inadvertent. Patient 5 said that there was no way the Respondent's thigh could have been placed

on the side of the bed. It had to have been on the top of the bed because of the way the Respondent's penis was positioned in her hand. She also referenced the caressing motion.

388. After the appointment Patient 5 asked her daughter whether she noticed if both of the Respondent's feet were on the ground for the treatment. Her daughter did not know as she was playing on the phone during the appointment.

389. Patient 5 then phoned her husband from the truck in the clinic parking lot. She told her husband that she felt the Respondent's penis in her hand. He made a sarcastic comment. When they later spoke in private, Patient 5 expressed how upset she was. Patient 5 testified that she had another appointment scheduled for February 25, 2019 that she did not attend. She either cancelled it online or her husband cancelled it.

390. Patient 5 testified that the Respondent called her husband to ask why she cancelled her massage therapy appointment. She discussed this with her husband.

391. Patient 5 testified that on February 24, 2019, she booked another appointment with the Respondent for March 11, 2019. She then cancelled that appointment on March 8, 2011. Patient 5 and her daughter both had flare ups of their conditions and booked appointments with the Respondent for March 12, 2019.

392. On March 12, 2019, Patient 5 stayed in the room during her daughter's appointment, which was first. Patient 5 then had her appointment. Patient 5 testified she told the Respondent about her back and neck pain that day. She commenced the treatment lying face up on the massage therapy table. Patient 5 recalled the Respondent started working on the lower right quadrant of her abdomen. He "went underneath the underwear and started to massage lower to the pubic area."

393. Patient 5 testified that there was no discussion about the Respondent going underneath her underwear, and there was no discussion of his touching Patient 5 in that area over top of her clothing. Patient 5 testified that the Respondent used one hand and touched "down onto the pubic area and the labia." The other hand was on Patient 5's hip area. Patient 5 testified that one or two of the Respondent's fingers

touched her labia. She estimated that the massaging was two to three minutes, with one minute touching the labia. The Respondent stopped when Patient 5 moved uncomfortably. Patient 5 testified that the Respondent moved her scrubs and underwear but most of the time the Respondent had his hand underneath her clothing. He did not say anything to Patient 5 about moving her clothing.

394. Patient 5 testified that after the pelvic portion of the March 12, 2019 appointment the Respondent massaged her neck and then “it kind of wandered down into the nipple area.” Patient 5 testified that the Respondent would massage her neck, but nothing was mentioned about her chest. Patient 5 testified she had had pectoral massages before. Patient 5 recollected she was wearing a sports bra. She could not recall if there was a sheet on top of her. The Respondent was sitting on a stool behind Patient 5’s head. The Respondent did not have any discussion with Patient 5 about massaging underneath her sports bra or moving her sports bra. The Respondent used both of his hands to massage the area. He then placed his left hand on the side of her neck and continue massaging with his right hand. The Respondent massaged under Patient 5’s sports bra, on the side and top of her breast, and touching her nipples. Patient 5 testified the Respondent touched her breast with his full hand and her nipples with his fingers. Patient 5 estimated that this portion of the massage lasted approximately five minutes, with two to three minutes of coming on and off the nipples.

395. Patient 5 denied the suggestion that the Respondent used a sheet as a barrier and worked on her pectoral muscles up to the edge of the sheet. Patient 5 agreed it was possible there was a sheet but said “he definitely worked underneath it, touched skin and he touched the nipples for sure.”

396. Patient 5 identified diagrams of where the Respondent touched her during both appointments.

397. After the March 12, 2019 appointment, Patient 5 spoke with her husband and told him that the Respondent touched her breast. She did not tell him he touched her labia or nipples. She found it uncomfortable to talk about and “shut down”.

398. About two months after her March 12, 2019 appointment, Patient 5 described seeing a news article describing a report of a patient who had a similar experience to Patient 5 with a massage therapist. Patient 5 could not recall the Respondent's name so searched through her email and noted that the news article was about the Respondent, the same person with whom she had seen. Patient 5 remarked to her husband that she knew her "gut was right".

399. Patient 5 asked her husband to call the RCMP so she could make a report. She met with a constable who told her about the College's complaint process. Patient 5 decided to pursue that process instead of the criminal process. Patient 5 made a complaint to the College within days. Patient 5 explained that she made the complaint to the College because she did not want the same thing to happen to her daughter. She was upset that she went back to the Respondent against her better judgment and brought her daughter.

400. Patient 5's husband, Witness E, testified as a witness. [redacted] Witness E testified about Patient 5's physical injuries at work and the impact it had on their lives. Witness E testified about the two appointments he was aware of that Patient 5 had with the Respondent, which correspond with the February 15 and March 12, 2019 appointments.

401. Patient 5 phoned Witness E after the February 15, 2019 appointment and described it as "weird". She said that the Respondent had "brushed up against" Patient 5. They spoke further when she arrived home. Patient 5 appeared "a little antsy", "anxious, energetic…rattled." Patient 5's husband made a joke and Patient 5 shut down conversation at this point.

402. Witness E testified about receiving a phone call from the Respondent after Patient 5 did not show up or cancelled one of his appointments. The Respondent asked him why Patient 5 did not attend and whether she said anything and would be returning. Witness E told the Respondent he would need to speak with Patient 5.

403. Witness E testified about his interactions with his wife following the March 12, 2019 appointment. Patient 5 called him from the parking lot. Initially it was "dead silent", and Witness E worried someone had been hurt, perhaps in a collision. Patient 5 was

agitated and said she would discuss it when she got home. When she arrived, she was disheveled and had been crying. Witness E described this as completely out of character for his powerful and very organized wife. Patient 5 told her husband that the Respondent "kept pushing his balls into my hand." Patient 5 said she moved her hand, and the Respondent would move and place "his balls…back in my hand." She said he had one leg on the ground. Patient 5 described feeling violated and dirty. Even after she showered that evening, she was rattled and did not want to be touched.

404. Witness E testified about supporting his wife making a complaint to the RCMP.

405. The Respondent testified about his appointments with the Respondent. He recalled reviewing many issues with Patient 5.

406. With respect to the February 15, 2019 appointment, the Respondent testified that he thought Patient 5 said her previous appointment had been positive but other than that, he could not recall anything. The Respondent reviewed his clinical records and said that he asked for consent to treat Patient 5's chest area, that he performed some Swedish work on her upper back and spinals, and myofascial release for the pectoralis minor and serratus anterior.

407. The Respondent testified that it is not possible to massage a patient while trying to stand on one leg. He has never treated a patient while standing on one leg. He testified that a patient's vision is limited when their head is in the face piece. The Respondent did not use a caressing motion but agreed his motion would have changed when he began to work around the shoulder blade area.

408. The Respondent denied that his penis was in Patient 5's hand or that he had an erection at any time during the treatment. The Respondent testified he may have bumped his leg into Patient 5's hand but he does not recall having done that.

409. The Respondent denied touching Patient 5's labia and said that the closest he would have touched was about three inches away. He asked for consent in moving down Patient 5's pants and there were no complaints or objections when he did so.

410. The Respondent testified he could not recall if he tried to telephone Patient 5. He also testified that he recalled speaking to her husband. He further testified that he made the phone call because he was checking in and concerned about Patient 5.

411. With respect to the March 12, 2019 appointment, the Respondent denied that he placed his full hands on Patient 5's breasts, touched her nipples and massaged underneath her sports bra: "that didn't happen." He indicated he recalled going to the edge of her sports bra but not underneath and was at least three inches from Patient 5's nipples. During a demonstration, the Respondent testified that he recalled the "line" where Patient 5's sports bra was located. The Respondent asked for and received consent to massage the portion of the pectoralis that is appropriate to treat,

412. The Respondent did not recall using any draping on Patient 5 at either appointment.

5. In the course of providing massage therapy services to Patient 5,

(a) On or about February 15, 2019, you pressed your groin against her hand for a non-therapeutic or sexual purpose; and/or

413. There is no dispute the Respondent provided massage therapy services to Patient 5 on February 15, 2019. The clinical records are consistent with that fact. There is no dispute that the Respondent would have been working on Patient 5's back and that she was lying face down on the massage therapy table for that.

414. The Panel prefers the evidence of Patient 5 to the evidence of the Respondent and accepts her account. The Respondent has little to no recollection of his February 15, 2019 appointment. Patient 5's evidence was clear and convincing. She described in detail the sensation of the Respondent placing his "full frontal" penis in her hand, which was not erect but not soft, and she could feel his testicles. She described the material and colour of the Respondent's pants. She recalled the moment during the massage therapy session on February 15, 2019 when the Respondent pressed his groin into her hand, and that the Respondent also changed his touch to a caressing motion. Patient 5 looked through the face piece in the massage table and noted that one of the Respondent's legs was off the floor and she concluded the other must

have been on the bed. Patient 5 was adamant the touch was not accidental and that what she felt was not the Respondent's leg. Patient 5's account was not shaken on cross-examination.

415. Patient 5's husband's evidence that Patient 5 was upset about something sexual in nature following this appointment is consistent with Patient 5's testimony of what occurred. Her cancellation of a subsequent appointment and the Respondent's call to Patient 5's husband is also consistent with her version of events.

416. While the Respondent argues he could not perform a massage standing on one leg, the Panel notes that his testimony on cross-examination changed from being it being impossible for him to do that, to being something he would not do. The Panel does not consider that Patient 5's evidence that the Respondent placed his penis in her hand necessitates proof that one of the Respondent's legs was placed on the table.

417. The Panel also has difficulty reconciling the Respondent's lack of recollection of the appointment with his firm denial his groin touched Patient 5's hand, and with his acknowledgement of the possibility that his leg may have touched her hand as he was bracing on the table during this appointment.

418. The Respondent submits that Patient 5's evidence was inconsistent because of Witness E's testimony that Patient 5 told him the Respondent repeatedly moved and placed his testicles in her hands. The Respondent did not cross-examine either witness on this point. Patient 5's own testimony on this point has been consistent throughout.

419. The Respondent submitted that Patient 5 had difficulty recalling specific details in her testimony including the treatment plan she agreed to, whether her daughter attended the treatment on February 15, 2019, whether the Respondent's penis was erect or not, whether there was a sheet on her, the details of the news article she reviewed, and whether she mentioned her daughter's treatment to the College. The Panel disagrees with the Respondent's characterization of some of these points as being gaps in Patient 5's memory. Patient 5 was clear about her description of the Respondent's erection (it was neither erect nor soft), and that her daughter attended the February 15, 2019 appointment and was on her phone. The Panel does not

consider the other details to be determinative. The Panel finds that Patient 5 was forthcoming when she could not remember a specific detail, for example, whether she was draped with a sheet. This reinforces rather than undermines the reliability and credibility of Patient 5's testimony.

420. The Respondent also argues that it is not reasonable for Patient 5 to have returned for treatment on March 12, 2019 if she had in fact been sexually assaulted on February 15, 2019. The Panel addressed this point earlier in the reasons and is not prepared to draw an inference based upon myths of how sexual assault victims should behave that no sexual misconduct occurred because Patient 5 returned to see the Respondent.

421. The Respondent's testimony about his telephone call to Witness E following the February 15, 2019 appointment is inconsistent and not credible. It is unusual he would have called Patient 5's husband and not Patient 5 herself if he wanted to check in on her. The Respondent's testimony was also inconsistent in that he asserts that he is not sure he made the call but at the same time recalls speaking with Witness E. The Respondent also withheld this information when asked by the College investigator if he spoke to anyone else about Patient 5's appointments between February 15 and March 12, 2019. His explanation for the omission did not make sense. The Respondent said no other interactions came to mind, but also stated, he thought the investigator was referring to "some random stranger or something like that." The Panel finds that the Respondent was evasive and inconsistent.

422. The Panel finds that in the course of delivering massage therapy services to Patient 5 on February 15, 2019, the Respondent pressed his groin against Patient 5's hand. Looking objectively at the totality of the circumstances, the Panel finds this was done for a non-therapeutic or sexual purpose because:

    a. There is no therapeutic reason for an RMT to place their groin in a patient's hand.

    b. The body part (penis) is inherently sexual.

c. Patient 5 felt the Respondent's testicles which is more consistent with purposeful touch than an accidental brush.

d. The Respondent's penis was touching Patient 5's hand for approximately three to five minutes which is consistent with purposeful touch rather than an accidental brush.

e. The Respondent used a caressing motion on Patient 5's back.

f. By February 15, 2019, the Respondent had been made aware of another complaint against him (Patient 3's) which also alleged that he pressed his groin into that patient's hand. By this time, he would have been aware of the heightened need to take steps to avoid any accidental touch of this nature.

423. The Panel finds that the College has proven this allegation to the requisite standard.

424. Section 21 of the Code of Ethics requires that a massage therapist not engage in sexual misconduct with a patient. Sexual misconduct is defined to include "touching of a sexual nature of a patient by a massage therapist" and "sexualizing the treatment environment." An RMT placing their penis in a patient's hand is touching of a sexual nature of a patient by an RMT. It is also an act which sexualizes the treatment environment. The Panel has determined that the Respondent breached section 21 of the Code of Ethics.

425. Section 4 of the Boundaries Standard requires an RMT to recognize and respect 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. The Respondent sexualized the treatment environment and the therapeutic relationship through his touch which was explicit sexual conduct contrary to the Code of Ethics. The Panel has determined that the Respondent breached section 4 of the Boundaries Standard.

426. The Respondent's sexual touching of Patient 5 is a marked departure from what is expected of a registered massage therapist. It is regarded as disgraceful, dishonourable and unbecoming of the professional and the public. It is a

fundamental breach of trust and antithetical to the foundation of the profession. The Panel has determined that the Respondent has committed professional misconduct.

5 (b) On or about March 12, 2019, you placed your hands underneath her undergarment and massaged her breasts for a non-therapeutic or sexual purpose;

427. There is no dispute that the Respondent provided massage therapy services to Patient 5 on March 12, 2019. The clinical records support the evidence of Patient 5 and the Respondent.

428. With respect to whether the Respondent placed his hands underneath Patient 5's undergarment and massaged her breasts, the Panel prefers Patient 5's evidence to the Respondent's evidence and accepts her version of the events. Patient 5 testified about how on March 12, 2019, the Respondent was seated on a stool behind her, his hands went under her sports bra and on her breasts; and for a period of two to three minutes, his fingers moved back and forth on and off her nipples. Patient 5 described being very upset. Her account was consistent with her husband's testimony of her demeanour following the appointment.

429. The Respondent's evidence changed. On the one hand the Respondent had little recollection of the appointment, on the other hand he gave very specific evidence about the type of stroke he used, and he indicated he recalled going to the edge of Patient 5's sports bra but not underneath and was at least three inches from Patient 5's nipples.

430. Patient 5 was again clear, convincing, specific, and detailed with her testimony. She was a reliable and credible witness.

431. There were some inconsistencies in the evidence of Patient 5 and her husband with respect to the timeline of events. The Panel does not consider that those undermine either the reliability or the credibility of either witness. It is understandable that there would be some variance on the timeline of events and minor details given the length of time that has passed. The crux of their testimony is aligned with respect to the allegations. Patient 5's husband presented as a credible witness, and he was

emphatic about Patient 5's demeanour being completely out of the ordinary following the March 12, 2019 appointment.

432. The Panel finds that in the course of providing massage therapy services to Patient 5 on March 12, 2019, the Respondent placed his hands underneath her undergarment and massaged her breasts. Looking objectively at the totality of the circumstances, the Panel finds this was done for a non-therapeutic purpose because:

    a. There is no therapeutic reason for an RMT to touch a patient's nipples.

    b. The body part (nipple) is inherently sexual.

    c. The Respondent did not have any discussion with Patient 5 about massaging underneath her sports bra or moving her sports bra.

    d. This portion of the massage lasted approximately five minutes, with two to three minutes of coming on and off the nipples.

433. The Panel finds that the College has proven this allegation to the requisite standard.

434. Section 21 of the Code of Ethics requires that a massage therapist not engage in sexual misconduct with a patient. Sexual misconduct is defined to include "touching of a sexual nature of a patient by a massage therapist" and "sexualizing the treatment environment." An RMT touching a patient's breasts and nipples skin on skin for no therapeutic reason is touching of a sexual nature of a patient by an RMT. It is also an act which sexualizes the treatment environment. The Panel determines that the Respondent breached section 21 of the Code of Ethics.

435. Section 4 of the Boundaries Standard requires an RMT to recognize and respect 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. The Respondent sexualized the treatment environment and the therapeutic relationship through his touch which was explicit sexual conduct contrary to the Code of Ethics. The Panel has determined that the Respondent breached section 4 of the Boundaries Standard.

436. The Respondent's sexual touching of Patient 5 is a breach of trust and a marked departure from what is expected of a registered massage therapist. It is regarded as disgraceful, dishonourable and unbecoming of the professional and the public. It is a fundamental breach of trust and antithetical to the foundation of the profession. The Panel has determined that the Respondent has committed professional misconduct.

437. The Respondent notes that Patient 5 did not mention that the Respondent touched her nipples in her complaint to the RCMP. The Panel does not find that a partial report or delayed report undermines Patient 5's credibility. Patient 5 also gave testimony about why she did not use the words labia or nipples with the RCMP. She said that she was speaking to a male RCMP officer, she was under a lot of emotion, and did not feel comfortable using those words. She did tell the RCMP officer that the Respondent massaged her breasts inappropriately underneath her bra. This area includes the nipples.

Allegation 6: Patient 6

6. In the course of providing massage therapy services to Patient 6,
    (a) On or about March 14, 21, and 28, 2019, you:
        (i) Pressed your groin into her hand for a non-therapeutic or sexual purpose;
        (ii) Massaged or otherwise touched her mons pubis and/or labia for a non-therapeutic and/or sexual purpose;
        (iii) Massaged or otherwise touched her groin area for a non-therapeutic and/or sexual purpose,
        (iv) Made statements and/or inquiries of an unprofessional, inappropriate and/or personal nature including initiating faith-based conversations, asking her if you could pray for her and/or praying for her in her presence; and/or
        (v) Engaged in inappropriate and unprofessional conduct by hugging her;
    (b) Between about April 4, 2019 and September 2019 you:
        (i) Made statements of an unprofessional, inappropriate and/or personal nature by praying for your chaperone during her treatment;
        (ii) For a non-therapeutic and/or sexual purpose you:

i. Directed her to the edge of the massage table and to spread her legs open;

ii. When she did so, you placed yourself between her legs and rested your elbows on her knees and your head near her groin; and/or

iii. In this position, your upper bodies came into contact;

(c) Massaged or otherwise touched her gluteal cleft and/or perineum for a non-therapeutic and/or sexual purpose; and/or

(d) On or about October 2 and 10, 2019, you pressed your groin against her hand for a non-therapeutic or sexual purpose;

438. The College made several clarification points about the dates set out in this allegation:

a. Patient 6 stated in her evidence that, while she stated in her complaint to the College that she had an appointment with the Respondent on April 4, with respect to the allegations in sub-paragraph 6(b), she accepted the treatment records that did not record an appointment that day.

b. Sub-paragraph 6(c) does not contain a date in the Citation, but the College clarified to the Respondent by way of letter dated December 9, 2020 (shortly after the Citation was served and four months before the beginning of the Discipline Hearing) that it was intended to be between about April 4, 2019 and September 2019.

c. Patient 6 stated in her evidence that she felt the Respondent's groin in her hand during her last two appointments with him. According to her treatment records, this would be October 10 and 22, 2019, not October 2 and 10, 2019. As the Citation is worded "on or about", the College submits nothing turns on this.

439. The Panel accepts the College's clarifications set out above.

440. Patient 6 is 24 years old. [redacted]

441. Patient 6 had only had one massage therapy appointment before seeing the Respondent. She began seeing the Respondent when she was 21 years old. Her

chief concern was potential irritable bowel syndrome (“IBS”). Patient 6’s mother was a patient of the Respondent. Patient 6’s mother inquired if he could treat IBS with massage therapy. He said he could. Patient 6’s mother booked an appointment for Patient 6 with the Respondent. Patient 6’s mother told Patient 6 that she had spoken to the Respondent about Christianity.

442. Patient 6 testified she saw the Respondent for 27 appointments between March and October 22, 2019. She wore the same clothing to each appointment: an athletic t-shirt, a Lululemon sports bra that pulls over the head, and boy short underwear. She described that the Respondent wore black athletic pants.

443. Patient 6 initially saw the Respondent at [redacted] and later saw him at other locations. She described the treatment room layout. Patient 6 identified intake forms which show her first appointment as March 14, 2019. Treatment records show that Patient 6 had appointments with the Respondent on March 14, 21 and 28, 2019.

444. Patient 6 believed that the Respondent did an initial assessment of her hips and determined they were sometimes not aligned. Patient 6 believed that the Respondent told her he would be treating her hip flexor muscles. She firmly rejected the suggestion that the Respondent ever told her he would be working in her pubic area. Patient 6 disagreed that the Respondent ever showed her on his own body where he would be working or told her he would be working on her pubic area.

445. Patient 6 described that these appointments started out with her lying face up on the massage therapy table, wearing her sports bra and underwear, and covered with a sheet over the lower half of her body. The Respondent stood to her left and stretched the skin in her abdominal region for the first half of her 60-minute appointment. The Respondent then moved to her “super pubic area and groin.” He asked Patient 6 if he could put his hand under her underwear. Patient 6 gave consent for that because she trusted the Respondent’s judgment and was aware that he was Christian which built trust for her. The Respondent did not explain why he was working in that area or provide Patient 6 with any options. The sheet at this point was resting on Patient 6’s hip right about her “super pubic…borderline where you could see [her] pubic hair.” Patient 6 defined the “super pubic” area as being “right at the crack…the

opening of my vagina at the top." Patient 6 contacted her pubic bone. Patient 6 testified the Respondent touched her pubic hair. Patient 6 identified a diagram she completed where she drew the area where the Respondent touched her. Patient 6 testified she was embarrassed by this as she had not had anyone touch her there. Patient 6 described the Respondent's touch as being soft touches, using his fingers bunched together, making a circular rubbing motion. At times, Patient 6 observed the Respondent's eyes were closed.

446. Patient 6 testified the Respondent stopped working in this area once he had a chaperone in the room for later appointments. Patient 6 rejected the suggestion that the change was the result of a treatment change to focus on endometriosis. She testified that the issue with endometriosis arose at the end of April 2019, and the chaperone had been present since the beginning of April 2019. Patient 6 identified text messages in which she advised the Respondent of her endometriosis on April 30, 2019.

447. Patient 6 testified that while she was lying face up on her back on the massage therapy table, the Respondent also massaged her groin. He would move back and forth between her pubic and groin areas. The total amount of time massaging both areas was about 30 minutes. She recalled the groin area being more painful. The Respondent used a similar motion to the pubic area in that the Respondent's four fingers massaged. Patient 6 described the location as follows:

> He was under the sheet but my underwear was on and he was -- he would have been massaging at the base of my vagina, so not touching the lips, but in that inner leg and inner groin.
>
> …
>
> So it would have been at the base of my vagina, and I remember it being quite painful. I'm not sure if it was because of the pressure or because it's sensitive and maybe a tender area, but I remember it being quite painful.
>
> He wasn't touching the lips of my vagina, so kind of in that area but not touching the lips, like, right borderline…
>
> Towards the vaginal opening

448. Patient 6 also described the location as being the crease between her leg and her pubic area. Patient 6 also identified a diagram she completed showing the location that the Respondent touched her.

449. Patient 6 testified the Respondent told her he was going to work in this area to release tension to the skin. He asked if that was okay and Patient 6 responded “yes”. There was no other discussion. Patient 6 agreed to let the Respondent treat her groin because she trusted his judgment and that he was going to do what was needed to treat her IBS.

450. Patient 6 described feeling embarrassed and confused. Patient 6 was embarrassed because of the pubic hair in that area and she did not know why the Respondent had to massage there. She also testified about being in so much pain that she would raise her hand to the Respondent’s hand, almost to push it away. She would also pinch her stomach to redirect the pain. The Respondent did not reduce the pressure he applied. The Respondent ceased this type of treatment once a chaperone was present for Patient 6’s appointments.

451. Patient 6 testified that she and the Respondent would sometimes talk about God. She described that the Respondent once prayed for her while he was massaging her back. The Respondent also told Patient 6 that he had been thinking of her and praying for her and her body would go back to the way God created it to be. Patient 6 could not recall the exact dates of these conversations but identified they occurred prior to the time that a chaperone was present for their appointments. Patient 6 testified that her level of comfort with prayer depends upon who is praying for her.

452. Patient 6 testified that at the end of each appointment in March 2019, the Respondent would give her a farewell hug. The hug was initiated by the Respondent. He did not ask her if he could initiate the hug, he just gestured to Patient 6. She testified that she was “okay with it.” It was a brief hug.

453. With respect to the appointments from April to September 2019, Patient 6 testified that she saw the Respondent for 20 appointments from April 11, 2019, to September 26, 2019. These appointments were at [redacted] or [redacted]. Patient 6 testified about the layout and appearance of both of those locations.

454. There was a chaperone present for all of these appointments. Patient 6 testified that the Respondent did not tell her about the section 35 order or the presence of the chaperones. The Respondent and a chaperone (the "Chaperone") told Patient 6 that the Chaperone was "job shadowing." Patient 6 saw the Respondent and the Chaperone leaving a sushi restaurant together before one of her appointments which left her with the impression, they were friends. On one occasion, Patient 6 left the appointment at the same time as the Chaperone and Patient 6 asked her about becoming a massage therapist and how long she had been job shadowing. The Chaperone smiled and gave vague answers. Patient 6 came to know in the summer 2019 that the chaperones were not job shadowing the Respondent. Her father discovered a news article online with the allegations against the Respondent and that the Respondent was ordered to have a chaperone in the room. Patient 6 continued to see the Respondent because her mother did and because she trusted him as a Christian.

455. Patient 6 testified that the Respondent prayed for the Chaperone at the beginning of one of Patient 6's appointments in August 2019. The Respondent asked Patient 6 if she would be comfortable with them praying for the Chaperone who was experiencing wrist pain from a softball injury. The Respondent had the Chaperone sit on the massage therapy table, he sat next to her and Patient 6 stood in front of her and they prayed. The Respondent and Patient 6 were touching the Chaperone during the prayer. Patient 6 prayed for the Chaperone towards the end after being prompted by the Respondent's request that Patient 6 do so. Patient 6 described not being completely comfortable with this because she prefers to pray for people in her head, she is not someone who likes to pray out loud, and she did not know the chaperone that well. Patient 6 disagreed with the suggestion set out in the Respondent's affidavit that it was an invitation Patient 6 knew she could decline without any offence to anyone. Patient 6 testified she felt obligated to pray because the Respondent had suggested it and she did not feel that she could say no.

456. Patient 6 testified about a position the Respondent placed her in. Patient 6 referred to the position as the "army man". The Respondent referred to the same position as the seated diaphragm technique. Patient 6 testified that the Respondent only started

performing this position with Patient 6 after the chaperone was present at her appointments.

457. Patient 6 recalled the Respondent told her that if they loosened up her intestines it could prevent an attack from coming where Patient 6 was experiencing the pain. He was trying to loosen those muscles. Patient 6 testified the Respondent did not provide her with options for treating her upper intestines in this manner. She believed he mentioned this was the only position they could use to get under her ribcage.

458. Patient 6 testified that she was sitting on the edge of the massage therapy table, her legs were spread apart, and the Respondent was sitting on a wheelie stool facing the wall with a mirror on it. The stool was about two feet high. Patient 6 recalled she was at the very edge of the table, and it was difficult to stay on the table. Patient 6 testified that the Respondent told her to spread her legs apart so that he could position his body in between her legs. She had to try very hard so as not to fall in the Respondent's lap.

459. The Respondent directed Patient 6 to place her arms over his shoulder so that she was "hunched over his shoulder". Patient 6's "whole chest" was over the side of his body. The Respondent's head was at Patient 6's side between her waist and her chest. Patient 6's elbows were resting on the Respondent's shoulder. Patient 6's breast was close to the Respondent's head. The Respondent worked on each side of her body with one hand on her back and the other hand underneath the front of her ribcage. The Respondent massaged her intestines using circular motions with his thumbs under her ribcage. Patient 6 described this as quite painful and lasting approximately 25 minutes.

460. Patient 6 testified that during an appointment in July or August 2019, the Respondent massaged her "butt crack". She thought this appointment was at [redacted] where the chaperone was sitting to the right side of the bed, six to eight feet away from her.

461. Patient 6 told the Respondent at the outset of the appointment that she had back pain, likely due to her posture. After she undressed to her bra and underwear and was lying face down on the massage therapy table, the Respondent went directly to

her lower back and “then slowly moved to working on [her] butt cheeks and then moved into the crack of [her] butt.” There was a sheet placed up to Patient 6’s waist. Patient 6 testified that she remembered the Respondent puling her underwear down to working directly on her skin. His hands were under the sheet, and he lifted it up so that he could work in that area.

462. The Respondent asked if he could pull down Patient 6’s underwear and she replied that it was fine. She was not presented with any options. The Respondent pulled her underwear down so that they were resting at the bottom of her “butt cheeks.” The sheet was resting at her tailbone.

463. The Respondent was using his thumbs. Patient 6 recalled the Respondent went in her “butt crack about an inch and…went down [her] butt crack to where…it meets [her] vagina but he didn’t touch [her] vagina.” She clarified she was referring to the "lips of her vagina.” He did not insert his fingers into her anus or vagina while working in this area. He worked in this area for about 10 minutes. Patient 6 confirmed that the Respondent was working in the perineum (the area between her anus and the vaginal opening).

464. Patient 6 recalled being confused because she had pain in her middle back, and he was going to massage that area. She denied requesting any treatment to her gluteal muscles this day. She did not understand why he “needed to go into the crack of [her] bum.” She was embarrassed. Patient 6 described that the Respondent then began massaging her upper back and she was “grossed out” because he had not washed his hands. The Respondent was not wearing gloves.

465. Patient 6 denied the suggestion that the Respondent was two to three inches away from her gluteal cleft, and the same distance away from her vagina and anus. Patient 6 denied the suggestion that she sometimes wanted the Respondent to work in her gluteal area skin on skin. She said, “it was all initiated by him, and he was the one that would have moved the sheet and my underpants down.” Patient 6 agreed that her “butt crack” was not exposed for the chaperone to see.

466. Patient 6 testified that during two of her October 2019 appointments (October 10 and 22), she was lying face down on the massage therapy table with her arm off the

bed and her hand was resting against the Respondent's groin. She was wearing her sports bra and leggings. The sheet was about halfway up her back, and her arms were outside of the sheet, at her side. Patient 6's palms were facing upward. Her hand was resting off the massage therapy table. It was her right hand.

467. Patient 6 testified that at first, she did not know what part of the Respondent's body was touching her hand. It lasted about 30 to 35 seconds and she thought that maybe she was touching the Respondent's penis, but she was not sure. When it happened at the next appointment, Patient 6 verified that it was the Respondent's penis. She knew because she felt it being "hard." Patient 6 recalled the Respondent wearing thin athletic material pants which she felt in her hand. Patient 6 recalled the Respondent's penis touched her outer palm below her pinky. The touching during the second appointment lasted 10 to 15 seconds because Patient 6 moved her hand back on the table and to the side of her body sooner.

468. The chaperone was in the room and was located behind the Respondent. Typically, she sat in the corner and would read a book or be on her iPad. She could not say whether the chaperone did this during these appointments.

469. Patient 6 testified about going to the RCMP on November 18, 2019 to make a statement about the Respondent. After she moved out of the apartment owned by the Respondent, she saw things more clearly and realized that sexual assault did not necessarily mean "rape." Patient 6 testified she made a complaint to the College the next day. Patient 6 described that she was motivated because it was "intertwined with Christianity and with the manipulation…. I was very vulnerable and I believe that he saw that and he took advantage of it." She described making the complaint so other women did not have to go through the same experience.

470. The Respondent testified that Patient 6's mother had referred her to him to treat her IBS, in addition to her neck and back. The Respondent testified about his initial assessment of Patient 6 in March 2019. He did not remember having a "huge" discussion with Patient 6 about draping options or any discussion about disrobing options. The Respondent spoke to Patient 6 about wearing a sports bra. He said Patient 6 was comfortable wearing a sports bra, and with "what was happening."

The Respondent said he spoke to Patient 6 about treating skin on skin and she agreed with that. The Respondent acknowledged it was possible he completed Patient 6's clinical records a week after the treatment.

471. The Respondent made a statement in an affidavit that "I did treat close to [Patient 6's] mons pubis and the structures underneath it with her consent, which is fully within scope of practice for RMTs. I did not touch her mons pubis for non-therapeutic reasons." During the hearing, he testified, that it is more accurate "if I touched it, I wouldn't have touched it for non-therapeutic reasons." The Respondent testified that when he treated Patient 6's psoas minor, there was contact with the outer part of the pubic bone, and when he treated her rectus abdominus there was pressure on his pubic bone. On cross-examination, he testified he would never intentionally touch someone's pubic bone. The Respondent stated that when treating in the area between the umbilicus and pubic symphysis, he could not say he did not come into contact with Patient 6's pubic hair, though he did not recall doing so. The Respondent testified he had a conversation at the end of March or early February about Patient 6 seeing a specialist for endometriosis and he suggested they not work on her lower abdomen as a result.

472. With respect to the groin area, the Respondent testified that he did not know what Patient 6 was referring to when she referenced him treating her groin. He testified that his hands did not go underneath the sheet. He testified he treated Patient 6's thigh through the sheet which involved compression and stretching. He treated her inguinal ligament two to three times because he noticed her pelvic was not aligned. He used a stretching technique for that with the palms of his hands. The Respondent stated he explained to Patient 6 what the inguinal ligament was and how he treated it and asked for consent to push toward the pubic bone and contact the outside side of Patient 6's pubic bone. Patient 6 consented. The Respondent testified that he did recall Patient 6's hand raised (which she says she did when she experienced pain). He made eye contact and eased off the pressure and Patient 6 appeared better. The Respondent agreed there could have been more communication and he could have done better.

473. The Respondent testified that he spoke to Patient 6 about faith and there was an understanding because he also spoke to her mother about faith. He testified he believed speaking about faith was appropriate. The Respondent did not recall stating in March 2019 that he prayed for Patient 6's body to go back to the way it was intended to be but agreed it was possible. The Respondent agreed he prayed for Patient 6. He did not recall praying for her while he was massaging her back in March 2019. He said that if there was occasion to pray for her, he would ask for consent to do that. The Respondent perceived Patient 6 as open to discussing faith because she talked about it a lot and she never said she was not open to it.

474. The Respondent spoke with Patient 6 about her seeing a counsellor for a past abusive relationship. He agreed he participated in these conversations because it would be "ridiculous" to only listen. During the College investigation, he stated he only listened to her comments. When confronted with this on cross-examination, the Respondent explained as follows:

> A So to me, confirming that I am listening is sometimes repeating what people say. So I may have said some things in response to what she was telling me.
>
> Q But you said that you encouraged her to see her counsellor?
>
> A I did.
>
> Q And so that's -- encouraging is an active action; right? It's more than just listening or repeating something back?
>
> A I think as a therapist, it's my responsibility to help people get to the help that they need and when I see a need, I will mention for, you know, just -- I have even given people business cards of counsellors and things like that.

475. The Respondent testified that there were "a couple of hugs" with Patient 6 at the conclusion of her appointments. He did not recall how many. He did not recall initiating the hugs with Patient 6. He testified that any hugs he had with Patient 6 "were mutual hugs or she initiated them." He also testified that he "didn't want to make her feel uncomfortable that she couldn't give me a hug if he wanted to."

476. The Respondent acknowledged he spoke to the Chaperone about telling patients including Patient 6 that she was "job shadowing." The Chaperone said that she "kind of has been interested in massage therapy" so the Respondent felt there was truth to the statement…"it was true". He acknowledged on cross-examination that he was

ordered to have a chaperone, she was only chaperoning female clients, and he was paying the Chaperone to be there. On cross-examination, the Respondent testified that he could not recall that it was his suggestion to the Chaperone. When asked by the College "Patient 6 indicated that both you and the Chaperone indicated that she was job shadowing. Is that possible or did that explanation happen?", the Respondent answered, "I don't recall that conversation." On cross-examination, the Respondent said he was not specifically asked about a conversation with Patient 6 and cannot think of every scenario if he is not asked a specific question. The Respondent agreed he had sushi lunch with the Chaperone before an appointment.

477. The Respondent admitted he prayed for his chaperone during Patient 6's treatment:

> And there was the occasion where we prayed for the chaperone, and that was at the end of the treatment. It was something that, you know, I saw that the chaperone was in pain and she was having a difficult time. I knew that [Patient 6] was trying to gather some hope as well from just being more into prayer and more into reading the bible.
>
> I thought that that may be a good opportunity to encourage her as well through praying for someone. And it wasn't anything that I wanted to, you know, force on her, put her on the spot or anything like that. She fully could have said no, and I would have been fine with that. But there was no real pressure other than me just encouraging her inner faith and encouraging her after, she had, you know, gone through a lot of difficulties in the prior years before coming to treatment.

478. He did not agree that it happened at the beginning of the appointment but did agree with Patient 6's description of where everyone was located in the room, and who was touching whom. The Respondent asked the chaperone if he and Patient 6 could pray for her and then asked Patient 6 if she wanted to pray for the chaperone. The Respondent stated that "sometimes there's a need for prayer" and "it felt like that time for me."

479. The Respondent did not admit it was unprofessional, inappropriate or of a personal nature. The Respondent agreed that the prayer was personal to the chaperone as she was receiving the prayer. The Respondent stated that, "And I was already limited in the amount of chaperones and people that were helping me at the time, so I was having a hard time getting people in, so it felt like a need at the time." The

Respondent testified that there was a therapeutic purpose to asking Patient 6 to pray for the chaperone. The Respondent maintained that Patient 6 “could have said no.”

480. The Respondent testified that he only recalled performing the seated diaphragm technique on Patient 6 once. He assessed Patient 6 had an abnormal breathing pattern and his attempt to treat the diaphragm while she was laying down face up did not work. He testified he asked Patient 6 to try a different technique and she did not have any problem with it. The Respondent agreed that Patient 6 was seated at the edge of the massage therapy table and he asked her to bring her legs apart. He agreed that he slid his knees underneath the massage therapy table. The Respondent denied that he placed his elbows on her knees and his head near her groin. The Respondent asked Patient 6 to lean her shoulder on his shoulder and agreed their bodies came into contact. The Respondent disagreed Patient 6’s breast was close to his head. He did not know where her breast was. He estimated this posture took five minutes per side. The Respondent testified that Patient 6 was very relaxed.

481. The Respondent testified that he treated Patient 6’s gluteal muscles about seven or eight times at her request because she was experiencing menstruation pain. The Respondent denied going anywhere close to Patient 6’s gluteal cleft or perineum. He testified that there was appropriate draping and no exposure of her gluteal cleft. The Respondent testified that Patient 6 sometimes wanted the draping moved lower and would motion for the Respondent to move it down. The Respondent denied that Patient 6’s underwear or pants were resting below the bottom of her buttocks with a sheet overtop. He said a couple of times Patient 6 reached back to pull them down further. The Respondent testified that the closest he came to Patient 6’s genitalia while working on her gluteal muscles was four to five inches away. When he worked on the sacrotuberous ligament, he was three to four inches away.

482. The Respondent testified that he did not touch put his fingers in Patient 6’s gluteal cleft. He testified that it was “completely false” that “during one of [Patient 6’s] treatment appointments, [he] used [his] thumbs and went under the sheet and into her gluteal cleft down towards her vaginal opening.”

483. The Respondent denied that his Patient 6's hand touched his groin while he was working on her back. He recalled her hand coming off the massage therapy table twice during October 2019 appointments while he was working on her back. He said he repositioned her hand. The Respondent also testified that he recalled Patient 6's arm moving a couple of times and hitting the side of his hip just below the bony area. He could not recall whether that occurred during the same October 2019 appointments. The Respondent's affidavit sworn prior to this hearing stated, "...while it is possible that a patient's hand can fall off the table during treatment, it did not happen in her case with me. I would have noticed it and I would have immediately apologized and re-established consent before continuing." The Respondent agreed it was possible that he lost focus on his body position.

484. The Respondent agreed he did not provide instructions to his chaperones about their use of an iPad or reading materials while they were acting as chaperones. The Respondent's affidavit states that a chaperone was present at the time of the treatment and that it is the Respondent's understanding she did not observe anything unusual or inappropriate. On cross-examination, the Respondent could not say which treatment or chaperone this statement referred to.

485. Witness F testified as a witness regarding the allegations at paragraphs 6(b) and (c) of the Citation. Witness F was a chaperone for the Respondent. She attended appointments with Patient 6 on August 21, 29, September 3, 11, 19, 26, October 2 and 10, 2019. Patient 6 had other appointments during the relevant time period with other chaperones. Witness F testified that there was never a sheet used. She testified that Patient 6 did not wear a sports bra to her appointments. She could not recall the seated diaphragm being done. She originally told the College that she did not recall the Respondent treating Patient 6's gluteal area. During the hearing, Witness F testified that she did recall him doing it on one occasion. Witness F agreed she had a book or iPad with her during appointments but only looked down at them when the Respondent was away from Patient 6. Witness F agreed that the room was small, and it was possible for the Respondent to position himself in a manner that would obscure her view of Patient 6's arm.

486. The Respondent testified that he terminated his therapeutic relationship with Patient 6 when he had a conversation with her that he could no longer see her once she moved into his apartment. He did not know if he provided her with written notice.

6(a) On or about March 14, 21, and 28, 2019, you:

487. The Respondent provided massage therapy services to Patient 6 on March 14, 21, and 28, 2019. The intake form and clinical records are consistent with appointments having taken place on those dates. Patient 6 distinguished between her appointments with and without a chaperone present. The appointments without a chaperone present were in March 2019.

6(a)(i) Pressed your groin into her hand for a non-therapeutic or sexual purpose

488. The College has indicated that it is not pursuing this allegation.

6(a)(ii) Massaged or otherwise touched her mons pubis and/or labia for a non-therapeutic and/or sexual purpose;

489. The Panel prefers the evidence of Patient 6 to the evidence of the Respondent. Patient 6 was clear, convincing, specific and careful in her testimony. She was a reliable and credible witness. Patient 6 acknowledged if she did not know or could not recall something (for example, the meaning of mons pubis). Her description of the location that the Respondent touched was very precise: her "super pubic…borderline where you could see [her] pubic hair" …"right at the crack…the opening of my vagina at the top"…her pubic bone…her pubic hair." Patient 6 described the Respondent using a soft touch in a rubbing circular motion, and that it lasted approximately 15 minutes. The diagram completed by Patient 6 is consistent with this description. Patient 6 was not challenged on this diagram. The area represents Patient 6's labia and mons pubis.

490. The Respondent's evidence was inconsistent and vague. He earlier made a statement acknowledging he did treat close to the mons pubis and the structures underneath, then testified, "if I touched it, I wouldn't have touched it for non-therapeutic reasons." The Respondent's assertion of having worked in the mons

pubis area because it is inside the scope of practice of RMTs does not reconcile with an assertion that he would have only made contact in that area accidentally, or that he may have accidentally touched Patient 6's pubic hair. Moreover, the Respondent's accidental touch evidence does not reconcile with his other testimony that he made contact with the outer part of Patient 6's pubic bone, and that when he treated her rectus abdominus, there was pressure on his pubic bone. On cross-examination, the Respondent testified he would never intentionally touch someone's pubic bone.

491. The treatment records note that the Respondent worked on Patient 6's abdomen between the umbilicus and pubic symphysis on March 28, 2019. The Respondent's testimony about pausing abdomen treatment while Patient 6 was investigating endometriosis is not consistent with the timing of her communications with her physician, and the timing of Patient 6 having communicated that to the Respondent by text. Moreover, the Respondent's evidence of such a change in treatment plan is not reflected in Patient 6's clinical records.

492. The Respondent submits that Patient 6's evidence does not indicate touching of her labia. The Panel disagrees with that contention and finds the evidence did indeed demonstrate the Respondent touched Patient 6's labia. As also noted above, the Respondent did not challenge Patient 6's diagram depicting touch of her labia.

493. The Respondent also submits that this allegation is not proven because Patient 6 consented to the Respondent putting his hand under her underwear. Any consent by Patient 6 to treat the area or for the Respondent to place his hands under Patient 6's underwear does not disprove this allegation. Clothing is a boundary for skin-on-skin touch in massage therapy treatment. The Panel also notes that Patient 6 gave consent because she trusted the Respondent's judgment and was aware that he was Christian which built trust for her at the time. Patient 6 testified that the Respondent did not explain why he was working in that area or provide Patient 6 with any options, which undermines whether the Respondent provided sufficient information for Patient 6 to have provided informed consent.

494. The Panel finds that during one or more of Patient 6's appointments on March 14, 21, and 28, 2019, the Respondent massaged or otherwise touched Patient 6's labia and mons pubis. Looking at the totality of the circumstances, the Panel finds that the Respondent did this for a non-therapeutic and sexual purpose because:

    a. The area of the labia is inherently sexual.

    b. The area of the mons pubis is inherently sexual.

    c. There is no therapeutic reason for an RMT to touch a patient's labia.

    d. There was no therapeutic reason for the Respondent to touch Patient 6's mons pubis and pubic hair underneath her underwear.

    e. The Respondent used a soft touch with a circular rubbing motion.

    f. This type of treatment stopped once a chaperone was present at later treatment sessions.

495. The Panel finds that the College has proven this allegation to the requisite standard.

496. Section 17 of the Boundaries Standard requires that a Registrant employs touch only with therapeutic intent. There was no therapeutic intent for the Respondent to touch Patient 6's labia or mons pubis. The Respondent has breached the Boundaries Standard.

497. Section 21 of the Code of Ethics required massage therapists to not engage in sexual misconduct with a patient. Sexual misconduct is defined to include touching of a sexual nature of a patient by a massage therapist and sexualizing the treatment environment. The Respondent's touching of Patient 6's labia and mons pubis was touching of a sexual nature and sexualizing the treatment environment. The Respondent breached the Code of Ethics.

498. The Panel finds that the Respondent's conduct of touching Patient 6's labia and mons pubis for a non-therapeutic and sexual purpose is a serious breach of trust and would reasonably be considered by members of the profession to be dishonourable, disgraceful and unprofessional. It is a marked departure from the

standard expected of a registered massage therapist. The Panel determines that the Respondent committed professional misconduct.

6(a)(iii) Massaged or otherwise touched her groin area for a non-therapeutic and/or sexual purpose,

499. The Panel prefers the evidence of Patient 6 to the evidence of the Respondent. Patient 6 was clear and specific about the location and manner of the Respondent's touch in her groin area. Her testimony about the location, "the base of my vagina, the inner leg and inner groin, towards the vaginal opening, the crease between her leg and pubic area", establishes that the Respondent touched her groin area. Patient 6's evidence was that the Respondent used a similar motion to the pubic area in that the Respondent's four fingers massaged. She found it quite painful. Patient 6 was embarrassed because of the pubic hair in that area and she did not know why the Respondent had to massage there. He worked in the area for approximately 15 minutes. He was touching and massaging her groin. Patient 6 testified that this occurred when there was no chaperone in the room, which is consistent with the timing of Patient 6's March 2019 appointments. The drawing which Patient 6 completed and on which Patient 6 was not challenged on cross-examination clearly identifies that the Respondent touched her groin area and is consistent with her oral testimony. The Panel accepts this account and finds these as facts.

500. The Panel does not accept the Respondent's testimony that he did not work on Patient 6's groin but sought and obtained consent to treat the inguinal ligament and specifically that he would push towards the pubic bone and contact the outer side of it. This is inconsistent with his testimony that he would never intentionally treat the pubic bone. The Respondent agreed that he observed Patient 6's hand move up (something she expressed she did as a result of the pain). The Respondent did not cease treatment or verbally address the matter with Patient 6.

501. The Respondent submits that he obtained consent to treat near Patient 6's groin area and explained the treatment reasoning for working in that area to Patient 6. As with the previous allegation, the fact that Patient 6 may have indicated she consented to the Respondent working in the area is not dispositive of the allegation.

Patient 6 testified the Respondent told her he was going to work in this area to release tension to the skin. He asked if that was okay and Patient 6 responded “yes”. She was clear in her testimony, however, that there was no other discussion. Patient 6 agreed to let the Respondent treat her groin because she trusted his judgment and that he was going to do what was needed to treat her IBS. However, once the Respondent did work in her groin area, Patient 6 described feeling embarrassed and confused. Patient 6 was embarrassed because of her pubic hair in that area and she did not know why the Respondent had to massage her there. This is not consistent with the Respondent having obtained consent.

502. The Panel finds that on or about March 14, 21, and 28, 2019, the Respondent massaged or otherwise touched Patient 6’s groin area. Looking objectively at the totality of the circumstances, the Panel finds that the Respondent did this for a non-therapeutic and sexual purpose because:

    a. The area is inherently sexual.

    b. The draping was low enough that it exposed Patient 6’s pubic hair.

    c. Patient 6 did not know why the Respondent was massaging her groin, which the Panel finds demonstrates an absence of communication about the therapeutic touch before and during treatment, in particular, near sexualized body areas.

    d. There was no communication about pain level or ceasing of treatment on observing Patient 6’s hand in the air when she expressed pain. The failure to stop, verbally re-establish consent and continue after consent is given suggests an absence of therapeutic touch.

    e. There is no therapeutic reason for the Respondent to work underneath the sheet.

    f. This type of treatment stopped once a chaperone was present at later treatment sessions.

503. The Panel finds that the College has proven this allegation to the requisite standard.

504. Section 17 of the Boundaries Standard requires that a Registrant employs touch only with therapeutic intent. There was no therapeutic intent for the Respondent to touch Patient 6's groin area. The Respondent has breached the Boundaries Standard.

505. Section 21 of the Code of Ethics, which was in effect at the time, required massage therapists to not engage in sexual misconduct with a patient. Sexual misconduct is defined to include touching of a sexual nature of a patient by a massage therapist and sexualizing the treatment environment. The Respondent's touching of Patient 6's groin area was touching of a sexual nature and sexualizing the treatment environment. The Respondent breached the Code of Ethics.

506. The Panel finds that the Respondent's conduct of touching Patient 6's groin area for a non-therapeutic and sexual purpose is a serious breach of trust and would reasonably be considered by members of the profession to be dishonourable, disgraceful and unprofessional. It is a marked departure from the standard expected of a registered massage therapist. The Panel determines that the Respondent committed professional misconduct.

6(a)(iv) Made statements and/or inquiries of an unprofessional, inappropriate and/or personal nature including initiating faith-based conversations, asking her if you could pray for her and/or praying for her in her presence; and/or

507. The Panel prefers the evidence of Patient 6 to the Respondent's evidence. While Patient 6 could not identify the specific dates of the Respondent's comments regarding God, she knew they occurred prior to when a chaperone was present for their appointments. Given the timing of the section 35 order, this means those appointments were in March 2019.

508. The Panel accepts Patient 6's evidence that the Respondent prayed for her while he was massaging her back, and also told Patient 6 that he had been thinking of her and praying for her and her body would go back to the way God created it to be.

509. The Respondent did not recall praying for Patient 6 while massaging her back. While the Respondent could not recall stating he prayed for Patient 6's body to return to

the way God created it, he acknowledged it was possible, that it was a treatment rationale, and that speaking about faith was appropriate. The Panel finds that both interactions took place as described by Patient 6. The Respondent's testimony is not inconsistent with those events.

510. The Respondent's testimony about his discussions with Patient 6 about seeing a counselor for a past abusive relationship is not credible. He stated he just listened, then stated he responded but with confirmatory statements, and then agreed that he encouraged Patient 6 to see a counselor because it was his responsibility as a therapist to help people. The Panel finds that the Respondent did more than just listen. He engaged in personal discussion with Patient 6 about a past abusive relationship and encouraged her to see a counselor. The Respondent was privy to the details of the end of Patient 6's relationship and the nature of the abuse. Even if Patient 6 initiated the personal disclosure, it was the Respondent's responsibility as the professional to ensure that the personal conversation did not continue. While recommending that a patient seek assistance from a counselor is not problematic, it is clear as noted above that the Respondent's participation in this conversation went well beyond that.

511. The Respondent submits that Patient 6 was open about her faith and to having discussions with the Respondent about the church and her personal life. He submits that he talked about faith in the context of her injuries and her relationships and that "talking about faith with [Patient 6] made her more comfortable and put her interests at the forefront of the treatment environment." The Panel rejects this argument. The Panel does not accept that the Respondent's discussions about faith made Patient 6 more comfortable and put her interest at the forefront of the treatment environment. Patient 6's evidence is that she originally trusted the Respondent because of his faith but she later realized he manipulated her and took advantage of her vulnerability:

> A I am participating because Mr. Krekic was someone that I trusted. It was first based on Christianity, and that's what kind of, I feel, made me go down this -- like, intertwined with Christianity and with the manipulation and stuff like that. I was very vulnerable and I believe that he saw that and he took advantage of it.

512. The Panel finds that it was inappropriate for the Respondent to have prayed for Patient 6 while massaging her back, even if she consented, and it was inappropriate for him to tell her that he was thinking about Patient 6 outside of the treatment session, praying privately for her, and specifically asking that God return her body to the way it was created.

513. The Respondent's disclosures to Patient 6 and his conversations blurred the professional and personal boundaries between him as a registered massage therapist and Patient 6 as a patient.

514. The Panel finds that the Respondent made statements and inquiries of an unprofessional, inappropriate and/or personal nature including initiating faith-based conversations, asking Patient 6 if he could pray for her and praying for her in his presence. The College has proven this allegation to the requisite standard.

515. Subsections 1(c) and (d) of the Boundaries Standard require an RMT to establish a professional rapport with a patient and maintain an appropriate level of professional objectivity. Subsections 2(a) and (b) require an RMT to recognize that it is always the responsibility of the RMT to establish and maintain professional boundaries, and to re-establish professional boundaries with a patient. The Respondent was clear that he did not think he crossed any boundaries in any of the above instances. He did not redirect any of the above conversations. He displayed no recognition of his own responsibility to maintain boundaries and did nothing to re-establish the boundary after it was crossed. Section 13 of the Boundaries Standard requires RMTs to disclose personal information to the patient only to the extent required for the provision of patient-centred care. The Panel finds that the Respondent's disclosure of his faith to Patient 6 was not for the purposes of patient-centred care. The Respondent asserted at various points of the proceedings that there was a therapeutic benefit to his patients in speaking of his faith and engaging in prayer. The Panel does not accept that was the case here. The Respondent's disclosure of his faith, personal prayers outside of the treatment work, views on God's work, and prayer while massaging Patient 6's back was not required for the provision of

patient-centre care. The Panel determines that the Respondent has breached sections 1(c), 1 (d), 2(a), 2(b), 13 of the Boundaries Standard.

516. The Panel determines that the Respondent was in a position of trust and power in relation to Patient 6, and that his personal disclosures and communications about his faith, prayer and Patient 6's relationship were unprofessional. The Panel has determined that the Respondent committed unprofessional conduct.

6(a)(v) Engaged in inappropriate and unprofessional conduct by hugging her;

517. Patient 6's testimony was that at the end of each appointment in March 2019, the Respondent gave her a brief farewell hug. The hug was initiated by the Respondent. He did not ask her if he could initiate the hug. Patient 6 was "okay with" these hugs.

518. The Respondent's testimony is once again inconsistent and difficult to reconcile. On the one hand, the Respondent had little recollection other than there were "a couple of hugs" with Patient 6 and does not recall him initiating the hugs. He points to Witness F's testimony that she never observed the Respondent and Patient 6 to suggest it happened infrequently. On the other hand, the Respondent maintained the hugs were mutual and Patient 6 initiated them. The Panel finds it difficult to believe that the Respondent would not be in a position to say no to hugs from Patient 6 or that he did not want to make Patient 6 uncomfortable by refusing her hugs. This is inconsistent with his general testimony about hugging in that if he felt a patient was "okay with a hug", he would ask them and give them a quick hug.

519. The Panel prefers Patient 6's evidence. The Panel finds that at the end of each appointment in March 2019, the Respondent engaged in inappropriate and unprofessional conduct when he gave Patient 6 her a brief farewell hug. The hug was initiated by the Respondent. He did not ask her if he could initiate the hug but testified that Patient 6 was "okay with" these hugs.

520. The College has proven this allegation to the requisite standard.

521. Section 18 of the Boundaries Standard provides that an RMT does not initiate non-therapeutic touch or hugging with a patient and, before receiving non-therapeutic touch such as a hug, considers whether it would be appropriate supportive and

welcome. As the Panel has found that it was the Respondent and not Patient 6 who initiated the hugs and they were non-therapeutic, the Panel has determined the Respondent breached section 18 of the Boundaries Standard.

6(b) Between about April 4, 2019 and September 2019 you:

522. Because of the Inquiry Committee's section 35 order, the Respondent had a chaperone present during appointments starting in April 2019. Patient 6's first appointment with a chaperone present was April 11, 2019.

6(b)(i) Made statements of an unprofessional, inappropriate and/or personal nature by praying for your chaperone during her treatment;

523. The Respondent made a partial admission in respect of this allegation. Specifically, he admits that he prayed for his chaperone during [Patient 6]'s treatment.

524. The Panel accepts that partial admission and the further evidence of Patient 6 with respect to the whole of the allegation. The Panel found Patient 6's testimony about praying for her chaperone, the Chaperone, during August 2019 to be reliable and credible. She did not exaggerate and was clear about what occurred.

525. The Panel finds that during an appointment in August 2019, the Respondent asked Patient 6 if she would be comfortable with them praying for the chaperone who was experiencing wrist pain from a softball injury. The Respondent had the Chaperone sit on the massage therapy table, he sat next to her and Patient 6 stood in front of her. The Respondent prayed for the Chaperone. The Respondent and Patient 6 were touching the chaperone during the prayer. Patient 6 prayed for the chaperone after being prompted by the Respondent's request that Patient 6 do so. Patient 6 was not completely comfortable with this because she prefers to pray for people in her head, she is not someone who likes to pray out loud, and she did not know the chaperone that well. Patient 6 felt obligated to pray because the Respondent had suggested it and she did not feel that she could say no.

526. The Panel does not accept the Respondent's position that there was a therapeutic benefit for Patient 6 to have the Respondent pray for the chaperone in her presence. One of the reasons the Respondent gave for initiating the prayer at all was because

he was concerned about his ability to find chaperones and worried that the Chaperone would no longer be able to act as a chaperone. That was not acting in Patient 6's interests. Rather, it speaks to the Respondent acting in furtherance of his own financial self-interest.

527. The Panel finds that the Respondent's conduct was unprofessional, inappropriate and personal in nature. Patient 6 felt as though she could not say no and felt obligated to say yes to the Respondent's prayer request, who had asked the chaperone first. Patient 6 indicated that she prefers to pray for people she knows well, and not to pray out loud.

528. The College has proven this allegation to the requisite standard.

529. Subsections 1(c) and (d) of the Boundaries Standard require an RMT to establish a professional rapport with a patient and maintain an appropriate level of professional objectivity. Subsections 2(a) and (b) require an RMT to recognize that it is always the responsibility of the RMT to establish and maintain professional boundaries, and to re-establish professional boundaries with a patient. As noted above, the Respondent was clear that he did not think he crossed any boundaries by praying for the chaperone. He displayed no recognition of his own responsibility to maintain boundaries. Section 13 of the Boundaries Standard requires RMTs to disclose personal information to the patient only to the extent required for the provision of patient-centred care. The Panel finds that the Respondent's disclosure of his faith to Patient 6 in the context of praying for the chaperone was not for the purposes of Patient 6's patient-centred care. The Panel has determined that the Respondent has breached sections 1(c), 1 (d), 2(a), 2(b), 13 of the Boundaries Standard.

530. Section 2 of the Code of Ethics, which was in effect at the time, required an RMT to act in the best interests of the patient. In focusing on the Chaperone's injury and the Respondent's own constraints in finding chaperones, the Respondent was not acting in Patient 6's best interests. The Panel has determined the Respondent breached the Code of Ethics.

531. The Panel has determined that the Respondent was in a position of trust and power in relation to Patient 6, and that his personal disclosures and communications about

his faith, prayer and Patient 6's relationship were unprofessional. The Panel has determined that the Respondent committed unprofessional conduct.

6(b)(ii) For a non-therapeutic and/or sexual purpose you:

i. Directed her to the edge of the massage table and to spread her legs open;

ii. When she did so, you placed yourself between her legs and rested your elbows on her knees and your head near her groin; and/or

iii. In this position, your upper bodies came into contact;

532. The evidence of the Respondent and of Patient 6 is aligned on many components of this allegation. However, where they differ, the Panel prefers the evidence of Patient 6.

533. Patient 6 was clear that the Respondent performed the seated diaphragm technique approximately eight to ten times (which she called the "army man") only after chaperones attended her appointment. The Respondent agreed that he performed the seated diaphragm technique on Patient 6 but testified that it only occurred once in March 2019.

534. The Respondent submits his testimony is consistent with the testimony of Witness F, who says she did not recall observing an exercise where the Respondent directed Patient 6 to sit at the edge of the table and open her legs with the Respondent's legs sliding in between treatments. The Panel found Witness F's testimony to be generally unreliable and inconsistent. Witness F did not testify that the Respondent did not perform the seated diaphragm technique on Patient 6 in her presence. She testified, "I do not recall that exercise, no." She also lacked recollection about the first treatment she chaperoned for Patient 6, whether she reviewed the section 35 public notice concerning the Respondent, or whether Respondent gave her any instructions about the use of her phone, or iPad during chaperoning. Her recollections about whether Patient 6 wore a sports bra during treatment were incorrect - both the Respondent and Patient 6 agree that is what Patient 6 wore. Witness F told the College during an investigation interview that she had no recollection of the Respondent treating Patient 6's gluteal area A. She testified she

did have one recollection of the Respondent treating Patient 6's gluteal area. During her interview, Witness F told the College that the Respondent could position himself in a way that preventing Witness F from seeing where Patient 6's arm was. During the hearing, she denied that he could do so until she was confronted with the interview statement, after which Witness F acknowledged, "yes, it is possible." Witness F agreed on cross-examination that there were no appointments where she did not ever look at an iPad or at a book. She initially denied always having her iPad with her while chaperoning. When confronted with a statement she gave to the College that she always had her iPad with her while she was chaperoning, Witness F stated, "well, I know there's times when I left it at home by – it wasn't in my bag." She agreed that, more often than not, she had her iPad with her. Witness F also agreed that looking at a book on her iPad or reading a book is not observing the appointment at all times. She agreed she was given instructions by the College to observe at all times As previously noted, on direct examination, Witness F acknowledged she looked at her iPad during appointments but maintained that was when the Respondent was away from the patient. She identified those times as, "There was a lot of times because he would be demonstrating exercises, he would be at his computer putting the notes in for what the treatments were and the assessment process. So there was many times when there was no connection whatsoever between the patient and Mr. Krekic." The Panel gives very little weight to Witness F's testimony and rejects the Respondent's argument that it should prefer Mr. Krekic's and Witness F's evidence because it is consistent and should be preferred over Patient 6's evidence. The Respondent argued that had the seated diaphragm technique occurred eight to ten times for 25 minutes each, Witness F would have remembered. Witness F not only lacked memory over central points, her ability to observe was also compromised by the Respondent's positioning and her reading during the appointment, which the Panel does not accept only took place during select moments that the Respondent was "away" from the patient.

535. The Panel prefers the evidence of Patient 6 on the timing. Her evidence that it occurred multiple times was clear and compelling. The fact that she gave the position the name "army man' is also consistent with it having occurred more than

once. The Panel accepts this occurred during the period that Patient 6's treatments were chaperoned which places the period after April 11, 2019.

536. The Respondent and Patient 6 agree that the Respondent directed Patient 6 to the edge of the massage therapy table and to spread her legs. Patient 6 described being so close to the edge that she was trying very hard not to fall off and into the Respondent's lap. The Panel finds that the Respondent directed Patient 6 to the edge of the massage table and to spread her legs open. The College has proven the allegation at paragraph 6(b)(ii) i to the requisite standard.

537. The Respondent and Patient 6 agree that the Respondent placed himself between her legs while Patient 6 was sitting at the edge of the table.

538. Patient 6 testified that the Respondent's elbows were "kind of outwards" and that his head was resting at the side of her body between her waist and her chest. The Respondent denied that he rested his elbows on Patient 6's knees and had his head near her groin.

539. The Respondent submits that there is no evidence that he placed his head near Patient 6's groin area during the seated diaphragm technique. The Panel agrees with the Respondent's submission on this point.

540. This allegation requires the College to prove not only that the Respondent placed himself between Patient 6's legs, but also that he rested his elbows on her knees and that his head was near Patient 6's groin. Patient 6's evidence does not cover the second two parts of this allegation. The College submits that the most important part of this allegation is that the Respondent placed himself between Patient 6's legs. The Panel agrees; however, it cannot ignore two of three elements of the allegation as set out in the Citation. The Panel finds that while Patient 6 was at the edge of the massage therapy table, the Respondent placed himself between her legs. The Panel does not find that the Respondent rested his elbows on Patient 6's knees, or that his head was near her groin. Accordingly, the Panel finds that the College has not proven the allegation at paragraph 6(b)(ii) ii to the requisite standard.

541. The Respondent and Patient 6 both testified that their bodies came into contact. Patient 6's testified that while in this position, she was hunched over the Respondent's shoulder with her whole chest was over the side of the Respondent's body. The Respondent agreed his upper body came into contact with Patient 6's upper body. The Panel finds that while in this position, the Respondent and Patient 6's bodies came into contact. The College has proven the allegation at paragraph 6(b) (ii) iii to the requisite standard.

542. Looking objectively at the totality of the circumstances, the Panel finds that the proven conduct at paragraph 6(b)(ii) was done for a non-therapeutic and sexual purpose because:

    a. The Respondent had Patient 6 positioned facing him, effectively straddled with her legs spread open, while he was seated below her, placed between her legs

    b. The Respondent's technique positioning was not appropriate and sexualized the treatment environment.

    c. Patient 6 was wearing rolled down yoga pants and a sports bra while male patients receiving the treatment would wear a shirt.

    d. Patient 6's breast was near the Respondent's head.

    e. Patient 6 was not given treatment options and was told this was only way to get under her ribcage.

    f. It was open to the Respondent to modify the technique in a manner that would have avoided contact with Patient 6.

543. The Respondent submits that he obtained consent to perform the seated diaphragm technique on Patient 6 and did it for a therapeutic purpose, namely, to improve her breathing. Again, the Respondent's argument is misplaced. The Respondent did not tell Patient 6 that her breast would be near his head, and importantly, did not provide her with other treatment options, including a modified technique where she was lying down. Even if Patient 6 had consented to the seated diaphragm technique, the

Respondent performed that technique in a manner which was not appropriate and was sexualized.

544. Section 17 of the Boundaries Standard requires that a Registrant employs touch only with therapeutic intent. The Panel has determined that the Respondent has breached the Boundaries Standard because his conduct was done for a non-therapeutic purpose and sexual purpose

545. Section 21 of the Boundaries Standard requires that a registrant “recognizes and takes steps to minimize the occurrence of unintentional or incidental physical contact with potentially sexualized areas of patient’s body.” The Panel finds that the Respondent breached this section because the very way he positioned Patient 6 did not minimize the occurrence of unintentional or incidental physical contact with potentially sexualized areas of her body. Their groins were facing each other, and the Respondent’s head was close to Patient 6’s breast. The manner in which the Respondent performed the technique meant that their bodies did make contact. He did not offer Patient 6 any treatment alternative. As previously noted, the Respondent’s expert Mr. Dixon opined that this was an inappropriate treatment position because of the positioning of the Respondent between a patient’s legs and the proximity of a patient’s breasts to the Respondent’s body. Mr. Dixon’s own textbook depicts the technique being performed with the patient lying face up on the treatment table. The Respondent did not offer Patient 6 a pillow or a towel to place between her breasts and the Respondent’s body.

546. Section 21 of the Code of Ethics, which was in effect at the time, required massage therapists to not engage in sexual misconduct with a patient. Sexual misconduct is defined to include touching of a sexual nature of a patient by a massage therapist and sexualizing the treatment environment. The Respondent’s touching of Patient 6's body was touching of a sexual nature and sexualizing the treatment environment. The Panel has determined that Respondent breached the Code of Ethics.

547. The Panel finds that the Respondent’s conduct is a serious breach of trust and would reasonably be considered by members of the profession to be dishonourable, disgraceful and unprofessional. It is a marked departure from the standard expected

of a registered massage therapist. The Panel has determined that the Respondent committed professional misconduct.

6(c) Massaged or otherwise touched her gluteal cleft and/or perineum for a non-therapeutic and/or sexual purpose; and/or

548. The Respondent and Patient 6 both testified that the Respondent treated Patient 6's gluteal area.

549. The Panel finds that the evidence of Patient 6 was clear and consistent. She testified that while she was not certain of the date of this appointment, she testified it was in July or August 2019. It was at [redacted], in the presence of a chaperone, which is consistent with the timing of the section 35 order and consistent with it taking place after April 11, 2019.

550. Patient 6 was clear, specific and precise in describing that the Respondent massaged her gluteal cleft and her perineum. The Respondent moved her underwear to below her "butt cheeks" and placed the sheet at about her tailbone. The Respondent worked below the sheet, skin on skin, using his thumbs and went an inch into her gluteal cleft and worked down to her perineum.

551. The Respondent recalled treating Patient 6's gluteal area approximately seven or eight times, at the request of Patient 6. He said it was "completely false" that "during one of [Patient 6's] treatment appointments, [he] used [his] thumbs and went under the sheet and into her gluteal cleft down towards her vaginal opening." The Respondent testified that the closest he came to Patient 6's genitalia while working on her gluteal muscles was four to five inches away. When he worked on the sacrotuberous ligament, he was three to four inches away.

552. He testified that there was appropriate draping and no exposure of her gluteal cleft. The Respondent testified that Patient 6 sometimes wanted the draping moved lower and would motion for the Respondent to move it down. He said a couple of times Patient 6 reached back to pull them down further. The Panel has difficulty accepting this evidence and finds it unlikely that Patient 6 would have requested less draping in a sensitive area of her body for no apparent reason.

553. The Respondent's version of events is inconsistent with Patient 6's specific and credible evidence that she was embarrassed about the Respondent working in the buttocks region because she was not sure if the area was clean, and she was "grossed out" that the Respondent went on to touch her back without washing his hands. The Panel prefers Patient 6's evidence.

554. The Respondent submits that Patient 6's evidence is that this occurred in the presence of a chaperone and that because the College did not call that chaperone, it is not open to the Panel to prefer Patient 6's evidence over the Respondent's. The College submits that the Respondent is essentially asking for an adverse inference to be drawn for not calling a series of chaperones, that there is no legal basis for this submission, and that it would be a legally incorrect conclusion to reach. The Panel finds that the Respondent has not in fact requested that the Panel draw an adverse inference. The Respondent's legal submissions are lengthy and there is no such request in those detailed submissions. Likewise, there are no arguments as to why an adverse inference should be drawn in this case. Indeed, there is no legal basis or argument at all identified for the Respondent's assertion. In any event, the Panel's weighing of evidence is discretionary, including with respect to whether or not to draw an adverse inference for failure to call a material witness, or a witness who would have knowledge of the facts and be willing to participate in the proceedings – none of which were argued here. The Panel found the one chaperone who was called as a witness in these proceedings to have been of little to no assistance to the Panel. The Panel does not consider itself bound by the Respondent's evidence because the College did not call one or some of the other chaperones. It is open to the Panel to prefer the evidence of Patient 6 over the Respondent's evidence and that is what the Panel has done.

555. The Panel finds that the Respondent massaged or otherwise touched Patient 6's gluteal cleft and her perineum. Looking objectively at the totality of the circumstances, the Panel finds this was done for a non-therapeutic and sexual purpose because:

a. There is no legitimate treatment in which an RMT massages skin in skin, under draping, one inch in a patient's gluteal cleft and down to the perineum.
b. The Respondent did not suggest treatment in the manner described by Patient 6 was justified, he denied he touched Patient 6 in that manner.

556. The Panel notes that Mr. Dixon has suggested in his expert report that Patient 6 may have experienced referred pain to her gluteal cleft or perineum. On cross-examination, Mr. Dixon agreed the trigger points are activated internally. Mr. Dixon also agreed that the diagrams of referred pain which he relied upon in preparing his opinion do not depict pain patterns in the gluteal cleft or near the perineum. The Panel accepts Mr. Dixon's answers on cross-examination and finds there was no referred pain in Patient 6's case to her gluteal cleft or perineum.

557. The College has proven this allegation to the requisite standard.

558. Section 17 of the Boundaries Standard requires that a Registrant employs touch only with therapeutic intent. There was no therapeutic intent for the Respondent to touch Patient 6's gluteal cleft or perineum. The Panel has determined that the Respondent has breached the Boundaries Standard.

559. Section 21 of the Code of Ethics, which was in effect at the time, required massage therapists to not engage in sexual misconduct with a patient. Sexual misconduct is defined to include touching of a sexual nature of a patient by a massage therapist and sexualizing the treatment environment. The Respondent's touching of Patient 6's gluteal cleft or perineum was touching of a sexual nature and sexualizing the treatment environment. The Panel has determined that the Respondent breached the Code of Ethics.

560. The Panel finds that the Respondent's conduct of touching Patient 6's gluteal cleft or perineum is a serious breach of trust and would reasonably be considered by members of the profession to be dishonourable, disgraceful and unprofessional. It is a marked departure from the standard expected of a registered massage therapist. The Panel has determined that the Respondent committed professional misconduct.

6(d) On or about October 2 and 10, 2019, you pressed your groin against her hand for a non-therapeutic or sexual purpose;

561. The Panel found Patient 6's evidence about her last two appointments on October 10 and 22, 2019 to be clear and convincing. As noted above, the dates of those appointments were October 10 and 22, 2019 and not October 2 and 10, 2019. The Panel considers October 10 and 22, 2019 to be "on or about" October 2 and 10, 2019.

562. The Panel found Patient 6's evidence about the Respondent pressing his groin against her hand to be careful and precise. She stated that the first time it occurred, she was not certain but thought it was the Respondent's penis. The second time it happened Patient 6 was able to conclude it was the Respondent's penis because she felt his erect penis in her hand. She quickly moved her hand back. Patient 6 described exactly where the Respondent's penis touched her hand – on her outer palm below her pinky finger. Patient 6 described the length of time of the touch, where the draping was positioned and what she was thinking and observing at the time.

563. The Panel finds that the Respondent's evidence was vague and unlikely. He testified that Patient 6's hand fell off the massage therapy table twice while he was working on her back and stated that her hand did not touch his body. At the same time, he testified he may have lost focus about his body positioning, and also acknowledged that he recalled Patient 6's hand did touch his leg once though he did not know when.

564. The Panel agrees with the College's submissions that the presence of the chaperone does not disprove this allegation against the Respondent. First, Patient 6 observed one of the chaperones reading a book or being on her iPad. Witness F, who was present for the October 2 and 10, but not October 22, 2019 appointments, acknowledged she carried both of those items with her to the appointments. She said that she only used them when the Respondent was standing away from the patient. This is unlikely, given the evidence that the room was small, and the nature of massage therapy is to be close to the patient. Second, Patient 6 testified that the

Respondent could obscure the chaperones' view of her depending upon how he was positioned in the room and relative to her body.

565. The Respondent submits that his evidence should be preferred over Patient 6's evidence because it is not reasonable to believe that's he would agree to move into the Respondent's suite and continue a relationship that had them spending significant amounts of time together if she had felt his erect penis in her hand on two occasions. The Respondent argues, "[Patient 6]'s conduct and behaviour after she alleges this happened is not consistent with how you would expect anyone to whom that has happened to act" and "[Patient 6]'s actions following the alleged incidents are not the actions of a young woman against whose hand their therapist had pressed his erect penis." The College submits that this is the most egregious example of propagating myths about how victims of sexual assault ought to be behave. The Panel rejects the Respondent's argument for reasons it has previously outlined earlier in this decision about stereotyping how a sexual assault victim ought to behave. The Panel also reiterates Patient 6's important testimony quoted above, in which she stated that she originally placed trust in the Respondent but later came to realize he was manipulating her and taking advantage of her vulnerability. Patient 6 was 22 years old at the time, there was a power imbalance between Patient 6 and the Respondent, she thought that sexual assault meant "rape", and she had financial constraints associated with her housing and practicum.

566. The Respondent also argues that Patient 6 never actually looked or saw what she was touching and that there was nothing preventing her from doing so. The Discipline Committee has rejected this position in past. A witness' observations are not required to be visual, they may use any of their senses.

567. The Panel finds that on October 10 and 22, 2019, the Respondent pressed his groin against Patient 6's hand. The Panel finds this was done for a non-therapeutic and sexual purpose because:

    a. There is no therapeutic reason for a massage therapist to place their penis in a patient's hand.

    b. The body part (the Respondent's penis) is inherently sexual.

c. Contact between a massage therapist's sexual body part and a patient is sexual in nature.

d. The contact was not accidental or incidental because the same contact occurred twice within a short span of time, Patient 6 felt that the Respondent had an erection, and there would be no need for the Respondent to brace himself, if, as the Respondent stated that his treatment of Patient 6's back was a more relaxing, Swedish type massage.

568. The College has proven this allegation to the requisite standard.

569. Section 21 of the Code of Ethics requires that a massage therapist not engage in sexual misconduct with a patient. Sexual misconduct is defined to include "touching of a sexual nature of a patient by a massage therapist" and "sexualizing the treatment environment." An RMT pressing their groin into the hand of a patient is touching of a sexual nature of a patient by an RMT. It is also an act which sexualizes the treatment environment. The Panel has determined that the Respondent breached section 21 of the Code of Ethics.

570. Section 4 of the Boundaries Standard requires an RMT to recognize and respect 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. The Respondent sexualized the treatment environment and the therapeutic relationship through his touch which was explicit sexual conduct contrary to the Code of Ethics. The Panel has determined that the Respondent breached section 4 of the Boundaries Standard.

571. The Respondent's sexual touching of Patient 6 is a marked departure from what is expected of a registered massage therapist. It is regarded as disgraceful, dishonourable and unbecoming of the professional and the public. It is a fundamental breach of trust and antithetical to the foundation of the profession. The Panel has determined that the Respondent has committed professional misconduct.

Allegation 7: Patient 6

7. From about August 23, 2019 through November 21, 2019, you entered into a close personal relationship and engaged in inappropriate and unprofessional communications with Patient 6, particularized by one or more of the following:

    (a) Communicated with her by text message and email about matters outside of massage therapy treatments;

    (b) Offered to rent her a suite connected to your house at a reduced price if she would help you clean and/or rent out another property or properties that you own;

    (c) Instructed her to rent the property or properties using the name "[redacted]" and an email address that did not contain her real name so that the CMTBC would not be able to discovery that she was your patient;

    (d) Instructed her to tell those who inquired that you knew each other through her parents and to not mention their personal relationship during massage therapy appointment in front of the chaperone;

    (e) Instructed her to stay in her rental unit when his housekeeper, who was also one of his chaperones, as at his house;

    (f) Became her landlord;

    (g) Repeatedly entered into her suite with limited notice and/or without express consent;

    (h) Informed her that if she and her boyfriend ended their relationship that you would like to pursue her romantically;

    (i) Initiated physical contact including hugging her, massaging her neck while she was sitting on the couch and/or putting your arm around her while watching television; and/or

    (j) Attended at her place of work without express permission.

572. Given that there are many admissions and partial admissions in this section, the Panel will include both its summary and analysis of the evidence under each of the sub-paragraphs below.

7. From about August 23, 2019 through November 21, 2019, you entered into a close personal relationship and engaged in inappropriate and unprofessional communications with Patient 6.

573. In terms of the relevant time frame of this allegation, Patient 6 testified that in August 2019, she was working full-time and preparing to start school full-time the following month. She was looking for an apartment to rent. Patient 6 recalled the Respondent speaking about a suite that he was renting during her massage appointments, she contacted him by text ask how about the pricing of the rental suite. The number he

provided to Patient 6 was higher than she was willing to pay. Patient 6 told him that. The Respondent emailed her to say that he had a smaller suite available that he could price lower. Patient 6 testified that towards the end of August 2019, the Respondent asked her if she would be available to help him clean his house to get it ready to rent to people.

574. Patient 6 testified that the Respondent offered Patient 6 an "employment opportunity" to act as a chaperone with his female patients. They discussed the "job" and Patient 6's resume, and the Respondent sent in Patient 6's resume to the College on August 17, 2019 as an applicant to be one of his chaperones. On August 23, 2019, the College denied the request because Patient 6 was a patient of the Respondent, there is a power differential present, there is a risk Patient 6 could be unduly influenced or otherwise unable to properly report to the College, Patient 6 did not have very much work experience, and there was no indication she would be able to fulfil the requirements of the chaperone role. The Respondent texted Patient 6 to say that the College was "playing games."

575. Also, in terms of the relevant period of this allegation, Patient 6 testified about conversations that she had with the Respondent at the time of her breakup with her boyfriend on October 31, 2019. Patient 6 testified that the Respondent told her about the importance of not having premarital sex and that "God would bless you more in heaven if you saved yourself for marriage." Patient 6 told her boyfriend she would no longer have sex with him, and they broke up on October 31, 2019 as that was a compromise her boyfriend could not make. Patient 6 recalled a time in her rental suite where the Respondent prayed for Patient 6 that "God would convict [her] of those sins and that…if [she] did have sex that [she] would feel shame and guilt and that would draw [her]away from doing that." Patient 6 recalled the Respondent helped "counsel [her] through" her decision that waiting until marriage is the right decision. The following text messages from October 31, 2019 to November 11, 2019 in relation to these events were entered into evidence:

2019-10-31, 6:27 PM

Hi [redacted] sorry I was at work then came home took the fish tank apart and then [redacted]came and of course my phone was dead. I will talk to you in a bit. 🙂

Would you be interested in a pizza if I ordered one?

No thank you I am not up for eating. Thank you again

Ok I get it...I did make some fresh baked potatoes if you are hungry later. Praying for you 🙏

Thank you very much. I appreciate it.

You welcome...do you want to talk or be alone?

Is it ok if I be alone for a little bit?

Yes!! I'm heading out for a bit. [redacted]is in the suite. Talk to you in a while.

Ok sounds good. Thank you.

You welcome

2019-10-31, 8:36 PM

Are you free?

Yes I am

2019-10-31, 11:43 PM

Would you like a piece of pizza or a potatoe with a cream and salsa for your lunch tomorrow?

No thank you Len

Ok night night😴

Can I bring you something:)

If not it's ok. Just a little treat😊

I'm not home right now, but thank you Len

Everything ok?

Not really but I will be fine.

Just let me know if you need anything ...ok

Praying for you...if you want to come over to hang out while I pack I'm fine with that.

2019-11-01, 1:41 AM

Are you awake?

Please

Yes

Are you here?

I have been praying hard for you

Come up if you like just relaxing before bed.

I have the fire going if you want to chat for a bit and have a tea.

I would like to pray with you if would like me to. I just want you to feel some peace.

I will keep praying either way but please just let me know you are here and safe. Thank you 🙏

He doesn't want me

I just went to his house and he said he wants nothing to do with me

I wasn't even the one who broke up with him, and I went back and he said how much he doesn't want to be with me and he's over me

I am sorry [redacted]...I'm my knees praying for you

You deserve someone who really wants you...especially around your love for Jesus.

You're an amazing person [redacted]!

Trust in the Lord with all your heart and lean not on your own understanding;
in all your ways submit to him, and he will make your paths straight.

Him not wanting you is nothing to do with you. It's more to do with Him submitting his life to Jesus and following a righteous path.

Jesus wants you!

If you need to talk by all means come up any time.

2019-11-01, 9:01 AM

I will come and pray with you this morning if you like. [redacted]nd her buddy are coming at 9:30 to start cleaning. I will talk to you later. :)

Thank you Len. I'm just going to stay in for a bit but I will let you know when I can see you.

Please please pray for me Len. I know you have but please continue. Thank you

I am praying every minute

I care about you a ton...it hurts me to see you going through this...maybe a sit down with [redacted]would be good. I would like chance to pray with you when you are ready. I'm heading out and will be back around 4pm. [redacted]another one of my chaperones is coming now and will likely be around until 6pm. I will keep you updated. 🙏

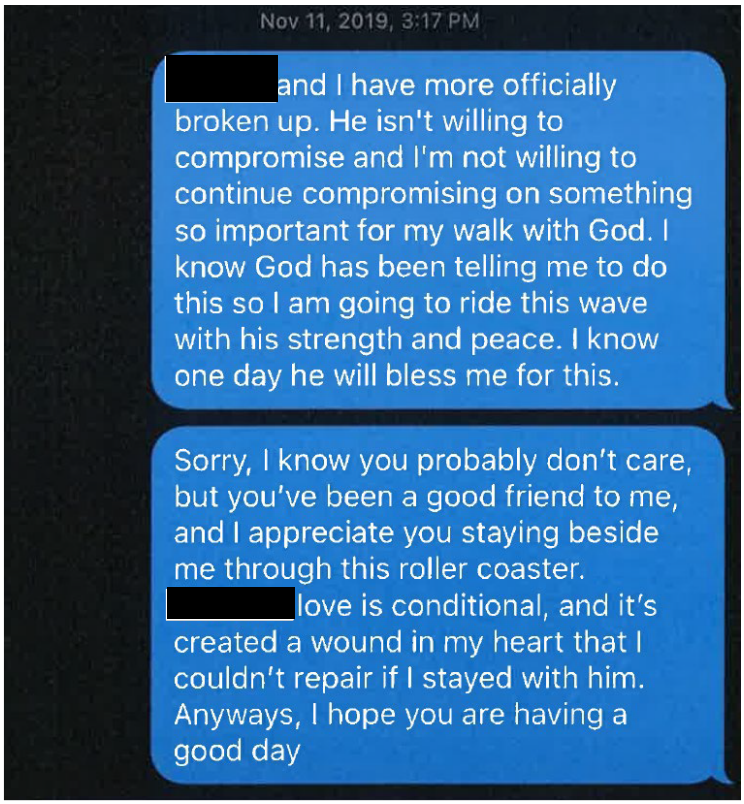
Praying that God would bless you because you stand for Him.

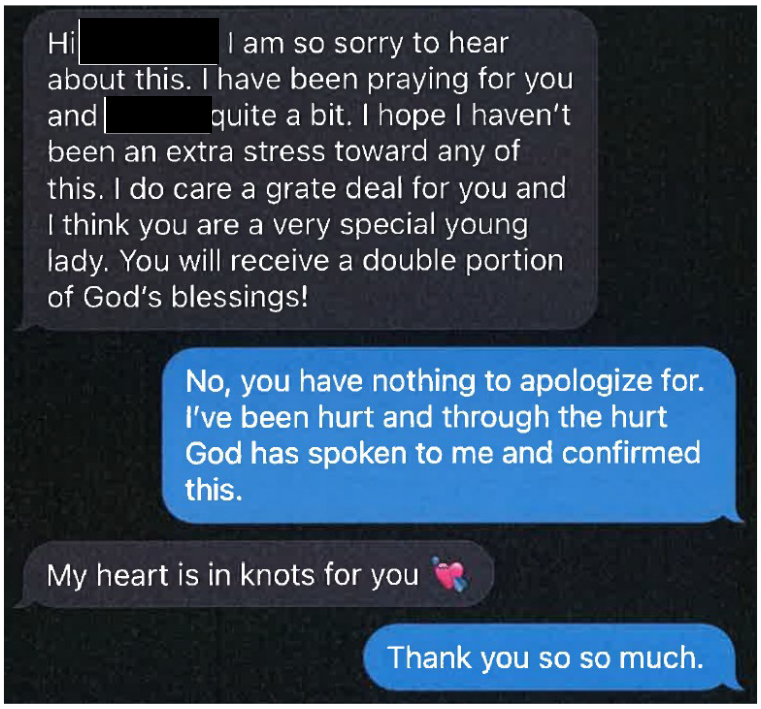
I know you are not doing that well and you can totally say no, but I would like to celebrate a bit tonight. Just the fact that I am done...mostly. Do you want to watch a movie and hang out later? Maybe around 7-8pm? Continuing to pray God's peace and healing over you.

Praying that the Lord would repair the broken areas of your heart by the power of the Holy Spirit.

Yes, that sounds great. I'm seeing my therapist, but should be done around 8 pm

Awesome! Continuing to pray life over you:)





576. Patient 6 testified that she moved out of the Respondent's rental suite on November 12, 2019. The Respondent and Patient 6 exchanged some personal communications on November 12, 17, and 18, 2019. Patient 6 testified she did not

have a further conversation with the Respondent after receiving an email from him on November 18, 2019. A final email chain was exchanged from November 24 to 29, 2019 in which the Respondent sent Patient 6 a document for Patient 6 to sign and terminate their lease agreement. Patient 6 testified she signed that agreement and returned it to the Respondent. The Respondent then exchanged some communications with her father about removing her things from her suite.

577. The Respondent was asked multiple times on cross-examination whether he entered into a close personal relationship between about August 2019 to November 2019. His answers were vague and evasive. The Respondent made certain conduct admissions in relation to the allegations at paragraph 7 of the Citation, but at the same time, distanced himself from the characterization of his relationship with Patient 6 as being “close”. The Respondent refused to acknowledge known dates and milestones, and recast his relationship with Patient 6. The Respondent was vague about the timeline and evasive as to whether the relationship was a “close personal relationship.” He attempted to qualify there was only “some overlap”, that “he tried not to get too personal”, and that he communicated to Patient 6 about how their relationship was “getting away from it just being a therapeutic relationship.” He stated, “I don’t know whether it was August or not, but there was a time where I think that boundary was more crossed where we shared more personal information.” Likewise, when asked about the September to November 2019 period, the Respondent answered:

> That, I can't tell you either. But I do know that she -- I think her last treatment was somewhere at the end of September. I can't remember exactly the end of October that I knew that I tried not to get too personal with her but then, you know, she was around more at that time because she was going to move in, she was painting, she was doing other things.
>
> And I did mention to her that because she's moving in and there's more of a -- you know, we're getting away from just it being a therapeutic relationship, that I couldn't see her as a – I told her that and that she -- if she understood that she couldn't see me as a patient anymore, and she kind of felt like, oh, you know, I can't see you as a patient anymore. I said, no, you know, we need to try to have some separation between the two.
>
> So I did communicate that with her for all that's worth, but, you know, I think there was some overlap there where we did communicate about some personal things, and I agree with that. But I don't know the exact timeframes or, you know, like, if

> you can sort of -- you know, define the timeframes the way you're wanting to define them, I don't know if I can do that.

578. The question of whether the Respondent entered into a close personal relationship with Patient 6 from August 23, 2019 through November 21, 2019 is assessed with reference to the Boundaries Standard, which provides the following definitions:

> Boundary violation: Occurs when the RMT intentionally or unintentionally crosses professional lines of behavior in a way that is serious enough to potentially or actually harm a patient.
>
> Close personal relationship: A relationship with a person that has elements of exclusivity, privacy or emotional intimacy which occur outside of the therapeutic context.
>
> Dual relationships: When an RMT has a business or personal relationship with a patient outside of his or her practice.

579. The Boundaries Standard requires that an RMT:

> 5. does not enter into a close personal relationship with a patient;
> …
> 8. recognizes when he or she is in a dual relationship with a patient and:
> a. clearly communicates to the patient when the RMT is acting in a professional capacity as a registered massage therapist; and
> b. maintains relationship boundaries when acting in a professional capacity;
> …
> 11. recognizes the power imbalance within the therapeutic relationship and does not use the therapeutic relationship for inappropriate personal or financial gain;
> …
> 13. discloses personal information to the patient only to the extent required for the provision of patient-centred care;
> …
> 18. does not initiate non-therapeutic touch or hugging with a patient and, before receiving non-therapeutic touch such as a hug, considers whether it would be appropriate, supportive and welcome;

580. The College submits that the Respondent was in a close personal relationship with Patient 6 and breached section 5 of the Boundaries Standard by entering into that relationship and maintaining it for a period of months.

581. The Panel finds that from about August 23, 2019 through November 21, 2019, the Respondent entered into a close personal relationship and engaged in inappropriate and unprofessional communications with Patient 6. The Respondent's relationship meets the definition of "close personal relationship" under the Boundaries Standard as it clearly had elements of exclusivity, privacy and emotional intimacy which occurred outside of the therapeutic context. The Panel notes that the presence of the word "or" in the definition of "close personal relationship" means that all three of those elements are not required to be present in order for the relationship to be a close personal relationship. The communications between the Respondent and Patient 6 about their personal romantic relationships were private and had emotional intimacy. The Respondent's offer of his rental suite to Patient 6 was exclusive, private and had emotional intimacy. The Respondent becoming Patient 6's landlord was exclusive and private. The Respondent's communications to Patient 6 about how she should characterize their relationship to others were private and exclusive. The Panel finds that the content, frequency, and duration of the communications are clearly inappropriate and unprofessional.

582. The Panel addresses each of the subparagraphs of this allegation in further detail below.

7(a) Communicated with her by text message and email about matters outside of massage therapy treatments

583. The Respondent has admitted paragraph 7(a) of the Citation. The College has indicated that it accepts the Respondent's admission.

584. The Panel accepts the Respondent's admission of allegation 7(a) of the Citation and finds this allegation is proven to the requisite standard.

585. The College submits that a text message or email, on its own, may not necessarily create elements of exclusivity, privacy or emotional intimacy, but the sheer volume and nature of the communications exchanged, beginning in late August 2019, meets the elements of exclusivity, privacy and emotional intimacy to constitute a "close personal relationship."

586. The Panel finds that during the material time period, the Respondent communicated with Patient 6 by text message and email about matters outside of massage therapy treatments. The Respondent exchanged messages with Patient 6 about acting as a chaperone, helping the Respondent clean his home, moving in and renting his suite, his relationship with God, prayer, sharing food, meeting in the evening to spend time together socially, and Patient 6's relationship with her boyfriend.

587. This conduct was contrary to section 5 of the Boundaries Standard. The volume, content, and number of months over which the text messages were exchanged establishes the elements of exclusivity, privacy and emotional intimacy which occurred outside of the therapeutic context to meet the definition of "close personal relationship." The level of emotional intimacy was particularly significant. The Panel has determined that the Respondent breached the Boundaries Standard.

7(b) Offered to rent her a suite connected to your house at a reduced price if she would help you clean and/or rent out another property or properties that you own

588. The Respondent has admitted paragraph 7(b) of the Citation. The College has indicated that it accepts the Respondent's admission.

589. The Panel accepts the Respondent's admission of allegation 7(b) of the Citation and finds this allegation is proven to the requisite standard.

590. The College submits that offering to rent a suite connected to a personal residence, combined with setting rent at a rate which was a beneficial financial arrangement for the Respondent and creating an employment situation in the process, is also a relationship that contains elements of exclusivity, privacy and emotional intimacy and is a breach of section 11 of the Boundaries Standard. The Respondent became Patient 6's landlord and entered into her property, which the College submits is also a relationship that contains elements of exclusivity and privacy.

591. The Panel agrees with the College's submission. By offering to rent Patient 6 a suite connected to the personal residence in which he lived, at a reduced rate if Patient 6 would help the Respondent clean and rent out another property the Respondent owns is a breach of section 11 of the Boundaries Standard. By offering to rent Patient

6 a suite which was connected to his property at a reduced rate for her services, the Respondent entered into a close personal relationship which had elements of exclusivity, privacy and emotional intimacy. The Respondent failed to recognize the power imbalance within the therapeutic relationship and used the therapeutic relationship for his personal and financial gain. The Panel has determined that the Respondent breached the Boundaries Standard.

7(c) Instructed her to rent the property or properties using the name "[redacted]" and an email address that did not contain her real name so that the CMTBC would not be able to discover that she was your patient

592. Patient 6 testified that the Respondent asked her to help him rent out his properties using her name because the Respondent knew that his reputation "might have been tarnished a little bit" based upon the news articles relating to the College complaint against him. Patient 6 testified that they used Kijiji and her email which was [redacted] Patient 6 testified they used that email address because "it didn't have my name in it which was something that we didn't want to include just in case the College saw it." They also used Facebook Marketplace with a fake profile in a man's name which had been created by Patient 6. Patient 6 testified that she and the Respondent spoke about the perception that would be created if the College were to see Patient 6's name and that she was renting at the same address as the Respondent and assisting the Respondent with renting his property. Patient 6 said "he knew it wouldn't look super good, so we – that's why we decided to use the fake account." Patient 6 testified that the Respondent placed an advertisement in the *Edmonton Sun*. She recalled him texting her to ask if it would be okay for him to use the name [redacted] Patient 6 testified "so I gave him my email and he created it and put my name as [redacted]"

593. The Respondent testified that he told Patient 6, because of the complaints against him, he did not want to use his name in the rental advertisements. The Respondent testified that he and Patient 6 came up with the idea that she would manage the Facebook and Kijiji account. He said that Patient 6 came up with the idea to use an alias. He had "no idea about those names….[redacted] or whatever." The

Respondent said it was not his creation, that was something that Patient 6 had used previously. The Respondent decided to go with that name because it would not connect Patient 6 to the property and could not connect him either. The Respondent could not recall if Patient 6's email was similar to the name [redacted] explaining he tends to "shy away from that stuff". On cross-examination, the Respondent was reluctant to admit that Patient 6's name is not [redacted] stating a short form of her name is [redacted] "so it's not entirely untrue." The Respondent denied that he used the name [redacted] for an advertisement in the Edmonton Sun. The Respondent was confronted with text messages that state, "I'm posting an ad in the *Edmonton Sun*. Okay if I use you as a contact for the suite?", "You are [redacted] in the *Edmonton Sun*", and "Okay if I put you as a contact for the *Edmonton Sun*?" The Respondent denied that he ended up posting anything in the *Edmonton Sun* because he was too busy, and he never ended up doing it. The Respondent would not agree that he intended to place the ad using a fake name. He said that [redacted] was the name suggested by Patient 6.

594. The College submits that the Respondent's evidence that he intended but did not in fact post an ad in the *Edmonton Sun* does not make sense given the stated words in his communications to Patient 6. The College submits that the evidence favours Patient 6's account and that the evidence demonstrates the Respondent wanted to hide the true nature of his relationship with Patient 6 from the College. The Respondent was motivated to keep his activities and relationship concealed because he was worried about facing another section 35 proceeding and possibly being suspended from practice.

595. The Respondent's submissions are inconsistent on this allegation. At paragraph 548 of the Respondent's submissions, he argues, "They jointly decided that [Patient 6] would manage the Facebook account and Kijiji account. It was [Patient 6]'s idea to use an alias for that…Mr. Krekic believes the name [Patient 6] came up with was [redacted]…" At paragraph 588, the Respondent argues, "Mr. Krekic's evidence is that he had asked [Patient 6] to use her name for the advertising as he didn't want his name to be used. It is not contested that [Patient 6] came up with the idea to use an alias for the ads and that alia [sic] [redacted]." The Respondent submits that

the Panel should find it was Patient 6's idea to use the name [redacted] based upon the fact that the Respondent never asked Patient 6 to use a fake profile or alias.

596. The Panel prefers Patient 6's evidence to the Respondent's evidence. The Respondent's testimony was evasive and inconsistent with other objective and uncontested evidence before the Panel. The Respondent refused to make reasonable admissions, for example, by refusing to admit that the alias [redacted] is in fact a different name that Patient 6's name (which it is). It is incorrect to state that it is uncontested that Patient 6 came up with the alias [redacted]. Patient 6's evidence is clear that she came up with the alias for Facebook Marketplace, which was a man's name and an entirely different name than [redacted]. She said that the Respondent came up with the name [redacted]. The Panel agrees. The communications between the Respondent and Patient 6 are consistent with Patient 6's account. The Panel finds that it was the Respondent who instructed Patient 6 to rent the property or properties using the name "[redacted]" and an email address that did not contain her real name so that the CMTBC would not be able to discover that she was the Respondent's patient. Patient 6's evidence was clear and consistent that the Respondent wanted to use fake names in his rental advertising, including the name [redacted], in order to avoid the College being able to discover that the person carrying out the Respondent's property rental activities was his patient, Patient 6. The Panel accepts Patient 6's evidence that Respondent knew that this would attract the scrutiny of the College. It is not necessary for the Panel to determine whether the *Edmonton Sun* ad was in fact ever published as that is not required by the wording of the Citation allegation. The Panel finds this is a breach of section 5 and section 11 of the Boundaries Standard. This relationship was private as it was concealed, it was exclusive with Patient 6, and it had emotional intimacy because an aspect of what the Respondent wanted to hide from the College was that Patient 6 was renting at the same address as the Respondent. Moreover, the Respondent failed to recognize the power imbalance within the therapeutic relationship and used that relationship for both financial gain and personal gain. The financial gain was to rent out his property. The personal gain was to continue to keep

concealed from the College his personal relationship with Patient 6. This allegation is proven to the requisite standard. The Panel has determined that the Respondent breached the Boundaries Standard.

7(d) Instructed her to tell those who inquired that you knew each other through her parents and to not mention their personal relationship during massage therapy appointment in front of the chaperone

597. The Respondent has admitted paragraph 7(d) of the Citation. The College has indicated that it accepts the Respondent's admission.

598. The Panel accepts the Respondent's admission of allegation 7(d) of the Citation and finds this allegation is proven to the requisite standard.

599. The College submits that the instructions the Respondent provided to Patient 6 about how she should represent her relationship with him to others are concrete examples of exclusivity and privacy, and the only reason for the Respondent to provide these instructions was to protect himself, specifically from the College and its processes.

600. The Panel agrees with the College's submissions. The Respondent's proven conduct in this allegation is a breach of section 5 and section 11 of the Boundaries Standard. The elements of exclusivity, privacy and emotional intimacy were all present for the reasons identified in allegation 7(c).

7(e) Instructed her to stay in her rental unit when his housekeeper, who was also one of his chaperones, was at his house;

601. The Respondent has admitted paragraph 7(e) of the Citation. The College has indicated that it accepts the Respondent's admission.

602. The Panel accepts the Respondent's admission of allegation 7(e) of the Citation and finds this allegation is proven to the requisite standard.

603. The instructions the Respondent provided to Patient 6 about staying in her rental unit when his housekeeper, who was also his chaperone, was at his house, is another concrete example of exclusivity, privacy and emotional intimacy. The Panel

finds that the only reason for the Respondent to provide these instructions was to protect himself, specifically from the College and its processes.

604. The Respondent's proven conduct in this allegation is a breach of section 5 and section 11 of the Boundaries Standard. The elements of exclusivity, privacy and emotional intimacy were all present for the reasons outlined in allegation 7(c).

7(f) Became her landlord

605. The Respondent has admitted paragraph 7(f) of the Citation. The College has indicated that it accepts the Respondent's admission.

606. The Panel accepts the Respondent's admission of allegation 7(f) of the Citation and finds this allegation is proven to the requisite standard.

607. The College submits that by becoming Patient 6's landlord, the Respondent was engaged in a close personal relationship that contained elements of exclusivity and privacy.

608. The Panel agrees and finds the Respondent breached section 5 of the Boundaries Standard. The Respondent's relationship was close and personal because it contained elements of exclusivity and privacy.

7(g) Repeatedly entered into her suite with limited notice and/or without express consent;

609. The Respondent made a partial admission with respect to this allegation. Specifically, he admits that he entered into Patient 6's suite with notice that was agreed upon.

610. With respect to the Respondent's admissions of the allegations at paragraph 7(g) and (i) in the Citation, the College submits that the Respondent has selectively admitted some of the conduct alleged in the Citation and added exculpatory facts, many of which are contested. These proposed admissions fundamentally re-cast the conduct alleged, and the College does not accept the version of events that the Respondent purports to "admit."

611. The College submits that the Respondent relied upon an oral agreement with Patient 6 to enter into her premises “whenever” which did not exist, and even if it did exist, it is manifestly deficient. The College submits that entering someone’s home with limited or without express consent is a boundary violation. Their home is personal and private and somewhere they should feel safe and in control. The College also notes that the law requires advance notice for entry.

612. The Respondent submits that Patient 6 was quite open to the Respondent coming to do work on the suite and that he was respectful and never entered her suite without asking for her permission first. The Respondent submits that Patient 6 told the Respondent to come by whenever he wanted. The Respondent submits there is no professional obligation that touches on his relationship with Patient 6 as a tenant.

613. The Panel agrees that its task is not to assess whether the Respondent provided adequate legal tenancy notice in entry of Patient 6’s suite. However, this allegation does not require that assessment. It is relevant to professional boundaries and professional conduct whether a registrant entered a patient’s living quarters with limited or without express consent.

614. The Panel finds that the Respondent did enter Patient 6’s suite with limited notice or without her express consent. Patient 6 testified that the Respondent texted her saying he would be at her suite in 30 minutes, and she was not home at the time. Patient 6 testified that on another occasion, the Respondent texted Patient 6 saying that he was going to come over, but she was in the shower at the time so did not have access to her phone. She testified, “And then I came out of the shower and I looked at my phone he said, I’m here. And then he was in the kitchen.” Patient 6 noticed that the Respondent would enter her suite more often in the late afternoon or in the evening. These accounts were not undermined on cross-examination and the Panel accepts them as facts.

615. This testimony must also be considered in the context of Patient 6’s testimony that the Respondent’s texts about the timing of his visits were connected to knowledge he had about her leaving and returning to her suite which he obtained from a security camera. Patient 6 noted that the Respondent’s text messages where he wanted to

visit with her would often arrive shortly after she returned home, “and that’s because he would see me coming into my apartment.” Patient 6 reached that conclusion after being with the Respondent when he received an email notification that a bird flew by the security camera. Patient 6 described that by November 2019, she had found the Respondent overwhelming as he was constantly in her apartment, and she did not feel like she had any privacy especially with the security camera. These accounts were not undermined on cross-examination and the Panel accepts them as facts.

616. While Patient 6 did provide her consent for the Respondent to enter her suite, the Panel does not find that she provided consent for the Respondent to come whenever he wanted; at any hour of the day, while she was in the shower, or with limited notice.

617. This allegation is proven to the requisite standard.

618. The Panel agrees with the College’s submissions. The Respondent’s proven conduct in this allegation is a breach of section 5 and section 11 of the Boundaries Standard. The elements of exclusivity, privacy and emotional intimacy were all present for the reasons outlined in allegation 7(c).

7(h) Informed her that if she and her boyfriend ended their relationship that you would like to pursue her romantically;

619. Patient 6 testified that on October 26, 2019, the Respondent called her into his living room for a discussion at approximately 1:00 or 1:30 p.m. She thought that it had to do with her job performance, so she described feeling quite nervous. Patient 6 testified that they sat down, and the Respondent told her that “if things didn’t work out with my boyfriend, then he would like to pursue me.” Patient 6 confirmed that the Respondent used those words. He also told Patient 6 that they had a mutual friend who was a pastor in the church and that the pastor and his wife could mentor the Respondent’s and Patient 6’s relationship if they decided to pursue one another. Patient 6 described feeling very uncomfortable. She was moving into the suite the next day. She did not want to reject the Respondent on the spot because the Respondent had told Patient 6 that he had received divorce papers on October 25, 2019.

620. The Respondent denied making these statements. He testified that he told Patient 6 that if he was twenty years younger, that he would be interested in pursuing her. He said that he did not say that he wanted to pursue her at that time. The Respondent testified he was trying to encourage her to get through the events mentally. He wanted to convey to Patient 6 that she is a great person, and somebody would want to be with her.

621. The College submits that the Respondent's version of events is less plausible. The Respondent had previously dated at least one woman who was a patient. On cross-examination, the Respondent admitted that his ex-wife was a patient of his before they started dating.

622. The Respondent submits that he only wanted to comfort Patient 6 and that had he actually wanted to pursue Patient 6 he would have asked Patient 6 out on a date or for dinner, something she admitted did not occur.

623. The Panel prefers Patient 6's version of events. Patient 6's description of the conversation with the Respondent on October 26, 2019 was clear and specific. She recalled the time, that they were sitting down, feeling nervous in advance, and feeling uncomfortable afterwards. Patient 6 linked the timing of the discussion to days after a significant moment in the Respondent's divorce process. Patient 6 was clear about the Respondent's words. The Respondent did not dispute using the words "pursue her". The Respondent's account that he only conveyed wanting to pursue her if he was twenty years younger is not plausible and not consistent with other objective evidence. The Panel does not accept that the Respondent would have formally asked Patient 6 to join him on a date or for dinner if he did indeed want to pursue her at that time. That is not how all relationships commence. The Respondent's communications with Patient 6 which were before this Panel are consistent with him attempting to pursue Patient 6. He texted Patient 6 multiple times about spending time together, often in the late afternoons and evenings, and invited her to share food and time together. As the College notes, the evidence was that the Respondent was involved in another relationship with a former patient; therefore, that in and of itself was not a barrier to the Respondent.

624. The Panel finds that the Respondent informed Patient 6 that if she and her boyfriend ended their relationship that the Respondent would like to pursue her. The College has proven this allegation to the requisite standard.

625. The Respondent's conduct in this allegation is a breach of section 5 of the Boundaries Standard. The elements of exclusivity, privacy and emotional intimacy were all present for the reasons outlined in allegation 7(c).

7(i) Initiated physical contact including hugging her, massaging her neck while she was sitting on the couch and/or putting your arm around her while watching television

626. The Respondent made a partial admission with respect to this allegation. Specifically, he admits that he initiated physical contact with Patient 6 including hugging her and putting his arm around her while watching television.

627. As noted above, with respect to the Respondent's admissions of the allegations at paragraph 7(g) and (i) in the Citation, the College submits that the Respondent has selectively admitted some of the conduct alleged in the Citation and added exculpatory facts, many of which are contested. These proposed admissions fundamentally re-cast the conduct alleged, and the College does not accept the version of events that the Respondent purports to "admit."

628. Patient 6 testified that on October 31, 2019, the night she and her boyfriend broke up, the Respondent suggested that they "do a celebration" for all of the work that they did in getting the Respondent's house rented and packed. They had dinner and then put on a movie. The Respondent asked if he could hold Patient 6 and she said yes. Patient 6 testified that the Respondent put his arm around her and cradled her for the duration of the movie. Patient 6 described feeling uncomfortable because she felt as though she could not say no as it might jeopardize her financial situation. Patient 6 testified on another occasion the Respondent performed the army man in her apartment. Patient 6 recalled sitting on the grey chair in her apartment at the time. She also testified that sometimes the Respondent would be cooking a meal for himself in Patient 6's kitchen and would go back and forth massaging her shoulders to cooking to massaging her shoulders. She said that if they were talking, he would

ask if he could massage her hand. On another occasion, the Respondent finished working on a shelf by her window on her bedroom. He secured the shelf and then asked Patient 6 to come look at it. Patient 6 testified she did so. The Respondent then said he could really use a hug at that moment and Patient 6 gave him a hug. Patient 6 described that she and the Respondent would often hug when he was leaving her suite or if she left his house after packing. She said that the hugs got longer as time went on. She was fine with the shorter hugs, but the longer hugs made her uncomfortable.

629. As noted above, the Respondent made a partial admission with respect to hugging Patient 6. He stated that he was upset about his divorce and Patient 6 was the only person around. While he acknowledged it was not the “brightest” idea, he said he asked for and received permission. The Respondent denied performing any massage techniques on Patient 6 outside of the treatment room. He did not massage her hands or shoulders in her suite while cooking or at any other time.

630. The Panel prefers Patient 6’s account. Her testimony was clear and consistent. Her evidence about the specific incidents of physical contact were precise and plausible. They were also consistent with her other testimony, the general context of their personal relationship at that time, and with the other objective evidence such as the text messages. It is implausible that the Respondent would have engaged in such significant boundary violations as requesting that Patient 6 act as a chaperone, offering her a rental suite in his property, offering her a discounted rate if she assists in cleaning and renting out his properties, instructing her about how to characterize their relationship to others, communicating with her by text message about matters outside of massage therapy, becoming her landlord, entering her suite, but then that he would have carefully drawn boundaries around his physical contact with Patient 6.

631. The Panel finds that the Respondent initiated physical contact including hugging Patient 6, massaging her neck, and putting his arm around her while she was watching television. The College has proven this allegation to the requisite standard.

632. The Respondent's conduct in this allegation is a breach of section 5 of the Boundaries Standard. The elements of exclusivity, privacy and emotional intimacy were all present for the reasons outlined in allegation 7(c). The Respondent's conduct is also a breach of section 18 of the Boundaries Standard. The Respondent initiated non-therapeutic touch or hugging with a patient.

7(j) Attended at her place of work without express permission

633. The Respondent made a partial admission with respect to this allegation. Specifically, he admits that he attended Patient 6's place of work, specifically school grounds, in the course of walking a dog, and texted her to let her know he was there.

634. Patient 6 testified that she started her practicum on November 12, 2019. She recalled being quite nervous because it was her first day. The Respondent texted her that he might be on the school grounds. [redacted] The Respondent was taking care of a friend's dog and he said Patient 6 might see him on the school grounds with the dog. She received that text message in the morning. She felt uncomfortable and like she was being followed. Patient 6 did not see the Respondent on the school grounds. Patient 6 agreed on cross-examination that the Respondent did not ask to see her at the school where he was walking the dog. Patient 6 then moved out of the Respondent's rental suite.

635. In addition to the partial admission above, the Respondent also testified that it was not an uncommon route for him to walk. He submits that his text to Patient 6 was an innocent text not meant to upset her in any way. He says he did not attend at her place of work, he walked by the school without stopping or attempting to connect with her.

636. The College submits that the Respondent is not stating that he did not attend Patient 6's place of work without her consent, he is taking the position that he does not need her consent because it is a public place. The College submits that the Respondent did require permission in the circumstances. He knew Patient 6 was uncomfortable by his presence, tested the waters twice to see if she would engage with him about his dog, could have walked his dog anywhere in the city, and still went to the exact

place that Patient 6 was working that morning. Then, the Respondent texted Patient 6 to let her know that he was there.

637. The Respondent's position is inconsistent. On the one hand, his March 16, 2021 letter setting out his admissions states "Mr. Krekic admits that he attended [Patient 6]'s *place of work*, specifically school grounds, in the course of walking a dog, and texted her to let her know he was there." [emphasis added]. At the same time, the Respondent's closing submissions state at paragraph 601, "Mr. Krekic did not attend at [Patient 6]'s place of work." and "The Panel cannot find that Mr. Krekic attended [Patient 6]'s place of work without permission *because he did not attend her place of work* even if he had gone into the school, he did not need her permission." [emphasis added].

638. The Panel finds that that by walking on the school grounds where Patient 6 was conducting a practicum, the Respondent attended her place of work. The Panel also finds that the Respondent did that without Patient 6's permission. He simply advised her of his presence. The Panel is not required to determine whether the Respondent is required to obtain permission from the school or from Patient 6 to walk his dog on the school grounds and declines to make any finding in that regard. The Citation allegation is with respect to the Respondent's personal interactions with his patient and tenant Patient 6 and his attendance at her place of work. The College has proven this allegation to the requisite standard.

639. The Panel finds that the Respondent breached section 5 and section 1 of the Boundaries Standard by entering into a close personal relationship with Patient 6 which contained the elements of exclusivity, privacy and emotional intimacy. He failed to maintain professional boundaries with Patient 6.

640. In terms of determinations with respect to the allegations at paragraph 7 of the Citation, as noted above, the Panel has determined that the Respondent breached the Boundaries Standard.

641. The Panel has also determined that the Respondent committed professional misconduct. The Respondent was 48 years old and Patient 6 was 22 years old. He was in a position of power imbalance in relation to Patient 6. The scope and depth

of the communications that the Respondent engaged in during the material time is astonishing. The Respondent engaged in communications with Patient 6 of the most intimate and private nature. The Respondent took advantage of Patient 6's trust and of her vulnerability. The Respondent's conduct is a marked departure from what is expected of a registered massage therapist. It is regarded as disgraceful, dishonourable and unbecoming of the professional and the public. It is a fundamental breach of trust and antithetical to the foundation of the profession. The Panel has determined that the Respondent has committed professional misconduct.

Allegation 8: Section 35 Order

8. You breached the Order made April 5, 2019 pursuant to section 35 of the Act by:
    (a) Failing to inform CMTBC immediately of any new locations where you were providing massage therapy services;
    (b) During the months of July and August 2019, failing to provide reports each week with each patient you consulted, assessed, examined or treated and the name of the person who acted as a chaperone for each of those patients;
    (c) During an appointment in late July or early August 2019, failing to have a chaperone present at all times during the consultation, assessment, examination or treatment of a female patients; and/or
    (d) Failing to ensure that at the completion of any consultation, assessment, examination or treatment of a patient that the chaperone records their full name, signature and date in the corresponding patient chart entry;

8(a) Failing to inform CMTBC immediately of any new locations where you were providing massage therapy services;

642. The Respondent has admitted paragraph 8(a) of the Citation. The College has indicated that it accepts the Respondent's admission.

643. The Panel accepts the Respondent's admission of allegation 8(a) of the Citation and finds this allegation is proven to the requisite standard.

8(b) During the months of July and August 2019, failing to provide reports each week with each patient you consulted, assessed, examined or treated and the name of the person who acted as a chaperone for each of those patients;

644. The Respondent has admitted paragraph 8(b) of the Citation. The College has indicated that it accepts the Respondent's admission.

645. The Panel accepts the Respondent's admission of allegation 8(b) of the Citation and finds this allegation is proven to the requisite standard.

8(c) During an appointment in late July or early August 2019, failing to have a chaperone present at all times during the consultation, assessment, examination or treatment of a female patients

646. The Respondent has admitted paragraph 8(c) of the Citation. The College has indicated that it accepts the Respondent's admission.

647. The Panel accepts the Respondent's admission of allegation 8(c) of the Citation and finds this allegation is proven to the requisite standard.

8(d) Failing to ensure that at the completion of any consultation, assessment, examination or treatment of a patient that the chaperone records their full name, signature and date in the corresponding patient chart entry

648. The Respondent has admitted paragraph 8(d) of the Citation. The College has indicated that it accepts the Respondent's admission.

649. The Panel accepts the Respondent's admission of allegation 8(d) of the Citation and finds this allegation is proven to the requisite standard.

650. The College submits that the Panel ought to make determinations that the Respondent breached the Code of Ethics and committed professional misconduct with respect to the allegations set out at paragraph 8 of the Citation.

651. The College submits that breaching a section 35 order breaches sections 25, 27 and 28 of the Code of Ethics. The content of those duties is set out earlier in these reasons.

652. The College submits that the Respondent committed professional misconduct and relies upon *Ontario (College of Pharmacists) v. Rak*, 2018 ONCPDC 45 and *Re Farion*, 2017 LSBC 5.

653. The Respondent did not make specific submissions about any determinations the Panel ought to make following on his admissions. He did submit that, “Mr. Krekic has admitted to the allegations 8(a)-(d), 9 and 10 of the Citation. He admitted that he was mistaken about how to properly obtain his signatures, the expectations were unclear to him and that he was going through a difficult time in his personal life which led to a failure to comply with some of the conditions imposed by the College” and “Mr. Krekic’s evidence with respect to whether he had complied with the requirements of the order was that he thought he was in compliance and didn’t know until he heard from the College that the signatures needed to be entered in a manner other than the way he doing it, namely immediately.”

654. The Panel does not accept that the Respondent did not read portions of the section 35 Order, or that he found the Order to be unclear, or that he did his best to follow it, or that he was somehow mistaken about the requirements imposed upon him. The wording of the Order is clear, and the Respondent never sought to clarify any aspect of the Order which he found to be unclear. The Respondent was represented by legal counsel during the section 35 process.

655. The Panel has determined that in failing to comply with the Inquiry Committee’s section 35 Order in the manner proven in the allegations at paragraphs 8 (a),(b),(c) and (d), the Respondent breached sections 27 and 28 of the Code of Ethics, which was in effect at the time. Specifically, the Respondent failed to recognize that professional self-regulation is a privilege that each massage therapist has a continuing responsibility to merit by upholding the honour, dignity and credibility of the profession; and he failed to respond to inquiries, requests and directions from the College in a professional, responsive and timely manner.

656. The Panel has also determined that the Respondent committed professional misconduct in respect of each of the allegations at paragraph 8 of the Citation. The Panel agrees with the reasoning in *Ontario (College of Pharmacists) v. Rak* and *Re Farion*, 2017 LSBC 5. In particular, the Panel finds the following passage from *Rak* to be particularly persuasive and adopts the reasoning in this case:

> [337] The Panel finds that the Member's conduct can be viewed as dishonest and deceitful. The Member's lack of accountability and his failure to adequately seek clarification about the Order while continuing to practice in a community pharmacy, demonstrates a significant element of moral failing. This significant element of moral failing warrants attributing to the Member's misconduct the most serious characterization under this definition, which is "disgraceful".
>
> [338] The Panel further notes that the College's mandate is to protect the public through self-regulation of the profession of pharmacy. In this context, breaching an Order would be regarded by members of the public and members of the profession as the most severe of offenses.
>
> [339] Breaching an Order of the Discipline Committee demonstrates to the Panel, that the Member is ungovernable. Such breaches represent an egregious assault on the concept of self-regulation.
>
> [340] It is important to the Panel that it sends a message with this Decision: Orders of the Discipline Committee must be respected and complied with. Those members of the profession who fail in that regard will be held accountable for their actions. This is essential for the public's confidence in the profession's ability to govern itself.

657. The Panel considers that the same rationale applies with respect to breaching a section 35 order of the Inquiry Committee. Such orders are extraordinary measures which are imposed where interim action is necessary to protect the public. The public's confidence requires strict adherence to orders which have been imposed upon registrants. The Respondent's failure to adhere to the section 35 Order would reasonably be considered by members of the profession to be dishonourable, disgraceful and unprofessional and represents a marked departure from the standard expected of the profession.

Allegation 9: Treatment Records

> 9. You failed to provide treatment records for three female patients in response to the CMTBC's June 14, 2019 request within a reasonable time period and did not do so until September 5, 2019; and

658. The Respondent has admitted paragraph 9 of the Citation. The College has indicated that it accepts the Respondent's admission.

659. The Panel accepts the Respondent's admission of allegation 9 of the Citation and finds this allegation is proven to the requisite standard.

660. The College submits that the Panel should determine that the Respondent breached section 28 of the Code of Ethics because his responses were not timely; and committed unprofessional conduct because his assertion that there were no outstanding requests was not true at the time, he made that assertion.

661. The Panel agrees that the Respondent's failure to provide requested treatment records to the College within a reasonable time constitutes a breach of section 28 of the Code of Ethics, which was in effect at the time. The Panel also agrees that the Respondent's assertion on August 6, 2019 to the College that there were no outstanding requests, when that was not true, constitutes unprofessional conduct. The Panel considers that a determination of unprofessional conduct as opposed to professional misconduct is appropriate in the circumstances of this case and consistent with the reasoning expressed in *CMTBC v. Gill*, 2019 CMTBC 01.

Allegation 10: Practising without Liability Insurance

> 10. You practiced massage therapy without liability insurance between November 1 and 16, 2019.

662. The Respondent has admitted paragraph 10 of the Citation. The College has indicated that it accepts the Respondent's admission.

663. The Panel accepts the Respondent's admission of allegation 10 of the Citation and finds this allegation is proven to the requisite standard.

664. The College submits that the Panel should determine that the Respondent breached the Bylaws and committed professional misconduct. It relies upon Discipline Committee in the case of *Ontario (College of Physiotherapists of Ontario) v. Shah,* 2019 ONCPO 26.

665. The Respondent submits that his evidence about his insurance coverage was that he thought that there was an insurance rider that extended his coverage while he obtained new coverage, which arose from confusion about a rider in the insurance policy of the RMTBC. The College submits in reply that the Respondent's thoughts or intentions are not relevant to whether he complied with the applicable requirement or standard. At most those issues would be relevant at the penalty stage. The Panel

agrees with the College, the Respondent's intentions and understanding about his policy coverage are not relevant to the conduct question of whether he had insurance in place at the material times. He may raise those points at the penalty phase of these proceedings.

666. The Panel has determined that the Respondent breached section 61 of the Bylaws which requires each active registrant to obtain and at all times maintain professional liability insurance coverage in a designated amount and in a form satisfactory to the College.

667. The Panel has determined that the Respondent committed professional misconduct. As noted in *Ontario (College of Physiotherapists of Ontario) v. Shah*, 2019 ONCPO 26, the liability insurance requirement is in place to protect members of the public:

> The public is entitled to assume that Physiotherapists hold appropriate insurance so they are protected in the event of injury due to the negligence of a member or due to anyone for whom the member is legally responsible. The protracted amount of time, namely 18 months, during which Mr. Shah practiced without insurance was an aggravating factor in determining his penalty. The Member was not acting in the best interest of his patients during this time period and exposed them to the potential for significant harm.

668. The Panel does note that the period of time that the registrant in *Shah* failed to maintain insurance was significantly longer than with respect to the Respondent. The Panel does not adopt that decision's comments about the length of time being an aggravating factor as those are considerations for the penalty phase of the proceedings.

669. The Respondent's failure to maintain liability insurance would reasonably be considered by members of the profession to be dishonourable, disgraceful and unprofessional and represents a marked departure from the standard expected of the profession.

Order

670. In summary, the Panel finds that the College has proven all the allegations in the Citation to the requisite standard, with the exception of paragraphs 4 (a) (ii), 4 (b)

(iv) and 6 (b) (ii) ii. which were not proven to the requisite standard, and paragraphs 4 (b) (iii) and 6 (a) (i) of the Citation, which the College did not pursue.

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

a. Has committed unprofessional conduct in relation to the allegation at paragraph 1(a) (i) of the Citation;

b. Has committed unprofessional conduct in relation to the allegation at paragraph 1(a) (ii) of the Citation;

c. Has committed professional misconduct in relation to the allegation at paragraph 1(a) (iii) of the Citation;

d. Has not complied with the Bylaws and has committed professional misconduct in relation to the allegation at paragraph 1(a) (iv) of the Citation;

e. Has not complied with the Bylaws and has committed professional misconduct in relation to the allegation at paragraph 1(b) of the Citation;

f. Has committed unprofessional conduct in relation to the allegation at paragraph 2 (a) (i) of the Citation;

g. Has not complied with the Bylaws and has committed professional misconduct in relation to paragraph 2 (a) (ii) of the Citation;

h. Has committed unprofessional conduct in relation to the allegation at paragraph 2 (b) (i) of the Citation;

i. Has not complied with the Bylaws and has committed professional misconduct in relation to the allegation at paragraph 2 (b) (ii) of the Citation;

j. Has not complied with the Bylaws and has committed professional misconduct in relation to the allegation at paragraph 2 (b) (iii) of the Citation;

k. Has not complied with the Bylaws and has committed professional misconduct in relation to the allegation at paragraph 2 (b) (iv) i. of the Citation;

l. Has not complied with the Bylaws and has committed professional misconduct in relation to the allegation at paragraph 2 (b) (iv) ii. of the Citation;

m. Has not complied with the Bylaws and has committed professional misconduct in relation to the allegation at paragraph 2 (b) (iv) iii. of the Citation;

n. Has not complied with the Bylaws and has committed professional misconduct in relation to the allegation at paragraph 3 (a) of the Citation;

o. Has not complied with the Code of Ethics and has committed professional misconduct in relation to the allegation at paragraph 3 (b) of the Citation;

p. Has not complied with the Consent Standard in relation to the allegation at paragraph 4 (a) (i) of the Citation;

q. Has not complied with the Consent Standard and has committed professional misconduct in relation to the allegation at paragraph 4 (b) (i) of the Citation;

r. Has not complied with the Consent Standard and has committed professional misconduct in relation to the allegation at paragraph 4 (b) (ii) of the Citation;

s. Has not complied with the Boundaries Standard, has not complied with the Code of Ethics and has committed professional misconduct in relation to the allegation at paragraph 5 (a) of the Citation;

t. Has not complied with the Boundaries Standard, has not complied with the Code of Ethics and has committed professional misconduct in relation to the allegation at paragraph 5 (b) of the Citation;

u. Has not complied with the Boundaries Standard, has not complied with the Code of Ethics, and has committed professional misconduct in relation to the allegation at paragraph 6 (a) (ii) of the Citation;

v. Has not complied with the Boundaries Standard, has not complied with the Code of Ethics, and has committed professional misconduct in relation to the allegation at paragraph 6 (a) (iii) of the Citation;

w. Has not complied with the Boundaries Standard and has committed unprofessional conduct in relation to the allegation at paragraph 6 (a) (iv) of the Citation;

x. Has not complied with the Boundaries Standard in relation to the allegation at paragraph 6 (a) (v) of the Citation;

y. Has not complied with the Boundaries Standard, has not complied with the Code of Ethics and has committed unprofessional conduct in relation to the allegation at paragraph 6 (b) (i) of the Citation;

z. Has not complied with the Boundaries Standard, has not complied with the Code of Ethics, and has committed professional misconduct in relation to the allegation at paragraph 6 (b) (ii) i. of the Citation;

aa. Has not complied with the Boundaries Standard, has not complied with the Code of Ethics, and has committed professional misconduct in relation to the allegation at paragraph 6 (b) (ii) iii. of the Citation;

bb. Has not complied with the Boundaries Standard, has not complied with the Code of Ethics, and has committed professional misconduct in relation to the allegation at paragraph 6 (c) of the Citation;

cc. Has not complied with the Boundaries Standard, has not complied with the Code of Ethics, and has committed professional misconduct in relation to the allegation at paragraph 6 (d) of the Citation;

dd. Has not complied with the Boundaries Standard and has committed professional misconduct in relation to the allegation at paragraph 7 of the Citation;

ee. Has not complied with the Code of Ethics and has committed professional misconduct in relation to the allegation at paragraph 8 (a) of the Citation;

ff. Has not complied with the Code of Ethics and has committed professional misconduct in relation to the allegation at paragraph 8 (b) of the Citation;

gg. Has not complied with the Code of Ethics and has committed professional misconduct in relation to the allegation at paragraph 8 (c) of the Citation;

hh. Has not complied with the Code of Ethics and has committed professional misconduct in relation to the allegation at paragraph 8 (d) of the Citation;

ii. Has not complied with the Bylaws and committed unprofessional conduct in relation to the allegation at paragraph 9 of the Citation;

jj. Has not complied with the Bylaws and committed professional misconduct in relation to the allegation at paragraph 10 of the Citation.

Schedule for Submissions on Penalty and Costs

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

673. 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 2, 2022;

b. Submissions must be delivered by the Respondent to counsel for the College and the Panel by no later than September 23, 2022; and

c. Reply submissions may be delivered by counsel for the College to the Respondent and the Panel by no later than September 30, 2022.

Notice of Right to Appeal

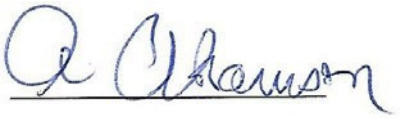
674. The Respondent is advised that under section 40(1) of the Act, a respondent aggrieved or adversely affected by an order of the Discipline Committee under section 39 of the Act may appeal the decision to the Supreme Court. Under section 40(2), an appeal must be commenced within 30 days after the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

Public Notification

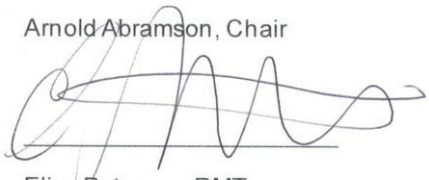
675. The Panel directs that pursuant to sections 39.3(1)(d) of the Act, the Registrar notify the public of the determination made herein.

676. 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 College may return to the Panel for further direction as to implementation regarding section 39.3(3)(a) if required.

Dated: August 5, 2022



Arnold Abramson, Chair



Elisa Peterson, RMT

Michael Wiebe, RMT