

**DISCIPLINE AND FITNESS TO PRACTISE COMMITTEE OF THE COLLEGE OF MASSAGE  
THERAPISTS OF NEW BRUNSWICK**

**Indexed as: College of Massage Therapists of New Brunswick v. Blair Eagles,  
2019 NBCMT 02**

**IN THE MATTER OF** a Hearing  
by the Discipline and Fitness to Practise Committee of  
the College of Massage Therapists of New Brunswick  
under Ss. 38(1) of the  
***Massage Therapy Act***, SNB 2013, c. 49 (the “**Act**”)

**BETWEEN:**

**THE COLLEGE OF MASSAGE THERAPISTS OF NEW BRUNSWICK**

**- and -**

**Blair Eagles, RMT**

<b>COMMITTEE MEMBERS:</b>	Joshua D. Lutes RMT	Chair, Professional Member
	Jolyane Richard RMT	Professional Member
	Edwin White RMT	Professional Member
	Lorraine Downing	Public Member

**Hearing Date:** *July 13, 2019*

**Decision Date:** *July 18, 2019*

**Release of Written Reasons:** *July 18, 2019*

**DECISION AND REASONS**

The Discipline and Fitness to Practise Committee of the College of Massage Therapists of New Brunswick (the “Committee”) met to consider the Complaint at a hearing on July 13, 2019.

With the consent of the Member and the College the hearing proceeded before quorum of the Committee, being four members of the Committee including the public member.

As a preliminary matter, the Committee considered a motion by counsel for the Member that members of the media be excluded from the hearing pursuant to section 46(12) of the Act and for an order prohibiting the broadcasting and publication of the Committee hearing including the name of the Member pursuant to section 46(13) of the Act. The committee also considered a motion by counsel for the College for an order prohibiting publication of the identity of the Complainant.

After considering the motions, the Committee ordered that publication be prohibited on the Complainant’s identity and any information identifying the Complainant and that there be no broadcasting of the Committee hearing pursuant to section 46(13) of the Act. The Committee’s reasons for making this order are that it strikes the appropriate balance between the presumption under section 46(11) that Committee hearings are open to the public and the need in the circumstances, given the allegations of sexual abuse, to protect the identity of the Complainant.

**Allegations of Professional Misconduct**

The Notice of Discipline Hearing (Tab 4) dated May 1, 2019, alleged that the Member, while a registered member of the College, on or about February 6, 2019, did provide massage therapy services to the Complainant and did kiss the Complainant while in the treatment room and while on the massage table, which conduct constitutes touching and/or behaviour of a sexual nature by a member towards a patient, and thereby the Member did commit an act or acts of sexual abuse of a patient as defined in subsection 60(1)(b) and (c) of the *Massage Therapy Act*, and further did commit an act or acts of professional misconduct as defined by subsection 31(h) of the Act.

## **Evidence**

With consent of the Member and the College, the Committee received as evidence, and carefully reviewed and considered documents consisting of books of bound documents respecting the Complaint prepared for presentation to the Committee and marked as "Book 1" and "Book 2", a list of which documents is attached to this Decision as Schedule "A" and Exhibit "1", being a copy of a letter dated May 2018 from Eastern College a copy of which is attached to this Decision as Schedule "B". There were no objections to the admissibility of these documents.

Lawyer David J. Shore represented the College of Massage Therapists of New Brunswick (the "College"). Mr. Shore called the Complainant as a witness.

Lawyer Jack Haller represented the Member, Blair Eagles. Mr. Haller called the Member and Mr. Robert Taylor as witnesses.

The Committee heard submissions from Mr. Shore and Mr. Haller on the merits of the Complaint and the allegations made against the Member. During his submissions, Mr. Haller requested that the Member take a polygraph test and results be submitted to the Committee.

The Committee met to consider Mr. Haller's request and, upon determining the request was unnecessary, the Committee considered the merits of the Complaint and allegations, and rendered a verbal decision finding the Member guilty of professional misconduct with a written decision to follow. This is the Committee's full decision.

## **Findings**

The Committee carefully reviewed and considered all the documents, evidence and testimony presented, including from the Member. After hearing from the College's and the Member's respective legal counsel, and based on the evidence, the Committee finds:

1. The Member has been a registered massage therapist for 20 years without any prior complaints. He was formerly an instructor at Eastern College from October 2017 to July 2018 and is currently employed at A Human Touch Massage Clinic (the "Clinic").
2. The Complainant began receiving weekly treatments from Matthias Mann at the Clinic following a motor vehicle accident in December 2017 and the treatments were paid for by insurance.
3. The Member and the Complainant have a past relationship history.
4. The Complainant testified that she and the Member were friends and "perhaps were dating" in April and May 2018, but that she ended the relationship in May 2018 after an incident where the Member made her feel uncomfortable.

5. The Member testified that he and the Complainant were in a relationship in the spring of 2018 which ended in April or May 2018 because both were too busy at the time to be in a relationship.
6. The friendship between the Complainant and the Member resumed in the fall or winter of 2018 when the Complainant ran into the Member at the Clinic and soon afterwards they began exchanging text messages and socializing.
7. Mr. Taylor testified that the Complainant and the Member came to Mr. Taylor's home an evening in January 2019 where they had dinner and drank some wine and that during the evening the Member and the Complainant held hands and appeared to be in a romantic relationship.
8. The Member helped the Complainant boost her car on February 4, 2019. The Complainant testified that after the Member successfully boosted her car, she hugged the Member and said "You are the Man". The Member testified that the Complainant kissed him passionately.
9. The Member testified that prior to February 6, 2019, he and the Complainant were exchanging multiple text messages a day, calling each other and seeing each other and that they had kissed on multiple occasions. The Member testified that he believed he was in a romantic relationship with the Complainant at the time.
10. The Complainant testified that she believed she and the Member were friends and that they were not in a romantic relationship.

#### The Events of February 6, 2019

11. Prior to the treatment session on February 6, 2019, the Complainant's regular massage therapist, Mr. Mann, was on vacation and asked the Member to take over the Complainant's treatment. The Member treated the Complainant at the Clinic on January 15 and January 28, 2019 without incident.
12. On February 6, 2019, the Complainant attended at the Clinic for a massage therapy treatment session with the Member.
13. With respect to the events of February 6, 2019, the Complainant testified that:
  - a. the Member followed her into the treatment room and she said to him "I think I get to do this part alone" at which point the Member grabbed her by the shoulders and kissed her on the lips;
  - b. she said "never do that again" and the Member left the treatment room whistling and saying "Haha I can't hear what you're saying";
  - c. despite the kiss, she proceeded with the treatment because she was in a lot of pain, trusted the Member would be professional and respect the boundaries of the profession and thought they were friends; and

- d. during treatment the Member made comments about pleasure and pain which made her uncomfortable and the Member ceased making comments when the Complainant asked him to stop.

14. The Member testified that he did not kiss the Complainant prior to treatment, the Complainant went into the treatment room alone and got ready for treatment and he performed certain treatment modalities on the Complainant to calm muscle inflammation. He testified that he knew the Complainant was in chronic pain, wanted to help her and that massage therapy treatment was the tool that he used to help her.

15. Both the Member and the Complainant testified that the Member kissed the Complainant at the completion of the treatment session while still in the treatment room at the Clinic and while the Complainant was laying on the massage table.

16. The Complainant testified that:

- a. at the end of the treatment, when she was laying on her back in meditation, the Member held her down by her shoulders and kissed her putting his tongue in her mouth;
- b. she was terrified at the realization that she was unable to move and was very aware that she was alone with the Member and naked on the massage table under the sheet;
- c. after the kiss she immediately dressed and ran out of the Clinic; and
- d. the stress caused by the kiss caused a flare up for her of her medical condition.

17. With respect to the kiss, the Member testified that:

- a. following the treatment session he leaned down and lightly kissed the Complainant on the lips to let her know the session had ended;
- b. upon seeing that he had startled the Complainant, he apologized for startling her, but said that he had a patient in the waiting room and so "wanted to get our kiss now";
- c. he kissed the Complainant in the treatment room as he did not want appear unprofessional in kissing the Complainant in the waiting room in front of his other patient;
- d. that kiss was not sexual in nature as it was not intended that way. It was meant as a way to inform the Complainant that the treatment was over;
- e. at the time he believed that he was in a romantic relationship with the Complainant;
- f. he had a lapse of judgment on that day and should have kissed the Complainant in the waiting room;
- g. he does not believe his conduct would bring dishonor to the profession and that he acted ethically on February 6, 2019; and
- h. he agreed, on cross-examination, the Complainant was his patient when he was treating her on February 6, 2019.

18. The Committee considered and assessed the various contradictions in the evidence presented, specifically:

- a. with respect to the incident of the “first” kiss on February 6, 2019 occurring in the treatment room prior to the massage therapy treatment session beginning, contradictory testimony was presented with regard to whether the Member followed the Complainant into the treatment room, whether he grabbed and kissed her and whether he made inappropriate comments. Considering the conflicting evidence, the Committee cannot determine that the above-mentioned events occurred;
- b. with respect to the incident of the “second” kiss on February 6, 2019 occurring while the Complainant was still on the treatment table, contradictory testimony was presented with regard to whether the Member held the Complainant down and kissed her. Considering the conflicting evidence, the Committee finds that after the massage treatment was completed, and while the Complainant was still on the treatment table in the Clinic, the Member leaned over the Complainant and kissed her on the lips. Further, the Committee finds that the Complainant did not consent to the kiss and that the kiss on the lips was an act of touching of a sexual nature within the meaning of section 61(b) of the Act; and
- c. with respect to whether the Complainant was the Member’s patient on February 6, 2019, contradictory evidence was presented as to whether the Member and Complainant were in a romantic relationship and the Member did not receive payment such that the treatment was not provided in a therapist-patient relationship and therefore the Complainant was not a patient. The Committee concludes that a therapist-patient relationship existed between the Member and Complainant on February 6, 2019. The Member had taken over the Complainant’s treatment from her regular therapist, the treatment took place in the Clinic, the Member’s place of work, the treatment given used the Members professional skills as a massage therapist including certain treatment modalities and the Member later admitted in his testimony on cross-examination that the Complainant was his patient.

19. In his testimony, the Member apologized for not immediately addressing the Complaint. He testified that his actions were as a result of denial on his part and admitted that it was unprofessional of him and he should have addressed the Complaint sooner.

20. The Member testified that he loves his job and that this profession allows him to help people. He testified that he respects the Complainant and never intended to harm or hurt her in any way.

## **Conclusions**

Based on the evidence and in consideration of the above findings, the Committee determines that:

1. the Member is responsible for his conduct, actions and omissions;
2. the Member demonstrated professional misconduct on February 6, 2019 by committing an act of sexual abuse of a patient contrary to section 60(1)(a) of the Act; and

3. notwithstanding that the Member recognized that his actions constituted a lack of judgment on his part, the Member demonstrated a lack of insight into the consequences of his actions and inappropriately minimized the unprofessionalism of his conduct.

### **Position of the Parties on Penalty**

Following the Committee's decision on the merits, and with the consent of the College and the Member, the Committee proceeded with the penalty phase of the hearing and heard submissions from Mr. Shore and Mr. Haller on appropriate penalty. Both Mr. Shore and Mr. Haller submitted that it was appropriate for the Member to attend an Ethics and Professionalism course.

Mr. Shore submitted that the appropriate penalty for professional misconduct in the circumstances is a suspension in the range of 3 - 9 months and an award of costs in the suggested range of \$3,000 - \$5,000. Mr. Shore submitted three decisions of the College of Physicians and Surgeons of Ontario in support of his submissions with respect to length of suspension. Mr. Shore submitted that a suspension is in the public interest to effect general and specific deterrence and was appropriate in the circumstances given the fact that massage therapy is a healing profession.

Mr. Haller submitted that the appropriate penalty is a suspension of 4 weeks based on the mitigating factors that the Member has no previous discipline history with the College during his 20 years of practise and that he has already suffered reputational and professional harm. Mr. Haller submitted that a costs award of \$500 was appropriate considering the Member's limited means should his registration be suspended and considering that he is a single father.

Following submissions on penalty, the Committee reserved its judgment on penalty with a written decision to follow. This is that Decision.

Following the hearing and prior to the Committee making its decision on penalty, the Committee received, with the consent of the Member and the College, reference letters in support of the Member and his professionalism, dedication and expertise as a massage therapist. The Committee carefully considered these letters prior to making its decision on penalty.

### **Decision on Penalty**

The Member was given a verbal reprimand at the hearing. The Committee's decision on penalty is in addition to that verbal reprimand. The Member's registration and membership is immediately suspended for 3 months, he is also ordered to attend an Ethics and Professionalism course and he pay costs to the College in the amount of \$1,500.

### **Reasons for Penalty**

In determining an appropriate penalty for the Member, it is the Committee's responsibility to give adequate and proper consideration to protection of the public. The Committee must also consider specific deterrence of the Member, general deterrence, maintenance of public confidence in the integrity of the profession and in doing so, display the College's ability to self-regulate.

The Committee must also consider if there are any mitigating or aggravating factors in determining the appropriate penalty.

The mitigating factors are that this is the first complaint against this Member in his 20 years of practise and the kiss, while still an act of professional misconduct, is not as intrusive an act as

other disciplinary cases. Further, the misconduct involved one kiss with one patient. The Committee also considered that the Member is a single father and that a suspension would have a large financial impact on him.

The aggravating factors are that the Member failed to recognize his actions were unprofessional and contested the allegations of professional misconduct causing the Committee to hold a full hearing requiring oral testimony from both parties. Further, though the Member expressed some regret in admitting that he made an error in judgment, he failed to recognize that his actions in this therapist-patient relationship were inappropriate.

The Committee also considered the healing nature of the profession and receiving massage therapy treatment. The Committee considered that any touching of a sexual nature of a patient is wholly inappropriate, reflects poorly on the profession, undermines the public trust in the profession and will not be tolerated especially when such touching occurs within the context of treatment.

The Committee also has concerns with the Member's lack of insight into his unprofessional conduct. The Member at times seemed to accept that the Complainant was his patient and that it was inappropriate to kiss a patient, but at other times testified that he believed it was ok to kiss the Complainant because he believed they were in a romantic relationship. He did acknowledge that his actions constituted a lapse of judgment and the remediation the Committee is ordering should address his lack of insight.

## **Order**

### THE COMMITTEE ORDERS THAT:

- 1) the Member is reprimanded for his conduct on February 6, 2019 and cautioned that if another complaint is filed against the Member then this Decision may be taken into consideration;
- 2) the Member's registration and membership as a massage therapist is suspended for a period of 3 months from the date of this Order;
- 3) the Member shall take the Ethics and Professionalism course offered by Eastern College or by another accredited institution as approved in advance by the Registrar and shall provide evidence of successful completion to the Registrar within 3 months from the date of this Order;
- 4) the Member pay to the College a portion of the costs of the College with respect to this Complaint, in the amount of \$1,500 within 60 days of his return to the active practise of massage therapy;
- 5) failure to submit the confirmation or complete the course referred to in (3) or pay the costs referred to in (4) above, shall result in the suspension of the member's registration until such time as the condition is met;
- 6) it is the Member's responsibility to ensure that each of the above conditions are met and to ensure that other individuals who may need to be involved in the fulfillment of the conditions forthwith receive a copy of this Decision.

- 7) the Registrar shall cause notice public notice of a summary of the Committee's Order suspending the Member's registration and membership to be made pursuant to section 50(1) of the Act and such notice shall include the Member's name.

This decision is signed by Chairman Joshua D. Lutes on behalf of the Discipline and Fitness to Practise Committee.

Dated this 18th day of July 2019.



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JOSHUA D. LUTES, RMT