

Discipline Committee of the College of Registered Psychotherapists and Registered Mental Health Therapists of Ontario

Citation: ONCRPO v. HOLAN, 2020 ONCRPO 1

Date of written reasons: August 26, 2020

Docket: C1819-30

IN THE MATTER OF the *Regulated Health Professions Act, 1991, S.O. 1991, c. 18*, as amended, and the regulations thereunder, as amended;

IN THE MATTER OF the *Psychotherapy Act, 2007, S.O. 2007, c. 10, Sched. R*, as amended and the regulations thereunder, as amended;

AND IN THE MATTER OF a discipline proceeding against David Holan, a Member of the College of Registered Psychotherapists and Registered Mental Health Therapists of Ontario.

Between: **COLLEGE OF REGISTERED PSYCHOTHERAPISTS AND REGISTERED MENTAL HEALTH THERAPISTS OF ONTARIO**

- and -

DAVID LEON HOLAN (REGISTRATION #003912)

Before: Panel

**Gary Cockman (Chair)
Andrew Benedetto
Steven Boychyn
Shelley Briscoe Dimock
Kenneth Lomp**

Date of hearing:

January 7, 2020

Appearances:

Rebecca Durcan,

Counsel for College of Registered Psychotherapists and Registered Mental Health Therapists of Ontario

Cynthia Kuehl,

Independent Legal Counsel

David Leon Holan,

Self-represented

DECISION AND REASONS

This matter came before a panel of the Discipline Committee (the “Panel”) of the College of Registered Psychotherapists and Registered Mental Health Therapists of Ontario (the “College”) on January 7, 2020 at the offices of the College in Toronto. David Leon Holan (the “Member”) participated by video conference and was self-represented.

THE ALLEGATIONS

The allegations against the Member as stated in the Notice of Hearing dated March 15, 2019, which was filed as Exhibit #1, are as follows:

The Member

1. David Leon Holan (the “Member”) has been a member of the College of Registered Psychotherapists of Ontario (the “College”) since approximately January 18, 2016.
2. The Member has practised the profession in Kitchener, Ontario.

Client A

3. In or around August 2018, the Member was retained by Client A.
4. Client A received psychotherapy from the Member for approximately seven (7) sessions between approximately August and October 2018.

Remarks and Images of a Personal and/or Sexual Nature

5. It is alleged that on or about October 16, 17 and/or 18, 2018 the Member made remarks of a personal and/or sexual nature to Client A via text message and telephone.
6. It is alleged that on or about October 16 and/or 17, 2018 the Member sent images of a personal and/or sexual nature to Client A via text message.
7. It is alleged that the above conduct constitutes professional misconduct pursuant to section 51(1)(b.1) of the Health Professions Procedural Code, being Schedule 2 to the *Regulated Health Professions Act, 1991* (the “Code”), namely that the Member sexually abused Client A by engaging in behaviour or remarks of a sexual nature.

8. It is alleged that the above conduct also constitutes professional misconduct pursuant to section 51(1)(c) of the Code as set out in one or more of the following paragraphs of section 1 of Ontario Regulation 317/12 made under the *Psychotherapy Act, 2007*:

- a. **Paragraph 1** – Contravening, by act or omission, a standard of practice of the profession or failing to maintain the standard of practice of the profession, namely, i. 1.5 – General Conduct;
 - ii. 1.7 – Dual and Multiple Relationships; and/or
 - iii. 1.8 – Undue Influence and Abuse;
- b. **Paragraph 2** - Abusing a client or a client’s representative verbally, physically, psychologically or emotionally;
- c. **Paragraph 52** – Engaging in conduct or performing an act relevant to the practice of the profession that, having regard to all the circumstances, would reasonably be regarded by member as disgraceful, dishonourable or unprofessional; and/or
- d. **Paragraph 53** – Engaging in conduct that would reasonably be regarded by member as conduct unbecoming a member of the profession.

MEMBER’S PLEA

The Panel was presented with a written Plea Inquiry, which was filed as Exhibit #2. It is noted the Panel also conducted an oral plea inquiry. The Panel was satisfied that the Member’s admission was voluntary, informed, and unequivocal.

AGREED STATEMENT OF FACTS AND ADMISSION OF PROFESSIONAL MISCONDUCT

The Panel was presented with an Agreed Statement of Facts and Admission of Professional Misconduct, which was filed as Exhibit #3, and provides (without attachments) as follows:

The Member

1. David Leon Holan (the “Member”) has been a member of the College of Registered Psychotherapists of Ontario (“the College”) since approximately January 18, 2016.

Client A

2. In or around August 2018, Client A retained the Member.
3. Between approximately August and October 2018, Client A received psychotherapy from the Member for approximately seven sessions.

4. On or about October 16, 17 and/or 18, 2018 the Member made remarks of a personal and sexual nature to Client A via text message and telephone, which include the following:
 - a. “You are such a tease!”
 - b. “I said way more than I should have, including my intention.”
 - c. “I just really want right now to taste you. And then see where things go.”
 - d. “I am a very sensual person. I love the sensory experience of someone I’m connected to. Does that mean that I would love to taste how you’re feeling? Yes, I would.”
 - e. “Sweet dreams. And no playing with yourself tonight. [winking face]”
 - f. “I want to kiss you all over. Until you ate [sic] completely spent. After your 10 orgasms. And then wrap you in arms til [sic] you wake...”
 - g. “I hope that we get to be together and fully experience each other happens sooner than later. [blowing a kiss face]”
 - h. “I want to cuddle and sleep in, watch a movie, go for a walk on the river, cook for you...”
5. On or about October 16, 17 and/or 18, 2018 the Member sent images of a personal nature to Client A via text message. The images are attached at Tab “B”.
6. If the Member were to testify, he would state that, during this time, he was obtaining his own treatment for Post-Traumatic Stress Disorder. During this time, he was also in the process of shutting down his practice to relocate to Florida in order to care for his mother who has Stage 4 cancer. He is her primary caregiver.
7. It is agreed that the above conduct constitutes professional misconduct pursuant to:
 - a. Section 51(1)(b.1) of the Health Professions Procedural Code, being Schedule II to the *Regulated Health Professions Act, 1991*, namely that the Member sexually abused Client A by engaging in behaviour or remarks of a sexual nature;
 - b. Section 51(1)(c) of the Health Professions Procedural Code, being Schedule II to the *Regulated Health Professions Act, 1991*, as set out in the following paragraphs of section 1 of Ontario Regulation 317/12 made under the *Psychotherapy Act, 2007*:
 - i. Paragraph 1 – Contravening, by act or omission, a standard of practice of the profession or failing to maintain the standard of practice of the profession, namely:

1. 1.5 – General Conduct
2. 1.7- Dual and Multiple Relationships and
3. 1.8 - Undue Influence and Abuse

Excerpts of these standards are attached at Tab “C”.

- ii. Paragraph 2 – Abusing a client or a client’s representative verbally, physically, psychologically or emotionally;
 - iii. Paragraph 52 – Engaging in conduct or performing an act relevant to the practice of the profession that, having regard to all the circumstances would reasonably be regarded by members as disgraceful, dishonourable or unprofessional; and
 - iv. Paragraph 53 – Engaging in conduct that would reasonably be regarded by members as conduct unbecoming a member of the profession.
8. By this document Mr. Holan states that:
- a. he understands fully the nature of the allegations against him;
 - b. he has no questions with respect to the allegations against him;
 - c. he understands that by signing this document he is consenting to the evidence as set out in the Agreed Statement of Facts being presented to the Discipline Committee;
 - d. he understands that by admitting the allegations, he is waiving his right to require the College to prove the case against him and the right to have a hearing;
 - e. he understands that the decision of the Discipline Committee and a summary of its reasons, including reference to his name, may be published in the College’s annual report and any other publication or website of the College;
 - f. he understands that any agreement between him and the College with respect to any penalty proposed does not bind the Discipline Committee; and;
 - g. he understands and acknowledges that he is executing this document voluntarily, unequivocally, free of duress, free of inducement or bribe, and that he has been advised of his right to seek legal advice and that he has had the opportunity to receive such advice.

DECISION

On reading the Notice of Hearing, the Agreed Statement of Facts and on hearing the submissions of counsel for the College and of the Member, the Panel finds that the Member committed professional misconduct pursuant to:

- Section 51(1)(b.1) of the Health Professions Procedural Code, being Schedule II to the Regulated Health Professions Act, 1991, namely that the Member sexually abused Client A by engaging in behaviour or remarks of a sexual nature; and
- Section 51(1)(c) of the Health Professions Procedural Code, being Schedule II to the Regulated Health Professions Act, 1991, as set out in the following paragraphs of section 1 of Ontario Regulation 317/12 made under the Psychotherapy Act, 2007:

Paragraph 1 – Contravening, by act or omission, a standard of practice of the profession or failing to maintain the standard of practice of the profession, namely, i. 1.5 – General Conduct; ii. 1.7 – Dual and Multiple Relationships; and iii. 1.8 – Undue Influence and Abuse;

Paragraph 2 - Abusing a client or a client's representative verbally, physically, psychologically or emotionally;

Paragraph 52 – Engaging in conduct or performing an act relevant to the practice of the profession that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional; and

Paragraph 53 – Engaging in conduct that would reasonably be regarded by members as conduct unbecoming a member of the profession of section 1 of Ontario Regulation 317/12 under the Psychotherapy Act, 2007.

REASONS FOR DECISION

The Panel accepted as true all the facts set out in the Agreed Statement of Facts and Admission of Professional Misconduct. Having regard to these facts and the Member's admissions, the Panel finds that the Member committed the acts of professional misconduct alleged in the Notice of Hearing.

THE JOINT SUBMISSION AS TO PENALTY AND COSTS

Counsel for the College and the Member provided the Panel with a Joint Submission as to Penalty and Costs, which was filed as Exhibit #4, and provides as follows:

The College of Registered Psychotherapists and Registered Mental Health Therapists of Ontario (the "College") and David Holan (the "Member") agree and jointly submit that the Discipline Committee make an order:

1. Directing the Registrar to revoke the Member's certificate of registration effective immediately.
2. Requiring the Member to appear before the panel of the Discipline Committee to be reprimanded on a schedule to be arranged by the Registrar;
3. Requiring the Member to reimburse the College for funding provided for Client A;
4. Requiring the Member to post security acceptable to the College to guarantee the payment of any amounts the Member may be required to reimburse under paragraph 4;
5. The Member shall pay the College's costs fixed in the amount of \$4,460.00 payable on a schedule determined by the Registrar;
6. The Member acknowledges that this Joint Submission as to Penalty and Costs is not binding upon the Discipline Committee.
7. The Member acknowledges that he has had the opportunity to receive independent legal advice.

DECISION ON ORDER

The Panel accepted the Joint Submission as to Penalty and Costs as presented by the parties and makes an Order in accordance with the terms set out above.

REASONS FOR DECISION ON ORDER

The Panel concluded that the proposed penalty is reasonable and in the public interest. The penalty provides general deterrence demonstrating to the profession that such conduct will not be tolerated.

REPRIMAND

At the conclusion of the hearing, having confirmed that the Member waived any right to appeal, the panel delivered its oral reprimand. A copy of the reprimand is attached at Schedule "A" of these reasons.

I, Gary Cockman, sign this Decision and Reasons for the decision as Chairperson of this Discipline panel and on behalf of the members of the Discipline panel as listed below:

Gary Cockman, Chair, Discipline Panel

August 26, 2020

Andrew Benedetto, RP, Professional Member
Steven Boychyn, Public Member
Shelley Briscoe Dimock, RP, Professional Member
Kenneth Lomp, RP, Professional Member

Schedule "A"**Oral Reprimand**

Mr. Holan,

We, as the Discipline Committee, certainly appreciate how difficult it is for you to appear before the College today. The Committee members have serious concerns about your actions that have brought your case before us.

First, Mr. Holan, while we accept the agreement between yourself and the College, that the images you sent to the complainant will be considered personal for the record, we want to ensure that both yourself and the public are aware that any image, whether implicitly or explicitly sexual in nature, are considered egregious and are never appropriate in any psychotherapeutic relationship.

Second, we agree with the joint order between the College and yourself, and specifically the revocation of your registration as this sets a precedent that is a clear communication of the College's stance on sexual abuse. In the case that you do decide to apply to the College in the future or any other regulatory body to practise psychotherapy, we have significant concerns about your ability to safely and ethically practise. Given this, we strongly recommend that remediation processes are taken seriously and put into place if you ever do decide to return to practise.

In conclusion, you have engaged in behavior that has disgraced your profession and put the public at risk. By your actions, you have caused significant damage to the reputation of the profession as a whole and cast a shadow over your own integrity.

Gary Cockman, Chair, Public Member
Andrew Benedetto, RP, Professional Member
Steven Boychyn, Public Member
Shelley Briscoe Dimock, RP, Professional Member
Kenneth Lomp, RP, Professional Member