

MEMORANDUM

September 26, 2019



SUBJECT: Illegal practice of medicine and massage therapy activities

Our file: 30-15-2737

BACKGROUND

While massage therapy has long been practiced in Québec, it has never been legally regulated, unlike in many other Canadian provinces.

Like osteopathy, massage therapy is an alternative therapy that enjoys de facto recognition. Nevertheless, there is still no legal framework in Québec to define the scope of its practice, the conditions under which it may be practiced, and training requirements. In the words of Justice Lavergne, [translation] “[t]his legal vacuum inevitably places the therapeutic approach used in massage therapy on the fringes of medical practice or even in an overlapping position, given the definition and wide range of activities restricted to physicians as set out in the *Medical Act*”¹. Justice Lavergne was, of course, referring to osteopathy.

To ensure that massage therapy or the practice of massage therapy is not considered the illegal practice of medicine, studying professional legislation such as the *Professional Code* and relevant case law (court decisions) is essential to obtain a clearer understanding of the limits of massage therapy practice.

Recently, in 2019, the Collège des médecins obtained five (5) judgements against various individuals or institutions for the illegal practice of medicine, including the Collège d’études en ostéopathie inc. and three (3) osteopaths who had studied or taught there.

In the latter case, the Collège des médecins alleged that the three (3) osteopaths had diagnosed illnesses, determined medical treatments and prescribed treatments (a home exercise program), all of which are activities restricted to physicians.

Massage therapists must therefore exercise caution in their practice, both in their communications with their patients and in their advertising. For this reason, the Fédération québécoise de la massothérapie would like to draw your attention to certain activities that should be incorporated into your daily practice.

¹ *Collège des médecins du Québec v. Collège d’études en ostéopathie inc.*, 2019 QCCQ 3443, para. 21.

1. “TO DIAGNOSE” AND “DIAGNOSIS”

The case law is consistent on this point, as the words “diagnose” and “diagnosis” have been subject to judicial interpretation on many occasions. In *Collège des médecins du Québec v. Provencher*², the Court of Québec defined “diagnosis” as follows:

[28] [translation] (...) A diagnosis is essentially the process of identifying an illness, pathology or health issue. This process consists in an examination of symptoms or an examination using a scientific instrument or method. Diagnosis also involves identifying the nature of a dysfunction or difficulty.[19] Additionally, diagnosis refers to predicting probable ailments based on a person’s condition.

“Diagnose” and “diagnosis” are therefore very broad terms that essentially mean [trans] “identify (or attempt to identify) an illness, impairment or health problem from its symptoms.”

The person making the diagnosis does not necessarily need to use medical terms or a scientifically or medically recognized method. Additionally, in *Vézina*³, the Court of Appeal likened making a diagnosis to locating the source of the ailment in order to suggest a treatment or medication based on the symptoms mentioned by the patient.

2. HEALTH QUESTIONNAIRE AND ASSESSMENT

Massage therapists may ask their clients to complete a health questionnaire. However, massage therapists who do so should be sure to inform the client that the questionnaire is not designed to establish the likely causes of an illness, impairment, pathology or health problem, but rather to determine whether certain types of massage or strokes are contraindicated for the client in question.

The term “health assessment” seems more problematic. If we consider a “health assessment” to be an examination (or a series of examinations) of an individual to assess his or her state of health and a means of providing an overview of a person’s state of health, it would seem that a “health assessment” inevitably leads to a diagnosis, an act that is primarily restricted to physicians. For this reason, we believe that performing a “health assessment” should be avoided.

² *Collège des médecins du Québec v. Provencher*, 2005 CanLII 3754 (QCCQ).

³ *Vézina v. Corporation professionnelle des médecins du Québec*, 1998 CanLII 12500 (QCCA).

3. THERAPEUTIC REASONING

First, we must define the expression “therapeutic reasoning.” This term has not been subject to judicial interpretation and is not defined by legislation. In *Javanmardi*⁴, the Court of Appeal found that [translation] “diagnosis is the exercise of therapeutic judgment with the aim of identifying an illness or a condition from observed or reported symptoms, prior to prescribing a substance or treatment.” Exercising therapeutic judgement would therefore appear to be synonymous with “diagnose.”

On the other hand, if “therapeutic reasoning” simply refers to the act of determining whether a particular type of massage is contraindicated for a client based on the client’s state of health (if the client is pregnant or suffers from osteoporosis, for example), the term “therapeutic reasoning” would appear to be distinct from the notion of “diagnosis”; in such cases, we do not believe that it amounts to the illegal practice of medicine.

4. TREATMENT

In *R. v. Javanmardi*⁵, the Court of Québec explained that a treatment is any act performed with the intention of “curing” or “relieving” an illness through physical or moral means, referring to the definition found in *Le Petit Robert*⁶:

[translation] Cure: a manner of treating a patient or disease, any means (medication, hygienic and dietary prescriptions) used for the purpose of curing, treatment, medication, therapy.

Furthermore, to be considered a “medical treatment,” the methods used do not necessarily need to be medically recognized. The mere implication that the client’s health could be improved is sufficient.

The term “medical treatment” is therefore very broad and the methods used do not necessarily need to be medically recognized. If the intent is to cure, relieve or otherwise treat a health impairment, it is a medical treatment, and thus restricted to physician members of the Collège des médecins du Québec.

⁴ *Javanmardi v. Collège des médecins*, 213 QCCA, 306 CanLII, para. 59 to 62.

⁵ *R. v. Javanmardi*, 2017 (QCCQ) 2652, para. 64 and 65.

⁶ *Le Petit Robert*, 2013 Edition.

4. PRESCRIBING PHYSICAL EXERCISE

If a client comes to a massage therapist complaining of back pain, for example, recommending exercises designed to reduce, relieve or cure the back pain could be interpreted as prescribing medical treatment, an activity restricted to physicians under section 31 para. 2(6) LN. However, recommending “how to do an exercise correctly to prevent injury” or explaining “how to do an exercise differently” to a client suffering from back pain would most likely not be seen as prescribing a medical treatment, as these recommendations are not intended to treat the impairment or disability (i.e. back pain).

We hope that this information will guide you in your daily practice and help you avoid any problems related to the illegal practice of medicine or physiotherapy.

[Disclaimer: This English translation of the memorandum was not produced by CAIN LAMARRE, who provided only the original French version to the Fédération québécoise des massothérapeutes. In case of misinterpretation, the French version prevails, available in the French Blog of the FQM.]