

**EXECUTIVE SUMMARY – HOWARD HEAVEN, RMT
DISCIPLINARY HEARING CONDUCTED
JULY 25, 2012**

The Member, Howard Heaven, RMT, was charged with seven counts of professional misconduct:

1. Contravening the Massage Therapy Act, 1991, S.O. 1991, the Regulated Health Professions Act, 1991 or the Regulations under either of those Acts;
2. Contravening a term, condition or limitation imposed on a member's Certificate of Registration;
3. Receiving any form of benefit from the practice of Massage Therapy while under suspension unless full disclosure is made by the Member to the College of the nature of the benefits to be obtained and prior approval is obtained from the Executive Committee;
4. Signing or issuing, in the Member's professional capacity, a document that the Member knows contains a false or misleading statement;
5. Failing to keep records as required;
6. Falsifying a record relating to the Member's practice; and
7. Engaging in conduct or performing an act relevant to the practice of the profession that, having regard to all circumstances would reasonably be regarded by members as disgraceful, dishonourable and unprofessional.

THE PLEA

The Member entered a plea of guilty to Allegations 1, 2, 3, 4, 6 and 7.

The College withdrew Allegation 5.

THE FACTS

The Member and the College entered an Agreed Statement of Facts. The admitted facts included that:

1. Mr. Heaven's Certificate of Registration had been suspended during a period from May 2007 to May 2008;
2. As a result of an order of a Panel of the Discipline Committee of the College, the Member's Certificate of Registration was to be suspended for four (4) consecutive months, however one (1) month of the suspension was to be remitted upon Mr. Heaven's successful completion of the terms, conditions, and limitations imposed on his Certificate of Registration, which included that Mr. Heaven complete certain coursework, make certain submissions and pay costs in the amount of \$2,000, within eighteen (18) months of the date of the hearing;
3. Mr. Heaven failed to pay any of the costs awarded against him and his Certificate of Registration was suspended for the full four month period imposed by the Panel of the Discipline Committee, from March 17, 2010 to July 17, 2010;
4. Mr. Heaven admitted that during this period of suspension in 2010 he:
 - (a) Did perform a number of Massage Therapy treatments;
 - (b) Held himself out as licensed to practice Massage Therapy to clients he treated, including by using or authorizing the use of his RMT number on receipts that were submitted to an insurer;
 - (c) Was remunerated for Massage Therapy treatments provided during his period of suspension and did not seek approval from the College for these treatments or remuneration;

Counsel for the Member and the College provided treatment records indicating over 400 massage treatments by Mr. Heaven during his period of suspension in 2010.

FINDING OF GUILT

The Hearing Panel found the admitted facts supported a finding that the Member was guilty of the six allegations of professional misconduct to which the Member pled guilty.

SENTENCING

The College and the Member contested the penalty to be imposed by the Hearing Panel. The Hearing Panel heard evidence from the Member himself on the issue of penalty. Mr. Heaven's testimony included that:

1. He had been unable to pay the \$2,000 ordered by the previous panel of the Discipline Committee due to financial crisis;
2. He was unemployed from July 2010 until November 2010, is currently employed as a personal trainer, only works 5 to 10 hours per week part time, and has difficulty providing for his family;
3. He practiced while suspended to support his family, his intentions were not malicious, and he has otherwise cooperated with the College except in respect of the payment of the outstanding \$2,000 in costs; and
4. He is an asset to the profession and has helped others choose a career in Massage Therapy.

The College entered as evidence the reasons for decision of two previous panels of the Discipline Committee in respect of the Member. A 2006 decision (with reasons dated in 2007) suspended Mr. Heaven for a period of time beginning in May 2007. Mr. Heaven was found guilty of professional misconduct after acknowledging he failed to abide by an undertaking given to the Complaints Committee. The 2010 decision imposed the suspension at issue in this case (from March to July 2010), based on Mr. Heaven's admission that he benefitted from the practice of Massage Therapy while suspended during the earlier period of suspension.

The College and the Member each made submissions on penalty. The Hearing Panel was referred to a number of previous decisions of the Discipline Committee.

The College sought the penalty of revocation, a public reprimand and a payment of \$4,000 (to include the outstanding \$2,000).

The Member sought the penalty of suspension for 6 to 8 months, a fine of \$1,000, payable within six months of resumption of practice, a payment arrangement for the outstanding \$2,000, submission to an inspection of his practice, and additional coursework.

The Hearing Panel unanimously agreed on the penalty of revocation of the Member's Certificate of Registration, and an order to pay costs in the amount of \$1,000 to the College. The Hearing Panel concluded that the Member was ungovernable.

The Hearing Panel referred to Mr. Heaven's long-standing history of past conduct proceedings with the

College. This was the Member's third such proceeding. He did not abide by past undertakings. The Hearing Panel acknowledged Mr. Heaven's remorse, but did not accept Mr. Heaven's explanation that he continued to practice while suspended to support his family to be a valid excuse. Mr. Heaven could have supported his family in ways that did not require a breach of the conditions on his Certificate of Registration.

The Hearing Panel considered this case to be more serious than other decisions to which it was referred. Based on Mr. Heaven's past history of breach of undertakings, the Hearing Panel had little confidence that he would be governable in the future. The Hearing Panel also referred to the cost of the proceedings to the College, and its lack of confidence that these costs will be recuperated. It noted that the Member had failed to protect the public by misrepresenting himself as a licensed Registered Massage Therapist.

The Hearing Panel also noted that the decision sends a strong message to members, the public and the insurance industry that practicing Massage Therapy while suspended is considered serious misconduct and will not be tolerated.

CASE COMMENT

The Heaven decision emphasizes that members must abide by orders of the College's governing bodies and undertakings given to the College. This is particularly true of orders and undertakings that have the effect of imposing terms and conditions on the Member's Certificate of Registration or preventing the Member from practicing.

A member who repeatedly fails to abide by orders of the College and/or undertakings given to the College may be found to be ungovernable and have his or her license revoked. As the Hearing Panel in this case noted, this is serious misconduct that will not be tolerated.