

Discipline Decisions 2008

Member: Donald Cook, RMT

Hearing Date(s): August 21, 2008

Allegation(s) of Professional Misconduct:

1. Failure to cooperate with an authorized representative of the College conducting an inspection or examination of his records or practice;
2. Falsifying a record relating to his practice;
3. Signing or issuing in his professional capacity, a document that he knew contained a false or misleading statement;
4. Contravening the *Massage Therapy Act, 1991*, the *R.H.P.A.* or the regulations under either of those Acts and;
5. Engaging in disgraceful, dishonourable and unprofessional conduct.

Brief Synopsis of Facts:

- Despite being served with the Notice of Hearing, Mr. Cook declined to attend the hearing or participate and was not represented by a lawyer. As a result of his failure to appear, a plea of not guilty was entered on Mr. Cook's behalf. The hearing proceeded before the Panel of the Discipline Committee in Mr. Cook's absence.
- The College called the evidence of five witnesses: the Registration Manager of the College, the Clinic Manager for the practice location for the Member, a representative from Green Shield Canada, and 2 College Investigators.
- The evidence of the Registration Manager indicated that Mr. Cook was a member of the College since October 27, 1993. It was further indicated that between April 7, 2004 and October 7, 2005, Mr. Cook's Certificate of Registration was suspended for failing to pay his annual registration and/or non-payment of fees.
- The evidence of the Clinic Manager where Mr. Cook was practising at the time in question included a review of client health records and those records were matched with records relating to the same clients that were Plan Members with Green Shield Canada.
- A representative from Green Shield Canada provided evidence which included original submissions made by Mr. Cook's client's, with Mr. Cook's receipts as well as details of the denials of claims by Green Shield Canada.
- Evidence was led to establish that notwithstanding Mr. Cook's suspension of his registration over the course of approximately 1 1/2 years, he continued to issue receipts to his clients with his signature, official designation ("RMT") and registration number. Many of those clients submitted those receipts to their employers' plan administrators for reimbursement. Most if not all of those claims were denied because Mr. Cook was suspended at the time the services were rendered.
- Evidence was provided by one of the College's Investigators who had, on two separate occasions, attended the clinic to receive massage therapy from Mr. Cook. On both occasions, the Member issued receipts which contained the designation "RMT" along with Mr. Cook's registration number. During the second attendance, Mr. Cook expressed the view to the

Investigator that in light of his education and training, he should not be required to pay registration fees in order to use the term “RMT”.

- Evidence was provided by the College Investigator who attempted on several occasions to meet with Mr. Cook to obtain copies of his clients’ clinical notes and records in relation to those clients treated while he was suspended. Mr. Cook avoided the College’s Investigator for over 10 months. He provided various excuses, failed to return voice mail messages, cancelled meetings and on at least one occasion, simply failed to show up for an appointment. Finally when the Investigator showed up unannounced at Mr. Cook’s clinic to obtain a copy of his files, Mr. Cook indicated that the files were not kept at his office. Although the Investigator offered to attend with the Member at his home to obtain the files, he refused to cooperate. As a result no client health records were ever produced by Mr. Cook.

Decision:

The Discipline Panel accepted the evidence of all the College’s witnesses in their entirety and unanimously found Mr. Cook guilty of allegations 1, 3, 4 and 5. The Panel found there was insufficient evidence upon which to make a finding in relation to allegation 2.

Penalty:

- (a) Revocation of the Member’s Certificate of Registration
- (b) Costs of \$5000; and
- (c) Publication.

Panel’s reasons for Decision and Penalty:

The College led evidence as to the appropriate penalty in this matter and the Panel unanimously concluded that this was a particularly serious case of ungovernability. The Panel found Mr. Cook’s actions to be egregious and that revocation of the Member’s Certificate of Registration was the only fitting penalty. The Panel noted that, although the Member was advised in advance of the hearing that the College would be seeking revocation, he still failed to attend and explain his actions. The Panel was of the view that the Member’s conduct indicated that he simply “did not care” about his clients who had their claims denied, the impact of his actions on the reputation of the profession or its dealings with its partners in the insurance industry or the disciplinary process itself. The Panel further commented that in ordering revocation, it was attempting to protect the public from financial hardship that clients may experience when a massage therapist continues to practice while his or her registration is suspended. The Panel was of the view that the costs penalty ordered in this matter is significant to “send a message’ to others that removal from the profession is not enough to “make things right”.

EDITORIAL NOTE

The *Cook* case demonstrates that the College will not hesitate to have persons who are deemed “ungovernable” removed from the profession. This case is also an example of a member’s flagrant and contemptuous disregard for the authority of the College, ultimately leading to the revocation of his registration. The decision of the Discipline Committee emphasizes the College’s desire to maintain, promote and defend the integrity of the profession amongst not only its own members but its partners in the insurance industry and the public.