

## Discipline Decision 2007

**Member:** Rodney Smith, RMT

**Hearing Date(s):** April 10, 2007

### **Charge(s) of Professional Misconduct:**

1. Breaching a term of the *Massage therapy Act, the Regulated Health Professions Act, 1991* and/or regulations made thereunder ; and
2. Engaging in disgraceful, dishonourable and unprofessional conduct

### **Brief Synopsis of the Facts:**

- This matter proceeded by way of an Agreed Statement of Facts and joint submission respecting penalty. The facts of the case acknowledged the following:
- Mr. Smith became a member of the College on December 24, 1996.
- Between April 7, 2004 and June 28, 2005 the Member's Certificate of Registration was suspended for non- payment of his annual fees.
- During the Member's period of suspension, he performed approximately 89 treatments to numerous clients.
- The clients that received massage therapy from the Member received receipts from the service provided. A number of the clients submitted those receipts to their respective extended health care insurance providers for reimbursement and in a number of cases upon learning of the suspended status of the Member's Certificate of Registration, the insurers denied payment.
- The College received a complaint lodged by Greenshield Canada and after having been aware of the complaint, the Member made arrangements with the College to reinstate his registration by the payment of retroactive outstanding fees.
- While completing his Registration Renewal Form for 2004, the Member misrepresented to the College that he had not practiced massage therapy during the 2004 calendar year and he signed the "Declaration of Inactive Certificate" in that regard. At the time the member made this representation to the College he had performed at least 89 massage therapy treatments during 2004.
- The Member acknowledged that his conduct in using the title massage therapist and holding himself out as a person qualified to practice in Ontario as a massage therapist during the period of his suspension constituted professional misconduct as defined by Section 26, Paragraph 41 of the Professional Misconduct Regulations and also section 7 of the *Massage Therapy Act*.
- The Member further acknowledged that by holding himself out as a massage therapist holding a valid Certificate of Registration to many clients and submitting the false Declaration of Inactive Certificate in his 2004 Registration Renewal Form also constituted disgraceful, dishonourable and unprofessional conduct.

**Decision:**

The panel found the facts as presented in the Agreed Statement of Facts and Joint Submission respecting penalty supported a finding of guilty and the imposition of a penalty.

**Penalty:**

1. A six-month suspension of the Member's Certificate of Registration, to be served consecutively, without interruption, and to commence on a date fit to be fixed by the Registrar;
2. The imposition of the following terms, conditions, and limitations on the Member's Certificate of Registration to include:
  - i. Notwithstanding the previous paragraph, the suspension shall continue indefinitely until such time as the member:
    1. successfully completes courses in Record Keeping, Regulations, and Ethics and Boundaries as approved by the Registrar; and
    2. pays the sum of \$1,825.00 as a contribution towards the legal and other costs incurred by the College in the course of investigating and prosecuting the matter.
  - ii. Within 90 days following the completion of the course work, the Member is to provide a written report describing what he has learned through the courses, how his conduct reflects upon himself in the profession, and how his conduct relates to the Charter of Professionalism. The report, in whole or in part, or summary thereof, may be published in the *College Standard* or such other College publication as deemed appropriate.
  - iii. Two inspections of the Member's practice at his own expense within 24 months following the completion of the period of suspension;
3. A public and recorded reprimand for an order that the results of the hearing be included in the public portion of the register.

**Panel's Reasons for Decision and Penalty:**

The panel accepted the Joint Submissions made by the parties and found the same to be appropriate in the circumstances. The panel indicated that the penalty imposed achieved both specific deterrence and rehabilitation for the member by the imposition of a six-month penalty coupled with course work and the requirement to provide written submissions reflecting upon the conduct of concern and his course work. The panel was of the view that the penalty was sufficient to achieve deterrence in that like-minded members will be deterred from engaging in such conduct in light of the length of the suspension, the public reprimand and the imposition of a significant ward of costs. The panel noted that the public interest was also recognized by keeping the member out of the profession for a period of six months, and requiring him to complete course work to make him a better practitioner as well as having

his practice inspected upon his return to practice. The panel noted that the disposition of this case, in particular the six- month suspension was consistent in principle with other cases of a similar nature. It was further noted by the panel that in support of the joint submissions of the parties an undertaking was entered into by the Member where he agreed amongst other things not to engage in any massage-like activity for a fee, whether or not the provision of such activity constituted massage therapy during his entire suspension.

### **The Reprimand**

Immediately following the hearing the Member waived his right of appeal and a public reprimand was administered by the Chair of the Panel.

### **Editorial note**

This case repeats and reinforces the message in the Bain Decision of February 2007. The College will not tolerate its members breaching the terms and conditions of their registration. Any member who is found to have engaged in active practice while their registration is under suspension will be brought before the Discipline Panel of the College and significant periods of suspension and other financial penalties will be sought upon conviction. The College is always mindful that success of the profession is closely intertwined with the public's trust and the relationship with extended health care insurers. Conduct of this nature could jeopardize both. It is also noted that this case emphasizes the College's commitment to address inappropriate conduct such as the misrepresentation of information on Registration Renewal Forms or other forms submitted to the College. Members must be vigilant to ensure that any information required to be completed for the College are accurate.