

Merrill Sandell

member: Merrill Sandell

Hearing Dates: May 14, 2003

Charges of Professional Misconduct

- Failing to keep records as required;

Brief Synopsis of Facts

- The member during the period of early 1998 to June of 2001 practiced at a sports club where he conducted numerous Massage Therapy treatments;
- In relation to most of the clients seen by the member, the member's client records included only the personal health information sheet on which the clients reported their own health history and some notes relating to payments owed to the member;
- The records kept by the member did not include the information required by the applicable sections of the regulations governing Massage Therapists;
- The member alleged that more complete records were kept on a computer data base but the records were erased during a change in his computer operating system
- The member failed to ensure that the computer records were secure from this kind of loss as required by the applicable regulations.
- The member pleaded guilty to the charges.

Decision

The panel accepted the member's guilty plea and therefore found him guilty of the charge of professional misconduct.

Penalty

- Three (3) months suspension to be remitted if the member completes a record-keeping course; and
- Costs of \$500.00

Panel's Reasons for Decision

The panel found that the facts of the case supported the guilty plea and a finding of guilt. The panel wished to make it clear to the member and the profession that client records are essential to the practice of the profession. The panel was concerned that the member failed to take appropriate precautions to safeguard his clients' records when it was quite reasonable to

assume that computers malfunction. The panel finds that had the member taken precautions that contemplated a 'computer crash' this matter may well have not come to this stage. The panel was extremely concerned that the member's failure to take such precautions resulted in a significant number of clients who can no longer access information relating to the treatments they received. The panel recognized the special circumstances in this case when determining the penalty as the member was residing in British Columbia at the time of the hearing and for this reason only was a remission of the suspension period considered. The panel was of the opinion that the penalty imposed ensured that if the member returned to an immediate practice in Ontario he could only do so if he completed the required course. If however the member did not complete the course work and return to Ontario he would be required to serve his suspension period immediately.