

## EXECUTIVE SUMMARY – ROLAND PLUMMER, RMT

### DISCIPLINARY HEARING CONDUCTED OCTOBER 28, 29, NOVEMBER 12, 2010, PENALTY HEARING CONDUCTED MAY 23, 2012, MOTION HEARD JANUARY 17, 2013

The Member, Roland Plummer, RMT, was charged with four counts of professional misconduct:

1. Falsifying records relating to the Member's practice;
2. Signing or issuing in the Member's professional capacity, a document that the Member knows contains a false or misleading statement;
3. Contravening the *Massage Therapy Act*, the *Regulated Health Professions Act* or the regulations under either of those Acts; and
4. Engaging in conduct unbecoming of a massage therapist.

#### **THE PLEA**

The Member entered a not guilty plea to all of the allegations of professional misconduct.

#### **THE FACTS**

The Panel heard evidence from four witnesses, including the Member. The Member rented a room at the Apexx Injury Rehabilitation Centre (the "Clinic").

The College investigator testified that he booked an appointment at the Clinic with the Member for June 6, 2007 using the name "Dan Davis". When the investigator arrived at the Clinic, a young female introduced herself as Denise Johnson. Ms. Johnson told the investigator that she would be doing the massage. After the massage, and at the investigator's request, Ms. Johnson provided the investigator with a computer generated receipt with the Member's name on it. The next day, the investigator called the Clinic. The receptionist told the investigator that the Member was the main therapist and Ms. Johnson was his employee.

The investigator attended for a second massage on August 17, 2007. The investigator again tried to book a massage appointment with the Member. When the investigator arrived at the Clinic for the massage, Ms. Johnson again greeted him and said that she would be performing the massage as the Member was not available. The investigator received a half hour massage. Ms. Johnson provided the investigator with a receipt with the Member's name and RMT number stamped on it.

The investigator attended the Clinic for a third massage on November 23, 2007. He did not request a specific therapist. Ms. Johnson again performed the massage. The investigator was provided with a receipt. He saw Ms. Johnson stamp the receipt with the Member's stamp. The investigator picked up a business card at the front of the desk which had the Clinic's logo on it. It identified Ms. Johnson as a registered massage therapist.

The investigator never met the Member nor, to his knowledge, spoke with the Member by telephone.

A second College investigator testified that she attended the Clinic to interview the Member on November 13, 2008. The Member advised that he hired RMTs to perform massage therapy in his rented room at the Clinic. The Member had three RMTs and one non-RMT working for him. The Member advised that the non-RMT was Ms. Johnson. Her role was to operate the business in his absence. The Member told the College investigator that Ms. Johnson's duties were clerical. He visited the Clinic daily to check on the business.

The Member told the investigator that he had two stamps with his massage registration information on it stored in a lock-box at the front desk. This was readily accessible by the Clinic's staff who knew where the key was. The Member's therapists at the Clinic kept their own files and appointment books. The Member stated that he had not given Ms. Johnson permission to massage clients or use his stamp. When asked for the client record for "Dan Davis" (the undercover investigator), the Member replied that there was no client by that name and thus no file. On Mondays, with clients' permissions, the Member would demonstrate techniques on the client in front of Ms. Johnson. She would treat the client under his supervision.

Ms. Johnson testified under subpoena. She was registered with the College as of February 20, 2010 with restrictions on her registration. The restrictions related directly to the conduct at issue in the Member's hearing.

Ms. Johnson worked at the Clinic for the Member from March, 2007 for one year. Her duties included cleaning the massage room, answering the telephone, changing sheets and filing. She was paid in cash on a bi-weekly basis. Following a discussion with the Member, Ms. Johnson began performing relaxation massages a few times a week.

Ms. Johnson testified that she saw the Member as a mentor. He taught her massage techniques. If the client agreed, she would practise the techniques shown under supervision.

Ms. Johnson testified that the Member's stamp was kept in a lock-box at the Clinic. Ms. Johnson stated that she had access to the lock-box as the Member had given her a key.

On June 6, 2007, she was asked to stay late to treat Mr. Davis. Upon the request for a receipt, Ms. Johnston testified that she called the Member because she was uncomfortable providing a receipt. The Member told Ms. Johnson to do the massage and issue a receipt. After the treatment, Ms. Johnson printed the receipt, which had the Member's name and registration number on it. She filled in the appropriate information in Mr. Davis' patient chart and filed it.

On August 17, 2007, Ms. Johnson testified that she was again asked to perform a massage on Mr. Davis. She called the Member to seek instructions, and understood that she was to do the massage and issue the receipt. Ms. Johnson provided a receipt to Mr. Davis with an invoice, with the Member's stamp on it.

On November 23, 2007, the same routine was followed; however, Ms. Johnson did not call the Member first to request permission.

The Member testified that he did not know that Ms. Johnson was massaging clients and would never have told her to do so. He also stated that he never authorized her to issue receipts in his name when she massaged a client. The Member stated that he started the business to help other massage

therapists gain business skills and experience. He testified that he did not keep track of the number of treatments each therapist performed or the number of appointments at the Clinic. The therapist would leave money in the lock-box and would invoice him for their work. Although the therapist had certain days in the office that they worked, they could come in whenever they wanted if they had an appointment scheduled. The Member stated that he never checked to see if his employees were following the standards of practice of massage therapy.

### **FINDING OF GUILT**

The Panel found the Member guilty of allegation 4, conduct unbecoming of a massage therapist.

The Panel found that the Member had instructed and/or authorized employees or individuals to issue receipts to clients that falsely represented that massage therapy had been provided by the Member.

As for the other allegations, the Panel found that the Member did not falsify records or sign documents as someone else, namely Ms. Johnson, did.

The Panel concluded that the Member's statement that he started the business to help other therapists gain business skills and experience was not credible. Upon questioning by the College's counsel, there were no business practices in place. The Member had no central appointment book, no receipt book, money was never reconciled and no way of knowing what treatments his therapists were doing. The Panel was satisfied that the Member instructed his employee, Ms. Johnson, to issue false receipts.

### **THE SENTENCING HEARING**

The penalty hearing was contested.

The College argued that conduct unbecoming a massage therapist was a serious charge. The Member had instructed a future RMT to break the Standards of the College. By instructing an employee to issue false receipts, the Member was responsible; acting indirectly does not limit his culpability. Among other things, a substantial suspension of six months was sought.

Counsel for the Member disagreed on the proposed suspension, start date of suspension and costs sought by the College.

### **PENALTY ORDER**

The Panel imposed the following Order:

1. A six month suspension of the Member's Certificate of Registration to commence on June 11, 2012. The suspension shall be remitted, however, for a period of three months if the Member complies with the terms, conditions and limitations imposed on the Member's Certificate, as set out below;
2. The following terms, conditions and limitations shall be imposed upon the Member's Certificate:

- (a) The Member shall enroll in and successfully complete, at his own expense, the College's on-line record keeping course, or Registrar approved record-keeping course, and provide satisfactory evidence within 30 days of completing same;
  - (b) The Member shall enroll in and successfully complete, at his own expense, the College's Professionalism Workshop, and provide satisfactory evidence within 30 days of completing same; and
  - (c) The College is entitled to contact the facilitators of the above listed courses and request a report to the Registrar outlining the Member's participation in the course which, if unsatisfactory, will constitute a breach of paragraphs 3(a) and (b) above.
3. The Member shall submit to two inspections of his practice, at his own expense, within approximately six months and one year of his returning to practice. The costs of each inspection shall not exceed \$275.00 each;
  4. The Member shall contribute to the investigation and prosecution costs of the College in the amount of \$6,000.00, payable to the College in monthly installments of \$250.00 over 24 months;
  5. The Member shall appear before a Panel of the Discipline Committee to receive a public and recorded reprimand; and
  6. Publication of this decision in the usual course and, if the Member fails to comply with any paragraph of the Penalty Order, the College may publish, at the discretion of the Registrar, details of the Member's failure to comply.

In its reasons for the Penalty Order, the Panel noted that the charge was serious and a suspension was warranted. A six month suspension with the ability to remit three months was fair and consistent with previous cases dealing with similar circumstances. It would provide adequate deterrence to the Member and other members of the profession, and make clear that the College will not tolerate this type of behaviour. The Member was not entitled to a lighter penalty because he did something indirectly through an employee.

With respect to the suspension commencement date, the Panel concluded that two weeks to close the Member's practice was sufficient time. A suspension is a financial hardship for any RMT and a delay of two months was not appropriate. The suspension commencement date is not chosen for a member's convenience.

With respect to the issue of costs, the Member behaved inappropriately and his actions necessitated an investigation and subsequent four day discipline hearing. These are costly proceedings and it is important that the Member contribute to those costs. The Panel ordered costs of \$6,000.00 payable over 24 months.

#### **ADDENDUM**

On January 17, 2013, the College brought a motion, on consent, to set aside the finding of professional misconduct under s. 26(4) of the Misconduct Regulation, as this allegation had not been referred to the

Discipline Committee, and was incorrectly included in the Notice of Hearing. Instead, the allegation of disgraceful, dishonourable and unprofessional conduct had been referred. The Panel granted the motion and ordered that its finding of conduct unbecoming a massage therapist be set aside and vacated.

The Panel also ordered that the published results of the discipline proceeding be updated with an addendum to reflect this subsequent order.