

Discipline Decisions 2006

Member: Howard Heaven, RMT

Hearing Date(s): December 6, 2006

Charge(s) of Professional Misconduct:

- Failing to abide by a written Undertaking given to the College; and
- Engaging in disgraceful, dishonourable and unprofessional conduct.

Brief Synopsis of Facts:

- The facts of the case were established by an Agreed Statement of Facts entered as an Exhibit during the hearing, which acknowledged the following:
- On January 19th, 2003, the College received a letter of complaint concerning the Member.
- In relation to the complaint, the member on November 7, 2003 entered into an Undertaking/Agreement with the College to address the issues raised in the complaint. The terms of the Undertaking/Agreement required the member to complete coursework, prepare a written presentation to a panel of the Complaints Committee and submit to an inspection of his practice. An additional term of the Undertaking/Agreement also provided that failure to comply with any term could result in a referral to the Discipline Committee;
- Despite repeated following up with the member, he acknowledged that he failed to comply with terms of his Undertaking/Agreement;
- The member further acknowledged that failure to comply with the terms of an Undertaking/Agreement constituted an act of professional misconduct and that his continuing persistent failure to comply with the Undertaking constituted disgraceful, dishonourable and unprofessional conduct.

The Plea:

The member entered a guilty plea to the charges of professional misconduct.

Decision:

The panel found the facts as presented in the Agreed Statement of Facts supported a finding of guilt. The panel therefore found the member guilty of the allegations of professional misconduct.

The Penalty Hearing

Submissions were made by the College and the member with respect to the penalty to be ordered. The College made submissions emphasizing the need for members to understand their professional obligations and the supervisory role that the College plays in the protection of the public interest. It was emphasized that a failure to abide by a written Undertaking with the College must be met with a firm response by the College in order to ensure compliance by the membership.

The member submitted that the impact of a lengthy period of suspension would result in the loss of his livelihood and his home, and would cause extreme hardship for his family. The member expressed remorse for his conduct and assured the Committee that he had now enrolled in the outstanding course work required of him and he intended to complete it at the first opportunity.

Penalty:

- (1) Reprimand, public and recorded in the public portion of the register;
- (2) 120 days suspension of his Certificate of Registration, 90 days of the suspension to be remitted, in the event the member completes all outstanding terms of his Undertaking by no later than May 1st, 2007;
- (3) Imposition of a term, condition and limitation on the member's Certificate of Registration that the member's registration status will not be reinstated unless and until all terms of his Undertaking/Agreement have been complied, therefore, the member's registration will be perpetually suspended, if he does not complete the terms of his Undertaking;
- (4) Upon resumption to practice, the member is to submit to an inspection of his practice, at his own expense within six months following the completion of the period of the suspension;
- (5) \$1,200.00 costs and
- (6) Publication of the decision.

Panel's reasons for Decision and Penalty

The panel determined that the joint submissions with respect to the facts of the case supported a finding of guilt. The panel was concerned by the member's failure to comply with the terms of the Undertaking/ Agreement with the College and was of the opinion that this case must send a message to the member and the profession that ignoring directions or obligations resulting from investigations and complaints processes of the College will not be tolerated. The panel found the member was remorseful for his conduct and that the penalty order imposed was appropriate serving to demonstrate protection of the public, deterrence of the member and the profession as a whole.

EDITORIAL NOTE

This case highlights the significance of members who enter into Undertakings and/or Agreements with the College. These documents are relied upon by the College in the course of its work. Any member who enters into such Undertakings and/or Agreements and breaches them can expect that the College will be adopting a policy of zero tolerance and will, absent exceptional circumstances, be looking for significant periods of suspension as well as significant contributions towards the costs of any discipline proceedings arising as a result.