

Discipline Decision 2007

Member: Kevin Bain, RMT

Hearing Date(s): February 14, 1007

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. Bain became a member of the College on May 18, 1998.
- Despite receiving reminders the Member failed to pay his annual renewal of registration fees and therefore his Certificate of Registration was suspended effective November 19, 2004.
- Notwithstanding the suspension, the Member continued to hold himself out and practice as a massage therapist from November 22, 2004 until March 2, 2005, performing at least 221 treatments while his Certificate of Registration was suspended.
- The College received a letter of complaint from the owner of the clinic where the Member was practising massage therapy after two of the Member's clients reported that their claims for treatment from their extended health care insurers had been denied.
- Upon notification of the complaint, the Member promptly acknowledged he was continuing to practice and hold himself out as a registered massage therapist which in turn constituted an act of professional misconduct. He also surrendered his Certificate of Registration to the College on April 22, 2005 the day after he had been notified of the complaint.
- The member acknowledged that his continued and persistent misrepresentation to his clients that his Certificate of Registration was in good standing and the receipts he issued could be submitted to extended health care insurers for reimbursement constituted a breach of a term of the *Massage Therapy Act* and 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:

- (a) a six month suspension of the Member's Certificate of Registration;
- (b) an Order directing the Member to appear before a panel of the Discipline Committee to be reprimanded and that reprimand be recorded in the College's register;
- (c) an Order directing the Member to pay the College the sum of \$1,500.00 as contribution towards the College's legal costs and expenses incurred by the College in the course of investigating and prosecuting the matter; and
- (d) an Order directing that the results of the hearing and the sentence be included in the public portion of the College's register.

Panel's Reasons for Decision and Penalty:

The Panel determined that the Joint Submissions made by the parties was appropriate in the circumstances. The panel noted that it is a very serious offence to practice massage therapy without a valid registration and as a result the six month suspension was entirely appropriate and should send a message to like-minded members of the profession that a failure to renew one's license while continuing to practice will not be tolerated and would reasonably be regarded by members of the profession as disgraceful, dishonourable or unprofessional. The panel was concerned about the effects of the member's actions on the clients involved, many of whom had been misled to believe they would be reimbursed for the Member's services. The panel found that the suspension of the Member's Certificate spoke to the issue of general deterrence and would be sufficient to dissuade other members of the profession from engaging in similar conduct. The panel was satisfied that the Member was apologetic and remorseful. It was further noted that the Member surrendered his Certificate of Registration shortly after the complaint was filed acknowledging his mistake and cooperating with the College throughout the proceedings. The panel found the cost award imposed coupled with the suspension is a significant financial penalty

Editorial Note

This case is intended to send a message to the profession that the College will not tolerate its members breaching terms and conditions of their registration and any member found to be engaging in practice while their Certificate of Registration is suspended will be brought before the Discipline Panel where significant periods of suspension and financial penalties will be sought upon conviction. The College is mindful that the success of the profession is closely tied to the public's trust and its relationship with extended health care insurers.