

## Discipline Decisions 2006

**Member:** Brendan Staples, RMT

**Hearing Date(s):** December 6, 2006

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

- Contravening a term, condition or limitation imposed on a certificate of registration;
- Failing to keep records as required by the Regulations.

**Brief Synopsis of Facts:**

- The facts of the case were established by an Agreed Statement of Facts and a Joint Submission respecting penalty, which acknowledged the following:
- Between January 1, 2004 and December 1, 2004, the member elected to hold an inactive certificate of registration as he was scheduled to leave the country in March of 2004.
- Pursuant to section 8(2) of the regulations made under the *Massage Therapy Act 1991* it is a condition of an Inactive Certificate of Registration that the member not practice in Ontario as a massage therapist.
- During January and February of 2004, while holding an inactive Certificate of Registration the member was practising in Ontario as a massage therapist.
- It was acknowledged that in respect of 20 clients that the member treated during this time he failed to retain the client health records.
- The College and the member made joint submissions to the panel regarding an appropriate penalty to be imposed given the circumstances of this case.

**Decision:**

The panel found the facts as presented in the Agreed Statement of Facts and the Joint Submissions respecting penalty, supported a finding of guilt and the imposition the penalty order.

**Penalty:**

- (a) Reprimand, public and recorded on the public portion of the register
- (b) 60-day suspension of the member's certificate of registration, 30 days of the suspension to be remitted in the event the member enrolled in, and successfully completed, the College's courses in boundaries and ethics and a Registrar approved record keeping course by no later than a date specified by the Registrar
- (c) Costs of \$1,825.00 and
- (d) 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 and the proposed penalty was appropriate for a finding of guilt and the imposition of the penalty order. The panel noted that the suspension of the member's Certificate of Registration spoke to the issue of general deterrence in that it would be sufficient to dissuade other members of the profession in similar circumstances from engaging in practice while holding an inactive certificate of registration. The panel was satisfied that the member was sufficiently remorseful and apologetic as to have learned his lesson. It viewed the financial contribution towards costs of \$1,825.00, coupled with the suspension, as a significant financial penalty to the member in his particular circumstances. It also noted the rehabilitative aspect of the joint

recommendation involving the requirement that the member enrol in and successfully complete courses in record keeping, ethics and boundaries. Finally, it was satisfied that the public interest was protected in all the circumstances. It noted specifically that the member was quick to acknowledge his mistake and cooperated with the College even before the initial discipline proceedings were initiated.

#### **EDITORIAL NOTE**

This case is intended to send a message to the profession at large that the College will not tolerate its members breaching the terms and conditions of their licences. Any member who is found to be engaged in practice having elected to hold an inactive certificate will be brought before the Discipline Panel, where significant periods of suspension and financial penalties will be sought upon conviction. The membership is also reminded of its obligation to maintain records, whether or not there is an intention to treat the clients again for the minimum regulatory period of 10 years.