

# Jennifer Berry, RMT

**Location:** Vancouver, BC

**Date of Action:** November 26, 2020

**Nature of Action:** The registrant, Jennifer Berry, RMT, voluntarily entered into a consent and undertaking agreement with the Inquiry Committee of CMTBC. Ms. Berry agreed to the following terms:

1. a formal reprimand;
2. completion of remedial coursework on record-keeping;
3. a three-month suspension from practice (commencing on December 10, 2020), which may be reduced to a two-month suspension should she complete the required remedial coursework by a specified date;
4. payment of a fine in the amount of \$1,000;
5. payment of a portion of the costs of the investigation in the amount of \$1,000; and
6. undertakings not to repeat the following conduct:
  - a. violating provisions of CMTBC's Bylaws relating to record-keeping;
  - b. destroying and re-writing records relating to her massage therapy practice; and
  - c. creating back-dated records without a clear notation that the records were not created contemporaneously with the dates indicated.

**Reasons:** The Inquiry Committee received a complaint alleging that Ms. Berry failed to keep a clinical record for a patient whom she treated approximately 3 times a week from 2015 until 2019 (the "Patient"). During the investigation, additional concerns arose about Ms. Berry's record-keeping in relation to the Patient.

As part of the agreement in this matter, Ms. Berry admitted that she issues handwritten receipts to her massage therapy patients; a flood destroyed her receipts for treatments up to and including 2017, and in 2018 she shredded old boxes of paper which included her 2017 receipts that were not destroyed by the flood. Ms. Berry also admitted that she did not have a note-taking system prior to August 2019. She recorded her treatments in notepads; her

notes were not readable to anyone except her. A few years ago, she began to keep her notepads in a locked filing cabinet.

When the Patient's legal counsel contacted Ms. Berry in 2019 to request her records for the Patient's treatments, Ms. Berry could not locate her notepad notes for the Patient and was unable to find her locked filing cabinet. Ms. Berry advised the Patient's lawyer in writing that she did not have clinical notes for the Patient.

Ms. Berry subsequently located the locked filing cabinet during a long weekend. During that weekend, Ms. Berry re-wrote all of her notes relating to the Patient from April 2015 to July 2019 by transferring the information from the notepads and some notes that were on loose pieces of paper to new pages of paper with a template printed on them (the "Transferred Records"). Ms. Berry admitted that she did not have time to review the Transferred Records for accuracy and may have made mistakes when writing them. She also admitted that she shredded the notepad notes for the Patient after creation of the Transferred Records.

When Ms. Berry then provided copies of the Transferred Records to the Patient's lawyer, she did not advise that the Transferred Records were written in a single sitting and not created contemporaneously with the dates indicated.

When Ms. Berry later provided copies of the Transferred Records to CMTBC, she did not advise that the Transferred Records were written in a single sitting and not created contemporaneously with the dates indicated.

Ms. Berry acknowledged that by engaging in the conduct described above, she committed professional misconduct and violated:

1. section 4(a) of Schedule "E" to the College's Bylaws in effect from April 2015 until April 15, 2016, by failing to keep a clinical record for the Patient containing all of the information required under section 4(a);
2. section 3(1)(a) of Schedule "E" to the College's Bylaws in effect since April 16, 2016, by failing to keep a clinical record for the Patient containing all of the information required under section 3(1)(a);
3. section 3(1)(c) of Schedule "E" to the College's Bylaws in effect since April 16, 2016, by failing to keep a record of payment for the Patient's treatments as required under section 3(1)(c);

4. section 4 of Schedule "E" to the College's Bylaws in effect since April 16, 2016, by failing to retain Health Care Records and Other Records in her custody and control for a minimum period of sixteen years from the date of last entry;
5. section 3 of Schedule "E" to the College's Bylaws in effect from April 2015 until April 15, 2016, by failing to protect and maintain the confidentiality of the Patient's personal information and ensure that all records from her practice containing the Patient's personal information were safely and securely stored, or disposed of, by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure, copying, modification or disposal or similar risks; and
6. section 2 of Schedule "E" to the College's Bylaws in effect since April 16, 2016, by failing to adequately protect and maintain the confidentiality of the Patient's personal information.

The Inquiry Committee considered Ms. Berry's conduct to be serious. The Inquiry Committee is satisfied that the undertaking and consent agreement in this matter appropriately reflects the seriousness of the registrant's conduct and protects the public interest.