

THE MATTER OF THE HEALTH PROFESSIONS ACT, R.S.A.
2000, c.H-7;

AND IN THE MATTER OF A HEARING INTO THE CONDUCT
OF [REDACTED] A MEMBER OF THE ALBERTA
COLLEGE OF SOCIAL WORKERS;

AND INTO THE MATTER OF A COMPLAINT BY [REDACTED]
[REDACTED] INTO THE CONDUCT OF [REDACTED]
PURSUANT TO S. 77(a) OF THE HEALTH PROFESSIONS ACT

REASONS FOR DECISION

Pursuant to a public hearing held on December 15, 2017 and January 22, 2018 at the Edmonton offices of Parlee McLaws, the Alberta College of Social Workers Hearing Tribunal is issuing its reasons for decision.

A hearing into the conduct of [REDACTED] was held on December 15, 2017 and January 22, 2018 pursuant to the *Health Professions Act*, R.S.A. 2000, c.H-7 as amended (the "Act").

The Members of the Hearing Tribunal present:

Stanley Haroun, RSW, Chair

Ann Henry, RSW

Sherri Tanchak, RSW

James Lees, Public member

The hearing was a public hearing pursuant to s. 78 of the Act.

The investigated member, [REDACTED] provided a written admission of unprofessional conduct to the Hearing Tribunal dated pursuant to s. 70(1) of the Act.

The Hearing Tribunal accepts all of the admissions of the investigated member.

The allegations in the Notice of Hearing arise from a complaint from [REDACTED] dated July 5, 2017.

The allegations in the Notice of Hearing are as follows:

1. During the course of undertaking your employment responsibilities while driving youth client A, you placed the youth at risk as follows:
 - a. On May 30, 2017, you texted while driving (contrary to the Distracted Driving laws)

- b. On May 30, 2017, you negotiated unsafe sudden turns
 - c. On May 30, 2017, you wrote emails while you were driving and/or sitting in the vehicle
 - d. As a result of your distracted driving, you became erratic in driving while the youth was in the car. Specifically you crossed over into oncoming traffic lanes
 - e. That you parked in a merge lane on the highway for a client to have a when there were safer parking options
 - f. That you drove at a speed over the designated limits (up to a 140 km/hr) in poor road conditions when a driving advisory warning was in effect
 - g. That while driving you unlocked your cellphone screensaver
 - h. That you utilized your cellphone GPS function while driving
2. That you inappropriately left a youth in a hotel room (who was recovering from dental surgery) unattended which allowed the youth to leave without supervision.
 3. You failed to appropriately advise staff and your co-workers regarding your whereabouts causing risk to staff and other youth clients.
 4. On May 10, 2017, you breached client confidentiality by discussing personal matters relating to a youth client on your case load on the speaker phone in the presence of another youth client who was in your vehicle at the time.
 5. On June 22, 2017, you breached confidentiality by leaving a Children's Services Report that contained sensitive client information in your vacated rental apartment.
 6. That in response to questions from your employers with respect to issues of concern (leaving the youth unsupervised and speeding), you did not respond to those questions in an honest and forthright manner.

The hearing proceeded on December 15, 2017 and January 22, 2018.

The Hearing Tribunal heard from the following witnesses at the Hearing:



Present at the Hearing:

Karen Smith, Counsel for ACSW (December 15, 2017 and January 22, 2018)

Sheryl Pearson, Manager, Regulatory Practice and Complaint Director for ACSW
(December 15, 2018)

The following documents were accepted as Exhibits at the Hearing:

1. Notice of Hearing
2. Notice to Attend
3. Investigation Report
4. Affidavit of Service
5. Admission of Unprofessional Conduct
6. Consent Order (proposed)

General Findings of Fact

██████████ graduated from the Lakehead University in Thunder Bay, Ontario in 2014 with a BSW. At all material times, ██████████ was a registered social worker with the Alberta College of Social Workers since 2016. ██████████ was employed by Northwest Children Services in Grande Prairie, Alberta. He commenced employment in the Spring 2016.

In the course of his employment, ██████████ had a wide range of responsibilities including the case management of youth. His employment necessitated him to travelling with youth between Grande Prairie and Edmonton.

1. Placing Youth and/or Staff at Risk

The following conduct contravenes ss. E.1(b)(c), G.3(a) of the Standards of Practice 2013, Values 1,3,4 and 6 of the Code of Ethics 2005 and constitutes unprofessional conduct pursuant to s 1(1)(pp)(i)(ii) and (xii) of the *Health Professions Act*.

- a. On May 30, 2017, ██████████ used his cell phone while driving (contrary to the Distracted Driving Laws)
- b. On May 30, 2017, ██████████ negotiated unsafe sudden turns
- c. As a result of ██████████ distracted driving, he became erratic in driving while a youth was in the car. Specifically he crossed over into oncoming traffic lanes
- d. That ██████████ parked in a merge lane on the highway for a client to have a cigarette where there were safer parking options
- e. That ██████████ drove at a speed over the designated limits (up to a 140 km/hr) in poor road conditions when a driving advisory warning was in effect

2. **Breach of Confidentiality**

The following conduct contravenes ss.D1(b), D.4(a), D.5(a), G.3(a) of the Standards of Practice 2013, Value 5 of the Code of Ethics 2005 and constitutes unprofessional conduct pursuant to s.(1)(pp)(i)(ii) and (xii) of the *Health Professions Act*.

- a. On May 10, 2017, [REDACTED] discussed personal matters related to a youth client on his caseload on speakerphone in the presence of another youth client who was in his vehicle at the time.
- b. June 22, 2017, [REDACTED] left a Children Services report that contained sensitive client information in his vacated rental apartment.

3. **Failure to Satisfy your Employment Responsibilities**

The following conduct contravenes ss. D.2(a), D.4(a), D.5(a),E.1(b)(iv)(v), G.1(b) of the Standards of Practice 2013, Values 4 and 5 of the Code of Ethics 2005 and constitutes unprofessional conduct pursuant to s. 1(1)(pp)(i)(ii) and (xii) of the *Health Professions Act*.

During the course of employment with the Northwest Children's Services, the employer continued to receive numerous reported concerns from children and youth caregivers for community stakeholders regarding [REDACTED]

- a. Poor decision making
- b. Poor communications
- c. Questionable professional conduct/representation of the employer with children/youth, caregivers and community stakeholders
- d. Timely follow-up with case management activities
- e. Planning with respect to employment responsibilities
- f. Ability to complete assigned tasks
- g. Action in organizing a box labeled "shredding" which contained unpaid invoices and active file documents
- h. Failure to ensure updated client contact notes were added

The Hearing Tribunal considered the written submissions provided in advance of the hearings, the revised consent order and representations of the Member at the two hearings. The Hearing Tribunal

put significant weight to the requirements outlined in the Health Professions Act (HPA), Social Workers Professional Regulation, the relevant Code of Ethics and Standards of Practice.

In considering the nature of the unprofessional conduct issues identified in this matter, the Hearing Tribunal had lengthy discussions about the Member's appreciation of and capacity to exercise situational awareness in his professional role and responsibilities as a permanency worker with Northwest Child Services. Situational awareness refers to a person's "perceptions of the elements of the environment in a volume of time and space, the comprehension of their meaning, and the projection of their status in the near future" (Endsley, 1995). Situation awareness consists of three hierarchical levels: perception, comprehension and projection. Perception is the first level of situational awareness and refers to how people perceive their details in order to integrate information and prioritize tasks. Projection, the highest level of situational awareness, refers to the ability of individuals to forecast outcomes based on their holistic awareness of circumstances. When an individual's situation awareness is limited or compromised, there is increased risk for poor decision making, workplace accidents and unethical conduct.

With respect to the information shared with the Hearing Tribunal, we submit that the Member's struggled to consistently engage in situational awareness contributed to his decline of professional conduct, environment and context. Comprehension refers to how people understand and interpret relevant information.

REASONS FOR DECISION ON SANCTIONS

As a result of the findings of the Hearing Tribunal with respect to allegations of unprofessional conduct, the Parties presented a proposed **joint submission as to sanctions** during the hearing on December 15, 2017. The Hearing Tribunal adjourned to consider the proposal, and decided to amend the sanctions due to a significant concern with the need to protect the public which was not addressed in the original proposal. On January 22, 2018 the Hearing Tribunal reconvened to present a **revised joint submission as to sanctions**. Following discussions with the parties regarding the rationale for the revisions, the Hearing Tribunal makes the following orders in accordance with s. 82 of the Act.

1. A reprimand shall be issued as against [REDACTED]
2. Prior to returning to work as a Registered Social Worker, [REDACTED] must complete an assessment regarding his current capacity to carry out the duties and responsibilities of a Registered Social Worker. Arrangements for this assessment will be coordinated with the ACSW.
3. Pending confirmation of satisfactory results following his practice assessment:

- a. [REDACTED] social work practice shall be subject to supervision for a period of two (2) years from the date that [REDACTED] returns to practice. The supervisor may be within or outside the context of [REDACTED] employment. The supervisor shall be approved by the ACSW and the ACSW shall be entitled to such reporting and disclosure from the supervisor as the ACSW deems necessary from time to time;
 - b. [REDACTED] shall be obliged to undertake six (6) consultations with a senior social work practitioner approved by the ACSW over a period of one (1) year from the date of his return to work. The cost of these consultations will be the responsibility of [REDACTED]. The ACSW shall be entitled to any such reporting as it deems necessary from time to time;
 - c. [REDACTED] shall successfully complete a social work university level course that will engage him in developing practice competencies through face-to-face (classroom) instruction and practice in the areas identified in the professional capacity assessment, including but not limited to the foundations and practice of social work, at his own cost and to be approved by the ACSW Complaints Director within one (1) year of his return to the practice of social work.
4. [REDACTED] shall pay costs in the amount of \$500.00 within one (1) year from the date of this Order.
 5. The ACSW Complaints Director shall maintain the discretion to suspend [REDACTED] pending a Hearing should the Complaints Director in his/her sole discretion conclude that [REDACTED] has breached this Order.
 6. This order shall be published on a no-names basis.

The Hearing Tribunal makes its orders as set out above on the basis of the following reasons. In determining the appropriate sanctions, the Hearing Tribunal focussed on five main principles:

1. Protection of the Public
2. Deterrence (both specific and general)
3. Preservation of the integrity of the profession
4. Rehabilitation of the member
5. The duty of Fairness to the member

1. Protection of the Public

The ACSW is a self-governing professional body established under the Health Professions Act, and is responsible for regulation of the profession in the public interest. This includes ensuring that all registered practitioners are capable of practicing their profession in a manner that protects the public, including their clients, from unacceptable risk or acts of unprofessional conduct. The Hearing Tribunal sees protection of the public as a primary consideration, and found that [REDACTED] had, during the course of his employment, exercised poor judgment by engaging in activities which put himself, his client and the public at risk. His actions while driving a vehicle accompanied by a client and his breaches of confidentiality are examples of a series of poor judgment and choices made by [REDACTED] as a practicing social worker. The Hearing Tribunal feels strongly that to protect the public interest and clients, it is essential that before returning to work as a registered member, [REDACTED] must undergo a practice assessment to determine his capability to function in his role as a social worker and to ensure he understands the consequences of his decisions and actions when practicing as a registered social worker.

2. Deterrence

The objective of specific deterrence is to reinforce with the practitioner the requirement to not engage in further unprofessional conduct in the future. The Hearing Tribunal believes the sanctions imposed will serve to guide [REDACTED] in the future when he is practicing as a registered social worker. The sanctions serve as a reminder to [REDACTED] that unprofessional conduct has consequences which he will bear as a direct result of any future instances of misconduct.

General deterrence has a similar objective with a broader audience. The intent is to communicate to other professionals who practice in the profession that unprofessional conduct is unacceptable. Such actions carry consequences, and the ACSW will act to address any and all instances of unprofessional conduct by its members.

3. Preservation of the Integrity of the Profession

The ACSW is self-regulated, and as such is responsible for ensuring that the Code of Ethics and Standards of Practice are followed by all registered members, as well as taking disciplinary action in cases of unprofessional conduct. Failure to maintain high professional standards and ethics by the ACSW would serve to undermine public confidence in the profession of social work and its registered practitioners.

4. Rehabilitation of the Member

The Hearing Tribunal noted a pattern of several instances of poor judgment and decision-making by [REDACTED] in providing care and services to his client which

put the client and public at risk. When determining what sanctions to impose on [REDACTED] the Hearing Tribunal placed a high priority on ensuring that [REDACTED] would understand why his conduct did not meet professional standards, complete a course on the foundations and practice of social work, and be subject to regular supervision for a fixed period to demonstrate to the ACSW that the rehabilitation process he follows is successful in ensuring his professional conduct is consistent with the Code of Ethics and Standards of Practice. The hearing Tribunal feels that the course work and supervision are key elements in this rehabilitation process.

5. Fairness to the Member

The Hearing tribunal recognizes the need for fairness in determining sanctions that are appropriate for the unprofessional conduct [REDACTED] has admitted to. The Hearing Tribunal recognizes that there were exceptional personal circumstances which likely contributed to [REDACTED] decisions and actions. Two of the sanctions – a reprimand and payment of \$500 in costs, are at the low end of the spectrum in terms of severity.

The other sanctions address serious concerns regarding [REDACTED] capacity to practice the profession of social work within the Code of Ethics and Standards of Practice, and will support his successful return to practice as a registered social worker compliant with all standards and ethics for the profession. The sanctions imposed align with the incidents of unprofessional conduct admitted to by [REDACTED] and the Hearing Tribunal feels these sanctions are both fair and appropriate.

In determining the appropriate sanctions in relation to the unprofessional conduct, the Hearing Tribunal considered the following factors as outlined in *Jaswal v Medical Board (Newfoundland)* 23.1:

- The nature and gravity of the proven allegations – [REDACTED] misconduct is serious, with potential harm to himself, his client and others. This includes distracted driving and his management of confidential client information and documents.
- The age and experience of the offending practitioner – [REDACTED] is a recent graduate with one year's experience working with a challenging client group.
- The previous character of the practitioner including the presence or absence of prior complaints or convictions – The Hearing Tribunal was not aware of any complaints made to the ACSW regarding [REDACTED] however he had

received a disciplinary letter from his employer in December 2016 regarding performance concerns that needed to be addressed.

- The age and mental condition of the offended client – [REDACTED] client group included the case management of youth, a vulnerable population. A youth was travelling with [REDACTED] in his vehicle when his distracted driving actions put this youth at risk.
- The number of times the offence was proven to have occurred – [REDACTED] Admission to Unprofessional Conduct included a number of specific incidents occurring over a period of time, demonstrating a pattern of poor decisions and choices.
- The role of the practitioner in acknowledging what had happened – [REDACTED] did not dispute his conduct, and cooperated by agreeing to an Admission of Unprofessional conduct. This case moved very quickly due to his cooperation at all stages.
- Whether the practitioner had already suffered other serious financial or other penalties as a result of the allegations being made – [REDACTED] resigned from his position in June 2017 and has not worked as a registered social worker since. The Hearing Tribunal was not aware of any other financial or other penalties.
- The impact of the incident(s) on the affected client – there were no complaints to ACSW from clients regarding [REDACTED] conduct. A youth under his care was exposed to potentially serious risk due to [REDACTED] distracted driving, and [REDACTED] lost custody of confidential information regarding a client under his care.
- The presence or absence of any mitigating circumstances – The Hearing Tribunal was made aware of serious health problems with [REDACTED] daughter back in Montreal, This was a distraction weighing heavily on his mind, and likely impacted his decision-making and situational awareness.
- The need to promote specific and general deterrence and, thereby, to protect the public and ensure the safe and proper practice of social work – this is discussed above under ‘Deterrence’.
- The need to maintain the public confidence in the integrity of the social work profession – this is discussed above also.

- The degree to which the unprofessional conduct that was agreed to have occurred was clearly regarded, by consensus, as being the type of conduct that would fall outside the range of permitted conduct – [REDACTED] actions while driving with a youth client in the car, and his failure to maintain custody/confidentiality of client records are clearly contrary to the ACSW Code of Ethics and Standards of Practice, and [REDACTED] has agreed his actions constitute unprofessional conduct.
- The range of sanctions in other similar cases – no specific case law regarding sanctions was referred to during the hearing. The Hearing Tribunal felt strongly that a practice assessment was an essential component of the sanctions, and members were familiar with previous cases where similar assessments were a requirement before returning to social work as a registered member.

Stanley Haroun, MSW, RSW



Chair, Hearing Tribunal
On behalf of the Tribunal Members