

IN 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 MR.
KEER CHOL, A MEMBER OF THE ALBERTA COLLEGE OF SOCIAL
WORKERS;

AND INTO THE MATTER OF A COMPLAINT INTO THE CONDUCT OF
MR. KEER CHOL PURSUANT TO S. 77(a) OF THE HEALTH
PROFESSIONS ACT

SANCTION DECISION

- 1 Pursuant to a public hearing held on November 29, 2018, October 22, 2019 and October 23, 2019 at the Edmonton offices of Parlee McLaws LLP, 1700 Enbridge Centre, 10175 - 101 Street, Edmonton, Alberta, the Alberta College of Social Workers Hearing Tribunal (the "Hearing Tribunal") issued its decision and reasons in the above noted matter on June 12, 2020 (the "Merits Decision"). The Merits Decision was provided to the College and Mr. Keer Chol, (the "Member") on Friday, June 19, 2020.
- 2 In the Merits Decision, the Hearing Tribunal set out its reasons for finding that the Member had engaged in the following behaviours that constituted unprofessional conduct:
 - *Contacting the student after business hours and at inappropriate times*
 - *Sending text messages to her private phone during non-working hours and weekends*
 - *Making comments about the clothing the student was wearing*
 - *Making sexual references by looking down at your genitalia while speaking to the student*
 - *By indicating to the student that she required friendship from you*
 - *Making inappropriate and/or personal comments to the student*
 - *Making inappropriate personal comments about the student's physical appearance*
 - *Inappropriately touching the student*
- 3 The Member and the Alberta College of Social Workers (the "College") agreed on a timeline within which each party would provide their submissions with respect to an appropriate sanction for the Member.
- 4 The Hearing Tribunal has now heard from both the College and the Member. It has considered the applicable principles and legislation as well as the submissions made by both the College and the Member. A summary of the Hearing Tribunal's order of sanction is below. Thereafter, the Hearing Tribunal sets out its reasons for its findings with respect to the ordered sanctions.

SUMMARY OF SANCTION DECISION

5 The Sanction Order of the Hearing Tribunal is:

- (a) A reprimand shall be issued as against the Member.
- (b) The Member shall be suspended from the practice of social work for a period of three (3) months from the date of the issuance of this Order.
- (c) When the Member decides to return to the practice of social work after his three (3) month suspension:
 - (i) his practice of social work shall be subject to supervision for a period of two (2) years from the date he starts to practice social work. Written notice of the date on which the Member starts to practice social work after his suspension must be provided to the Complaints Director at the College;
 - (ii) The Member shall be obliged to undertake four (4) consultations with a senior RSW social worker practitioner approved by the ACSW within one (1) year from the date the Member starts to practice social work. The costs of such consultations shall be the responsibility of the Member. The ACSW shall be entitled to any such reporting as it deems necessary from time to time.
 - (iii) The Member shall be required to successfully complete, within one (1) year from the date the Member starts to practice social work, ten (10) hours of continuing education in the area of professional boundaries.
 - (iv) The Member shall be prohibited from supervising any practicum students and from teaching students at any level until he has satisfactorily complied with the requirements in c (i) through (iii) and received the express written permission of the Complaints Director.
- (d) The Member will pay costs in the amount of \$5000 within one (1) year of the date of this Sanction Order or in accordance with a payment plan agreed to by the Complaints Director.
- (e) The Complaints Director will retain the discretion to suspend the Member should he refuse to abide by the terms of this Order, pending a Hearing.
- (f) This Order shall be published on a with names basis as a result of the suspension.

REASONS

(a) Legislation and Applicable Principles

- 6 Section 82 of the *Health Professions Act*, RSA 2000, c. H-07, as amended (but prior to the amendments in 2018 and since) provide that with respect to a hearing:

Orders of tribunal

82(1) If the hearing tribunal decides that the conduct of an investigated person constitutes unprofessional conduct, the hearing tribunal may make one or more of the following orders:

- (a) caution the investigated person;
- (b) reprimand the investigated person;
- (c) impose conditions on the investigated person's practice permit generally or in any area of the practice of the regulated profession, including conditions that the investigated person
 - (i) practise under supervision,
 - (ii) practise with one or more other regulated members,
 - (iii) not practise in an area of the practice of the regulated profession until the investigated person has successfully completed a specific course of studies or obtained supervised practical experience of a type described in the order,
 - (iv) not practise in an area of the regulated profession, or
 - (v) report on specific matters to the hearing tribunal, council, committee or individual specified in the order;
- (d) direct the investigated person to satisfy the hearing tribunal, committee or individual specified in the order that the investigated person is not incapacitated and suspend the investigated person's practice permit until the hearing tribunal, committee or individual is so satisfied;
- (e) require the investigated person to undertake counselling or a treatment program that in its opinion is appropriate;
- (f) direct that within the time set by the order the investigated person must pass a specific course of study, obtain supervised practical experience of a type described in the order or satisfy the hearing tribunal, committee or individual specified in the order as to the investigated person's competence generally or in an area of the practice of the regulated profession;
- (g) suspend the practice permit of the investigated person for a stated period or until
 - (i) the investigated person has successfully completed a specific course of studies or obtained supervised practical experience of a type described in the order, or
 - (ii) the hearing tribunal or a committee or individual specified in the order is satisfied as to the competence of the investigated person generally or in a specified area of the practice of the regulated profession;
- (h) cancel the registration and practice permit of the investigated person;
- (i) if, in the opinion of the hearing tribunal, the investigated person's fees for professional services were improper or inappropriate or the professional services that the investigated person provided were improperly rendered or required the complainant to undergo remedial treatment, the hearing tribunal may direct the investigated person to waive, reduce or repay the fee for professional services provided by the investigated person;

- (j) direct, subject to any regulations under section 134(a), that the investigated person pay within the time set in the order all or part of the expenses of, costs of and fees related to the investigation or hearing or both, including but not restricted to
 - (i) the expenses of an expert who assessed and provided a written report on the subject-matter of the complaint,
 - (ii) legal expenses and legal fees for legal services provided to the college, complaints director and hearing tribunal,
 - (iii) travelling expenses and a daily allowance, as determined by the council, for the complaints director, the investigator and the members of the hearing tribunal who are not public members,
 - (iv) witness fees, expert witness fees and expenses of witnesses and expert witnesses,
 - (v) the costs of creating a record of the proceedings and transcripts and of serving notices and documents, and
 - (vi) any other expenses of the college directly attributable to the investigation or hearing or both;
 - (k) direct that the investigated person pay to the college within the time set in the order a fine not exceeding the amount set out in the column of the unprofessional conduct fines table that is specified for the college in a schedule to this Act for each finding of unprofessional conduct or the aggregate amount set out in that column for all of the findings arising out of the hearing;
 - (l) any order that the hearing tribunal considers appropriate for the protection of the public.
- (2) The hearing tribunal may, in an order under subsection (1), stay the order or a portion of the order on conditions set out in the order.
- (3) If the complaints director is satisfied that a person has not complied with an order under this section or section 89(5)(b), the complaints director may
- (a) treat the matter as information under section 56,
 - (b) refer the matter to the hearings director to schedule a hearing before the hearing tribunal, or
 - (c) in the case of non-payment of a fine described in subsection (1)(k) or expenses described in subsection (1)(j) or section 89(6), suspend the practice permit of the investigated person until the fine or expenses are paid in full or the complaints director is satisfied that they are being paid in accordance with an agreement entered into with the investigated person.
- (4) A fine or expenses ordered to be paid under this section and section 89 are a debt due to the college and may be recovered by the college by an action in debt.

RSA 2000 cH-7 s82;2001 c21 s16;2006 c19 s2(9)

7 As noted by the College at paragraph 10 of their submissions, there are a number of objectives that have been recognized as requiring consideration in determining an appropriate sanction for unprofessional conduct. These are, as noted by the College:

(a) Protection of the Public

- (b) Deterrence
- (c) Rehabilitation
- (d) Fairness
- (e) Integrity of the Profession.

Further, as noted by the College, there are a number of factors that can be examined when determining an appropriate sanction for unprofessional conduct. These are commonly referred to as the *Jaswal* factors, in reference to the Newfoundland Supreme Court Trial Division decision in *Jaswal v. Newfoundland Medical Board*, 1996 CarswellNfld 32 (TD). At para. 35 that Court found:

Here, if the Board chose a 14 months' suspension because it happened to coincide with what they were led to believe was the period during which Dr. Jaswal had in fact been suspended from his employment, that in itself is evidence of having acted on a wrong principle. A sentencer should not impose a sentence simply to coincide with what has actually happened; rather, the sentencer should be led to the proper penalty by the application of principles applicable to the case at hand. From the cases cited, the following is a non-exhaustive list of factors that ought to have been considered:

1. the nature and gravity of the proven allegations
2. the age and experience of the offending physician
3. the previous character of the physician and in particular the presence or absence of any prior complaints or convictions
4. the age and mental condition of the offended patient
5. the number of times the offence was proven to have occurred
6. the role of the physician in acknowledging what had occurred
7. whether the offending physician had already suffered other serious financial or other penalties as a result of the allegations having been made
8. the impact of the incident on the offended patient
9. the presence or absence of any mitigating circumstances
10. the need to promote specific and general deterrence and, thereby, to protect the public and ensure the safe and proper practice of medicine

11. the need to maintain the public's confidence in the integrity of the medical profession

12. the degree to which the offensive conduct that was found to have occurred was clearly regarded, by consensus, as being the type of conduct that would fall outside the range of permitted conduct

13. the range of sentence in other similar cases

8 The Hearing Tribunal notes that both the Member and the College agreed that these were the applicable principles that must be applied by the Hearing Tribunal.

(b) Agreed and Contested Sanctions

9 The Hearing Tribunal notes the agreement of the Member with certain of the sanctions requested by the College.

10 The College requested the following sanctions:

- a. A reprimand be issued as against the Member.
- b. The Member be suspended from the practice of social work for a period of three (3) months commencing August 1, 2020 or any other day henceforth from the date of this Order.
- c. The Member's social work practice be subject to supervision for a period of two (2) years from the date of the conclusion of his suspension, the costs of which will be the responsibility of the Member. The supervision be within or outside the context of any of the Member's employment. The supervisor be approved by the ACSW and the ACSW be entitled to such reporting and disclosure from the supervisor as the ACSW deems necessary from time to time.
- d. The Member be obliged to undertake four (4) consultations with a senior RSW social worker practitioner approved by the ACSW within one (1) year from the date of this Order. The costs of these consultations would be the responsibility of the Member. The ACSW shall be entitled to any such reporting as it deems necessary from time to time.
- e. The Member be required to successfully complete within one (1) year of the date of this Order ten (10) additional hours of continuing education in the area of professional boundaries.
- f. The Member be prohibited from supervising any practicum students and from teaching students at any level until he has satisfactorily complied with orders herein and received the expressed permission of the Complaints Director.

- g. The Member pay costs in the amount of \$10,000 within one (1) year of the date of this Order or in accordance of a payment plan agreed to by the Complaints Director.
- h. The Complaints Director would retain the discretion to suspend the Member should he refuse to abide by the terms of the Order pending a Hearing.
- i. There would be publication of this Order on a “with names” basis as a result of the suspension.

11 The Member agreed with the imposition of the sanctions set out in (a) to (b), and (h). The Member argued that, as he was currently not working in the social work profession and did not plan to return to this work in the near future, with respect to (c) through (f), these would be imposed only in the event he returned to work in the social work profession.

12 With respect to costs, the Member argued that costs only be imposed in the event the Member decided to apply to return to the practice of social work, and then that repayment would only start after he had been practicing for one year. With respect to publication of the sanctions, the Member requested that any publication be on a no names basis because he is no longer working as a social worker and is seeking employment in other fields. However, in the event the Member did apply to practice social work in the future, then publication could occur.

(c) Decision of the Hearing Tribunal with respect to Sanction

13 Given the agreement of the Member and College on certain sanctions, and there being no reason to not impose those sanctions, the Hearing Tribunal will impose those sanctions which have been agreed to by both the Member and the College. These are that:

- the Member will receive a reprimand;
- the Member will be suspended from the practice of social work for a period of three (3) months commencing on the date of this Sanctions Decision; and
- The Complaints Director will retain the discretion to suspend The Member should he refuse to abide by the terms of the Order pending a Hearing.

14 With respect to the sanctions suggested by the College in (c) through (f) above, the Hearing Tribunal finds that the objectives of both the protection of the public and rehabilitation of the member can be addressed by imposing such sanctions only in the event the Member choses to once again practice as a social worker.

15 The sanctions listed in (c) through (f) are protective of the public *in the event the Member is practicing social work* and address rehabilitation as it relates to the Member’s return to active practice. In the event that the Member is not providing social work services to the public, there is no reason to protect the public from the

Member's practice. Further, if the Member does not ever return to the practice of social work, then there is no purpose to the rehabilitative directions. In short, the sanctions (c) through (f) are geared towards a member who aims to return to the practice of social work. Therefore, the Hearing Tribunal finds that these sanctions are appropriate to impose only in the event that The Member decides to return to practice as a social worker.

16 With respect to costs, s. 82(j) provides the Hearing Tribunal with specific authority to make an order of costs in order to recoup costs incurred by, in this case, the College, to investigate the complaint and hold a hearing. Further, Courts have recognized that one of the aspects of being in a self regulated profession is that the regulating professional organization will have to incur costs to hold conduct hearings as part of its mandate to assure the public of competent and ethical professionals. These costs may properly be borne by a member whose conduct is at issue and where that conduct has been found wanting (see *Hoff v. Pharmaceutical Assn. (Alberta)*, 1994 CarswellAlta 81 (QB) at para 22, point 3 under Conclusions). However, as noted in *Zuk v. Alberta Dental Association and College*, 2018 ABCA 270 at para. 194, "it is well established that costs orders in the disciplinary process must be sensitive to a member's financial circumstances,".

17 In this way, a costs award places some responsibility on the member for the expenses incurred by the College as a result of his or her conduct. This responsibility exists whether the member choses to practice in the profession going forward, or not. Therefore, the Hearing Tribunal does find it appropriate in this circumstance to make the costs order contingent upon the Member's return to practice.

18 With respect to the quantum of the costs award, the Hearing Tribunal acknowledges the significant costs incurred by the College in the Hearing of this matter. However, it also notes that a \$10,000 costs award would be significantly more than cost awards in previous hearings by a significant amount. Further, it is unclear what impact such an award would have on the Member's financial circumstances, particularly since he is no longer practicing as a social worker. The Hearing Tribunal, therefore, orders the Member to pay costs of \$5000 within one (1) year of the date of this Sanction Order or, alternatively, in accordance with a payment plan agreed to by the Complaints Director.

19 Finally, there is the issue of publication. The Member has requested that the decisions be published on a no-names basis, unless and until he decides to return to social work in a professional capacity. In the Hearing Tribunal's view, this is not appropriate. Given the findings of the Hearing Tribunal regarding the Member's conduct, and given that there are many social work like roles that may not require that an individual be a registered social worker, the Hearing Tribunal concludes that it is appropriate to identify the member in the publication of the decisions, particularly given the findings regarding the disregard of boundaries. The Hearing Tribunal finds that publication furthers the goals of protection of the public, and deterrence. It alerts the public to the conduct of an individual which increases the accountability a member has for their conduct. Further, it makes it clear to members that such

conduct will result in identification of them in the decision which results in members being more fully more accountable for their conduct. This may also act as a deterrent from engaging in such conduct.

Conclusion

20 The Hearing Tribunal hereby makes the following order with respect to sanctions in this matter:

- (a) A reprimand shall be issued as against the Member.
- (b) The Member shall be suspended from the practice of social work for a period of three (3) months from the date of the issuance of this Sanctions Decision.
- (c) When the Member decides to return to the practice of social work after his three (3) month suspension:
 - (i) his practice of social work shall be subject to supervision for a period of two (2) years from the date he starts to practice social work. Written notice of the date on which the Member starts to practice social work after his suspension must be provided to the Complaints Director at the College;
 - (ii) The Member shall be obliged to undertake four (4) consultations with a senior RSW social worker practitioner approved by the ACSW within one (1) year from the date the Member starts to practice social work. The costs of such consultations shall be the responsibility of the Member. The ACSW shall be entitled to any such reporting as it deems necessary from time to time.
 - (iii) The Member shall be required to successfully complete, within one (1) year from the date the Member starts to practice social work, ten (10) hours of continuing education in the area of professional boundaries.
 - (iv) The Member shall be prohibited from supervising any practicum students and from teaching students at any level until he has satisfactorily complied with the requirements in c (i) through (iii) and received the express written permission of the Complaints Director.
- (d) The Member will pay costs in the amount of \$5000 within one (1) year of the date of this Sanction Order or in accordance with a payment plan agreed to by the Complaints Director.
- (e) The Complaints Director will retain the discretion to suspend the Member should he refuse to abide by the terms of this Order, pending a Hearing.

(f) This Order shall be published on a with names basis as a result of the suspension.

DATED and issued this 13 day of October, 2020 on behalf of the Hearing Tribunal.



Richard Ouellet (Chair)



per Glenn Lantz (Member)