

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 May 19, 2019 at the Calgary offices of Parlee McLaws LLP, the Alberta College of Social Workers Hearing Tribunal is issuing its reasons for decision May 19, 2019 pursuant to the *Health Professions Act*, R.S.A. 2000, c.H-7 as amended (the “Act”).

The members of the Hearing Tribunal were:

Frank Kelton, RSW, Chair
Glenn Lantz, RSW
Sheri Epp, Public Member

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

CONSENT ORDER

BACKGROUND FACTS

1. [REDACTED] has been a Registered Social Worker with the Alberta College of Social Workers (“ACSW”) since 1995.
2. At all material times, [REDACTED] was providing counselling services to DP and his spouse LP.
3. [REDACTED] was retained to see DP and LP regarding issues as a couple in his private practice.
4. [REDACTED] initially saw the couple once but subsequently, both showed up more frequently individually rather than as a couple for scheduled sessions as follows:
 - December 19, 2016 – couple visit – intake meeting
 - January 19, 2017 – LP – individual appointment

- January 18, 2017 – LP – individual appointment
 - January 27, 2017 – DP – individual appointment – diagnosis of BPD
 - January 30, 2017 – LP – individual appointment – discussion of spouse with BPD
 - February 7, 2017 – DP – individual appointment
 - February 14, 2017 – DP – individual appointment
 - February 28, 2017 – couple appointment
 - March 10, 2017 – couple appointment
 - March 27, 2017 – DP – individual appointment – couple separated
5. [REDACTED] provided a diagnosis of BPD to DP on January 27, 2017 after one previous initial couple visit and using a diagnostic checklist only.
 6. Details of the diagnosis of BPD of DP were shared with LP on January 30, 2017.
 7. A written complaint was received from TP on October 16, 2017.
 8. [REDACTED] and the ACSW acknowledge and agree that [REDACTED] has agreed to the facts set out at paragraphs 1 - 7 above for the sole purpose of the within regulatory proceedings. For clarity, [REDACTED] and the ACSW acknowledge and agree that [REDACTED] has not agreed to the facts set out at paragraphs 1 - 7 above for the purposes of any other proceeding including, but not limited to, any civil proceeding.

FINDINGS OF UNPROFESSIONAL CONDUCT

Professionalism

9. That [REDACTED] diagnosed Borderline Personality Disorder (BPD) of DP when he was not properly qualified to do so.

Such conduct contravenes ss. B.7, E.1(b)(ii) of the Standards of Practice 2013, Values 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*.

Breach of Confidentiality

10. That [REDACTED] breached confidentiality by communicating the diagnosis of DP to DP's spouse.

Such conduct contravenes ss. B.5(a)(b)(i) of the Standards of Practice 2013, Value 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*.

Such further and other allegations of unprofessional conduct as may be heard at the hearing of this matter and upon which you shall be provided notice.

ACKNOWLEDGMENT OF UNPROFESSIONAL CONDUCT

It is acknowledged by [REDACTED] and the ACSW that [REDACTED] conduct as described in the Agreed Statement of Facts constitutes unprofessional conduct. [REDACTED] and the ACSW acknowledge and agree that [REDACTED] is hereby acknowledging that his conduct as described in the Agreed Statement of Facts constitutes unprofessional conduct for the sole purpose of the within regulatory proceedings. For clarity, [REDACTED] and the ACSW acknowledge and agree that [REDACTED] has not agreed that his conduct as described in the Agreed Statement of Facts constitutes unprofessional conduct for the purposes of any other proceeding including, but not limited to, any civil proceeding.

NO RIGHT TO APPEAL

The ACSW and [REDACTED] agree that there shall be no appeal from this Order notwithstanding s. 87 of the *Health Professions Act*, R.S.A 2000, c.H-7.

ORDERS AS TO SANCTIONS

The Hearing Tribunal orders that the appropriate sanctions in the circumstances of this matter are as follows:

1. A Reprimand shall be issued as against [REDACTED]
2. [REDACTED] shall practice under supervision by a MSW social worker (outside his clinical practice) for a period of six (6) months. The cost of this supervision shall be the responsibility of [REDACTED]. The individual providing supervision shall be approved by the ACSW. The terms of this supervision shall be agreed upon between [REDACTED] and the supervisor, with disclosure to the ACSW as required.
3. [REDACTED] shall submit his annual portfolio to the Competence Committee for review. This submission shall be provided to the Competence Committee at the time of his annual permit to practice renewal (and at the latest at the conclusion of 2019). This portfolio shall be subject to the approval of the Competence Committee.
4. [REDACTED] shall pay costs in the amount of \$750.00 within one (1) year of the date of this Order.

5. The Complaints Director shall maintain the discretion to suspend [REDACTED] pending a hearing should the Complaints Director, in his sole discretion, conclude that [REDACTED] has breached or failed to satisfy this Order.
6. This Order shall be published on a "no names" basis.

DATED at the City of Calgary, in the Province of Alberta, this _____ day of May, 2019.

Witness _____

[REDACTED]

DATED at the City of Calgary, in the Province of Alberta, this _____ day of May, 2019.

Alberta College of Social Workers

Per: _____

DATED at the City of Calgary, in the Province of Alberta, this _____ day of May, 2019.

**Hearing Tribunal of the
Alberta College of Social Workers**

(ORIGINAL SIGNED by ALL PARTIES)

Per:

_____, Chair

_____, Public Member

The investigated member, [REDACTED] provided a written admission of unprofessional conduct to the Hearing Tribunal dated May 13, 2019.

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 October 16, 2018.

The allegations in the Notice of Hearing are as follows:

- 1) That [REDACTED] diagnosed Borderline Personality Disorder of a client when he was not properly qualified to do so, in contravention of ssB.7,E.1(b)(ii) of the Standards of Practice 2013, Values 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*.
- 2) That [REDACTED] breached confidentiality by communicating the diagnosis referred to in 1 above, to a third party. Such conduct contravenes ss. B.5(a)(b)(i) of the Standards of Practice 2013, Value 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*.

The hearing proceeded on May 13, 2019.

The following documents were accepted as Exhibits at the Hearing:

- 1) *Notice of Hearing*
- 2) *Notice to Attend*
- 3) *Investigator's Report*
- 4) *Affidavit of Service*
- 5) *Admission of Unprofessional Conduct*
- 6) *Consent Order*

General findings of fact:

[REDACTED] acknowledges that he diagnosed a client with Borderline Personality Disorder (BDP), despite lacking proper qualifications to do so. [REDACTED] further acknowledges that he communicated his diagnosis to the client's spouse and acknowledges that in doing so, he breached client confidentiality. [REDACTED] had the benefit of advice of counsel with respect to his admissions of unprofessional conduct and with respect to the Consent Order (Ex. 6) both of which post-date [REDACTED] meeting with the ACSW on the matters before this Tribunal.

It is this Tribunal's decision that [REDACTED] diagnosis was inappropriate and without proper or complete clinical foundation. Accordingly, this Tribunal finds that [REDACTED] behaviour constitutes unprofessional conduct.

It is also this Tribunal's decision that the disclosure of the BDP diagnosis to the spouse of the client that [REDACTED] was treating, is a *prima facie* case of unprofessional conduct. [REDACTED] neither obtained consent from the client to disclose the diagnosis nor was there any evidence of any follow-up with the client or the spouse to mitigate the potential damage arising from this breach of confidentiality.

REASONS FOR DECISION ON SANCTION

As a result of the findings of the Hearing Tribunal with respect to allegations of unprofessional conduct, the Hearing Tribunal makes the following orders in accordance with s. 82 of the Act.

1. The Tribunal accepts the Admission of Unprofessional Conduct (Ex. 5) from [REDACTED]
2. The Tribunal accepts the Orders as to Sanctions without modification as articulated in Ex. 6 above.

The Hearing Tribunal makes its orders as set out above on the basis of the following reasons.

The Tribunal supports the sanction requiring [REDACTED] to practice under supervision by a MSW social worker outside of his clinical practice for a period of 6 months, and believes that this supervision will mitigate the risks to the public of an improper diagnosis recurring. This is particularly important as [REDACTED] operates in private practice without the benefit of peer review, consultation or other pedagogical supports generally available in other practice settings. The Tribunal believes that this investment of 6 months time – at [REDACTED] expense, in conjunction with the reprimand and the review of [REDACTED] portfolio by the Competence Committee will serve as a deterrent to such conduct repeating itself. Moreover, the Tribunal believes that the potential reputational damage to [REDACTED] in this case will also act as a deterrent and may be mitigated by a supervised return to safe and proper social work practice.

In assessing the fairness of the sanctions, the Tribunal weighed the severity of the unprofessional conduct with the fact that heretofore, [REDACTED] has worked in private practice for 24 years and with a seemingly unblemished record. The Tribunal juxtaposed the modest fine with the sanction of 6 months supervision and the threat of suspension from practice and determined that the sanctions balance fairly, the consequences with [REDACTED] conduct. The Tribunal was accordingly not compelled by [REDACTED] behaviour to suspend or terminate his license to practice.

Finally, the Tribunal took the view in this case, that deference is owed to both the ACSW's and [REDACTED] counsel who jointly derived, negotiated and penned the sanctions agreed to by [REDACTED] taking into account principles of fairness, public interest and appropriate consequences. Accordingly, the Tribunal forbears from modifying the Order as to Sanctions.

All of which is respectfully submitted,

This 13th Day of June, 2019

F. Kelton (Chair)

Sheri Epp

Glenn Lantz

Handwritten signatures of the three individuals listed to the left. The signature for F. Kelton is at the top, Sheri Epp's is in the middle, and Glenn Lantz's is at the bottom. The signatures are written in dark ink and are somewhat stylized.