

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

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

AND IN THE MATTER OF A PROFESSIONAL CONDUCT HEARING REGARDING THE CONDUCT OF [REDACTED] [REDACTED] UNDERTAKEN VIRTUALLY;

AND INTO THE MATTER OF A COMPLAINT INTO THE CONDUCT OF [REDACTED] [REDACTED] PURSUANT TO A COMPLAINT BY [REDACTED] [REDACTED] AND REPRESENTATIVES OF [REDACTED] MICHENER HILL, INTO YOUR CONDUCT AND TO S.77(a) OF THE *HEALTH PROFESSIONS ACT*

**DECISION AND REASONS FOR SANCTIONS OF THE HEARING TRIBUNAL OF THE ALBERTA COLLEGE OF SOCIAL WORKERS (the “College” or “ACSW”)**

A hearing was held on June 30, 2023 (the “Hearing”) into the conduct of [REDACTED] [REDACTED] (“Ms. [REDACTED]”). The hearing was held virtually, via the online platform, Webex, pursuant to the *Health Professions Act*, R.S.A. 2000, c.H-7 as amended (the “Act”).

**I. INTRODUCTION**

(a) Generally

The members of the Hearing Tribunal were:

Kwaku Adu, Chair and Public Member

Barbara Rocchio, Public Member

Stanley Haroun, RSW

Mary Berube, RSW

Also present at the hearing were:

Karen A. Smith K.C., Complaints Director Legal Counsel

Ms. [REDACTED]

Mr. Joel Franz, Ms. [REDACTED]'s Legal Counsel

The hearing was a public hearing pursuant to s. 78(1) of the Act.

(b) The Composition and Jurisdiction of the Hearing Tribunal

Both parties consented to the composition and the jurisdiction of the Hearing Tribunal. The Hearing Tribunal members declared no bias or conflict of interest. There were no preliminary applications.

## II. CONSENT ORDER

Both parties presented a Consent Order sent to the Hearing Tribunal prior to the Hearing (June 27, 2023) which resulted in the Hearing being conducted as a Consent Hearing.

As part of the Consent Order, the following statements appear:

### “ACKNOWLEDGEMENT OF RESPONSIBILITY

It is acknowledged by Ms. [REDACTED] and the ACSW that Ms. [REDACTED]’s conduct as described in the Agreed Statement of Facts constitutes unprofessional conduct.

### NO RIGHT OF APPEAL

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

As part of the proceedings, Ms. [REDACTED] also provided a written Admission of Unprofessional Conduct (the “Admission”) which stated the following:

“I, [REDACTED] [REDACTED], acknowledge that my conduct as described below constitutes unprofessional conduct. I accept responsibility for my conduct pursuant to s.70 of the *Health Professions Act*.

1. I shared confidential medical information and contact information regarding a client’s spouse with AISH.

Such conduct contravenes ss. B.5, D.5(b) of the Standards of Practice 2019, 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*.”

6. I provided information to AISH with respect to a client based solely on the assertion of the client without taking independent verification.

Such conduct contravenes ss. E.1(b)(iv)(v), D.5(b) of the Standards of Practice 2019, Value 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*.”

## III. THE ALLEGATIONS

The charges in the Amended Notice of Hearing arise from a complaint made by [REDACTED] [REDACTED] and representatives of [REDACTED] Michener Hill regarding Ms. [REDACTED]’s conduct. Out of the 10 charges of unprofessional conduct originally alleged, 8 charges were withdrawn leaving the 2 charges that were admitted by Ms. [REDACTED] in the Admission, as set out above.

The Hearing Tribunal noted that the original charges alleged in the Amended Notice of Hearing have been withdrawn and have been replaced by the 2 charges in the Admission.

#### **IV. WITNESSES AND EXHIBITS**

The Hearing Tribunal heard from the respective counsel for the Complaints Director and Ms. [REDACTED] at the Hearing. No witnesses were called.

The following documents were entered as Exhibits at the Hearing with the consent of both parties:

1. Amended Notice of Hearing, dated June 13, 2023
2. Investigation Report, dated October 17, 2021
3. Admission of Unprofessional Conduct, dated June 13, 2023
4. Consent Order (including an Agreed Statement of Facts, Findings of the Hearing Director, Acknowledgement of Responsibility, No Right to Appeal and Orders as to Sanctions), signed June 13, 2023

Both Ms. Smith and Mr. Franz confirmed that the Investigation Report was not being entered as an exhibit for proof of the truth of its contents but was instead being entered to provide context and background about the allegations to the Hearing Tribunal.

#### **V. AGREED STATEMENT OF FACTS**

The following were agreed upon by both parties:

1. Ms. [REDACTED] [REDACTED] (“Ms. [REDACTED]”) has been a Registered Social Worker with the Alberta College of Social Workers (“ACSW”) since January 22, 2002.
2. Ms. [REDACTED] was employed at Extendicare Michener Hill as a social worker.
3. Ms. [REDACTED] shared confidential medical information and contact information regarding a client’s spouse with Assured Income for the Severely Handicapped (AISH).
4. Ms. [REDACTED] provided information to AISH with respect to a client based solely on the client’s assertion.
5. Ms. [REDACTED] did not undertake any independent verification of the information received by the client, which, in fact, was not accurate.
6. On September 30, 2021, Ms. [REDACTED]’s employment was terminated.

#### **VI. REASONS FOR FINDINGS OF HEARING TRIBUNAL**

After carefully considering all of the documents and information before it (including the Consent Order) the Hearing Tribunal accepted the Admission by Ms. [REDACTED] regarding the unprofessional conduct described in the Admission. The Agreed Statement of Facts provided a clear factual foundation for the admitted unprofessional conduct and Ms. [REDACTED]’s conduct rose to the level of unprofessional conduct as defined in the Act.

Protection of the public and preserving the integrity of the profession is paramount in discipline proceedings. The Hearing Tribunal accepted the submissions from the parties about Ms. [REDACTED]’s

unprofessional conduct.

## **VII. SANCTION ORDERS OF THE HEARING TRIBUNAL**

The Hearing Tribunal accepted the jointly proposed Orders as to Sanctions in the Consent Order.

Accordingly, the Hearing Tribunal makes the following orders in accordance with section 82 of the Act:

1. A letter of reprimand shall be issued by the Hearing Tribunal against Ms. [REDACTED].
2. Ms. [REDACTED]'s practice of social work shall be subject to supervision for a period of one (1) year. The supervision must be approved by the ACSW and there shall be reporting to the ACSW as required. **Expenses associated with the supervision, if any, shall be at the cost of Ms. [REDACTED].**
3. Ms. [REDACTED] will successfully complete five (5) hours of additional continuing education on the issues of confidentiality and privacy within six (6) months of the date of this Order. This additional continuing education shall be at the cost of Ms. [REDACTED] and shall be approved by the Complaints Director.
4. Ms. [REDACTED] shall pay costs in the amount of ONE THOUSAND DOLLARS (\$1,000.00) within two (2) years of the date of the Order of the Hearing Tribunal.
5. The Complaints Director shall maintain the discretion to suspend Ms. [REDACTED]'s permit to practice pending a Hearing should the Complaints Director, in his/her sole discretion, conclude that Ms. [REDACTED] has breached this Order.
6. There shall be a publication of this matter on a "no names" basis on the ACSW website.

The bold-typed portion of Order #2 above was discussed by the parties and the Hearing Tribunal during the Hearing and was agreed to with the consent of both parties. Ms. [REDACTED]'s counsel communicated his client's belief that there would not be any, or any significant costs, if the supervision was conducted internally by ACSW staff.

## **VIII. REASONS FOR JOINT SANCTIONS ORDERS**

The Hearing Tribunal's reasons for accepting the joint penalty proposal are as follows.

In deciding the appropriateness of penalties, our courts have set out several factors to be considered by discipline tribunals. Counsel for the Complaints Director referred to the case of *Jaswal v Medical Board (Newfoundland)*, 1996 CanLII 11630 (NLSC). These non-exhaustive "Jaswal factors" include the following:

- the nature and gravity of the proven allegations;
- the age and experience of the offending [professional];
- the previous character of the [professional] and in particular the presence or absence of any prior complaints or convictions;
- the age and mental condition of the offended [party];

- the number of times the offence was proven to have occurred;
- the role of the [professional] in acknowledging what had occurred;
- whether the offending [professional] had already suffered other serious financial or other penalties as a result of the allegations having been made;
- the impact of the incident on the offended [party];
- the presence or absence of any mitigating circumstances;
- the need to promote specific and general deterrence and, thereby, to protect the public and ensure the safe and proper practice of [the profession];
- the need to maintain the public's confidence in the integrity of the profession;
- 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; and
- the range of sentence in other similar cases.

In applying the Jaswal factors, the Hearing Tribunal noted the following:

Nature and gravity of the proven allegations

Ms. ██████'s disclosure of confidential information is a serious breach according to the College's standards.

The age and experience of the offending professional

Ms. ██████ has 30 years of social work experience and has been a registered member of the ACSW since 2001. She spent the last eight years with one employer, Extendicare. The only absenteeism from her employment resulted from her hospitalization due to her medical condition.

Whether the offending professional had already suffered other serious financial or other penalties as a result of the allegations having been made.

The member was terminated from her employment on September 30, 2021, and has reasonably suffered financial repercussions.

The presence or absence of any prior complaints or convictions

The Hearing Tribunal noted that there have been no prior discipline findings relating to Ms. ██████ until this Hearing. She took responsibility for her conduct in the two agreed upon allegations, thereby avoiding further protracted litigation and saving scarce public resources.

The need to promote specific and general deterrence and, thereby, to protect the public and ensure the safe and proper practice of the profession.

The Orders require Ms. ██████ to be supervised in her practice for one year and for there to be a publication of the Consent Order on a no names basis. This aims to deter Ms. ██████ and other professionals governed by the Act.

As well, payment of \$1,000.00 in costs (representing the "standard" costs for a College consent hearing) are reasonable in that Ms. ██████ should bear some financial responsibility for the discipline proceedings. As a self-regulating profession, the College's membership at large must also bear some of the cost of the discipline process.

Finally, the Hearing Tribunal was aware of the clear case law, including *R v Anthony-Cook*, 2016 SCC 43 (CanLII), in which the Supreme Court admonished judicial bodies to give significant

deference to consent proposals, and not depart from joint submissions unless the proposed sanctions would bring the administration of justice into disrepute or would be otherwise contrary to the public interest. The Hearing Tribunal is satisfied that the joint penalty proposal in this matter meets the public interest test, achieves public protection, maintains the integrity of the social work profession, and adequately provides specific and general deterrence.

In summary, the Hearing Tribunal concluded that the Joint Sanction Orders were fair, reasonable, and appropriate.

Dated July 17, 2023.

A handwritten signature in blue ink, appearing to read 'Kwaku Adu', with a stylized flourish extending to the right.

Kwaku Adu, Chair

On behalf of the Hearing Tribunal