

IN THE MATTER OF THE *HEALTH PROFESSIONS ACT*, RSA 2000, c.H-7;

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

REASONS FOR DECISION

Pursuant to a public hearing held on February 5, 2025 at Edmonton, Alberta, the Alberta College of Social Workers Hearing Tribunal (the “Hearing Tribunal”) is issuing its reasons for decision.

These reasons will review the proceedings involving the Member and then state the Hearing Tribunal’s decision. Following this, the reasons will identify the legal questions the Hearing Panel must determine with respect to each allegation. These reasons will then set out the applicable legislation, standards and codes that are relevant for these proceedings.

Finally, these reasons will set out the rulings made during the hearing, the evidence heard by the Hearing Tribunal, the legal principles that arise in this hearing and the legal questions as they relate to each of the allegations.

INTRODUCTION AND SUMMARY OF DECISION

A hearing into the conduct of [EK] (the “Member”) was held on February 5, 2025 pursuant to the *Health Professions Act*, RSA 2000, c H-7.

The Amended Notice of Hearing listed the following three citations made against the Member:

1. That you failed to be candid with the ACSW Complaints Director and IM, the senior RSW approved as the consulting RSW and your supervisor in accordance with the Order of the Hearing Tribunal of December 19, 2019.
2. That you failed to be candid with your employer with respect to the terms of the Order of the Hearing Tribunal of December 19, 2019 regarding the prohibition from the “responsibility of supervising of female students for a period of 2 years from the date of this Order”.
3. That while employed at CarePros, you continued to work in scope of practice without appropriate supervision and in violation of the Order of the Hearing Tribunal of December 19, 2019.

It was alleged that the Member contravened ss. G.1(a), (b), (g), (h) and G.3(a) of the Standards of Practice 2019, Value 4 of the Code of Ethics 2005, and that these contraventions constituted unprofessional conduct pursuant to ss. 1(1)(pp) (i), (ii) and (xii) of the *Health Professions Act*.

At the hearing, counsel for the Complaints Director advised that Citations #1 and #3 were being withdrawn, and the Parties were putting forward a joint submission with respect to both the finding of unprofessional conduct, and the sanction to be levied, in respect of Citation #2. Accordingly, the hearing

proceeded to consider whether the Hearing Tribunal should accept the joint submission on unprofessional conduct and sanction in respect of Citation #2.

At the conclusion of the hearing, the Hearing Tribunal advised that it accepted the joint submission on unprofessional conduct and sanction, and that it would issue a written decision with reasons in due course.

COMPOSITION OF THE HEARING TRIBUNAL

Section 12 of the Act provides:

***12(1)** Twenty-five percent of the voting members of a council, a complaint review committee and a hearing tribunal and of a panel of any of them must be public members but with the consent of the council the percentage of the public members may be greater than 25%.*

***(2)** Despite the bylaws governing quorum, the number of public members required by subsection (1) must be present at an appeal under Part 4 before a council, a ratification of a settlement and a review by a complaint review committee and a hearing by a hearing tribunal.*

***(3)** Despite subsections (1) and (2), the powers and duties of a council, complaint review committee or a hearing tribunal or a panel of any of them are not affected by a vacancy in the office of a public member for up to 6 months from the date that the schedule to this Act that governs the college comes into force.*

The members of the Hearing Tribunal were:

- Vince Paniak (Chair, Public Member)
- Georgeann Wilkin (Public Member)
- Verna Wittigo (Registered Member)
- Dorothy Badry (Registered Member)

Michael Swanberg attended the hearing as independent legal counsel to the Hearing Tribunal.

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

PARTIES

The parties present at the hearing were:

- **[EK]** (the Member)
- Dana Christianson (Counsel for the Member)
- Sheryl Pearson (ACSW Complaints Director)
- Karen Smith, K.C. (Counsel for the ACSW Complaints Director)

LEGAL QUESTION

Since the parties presented a joint submission on both the admission of unprofessional conduct, and the sanction to be imposed in respect of that admitted unprofessional conduct, the Hearing Tribunal considered whether accepting this joint submission would bring the administration of justice into disrepute, or would be contrary to the public interest, which is consistent with the direction of the Supreme Court of Canada in **R v. Anthony-Cook**, 2016 SCC 43 [**Anthony-Cook**].

As part of this analysis, the Hearing Tribunal considered whether the admissions made by the Investigated Member constitute unprofessional conduct under the *Health Professions Act* and the applicable provisions in the Standards of Practice and Code of Ethics, and whether the proposed sanction is fit, proportionate and appropriate in the circumstances.

LEGISLATION AND APPLICABLE STANDARDS AND CODES

The Act

The Amended Notice of Hearing alleged that the Member contravened section 1(1)(pp) (i), (ii) and (xii), which are as follows:

(pp) “unprofessional conduct” means one or more of the following, whether or not it is disgraceful or dishonourable:

- (i) displaying a lack of knowledge of or lack of skill or judgment in the provision of professional services;*
- (ii) contravention of this Act, a code of ethics or standards of practice;*
- ...*
- (xii) conduct that harms the integrity of the regulated profession;*

The Standards of Practice

The Amended Notice of Hearing alleged that the Member contravened sections G.1(a), (b), (g), (h) and G.3(a) of the ACSW Standards of Practice, which are as follows:

G.1(a) A social worker is legally and ethically obligated to adhere to the Health Professions Act, the Social Workers Profession Regulation, the ACSW Bylaws, the Code of Ethics and the Standards of Practice, regardless of workplace policies.

G.1(b) A social worker will not act in a manner that may reduce public trust in social work and social workers.

...

G.1(g) A social worker will have ongoing practice/clinical supervision or peer consultation appropriate to their field of practice and setting.

G.1(h) A social worker who is providing or receiving supervision to fulfill requirements related to obtaining registration, providing restricted activities, joining the Clinical Registry, or as a result of an order by a Hearing Tribunal, the Registrar, the Registration Committee, or the Competence Committee will ensure that the supervision is conducted in accordance with the specific requirements as defined in the Social Workers Profession Regulation, ACSW policies, or the specific order.

...

G.3(a) A social worker is accountable and responsible to the employer in the performance of her or his duties.

The Code of Ethics

The Amended Notice of Hearing alleged that the Member contravened Value #4 of the ACSW Code of Ethics, which is as follows:

Social workers demonstrate respect for the profession's purpose, values and ethical principles relevant to their field of practice. Social workers maintain a high level of professional conduct by acting honestly and responsibly, and promoting the values of the profession. Social workers strive for impartiality in their professional practice, and refrain from imposing their personal values, views and preferences on clients. It is the responsibility of social workers to establish the tenor of their professional relationship with clients, and others to whom they have a professional duty, and to maintain professional boundaries. As individuals, social workers take care in their actions to not bring the reputation of the profession into disrepute. An essential element of integrity in professional practice is ethical accountability based on this Code of Ethics, the IFSW International Declaration of Ethical Principles of Social Work, and other relevant provincial/territorial standards and guidelines. Where conflicts exist with respect to these sources of ethical guidance, social workers are encouraged to seek advice, including consultation with their regulatory body.

EVIDENCE RECEIVED IN THE HEARING

The Parties jointly entered the following documents into evidence at the hearing:

- Admission of Unprofessional Conduct executed by the Member, dated July 2, 2024;
- Consent Order executed by the Member and the ACSW Complaints Director, dated July 2, 2024; and
- Investigation Report for Complaint File No. 23.002.

The Investigation Report was not put into evidence to prove the truth of its contents. It was put into evidence to demonstrate to the Hearing Tribunal that the report was prepared, and to apprise the Hearing Tribunal of the steps taken in the investigation and the materials collected.

No oral evidence was given at the hearing.

FINDINGS OF THE HEARING TRIBUNAL

As noted at the beginning of this decision, Citations #1 and #3 were withdrawn by the Complaints Director, and the sole issue for consideration by the Hearing Tribunal was whether the admission of unprofessional conduct in respect of Citation #2, and the joint submission on sanction, should be accepted by the Hearing Tribunal.

Counsel for the Complaints Director and counsel for the Member both referred to the Supreme Court of Canada's decision in **Anthony-Cook** to provide guidance on how a Hearing Tribunal should determine whether to accept an admission of unprofessional conduct and a joint submission on sanction. Paragraphs 32-34 of the Supreme Court of Canada's decision in **Anthony-Cook** confirm that a decision-maker should not depart from a joint submission unless doing so would bring the administration of justice into disrepute, or it would otherwise be contrary to the public interest:

Under the public interest test, a trial judge should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest. But, what does this threshold mean? Two decisions from the Newfoundland and Labrador Court of Appeal are helpful in this regard.

In Druken, at para. 29, the court held that a joint submission will bring the administration of justice into disrepute or be contrary to the public interest if, despite the public interest considerations that support imposing it, it is so "markedly out of line with the expectations of reasonable persons aware of the circumstances of the case that they would view it as a break down in the proper functioning of the criminal justice system". And, as stated by the same court in R. v. B.O.2, 2010 NLCA 19, at para. 56 (CanLII), when assessing a joint submission, trial judges should "avoid rendering a decision that causes an informed and reasonable public to lose confidence in the institution of the courts".

In my view, these powerful statements capture the essence of the public interest test developed by the Martin Committee. They emphasize that a joint submission should not be rejected lightly, a conclusion with which I agree. Rejection denotes a submission so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down. This is an undeniably high threshold — and for good reason, as I shall explain.

The Hearing Tribunal first considered whether to accept the admission of unprofessional conduct executed by the Member, and then considered whether to accept the joint submission on sanctions, being mindful that it should decline to accept these joint submissions only if doing so would bring the administration of justice into disrepute, or if it would be contrary to the public interest.

1. Admission of Unprofessional Conduct

The Consent Order contained an Agreed Statement of Facts, which set out the following facts that are considered to be proven and can be relied on for the truth of their contents:

1. [The Member] has been a Registered Social Worker with the Alberta College of Social Workers since 2012.
2. At all material times, [the Member] was employed with CarePros and he reported directly to the President, CW.
3. CarePros was and is a Family Support organization for children with disabilities (FSCD services) which includes providing in-home respite or care.
4. [The Member] transitioned to his current employer, Oak Hills, in 2022.
5. Only subsequent to [the Member] leaving the employ of CarePros did CW become aware of the actual terms of the December 2019 Hearing Tribunal Order.

The Member submitted a signed Admission of Unprofessional Conduct wherein he acknowledged that he failed to be candid with his employer with respect to the terms of the Order of the Hearing Tribunal of December 19, 2019, and that this constitutes unprofessional conduct worthy of sanction under the *Health Professions Act*, the Standards of Practice, and the Code of Conduct.

The Hearing Tribunal accepts the Member's Admission of Unprofessional Conduct and finds that the admitted facts in the Agreed Statement of Facts support a finding that he breached his obligation to be candid with his employer regarding the previous Order issued by the Hearing Tribunal in 2019. The Hearing Tribunal is satisfied that the Member had a positive obligation to be candid with his employer regarding the terms of the 2019 Order, and that in failing to do so, he breached Value #4 of the ACSW Code of Ethics, sections G.1(a), (b), (g), (h) and G.3(a) of the ACSW Standards of Practice, and sections 1(1)(pp) (i), (ii) and (xii) of the *Health Professions Act*.

2. Joint Submission on Sanction

The Parties jointly submitted the following Order for Sanctions to be imposed with respect to the admitted unprofessional conduct under Citation #2:

1. A Reprimand shall be issued as against the Member.
2. The Member shall, within 90 days of the date of this Order, provide a letter to CW confirming his failure to provide full specifics of the Order of the Hearing Tribunal of December 2019. The letter shall be satisfactory to the Complaints Director and will be subsequently provided to CW.
3. The Member shall, within 90 days of the date of this Order, provide a 1000-word paper to the ACSW Complaints Director undertaking a review of the principles of Value 4 of the Code of Ethics in the context of issues named in this Consent Order.
4. The Member shall pay costs of this matter in the amount of Five Hundred Dollars (\$500.00) within six months of the date of this Order.

5. The Complaints Director shall maintain the discretion to suspend the Member's permit to practice pending a Hearing should the Complaints Director, in his/her sole discretion, conclude that the Member has breached this Order.
6. There shall be publication of this Decision and the Reasons on a "no names" basis given the aforementioned suspension.

In addition to the guidance provided by the Supreme Court of Canada's decision in **Anthony-Cook**, the Hearing Tribunal had regard for the factors set out in the decision of the Newfoundland and Labrador Superior Court in **Jaswal v. Newfoundland Medical Board**, 1996 CarswellNfld 32 [**Jaswal**] for determining a fit and proper sanction in professional regulatory proceedings concerning unprofessional conduct:

1. The nature and gravity of the proven allegations;
2. The age and experience of the offending member;
3. The previous character of the member and in particular, the presence of any prior complaints or convictions;
4. The age and mental condition of the patient;
5. The number of times the offence was proven to have occurred;
6. The role of the member in acknowledging what had occurred;
7. Whether the offending member had already suffered other serious financial or other penalties as a result of allegations having been made;
8. The impact of the incident on the 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 safety and proper practice of Social Work;
11. A need to maintain the public's confidence in the integrity of the profession;
12. The degree to which the offensive conduct 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
13. The range of sentence in similar cases.

Counsel for both parties agreed that the joint submission on sanction was appropriate and proportionate, and properly accounted for the **Jaswal** factors described above.

After counsel finished making submissions, the Member was given an opportunity to address the Hearing Tribunal. The Member apologized and confirmed that he took full responsibility for the admitted unprofessional conduct.

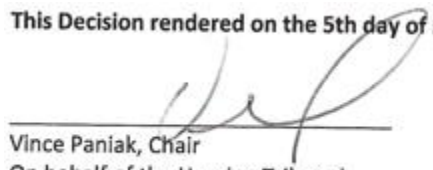
The Hearing Tribunal agrees that the joint submission on sanction is fit and appropriate in the circumstances. Overall, while the Member's failure to be candid with his previous employer is sufficiently serious to constitute unprofessional conduct worthy of sanction under the *Health Professions Act*, this is at the lower end of the scale of unprofessional conduct. This matter does not involve harm or risk to a patient, and the Hearing Tribunal notes that the Member fully complied with the terms of the Hearing Tribunal's 2019 Order. The Member has taken responsibility and has clearly reflected on his actions. The Hearing Tribunal is satisfied that the joint recommendation on sanctions is fit, proportionate and appropriate in the circumstances.

Further, the Hearing Tribunal is satisfied that the administration of justice would not be brought into disrepute if the proposed sanctions are accepted, nor are the proposed sanctions contrary to the public interest. This is not one of the rare cases where this Hearing Tribunal should override a carefully negotiated joint submission on sanctions.

CONCLUSION AND NEXT STEPS

The Hearing Tribunal accepts the Member's Admission of Unprofessional Conduct, and the Parties' joint submission on sanctions, as summarized above.

This Decision rendered on the 5th day of February, 2025



Vince Paniak, Chair
On behalf of the Hearing Tribunal