



## **Discipline Decision Summary**

This summary of the Discipline Committee's Decision and Reason for Decision is published pursuant to the Discipline Committee's penalty order.

By publishing this summary, the College endeavours to:

- illustrate for social workers, social service workers and members of the public, what does or does not constitute professional misconduct;
- provide social workers and social service workers with direction about the College's standards of practice and professional behaviour, to be applied in future, should they find themselves in similar circumstances;
- implement the Discipline Committee's decision; and
- provide social workers, social service workers and members of the public with an understanding of the College's discipline process.

## **PROFESSIONAL MISCONDUCT**

### **David Rourke**

**(Former Social Service Member #805579)**

### **Agreed Statement of Fact**

The College and the Member submitted a written statement in which the following facts were agreed:

1. In 2008, Mr. Rourke facilitated a two-day workshop. In 2011 an attendee at that workshop sought out Mr. Rourke for individual counselling services. Mr. Rourke provided ten counselling sessions to the attendee (the "Client") using Emotional Freedom Technique ("EFT") to address issues relating to the Client's eating disorder.
2. During the course of the sessions, and at a time when the Client was particularly vulnerable, Mr. Rourke:
  - a) Kissed the Client on the cheek, without asking, on more than one occasion;
  - b) Hugged the Client, without asking, on more than one occasion;
  - c) Made inappropriate and sometimes sexually suggestive comments to the Client including that:
    - i. "he was thinking about [the Client] the night before";
    - ii. "his ex-wife had her own sexual issues, had accused him of being a sex addict and insisted that he attend a group for sex addicts";
    - iii. he loved when the Client smiled, that the Client had natural beauty, and that "If it helps any, as a man, I would like to fuck you"; and,
    - iv. he did not think that the ethics committee would approve of his technique.
  - d) Walked the Client to the Client's car and made the Client uncomfortable by staring at the Client in a sexually suggestive manner. When the Client said "what" in response to Mr. Rourke's staring, Mr. Rourke said "Oh nothing" in a sexually suggestive tone.

## **Plea**

Mr. Rourke was not present at the hearing. He did, however, submit a signed and witnessed Plea and Plea Inquiry in which he admitted all of the allegations of professional misconduct in the Notice of Hearing. The Discipline Committee was satisfied with the signed and witnessed Plea Inquiry submitted by Mr. Rourke, in which he stated that his admissions were voluntary, informed and unequivocal.

## **Decision**

The Discipline Committee found that the facts support a finding of professional misconduct against Mr. Rourke in that he:

1. Violated Section 2.5 of Ontario Regulation 384/00 (the “Professional Misconduct Regulation”) made under the *Social Work and Social Service Work Act* (the “Act”), and Principle VIII of the Handbook (as commented on in Interpretations 8.1, 8.2, 8.2.2, 8.2.3, and 8.6) by abusing a client physically, sexually, verbally, psychologically or emotionally, including sexually abusing a client within the meaning of subsection 43(4) of the Act, failing to ensure that sexual misconduct did not occur, engaging in touching, of a sexual nature, of the client, engaging in behaviour or remarks of a sexual nature other than behaviour or remarks of a clinical nature appropriate to the service provided and by engaging in sexual relations with a client during counselling or while providing other professional services where the nature of the professional relationship has created a conflict of interest;
2. Violated Sections 2.2 and 2.28 of the Professional Misconduct Regulation and Principle I of the Handbook (commented on in Interpretations 1.4, 1.5 and 1.6) by failing to accept the uniqueness of the client, failing to maintain awareness of his own values, attitudes and needs and how these impact on his professional relationship with the client and by failing to distinguish his needs and interests from those of his client to ensure that his client’s needs and interests remain paramount;
3. Violated Sections 2.2 and 2.28 of the Professional Misconduct Regulation and Principle II, 2.1 of the Handbook (commented on in Interpretation 2.1.5) by failing to engage in the process of self-review and evaluation and seek consultation when appropriate as part of maintaining competence and acquiring skills in social service work practice;
4. Violated Sections 2.2, 2.10 and 2.28 of the Professional Misconduct Regulation and Principle II, 2.2 of the Handbook (commented on in Interpretation 2.1.1) by engaging in a professional relationship that constituted a conflict of interest or in situations in which he ought reasonably to have known that the client would be at risk and providing a professional service to a client where he was in a conflict of interest;
5. Violated Sections 2.2 and 2.2.8 of the Professional Misconduct Regulation and Principle II, 2.2 of the Handbook (as commented on in Interpretation 2.2.3) by using information obtained in

the course of the professional relationship and the professional position of authority to coerce, improperly influence, harass, abuse or exploit a client;

6. Violated Section 2.2 of the Professional Misconduct Regulation and Principle II of the Handbook (as commented on by Interpretation 2.2.8) by failing to avoid conduct which could reasonably be perceived as reflecting negatively on the profession of social service work;

7. Violated Section 2.2 of the Professional Misconduct Regulation and Principle III of the Handbook (as commented on by Interpretation 3.7) by failing to assume responsibility for demonstrating that the client (or former client) has not been exploited, coerced or manipulated, intentionally or unintentionally;

8. Violated Section 2.2 of the Professional Misconduct Regulation and Principle III of the Handbook (as commented on by Interpretation 3.8) by providing a service that does not conform to College standards and/or a service that he knew (or ought reasonably to have known) was not likely to benefit the client;

9. Violated Section 2.36 of the Professional Misconduct Regulation by engaging in conduct or performing an act relevant to the practice of the profession that, having regard to all circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

### **Penalty**

The Discipline Committee accepted the Joint Submission as to Penalty submitted by the College and by Mr. Rourke. The Discipline Committee ordered that,

1. Mr. Rourke be reprimanded by the Discipline Committee in writing and that the fact of the reprimand be recorded on the Register for an unlimited period of time.
2. The finding and order of the Discipline Committee be published, in detail, with the name of Mr. Rourke (but without information which would identify the Client), in the official publication of the College and in any other manner deemed appropriate by the College.

In arriving at its Penalty Order, the Discipline Committee noted that:

- The proposed penalty was reasonable and serves and protects the public interest;
- Mr. Rourke co-operated with the College and by agreeing to the facts and a proposed penalty, has accepted responsibility for his actions;
- Because Mr. Rourke resigned from College membership prior to the hearing, the options for penalty available to the Discipline Committee were limited;
- Fixing costs or assigning a financial penalty were inappropriate given Mr. Rourke's "ownership" of his behaviour and cooperation with the disciplinary process;
- In accepting the Joint submission as to Penalty, the Discipline Committee was convinced that under the circumstances, the only objective that could be met was one of general deterrence. The Discipline Committee therefore decided that its findings should be

published, with Mr. Rourke's name, thus clearly demonstrating to practising members that such conduct on the part of a College member will not be tolerated. Specific deterrence and remediation/rehabilitation would not apply since Mr. Rourke had already resigned from membership in the College and is no longer a practising College member.