



Ontario College of
Social Workers and
Social Service Workers

Ordre des travailleurs
sociaux et des techniciens
en travail social de l'Ontario

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DISCIPLINE COMMITTEE OF THE ONTARIO COLLEGE OF SOCIAL WORKERS AND SOCIAL SERVICE WORKERS

Indexed as: Ontario College of Social Workers and Social Service Workers v Paul Schaubert,
2021 ONCSWSSW 4

Decision date: 20210312

BETWEEN:

THE ONTARIO COLLEGE OF SOCIAL WORKERS
AND SOCIAL SERVICE WORKERS

- and -

PAUL SCHAUBER

PANEL: Amanda Bettencourt Chair, Professional Member
Charlene Crews Professional Member
John Fleming Public Member

Appearances: Debra McKenna, counsel for the College
Paul Schaubert, self-represented
Andrea Gonsalves, Independent Legal Counsel to the Panel

Heard: February 4, 2021

DECISION AND REASONS FOR DECISION

[1] This matter came on for hearing by video conference before a panel of the Discipline Committee (the “**Panel**”) on February 4, 2021, at the Ontario College of Social Workers and Social Service Workers (the “**College**”).

The Allegations

[2] In the Notice of Hearing dated September 14, 2018, Paul Schaubert (the “**Member**” or “**Mr. Schaubert**”) is alleged to be guilty of professional misconduct pursuant to the *Social Work and Social Service Work Act*, 1998, S.O. 1998, c 31 (the “**Act**”) in that he is alleged to have engaged

in conduct that contravenes the Act, Ontario Regulation 384/00 (the “**Professional Misconduct Regulation**”), Schedule “A” to By-law No. 66 of the Ontario College of Social Workers and Social Service Workers, being the Ontario College of Social Workers and Social Service Workers Code of Ethics (the “**Code of Ethics**”), and Schedule “B” to By-law No. 66 of the Ontario College of Social Workers and Social Service Workers, being the Ontario College of Social Workers and Social Service Workers Standards of Practice Handbook (the “**Handbook**”)¹.

[3] The Notice of Hearing alleges that the Member engaged in the following conduct:

1. The Member is, and was at all times relevant to the allegations, a registered social worker with the Ontario College of Social Workers and Social Service Workers (the “**College**”).
2. The Member was registered with the College on July 13, 2010, by application dated June 25, 2010. At the time of his application, the Member was licensed by the Florida Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling (the “**Board**”) as a clinical social worker in Florida.
3. On or about August 23, 2010, the Member pleaded guilty to one count of felony grand theft over \$20,000.00, in violation of sections 812.014(1) and 2(b) of the Florida Statutes.
4. The Member’s criminal conduct occurred over the period from January 1, 2007 to August 30, 2008, during which he did knowingly obtain or use, or endeavour to obtain or use funds which were the property of the Agency for Healthcare Administration, the statutory body responsible for Florida’s Medicaid Program.
5. As a consequence of the guilty plea, the Member was sentenced to five-years of probation, fifty hours of community work, a restitution order of \$27,000, and various fines and costs.
6. On or about September 15, 2011, the Board received an administrative complaint against the Member on behalf of the Department of Health. The substance of the complaint related to the Member’s criminal conviction for Medicaid fraud in August 2010.
7. In particular, the Member was alleged to have violated section 491.009(1)(w) of the Florida Statutes which provides that there are grounds for disciplinary action by the Board where there is violation of section 456.072(1)(II) – being a conviction or guilty plea for a crime related to health care fraud.
8. On or about April 26, 2012, the Board proceeded with disciplinary proceedings against the Member with respect to the administrative complaint.

¹ By-law 24, as amended by By-law Nos. 32 and 48 and revoked effective July 1, 2008 by By-law 66, continues to apply to conduct which occurred prior to July 1, 2008.

9. The Member did not respond to the administrative complaint.
10. By unanimous vote of the Board, the facts alleged in the administrative complaint were found by the Board to be true and supported a violation by the Member. As a result, the Member's license was revoked by the Board.
11. A copy of the final order of the Board was sent to the Member on or about May 22, 2012.
12. The Member did not disclose the administrative complaint and/or the revocation of his licence to the College in the annual renewal of his registration for the years 2012, 2013, 2014, 2015, 2016, 2017 and/or 2018, or at all.
13. The Member did not disclose to the College his criminal conviction in Florida in the annual renewal of his registration for the years 2011, 2012, 2013, 2014, 2015, 2016, 2017, or 2018, or at all.
14. On or about June 3, 2017, the Member was charged in Peterborough, Ontario with impaired driving contrary to section 253(1)(b) of the *Criminal Code* – operating a motor vehicle with a blood alcohol concentration that exceeded 80 mg.
15. On or about July 4, 2017, the Member pleaded guilty to impaired driving contrary to section 253(1)(b) of the *Criminal Code* for which he received a fine of \$1,500.00 and 12-months suspension of his driver's license.

[4] The Notice of Hearing further alleges that, by reason of engaging in some or all of the conduct outlined above, the Member is guilty of professional misconduct as set out in section 26(2)(a) and (c) of the Act:

- (a) In that he violated **Section 2.1 of the Professional Misconduct Regulation** by contravening a term, condition or limitation imposed on his certificate of registration.
- (b) In that he violated **Section 2.2 of the Professional Misconduct Regulation and Principle II of the Handbook (commented on in Interpretations 2.2.7 and 2.2.8)** by misrepresenting his professional qualifications, education, experience, or affiliation; by failing to avoid conduct which could reasonably be perceived as reflecting negatively on the professions of social work or social service work.
- (c) In that he violated **Section 2.19 of the Professional Misconduct Regulation** by falsifying a record relating to his practice.
- (d) In that he violated **Section 2.21 of the Professional Misconduct Regulation** by making a record, or issuing or signing a certificate, report or other document in the course of practising the profession that he knew or ought reasonably to know is false, misleading or otherwise improper.

- (e) In that he violated **Sections 2.28 of the Professional Misconduct Regulation** by contravening the Act or regulations or by-laws.
- (f) In that he violated **Section 2.29 of the Professional Misconduct Regulation** by contravening a federal, provincial or territorial law or a municipal by-law in circumstances where the purpose of the law or by-law is to protect public health and/or is relevant to your suitability to practise.
- (g) In that he violated **Section 2.34 of the Professional Misconduct Regulation** by failing to take reasonable steps to ensure that the requested information is provided in a complete and accurate manner where a member is required to provide information to the College pursuant to the Act, regulations or by-laws.
- (h) In that he 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 and/or unprofessional.

Member's Position

[5] The Member admitted the allegations set out in the Notice of Hearing. The Panel conducted an oral plea inquiry and was satisfied that the Member's admission was voluntary, informed and unequivocal.

The Evidence

[6] The evidence was tendered by way of an Agreed Statement of Facts, which provided as follows.

1. At all relevant times, the Member was registered as a social work member with the Ontario College of Social Workers and Social Service Workers (the "**College**").
2. The Member was registered with the College on July 13, 2010, by application dated June 25, 2010. At the time of his application, the Member was licensed by the Florida Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling (the "**Board**") as a clinical social worker in Florida.
3. On or about August 23, 2010, the Member pleaded guilty to one count of felony grand theft over \$20,000.00, in violation of sections 812.014(1) and 2(b) of the Florida Statutes.
4. The Member's criminal conduct occurred over the period from January 1, 2007 to August 30, 2008, during which he did knowingly obtain or use, or endeavour to obtain or use funds which were the property of the Agency for Healthcare Administration, the statutory body responsible for Florida's Medicaid Program.

5. On or about September 15, 2011, the Board received an administrative complaint against the Member on behalf of the Department of Health. The substance of the complaint related to the Member's criminal conviction for Medicaid fraud in August 2010.
6. In particular, the Member was alleged to have violated section 491.009(1)(w) of the Florida Statutes which provides that there are grounds for disciplinary action by the Board where there is violation of section 456.072(1(II) - being a conviction or guilty plea for a crime related to health care fraud.
7. On or about April 26, 2012, the Board proceeded with disciplinary proceedings against the Member with respect to the administrative complaint.
8. The Member did not respond to the administrative complaint.
9. By unanimous vote of the Board, the facts alleged in the administrative complaint were found by the Board to be true and supported a violation by the Member. As a result, the Member's licence was revoked by the Board.
10. A copy of the final order of the Board was sent to the Member on or about May 22, 2012.
11. The Member did not disclose the administrative complaint and/or the revocation of his licence to the College in the annual renewals of his registration for the years 2012, 2013, 2014, 2015, 2016, 2017 and/or 2018, or at all.
12. The Member did not disclose to the College his criminal conviction in Florida in the annual renewals of his registration for the years 2011, 2012, 2013, 2014, 2015, 2016, 2017, or 2018, or at all.
13. On or about June 3, 2017, the Member was charged in Peterborough, Ontario with impaired driving contrary to section 253(1)(b) of the Criminal Code - operating a motor vehicle with a blood alcohol concentration that exceeded 80 mg.
14. On or about July 4, 2017, the Member pleaded guilty to impaired driving contrary to section 253(1)(b) of the Criminal Code for which he received a fine of \$1,500.00 and a 12-month suspension of his driver's licence.
15. The Member agrees that the following are standards of the profession, as set out in the Code of Ethics and Standards of Practice Handbook (the "**Handbook**"):
 - (a) Principle II addresses a member's competence and integrity.

16. The Member admits that he engaged in and is guilty of professional misconduct as described in paragraphs 2 to 15 above, and within the meaning of section 26(2)(a) and (c) of the *Act*, in that:
- (a) he contravened a term, condition or limitation imposed on his certificate of registration, contrary to section 2.1 of the Professional Misconduct Regulation;
 - (b) he misrepresented his professional qualifications; by failing to avoid conduct which could reasonably be perceived as reflecting negatively on the professions of social work or social service work., contrary to sections 2.2 of the Professional Misconduct Regulation and Principle II of the Handbook (commented on in Interpretations 2.2.7 and 2.2.8);
 - (c) he falsified a record relating to his practice, contrary to section 2.19 of the Professional Misconduct Regulation;
 - (d) he made a record, or issued or signed a certificate, report or other document in the course of practising the profession that he knew or ought reasonably to have known is false, misleading or otherwise improper, contrary to section 2.21 of the Professional Misconduct Regulation;
 - (e) he contravened the Act or regulations or by-laws, contrary to section 2.28 of the Professional Misconduct Regulation;
 - (f) he contravened a federal, provincial or territorial law or a municipal by-law in circumstances where the purpose of the law or by-law is to protect public health and/or is relevant to his suitability to practise, contrary to section 2.29 of the Professional Misconduct Regulation;
 - (g) he failed to take reasonable steps to ensure that the requested information is provided in a complete and accurate manner where a member is required to provide information to the College pursuant to the Act, regulations or by-laws, contrary to section 2.34 of the Professional Misconduct Regulation; and
 - (h) he engaged 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 and/or unprofessional, contrary to section 2.36 of the Professional Misconduct Regulation.

Decision of the Panel

[7] Having considered the admissions of the Member, the evidence contained in the Agreed Statement of Facts, and the submissions of counsel for the College and of the Member, the Panel finds that the Member committed the acts of professional misconduct alleged in paragraphs (a), (b), (c), (d), (e), (f), (g), and (h) of the Notice of Hearing. With respect to allegation (h), the Panel finds that the Member's conduct would reasonably be regarded by members as disgraceful, dishonourable and unprofessional.

Reasons for Decision

[8] After careful consideration, the Panel found that the Agreed Statement of Facts along with the Member's admission of misconduct, proved on a balance of probabilities each of the allegations against the Member.

[9] In regard to allegation (a), Mr. Schauber violated section 2.1 of the Professional Misconduct Regulation, in that he contravened a term, condition, or limitation imposed on his certificate of registration. The terms, conditions, or limitations that are being referred to here are rules that apply to every certificate of registration. As specified in Ontario Regulation 383/00 under the Act (the "**Registration Regulation**"), s. 6, the following are conditions of registration with the College of any class:

1. The member must disclose the following information relating to the member and to the practice of social work, social service work or any other profession, whether in Ontario or in any other jurisdiction:
 - i. Every finding of professional misconduct, incompetence or incapacity and every other similar finding, including a finding of professional misconduct, incompetence or incapacity made by a professional association or other body that has self-regulatory responsibility.
 - ii. Every current proceeding in relation to professional misconduct, incompetence or incapacity and every other similar proceeding, including a proceeding relating to professional misconduct, incompetence or incapacity held by a professional association or other body that has self-regulatory responsibility.
2. The member must disclose every finding of guilt against the member in relation to a criminal offence, an offence under the *Controlled Drugs and Substances Act* (Canada) or the *Food and Drugs Act* (Canada) or any other offence relevant to the applicant's suitability to practise social work or social service work, as the case may be, if the finding is made after the initial registration of the member.
3. The member must provide evidence satisfactory to the College of the member's continuing competence to practise social work or social service work, as the case may be, in accordance with the guidelines approved by

Council from time to time and published and distributed by the College to the members of the College.

[10] Mr. Schauber violated those conditions each time he failed to report to the College on his annual renewal forms that he had been criminally convicted in Florida of health care fraud and had his licence revoked by the Florida Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling. In addition, Mr. Schauber was found guilty in Ontario of impaired driving. The guilty finding speaks to his judgment and is inconsistent with the condition in s. 6 of the Registration Regulation that the Member demonstrate ongoing competence to practise social work in Ontario.

[11] With respect to allegation (b), Mr. Schauber violated section 2.2 of the Professional Misconduct Regulation when he failed to meet the standards of the profession as set out in Principle II of the Handbook (as commented on in interpretations 2.2.7 and 2.2.8). Principle II of the Handbook requires members to maintain competence and integrity in their practice. The Member contravened that requirement in two ways. First, he misrepresented his professional qualifications when he did not disclose to the College in the annual renewals of his registration (a) the administrative complaint and the revocation of his Florida licence, or (b) his criminal conviction in Florida. Those events affected the Member's professional qualifications as a member of the College because he was required to disclose them as a condition of registration. He therefore misrepresented his qualifications when he failed to disclose them.

[12] Second, the Member violated Principle II of the Handbook by failing to avoid conduct which could reasonably be perceived as reflecting negatively on the profession of social work when he engaged in conduct that resulted in his impaired driving charge.

[13] Regarding allegations (c) and (d), Mr. Schauber violated sections 2.19 and 2.21 of the Professional Misconduct Regulation in that he falsified records relating to his practice and made records in the course of practising the profession that he knew, or ought to reasonably have known, were false, misleading or otherwise improper. When the Member submitted to the College the annual renewals of his registration for the years 2012, 2013, 2014, 2015, 2016, 2017 and 2018, he did not disclose the administrative complaint and/or the revocation of his license to practice social work in the State of Florida to the College. Similarly, when he submitted his annual renewals for the years 2011, 2012, 2013, 2014, 2015, 2016, 2017 and 2018, the Member did not disclose his criminal conviction in Florida. The renewal documents were not accurate and were false and misleading because they gave no indication that those events occurred. The Panel finds that the Member ought to have known that the records were false as the Member was aware of the facts of his Florida conviction and subsequent revocation of his licence to practise there. As a member of the College, the Member must be taken to know the conditions required of all members in the Registration Regulation and he should have known that he was obligated to disclose the information surrounding his Florida conviction and licence revocation to the College. For the same reasons, the Panel finds that allegation (g), Mr. Schauber violated section 2.34 of the Professional Misconduct Regulation.

[14] With respect to allegation (e), Mr. Schauber violated section 2.28 of the Professional Misconduct Regulation in that he contravened the Act or regulations, or by-laws. By virtue of the Panel's findings on allegations (a) – (d) and (f) – (h), and the facts set out in the Agreed Statement of Fact, the Member contravened multiple provisions of the Misconduct Regulation and failed to

satisfy the conditions on his registration as set out in the Registration Regulation. He also contravened the Handbook, which is a by-law of the College.

[15] In regards to allegation (f), Mr. Schauber contravened a federal law, the purpose of which is to protect public health and the contravention is relevant to his suitability to practise, contrary to section 2.29 of the Professional Misconduct Regulation. On or about July 4, 2017, Mr. Schauber pleaded guilty to impaired driving contrary to s. 253(1)(b) of the *Criminal Code*, a federal law of Canada. He received a fine of \$1500.00 and a 12-month suspension of his driver's licence as a result of the finding of guilt. Based on these admitted facts, the Panel finds that the Member contravened a federal law. The second aspect of allegation (f) requires the Panel to be satisfied that the purpose of the law Mr. Schauber contravened is to protect public health or that his contravention is relevant to his suitability to practise. The Panel finds that the purpose of s. 253(1)(b) of the *Criminal Code* is to protect public health by deterring members of the public from driving while under the influence of any substances. This law is in place to protect the public from the negative and often serious outcomes of impaired driving, such as property damage or the loss of life. This contravention of a federal law also speaks to the Member's suitability to practice as this demonstrates a significant lapse in his judgment. Furthermore, the Panel notes that in regard to the impaired driving conviction the Member commented at the hearing that he is "sure" he "isn't the only social worker who partakes in the use of alcohol". That comment demonstrated to the panel that the Member lacks insight into the gravity of his actions.

[16] Lastly, with respect to allegation (h), the Panel finds that Mr. Schauber engaged in conduct or performed acts relevant to the practice of the profession that, having regard to all circumstances, would reasonably be regarded by members of the profession as disgraceful, dishonourable, and unprofessional. Mr. Schauber's conduct demonstrates a serious and persistent disregard for his professional obligations to be truthful and candid with the College in submitting the reports required of all members. Further, his decision to drive while impaired was a significant lapse in his judgment, which he failed to recognise. Through these actions, Mr. Schauber has failed to demonstrate the traits of good judgment and responsibility required of those privileged to practise the social work profession. In addition to his actions that brought him before the College which demonstrated an element of moral failing, Mr. Schauber failed to appreciate the seriousness of his conduct when he stated that although he engaged in impaired driving, he must not be the only social worker who partakes in alcohol or other substances. That comment demonstrated to the Panel Mr. Schauber's failure to take responsibility for his actions or to acknowledge the seriousness of his conduct. Furthermore, Mr Schauber's conduct surrounding the Medicaid fraud in Florida is an act that is rightfully deemed dishonourable. Taken as a whole, the Member's conduct is disgraceful: it casts serious doubt on the Member's moral fitness and inherent ability to discharge the higher obligations the public expects professionals to meet. The Member knew about his conviction and revocation in Florida while being registered with the College but failed to disclose this information at any time, despite having numerous opportunities to do so. For these reasons, the Panel found that the Member's conduct would reasonably be regarded by members of the profession as disgraceful, as well as unprofessional and dishonourable.

Evidence and Submissions on Penalty and Costs

[17] The parties were not in agreement on the order that the Panel should make in light of its findings of professional misconduct. Accordingly, after the Panel announced its decision on the allegations of professional misconduct, the hearing proceeded to a contested penalty hearing.

Evidence at the Penalty Hearing

[18] The College called one witness to testify at the penalty phase of the hearing, Lisa Loiselle, the investigations manager at the College.

[19] Ms. Loiselle testified that she was the primary investigator in this matter. She explained that the College received an email from a member of the public in 2017. The email informed the College of the Member's impaired driving charge and the revocation of the Member's licence to practise social work in the state of Florida. The email contained links to articles regarding the Member's impaired driving charge as well as the minutes from the Board meeting in which Mr. Schauber's licence to practise social work in Florida was revoked. This email correspondence between Ms. Loiselle and Shawna Kingston was marked as Exhibit 4 at the hearing. Ms. Loiselle confirmed the links contained in the email directed to the following websites:

- mykawartha.com (news article regarding impaired driving charge)
- Psychiatric Criminal Database and Disciplinary Actions (guilty of grand theft over \$20,000.00 in the State of Florida)
- Board of Clinical Social Work, Marriage & Family Therapy and Mental Health Counselling (decision of Florida Board to revoke license – Mr. Schauber pled guilty to Medicaid fraud over \$20k)

[20] Ms. Loiselle testified that the information about the Member's Florida conviction is already in the public domain, as it was a member of the public who found this information online which she submitted to the College in an email.

[21] Ms. Loiselle also testified about a phone call she had with the Member during the investigation, which was captured in a cover letter memo and summary of telephone conversation that was marked as Exhibit 5 at the hearing. Ms. Loiselle confirmed the following in respect of that phone call:

- That the Member stated he thought he only had to respond to conviction in Canada
- That the Member did not mention the sealing order in these communications between himself and Ms. Loiselle
- The investigator (Ms. Loiselle) disclosed to the Member that the information about him came to the College from a member of the public
- That the Member responded that he felt that this member of public made her report with malicious intent

- That the Member was aware that information had come from the internet.

[22] The Member did not cross-examine Ms. Loiselle and did not call any evidence at the penalty stage.

[23] In the course of submissions on the issue of costs, the Member referred to his personal financial circumstances. College counsel invited the Panel to give the Member an opportunity to submit documentary evidence after the hearing relating to his financial circumstances. The Panel agreed. After the hearing, the Member provided the Panel with a number of documents relating to his financial situation. These documents included:

1. the Member's Scotia Bank account balances for his chequing and savings accounts,
2. an account summary of the Member's vehicle loan with Scotia Bank,
3. an account summary of the Member's line of credit with Scotia Bank,
4. two pay stubs from Canadian Mental Health Association for the month of January 2021,
5. documents relating to the Member's monthly expenses for car insurance, hydro, heat, water, food, telephone and internet, homeowner's insurance, and household supplies.

[24] Additionally, the Member submitted two letters indicating that he has resigned from his position with Kawartha Therapy Services as of December 7, 2020.

Submissions of the College

[25] In light of the Panel's findings, the College asked for an order on penalty and costs as follows.

1. The Member is to be reprimanded by the Discipline Committee and the fact and nature of the reprimand shall be recorded on the College's Register for an unlimited period of time.
2. The Registrar is directed to revoke the Member's certificate of registration.
3. The period of time during which the Member may not re-apply to the College for a new certificate of registration or seek reinstatement shall be fixed at five (5) years from the date of the Discipline Committee's order.
4. The finding and the order of the Discipline Committee shall be published, in detail or in summary with the Member's name, online and/or in print, including, but not limited to, in the official publication of the College, on the College's website, and on the College's public register.
5. The Member shall pay costs to the College in the amount of \$20,000.00.

[26] College counsel reminded the Panel that the objective of the discipline process is to protect the public interest. She highlighted the importance of public confidence in the College and its members, as well as the College's ability to govern the conduct of its members through the discipline process. College counsel relied on the decision of the Ontario Court of Appeal in *College of Physicians and Surgeons of Ontario v. Peirovy*, 2018 ONCA 420, which sets out the various principles that discipline panels ought to consider when coming to an appropriate penalty order. These principles include: a) that revocation is sometimes demanded by egregious conduct alone, b) the importance of maintaining public confidence in the integrity of the profession and protection of the public, c) that public protection is the paramount sentencing principle, d) that the panel has the task of arriving at a fair and just penalty, taking into account all of the sentencing principles, and e) those sentencing principles are effective self-governance, general deterrence, specific deterrence, rehabilitation, and the proportionality of these principles.

[27] College counsel submitted that the College's proposed order meets the goals of specific and general deterrence. Specific deterrence is intended to ensure that the Member will not engage in professional misconduct again, while general deterrence is intended to inform other members of the College of the disciplinary consequences that will follow should similar acts of misconduct be committed.

[28] With respect to mitigating facts, College counsel noted that the Member does not have any prior discipline history with this College and that the Member admitted to the professional misconduct and ultimately agreed to submit an Agreed Statement of Facts to the Panel. College counsel noted, however, that the evidence against the Member was overwhelming and it would have been unreasonable for him to contest the facts.

[29] As for aggravating factors, the College relied on the egregious nature of the Member's conduct, a thread of dishonesty on his part throughout this entire matter, and the Member's conduct in general. College counsel argued that the Member has failed to demonstrate that he is willing or able to abide by the standards of conduct of this profession. Further, members' obligations to report are critical to the functioning of a self-governing profession. In failing to report as required, the Member has not shown that he is governable and/or will act with decency, integrity and honesty.

[30] In the College's submission, a reprimand is appropriate in this circumstance and would allow the Panel to convey its concerns and disapproval of this misconduct directly to the Member.

[31] The College also seeks revocation of the Member's certificate of registration and asks the Panel to fix a five-year period during which the Member may not apply for reinstatement or a new certificate of registration. The College submits these terms are appropriate given the seriousness of the Member's misconduct. College counsel cited several cases from the discipline committees of other regulated professions in which similar misconduct resulted in revocation. Those cases are: *College of Nurses of Ontario v. Codinha*, 2009 CanLII 92097, *College of Nurses of Ontario v. Laviolette*, 2018 CanLII 62037, *College of Nurses of Ontario v. Noseworthy-Gondermann*, 2018 CanLII 130950, *College of Pharmacists of Ontario v. Mikhael*, 2017 ONCPDC 25.

[32] College counsel emphasized the importance of general deterrence to the proper functioning of a self-governing profession. In the College's submission, revocation of the Member's certificate of registration along with a five-year ban on reapplying sends the message that the members must abide by their reporting obligations and will face serious consequences if they do not do so.

[33] Regarding the College's request for an order that the Committee's decision be published with the Member's identifying information, College counsel argued that open hearings are fundamental to inspiring public confidence in the College's discipline process and ensuring transparency and accountability. There must be compelling evidence to displace this presumption. The College notes that information about the Member's criminal record in Florida is already publicly available on the internet and that the publication of the Panel's decision sends a message to the public and to the profession that this type of misconduct will not be tolerated. College counsel further submits that the publication of the Member's name and those details are necessary to protect the public interest, and in order to promote transparency and maintain public confidence in the integrity of the College's discipline process. The Member's criminal record in Florida is a critical fact and at the root of these discipline proceedings.

[34] On the issue of costs, the College relied on *Shulakewych v Alberta Assn. of Architects*, 1997 ABCA 157, in which the Court of Appeal for Alberta said: "we think it would be grossly unfair to leave the costs of a successful prosecution on the shoulders of the general membership of the Association." Colleges have an obligation to their members to seek costs from members who are found guilty of professional misconduct. Several recent decisions from the Divisional Court posit that an order in the range of two-thirds of the actual expenses incurred is reasonable with respect to professional misconduct proceedings. College counsel argued that although the Member ultimately did not contest the allegations of misconduct, he did not admit his professional misconduct until the eve of the hearing and the issue of penalty was contested. The College sought costs in the amount of \$20,000.00, which it estimated to be less than two-thirds of the overall costs that will be incurred by the College in connection with this matter.

Submissions of the Member

[35] The Member noted that he has ceased working as a social worker. He did not appear to contest the College's submission that his certificate of registration should not be revoked, but he stated that he has no intention of re-applying based on his age. He expressed confusion as to the reapplication ban, stating that he did not understand why the College would let him reapply in five years if the College is indicating that he is not fit to be registered.

[36] The Member's submissions with respect to order were largely focussed on the issues of publication and costs. He did not comment on the appropriateness of a possible reprimand.

[37] On the issue of publication, the Member requested that he not be identified in any publication of the Discipline Committee's findings and order (or a summary thereof). He stated that his criminal conviction in the State of Florida in relation to Medicaid fraud is sealed and his submissions appeared to be based, at least in part, on a desire not to have that conviction be further publicised. He also expressed his perception that publication of the discipline process amounts to public shaming. The Member did not comment on general or specific deterrence. In regards to rehabilitation and/or remediation the Member indicated that he does not intend to reapply with the College, as mentioned previously.

[38] As to the matter of costs, the Member submitted that he should not be ordered to pay costs to the College. He commented on his financial situation, which has been affected by his resignation from his position as a social worker, and submitted that a costs order would be punitive. The Member told the Panel that there is the potential for him to lose his current source of employment and noted the significant financial loss he will suffer should that happen.

Penalty Decision

[39] Having considered the findings of professional misconduct, the evidence and the submissions of the parties, the Panel makes the following order.

1. The Member shall be reprimanded orally by the Discipline Committee, including by way of video conference if the Discipline Committee considers it appropriate, and the fact and nature of the reprimand shall be recorded on the College's Register.
2. The Registrar is directed to revoke the Member's Certificate of Registration.
3. The period of time during which the Member may not re-apply to the College for a new certificate of registration or seek reinstatement shall be fixed at three (3) years from the date of this order.
4. The Discipline Committee's findings and Order (or a summary thereof) shall be published, with identifying information concerning the Member included, in the College's official publication and on the College's website, and the results of the hearing shall be recorded on the Register and in any other media related format that is provided to the public and is considered appropriate by the College.
5. The Member shall pay costs to the College in the amount of \$20,000.00, within three (3) years of the date of this Order.

Reasons for Penalty Order

[40] The Panel recognized that the penalty imposed in this case should maintain high professional standards, preserve public confidence in the ability of the College to regulate its members, and, above all, protect the public. This is achieved through a penalty that considers the principles of general deterrence, specific deterrence and, where appropriate, rehabilitation and remediation of the Member's practice. The penalty order should also reflect the aggravating and mitigating circumstances in the case, and be proportionate in view of the misconduct findings the Panel has made.

[41] The Panel considered relevant case law, the Member's level of engagement in the discipline process, and both parties' submissions on penalty when determining this penalty decision, along with the relevant factors set out in the *Peirovy* decision. The Panel found that revocation of the Member's certificate of registration is appropriate given the case law references, the nature of the Member's misconduct, and the thread of dishonesty woven throughout the details of the Member's conduct. The Panel notes that the Member did not contest the revocation of his certificate of registration or that the Panel fix a period of time during which he may not reapply for registration. Although the Member indicated that he does not intend to reapply to the College based on his age, potentially reducing the importance of specific deterrence and rehabilitation as penalty objectives in this case, the Panel must also consider general deterrence in arriving at an appropriate order.

[42] Given the importance of members' reporting obligations for the College to fulfil its regulatory functions, general deterrence is the paramount objective in this case. To meet that objective, the Panel was satisfied that it is appropriate to fix a period of time before the Member

can reapply for registration with the College. The College argued for a five year period. The Panel determined that three years is appropriate. The Panel notes that there appears to be no precedent from this Discipline Committee regarding an appropriate period of time before a member can reapply for registration in circumstances similar to this case. Under the *Regulated Health Professionals Act, 1991*, SO 1991, c 18, s. 72, a member whose certificate of registration has been revoked may apply to have a new certificate issued but the application may not be made earlier than one year after the date of which the certificate was revoked, or not earlier than five years after the date on which the certificate was revoked if the revocation is for sexual abuse of a patient. The Panel found that Mr. Schauber's misconduct is not comparable in severity to sexual abuse of a client; however, it is sufficiently serious to warrant fixing a period of time before he can re-apply for registration. Fixing a period of time before the Member can reapply for registration with the College, and setting it at three years will deter members of the College generally from engaging in professional misconduct that relates to their honesty and integrity, which are integral to the functioning of a self-governing profession.

[43] An oral reprimand is appropriate in this case. Reprimands are a standard component of orders from this Discipline Committee because they allow for the Panel to communicate to the Member its disapproval of the Member's conduct as well as how other members of the profession may regard the Member's conduct. This opportunity to convey directly to the Member the Panel's views as to his conduct has an important deterrent effect.

[44] The Panel finds that following the College's normal practice of publishing decisions of the Discipline Committee on the Register is entirely appropriate in this case. The Panel found no compelling evidence or reasons in this case to justify a departure from the usual practice. Publishing decisions provides for accountability and transparency in the College's discipline process, and helps maintain public confidence in the College. The Panel notes that if the work of the College is done in the shadows, then the Discipline Committee as well as the College cannot achieve their overall objective of regulating the profession in the public interest, as the public cannot see, read, and know that the profession is being properly regulated. For those reasons, the Panel gave significant weight to the open court principle. Publication helps hold the Member, the profession, and the College accountable to the public.

[45] The revocation of the Member's certificate of registration together with a three-year ban on reapplying, oral reprimand and publication of the Panel's decision with identifying information of the Member, all serve the function of general deterrence, which is a paramount objective in this case. By learning the outcome of this matter members will appreciate that serious consequences attach to the kind of professional misconduct that occurred here, particularly, failing to abide by reporting obligations. The publication of this decision will allow members an opportunity to self-reflect on their own practices and decision-making, especially in regard to the importance of being candid with the College when submitting the required annual reports. Publication speaks to the very mandate of the College: public protection and the confidence of the public in the College's abilities to meet this mandate. The Panel notes that this is not a matter of public shaming but rather, it is a matter of transparency regarding self-regulation and accountability to the members and the profession as a whole.

[46] Despite admitting to the allegations, the Panel did not detect in the Member's submissions that he has insight regarding his conduct. The Member's conduct shows that his professional and personal judgment are a concern from a public protection standpoint. The Member did not appear

to take responsibility for his actions and demonstrated a lack of accountability for his actions. The Panel would expect the Member to address his lack of insight should he ever want to consider reapplying to the College for registration.

Reasons for Costs Order

[47] The Panel considered the submissions of both parties on the issue of costs, the College's costs outline, as well as the financial information supplied by the Member, which outlined his current debt-to-income ratio. The Panel finds it appropriate to order the Member to pay \$20,000.00 to the College for costs, within a three year period.

[48] Although the costs order we have imposed is greater than the costs orders made in many other cases that have come before this Committee, the Panel was guided by the principle that costs orders are discretionary and may take into account a variety of factors including: the particular facts of the case and the length of the investigation, the conduct of hearing, the complexity and multiplicity of allegations involved in the case, the seriousness of the professional misconduct, and the outcome of the case including the College's substantial success in respect of both the findings of misconduct and penalty. While costs are not intended to penalize the Member for his misconduct, the seriousness of the misconduct is a relevant factor in determining whether the resources the College put into the case were reasonable. For all these reasons here, the Panel found that the College's request for costs of \$20,000.00, an amount less than 2/3 of the College's expenses, is reasonable and fair. This amount is to be paid in full within three (3) years of the date of this order.

I, Amanda Bettencourt, sign this decision as chairperson of the Panel and on behalf of the Panel members listed below.

Date: March 12, 2021

Signed: _____
Amanda Bettencourt, Chair
Charlene Crews
John Fleming