



**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 Scally, 2021
ONCSWSSW 9

Decision date: 20210813

BETWEEN:

THE ONTARIO COLLEGE OF SOCIAL WORKERS
AND SOCIAL SERVICE WORKERS

- and -

PATRICK SCALLY

PANEL: Angèle Desormeau Chair, Professional Member
Rita Silverthorn Professional Member
John Fleming Public Member

Appearances: Jill Dougherty and Alyssa Armstrong, counsel for the College
Member not in attendance
Andrea Gonsalves, Independent Legal Counsel to the Panel

Heard: July 15, 2021

DECISION AND REASONS FOR DECISION ON PENALTY AND COSTS

[1] On April 13, 2021, this panel of the Discipline Committee (the “**Panel**”) released its decision and reasons with respect to findings of professional misconduct made against Patrick Scally (“**Mr. Scally**” or the “**Member**”) under the *Social Work and Social Service Work Act, 1998*, SO 1998, c 31 (the “**Act**”). On July 15, 2021, the Panel reconvened the hearing for argument on the matter of penalty. The hearing proceeded electronically by way of video conference.

[2] The Member was neither present or represented at the hearing. College counsel called evidence to establish that the Member had been served with a Notice of Hearing respecting the penalty hearing. The Panel accepted that the Member was properly served with the Notice of Hearing and had adequate notice of the time, date, place and nature of the hearing.

[3] Accordingly, the Panel proceeded with the hearing in the Member's absence.

The Findings

[4] The detailed findings of the Panel and the reasons for those findings are set out in the Panel's written reasons of April 13, 2021, reported at 2021 ONCSWSSW 5. In brief, the Panel found that the Member engaged in professional misconduct on several allegations:

- He failed to meet various standards of the profession in his counselling sessions with the Client, a vulnerable individual, between September 2017 and November 2017, including:
 - a. by telling the Client that she was "hot" in response to her disclosure to him that she felt ugly;
 - b. by asking the Client if she masturbated. After telling him that she was uncomfortable discussing this topic, he continued to inquire about it in subsequent sessions; and
 - c. disclosed intimate and personal details to the Client about his own life and sexual behaviour.
- He failed to keep records as required by the College's regulations and by the standards of the profession.
- By this conduct, the Member contravened the Act, regulations or by-laws, and engaged in conduct relevant to the practice of the profession that, having regard to all circumstances, would reasonably be regarded by members as disgraceful, dishonorable or unprofessional.

Positions and Submissions on Penalty and Costs

College's Position

[5] Based on the Panel's findings, the College asked the Panel to make an order as follows:

- (a) Directing that Mr. Scally be reprimanded by the Discipline Committee in writing and that reprimand be recorded on the register for an unlimited period of time, pursuant to s. 26(5)(1) of the Act;
- (b) Directing the Registrar to suspend Mr. Scally's Certificate of Registration for a period of five (5) months;
- (c) Directing the Registrar to impose the following specified terms, conditions or limitations on Mr. Scally's Certificate of Registration, to be recorded on the College's public register:
 - (i) The Member shall, at his own expense, participate in and successfully complete a boundaries and ethics course, as prescribed by and acceptable to the College, and provide proof of such

completion to the Registrar within twelve (12) months of the date of the Order;

- (ii) The Member shall review the College's Practice Note titled, "The Broken Record" with respect to the subject of documentation. The Member shall then submit to the Registrar, a 500-word reflective essay on implementing best practices with respect to documentation in his own practice. The essay should contain the Member's reflections on:
 - (A) The purpose of maintaining the social work record;
 - (B) The risks associated with a failure to maintain the social work record, and
 - (C) Strategies for ensuring the social work record conforms with the expectations set out in the Standards of Practice Handbook.

The reflective essay will be provided to the Registrar within twelve (12) months of the date of the Order;

- (iii) For a period of one (1) year beginning on the date on which the Member returns to practice following his suspension, the Member shall:
 - (A) Notify any current or new employers of the Discipline Committee's decision, and:
 - (1) Ensure that the Registrar is notified of the name, address, and telephone number of all employer(s) within fifteen (15) days of commencing or resuming employment in any social work position;
 - (2) Provide his employer(s) with a copy of:
 - a. the Discipline Committee's Order;
 - b. the Notice of Hearing; and
 - c. a copy of the Discipline Committee's Decision and Reasons, once available;
 - (3) Subject to paragraph (4), below, only practice social work for an employer who agrees to, and does, forward a report to the Registrar within fifteen (15) days of the commencement or resumption of the Member's employment in any social work position, confirming:

- a. that they received a copy of the required documents; and
 - b. that they agree to notify the Registrar immediately upon receipt of any information that the Member has breached the Code of Ethics and Standards of Practice of the profession.
- (4) In the event that the Member operates a private practice, the Member must, at his own expense, receive supervision of his social work practice from an approved member of a regulated health profession or a registered social worker approved by the College (the “Supervisor”). The Member must additionally provide to the approved Supervisor (and any subsequent approved Supervisor) the Notice of Hearing and the final Decision of the Discipline Committee and must provide written confirmation, signed by the Supervisor, of receipt of those documents to the Registrar within fifteen (15) days of the Member returning to practice under supervision (and within 15 days of the approval of any subsequent Supervisor). The Member must seek consent from prospective clients to share personal health information with his Supervisor, in order to allow the Supervisor to review client files and engage in supervision.¹ The Supervisor shall provide a report to the Registrar at six (6) months and at twelve (12) months, confirming that the supervision took place and the nature of the supervision.²
- (d) Directing that the finding and the Order of the Committee be published, in detail, with the name of Mr. Scally, in the official publication of the College, on the College's website and on any other media related document that is provided to the public and is deemed appropriate by the College, pursuant to s. 26(5)(3) of the *Act*.
- (e) Directing that Mr. Scally pay costs in the amount of \$20,000 to the College, pursuant to s. 26(5)(5) of the *Act*.

[6] In support of the College’s proposed penalty, College counsel emphasized that the purpose of the Act is not only to protect the public with respect to the conduct of social workers and social service workers, but also to maintain public confidence in the profession.

¹ For greater clarity, while a client may refuse to sign a consent for the release of personal health information, the Member must maintain documentation, signed by the client, indicating that the request for consent was made and refused, for review by the Supervisor.

² For clarity, all expenses relating to supervision, including the obligation to review College materials and to communicate with the College where necessary, are at the expense of the Member.

[7] To that end, College counsel submitted that the appropriate penalty in this matter must meet three objectives:

- **Specific deterrence** in order to discourage any repetition of the misconduct by this Member in the future;
- **General deterrence**, making clear to the profession in general that conduct like the Member's does not meet the standards of the profession, and is contrary to the Act; and
- **Rehabilitation/remediation**, with the purpose of informing, educating and sensitizing about the obligations and standards all members are expected to meet, and give him the tools to avoid recurrence.

[8] College counsel submitted that its proposed penalty meets those goals, having regard to the nature of the misconduct as found by the Panel and the circumstances of the Member.

[9] College counsel made submissions on the mitigating and aggravating factors in this matter. The fact that Member has not previously been disciplined by the Discipline Committee is a mitigating factor. Due to the member's failure to participate in the hearing, the Panel was not presented with any other mitigating factors. College counsel submitted that it was the right of the Member to require the College to prove the allegations against him; therefore, the fact that he was deemed to have contested the allegations is not an aggravating factor. It is, however, the *absence of a mitigating factor*. Similarly, had the Member arrived at an agreed statement of fact and a joint submission on penalty with the College, that would have been a strong mitigating factor. He chose not to do so.

[10] College counsel argued that the Member's decision not to attend the hearing should be considered to be an aggravating factor. The Member was aware of the proceedings and chose not to participate. He never provided any medical evidence or other support to explain his non-attendance.

[11] The aggravating circumstances here also include the nature of the Member's misconduct. The misconduct involved a very vulnerable Client who was seeking the Member's assistance to deal with complex trauma and mental health issues and trying to maintain her sobriety. The Member's comments to the client could have been harmful and triggering in light of the Client's background. The Member knew of that potential and took no account of it. In addition, the Member knew of the issues with his documentation. The Member's employer, [redacted] Community Counselling and Addictions Services, made repeated efforts to work with the Member to remediate his documentation and note-keeping problems. He repeatedly failed to document his client contacts with [redacted] (the Client in this case) and other clients.

[12] With respect to the suspension, College counsel explained that the College considered other cases involving analogous conduct and determined that a five-month suspension was within the range of reasonable penalties.

- In *Ontario College of Social Workers and Social Service Workers v Giri*, 2020 ONCSWSSW 4, the member was found to have engaged in boundary crossings and inappropriate disclosures and comments. Similar to the present case, there was no frank sexual contract. The member and the College arrived at an agreed statement of fact and

joint submission on penalty, which was a mitigating factor as it showed the member's awareness of his wrongdoing and willingness to work with the College to make changes. The member's certificate of registration was suspended for four months, with one month remitted.

- *Ontario College of Social Workers and Social Service Workers v Shaheen*, 2019 ONCSWSSW 9 involved a member who had made inappropriate disclosures of personal information and comments of a personal or romantic nature to a client. The member continued to try to communicate with the client after termination of the professional relationship even though she had undertaken not to do that. The Member received a five month suspension with one month remitted. The parties filed a partial joint submission on penalty where the only point of disagreement was with respect to publication. The penalty was reduced because of the mitigation factor of the member's admission.
- In *Ontario College of Social Workers and Social Service Workers v O'Connell* (2017), the member engaged in boundary violations with two clients. He received a six-month with three months remitted, based on the member's admissions of misconduct, an agreed statement of facts and a joint submission on penalty.
- Finally, in *Ontario College of Social Workers and Social Service Workers v Mitchell* (2016), the member had provided counseling and/or psychotherapy to vulnerable client and engaged in boundary crossings with her. There were also record-keeping issues. The member was not present or represented at the hearing. The Discipline Committee imposed a twelve-month suspension with six months remitted.

[13] Based on those precedents, College counsel submitted that a five-month suspension is appropriate in this case.

[14] With regard to the terms, conditions and limitations, College counsel emphasized the importance of rehabilitation, should the Member return to professional practice. The proposed terms are designed to facilitate the Member's remediation. The coursework requirement is a measure that is intended to be remedial and educational, not punitive. It provides both specific deterrence and rehabilitation. College counsel also noted that the proposed terms, conditions and limitations on the Member's certificate of registration are similar to those imposed in other cases and are appropriate in this case. Publication of the Committee's finding and order, in detail, with Mr. Scally's name, has become typical and is a recognised public protection measure.

[15] After College counsel presented her submissions at the penalty hearing, the Panel asked for the College's comments on the possible inclusion in an order of a term, condition or limitation requiring the Member to submit to the Registrar a 500-word reflective essay regarding the importance of boundaries and ethics in the practice of social work, as a way to demonstrate the understanding he acquired in the boundaries and ethics course contemplated in paragraph (c)(i) of the College's proposed order. College counsel advised that the College had no objection to that kind of term.

[16] On the issue of costs, the College filed a bill of costs showing that the College incurred costs in this matter totalling over \$80,000.00. The College sought an award of costs in the amount of \$20,000.00. College counsel submitted that this is an appropriate case to award costs,

particularly in light of the Member's refusal to engage in the disciplinary process. College counsel referred to other cases in which members were ordered to pay costs in the amount of two-thirds of the College's actual costs. The College's request for \$20,000 in costs is well below two-thirds of the College's actual costs (which would have been approximately \$53,000 in this case). College counsel explained that it had already communicated the \$20,000 amount to Mr. Scally before it fully appreciated what the costs were going to be and decided that, in fairness, it was appropriate to maintain that request rather than asking for a higher costs award..

Member's Position

[17] The Member was not present or represented at the hearing and the Panel had no information as to his position on the appropriate order.

Advice of Independent Legal Counsel

[18] Independent legal counsel expressed agreement with College counsel's position on the legal principles governing the Panel's determination of the appropriate penalty except regarding the impact of the Member's non-attendance at the hearing. Independent legal counsel expressed the opinion that the Member's decision not to attend the hearing is not necessarily or automatically an aggravating factor. A member has a right to contest the allegations as well as the right not to attend the hearing. Indeed, a member's decision not to attend the hearing may make it easier for the College to prove its case and reduce the time and expense of the hearing as compared to if the Member attends to contest the allegations and challenge the College's evidence.

[19] In response to this advice, College counsel reiterated her position that not attending the hearing is an aggravating factor. It is different than a situation where a member denies the allegations, and shows up at the hearing to make arguments and present evidence. Insisting on a contested hearing is not an aggravating factor, but not showing up is. It speaks to the Member's respect for the College and how confident the Panel can be in whether he can be remediated. In any event, there are a number of aggravating factors in this case and the College's proposed penalty is appropriate even if the Member's non-attendance at the hearing is not factored in as an aggravating factor.

Decision of the Panel on Penalty and Costs

[20] Having considered the findings of professional misconduct against the Member, the relevant evidence, the College's submissions and the principles of penalty, the Panel makes the following order:

- (a) The Member shall be reprimanded by the Discipline Committee in writing and the reprimand shall be recorded on the register for an unlimited period of time;
- (b) The Registrar is directed to suspend the Member's Certificate of Registration for a period of five (5) months beginning on the effective date of this Order;
- (c) The Registrar is directed to impose the following specified terms, conditions or limitations on the Member's Certificate of Registration, to be recorded on the College's public register:

- (i) The Member shall, at his own expense, participate in and successfully complete a boundaries and ethics course, as prescribed by and acceptable to the College, and provide proof of such completion to the Registrar within twelve (12) months of the date of the Order. In addition, within 12 months of the effective date of this Order and of the completion of the course, the Member shall submit to the Registrar a 500-word reflective essay on the importance of boundaries and ethics in the practise of social work;
- (ii) The Member shall review the College's Practice Note titled, "The Broken Record" with respect to the subject of documentation. The Member shall then submit to the Registrar a 500-word reflective essay on implementing best practices with respect to documentation in his own practice. The essay should contain the Member's reflections on:
 - (A) The purpose of maintaining the social work record;
 - (B) The risks associated with a failure to maintain the social work record, and
 - (C) Strategies for ensuring the social work record conforms with the expectations set out in the Standards of Practice Handbook.

The reflective essay will be provided to the Registrar within twelve (12) months of the date of the Order;

- (iii) For a period of one (1) year beginning on the date on which the Member returns to practice following his suspension, the Member shall:
 - (A) Notify any current or new employers of the Discipline Committee's decision, and:
 - (1) Ensure that the Registrar is notified of the name, address, and telephone number of all employer(s) within fifteen (15) days of commencing or resuming employment in any social work position;
 - (2) Provide his employer(s) with a copy of:
 - a. the Discipline Committee's Order;
 - b. the Notice of Hearing; and
 - c. a copy of the Discipline Committee's Decision and Reasons, once available;
 - (3) Subject to paragraph (4), below, only practice social work for an employer who agrees to, and does, forward a report to the Registrar within fifteen (15) days of the

commencement or resumption of the Member's employment in any social work position, confirming:

- a. that they received a copy of the required documents; and
 - b. that they agree to notify the Registrar immediately upon receipt of any information that the Member has breached the Code of Ethics and Standards of Practice of the profession.
- (4) In the event that the Member operates a private practice, the Member must, at his own expense, receive supervision of his social work practice from an approved member of a regulated health profession or a registered social worker approved by the College (the "Supervisor"). The Member must additionally provide to the approved Supervisor (and any subsequent approved Supervisor) the Notice of Hearing and the final Decision of the Discipline Committee and must provide written confirmation, signed by the Supervisor, of receipt of those documents to the Registrar within fifteen (15) days of the Member returning to practice under supervision (and within 15 days of the approval of any subsequent Supervisor). The Member must seek consent from prospective clients to share personal health information with his Supervisor, in order to allow the Supervisor to review client files and engage in supervision.³ The Supervisor shall provide a report to the Registrar at six (6) months and at twelve (12) months, confirming that the supervision took place and the nature of the supervision.⁴
- (d) The Discipline Committee's finding and order shall be published, in detail, with the name of the Member, in the official publication of the College, on the College's website and on any other media related document that is provided to the public and is deemed appropriate by the College.
 - (e) The Member shall pay costs to the College in the amount of \$20,000, such costs to be paid in full within 18 months of the date of this order.

Reasons for Decision on Penalty

[21] The Panel understands that a penalty order must protect the public and maintain public confidence in the College's ability to regulate its members. An appropriate penalty must serve

³ For greater clarity, while a client may refuse to sign a consent for the release of personal health information, the Member must maintain documentation, signed by the client, indicating that the request for consent was made and refused, for review by the Supervisor.

⁴ For clarity, all expenses relating to supervision, including the obligation to review College materials and to communicate with the College where necessary, are at the expense of the Member.

the goals of general deterrence, specific deterrence and remediation where it is possible and appropriate. The Panel finds that the penalty order set out above achieves these objectives.

[22] The Panel's determination of the appropriate penalty took into account both mitigating and aggravating factors.

1. Written Reprimand

[23] A reprimand allows the Panel to convey directly to the Member its disapproval of the Member's conduct and the impact of his misconduct on the public and its confidence in the profession. It promotes both specific and general deterrence, and can help rehabilitate the Member. While it is preferable for reprimands to be delivered in person, in this case where the Member has elected not to participate in the discipline process, the Panel has little confidence that the Member would attend in person or by video conference to receive the reprimand. A written reprimand increases the likelihood that the Member will read and consider the Panel's comments.

2. Suspension of the Member's Certificate of Registration

[24] The Panel is satisfied that a five-month suspension of the Member's certificate of registration, as proposed by the College, is appropriate. It serves the goals of both specific and general deterrence. Given the serious nature of the Member's misconduct toward a vulnerable client, a lengthy suspension is appropriate. The suspension is within the range established in the cases on which the College relied. Notably, many of those cases proceeded on an uncontested basis with an agreed statement of fact and joint submission on penalty. Those are significant mitigating factors that justify a shorter suspension or suspending and remitting part of the suspension. Those mitigating factors are absent in this case and the Panel finds that no suspension and remission of the suspension is warranted.

3. Terms, Conditions and Limitations

[25] The terms, conditions and limitations ordered by the Panel are appropriate considering the goals of specific and general deterrence, and in particular to assist in the rehabilitation of the Member, should he return to professional practice after serving his suspension (his certificate of registration is currently administratively suspended). The terms, conditions and limitations are tailored to the specific misconduct in this case and are designed to give the Member education and tools to avoid similar misconduct in the future.

[26] One of the terms proposed by the College is a requirement for the Member to successfully complete an approved course on boundaries and ethics. The Panel agrees that such a term is appropriate. The Panel has also included in its order a requirement that following the successful complete of that course, the Member complete a reflective essay on the importance of boundaries and ethics in the practise of social work. The Panel added that term given the importance of this aspect of professional practice, and the nature of the Member's misconduct. The reflective essay provides a mechanism to assess the knowledge and insight the Member has gained from the boundaries and ethics course.

[27] The Panel agreed with the College's proposed term that the Member review the College's Practice Note titled, "The Broken Record" and then submit a reflective essay on implementing

best practices with respect to documentation in his own practice. Like the additional reflective essay ordered by the College, this term will allow the Member to demonstrate what he has learned from the College's Practice Note, particularly on the purpose of maintaining the social work record; the risks associated with a failure to maintain the social work record, and strategies for ensuring the social work record conforms with the expectations set out in the Standards of Practice Handbook.

[28] The terms of the order relating to employer notification and supervision of the Member's practice protect the public by ensuring that the Member's practice will be overseen by an employer or supervisor with knowledge of his prior misconduct who can identify any potential red flags and work to address them at an early stage.

4. Publication of the Committee's Finding and Order

[29] Publication of the Committee's finding and order is an important aspect of both specific and general deterrence. For that reasons, although publication is discretionary rather than mandatory under the Act, publication has become the normal practice of this Discipline Committee. There is no reason to depart from that practice in this case. Publication is appropriate.

[30] In sum, having regard to the objectives of penalty, the mitigating and aggravating factors, and the range of appropriate penalties established in prior case law, the Panel is satisfied that the penalty ordered is proportionate, protects the public and maintains public confidence in the profession.

Reasons for Decision on Costs

[31] The Panel finds that it is appropriate to award costs in the amount of \$20,000 as requested by the College. The amount is fair and reasonable having regard to the costs the College actually incurred in investigating this matter and conducting the discipline hearing. The Panel notes that the Member is currently not practising social work because his certificate of registration is administratively suspended, and the Panel's order imposes an additional five- month suspension. This period of time not practising may well have an impact on the Member's financial circumstances.

[32] The Member has 18 months, from the date of this order to make full payment to the College. In view of the amount of the costs awarded, the Panel considered it appropriate to give the Member an 18-month period to make payment in full.

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

Date: _____

Signed: _____
Angele Desormeau, Chair
Rita Silverthorn
John Fleming