

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 dated November 12, 2012.

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 to the College's discipline process.

PROFESSIONAL MISCONDUCT

Mark John Bergen, RSW
#803115

Allegations

The College's allegations relate to Mr. Bergen's conduct or actions, in regard to two clients to whom he provided counselling and/or psychotherapy services, and to his subsequent convictions under section 271 of the *Criminal Code*, for having sexually assaulted both of the clients.

Plea

As Mr. Bergen was neither present nor represented at the hearing (although notified of the allegations and the hearing), he was deemed to have denied the allegations.

Evidence

The Evidence consisted of a Book of Documents which, in particular, included Mr. Bergen's Indictment, the Court's Reasons for Judgement and Reasons for Sentence in the criminal proceedings, and the Court of Appeal's endorsement dismissing Mr. Bergen's appeal from his convictions.

Findings

The panel concluded that all of the allegations of Mr. Bergen's professional misconduct were established by the evidence, especially having regard to the convictions entered and the facts found by the trial Judge.

Specifically, the Discipline Committee found that Mr. Bergen is guilty of professional misconduct as set out in Section 26(2)(a) and (c) of the *Social Work and Social Service Work Act* (the "Act"), in that the Member:

1. Violated section 2.29 of the Professional Misconduct Regulation by contravening a federal, provincial or territorial law, the contravention of which is relevant to Mr. Bergen's suitability to practice, namely section 271 of the *Criminal Code*, R.S.C. 1985, c. C-46 when he was convicted of sexual assault in respect of two clients, to whom he provided counselling services and/or psychotherapy services;
2. Violated section 2.5 of the Professional Misconduct Regulation by abusing both clients physically, sexually, verbally, psychologically or emotionally when he established personal and/or sexual relationships with both clients to whom he provided counselling services and/or psychotherapy services;
3. Violated section 2.2 of the Professional Misconduct Regulation and Principle VIII of the Handbook (as commented on in Interpretations 8.1, 8.2, 8.6 and 8.7) by engaging in behaviour of a sexual nature with both clients when he established a personal and/ or sexual relationship with both clients, to whom he provided counselling services and/or psychotherapy services;
4. Violated Section 2.6 of the Professional Misconduct Regulation by using information obtained during his professional relationship with both clients, and using his professional position of authority to coerce, improperly influence, harass or exploit both clients, when he established a personal and/or sexual relationship with both clients to whom he provided counselling services and/or psychotherapy services;
5. Violated section 2.2 of the Professional Misconduct Regulation and Section 1 of the Code of Ethics and Principle I of the Handbook (commented on in Interpretations 1.5 and 1.6) by failing to regard the well-being of both clients, as the his primary professional obligation when he established and pursued a personal and/or sexual relationship with them. In doing so Mr. Bergen failed to distinguish his own needs from those of the clients, failed to appreciate how his needs might impact on his professional relationship with the clients, placed his own needs before those of the clients and failed to ensure that the clients' interests were paramount;
6. Violated Principle II (2.2) of the Handbook (commented on in Interpretations 2.2.1, 2.2.2, 2.2.3, 2.2.4, 2.2.6, 2.2.8 and 2.2.9) by failing to maintain clear and appropriate boundaries in his professional relationship with both clients when he established a personal relationship and attempted to establish a sexual relationship or to engage in sexual contact with the clients, to whom Mr. Bergen provided counselling services and/or psychotherapy services. In doing so, Mr. Bergen placed himself in a conflict of interest situation in which he ought reasonably to have known that the clients would be at risk and used his professional position of authority to abuse or exploit the clients.
7. Violated Principle III of the Handbook (commented on in Interpretation 3.7 and 3.8) by failing to ensure that professional services were provided responsibly to

- both clients when the he established and/or pursued a personal and/or sexual relationship with the clients to whom he provided counselling services and/or psychotherapy services. In doing so, Mr. Bergen placed himself in a conflict of interest situation and established a dual relationship with the clients which impaired Mr. Bergen's professional judgment and increased the risk of exploitation or harm to the clients;
8. Violated Section 2.2 of the Professional Misconduct Regulation and Principle II (2.2) of the Handbook (2.2.3 and 2.2.4) by using information obtained during his professional relationship with one of the clients and using his professional position of authority to coerce or improperly influence the client in the client's communications with the Mr. Bergen's former employer, with another facility and with the client's parents regarding the client's treatment, the client's relationship with the Mr. Bergen and Mr. Bergen's professional conduct; and
 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 the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional when Mr. Bergen: established personal and sexual relationships with both clients to whom the Member provided counselling services and/or psychotherapy services; and used information obtained during his professional relationship with one of the clients, and his professional position of authority to coerce or improperly influence the client in the clients communications with his former employer, another facility and the client's parents regarding the client's treatment, the client's relationship with him and his professional conduct.

Penalty

The Discipline Committee ordered that:

1. Mr. Bergen's certificate of registration be revoked and that a notification of the revocation be recorded on the Register;
2. Mr. Bergen shall not apply to the Registrar of the College for a new certificate of registration for a period of 5 years from the date of the Discipline Committee's Order, and that at the time of such application Mr. Bergen should be subject to Fitness to Practise assessment;
3. Mr. Bergen be reprimanded by the Committee in writing and that the reprimand be recorded on the register for an unlimited period of time;
4. The finding and Order of the Discipline Committee be published, in detail, with Mr. Bergen's name (but without information which could identify the affected clients) 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; and that

5. Mr. Bergen pay costs in the amount of \$5000.00 to the College.

The Discipline Committee's Decision included the following reasons for its Penalty Order:

- Mr. Bergen's conduct is "so egregious" that any order other than revocation would not specifically deter or rehabilitate Mr. Bergen.
- Mr. Bergen's behaviour was "especially despicable" because it involved young and vulnerable clients, involved a lack of care and professionalism, and was characterized by the trial judge in the criminal matter as "the grossest abuse of a position of trust and flagrantly unethical conduct."
- Mr. Bergen's refusal to participate in the hearing and his lack of insight into his behaviour, even after the criminal convictions were upheld by the Court of Appeal, make it unlikely that he would be deterred or rehabilitated.
- Mr. Bergen has shown no insight into the fact that his sexual and or personal relationships with the clients were highly improper and damaging to them.
- The revocation of Mr. Bergen's certificate of registration is necessary to protect the public, to serve as a specific and general deterrent and to recognize the seriousness of the misconduct.
- Publication of the Discipline Committee's Order is necessary to ensure protection of the public. Broadly publishing Mr. Bergen's name and the Discipline Committee's Order with his name may be the only effective way of ensuring that the public or future employers are aware of Mr. Bergen's past actions.
- With respect to costs, Mr. Bergen refused to participate in the discipline hearing, including admitting the conduct underlying the criminal convictions, thereby forcing the College to prove its case.
- This matter caused the College considerable expense and the costs incurred by the College to investigate and prosecute the matter are only a fraction of the amount of costs Mr. Bergen is ordered to pay to the College. The costs reflect the fact that Mr. Bergen's involvement in the proceedings could have reduced College expenses which are borne by the general College membership. The amount of the cost award is "reasonable, defensible, and fair" to all parties affected by the costs involved in prosecuting Mr. Bergen.