

**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 Dorit Osher,
2022 ONCSWSSW 3

Decision date: 20220502

BETWEEN:

THE ONTARIO COLLEGE OF SOCIAL WORKERS
AND SOCIAL SERVICE WORKERS

- and -

DORIT OSHER

PANEL:	Durel Williams	Chair, Professional Member
	Angèle Desormeau	Professional Member
	Alexia Polillo	Public Member

Appearances: Lara Kinkartz, counsel for the College
Morgan Sim, counsel for the Member
Andrea Gonsalves, Independent Legal Counsel to the Panel

Heard: April 13, 2022

DECISION AND REASONS FOR DECISION

[1] This matter came on for hearing by video conference on April 13, 2022, before a panel of the Discipline Committee (the “**Panel**”) of the Ontario College of Social Workers and Social Service Workers (the “**College**”).

The Allegations

[2] In the Notice of Hearing dated January 28, 2021, the Member 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 she 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**”).

[3] The allegations set out in the Notice of Hearing and the particulars of those allegations are as follows:

I. The following are particulars of the said allegations:

1. At all relevant times, you were registered as a social worker with the Ontario College of Social Workers and Social Service Workers (the “**College**”) and were working as a social worker in private practice.
2. The social work services you provided included the provision of talk and somatic therapy services related to depression, anxiety, mood disorders, stress, trauma, eating disorders, addictions, couples, and parent-child relationships.
3. On or about April 11, 2020, you disposed of confidential client files in a publicly accessible dumpster belonging to a local business. The client files were not shredded, redacted, or anonymized before you disposed of them. As a result, client names, contact information, and personal health information appeared in many of these files. Many of the files contained information indicating that you were providing social work services to these clients.
4. Staff of the business in question observed your conduct, recovered the client files from the dumpster, and reported your conduct to the College.
5. Approximately 450 discrete client files (or portions thereof) were recovered from the dumpster. Some of these files contained intake forms, clinical notes and/or confidential information about the client’s mental health or the nature of the issues for which the client was seeking social work services.
6. One or more of the client files had not yet been digitized or preserved in another format before you disposed of them, despite the fact that the applicable retention periods had not yet passed. You therefore failed to ensure these client records were retained, stored, and preserved in a secure location for the required retention period.
7. You had obligations to protect the confidentiality of clients’ personal information, including their personal health information, pursuant to (among other things) the Code of Ethics, the Handbook, and the *Personal Health Information and Protection Act, 2004*. By virtue of the conduct outlined in paragraphs 3-6 above, you failed to abide by these obligations by:

- (a) Dealing with clients' records and personal health information in a manner that resulted in an impermissible and unauthorized disclosure;
- (b) Failing to ensure that that client records and personal health information were retained, transferred, and disposed of in a secure manner that did not compromise their confidentiality;
- (c) Failing to take reasonable steps to ensure clients' records and personal health information were protected against theft, loss and unauthorized use or disclosure; and/or
- (d) Failing to take reasonable steps to ensure that clients' records and personal health information were protected against unauthorized copying, modification, or disposal.

II. It is alleged that by reason of engaging in some or all of the conduct outlined above, you are guilty of professional misconduct as set out in section 26(2)(a) and (c) of the Act:

- (a) In that you violated **Section 2.2 of the Professional Misconduct Regulation and Principle IV of the Handbook (as commented on in Interpretation 4.2.1)** by failing to comply with the requirements regarding record retention, storage, preservation and security set out in any applicable privacy and other legislation;
- (b) In that you violated **Section 2.2 of the Professional Misconduct Regulation, Section 6 of the Code of Ethics, and Principle IV of the Handbook (as commented on in Interpretation 4.2.2)** by failing to take necessary steps to protect the confidentiality of all professionally acquired information, including by failing to protect the confidentiality and security of paper records, faxes, electronic records, and other communications;
- (c) In that you violated **Section 2.2 of the Professional Misconduct Regulation and Principle IV of the Handbook (as commented on in Interpretation 4.2.3)** by failing to ensure that each client record is stored and preserved in a secure location for at least seven years from the date of the last entry or, if the client was less than eighteen years of age at the date of the last entry, at least seven years from the day the client became or would have become eighteen, or such other period of storage time that may be required by law;
- (d) In that you violated **Section 2.2 of the Professional Misconduct Regulation and Principle IV of the Handbook (as commented on in Interpretation 4.2.5)** by destroying client records in a manner that did not follow the time frames outlined in Interpretation 4.2.3 and/or by disposing of client record contents in a way that did not ensure that the confidentiality of the information was not compromised;

- (e) In that you violated **Section 2.2 of the Professional Misconduct Regulation, Section 6 of the Code of Ethics, and Principle V of the Handbook (as commented on in Interpretation 5.1)** by failing to comply with any applicable privacy and other legislation and/or by disclosing professionally acquired client information, including personal information, without first obtaining client consent and where such disclosure was not otherwise permitted or required by law;
- (f) In that you violated **Section 2.2 of the Professional Misconduct Regulation and Principle V of the Handbook (as commented on in Interpretation 5.3)** by disclosing information concerning or received from clients in circumstances where none of the enumerated exceptions in Interpretation 5.3 permitted such disclosure;
- (g) In that you violated **Sections 2.2 and 2.36 of the Professional Misconduct Regulation, Section 8 of the Code of Ethics, and Principle II of the Handbook (as commented on in Interpretation 2.2.8)** 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; by failing to avoid conduct in the practice of social work that could reasonably be perceived as reflecting negatively on the profession of social work; and/or by providing social work services in a manner that discredits the profession of social work or diminishes the public's trust in the profession;
- (h) In that you violated **Section 2.3 of the Professional Misconduct Regulation** by doing anything to a client in the course of practicing the profession in a situation in which consent is required by law, without such consent;
- (i) In that you violated **Section 2.20 of the Professional Misconduct Regulation** by failing to keep records as required by the regulations and standards of the profession;
- (j) In that you violated **Section 2.28 of the Professional Misconduct Regulation** by contravening the Act or regulations or by-laws; and/or
- (k) In that you contravened **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 the contravention is relevant to your suitability to practice, and in particular by violating ss. 12, 13, and/or 29 of the *Personal Health Information Protection Act, 2004*, S.O. 2004, c. 3, Sched. A.

Member's Position

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

The Evidence

[5] The evidence was tendered by way of an Agreed Statement of Facts, which provided in relevant part as follows.

BACKGROUND

1. At all relevant times, Dorit Osher (the "**Member**") was registered as a social worker with the Ontario College of Social Workers and Social Service Workers (the "**College**") and was working as a social worker in private practice.
2. Ms. Osher has been a member in good standing with the College for approximately 26 years. This is the first ever complaint or report filed with the College against the Member.
3. The services the Member provided include the provision of talk and somatic therapy services related to depression, anxiety, mood disorders, stress, trauma, eating disorders, addictions, couples, and parent-child relationships.

THE IMPROPER DISPOSAL OF CONFIDENTIAL CLIENT FILES

4. On April 11, 2020, the Member disposed of confidential client files in a publicly accessible dumpster belonging to a local business. The client files were not shredded, redacted, or anonymized before the Member disposed of them. As a result, client names, contact information, and personal health information appeared in many of these files.
5. In total, 482 unique client files (or portions thereof) were recovered from the dumpster, containing client names and ranging in date from 2008 through 2019. Nine of the recovered files pertained to clients who were minors.
6. Many of the files contained information indicating that the Member was providing social work services to these clients. Several files contained intake forms, clinical notes and/or confidential information about the client's mental health or the nature of the issues for which the client was seeking social work services (including files with details about personal issues such as divorce, trauma, and abuse). A number of files also contained client addresses and invoices.
7. Approximately $\frac{1}{4}$ of the client files had not yet been digitized or preserved in another format before the Member disposed of them, despite the fact that the applicable retention periods had not yet passed for all of these files. If she were to testify, the Member would state that all active client files had already been

digitized prior to the breach and that some of the not-yet digitized files were with respect to no-shows or individuals to whom social work services were ultimately never provided.

8. Staff of the business in question observed the Member disposing of the files in the dumpster, recovered the client files from the dumpster, and reported the Member's conduct to the College. Investigators were appointed by the College on June 19, 2020.
9. When contacted by the College as part of the investigation, the Member admitted to improperly disposing of the client files in the public dumpster. She expressed remorse and stated that she understood the gravity of her very serious lapse in judgement, acknowledging that her conduct on April 11, 2020 breached principles 4.2.2, 4.2.3, and 4.2.5 of the *Code of Ethics and Standards of Practice Handbook*. She provided the following context about the day of the incident (April 11, 2020):
 - (a) At the time, the Member was experiencing significant stress related to the recent announcement of the COVID-19 pandemic and the related lockdown. News of the pandemic had caused a significant relapse in her two sons' mental health conditions and the lockdown had made it very difficult to access services or care to address these symptoms. In addition to the stress of managing her children's mental health challenges through an unprecedented pandemic and lockdown, the Member was in the midst of moving offices, was trying to quickly transition her practice to facilitate the offering of virtual sessions, and was worried about her husband who was sick with a respiratory flu which the Member was concerned might be COVID-19.
 - (b) On the day in question, the Member was at her office sorting through and packing up more than 20 years of client files, in preparation for the relocation of her practice to her home office. In order to facilitate this process, the Member purchased "Jane"- a fully-integrated practice and electronic health records management platform and converted active client files into digital and electronic formats. The Member planned to dispose of the paper version of digitized files as well as those records where more than seven years had passed from the date of the last entry (or, if the client was less than 18 years of age at the date of the last entry, at least seven years from the client's eighteenth birthday).
 - (c) The COVID lockdown and State of Emergency which began on March 17, 2020 significantly complicated the Member's efforts to pack up, sort through, and digitize files so she could move to her home office. The Member was not permitted to attend her regular office because her services were deemed non-essential. Then, as she was trying to move a filing cabinet out of her regular office to finish digitizing and disposing of files, it broke, sending files everywhere. The Member retrieved these files

and put several boxes of these client files in her car so that she could take them to a company that could shred and dispose of them.

- (d) At that point, the Member's eldest son (who is autistic and severe OCD) called her while experiencing a mental health crisis and told her that he was considering suicide. The Member went to pick him up but did not want to take him to a hospital for fear of contracting COVID-19.
 - (e) The Member drove around the city with her son in the car, attempting to find a business that provided shredding services and/or a place where she could purchase a shredder. The search was unsuccessful because many businesses were subject to the provincial lockdown related to the COVID-19 pandemic. Meanwhile, her son was in an emotional state in the car, repeatedly stating that he wanted to die.
 - (f) The Member became panicked as she drove close to her son's apartment to drop him off (as she could not bring him home due to her husband being ill with a respiratory flu which she thought could be COVID-19). Her son's emotional state of crisis had escalated due to the prospect of being dropped at home. In her panic, the Member drove into the parking lot of a local business close to his apartment where there was a dumpster in its parking lot. She then disposed of the files in that dumpster.
 - (g) After placing several boxes in the dumpster, the Member realized her error and attempted to retrieve the boxes but was unable to because they were at the bottom of the dumpster and out of reach. However, she did not attempt to obtain assistance in retrieving the files or take additional steps to secure them.
10. If she were to testify, the Member would state that her improper disposal of the records was a result of the stress and panic she was experiencing at the time and that by disposing of the records in a public dumpster, it was never her intention to make any client records available or accessible to any third parties.
 11. After the incident, the Member voluntarily began working with a psychotherapist to address situational stress and anxiety. She also reviewed her record-keeping practices to ensure they complied with the College's standards and with the *Personal Health Information and Protection Act, 2004*, S.O. 2004, c. 3, Sched. A ("**PHIPA**"). The breach was immediately contained because the business employees who had observed the Member disposing of the files immediately contacted the College and secured the files until the College could take possession of them. The remaining boxes of paper files in the Member's possession were properly disposed of.
 12. During the College's investigation, the College investigator asked the Member if she had taken steps to report the privacy breach to the Information and Privacy Commissioner of Ontario ("**IPC**"). In response to the investigator's inquiries, the Member retained a lawyer to assist her in reporting the breach to the IPC, and did in fact report the breach shortly thereafter.

13. As part of the process mandated by the IPC to deal with the privacy breach, the Member updated her practice's privacy policy and privacy statement. She also provided notification of the breach to all affected clients for whom she had contact information. Ultimately, the Member provided notice to 110 clients by email, 62 clients by telephone, and 30 clients in person at her office. The notification included the details of the breach, the personal health information at issue, and the steps that were taken to contain and address the breach. 280 clients could not be notified because their contact information was not available or was no longer accurate. On April 30, 2021, after considering the circumstances of this reported breach and the actions taken by the Member, the IPC advised that it was satisfied that no further review of the matter was required and closed its file.

APPLICABLE LEGISLATION AND STANDARDS OF PRACTICE

14. The Member had obligations to protect the confidentiality of clients' personal information, including their personal health information, pursuant to (among other things) the *Code of Ethics and Standards of Practice Handbook* (the "**Handbook**") and PHIPA.
15. The Handbook contained the applicable standards of the profession at the relevant time, and those standards applied to the manner in which the Member dealt with her clients' records and personal health information.
16. The Member acknowledges that the conduct described in paragraphs 4-13 above did not comply with the applicable standards of practice relating to the maintenance of the social work record and confidentiality found in Principles IV and V of the Handbook.
17. At the relevant time, the Member was a "health information custodian" within the meaning of that term in PHIPA, and she was therefore required to abide by the responsibilities of health information custodians, including but not limited to those set out in ss. 12, 13, and 29 of PHIPA. The Member acknowledges that many of the client files that were disposed of in the dumpster contained "personal health information" as defined in PHIPA.
18. Under sections 12, 13, and 29 of PHIPA, the Member's obligations as a health information custodian included (but were not limited to) the duty to:
 - take steps that were reasonable in the circumstances to ensure that personal health information in her custody or control was protected against theft, loss and unauthorized use or disclosure and to ensure that the records containing that information are protected against unauthorized copying, modification, or disposal;
 - ensure that the records of personal health information that she had in her custody or control were retained, transferred, and disposed of in a secure manner and in accordance with the prescribed requirements; and

- refrain from collecting, using, or disclosing (whether deliberately or unintentionally) personal health information about an individual unless the individual had consented; or the collection, use, or disclosure was permitted or required by PHIPA.
19. PHIPA defines “disclose” to mean: “to make the information available or to release it to another health information custodian or to another person, but does not include to use the information.” The Information and Privacy Commissioner has found that even an inadvertent disclosure constitutes a breach of PHIPA.
 20. The Member acknowledges that although it was not her intention to make client records available to third parties, that was the effect of her conduct, and that her conduct therefore constituted a “disclosure” within the meaning of PHIPA.
 21. The Member acknowledges that the conduct described in paragraphs 4-13 above did not comply with these requirements in sections 12, 13, and 29 of PHIPA.

ADMISSIONS OF PROFESSIONAL MISCONDUCT

22. The Member admits that, by reason of engaging in the conduct outlined above, she is guilty of professional misconduct as set out in section 26(2)(a) and (c) of the *Social Work and Social Service Work Act*:
 - (a) In that she violated **Section 2.2 of the Professional Misconduct Regulation** and **Principle IV of the Handbook (as commented on in Interpretation 4.2.1)** by failing to comply with the requirements regarding record retention, storage, preservation and security set out in any applicable privacy and other legislation;
 - (b) In that she violated **Section 2.2 of the Professional Misconduct Regulation, Section 6 of the Code of Ethics, and Principle IV of the Handbook (as commented on in Interpretation 4.2.2)** by failing to take necessary steps to protect the confidentiality of all professionally acquired information, including by failing to protect the confidentiality and security of paper records, faxes, electronic records, and other communications;
 - (c) In that she violated **Section 2.2 of the Professional Misconduct Regulation** and **Principle IV of the Handbook (as commented on in Interpretation 4.2.3)** by failing to ensure that each client record is stored and preserved in a secure location for at least seven years from the date of the last entry or, if the client was less than eighteen years of age at the date of the last entry, at least seven years from the day the client became or would have become eighteen, or such other period of storage time that may be required by law,

- (d) In that she violated **Section 2.2 of the Professional Misconduct Regulation and Principle IV of the Handbook (as commented on in Interpretation 4.2.5)** by destroying client records in a manner that did not follow the time frames outlined in Interpretation 4.2.3 and/or by disposing of client record contents in a way that did not ensure that the confidentiality of the information was not compromised;
- (e) In that she violated **Section 2.2 of the Professional Misconduct Regulation, Section 6 of the Code of Ethics, and Principle V of the Handbook (as commented on in Interpretation 5.1)** by failing to comply with any applicable privacy and other legislation and/or by disclosing professionally acquired client information, including personal information, without first obtaining client consent and where such disclosure was not otherwise permitted or required by law;
- (f) In that she violated **Section 2.2 of the Professional Misconduct Regulation and Principle V of the Handbook (as commented on in Interpretation 5.3)** by disclosing information concerning or received from clients in circumstances where none of the enumerated exceptions in Interpretation 5.3 permitted such disclosure;
- (g) In that she violated **Sections 2.2 and 2.36 of the Professional Misconduct Regulation, Section 8 of the Code of Ethics, and Principle II of the Handbook (as commented on in Interpretation 2.2.8)** 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; by failing to avoid conduct in the practice of social work that could reasonably be perceived as reflecting negatively on the profession of social work; and/or by providing social work services in a manner that discredits the profession of social work or diminishes the public's trust in the profession;
- (h) In that she violated **Section 2.3 of the Professional Misconduct Regulation** by doing anything to a client in the course of practicing the profession in a situation in which consent is required by law, without such consent;
- (i) In that she violated **Section 2.20 of the Professional Misconduct Regulation** by failing to keep records as required by the regulations and standards of the profession;
- (j) In that she violated **Section 2.28 of the Professional Misconduct Regulation** by contravening the Act or regulations or by-laws; and/or
- (k) In that she contravened **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 the contravention is relevant to her

suitability to practice, and in by particular by violating ss. 12, 13, and/or 29 of the *Personal Health Information Protection Act, 2004*, S.O. 2004, c. 3, Sched. A.

23. With respect to the allegation in paragraph 22(g) above, the parties agree that the Member's conduct should be classified as dishonourable and unprofessional.

Decision of the Panel

[6] Having considered the admissions of the Member, the evidence contained in the Agreed Statement of Facts, and the submissions of counsel, the Panel finds that the Member committed the acts of professional misconduct alleged in the Notice of Hearing. With respect to allegation (g) the Panel finds that the Member's conduct would reasonably be regarded by members as dishonourable and unprofessional.

Reasons for Decision

[7] At all relevant times the Member was registered as a social worker with the College and was working as a social worker in private practice. The Member has been a member in good standing with the College for approximately 26 years and this is the first complaint or report filed with the College against the Member. The services provided by the Member include the provision of talk and somatic therapy, services related to depression, anxiety, mood disorders, stress, trauma, eating disorders, addiction, couples, and parent-child relationships.

[8] The allegations in this case engage three broad issues: improper disposal of client files, improper disclosure of client files, and failure to retain client files for the required period of time.

[9] For allegation (a), the College had to prove that the Member violated s. 2.2 of the Professional Misconduct Regulation, which makes it an act of professional misconduct for a member to fail to meet the standards of the profession, and Principle IV of the Handbook (as commented on in Interpretation 4.2.1), which sets out standards of the creation and maintenance of records by social workers. Specifically, the College alleged that the Member failed to comply with the requirements regarding record retention, storage, preservation and security set out in applicable privacy and other legislation.

[10] On April 20, 2020 the Member disposed of 482 discrete client files in a public dumpster. At the relevant time, the Member was a "health information custodian" as defined in s. 3 of the *Personal Health Information Protection Act, 2004*, SO 2004, c 3, Sch A ("PHIPA") and therefore was required to comply with the obligations PHIPA imposes on health information custodians, including but not limited to those set out in sections 12, 13 and 29. The relevant parts of sections 12, 13 and 29 of PHIPA provide as follows:

- 12 (1)** A health information custodian shall take steps that are reasonable in the circumstances to ensure that personal health information in the custodian's custody or control is protected against theft, loss and unauthorized use or disclosure and to ensure that the records containing the information are protected against unauthorized copying, modification or disposal.

- 13 (1)** A health information custodian shall ensure that the records of personal health information that it has in its custody or under its control are retained, transferred and disposed of in a secure manner and in accordance with the prescribed requirements, if any.
- 29** A health information custodian shall not collect, use or disclose personal health information about an individual unless,
- (a) it has the individual's consent under this Act and the collection, use or disclosure, as the case may be, to the best of the custodian's knowledge, is necessary for a lawful purpose; or
 - (b) the collection, use or disclosure, as the case may be, is permitted or required by this Act.

[11] The files that the Member disposed of in the dumpster contained "personal health information" as defined in s. 4(1) of PHIPA. Some of these files contained intake forms, clinical notes and confidential information about the client's mental health or the nature of the issues for which the client was seeking social work services from the Member including details about personal issues such as divorce, trauma and abuse. A number of files also contained client addresses and invoices.

[12] The Member did not take reasonable steps to prevent the disclosure of confidential client records. By disposing of the records in a public dumpster, the Member made the contents of the files accessible to the public. The files were not shredded, redacted or anonymized in any way, making the personal health information contained in the files accessible to the public when they were disposed of in the dumpster. Approximately one quarter of the client files had not yet been digitized or preserved in another format before the Member disposed of them, despite the fact that the applicable retention periods had not yet passed for all of the files. By disposing of the files in this manner:

- a. the Member did not take reasonable steps to ensure that personal health information in her custody was protected against theft, loss or unauthorized use or disclosure or ensure that the records were protected against unauthorized copying or disposal (contrary to s. 12 of PHIPA);
- b. the Member did not ensure the records of personal health information in her custody were disposed of in a secure manner (contrary to s. 13 of PHIPA);
- c. disclosed personal health information about her clients without the individuals' consent and where such disclosure was not permitted or required by PHIPA (contrary to s. 29 of PHIPA);
- d. The Member did not comply with the requirements for record retention, storage, preservation and security set out in PHIPA as required by Principle IV of the Handbook and Interpretation 4.2.1.

[13] A finding of professional misconduct for failing to meet the standards of the profession in this case is supported by the Discipline Committee's decision in *OCSWSSW v Barnim* 2017. In

Barnim the member accessed and viewed without consent the medical records of 139 patients for whom she was not involved in providing care. The member was charged under PHIPA and pled guilty. The Discipline Committee found the member guilty of professional misconduct under s. 2.2 of the Professional Misconduct Regulation and Principle IV of the Handbook (as commented on in Interpretation 4.2.1) for failing to manage client records in accordance with PHIPA.

[14] Because the Member failed to meet the standards of practice reflected in Principle IV of the Handbook and Interpretation 4.2.1, including by failing to comply with her obligations under PHIPA, allegation (a) has been proven.

[15] Allegation (b) relates to the Member's alleged violation of s. 2.2 of the Professional Misconduct Regulation, s. 6 of the Code of Ethics and Principle IV of the Handbook (as commented on in Interpretation 2.2) by failing to meet the standards of the profession regarding taking the necessary steps to protect the confidentiality of all professionally acquired information. By disposing of the 482 client files in the dumpster and making them accessible to the public, the Member did not properly dispose of the files in a way that would ensure confidentiality. She made it possible for members of the public to access sensitive client file information including but not limited to intake forms, clinical notes, clients' mental health information, addresses and invoices. In doing so, she did not protect the confidentiality of that information. Accordingly, the Member failed to meet the standards of the profession as alleged in allegation (b) by violating s. 2.2 of the Professional Misconduct Regulation, s. 6 of the Code of Ethics and Principle IV of the Handbook (Interpretation 4.2.2).

[16] Allegation (c) is that the Member violated s. 2.2 of the Professional Misconduct regulation and Principle IV of the Handbook (as commented on in Interpretation 4.2.3) by failing to ensure the proper storage and preservation of client files. The standards of the profession require the Member to ensure that each client record is stored and preserved in a secure location for the required period of time, generally at least seven years from the date of the last entry or, if the client was less than eighteen years of age at the date of the last entry, at least seven years from the day the client became or would have become eighteen. As noted, some files the Member disposed of in the dumpster had not yet been digitized or preserved in another format and the applicable retention periods had not yet passed for all of the files. The evidence proves the Member engaged in professional misconduct as alleged in allegation (c).

[17] Allegation (d) alleges that the Member violated s. 2.2 of the Professional Misconduct regulation and Principle IV of the Handbook (as commented on in Interpretation 4.2.5) by destroying client files in a manner that did not follow the required time frames or dispose of them such a way as to ensure confidentiality of the file contents was not comprised. For the reasons set out in paragraphs 11 to 16 above, the Panel found that the Member also committed professional misconduct as set out in allegation (d).

[18] For allegation (e), the College had to prove that the Member violated s. 2.2 of the Professional Misconduct Regulation, s. 6 of the Code of Ethics and Principle V of the Handbook (as commented on in Interpretation 5.1) by failing to meet the standards of the profession requiring compliance with privacy legislation and by disclosing of professional acquired client information, including personal health information, without client consent.

[19] Section 2 of PHIPA defines "disclose" to mean "make the information available or release it to another health information custodian or to another person". The Member's conduct in

disposing of the client files in a public location constituted a “disclosure” within the meaning of PHIPA. This case is similar to the decision of the Information and Privacy Commissioner of Ontario (“IPC”) in *Trillium Health Partners (Re)*, 2020 CanLII 15333, on which the College relied. In that case, a hospital gave staff members login credentials to access client health records. The staff members then accessed those files inappropriately. Although the hospital did not intend such inappropriate use, by providing the staff members with access to the client health records, the IPC found that the hospital “disclosed” the patients’ health information under PHIPA. Similarly, by disposing of the files in a public place (a dumpster) the Member made her clients’ information available to the public and she therefore “disclosed” the information. There is no dispute that the Members’ clients did not consent to the Member disclosing the information in their files by disposing those files in a public dumpster unshredded, unredacted and not anonymized.

[20] While the Panel acknowledges the context of the Member’s emotional state at the time, her emotional state and intentions had no bearing on the fact that her actions amounted to improper disclosure of her clients’ health information. Notably, the Member did not notify the College of having dumped the files in the dumpster. Although the potential damage was contained and the files were not access by the public, this was due to the actions of the business owner who observed the Member disposing of the files in the dumpster, recovered the client files from the dumpster, and reported the Member’s conduct to the College. The Member did not take steps after she had disposed of the files to retrieve them and alert the College. The Member did not comply with s. 29 of PHIPA and failed to meet the standards of the profession when she disclosed the client files by disposing them in the public dumpster without client consent. Thus, the College has proven allegation (e).

[21] The Panel’s finding on allegation (e) is supported by the Discipline Committee’s decision in *OCSWSSW v Denham*, 2019 ONCSWSSW 7. In that case the Member publicly posted a link to a confidential file containing information about 285 families involved with Child and Family Services. Although the Member was not involved with those families or Child and Family Services in her professional capacity, the Discipline Committee found that she disclosed the information contrary to applicable privacy legislation (in that case, s. 45(8) of the *Child and Family Services Act*, RSO 1990, c C.11) and contravened the standards of the profession set out in Principle V and Interpretation 5.1 by making confidential and sensitive information accessible to the public.

[22] Like allegation (e), allegation (f) relates to disclosure of client information in circumstances where it is not permitted. Principle V, Interpretation 5.3 prohibits College members from disclosing information concerning or received from clients except where specific enumerated exceptions permit disclosure. None of the enumerated exceptions in Interpretation 5.3 permitted the Member to disclose client information by disposing of the client files in the manner she did. Accordingly, the Panel found that the Member violated s. 2.2 of the Professional Misconduct Regulation and Principle V (as commented on in Interpretation 5.3), as alleged in allegation (f).

[23] With respect to allegation (g), the Panel was satisfied that the Member violated s. 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 dishonourable and unprofessional. The parties agreed that those two terms in s. 2.36 most appropriately describe the Member’s conduct. The Panel agreed. Without consent, the Member made client files containing sensitive personal health information accessible to the public by disposing of them in a public dumpster. The Member’s conduct did not meet the

standards of appropriate record keeping or retention of files for the required period of time. In falling below the standards expected of social work professionals, the Member's conduct is also unprofessional. Moreover, the Member's conduct was dishonorable in that she knew or ought to have known that the improper disposal of client records was an unacceptable conduct.

[24] The Member also violated s. 2.2 of the Professional Misconduct Regulation by failing to meet the standards of the profession as set out in s. 8 of the Code of Ethics and Principle II of the Handbook (as commented on in Interpretation 2.2.8). Section 8 of the Code provides that members "shall not provide social work or social service work services in a manner that discredits the profession of social work or social service work or diminishes the public's trust in either profession." Principle II requires that members maintain competence and integrity in their practice and Interpretation 2.2.8 adds that College members must "avoid conduct which could reasonably be perceived as reflecting negatively on the professions of social work or social service work." The Member failed to meet these standards by making client information containing health information accessible to the public when disposing client files in a public dumpster. Although the intent of the Member was not to disclose personal health information, the improper disposal of the client records made disclosure a possibility.

[25] Allegation (h) engages s. 2.3 of the Professional Misconduct Regulation, which makes it an act of professional misconduct for a member to do anything to a client in the course of practising the profession in a situation in which consent is required by law, without such consent. When she disposed of client files, some of which contained confidential information, in a public dumpster the Member disclosed the contents of those files without the clients' consent. As discussed, s. 29 of PHIPA requires client consent to disclose personal health information except in narrow circumstances that do not apply here. Allegation (h) was proven on the evidence before the Panel.

[26] Allegation (i) is that the Member violated s. 2.20 of the Professional Misconduct Regulation by related to failing to keep records as required by the regulations and standards of the profession. The Member had obligations under the standards of practice set out in the Code of Ethics and the Handbook, as well as under PHIPA, to protect the confidentiality of client information and as to the maintenance, confidentiality, retention and proper disposal of social work records. The Member had a duty to: take steps to ensure that personal health information in her custody and control was protected; ensure that the records in her custody and control were retained, and disposed of in a secure manner in accordance with prescribed requirements; and refrain from collecting, using or disclosing (whether deliberate or unintentional) personal health information unless the individual has consented to the collection, use or disclosure as permitted or required by PHIPA. By failing to keep records as required, the Member committed professional misconduct as alleged in allegation (i).

[27] Allegation (j) alleges that the Member violated s. 2.28 of the Professional Misconduct Regulation by contravening the Act or regulation or by-laws. By reason of engaging in the acts of professional misconduct outlined in these reasons (with respect to allegations (a) to (i) and (k)), the Member contravened the Code of Ethics and Handbook (which are bylaws of the College), provisions of the Professional Misconduct Regulation, and ss. 26(2)(a) and (c) of the Act. This constitutes violations of s. 2.28 of the Regulation and supports a finding on allegation (j).

[28] Finally, allegation (k) relates to s. 2.29 of the Professional Misconduct Regulation. It is an act of professional misconduct if a member contravenes a federal, provincial or territorial law or a

municipal by-law where the purpose of the law or by-law is to protect the public health and/or the contravention is relevant to the member's suitability to practise. The Panel is satisfied that the Member contravened the obligations she had under ss. 12, 13 and 29 of PHIPA, a provincial law. The Member acknowledges that although that was not her intention to make client records available to third parties, that is in fact what the result of her conduct was by disposing of the 482 client files in a public dumpster. The purpose of PHIPA is to protect public health as it requires custodians to keep public health records confidential unless stipulated exceptions exist or the client consents to disclosure of the information. Confidentiality of personal health information is necessary for the protection of public health. The clients did not consent and there were no exceptions permitting disclosure in this case when the Member improperly disposed of the confidential files containing client health information. Further, the contravention is relevant to the Member's suitability to practise social work because the law and the Member's professional obligations required her to maintain client confidentiality. She failed to meet those obligations when she threw the files in a public dumpster and made her clients' health information accessible and available to the public.

Penalty Submissions

[29] The parties were in agreement on the issue of penalty. They presented to the Panel a Joint Submission on Penalty and Costs ("**Joint Submission**") and asked the Panel make an order as follows.

1. The Member shall be reprimanded in person or electronically by the Discipline Committee, and the fact and nature of the reprimand shall be recorded on the College's Register.
2. The Registrar shall be directed to suspend the Member's Certificate of Registration for a period of four (4) months, the first three (3) of which shall be served beginning on May 22, 2022 and shall run continuously up to and including August 21, 2022. The remaining one (1) month of the suspension shall be remitted if, on or before the one (1) year anniversary of the Discipline Committee's Order herein, the Member provides evidence, satisfactory to the Registrar of the College, of compliance with the terms, conditions, and limitations imposed under paragraph 3 as set out below. If the Member fails to comply with those terms, conditions, and limitations, the Member shall serve the remaining one (1) month of the suspension, which shall be served immediately following the one (1) year anniversary of the Discipline Committee's Order herein.¹

¹ For greater clarity, the terms, conditions, and limitations imposed under paragraph 3 hereof will be binding on the Member regardless of the length of suspension served and the Member may not elect to serve the suspension in place of performing those terms, conditions and limitations. If the Member fails to comply with the terms, conditions, and limitations, the Registrar may refer the matter to the Executive Committee of the College. The Executive Committee, pursuant to its authority, may take such action as it deems appropriate, which may include referring to the Discipline Committee allegations of professional misconduct arising from any failure to comply with the terms, conditions, and limitations.

3. The Registrar shall be directed to impose the following terms, conditions and limitations on the Member's Certificate of Registration, to be recorded on the Register:
 - a. Requiring the Member to, at her own expense, participate in and successfully complete a continuing education course, approved by the Registrar, on the topic of professional ethics.
 - b. Requiring the Member to, at her own expense, participate in and successfully complete a continuing education course, approved by the Registrar, on the topic of privacy and her related professional obligations under the College's *Code of Ethics and Standards of Practice Handbook* and the *Personal Health Information Protect Act* ("**PHIPA**").
 - c. Requiring the Member to, at her own expense, engage in psychotherapy as directed by a therapist, approved by the Registrar, for a minimum of six (6) sessions, to be completed before the one (1) year anniversary of the Discipline Committee's Order herein. The Member shall ensure the approved therapist provides a written report to the Registrar at the conclusion of the six (6) sessions, which shall include the following:
 - i. confirmation that the Member has provided the therapist with the Notice of Hearing and the Agreed Statement of Facts in this matter and that the psychotherapy sessions addressed the conduct discussed therein;
 - ii. outlining the substance of the psychotherapy;² and
 - iii. discussing the Member's progress.
 - d. Requiring the Member to, at her own expense, meet with the Registrar and/or a regulatory expert designated by the Registrar within six (6) months from the date of the Order. Prior to the meeting, the Member shall review sections 1-2 of the College's *PHIPA* Toolkit. The subject of the meeting with the Registrar and/or regulatory expert will include a discussion on:
 - i. the acts or omissions for which the Member was found to have committed professional misconduct and the Member's reflections on the factors contributing to the professional misconduct;
 - ii. the potential consequences of the misconduct to the Member's clients, colleagues, the profession, and herself;
 - iii. strategies for preventing the misconduct from recurring; and

² For greater clarity, the substance of the psychotherapy includes but is not limited to the content, approach, and expected outcomes. A discussion of the Member's progress is expected to include the therapist's assessment of the progress the Member made throughout the course of therapy.

- iv. the Member's learning plan, which the Member will prepare in advance of the meeting and be prepared to discuss with the Registrar and/or the regulatory expert.³
4. The finding and the order of the Discipline Committee shall be published, in detail or in summary with the name of the Member, 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 five thousand dollars (\$5,000), to be paid within sixty (60) days of the Discipline Committee's Order herein.

[30] College counsel reminded the Panel of the proper approach to consideration of a joint submission as set out by the Supreme Court of Canada in *R. v. Anthony-Cook*, 2016 SCC 43. The Panel must accept the joint submission unless it finds that doing so would bring the administration of the College's discipline process into disrepute or would be contrary to the public interest. College counsel reviewed the principles and objectives of penalty, which the Panel must consider in assessing the Joint Submission according to that standard. The primary purpose of penalty is to protect the public. The public must have confidence in the profession's ability to regulate itself. The Panel should consider the objectives of general deterrence, specific deterrence, and the Member's potential for rehabilitation. College counsel argued that the Joint Submission is appropriate in light of these principles.

[31] The Panel must also consider the aggravating and mitigating factors. College counsel argued that the aggravating factors in this case are the Member's breach of her confidentiality obligations, which are a cornerstone of the client-social worker relationship. It was serious misconduct that resulted in the personal health information of 482 clients being disposed of in a public place. Some of the records included highly sensitive matters for which the clients were receiving social work services from the Member. It was not a situation of inadvertence or negligence by the Member—she decided to dispose of the files in the dumpster. As for mitigating factors, the Member cooperated with the College throughout this proceeding, has no prior discipline history, and this was a one-time incident that does not reflect a pattern of behaviour. After the incident the Member showed insight by undergoing psychotherapy to help her deal with the stressors that created the context in which the misconduct occurred. She has taken remedial steps to deal with her actions, including working with the IPC, updating her practices, retaining a lawyer to advise her on her privacy obligations, and contacting the clients who were affected by the breach. However, College counsel argued that the fact the breach was immediately contained is not a mitigating factor because it was not as a result of any actions of the Member, but rather the actions of the business owner.

[32] College counsel noted that the terms of the Joint Submission are in line with similar cases although there is no case with facts exactly like this one:

- a. *OCSWSSW v Barnim* (2017) – this was a “snooping” case in which the member accessed patients' personal health information without authority. The member's

³ For greater clarity, a learning plan seeks to identify practice gaps and provides a description of how those practice gaps will be addressed.

actions were deliberate. The member was a junior member of the profession, unlike Ms. Osher. The member did not undertake the extensive remedial work that Ms. Osher has done. The Discipline Committee imposed a longer suspension of six months (with two months remitted).

- b. *OCSWSSW v Denham*, 2021 ONCSWSSW 3 – the member, acting in her personal capacity, publicly posted a link to a webpage intended to be private that contained information about families involved in child protection matters. The member also surreptitiously recorded confidential board documents of a child and family services agency and posted the recording on a public website. The member’s actions were deliberate, she actively tried to disclose confidential information, and she encouraged others to view the information. The member was unremorseful. The Discipline Committee imposed a six-month suspension with one month remitted.
- c. *OCSWSSW v Cullain* (2017) and *OCSWSSW v Kline*, 2020 ONCSWSSW 2 – in both of these cases the members inappropriately disclosed information from Children’s Aid Society files. Both members voluntarily resigned their certificates of resignation and undertook not to reapply for membership.

[33] The Member’s legal counsel reminded the Panel that the Member admitted wrongdoing, took responsibility for her actions and expressed remorse for the lapse in judgement. The Member did not intend on making the records publicly accessible. The Member did engage in remediation prior to the hearing and joint submission on penalty by reviewing her recordkeeping practices, reporting the breach to affected clients and retaining a lawyer to ensure compliance with her privacy obligations. The Member’s counsel provided a letter from the IPC (Exhibit #5) dated April 30, 2021, setting out the details of the breach and the Member’s remediation, and the IPC’s decision to close the file. Also in 2021, the Member completed privacy training. This is the first complaint to the College about the Member in over two decades of social work practice. It was a single incident of misconduct that occurred in the context of a number of factors the Member was dealing with at the time.

[34] The Member’s counsel distinguished the cases cited by the College, noting that it was not the Member’s deliberate intention to disclose the file information in this case.

[35] The Member’s legal counsel agreed with the length of suspension in the Joint Submission and argued that given the nature of the services the Member provides to some of her clients, they would be left vulnerable if the suspension was for a longer period of time.

[36] **Penalty Decision**

[37] Having considered the findings of professional misconduct, the evidence and the submissions of the parties, the Panel accepts the Joint Submission and makes an order as follows.

1. The Member shall be reprimanded in person or electronically by the Discipline Committee, and the fact and nature of the reprimand shall be recorded on the College’s Register.
2. The Registrar is hereby directed to suspend the Member’s Certificate of Registration for a period of four (4) months, the first three (3) of which shall be served beginning

on May 22, 2022 and shall run continuously up to and including August 21, 2022. The remaining one (1) month of the suspension shall be remitted if, on or before the one (1) year anniversary of the Discipline Committee's Order herein, the Member provides evidence, satisfactory to the Registrar of the College, of compliance with the terms, conditions, and limitations imposed under paragraph 3 as set out below. If the Member fails to comply with those terms, conditions, and limitations, the Member shall serve the remaining one (1) month of the suspension, which shall be served immediately following the one (1) year anniversary of the Discipline Committee's Order herein.⁴

3. The Registrar is hereby directed to impose the following terms, conditions and limitations on the Member's Certificate of Registration, to be recorded on the Register:
 - (a) Requiring the Member to, at her own expense, participate in and successfully complete a continuing education course, approved by the Registrar, on the topic of professional ethics.
 - (b) Requiring the Member to, at her own expense, participate in and successfully complete a continuing education course, approved by the Registrar, on the topic of privacy and her related professional obligations under the College's *Code of Ethics and Standards of Practice Handbook* and the *Personal Health Information Protect Act* ("**PHIPA**").
 - (c) Requiring the Member to, at her own expense, engage in psychotherapy as directed by a therapist, approved by the Registrar, for a minimum of six (6) sessions, to be completed before the one (1) year anniversary of the Discipline Committee's Order herein. The Member shall ensure the approved therapist provides a written report to the Registrar at the conclusion of the six (6) sessions, which shall include the following:
 - i. confirmation that the Member has provided the therapist with the Notice of Hearing and the Agreed Statement of Facts in this matter and that the psychotherapy sessions addressed the conduct discussed therein;
 - ii. outlining the substance of the psychotherapy;⁵ and
 - iii. discussing the Member's progress.
 - (d) Requiring the Member to, at her own expense, meet with the Registrar and/or a regulatory expert designated by the Registrar within six (6) months from the date

⁴ For greater clarity, the terms, conditions, and limitations imposed under paragraph 3 hereof will be binding on the Member regardless of the length of suspension served and the Member may not elect to serve the suspension in place of performing those terms, conditions and limitations. If the Member fails to comply with the terms, conditions, and limitations, the Registrar may refer the matter to the Executive Committee of the College. The Executive Committee, pursuant to its authority, may take such action as it deems appropriate, which may include referring to the Discipline Committee allegations of professional misconduct arising from any failure to comply with the terms, conditions, and limitations.

⁵ For greater clarity, the substance of the psychotherapy includes but is not limited to the content, approach, and expected outcomes. A discussion of the Member's progress is expected to include the therapist's assessment of the progress the Member made throughout the course of therapy.

of the Order. Prior to the meeting, the Member shall review sections 1-2 of the College's *PHIPA* Toolkit. The subject of the meeting with the Registrar and/or regulatory expert will include a discussion on:

- i. the acts or omissions for which the Member was found to have committed professional misconduct and the Member's reflections on the factors contributing to the professional misconduct;
 - ii. the potential consequences of the misconduct to the Member's clients, colleagues, the profession, and herself;
 - iii. strategies for preventing the misconduct from recurring; and
 - iv. the Member's learning plan, which the Member will prepare in advance of the meeting and be prepared to discuss with the Registrar and/or the regulatory expert.⁶
4. The finding and the order of the Discipline Committee shall be published, in detail or in summary with the name of the Member, 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 five thousand dollars (\$5,000), to be paid within sixty (60) days of the Discipline Committee's Order herein.

Reasons for Penalty Decision

[38] The Panel recognized that the penalty 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 Panel also considered the principle that the Panel should accept a joint submission on penalty unless it is contrary to the public interest and would bring the administration of justice into disrepute.

[39] The Panel found that the Joint Submission appropriately takes into account the protection of the public, individual circumstances, the nature of the misconduct as well as specific and general deterrence and rehabilitation.

[40] The aspects of penalty that achieve specific deterrence are: the oral reprimand; the suspension of the Member's certificate of registration with the College; the training on professional ethics and privacy as it is related to professional obligations; the costs incurred including for training; the publication of the decision; the requirement to undergo psychotherapy; and the meeting with the Registrar within six months from the date of order. The aspects of penalty that achieve general deterrence are: the reprimand; the suspension of the Member's certificate of registration; the training and associated costs; and the publication of the decision. The aspects of

⁶ For greater clarity, a learning plan seeks to identify practice gaps and provides a description of how those practice gaps will be addressed.

the penalty that achieve rehabilitation/remediation are: the ethics and privacy training, the psychotherapy sessions, the meeting with the Registrar and the publication of the decision and reasons.

[41] The aggravating factors in this case include the Member’s failures to take steps to retrieve client files and to report the inappropriate disposal of confidential information in a public dumpster. The conduct of the Member was in breach of her obligations as social worker and “health information custodian”, under both the College’s standards and PHIPA. The Member made nearly 500 client files accessible in a public dumpster. The Member deliberately chose to dispose of the client files in an unsafe location, contravening her obligation to maintain client trust. For some clients, the Member disposed of the client files before the required retention period had passed.

[42] The mitigating factors include that the Member cooperated with the College and the IPC (supported by the letter marked as exhibit #5). The Member revised her privacy policy, enlisted the services of a privacy lawyer at her own expense and notified clients of the breach. This was the first time the Member faced a College complaint or appeared before the Discipline Committee. The Member had insight and willingness to engage in psychotherapy when it became apparent that her conduct may be impacted by her personal circumstances.

[43] This case represents a middle ground of case law that was presented and speaks to unique circumstances in this matter. The Member engaged in a serious breach of trust with her clients by improperly disposing of the client files. However, she has demonstrated remorse, cooperated with the College, and undertaken significant remedial measures. The Joint Submission falls within an acceptable range based on the cases the parties presented to the Panel. The Panel is satisfied that the public interests are protected based on the Joint Submission.

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

Date: _____

Signed: _____

Durel Williams, Chair
Angèle Desormeau
Alexia Polillo