

PROVINCE OF NOVA SCOTIA )  
CITY OF HALIFAX )

IN THE MATTER OF: **The Nova Scotia Board of Examiners in Psychology**

AND IN THE MATTER OF: **Dr. Merete Sommerlund, # R0915**

AND IN THE MATTER OF: **A hearing held pursuant to section 39 of the  
*Psychologists Act, SNS 2000, c 32***

---

**HEARING COMMITTEE DECISION**

---

Panel Members: Sean Ponnambalam, Chair  
Michele Brennan  
Heather Power, R. Psych.  
Dr. Leah Clyburn, R. Psych.  
Dr. Shelley Goodwin, R. Psych.

Dates of Hearing: November 21-22, 2023  
November 13-14, 2024  
December 9, 2024

Counsel: Ryan Baxter and Olivia Feschuk for NSBEP  
Ian Joyce for Dr. Merete Sommerlund  
Kimberley Turner, K.C. for the Hearing Committee

**Decision: Dr. Merete Sommerlund is guilty of professional misconduct and conduct unbecoming a psychologist and her registration is cancelled, effective 45 days after the issuing of this decision, with the ability to reapply for registration 2 years after her removal from the register of psychologists. Dr. Sommerlund is to receive a reprimand for sexual misconduct with a vulnerable adult client.**

## **I. INTRODUCTION**

1. The Hearing Committee of the Nova Scotia Board of Examiners in Psychology (“NSBEP”) was appointed in the spring of 2023 to consider allegations that Dr. Merete Sommerlund had engaged in professional misconduct and/or conduct unbecoming a psychologist as follows:

1. Beginning in January 2019 and continuing thereafter, Dr. Sommerlund engaged in a sexual relationship with Client “A”, a vulnerable client for whom she had very recently provided psychological services, contrary to: the NSBEP’s Sexual Misconduct by Psychologists Guideline; the NSBEP Standards of Professional Conduct, Principles 9.1 and 9.4; and the Canadian Code of Ethics for Psychologists, Ethical Standards II.1, II.2, II.28, III.28, III.30, and IV.10.
2. Between 2018 – 2021, Dr. Sommerlund failed to maintain appropriate professional boundaries by engaging in a personal relationship with Client “A”, particulars of which included:
  - a. allowing Client “A” to render unpaid services to her, including plowing her driveway during winter and stacking wood;
  - b. exchanging texts with Client “A” for non-therapeutic reasons; and
  - c. allowing Client “A” to move in with her only months following the termination of the therapeutic relationship,contrary to the Canadian Code of Ethics, Ethical Standards II.1, II.2, III.30, and IV.10.
3. In or around 2018 – 2019, Dr. Sommerlund failed to refer Client “A” to another psychologist upon initially noting the existence of a dual relationship, contrary to the NSBEP Standards of Professional Conduct, Principle 8 and the Canadian Code of Ethics, Ethical Standards II.33 and III.31.
4. Dr. Sommerlund failed to disclose the nature of her relationship with Client “A” during her oral ethics exam with the Registration Subcommittee of NSBEP on March 29, 2019. (Notice of Hearing)

2. A hearing was scheduled for November 21 and 22, 2023.
3. In advance of the hearing dates, the Hearing Committee was provided with an “Agreed Statement of Facts and Admissions” which set out the background to the matter, and included Dr. Sommerlund’s admission to the charges, and her admissions that this constituted professional misconduct and conduct unbecoming a psychologist.
4. Also, in advance of the hearing dates, both parties provided written submissions on penalty. The Committee was also provided with reports from Dr. Timothy Walker, a Registered Counselling Therapist who was treating Dr. Sommerlund, and Dr. Myles Genest, Dr. Sommerlund’s practice supervisor.
5. In their written submissions, NSBEP sought the cancellation of Dr. Sommerlund’s registration, that she be reprimanded for engaging in sexual misconduct with a vulnerable client, that she be required to complete an ethics training course before applying for reinstatement, and that she undergoes an independent mental health assessment prior to being eligible to apply for reinstatement.
6. Dr. Sommerlund’s written submissions proposed a suspension in the range of six to twelve months, with ongoing supervision and treatment for a period of six months, and the completion of an approved ethics training course. She submitted that the reprimand should be for “engaging in sexual misconduct with a client” (omitting the word vulnerable).
7. At the hearing on November 21 and 22, 2023 NSBEP called no evidence but relied on the Agreed Statement of Facts and Admissions in support of their requested disposition. Dr. Sommerlund called Dr. Walker and Dr. Genest to speak to their reports. Dr. Sommerlund was not called to testify.
8. The Committee also received further oral submissions from the parties on the appropriate disposition and Dr. Sommerlund was provided the opportunity to submit written rebuttal on caselaw relied upon by NSBEP in its submissions.
9. In February 2024, before the Committee had made its decision on Penalty, Dr. Sommerlund, through new legal counsel, Ian Joyce, sought to reopen the hearing in order to allow the tendering of a formal risk assessment, to have Dr. Sommerlund testify on the issue of remorse, and to provide supplemental arguments in light of the new evidence.
10. NSBEP objected to the reopening of the hearing for this (or any) purpose. Both parties provided written submissions.
11. By email summary decision on May 2, 2024, the Committee advised the parties that it was allowing the motion to reopen the hearing, limited to the following:
  - 1) formal independent risk assessment,
  - 2) direct evidence from Dr. Sommerlund on the issue of remorse,

3) argument and submissions concerning the risk to re-offend, remorse, and the appropriate penalty to be imposed in this matter.

12. Reasons for this decision are set out later in this decision.

13. The hearing reconvened on November 13 and 14, 2024, in person and continued on December 9, 2024, virtually. Dr. Sommerlund submitted a report from Dr. Brad Kelln and called him to testify with respect to his opinion. Dr. Sommerlund also testified. Both parties then provided further oral submissions, supported by caselaw.

14. NSBEP maintained its position that the appropriate penalty included the cancellation of Dr. Sommerlund's registration, a reprimand, an assessment, and ethics training.

15. Dr. Sommerlund argued that an appropriate penalty would be a suspension in the 3-to-18-month range and that any reprimand clearly references Mr. A as a vulnerable "adult" client.

## **II. MANDATE AND AUTHORITY OF THE HEARING COMMITTEE**

16. This Hearing Committee was established pursuant to section 39 of the *Psychologists Act*, SNS 2000, c 32, (the "Act") after a referral from NSBEP's Investigation Committee.

17. As noted, the Committee is tasked with determining an appropriate penalty for Dr. Sommerlund's misconduct. In making that assessment, the Committee must take into consideration the purposes of the *Psychologists Act*:

*3(A) (1) The objects of the Board are to*

*(a) serve and protect the public interest in the practice of psychology;*

*(b) preserve the integrity of the profession of psychology; and*

*(c) maintain public confidence in the ability of the Board to regulate the practice of psychology.*

18. The Committee's authority to impose sanctions on a registrant is elaborated upon under section 46(1)(e) of the Act:

*46(1)(e) A hearing committee shall determine whether the registered psychologist or candidate is guilty of charges relating to a discipline matter, and*

*(i) where there is a guilty finding, may determine that*

*(A) the registration of the registered psychologist be cancelled,*

*(B) the name of a candidate be removed from the Register of Candidates,*

*(C) the registration of a registered psychologist be suspended for an indefinite period until the occurrence of some specified future event or until compliance with conditions prescribed by the committee,*

*(D) conditions, limitations or restrictions be imposed upon the registration of the registered psychologist or candidate,*

*(E) the registered psychologist or candidate undergo such treatment or re-education as the committee considers necessary,*

*(F) restitution be made,*

*(G) such fine as the committee considers appropriate, to a maximum of fifteen thousand dollars, be paid by the registered psychologist or candidate to the Board for the purpose of funding education and research as determined by the Board,*

*(H) the registered psychologist or candidate be reprimanded,*

*(I) such other disposition as it considers appropriate be imposed*

19. Any sanction applied to Dr. Sommerlund must ensure that the public is protected, that the profession's integrity is maintained, and that the public has faith that the Committee is adequately regulating members who fall below the standards of practice.

20. Beyond the protection of the public, the disciplinary process is one that takes into consideration broader public interest considerations such as the public access to service, reputational impacts on the profession, rehabilitation of the practitioner, issues specific to the practice of psychology, principles of natural justice and procedural fairness. As a Hearing Committee, we have had to balance these sometimes-competing considerations to reach a resolution that reflect the objects under the Act.

### **III. BACKGROUND**

#### **Background of the Registrant**

21. Dr. Sommerlund is a Registered Psychologist in the Province of Nova Scotia and a member of the NSBEP.

22. In 2004, Dr. Sommerlund completed her Bachelor of Arts in Psychology (Honours) from the University of Calgary. In 2015, Dr. Sommerlund obtained her Doctorate in Clinical Psychology from the University of Saskatchewan.

23. From 2010 to 2017, Dr. Sommerlund worked as a clinical therapist/psychologist with the Child and Youth Program, Mental Health and Addiction Services, Nova Scotia Health Authority in Kentville, Nova Scotia. From 2017 until 2022, and at the time of the misconduct, Dr. Sommerlund practised as a psychologist with CBI Health, in New Minas, Nova Scotia.

24. Dr. Sommerlund first registered with the NSBEP as a Candidate in 2016. Dr. Sommerlund became a fully Registered Psychologist on March 29, 2019, after completing the requirements of candidacy, including an oral ethics exam.

25. In December 2022, Dr. Sommerlund opened a private practice, where she continues to practice as a sole practitioner at the time of this writing (subject to supervision by Dr. Myles Genest).

### **Background to the Complaint and Investigation**

26. As set out in the Agreed Statement of Facts and Admissions, Mr. A had originally sought the services of Dr. Sommerlund in 2018 in relation to an ongoing Workers' Compensation Board claim. Dr. Sommerlund provided psychotherapy treatment for Mr. A's significant life stressors, anxiety, and Post-Traumatic Stress Disorder ("PTSD") from April 11, 2018 until January 11, 2019. From August 2018 forward these services were provided on a pro bono basis.

27. During the time she was Mr. A's psychologist, Dr. Sommerlund failed to maintain appropriate boundaries, or refer Mr. A to another therapist, despite Mr. A's behaviour becoming increasingly friendly and subtly flirtatious, and despite her developing a fondness for him. She engaged in personal texting with Mr. A and allowed him to plow her driveway and stack her wood in exchange for her pro bono therapy sessions. Dr. Sommerlund did not bring her attraction to Mr. A to the attention of her clinical supervisor.

28. During their final therapy session in January 2019, Mr. A confessed to having strong feelings for Dr. Sommerlund. Dr. Sommerlund and Mr. A promptly ended the therapeutic relationship.

29. Dr. Sommerlund entered into a sexual relationship with Mr. A immediately after terminating the therapeutic relationship. Dr. Sommerlund and Mr. A began cohabiting in May 2019 in a part-time arrangement when her children were not present in the apartment. In the fall of 2019, Mr. A moved into Dr. Sommerlund's home full-time, her children being present around 50% of the time. This living situation lasted until August 3, 2021.

30. On August 3, 2021, Mr. A left Dr. Sommerlund's house with her car and did not return. The police became involved as Mr. A was being investigated with respect to an alleged offence.

31. On August 24, 2021, Mr. A was located, arrested and sent to the East Coast Forensic Psychiatric Hospital, where he was placed under the care of Dr. Scott Theriault.

32. Dr. Theriault submitted a complaint to NSBEP against Dr. Sommerlund on September 10, 2021, in which he noted the following:

- a. He was the assigned psychiatrist of Mr. A at the East Coast Forensic Psychiatric Hospital, starting on August 26, 2021;
- b. Mr. A informed Dr. Theriault that he was in a common law relationship with Dr. Sommerlund and had been for three years;
- c. Mr. A had received psychological services from Dr. Sommerlund initially paid for by the WCB and subsequently, when the entitlement ended, on a pro bono basis;
- d. After several pro bono sessions, the intimate relationship began and Dr. Sommerlund ceased acting as Mr. A's treating psychologist. At around the same time, both parties were separating from their respective spouses; and
- e. Mr. A reported that he felt that he was taken advantage of in the relationship and used as a "babysitter" and that the relationship was "not right".

33. On October 28, 2021, Dr. Sommerlund responded to the Complaint. In her response she admitted to the relationship following her treatment of Mr. A. She referenced various stressors in her life, and said that "When Mr. A professed his feeling for me and offered the possibility of a different life, I took the leap, knowing that it was not the right thing to do on many levels". She described Mr. A as being verbally and emotionally abusive during the time of their relationship, which ended on August 3, 2021, when she became aware that Mr. A was under investigation for a home invasion and subsequently charged with a number of criminal offences.

34. Dr. Sommerlund admitted that "There is no doubt that my choice to enter into a romantic relationship with Mr. A after our therapeutic relationship ended was poor and counter to my ethical code as a psychologist." She said that she has "learned the hard way why I should not have done what I did". She described the complaint as Mr. A's "last attempt at demonstrating his power by ensuring that I suffer as well, given the predicament he is now in".

35. The complaint was referred to the NSBEP Investigation Committee in the Fall of 2021.

36. On March 8, 2022, Dr. Sommerlund entered into a voluntary undertaking with NSBEP, under which her practice was to be supervised, at her own expense, by a registered psychologist appointed by NSBEP. She was to meet with the practice supervisor for two hours each month, with a focus of the supervision being on dual relationships, professional boundaries and ethics. Dr. Myles Genest was appointed by NSBEP on April 8, 2022. Dr. Sommerlund has continued to offer psychological services under the supervision of Dr. Genest to date.

37. Dr. Sommerlund was not suspended from practice by either the Investigation Committee or by the Hearing Committee.

38. The Investigation Committee concluded their investigation on October 20, 2022 and referred the allegations set out in the notice of hearing to the Hearing Committee.

#### **IV. ADMISSIONS**

39. Under the Agreed Statement of facts, Dr. Sommerlund admits that her conduct set out therein constitutes professional misconduct and conduct unbecoming pursuant to the *Psychologists Act*.

40. These admissions allowed the Committee to avoid a full hearing on the merits of the allegations including avoiding the need for testimony from Mr. A.

#### **V. THE HEARING**

##### **November 21 and 22 Hearing Dates**

41. The hearing on sanction originally took place on November 21, and 22, 2023.

42. At that point in time, Dr. Sommerlund was represented by Randall Balcome, K.C., while NSBEP was represented by Ryan Baxter and Mallory Adams.

##### **Publication Bans**

43. At the commencement of the hearing, NSBEP requested a publication ban on the identity of the client. Dr. Sommerlund consented to this ban, and it was granted by the Committee. Throughout this decision, the client will be referred to as Mr. A. The Committee agrees there is no public interest in the disclosure of client's names during regulatory proceedings.

44. In her written submissions of November 15, 2023, Dr. Sommerlund requested a publication ban on her name and the specific details of her mental health information. The NSBEP, in their November 17, 2023 reply, consented to a publication ban on the details of Dr. Sommerlund's mental health information. However, NSBEP did not consent to a publication ban of Dr. Sommerlund's name, noting the notice of hearing had already been published on a named basis.

45. Following NSBEP's motion for a publication ban, the Committee asked Dr. Sommerlund's counsel if he was making a motion. He responded he was not. Accordingly, the Committee did not issue a publication ban regarding Dr. Sommerlund's name or mental health information.

##### **Witnesses on November 21 and 22, 2023**

46. NSBEP called no witnesses, but relied upon the Agreed Statement of Facts and Admissions.



47. Dr. Sommerlund called two expert witnesses, Dr. Timothy Walker and Dr. Myles Genest. She did not testify.

Dr. Timothy Walker

48. The Committee first heard testimony from Dr. Timothy Walker, a Registered Counselling Therapist who provided psychotherapy to Dr. Sommerlund from October 2021 to the date of the hearing. Dr. Walker completed his doctorate in 1995 in Counselling from Dalhousie University and has been engaged in the mental health field for over 40 years. His experience includes work in mindfulness and its application to counselling.

49. Dr. Sommerlund asked that Dr. Walker be qualified as an expert in the field of psychotherapy and counselling, capable of giving evidence on:

- the course and results of treatments of Dr. Sommerlund,
- the causes and context of Dr. Sommerlund's misconduct, and,
- the probability of Dr. Sommerlund's reoffending.

50. On cross examination by NSBEP on his expertise, Dr. Walker testified that he does not use formal assessments in his practice, that he has no formal training on risk assessment or recidivism, and that he does not have formal training on the empirical basis of behavior. In addition, he testified that he did not formally diagnose Dr. Sommerlund, nor did he collect any collateral information or interview third parties.

51. Following cross examination of Dr. Walker, NSBEP acknowledged that he was an expert in the field of psychotherapy and counselling, but objected to his being qualified as an expert with respect to Dr. Sommerlund's probability of reoffending. NSBEP referred the Committee to *R v. Mohan 1994 SCC 80* 1994 CarswellOnt 66, *College of Physicians and Surgeons of Ontario v. Abnoujamra, 2022ONPSDT14, 2022CarswellOnt 5255* and *Moodley (Re), 2020 CanLII 103050 (NS CPS)*, as setting out the test for such qualification. Dr. Sommerlund was given an opportunity to make reply submissions.

52. As Dr. Walker did not perform a formal psychological assessment of Dr. Sommerlund, and does not have training related to recidivism in sexual misconduct, the Committee found that Dr. Walker was not qualified to give expert evidence on Dr. Sommerlund's likelihood of reoffending. However, the Committee did accept that he was qualified as an expert in the field of psychotherapy and counselling, capable of giving expert evidence on the course and results of treatment of Dr. Sommerlund, and on contributing factors to Dr. Sommerlund's misconduct.

53. In his direct evidence, Dr Walker testified to his treatment of Dr. Sommerlund from October 9, 2021 until November 2023 and spoke to the contents of his November 8, 2023 report prepared for the purpose of the hearing. He described Dr. Sommerlund as having the classic attributes of an "adult parentified child, including anxiety, difficulty with emotions and difficulty with forming

intimate relationship, an internal experience of imposter syndrome and occasional episodes of dissociation under great stress.” He described an outward persona of “tremendous competence, diligence, rational clarity, and apparent confidence”.

54. Dr. Walker, in his report and oral evidence, reviewed the various therapeutic methods, strategies and interventions he used in her therapy, including self-awareness through mindfulness, and cultivating a mindful attitude in everyday life. He also engaged in techniques and methods of Somatic Experiencing to help recognize the impacts of childhood trauma, conducted inner child work in a method he called Transactional Analysis re-parenting, and engaged in EMDR therapy. In his written report, Dr. Walker provided that Dr. Sommerlund’s healing in psychotherapy is “hardly complete” but that he has seen “significant improvements and a commitment to working toward constant growth and development by using these approaches in an ongoing way”. In his oral evidence Dr. Walker spoke to his observations of Dr. Sommerlund’s improvements.

Dr. Myles Genest

55. Dr. Myles Genest is a Registered Psychologist who has been supervising Dr. Sommerlund’s practice at the request of NSBEP in response to this complaint since April 2022. Dr. Genest received his doctorate in Psychology in 1982 from the University of Waterloo and has been engaged broadly in the field of psychology and clinical work. Dr. Genest’s experiences include faculty positions across multiple universities, acting as chair for the Association of Psychologists of Nova Scotia, and extensive involvement in the regulation of psychology with NSBEP, from disciplinary hearings to acting as chair of the board. Dr. Genest also has a varied private clinical practice, with a recent focus on assessments and legal consultations.

56. Dr. Sommerlund sought to have Dr. Genest qualified as an expert to give opinion evidence on:

- the course and results of the supervision of Dr. Sommerlund,
- the contributing factors to Dr. Sommerlund’s misconduct,
- Dr. Sommerlund’s ability to practice safely in the future, and
- the probability of a reoffence.

57. Dr. Genest indicated that his supervision of Dr. Sommerlund included two hours of consultation per month in which Dr. Genest would review six files every month, where ethical and clinical considerations were discussed.

58. On cross examination on his qualifications, Dr. Genest reported that he had not conducted a formal psychological assessment of Dr. Sommerlund. Dr. Genest indicated that he has experience giving expert opinion on the likelihood of reoffence in a professional regulation setting, namely

with lawyers, dentists, and physicians, however those opinions were delivered after an assessment of the individual practitioner.

59. When responding to questions from the Committee, Dr. Genest was clear that he had not formally assessed Dr. Sommerlund and that he “would not offer a diagnostic impression of Dr. Sommerlund”. Dr. Genest emphasized that his experience of supervising many interns and psychologists gave him some insight into Dr. Sommerlund’s likelihood to exhibit similar conduct.

60. When Dr. Genest was asked by the Committee what he would have done if he was assessing Dr. Sommerlund for risk of recidivism, Dr. Genest replied that he would speak to her supervisor, but that he would also conduct personality assessments, get a complete history, and use other instruments as indicated.

61. As Dr. Genest had not conducted a formal risk assessment of Dr. Sommerlund, and had not conducted the battery of tests he would normally employ in assessing risk, the Committee concluded that he was not in a position to offer expert opinion on the risk of recidivism of Dr. Sommerlund. The Committee does acknowledge Dr. Genest’s range of expertise, but his role in this matter was one of supervision on behalf of NSBEP.

62. Consequently, the Committee qualified Dr. Genest as an expert in clinical psychology able to provide opinion evidence regarding his supervision of Dr. Sommerlund and her compliance with the standards of practice of psychologists during the time of their supervision.

63. Dr. Genest testified that he had been supervising Dr. Sommerlund’s practice since April 2022 and had met with her monthly (for two hours each time) since then. He described her practice as being competent and said that in his opinion she was ready for independent practice. He testified that during the period of supervision, Dr. Sommerlund had shown an awareness of ethical standards, including issues related to dual relationships. She identified times where she had experienced additional stress and “ups and downs” and he thought she responded appropriately on those occasions. He identified no psychological dysfunction that interfered with her professional thinking or advice.

64. He testified that Dr. Sommerlund had expressed a “deep sense of having made a serious mistake, or regretting having done it, of the fact that many people were affected by that, and that she was quite hard on herself about having messed up”.

#### *No Direct Evidence from Dr. Sommerlund*

65. The Committee inquired on multiple occasions whether Dr. Sommerlund would be testifying. Dr. Sommerlund, on the advice of her counsel, declined to provide the Committee with any direct testimony on the issue of remorse. Counsel indicated that Dr. Sommerlund would not be testifying due to the existence of the Agreed Statement of Facts, and that both Dr. Walker and

Dr. Genest testified to their observations of Dr. Sommerlund's remorse. Both parties provided submissions regarding the weight to be given to hearsay evidence of Dr. Sommerlund's statements of remorse, in the absence of her direct testimony. NSBEP referred the Committee to *Doyle v. Discipline Committee of the College of Physicians and Surgeons of Ontario, 2019 ONSC 3905* and in written submissions Dr. Sommerlund referred the committee to *Esposito v. Alberta WCB (2009) ABQB 188*.

### **Motion to Reopen Hearing**

66. As set out in the Introduction, in January 2024, before the Committee had made its decision on Penalty, Dr. Sommerlund, through new legal counsel, sought to reopen the hearing in order to allow the tendering of a formal risk assessment, to have Dr. Sommerlund to testify on the issue of remorse, and to provide supplemental arguments in light of the new evidence.

67. Ian Joyce, Dr. Sommerlund's new counsel advised that Dr. Sommerlund's previous legal counsel did not present or cause to have presented to the Hearing Committee all information, evidence and submissions necessary for Dr. Sommerlund to make full answer and defence to the allegations.

68. Dr. Sommerlund maintained that the reopening of the hearing was necessary to allow her to call direct evidence of her remorse, and to allow for the tendering of an independent formal risk assessment.

69. NSBEP objected to the reopening of the hearing for this (or any) purpose. Both parties provided written submissions which included an affidavit from Dr. Sommerlund. Affidavit evidence was also received from Dr. Gordon Butler, Registrar of NSBEP. The parties put forth different "tests" to be followed, but both agreed that the Hearing Committee had the statutory authority to control its own process, including the discretion to re-open a hearing.

70. Dr. Sommerlund urged the Committee to adopt a flexible approach, with the key consideration of "doing justice" between the parties, citing *Jeffrie v. Hendriksen, 2011 NSSC 460*. She proposed the test set out in *R. v. Hayward* 1993 CarswellOnt 1162, (adopted in the regulatory context in *Law Society of Upper Canada v. Meera Bharadwaj, 2011 ONLSHP 4*), which considers.:

- a) an initial determination of whether the proposed evidence is relevant;
- b) then a consideration of the potential prejudice to the other party should the hearing be reopened and
- c) the effect of the reopening on the orderly and expeditious conduct of the hearing.

71. The NSBEP, citing *6711223 Ontario Ltd. v. Sagaz Industries Canada Inc. 2001 SCC 59*, advocated for a more restrictive two-part test, arguing that Dr. Sommerlund had to establish, on the balance of probabilities that:

- a) the proposed fresh evidence **may** change the result; and

- b) that the proposed fresh evidence was not available prior to or during the hearing through the exercise of reasonable diligence.

72. The NSBEP also noted that the test may also include the consideration of important interest of justice factors, such as finality, the cogency of the proposed evidence, delay, fairness and prejudice.

73. The Committee carefully considered the above arguments and caselaw. Given the Committee's broad discretion, and considering:

- the significant penalty that NSBEP was seeking in this matter,
- the Committee's obligation to ensure a fair hearing, where both parties are able to fully present their case, and
- the potential relevance of Dr. Sommerlund's direct evidence on remorse and
- the potential value of a risk assessment to the Committee's ultimate decision
- the lack of prejudice to NSBEP or the public interest (given that Dr. Sommerlund remains subject to her voluntary undertaking and supervision)

The Committee determined it would grant the request to reopen the hearing.

74. By email summary decision on May 2, 2024, the Committee advised the parties that it was allowing the motion to reopen the hearing, limited to the following:

- 1) formal independent risk assessment,
- 2) direct evidence from Dr. Sommerlund on the issue of remorse,
- 3) argument and submissions concerning the risk to re-offend, remorse, and the appropriate penalty to be imposed in this matter.

### **November and December 2024 Hearing Dates**

75. The re-opened hearing took place across three days, specifically on November 13 and 14, 2024, with closing arguments completed virtually on December 9, 2024. The Committee heard evidence from Dr. Sommerlund, and from Dr. Brad Kelln.

### **Dr. Sommerlund**

76. In her testimony, Dr. Sommerlund confirmed the facts and admissions set out in the Agreed Statement of Fact and Admissions.

77. She accepted responsibility for her wrongful conduct, which she identified as:

- Not taking action when she first noticed that Mr. A was flirting with her;
- Continuing with treatment of Mr. A;
- Letting her personal circumstances cloud her judgment;

- Entering into the relationship with Mr. A.

78. She explained that in the lead up to her intimate relationship with Mr. A, she felt “flattered” when he flirted with her. Dr. Sommerlund also provided Mr. A with her personal phone number to coordinate Mr. A’s snow plowing for her as a barter for psychological services, but she stated that in January 2019 the text messaging became more personal. Dr. Sommerlund did not confront this boundary blurring and allowed these increasingly informal interactions to continue instead of referring Mr. A to another psychologist and stopping any interactions with him.

79. When asked if she was remorseful for her conduct towards Mr. A, Dr. Sommerlund responded that she was sorry for having failed to offer him the treatment he sought, for failing to conduct herself in an ethical and professional manner and sorry for the negative consequence to him. She testified that when the relationship first ended, she felt it was wrong to feel remorse about someone who had treated herself and her children so poorly. She testified she now understands that is not relevant to her unprofessional conduct.

80. Dr. Sommerlund also replied in the affirmative when asked if she had experienced sorrow, humiliation, and embarrassment because of her conduct. She testified that through therapy with Dr. Walker, she has become more self-aware.

81. When asked about the consequences to Mr. A, she acknowledged that he did not receive the treatment he had sought, but also that he did not receive the ongoing help he might have needed because of the secrecy around the relationship. She testified that she had told him not to disclose to others how they had met.

82. In terms of her treatment, Dr. Sommerlund testified she was no longer in therapy with Dr. Walker, as she felt she had benefited as much as possible from the therapy, but that she actively uses the tools he provided her.

83. She testified that she had allowed her personal circumstances to cloud her personal judgement, and that the lack of self-care was a huge factor in her misconduct. She said she is now acutely aware of boundaries with clients around her personal life, and the importance of reaching out to colleagues for support. She testified that her professional attitude had changed through supervision with Dr. Genest and her assessment by Dr. Kelln. In particular, she said she will not offer pro bono services.

84. On cross examination, NSBEP counsel took Dr. Sommerlund through her October 28, 2021 response to the Complaint, and numerous other emails and documents that form part of the record of this matter, and noted the lack of any statement of remorse in her responses. Dr. Sommerlund referenced areas where she had expressed guilt and embarrassment but agreed that there was no specific reference to remorse. On redirect, Dr. Sommerlund said that while she may not have mentioned the word remorse, she had personally experienced remorse in connection with her conduct with Mr. A. She said initially her state of feeling was as a victim and she was responding from that perspective. She compared it to rear ending someone, and then

having the driver come out and beat you with a tire iron. There is a conflict of feeling like a victim while at the same time knowing that you have caused harm.

85. In response to questions from the Committee, Dr. Sommerlund said it was challenging to function for 2.5 years living with a former client. She confirmed that she had told Mr. A that he had to maintain secrecy around the way they had met. She said she explained to him all the reasons why their relationship was not allowed, but that he had a hard time understanding the power imbalance, why it was bad, or why she was rigid about it.

86. She testified that at one point Mr. A's ex-wife had discovered the relationship and called into CBI and left a message that was received by Patricia Rose. She told Patricia Rose she had done "something bad", but testified she was embarrassed and scared, and did not report to the regulator. She confirmed, as set out in the Agreed Statement of Facts that she had not disclosed her relationship with Mr. A during her oral ethics examination with NSBEP in March 2019, when discussing ethical and boundary issues with her clinical supervisor, and did not consult with other psychologists in Nova Scotia when her relationship with Mr. A changed.

87. When asked about her own perception of her risk, she testified that she has taken steps to heal herself, she is no longer "running around like a chicken with my head cut off", she is taking care of herself and taking steps to manage the risk factors that resulted in her behaviour. She said she was confident she will not relapse because "these last 3 years have been very stressful".

88. She also identified stressors that were ongoing in her life including:

- Tremendous financial issues, to the extent that she filed for bankruptcy;
- Her mother's health had declined significantly;
- Being a single mom and caring for her children;
- Her living condition (having to rent with 3 children)

89. She said she discontinued her therapy with Dr. Walker at the time of her bankruptcy, but felt she was doing better and had the tools to deal with her stressors, and was functioning well in spite of them.

#### Dr. Brad Kelln

90. The Committee also heard from Dr. Brad Kelln, who delivered an expert report on behalf of Dr. Sommerlund, speaking to her risk of recidivism.

91. Dr. Brad Kelln is a Registered Psychologist who has been in clinical practice since 1998, completing his doctorate in Clinical Psychology at the University of Calgary in the same year. Dr. Kelln has worked primarily as a forensic psychologist at the East Coast Forensic Hospital, specializing in psychological assessment of risk, personality, cognition, diagnosis and malingering.

He has been called to act as an assessor in situations where ethical violations have occurred with regulated professionals on multiple occasions. Dr. Kelln has received specialized training with respect to risk assessment, sexual assault risk, and behavioral prediction in a criminal context and works regularly to assess risk with the Criminal Code Review Board.

92. Dr. Kelln was qualified as an expert in clinical and forensic psychology and their associated practices, including the assessment, treatment, management and prediction of risk for re-offence and future behaviour, including professional boundary-violating behaviour, with the consent of the parties.

93. Dr. Kelln was contacted by Mr. Joyce in February 2024 to conduct an independent risk assessment of Dr. Sommerlund, and issued a “Fitness to Practice Assessment” dated May 14, 2024.

94. In submissions made prior to the November 2024 hearing, NSBEP objected to the report, stating that a “Fitness to Practice Assessment” is not a “Risk Assessment”, which was the only expert report permitted for the limited re-opening of this matter.

95. While the Committee appreciates NSBEP’s position, we note that the components of Dr. Kelln’s report include document review, collateral interviews with supervisors and colleagues, and several hours of clinical interviews with Dr. Sommerlund where she was subjected to a battery of psychological assessments. These components were then synthesized by Dr. Kelln to provide an assessment of Dr. Sommerlund’s risk to engage in sexual misconduct in the future.

96. Cumulatively, in substance Dr. Kelln’s report offers value in determining Dr. Sommerlund’s risk of reoffending, which was central to the Committee’s decision to allow the hearing to be reopened.

97. In his oral evidence, Dr. Kelln reviewed the process by which he normally conducts an independent assessment, including the review of all the initial letter and material, the gathering of collateral information, clinical interview, psychological testing, interviews with people who may be relevant, and then the production of the report.

98. Dr. Kelln testified that he did not see Dr. Sommerlund as a predatory offender, but that she found herself in a perfect storm created by the stress of her relationship, her leaving public practice, and her resulting inability to respond appropriately to Mr. A’s approaches.

99. Dr. Kelln testified that the evidence supports a finding that Dr. Sommerlund suffers from Generalized Anxiety Disorder (GAD) and that she self-reports Attention-Deficit/Hyperactivity Disorder (ADHD). He testified that it was very likely she was suffering from GAD at the time of the breaches.



100. He described GAD as a “distal” risk factor related to the breach, because it could cause someone not to look after the rest of their life, which could increase the likelihood of a breach.

101. Dr. Kelln, in both his written report and oral evidence, provided the opinion that it is unlikely Dr. Sommerlund would be at risk for another ethical breach, citing the insight that she had gained into the need for self-care and prioritizing her personal life, her access to treatment and professional supervision. He testified that she was more cognizant of the slippery slope toward additional violations, and that her experiences in this matter have provided opportunities for learning and growth.

102. He also testified that he could not say that Dr. Sommerlund posed zero risk to reoffend, but that he could not see how it would happen again. Central to this was his finding that she was not a predator, but someone who had engaged in terrible decision making and who now had the benefit of additional counselling, supervision and assessment.

## **VI. ANALYSIS AND FINDINGS**

### **Finding of Professional Misconduct and Conduct Unbecoming a Psychologist**

103. While Dr. Sommerlund has admitted to professional misconduct and conduct unbecoming a psychologist, the Committee should accept such admission only after ensuring there is adequate evidence to support the admissions.

104. On the basis of the Agreed Facts and Admissions, and the additional evidence and argument at the hearing, the Committee has no hesitation in finding that Dr. Sommerlund is guilty of the allegations set out in the Notice of Hearing, and that these violations constitute Professional Misconduct and Conduct Unbecoming a Psychologist.

105. In particular, Dr. Sommerlund’s admitted sexual misconduct violates the following psychological service providers’ standards, guidelines for intimate relationships, and ethical codes of conduct.

#### Standards

106. NSBEP’s *Standards of Professional Conduct* states at Principle 9:

*Principle 9: A registrant does not seek special benefit or advantage from relations with a client.*

*9.1 A registrant shall not have sexual relations with a client.*

...

*9.4 Psychologists do not engage in sexual intimacies with a former therapy patient or client for at least two years after cessation of or termination of professional services.*

107. Dr. Sommerlund began a sexual relationship with Mr. A immediately following the termination of the therapeutic relationship and received special benefit from that relationship in the form of romantic companionship. The Committee concludes that Dr. Sommerlund has violated Principle 9.

108. NSBEP's *Standards for Providers of Psychological Services* states at section III.1:

*III.1 Psychologists strive to make their client relationships clear and unambiguous*

...

*Sexual relations with clients are prohibited.*

109. Dr. Sommerlund allowed the lines between a professional and personal relationship with Mr. A to blur, and over time allowed these increasingly informal interactions to continue into what Dr. Kelln described as a "descent to full ethical breach". These boundary crossings culminated in a sexual relationship with Mr. A, in clear violation of standard III.

#### Guidelines

110. In 2006, NSBEP directly addressed the issue of sexual relations occurring within the provision of psychological services by publishing the *Guidelines for Sexual Misconduct by Psychologists*, which serve as a standard of practice for registrants in Nova Scotia. These guidelines mirror concepts found in the above referenced *Standards* and in the *Canadian Code of Ethics for Psychologists*.

111. The Guidelines state that sexual intimacies between psychologists and clients are unethical, and prohibit this behavior even if the client initiates or consents. Further, this practice standard directly addresses post-termination relationships with clients. Within the Guidelines, NSBEP adopted a standard from the American Psychological Association ("APA"), *Ethical Principles of Psychologists and Code of Conduct* (1992), which states that psychologists do not engage with sexual intimacies with former clients for at least two years after cessation of services. The APA elaborates on the seriousness of prohibiting sexual relationships with former clients:

"Because sexual intimacies with a former therapy patient or client are so frequently harmful to the patient or client, and because such intimacies undermine public confidence in the psychology profession and thereby deter the public's use of needed services, psychologists do not engage in sexual intimacies with former therapy patients and clients even after a two-year interval except in the most unusual circumstances. The psychologist who engages in such activity after the two years following cessation or

termination of treatment bears the burden of demonstrating that there has been no exploitation, in light of all relevant factors ...”

112. Dr. Sommerlund initiated her relationship immediately following the ending of the therapeutic relationship, violating a clear prohibition in the Guidelines.

### Code of Ethics

113. The *Canadian Code of Ethics for Psychologists* also addresses sexual intimacy with clients and former clients at section II.28 and III.28:

*II.28 Be acutely aware of the power relationship in therapy and, therefore, not encourage or engage in sexual intimacy with therapy clients, neither during therapy, nor for that period of time following therapy during which the power relationship reasonably could be expected to influence the client’s decision making.*

...

*III.28 Not exploit any relationship established as a psychologist to further personal, political, or business interests at the expense of the dignity or well-being of their primary clients... This includes... taking advantage of trust or dependency to encourage or engage in sexual intimacies...*

114. Dr. Sommerlund started a sexual relationship immediately after termination of the therapeutic relationship, well within the period of time where the power relationship could be expected to influence Mr. A’s decision making. Dr. Sommerlund took advantage of the pre-existing relationship to further her personal needs of companionship. The Committee concludes that Dr. Sommerlund is violation of both sections II.28 and III.28 of the *Code of Ethics*.

### **Sentencing Principles and Factors**

115. Having found that Dr. Sommerlund engaged in Professional Misconduct and Conduct Unbecoming a Psychologist, it falls on the Committee to determine an appropriate sanction.

116. As set out previously, the NSBEP is seeking the cancellation of Dr. Sommerlund’s registration, with the right to seek reinstatement after two years. Dr. Sommerlund submits a suspension ranging from 3-18 months would be sufficient. Both agree there should be a reprimand.

117. Counsel for the Dr. Sommerlund emphasized that it is the Committee’s prerogative to determine a fit and proper punishment for Dr. Sommerlund’s misconduct. The Committee agrees and has determined that a context-specific approach to determining sanction would best satisfy its mandate under the *Psychologists Act*. This context will be applied against general principles of sentencing in professional regulation, aggravating and mitigating factors, and case law.

118. The Committee has reviewed the voluminous case law provided by the parties, and while it is not binding, it does provide some indications of sentencing considerations and ranges of sanctions arising from sexual misconduct.

### **Principles of Sentencing**

119. The principles used to determine an appropriate sanction are not fixed in stone, but this Committee relies on an analysis of fair penalty using the principles laid out by the Ontario Court of Appeal in *College of Physicians and Surgeons of Ontario v. Peirovy*, 2018 ONCA 420 at para. 64.

[64] In this passage, the Discipline Committee was quite properly pointing out that revocation is sometimes "demanded" by egregious conduct alone. As it indicated in other parts of its reasons, however, it is tasked with arriving at a fair and just penalty that addresses all of the sentencing principles. **Those principles include the paramount consideration of protection of the public, as well as maintenance of public confidence in the reputation and integrity of the profession, effective self-governance, general deterrence, specific deterrence and the potential for the member's rehabilitation. Proportionality is also an important consideration. (emphasis added)**

120. The Committee has also considered the factors set out in *Jaswal v. Newfoundland Medical Board 1996 Canlii 11630 (NLSC)* referenced in Dr. Sommerlund's written submissions, and the sentencing principles set out in the NSBEP written submissions, both of which include a consideration of aggravating and mitigating factors. Our considerations include the following:

#### Protection of the Public

121. The protection of the public is always a paramount concern for a Hearing Committee constituted under the *Psychologists Act*.

122. A psychologist engaging in a sexual relationship with a client is a betrayal of both the trust of the patient, and the public trust.

123. Mr. A, by virtue of being in a psychotherapeutic relationship with Dr. Sommerlund, was acutely vulnerable, and by Dr. Sommerlund's own admission, their relationship resulted in him losing access to the therapeutic services he required. Dr. Theriault's complaint references Mr. A describing a feeling of being taken advantage of by Dr. Sommerlund.

124. Members of the public seeking psychological services must have confidence that they will not be taken advantage of by the very person they come to for assistance.

#### Public Confidence in the Regulator

125. The Regulator's response, and this decision, must be one that instills and preserves public confidence in the ability of NSBEP to regulate its registrants in the public interest.

126. The NSBEP forcefully argued that there has been an evolution of sanctions for sexual misconduct among health regulators, culminating in the inclusion of mandatory revocation for any sexual activity with a client in Ontario. No excuses will be considered. The NSBEP also provided considerable case law condemning such behaviour and revoking licenses even where there is no mandatory revocation.

127. While not bound by the policies or practices of other professions or in other jurisdictions, and while acknowledging that each case must be determined on its own merits, the Committee is cognizant that its decision must be able to withstand public scrutiny and that a suspension in the face of prolonged sexual misconduct may diminish the public's confidence in the ability of the NSBEP to regulate the profession. Sustained public confidence in the Regulator in matters of sexual misconduct require clear and unequivocal denunciation of the conduct.

#### General Deterrence

128. Sexual misconduct is amongst the worst offences in the practice of psychology. The inherent vulnerability created by the psychologist-client relationship allows for major power imbalances. Psychologists have access to their client's most intimate emotions through their position of trust.

129. Any sanction must send a strong message to the profession at large that discourages the abuse of this privileged position, and that sexual relationships with clients will not be tolerated. Licensees must understand that sexual misconduct will be met with the most serious of disciplinary responses.

130. A suspension will not have the same general deterrence effect as a revocation.

#### Specific Deterrence

131. Dr. Sommerlund's sexual misconduct occurred over a protracted period of two and a half years and included multiple, unethical omissions during her supervised period as a candidate on the psychology register. Not only did Dr Sommerlund violate her ethical obligations leading up to and entering into a sexual relationship with Mr. A, she then counselled him not to disclose their previous professional relationship, and she failed to disclose or self-report it when multiple opportunities presented themselves.

132. Dr. Sommerlund was aware her relationship with Mr. A was unethical and that she could be disciplined for such conduct. This was not a sufficient deterrent for her, leading her to instead hide the relationship and instruct Mr. A to do the same.

133. The Committee agrees with the NSBEPs position that, at this point, the message to Dr. Sommerlund regarding the unacceptable nature of this conduct must be unequivocal. Even accepting Dr. Sommerlund's evidence of her remorse, and Dr. Kelln's evidence that she is unlikely to reoffend, this remains a relevant factor.

### Potential for Rehabilitation

134. Rehabilitation and remediation of professionals is an important consideration in determining a penalty. The Committee considered Dr. Sommerlund's potential for rehabilitation and remediation. Members of this Committee work in the field of psychology and take notice of the long wait lists and high demand for psychological services in Nova Scotia.

135. Dr. Genest reported that Dr. Sommerlund is a psychologist with broad clinical competence in both assessment and therapy. He testified that he did not identify any issues in her practice related to her ethics or competence during the period of their supervision. Dr. Genest stated that "there's no question in [his] mind" that Dr. Sommerlund was ready for independent practice, and that he had spent over 60 hours with her supervising her practice. Notably, Dr. Genest testified that Dr. Sommerlund now demonstrated an awareness of ethical issues related to dual relationships in a rural setting and how to negotiate them.

136. The Committee has considered Dr. Sommerlund's potential for rehabilitation as relevant to the length of time before which she will be able to apply for her registration to be reinstated.

### Proportionality

137. The factors being considered cannot be applied to the facts of this case in isolation. There must be an appropriate balance between the disposition principles, case law, and aggravating or mitigating factors. Any sanction imposed on Dr. Sommerlund must be proportionate to her misconduct, and to findings in similar cases. This will be addressed more fully in the case analysis later in this decision.

### **Aggravating and Mitigating Factors**

138. The Committee has considered the following aggravating and mitigating Factors.

#### **Aggravating Factors**

##### The Nature and Gravity of the Misconduct:

139. The nature of the offence is a key consideration in determining an appropriate sanction.

140. Sexual misconduct with a client is amongst the most egregious offences that a psychologist can commit.

141. The damage that can be done to a vulnerable client by engaging in sexual relations is considerable and often unseen until it is too late. A psychologist is in a perfect position to exploit their understanding of a client's mental state to avail themselves of sexual or romantic gratification. The exploitation of this emotional power imbalance is to be roundly condemned.

142. In *McKee v. College of Psychologists (British Columbia)*, 1992 CanLII 12841 (BC SC), the British Columbia Supreme Court stated:

[42] Counsel for the college submitted that "sexual intimacy with a client is the most serious professional transgression that can be committed by a psychologist." This might well be true. What the psychologist is dealing with is the state of mind of a person. In doing so, he or she is allowed to probe into the most intimate and private aspects of a person's thinking processes. The psychologist thereby has a unique opportunity to discover the vulnerable aspects of a person's psyche.

[43] If the client is, because of loneliness, rejection, or any other number of reasons, vulnerable, this will be readily obvious to the clinical psychologist. If the vulnerability makes the client open to suggestion, this will equally be seen by the psychologist. To take advantage of that vulnerability is the moral culpability of which Mr. Justice Wood spoke in *Sweeney*.

143. If the public came to associate a risk of exploitation with the consumption of psychological services, it would undermine the profession and seriously damage the public interest in the practice of psychology.

144. The Committee considers the nature of Dr. Sommerlund's misconduct a serious aggravating factor.

#### *The Duration of the Misconduct*

145. Dr. Sommerlund's misconduct took place over a period of approximately two and a half years. This was not a momentary lapse of judgment, or a single offence.

146. Dr. Sommerlund knowingly continued her misconduct and took actions to keep it concealed.

147. She had numerous opportunities to self-disclose but repeatedly chose not to.

148. Dr. Sommerlund's failure to stop her ongoing conduct despite knowing full well that it was unethical is a significant aggravating factor.

#### *Active Deception*

149. Dr. Sommerlund was well aware that her relationship with Mr. A was in breach of her professional standards but pursued it anyway. She rationalized her situation at the time as "falling in love with the wrong person". She testified that she told Mr. A to not reveal how they met in order to sustain the ethical breach. Dr. Sommerlund testified that she had explained to Mr. A all the reasons why their relationship was not allowed, and that Mr. A had a hard time understanding the existence of a power imbalance.

150. Dr. Sommerlund was actively coaching Mr. A so that she could avoid detection and evade the potential consequences related to this ethical breach. The Committee considers this behaviour to be reprehensible and a serious aggravating factor.

#### Passive Deception

151. During the period of the misconduct Dr. Sommerlund was a candidate on the psychology register. Consequently, she had regular check-ins with her NSBEP supervisor who was overseeing her candidacy. In supervisory meetings a candidate would discuss practice questions and ethical concerns. Dr. Sommerlund never revealed the existence of her relationship with Mr. A to her supervisor, despite knowing that it was a serious ethical concern.

152. As the capstone of the candidacy process at NSBEP, a candidate is required to undergo an oral ethics exam. During that exam, a candidate psychologist has an opportunity to raise ethical issues experienced in their practice in a discussion with a panel of psychologists. Dr. Sommerlund omitted the existence of her ongoing sexual relationship with a former client.

153. When Mr. A's ex-wife complained to CBI, Dr. Sommerlund had yet another opportunity to self-disclose. She failed to do so.

154. The Committee considers these omissions, especially those in circumstances specifically geared towards ethical oversight, to be aggravating factors.

#### Vulnerability of Client

155. Dr. Sommerlund characterized Mr. A as having significant mental health symptoms at the time of her initial assessment:

"Mr. [A] reports experiencing significant irritability, anger, and intense anxiety. Indeed he reports experiencing panic attacks on a regular basis. Mr. [A] reports being unable to function due to his state of mind. Indeed he presents as agitated, tearful, exhibiting poor eye contact and shaking."

156. Mr. A was later described by Dr. Sommerlund as meeting the criteria for Post-Traumatic Stress Disorder. He would go on to receive psychiatric medication to treat his symptoms. Dr. Sommerlund had clear insight into his mental health issues and related vulnerabilities.

157. Towards the latter part of the therapeutic relationship, Mr. A brought up his marital issues, such that Mr. A's wife at the time attended a therapy session with him, again highlighting Dr. Sommerlund's intimate knowledge of his marital circumstances.

158. Mr. A would go on to become incarcerated at the East Coast Forensic Hospital, shortly after the dissolution of his relationship with Dr. Sommerlund, indicating serious mental health issues to the extent that they interfaced with legal authorities.



159. The Committee finds that Mr. A's ongoing, complex mental health issues indicate significant vulnerability, regardless of whether he initiated romantic gestures towards Dr. Sommerlund. As the professional it was up to Dr. Sommerlund to deal appropriately with his overtures. There is no excuse for her failure to do so.

160. The client's vulnerability is an aggravating factor.

#### Experience of Psychologist

161. Dr. Sommerlund was plainly aware that her conduct was anathema to the profession; she has been in the field working as a clinical therapist since 2010. The Committee rejects any notion that Dr. Sommerlund was a new practitioner, even though her time as a fully registered psychologist was limited. She had been working in settings where the same ethical prohibitions applied for nearly a decade.

162. Her experience in the mental health field is considered an aggravating factor.

#### **Mitigating Factors**

##### Admissions and Cooperation

163. Dr. Sommerlund admitted that her behavior constitutes professional misconduct and conduct unbecoming. Consequently, the Committee was able to avoid a hearing on the merits of the charges.

164. Avoiding a hearing on the merits allowed the regulator to reduce costs and time associated with the disciplinary process, regardless of the subsequent delays and additional hearing days that were ultimately required.

165. More importantly, this admission removed the need to have Mr. A testify, avoiding the potential negative impact that he might experience if the allegations were contested.

166. Dr. Sommerlund was also cooperative with NSBEP's investigation and voluntarily entered into a supervisory relationship with Dr. Genest.

167. The admission of guilt and cooperation are considered mitigating factors

##### Lack of Disciplinary History

168. Dr. Sommerlund's lack of prior disciplinary record is a mitigating factor.

##### Health and Life Circumstances

169. The Committee heard lengthy testimony from Dr. Walker, Dr. Kelln, and Dr. Sommerlund herself regarding her mental health and life circumstances around the time she entered into an improper relationship with Mr. A.

170. Dr. Walker framed Dr. Sommerlund's transgressions in the context of challenges in her family life and relationships growing up. Dr. Walker described "ego states" that were not properly integrated in Dr. Sommerlund's functioning, such that Dr. Sommerlund would enter into a "dissociative" condition which led to the ethical breaches. When asked to define Dr. Sommerlund's "dissociation", Dr. Walker stated that it was not as though she was operating without awareness of what happened for days, but rather that it was more "making a bad decision and then feeling she can't get out of it."

171. While the Committee does appreciate Dr. Walker's conceptualization of Dr. Sommerlund's mental state for the purposes of psychotherapeutic treatment, it does not accept his description of her "dissociation" as a mitigating factor.

172. Dr. Kelln also framed Dr. Sommerlund's transgressions in the context of her relationship history but placed emphasis on the risk pathway that culminated in her breach of ethics. Dr. Kelln described Dr. Sommerlund's mental health issues as "distal factors" that have "contributed" to her conduct but did not "cause" them. Dr. Kelln reported that the more "proximal factors" which had a more immediate impact on her decision-making included discontentment in her marriage, the stress of parenting three young children, concerns around turning 40 years of age, and a sequence of relationship and life choices that led to ever mounting stress and disappointment. Dr. Kelln noted that these proximal factors were amplified by self-neglect and a lack of self-care.

173. The Committee acknowledges that these expert opinions offer an explanation of the psychological dynamics operating in Dr. Sommerlund's life and potential pathways forward for improved mental health. However, the Committee also notes that these insights do not provide significant exculpatory justification for Dr. Sommerlund's ethical breach. Dr. Kelln himself says that the circumstances she was under did not mean that her misconduct was inevitable.

174. The Committee concludes that the culminative stressors and mental health issues present in Dr. Sommerlund's life are only limited mitigating factors. The Committee also notes that Dr. Sommerlund continues to be subject to a number of stress factors, including a bankruptcy, her mother's health, parenting issues, and a recent relationship breakup, and is no longer seeing Dr. Walker.

#### *Risk of Recidivism*

175. Dr. Sommerlund's risk to reoffend is an important consideration in establishing an appropriate overall penalty.

176. In Dr. Kelln's expert opinion, he provides that it is "unlikely that Dr. Sommerlund would be at risk for another ethical breach". In his testimony, Dr. Kelln noted that while risk to reoffend is never zero, that he "can't see how it would happen again." He stated that a major concern for reoffence is whether the breach was predatory. In this case, Dr. Sommerlund did not seek out a

vulnerable person for a sexual relationship, but instead accepted Mr. A's advances without establishing boundaries and that she was "too weak" to say it was wrong. Dr. Kelln described a "perfect storm" of life stressors that led to the ethical breach. He opined that the breach's causal chain included the cumulative effects of poorly negotiated situations, including boundary lapses and the "slippery slope" towards additional violations. However, it is also noted that Dr. Kelln later noted that Dr. Sommerlund's anxiety caused her impairment in her relationships such as that she was demanding and controlling in her marriage. Moreover, the Committee notes that Dr. Sommerlund actively advised Mr. A to maintain secrecy around the origins of their relationship.

177. Dr. Kelln reported that Dr. Sommerlund had gained substantial insight into the need for self-care and managing stressors in her personal life. Dr. Kelln noted that Dr. Sommerlund had sought treatment in response to her mental health issues and continues to have some access to the supports required to address those symptoms.

178. However, during Dr. Sommerlund's testimony, it was revealed that she has persistent ongoing stressors in her life, including the recent end of a relationship, financial problems severe enough to require a bankruptcy filing, parenting three children as a renter, a decline in her mother's health, and the anxiety around this complaint process. Dr. Kelln was asked what was different today in terms of stress levels as compared to the "perfect storm" that preceded the breach. Dr. Kelln indicated that her current situation was different in that she was not in a marriage, is not caring for an infant and toddlers, and that she was not in the middle of a career shift. Dr. Kelln indicated that what matters is not only the list of stressors, but also how a person is managing those stressors. While this may be the case, it is the Committee's view that the stressors in Dr. Sommerlund's life at the time of her ethical breach are not dissimilar to the stressors she was experiencing at the time of the hearing into this matter and she had disengaged from therapy.

179. Nevertheless, Dr. Kelln opined that Dr. Sommerlund had gained significant insight into her risks after his discussion with her and that she was able to shift her perspective to understand "why" the breach occurred. Dr. Sommerlund stated that she had connected with a clinician peer group in her region and that she had scaled back to part time work to better manage the demands on her limited resources.

180. However, the Committee also notes that Dr. Sommerlund reported that her peer group is not aware of her ethical breach and therefore the ability of her peer group to assist in managing any risk for recidivism that is present is questionable. Moreover, Dr. Sommerlund had opportunities to reveal her ethical misconduct during the time it was occurring and did not do so, raising the question of whether she would independently reveal any concerns in the future.

181. Overall, the Committee accepts the conclusion of Dr. Kelln that Dr. Sommerlund is unlikely to commit the same breach of ethics in the future. Thus, Dr. Sommerlund's low risk of recidivism is a mitigating factor. However, the Committee finds that Dr. Sommerlund may benefit from

evidence-based treatment to address mental health issues that may have contributed to her ethical breach and that she develop a risk management plan.

### Post-Breach Therapy

182. Dr. Sommerlund began seeing Dr. Walker for psychotherapeutic treatment in October 2021. Dr. Walker stated that they discussed the breach and spent considerable time reviewing her family relationships. Dr. Walker indicated that they had used mindfulness-based treatment to help her stay present and to develop self-regulation skills. Dr. Sommerlund reported that she worked with Dr. Walker around shame she was experiencing and how she could make better choices if she should find herself in similar circumstances.

183. The Committee notes that at the time of her testimony, Dr. Sommerlund had stopped seeing Dr. Walker due to financial difficulties and a belief that she had gained all the tools that she could from him after more than 20 sessions.

184. The steps Dr. Sommerlund has taken to manage her mental health indicate some acceptance of her role in this complaint, which this Committee considers a mitigating factor. That said, the Committee is concerned that at the time of the hearing, Dr. Sommerlund was continuing to experience significant stressors in her life but was not engaged in any supportive therapy.

### Remorse

185. Remorse is an important consideration for determining appropriate sanction.

186. The Committee heard evidence of Dr. Sommerlund's remorse from Dr. Walker, and Dr. Genest during the first phase of the hearing, and from Dr. Sommerlund and Dr. Kelln during the reopened hearing. The NSBEP, on cross examination of each witness, questioned whether Dr. Sommerlund had expressed remorse specifically about the impact of her misconduct on Mr. A.

187. Dr. Kelln noted in his risk assessment report that Dr. Sommerlund "... remains highly upset and remorseful about allowing this ethical lapse in judgement...", adding, "At times, she became tearful in her recollection of how her life devolved through her chaotic, disorganized, and poorly managed life decisions. There is no doubt that she carries deep regret about her decision-making". He also wrote:

"Dr. Sommerlund is equally remorseful about her choices that led to the breach as she is concerned about the professional ramifications. She was frequently tearful in her presentation during this assessment and presented in a genuine and authentic fashion regarding her remorse over her professional lapse".

During his testimony, Dr. Kelln was asked what Dr. Sommerlund said about the impact of her actions on Mr. A. He acknowledged that was not discussed during the assessment. He opined that remorse is less relevant than responsibility. He remarked, "Everyone feels bad when they are caught."

188. Dr. Sommerlund testified at length on the remorse she felt about her misconduct. She stated that she accepted full responsibility for the conduct without any limitations. She acknowledged that regardless of any mitigating circumstances, her conduct was wrong. She expressed that it was wrong to not take action when she initially noticed Mr. A's flirtation, and in all the ensuing boundary violations, including the sexual relationship.

189. Dr. Sommerlund also expressed remorse with respect to the impact on Mr. A. She acknowledged that she did initially not feel sorry for Mr. A due to her perception of his treatment of herself and her children, but that she now regrets the harm that came to Mr. A and other people. She stated that she felt sorry for having failed to offer the treatment that he sought and that she failed to conduct herself in an ethical and professional manner. Dr. Sommerlund noted how her actions spiraled out to negatively affect many other people, including Mr. A's family, the people around her, her ex-husband, the community, her employer, and the profession. She testified that she felt embarrassment, shame, and humiliation as a result of her actions.

190. During her testimony, Dr. Sommerlund explained her role as a woman in the relationship with Mr. A and as a psychologist, stating that she experienced conflicting feelings that she had been victimized and that she had caused harm. She expressed that she did not feel that she could enforce boundaries with Mr. A as she felt responsible for him, although it is also noted that Dr. Kelln described Dr. Sommerlund as demanding and controlling in her marriage. Moreover, under questioning Dr. Sommerlund admitted that she advised Mr. A to maintain secrecy around the origins of their relationship.

191. However, it is also noted that Dr. Sommerlund's initial response was to blame Mr. A, and not to accept full responsibility for her conduct or express any remorse regarding the impact on Mr. A.

192. The Committee notes that Dr. Sommerlund had the benefit of time and knowledge from the first phase of the hearing regarding concerns related to remorse before speaking directly about her remorse during the second phase of the hearing. Still, this Committee found Dr. Sommerlund's testimony on remorse to be forthright and sincere, even if remorse was not present during or immediately following her ethical breach.

193. For the purposes of determining appropriate sanction, Dr. Sommerlund's remorse is a mitigating factor, although less so had there been an immediate full acceptance of responsibility for her conduct.

## **VII. CASELAW**

### **General Comments**

194. Both parties provided extensive caselaw in support of their carefully articulated arguments on disposition.

195. NSBEP has provided caselaw within four categories related to sexual misconduct by professionals. Revocation cases for sexual misconduct in Nova Scotia. Revocation cases for sexual misconduct in other jurisdictions, suspension cases for sexual misconduct in Nova Scotia, and suspension cases for sexual misconduct in other jurisdictions.

196. Dr. Sommerlund has provided a series of cases where sexual misconduct by a professional resulted in suspensions in the range of 3-18 months. The Committee has also been provided with numerous criminal law cases that set out sanctioning principles and discuss the impact of remorse and rehabilitation.

197. The Committee has been urged by NSBEP to adopt a zero-tolerance approach based on legislative developments in Ontario and the evolution of sanctions in sexual misconduct cases. In response Dr. Sommerlund has warned the Committee against fettering its discretion based on decisions from other provinces, but to instead focus on an individualized assessment based upon the specific evidence in this matter.

198. The Committee agrees that it is not bound by the caselaw presented, and that it maintains a broad discretion to make an individualized decision based on its analysis of the facts and the sentencing principles that have been set out above.

199. However, the case law does provide guidance to the Committee in terms of the scope of dispositions, and the findings and comments of other panels are helpful to this analysis.

200. In addition, reviewing decisions and penalties for similar offences across other regulators in Nova Scotia and more broadly in Canada serves to ensure that Dr. Sommerlund receives a fair penalty that is proportional to her misconduct.

201. Having said that, no one case spoke directly to the circumstances that the Committee has before it in this matter.

202. NSBEP cited multiple cases from Ontario where there is a mandatory 5-year revocation in instances of sexual misconduct, pursuant to the *Regulated Health Professions Act, 1991, SO 1991, c 18*. The commentary in these decisions offers some insight into broad views on sexual misconduct but is not as instructive for determining range of penalty.

203. The parties have also submitted reported decisions where the penalty was a joint proposal determined in a settlement agreement. In those cases, very little latitude is afforded to a tribunal to alter the proposal. As the Disciplinary Hearing Committee in *Moodley (Re)*, 2021 CanLII 43606 (NS CPS) noted at paragraph 72:

“72. The College has also cited decisions of the Hearing Committee approving settlement agreements. In our opinion, settlement agreements have limited value because the disposition in a settlement agreement is a negotiated resolution of the complaints under investigation. The College may agree to a suspension because of difficulties in obtaining testimony. The physician may decide to avoid a hearing with an uncertain outcome and the potential of a large costs award.”

204. The Committee agrees with the sentiment in *Moodley*, namely that joint proposals on penalty have limited value due to the factors that may influence those settlement agreements. Still, they do serve as indicators on ranges of sanction that do not offend the public interest.

205. Counsel for Dr. Sommerlund marshalled extensive case law from the criminal context on sentence mitigation. It is important to distinguish the professional regulatory sentencing from the criminal sentencing. The tribunal in *Kazman v Law Society of Upper Canada*, 2008 ONLSAP 7, notes at para. 74:

“[74] A criminal court judge is concerned primarily with specific deterrence, general deterrence, and rehabilitation. She is rarely concerned with the collective reputation of an accused’s peer group but is free to focus instead on the individual accused to the exclusion of most other considerations. On the other hand, law **society discipline panelists must always take into account the collective reputation of the accused licensee’s peer group** – the legal profession.”

[emphasis added]

206. While the committee has reviewed the criminal case law submitted by the parties, it affords more weight to cases in a professional regulation setting. In particular, the Committee agrees with NSBEP that in professional regulation there is a greater emphasis on the impact of the misconduct on the public and the reputation of the profession.

207. It is not the intention of the Committee to review every decision provided by the parties, but the Committee found the following cases particularly helpful in considering the range of an appropriate penalty in this case.

#### Decisions from NSBEP

208. In *Re Green*, 2015, a candidate register psychologist accepted a settlement agreement for a 12-month suspension in response to one incident of sexual intimacy with her client. In the lead up to the sexual misconduct, Ms. Green documented her feelings of transference and discussed the matter with her supervisor. She immediately terminated the therapeutic and personal relationship with her client after the incident. Ms. Green voluntarily removed herself from

practice in the same month of the incident and admitted her actions acknowledging that they constituted professional misconduct.

209. Unlike in *Green*, Dr. Sommerlund did not raise concerns about Mr. A with her supervisor. Dr. Sommerlund's transgressions were only discovered years after they began. Mr. A received treatment while at the East Coast Forensic Hospital where his psychiatrist alerted NSBEP to their inappropriate sexual relationship. In contrast to Ms. Green, Dr. Sommerlund actively sought to conceal the origin of her relationship with Mr. A and continuously engaged in sexual misconduct over a period of two and a half years. These aggravating circumstances indicate a sanction greater than a 12-month suspension.

210. *Nova Scotia Board of Examiners in Psychology v. Unnamed Psychologist*, 2022, involved a psychologist engaged in a dual and sexual relationship with a client. With consent, the psychologist was suspended for 6 months and then permanently and irrevocably resigned from the register. The psychologist also undertook to not apply for licensure in Nova Scotia or any other jurisdiction. There are no details as to the nature of the relationship between the psychologist and the client, or the extent of the sexual misconduct. A 6-month suspension followed by resignation was determined appropriate in reference to norms in existence at the time of the offence, which occurred 15 years earlier.

211. The details of this case are ambiguous and offer limited precedential value. The Committee notes that while the psychologist was suspended, the undertaking amounted to a permanent loss of licensure.

#### Canadian Suspension Case Law

212. In *Ontario (College of Psychologists of Ontario) v. Seidman*, 2019 ONCPD 3, Dr. Seidman was suspended for 12 months on a joint submission of penalty for engaging in a sexual relationship with a client who received neurofeedback services from a technician employed in her clinic. As a part of the normal procedure of her clinic, Dr. Seidman met the client for a brief intake after which she assigned an employee technician to run neurofeedback sessions. These technician sessions took place for several months before the breach occurred. Dr. Seidman had a chance encounter with the client in a social setting and began a sexual relationship with him shortly thereafter. The client continued to receive neurofeedback services from Dr. Seidman's clinic from the employee technician. Dr. Seidman admitted to the conduct, expressed remorse and accepted responsibility for her actions.

213. Dr. Sommerlund's case is easily distinguishable from *Seidman*. Dr. Seidman had limited contact with her client, provided no psychotherapeutic treatment, and there is no evidence of client vulnerability. In contrast, Dr. Sommerlund was providing direct psychotherapeutic



treatment to Mr. A, a client with PTSD symptoms on psychiatric medication. Dr. Sommerlund's conduct was more reprehensible.

214. A psychologist in *Ontario (College of Psychologists of Ontario) v. Manion*, 2019 ONCPD 5 received a 12-month suspension on a joint submission of penalty after he began a sexual relationship with his former client. Dr. Manion provided psychotherapy to Dr. X in 9 sessions over a period of several months in 2015. Dr. Manion documented an initial boundary violation involving hugging, kissing, and petting with Dr. X after which he ended the therapeutic relationship, proposed ending personal contact, and tried to refer Dr. X to another therapist. Despite Dr. Manion's documented intentions, he pursued an intimate relationship with Dr. X, where sexual contact began a few months later.

215. The decision does not offer significant details about the duration of Dr. Manion's sexual relationship, the vulnerability of the client, or aggravating factors, limiting *Manion's* value as a precedent.

216. In *Ontario (College of Psychologists of Ontario) v. Liswood*, 2020 ONCPD 2, a psychologist was suspended for 12 months on a joint submission of penalty after she engaged in a sexual relationship with a former client. Dr. Liswood provided psychotherapy to a client from 2001 to 2003 and began a personal relationship with him one month after terminating the therapeutic relationship. Dr. Liswood's relationship with her client became sexual in 2005 and lasted for three years. Throughout this period and beyond it, Dr. Liswood provided thousands of dollars in payments to this client on the belief that he would expose the origin of their relationship if she did not comply with his requests.

217. Like in *Manion*, no significant details were offered regarding the client's vulnerability. The Committee notes that while Dr. Liswood had been retired at the time of sentencing, the tribunal explicitly noted their intention that a suspension was to provide an opportunity for Dr. Liswood to return to practice, noting her long and unblemished career. Dr. Sommerlund's case shares similar features to *Liswood*, in terms of duration of sexual relationship and the intention to prevent exposure of the origin of their relationship. *Liswood* does offer this Committee some precedential value, acknowledging that it was a settlement and that the conduct took place roughly a decade earlier than Dr. Sommerlund's.

218. In *Ontario (College of Physicians and Surgeons of Ontario) v. Henderson*, 2004 ONCPSD 15, a family physician was suspended for three months on a joint proposal of penalty for engaging in a romantic and sexual relationship with a former patient. Dr. Henderson had been Patient A's family doctor for 5 years, with most of her visits focused on non-mental health related issues. In the final year of Patient A's treatment, Dr. Henderson provided psychotherapy for post-partum depression and marital problems on eight occasions. Dr. Henderson engaged in a romantic relationship with Patient A shortly after terminating the doctor-patient relationship, with the

relationship becoming sexual one year later. This romantic relationship lasted more than three years.

219. Unlike in *Henderson*, Dr. Sommerlund's interaction with Mr. A were solely focused on psychotherapeutic intervention and the sexual relationship began immediately after the cessation of services. The Committee notes that the misconduct in *Henderson* occurred from 1995 to 1999, where strict prohibitions against sexual relationships with former patients were non-existent. Dr. Sommerlund's conduct occurred during a period where sexual contact with a client within 2 years of ending treatment was expressly prohibited.

220. A family physician in *Ontario (College of Physicians and Surgeons of Ontario) v Horri*, 2019 ONCPSD 15 was suspended for 12 months in a contested hearing on penalty after he began a 3-year long sexual relationship with a former patient. Dr. Horri had encountered Patient A during a locum and continued treatment of her mental health issues with counselling and psychiatric medication management. Patient A had a history of suicidal ideation, but saw Dr. Horri for issues around depression, anxiety, relationship problems, and insomnia for approximately six months. Two weeks after terminating the doctor-patient relationship, Dr. Horri began an on-and-off, long-distance, sexual relationship from 2010 to 2014.

221. Critically different from Dr. Sommerlund's case, there was no explicit prohibition on sexual relationships with former patients during Dr. Horri's misconduct. While the Ontario regulator had circulated a policy discouraging such behavior in 2008, there was no policy explicitly prohibiting sex with former patients. Dr. Sommerlund's conduct was prohibited by NSBEP standards, guidelines, and ethical codes and she was aware that what she was doing was wrong.

222. In *Ontario (College of Physicians and Surgeons of Ontario) v. Redhead*, C. A., 2013 ONCPSD 18 and *Ontario (College of Physicians and Surgeons of Ontario) v. Redhead*, 2014 ONCPSD 2, a physician was suspended for 5 months after he engaged in a sexual relationship with a former patient and provided inappropriate gifts to her. Dr. Redhead had treated Ms. X on 5 occasions when she arrived in the emergency room. Ms. X had serious mental health issues, including suicidal ideation. He had not provided psychotherapy to Ms. X and had not seen her as a regular patient. Dr. Redhead began a 3-month-long sexual relationship with Ms. X approximately one month after the end of the doctor-patient relationship.

223. The conduct in *Redhead* occurred in 2007, when sexual relationships with former patients had not been expressly prohibited. As in *Horri*, there did exist a policy from the Ontario regulator, dating back to 1992, which did discourage such behavior. *Redhead* can be distinguished from Dr. Sommerlund's case by pointing to the existence of expressed prohibition, her provision of psychotherapy, her lengthy and regular treating relationship, and her protracted sexual misconduct over two and a half years.

224. An emergency physician in *Ontario (College of Physicians and Surgeons of Ontario) v. Thavanathan*, 2020 ONCPSD 14 was suspended for 3 months on a joint proposal of penalty after he had sexual relations and took recreational drugs with a former patient he admitted to the hospital. Dr. Thavanathan encountered the patient when she presented to the emergency department but recognized that he knew her socially. He referred her on for a hospital admission after performing a cardiorespiratory assessment. Days later, the patient asked Dr. Thavanathan out on a date through direct messaging on a social media platform. Dr. Thavanathan engaged in sexual relations and consumed drugs with the patient over a weeklong period. The tribunal noted the egregiously poor judgment of Dr. Thavanathan to consume drugs with a patient who he admitted on an overdose.

225. *Thavanathan* can be distinguished from Dr. Sommerlund by examining the extent of contact and treatment with the vulnerable person. Dr. Thavanathan had one brief encounter with the patient before referring them onwards, while Dr. Sommerlund had treated Mr. A directly for several months. Dr. Thavanathan also performed no psychotherapy.

226. In *Ontario (College of Physicians and Surgeons of Ontario) v. Weaver*, 2012 ONCPSD 6, a physician was suspended for 6 months with stringent conditions because he had sex with a former patient one day after severing the doctor-patient relationship. While *Weaver* was not a jointly proposed penalty, Dr. Weaver did not attend or participate in the penalty hearing. The tribunal noted that Dr. Weaver's only mitigating factor was his lack of prior disciplinary history and that his knowledge of her marital problems was a significant aggravating factor.

227. During the timeframe of the Weaver's misconduct, there was no prohibition on sexual relationships with former patients.

228. The physician in *Ontario (College of Physicians and Surgeons of Ontario) v. Carter*, 2012 ONCPSD 14 was suspended for 18 months on a joint proposal of penalty after he had a romantic and sexual relationship with a patient. Patient A had been Dr. Carter's patient for four years when a romantic relationship began in February 2008 after he hugged and kissed her during an appointment. One month later, Dr. Carter told Patient A that he could no longer be her physician and immediately began a sexual relationship. When the sexual relationship was terminated several months later, the Patient A experienced severe harm, including severe anxiety, depression, and suicidal ideation. During the period of their relationship and after, Dr. Carter prescribed psychiatric medications with limited instruction. The tribunal noted Patient A's vulnerability as a serious aggravating factor.

#### Revocation or License Cancellation Case Law

229. In *Nova Scotia College of Nursing v. Relic*, 2020, a nurse's license was cancelled for 2 years on a joint submission of penalty after he had a sexual relationship with a recently discharged

inpatient from a mental health unit. Shortly after her discharge, Client A contacted Mr. Relic and they began a sexual relationship. Mr. Relic asked Client A not to discuss the relationship with anyone. After a complaint was initiated, Mr. Relic was subsequently terminated from his role by his employer. On renewal of registration with the regulator, he did not disclose this termination as required. Further, in the midst of the regulator's investigation, Mr. Relic applied for licensure in Ontario despite signing an undertaking not to apply to other jurisdictions until the matter was resolved, an action characterized as ungovernability. Mitigating factors included Mr. Relic's full cooperation and admissions, the brevity of the relationship, his remorse, and his lack of disciplinary history.

230. While Dr. Sommerlund's relationship with Mr. A was comparably lengthy, there are some elements of similarity. Like in *Relic*, Dr. Sommerlund tried to conceal the origin of her relationship and Mr. A was a vulnerable patient with significant mental health issues. In this matter Dr. Sommerlund's remorse, admissions and cooperations are considered significant mitigating factors, as in *Relic*.

231. A social worker in *Nova Scotia College of Social Workers v Rhodenizer*, 2021 had her license revoked on consent for 1 year after she engaged in a sexual relationship with a recently discharged client. Client A had received supportive counselling services from Ms. Rhodenizer from 2015 to 2016. Ms. Rhodenizer admitted to asking Client A to not discuss their personal encounters with anyone and failed to consult colleagues when appropriate. In *Rhodenizer*, a mitigating factor was her diagnosis of Post Traumatic Stress Disorder during material times and her willingness to admit faults.

232. While there are some significant similarities with *Rhodenizer*, Dr. Sommerlund was not given a diagnosis of Post Traumatic Stress Disorder during the material times of her misconduct. Dr. Sommerlund's mental health issues were found to be "distal factors" and Dr. Kelln stated that they did not cause her behaviour, even though they may have contributed to it.

233. In *Nova Scotia College of Nursing v. Barkhouse*, 2021, a nurse's license was cancelled by consent with no ability to reapply for 2 years after she had a sexual relationship with a former client from an inpatient treatment centre. Client A had two admissions at Ms. Barkhouse's facility where she was the head Licensed Practical Nurse and therefore fully informed about Client A's vulnerability. During Client A's second admission, Ms. Barkhouse and Client A began exchanging personal messages. Two days after Client A was released for physical health reasons, Ms. Barkhouse began a 3-month sexual relationship with them. When Ms. Barkhouse was asked about her relationship with Client A by her employer, she denied it.

234. In contrast, Dr. Sommerlund's relationship was significantly longer, and she provided psychotherapy to Mr. A. There is no evidence before this Committee that Dr. Sommerlund explicitly denied her relationship with Mr. A on an occasion where she was confronted about it.

According to Dr. Kelln's report, Dr. Sommerlund's employer was contacted by the ex-wife of Mr. A with a vague complaint in 2019. When Dr. Sommerlund was asked about it by her colleague, Ms. Patricia Rose, she admitted that she "had done something bad". The Committee notes that there is no direct evidence from Ms. Rose in this matter and no evidence that this incident was reported to NSBEP.

235. A nurse in *Nova Scotia College of Nursing v. Shanks*, 2021 consented to the revocation of her license with no ability to seek reinstatement for 2 years after she engaged in a sexual relationship with a former client. From 2015 to 2018, Ms. Shanks was the sole nursing care provider to Client A. Ms. Shanks initiated communication with Client A over text and began a personal relationship while they were still being treated at Ms. Shanks' clinic. Ms. Shanks stopped all treatment of Client A and had a sexual relationship that lasted one month, during which she also accepted a \$1000 dollar loan from them. The tribunal considering the mitigating factors (including self-disclosure to the regulator, a lack of discipline history and co-operation) when imposing the two-year time frame before which she could apply to be reinstated.

236. Like Ms. Shanks Dr. Sommerlund was plainly aware that her conduct was wrong.

237. In *College of Psychologists of Ontario v Roat*, 2016, a psychologist's license was revoked in a contested hearing because of his sexual relationship with a former client. The disciplinary panel pointed to the client's several major clinically important issues and the fact that he began the sexual relationship only three months after the termination of the therapeutic relationship as aggravating factors.

238. The relative lack of details in *Roat* limits its precedential value. *Roat* did not indicate how long Mr. Roat was barred from reapplying for licensure following his revocation. No details were provided with respect to the length or nature of his sexual relationship with his former client. Like Dr. Sommerlund, Mr. Roat did admit to the conduct and contested on penalty. The Committee notes that the disciplinary panel in *Roat* was not convinced that a period of suspension with conditions would adequately address the misconduct in a manner that protects the public and it emphasized the importance of deterrence to members who engage in sexual impropriety with former clients.

239. A psychologist in *Ontario (College of Psychologists of Ontario) v. Dessaulles*, 2023 ONCPD 2 received a suspension that in practice amounted to a permanent revocation after he had crossed several boundaries with a client. In that case, AW began seeing Dr. Dessaulles for treatment of her trauma from childhood sexual abuse and an eating disorder in 2019. In 2020, Dr. Dessaulles committed a series of progressive boundary violations over the course of six months, including the exchange of emails of an increasingly personal nature, the use of non-evidence based physical touch techniques in session, hugging, and kissing. These inappropriate behaviors culminated in the summer of 2020 where alcohol was consumed in session and AW received unwanted

inappropriate touching. Dr. Dessaulles did not contest the facts, but did express through his counsel that this should not be interpreted as agreement or admission. In a joint proposal on penalty, Dr. Dessaulles was suspended until he signed an undertaking to resign and never reapply in any jurisdiction.

240. While Dr. Sommerlund's case does contain progressive boundary violations, there is no evidence before the Committee that sexual contact happened before the termination of their therapeutic relationship.

241. In *Ontario (College of Psychologists of Ontario) v. Hutchinson*, 2018 ONCPD 3 a psychologist consented to the revocation of her license, and signed an undertaking to never again provide psychological services after she had a sexual relationship with a former client. Dr. Hutchinson saw Ms. X weekly for psychotherapy for 3 months at her home office. During the course of treatment, Dr. Hutchinson made inappropriate comments to Ms. X regarding her physique and her role as a "top" in her sex life. These comments were admitted to be sexual abuse of a client. Less than one month after the therapeutic relationship was terminated, Dr. Hutchinson began a sexual relationship with Ms. X that lasted more than two years. Dr. Hutchinson attempted to obliterate Ms. X's name from her records and was unable to produce them for the investigation committee.

242. Dr. Sommerlund engaged in an inappropriately personal relationship with Mr. A while therapy was ongoing. While Dr. Sommerlund did counsel Mr. A not to reveal the origin of their relationship, she did not take steps to obfuscate his identity from her records.

### **Analysis of Case Law**

243. A review of the case law indicates a range of disciplinary responses, highly dependent on the facts underlying each case. While the range is broad, for the most part, sexual misconduct will be met with a significant sanction inclusive of either a lengthy suspension or a licence cancellation.

244. In favour of a suspension, Dr. Sommerlund points the Committee to the previous decisions of NSBEP where sexual involvement with a client did not result in the cancellation of a license.

245. Ordinarily, the decisions from NSBEP might be considered more persuasive, however the facts of *Green* and *Unnamed Psychologist* are so different from this matter that they offer little value. In *Peirovy*, the Ontario Court of Appeal noted that penalty ranges may change over time and that a disciplinary committee is in the best position to determine whether change was required:

“[83] The Discipline Committee was in the best position to assess whether a deviation from the range of penalties previously imposed for similar misconduct or a wholesale change was required.”

246. On the whole, this Committee has determined that Dr. Sommerlund’s conduct is more egregious than the conduct in *Green* and that proportionality leads to a more significant penalty. The Committee also notes that the end result of the *Unnamed Psychologist* case was that the psychologist was no longer in practice.

247. In support of a registration cancellation, counsel for NSBEP has cited several cases where a joint submission of penalty led to revocation. Like the approach described in *Moodley* at para. 87, this Committee notes that these settlement decisions do provide value in aggregate as they demonstrate an overall trend in the case law where more recent cases invited more severe sanctions for sexual misconduct. In Nova Scotian cases, where sexual relations with a former client occurred, disciplinary panels have stated that revocation served the public interest.

248. While not in any way bound by it, the Committee also considers the existence of Ontario legislation requiring mandatory revocation for a period of 5 years as evidence of an evolution in Canadian society towards harsher sanctions in professional regulation for sexual misconduct.

## **VIII. DECISION**

249. After the Committee conducted a thorough evaluation of all evidence before it, the sentencing principles, and arguments of the parties, and considered our mandate to act in the public interest, the Committee has determined that Dr. Sommerlund’s registration should be cancelled.

250. The Committee concludes that the aggravating factors set out above far outweigh the mitigating factors.

251. Sexual misconduct with a client is one of the most damaging behaviors in which a psychologist can engage, and the Committee must be cognizant of the signal that issuing a lesser sanction sends to both the public and registrants. Dr. Sommerlund engaged in protracted sexual misconduct with a vulnerable client over a period of two and a half years. This was not a momentary lapse in judgement, but a drawn-out breach of ethics. Dr. Sommerlund was plainly aware her actions were wrong and sought to deliberately conceal the origin of her relationship with Mr. A. She had many opportunities to confront her ethical situation, being under supervision and completing an ethics oral exam, but she did not. But for Mr. A’s involuntary psychiatric admission, it is possible that this breach would never have been addressed by Dr. Sommerlund.

252. The mitigating factors, including Dr. Sommerlund's admissions, her cooperation with the investigation, her observed competence as a practitioner, her rehabilitation efforts, her low risk of recidivism, and her remorse, have all been considered. None are sufficient to mitigate against the severity of the misconduct, but do lead the Committee to a determination that Dr. Sommerlund should be permitted to apply for reinstatement after a period of two years. But for these mitigating factors, the Committee would have imposed a considerably lengthier restriction on her ability to apply for reinstatement.

253. The Committee rejects the NSBEP's proposed requirement for an independent mental health assessment, recognizing that Dr. Sommerlund has already undergone psychological assessment by Dr. Kelln and that her practice has been supervised without issue by Dr. Genest.

254. The Committee accepts that there should also be a reprimand for sexual misconduct with a vulnerable adult client.

## **IX. DISPOSITION**

255. The egregiousness of Dr. Sommerlund's sexual misconduct necessitates a forceful sanction.

256. The Committee has determined that the appropriate disciplinary penalty for Dr. Sommerlund's misconduct is as follows:

1. Dr. Sommerlund's registration to practice as a psychologist is cancelled, effective 45 days from the date of this decision.
2. Dr. Sommerlund may not apply for re-instatement of her registration for 2 years after its cancellation.
3. Dr. Sommerlund is to receive a reprimand for sexual misconduct with a vulnerable adult client.

257. Costs are to be determined at a future date after receipt of written submissions, a process agreed to by the parties.

258. If Dr. Sommerlund applies for reinstatement in two years, she will have to satisfy a future NSBEP Reinstatement Committee that a return to practice is in the public interest in accordance with the application legislation at that time.

259. Some indicators that would demonstrate sufficient remediation and acknowledgement of the importance of ethical boundaries and self-care would, from this Committee's perspective, include:



- A. Completion of an ethics course approved by the Registrar. Topics of concern to this Committee include boundaries, managing dual relationships, and ethical concerns specific to rural practice.
- B. That evidence-based treatment specific to Dr. Sommerlund's mental health issues has been sought.
- C. Existence of a robust and proactive risk management plan that considers self-care and the demands of a professional psychology practice. Such a plan should include the establishment of a peer support network that has a reasonable understanding of the kinds of risks that are attempting to be managed.

260. The public has an interest in seeing competent professionals delivering psychological services that are safe and compliant with ethical standards. It is hoped these non-binding recommendations will assist Dr. Sommerlund if she plans to apply for reinstatement in the future.

Dated at Halifax, Nova Scotia, this 27<sup>th</sup> day of June, 2025.

A handwritten signature in black ink, appearing to read 'Sean Ponnambalam', written in a cursive style.

Sean Ponnambalam  
Hearing Committee Panel Chair  
Nova Scotia Board of Examiners in Psychology

---

## DECISION ADDENDUM

---

The parties approached the Hearing Committee on July 27, 2025, with a request to issue corrections to the original decision dated June 27, 2025. These corrections were suggested to ensure greater accuracy and were non-substantive for the ultimate outcome.

The joint proposal by the parties has been accepted by the Committee and incorporated into the decision. The Committee notes that these changes do not affect the timelines provided in the original decision.

Dated at Halifax, Nova Scotia, this 14<sup>th</sup> day of August, 2025.

A handwritten signature in black ink, appearing to read 'Sean Ponnambalam', with a stylized flourish at the end.

Sean Ponnambalam  
Hearing Committee Panel Chair  
Nova Scotia Board of Examiners in Psychology