

THE DISCIPLINARY AND ETHICS COMMISSION

IN THE MATTER OF

RICHARD A. BEAN, JR.,



Respondent.

CFP Board Case No. 2019-51830

August 28, 2023

ORDER

I. Procedural Background

Certified Financial Planner Board of Standards (“CFP Board”) granted Respondent the right to use the CFP®, CERTIFIED FINANCIAL PLANNER™,  and  certification marks (“CFP® marks”) on September 13, 1999. (DEC Book at 28-29.)¹ He has been certified since that date. (*Id.*)

On June 2, 2022, CFP Board staff delivered to Respondent a Notice of Investigation (“NOI”) requesting certain information and documents related to his arrests for Driving Under the Influence (“DUI”) in March and July of 2019 and his December 2019 Chapter 13 bankruptcy filing. (DEC Book at 152-53.) On June 7, 2022, Respondent timely submitted his Response to the NOI and provided a written statement and supporting documents concerning his DUI arrests. (*Id.* at 154-55.) He also provided a written statement and documents concerning his 2019 bankruptcy. (*Id.*)

On June 8, 2022, CFP Board staff delivered to Respondent a Request for Additional Information (“RFAI”) (*id.* at 156-57), to which Respondent responded on June 21, 2022, providing information about two of his criminal matters. (*Id.* at 159-62). Although CFP Board staff had requested related court documents, they were not included in Respondent’s June 21 response, and the record does not reflect when, if ever, he provided these materials. (*Id.* at 159.)

On August 17, 2022, CFP Board staff delivered to Respondent a Notice of Oral Examination that set September 1, 2022, at 1:30 p.m. as the date and time for the examination. (*Id.* at 165.) The examination took place as scheduled, via web conference using the Zoom online platform. (*Id.* at 166, 170.) Respondent, who was not represented by counsel, was questioned by CFP Board Counsel on the record for approximately two hours and forty-five minutes. (*Id.* at 168, 318.)

On October 18, 2022, CFP Board staff delivered to Respondent a Notice of Complaint and Complaint that alleged violations of CFP Board’s *Rules of Conduct* and set potential hearing dates in February 2023. (*Id.* at 6-25.) In accordance with Article 3.1 of the *Procedural Rules*, CFP Board’s Complaint included numbered paragraphs setting forth the grounds for sanction, including a detailed factual description of the conduct and a specific statement of the alleged violations. (*Id.*) Prior to the hearing, Respondent filed an undated Answer to the Complaint comprised of an annotated copy of CFP Board’s Complaint, marked to

¹ The DEC Book and any other exhibits to this Order will not be published under Article 17.7 of the *Procedural Rules*.

reflect whether Respondent agreed with or denied each numbered paragraph. (*Id.* at 414-28.) In his Answer, Respondent admitted many of the allegations of the Complaint. (*Id.*)

On June 7, 2023, a Hearing Panel of CFP Board’s Disciplinary and Ethics Commission (“Commission” or “DEC”) convened by video conference to review CFP Board’s above-described Complaint. (Transcript of Hearing of Richard A. Bean, Jr., CFP[®], June 7, 2022 (“Bean Tr.”) at 1.) CFP Board Enforcement Counsel appeared for CFP Board; DEC Counsel appeared for the DEC and for a Hearing Panel of the Commission; Respondent appeared *pro se*.

At the outset of the hearing, the parties addressed Respondent’s submission, the evening before the hearing, of a four-page abstract of his voluminous medical records. (“Exhibit A”) (Bean Tr. at 13.) Respondent wanted these materials to be made a part of the record in the proceeding; Enforcement Counsel objected. (*Id.* at 13-17.) After deliberation, the Hearing Panel allowed the four-page abstract to be admitted and indicated that it would determine how much evidentiary weight, if any, to give these documents during its deliberations.

The Commission considered the Hearing Panel’s recommendation and issued its final order on August 28, 2023.

II. Findings of Fact

A. Background

Respondent has passed the following FINRA examination: (a) Series 65 – Uniform Investment Advisor Law Examination (1999). (*Id.* at 57, 414.) Respondent maintains a State Insurance License. (*Id.* at 63, 414.)

Respondent is currently registered as an investment advisor representative with Investment Advisor. (*Id.* at 56, 414.)

B. In 2007, Respondent was Convicted of Misdemeanor Disorderly Conduct Following an Incident in Which Respondent was Intoxicated on an Airplane

On August 20, 2007, Respondent boarded a flight to Manchester Boston Regional Airport. (*Id.* at 70, 414.) According to a police report, while on the flight and during the service phase, one of the flight crew noticed that both Respondent and his companion were intoxicated. (*Id.*) The police report described that Respondent’s behavior continued to evidence inebriation and that he displayed violent aggression toward his companion (*id.* at 70-71.); the flight attendants called security to meet them at the gate due to Respondent’s conduct and the fact that he claimed he would be driving home from the airport. (*Id.*) Officers were dispatched to the gate at Manchester Boston Regional Airport and escorted Respondent and his companion off the plane. (*Id.* at 69.) The police report stated that, when Respondent began to yell and swear, the officers arrested Respondent for disorderly conduct. (*Id.* at 68, 416.)

Due to this incident, on August 28, 2007, the State of New Hampshire filed a Criminal Complaint against Respondent for misdemeanor Disorderly Conduct in the 10th Circuit Court, District Division, Derry County as case number 431-2007-CR-03441. (*Id.* at 65-66, 416.) On November 19, 2007, Respondent entered a plea of *Nolo Contendere* and was convicted of Disorderly Conduct, a misdemeanor B, in violation of New Hampshire Revised Statutes Annotated (“R.S.A.”) § 644:2. (*Id.* at 76-77, 416.) Respondent was sentenced to a fine of \$550 with \$250 being suspended. (*Id.* at 77, 416.)

C. Respondent was Arrested for Operating a Vehicle While Under the Influence (“OUI”) in 2009 and Convicted of Driving While Intoxicated (“DWI”) in 2012

Respondent admits that, on June 7, 2009, he and a friend were coming out of a club where they each had had a drink. (*Id.* at 301, 416.) Respondent asserts that, after getting into their car, the car in front of Respondent’s backed up, hit his car, and then drove off. (*Id.*) Officers at the scene saw this incident and requested that Respondent get out of his car and perform sobriety tests. (*Id.* at 302, 416.) Respondent performed four or five different sobriety tests and was ultimately arrested and charged with OUI and Failure to Stop/Yield. (*Id.* at 301-03.)

On June 8, 2009, the Commonwealth of Massachusetts filed a Criminal Complaint against Respondent for OUI and Failure to Stop/Yield in the Newburyport District Court as case number 0922CR001149. (*Id.* at 78, 417.) On February 11, 2010, the Court found that Respondent had admitted to sufficient facts to prove he committed OUI, a violation of Massachusetts General Laws Annotated Ch. 90 § 24(1)(a)(1) but continued the matter without a finding or conviction for a probationary period with a fine. (*Id.* at 79, 417.) Respondent completed his probationary period on October 19, 2012, with no violations of probation found. (*Id.* at 80, 417.) At the recommendation of the Probation Department, the charges against Respondent were dismissed. (*Id.* at 79, 417.)

On November 29, 2011, an officer began following Respondent’s car after noticing his car speeding and using his right turn signal in an erratic fashion. (*Id.* at 84, 417.) After watching Respondent do a U-turn in a parking lot and then pull back onto the road, continuing to speed, the officer put on his emergency lights and pulled Respondent over. (*Id.*) The officer had Respondent perform three field sobriety tests (*id.* at 85-86) and the result of each showed Respondent to be impaired. (*Id.*)

The officer arrested Respondent for DWI, a misdemeanor B, in violation of R.S.A. § 265-A:2. (*Id.* at 85-87.) According to the arrest report, the original charge of DWI was amended to Reckless Operation of a Vehicle on March 27, 2012. (*Id.* at 89, 418.) According to law enforcement records, Respondent was convicted of Reckless Operation of a Vehicle, a violation of R.S.A. § 265:79 on March 27, 2012, and he was sentenced to 60 days revocation of his license and a \$620 fine. (*Id.*)

D. Respondent Pleaded Guilty to and was Convicted of Driving Under the Influence (“DUI”) on Two Separate Occasions in 2019

On March 3, 2019, Respondent was involved in a multi-car accident during which he was side-swiped and ended up in the next lane of oncoming traffic. (*Id.* at 160, 461.) As a result, Respondent was taken to the hospital. (*Id.*) While Respondent was at the hospital, the police acquired a blood sample, tested his blood, and concluded that his blood alcohol concentration was above the legal limit. (*Id.*)

Due to this incident, on March 12, 2019, the State of New Hampshire filed a Criminal Complaint against Respondent for DUI Aggravated 0.16+ and DUI Impaired in the 9th Circuit Court, District Division, Merrimack County as case number 457-2019-CR-00538. (*Id.* at 94-95, 418.) On October 6, 2020, Respondent entered a plea of No Contest and was convicted of DWI Impaired, a misdemeanor B, in violation of R.S.A. § 265-A:2, 1(a). (*Id.* at 100, 418.) Respondent was sentenced to 18-months revocation of his driver’s license with an ignition interlock device to be installed in his vehicle for two years, Alcohol Evaluation, attending an Impaired Driver Care Management Program, and a fine of \$930. (*Id.* at 100-03, 418.)

In a separate incident, just over three months later, on July 17, 2019, while driving home from dinner with his girlfriend, Respondent was pulled over by an officer and asked to exit his vehicle. (*Id.* at 160, 418.) According to Respondent, the officer who pulled him over claimed to smell alcohol and placed Respondent under arrest without doing any field sobriety tests. (*Id.* at 160-61.) On July 17, 2019, the State of New Hampshire filed a Criminal Complaint against Respondent for OUI – DWI (Liquor) in the 9th Circuit Court, District Division, Merrimack County as case number 457-2019-CR-01556. (*Id.* at 109, 419.) On December 5, 2019, Respondent entered a guilty plea and was convicted of DWI First Offense, a misdemeanor B, in violation of R.S.A. § 265-A:2. (*Id.* at 114, 419.) Respondent was sentenced to 18-months revocation of his driver’s license with an ignition interlock device to be installed in his vehicle for 12 months, Alcohol Evaluation, attending an Impaired Driver Care Management Program, and a fine of \$620. (*Id.* at 114–119, 419.) Respondent’s license revocation was ordered to run concurrent with the license revocation issued in case number 457-2019-CR-00538. (*Id.* at 116-18, 419.)

E. The New Hampshire Insurance Department Suspended Respondent’s Insurance License for Seven Days Due to His Failure to Accurately Report Criminal Prosecutions and Child Support Arrearages on His Insurance License Renewal Applications

On September 23, 2020, the New Hampshire Insurance Department (the “Department”) sent Respondent an Order to Show Cause and Notice of Hearing based upon Respondent’s failure to disclose his criminal convictions and a child support arrearage on his insurance license applications. (*Id.* at 121-125.) Following a hearing on this matter on February 17, 2021, the Hearing Officer issued a Proposed Decision and Order for the Commissioner’s review on April 14, 2021. (*Id.* at 129-143.) On June 15, 2021, the Commissioner issued his Final Decision and Order (“Final Decision”) in that matter adopting the Proposed Decision and Order with a few changes (*id.* at 126-128, 419) and making various findings of fact including:

- Respondent's 2007 conviction for misdemeanor disorderly conduct (*Id.* at 131);
- Respondent's 2009 arrest for OUI, which he did not disclose to the Department (*Id.* at 132);
- Respondent's submission in 2010 of his insurance producer renewal application without reporting any criminal convictions (*Id.*);
- A 2011 court lien in the amount of \$60,000 on Respondent's property due to his outstanding child support obligations, that Respondent stated he notified the Department of, but the Department says it has no record of receiving (*Id.* at 132-35);
- Respondent's 2012 submission of another insurance producer renewal application without reporting any criminal convictions or unreported and outstanding child support obligations (*Id.* at 133);
- Another court lien in 2013 for \$70,679.38 for unpaid child support, which was eventually released on August 20, 2020 (*Id.* at 133);
- Respondent's 2014, 2016, and 2018 submissions of insurance producer renewal applications to the Department, in each of which he failed to report any criminal convictions or unreported and outstanding child support obligations (*Id.* at 133-134);
- Respondent's March 2019 DUI arrest (*Id.* at 134);
- A June 2019 arrest for disorderly conduct, driving after having his license suspended or revoked, and disobeying an officer (*Id.*);
- Respondent's July 2019 arrest for DUI, which he pleaded guilty to in December 2019 (*Id.*);
- A September 2019 arrest for conduct after an accident, for which Respondent eventually pleaded guilty to the lesser violation of criminal mischief on December 12, 2019 (*Id.*);
- An October 2019 arrest for driving after his license was suspended/revoked (*Id.*);
- Respondent's admission at the hearing in the Department matter that he failed to report any criminal convictions or unreported and outstanding child support obligations in connection with his most recent insurance producer renewal application, filed in 2020 (*Id.* at 135); and
- Respondent's 2020 arrest for driving after his license was suspended/revoked, driving without an ordered interlock, driving without giving proof, and having an open container. (*Id.* at 136.)

The Final Decision also found that, due to his failure to report the criminal proceedings from Massachusetts docket number 0922CR01149 and New Hampshire case numbers 431-2007-CR-03441 and 457-2019-CR-01556, Respondent violated R.S.A. § 402-J:12, I (b) and R.S.A. § 402-J:17, II, which required him to report any criminal prosecution taken against him within 30 days of the pretrial conference. (*Id.* at 138.) Further, due to his failure to correctly answer the question regarding his child support arrearages on his 2018 insurance producer renewal application, the Final Decision found that Respondent violated R.S.A. § 402-J:12, I(a). (*Id.* at 141.) As a result of his conduct and violations, the Commissioner issued Respondent a seven-day suspension and fine of \$300. (*Id.* at 142-43, 421.)

On July 10, 2021, Respondent filed a Motion for Appeal with the Department requesting no suspension or fine be issued in his case. (*Id.* at 144-45, 421.) On July 19, 2021, the Department submitted an Objection to Respondent's Motion for Appeal (*id.* at 146-149, 421) and on July 19, 2021, the Commissioner issued an Order denying Respondent's Appeal. (*Id.* at 150, 421.)

F. Respondent Failed to Timely Report His Misdemeanor Convictions and Professional Discipline to CFP Board and Made False and Misleading Statements to CFP Board on his Ethics Declarations

Respondent admitted that he failed to notify CFP Board of any of his misdemeanor convictions, as required pursuant to Article 13.2 of the *Disciplinary Rules and Procedures*, and its successor, Standard E.3.a. of the *Code and Standards*. Respondent also admitted that he failed to notify CFP Board of the 2021 New Hampshire Final Decision and the seven-day suspension that it imposed within 30 calendar days, as required by Standard E.3.c. of the *Code and Standards*. Respondent claimed that he was unaware of this obligation: “I guess looking back, I, I didn’t know, or didn’t regard it from an ignorance point of view. . . I just didn’t totally realize . . . that you had to report it when it happened.” (Bean Tr. at 114.) Respondent acknowledged the purpose that underlies his disclosure obligations, however, when he stated:

Q: Well, you understand -- here's the thing, Mr. Bean. We can't investigate things that we don't know about. Right? That's the point of you disclosing them to us.

A: Right.

Q: So if you don't disclose something to us, how do you expect that we're going to investigate that?

A: I don't know. You're right.

(DEC Book at 299-300.)

At no relevant time did he seek guidance from CFP Board staff as to how he should interpret those obligations, even as his criminal convictions continued to mount. (Bean Tr. at 130; DEC Book at 233.)

In addition to his failure to affirmatively disclose his criminal convictions and the New Hampshire regulatory finding to CFP Board, Respondent made false statements on each of the seven Renewal Applications for CFP® Certification that he filed from 2008 to 2020. Respondent’s first criminal conviction for disorderly conduct occurred in 2007. (*Id.* at 70, 414.) In completing the Ethics Declaration associated with his bi-annual Renewal Application in 2008, and in every renewal thereafter, Respondent answered “No” each time he was asked if he was the subject of regulatory inquiries, criminal proceedings, charges or convictions. (*Id.* at 30-48.) Respondent claims that he misunderstood what was being asked by the Ethics Declaration and “answered [the question] the same way [he] answered [New Hampshire Insurance and Securities Departments] and it was acceptable. So that’s my ignorance.” (Bean Tr. at 61.) Respondent’s misrepresentations facilitated the renewal of his CFP® certification without being subject to an investigation at any point during this time.

G. Respondent’s Demeanor and Credibility

The Hearing Panel did not find Respondent to be a credible witness in several key respects, and the Commission agreed. Perhaps most important to a matter that is based primarily on Respondent’s alcohol-related convictions, Respondent’s testimony about his current drinking habits was inconsistent and undermined his credibility as a whole. For example, Respondent testified emphatically that he does not

drink alcohol: “I don’t drink”² “I’m at now that I don’t drink, I mean, seriously, I don’t drink. I haven’t had a drink in four years”³ “[a]nd you know what? I’ve learned. I have made my major changes, and I have changed my life. I don’t even take a drink of alcohol.”⁴ But he also testified that he drinks alcohol on his birthday or New Year’s Eve.⁵ Likewise, at various times during the hearing he testified that he had last taken a drink of alcohol in 2017,⁶ 2018,⁷ and finally proclaimed that he had last had a drink on New Year’s 2019.⁸

Similarly, a recurrent theme in Respondent’s testimony was that factors outside of his control, including an allegedly vindictive ex-wife,⁹ the police,¹⁰ and his life circumstances in general,¹¹ had conspired against him to foist unwarranted consequences, including this disciplinary matter, upon him. For example, Respondent blamed his ex-wife for causing him trouble by reporting misconduct that he had failed to disclose despite his obligation to do so:

My then girlfriend, which was my wife, who by the way who is the one who blew the whistle on this whole investigation. She did it with the State of New Hampshire Insurance Department, which [counsel] has outlined, and she did it with the State Securities Department, which she was a disgruntled person who took -- it was a four-year marriage. I mean, it took me four years to get rid of the girl, and she was a very scorned person, and she decided to blow the whistle. And I believe this is why we are here.

(*Id.* at 52-53.)

Similarly, Respondent maintains that the police pulled him over because they “recognized his license plate” (*Id.* at 113) and that they filed DUI charges against him based on a mistaken reading of his medical records. (DEC Book at 160; Bean Tr. at 57.)

In his efforts to shift blame, Respondent often relied on self-serving, improbable, and unsupported factual assertions. For example, he insisted that a DWI conviction stemming from a July 2019 incident had been expunged (*Id.* at 140-42) but provided no support for that assertion. In his Answer, Respondent claimed, incredibly, that the charge stemming from the 2007 airplane incident was “proved not alcohol-related as

² Bean Tr. at 58.

³ *Id.* at 109.

⁴ *Id.* at 151.

⁵ *Id.* at 127-29: “[Respondent]: I don’t remember on [sic] 2019. The only time that I have ever had a drink I want to say since 2017, is on my birthday or on New Year’s Eve. Is it. So if I misspoke about 2019, it would probably be that. But this year, as it relates to 2020, actually my birthday is in November so it was 2022, I didn’t even have a drink on my birthday or New Year’s Eve. I usually leave those two opportunities as that’s what I’m doing. So, I don’t recall and it could have been going back to 2019. It probably, probably went to 2018 the more I know about it, that I haven’t had a drink. I don’t, I don’t drink.”

⁶ *Id.* at 57.

⁷ *Id.* at 110-12.

⁸ *Id.* at 124.

⁹ *Id.* at 52-53, 59, 104-06.

¹⁰ *Id.* at 113; DEC Book at 160.

¹¹ DEC Book at 154-55 (citing tumultuous divorce, erroneous divorce decree, bankruptcy filing, and serious health problems.)

per the court decision” and was “ultimately unnull [sic].” (DEC Book at 416.) Likewise, he maintained that the police who reviewed his blood test results after his March 3, 2019 hospitalization somehow confused his high blood glucose levels for high blood alcohol levels, and that he never would have been forced to plead no contest to those charges if he had had the means to secure expert testimony to that effect.¹² In Respondent’s own words:

[Y]ou know from what I honestly – I think I honestly got shafted on this because I was in this situation, I was in a vulnerable period of time that I couldn't defend myself properly, and I looked at it – traffic violation, whatever, it's no big deal. And, you know, I know I have to answer these questions going forward, and it's horrible. It's an absolute horrible thing because I honestly feel like I was set up to fail. I have all the medical records to prove it, but I didn't have the money at the time and the resources in order to properly defend myself. And if I did, I don't think we'd be having this conversation. I truly don't.

(DEC Book at 238-39.)

The medical records from Respondent’s March 3, 2019 hospitalization tell a different story, however. While they do reflect his elevated blood glucose level, they also unambiguously reflect that his blood alcohol level was far above the legal limit that evening. (DEC Book at 435 (St. Joseph’s Hospital record stating “Ethyl Alcohol (03/03/2019) 7:50 PM EST” was 305.3 MG/DL with a normal reference range of less than 3.0 MG/DL)). Among his diagnoses from that visit is “Alcoholic intoxication without complication.” (DEC Book at 440.) Yet in his hearing testimony, Respondent declared that the same medical record supported his contention that his blood alcohol was not elevated:

And that's why I asked for my medical records to be included, because it's part of this. And not only that, there's an exhibit and I can't remember what exhibit it is. It shows specifically where, there's a medical record at St. Joseph's Hospital. And there's a circle by the doctor, initialed by the doctor, that shows it is a blood glucose, not blood alcohol.

(Bean Tr. at 138-39.)

And in a stunning display of his failure to appreciate the gravity of his misconduct, and its’ reflection on his fitness to use the CFP® marks, Respondent testified that he did not feel that it was important for potential clients to be aware of a CFP® professional’s disciplinary history because, as he said, “what was, isn’t.” (*Id.* at 126.)

Respondent offered the testimony of a personal friend and professional colleague as a character witness at the hearing. The character witness testified about the various life difficulties that Respondent had faced,

¹² “. . . I was advised by my counsel to negotiate a plea which would reduce the charge. This was my only option, even knowing I had evidence that it was glucose levels not alcohol that was elevated. It was further supposed that pain medication I was on, could've provided a false positive result. But as I mentioned, I could not afford the service of an expert witness.” (DEC Book at 160.)

in terms that closely mirrored Respondent's own descriptions. The witness stated that Respondent's ex-wife was "a difficult person . . . [who] enjoyed alcohol quite a bit" (Bean Tr. at 74) and that she was the cause of the disturbance at the airport that led to Respondent's 2007 arrest. (*Id.*) The witness maintained that the investigation into Respondent's conduct by the New Hampshire Insurance Commission was "a fishing expedition" "trying to discover something that [the witness did not] think was there." (*Id.* at 76-77.) And although the witness freely cast aspersions on Respondent's ex-wife's alcohol use, he minimized Respondent's alcohol-related offenses, which he referred to as "extra-curricular activities." (*Id.* at 83.) The Hearing Panel did not believe that the witnesses' testimony addressed adequately Respondent's acceptance of responsibility, remorse or character, fitness, and eligibility to use the CFP® marks.¹³ Accordingly, the Hearing Panel did not credit the witness' testimony and the Commission adopted this finding.

III. Discussion of Respondent's Misconduct

To impose a sanction on Respondent, the Commission must find grounds for sanction. The Commission found grounds for sanction under the *Procedural Rules* because it determined that Respondent violated CFP Board's *Rules of Conduct*, as discussed below. The Commission made its decision based on the authority granted to it in Article 12 of the *Procedural Rules*.

First Ground for Sanction

CFP Board's Complaint alleged there are grounds to sanction Respondent for a violation of Rule 6.5 of the *Rules of Conduct*, which provides that a CFP® professional may not engage in conduct that reflects adversely on his or her integrity or fitness as a CFP® professional, upon the CFP® marks, or upon the profession. Conduct that reflects adversely on Respondent's integrity or fitness as a CFP® professional, upon the CFP® marks, or upon the profession may include the commission of acts that violate the criminal codes of the of any state and that result in a misdemeanor conviction for a second, or more, alcohol-related offense.

Article 7.1 of the *Procedural Rules* provides that a record from any court of criminal jurisdiction indicating that Respondent has been convicted of a crime in that court, or admitted into a program that defers or withholds entry of a judgment of conviction ("Criminal Conviction"), is conclusive proof of the commission of the crime and that Respondent engaged in the criminal conduct that led to the Criminal Conviction.

Respondent was a CFP® professional at all times relevant to this alleged violation.

The 9th Circuit Court, District Division, Merrimack County is a New Hampshire State Court of criminal jurisdiction. The 2020 Sentencing Order for Case No. 457-2019-CR-00538 is a record indicating that Respondent has been convicted of a crime. Therefore, this record conclusively establishes the commission

¹³ Having taken the CFP® Exam twice, the witness should have been familiar with the character requirements associated with maintaining the CFP® marks.

of the underlying crime and that Respondent engaged in the criminal conduct for purposes of this disciplinary proceeding on March 3, 2019.

This Sentencing Order is conclusive proof of Respondent's conviction of DWI Impaired, a misdemeanor B in violation of R.S.A. § 265-A:2, 1(a), and Respondent's third alcohol-related misdemeanor conviction.

The 9th Circuit Court, District Division, Merrimack County is a New Hampshire State Court of criminal jurisdiction. The 2019 DWI First Offense Sentencing Order for Case No. 457-2019-CR-01556 is a record indicating that Respondent has been convicted of a crime. Therefore, this record conclusively establishes the commission of the underlying crime and that Respondent engaged in the criminal conduct for purposes of this disciplinary proceeding on July 17, 2019.

This Sentencing Order is conclusive proof of Respondent's act of DWI First Offense, a misdemeanor B in violation of R.S.A. § 265-A:2, and Respondent's fourth alcohol-related misdemeanor conviction.

Respondent has multiple misdemeanor convictions for alcohol related offenses. Therefore, there are grounds to sanction Respondent for a violation of Rule 6.5 of the *Rules of Conduct*.

Second Ground for Sanction

CFP Board's Complaint alleged that there are grounds to sanction Respondent for a violation of Rule 4.3 of the *Rules of Conduct*, which provides that a certificant shall be in compliance with applicable regulatory requirements governing professional services provided to the client.

Respondent was a CFP® professional at all times relevant to this violation.

Article 7.2 of the *Procedural Rules* provides that a record from a (a) federal, state, local, or foreign governmental agency, (b) self-regulatory organization, or (c) other regulatory authority imposing discipline upon Respondent ("Professional Discipline") is conclusive proof of the existence of such Professional Discipline and the facts and violations that serve as the basis for such Professional Discipline. The fact that Respondent has not admitted or denied the findings contained in the record does not affect the conclusiveness of the proof. Professional Discipline includes a censure, injunction, undertaking, order to cease and desist, fine, suspension, bar, or revocation, and the surrender of a professional license or certification in response to a regulatory action or regulatory investigation. A record of Professional Discipline includes a settlement agreement, order, consent order, and Letter of Acceptance, Waiver, and Consent ("AWC").

The New Hampshire Insurance Department is a state governmental agency. The Final Decision adopting the Proposed Decision and Order is a record of Professional Discipline by the New Hampshire Insurance Department, and Respondent is the subject of that record. Therefore, the Final Decision adopting the Proposed Decision and Order conclusively establishes the existence of such Professional Discipline for purposes of this disciplinary proceeding and is conclusive proof of the facts and violations that serve as the basis for such Professional Discipline of Respondent.

The Final Decision adopting the Proposed Decision and Order is conclusive proof that Respondent failed to comply with R.S.A. § 402-J:12, I (b), R.S.A. § 402-J:17, II, and R.S.A. § 402-J:12, I(a), which are regulatory requirements governing professional services provided to clients, when he failed to timely report the criminal proceeding from Massachusetts, docket number 0922CR01149, by August 6, 2009, the criminal proceedings from New Hampshire, case number 431-2007-CR-03441, by December 19, 2007, and case number 457-2019-CR-01556, by January 6, 2020 to the New Hampshire Insurance Department and failed to correctly answer the question regarding his child support arrearages on his 2018 New Hampshire insurance producer renewal application.

The Final Decision adopting the Proposed Decision and Order is also conclusive proof that Respondent received a seven-day suspension of his state insurance license, which qualifies as Professional Discipline. Therefore, there are grounds to sanction Respondent for a violation of Rule 4.3 of the *Rules of Conduct*.

*Third Ground for Sanction
(Failure to Report before June 20, 2020)*

CFP Board's Complaint alleged there are grounds to sanction Respondent for violating Rule 6.2 of the *Rules of Conduct*, which provides that a CFP® professional shall meet all CFP Board requirements to retain the right to use the CFP® marks.

One of the requirements to retain the right to use the CFP® marks is the duty to report to CFP Board when certain events occur. Specifically, pursuant to Article 13.2 of the *Disciplinary Rules and Procedures* in place at the time of Respondent's 2007 and 2019 Disorderly Conduct and DWI convictions, respectively, Respondent had a duty to notify CFP Board in writing within 30 calendar days of any criminal conviction, other than minor traffic violations.

Respondent was a CFP® professional at all times relevant to this violation.

On November 19, 2007, Respondent entered a *Nolo Contendere* plea to and was convicted of Disorderly Conduct, a misdemeanor, in violation of R.S.A. § 644:2. Therefore, on November 19, 2007, Respondent was aware that he was the subject of a criminal conviction. Respondent did not disclose this criminal conviction to CFP Board within 30 calendar days, and thus failed to meet all CFP Board requirements to retain the right to use the CFP® marks.

On December 5, 2019, Respondent entered a guilty plea to and was convicted of DWI First Offense, a misdemeanor B, in violation of R.S.A. § 265-A:2. Therefore, on December 5, 2019, Respondent was aware that he was the subject of a criminal conviction. Respondent did not make a disclosure to CFP Board of this criminal conviction within 30 calendar days, and thus failed to meet all CFP Board requirements to retain the right to use the CFP® marks.

Another requirement to retain the right to use the CFP® marks is the duty to provide a truthful and accurate Ethics Declaration in connection with any Renewal Application for CFP® Certification.

Respondent's "No" answer in his 2008 Ethics Declaration was a misrepresentation as Respondent knew he had been named as a Defendant in a criminal complaint and subsequently convicted of misdemeanor Disorderly Conduct on November 19, 2007, approximately one year before he completed his 2008 Ethics Declaration. Respondent's misrepresentation facilitated the renewal of his CFP® certification without being subject to an investigation. As such, Respondent failed to meet all CFP Board requirements to retain the right to use the CFP® marks.

Respondent's "No" answer in his 2010 Ethics Declaration was a misrepresentation as Respondent knew he had been named as a Defendant in a criminal complaint on June 8, 2009, approximately one and a half years before he completed his 2010 Ethics Declaration. Respondent's misrepresentation facilitated the renewal of his CFP® certification without being subject to an investigation. As such, Respondent failed to meet all CFP Board requirements to retain the right to use the CFP® marks.

Therefore, there are grounds to sanction Respondent for a violation of Rule 6.2 of the *Rules of Conduct*.

*Fourth Ground for Sanction
(Failure to Report after June 30, 2020)*

CFP Board's Complaint alleged that there are grounds to sanction Respondent for a violation of Standard E.3 of the *Code and Standards*, which provides that a CFP® professional must provide written notice to CFP Board within thirty (30) calendar days after the CFP® professional has been charged with, convicted of, or admitted into a program that defers or withholds the entry of a judgment or conviction for a Relevant Misdemeanor. A CFP® professional must also report within 30 calendar days if he has had conduct mentioned adversely in a Finding in a Regulatory Action involving failure to comply with the laws, rules, or regulations governing Professional Services.

Respondent was a CFP® professional at all times relevant to this violation.

On October 6, 2020, Respondent entered a No Contest plea to and was convicted of DWI Impaired, a misdemeanor B, in violation of R.S.A. § 265-A:2, 1(a). Therefore, on October 6, 2020, Respondent was aware that he was the subject of a criminal conviction, and Respondent failed to make a required disclosure to CFP Board of this criminal conviction within 30 calendar days.

On June 15, 2021, the New Hampshire Insurance Department issued a Final Decision adopting the Proposed Decision and Order against Respondent suspending his insurance license for seven days. Therefore, on June 15, 2021, Respondent was aware that he had conduct mentioned adversely in a Finding in a Regulatory Action involving failure to comply with the laws, rules, or regulations governing Professional Services, and Respondent failed to make a required disclosure of this to CFP Board within 30 calendar days.

Therefore, there are grounds to sanction Respondent for a violation of Standard E.3 of the *Code and Standards*.

*Fifth Ground for Sanction
(Inaccurate Ethics Declarations after June 30, 2020)*

CFP Board's Complaint alleged that there are grounds to sanction Respondent for a violation of Standard E.5 of the *Code and Standards*, which provides that a CFP® professional may not make false or misleading representations to CFP Board.

Respondent's "No" answer in his 2020 Ethics Declaration was a misrepresentation as Respondent knew he had been convicted of DWI First Offense on December 5, 2019, approximately one year before he completed his 2020 Ethics Declaration. Respondent's misrepresentation facilitated the renewal of his CFP® certification without being subject to an investigation.

Respondent's "No" answer in his 2020 Ethics Declaration was a misrepresentation as Respondent knew he had been convicted of DWI Impaired on October 6, 2020, just two months before he completed his 2020 Ethics Declaration. Respondent's misrepresentation facilitated the renewal of his CFP® certification without being subject to an investigation.

Respondent failed to meet all CFP Board requirements to retain the right to use the CFP® marks when he made false and misleading statements on his 2020 Ethics Declarations claiming to have never been convicted of a misdemeanor.

Therefore, there are grounds to sanction Respondent for a violation of Standard E.5 of the Code and Standards.

IV. Discussion of the Commission's Decision

Pursuant to Article 12.3 of the *Procedural Rules*, the Commission must impose a sanction if it finds a violation that warrants a sanction. The Commission has discretion to impose any sanction under Article 11.1 of the *Procedural Rules*.

After careful consideration of the evidence in Respondent's matter and the violations found, the Commission determined to issue Respondent a **Suspension for Two Years and Remedial Education or Work in the form of 60 hours of additional Continuing Education**. This Continuing Education shall be in addition to those hours otherwise required for Respondent to renew his certification.

CFP Board has issued non-binding *Sanction Guidelines* that are intended to serve as guidance for determining the appropriate sanction. In arriving at its decision, the Commission considered the following *Sanction Guidelines*:

- Conduct 14(a): Failure to Disclose to CFP Board (Private Censure)
- Conduct 25: Relevant Misdemeanor Criminal Convictions (Private Censure)

- Conduct 33: Professional Discipline as defined in Article 7.2 involving a suspension (or a similar type of Professional Discipline) for up to one calendar month (30 days) (Public Censure)

The Policy Notes for Conduct 14(a) state: “The sanction imposed may be higher than Private Censure if it is determined that the Respondent’s failure to disclose was intentional.”

The Policy Notes for Conduct 25 state “The following should be considered additional aggravating or mitigating factors in determining the appropriate sanction: . . . (4) Has the certificant or registrant been convicted of other misdemeanor crimes not identified as serious crimes in the Disciplinary Rules (see Article 12.5) (5) Did the number of misdemeanor crimes reveal that there was a pattern of misconduct? Over what period of time? How long ago?”

The Commission reviewed the mitigating and aggravating factors in this case to determine whether there were any material factors relevant to this matter, and, if so, what weight those factors may have in its decision.

The Commission considered in aggravation:

1. Respondent had four alcohol-related incidents and three convictions, two of which were for DWI, over 12 years’ time, revealing a pattern of misconduct;
2. Respondent lied on multiple Ethics Declarations between 2008 and 2020;
3. Respondent’s testimony at hearing was evasive, dissembling, and contradictory; and
4. Respondent did not take responsibility for his actions or display genuine remorse, instead he ascribed fault to his ex-wife for “whistleblowing” and reporting his misconduct and implied that police harassed him by targeting him for unfounded investigation.

The Commission considered in mitigation that there is no evidence of direct client harm, although Respondent placed himself and others at serious risk of harm by acting recklessly, for which he was arrested and/or convicted on multiple occasions. Respondent’s contention that he need not disclose his disciplinary history is harmful to his clients, who deserve the integrity and transparency that the CFP® designation denotes. Lack of direct client harm is, in this instance, an unpersuasive mitigating factor.

The Commission then consulted various *Case Histories* (referred to as “ACHs” or “CHs”) involving two or more alcohol-related offenses such as Driving Under Influence (“DUI” or “DWI” or “OVI” or “OMVI”) to determine if any Case Histories contained precedent that warranted a deviation from the *Sanction Guidelines*. The Commission considered ACH 30094, ACH 41680, and ACH 43257.

In ACH 30094, a CFP® professional had four DWIs over a period of nine years; each of these convictions led to jail time, home monitoring, or work release sentences, and multiple years of probation. The Commission issued a two-year suspension. In that case, the aggravating factors were like those found in this matter but fewer in number: the CFP® professional displayed a pattern of reckless behavior involving alcohol and failed to report one of his convictions to CFP Board in a timely fashion. Similar to this case, there was no client harm found in ACH 30094; however, the CFP® professional there demonstrated

genuine remorse, unlike Respondent. In arriving at its decision in the ACH, the Commission consulted *Sanction Guideline 24*¹⁴ (Conviction of Criminal Misdemeanor). While the guideline called for a Private Censure, the Commission felt that the pattern of misconduct and other aggravating factors warranted a two-year suspension.

In ACH 41680, the CFP® professional had two DUI convictions 15 years apart and failed to answer his Ethics Declaration truthfully. The second conviction arose from a single-vehicle accident after which the CFP® professional admitted that he had been consuming alcohol while driving the car. The CFP® professional in that case was sentenced to jail time, home detention, an ignition interlock device, and 36 hours of traffic school. The Commission issued a one-year suspension. The mitigating factor in that case (no client harm) is identical to the sole mitigating factor in this matter; the aggravating factors there were fewer, however, in that there were fewer DUI convictions over the relevant time period, only one false Ethics Declaration filed with CFP Board, and no Professional Discipline finding.

In ACH 43257, the CFP® professional had three OVI convictions in total, two of which had occurred after he obtained the CFP® marks. The accident that gave rise to the second conviction also caused personal injury and property damage; the victim filed a civil action against the CFP® professional seeking compensation for their losses. As in this matter, the CFP® professional's conduct in ACH 43257 displayed a pattern of alcohol-related adverse conduct that the CFP® professional failed to report in one instance; his misconduct also caused injury to another and endangered the public. However, in that matter the CFP® professional did disclose one of the relevant convictions to CFP Board and took responsibility for his misconduct by consenting to a one-year suspension. In this matter, Respondent has neither acknowledged his misconduct nor taken responsibility for his actions.

In light of the violations found, the relevant *Sanction Guidelines* and ACHs, and the weight of the mitigating and aggravating factors, the Commission determined to issue to Respondent an **Order of Suspension for Two Years** of Respondent's right to use the CFP Board certification marks (CFP® marks) and **Remedial Education or Work** in the form of 60 hours of additional Continuing Education.

Pursuant to Article 14.1 of the *Procedural Rules*, a CFP® professional who has been suspended for a period longer than one year must petition the Commission for reinstatement. The Commission notes that if Respondent determines to seek reinstatement, Respondent will be required to prove by clear and convincing evidence, among other things noted in Article 14, his rehabilitation and fitness for CFP® certification, the absence of any further alcohol-related violations, and compliance with the terms of this order, pursuant to Article 14 of the *Procedural Rules*.

Ordered by:
CFP Board's Disciplinary and Ethics Commission

¹⁴ Now *Sanction Guideline 25* (Relevant Misdemeanor Criminal Convictions).