# THE DISCIPLINARY AND ETHICS COMMISSION

| IN THE MATTER OF<br>MARK F. KREGOR,<br><br>Respondent. | CFP Board Case No. 2022-64195<br><br>November 6, 2023 |
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## ORDER

### I. Procedural Background

Respondent submitted his initial application for CFP® certification on September 1, 2022. (DEC Book at 5.)[1] In the Declaration section of his application, Respondent disclosed that, in 2018, he received a 30-day suspension and a $32,000 fine from the Kentucky Department of Financial Institutions ("KDFI"), as well as several customer complaints, arbitrations, or civil suits, and that he was permitted to resign from his former firm. (*Id.*)

CFP Board established the *Fitness Standards for Candidates for CFP® Certification and Former CFP® Professionals Seeking Reinstatement* ("*Fitness Standards*") to ensure that an individual's prior conduct does not reflect adversely upon their fitness for CFP® certification, the profession, or the CFP® certification marks (also, "CFP Board certification marks" or "CFP® marks"). Under the *Fitness Standards*, suspension of a financial professional (e.g. registered securities representative, broker/dealer, insurance, accountant, investment advisor, financial planner) license is conduct that is "presumed to be unacceptable" or may reflect adversely upon a candidates' fitness for CFP® certification, the profession, or the CFP® marks and thus may bar a candidate from certification. Conduct that is presumed to be unacceptable or that may reflect adversely will bar an individual from becoming certified unless the individual petitions the Disciplinary and Ethics Commission ("Commission" or "DEC") for a fitness determination in accordance with CFP Board's *Procedural Rules*, and the Commission grants the petition or permits the individual to reapply for certification at a later date.

CFP Board Enforcement Counsel sent Respondent a Notice of Investigation ("NOI") on October 5, 2022 (*Id.* at 63-66), to which he responded on October 31, 2023. (*Id.* at 67-71)

On February 7, 2023, Enforcement Counsel gave notice that Respondent's suspension is conduct that is presumed to be unacceptable and that the other disclosed conduct may reflect adversely upon his fitness for CFP® certification, the profession, or the CFP® certification marks, and informed him that he must file a Petition for Fitness Determination ("Petition") by March 9, 2023. (*Id.* at 6-12.) Respondent filed with Enforcement Counsel his Petition pursuant to CFP Board's *Procedural Rules* on an unknown date, which the Commission presumed was timely due to no objection by Enforcement Counsel. (*Id*. at 572-589.)

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



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On August 9, 2023[2], a Hearing Panel of the Commission convened by video conference to review Respondent's Petition. (Transcript of Hearing of Mark F. Kregor, August 9, 2023 ("Kregor 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 and was represented by counsel.

The Commission considered the Hearing Panel's recommendation and issued its final order on November 6, 2023.

## II. Findings of Fact

### A. Background

Respondent has passed the following examinations: (1) Series 7 – General Securities Representative Examination (1993); (2) SIE - Securities Industry Essentials Examination (2018); and (3) Series 63 – Uniform Securities Agent State Law Examination (1993). (DEC Book at 41.) Prior to entering the securities industry, Respondent earned a bachelor's degree in mechanical engineering from the University of Kentucky and worked as a mechanical engineer for approximately 10 years. (*Id*. at 572.)

Respondent has been registered and employed as a financial advisor for approximately 30 years, since September 1993. (*Id.* at 43.) He was registered with and employed by his first firm from 1993 until it was acquired by another firm in 2019. (*Id*.) Respondent was employed at the acquiring firm for approximately two years, until July 2021, when he was permitted to resign. (*Id*. at 43, 61.) Respondent joined a third firm in August 2021, where he remains today. (*Id*. at 43.).

Respondent holds the Chartered Wealth Advisor® (or CWA®) designation and took and passed the CFP® Exam in November 2021. (*Id*. at 572.)

### B. Alleged Unsuitable Investments Lead to Kentucky Department of Financial Institutions ("KDFI") Suspension

#### *1. KDFI Consent Order*

On December 26, 2018, Respondent received an inquiry letter from KDFI requesting information relating to customer complaints filed against Respondent from January 2, 2017 to December 26, 2018. (*Id*. at 72-73.) On September 15, 2020, Respondent received a letter from KDFI alleging he may have engaged in conduct which is in violation of the Kentucky Revised State Chapter 292 Act ("Act"). (*Id*. at 78-80.) KDFI stated that between 2015 and 2019, seven customer complaints were filed against Respondent with the Financial Industry Regulatory Authority, Inc. ("FINRA"). (*Id*.) All complaints included allegations that Respondent offered or sold unsuitable investments

[2] CFP Board originally noticed Respondent's hearing for June 8, 2023, but it was postponed. (*Id*. at 594.) CFP Board provided Respondent with a Notice regarding Obligation to Sign Pathway to CFP® Certification Agreement to Pursue a Petition for Fitness Determination, which Respondent signed on July 7, 2023. (*Id*. at 620-628.) On July 10, 2023, CFP Board sent Respondent a new Notice of Hearing for a hearing on August 9, 2023. (*Id*. at 617.)



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for his clients. (*Id.*) Respondent's firm settled six of the complaints and the seventh went to arbitration with FINRA. (*Id.*) The complaints allege Respondent offered and sold penny stocks and investments in business development companies ("BDCs") to his clients when these investments were unsuitable for the clients. (*Id.)*

On September 14, 2021, Respondent entered into a Consent Order ("Order") with KDFI and agreed to a one-month suspension of his registration with the KDFI as a broker-dealer agent and an investment adviser representative, to pay a civil fine of $32,000, and to cease and desist from any future violations of the Act. (*Id.* at 81-87.) The Order disclosed that, between 2013 and 2015, Respondent "offered and sold high concentrations of high-risk investments to [his] clients, and by doing so [he] failed to follow the investment objectives for those clients." (*Id.*) The Order further disclosed that one of the complaints involved a client more than 70 years of age and that the seven complaints claimed a total of $2,806,644.00 in losses due to the high-risk investments.[3] (*Id.*) KDFI alleged this pattern of unsuitable trading behavior amounted to seven separate violations of the Act and the regulations, specifically KRS 292.320(1)(a) and 808 KAR 10:030 § 2, when Respondent offered and sold the high-risk securities in high concentrations when this advice was contrary to the clients' stated investment objectives of each of seven clients. (*Id.*) The Consent Order states that Respondent "has not admitted and does not admit by execution of this Agreed Order, that he violated any applicable statute or regulation." (*Id.* at 84.)

### 2. *Customer Complaints and Arbitrations Underlying KDFI Consent Order*

Although the Consent Order does not specify the specific matters or securities at issue, Respondent stated that the KDFI Consent Order related to customer complaints involving specific securities traded between 2013 and 2016 and he asserted that the investments were not unsuitable for his clients. (*Id.* at 572.) Respondent stated that nearly all the complaints centered around his recommendation of one particular oil and gas limited partnership that had offered a consistent source of dividend-paying securities during a historically low interest rate environment before a collapse in oil prices in or around 2014. (*Id.*) Respondent reported that his firm's research recommendations supported the oil and gas partnership and it was one of his firm's highest rated energy stocks before the company went bankrupt in May 2016. (*Id.*) According to Respondent, the company was an "above average risk," but not "speculative" as had been alleged by the claimants in the complaints and arbitrations on which the KDFI matter was based. (*Id.*)

Respondent stated that other of the complaints mentioned in the KDFI action related to a financial services technology company that sought to modernize financial management and payment options through banks. (*Id.*) Respondent claimed that he informed his clients about the risks and benefits of the stock. (*Id.*) He stated that after years of growth and success, the company's revenues declined, and it was purchased by another company in 2017. (*Id.*)

Respondent admitted that the companies at issue in the complaints underlying the KDFI matter were "not profitable," but that nearly all of the customers had net positive gains while Respondent

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[3] Correspondence from KDFI preceding the Agreed Order stated that customers paid more than $88,000 in commissions relating o the trading of the stock at issue. (DEC Book at 79.)



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served as their adviser. (*Id.*) Respondent also testified that he made personal investments in the same securities. (Kregor Tr. at 34-35: "…I generally put my money where my mouth is. You know, if I don't believe in something, you know, if it's not good enough for me, it's not good enough for my clients.") Respondent stated that, "if somebody fit the bill for moderately aggressive, then perhaps we would own [securities of the two companies described] to a lesser extent in, in their account." (*Id*. at 35.)

Respondent provided CFP Board with documents regarding seven complaints or arbitrations, all of which involved allegations of unsuitable sales practices and/or overconcentration in high-risk securities and most of which involved elderly clients of sometimes modest means. (*Id*. at 125-571.) In one case, the claimant, who was age 87 at the time of his Complaint, had accounts that were "initially" "mostly composed of mutual funds and fixed income investments" but were "gradually" "directed to be more growth oriented. (*Id*. at 209.) His complaint noted his investment objective as "Growth and Income" and his risk tolerance as "Moderate," but he had more than 70% of his portfolio in 10-20 individual stocks, including 15% of the total portfolio in the oil and gas partnership described above and another 15% in the financial technology company described above. (*Id*. at 211-212.)

In another example, a couple, who were ages 84 and 85 at the time of their complaint, had invested more than 35% of their portfolio in the oil and gas industry, including the oil and gas partnership described above. (*Id*. at 247.) They also had an investment objective of "Growth and Income" and risk tolerance of "Moderate." (*Id*. at 250-251.)

Respondent's BrokerCheck Report by FINRA details eight settled customer disputes filed between 2015 and 2020, all of which allege unsuitability and/or over-concentration. (*Id*. at 36-62.) The total settlement amount from these matters on Respondent's BrokerCheck Report was almost $1,000,000, most of which was paid by Respondent's firm. (*Id*.)

Respondent pointed out that FINRA also reviewed Respondent's business and the substance of the customer complaints underlying the KDFI Consent Order but did not issue any findings that he engaged in wrongdoing regarding the same, as noted in a May 2020 letter from FINRA. (*Id*. at 109-110, 573.) However, given the KDFI Order, the Commission did not place much weight on this fact.

### C. <u>Respondent is Placed on Heightened Supervision and Ultimately Permitted to Resign in July 2021</u>

A document provided by Respondent states that he was first on "heightened supervision … as a result of current litigation against [him] for certain business practices" on June 18, 2018. (*Id*. at 92.) Respondent also stated that he "agreed" to be placed on a plan of "heightened supervision" by his first firm beginning in June 2019, which remained in place when his firm was acquired. (*Id*. at 94-97, 572.)



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Furthermore, because of the KDFI Consent Order, the California Commissioner of Business Oversight (*id*. at 117-120) and the Texas State Securities Board (*id*. at 121-124), imposed heightened supervision on Respondent.

Respondent stated that the firm that acquired his first firm encouraged him to reduce his individual stock holdings for his clients and convert his clients' accounts into a fee-based structure. (*Id*.) Respondent stated that he did so, going from 7% to 40% fee-based in 2021, but he asserted that the acquiring firm did not believe the progress was sufficient. (*Id*.)

Ultimately, Respondent was permitted to resign from the acquiring firm on July 15, 2021. (*Id*. at 61.) Respondent's Form U5 states, "Upon a Kentucky Dept. of Financial Institutions proposal of a suspension and/or fine, Mr. Kregor was provided the option to retire or resign. Mr. Kregor chose to resign." (*Id*.)

### D. Respondent Joins New Firm with Heightened Supervision Plan

In August 2021, Respondent joined a new firm, which also imposed heightened supervisory requirements on him as of November 11, 2021. (*Id*. at 113.) The Heightened Supervision Memo notes that the firm is aware that he was permitted to resign from his prior firm in relation to the KDFI matter and placed guidelines and restrictions on his actions. (*Id*. at 113.)

A memorandum dated February 14, 2023, from Respondent's firm reports that Respondent had fulfilled his heightened supervision plan and that it no longer needed to be followed. (*Id*. at 585.) It states that on February 10, 2023, the firm reviewed documentation about Respondent's supervision from December 2022, and notes that Respondent's branch manager previously provided documentation of Respondent's heightened supervision. (*Id*.)

Respondent stated that the process of being on heightened supervision "has been both educational and effective in refining [his] practice." (*Id*. at 573.) He testified that he learned "just how important it is to convey the risk of security, which I thought I was doing a great job of, but going into more detail now." (Kregor Tr. at 39.) He further stated, "I, I also learned that, you know, whether a client -- if a client has moderately aggressive on their account form, I'm not going to have any high risk securities, or what I consider high risk in their account." (*Id.)*

Respondent asserted that his clients have benefited directly as a result of his new processes, including from his using both individual and sector concentrations and internal software to better quantify individual positions and sector allocations and, therefore, better control the risk associated with each account. (DEC Book at 573.) He described that, if an account develops what could be perceived as an overconcentrated position, he sends the clients a letter disclosing the concentration so that they are aware of the associated risks. (*Id*.)

Respondent also described that he gets weekly alerts and will take swift action to avoid overconcentration in a sector if an individual sector concentration reaches about 35%. (*Id*. at 41.) In response to questions at the hearing about concentration levels that would be appropriate for senior investors, Respondent indicated that a maximum concentration of 20% would be



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appropriate. (Kregor Tr. at 71.) Respondent further testified that he generally does not allow the concentration of a single security in a senior investor's portfolio to exceed 7.5%, with "some leeway." (*Id*. at 72.) At his new firm, while under heightened supervision, Respondent was required to quantify the individual and sector concentration with each purchase of a security, including using a Risk Assessment. (DEC Book at 573.)

When asked during the hearing what he believed to be the main problem in the complaints that were the basis of the KDFI action, Respondent stated: "…[I]f a company losses (sic) 50 percent of their value, I am going to have an awfully, awfully long thought process of whether I would continue to hold that." (Kregor Tr. at 40.) Respondent described "holding onto something past the 50 percent decline" were the "biggest things that got [him] into trouble. (*Id*. at 73.)

Respondent also testified about his approach to financial planning, describing software used by his current firm, as well as assessing risk tolerance. (Kregor Tr. at 59-60.) Regarding risk tolerance, Respondent described that he documents his assessment with responses to "about 16 questions" that he asks with every new account that is opened. (*Id*. at 63.)

### E. Respondent Receives a Cautionary Action Letter from FINRA in May 2020

On May 29, 2020, Respondent received a Cautionary Action Letter ("CAL") from FINRA cautioning him concerning compliance with FINRA Rule 2010. (*Id.* at 111-112.) The CAL stated that Respondent regularly corresponded with customers via text message regarding securities business, even though his Firm prohibited the use of external communication systems for business purposes and communications that circumvented Firm review. (*Id.*)

The CAL stated, "Specifically, from June 2019 through October 2019, you sent and received at least 20 securities business related text messages and did not provide copies of these communications to the Firm. In doing so, you prevented the Firm from reviewing and retaining correspondence with the public, as required by FINRA Rule 3110, and making and preserving books and records, as required by FINRA Rule 4511, and Exchange Act Rule 17a-4(b)(4)." (*Id.*)

### F. Respondent's Letters of Recommendation

Respondent submitted 12 positive letters of recommendation from various individuals with his Petition, including from his former and current Branch Manager, other colleagues, and clients. (*Id.* at 586-591.) During the hearing, Enforcement Counsel stated that he personally verified each of the recommendations. (Kregor Tr. at 84.) Enforcement Counsel also stated that Respondent's former branch manager stated to him that he would rehire Respondent if he could. (*Id*. at 90-91.)

### G. Respondent's Desire to Obtain the CFP® Certification Marks

Respondent testified that achieving the CFP® certification would be the "pinnacle" of his career. (Kregor Tr. at 16.) He stated: "I feel like I only sell trust nowadays to my clients so they can trust me. And this would be one step in that direction, and would also materially allow me to help them in the ways that I haven't thus far." (*Id.*) Respondent testified "…[T]he CFP[® certification] will



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allow me to extend that relationship, to provide added service at a time when a lot of my clients are getting older and desperately need it. And it would also be somewhat of a *cleansing effect for everything I've been through* with these two investigations to finally have somebody look at it from an unbiased standpoint and determine if I'm suitable to have the designation of a certified financial planner. It would mean the world to me." (*Id*. at 49-50 (emphasis added).)

## III. <u>Analysis of Respondent's Petition for Fitness Determination</u>

CFP Board has established specific character and fitness standards for candidates for CFP® certification to ensure the candidate's conduct does not reflect adversely on the candidate, the candidate's fitness for CFP® certification, upon the profession, or upon the CFP® certification marks. Pursuant to CFP Board's *Fitness Standards*, conduct that is presumed to be unacceptable will bar an individual from becoming certified unless the individual petitions the Commission for a fitness determination in accordance with CFP Board's *Procedural Rules*. The Commission will either grant the Petition or deny the Petition and impose either a Temporary Bar or Permanent Bar.

### A. <u>Factors Relevant to Respondent's Fitness</u>

Pursuant to Article 13 of the *Procedural Rules*, a Respondent who has filed a Petition must prove their fitness for CFP® certification by a preponderance of the evidence ("more probable than not to have occurred"), under the factors relevant to a Respondent's fitness that are set forth in Article 5.2 of the *Procedural Rules*.[4]

1. *The extent to which the Relevant Conduct reflects adversely upon the profession or the CFP® certification marks;*

The conduct at issue in Respondent's Petition includes a regulatory action by KDFI, which resulted in a one-month suspension of his state registration, a $32,000 civil fine and an order to cease and desist from future violations. Respondent was permitted to resign because of the then-pending action by KDFI.

The KDFI action was, in turn, related to seven client complaints or arbitrations by mostly senior investors involving allegations of unsuitability and/or overconcentration. Respondent's BrokerCheck Report describes eight settled actions (which are mostly duplicative of what the KDFI matter addressed) for almost $1 million.

Respondent also received a FINRA CAL for not being in compliance with FINRA Rule 2010 when he communicated with customers via text message regarding securities business when his firm presented it.

[4] Respondent filed and argued his Petition pursuant to CFP Board's *Procedural Rules*, as revised and effective February 21, 2022. Accordingly, the Commission has applied the factors relevant to Respondent's fitness for CFP® certification found in Article 5.2 of CFP Board's February 21, 2022 *Procedural Rules*, which were otherwise superseded on September 1, 2023.



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The Commission found that this conduct collectively reflects adversely upon the profession and the CFP® certification marks to a great extent.

2. *Whether and how Respondent has taken actions that are designed to prevent the Relevant Conduct from reoccurring in the future;*

During the hearing, Respondent described a process he has implemented involving closer monitoring and a policy to sell a security purchased for a client when the value of the security drops by 50%. Respondent further described processes he has implemented now alert him if a client's concentration in a sector exceeds 35%. In response to questions about concentration levels that would be appropriate for senior investors, Respondent indicated that a maximum concentration of 20% would be appropriate. The Commission concluded that, while the process Respondent described is an improvement, it does not go far enough to prevent the conduct from reoccurring, particularly as it relates to senior investors. Respondent must ensure that the maximum concentration levels he articulated are not exceeded and that each recommendation he makes is in a client's best interest under CFP Board's *Code and Standards*. Now that Respondent's heightened supervision plan has been lifted, this is even more important for Respondent to show.

3. *Whether and how Respondent has integrated the* Code and Standards *in Respondent's practice;*

Respondent testified about his fiduciary duty and said he understood it to mean to "put clients first." (Kregor Tr. at 22.) The Commission notes that, in fact, CFP Board's fiduciary duty includes the duty of care, duty of loyalty, and duty to follow client instructions. *See* Standard A.1. Respondent also responded to questions during the hearing about his approach to financial planning and to assessing risk tolerance. Given these responses, the Commission did not believe this to be adequate integration of the *Code and Standards.*

4. *Whether Respondent has submitted positive letters of reference from current clients, supervisors, colleagues, or other professionals concerning the Relevant Conduct or the Respondent's character; and*

Respondent submitted several positive letters of reference (verified by Enforcement Counsel) from clients, supervisors, and other professionals, including from a former manager who indicated in a follow-up call from Enforcement Counsel that, if given an opportunity, he would re-hire Respondent. The Commission believed that Respondent had met this factor through this extensive showing.

5. *Any other factors the Commission determines are relevant to Respondent's circumstances.*

Although Respondent (and Enforcement Counsel) emphasized that the relevant conduct should be viewed as stemming from a single incident and that it occurred during a limited period, the Commission considered Respondent's KDFI regulatory action, his individual customer complaints and arbitration, his being permitted to resign by his former employer, and the CAL issued to him



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by FINRA to be separate matters. Indeed, these matters involve several different categories of adverse conduct described in the *Fitness Standards*, including Suspension of a Financial Professional License, Customer Complaints, Arbitrations and other Civil Proceedings, and Employer Investigations and Termination. The Commission acknowledges that Respondent's "record" before and after the period relevant to these matters does not include additional known instances of adverse conduct; however, the Commission also observes that Respondent was on Heightened Supervision for an extended period following the regulatory actions and customer complaints and arbitrations.

B. Mitigating and Aggravating Factors

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

The Commission cited in aggravation that:

1) There were multiple types of adverse conduct at issue in the Petition—including several complaints and arbitrations, the KDFI regulatory action, an employer termination, and a violation of firm policy—each of which the Commission considered to be separate instances of adverse conduct;

2) The KDFI action was based upon arbitrations and complaints alleging great financial harm to several elderly clients and Respondent's BrokerCheck report reflects large settlements payments for claims involving suitability and/or overconcentration; and

3) Respondent did not appear to express regret regarding the recommendations to his clients.

The Commission considered no mitigating factors.

C. Relevant Case Histories

The Commission then consulted various *Case Histories* (referred to as "ACHs" or "CHs"), including ACH 28795, ACH 29476, and ACH 36821.

In ACH 36821, the Commission denied a Petition for Fitness Determination and issued a three-year Temporary Bar to a candidate for CFP® certification who had been issued a 20-day suspension and a $10,000 fine from FINRA for exercising discretion in customers' accounts without authorization. The candidate then failed to timely report the suspension to a state department of insurance. The candidate previously had been the subject of a customer complaint involving trade authorization, (although the complaint was not cited in the FINRA matter). In this ACH, the Commission viewed the candidate's adverse matters as three distinct issues. Although most of Respondent's issues stemmed from his recommendations of two securities, the Commission cannot ignore the multiple types of adverse conduct that required Respondent's fitness determination, including multiple customer complaints and arbitrations, the KDFI regulatory actions, an adverse employment action



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(being permitted to resign), and a violation of firm policy, all of which resulted an even greater suspension and fine than the candidate in ACH 326821.

The Commission also considered ACH 28795 and ACH 29476, which summarized cases in which the Commission granted petitions. Unlike this case, however, there were no indications in those ACHs of customer complaints, arbitrations or claims of customer losses or unsuitability.

## III. Resolution of Respondent's Petition for Fitness Determination

In considering the information provided by Respondent and the factors relevant to Respondent's fitness for CFP® certification, the Commission determined that Respondent **did not prove** by a preponderance of the evidence his fitness for CFP® certification. Accordingly, the Commission **denies** Respondent's Petition and issues a **Temporary Bar prohibiting Respondent from applying for CFP® certification for three years.**

Respondent was on a heighted supervision plan consistently from 2018 until his firm lifted the plan in February 2023, just six months before Respondent's hearing. The three-year Temporary Bar will provide Respondent with additional time to take actions to prevent the identified issues from reoccurring. Prior to applying for CFP® certification again, Respondent should complete continuing education regarding his fiduciary duty and customer-specific suitability, including risks of over-concentration. The Commission would also like Respondent to submit evidence demonstrating how he incorporates the Financial Planning Practice Standards into his financial planning work, particularly with elderly clients.

Ordered by:
CFP Board's Disciplinary and Ethics Commission



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