

**DISCIPLINE COMMITTEE  
OF THE COLLEGE OF NURSES OF ONTARIO**

**PANEL:**

Dawn Cutler, RN	Chairperson
Laura Caravaggio, RPN	Member
Mary MacMillan-Gilkinson	Public Member
Terah White, RPN	Member
Chuck Williams	Public Member

**BETWEEN:**

COLLEGE OF NURSES OF ONTARIO	)	<u>JESSICA LATIMER</u> for
	)	College of Nurses of Ontario
- and -	)	
	)	
SHELLEY LYNN VANDERZWAAG	)	<u>NO REPRESENTATION</u> for
Registration No. IH09583	)	Shelley Lynn VanderZwaag
	)	
	)	
	)	<u>CHRISTOPHER WIRTH</u>
	)	Independent Legal Counsel
	)	
	)	Heard: February 22, 2019

**DECISION AND REASONS**

This matter came on for hearing before a panel of the Discipline Committee (the “Panel”) on February 22, 2019 at the College of Nurses of Ontario (the “College”) at Toronto.

**The Allegations**

The allegations against Shelley Lynn VanderZwaag (the “Member”) as stated in the Notice of Hearing dated January 19, 2019 are as follows:

**IT IS ALLEGED THAT:**

1. You have committed an act of professional misconduct as provided by subsection 51(1)(c) of the *Health Professions Procedural Code* of the *Nursing Act, 1991*, S.O. 1991, c. 32, as amended, and defined in subsection 1(14) of *Ontario Regulation 799/93*, in that, while working at Woodstock Private Hospital, you falsified records relating to your practice, and in particular, you indicated in patient records that you were a Registered Practical Nurse and/or a nurse, when your certificate of registration was suspended in 2014, 2015, 2016 and/or 2017.

2. You have committed an act of professional misconduct as provided by subsection 51(1)(c) of the *Health Professions Procedural Code of the Nursing Act, 1991*, S.O. 1991, c. 32, as amended, and defined in subsection 1(16) of *Ontario Regulation 799/93*, in that, while working at Woodstock Private Hospital, you inappropriately used a term, title or designation in respect of your practice, and in particular, you indicated in patient records that you were a Registered Practical Nurse and/or a nurse, when your certificate of registration was suspended in 2014, 2015, 2016 and/or 2017.
3. You have committed an act of professional misconduct as provided by subsection 51(1)(c) of the *Health Professions Procedural Code of the Nursing Act, 1991*, S.O. 1991, c. 32, as amended, and defined in subsection 1(18) of *Ontario Regulation 799/93*, in that, while working at Woodstock Private Hospital, you contravened a term, condition or limitation on your certificate of registration, and in particular, you practised nursing when your certificate of registration was suspended in 2014, 2015, 2016 and/or 2017.
4. You have committed an act of professional misconduct as provided by subsection 51(1)(c) of the *Health Professions Procedural Code of the Nursing Act, 1991*, S.O. 1991, c. 32, as amended, and defined in subsection 1(19) of *Ontario Regulation 799/93*, in that, while working at Woodstock Private Hospital, you contravened a provision of the *Nursing Act, 1991*, the *Regulated Health Professions Act, 1991* or the regulations under either of those Acts, and in particular, you contravened subsections 11(1) and 11(5) of the *Nursing Act, 1991*, by using the title Registered Practical Nurse and/or nurse, or a variation thereof, and by holding yourself out as a person who is qualified to practise in Ontario as a Registered Practical Nurse and/or nurse, when your certificate of registration was suspended in 2014, 2015, 2016 and/or 2017.
5. You have committed an act of professional misconduct as provided by subsection 51(1)(c) of the *Health Professions Procedural Code of the Nursing Act, 1991*, S.O. 1991, c. 32, as amended, and defined in subsection 1(21) of *Ontario Regulation 799/93*, in that, while working at Woodstock Private Hospital, you failed to comply with an order of a panel of the Discipline Committee or an order of a panel of the Fitness to Practise Committee, and in particular, you failed to comply with the order of a panel of the Fitness to Practise Committee, dated May 11, 2012, by practising when your certificate of registration was suspended in 2014, 2015, 2016 and/or 2017.
6. You have committed an act of professional misconduct as provided by subsection 51(1)(c) of the *Health Professions Procedural Code of the Nursing Act, 1991*, S.O. 1991, c. 32, as amended, and defined in subsection 1(37) of *Ontario Regulation 799/93*, in that, while working at Woodstock Private Hospital in 2014, 2015, 2016 and/or 2017, you engaged in conduct or performed an act, relevant to the practice of nursing, that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, and in particular,
  - a. you practised nursing when your certificate of registration was suspended;
  - b. you indicated in patient records that you were a Registered Practical Nurse and/or a nurse; and/or

- c. you failed to comply with an order of a panel of the Fitness to Practise Committee by practising when your certificate of registration was suspended.

### **Member's Plea**

The Member admitted the allegations set out in paragraphs 1, 2, 3, 4, 5, 6(a), 6(b) and 6(c) in the Notice of Hearing. The Panel received a written plea inquiry which was signed by the Member. The Panel also conducted an oral plea inquiry and was satisfied that the Member's admission was voluntary, informed and unequivocal.

### **Agreed Statement of Facts**

Counsel for the College and the Member advised the Panel that agreement had been reached on the facts and introduced an Agreed Statement of Facts, which reads as follows:

#### **THE MEMBER**

1. Shelley Lynn VanderZwaag (the "Member") obtained a certificate in nursing from Thames Valley District School Board in 1997.
2. The Member registered with the College of Nurses of Ontario (the "College") as a Registered Practical Nurse ("RPN") on May 21, 1998. The Member's certificate of registration was suspended for non-payment of fees from February 15, 2012 to May 11, 2012. On May 11, 2012, the Member was suspended by the Fitness to Practise Committee and remains suspended today.
3. The Member was employed at the Woodstock Private Hospital (the "Facility") at various times as an RPN and a Personal Support Worker ("PSW").

#### **THE FACILITY**

4. The Facility is located in Woodstock, Ontario.
5. The Facility is a 16-bed hospital for clients requiring complex and continuing long-term care. The Facility is owned by the Member's mother.
6. The Facility employs one RN, several Registered Practical Nurses ("RPN"), multiple Personal Support Workers ("PSW"), and other administrative staff. Typically, there is only one registered staff member (either an RN or an RPN) working on each shift.
7. The Member's sister, L.F., has been the Administrator at the Facility since 2000, and she continues to be employed in that role. As the Administrator, L.F. was responsible for scheduling staff, purchasing medical and other supplies, Pharmacy inspection and accreditation, Fire safety and fire inspections, facility management and maintenance, Hospital On-Call Program, records maintenance, payroll, and occasionally participated in performance evaluations (until a Head Nurse Director of Care was hired in April of 2017), among other duties.

## **INCIDENTS RELEVANT TO ALLEGATIONS OF PROFESSIONAL MISCONDUCT**

### **Fitness to Practise Proceeding**

8. On December 1, 2011, the Member was referred by the Inquiries, Complaints and Reports Committee to the Fitness to Practise Committee at the conclusion of a health inquiry.
9. On May 11, 2012, the Fitness to Practise Committee suspended the Member's certificate of registration after a hearing ("FTP Order"). The Member was not entitled to practise nursing or hold herself out as a nurse as a result of the FTP Order.

### **Breach of the FTP Order**

10. In March 2017, the College received a call from an anonymous source, advising that the Member was working at the Facility as an RPN while her certificate of registration was suspended.
11. The following Facility documents demonstrate that the Member worked as an RPN, while suspended between 2014 and 2017:
  - The health records of at least five randomly selected patients reveal the Member signing patient care notes, signature sheets, and/or documenting a telephone order as "RPN".
  - The health records of at least three randomly selected patients reveal the Member administering medication, including narcotics.
  - The health record of at least one randomly selected patient reveals the Member signing a medication review in the space for "Nurse's Signature".
  - The Facility's staff schedules list the Member on its schedule of registered staff on various shifts between January 2015 and April 2017. In many cases, the Member was the only "registered staff" working on a particular shift.
  - The Facility's payroll records list the Member as being paid at an RPN rate (as opposed to a Health Care Aid/PSW rate) on numerous occasions between July 2014 and March 2017.
  - Incident reports in the Member's Human Resources file at the Facility, dated September 21, 2014, May 25, 2015, June 28, 2015, July 19, 2015, and January 7, 2016, identify medication administration errors made by the Member, including with respect to narcotics, with the Member's signed acknowledgement of making the errors.

12. While working as an RPN, the Member, as the designated registered staff member on shift, exchanged report on patients with other RPNs at the Facility.
13. In addition to the above, L.F. completed a performance evaluation for the Member in August 2015, while she was working as an RPN, in which she encouraged the Member “to seek reinstatement as an RPN.” The Member acknowledged this as a personal goal in the performance evaluation.
14. The Member acknowledges that between 2014 and 2017, she worked as an RPN at the Facility while she was suspended as a result of the FTP Order.

### **ADMISSIONS OF PROFESSIONAL MISCONDUCT**

15. The Member admits that she committed the acts of professional misconduct as alleged in paragraph 1 of the Notice of Hearing, as described in paragraphs 10 to 14 above, in that she falsified records related to her practice when she noted in patient records that she was an RPN and/or a nurse when her certificate of registration was suspended in 2014, 2015, 2016 and 2017.
16. The Member admits that she committed the acts of professional misconduct as alleged in paragraph 2 of the Notice of Hearing, as described in paragraphs 10 to 14 above, in that inappropriately used a term, title or designation in respect of her practice, when she noted in patient records that she was an RPN and/or a nurse when her certificate of registration was suspended in 2014, 2015, 2016 and 2017.
17. The Member admits she contravened a term, condition or limitation imposed on her certificate of registration by the FTP Order, as set out in paragraphs 10 to 14 above, which constitutes professional misconduct as alleged in paragraph 3 of the Notice of Hearing.
18. The Member admits that she committed the acts of professional misconduct as alleged in paragraph 4 of the Notice of Hearing, as described in paragraphs 10 to 14 above, in that she contravened a provision of the *Nursing Act* by using the title Registered Practical Nurse and/or nurse, and by holding herself out as a person who is qualified to practise in Ontario as an RPN and/or nurse, when her certificate of registration was suspended in 2014, 2015, 2016 and 2017.
19. The Member admits that she failed to comply with an order of the Fitness to Practise Committee, as set out in paragraphs 10 to 14 above, which constitutes professional misconduct as alleged in paragraph 5 of the Notice of Hearing.
20. The Member admits that she committed the acts of professional misconduct as alleged in paragraphs 6 (a), (b) and (c) of the Notice of Hearing, and in particular her conduct was disgraceful, dishonourable and unprofessional, as described in paragraphs 10 to 14 above.

## **Decision**

The College bears the onus of proving the allegations in accordance with the standard of proof, that being the balance of probabilities, based upon clear, cogent and convincing evidence.

Having considered the evidence and the onus and standard of proof, the Panel finds that the Member committed acts of professional misconduct as alleged in paragraphs 1, 2, 3, 4, 5, 6(a), 6(b) and 6(c) of the Notice of Hearing. As to allegation #6, the Panel finds that the Member engaged in conduct that would reasonably be considered by members to be disgraceful, dishonourable and unprofessional.

## **Reasons for Decision**

The Panel considered the Agreed Statement of Facts and the Member's plea and finds that the evidence supports findings of professional misconduct as alleged in the Notice of Hearing.

Allegation #1 in the Notice of Hearing is supported by paragraphs 10-14 in the Agreed Statement of Facts. The Member falsified patient records from 2014-2017 when her certificate of registration was suspended. She did this by signing patient care notes, signature sheets and documenting a telephone order using the title "RPN".

Allegation #2 in the Notice of Hearing is supported by paragraphs 10 - 14 in the Agreed Statement of Facts. The Member inappropriately used the designation of RPN during the years that her certificate of registration was suspended[.]

Allegation #3 in the Notice of Hearing is supported by paragraphs 10-14 in the Agreed Statement of Facts. The Member contravened a term, condition or limitation on her certificate of registration by continuing to practice as an RPN from 2014-2017 even though she had been suspended by the Fitness to Practi[s]e Committee.

Allegation #4 in the Notice of Hearing is supported by paragraphs 10-14 in the Agreed Statement of Facts. The Member contravened a provision of the *Nursing Act* by holding herself out as a person who is qualified to practice as a RPN in Ontario. She did this during the years 2014-2017 when her certificate of registration was suspended.

Allegation #5 in the Notice of Hearing is supported by paragraphs 10-14 in the Agreed Statement of Facts. The Member has admitted to misconduct in that she failed to comply with the May 11, 2012 suspension order of the Fitness to Practi[s]e Committee. The order continued to be in effect in the years 2014-2017 when she held herself out as an RPN.

With respect to Allegation # 6, the Panel finds that the Member's conduct was unprofessional as it demonstrated a serious and persistent disregard for her professional obligations. Over several years, while knowing that her license was suspended, the Member continued to practice as an RPN. This demonstrates a perpetual lack of good judgement.

The Panel also finds that the Member's conduct was dishonourable. Holding herself out as an RPN, when she did not have a certificate to registration as a nurse, involves both dishonesty and deceit. On

numerous occasions, she received financial compensation as if she were an RPN. The Member acted professionally as if there were no restrictions on her certificate of registration. At times, she was the only “registered” staff on a particular shift. Incident reports from the Facility indicate that the Member made medication errors. Some involved narcotics. This conduct created a potential for significant harm to occur.

Finally, the Panel finds that the Member’s conduct was disgraceful as it shames the Member and by extension the profession. By continuing to hold herself out as an RPN, even though her certificate of registration was suspended, the Member has breached the trust of the College, the clients in her care and the public. Her conduct demonstrated an extreme disregard of her professional obligations. The Member ought to have known that the Order of the Fitness to Practi[s]e Committee should not be ignored.

### **Penalty**

Counsel for the College and the Member advised the Panel that a Joint Submission on Order had been agreed upon. The Joint Submission on Order requests that this Panel make an order as follows:

1. Requiring the Member to appear before the Panel to be reprimanded within three months of the date that this Order becomes final.
2. Directing the Executive Director to immediately revoke the Member’s certificate of registration.

### **Penalty Submissions**

Submissions were made by Counsel for the College.

The mitigating factors in this case were:

- The Member has no prior disciplinary history at the College; and
- The Member has cooperated with the College and participated in the process.

The aggravating factors in this case were:

- The Member’s conduct showed dishonesty when she held herself out as a RPN when her certificate of registration was, in fact, suspended;
- The Member’s misconduct was intentional and occurred over several years;
- The Member profited financially from her work as a RPN when her certificate of registration was suspended; and
- The Member’s clients were put at risk as she practised unregulated and, at times, unsupervised.

The proposed penalty provides for specific and general deterrence through the revocation and the reprimand.

Rehabilitation is not appropriate under these circumstances as the Member has shown herself to be ungovernable by failing to abide by an Order of the Fitness to Practi[s]e Committee.

Overall, the public is protected because the revocation would ensure that the Member is no longer able to practice.

Counsel for the College submitted cases to the Panel to demonstrate that the proposed penalty fell within the range of similar cases from this Discipline Committee.

*CNO v. Nicole Kruczek* (formally ‘Guarrasi’) (Discipline Committee, 2014). In this case, the member worked 1.5 shifts after she had received a suspension from the Discipline Committee. The member also made misleading statements to the College on her Annual Membership Renewal Form when she indicated that she was not employed in nursing when she was, in fact, so employed. The panel ordered that the member receive a reprimand and that her certificate of registration be revoked.

Counsel for the College also referred the Panel to the decision of *CNO v. Hunter* (Discipline Committee, 2014) which was mentioned in the Kruczek decision. In this case, the member held herself out as a nurse when her registration was suspended as a result of a previous Discipline Committee order. The member’s certification of registration was revoked.

The Member advised the Panel that she agreed with the proposed penalty.

### **Penalty Decision**

The Panel accepts the Joint Submission on Order and accordingly orders:

1. The Member is required to appear before the Panel to be reprimanded within three months of the date that this Order becomes final.
2. The Executive Director is directed to immediately revoke the Member’s certificate of registration.

### **Reasons for Penalty Decision**

The Panel understands that the penalty ordered should protect the public and enhance public confidence in the ability of the College to regulate nurses. This is achieved through a penalty that addresses specific deterrence, general deterrence and, where appropriate, rehabilitation and remediation. The Panel also considered the penalty in light of the principle that joint submissions should not be interfered with lightly.

The Panel concluded that the proposed penalty is reasonable and in the public interest. The Member has co-operated with the College and, by agreeing to the facts and a proposed penalty, has accepted responsibility. She has avoided the need for a contested hearing.

The Panel finds that the penalty satisfies the principles of specific and general deterrence. Revocation sends a very strong message to the Member and to the membership as a whole that conduct such as this will not be tolerated. Members must take seriously, and comply with, any order of the College. Members will be reminded that the right to practice nursing is a privilege. Members will be reminded that the designation of a Registered Practical Nurse and/or a nurse comes with professional obligations and responsibilities that are not to be taken lightly and/or disregarded. Rehabilitation can only occur



when a member is considered governable. This is not the case here. The public will be reassured that public protection is paramount in the regulatory process of this College.

The penalty is in line with what has been ordered in previous cases.

I, Dawn Cutler, RN, sign this decision and reasons for the decision as Chairperson of this Discipline Panel and on behalf of the members of the Discipline Panel.