

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

<b>PANEL:</b>	Heather Stevanka, RN	Chairperson
	Dawn Cutler, RN	Member
	Sylvia Douglas	Public Member
	Neil Hillier, RPN	Member
	Lalitha Poonasamy	Public Member

**BETWEEN:**

COLLEGE OF NURSES OF ONTARIO	)	<u>NICK COLEMAN</u> for
	)	College of Nurses of Ontario
- and -	)	
	)	
MANDY GAYLE EDGERTON	)	<u>TIM HANNIGAN</u> for
Registration No. 0215129	)	Mandy Gayle Edgerton
	)	
	)	<u>CHRISTOPHER WIRTH</u>
	)	Independent Legal Counsel
	)	
	)	Heard: September 22, 2020

**DECISION AND REASONS**

This matter came on for hearing before a panel of the Discipline Committee (the “Panel”) of the College of Nurses of Ontario (the “College”) on September 22, 2020, via videoconference.

**Publication Ban**

College Counsel brought a motion pursuant to s.45(3) of the *Health Professions Procedural Code* of the *Nursing Act, 1991*, for an order prohibiting public disclosure and banning publication or broadcasting of the names of the patients, or any information that could disclose the identities of the patients referred to orally or in any documents presented in the Discipline hearing of Mandy Gayle Edgerton.

The Panel has considered the submissions of the Parties and has decided that there be an order prohibiting public disclosure and banning publication or broadcasting of the names of the patients, or any information that could disclose the identities of the patients referred to orally or in any documents presented in the Discipline hearing of Mandy Gayle Edgerton.

## **The Allegations**

The allegations against Mandy Gayle Edgerton (the “Member”) as stated in the Notice of Hearing dated June 23, 2020 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(1) of *Ontario Regulation 799/93*, in that, as a Registered Nurse, you contravened a standard of practice of the profession or failed to meet the standard of practice of the profession with respect to the following incidents:
  - (a) on or about April 29, 2016,
    - (i) you, or a person acting on your behalf, engaged in inappropriate communications with [Individual A], who had been a potential witness in your prior discipline hearing in January-April 2016, including the comments listed in Appendix A;
    - (ii) you, or a person acting on your behalf, engaged in inappropriate communications with [Individual B], who had been a potential witness in your prior discipline hearing in January-April 2016, including the comments listed in Appendix B;
    - (iii) you, or a person acting on your behalf, engaged in inappropriate communications with [Individual C], husband of [Individual A], including the comments listed in Appendix C;
  - (b) on or about April 30, 2016, you, or a person acting on your behalf to whom you had disclosed confidential information from the disclosure materials provided to you in relation to your prior discipline hearing in January-April 2016, engaged in inappropriate communications with [Individual A], including the comments listed in Appendix D;
  - (c) in or about August 2016,
    - (i) you, or a person acting on your behalf, engaged in inappropriate communications with [Individual D], a friend of [Individual A], including the comments listed in Appendix E; and/or
    - (ii) you, or a person acting on your behalf, posted inappropriate comments regarding [Individual A], including the comments listed at Appendix F.
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(37) of *Ontario Regulation 799/93*, in that, as a Registered Nurse, 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 with respect to the following incidents:
  - (a) on or about April 29, 2016,

- (i) you, or a person acting on your behalf, engaged in inappropriate communications with [Individual A], who had been a potential witness in your prior discipline hearing in January-April 2016, including the comments listed in Appendix A;
  - (ii) you, or a person acting on your behalf, engaged in inappropriate communications with [Individual B], who had been a potential witness in your prior discipline hearing in January-April 2016, including the comments listed in Appendix B;
  - (iii) you, or a person acting on your behalf, engaged in inappropriate communications with [Individual C], husband of [Individual A], including the comments listed in Appendix C;
- (b) on or about April 30, 2016, you, or a person acting on your behalf to whom you had disclosed confidential information from the disclosure materials provided to you in relation to your prior discipline hearing in January-April 2016, engaged in inappropriate communications with [Individual A], including the comments listed in Appendix D;
- (c) in or about August 2016,
- (i) you, or a person acting on your behalf, engaged in inappropriate communications with [Individual D], a friend of [Individual A], including the comments listed in Appendix E; and/or
  - (ii) you, or a person acting on your behalf, posted inappropriate comments regarding [Individual A], including the comments listed at Appendix F.

#### **APPENDIX A**

“You had better get an attorney I was there and Allen [sic] the hospital records are now public that you lied. [ ] lawyers has also been contacting with the supporting documents that you lied to the attorneys they had that paid you”

“Sorry all the hospital records are public also as to who you had taking the stand of students in your defence and they will also be contacted from I am certain Ms Edgetons [sic] attorney for destroying her [ ] career”

“They have been provided with the truth of how she never looked at your records by a hospital official you may want to clear your name first as this will certainly be a large headline in the [City Newspaper] next week that you lied and your lie continues to hurt her reputation.”

#### **APPENDIX B**

“You had better get an attorney I was there and Allen [all of] the hospital records are now public that you lied. [ ] lawyers has also been contacting with the supporting documents that you lied to the attorneys they had that paid you”

“Sorry all the hospital records are public also as to who you had taking the stand of students in your defence and they will also be contacted from I am certain Ms Edgetons attorney for destroying her [ ] career”

### **APPENDIX C**

“[ ] and [City Newspaper] have now been provided the documents from [the Facility] indicating her record was never looked at. I am certain that poor nurses attorney will be in touch from what I have heard at the hearing on Wed”

### **APPENDIX D**

“...Same with the CNO there was evidence she looked at anything to do without records even your emailed complaint of the link to the news article you sent them [CNO]...”

“but good luck with your job at [ ]”

“And like your comment to the [City Newspaper] and the College in your many interviews that she [the Member] showed the students your personal medical information.”

“Also that you could t [sic] make the hearing a few years ago due to childcare...”

“...the hospital disclosure from [Employee A] and [Employee B]...” and that “they both have all the print outs and letters stating when she [the Member] logged on...”

“Actually she logged into the computer from 1231-1236 hours that day...”

“...long after you left emerg at 0855 hours...”

### **APPENDIX E**

“Yup 3b no evidence as what all papers around the world reported”

“Ok it’s all public media from [City Newspaper] all public info. It was released to the public she lied! I don’t contact her I have a lawyer for that. But she seems to have you believing her even though the CNO deemed no evidence”

“She slandered me when she LIED to the media hospital and [the Facility]”

“Thus why she is being sued which is also public you can go to the court house for the filing”

“Here is the public city news link [ ]”

“That’s fine plse support her in court”

“And for the record I have NEVER contacted [Individual A]”

“So not reply as you harassed me on a public forum. Should you send one more message or post on a public form about me I will apply for a cease and assist”

## **APPENDIX F**

“hmmm read the story correctly [Individual A] lied which the college found that there was no evidence against her but nice try. Old story started many years ago and there is 7 [Facility] staff involved”

“Ha ha she did lie even the CNO dropped her case. Which is very very public in the media”

“yup just getting you the info. So I’m certain she told you she is being sued as well”

### **Member’s Plea**

The Member admitted the allegations set out in paragraphs 1(a)(i), (ii), (iii), 1(b), 1(c)(i), (ii), 2(a)(i), (ii), (iii), 2(b), 2(c)(i) and (ii), 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**

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

#### **THE MEMBER**

1. Mandy Gayle Edgerton (formerly Reid) (the “Member”) obtained a diploma in nursing from Fleming College in 2002.
2. The Member first registered with the College of Nurses of Ontario (“CNO”) as a Registered Nurse (“RN”) in August 2002. There was a lapse in the Member’s certificate of registration (“certificate”) between April 2003 and May 2004. She also resigned from CNO in November 2006 to work as a nurse in another jurisdiction. The Member renewed her registration as an RN in October 2008.
3. The Member’s certificate was suspended from April 27, 2016 to August 27, 2016, following an Order of a Panel of the Discipline Committee, as described below.
4. The Member is currently entitled to practise without restrictions.

5. The Member has worked as a casual RN at Case Manor Community Care in Bobcaygeon, Ontario since September 2018.

### **PRIOR DISCIPLINE**

6. The Member was the subject of a hearing before a Panel of the Discipline Committee on January 8, 2016 and April 27, 2016 regarding her conduct in 2010-2013 while employed at [the Facility], [ ] College and [the Agency].
7. The hearing commenced on January 8, 2016 as a contested hearing at which witnesses were expected to be called. At the start of the hearing, the Panel issued an order concerning disclosure outside the hearing room of any information that could be used to identify patients of the facilities mentioned during the hearing.
8. The hearing resumed on April 27, 2016. By that time, the parties had negotiated a resolution of the allegations of professional misconduct against the Member by which she admitted most but not all of the allegations. The parties made a joint submission to the Panel when the hearing resumed on April 27, 2016.
9. The Panel accepted the Agreed Statement of Facts, including the Member's admissions of professional misconduct. As requested by the parties, the Panel found that the Member committed the acts of professional misconduct between January 2010 and September 2013 as alleged, in that she contravened a practice of the profession and engaged in dishonourable and unprofessional conduct by accessing personal health information without consent related to approximately 300 patients at [the Facility] where the Member had been employed.
10. The Panel also found that the Member failed to maintain appropriate therapeutic nurse-patient boundaries with a patient at [the Agency], and the patient's family, when she discussed personal issues, brought personal friends to the patient's home, invited her family for dinner at the patient's home, purchased shirts for the patient and travelled with the family of a patient for an event in 2013.
11. The parties provided a Joint Submission on Order. The Panel accepted the joint submission and issued an Order comprised of a reprimand; suspension of the Member's certificate for four months; and terms, conditions and limitations requiring her to complete specified remedial exercises.

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

#### **Preparations for 2016 Discipline Hearing**

12. As noted above, the discipline proceeding in 2016 started as a contested hearing. In preparation for the hearing, witnesses were interviewed and medical and other records were reviewed. The witnesses CNO intended to call included amongst others, [Individual A] and [Individual B], two nursing students from [ ] College who had been supervised by the Member at [the Facility]. The CNO also obtained certain medical records regarding [Individual A] in preparation for the hearing.

13. CNO provided full disclosure of all relevant materials to the Member, including interview summaries for [Individual A] and [Individual B] as well as other witnesses, patient medical records for [Individual A] and other patients, and other documents relating to the allegations of professional misconduct against the Member.
14. The disclosure materials were provided to Member's then-counsel (not her current counsel) pursuant to an express deemed undertaking that the materials not be disclosed or used for any purpose other than the discipline hearing.
15. As a result of the resolution reached between CNO and the Member, the Member admitted to most but not all of the allegations of professional misconduct against her, as noted above. No witnesses were called to testify before the Panel.

### **Facebook Communications**

16. Soon after the hearing, in May 2016, [Individual A] and [Individual B] independently notified CNO that they had each received offensive Facebook messages that they assumed originated with the Member, as described below.
17. On or about April 29, 2016, the following Facebook messages were sent to [Individual A] [Notice of Hearing, Appendix A]:

“You had better get an attorney I was there and Allen [sic] the hospital records are now public that you lied. [ ] lawyers has also been contacting with the supporting documents that you lied to the attorneys they had that paid you”

“Sorry all the hospital records are public also as to who you had taking the stand of students in your defence and they will also be contacted from I am certain Ms Edgetons [sic] attorney for destroying her [ ] career”

“They have been provided with the truth of how she never looked at your records by a hospital official you may want to clear your name first as this will certainly be a large headline in the [City Newspaper] next week that you lied and your lie continues to hurt her reputation.”

18. On or about the same date, the following Facebook messages were sent to [Individual B] [Notice of Hearing, Appendix B]:

“You had better get an attorney I was there and Allen [all of] the hospital records are now public that you lied. [ ] lawyers has also been contacting with the supporting documents that you lied to the attorneys they had that paid you”

“Sorry all the hospital records are public also as to who you had taking the stand of students in your defence and they will also be

contacted from I am certain Ms Edgetons attorney for destroying her [ ] career”.

19. On or about the same date, the following Facebook messages were sent to [Individual C], who is [Individual A’s] husband [Notice of Hearing, Appendix C]:

“[ ] and [City Newspaper] have now been provided the documents from [the Facility] indicating her record was never looked at. I am certain that poor nurses attorney will be in touch from what I have heard at the hearing on Wed”.

20. The Facebook profile linked to the sender of the messages to [Individual A], [Individual B] and [Individual C] was identified as “[the Member’s Former Husband]” but used the pronoun “her” rather than “him”. The Facebook account’s URL identifier listed the name “amanda.reid” in the address. [ ] is the name of the Member’s former husband. He has denied any involvement with posting or sending any of the Facebook messages identified in this proceeding.

21. On or about April 30, 2016, the following additional Facebook messages were sent to [Individual A] [Notice of Hearing, Appendix D]:

“...Same with the CNO there was evidence she looked at anything to do without records even your emailed complaint of the link to the news article you sent them [CNO]...”

“but good luck with your job at [ ]”

“And like your comment to the [City Newspaper] and the College in your many interviews that she [the Member] showed the students your personal medical information.”

“Also that you could t [sic] make the hearing a few years ago due to childcare...”

“...the hospital disclosure from [Employee A] and [Employee B]...” and that “they both have all the print outs and letters stating when she [the Member] logged on...”

“Actually she logged into the computer from 1231-1236 hours that day...”

“...long after you left emerg at 0855 hours...”.

22. As with the previous messages, the sender was identified as “[the Member’s Former Husband]”.

23. In or about August 2016, the following Facebook message was sent to [Individual D], a friend of [Individual A] [Notice of Hearing, Appendix E]:



“Yup 3b no evidence as what all papers around the world reported”

“Ok it’s all public media from [City Newspaper] all public info. It was released to the public she lied! I don’t contact her I have a lawyer for that. But she seems to have you believing her even though the CNO deemed no evidence”

“She slandered me when she LIED to the media hospital and [the Facility]”

“Thus why she is being sued which is also public you can go to the court house for the filing”

“Here is the public city news link [ ]”

“That’s fine plse support her in court”

“And for the record I have NEVER contacted [Individual A]”

“So not reply as you harassed me on a public forum. Should you send one more message or post on a public form about me I will apply for a cease and assist”

24. The sender of the Facebook message to [Individual D] was identified as “Mandy Gail”.
25. In or about August 2016, the following Facebook messages were posted about [Individual A] [Notice of Hearing, Appendix F]:
  - “hmmm read the story correctly [Individual A] lied which the college found that there was no evidence against her but nice try. Old story started many years ago and there is 7 [Facility] staff involved”
  - “Ha ha she did lie even the CNO dropped her case. Which is very very public in the media”
  - “yup just getting you the info. So I’m certain she told you she is being sued as well”.
26. The Member acknowledges that the series of inappropriate Facebook messages between April and August 2016 included information that could only be known to someone who had reviewed the confidential disclosure materials provided by CNO to the Member’s then-counsel, including details from [Individual A’s] medical records and information provided by the witnesses to CNO during the investigation process. Furthermore, the disclosure of that information contravened the non-disclosure order issued by the Panel at the commencement of the hearing on January 8, 2016.

## **CNO STANDARDS OF PRACTICE**

27. CNO has published nursing standards to set out the expectations for the practice of nursing. CNO's standards inform nurses of their accountabilities and apply to all nurses regardless of their role, job description or area of practice.

### ***Professional Standards, Revised 2002***

28. CNO's *Professional Standards* provides that each nurse is responsible for ensuring that their conduct meets the standards of the profession.
29. In particular, nurses are expected to take responsibility for their actions and the consequences of those actions. Nurses are also accountable for conducting themselves in ways that promote respect for the profession as a whole and reinforce public confidence in the integrity and respectability of its members.

### ***Ethics***

30. CNO's *Ethics* standard also provides that nurses have a commitment to the nursing profession. Professional status brings with it the respect and trust of the public. Maintaining the respect of the public requires, amongst other things, for nurses to conduct themselves in a manner that reflects well on the profession.

## **ADMISSIONS OF PROFESSIONAL MISCONDUCT**

31. The Member admits that she committed the acts of professional misconduct as alleged in paragraphs 1 and 2 of the Notice of Hearing in that she or a person acting on her behalf was responsible for the inappropriate Facebook communications, as alleged.
32. In particular, the Member admits that she contravened a standard of practice or failed to meet the standard of practice of the profession with respect to the Facebook comments posted and sent to [Individual A], [Individual B], [Individual C] and [Individual D] in or about April and August 2016, as described in paragraphs 12-30 above.
33. The Member also admits that she 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 both unprofessional and dishonourable with respect to the same conduct, as described in paragraphs 12-30 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(a)(i), (ii), (iii), 1(b), 1(c)(i) and (ii), of the Notice of Hearing. As to allegations #2(a)(i), (ii), (iii), 2(b), 2(c)(i) and (ii), the Panel finds

that the Member engaged in conduct that would reasonably be considered by members to be unprofessional and dishonorable.

### **Reasons for Decision**

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

Allegation #1(a)(i) in the Notice of Hearing is supported by paragraphs 12, 13, 16, 17, 20, 26 and 32 in the Agreed Statement of Facts. CNO had provided full disclosure of all relevant materials to the Member and the Member's then-counsel and it was understood that the information was not to be disclosed other than at the discipline hearing. The Member admits that she contravened a standard of practice or failed to meet the standard of practice of the profession with respect to the Facebook comments.

Allegation #1(a)(ii) in the Notice of Hearing is supported by paragraphs 12, 13, 16, 18, 20, 27, 28, 29, 30, 31 and 32 in the Agreed Statement of Facts. Appendix B contains comments and inappropriate communication that the Member had engaged with someone who had been a potential witness in a previous Discipline hearing.

Allegation #1(a)(iii) in the Notice of Hearing is supported by paragraphs 19, 20, 27, 28, 29, 30, 31 and 32 in the Agreed Statement of Facts. Inappropriate communication was also undertaken with the family member of a witness and an attempt was made to confuse the issue by fact that the Facebook profile linked to the sender of the messages was under a false name. Nurses are expected to take responsibility for their actions and the consequences of those actions.

Allegation #1(b) in the Notice of Hearing is supported by paragraphs 13, 14, 15, 21, 22, 26, 27, 28, 29, 30, 31 and 32 in the Agreed Statement of Facts. The Member disclosed confidential information from disclosure materials in relation to a prior discipline hearing. CNO's ethics standard provides that nurses have a commitment to the nursing profession and this status brings with it the respect and trust of the public.

Allegation #1(c)(i) in the Notice of Hearing is supported by paragraphs 23, 24, 26, 27, 28, 29, 30, 31 and 32 in the Agreed Statement of Facts. The Member acknowledges that the series of inappropriate Facebook messages between April and August 2016 included information that could only be known to someone who had reviewed the confidential disclosure materials provided by CNO for a previous discipline hearing.

Allegation #1(c)(ii) in the Notice of Hearing is supported by paragraphs 25, 26, 27, 28, 29, 30, 31 and 32 in the Agreed Statement of Facts. The purpose of CNO standards of practice are to set out the expectations for the practice of nursing and inform nurses of their accountabilities and apply to all nurses regardless of their role, job description or area of practice.

With respect to allegations #2(a)(i), (ii), (iii), 2(b), 2(c)(i) and (ii), the Panel finds that the Member's conduct in engaging in inappropriate communications with potential witnesses or their family members and a friend of a witness and disclosing confidential information in relation to a prior discipline hearing

to them was unprofessional as it demonstrated a serious and persistent disregard for her professional obligations.

The Panel also finds that the Member's conduct was dishonourable. It demonstrated an element of dishonesty and deceit through attempting to disguise the Facebook name and page while sending inappropriate messages to potential witnesses involved in the previous discipline hearing. Furthermore, at the start of the previous hearing the Panel had issued an order concerning disclosure outside the hearing room of any information that could be used to identify patients. The Member knew about this order and admitted to disclosing this information. As such, the Member's conduct was unacceptable and fell well below the standards of a professional.

### **Penalty**

College Counsel and the Member's Counsel 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 suspend the Member's certificate of registration for four months. This suspension shall take effect from the date that this Order becomes final and shall continue to run without interruption as long as the Member remains in a practicing class.
3. Directing the Executive Director to impose the following terms, conditions and limitations on the Member's certificate of registration:
  - a) The Member will attend a minimum of two meetings with a Regulatory Expert (the "Expert") at her own expense and within six months from the date that this Order becomes final. If the Expert determines that a greater number of sessions are required, the Expert will advise the Director regarding the total number of sessions that are required and the length of time required to complete the additional sessions, but in any event, all sessions shall be completed within 12 months from the date that this Order becomes final. To comply, the Member is required to ensure that:
    - i. The Expert has expertise in nursing regulation and has been approved by the Director of Professional Conduct (the "Director") in advance of the meetings;
    - ii. At least seven days before the first meeting, the Member provides the Expert with a copy of:
      1. the Panel's Order,
      2. the Notice of Hearing,
      3. the Agreed Statement of Facts,
      4. this Joint Submission on Order, and

5. if available, a copy of the Panel's Decision and Reasons;
  - iii. Before the first meeting, the Member reviews the following CNO publications and completes the associated Reflective Questionnaires, online learning modules, decision tools and online participation forms (where applicable):
    1. *Professional Standards*, and
    2. *Code of Conduct*;
  - iv. At least seven days before the first meeting, the Member provides the Expert with a copy of the completed Reflective Questionnaires and online participation forms (as applicable);
  - v. The subject of the sessions with the Expert will include:
    1. the acts or omissions for which the Member was found to have committed professional misconduct,
    2. the potential consequences of the misconduct to the Member's patients, colleagues, profession and self,
    3. strategies for preventing the misconduct from recurring,
    4. the publications, questionnaires and modules set out above, and
    5. the development of a learning plan in collaboration with the Expert;
  - vi. Within 30 days after the Member has completed the last session, the Member will confirm that the Expert forwards his/her report to the Director, in which the Expert will confirm:
    1. the dates the Member attended the sessions,
    2. that the Expert received the required documents from the Member,
    3. that the Expert reviewed the required documents and subjects with the Member, and
    4. the Expert's assessment of the Member's insight into her behaviour;
  - vii. If the Member does not comply with any one or more of the requirements above, the Expert may cancel any session scheduled, even if that results in the Member breaching a term, condition or limitation on her certificate of registration;
- b) For a period of 12 months of active employment as a nurse from the date the Member returns to the practice of nursing following her four-month suspension, the Member will notify her employer(s) of the decision. To comply, the Member is required to:
- i. Ensure that the Director is notified of the name, address, and telephone number of all employer(s) within 14 days of commencing or resuming employment in any nursing position;

- ii. Provide her employer(s) with a copy of:
    - 1. the Panel's Order,
    - 2. the Notice of Hearing,
    - 3. the Agreed Statement of Facts,
    - 4. this Joint Submission on Order, and
    - 5. a copy of the Panel's Decision and Reasons, once available;
  - iii. Ensure that within 14 days of the commencement or resumption of the Member's employment in any nursing position, the employer(s) forward(s) a report to the Director, in which it will confirm:
    - 1. that they received a copy of the required documents, and
    - 2. that they agree to notify the Director immediately upon receipt of any information that the Member has breached the standards of practice of the profession.
4. All documents delivered by the Member to the CNO, the Expert or the employer(s) will be delivered by verifiable method, the proof of which the Member will retain.

### **Penalty Submissions**

Submissions were made by College Counsel.

The aggravating factors in this case were, the seriousness of the misconduct, in that the Member made personal attacks on proposed witnesses immediately following her previous discipline hearing. Also of major concern was disclosure of personal information pertaining to her hearing after an Order had been issued by a previous panel prohibiting disclosure. The misconduct took place over an extended period of time and involved not just one, but a number of people.

The mitigating factors in this case were that the Member had accepted responsibility, admitted her misconduct and cooperated with the College by agreeing to an Agreed Statement of Facts and the Joint Submission on Order.

The proposed penalty provides for general deterrence through an oral reprimand and a four month suspension and sends a clear message to the membership that this conduct will not be tolerated and to the public that this type of behaviour is taken very seriously by the College and this discipline Panel.

The proposed penalty also provides for specific deterrence to the Member through having her certificate of registration suspended for four months. During this time the Member will be guided through a process whereby she will gain increased knowledge and insight and will have time to reflect on the seriousness and inappropriateness of her actions. The Member must also notify employers of this decision and the reasons for it for a period of twelve months.

The terms, conditions and limitations in the proposed penalty provide for remediation and rehabilitation through two meetings with a Nursing Expert and by the Member reviewing the College's publications relating to Professional Standards and the Code of Conduct.

Overall, the public is protected because this process will assist the Member in gaining additional insight and knowledge into her practice. The intention is that the Member will reflect and improve on her practice and become a better nurse.

College Counsel submitted cases to the Panel to demonstrate that the proposed penalty is consistent with prior disciplinary decisions and fell within the range of similar cases from this Discipline Committee.

*CNO v. Hamilton* (Discipline Committee, January 2019). The member posted private health information regarding a patient on an internet web page and made inappropriate and unprofessional statements directed towards a client's family member. The member admitted the acts of professional misconduct and agreed to an Agreed Statement of Facts and a Joint Submission on Order. This was the first time this member was before a discipline panel. The member received an oral reprimand, a three month suspension of her registration, two meetings with a regulatory expert and twelve months of employer notification.

*CNO v. Kaufman* (Discipline Committee, November 2012). This member was not present and was not represented. The member permitted her husband to gain access to private health information without the patient's consent and submitted a request for payment for a nursing visit that she did not make. The penalty included an oral reprimand, a four month suspension of the member's registration, two meetings with a regulatory expert and twelve months of employer notification.

*CNO v. Proulx* (Discipline Committee, July 2019). This member used her cell phone to video tape a client and then shared the video with a co-worker through social media. The hearing proceeded by way of an Agreed Statement of Facts and a Joint Submission on Order. The penalty included an oral reprimand, a five month suspension of the member's certificate of registration, two meetings with a nursing expert and eighteen months of employer notification.

Counsel for the Member submitted that the Member has dedicated herself to nursing for almost 20 years, cares very much for it and has assisted a countless number of patients. She has cooperated with the College and has agreed to a serious penalty which will provide her with an opportunity to reflect on her practice. The Member is focused on moving forward and in light of her cooperation, asks the Panel to accept the Joint Submission on Order.

### **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 suspend the Member's certificate of registration for four months. This suspension shall take effect from the date that this Order becomes final and shall continue to run without interruption as long as the Member remains in a practicing class.

3. The Executive Director is directed to impose the following terms, conditions and limitations on the Member's certificate of registration:
- a) The Member will attend a minimum of two meetings with a Regulatory Expert (the "Expert") at her own expense and within six months from the date that this Order becomes final. If the Expert determines that a greater number of sessions are required, the Expert will advise the Director regarding the total number of sessions that are required and the length of time required to complete the additional sessions, but in any event, all sessions shall be completed within 12 months from the date that this Order becomes final. To comply, the Member is required to ensure that:
    - i. The Expert has expertise in nursing regulation and has been approved by the Director of Professional Conduct (the "Director") in advance of the meetings;
    - ii. At least seven days before the first meeting, the Member provides the Expert with a copy of:
      - 1. the Panel's Order,
      - 2. the Notice of Hearing,
      - 3. the Agreed Statement of Facts,
      - 4. this Joint Submission on Order, and
      - 5. if available, a copy of the Panel's Decision and Reasons;
    - iii. Before the first meeting, the Member reviews the following CNO publications and completes the associated Reflective Questionnaires, online learning modules, decision tools and online participation forms (where applicable):
      - 1. *Professional Standards*, and
      - 2. *Code of Conduct*;
    - iv. At least seven days before the first meeting, the Member provides the Expert with a copy of the completed Reflective Questionnaires and online participation forms (as applicable);
    - v. The subject of the sessions with the Expert will include:
      - 1. the acts or omissions for which the Member was found to have committed professional misconduct,
      - 2. the potential consequences of the misconduct to the Member's patients, colleagues, profession and self,
      - 3. strategies for preventing the misconduct from recurring,
      - 4. the publications, questionnaires and modules set out above, and
      - 5. the development of a learning plan in collaboration with the Expert;
    - vi. Within 30 days after the Member has completed the last session, the Member will confirm that the Expert forwards his/her report to the Director, in which the Expert will confirm:



1. the dates the Member attended the sessions,
  2. that the Expert received the required documents from the Member,
  3. that the Expert reviewed the required documents and subjects with the Member, and
  4. the Expert's assessment of the Member's insight into her behaviour;
- vii. If the Member does not comply with any one or more of the requirements above, the Expert may cancel any session scheduled, even if that results in the Member breaching a term, condition or limitation on her certificate of registration;
- b) For a period of 12 months of active employment as a nurse from the date the Member returns to the practice of nursing following her four-month suspension, the Member will notify her employer(s) of the decision. To comply, the Member is required to:
- i. Ensure that the Director is notified of the name, address, and telephone number of all employer(s) within 14 days of commencing or resuming employment in any nursing position;
  - ii. Provide her employer(s) with a copy of:
    1. the Panel's Order,
    2. the Notice of Hearing,
    3. the Agreed Statement of Facts,
    4. this Joint Submission on Order, and
    5. a copy of the Panel's Decision and Reasons, once available;
  - iii. Ensure that within 14 days of the commencement or resumption of the Member's employment in any nursing position, the employer(s) forward(s) a report to the Director, in which it will confirm:
    1. that they received a copy of the required documents, and
    2. that they agree to notify the Director immediately upon receipt of any information that the Member has breached the standards of practice of the profession.
4. All documents delivered by the Member to the CNO, the Expert or the employer(s) will be delivered by verifiable method, the proof of which the Member will retain.

### **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. The Panel finds that the penalty satisfies the principles of specific and general deterrence, rehabilitation and remediation, and public protection. Conduct by nurses that demonstrates a lack of integrity, dishonesty, abuse of power and authority cannot be tolerated by the nursing profession. The penalty protects the public, which is paramount, sends a significant message to the membership as a whole that this conduct will not be allowed, and it allows for the Member to rehabilitate and learn from her mistakes to become a better nurse. Members of the profession will be reminded that there can be serious consequences when professional standards are not followed.

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

I, Heather Stevanka, 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.