

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

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| PANEL: | Ingrid Wiltshire-Stoby, RN | Chairperson |
| | Spencer Dickson, RN | Member |
| | Terah White, RPN | Member |
| | Christopher Woodbury | Public Member |

BETWEEN:

| | | |
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| COLLEGE OF NURSES OF ONTARIO |) | <u>MEGAN SHORTREED</u> for |
| |) | College of Nurses of Ontario |
| - and - |) | |
| |) | |
| SERENA L. HUBERCHECK |) | <u>PHILIP ABBINK</u> for |
| Reg. No. 0426833 |) | Serena L. Hubercheck |
| |) | |
| |) | <u>CHRIS WIRTH</u> |
| |) | Independent Legal Counsel |
| |) | |
| |) | |
| |) | Heard: <u>JUNE 1, 2018</u> |

DECISION AND REASONS

This matter came on for hearing before a panel of the Discipline Committee on June 1, 2018 at the College of Nurses of Ontario (“the College”) at Toronto.

Publication Ban

College Counsel requested a publication ban on the identity of the Client referred to in this hearing and any information that could disclose the identity of the Client. The Panel granted this request.

The Allegations

The allegations against Serena Hubercheck (the “Member”) as stated in the Notice of Hearing dated April 23, 2018 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 while working as a Registered Nurse at Homewood Health Centre in Guelph, Ontario (the “Hospital”), you contravened a standard or practice of the profession or failed to meet the standards of practice of the profession as follows:
 - a. between April and June, 2016, you failed to maintain the boundaries of the therapeutic nurse-client relationship in respect of client, []; and/or
2. You have committed an act of professional misconduct as provided by subsection 51(1)(b.1) of the *Health Professions Procedural Code* of the *Nursing Act, 1991*, S.O. 1991, c. 32, as amended, in that while working as a Registered Nurse at the Hospital, you sexually abused a client, as follows:
 - a. between April and June, 2016, you engaged in physical sexual relations or touching of a sexual nature, or behavior or remarks of a sexual nature with client []; and/or
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(37) of *Ontario Regulation 799/93*, in that while employed as a Registered Nurse at the Hospital, 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, as follows:
 - a. between April and June, 2016, you failed to maintain the boundaries of the therapeutic nurse-client relationship in respect of client []; and/or
 - b. between April and June, 2016, you engaged in physical sexual relations or touching of a sexual nature, or behavior or remarks of a sexual nature with client []

Member’s Plea

The Member admitted the allegations set out in paragraphs 1(a), 2(a), 3(a) and 3(b) 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. Serena L. Hubercheck (the “Member”) obtained a certificate in nursing from St. Clair College in 2002. The Member obtained a diploma in nursing from St. Clair College in 2004.
2. The Member registered with the College of Nurses of Ontario (the “College”) as a Registered Practical Nurse (“RPN”) on December 11, 2003. The Member registered with the College as a Registered Nurse (“RN”) on August 10, 2004. The Member resigned her RPN certificate of registration on January 17, 2005. She then resigned her RN certificate of registration on January 29, 2018.
3. The Member was employed at Homewood Health Centre (the “Hospital”) from August 9, 2011 to November 9, 2016, when her employment was terminated as a result of the incident below.

THE HOSPITAL

4. The Hospital is located in Guelph, Ontario.
5. The Member worked at the Hospital as a full-time staff nurse on the Acute Stabilization Unit (“ASU”). She also likely worked as a charge nurse on occasion.
6. The ASU is a five bed inpatient unit. It is housed within the Comprehensive Psychiatric Care Unit (“CPC”). They are separate programs, with different client populations and staff schedules. The ASU and the CPC share a nursing station and medication room. There is one manager and one charge nurse who oversee both units. Nurses work collaboratively in the two units, including covering breaks for each other and receiving report for all clients together, and clients would move from the ASU to the CPC.

THE CLIENT

7. [] (the “Client”) was 44 years old at the time of the incident.
8. The Client was admitted to the CPC from April 15 to June 10, 2016 for an alcohol use disorder and possible Bipolar disorder. He also disclosed to the Hospital that he had a sexual addiction. The Member denies being aware of the Client's sexual addiction.
9. The Client died on October 22, 2017.

INCIDENTS RELEVANT TO ALLEGATIONS OF PROFESSIONAL MISCONDUCT

10. The Member met the Client on April 15, 2016, the date of his admission, when he handed her some paperwork at the nursing station.
11. The Client was the Member’s patient within the meaning of s. 1(3) of the *Code* to the *Regulated Health Professions Act*. The Member denies having treated the Client, as she did not document in his health record and was not his assigned nurse. However, she admits

she was in a therapeutic nurse-client relationship with the Client. She worked many shifts in the shared ASU/CPC unit when he was an in-patient there. She was likely the nurse in charge of the unit, at times, during his admission. She could have covered breaks for his assigned nurse on some shifts during his admission, but the Member does not recall having done so. The Member also had access to the Client's chart and eMAR and was in a position to receive report on his care during shift change. The Member admits that a personal relationship with the Client began during discussions while she was working at the nursing station, in or around the second week of May, and grew out of the Client's stay in the Hospital.

12. In or around the second week of May, the Member developed feelings for the Client that were not professional in nature. During the currency of the patient relationship, the Member and the Client had a romantic relationship, including physical touching of a sexual nature, which included kissing while the Client was a patient, and sexual involvement after his discharge.
13. On more than one occasion, while the Client was still an inpatient at the Hospital, the Member and the Client met off Hospital property. They also kissed off Hospital property while the Client was still an inpatient. The Member admits that this conduct during the patient relationship constituted a breach of the therapeutic boundaries, and sexual abuse of a patient.
14. After the Client's discharge from the Hospital, the Member visited the Client in Prince Edward Island at the end of June 2016 for four days. In the first 24 hours of the visit, the Member and the Client got intoxicated and had sexual involvement. The Member also met the Client's family and friends. The Member admits that this conduct within one year of the Client's discharge from psychiatric care constituted a breach of the therapeutic boundaries.
15. The Member did not disclose her relationship with the Client to anyone at the Hospital between the second week of May, when the relationship started, and June, 2016.
16. Several months later, on October 12, 2016, the Member requested a meeting with [The Doctor], Chief of Staff at the Hospital. She disclosed to [the Doctor], the substance of the facts set out in paragraphs 12 to 14 above. The Member advised [the Doctor], that she reported the relationship because she had difficulty coping after returning from Prince Edward Island. The Member also said the Client's girlfriend sent her threatening messages, in which she was threatening to report the Member's conduct to the Hospital.
17. The Member would testify that her difficulties coping were in part due to her relationship with the Client, but were also in part due to other unrelated stressors in her life. As a result of the combined stressors in her life, and at work, the Member began having panic attacks. She would also testify that, by October, she was experiencing headaches, migraines, vertigo, decreased energy, tearfulness and anxiety during this period of time, and she felt some patients were flirting with her.

18. The Member voluntarily admitted these incidents first to [the Doctor],, and then to her employer. She took active steps to acknowledge her misconduct, and accept responsibility for these events. She has also chosen to not work as a nurse since these events, and has already resigned her certificate of registration.

COLLEGE STANDARDS

19. The College's *Therapeutic Nurse-Client Relationship* Standard ("the Standard") places the responsibility for establishing and maintaining the limits or boundaries in the therapeutic nurse-client relationship on the nurse.

20. The Standard states:

[c]rossing a boundary means that the care provider is misusing the power in the relationship to meet his or her personal needs rather than the needs of the client, or behaving in an unprofessional manner with the client.

21. The Standard further clarifies that a nurse may cross a boundary in a number of different ways, including:

- self-disclosure that does not meet a specified therapeutic client need;
- failing to ensure that the nurse-client relationship promotes the well-being of the client and not the needs of the nurse;
- giving gifts to the client or engaging in other behaviour that suggests a special relationship between the nurse and the client; and
- entering into a personal or romantic relationship with a client.

22. The Standard also sets out that the nurse's role in protecting a client from abuse extends beyond the termination of the therapeutic relationship. It states that a nurse meets the Standard by:

...ensuring that after the nurse-client relationship has been terminated and the nature of the relationship has been **psychotherapeutic** or for the provision of intense psychosocial counselling, the nurse:

- must not engage in a personal friendship, romantic relationship or sexual relationship with the client or the client's significant other for one year following the termination of the therapeutic relationship, and...

ADMISSIONS OF PROFESSIONAL MISCONDUCT

23. The Member admits that her relationship with the Client, both before and after his discharge from the Hospital, as described above in paragraphs 10 to 16, breached the

College's *Therapeutic Nurse-Client Relationship* Standard, and therefore, that between the second week of May and June 2016, she contravened a standard of practice of the profession or failed to meet the standards of practice of the profession, as alleged in allegation 1(a) of the Notice of Hearing.

24. The Member admits that she committed the acts of professional misconduct as alleged in paragraph 2(a) of the Notice of Hearing, in that she sexually abused the Client by engaging in touching of a sexual nature with him, when she kissed him while he was her patient at the Hospital, as described in paragraphs 10 to 16 above.
25. The Member admits that she committed the acts of professional misconduct as alleged in paragraphs 3(a) and (b) of the Notice of Hearing, by failing to maintain the boundaries of the therapeutic nurse-client relationship with the Client, both before and after his discharge from the Hospital, and by engaging in physical sexual relations or touching of a sexual nature with the Client while he was her patient, and therefore, that she engaged in conduct relevant to the practice of nursing that would reasonably be regarded by members as disgraceful, dishonourable and unprofessional, as described in paragraphs 10 to 16 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), 2(a), 3(a) and 3(b) of the Notice of Hearing. As to allegations 3(a) and (b), 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 this 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.

Allegation #2 in the Notice of Hearing is supported by paragraphs 12-14 in the Agreed Statement of Facts.

With respect to Allegation #3, the panel finds that the Member's conduct in breaching the therapeutic nurse client relationship was unprofessional in that it demonstrated a clear disregard for her professional obligations and a serious lack of judgement.

The panel also finds that the Member's conduct was dishonourable. The Member would have known or ought to have known that her conduct fell well below that of what is expected of members of the profession. The Member also did not disclose this misconduct until such a time where she indicated she was threatened exposure via text-message by the Client's girlfriend.

Finally, the panel finds that the Member's conduct was disgraceful as it shames the Member and by extension the profession. Having sexually abused a client, the Member has cast serious doubt on her moral fitness and inherent ability to discharge the higher obligations the public expects professionals to meet.

Penalty

Counsel for the College and the Member advised the panel that a Joint Submission on Order had been agreed upon. The Joint Submission 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 College Counsel.

Mitigating factors in this case were: the Member cooperated with the College and admitted her misconduct as well as voluntarily reporting her misconduct to the Chief of Staff of the facility which resulted in this misconduct being investigated.

The aggravating factors in this case were: the Member's misconduct involved a vulnerable client receiving psychiatric care, the Member kept the relationship in secret for an extended period of time and while she did eventually disclose it, this disclosure was under duress, as well as the relationship with the patient was initiated by the Member in a very short period of time following his discharge from the hospital.

The proposed penalty provides for general deterrence by sending a strong message that misconduct of this nature will not be tolerated and will be subject to significant penalty.

The proposed penalty provides for specific deterrence in that the Member will no longer be practicing nursing and the reprimand serves to impress upon the Member the seriousness of her misconduct and the impact that it has had.

The Member's Counsel indicated that he agreed with those submissions and added: that in addition to voluntarily coming forward to report the misconduct in the first place, she also discontinued

practicing nursing following this and resigned membership with the College in 2018. He submitted that the Member was comfortable with the revocation and he stated that revocation was appropriate in this instance.

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

In *CNO v. Hawil* (Discipline Committee, 2016), the member breached the therapeutic nurse-client relationship with a psychiatric client and engaged in sexual intercourse with the client following her discharge from the faculty. The member's license was revoked by the panel.

Penalty Decision

The panel accepts the Joint Submission as to 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. The panel finds that the penalty satisfies the principles of specific and general deterrence, and public protection. Revocation ensures that the Member will not have the opportunity to engage in such misconduct in the future and sends a clear message to other members of the profession that this type of misconduct will draw a significant penalty should they engage in something similar.

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

I, Ingrid Wiltshire-Stoby, 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.

Chairperson

Date