

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

PANEL:

Carly Gilchrist, RPN	Chairperson
Sylvia Douglas	Public Member
David Edwards, RPN	Member
Karen Goldenberg	Public Member
Jane Walker, RN	Member

BETWEEN:

COLLEGE OF NURSES OF ONTARIO)	<u>EMILY LAWRENCE</u> for
)	College of Nurses of Ontario
- and -)	
)	
ANDREA PEZZANO)	<u>NO REPRESENTATION</u> for
Registration No. AD063498)	Andrea Pezzano
)	
)	<u>CHRISTOPHER WIRTH</u>
)	Independent Legal Counsel
)	
)	Heard: November 24, 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 November 24, 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 preventing public disclosure and banning publication or broadcasting of the name of the patient, or any information that could disclose the identity of the patient referred to orally or in any documents presented in the Discipline hearing of Andrea Pezzano.

The Panel considered the submissions of the Parties and decided that there be an order preventing public disclosure and banning publication or broadcasting of the name of the patient, or any information that could disclose the identity of the patient referred to orally or in any documents presented in the Discipline hearing of Andrea Pezzano.

The Allegations

The allegations against Andrea Pezzano (the “Member”) as stated in the Notice of Hearing dated October 22, 2020 are as follows:

IT IS ALLEGED THAT:

1. 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 employed as a Registered Practical Nurse (“RPN”) at Homewood Health Centre, in Guelph, Ontario (the “Facility”), you sexually abused a patient, in that, in or about June 2018:
 - a) you engaged in touching of a sexual nature of [the Patient];
 - b) you engaged in behaviour and/or made remarks of a sexual nature toward [the Patient]; and/or
 - c) you engaged in physical sexual relations with [the Patient]; and/or
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(1) of *Ontario Regulation 799/93*, in that while employed as a RPN at the Facility, you contravened a standard of practice of the profession or failed to meet the standards of practice of the profession in that:
 - a) in or about June 2018, you engaged in touching of a sexual nature of [the Patient];
 - b) in or about June 2018, you engaged in behaviour and/or made remarks of a sexual nature toward [the Patient];
 - c) in or about June 2018, you engaged in physical sexual relations with [the Patient].; and/or
 - d) between in or about June 2018 and November 2019, you failed to appropriately establish and/or maintain the boundaries of the therapeutic nurse-patient relationship with [the Patient], including but not limited to:
 - i. you communicated by text message and by telephone with [the Patient] outside of the therapeutic relationship;
 - ii. you met with [the Patient] in person outside of the therapeutic relationship; and/or
 - iii. you engaged in a personal, romantic and/or sexual relationship with [the Patient]; 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 sub-section 1(7) of *Ontario Regulation 799/93* in that, while employed as a RPN at the Facility, you abused a client, verbally, physically and/or emotionally in that:
 - a) in or about June 2018, you engaged in touching of a sexual nature of [the Patient];

- b) in or about June 2018, you engaged in behaviour and/or made remarks of a sexual nature toward [the Patient];
 - c) in or about June 2018, you engaged in physical sexual relations with [the Patient]; and/or
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(37) of *Ontario Regulation 799/93*, in that while employed as a RPN at the Facility, you engaged in conduct that would reasonably be regarded by members as disgraceful, dishonourable or unprofessional with respect to the following incidents:
- a) in or about June 2018, you engaged in touching of a sexual nature of [the Patient];
 - b) in or about June 2018, you engaged in behaviour and/or made remarks of a sexual nature toward [the Patient];
 - c) in or about June 2018, you engaged in physical sexual relations with [the Patient]; and/or
 - d) between in or about June 2018 and November 2019, you failed to appropriately establish and/or maintain the boundaries of the therapeutic nurse-patient relationship with [the Patient], including but not limited to:
 - i. you communicated by text message and by telephone with [the Patient] outside of the therapeutic relationship;
 - ii. you met with [the Patient] in person outside of the therapeutic relationship; and/or
 - iii. you engaged in a personal, romantic and/or sexual relationship with [the Patient].

Member's Plea

The Member admitted the allegations set out in paragraphs 1(a), (b), (c), 2(a), (b), (c), (d)(i), (ii), (iii), 3(a), (b), (c), 4(a), (b), (c), (d)(i), (ii) and (iii) 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 advised the Panel that agreement had been reached on the facts and introduced an Agreed Statement of Facts, which as amended reads, unedited, as follows:

THE MEMBER

1. Andrea Pezzano (the "Member") obtained a diploma in nursing from Conestoga College in 2013.
2. The Member registered with the College of Nurses of Ontario ("CNO") as a Registered Practical Nurse on July 18, 2014. The Member moved to the Non-Practising Class on December 31, 2019.

3. The Member was employed at Homewood Health Centre (the “Facility”), as staff nurse from January 26, 2015 until she went on leave on March 31, 2019. The Member worked in the Program for Traumatic Stress Recovery (“PTSR”) at the Facility from July 2016.

THE FACILITY

4. The Facility is located in Guelph, Ontario.
5. The PTSR is a unit for the treatment of patients with trauma. It is staffed by an interdisciplinary team and includes counselling and other therapeutic programs.
6. Nurses at the Facility are responsible for administering medication to patients, ensuring patients are doing mental status exams, attending to medical concerns and for crisis intervention. Nurses do not run therapeutic programming and do not provide psychotherapy in a group or individual setting. Nurses do run education-based groups.
7. Patients are assigned a primary nurse and an associate nurse, who often work on differing shifts. All staff take a mandatory boundaries course upon hire.
8. Relationships between staff and patients are prohibited by the Facility’s policies, during admission and for a period of a minimum of one year post-discharge.

THE PATIENT

9. [] (“the Patient”) was admitted to the Assessment Stabilization Unit of the Facility in April 2018 and later transferred to the PTSR. The Patient was discharged from in-patient services on June 27, 2018. Her discharge summary was completed by the Member.
10. The Patient was diagnosed with depression, chronic pain, and appeared to have an eating disorder and past substance abuse.

INCIDENTS RELEVANT TO ALLEGATIONS OF PROFESSIONAL MISCONDUCT

11. The Member was assigned to the Patient on a number of occasions, although not as her primary nurse. The Member documented progress notes with respect to the Patient on May 26-31, 2018 as well as June 1, 4, 14, 18, 19, 20, and 25, 2018. Some of the progress notes document 1:1 discussions between the Patient and the Member.
12. In June 2018 and while the Patient was admitted to the Facility, the Patient and the Member commenced a personal relationship which developed into a romantic and sexual relationship prior to the Patient’s discharge.
13. On June 11, 2018, the Member and the Patient began texting and talking on the phone, which was not necessary for the Patient’s care nor permitted by the Facility.
14. In addition, during the last two weeks of June 2018, the Member and the Patient arranged to spend time together outside the Facility. During the weekend of June 22 to 24, 2018, prior to

the Patient's discharge from the Facility on June 27, 2018, the Patient left the Facility on a weekend pass. The Patient and the Member spent the weekend together and stayed at a hotel in the same room. During that weekend, the Patient and the Member kissed.

15. Since June 2018, the Member and the Patient have been in a personal, sexual and romantic relationship. The Patient and the Member have engaged in touching of a sexual nature, behaviour of a sexual nature and physical sexual relations since June 2018.
16. In September 2018, the Patient moved her residence from Ottawa to Cambridge where the Member resides. [].

CNO STANDARDS

17. CNO's *Professional Standards* provides that each nurse is accountable to the public and responsible for ensuring her or his practice and conduct meets legislative requirements and the standards of practice of the profession. Nurses are accountable for conducting themselves in ways that promote respect for the profession.
18. CNO's *Therapeutic Nurse-Client Relationship Standard* ("*TNCR Standard*") places the responsibility for establishing and maintaining the limits and boundaries in the therapeutic nurse-patient relationship on the nurse. The *TNCR Standard* provides that:

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

19. With respect to maintaining boundaries, a nurse demonstrates having met the *TNCR Standard* by actions such as:
 - setting and maintaining the appropriate boundaries within the relationship, and helping [patients] understand when their requests are beyond the limits of the therapeutic relationship;
 - abstaining from disclosing personal information, unless it meets an articulated therapeutic need of the [patient];
 - continually clarifying her/his role in the therapeutic relationship, especially in situations in which the [patient] may become unclear about the boundaries and limits of the relationship; and
 - consulting with colleagues and/or the manager in any situation in which it is unclear whether a behaviour may cross a boundary of the therapeutic relationship.
20. CNO's *TNCR Standard* also requires nurses to protect the patient from harm by ensuring that abuse is prevented or stopped and reported. With respect to protecting the patient from abuse, a nurse demonstrates having met the *TNCR Standard* by actions such as:

- not entering a friendship, or a romantic, sexual or other personal relationship with a [patient] when a therapeutic relationship exists;
 - ensuring that after the nurse-[patient] relationship has been terminated, the nurse:
 - must not engage in a personal friendship, romantic relationship or sexual relationship with the [patient] or the [patient's] significant other for one year following the termination of the therapeutic relationship; and
 - not engaging in behaviours with a [patient] or making remarks that may reasonably be perceived by other nurses and/or others to be romantic, sexually suggestive, exploitive and/or sexually abusive.
21. In addition, the *TNCR Standard* further provides that sexual abuse includes touching of a sexual nature or touching that may be perceived by the patient or others to be sexual.

ADMISSIONS OF PROFESSIONAL MISCONDUCT

22. The Member admits that she committed the acts of professional misconduct as alleged in paragraphs 1(a) to (c) of the Notice of Hearing in that she sexually abused a patient, as described in paragraphs 9 to 16 above, when she and the Patient kissed while a therapeutic nurse-patient relationship existed, constituting behaviour of a sexual nature, and that she engaged in touching of a sexual nature and physical sexual relations with the Patient in or about June 2018 and subsequently thereafter.
23. The Member admits that she committed the acts of professional misconduct as alleged in paragraphs 2(a) to (d) of the Notice of Hearing in that she contravened a standard of practice of the profession or failed to meet the standards of practice of the profession, as described in paragraphs 9 to 21 above. In particular, the Member admits that she sexually abused the Patient in or about June 2018, and that doing so is a breach of the standards of practice. The Member also admits that she failed to appropriately establish and maintain the boundaries of the therapeutic nurse-patient relationship with the Patient, when she communicated by text message and by telephone with the Patient outside of the therapeutic relationship on June 11, 2018 and thereafter, when she spent the weekend with the Patient outside of the therapeutic relationship on June 22-24, 2018 and when she engaged in a personal, romantic and/or sexual relationship with the Patient commencing in June 2018 [].
24. The Member admits that she committed the acts of professional misconduct as alleged in paragraphs 3(a) to (c) of the Notice of Hearing in that she emotionally abused a patient, as described in paragraphs 9 to 21 above, in that she sexually abused the Patient while the Patient was admitted to the Facility and while the Patient was vulnerable due to her mental health challenges.

25. The Member admits that she committed the acts of professional misconduct as alleged in paragraphs 4(a) to (d) of the Notice of Hearing in that she engaged in conduct that would reasonably be regarded by members as disgraceful, dishonourable and unprofessional, as described in paragraphs 9 to 21 above. The Member admits and agrees that sexually abusing a Patient and breaching the boundaries of the nurse-patient relationship, especially with a vulnerable patient, brings shame to herself and the profession and brings into question the Member's moral fitness and inherent ability to discharge the obligations expected of a nurse.

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), (b), (c), 2(a), (b), (c), (d)(i), (ii), (iii), and 3 (a), (b) and (c) of the Notice of Hearing. With respect to allegations 3(a), (b) and (c), the Panel finds that the Member emotionally abused the client. As to allegations #4(a), (b), (c), (d)(i), (ii) and (iii), the Panel finds that the Member engaged in conduct that would reasonably be regarded by members of the profession 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(a) in the Notice of Hearing is supported by paragraphs 12-16 and 22 in the Agreed Statement of Facts.

Allegation #1(b) in the Notice of Hearing is supported by paragraphs 12-16 and 22 in the Agreed Statement of Facts.

Allegation #1(c) in the Notice of Hearing is supported by paragraphs 12, 14, 15 and 22 in the Agreed Statement of Facts.

The Panel finds that the Member committed acts of professional misconduct as alleged in paragraphs 1(a), (b) and (c) of the Notice of Hearing in that she sexually abused a patient, as described when she and the Patient kissed while a therapeutic nurse-client relationship existed and while she engaged in touching of a sexual nature, behaviour of a sexual nature and physical sexual relations since June 2018.

Allegation #2(a) in the Notice of Hearing is supported by paragraphs 12, 14, 15, 17-21 and 23 in the Agreed Statement of Facts.

Allegation #2(b) in the Notice of Hearing is supported by paragraphs 13, 17-20, and 23 in the Agreed Statement of Facts.

Allegation #2(c) in the Notice of Hearing is supported by paragraphs 12, 14, 15, 17-21 and 23 in the Agreed Statement of Facts.

Allegation #2(d)(i) in the Notice of Hearing is supported by paragraphs 13, 17-20 and 23 in the Agreed Statement of Facts.

Allegation #2(d)(ii) in the Notice of Hearing is supported by paragraphs 14, 16-20 and 23 in the Agreed Statement of Facts.

Allegation #2(d)(iii) in the Notice of Hearing is supported by paragraphs 12-21 and 23 in the Agreed Statement of Facts.

With respect to allegations #2(a), (b), (c), (d) (i), (ii) and (iii), the Panel finds that the Member committed the acts of professional misconduct as alleged in the Notice of Hearing in that she contravened the College's *Professional Standards* and the College's *Therapeutic Nurse-Client Relationship Standard*. The Panel found that the Member blatantly disregarded her professional obligations to establish and maintain the boundaries of the therapeutic nurse-client relationship.

Allegation #3(a) in the Notice of Hearing is supported by paragraphs 12, 14, 15 and 24 in the Agreed Statement of Facts.

Allegation #3(b) in the Notice of Hearing is supported by paragraphs 13 and 24 in the Agreed Statement of Facts.

Allegation #3(c) in the Notice of Hearing is supported by paragraphs 12, 14, 15 and 24 in the Agreed Statement of Facts.

The Panel finds that the Member committed acts of professional misconduct as alleged in paragraphs 3(a), (b) and (c) of the Notice of Hearing in that the Member emotionally abused a vulnerable patient who was actively receiving treatment for her mental health challenges.

With respect to allegations #4(a), (b), (c), (d)(i), (ii) and (iii), the Panel finds that the Member's conduct displayed a clear breach of professional practice and 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 and the Member demonstrated a serious lack of accountability and professionalism when engaging in a personal and sexual relationship with a vulnerable patient. The Member knew or ought to have known that her conduct was unacceptable and fell well below the standards of a professional.

Finally, the Panel finds that the Member's conduct was disgraceful as it shames the Member and by extension the profession. The conduct of emotionally and sexually abusing a patient casts serious doubt on the Member's moral fitness and inherent ability to discharge the higher obligations the public expects professionals to meet.

Penalty

College Counsel 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 3 months of the date that this Order becomes final.
2. Requiring the Member to reimburse CNO for funding provided for [the Patient] under the program required by s. 85.7 of the *Health Professions Procedural Code*, up to the amount of \$5,000, if [the Patient] accesses the fund.
3. Directing the Executive Director to immediately revoke the Member's certificate of registration.

Penalty Submissions

Submissions were made by College Counsel who submitted that Section 51.5(2) of the *Health Professions Procedural Code* provides that a reprimand and revocation of the Member's certificate of registration are mandatory if certain sexual acts are proven but even if not mandatory, revocation was appropriate in the circumstances.

The aggravating factor in this case was the seriousness of the Member's misconduct as it involved emotional and sexual abuse of a vulnerable patient who was receiving psychotherapeutic care.

The mitigating factors in this case were that the Member has no prior discipline history with the College, the Member cooperated with the College and that by agreeing to the Agreed Statement of Facts and Joint Submission on Order, the Member has accepted responsibility for her conduct.

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.

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. Hubercheck* (Discipline Committee, 2018) the hearing proceeded by way of Agreed Statement of Facts and Joint Submission on Order. Notable similarities in this hearing included that the conduct involved a member engaged in touching of a sexual nature with a patient while the member was in a therapeutic nurse-patient relationship with the patient. At the conclusion of this hearing the panel ordered that the member be reprimanded and that the member's certificate of registration be immediately revoked.

In *CNO v. Franklin* (Discipline Committee, 2020) the hearing proceeded by way of Agreed Statement of Facts and Joint Submission on Order. The conduct occurred between a member and a patient where the member maintained a personal and sexual relationship while a therapeutic nurse-patient relationship existed. This hearing concluded with the panel ordering that the member be reprimanded and immediately revoking the member's certificate of registration.

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 3 months of the date that this Order becomes final.
2. The Member is required to reimburse CNO for funding provided for [the Patient] under the program required by s. 85.7 of the *Health Professions Procedural Code*, up to the amount of \$5,000, if [the Patient] accesses the fund.
3. 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.

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

I, Carly Gilchrist, RPN, sign this decision and reasons for the decision as Chairperson of this Discipline panel and on behalf of the members of the Discipline panel.