

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

PANEL:	David Edwards, RPN	Chairperson
	Laura Caravaggio, RPN	Member
	Renate Davidson	Public Member
	Carly Gilchrist, RPN	Member
	Margaret Tuomi	Public Member

BETWEEN:

COLLEGE OF NURSES OF ONTARIO)	<u>DENISE COONEY</u> for
)	College of Nurses of Ontario
- and -)	
)	
TANIA SCOTT)	<u>NO REPRESENTATION</u> for
Reg. No: JE06287)	Tania Scott
)	
)	<u>LUISA RITACCA</u>
)	Independent Legal Counsel
)	
)	Heard: <u>OCTOBER 23, 2017</u>

DECISION AND REASONS

This matter came on for hearing before a panel of the Discipline Committee on October 23, 2017 at the College of Nurses of Ontario (“the College”) at Toronto.

The Allegations

The allegations against Tania Scott (the “Member”) as stated in the Notice of Hearing dated September 8, 2017 are as follows.

IT IS ALLEGED THAT:

1. You have committed an act of professional misconduct as provided by subsection 51(1)(a) of the Health Professions Procedural Code (the “Code”) of the Nursing Act, 1991, S.O. 1991, c. 32, as amended (the “Act”), in that on January 18, 2016, in the Ontario Court of Justice in Oshawa, Ontario, you were found guilty of an offence relevant to your suitability to practise, as follows:
 - (a) on or about the 1st day of August in the year 2014 in the Town of Whitby, in the Province of Ontario, while your ability to operate a motor vehicle was impaired by

alcohol, you did operate a motor vehicle, contrary to section 253(1)(a) of the Criminal Code of Canada.

2. You have committed an act of professional misconduct as provided by subsection 51(1)(c) of the Code of the Act, and defined in subsection 1(15) of Ontario Regulation 799/93, in that, on April 17, 2015 and March 17, 2016, you signed or issued, in your professional capacity, a document that you knew or ought to have known contained a false or misleading statement with respect to:
 - (a) your Application for a Certificate of Registration in the General Class dated April 17, 2015 in which you falsely answered “No” in response to question 4: “Are you the subject of a current proceeding in respect of any offence in any jurisdiction?” found in Section E: Declaration of Registration Requirements; and
 - (b) your Initial Registration Application in the General Class dated March 17, 2016 in which you falsely answered “No” in response to question 1: “Have you ever been found guilty of any criminal offence, any offence relating to the use, possession or sale of drugs, any offence under the Controlled Drugs and Substances Act (Canada), or any other offence in relation to the practice of nursing or another profession in any jurisdiction?” found under the Declaration of Registration Requirements section.
3. You have committed an act of professional misconduct as provided by subsection 51(1)(c) of the Code of the Act, and defined in subsection 1(18) of Ontario Regulation 799/93, in that, between January 18, 2016 and March 16, 2016, you contravened a term, condition or limitation on your certificate of registration, imposed pursuant to s. 1.5(1)1.(i) of Ontario Regulation 275/94, in that you failed to report a finding of guilt to the Executive Director of the College of Nurses (the “College”), as follows:
 - (a) on January 18, 2016, you were found guilty of the following offence, which you did not report:
 - a) on or about the 1st day of August in the year 2014 in the Town of Whitby, in the Province of Ontario, while your ability to operate a motor vehicle was impaired by alcohol, you did operate a motor vehicle, contrary to section 253(1)(a) of the Criminal Code of Canada.
4. You have committed an act of professional misconduct as provided by subsection 51(1)(c) of the Code of the Act, and defined in subsection 1(18) of Ontario Regulation 799/93, in that, between August 19, 2014 to March 16, 2016, you contravened a term, condition or limitation on your certificate of registration, imposed pursuant to s. 1.5(1)1.(ii) of Ontario Regulation 275/94, in that you failed to report charges relating to any offence to the Executive Director of the College, as follows:
 - (a) on August 19, 2014, you were charged with the following offences, which you did not report:

- a) on or about the 1st day of August in the year 2014 in the Town of Whitby, in the Province of Ontario, while your ability to operate a motor vehicle was impaired by alcohol, you did operate a motor vehicle, contrary to section 253(1)(a) of the Criminal Code of Canada; and
 - b) on or about the 1st day of August in the year 2014 in the Town of Whitby, in the Province of Ontario, without reasonable excuse, you refused to comply with a demand made by a peace officer to provide such a sample of breath as was necessary to enable a proper analysis to be made by means of an approved screening device, contrary to section 254(5) and section 255(1) of the Criminal Code of Canada.
- 5. You have committed an act of professional misconduct as provided by subsection 51(1)(c) of the Code of the Act, and defined in subsection 1(19) of Ontario Regulation 799/93, in that you contravened a provision of the Act, the Regulated Health Professions Act, 1991, S.O. 1991, c. 18, or the regulations under either of those Acts, and in particular, section 85.6.1 of the Code, in that, between January 18, 2016 to March 16, 2016, you failed to report a finding of guilt to the Registrar (being the Executive Director) of the College, as follows:
 - (a) on January 18, 2016, you were found guilty of the following offence, which you did not report:
 - a) on or about the 1st day of August in the year 2014 in the Town of Whitby, in the Province of Ontario, while your ability to operate a motor vehicle was impaired by alcohol, you did operate a motor vehicle, contrary to section 253(1)(a) of the Criminal Code of Canada.
- 6. You have committed an act of professional misconduct as provided by subsection 51(1)(c) of the Code of the Act, and defined in subsection 1(37) of Ontario Regulation 799/93, in that 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 of the profession as disgraceful, dishonourable or unprofessional in that, between 2014 and 2016:
 - (a) you signed or issued, in your professional capacity, a document that you knew or ought to have known contained a false or misleading statement with respect to:
 - a) your Application for a Certificate of Registration in the General Class dated April 17, 2015 in which you falsely answered “No” in response to question 4: “Are you the subject of a current proceeding in respect of any offence in any jurisdiction?” found in Section E: Declaration of Registration Requirements; and
 - b) your Initial Registration Application in the General Class dated March 17, 2016 in which you falsely answered “No” in response to question 1: “Have you ever been found guilty of any criminal offence, any offence relating to the use, possession or sale of drugs, any offence under the Controlled Drugs and Substances Act (Canada), or any other offence in relation to the practice

of nursing or another profession in any jurisdiction?” found under the Declaration of Registration Requirements section;

(b) you failed to report a finding of guilt to the Executive Director of the College, as follows:

a) on January 18, 2016, you were found guilty of the following offence, which you did not report:

I) on or about the 1st day of August in the year 2014 in the Town of Whitby, in the Province of Ontario, while your ability to operate a motor vehicle was impaired by alcohol, you did operate a motor vehicle, contrary to section 253(1)(a) of the Criminal Code of Canada;

(c) you failed to report charges to the Executive Director of the College, as follows:

a) on August 19, 2014, you were charged with the following offences, which you did not report:

I) on or about the 1st day of August in the year 2014 in the Town of Whitby, in the Province of Ontario, while your ability to operate a motor vehicle was impaired by alcohol, you did operate a motor vehicle, contrary to section 253(1)(a) of the Criminal Code of Canada; and

II) on or about the 1st day of August in the year 2014 in the Town of Whitby, in the Province of Ontario, without reasonable excuse, you refused to comply with a demand made by a peace officer to provide such a sample of breath as was necessary to enable a proper analysis to be made by means of an approved screening device, contrary to section 254(5) and section 255(1) of the Criminal Code of Canada.

Member's Plea

The Member admitted the allegations set out in paragraphs 1(a); 2(a),(b); 3(a),a); 4(a),a)&b); 5(a),a); 6(a),a)&b), 6(b),a),I) and 6(c),a),I)&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

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

THE MEMBER

1. Tania Scott (the “Member”) obtained a diploma in nursing from Durham College in 2004. The Member then obtained a degree in nursing from Ryerson University in 2015.
2. The Member registered with the College of Nurses of Ontario (the “College”) as a Registered Practical Nurse (“RPN”) on August 31, 2005.

INCIDENTS RELEVANT TO ALLEGATIONS OF PROFESSIONAL MISCONDUCT

3. On August 19, 2014, the Member was charged with impaired driving, contrary to section 253(1) of the *Criminal Code of Canada*, and refusal to comply with a demand for a breathalyzer, contrary to sections 254(5) and 255(1) of the *Criminal Code of Canada*.
4. The Member did not report the charges to the College.
5. On April 17, 2015, the Member filed an Application for Certificate of Registration in the General Class, as she was in the process of studying to become a Registered Nurse. In her application, she answered “No” in response to question 4: “Are you the subject of a current proceeding in respect of any offence in any jurisdiction?”
6. In doing so, the Member did not disclose the ongoing criminal matter with respect to the August 19, 2014 charges.
7. On July 30 and November 25, 2015, a trial was held with respect to the impaired driving charge. The Crown withdrew the charge related to the Member’s refusal to comply with a demand for a breathalyzer sample.
8. On January 18, 2016, the Member was found guilty and sentenced to a fine of \$1,000, a victim surcharge of \$300, 17 days of jail time if the Member defaulted on the payments, and a 12 month driving ban.
9. The Member did not report the conviction to the College.
10. On March 17, 2016, the Member filed an Initial Application for Certificate of Registration in the General Class. On the application, she failed to report her finding of guilt. The Member answered “No” to question 1 on the Declaration of Registration Requirements section of the application form: “Have you ever been found guilty of any criminal offence, any offence relating to the use, possession or sale of drugs, any offence under the *Controlled Drugs and Substances Act* (Canada), or any other offence in relation to the practice of nursing or another profession in any jurisdiction?”
11. If the Member were to testify, she would say that criminal lawyer advised her not to report the charges to the College. She would further say that she misread the application forms and inadvertently provided false and misleading information to the College. In any

case, the Member admits that it was her accountability to inform the College of her charges and conviction, and to enter accurate information on her application forms.

ADMISSIONS OF PROFESSIONAL MISCONDUCT

12. The Member admits that she committed the acts of professional misconduct as alleged in paragraph 1(a) of the Notice of Hearing, as described in paragraphs 3 to 11 above, in that she was found guilty of operating a motor vehicle when her ability to do so was impaired by alcohol, contrary to section 253(1)(a) of the *Criminal Code of Canada*, which is relevant to her suitability to practise nursing.
13. The Member admits that she committed the acts of professional misconduct as alleged in paragraph 2(a) and (b) of the Notice of Hearing, as described in paragraphs 3 to 11 above, in that she entered false and misleading information on her Application for a Certificate of Registration in the General Class and her Initial Registration Application in the General Class.
14. The Member admits that she committed the acts of professional misconduct as alleged in paragraph 3(a)(a) and 5(a)(a) of the Notice of Hearing, as described in paragraphs 3 to 11 above, in that she failed to report to the Executive Director that she was found guilty of operating a motor vehicle while her ability to do so was impaired by alcohol, contrary to section 253(1)(a) of the *Criminal Code of Canada*.
15. The Member admits that she committed the acts of professional misconduct as alleged in paragraph 4(a)(a) and (b) of the Notice of Hearing, as described in paragraphs 3 to 11 above, in that she failed to report to the Executive Director that she was charged with operating a motor vehicle while her ability to do so was impaired by alcohol, contrary to section 253(1)(a) of the *Criminal Code of Canada* and refusing to comply with a demand by a peace officer to provide a breathalyzer sample, contrary to section 254(5) and section 255(1) of the *Criminal Code of Canada*.
16. The Member admits that she committed the acts of professional misconduct as described in paragraphs 3 to 11 above, and in particular her conduct was dishonourable and unprofessional, as alleged in the following paragraphs of the Notice of Hearing:

- 6(a)(a) and (b)
- 6(b)(a)(I)
- 6(c)(a)(I) and (II)

Decision

The panel finds that the Member committed acts of professional misconduct as alleged in paragraphs 1(a); 2(a),(b); 3(a),a); 4(a),a)&b); 5(a),a); 6(a),a)&b), 6(b),a),I) and 6(c),a),I)&II) of the Notice of Hearing. As to allegation 6(a),a)&b), 6(b),a),I) and 6(c),a),I)&II), the panel finds that the Member engaged in conduct that would reasonably be considered by members of the profession to be dishonourable and unprofessional.

Reasons for Decision

The panel considered the Agreed Statement of Facts and the Member's plea and concludes that this evidence supports findings of professional misconduct as alleged in the Notice of Hearing. The panel also considered the advice of Independent Legal counsel, that the facts agreed to, should support the allegations that have been admitted. We were reminded that we should consider both the Notice of Hearing and the Agreed Statement of Facts carefully.

Allegation 1(a) in the Notice of Hearing is supported by paragraphs 3 to 11 in the Agreed Statement of Facts, in that the Member was charged and convicted of impaired driving. Impaired driving raises serious concerns about a member's judgement and concern for others around her. The panel finds that this conviction does relate to the Member's suitability to practice.

The remaining allegations in the Notice of Hearing are supported by the balance of facts admitted in the Agreed Statement of Facts. The Member failed on more than one occasion to advise the College of her criminal charges and conviction. This amounted to professional misconduct in a number of ways. First, her failure to report on her application forms resulted in the Member entering false and misleading information on her Application for a Certificate of Registration in the General Class and her Initial Registration Application in the General Class. Second, the Member was required by Regulation to report her various charges and eventual conviction for impaired driving to the Executive Director. Her failure to do so amounts to professional misconduct.

With respect to Allegation 6, the panel finds the Member's conduct to be unprofessional as it demonstrated a serious and persistent disregard for her professional obligations, which at a minimum included her obligation to provide accurate and truthful information to the College. She had a duty to self-report the charges and eventual conviction.

The panel also finds that the Member's conduct was dishonourable. The Member's failure to provide accurate and truthful information to the College demonstrated an element of dishonesty and deceit. She repeatedly failed to report her criminal charges or subsequent conviction to the College and misled the College in her application forms for registration and renewal.

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 suspend the Member's certificate of registration for three 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 the practising 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 one meeting with a Nursing Expert (the "Expert") at her own expense and within six months from the date of this. If the Expert determines that a greater number of sessions are required, the Expert will advise the Director of Professional Conduct (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 one year from the date of this Order. 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 College publications and completes the associated Reflective Questionnaires, online learning modules, decision tools and online participation forms (where applicable):
 1. *Professional Standards*,
 2. *Mandatory Reporting: A process guide for employers, facility operators and nurses*,
 - 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;
 - 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 clients, 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 from the date the Member's suspension ends, the Member will notify her employers 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; and
4. All documents delivered by the Member to the College, 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, which the Member did not dispute.

College Counsel reminded the panel to consider both the mitigating and aggravating factors in this case when determining whether the joint penalty proposed was appropriate. Counsel argued that the aggravating factors were serious in that the Member was charged with impaired driving, failed to report the charges or the conviction and did not answer the question on her renewal honestly, thereby providing false information to the College. By providing false information repeatedly, the Member created a serious breach of trust, which brought discredit to the profession. The mitigating factors were that the Member has no previous record with the College, has co-operated and has accepted responsibility for her actions.

College counsel stated the Joint Submission on Order was the product of a lengthy negotiation that took place both at and after the prehearing conference. The agreement reached is reasonable and in the public interest, it meets the goals of penalty and strikes the appropriate balance between public protection, deterrence and remediation. The suspension and reprimand are specific deterrents, which send a message to both the Member and the profession at large that these actions will not be tolerated. Remediation and rehabilitation are attained through the meeting with the expert and employer notification. Public protection is paramount and provided for by the penalty in whole. The penalty makes clear to the membership and the public that this behaviour will be made with serious consequences

College counsel submitted that the Joint Submission on Order is consistent with other decisions from the Discipline Committee, although every case must be considered in light of its particular facts.

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

CNO v. Toth (January 30, 2017). In this case the Member was found guilty of operating a vessel while impaired by alcohol, failing to self-report, and supplying misleading information to the College on her renewal form. The penalty received included a 2-month suspension, reprimand, two meetings with an expert and employer notification for 12 months.

CNO v. Scott (October 1, 2015). In this case the Member failed to self-report findings from a Board of Nursing from another jurisdiction. The penalty imposed was an oral reprimand, 3-month suspension, two meetings with a nursing expert and 18 months of employer notification.

The Member stated her intention was not to lie or mislead the College, she was advised by her lawyer to not report until convicted and then she checked the wrong box. She understands what she did was professional misconduct.

Independent Legal counsels advised the panel to accept the Joint Submissions on Order, unless to do so would bring the administration of this process into disrepute or otherwise be contrary to the public interest. Counsel reminded the panel that we could take comfort in the fact that we received two previous cases, where the penalties imposed fall into the same range of what is being sought here.

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 suspend the Member's certificate of registration for three 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 the practising 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 one meeting with a Nursing Expert (the "Expert") at her own expense and within six months from the date of this. If the Expert determines that a greater number of sessions are required, the Expert will advise the Director of Professional Conduct (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 one year from the date of this Order. 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 College publications and completes the associated Reflective Questionnaires, online learning modules, decision tools and online participation forms (where applicable):
 - 1. *Professional Standards*,
 - 2. *Mandatory Reporting: A process guide for employers, facility operators and nurses*,
 - 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;
 - 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 clients, 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 from the date the Member's suspension ends, the Member will notify her employers 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; and
4. All documents delivered by the Member to the College, 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 proposed penalty deals with specific deterrence through the reprimand and suspension. The panel is satisfied that all components of the penalty send a message to public that the College takes self-regulation seriously and that public protection is paramount.

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.

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

I, David Edwards, 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.

Chairperson

Date