

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

PANEL:	Tanya Dion, RN	Chairperson
	Sylvia Douglas	Public Member
	Marnie MacDougall	Public Member
	Michael Schroder, NP	Member

BETWEEN:

COLLEGE OF NURSES OF ONTARIO)	<u>NICK COLEMAN</u> for
)	College of Nurses of Ontario
- and -)	
)	
DAVID CHRISTIE)	<u>NO REPRESENTATION</u> for
Registration No. AA813451)	David Christie
)	
)	<u>CHRISTOPHER WIRTH</u>
)	Independent Legal Counsel
)	
)	Heard: June 30, 2021

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 June 30, 2021, 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 the publication or broadcasting of the name of the patient, or any information that could disclose their identity, referred to orally or in any documents presented in the Discipline Hearing of David Christie.

The Panel considered the submissions of College Counsel and the Member and decided that there be an order preventing public disclosure and banning the publication or broadcasting of the name of the patient, or any information that could disclose their identity, referred to orally or in any documents presented in the Discipline Hearing of David Christie.

The Allegations

The allegations against David Christie (the “Member”) as stated in the Notice of Hearing dated May 28, 2021 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 employed as a Registered Practical Nurse (“RPN”) at St. Andrew’s Terrace in Cambridge, Ontario (the “Facility”), you contravened a standard of practice of the profession or failed to meet the standard of practice of the profession with respect to kissing [the Patient], on the lips, or mimicking a kiss in close proximity to her lips, on or about January 13, 2020.
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 while employed as a RPN at the Facility, 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 kissing [the Patient], on the lips, or mimicking a kiss in close proximity to her lips, on or about January 13, 2020.

Member’s Plea

The Member admitted the allegations set out in paragraphs 1 and 2 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 reads, unedited, as follows:

THE MEMBER

1. David Christie (the “Member”) obtained a diploma in nursing from Conestoga College in August 2011.
2. The Member registered with the College of Nurses of Ontario (“CNO”) as a Registered Practical Nurse (“RPN”) on November 15, 2011. He was administratively suspended for

non-payment of fees on February 17, 2021 and his certificate expired on March 19, 2021. Therefore, the Member is not currently entitled to practise nursing in Ontario.

3. The Member worked at St. Andrew's Terrace as a full-time RPN from November 25, 2011 until his employment was terminated on February 10, 2020.

THE FACILITY

4. St. Andrew's Terrace (the "Facility") is a long-term care home in Cambridge, Ontario.
5. The 128 rooms are divided into four units comprised of approximately 32 beds each. The nurse to patient ratio is 1:32.
6. On every shift, each unit has one RPN and one Registered Nurse who are, in turn, assisted by Personal Support Workers ("PSW").
7. The Facility has video surveillance. There is no audio. The incident of professional misconduct set out below was captured on video and provided to CNO.
8. The Member worked day shifts from 0600 to 1400 and afternoon shifts from 1400 to 2200. He was permanently assigned to the Dementia Unit, so he was accustomed to working with patients diagnosed with neurological degeneration.

THE PATIENT

9. [The Patient] (the "Patient") was a 67-year-old female with severe dementia, early onset Alzheimer's, osteoporosis, dysphasia and aphasia. She was admitted to the Dementia Unit of the Facility on November 8, 2019.
10. The Patient was well known to staff as being weepy, teary and visibly sad the majority of the time. Her eyesight was also highly impaired.
11. While verbal, the Patient could not communicate coherently when asked direct questions. She was also known to staff as verbally and physically reactive when agitated. Conversely, the Patient also enjoyed hugging staff and was considered tactile. She would respond positively to touch because that would calm her down.

INCIDENT RELEVANT TO ALLEGATIONS OF PROFESSIONAL MISCONDUCT

12. The Member worked the day shift at the Facility from 0600 to 1400 on January 13, 2020.
13. At or around 1326, the Member, the Facility's surveillance footage shows the Patient and six colleagues, including two PSWs – [Colleague A] and [Colleague B] – and a fellow RPN – [Colleague C] – standing at the nursing station in anticipation of the 1330 shift change.

14. The Patient followed the Member to the nursing station, as was part of her routine when the Member was on shift. The Member was one of the few people the Patient still recognized given her advanced dementia.
15. The Patient had a runny nose and was weepy. To make her smile, the Member leaned toward the Patient and kissed her on the lips or mimicked a kiss near her face.
16. If [Colleague A] and [Colleague B] were to testify, they would state that they observed a kiss between the Patient and the Member.
17. The Member denies that there was the physical contact of a kiss between himself and the Patient. If the Member were to testify, he would admit that he mimicked an air kiss or puckered his lips and made a kissing noise in close proximity to the Patient's lips because he observed that she was crying and hoped this action could make her smile before he ended his shift. He would also testify that he positioned himself at eye-level and close to the Patient's lips because he wanted to make sure she could clearly see him.
18. The Member backed away from the Patient a few seconds after kissing the Patient or mimicking an air kiss in close proximity to the Patient's lips.
19. The Member smiled and waved at the Patient before turning around and going into the medication room that was a few feet away from where he was standing at the nursing station.
20. The Patient followed him into the room, along with one of the Member's colleagues, [Colleague C], RPN, who had been standing beside the Member during his interaction with the Patient.
21. The Member and [Colleague C] redirected the Patient out of the room.
22. When interviewed by management regarding the incident, the Member explained that he engaged in kissing, hugging and other physical contact with the patients, particularly those lacking family contacts. He explained that he though[t] such actions were consistent with nurse-patient boundary expectations. On further reflection, however, the Member now understands that such conduct is improper and can lead to confusion with patients regarding professional boundaries
23. If the Member were to testify, he would state that there was no sexual intention in his kissing action toward the Patient. Rather, he thought that his action toward the Patient would help reduce her weeping. However, the Member acknowledges that mimicking a kiss in close proximity to the Patient's lips was not an appropriate strategy for dealing with a situation where a vulnerable patient could misinterpret his intentions, no matter how well intended.

24. The Member acknowledges that he placed himself in a position of proximity to the Patient that was unnecessary and that he failed to create physical, social/emotional and professional boundaries with the Patient that would have avoided a compromising situation and situation in which a kiss could occur.
25. If the Member were to testify, he would further state that he deeply regrets his conduct because he takes trust, respect and professionalism between himself and his patients seriously. The Member would state that, upon reflection and a self-initiated review of CNO's *Code of Conduct* and *Therapeutic Nurse-Client Relationship Standard*, he appreciates how his action toward the Patient crossed a professional boundary and blurred the line between his role as a nursing professional versus someone who was more of a personal, intimate friend.

CNO STANDARDS OF PRACTICE

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

Code of Conduct

27. In January 2019, CNO introduced the *Code of Conduct* practice standard. Since the professional misconduct presently before the Discipline Committee dates from January 2020, this practice standard applies.
28. The *Code of Conduct* articulates what Ontarians can expect of nurses in all practice settings and emphasizes the importance of a patient-centred care model wherein nurses respect the dignity of patients; promote patient well-being; maintain patients' trust by providing safe and competent care; work with colleagues to best meet patients' needs; act with integrity to maintain patients' trust; and maintain public confidence in the nursing profession.
29. As valued members of the healthcare team, nurses are expected to meet this practice standard by maintaining "professional boundaries with patients." Nurses must always use "appropriate knowledge, skill and judgment when assessing the health needs of a patient" and maintain professional boundaries with a patient to avoid misunderstandings of the nurse's role on the team.

Professional Standards

30. 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. A nurse demonstrates this standard by actions such as:
 - a. identifying her/himself and explaining her/his role to [patients],

- b. recognizing limits of practice and consulting appropriately,
- c. advocating on behalf of [patients], and
- d. ensuring practice is consistent with CNO's standards of practice and guidelines, as well as legislation.

Therapeutic Nurse-Client Relationship

- 31. CNO's *Therapeutic Nurse-Client Relationship Standard* ("TNCR Standard") provides guidance on establishing and maintaining appropriate patient relationships.
- 32. While the *TNCR Standard* notes that establishing positive and empathic therapeutic relationships with patients is at the core of the practice of nursing, it explains that setting appropriate boundaries with patients is also an important aspect of a care provider's role.
- 33. The *TNCR Standard* specifies that therapeutic nursing services "contribute to the [patient's] health and well-being" and that a meaningful relationship is built upon a foundation of "trust, respect, empathy and professional intimacy" that requires an acknowledgement of the "appropriate use of power inherent in the care provider's role."
- 34. More specifically, the *TNCR Standard* elaborates that nurses meet the standard for patient-centred care by working with patients to ensure that all professional behaviour and actions meet the therapeutic needs of the patient. Nurses meet the standard by:
 - a. setting and maintaining appropriate boundaries within the relationship,
 - b. being aware of his/her verbal and non-verbal communication style and how [patients] might perceive it,
 - c. providing information to promote [patient] choice and enable the [patient] to make informed decisions, and
 - d. committing to being available to the [patient] for the duration of care within the employment boundaries and role context.

ADMISSIONS OF PROFESSIONAL MISCONDUCT

- 35. The Member admits that his conduct as set out in paragraphs 1-2 of the Notice of Hearing breached the standards of practice by not maintaining appropriate boundaries with a patient, as set out in CNO's *Code of Conduct, Professional Standards* and *TNCR Standard*.
- 36. The Member admits that he committed the acts of professional misconduct as alleged in paragraphs 1-2 of the Notice of Hearing. In particular, the Member admits that he:

- a. contravened a standard of practice of the profession or failed to meet the standard of practice of the profession, as alleged in paragraph 1 of the Notice of Hearing and described in paragraphs 12-25 above; and
- b. 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 unprofessional, as alleged in paragraph 2 of the Notice of Hearing and described in paragraphs 12-25 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 and 2 of the Notice of Hearing. As to allegation #2, the Panel finds that the Member engaged in conduct that would reasonably be regarded by members of the profession to be 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 4-35 and 36(a) in the Agreed Statement of Facts. The Member admits that he mimicked an air kiss, puckered his lips and made a kissing noise in close proximity to the Patient's lips.

A nurse meets the College's *TNCR Standard* by setting and maintaining appropriate boundaries. Kissing or mimicking a kiss towards a patient falls beyond the limits of the nurse-patient therapeutic relationship. Furthermore, a nurse meets the College's *TNCR Standard* by being aware of his/her verbal and non-verbal communication style and how patients may perceive it. In this instance, the vulnerable Patient may have perceived the relationship as one based upon friendship, companionship or intimacy rather than a professional therapeutic nurse-patient relationship. There is potential for the conduct to have a detrimental effect on the therapeutic nurse-patient relationship as it may conceal the focus of the care, health and wellbeing of the patient.

With respect to allegation #2, the Panel finds that the Member's conduct in kissing the Patient on the lips or mimicking a kiss in close proximity to the Patient's lips was unprofessional as it demonstrated a serious disregard for his professional obligations.

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. Directing the Executive Director to suspend the Member's certificate of registration for 1 month. This suspension shall take effect from the date the Member obtains an active certificate of registration in a practicing class 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 2 meetings with a Regulatory Expert (the "Expert"), at his own expense and within 6 months from the date the Member obtains an active certificate of registration in a practicing class. 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 7 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. *Code of Conduct*,
 2. *Professional Standards*, and,
 3. *Therapeutic Nurse-Client Relationship*;

- iv. At least 7 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 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 his 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 his certificate of registration;
- b) For a period of 12 months from the date the Member obtains an active certificate of registration in a practicing class and returns to the practice of nursing, the Member will notify his 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 his 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 factor in this case was that the Member acknowledged that it was part of his practice to engage in physical contact with patients.

The mitigating factors in this case were that the Member accepted responsibility for the misconduct by agreeing to the Agreed Statement of Facts and the Joint Submission on Order.

The proposed penalty provides for general deterrence through the 1-month suspension which conveys to the membership the consequences for engaging in this type of misconduct.

The proposed penalty provides for specific deterrence through the oral reprimand and the 1-month suspension which will reduce the likelihood that the Member will engage in similar misconduct in his future practice should he choose to re-enter the practicing class.

The proposed penalty provides for remediation and rehabilitation through the meetings with the Regulatory Expert. The meetings will deepen the Member's understanding of the misconduct and convey the significance of this misconduct on a member of a regulated profession.

The public is protected through the clear message that this penalty sends that this conduct is not acceptable and a serious penalty will accompany it. The penalty demonstrates to the public that this is a profession which is capable of governing itself.

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

CNO v. Keddie (Discipline Committee, 2020). This case proceeded by way of an Agreed Statement of Facts and a Joint Submission on Order. The misconduct involved inappropriate physical contact between the member and a co-worker. The perception from the co-worker was that the member groped the co-worker by grabbing him on the buttocks. The member's perception was that the member made contact with the co-worker using his walking stick. The Joint Submission on Order included an oral reprimand, a one-month suspension, two meetings with a Regulatory Expert and a 12 month period of employer notification.

CNO v. Rogers (Discipline Committee, 2020). This case involved a number of acts of professional misconduct, one of which was the manipulation of an uncooperative patient by kissing the patient on the lips. Subsequently, the member made a comment to her co-worker that you get "further with honey". This misconduct was more serious as the misconduct was expressly to manipulate to induce cooperation. The Joint Submission on Order included an oral reprimand, a three-month suspension, a minimum of two meetings with a Regulatory Expert and a 12 month employer notification. The three-month suspension was reflective of a series of misconduct incidents.

The Member made no submission on penalty.

Penalty Decision

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

1. The Member is required to appear before the Panel to be reprimanded within 3 months of the date that this Order becomes final.
2. The Executive Director is directed to suspend the Member's certificate of registration for 1 month. This suspension shall take effect from the date the Member obtains an active certificate of registration in a practising class and shall continue to run without interruption as long as the Member remains in a 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 2 meetings with a Regulatory Expert (the "Expert"), at his own expense and within 6 months from the date the Member obtains an active certificate of registration in a practicing class. 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 7 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. *Code of Conduct*,
 - 2. *Professional Standards*, and,
 - 3. *Therapeutic Nurse-Client Relationship*;
- iv. At least 7 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 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 his 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 his certificate of registration;
 - b) For a period of 12 months from the date the Member obtains an active certificate of registration in a practising class and returns to the practice of nursing, the Member will notify his 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 his 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. The penalty provides for general deterrence through the 1-month suspension which will convey to the membership the consequences for this type of misconduct. Specific deterrence is achieved through the oral reprimand and 1-month suspension. Remediation and rehabilitation are achieved through the meetings with the Regulatory Expert which will allow the Member to deepen his understanding of the misconduct. The public is protected through the clear message that this penalty sends that this type of conduct is not acceptable. This penalty demonstrates the College's ability to self-regulate and ensures that public trust in the profession is maintained. The penalty sends a clear message to the membership that boundary violations of the therapeutic nurse-client relationship will not be tolerated.

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

I, Tanya Dion, 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.