

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

PANEL:

Mary MacMillan-Gilkinson	Chairperson
George Rudanycz, RN	Member
Michael Schroder, NP	Member
Chris Woodbury	Public Member

BETWEEN:

COLLEGE OF NURSES OF ONTARIO)	<u>MEGAN SHORTREED</u> for
)	College of Nurses of Ontario
- and -)	
)	
JAINARINE DEONARAIN)	<u>JANE LETTON</u> for
Registration No. 0194035)	Jainarine Deonarain
)	
)	
)	<u>CHRISTOPHER WIRTH</u>
)	Independent Legal Counsel
)	
)	Heard: January 16, 2019

DECISION AND REASONS

This matter came on for hearing before a panel of the Discipline Committee (the “Panel”) on January 16, 2019 at the College of Nurses of Ontario (the “College”) at Toronto.

The Allegations

The allegations against Jainarine Deonarain (the “Member”) as stated in the Notice of Hearing dated January 2, 2019 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 Nurse at the Bella Senior Care Residence Inc. in Niagara Falls, Ontario (the “Facility”), you contravened a standard of practice of the profession or failed to meet the standards of practice of the profession, as follows:

- a. between February 2016 and November 2016, you harassed and/or sexually harassed your co-worker, [the Co-Worker], in that you made comments to [the Co-Worker] about her breasts which you knew, or ought to have known, were unwanted; and/or
 - b. on or about November 4, 2016, you harassed and/or sexually harassed your co-worker, [the Co-Worker], in that you:
 - i. made inappropriate comments to her about her breasts;
 - ii. attempted to touch her breast without her consent;
 - iii. touched her breast without her consent; and/or
 - iv. touched her buttocks without her consent.
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 Registered Nurse at the Facility, you engaged in conduct relevant to the practice of nursing that would reasonably be regarded by members of the profession as disgraceful, dishonourable or unprofessional, as follows:
- a. between February 2016 and November 2016, you harassed and/or sexually harassed your co-worker, [the Co-Worker], in that you made comments to [the Co-Worker] about her breasts which you knew, or ought to have known, were unwanted; and/or
 - b. on or about November 4, 2016, you harassed and/or sexually harassed your co-worker, [the Co-Worker], in that you:
 - i. made inappropriate comments to her about her breasts;
 - ii. attempted to touch her breast without her consent;
 - iii. touched her breast without her consent; and/or
 - iv. touched her buttocks without her consent.

Member's Plea

The Member admitted the allegations set out in paragraphs 1(a), 1(b) (i), (ii), (iii), (iv) and 2(a), 2(b) (i), (ii), (iii), (iv) 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 Counsel for 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. Jainarine Deonarain (the “Member”) obtained a degree in nursing from Humber College in 2001.
2. The Member registered with the College of Nurses of Ontario (the “College”) as a Registered Nurse (“RN”) on October 12, 2001.
3. The Member was employed at Bella Senior Care Residences, Inc. (the “Facility”) from May 2014 to November 25, 2016, when his employment was terminated as a result of the incidents below.

THE FACILITY

4. The Facility is a long-term care home located in Niagara Falls, Ontario.
5. The Member worked at the Facility as a full-time charge nurse.

INCIDENTS RELEVANT TO ALLEGATIONS OF PROFESSIONAL MISCONDUCT

6. [The Co-Worker] was employed at the Facility as a Registered Practical Nurse (“RPN”).
7. Between February and November 2016, the Member made several unwanted sexual comments to [the Co-Worker] about her breasts.
8. In or around February 2016, [the Co-Worker] told the Member her boyfriend at the time wanted a photo of her breasts. In response, the Member asked when he would get to see her breasts.
9. In or around August 2016, the Member made a bet with [the Co-Worker] that she would not get back together with her ex-boyfriend. When [the Co-Worker] and her ex-boyfriend did not get back together, the Member said he won the bet and she needed to show him “her boobs.”
10. The Member’s conduct escalated from comments to touching towards the end of 2016.
11. On November 4, 2016, the Member and [the Co-Worker] were both working the day shift at the Facility. Between 1000 and 1030, [the Co-Worker] was in the medication room when the Member entered. The Member asked [the Co-Worker] why she was upset. She told him she had broken up with her boyfriend; the Member told her she would get a new one soon. The Member then grabbed her chin and pulled her top open to look at her bra. [The Co-Worker] tried to cover her bra, saying something to the effect of “it’s not a nice one” (in reference to the bra). The Member then reached his hand down her shirt – his thumb came under her bra and touched her left nipple. [The Co-Worker] crossed her arms and turned away. The Member then grabbed her buttocks and shook her buttocks. The Member left the medication room.

12. The day of the incident, [the Co-Worker] told a nursing colleague at the Facility about the Member's conduct. The colleague encouraged [the Co-Worker] to report the Member, but [the Co-Worker] told her that she did not want to get the Member "in trouble", and asked the colleague to keep the information to herself.
13. The Facility's management became aware of the incident on November 22, 2016, after [the Co-Worker] reported the Member's conduct to her [Supervisor]. She further reported to [her Supervisor] she did not want to come forward because she was afraid the Member would get fired, and because she thought people would think she had "asked for it".
14. After learning of the incident, the Facility's Director of Care conducted an investigation into [the Co-Worker]'s complaint. The Facility found that the Member had contravened the Facility's Workplace Violence and Harassment Policy, and terminated his employment for cause on November 25, 2016.
15. [the Co-Worker] spoke to the police but decided not to press charges.

ADMISSIONS OF PROFESSIONAL MISCONDUCT

16. The Member admits that his unprofessional conduct was a breach of the College's *Professional Standards*.
17. The Member admits that he committed the acts of professional misconduct as described in paragraphs 6 to 15 above, and as alleged in the Notice of Hearing in the following paragraphs:
 - 1(a) in that he sexually harassed [the Co-Worker] between February 2016 and November 2016 when he made comments to her about her breasts, which he knew, or ought to have known, were unwanted;
 - 1(b) (i), (ii), (iii) and (iv), in that he sexually harassed [the Co-Worker] on November 4, 2016 when he made inappropriate comments about her breasts, attempted to touch her breast without consent, touched her breast without consent and touched her buttocks without consent.
18. The Member admits that he committed the acts of professional misconduct as alleged in paragraphs 2 (a) and (b) (i), (ii), (iii) and (iv) of the Notice of Hearing, and in particular that his conduct was disgraceful, dishonourable and unprofessional, as described in paragraphs 6 to 17 above.

In addition to the Agreed Statement of Facts, Counsel for the College also filed with the Panel as Exhibits, the College's *Professional Standards*, revised 2002 (the "College's Standards") and the Bella Senior Care Residences' Manual, last revised March 2011 (the "Manual").

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); 1(b) (i), (ii), (iii), (iv); 2(a) and 2(b) (i), (ii), (iii), (iv) of the Notice of Hearing. As to all the allegations in paragraph 2, 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 is supported by paragraphs 6 –17 in the Agreed Statement of Facts. The Member admitted that, over several months, he made sexually harassing comments to his female co-worker [the Co-Worker] regarding her breasts. This included asking her when he would get to see her breasts and stating that, because she had lost a bet with him, she needed to show him “her boobs.” This verbal sexual harassment culminated in the Member grabbing [the Co-Worker]'s chin, pulling up her top and exposing her bra. The Member then reached under her bra and touched her breast. As [the Co-Worker] crossed her arms and moved away, the Member grabbed and shook her buttocks. This is clearly a breach of the principles enshrined in the College's Standards.

In several places, the College's Standards emphasize the importance of maintaining professional relationships that are based on trust and respect. Nurses are expected to act with integrity and professionalism when interacting with other health care members. By breaching these Standards, the Member failed to recognize the effects of his disrespectful conduct on the practice environment. In addition, the Member breached the Facility's Workplace Violence and Harassment Policy contained in the Manual where it states that personal harassment is any comment, conduct or gesture that demeans, intimidates or causes embarrassment to another. It also states that sexual harassment is contact of a sexual nature. The conduct described at paragraphs 6-17 of the Agreed Statement of Facts constitutes sexual harassment as defined by this Policy.

With respect to Allegation #2, the Panel finds that the Member's conduct was unprofessional as it demonstrated a serious and persistent disregard for his professional obligations. Commenting on a co-worker's breasts showed a lack of good judgement and a disregard for the professional standards that nurses are expected to uphold. The Member's conduct was also found to be both disgraceful and dishonourable. The Member ought to have known that his sexual talk and touching were inappropriate and unwanted in a professional setting. Conduct such as this casts serious doubt on the Member's moral fitness and his 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 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 two meetings with a Regulatory Expert (the "Expert"), at his own expense and within six months 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*,
 - iv. Before the first meeting, the Member completes the College of Registered Nurses of British Columbia online learning module, *Communication in Nursing Practice Module*, and the accompanying workbook located at: <https://www.crnbc.ca/Lists/Flash%20Modules/Communications/player.html>

- v. 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;
 - vi. 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;
 - vii. 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;
 - viii. 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 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; 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 regarding penalty were made by Counsel for the College.

The mitigating factors in this case were:

- The Member has no prior history of professional misconduct with the College.
- He has made admissions of misconduct and has cooperated with the College.
- He has shown a willingness to be remediated.

The aggravating factors in this case were:

- The sexual harassment of a co-worker in a professional setting is extremely serious.
- The harassing comments occurred over several months.
- The Member was a charge nurse in the Facility and was in a position of authority over his co-worker who was an RPN.
- The Member's conduct was clearly intentional.
- The Member's actions were self-serving and not in the interests of a respectful and trusting environment.
- The Member's conduct did not just constitute harassment, but also included sexual harassment as defined by the Facility's policy on workplace violence and harassment.

The proposed penalty provides for general deterrence through the three month suspension. It sends a clear message to the profession that conduct such as this will not be tolerated. As such, the suspension will act as a deterrent to other nurses. The terms, conditions and limitations on the Member's certificate of registration will signal a message to the membership, as a whole, that this type of conduct is serious and falls well below professional standards.

The proposed penalty provides for specific deterrence through the three month suspension. The oral reprimand will assist the Member in gaining a greater understanding of the impact of his conduct.

The proposed penalty provides for remediation and rehabilitation through the two meetings with a Regulatory Expert. The Member's review of Professional Standards and his completion of the on-line module, as well as the Reflective Questionnaires, will help him to learn from his errors.

Overall, the public is protected because the Member will return to practice with a greater knowledge of the professional standards he is expected to uphold. He will also be required to notify his employer of this decision for a period of 12 months. This will provide additional oversight on the Member.

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

CNO v. Jayson Phillips (Discipline Committee, 2016). The Phillips case did not proceed by way of an Agreed Statement of Facts. Evidence was led. The panel found that the member sexually harassed multiple female co-workers by making comments on their breasts and buttocks. He also physically restrained a co-worker so that he could lift up her shirt and pull down her pants and press his body against hers. The member was not present at the hearing in Phillips. As a result, the Panel received no explanation for the member's conduct or any indication of remorse. The member was given a five month suspension, ordered to receive a reprimand, attend two sessions with a nursing expert and twelve months of employer notification.

CNO v. Elmedin Dubravac (Discipline Committee, 2012). This case proceeded on an Agreed Statement of Facts where the member plead to some of the allegations. The panel found that while assisting a co-worker with an unconscious client, the member used the client's hand to touch the co-worker's chest. The member's conduct also included inappropriate comments towards the co-worker, as well as touching her buttocks and chest. The member received an oral reprimand, a four month suspension, two sessions with a nursing expert, and eighteen months of employer notification.

CNO v. Ainsworth O'Connor (Discipline Committee, 2011). This case proceeded on an Agreed Statement of Facts. The panel found the member made inappropriate sexual advances toward an RPN student. He grabbed the breast and crotch of the RPN student in the presence of a client. The member received a two month suspension, an oral reprimand, and various terms, conditions and limitations on his certificate of registration including restrictions on his practice with students, employer notification for twelve months and two meetings with a nursing expert. Counsel for the College acknowledged that the O'Connor case was an older case and submitted that it was in the bottom range of penalties for this type of conduct.

The Member's Counsel indicated that she agreed with those submissions. The Member's Counsel did emphasize that although the Member's inappropriate comments occurred over a period of time, the physical contact was on one day.

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 two meetings with a Regulatory Expert (the "Expert"), at his own expense and within six months 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*,
 - iv. Before the first meeting, the Member completes the College of Registered Nurses of British Columbia online learning module, *Communication in Nursing Practice Module*, and the accompanying workbook located at:
<https://www.crnbc.ca/Lists/Flash%20Modules/Communications/player.html>
 - v. 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;
 - vi. 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;
 - vii. 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;
- viii. 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 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:
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 - 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 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. He has avoided the need for a contested hearing which might have put additional stress on his co-worker.

The Panel finds that the penalty satisfies the principles of specific and general deterrence, rehabilitation and remediation, and public protection. It sends a strong message to the Member and to the membership as a whole that actions such as these will not be tolerated. Members must ensure that they treat their co-workers with respect and interact with them in a professional manner. The public is protected by the fact that the Member has accepted responsibility for his actions and will be rehabilitated by the suspension and the meetings with the Regulatory Expert. The 12 month period of employer notification will ensure that when the Member returns to practice, he has appropriate supervision.

The penalty is in line with what has been ordered in previous cases. The Panel concludes that the joint submission represents a fair and reasonable outcome based on the evidence presented.

I, Mary MacMillan-Gilkinson, Public Member, 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