

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

**PANEL:**

Dawn Cutler, RN	Panel Chair
Sylvia Douglas	Public Member
Karen Goldenberg	Public Member
Sherry Szucsko-Bedard, RN	Member
Josee Wright, RPN	Member

**BETWEEN:**

COLLEGE OF NURSES OF ONTARIO	)	<u>DENISE COONEY</u> for
	)	College of Nurses of Ontario
- and -	)	
	)	
JACQUELINE C. CARREIRO	)	<u>NO REPRESENTATION</u> for
Registration No. HF07210	)	Jacqueline C. Carreiro
	)	
	)	<u>PATRICIA HARPER</u>
	)	Independent Legal Counsel
	)	
	)	Heard: October 27, 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 October 27, 2020, via videoconference.

As Jacqueline C. Carreiro (the “Member”) was not present, the hearing recessed for 15 minutes to allow time for the Member to appear. Upon reconvening, the Panel noted that the Member was not in attendance.

By way of an affidavit from [College Staff Member], Prosecutions Clerk, dated August 24, 2020, College Counsel provided the Panel with evidence that the Member had been sent the Notice of Hearing. In her affidavit, [College Staff Member] affirms that, on August 14, 2020, she sent correspondence, which included the Notice of Hearing, to the Member’s last known address on the College Register.

The Panel was satisfied that the Member had received adequate notice of the time, place and purpose of the hearing and of the fact that if she did not participate in the hearing, it may proceed

without her participation. Accordingly, the Panel decided to proceed with the hearing in the Member's absence.

### **The Allegations**

The allegations against the Member as stated in the Notice of Hearing dated August 13, 2020 are as follows:

#### **IT IS ALLEGED THAT:**

1. You have committed an act of professional misconduct as provided by subsection 51(1)(b.0.1) of the *Health Professions Procedural Code of the Nursing Act, 1991*, S.O. 1991, c. 32, in that you failed to cooperate with the Quality Assurance Committee or any assessor appointed by that committee, and in particular, you failed to participate after being selected by the Quality Assurance Committee for practice assessment in or around 2016-2017.
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 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, in that you failed to participate after being selected by the Quality Assurance Committee for practice assessment in or around 2016-2017.

### **Member's Plea**

Given that the Member was not present nor represented, she was deemed to have denied the allegations in the Notice of Hearing. The hearing proceeded on the basis that the College bore the onus of proving the allegations in the Notice of Hearing against the Member.

### **Overview**

The Member is a Registered Practical Nurse who was randomly selected to participate in the 2015 Practice Assessment process as part of the College's Quality Assurance Program. In February 2015 the Member was notified of the random selection and was provided with a letter outlining the process. At the time of the hearing the Member had not completed any components of the Practice Assessment despite multiple reminders and notifications from the College for not only 2015 but also for the 2017 practice assessment cycle. The Panel heard from one witness and received thirteen exhibits to consider.

The Panel found that the Member committed professional misconduct by failing to participate in the practice assessment after being selected by the Quality Assurance Committee in and around 2016 and 2017 and by engaging in conduct that would be regarded by members of the profession to be dishonourable and unprofessional.

## **The Evidence**

The sole witness for the College was [the Witness] an Advanced Practice Consultant of the Quality Assurance Program at the College (the “witness”). The witness identified herself as a Registered Nurse since 1991 who had been on the Quality Assurance team since 2013. The witness informed the Panel that all College members, on an annual basis, are to do a self-assessment and reflection to identify areas of improvement and develop a learning plan to enhance their knowledge. The witness went on to explain that every year members are randomly selected to submit their learning plan to the Quality Assurance Program. The witness reported her responsibilities as an Advanced Practice Consultant are to assist, guide and support members who have been selected to submit their learning plan to the Quality Assurance Program.

The witness identified the College’s Register Report that documented the Member has been registered with the College from June 27, 1986 until the present day with a short suspension in 2009 for non-payment.

The witness explained that the Quality Assurance Committee is a statutory committee of the College and its purpose is to monitor member participation and compliance with the Quality Assurance Program.

The witness took the Panel to page 5 of the *Professional Standards, Revised 2002* which documents the expectations for all members in continuing competence. It is expected that all members participate annually in the College’s Quality Assurance Program, perform a self-assessment, seek peer input, develop a learning plan, implement that learning plan, evaluate the outcome of the plan and participate in Practice Assessment when selected. The witness explained that members are randomly selected and are notified by a formal letter from the College that outlines how to prepare, expected timelines and a teleconference phone number they can call for assistance.

The witness identified a letter sent to the Member on February 23, 2015 from the College. The letter advised the Member that she had been selected to participate in the 2015 Practice Assessment process. It outlined the resources available, contacts for support if needed and that it needed to be completed by the deadline date of March 29, 2015.

The witness identified a letter sent to the Member on April 16, 2015 from the College as a follow-up to the previous letter. The follow-up letter documented that the Member did not meet the deadline of March 29, 2015 and provided the Member with another chance to submit the 2015 Learning Plan by May 10, 2015. The College also informed the Member in this letter that if the request was not completed by the deadline the committee may report the Member to the Inquiries, Complaints and Reports Committee (“ICRC”) for the lack of cooperation with the Quality Assurance Program. The powers of the Quality Assurance Committee were also outlined.

The witness was asked if the Member had completed the Quality Assurance Program at that time. The witness responded that the Member had not.

The witness identified a letter sent to the Member on May 22, 2015 from the College, advising the Member that even though two letters had been sent to her requesting participation with the Quality Assurance Program, the Member chose not to participate. The letter went on to document that the Quality Assurance Committee met on May 19, 2015 to review the Member's lack of cooperation and decided to disclose the Member's name and allegations to the ICRC. The letter also stated that the Member still had the opportunity to make a written submission to the Quality Assurance Committee's decision within 14 days from the date of the letter. Contact information was available on the letter in the event the Member wanted to contact the College with any questions.

The witness was asked by College Counsel if the Member ever completed the 2015 Quality Assurance Program. The witness responded that the Member had not done so.

The witness then identified a letter from the College to the Member dated December 15, 2016. The letter advised the Member that having recognised that she did not fulfill the previous request to participate in the Quality Assurance Program the Quality Assurance Committee was directing the Member to participate in the 2017 Practice Assessment. The Member was informed that a letter would be coming in the mail by February 2017 with instructions as well as the contact information for the Advanced Practice Consultant if she had any questions.

The witness identified a letter sent to the Member from the College dated February 13, 2017 documenting that since the Member's matter before the ICRC had concluded, it was expected and mandatory that the Member participate in the 2017 Quality Assurance Program with the expectation that all documents be submitted by March 23, 2017. The Member was also directed to take the objective multiple-choice tests along with submitting her 2017 Learning Plan. This letter documented teleconference information to answer questions of the Member, as well as contact information if assistance was needed.

College Counsel inquired with the witness as to where the address on the letters to the Member came from. The witness responded that all members update their addresses within the College system, and it is from this system that letters are generated.

The witness was asked by College Counsel if the Member made the deadline of March 23, 2017 to complete the Quality Assurance Program. The witness responded that the Member had not.

The witness identified a letter from the College dated April 21, 2017, outlining all of the correspondence that had taken place between the Member and the College that started with the 2015 request for participation in the 2015 Practice Assessment. The letter documented that the Quality Assurance Committee met on April 20, 2017 to review the Member's history with the Quality Assurance Program and identified serious concern about the Member's failure to meet mandatory Quality Assurance obligations since 2015, especially with the Member continuing to practice. The letter outlined that the Member may have committed professional misconduct and the matter would

be referred to the ICRC for a second time. The Member was given 14 days to provide a written submission to the Quality Assurance Committee.

The witness was asked by College Counsel if the Member ever contacted the witness or completed the 2017 Practice Assessment. In response to both questions, the witness stated that the Member had not.

### **Final Submissions**

College Counsel submitted that the witness's evidence and the exhibits clearly demonstrated the Member's lack of regard for participating in the Quality Assurance Program, which is a professional obligation. College Counsel stated that the Member's repeated failure to comply with the Quality Assurance Committee contravenes section 82(1)(e) of the *Code* and constitutes professional misconduct as defined in subsection 51(1)(b.0.1). College Counsel submitted that completing the Quality Assurance Program is a mandatory requirement and that the persistent failure of the Member to do so, despite repeated opportunities, shows a disregard for her professional obligations. The Member failed to complete the 2015 Practice Assessment cycle and was directed to complete the 2017 Practice Assessment cycle, but never completed either nor reached out for support that was provided by the College to assist with these activities. The Member's lack of response fell below the professional standards and would be considered unprofessional and dishonourable.

### **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. With respect to allegation 2, the Panel finds the Member engaged in conduct that would reasonably be regarded by members of the profession to be dishonourable and unprofessional.

### **Reasons for Decision**

The Panel found the witness to be credible. She has been with the Quality Assurance team at the College since 2013. The witness' evidence was clear and concise. She provided written documents to confirm the times that the College tried to communicate with the Member.

The documentary evidence, as well as the evidence of the witness, show that the Member was randomly selected for participation in the 2015 Quality Assurance Program and despite multiple opportunities, she chose not to participate. The Member was given a second chance in 2017 to complete the Quality Assurance Program and she still did not take part nor reach out to the Advanced Practice Consultant to request assistance even after receiving multiple notifications with direct contact information.

The Member's repeated failure to comply with the Quality Assurance Committee contravenes section 82(1)(e) of the *Code* and constitutes professional misconduct as defined in subsection 51(1)(b.0.1) of the *Code*.

Completing the Quality Assurance Program is a mandatory requirement and part of every members' professional obligations. The Member's lack of response to a Statutory Committee of the College shows a total disregard for her professional obligations and as a result her behaviour is both unprofessional and dishonourable. It demonstrates a serious and persistent disregard for her professional obligations and she knew or ought to have known that her conduct was unacceptable and fell well below the standards of a professional.

### **Penalty**

#### **Penalty Submissions**

College Counsel submitted that, in view of the Panel's findings of professional misconduct, it should 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 four 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 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 two meetings with a Regulatory Expert (the "Expert"), at her own expense and within six months from the date that this Order becomes final. 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, and
      3. 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*, and
2. *Professional Standards*;

iv. 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;

v. 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;

vi. If the Member does not comply with any 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) The Member shall participate in CNO's next available Quality Assurance program cycle, within 24 months from the date this Order becomes final.

4. All documents delivered by the Member to CNO, the Expert or the employer(s) will be delivered by verifiable method, the proof of which the Member will retain.

College Counsel submitted that:

The aggravating factors in this case were:

- The Member had multiple communications from the College asking her to complete the 2015 and 2017 Quality Assurance Program, which she ignored;
- The Member did not complete either the 2015 or 2017 Quality Assurance Program;

- The Member ignored an order from a statutory committee of the College;
- The Member ignored multiple letters from her Regulator, the College;
- The Member did not fulfil her professional obligations for self-regulation;
- The Member continues to practice without fulfilling her professional responsibilities;
- The Member did not participate in the hearing.

Due to the Member not attending the hearing or being represented the only mitigating factor that was identified was:

- The Member had no previous findings before the Discipline committee.

College Counsel submitted that the Member's disregard for the Quality Assurance Program displays a lack of governability.

The proposed penalty provides for specific and general deterrence through:

- The 4-month suspension;
- The oral reprimand.

The proposed penalty provides for remediation and rehabilitation through:

- The terms, conditions and limitations placed on the Member's certificate of registration, including two meetings with a Regulatory Expert which will allow the Member to reflect on her professional standards and requirements. Completing her Quality Assurance Program will also be part of the remediation and rehabilitation for this Member.

Overall, the public is protected because the proposed penalty sends a strong signal to the public and other members that there are serious consequences for failing to complete the Quality Assurance obligations.

College Counsel provided the Decisions and Reasons from two cases, as well as two recent Joint Submissions on Order to demonstrate that the proposed penalty fell within the range of similar cases from this Discipline Committee.

*CNO v. Desante* (Discipline Committee, 2016). In this case, the member committed an act of professional misconduct as she failed to cooperate with the Quality Assurance Committee in 2013 when she did not take part in the Quality Assurance Program after being selected by the Quality Assurance Committee. The member was not in attendance at the hearing nor was she represented. The penalty was an oral reprimand, a three month suspension, 2 meetings with a Nursing Expert and a requirement to participate in the College's 2017 Quality Assurance Program.



*CNO v. Greenshields* (Discipline Committee, 2014). In this case, the member committed an act of professional misconduct as she failed to cooperate with the Quality Assurance Committee in 2011 when she did not participate in the Quality Assurance Program after being selected by the Quality Assurance Committee. The member was not in attendance at the hearing nor was she represented. The penalty was an oral reprimand, a four month suspension, 1 meeting with a Nursing Expert and a requirement to participate in the College's 2015 Quality Assurance Program.

*CNO v. Keating* (Discipline Committee, October 2020). In this case, the member committed an act of professional misconduct as she failed to cooperate with the Quality Assurance Committee in 2017 when she did not participate in the Quality Assurance Program after being selected by the Quality Assurance Committee. This matter proceeded by way of an agreement. The panel ordered an oral reprimand, a two month suspension, 2 meetings with a Regulatory Expert and a requirement to participate in the College's next Quality Assurance Program.

*CNO v. Rubinas* (Discipline Committee, October 2020). In this case, the member committed an act of professional misconduct by failing to cooperate with the Quality Assurance Committee in 2019 when she did not participate in the Quality Assurance Program after being selected by the Quality Assurance Committee. This matter proceeded by way of an agreement. The panel ordered an oral reprimand, a two month suspension, 2 meetings with a Regulatory Expert and a requirement to participate in the College's next Quality Assurance Program.

### **Penalty Decision**

The Panel accepts the College's Submission on 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 four 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 a practicing 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 her own expense and within six months from the date that this Order becomes final. 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, and
      3. 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*, and
      2. *Professional Standards*;
    - iv. 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;
    - v. 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;
    - vi. If the Member does not comply with any 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) The Member shall participate in CNO's next available Quality Assurance program cycle, within 24 months from the date this Order becomes final.
4. All documents delivered by the Member to 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 finds that the repeated disregard for the Quality Assurance Program is a serious concern and demonstrates a degree of ungovernability. The Member ignored multiple communications from the College that governs her, which in turn shows a lack of respect for the profession. The Panel has confidence that the four month suspension is in line with previous similar cases and provides for specific and general deterrence. The terms, conditions and limitations allow for remediation and rehabilitation and by requiring the Member to engage in the Quality Assurance Program, will also protect the public.

I, Dawn Cutler, 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.