

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

PANEL:

Terry Holland, RPN	Chairperson
Margarita Cleghorne, RPN	Member
Sylvia Douglas	Public Member
Deborah Graystone, NP	Member
Devinder Walia	Public Member

BETWEEN:

COLLEGE OF NURSES OF ONTARIO)	<u>JEAN-CLAUDE KILLEY</u> for
)	College of Nurses of Ontario
- and -)	
)	
JULIE MARILYN FRANKLIN)	<u>NO REPRESENTATION</u> for
Registration No. HC02002)	Julie Marilyn Franklin
)	
)	<u>CHRISTOPHER WIRTH</u>
)	Independent Legal Counsel
)	
)	Heard: February 7, 2020

DECISION AND REASONS

This matter came on for a hearing before a panel of the Discipline Committee (the “Panel”) on February 7, 2020 at the College of Nurses of Ontario (the “College”) at Toronto.

At the commencement of the hearing, Julie Marilyn Franklin (the “Member”) was not present. College Counsel advised the Panel that the Member had asked College Counsel to relay to the Panel that she did not fail to attend out of a lack of respect, but that she was emotionally not capable of attending. The Member had provided authority for College Counsel to proceed in her absence and to convey to the Panel that her agreement to the allegations was voluntary. College Counsel provided the Panel with an affidavit affirmed by the Member on February 4, 2020 in which she acknowledged that she was aware that the hearing was taking place on February 7, 2020. The Panel decided to proceed in the Member’s absence.

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 banning the disclosure, including the publication and broadcasting of the name of the patient or any information that could disclose the patient's identity referred to in the Discipline Hearing of the Member due to the privacy interests of the patient.

The Panel considered the submissions of the College and decided that there be an order prohibiting disclosure including a ban of the publication and broadcasting of the name of the patient or any information that could disclose the patient's identity referred to in the Discipline Hearing of the Member.

The Allegations

The allegations against the Member as stated in the Notice of Hearing dated February 6, 2020 are as follows:

IT IS ALLEGED THAT:

1. You have committed an act of professional misconduct as provided by subsection 51(1)(b.1) of the *Health Professions Procedural Code* of the *Nursing Act, 1991*, S.O. 1991, c. 32, as amended, in that, while practising as a Registered Practical Nurse at [the Hospital] in London, Ontario, you sexually abused a patient, and in particular:
 - (a) beginning in about the fall of 2017, you maintained a personal relationship that included sexual intercourse or other forms of physical sexual relations between you and [the Patient], and/or touching of a sexual nature of [the Patient] by you, and/or behaviour or remarks of a sexual nature by you towards [the Patient], that included but was not necessarily limited to kissing;
2. You have committed an act of professional misconduct as provided by subsection 51(1)(c) of the *Health Professions Procedural Code* of the *Nursing Act, 1991*, S.O. 1991, c. 32, as amended, and defined in subsection 1(1) of *Ontario Regulation 799/93*, in that, while practising as a Registered Practical Nurse at [the Hospital] in London, Ontario, you contravened a standard of practice of the profession or failed to meet the standards of practice of the profession, and in particular:
 - (a) beginning in about the fall of 2017, you maintained a personal relationship and/or engaged in personal, non-therapeutic contact and/or activity with [the Patient] while your therapeutic relationship with [the Patient] was ongoing, that included but was not necessarily limited to:
 - (i) driving the [patient] in your vehicle;
 - (ii) buying the [patient] a phone;
 - (iii) staying overnight with the [patient] in the same hotel room in Niagara Falls; and

- (iv) allowing the [patient] to stay overnight at your home;
3. You have committed an act of professional misconduct as provided by subsection 51(1)(c) of the *Health Professions Procedural Code* of the *Nursing Act, 1991*, S.O. 1991, c. 32, as amended, and defined in subsection 1(37) of *Ontario Regulation 799/93*, in that, while practising as a Registered Practical Nurse at [the Hospital] in London, Ontario, 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, and in particular:
- (a) beginning in about the fall of 2017, you maintained a personal relationship that included sexual intercourse or other forms of physical sexual relations between you and [the Patient], and/or touching of a sexual nature of [the Patient] by you, and/or behaviour or remarks of a sexual nature by you towards [the Patient], that included but was not necessarily limited to kissing;
 - (b) beginning in about the fall of 2017, you maintained a personal relationship with [the Patient] and/or engaged in personal, non-therapeutic contact and/or activity with [the Patient] while your therapeutic relationship with [the Patient] was ongoing, that included but was not necessarily limited to:
 - (i) driving the [patient] in your vehicle;
 - (ii) buying the [patient] a phone;
 - (iii) staying overnight with the [patient] in the same hotel room in Niagara Falls; and
 - (iv) allowing the [patient] to stay overnight at your home.

Member's Plea

In her February 4, 2020 affidavit, the Member admitted the allegations set out in paragraphs #1(a), #2(a)(i), (ii), (iii) and (iv) and #3(a), (b)(i), (ii), (iii) and (iv) in the Notice of Hearing. The Member's affidavit, confirmed that her admissions were voluntary, informed and unequivocal and included a written plea inquiry signed by the Member as an appendix. The Member's affidavit also acknowledged that she had obtained independent legal advice from Renee A. Kopp of Jones Litigation PC prior to affirming it. The Panel was satisfied that the Member's admissions were voluntary, informed and unequivocal.

Agreed Statement of Facts

College Counsel advised the Panel that agreement had been reached on the facts and introduced an Agreed Statement of Facts signed by the Member, which in her affidavit of February 4, 2020, she admitted to be true. The Agreed Statement of Facts reads, unedited, as follows:

THE MEMBER

1. Julie Marilyn Franklin (the “Member”) has been a registered member of the College of Nurses of Ontario (“CNO”) as a Registered Practical Nurse since January 1, 1983. The Member resigned her certificate of registration on August 13, 2018.
2. The Member was employed at [] in London, Ontario (“the Hospital”) from March 10, 1986 to March 1, 2018, when her employment was terminated as a result of the incidents below.

THE FACILITY

3. The Member worked at the Hospital as a full-time staff nurse on an assertive community treatment team (the “Program”).
4. The Program provides specialized community-based services to individuals living with mental illness.

THE PATIENT

5. The Patient was admitted to the program in 2015.

INCIDENTS RELEVANT TO ALLEGATIONS OF PROFESSIONAL MISCONDUCT

6. The Member was assigned to provide care to the Patient.
7. In 2017, the Member engaged in a personal relationship with the Patient while the therapeutic nurse-patient relationship was ongoing.
8. During the personal relationship:
 - The Member drove the Patient in her car on personal matters;
 - The Patient attended the Member’s home and stayed overnight;
 - The Member and the Patient kissed;
 - The Member and the Patient took photograph(s) together;
 - The Member and the Patient exchanged gifts; and
 - The Member purchased a cell phone for the Patient which was used for personal communications.
9. In addition, the Member and the Patient travelled to Niagara Falls together where they stayed in the same room for one night.

10. A friend of the Member reported the personal relationship to the Hospital and the Member was terminated.
11. If the Member were to testify, she would state that her personal relationship with the Patient developed in the context of her husband's death and personal struggles that followed.

CNO STANDARDS

12. CNO's *Therapeutic Nurse-Client Relationship* standard (the "TNCR Standard") places the responsibility for establishing and maintaining the limits and boundaries in the therapeutic nurse-client relationship on the nurse. The TNCR Standard provides that:

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

13. The TNCR Standard specifies that a nurse may cross a boundary in a number of ways, such as:
 - self-disclosure that does not meet a specified therapeutic client need;
 - failing to ensure that the nurse-client relationship promotes the well-being of the client and not the needs of the nurse;
 - giving gifts to the client or accepting gifts from the client; and
 - entering into a personal or romantic relationship with a client.
14. The Member acknowledges and admits that her personal relationship with the Patient breached the boundaries of the therapeutic nurse-client relationship and that the conduct constitutes sexual abuse of a patient as defined in paragraph (c) of subsection 1(3) of the *Health Professions Procedural Code* of the *Regulated Health Professions Act, 1991*.

ADMISSIONS OF PROFESSIONAL MISCONDUCT

15. The Member admits that she committed the acts of professional misconduct as alleged in paragraph 1 (a) of the Notice of Hearing in that she sexually abused the Patient, and in particular she and the Patient kissed while a therapeutic nurse-patient relationship existed, constituting behaviour of a sexual nature.
16. The Member admits that she committed the acts of professional misconduct as alleged in paragraph 2 (a)(i) to (iv) of the Notice of Hearing in that she contravened a standard of practice of the profession or failed to meet the standards of the profession, as described in paragraphs 6 to 14 above.

17. The Member admits that she committed the acts of professional misconduct as alleged in paragraph 3 (a) to (b) of the Notice of Hearing, and in particular her conduct was disgraceful, dishonourable and unprofessional, as described in paragraphs 6 to 14 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 by maintaining a personal and sexual relationship, considered sexual abuse, with a Patient as alleged in paragraph #1(a) of the Notice of Hearing and failed to meet the standards of practice as alleged in paragraphs #2(a)(i) to (iv) of the Notice of Hearing. As to Allegation #3(a) and (b)(i), (ii), (iii) and (iv), 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(a) in the Notice of Hearing is supported by paragraphs 6 to 11 and 15 in the Agreed Statement of Facts. The Panel finds that the Member committed an act of professional misconduct as alleged by sexually abusing a patient when she maintained a personal relationship with a patient beginning in about the fall of 2017, during which she kissed the patient while a therapeutic nurse-patient relationship existed.

Allegation #2(a) in the Notice of Hearing is supported by paragraphs 6 to 14 and 16 in the Agreed Statement of Facts. The Panel finds that the Member failed to meet the standards of practice of the profession in particular by maintaining a personal relationship and/or engaging in personal, non-therapeutic contact and/or activity with the Patient while the therapeutic relationship with the Patient was ongoing. The non-therapeutic relationship included driving the Patient in the Member's vehicle, buying the Patient a phone, staying overnight with the Patient in the same hotel room in Niagara Falls and allowing the Patient to stay overnight at her home.

Allegations #3(a) and (b) in the Notice of Hearing are supported by paragraphs 6 to 14 and 17 in the Agreed Statement of Facts. The Panel finds that the Member's conduct was disgraceful, dishonourable and unprofessional as it demonstrated a serious and persistent disregard for her professional obligations, demonstrated an element of dishonesty and deceit and casts serious doubt on the Member's moral fitness and inherent ability to discharge the higher obligations the public expects professionals to meet. Sexual abuse of a Patient is a serious breach of the nurse client relationship and will not be tolerated by the College.

Penalty

College Counsel advised the Panel that a Joint Submission on Order had been agreed upon and is included in the Member's affidavit of February 4, 2020. 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 three months of the date that this Order becomes final.
2. Directing the Executive Director to immediately revoke the Member's certificate of registration.

Penalty Submissions

Submissions were made by College Counsel who stated that the fact the Member had resigned her certificate of registration to practi[c]e should not be an impediment to making the order of revocation. The seriousness of the conduct and the profound breach of the nurse-patient relationship with the development of a personal relationship demonstrates an exploitation of the power imbalance. College Counsel submitted that the relationship was not merely personal, but also a romantic relationship involving behaviour of a sexual nature amounting to sexual abuse. College Counsel submitted that this is the most serious transgression of the nurse-patient relationship which personally benefits the Member and even though the provision which requires mandatory revocation has not been triggered, it still justifies removal from practice.

College Counsel submitted that the goal of penalty is not to punish, but to maintain a high standard of practice of the profession. The proposed penalty provides for general and specific deterrence through revocation of the Member's certificate of registration and an oral reprimand.

Overall, the public is protected because the Member will no longer practice nursing.

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. Pankhurst (Discipline Committee, 2009). The similarities with this case are that it involved an intimate sexual and personal relationship. But for the admission to sexual intercourse, the other aspects related to the breach of the nurse-patient relationship are similar. The penalties were similar with the oral reprimand and the revocation of the member's certificate of registration.

CNO v. Rodgers (Discipline Committee, 2018). The similarities with this case included the breach of the nurse-patient relationship involving a personal and sexual relationship. This case involved "sexting", intensely over a period of time and included conduct requiring mandatory revocation. The member in this case admitted to his conduct. The penalty was similar including an oral reprimand and revocation of the member's certificate of registration.

Penalty Decision

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

1. The Member is required to appear before the Panel to be reprimanded within three months of the date that this Order becomes final.
2. The Executive Director is directed to immediately revoke the Member's certificate of registration.

Reasons for Penalty Decision

The Panel understands that the penalty ordered should protect the public and enhance public confidence in the ability of the College to regulate nurses. This is achieved through a penalty that addresses specific deterrence, general deterrence and, where appropriate, rehabilitation and remediation. The Panel also considered the penalty in light of the principle that joint submissions should not be interfered with lightly.

The Panel concluded that the proposed penalty is reasonable and in the public interest. The Member has co-operated with the College and, by agreeing to the facts and the proposed penalty, has accepted responsibility. The Panel finds that the penalty satisfies the principles of specific and general deterrence and public protection. The public is protected with the revocation of the Member's certificate of registration and therefore will no longer be a risk to the public. Specific and general deterrence is attained through an oral reprimand and revocation of the Member's certificate of registration. This sends a message to the Member and the profession at large that a sexual and personal relationship between a member and a patient will not be tolerated. As the Member's certificate of registration is revoked, the penalty need not address rehabilitation and remediation.

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

I, Terry Holland, 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.