

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

<b>PANEL:</b>	Dawn Cutler, RN	Chairperson
	Catherine Egerton,	Public Member
	Carly Gilchrist, RPN	Member
	Michael Schroder, NP	Member
	Devinder Walia	Public Member

**BETWEEN:**

COLLEGE OF NURSES OF ONTARIO	)	<u>JESSICA LATIMER</u> for
	)	College of Nurses of Ontario
- and -	)	
	)	
ROSEANNE TOTH	)	<u>NO REPRESENTATION</u> for
Registration No. 0428995	)	Roseanne Toth
	)	
	)	
	)	<u>CHRISTOPHER WIRTH</u>
	)	Independent Legal Counsel
	)	
	)	
	)	Heard: September 27, 2019

**DECISION AND REASONS**

This matter came on for hearing before a panel of the Discipline Committee (the “Panel”) on September 27, 2019 at the College of Nurses of Ontario (the “College”) at Toronto.

As Roseanne Toth (the “Member”) was not present, the hearing recessed for fifteen minutes to allow time for the Member to appear. Upon reconvening the Panel noted that the Member was not in attendance. College Counsel advised the Panel that the Member had indicated that she would not be present during the hearing.

College Counsel provided the Panel with evidence that the Member had been sent the Notice of Hearing on August 9, 2019. An Affidavit from Prosecutions Clerk [ ] was introduced into evidence

indicating that the Notice of Hearing was sent to the Member's last known address in the College's records. The Panel was satisfied that the Member had received adequate notice of the hearing and therefore proceeded with the hearing in the Member's absence.

### **The Allegations**

College Counsel advised the Panel that the College was requesting to withdraw the allegations set out in paragraphs 1(c), 3(a)(iii), 4(a)(iii), and 5(b)(iii) of the Notice of Hearing dated August 7, 2019. Those allegations related to committing an act of professional misconduct under subsection 51(1)(a) and 51(1)(c) of the *Health Professions Procedural Code of the Nursing Act, 1991*, S.O. 1991, c. 32. The Panel granted this request. The remaining allegations set out in the Notice of Hearing are as follows:

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

1. You have committed an act of professional misconduct as provided by subsection 51(1)(a) of the *Health Professions Procedural Code of the Nursing Act, 1991*, S.O. 1991, c. 32, as amended, in that, on April 14, 2010, you were found guilty of offences relevant to your suitability to practise, and in particular, in the Broward County Court, in the State of Florida, you were found guilty of the following offences:
  - a. disorderly conduct, contrary to section 877.03(1) of the *Florida Statutes*;
  - b. resist/obstruct an officer, contrary to section 843.02 of the *Florida Statutes*; and/or
  - c. [withdrawn].
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(18) of *Ontario Regulation 799/93*, in that, in March 2016, you contravened a term, condition or limitation of your certificate of registration, imposed pursuant to s. 1.5(1)1.(ii) of *Ontario Regulation 275/94 of the Nursing Act, 1991*, in that you failed to report charges arising in any jurisdiction relating to any offence to the Executive Director of the College of Nurses (the "College"), as follows:
  - a. On March 31, 2016, in Broward County, in the State of Florida, you were charged with the following offences, which you did not report:
    - i. driving under the influence of alcohol or chemical substance, contrary to Section 316.193(1) of the *Florida Statutes*; and
    - ii. driving under the influence of alcohol or chemical substance while driving with a blood alcohol level above the legal limit, or while driving with a person under 18 years of age in the vehicle, contrary to Section 316.193(4) of the *Florida Statutes*.
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(18) of *Ontario Regulation 799/93*, in that, between 2010 and 2017, you contravened a term, condition or limitation of your certificate of registration, imposed pursuant to s. 1.5(1)1.i. of *Ontario Regulation 275/94* of the *Nursing Act, 1991*, in that you failed to report findings of guilt arising in any jurisdiction relating to any offence to the Executive Director of the College, as follows:

- a. On April 14, 2010, in the Broward County Court, in the State of Florida, you were found guilty of the following offences, which you did not report:
    - i. disorderly conduct, contrary to section 877.03(1) of the *Florida Statutes*;
    - ii. resist/obstruct an officer, contrary to section 843.02 of the *Florida Statutes*; and
    - iii. [withdrawn]; and/or
  - b. On June 20, 2017, in the Broward County Court, in the State of Florida, you were found guilty of the following offence, which you did not report:
    - i. careless driving contrary to Section 316.1925(1) of the *Florida Statutes*.
4. 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(19) of *Ontario Regulation 799/93*, in that, between 2010 and 2017, you contravened a provision of the *Nursing Act, 1991*, the *Regulated Health Professions Act, 1991*, or the regulations under either of those Acts, and in particular, s. 85.6.1 of the *Health Professions Procedural Code*, in that you failed to report findings of guilt of an offence to the Registrar (being the Executive Director) of the College, as follows:
- a. On April 14, 2010, in the Broward County Court, in the State of Florida, you were found guilty of the following offences, which you did not report:
    - i. disorderly conduct, contrary to section 877.03(1) of the *Florida Statutes*;
    - ii. resist/obstruct an officer, contrary to section 843.02 of the *Florida Statutes*; and
    - iii. [withdrawn]; and/or
  - b. On June 20, 2017, in the Broward County Court, in the State of Florida, you were found guilty of the following offence, which you did not report:
    - i. careless driving contrary to Section 316.1925(1) of the *Florida Statutes*.
5. 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, between 2010 and 2017, you engaged in conduct or performed an act, relevant to the practice of

nursing, that, having regard to all the circumstances, would reasonably be regarded by members of the profession as disgraceful, dishonourable or unprofessional, and in particular, you failed to report charges and/or findings of guilt to the Executive Director of the College, as follows:

- a. On March 31, 2016, in Broward County, in the State of Florida, you were charged with the following offences, which you did not report:
  - i. driving under the influence of alcohol or chemical substance, contrary to Section 316.193(1) of the *Florida Statutes*; and
  - ii. driving under the influence of alcohol or chemical substance while driving with a blood alcohol level above the legal limit, or while driving with a person under 18 years of age in the vehicle, contrary to Section 316.193(4) of the *Florida Statutes*; and/or
- b. On April 14, 2010, in the Broward County Court, in the State of Florida, you were found guilty of the following offences, which you did not report:
  - i. disorderly conduct, contrary to section 877.03(1) of the *Florida Statutes*;
  - ii. resist/obstruct an officer, contrary to section 843.02 of the *Florida Statutes*; and
  - iii. [withdrawn]; and/or
- c. On June 20, 2017, in the Broward County Court, in the State of Florida, you were found guilty of the following offence, which you did not report:
  - i. careless driving contrary to Section 316.1925(1) of the *Florida Statutes*.

### **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 has been registered with the College since July 21, 2000, initially as a Registered Practical Nurse, then in 2004 as a Registered Nurse. The Member was licenced to practice nursing in Ontario, Canada and New York, United States. The Member's conduct in question is related to her failure to report criminal charges and finding of guilt to the College. The criminal charges and findings of guilt occurred during three separate periods of time.

1. On April 14, 2010, the Member was charged and found guilty of disorderly conduct, contrary to section 877.03(1) of the *Florida Statutes* and resisting/obstructing an officer, contrary to section 843.02 of the *Florida Statutes*. The Member was also charged and found

guilty of failing to report an accident, contrary to section 316.062(2) of the *Florida Statutes* but as noted above, the College withdrew the allegations with respect to this charge and finding of guilt.

2. On March 31, 2016 in Broward County (state of Florida) the Member was charged with driving under the influence of alcohol or chemical substance, contrary to Section 316.193(1) of the *Florida Statutes*; and driving under the influence of alcohol or chemical substance while driving with a blood alcohol level above the legal limit, or while driving with a person under 18 years of age in the vehicle, contrary to Section 316.193(4) of the *Florida Statutes*.
3. On June 20, 2017, in the Broward County Court, in the State of Florida, the Member was found guilty of careless driving contrary to Section 316.1925(1) of the *Florida Statutes*.

The issues are as follows:

- Did the Member commit professional misconduct by being found guilty of offences relevant to her suitability to practise, by contravening a term, condition and limitation on her Certification of Registration, by failing to report those charges and findings of guilt to the College, and by contravening s. 85.6.1 of the *Health Professions Procedural Code* (the “Code”) by failing to report findings of guilt of an offence to the Registrar of the College?
- Did the Member commit professional misconduct by engaging in conduct that would be considered by members of the profession to be disgraceful, dishonourable and/or unprofessional by failing to report charges and/findings of guilt to the Executive Director of the College?

The Panel heard evidence from one witness and received fourteen exhibits to consider. The Panel found the Member committed professional misconduct by being found guilty of offences relevant to her suitability to practise, by failing to report those charges and findings of guilt and by engaging in conduct that would be regarded by members of the profession to be disgraceful, dishonourable and unprofessional.

### **The Evidence and Legal Authorities**

Evidence was heard from one witness, an employee from the College. College Counsel entered 14 documents as Exhibits, which were compiled in a Book of Documents. College Counsel also provided a Book of Authorities which contained both the Florida and Ontario Statutory Provisions. The Book of Authorities also included a previous Decision and Reasons of the Discipline Committee with respect to the Member.

#### **Witness A**

[Witness A] has been employed with the College for eight years. [Witness A] has worked five years in Professional Practice and three years as a College Investigator. [Witness A] familiarized the Panel with her role as an Investigator and gave a brief job description. [Witness A] reported that once there has been a complaint made against a member she gathers data, documents and evidence, conducts interviews of witness[es], and assesses the reliability of the claims. [Witness A] then

processes her findings and presents the information to the Inquires, Complaints, and Reports Committee. With regard to the Member's case, [Witness A] testified that the College received an anonymous report concerning the Member's failure to report criminal charges and findings of guilt. She testified as to the investigation into these allegations that she conducted and to the documents she obtained from the Florida Courts concerning the Member. [Witness A] confirmed that the Member had been convicted of offences under Florida law and had failed to report these charges and findings of guilt as alleged in the Notice of Hearing.

### **Submissions of College Counsel**

#### Exhibits and Legal Authorities

College Counsel referred to the documents marked as Exhibits and to the Book of Authorities in making submissions.

#### 2010 Criminal Charges and Findings of Guilt (Exhibit #4 and Exhibit #5)

Exhibits #4 and #5 were copies of the Member's charges in 2010, which included Disorderly Conduct, Resisting Arrest without Violence and Failure to Report an Accident. College Counsel reviewed with the Panel a copy of a sealed Complaint Affidavit from Broward County, Florida dated April 14, 2010. College Counsel then reviewed the Findings and Order of the 17<sup>th</sup> Circuit Court in Broward County, State of Florida dated April 14, 2010. A copy of the Case Detail for the State of Florida vs R. Toth was provided to the Panel which included her Charges, Arrest, Disposition and Collection.

#### 2016 Criminal Charges (Exhibit #6 and Exhibit #7)

Exhibits #6 and #7 were copies of the Member's charges in 2016 which included two counts of Driving under the influence. College Counsel reviewed with the Panel a copy of a sealed Complaint Affidavit from Broward County dated March 31, 2016, as well as information for the State of Florida vs. Rose Anne Toth, dated April 22, 2016.

#### 2017 Disposition Order (Exhibit #8)

Exhibit #8 was Findings and Order of the 17<sup>th</sup> Circuit Court in Broward County, State of Florida dated April 14, 2010. A copy of the Case Detail for the State of Florida vs R. Toth was provided which included her Charges, Arrest, Disposition and Collection.

#### Florida Statutes

College Counsel provided and reviewed with the Panel the *Florida Statutes* from the years 2010, 2016, and 2017. In that regard, the *Florida Statutes* provide as follows:

#### 2010 Florida Statutes:

877.03 **Breach of the peace; disorderly conduct** - Whoever commits such acts as are of nature to corrupt the public morals, outrage the sense of public decency, or affect the peace and quiet of persons who may witness them, or engages in brawling or fighting, or engages in such conduct as to constitute a breach of the peace or disorderly conduct, shall be guilty of a misdemeanor of the second degree

843.02 **Resisting officer without violence to his or her person** - Whoever shall resist, obstruct, or oppose any officer.

2016 Florida Statutes:

316.193 (1) **Driving under the influence; penalties** - A person is guilty of the offense of driving under the influence and is subject to punishment as provided in subsection (2) if the person is driving or in actual physical control of a vehicle with in the state and:

(a) The person is under the influence of alcoholic beverages, any chemical substance set forth in se. 877.111, or any substance controlled under chapter 893, when affect to the extent that the person's normal faculties are impaired;

(b) The person has a blood-alcohol level of 0.08 or more grams of alcohol per 100 milliliters of blood; or

(c) The person has a breath-alcohol level of 0.08 or more grams of alcohol per 210 liters of breath.

2017 Florida Statutes

316.1925 **Careless driving** - (1) Any person operating a vehicle upon the streets or highways within the state shall drive the same in a careful and prudent manner, having regard for the width, grade, curves, corners, traffic, and all other attendant circumstances, so as not to endanger the life, limb, or property of any person. Failure to drive in such a manner shall constitute careless driving and a violation of this section.

**Professional Obligations**

College Counsel reviewed with the Panel that every nurse has mandatory reporting obligations and professional responsibilities in regard to Mandatory Reporting. A copy of the College's *Mandatory Reporting Guide: A process guide for employees, facility operators and nurses* was provided to the Panel. Of importance, the Panel noted a nurse must self-report to the College if she or he:

- has been found guilty of any offence in any jurisdiction;
- has a finding of professional negligence and/or malpractice; and
- has been charged with any offence in any jurisdiction.

A copy of the College's Self Reporting form was also provided as an exhibit. The first two questions on this document concern charges and findings of guilt in any jurisdiction. More specifically question 1 asks: Have you been charged with an offence in any jurisdiction? An offence is a breach of law that is prosecuted in a court. This includes any offence in any

jurisdiction. Question 2 asks: Have you been found guilty of an offence? This includes any offence in any jurisdiction, including but not limited to any criminal offence, as well as any offence under federal or provincial statute. You have been found guilty of an offence even if you have been pardoned or received a condition or absolute discharge.

The College's records demonstrated that the Member had not reported any of the charges or findings of guilt detailed above.

### **Final Submissions**

College Counsel submitted that the Panel has sufficient evidence to support findings of professional misconduct as alleged in the Notice of Hearing.

Allegation #1: The Member was found guilty of two criminal offences, from the Broward County Court, that would be relevant to the suitability to practice. These included disorderly conduct and resisting/obstructing an officer. College Counsel referred the Panel to Exhibit #4, the Findings and Order of the 17<sup>th</sup> Circuit Court in Broward County, State of Florida dated April 14, 2010.

According to subsection 51(1)(a) of the *Health Professions Procedural Code of the Nursing Act, 1991*, S.O. 1991, c. 32, a panel shall find that a member has committed an act of professional misconduct if the member has been found guilty of an offence that is relevant to the suitability to practice. Although the Member's criminal conduct is not related to her nursing professional practice, her conduct contradicts the values of the nursing profession. College Counsel referred the Panel to Tabs Q, R and S in the Book of Authorities. Past panels of the Discipline Committee have determined that findings of guilt in a criminal offence is relevant to a member's suitability to practice. When working as a nurse, one holds a certain level of respect and trust of the public. A nurse must always conduct herself in an appropriate manner that, to the public eye, is reflective of the profession. The Member's conduct does not reflect well on the Member, the public and the profession.

Allegation #2: The Member failed to report charges arising in any jurisdiction relating to any offence to the Executive Director. College Counsel referred the Panel to Tab N of the Book of Authorities, highlighting s. 1.5(1)1(ii) of *Ontario Regulation 275/94 of the Nursing Act, 1991*. The Member shall provide to the Executive Director the details of charges arising in any jurisdiction related to any offence. College Counsel then referred the Panel to Exhibits #6 and #7 which are the complaint affidavit of the charges against the Member and information for the State of Florida vs. Rose Anne Toth, dated April 22, 2016. The Member was charged with driving under the influence of alcohol or a chemical substance and driving under the influence of alcohol or a chemical substance with a blood alcohol above the legal limit or while driving with a person under 18 years of age in the vehicle. College Counsel reminded the Panel that [Witness A] testified that the Member failed to report these charges to the College.

Allegation #3: The Member failed to report findings of guilt arising in any jurisdiction. College Counsel reminded the Panel that the criminal offences occurred in two separate time periods from 2010 and 2017 in the State of Florida. College Counsel reminded the Panel of *Ontario Regulation 275/94 of the Nursing Act, 1991* from 2010. During this period of time, a registration requirement for a Certificate of Registration of any class was that the member must not have been found guilty of a criminal offence. According to the *Ontario Regulation 275/94*, s. 5(1)(5) "An applicant must

not currently be the subject of proceedings for professional misconduct, incompetence or incapacity, whether in Ontario or another jurisdiction and whether in relation to the nursing profession or another health profession. Members of the profession are required to report any criminal offence that occurs whether it happens to be in Canada or another country”.

In regard to the Member’s findings of guilt for careless driving. College Counsel referred the Panel to Tab N in the Book of Authorities which reviews *Ontario Regulation 275/94 of the Nursing Act, 1991* from 2017. The Panel was also reminded of Exhibit #8 which is the Court Disposition order for the Member from Broward County for the careless driving charges. College Counsel referred to [Witness A]’s testimony, reminding the Panel that the Member failed to report these charges.

College Counsel discussed the purpose of self-reporting and mandatory reporting. When a Member self-reports it alerts the College that there may be a concern that a nurse is not practicing safely. If one does not self-report, it has the potential to put the public at risk. Public protection is met through self-reporting and mandatory reporting.

Allegation #4: College Counsel reviewed with the Panel s. 85.6.1(1) of the *Health Professions Procedural Code of the Nursing Act, 1991*, S.O. 1991, c. 32. (the “Code”) which clearly states that a member shall file a report in writing with the Registrar if the member has been found guilty of an offence. The report must include the name and location of the court that found the member guilty of the offence. By the Member failing to self-report her findings of guilt the Member contravened the provisions under this Act.

Allegation #5: College Counsel argued that the Member’s conduct in failing to report charges and findings of guilt should be considered disgraceful, dishonourable and unprofessional. The Member ought to have known better. College Counsel referred to the Member’s previous hearing, the Decision and Reasons of which were at Tab S of the Book of Authorities, where the Member stated she was not aware of her professional obligations to report proceedings and findings in another jurisdiction to the College as she was not practicing nursing. The Member further stated it was her responsibility to be aware of the terms, conditions and limitations on her certificate of registration that required such reporting, and that she should have reported both of the proceedings and the findings to the College pursuant to *Ontario Regulation 275/94*. Despite the Member being made aware of her professional obligations in her previous hearing, the Member acted in a deceitful manner by withholding the information related to the charges and findings of guilt from the College. By the Member ignoring her professional obligations, it demonstrates a serious and persistent disregard for her professional obligations.

## **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), 2(a)(i), 2(a)(ii), 3(a)(i), 3(a)(ii), 3(b)(i), 4(a)(i), 4(a)(ii) and 4(b)(i) of the Notice of Hearing. With respect to Allegations 5(a)(i), 5(a)(ii), 5(b)(i), 5(b)(ii) and 5(c)(i), the Panel finds that the Member engaged

in conduct that would reasonably be regarded by members of the profession as disgraceful, dishonourable and unprofessional.

### **Reasons for Decision**

The Panel considered the submissions made by College Counsel, the exhibits and the testimony presented. The Panel is satisfied that the Member was convicted of offences in the State of Florida which were relevant to her suitability to practise. The Member failed to meet her professional obligations to self-report them.

Furthermore, she was charged and convicted of offences in the State of Florida which she did not report to the College and its Registrar/Executive Director in contravention of the terms, conditions and limitations on her certificate of registration and s. 85.6.1 of the *Code*. The Panel considered the relevant regulation from the time of each of the offences, that cited the terms, limitations and conditions in force at the time on a certificate of registration.

The Panel also heard witness testimony that the Member failed to report the charges and findings of guilt to the College and its Registrar/Executive Director.

The evidence supports findings of professional misconduct as alleged in the Notice of Hearing as alleged in Allegations #1(a), #1(b), #2(a)(i), #2(a)(ii), #3(a)(i), #3(a)(ii), #3(b)(i), #4(a)(i), #4(a)(ii) and #4(b)(i).

The Panel, after careful consideration of the evidence, and in the absence of the Member or the Member's testimony or evidence to the contrary, finds that the Member committed acts relevant to the practise of nursing, that, having regard to all the circumstances, would reasonably be regarded by members of the profession as disgraceful, dishonourable and unprofessional as alleged in paragraph #5 of the Notice of Hearing. The Panel finds that the Member's repeated failure to report her criminal charges and findings of guilt to the College is conduct that is particularly deceitful and shows elements of moral failing. The Member ought to have known better. The Member was reminded of her self-reporting obligations in 2017 and acknowledge[d] her responsibility to the same. The Member continued to disregard her obligations casting serious doubt on the Member's moral fitness and inherent ability to discharge the higher obligations that the public expects.

### **Penalty**

#### **Penalty Submissions**

College Counsel submitted that the Panel should make the following order:

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 5 months. This suspension shall take effect from the date the Member obtains an active certificate of registration and shall continue to run without interruption as long as the Member remains in the practising class.

3. Directing the Executive Director to impose the following terms, conditions and limitations on the Member's certificate of registration:
  - a) The Member will attend a minimum of 2 meetings with a Nursing Expert (the "Expert") at her own expense and within 6 months from the date that this Order becomes final. If the Expert determines that a greater number of sessions are required, the Expert will advise the Director of Professional Conduct (the "Director") regarding the total number of sessions that are required and the length of time required to complete the additional sessions, but in any event, all sessions shall be completed within 12 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 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, 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 (where applicable):
      1. *Professional Standards*,
      2. *Code of Conduct*, and
      3. *Mandatory Reporting*;
    - 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 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) For a period of 18 months from the date the Member returns to the practice of nursing, the Member will notify her employers of the decision. To comply, the Member is required to:
- i. Ensure that the Director is notified of the name, address, and telephone number of all employer(s) within 14 days of commencing or resuming employment in any nursing position;
  - ii. Provide her employer(s) with a copy of:
    1. the Panel's Order,
    2. the Notice of Hearing, and
    3. 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 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 proposed order is reasonable, in the public interest and addresses the goals of a penalty, namely, specific and general deterrence, protection of the public and rehabilitation.

With respect to the Member's failure to disclose her criminal charges and convictions, College Counsel submitted that this failure to disclose is serious because of the College's obligation to protect the public.

College Counsel submitted that there were several aggravating factors in this case. The Member's conduct would be considered serious. Her criminal conduct was repeated behavior which occurred over different time periods. The Member acted in a problematic way by not obeying the law and failing to report such criminal charges and findings to the College. College Counsel indicated that the Member had a prior discipline hearing surrounding similar criminal conduct and failing to meet professional obligations on mandatory reporting. College Counsel provided a copy of the Discipline Hearing Decision to the Panel. College Counsel reinforced that the penalty should not be decided on the entirety of a member's previous hearing but College Counsel focused this Panel to paragraph #13 in the Agreed Statement of Facts from that previous hearing which states: "If the Member were to testify, she would state that she had no intention of misleading the College by failing to report... The Member was not aware of her obligation to report proceedings and findings in another jurisdiction to the College. However, the Member now admits that it was her responsibility to be aware of the terms, conditions and limitations on her certificate that required such reporting, and that she should have reported both the proceeding and the finding to the College pursuant to *Ontario Regulation 275/94*."

College Counsel argued that because of the statement in the Agreed Statement of Facts, the Member acted intentionally, repeating her deceit, and the Member should have recognized her professional obligations and duty to report.

College Counsel submitted that the mitigating factor in this case was that the Member is now registered in the Non-Practising Class. This is an important component when deciding penalty. Protection of the public is paramount. If the Member decides to return to practise as a Nurse, the Member would have to reapply and follow the strict registration process. College Counsel also highlighted, that once the Member becomes active again in her practice, the Member would have restrictions on her Certificate of Registration as ordered by this Panel.

General and specific deterrence are provided through the five-month suspension.

The proposed penalty provides for remediation and rehabilitation through the terms and conditions imposed on the Member's Certificate of Registration, as well as the two meetings with the Nursing Expert. As outlined in the proposed order these meetings will primarily focus on professional misconduct, the consequences of misconduct as they relate to the Member, the patient, colleagues and the profession itself.

The public is protected because the Member is required to advise her employer of this decision for a period of 18-months from the date the Member returns to the practice of nursing. This penalty also sends a clear message to the profession about the seriousness of this type of behaviour.

College Counsel submitted that the proposed penalty is consistent with other decisions from other panels of the Discipline Committee but reminded this Panel that there are no perfect parallels.

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

*CNO vs. Phillips* (Discipline Committee, 2007). In this case, the member had been found guilty of numerous criminal offences by the Ontario Court of Justice dating from 1999 to 2005. On the 2002 and 2003 Annual Payment form the member falsely certified that he had not been found guilty of a criminal offence since his initial registration with the College nor did he have any reporting requirements to the College. Due to the nature and seriousness of this member's criminal convictions, the panel accepted College Counsel's recommendation to revoke the member's Certificate of Registration.

*CNO vs. Soudy* (Discipline Committee, 2012). In this case, the member was found to have committed an act of professional misconduct by the New Mexico Board of Nursing in 2002. Between 2002 and 2010, the member pled guilty to and was subsequently convicted of eleven different criminal charges in relation to six separate incidences. The offences included driving under the influence of alcohol, aggravated battery, false imprisonment, uttering death threats and breaching a probation order. The member failed to report various criminal convictions to the College. This case ultimately proceeded by way of an Agreed Statement of Facts and Joint Submission on Order that included an oral reprimand, a suspension for five months and terms, conditions and limitations on the member's Certificate of Registration, which included two sessions with a Nursing Expert.

*CNO vs Toth* (Discipline Committee, 2017). In this case, the member failed to report various criminal convictions from the Ontario Court of Justice to the College. The member also failed to report findings of professional misconduct, incompetency or incapacity from the order of the State of Florida Board of Nursing. This case ultimately proceeded by way of an Agreed Statement of Facts and Joint Submission on Order that included an oral reprimand, a suspension for two months and terms, conditions and limitations on the member's Certificate of Registration which included two sessions with a Nursing Expert and a twelve month employee notification.

### **Penalty Decision**

The Panel makes the following order as to penalty:

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 5 months. This suspension shall take effect from the date the Member obtains an active certificate of registration and shall continue to run without interruption as long as the Member remains in the practising class.
3. The Executive Director is directed to impose the following terms, conditions and limitations on the Member's certificate of registration:
  - a) The Member will attend a minimum of 2 meetings with a Nursing Expert (the "Expert") at her own expense and within 6 months from the date that this Order

becomes final. If the Expert determines that a greater number of sessions are required, the Expert will advise the Director of Professional Conduct (the “Director”) regarding the total number of sessions that are required and the length of time required to complete the additional sessions, but in any event, all sessions shall be completed within 12 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 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, 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 (where applicable):
  1. *Professional Standards*,
  2. *Code of Conduct*, and
  3. *Mandatory Reporting*;
- 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 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) For a period of 18 months from the date the Member returns to the practice of nursing, the Member will notify her employers of the decision. To comply, the Member is required to:
- i. Ensure that the Director is notified of the name, address, and telephone number of all employer(s) within 14 days of commencing or resuming employment in any nursing position;
  - ii. Provide her employer(s) with a copy of:
    - 1. the Panel's Order,
    - 2. the Notice of Hearing, and
    - 3. 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 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 and, where appropriate, rehabilitation and remediation.

Although the Member is currently registered in the Non-Practising class, the Panel agrees that if the Member were to return to practise the proposed penalty satisfies the principles of specific and general deterrence, rehabilitation and remediation, and most importantly public protection.

General and specific deterrence are provided through the oral reprimand and a five-month suspension which would take effect from the date the Member obtains an active certificate. It discourages the Member in the future and sends a message to members of the profession that it is their professional and regulatory requirement to report obligatory components of mandatory reporting.

Rehabilitation and remediation are provided through the terms, conditions and limitations on the Member's Certificate of Registration which include two meetings with the Nursing Expert to review Professional Standards, Code of Conduct and Mandatory Reporting.

The public is protected through an eighteen-month employer notification. The Member is to inform her employer(s) of this decision. This penalty also sends a clear message to the profession about the seriousness of this type of misconduct.

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

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.