

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

**PANEL:**

Grace Fox, NP	Chairperson
Laura Caravaggio, RPN	Member
Renate Davidson	Public Member
Deborah Graystone, NP	Member
Tania Perlin	Public Member

**BETWEEN:**

COLLEGE OF NURSES OF ONTARIO	)	<u>DENISE COONEY</u> for
	)	College of Nurses of Ontario
- and -	)	
	)	
TINA TRUDEL	)	<u>SOPHIA RUDDOCK</u> for
Reg. No. 0431429	)	Tina Trudel
	)	
	)	<u>CHRIS WIRTH</u>
	)	Independent Legal Counsel
	)	
	)	Heard: April 6, 2018

**DECISION AND REASONS**

This matter came on for hearing before a panel of the Discipline Committee (the “Panel”) on April 6, 2018 at the College of Nurses of Ontario (the “College”) at Toronto.

**The Allegations**

The allegations against Tina Trudel (the “Member”) as stated in the Notice of Hearing dated January 19, 2018 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 the *Ontario Regulation 799/93*, in that while working as a Registered Nurse at Sensenbrenner Hospital, in Kapuskasing, Ontario (the “Hospital”), you contravened a standard of practice of the profession or failed to meet the standards of practice of the profession in that you accessed personal health information in

electronic medical records for approximately 63 clients, without consent or other authorization, between 2010 and 2015.

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 Hospital, 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 in that you accessed personal health information in electronic medical records for approximately 63 clients, without consent or other authorization, between 2010 and 2015.

### **Member's Plea**

The Member admitted the allegations set out in paragraphs 1 and 2 in the Notice of Hearing. The Panel received a written plea inquiry which was signed by the Member. The Panel also conducted an oral plea inquiry and was satisfied that the Member's admission were voluntary, informed and unequivocal.

### **Agreed Statement of Facts**

Counsel for the College and 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. Tina Trudel (the "Member") obtained a diploma in nursing from the Northern College of Applied Arts and Technology in 2004.
2. The Member registered with the College of Nurses of Ontario (the "College") as a Registered Nurse ("RN") on September 13, 2004.
3. The Member was employed at Sensenbrenner Hospital (the "Hospital") from October 8, 2010 to January 8, 2016, when her employment was terminated as a result of the incidents below.

### **THE HOSPITAL**

4. The Hospital is located in Kapuskasing, Ontario. It is part of the Health Sciences North network of hospitals.
5. The Member worked as a full-time staff nurse on the Acute Care Unit, which included the Emergency Department and the Intensive Care Unit, on the day and night shift. The Member often filled the role of charge nurse.
6. The Hospital used an electronic health record system called Meditech. Staff at the Hospital had access to Meditech records from other hospital sites in the Health Sciences North network.

## HOSPITAL POLICIES

7. The Hospital's privacy and confidentiality policies, and its Code of Business Conduct and Ethics, adopt the Circle of Care analysis from the Information and Privacy Commission, and indicate that if a staff member is not within a client's circle of care, he or she should not access the client's health record.
8. The policy also notes that if a client requests access to their own records, they should be referred to the Health Records department.
9. On November 8, 2010, the Member signed a Confidentiality Statement in which she agreed that, "[o]nly authorized personnel are expected to review and discuss hospital records when required" and that "confidential information is not to be discussed outside the Hospital." The Member also received orientation on the privacy policies.

## COLLEGE STANDARDS

10. The College issued a Practice Standard titled *Confidentiality and Privacy – Personal Health Information* ("Practice Standard"). It was first published in 2004 and updated in 2009. It largely addresses the *Personal Health Information Protection Act* ("PHIPA").

11. The Practice Standard begins with a general statement about the purpose of practice standards:

Nursing standards are expectations that contribute to public protection. They inform nurses of their accountabilities and the public of what to expect of nurses. Standards apply to all nurses regardless of their role, job description or area of practice.

12. The Practice Standard provides key indicators nurses can use to ensure they are meeting the standard, including:

The nurse meets the standard by:

- seeking information about issues of privacy and confidentiality of personal health information;
- maintaining confidentiality of clients' personal health information with members of the healthcare team, who are also required to maintain confidentiality, including information that is documented or stored electronically;
- maintaining confidentiality after the professional relationship has ended, an obligation that continues indefinitely when the nurse is no longer caring for a client or after a client's death;
- ensuring clients or substitute decision-makers are aware of the general composition of the health care team that has access to confidential information;
- collecting only information that is needed to provide care;

- not discussing client information with colleagues or the client in public places such as elevators, cafeterias and hallways;
- **accessing information for her/his clients only and not accessing information for which there is no professional purpose;** [emphasis added]
- ...
- safeguarding the security of computerized, printed or electronically displayed or stored information against theft, loss, unauthorized access or use, disclosure, copying, modification or disposal;
- not sharing computer passwords; ...

13. The Member acknowledges that she was bound by the College's Practice Standard and that a nurse who breaches those standards and the statutory obligations set out in PHIPA is subject to discipline by the College.

#### **INCIDENTS RELEVANT TO ALLEGATIONS OF PROFESSIONAL MISCONDUCT**

14. [Individual A] is the Member's ex-husband. He is in a common law relationship with [Individual B].
15. The Member and [Individual A] exchanged the following text messages on August 10, 2015 in the morning:

Member: Hey! So bring me to court if u dare, u will loose both kids with something that i have on a member of your household. I have been trying to completely forget it, but your neurosis from last night brought it back.

If u bring me to court, you will loose both kids, and the only visitation you will have with them will be supervised.

When you are ready to be a respectful adult, call me and we can talk. But [Individual A] you will loose. No judge will ever let my kids walk in your house ever again without supervision.

[Individual A]: Kiss my ass

Member: Exactly

Bring on therapists and doctors. I welcome it, but just be ready to say goodbye

...

Member: Just be ready

My kids will never again walk in to your house without supervision

Just remember that

[Individual A]: You have a problem!

Member: :(

No

[Individual A]: Oh u do an many people can back that up

Oh and have you been illegally checking records perhaps? Job loosing actions???

16. As a result of the email exchange between the Member and [Individual A], [Individual B] suspected the Member had accessed her health records from a visit to Smooth Rock Falls Hospital on July 14, 2015, as well as her daughter's health record.
17. [Individual B] reported her concerns to the Smooth Rock Falls Hospital, which triggered the Hospital to conduct an audit of the Member's activity in Meditech from 2010 to 2015.
18. The audit covered accesses by the Member in all hospitals in the Health Sciences North network, including accesses for clients who never attended the Hospital.
19. The audit results concluded that the Member accessed records for at least 63 clients who were not in her circle of care. Many of the clients were the Member's family members, co-workers, neighbours or friends, including [Individual A] and [Individual B]. The Member did not access [Individual B's] daughter's health record.
20. The Member often made multiple accesses to the same client record. Information accessed included ER visits, lab results, x-ray results and mammogram results, which are all personal health information within the meaning of PHIPA.
21. If the Member were to testify, she would say that, at the time she accessed [Individual A] and [Individual B's] health record, she shared custody of her two children with [Individual A] and the children lived with [Individual A] and [Individual B] several days a week. The Member would further testify that she accessed [Individual B] and [Individual A's] health records because of a safety concern in their home, which her son brought to her attention. In any case, the Member acknowledges that her concern for her children's safety does not justify accessing health records for clients outside her circle of care.

## **ADMISSIONS OF PROFESSIONAL MISCONDUCT**

22. The Member admits that her unauthorized accesses to the Client's personal health information set out in paragraphs 14 to 20 above constitutes a breach of the College's standard on *Confidentiality and Privacy – Personal Health Information*.
23. The Member admits that she committed the acts of professional misconduct as alleged in the following paragraphs of the Notice of Hearing:

- 1, in that she contravened a standard of practice of the profession or failed to meet the standards of practice of the profession ; and
- 2, in that she 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 dishonourable and unprofessional.

### **Decision**

The College bears the onus of proving the allegations in accordance with the standard of proof, that being the balance of probabilities based upon clear, cogent and convincing evidence.

Having considered the evidence and the onus and standard of proof, the Panel finds that the Member committed acts of professional misconduct as alleged in paragraphs 1 and 2 of the Notice of Hearing. As to allegation #2, the Panel finds that the Member engaged in conduct that would reasonably be regarded by members of the profession as dishonourable and unprofessional.

### **Reasons for Decision**

The Panel considered the Agreed Statement of Facts and the Member's plea and finds that the evidence contained therein supports findings of professional misconduct as alleged in the Notice of Hearing.

Allegation 1 is supported by:

Paragraphs 7, 8, 9 that cover the Hospital's privacy and confidentiality policies, signed by the Member on November 8, 2010. The Member also received orientation on the privacy policies.

Paragraphs 10, 11, 12, 13 that deal with the College's Practice Standard titled Confidentiality and Privacy – Personal Health Information ("Practice Standard") that was first published in 2004 and updated in 2009. This Practice Standard specifically references nurses' responsibilities for "accessing information for her/his clients only and not accessing information for which there is no professional purpose". The Member acknowledges that she was bound by the College's Practice Standard and that a nurse who breaches those standards and the statutory obligations set out in PHIPA is subject to discipline by the College.

Paragraphs 14, 15, 16, 17, 18, 19, 20 that describe the circumstances that precipitated the breach, and the subsequent audit that was conducted. The audit results concluded that the Member accessed records for at least 63 clients who were not in her circle of care. The information accessed included ER visits, lab results, x-ray results and mammogram results, which are all personal health information within the meaning of PHIPA.

Allegation #2 in the Notice of Hearing is supported by paragraphs 14 to 20 of the Agreed Statement of Facts.

With respect to Allegation # 2, the Panel finds that the Member's conduct in accessing at least 63 client records for which there was no professional purpose and in violation of the College's Practice

Standard, i.e. Confidentiality and Privacy – Personal Health Information (“Practice Standard”) was unprofessional as it demonstrated a serious and persistent disregard for her professional obligations.

The Panel also finds that the Member’s conduct was dishonourable. It demonstrated an element of dishonesty and deceit through the repeated unauthorized access to private records over an extended period of time.

### **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 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 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 Nursing Expert (the “Expert”), at her 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*,
      2. *Confidentiality and Privacy - Personal Health Information*,

- iv. Before the first meeting, the Member reviews *Circle of Care: Sharing Personal Health Information for Health-Care Purposes*, as released by the Information and Privacy Commissioner of Ontario;
  - 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 her 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 her 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 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,
    - 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 were made by College Counsel and the Member's Counsel.

The parties agreed that the mitigating factors in this case were:

The Member has co-operated with the College and taken responsibility for her actions. The Member has no prior history with the College.

The aggravating factors in this case were:

These accesses were not inadvertent but were intentional. The Member accessed a large number of records of clients not in her circle of care often multiple times and in some cases, records in other hospitals for clients not in the system. The Member also tried to make use of the information she attained.

The proposed penalty provides for general deterrence through the four-month suspension, and terms, conditions and limitations. It sends a strong message to the nursing profession that breaches of this Practice Standard will not be tolerated.

The proposed penalty provides for specific deterrence through the oral reprimand, suspension, and terms, conditions and limitations including employer notification.

The proposed penalty provides for remediation and rehabilitation through two meetings with a nursing expert. This will help the Member to reflect on her actions so that they will not be repeated.

Overall, the public is protected because the Member will be required to notify her employer of this decision for a period of 12 months after the suspension ends. The proposed penalty also promotes public confidence in the ability of the nursing profession to regulate its members.

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 Calvano (Discipline Committee, 2015). This case involved unauthorized access to 300 records. The member was given a three-month suspension and similar terms, conditions and limitations on her certificate. The member also received an oral reprimand. This case identified the mounting public concern regarding unauthorized access to client files.

CNO v Oliveira (Discipline Committee, 2015). This case involved multiple unauthorized access of up to 1300 client records. A suspension of five months was ordered, with similar terms and conditions. The member also received an oral reprimand.

CNO v Edgerton (Discipline Committee, 2016). This case involved unauthorized access to 300 records. A suspension of four months was ordered as this misconduct spanned two different categories of violation: privacy breaches and boundary breaches. The terms, conditions and limitations were similar with the exception of the employer notification which was for 18 months. The member also received an oral reprimand.

### **Penalty Decision**

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

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 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 Nursing Expert (the "Expert"), at her 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*,
    - 2. *Confidentiality and Privacy - Personal Health Information*,
  - iv. Before the first meeting, the Member reviews *Circle of Care: Sharing Personal Health Information for Health-Care Purposes*, as released by the Information and Privacy Commissioner of Ontario;
  - 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 her 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 her 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 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,
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.

#### **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 concluded that the proposed penalty is reasonable and in the public interest. The Member has co-operated with the College and, by agreeing to the facts and a proposed penalty, has accepted responsibility. The Panel finds that the penalty satisfies the principles of specific and general deterrence, rehabilitation, remediation, and public protection. The Panel also considered the penalty in light of the principle that joint submissions should not be interfered with lightly.

It is the obligation of every nurse to protect the client's right to privacy and when one disregards this important responsibility, it casts doubt upon and damages the trust the public places in the nursing profession. Members of the profession must have heightened awareness of potential breaches of confidentiality due to changes in technology and the increased accessibility to private information. The penalty is in line with what has been ordered in previous cases.

I, Grace Fox, NP, sign this decision and reasons for the decision as Chairperson of this Discipline Panel and on behalf of the members of the Discipline Panel.

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Chairperson

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Date