

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

PANEL:	Deborah Graystone, NP	Chairperson
	Terry Holland, RPN	Member
	Michael Schroder, NP	Member
	Tania Perlin	Public Member
	Devinder Walia	Public Member

BETWEEN:

COLLEGE OF NURSES OF ONTARIO)	<u>JESSICA LATIMER</u> for
)	College of Nurses of Ontario
- and -)	
)	
BRIAN KEDDIE)	<u>CHRISTOPHER BRYDEN</u> for
Registration No. 0221119)	Brian Keddie
)	
)	<u>CHRISTOPHER WIRTH</u>
)	Independent Legal Counsel
)	
)	Heard: <u>February 6, 2020</u>

DECISION AND REASONS

This matter came on for hearing before a panel of the Discipline Committee (the “Panel”) on February 6, 2020 at the College of Nurses of Ontario (the “College”) at Toronto.

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 preventing the public disclosure of the name of the co-worker referred to orally or in any documents presented in the Discipline hearing of Brian Keddie or any information that could disclose the identity of the co-worker, including a ban on the publication or broadcasting of this information.

The Panel considered the submissions of the parties and decided that there be an order preventing the public disclosure of the name of the co-worker referred to orally or in any documents presented in the Discipline hearing of Brian Keddie or any information that could disclose the identity of the co-worker, including a ban on the publication or broadcasting of this information.

The reasons for the Panel’s decision are that personal matters may be disclosed at the hearing, namely personal information of the co-worker, and the Panel has concluded that the desirability of avoiding

public disclosure of those matters in the interest of any person affected outweighs the desirability of adhering to the principle that hearings be open to the public.

The Allegations

The allegations against Brian Keddle (the “Member”) as stated in the Notice of Hearing dated November 27, 2019 are as follows:

IT IS ALLEGED THAT:

1. You have committed an act of professional misconduct as provided by subsection 51(1)(c) of the *Health Professions Procedural Code* of the *Nursing Act, 1991*, S.O. 1991, c. 32, as amended, and defined in subsection 1(37) of *Ontario Regulation 799/93*, in that, while you were employed as a Registered Nurse at the Weeneebayko General Hospital, in Moose Factory, 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 in that you inappropriately touched a co-worker, [], on one or more occasions in or around October-November 2016.

Member’s Plea

The Member admitted the allegation set out in Allegation #1 in the Notice of Hearing. The Panel received a written plea inquiry which was signed by the Member. The Panel also conducted an oral plea inquiry and was satisfied that the Member’s admission was voluntary, informed and unequivocal.

Agreed Statement of Facts

College Counsel and the Member’s Counsel advised the Panel that agreement had been reached on the facts and introduced an Agreed Statement of Facts, which reads, unedited, as follows:

THE MEMBER

1. Brian Keddle (the “Member”) obtained a diploma in nursing from St. Clair College in 2002.
2. The Member initially registered with the College of Nurses of Ontario (“CNO”) as a Registered Nurse (“RN”) on November 19, 2002 in the General Class. On January 1, 2014, the Member entered the Non-Practicing Class until October 7, 2014, when he re-entered the General Class. The Member resigned his Certificate of Registration on January 6, 2020.
3. The Member began employment as a full-time staff nurse at Weeneebayko Area Health Authority on December 5, 2015. In May 2016, the Member began to work at the Weeneebayko General Hospital (the “Facility”) in Moose Factory, Ontario.
4. The Member ceased working with the Weeneebayko Health Authority on November 21, 2016 following the incident described below.

INCIDENT RELEVANT TO ALLEGATIONS OF PROFESSIONAL MISCONDUCT

5. [] (the “Co-worker”) is a [] at the Facility.
6. On or around November 2, 2016, the Co-worker walked past the Member in the hallway. As this occurred, the Co-worker felt the Member grab him on the buttocks, and the Co-worker heard the Member say “Hi, [Co-worker’s name]”. There were no other witnesses to this incident.
7. On that same day, November 2, 2016, the Co-worker called his manager to report that the Member had assaulted him.
8. The Facility interviewed the Co-worker on or around November 3, 2016. During the interview, the Co-worker described the incident referenced above in paragraph 6.
9. On or around November 4, 2016, the Facility interviewed the Member regarding the incident. The Member explained that he had his walking stick in his hand as he was walking down the hallway, and that as he passed the Co-worker, he had lightly tapped the Co-worker with the walking stick. The Member explained that he had meant this to be a friendly gesture like you would in a locker room.
10. If the Member were to testify, he would state that he did not grab the Co-worker’s buttocks, but that he tapped the Co-worker on the buttocks with his walking stick as an intentional gesture which was meant to be friendly and collegial in nature. However, the Member acknowledges that touching a Co-worker in this manner was inappropriate.

CNO STANDARDS

11. CNO’s *Professional Standards* provides that each nurse is accountable to the public and responsible for ensuring her or his practice and conduct meets legislative requirements and the standards of practice of the profession.
12. CNO’s *Professional Standards* further provide, in relation to the Relationships standard, that nurses meet the standard by establishing and maintaining respectful and professional relationships with colleagues, health care team members and employers. The Professional Relationships standard notes that professional relationships are based on trust and respect, and result in improved client care. A nurse demonstrates having met this standard by actions such as:
 - role-modelling positive collegial relationships; and
 - using a wide range of communication and interpersonal skills to effectively establish and maintain collegial relationships.
13. In addition, CNO’s *Professional Standards* further provides that a nurse demonstrates leadership by providing, facilitating and promoting the best possible care/service to the

public. A nurse demonstrates this standard by actions such as role-modelling professional values, beliefs and attributes.

14. The Member admits and acknowledges that he inappropriately touched the Co-worker. The Member acknowledges that this conduct occurred in the workplace and involved his Co-worker and that it fell below the standards of practice of the profession.

ADMISSIONS OF PROFESSIONAL MISCONDUCT

15. The Member admits that he committed the acts of professional misconduct as alleged in paragraph 1 of the Notice of Hearing, and in particular his conduct was dishonourable and unprofessional, as described in paragraphs 5 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 contained within the Agreed Statement of Facts.

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 Allegation #1 of the Notice of Hearing. As to Allegation #1, the Panel finds that the Member engaged in conduct that would reasonably be considered by members to be 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 in the Notice of Hearing is supported by paragraphs 5-15 in the Agreed Statement of Facts. With respect to Allegation #1, the Panel finds that the Member's conduct in touching a co-worker inappropriately was unprofessional as it demonstrated a serious disregard for the Member's professional obligations. The Panel also finds that the Member's conduct was dishonourable as it contained an element of moral failing. The Member's actions fell well below the standards of a professional and made his co-worker feel uncomfortable. The Member ought to have known his actions were inappropriate.

Penalty

College Counsel and the Member's Counsel advised the Panel that a Joint Submission on Order had been agreed upon. 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 suspend the Member's certificate of registration for 1 month. This suspension shall take effect from the date the Member obtains an active certificate of registration in Ontario 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 2 meetings with a Regulatory Expert (the "Expert"), at his own expense and within 6 months from the date the Member obtains an active certificate of registration. 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,
 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 CNO publications and completes the associated Reflective Questionnaires, online learning modules, decision tools and online participation forms (where applicable):
 1. *Professional Standards*,
 2. *Code of Conduct*,
 - iv. At least 7 days before the first meeting, the Member provides the Expert with a copy of the completed Reflective Questionnaires and online participation forms;
 - v. 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;
 - vi. Within 30 days after the Member has completed the last session, the Member will confirm that the Expert forwards his/her report to the Director, in which the Expert will confirm:
 1. the dates the Member attended the sessions,

2. that the Expert received the required documents from the Member,
 3. that the Expert reviewed the required documents and subjects with the Member, and
 4. the Expert's assessment of the Member's insight into his behaviour;
- vii. If the Member does not comply with any one or more of the requirements above, the Expert may cancel any session scheduled, even if that results in the Member breaching a term, condition or limitation on his certificate of registration;
- b) For a period of 12 months from the date the Member returns to the practice of nursing in Ontario, the Member will notify his employers of the decision. To comply, the Member is required to:
- i. Ensure that the Director is notified of the name, address, and telephone number of all employer(s) within 14 days of commencing or resuming employment in any nursing position;
 - ii. Provide his employer(s) with a copy of:
 1. the Panel's Order,
 2. the Notice of Hearing,
 3. the Agreed Statement of Facts,
 4. this Joint Submission on Order, and
 5. a copy of the Panel's Decision and Reasons, once available;
 - iii. Ensure that within 14 days of the commencement or resumption of the Member's employment in any nursing position, the employer(s) forward(s) a report to the Director, in which it will confirm:
 1. that they received a copy of the required documents, and
 2. that they agree to notify the Director immediately upon receipt of any information that the Member has breached the standards of practice of the profession.
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.

Penalty Submissions

College Counsel submitted to the Panel that the Joint Submission on Order is in the public interest. The proposed order provides for an oral reprimand, a one-month suspension, a twelve-month employer notification period and remediation of the Member. The Panel noted that the Member resigned his certificate of registration on January 6, 2020; thus, the one-month suspension will take effect from the date the Member obtains an active certificate.

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

- The conduct is substantially serious to merit discipline as proposed;
- The conduct was intentional;
- There was potential harm that could have resulted from the conduct, to the person involved and also discredit brought upon the profession; and
- The extent of disregard for professional obligations as a member.

The mitigating factors in this case were:

- The Member cooperated with the College;
- The Member was forthright and made admissions before the Panel;
- The Member was willing to acknowledge and accept responsibility for his misconduct; and
- The Member had no prior discipline before this College.

College Counsel concluded that the Joint Submission on Order meets all goals of penalty including rehabilitation, protection of the public, and general and specific deterrence. The proposed penalty provides for remediation and rehabilitation through the terms, conditions and limitations placed upon the Member's certificate of registration, and the requirement to meet with the nursing expert with respect to the Member's conduct and the Standards of Practice. General and specific deterrence are met through the one-month suspension and the oral reprimand. Overall, the public is protected through the twelve-month employer notification. The Joint Submission on Order is in the profession's interest in that it sends a message to members that there are serious consequences for such misconduct, and demonstrates to the public the College's ability to self-regulate.

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

CNO v. O'Connor (Discipline Committee, 2011). College Counsel submitted that this case involved the same type of allegation but was not identical in that the O'Connor case involved conduct of a romantic and sexual nature with a nursing student. The O'Connor case involved conduct that was deemed unprofessional, dishonorable as well as disgraceful and resulted in an oral reprimand, two-month suspension, meetings with an expert and a twelve-month employer notification and monitoring period. The case involved conduct more serious which explains the difference in the length of suspension.

Member's Counsel stated that he agreed with College Counsel's submissions and asked that the Joint Submission on Order be accepted.

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 suspend the Member's certificate of registration for 1 month. This suspension shall take effect from the date the Member obtains an active certificate of

registration in Ontario 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 2 meetings with a Regulatory Expert (the "Expert"), at his own expense and within 6 months from the date the Member obtains an active certificate of registration. 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,
 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 CNO publications and completes the associated Reflective Questionnaires, online learning modules, decision tools and online participation forms (where applicable):
 1. *Professional Standards*,
 2. *Code of Conduct*,
 - iv. At least 7 days before the first meeting, the Member provides the Expert with a copy of the completed Reflective Questionnaires and online participation forms;
 - v. 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;
 - vi. Within 30 days after the Member has completed the last session, the Member will confirm that the Expert forwards his/her report to the Director, in which the Expert will confirm:

1. the dates the Member attended the sessions,
 2. that the Expert received the required documents from the Member,
 3. that the Expert reviewed the required documents and subjects with the Member, and
 4. the Expert's assessment of the Member's insight into his behaviour;
- vii. If the Member does not comply with any one or more of the requirements above, the Expert may cancel any session scheduled, even if that results in the Member breaching a term, condition or limitation on his certificate of registration;
- b) For a period of 12 months from the date the Member returns to the practice of nursing in Ontario, the Member will notify his employers of the decision. To comply, the Member is required to:
- i. Ensure that the Director is notified of the name, address, and telephone number of all employer(s) within 14 days of commencing or resuming employment in any nursing position;
 - ii. Provide his employer(s) with a copy of:
 1. the Panel's Order,
 2. the Notice of Hearing,
 3. the Agreed Statement of Facts,
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 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.
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, general deterrence and, where appropriate, rehabilitation and remediation. The Panel also considered the penalty in light of the principle that joint submissions should not be interfered with lightly.

The Panel concluded that the proposed penalty is reasonable and in the public interest. The Member has co-operated with the College and, by agreeing to the facts and a proposed penalty, has accepted responsibility for his actions. The Panel finds that the penalty satisfies the principles of specific and general deterrence, rehabilitation and remediation, and public protection. Specific deterrence is met through the oral reprimand and the one-month suspension of the Member's certificate of registration. General deterrence is met in that the penalty sends a strong message to members that there are serious consequences for such conduct. Remediation and rehabilitation takes place through the Member's meetings with a nursing expert while public safety is met through the terms, conditions and limitations placed on the Member's certification of registration. The penalty demonstrates the College's ability to self-regulate and ensures that public trust in the profession is maintained.

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

I, Deborah Graystone, 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.