

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

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| PANEL: | Catherine Egerton | Chairperson |
| | Dawn Cutler, RN | Member |
| | Renate Davidson | Public Member |
| | Desiree Ann Prillo, RPN | Member |
| | Heather Riddell, RN | Member |

BETWEEN:

| | | |
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| COLLEGE OF NURSES OF ONTARIO |) | <u>DENISE COONEY</u> for |
| |) | College of Nurses of Ontario |
| - and - |) | |
| |) | |
| DARYOSH GOLDAR |) | <u>NO REPRESENTATION</u> for |
| Registration No. AD045641 |) | Daryosh Goldar |
| |) | |
| |) | <u>CHRISTOPHER WIRTH</u> |
| |) | Independent Legal Counsel |
| |) | |
| |) | Heard: January 3, 2019 |

DECISION AND REASONS

This matter came on for hearing before a panel of the Discipline Committee (the “Panel”) on January 3, 2019 at the College of Nurses of Ontario (the “College”) at Toronto.

Daryosh Goldar (the “Member”) was not present and was not represented by counsel. The hearing recessed for 15 minutes to allow time for the Member to appear. Upon re-convening the Panel noted that the Member was not in attendance.

Counsel for the College provided the Panel with evidence that the Member had been sent the Notice of Hearing on October 22, 2018. The Panel was satisfied that the Member had received adequate notice and therefore proceeded with the hearing in the Member’s absence.

The Allegations

The allegations against Daryosh Goldar (the “Member”) as stated in the Notice of Hearing dated October 19, 2018, are as follows:

IT IS ALLEGED THAT:

1. You have committed an act of professional misconduct as provided by subsection 51(1)(b) of the *Health Professions Procedural Code* of the *Nursing Act, 1991*, S.O. 1991, c. 32, as amended, in that the governing body of another health profession in Ontario found that you committed an act of professional misconduct that would, in the opinion of the panel, be an act of professional misconduct under this section or an act of professional misconduct as defined in the regulations, and in particular, on September 13, 2017, the Discipline Committee of the College of Massage Therapists of Ontario found that you committed acts of professional misconduct in that you: sexually abused a client; abused a client verbally or physically; engaged in conduct or performed an act, relevant to the practice of the profession, that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional; and engaged in conduct that would reasonably be regarded by members as conduct unbecoming a massage therapist.
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, between January 2017 and September 2017, you contravened a term, condition or limitation of your certificate of registration, as provided by section 1.5(1)1.(iv) of *Ontario Regulation 275/94* of the *Nursing Act, 1991*, by failing to provide the College with details of a proceeding for professional misconduct, incompetency or incapacity, and in particular, the proceeding before the Discipline Committee of the College of Massage Therapists of Ontario that resulted in the Order dated September 13, 2017.
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, in September 2017, you contravened a term, condition or limitation of your certificate of registration, as provided by section 1.5(1)1.(iii) of *Ontario Regulation 275/94* of the *Nursing Act, 1991*, by failing to provide the College with details of a finding of professional misconduct, incompetency or incapacity, and in particular, the Order of the Discipline Committee of the College of Massage Therapists dated September 13, 2017.
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(37) of *Ontario Regulation 799/93*, in that, between 2014 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 to the College:
 - a. details of a proceeding for professional misconduct, incompetency or incapacity, and in particular, the proceeding before the Discipline Committee of the College of Massage Therapists of Ontario that resulted in the Order dated September 13, 2017; and

- b. a finding of professional misconduct, incompetency or incapacity, and in particular, the Order of the Discipline Committee of the College of Massage Therapists dated September 13, 2017.

Member's Plea

Given that the Member was not present nor represented, he 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 was registered with the College as an RPN from February 24, 2014 until he was suspended by the Inquiries Complaints Reports Committee on December 19, 2017. The Member was also registered with the College of Massage Therapists [of Ontario] (the "CMT[O]") as a massage therapist. A complaint against the Member was received by the CMT[O]. The Discipline Committee of the CMT[O] subsequently found that the Member committed acts of professional misconduct in that he sexually abused a client; abused a client verbally or physically; engaged in conduct or performed an act, relevant to the practice of the profession, that, having regard to all circumstances, would reasonably be regarded by members of that profession as disgraceful, dishonorable or unprofessional; and engaged in conduct that would reasonably be regarded by members of that profession as conduct unbecoming a massage therapist.

One of the requirements for a nurse who is registered with the College, is to report to the College details of a proceeding for professional misconduct, incompetency or incapacity in relation to the practice of another profession in any jurisdiction. It is also required that the Member report the findings of such a proceeding to the College.

It is alleged that the Member did not report the proceedings against him at the CMT[O] or the findings of the Discipline Committee of the CMT[O] to the College.

The issues for the Panel to consider were:

- Did the finding of professional misconduct by the CMT[O] also constitute a finding of professional misconduct as provided by subsection 51(1)(b) of the *Health Professions Procedural Code* of the *Nursing Act*, 1991?
- Did the Member contravene a term, condition or limitation of his Certificate of Registration by failing to provide the College with details of a proceeding for professional misconduct before the Discipline Committee of the CMT[O] that resulted in the Order dated September 13, 2017?

- Did the Member contravene a term, condition or limitation of his Certificate of Registration by failing to provide the College with details of a finding of professional misconduct made by the Discipline Committee of the CMTO dated September 13, 2017?
- Did the Member engage in conduct or perform 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?

The Panel heard from one witness and considered nine documentary exhibits including administration records, the College's Self-reporting form, Mandatory Reporting for employers, facility operators and nurses, and the decision of the Discipline Committee of the College of Massage Therapists of Ontario.

Having considered the evidence and the onus and standard of proof, the Panel found that the Member committed acts of professional misconduct as alleged in the Notice of Hearing. As to allegation 4, the Panel found that the Member engaged in conduct that would reasonably be regarded by members of the profession as disgraceful, dishonourable and unprofessional.

The Evidence

The Panel heard from witness, [College Investigator]. [The College Investigator] joined the College in 2009. She has held a position as an Intake Investigator on the College's Reports team, since June of 2011. The witness led the Panel through the process from when a report arrives at the College to when the report is provided to the Executive Director.

The witness identified examples of the Self-Reporting Form from the College's website and testified that members are required to report proceedings at and findings of another regulatory body. Counsel for the College also led the witness through the College's process guide related to Mandatory Reporting, including how and when to use it. The witness stated that according to this guide, a nurse must self-report to the College if he or she is subject to a finding of professional negligence and/or malpractice, professional misconduct, incompetence or incapacity or any similar investigation or proceeding in relation to the practice of nursing or any other profession in any jurisdiction.

The witness testified that she was assigned as the investigator in this case and after a thorough investigation, found that the Member had not reported either the details of or the fact that there had been a proceeding against him before the CMT[O], nor the findings of professional misconduct made against him by the Discipline Committee of the CMT[O].

Counsel for the College provided the Panel with the written decision and reasons of the panel of the Discipline Committee of the CMT[O] involving the Member. The Discipline Committee of the CMT[O] made the following findings of professional misconduct against the Member:

1. The Member engaged in sexual abuse of a client contrary to s. 51(b.1) of the *Health Professionals Procedural Code* being Schedule 2 of the *Regulated Health Professions Act, 1991* (the “Code”)
2. The Member engaged in physical abuse of a client contrary to s. 26(8) of *Ontario Regulation 544/94* made under the *Massage Therapy Act, 1991*, s.o.1991, c.27 (the “*Massage Therapy Regulation*”)
3. The Member engaged in behaviour that is disgraceful, dishonourable or unprofessional contrary to s. 26(44) of the *Massage Therapy Regulation*.
4. The Member engaged in conduct that would reasonably be regarded as unbecoming a massage therapist contrary to s. 26(49) of the *Massage Therapy Regulation*.

The actions of the Member, which led the Discipline Committee of the CMT[O] to make the above findings of professional misconduct included:

1. making comments of a sexual nature to a massage therapy client; and
2. touching that client in a sexual manner, including touching the client’s breasts, without clinical indication and without consent.

The Panel was also provided with the written decision and reasons on penalty of the panel of the Discipline Committee of the CMT[O] dated May 11, 2018. That penalty included a reprimand, revocation of the Member’s certificate of registration as a massage therapist and an order requiring him to reimburse the CMT[O] for funding provided to the client under s. 87.5 of the *Code*.

Final Submissions

Counsel for the College submitted that pursuant to section 51(1)(b) of the *Code*, the findings of sexual abuse, physical abuse, disgraceful, dishonourable or unprofessional conduct and conduct unbecoming made by the CMT[O] would also constitute professional misconduct at the College.

Counsel for the College submitted that the finding of conduct unbecoming made by the CMT[O] under the *Massage Therapy Regulation* is analogous to disgraceful, dishonourable and unprofessional conduct under the *Nursing Act*.

Further, Counsel for the College submitted that the Member had an obligation, under section 1.5(1)1.(iii) and (iv) of *Ontario Regulation 275/94* of the *Nursing Act, 1991*, to report to the College both the CMT[O] proceedings and the findings by the Discipline Committee of the CMT[O]. The Member did not do so.

Decision

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

Having considered the evidence and the onus and standard of proof, the Panel finds that the Member committed an act of professional misconduct as alleged in paragraph (1) of the Notice of

Hearing in that the governing body of another health profession in Ontario found that the Member committed an act of professional misconduct that would, in the opinion of the Panel, be an act of professional misconduct under subsection 51(1)(b) of the *Code* or as defined in the regulations.

The Panel finds that the Member committed an act of professional misconduct as alleged in paragraph (2) of the Notice of Hearing by failing to provide the College with details of a proceeding for professional misconduct, incompetency or incapacity, and in particular, the proceeding before the Discipline Committee of the CMT[O] that resulted in the order dated September 13, 2017, thereby contravening a term, condition or limitation of his certificate of registration as provided by section 1.5(1)1.(iv) of *Ontario Regulation 275/94* of the *Nursing Act*.

The Panel finds that the Member committed an act of professional misconduct as alleged in paragraph (3) in the Notice of Hearing, in that in September 2017, he failed to provide the College with details of a finding of professional misconduct, incompetency or incapacity, and in particular, the Order of the Discipline Committee of the CMT[O] dated September 13, 2017, thereby contravening a term, condition or limitation of his certificate of registration as provided by section 1.5(1)1.(iii) of *Ontario Regulation 275/94* of the *Nursing Act*.

Lastly, the Panel finds that the Member committed an act of professional misconduct as alleged in paragraph 4 (a) and (b) of the Notice of Hearing, in that between 2014 and 2017, the Member 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, dishonorable and unprofessional, and in particular, he failed to report to the College details of a proceeding before the Discipline Committee of the CMT[O] that resulted in the Order dated September 13, 2017 and also failed to report to the College a finding of professional misconduct, incompetency or incapacity, and in particular, the Order of the Discipline Committee of the CMT[O] dated September 13, 2017.

Reasons for Decision

The Panel accepts the uncontested evidence led by Counsel for the College and finds that the facts clearly support the allegations in the Notice of Hearing. The Member committed an act of professional misconduct as provided for by subsection 51(1)(b) of the *Code* as the Discipline Committee of the CMT[O] found that the Member committed acts of professional misconduct in that he sexually abused a client; abused a client verbally or physically; engaged in conduct or performed an act, relevant to the practice of the profession, that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonorable or unprofessional; and engaged in conduct that would reasonably be regarded by members as conduct unbecoming a massage therapist, which in the opinion of the Panel, would also constitute professional misconduct under subsection 51(1)(b) of the *Code* or as defined in the regulations.

Further, the evidence also clearly established that the Member contravened a term, condition or limitation of his Certificate of Registration when he failed to report to the College both the details of the proceeding for professional misconduct before the Discipline Committee of the CMT[O] and its findings of professional misconduct against him.

The public's trust in nurses and in the nursing profession is a paramount value that underlies the privilege of professional self-regulation. At all times, nurses must practice their profession with honesty and integrity. The actions of the Member were a serious breach of trust.

Unprofessional behaviour includes actions and/or behaviours that disregard professional obligations in a serious manner. Dishonorable conduct involves dishonesty or deceit. Disgraceful conduct casts serious doubt on the Member's moral fitness and inherent ability to discharge the obligations the public expects professionals to meet. Accordingly, the Panel was satisfied that the Member's conduct was relevant to the practice of nursing, that he repeatedly contravened the terms of his Certificate of Registration and that his behaviour constitutes disgraceful, dishonorable and unprofessional conduct.

Penalty

Counsel for the College requested this Panel to 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

Counsel for the College submitted that section 51(5) of the *Code* speaks to sexual abuse and the mandatory revocation of the Certificate of Registration of the Member for sexual abuse.

Further, the mandate of the College is to protect the public, thereby maintaining the confidence of the public in its ability to self-govern. The sexual abuse of a massage therapy client by the Member, as found by the CMT[O], was a serious breach of trust committed by him as a regulated health professional. The Member's conduct and non-participation in this proceeding at the College showed a lack of governability and a disregard for the College's process. It also showed a lack of respect for the public in general. The Member's actions have a potential for harm to the victim personally and the reputation of the profession more broadly.

Counsel for the College submitted that the proposed penalty satisfied the need for specific and general deterrence through the reprimand and revocation of the Certificate of Registration of the Member. It would also demonstrate to the public that the profession is able to govern itself and its members.

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 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

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's first concern is protection of the public, which is achieved by the immediate revocation of the Member's Certificate of Registration. The revocation and reprimand address specific deterrence of the Member. This penalty also achieves general deterrence as it sends a very strong message to members of the profession that sexual abuse of patients/clients will not be tolerated.

The Member has not participated in this process. He has offered no explanation and shown no insight into his conduct or behaviour. As a result, the Panel has no mitigating factors to consider, nor can it assess the Member's potential to be rehabilitated.

This order on penalty is mandatory under subsection 51(5.2)(b) of the *Code*.

I, Catherine Egerton, sign this decision and reasons for the decision as Chairperson of this Discipline Panel and on behalf of the members of the Discipline Panel.