

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

<b>PANEL:</b>	Dawn Cutler, RN	Chairperson
	Sylvia Douglas	Public Member
	Carly Gilchrist, RPN	Member
	Honey Palalon, RN	Member
	Lalitha Poonasamy	Public Member

**BETWEEN:**

COLLEGE OF NURSES OF ONTARIO	)	<u>MEGAN SHORTREED AND</u>
	)	<u>GLYNNIS HAWE</u> for
	)	College of Nurses of Ontario
- and -	)	
	)	
TYLER MANCUSO	)	<u>NO REPRESENTATION</u> for
Registration No. 06296082	)	Tyler Mancuso
	)	
	)	
	)	<u>CHRISTOPHER WIRTH</u>
	)	Independent Legal Counsel
	)	
	)	Heard: July 31, 2020

**AMENDED DECISION AND REASONS**

This matter came on for hearing before a panel of the Discipline Committee (the “Panel”) of the College of Nurses of Ontario (the “College”) on July 31, 2020, via videoconference.

As Tyler Mancuso (the “Member”) was not present, the hearing recessed for fifteen minutes to allow time for the Member to appear. Upon reconvening at 9:45 a.m. the Panel noted that the Member was not in attendance.

College Counsel provided the Panel with evidence that the Member had been sent the Notice of Hearing on June 19 and 22, 2020. 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.

**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 public disclosure and banning publication or broadcasting of the names, or any information that could disclose the identities, of the victims

named in the criminal proceedings referred to orally or in any documents presented in the Discipline hearing of the Member.

The Panel considered the submissions of College Counsel and decided that there be an order preventing public disclosure and banning publication or broadcasting of the names, or any information that could disclose the identities, of the victims named in the criminal proceedings referred to orally or in any documents presented in the Discipline hearing of the Member.

### **The Allegations**

The allegations against the Member as stated in the Notice of Hearing dated June 11, 2020 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 October 30, 2017, in the Ontario Court of Justice, in Sault Ste. Marie, you were found guilty of offences relevant to your suitability to practise, and in particular, you were found guilty of the following offences:
  - (a) Assault, contrary to Section 266 of the *Criminal Code*; and/or
  - (b) Failing to comply with a condition of a recognizance to abstain from providing any medical examinations/service unless under the direct supervision of a qualified medical doctor or in the presence of a third party with knowledge of these offences and terms of this recognizance, contrary to Section 145(3) of the *Criminal Code*; and/or
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(24)(i) of *Ontario Regulation 799/93*, in that, in or about May 2017, you failed to abide by a written undertaking given by you to the College of Nurses of Ontario (“CNO”) to abstain from conducting assessments, interventions, communicating diagnoses or providing nursing care or services to any person unless under the direct and physical supervision of a nurse practitioner or physician who was aware of your charges and terms of release, and in particular, you conducted an unsupervised physical examination of a 19 year old male individual; and/or

3. You have committed an act of professional misconduct as provided by subsection 51(1)(c) of the *Health Professions Procedural Code* of the *Nursing Act, 1991*, S.O. 1991, c. 32, as amended, and defined in subsection 1(37) of *Ontario Regulation 799/93*, in that 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, in or about May 2017, you failed to abide by a written undertaking given by you to CNO to abstain from conducting assessments, interventions, communicating diagnoses or providing nursing care or services to any person unless under the direct and physical supervision of a nurse practitioner or physician who was aware of your charges and terms of release, and in particular, you conducted an unsupervised physical examination of a 19 year old male individual.

### **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 is a Nurse Practitioner and the owner/operator of Superior EMS. He was initially registered with the College from October 13, 2006 until November 30, 2011 as a Registered Nurse. From November 30, 2011 to May 8, 2019 the Member was registered as an RN in the extended class. On May 8, 2019, the Inquiries, Complaints and Reports Committee ("ICRC") suspended the Member's Certificate of Registration.

The Member was charged under the *Criminal Code*. His criminal proceedings were dealt with prior to this discipline hearing. On October 30, 2017, the Member was convicted of Assault and of a failure to comply with a condition of a recognizance.

To support the allegations in the Notice of Hearing, College Counsel called one witness. The Panel also accepted 25 exhibits into evidence, including certified copies of court records from the Member's criminal proceedings on these matters. The primary factual issues the Panel was asked to consider included the following:

- 1) Was the Member found guilty of an offence relevant to his suitability to practice in that he was found guilty of Assault contrary to Section 266 of the *Criminal Code*?
- 2) Was the Member found guilty of an offence relevant to his suitability to practice in that he was found guilty of failing to comply with a condition of a recognizance to abstain from providing medical examinations/service unless under direct supervision of a qualified medical doctor or in the presence of a third party with knowledge of these offences and terms of the recognizance, contrary to Section 145(3) of the *Criminal Code*?
- 3) Did the Member fail to abide by a written undertaking provided by him to the College?

As discussed below, there were no real factual issues as to the fact of the Member's convictions and of his failure to abide by an undertaking. As such, the Panel found that all allegations in the Notice of Hearing were proven by the College on the balance of probabilities based upon clear, cogent and convincing evidence.

### **The Evidence**

College Counsel submitted 25 exhibits into evidence, including the Public Registrar Report of the Member, the Interim Order of the ICRC, a written and signed undertaking by the Member with the College, numerous Transcripts from the Member's Preliminary Inquiry, Plea and Sentencing Hearings, Indictment and, finally, his correspondence to the College's Executive Director.

### **Witness 1 – [ ]**

[Witness 1] has been employed with the College since 2008 as an Investigator. She became involved/appointed with the Member's case in June 2013. From 2013 to 2018 [Witness 1] was given multiple appointments to investigate the Member. She testified that the Member was originally criminally charged with Sexual Assault of 7 young men which was then changed to 11. [Witness 1] testified that there was one additional referral from the ICRC in regards to the Member. The Member worked in a capacity as an instructor and the referral is in relation to his conduct towards his students. College Counsel reviewed the Book of Documents with [Witness 1] and she testified about and identified the following documents:

#### **Exhibit #3**

The Public Register Report pertaining to the Member was reviewed by [Witness 1] who identified it as being used in part of any investigation and is up to date, accurate and complete. The Member is not entitled to practice as a Nurse Practitioner and his current registration status is resigned. The Member initially registered with the College on October 13, 2006 as a Registered Nurse. On November 30, 2011 he registered in the Extended Class, and remained in this class, until his suspension on May 8, 2019.

#### **Exhibit #4**

A copy of the Interim Order of the ICRC dated May 8, 2019 was identified by [Witness 1] who reviewed it with the Panel. It directed the Executive Director of the College to suspend the Member's certificate of registration on an interim basis.

#### **Exhibit # 5**

College Counsel provided the Panel with a copy of a Reference Document: Professional Misconduct Standards. The Witness reviewed the document's copyright dates and the paragraphs directly under the heading of "Failure to meet professional obligations". College Counsel then reviewed with the Panel what a written undertaking was and that a "failure to comply with the terms of a written undertaking or an agreement with the College is a breach of trust and constitutes professional misconduct." College Counsel and the Witness reviewed with the Panel other grounds for professional misconduct which includes s. 51(1)(a) in which 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 member's suitability to practice. Examples of convictions that have been found relevant to a nurse's suitability to practice include assault - sexual, aggravated or otherwise. According to the Registration Regulation under the *Nursing Act, 1991* nurses are required to provide the College with details of any findings of guilt for any offence even if they have been pardoned or received a condition of absolute discharge.

#### **Exhibits #6 and #7**

[Witness 1] identified copies of signed Undertakings by the Member with the College dated August 26, 2013 and September 3, 2015. The Panel was directed to paragraph 1(c) of the September 3, 2015 Undertaking in which the Member agreed to abstain from conducting assessments, interventions, communicating diagnoses or providing nursing care or services to any person unless under the direct and physical supervision of a nurse practitioner or physician who is aware of the Member's charges and terms of release.

#### **Exhibits #8 and #9**

College Counsel reviewed with the Panel the Information pertaining to the Member's Criminal Charges of Sexual Assault against 7 victims which occurred between 2007 and 2011. In October, 2014 a further Information was sworn charging the Member with 5 more sexual assault charges for incidents that occurred from 2011-2012.

#### **Exhibits #10 and #11**

The Panel was provided with a copy of the Member's Recognizance of Bail dated October 8, 2014 and November 14, 2014. College Counsel highlighted condition #3 in which the Member was to abstain from providing any medical examination/service unless, under direct supervision of a qualified medical doctor or in the presence of a third party with knowledge of these offences and terms of this recognizance.

#### **Exhibits #12-#18**

The Panel was provided with a copy of the court transcripts from each hearing pertaining to the Member.

#### **Exhibits #19 and #20**

The Panel was provided with an Information dated June 9, 2017 relating to the charge against the Member for failing to comply with a term of his recognizance contrary to section 145(3) of the *Criminal Code*. On October 30, 2017, the Member plead guilty to this charge and a finding of guilt was made.

The Panel was provided with a copy of the Information in relation to the Member sworn by an officer on October 17, 2017 indicating that the Member on or between the 1<sup>st</sup> of January 2008 and the 31<sup>st</sup> day of August 2014, at the City of Sault Ste. Marie in the said Region, did commit assault on persons contrary to Section 266 of the *Criminal Code*. This Information provided that these charges were disposed of on October 30, 2017 when the Crown elected

to proceed summarily and the Member pleaded guilty and was found guilty of Assault contrary to Section 266 of the *Criminal Code*. The outstanding Sexual Assault Charges were withdrawn.

### **Exhibit #21**

The Panel was provided with a copy of the consolidated Indictment document in regard to the 11 Sexual Assault charges against the Member dated March 14, 2017. On November 22, 2017, at the request of the Crown the indictment was marked as withdrawn.

### **Exhibit #22**

The Panel was provided with a copy of the hearing transcript of the court proceedings on October 30, 2017. The transcript evidenced the Member's guilty plea of Assault and that it was done so voluntarily with the known facts to be relied upon. The Member also pleaded guilty to breaching his recognizance. The Member admitted to conducting physical examinations of individuals which were done outside the confines of accepted practices for physical examinations.

### **Exhibit #23**

The Panel was provided with a copy of the Plea Proceedings Transcript on February 5, 2018 in which the reasons for judgement were discussed.

### **Exhibit #24 and #25**

The Panel was provided with copies of correspondence from the Member to the Executive Director and from College Counsel to the Member. In his letter, the Member describes his disgust with the College and that he will be seeking substantial damages for multiple breaches to his charter rights, defamation, and breaches of the *Ontario Human Rights Code*. College Counsel in responding to the Member's letter reminded him of the College's jurisdiction over former members, pursuant to s. 14(1) of the *Health Professions Procedural Code*.

### **Final Submissions**

College Counsel reminded the Panel that the College has the burden of proving on a balance of probabilities that the Member engaged in professional misconduct as described in the allegations set out in the Notice of Hearing. College Counsel submitted that the College has discharged its burden as required.

College Counsel summarized the evidence before the Panel and argued that, in light of the criminal convictions and the overwhelming evidence, there should be no difficulty in finding the Member guilty of all allegations set out in the Notice of Hearing.

## **Allegation #1**

Allegation #1 is under section 51(1)(a) of the *Code*. It is professional misconduct if a member has been found guilty of an offence and the offence is relevant to the member's suitability to practice. In the evidence, College Counsel submitted that there were two criminal findings of offences committed by the Member and that both are relevant to his suitability to practice. The Member was found guilty of the offences, and proof of his convictions is proof of the crime. The Panel was asked to rely on the findings from the Criminal Court as proof of the criminal convictions.

The Member made admissions in the criminal proceedings. He not only accepted a plea of guilty, but he was also pleading to the essential elements of those offences and admitted to the facts supporting the charges.

College Counsel referred the Panel to section 606 (1.1) of the *Criminal Code* and submitted that the facts of the Assault charge are relevant to the Member's suitability to practice. Assault is a violent act and engages harm to the public and safety of the patients. The transcripts provide the Panel with more information about the nature of the assault. In particular, the Crown stipulated that the parties were relying specifically on the evidence that the Judge had already heard in the preliminary inquiry which showed the Member conducted physical examinations of 11 individuals whether for sports, work related or a study that he was conducting. The physical examinations completed by the Member were outside the confines of accepted practices of physical examinations and as such his actions and the touching constituted assault.

An Aide Memoire was provided to the Panel which examined the discrete evidence of each of the 11 individuals in regards to the touching, improper genital examination and nude photos taken by the Member. It was reviewed with the Panel that the Physical Examinations were not just what is found in usual examinations that there was a "holding of the testicles" while the patient coughed, many of the young men had their penises inspected "up and down", including the shaft of the penis and the tip of the penis, and the pulling back of the foreskin. There was repeated touching of the scrotum and testicles and repeated prostate examinations for most of the patients with digital rectal examinations. Eight of the victims were patients of the Member and three were employees of the Member.

College Counsel argued that the Panel had enough evidence for the breach of recognizance (exhibit 11) as the certified court records clearly establishes that the Member plead guilty to and was found guilty of failing to comply with a condition of his recognizance contrary to Section 145(3) of the *Criminal Code*. The Member admitted that despite a term of his recognizance not to do so, he submitted a 19-year-old to a physical examination, and it was in his capacity as the owner and operator of Superior EMS. The police interviewed the 19-year-old male and found that the Member did not have a third party present while he conducted the physical examination. The individual stated to the officer the physical examination only took place with the Member and no one else was present. This offence was relevant to the Member's suitability to practice as non-compliance with a court order goes to the Member's integrity and trust. He made a promise to the court and he breached the promise.

### **Allegations #2 and #3**

Both these allegations concern a breach of an undertaking with the College. [Witness 1] testified that as soon as the College was involved with the Member and his serious charges, it entered into an undertaking with the Member which was renewed two years later. The Member admitted to the facts of the breach when in the criminal court proceedings, he admitted to medically examining a 19-year-old male in May 2017 with no third party present. According to 1(c) of the Member's undertaking, he was to abstain from conducting assessments, interventions, communicating diagnoses or providing nursing care or services to any person unless under the direct and physical supervision of a nurse practitioner or physician who is aware of the Member's charges and terms of release. College Counsel argued that the Panel received enough evidence to establish that the Member had breached the undertaking. A failure to comply with a written undertaking with the College is a breach of trust and constitutes professional misconduct.

College Counsel asked the Panel to make a finding of professional misconduct for allegation #3 with the same facts and find the Member's conduct to be disgraceful, dishonourable and unprofessional. It was a breach of his commitment to his regulator. It was unprofessional to give a promise to the regulator and breach it. The Member's conduct was also disgraceful and dishonourable. The conduct was purposeful, intentional and showed reckless disregard for his obligations. The Member's conduct was knowing. He knew he was subject to a court order and subject to undertakings with the College. He knew he was not supposed to conduct physical examinations in the absence of a supervisor. For this reason, College Counsel called in to question the Member's moral fitness to carry out the higher duties that nurses owe to the profession. The Member's conduct also has the effect of shaming the Member and the profession.

### **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 the Member committed acts of professional misconduct as alleged in paragraphs 1, 2 and 3 in the Notice of Hearing. With respect to allegation #3, the Panel finds that the Member's conduct would be reasonably regarded by members of the profession as disgraceful, dishonourable and unprofessional.

### **Reasons for Decision**

The Panel reviewed all 25 exhibits submitted by College Counsel and accepted the testimony of [Witness 1]. Her testimony was credible and was supported by contemporaneous and relevant documents. She was very clear and concise in reviewing with the Panel the Member's criminal convictions and his written undertaking with the College, and the proof of the Member's failing to comply with the undertakings.

The Panel found the evidence to be clear, cogent and convincing. The Panel was satisfied and determined that, on the balance of probabilities, the Member committed acts of professional misconduct as alleged in the Notice of Hearing.



With respect to allegation #1, these criminal offences of which the Member was found guilty clearly relate to his suitability to practice as he repeatedly assaulted 11 individuals and failed to comply with a Court recognizance.

With respect to allegation #2, the Member clearly breached his written undertaking with the College when he conducted an unsupervised physical examination of a 19-year-old male individual in May 2017 contrary to his undertaking.

With respect to allegation #3, the Panel found that the Member engaged in conduct that would reasonably be regarded by members of the profession as disgraceful, dishonourable and unprofessional in that he showed a lack of judgement and no remorse by repeatedly engaging in unprofessional behavior. The Member's actions have, in effect, shamed him and by extension, the profession. The Member was charged with assault and was required to comply with the terms of a written undertaking that he must not complete a physical examination on any persons unless directly supervised. The Member chose not to comply with this term. By failing to follow the terms of his undertaking with the College, the Member demonstrated a persistent disregard for his professional obligations and that he is ungovernable.

### **Penalty**

### **Penalty Submissions**

College Counsel submitted that, in view of the Panel's findings of professional misconduct, it should make an Order as follows:

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 immediately revoke the Member's certificate of registration.

College Counsel submitted that the only appropriate penalty in this case is an oral reprimand and a revocation of the Member's certificate of registration. The Member did not participate in the College's proceedings and while the Member cannot be punished for this, the lack of participation leaves the Panel with no information on his situation or circumstances.

The overriding goal of a proper sanction is public protection. There are three objectives to any sanction: 1) General Deterrence - deterring the Membership at large from similar misconduct; 2) Specific Deterrence - deterring this member from reoffending; 3) Rehabilitation/Remediation where appropriate and possible.

A penalty of revocation would have a deterrent effect on members at large and this Member specifically.

College Counsel questioned whether this Member has the capacity to be remediated. There is no evidence from this Member of any willingness to accept responsibility for his actions or to be open to remediation or re-education by way of terms and conditions. The evidence is starkly to the

contrary. College Counsel referred the Panel to exhibit 24 which is a letter to the Executive Director in June 2020. The Member was upset about disclosure materials he had been receiving from the College. The Member set out his disdain for the College. College Counsel argued that based on the letter, the Member is unable to be remediated. He expressed utter contempt for his regulator, for its discipline committee and for this proceeding. The Member believes he has done nothing wrong and that this College does not have jurisdiction over him. As such, College Counsel argued that the Member is unlikely to be a candidate for remediation.

College Counsel argued the Member has not responded to the College's letter (exhibit 25). It is perceived that the Member is done with the College. He has not appeared before the Panel to offer any insight about his misconduct, any admissions of his misconduct or any defence/explanation of his misconduct. As a result of his breaches of trust to the court and his regulatory body, he is not governable.

College Counsel reinforced the seriousness of the misconduct. The Member has been found to have committed two different types of misconduct:

- 1) Being found guilty of offenses relevant to the suitability to practise: assaults on patients and a breach of the Member's recognizance, a breach of a court order;
- 2) Breaching his undertaking to the College.

The aggravating factors reviewed by College Counsel included:

- The Member has not appeared before the Panel;
- The Member was found criminally guilty of assault of 11 patients over years (2007-2012);
- A majority of the patients were minors as young as 15 years old;
- The Member was in a position of authority;
- The patients were vulnerable and young;
- The assaults took place on 3 employees;
- Touching occurred outside appropriate physical examination;
- The Member was manipulative of patients;
- The Member was dishonest;
- There was a breach of a promise to the Courts and to the College;
- The Member lacks insight into his behaviour.

The mitigating factors reviewed by the College included:

- The Member does not have a discipline history with the College;
- This is the first finding of professional misconduct.

The multitude of aggravating factors suggest that the Panel must impose the most serious of penalty for this conduct which would be revocation.

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

*CNO v. Halladay* (Discipline Committee, 2017). In this case the member did not appear before the panel. The member was charged and was found guilty of multiple criminal offences, misappropriated credit cards and failed to report criminal charges to the Executive Director. The member was deemed ungovernable. The penalty was revocation of the member's Certificate of Registration.

*CNO v. Holmgren* (Discipline Committee, 2018). In this case the member committed professional misconduct by being found guilty of offences relevant to his suitability to practice, failing to report charges and finding of guilt and by breaching an undertaking with the College. His conduct was deemed to be disgraceful, dishonourable and unprofessional. The member's penalty was an oral reprimand and revocation of his Certificate of Registration.

*CNO v. Little* (Discipline Committee, 2017). In this case the member did not appear before the panel. The member was found guilty of a criminal offence for assaulting 2 disabled patients. His conduct was more violent in nature. The member's penalty was an oral reprimand and revocation of his Certificate of Registration.

*CNO v. Dinsmore* (Discipline Committee, 2016). In this case the member did not appear before the panel. The member was found guilty of offences relevant to the suitability to practice. The conduct was less serious (financial offenses). The panel was concerned about governability. The member's penalty was a revocation of her Certificate of Registration.

### **Penalty Decision**

The Panel accepts the College's Submission on Order and accordingly orders:

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 immediately revoke the Member's certificate of registration.

### **Reasons for Penalty Decision**

The Panel deliberated and agreed with College Counsel that the Member, by his actions, has shown disrespect for the law and the profession. There is a clear unwillingness to be governed. Despite numerous attempts made by the College, the Member chose not to engage with it. The Member chose not to participate in the hearing process, further demonstrating an unwillingness to adhere to the College's jurisdiction.

The Member's actions violate the cornerstones of the nursing profession: honesty and integrity, and trustworthiness. While the Member has no prior discipline history, he chose not to participate nor share any information such as mitigating factors that may have assisted the Panel in its deliberations.

In light of this, there is no reason to believe that the Member will not engage in similar conduct in the future.

The Panel concludes that the penalty of revocation is appropriate given the seriousness and repetitive nature of the Member's conduct. This penalty acts as a specific and general deterrent. It discourages similar conduct by other members, confirming that such conduct will be met with severe consequences.

The Panel further concludes that revocation is the only appropriate penalty as the Member's conduct included elements of deceit, was dishonourable, and involved assaults on 11 vulnerable patients. The conduct was repetitive and intentional. The Panel has no evidence of any willingness by the Member or the capacity for the Member to be rehabilitated. Revoking the Member's Certificate of Registration will help restore public confidence in the profession, demonstrating that this conduct will not be tolerated.

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.