

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

| | | |
|---------------|--------------------------------|---------------|
| PANEL: | CATHERINE EGERTON, Chairperson | Public Member |
| | CARLY GILCHRIST, RPN | Member |
| | DEBORAH GRAYSTONE, NP | Member |
| | WINSOME PLUMMER, RN | Member |
| | DEVINDER WALIA | Public Member |

BETWEEN:

| | | |
|------------------------------|---|--------------------------------|
| COLLEGE OF NURSES OF ONTARIO |) | <u>JESSICA LATIMER</u> for |
| |) | College of Nurses of Ontario |
| - and - |) | |
| |) | <u>NO ONE APPEARING</u> for |
| MARISA MONIQUE GENEREAUX |) | Marisa Monique Genereaux |
| REGISTRATION # JE03672 |) | |
| |) | <u>LUISA RITACCA</u> |
| |) | Independent Legal Counsel |
| |) | |
| |) | Heard: <u>JANUARY 15, 2018</u> |

DECISION AND REASONS

This matter came on for hearing before a panel of the Discipline Committee on January 15, 2018, at the College of Nurses of Ontario (“the College”) at Toronto.

As Marissa M. Genereaux (the “Member”) was not present, the hearing recessed for 15 minutes to allow time for the Member to appear. Upon reconvening the panel noted that the Member was not in attendance and was not represented by counsel

Counsel for the College provided the panel with evidence that the Member had been sent the Notice of Hearing on November 7, 2017. The panel was satisfied that the Member had received adequate notice of the time, place and purpose of the hearing, and therefore proceeded with the hearing in the Member’s absence.

At the request of the College, the panel made an Order banning the publication and broadcasting of the identity of the Client, and any information that could disclose the Client's identity, including any reference to the Client's name contained in the allegations in the Notice of Hearing and in any exhibits filed with the panel, pursuant to s. 45(3) of the *Health Professions Procedural Code* of the *Nursing Act*, 1991.

The Allegations

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 paragraph 1(8) of *Ontario Regulation 799/93*, in that, while practising as a Registered Practical Nurse at Seasons Dufferin Centre in Trenton, Ontario, you misappropriated property from a client or workplace, as follows:
 - a. between about April 4 and April 17, 2015, you misappropriated narcotics from a client, [the Client] ; and
 - b. on or about April 23, 2015, you misappropriated narcotics from a client, [the Client]
2. You have committed an act of professional misconduct as provided by subsection 51(1)(c) of the *Health Professions Procedural Code* of the *Nursing Act*, 1991, S.O. 1991, c. 32, as amended, and defined in subsection 1(18) of *Ontario Regulation 799/93*, in that, in or about May 2015, you contravened a term, condition or limitation on your certificate of registration, imposed pursuant to s. 1.5(1)1.(ii) of *Ontario Regulation 275/94*, in that you failed to report charges relating to any offence to the Executive Director of the College, and in particular on May 20, 2015, you were charged with the following offences, as set out in Court Information #150651, and subsequently reduced during proceedings in the Ontario Court of Justice on May 2, 2016, which you did not report:
 - a. on or about the 4th day of April 2015 to the 17th day of April 2015 at the City of Quinte West in the said region, you did break and enter a certain place to wit suite 331 situated at 344 Dufferin Ave, Trenton Ontario Canada – Seasons Retirement Homes and did commit an indictable offence of theft contrary to Section 348(1)(b) of the Criminal Code; and
 - b. on or about the 23rd day of April in the year 2015 at the City of Quinte West in the said region, you did break and enter a certain place to wit suite 331 situated at 344 Dufferin Ave, Trenton Ontario Canada – Seasons Retirement Homes and did commit an indictable offence of theft contrary to Section 348(1)(b) of the Criminal Code.
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, as follows:

- a. between about April 4 and April 17, 2015, you misappropriated narcotics from a client, [the Client];
- b. on or about April 23, 2015, you misappropriated narcotics from a client,[the Client]; and
- c. on May 20, 2015, you were charged with the following offences, as set out in Court Information #150651, and subsequently reduced during proceedings in the Ontario Court of Justice on May 2, 2016, which you did not report:
 - i. on or about the 4th day of April 2015 to the 17th day of April 2015 at the City of Quinte West in the said region, you did break and enter a certain place to wit suite 331 situated at 344 Dufferin Ave, Trenton Ontario Canada – Seasons Retirement Homes and did commit an indictable offence of theft contrary to Section 348(1)(b) of the Criminal Code; and
 - ii. on or about the 23rd day of April in the year 2015 at the City of Quinte West in the said region, you did break and enter a certain place to wit suite 331 situated at 344 Dufferin Ave, Trenton Ontario Canada – Seasons Retirement Homes and did commit an indictable offence of theft contrary to Section 348(1)(b) of the Criminal Code.

Member's Plea

Given that the Member was not present nor represented, she was deemed to have denied the allegations in the Notice of Hearing.

The Hearing proceeded on the basis that the College bore the onus of proving the allegations in the Notice of Hearing against the Member.

Overview

The Member registered with the College on June 30, 2005. She resigned from the College as of September 8, 2015.

The Member was employed at Season's Retirement Home from August 2014 until April 2015. The Home houses approximately 140-clients who require various levels of care from independent to assisted living. The Member's initial role was a Care Supervisor. In August 2015, she became the Care Service Manager. One of her key responsibilities was to ensure that the clients were receiving appropriate care, as well as monitoring their overall wellbeing.

In April 2015, the Member was caught on camera misappropriating [the Client's] narcotic medication. She was arrested, charged with break and enter with intent to commit theft. Her employment at Season's Retirement Home was subsequently terminated.

The College became aware of the Member as a result of her employer's report. This initiated an investigation, through which it was discovered that the Member had failed to disclose her criminal charges to the College, in breach of her professional obligations.

Evidence

In addition to providing the panel with a number of documents which were entered as exhibits, College Counsel called two witnesses to provide in-person evidence.

Counsel provided the panel with documents from the College public register which showed that at the time the Member was arrested and charged criminally, she was a member in good standing with the College. The documents further showed that the Member had failed to report her charges to the College either at the time of her certificate renewal or at any other time.

Counsel also provided the panel with a certified copy of the original criminal charges as charged against the Member in April 2015, as well as court documents establishing that the Member was ultimately found guilty in 2016 of lesser charges.

Witness #1 -- [Witness #1] -- [Witness #1] is the General Manager at Season's Retirement Home and has been such since April 2013. She oversees the entire building but her primary responsibility is ensuring that the care needs of each of its clients are being met. In or about April 2015, [Witness #1] testified that a client, [the Client] complained to having had his morphine go missing. The client lived in a small independent suite, which included a kitchen and bedroom area. In response to the client's complaint, [Witness #1] requested that a video camera be put in the client's suite. At the same time, [Witness #1] reported the missing narcotic medication to police officer, Constable Wright, her immediate supervisor, and the Retirement Homes Regulatory Authority. [The Client] continued to have his morphine go missing. [Witness #1] testified that she watched the video showing the Member knocked on the client's door when no one was present, walked into [the Client]'s suite and toward where [the Client] kept his medication. The Member then opened up the pill bottle and put pills in her pocket. After reviewing the video, [Witness #1] contacted Constable Wright and the Member was arrested.

Witness #2 -- [Witness #2] -- [Witness #2] is an employee with the College of Nurses of Ontario and has been such since March 2015. As part of her role at the College as an Intake Coordinator, she reviews the completed Self Reporting Form found on the College of Nurses website. [Witness #2] testified that the Member failed to self-report the charges with offences as set out in Court Information #15065. [Witness #2] reviewed with the panel the Mandatory Reporting Guideline and stated that it clearly states the minimal expectation of any member.

"A nurse must self-report to the College if she or he has been charged with any offence in any jurisdiction. The College expects nurses to self-report a finding or the initiation of a proceeding in another jurisdiction within 30 days" (CNO, 2012, p. 4).

Final Submissions

College Counsel submitted that the evidence before the panel clearly demonstrated that the Member misappropriated medication and was charged with criminal offences. The Member failed to report her criminal charges to the Executive Director of the College as set out in the Notice of Hearing. Counsel argued that the Member's actions demonstrated a serious or persistent disregard for one's professional obligations. Failure to live up to this standard demonstrated that the Member acted in an unprofessional manner.

Decision

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 the Notice of Hearing paragraph 1(a)(b); 2(a)(b); 3(a)(b)(c) (i)(ii,). In particular, the Member engaged in conduct that would be reasonably be regarded by members of the profession as unprofessional by a) misappropriating narcotics from a client on more than one occasion, which resulted in criminal charges being laid and convictions being entered, and by b) failing to meet the standards of practice by disregarding one's professional obligation by not reporting said charges to the College.

Reasons for Decision

The panel was satisfied on the uncontested evidence that the Member had misappropriated narcotics on more than one occasion from the client in April 2015. The Member's conduct led to criminal convictions in 2016. Stealing from clients falls well below any minimum standard expected of a member of this College. The Member's behaviour undermines the profession's standing and brings shame.

The panel was also satisfied that the Member, contrary to her statutory and professional obligations, failed to report her criminal charges to the College as required. In doing so, she once again brought shame to the profession. The College relies on accurate and truthful reporting from its membership to be able to properly fulfil its mandate to protect and serve the best interests of the public.

The Panel found that the Member demonstrated serious disregard for one's professional obligation by failing to self-report the criminal charges against her. Subsection 1.5(1)1.ii of Ontario Regulation 275/94 provides that every certificate of registration is subject to a term, condition and limitation requiring nurses to provide to the Executive Director the details of any charge arising in any jurisdiction relating to the offence.

The College expects nurses to self-report a finding or the initiation of a proceeding in another jurisdiction within 30 days. The Member failed to do so and as a result breached her obligations to the College and the public at large.

The panel found that the Member engaged in conduct that would be reasonably be regarded by members of the profession as disgraceful, dishonourable and unprofessional in that she engaged in repetitive and illegal behaviour that showed poor judgement. The Member's actions have the effect of shaming the Member and, by extension, the profession. Failing to self-report charges to the College and attend the hearing demonstrates an unwillingness to take responsibility and accept the consequences of her actions. Engaging in theft is unacceptable behaviour that falls well below the standards of the profession.

Penalty

Counsel for the College advised the panel that the College was requesting an Order in the following form:

THE COLLEGE OF NURSES OF ONTARIO (THE “COLLEGE”) SUBMITS that, in view of the Panel of the Discipline Committee’s (the “Panel”) findings of professional misconduct the Panel should 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 seven months. This suspension shall take effect from the date the Member obtains an active certificate of registration and shall continue to run without interruption as long as the Member remains in the practising class.
3. Directing the Executive Director to impose the following terms, conditions and limitations on the Member’s certificate of registration:
 - a) The Member will attend 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, and
 3. 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 (where applicable):
 1. *Professional Standards*,
 2. *Therapeutic Nurse-Client Relationship*

- iv. 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;
 - 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 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;
 - 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 her behaviour;
 - vii. If the Member does not comply with any of the requirements above, the Expert may cancel any session scheduled, even if that results in the Member breaching a term, condition or limitation on her certificate of registration;
- b) For a period of 24 months from the date the Member returns to the practice of nursing, the Member will notify her employers of the decision. To comply, the Member is required to:
- i. Ensure that the Director is notified of the name, address, and telephone number of all employer(s) within 14 days of commencing or resuming employment in any nursing position;
 - ii. Provide her employer(s) with a copy of:
 - 1. the Panel's Order,
 - 2. the Notice of Hearing, and

3. a copy of the Panel's Decision and Reasons, once available;
- iii. Ensure that within 14 days of the commencement or resumption of the Member's employment in any nursing position, the employer(s) forward(s) a report to the Director, in which it will confirm:
 1. that they received a copy of the required documents, and
 2. that they agree to notify the Director immediately upon receipt of any information that the Member has breached the standards of practice of the profession; and
- c) The Member shall not practise independently in the community for a period of 18 months from the date the Member returns to the practice of nursing.
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

College Counsel stated that the Submission on Order is reasonable and in the public interest, and that it meets the goals of penalty by striking a balance between protecting the public and imposing a sanction that is measured. The suspension and oral reprimand act as both specific and general deterrents. The penalty sends a strong message to the profession that that these actions will not be tolerated. Remediation and rehabilitation are attained through the meeting with the Nursing Expert, as well as through the employer notification provision. Public protection is paramount. The College submitted that the penalty as a whole makes clear that public protection is paramount and that the conduct at issue here is simply not acceptable for the profession.

College counsel submitted that the following aggravating factors included the following:

- Member committed an act of theft, stole property of a client by the misappropriation of narcotics. She only stopped committing the crime when the Member was caught.
- There was a serious breach of trust of a client
- The Member demonstrated poor judgement and poor moral fitness.
- The Member chose to ignore her professional obligation

College counsel submitted that the mitigating factors included the following:

- The Member has no disciplinary history
- The Member resigned her registration in Fall 2015.

College Counsel stated that its penalty submission is consistent with other sanctions imposed by other panels of the Discipline Committee, dealing with similar facts. The College, however,

reminded the panel that there were no perfect parallels and that in any event the panel was not bound by precedent to follow an earlier decision.

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

College of Nurses of Ontario v. Melissa Visca (November 24, 2017). In this case the Member committed acts of theft by misappropriating money of one client, contravened a standard of practice as well as failed to comply with the mandatory reporting standard to the College. The penalty was an oral reprimand, 5-month suspension, 2 meetings with a Nursing expert and employer notification for a period of 24-months.

College of Nurses of Ontario v. Sherry Lee Reaume (March 5, 2012). In this case the Member stole a credit card and withdrew over \$1000 with a \$ 5.00 service fee. The Member was charged with theft and was convicted. The member did not attend the hearing. The penalty was an oral reprimand, a 6-month suspension, two meetings with a Nursing Expert, employer notification for a period of 24-months and the Member shall not practice independently in the community for a period of 12 months.

College of Nurses of Ontario v. Nicole Guarrasi (November 7, 2012). In this case the Member was convicted of stealing a sum of money not exceeding \$5000 by misappropriating money on gift cards. The Member participated in the hearing and if the Member were to testify, she would have argued that these acts were out of character for the Member. She was suffering from Mental Illness that included a diagnosis of Anxiety and Depression. This Member demonstrated to the panel that she was remorseful. The penalty was an oral reprimand, 4-month suspension, two meetings with a Nursing Expert and employer notification for a period of 24-months and the Member was not to practice as the only registered staff on duty until she successfully completed her two meetings with the Expert.

Independent legal counsel's advice to the panel was that College's written proposal was reasonable and in keeping with previous decisions.

Penalty Decision

The panel makes the following order as to penalty:

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 seven months. This suspension shall take effect from the date the Member obtains an active

certificate of registration and shall continue to run without interruption as long as the Member remains in the practising class.

3. Directing the Executive Director to impose the following terms, conditions and limitations on the Member's certificate of registration:
 - a) The Member will attend 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, and
 3. 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 (where applicable):
 1. *Professional Standards*,
 2. *Therapeutic Nurse-Client Relationship*
 - iv. 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;
 - 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 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;

- 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 her behaviour;
 - vii. If the Member does not comply with any of the requirements above, the Expert may cancel any session scheduled, even if that results in the Member breaching a term, condition or limitation on her certificate of registration;
- b) For a period of 24 months from the date the Member returns to the practice of nursing, the Member will notify her employers of the decision. To comply, the Member is required to:
- i. Ensure that the Director is notified of the name, address, and telephone number of all employer(s) within 14 days of commencing or resuming employment in any nursing position;
 - ii. Provide her employer(s) with a copy of:
 - 1. the Panel's Order,
 - 2. the Notice of Hearing, and
 - 3. a copy of the Panel's Decision and Reasons, once available;
 - iii. Ensure that within 14 days of the commencement or resumption of the Member's employment in any nursing position, the employer(s) forward(s) a report to the Director, in which it will confirm:
 - 1. that they received a copy of the required documents, and
 - 2. that they agree to notify the Director immediately upon receipt of any information that the Member has breached the standards of practice of the profession; and
- c) The Member shall not practise independently in the community for a period of 18 months from the date the Member returns to the practice of nursing.

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 nurses to self-regulate. This is achieved through a penalty that addresses specific deterrence, general deterrence and, where appropriate, rehabilitation and remediation. The penalty is in line with what has been ordered in previous cases.

The penalty provides protection for the public. It provides a strong message to the profession that nurses must practice according to standards regardless of their practice setting and that at all times. The public is protected when nurses practice according to standards and professional obligations to the College.

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.

Chairperson

Date