

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

PANEL:

David Edwards, RPN	Chairperson
Dawn Cutler, RN	Member
Sylvia Douglas	Public Member
Shaneika Grey, RPN	Member
Natalie Montgomery	Public Member

BETWEEN:

COLLEGE OF NURSES OF ONTARIO)	<u>JEAN-CLAUDE KILLEY</u> for
)	College of Nurses of Ontario
- and -)	
)	
PAUL ROBERT CRUMMEY)	<u>NO REPRESENTATION</u> for
Registration No. HF01825)	Paul Robert Crummey
)	
)	
)	<u>PATRICIA HARPER</u>
)	Independent Legal Counsel
)	
)	Heard: August 14, 2020

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 August 14, 2020, via videoconference.

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 co-workers referred to orally or in any documents presented in the Discipline hearing of Paul Robert Crummey.

The Panel considered the submissions of the parties 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 co-workers referred to orally or in any documents presented in the Discipline hearing of Paul Robert Crummey.

The Allegations

The allegations against Paul Robert Crummey (the “Member”) as stated in the Notice of Hearing dated July 10, 2020 are as follows:

IT IS ALLEGED THAT:

1. You have committed an act of professional misconduct as provided by subsection 51(1)(c) of the *Health Professions Procedural Code* of the *Nursing Act, 1991*, S.O. 1991, c. 32, as amended, and defined in subsection 1(1) of *Ontario Regulation 799/93*, in that, while employed as a physician’s assistant at Quinte Health Care in Trenton, Ontario (the “Facility”), and while a Registered Practical Nurse (“RPN”), you contravened a standard of practice of the profession or failed to meet the standards of practice of the profession, and in particular, you behaved unprofessionally in the workplace, including but not limited to:
 - (a) in around 2017, repeatedly discussing with co-workers your personal sexual experiences, and/or making jokes or remarks towards co-workers of a sexual nature;
 - (b) in around 2017, with respect to [Co-worker A]:
 - i. pushing your pelvis up against her;
 - ii. asking her why she did not wear a thong to work;
 - iii. telling her that her lipstick would “look good around [your] dick” or words to that effect;
 - iv. telling her “you’re pleasing me, and you are not in control” or words to that effect;
 - v. telling her that you had masturbated to her;
 - vi. moaning when she bent over, and/or approaching your pelvic area to her face while she was bent over;
 - vii. telling her that her daughter is “a dirty little girl” or words to that effect;
 - viii. showing her sexually explicit images at the workplace;
 - ix. pushing your pelvis and/or erect penis into her back;
 - x. cornering her and telling her to use the code word and/or refusing to move away from her when asked;
 - (c) in around 2011, with respect to [Co-worker B], you said to her “slow down, take it easy, swallow, that’s it swallow, you worked hard for it,” or words to that effect, while she was drinking;

2. You have committed an act of professional misconduct as provided by subsection 51(1)(c) of the *Health Professions Procedural Code of the Nursing Act, 1991*, S.O. 1991, c. 32, as amended, and defined in subsection 1(37) of *Ontario Regulation 799/93*, in that, while employed as a physician's assistant at the Facility, and while a RPN, 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, and in particular, you behaved unprofessionally in the workplace, including but not limited to:
- (a) in around 2017, repeatedly discussing with co-workers your personal sexual experiences, and/or making jokes or remarks towards co-workers of a sexual nature;
 - (b) in around 2017, with respect to [Co-worker A]:
 - i. pushing your pelvis up against her;
 - ii. asking her why she did not wear a thong to work;
 - iii. telling her that her lipstick would "look good around [your] dick" or words to that effect;
 - iv. telling her "you're pleasing me, and you are not in control" or words to that effect;
 - v. telling her that you had masturbated to her;
 - vi. moaning when she bent over, and/or approaching your pelvic area to her face while she was bent over;
 - vii. telling her that her daughter is "a dirty little girl" or words to that effect;
 - viii. showing her sexually explicit images at the workplace;
 - ix. pushing your pelvis and/or erect penis into her back;
 - x. cornering her and telling her to use the code word and/or refusing to move away from her when asked;
 - (c) in around 2011, with respect to [Co-worker B], you said to her "slow down, take it easy, swallow, that's it swallow, you worked hard for it," or words to that effect, while she was drinking.

Member's Plea

The Member admitted the allegations set out in paragraphs 1(a), 1(b)(ii), (iii), (iv), (v), (vi), (viii), (x), 1(c), 2(a), 2(b)(ii), (iii), (iv), (v), (vi), (viii), (x) and 2(c) 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.

The Member denied allegations 1(b)(i), 1(b)(vii), 1(b)(ix), 2(b)(i), 2(b)(vii) and 2(b)(ix).

Agreed Statement of Facts

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

THE MEMBER

1. Paul Robert Crummey (the “Member”) obtained a certificate in nursing from Newfoundland and Labrador in 1984.
2. The Member registered with the College of Nurses of Ontario (“CNO”) as a Registered Practical Nurse (“RPN”) on August 4, 1999. He was administratively suspended from February 20, 2019 until March 22, 2019. The Member’s certificate of registration expired on March 22, 2019.
3. The Member was employed at Quinte Health Centre (the “Facility”) from July 2008 until October 2017, when he was terminated for the incidents described below. The Member was employed as a physician’s assistant in the emergency department, which was not a nursing role.

INCIDENTS RELEVANT TO ALLEGATIONS OF PROFESSIONAL MISCONDUCT

4. On a number of occasions throughout the time that the Member worked at the Facility, including at various times throughout 2017, the Member participated in, and instigated, discussions with co-workers and/or in the presence of co-workers about sexual subjects. These discussions included discussion of personal sexual experiences and making jokes or remarks toward co-workers of a sexual nature. Certain specific incidents are described below.

[Co-worker A]

5. [Co-worker A], Registered Nurse (“RN”), worked at the Facility for approximately 10 years. She worked with the Member in or around 2017 for about one year.
6. In or around 2017, the Member engaged in inappropriate behaviour towards [Co-worker A] which included, but was not limited to, the behaviour outlined below.
 - While [Co-worker A] was behind a desk, the Member went behind the desk and behind [Co-worker A] and asked her why she does not wear a thong to work.
 - The Member told [Co-worker A] he liked her lipstick and it would look good around his “dick”. The incident occurred as [Co-worker A] was coming in for a shift and was in the hallway near the ambulance doors.

- While [Co-worker A] was in the lunchroom having supper, the Member entered the lunchroom and bent down and whispered in [Co-worker A's] ear. The Member stated to [Co-worker A] "you're pleasing me, and you are not in control."
- The Member approached [Co-worker A] at the desk and told her that he masturbated to her the other day.
- When [Co-worker A] bent over, the Member came towards her moaning. On one occasion while [Co-worker A] was bent over, the Member approached his pelvic area to her face.
- The Member cornered [Co-worker A] at her desk and he came towards her. [Co-worker A] could not move. The Member made jokes about [Co-worker A's] personal space. [Co-worker A] told the Member that he was too close to her and she could not breathe. The Member responded by telling [Co-worker A] to use the code word and [Co-worker A] replied she did not know the code word and requested he move away from her.
- The Member showed [Co-worker A] pictures of the tools/equipment he has at his home along with a picture of people he engages in "S&M" activity with.
- The Member told [Co-worker A] details about an orgy he was involved in.

[Co-worker B]

7. [Co-worker B], RN, worked at the Facility for approximately 17 years.
8. In or around 2011, the Member made an inappropriate comment to [Co-worker B] in the Facility. [Co-worker B] was drinking milk and started choking on the milk. The Member told her to "slow down, take it easy, swallow, that's it swallow, you worked hard for it."
9. [Co-worker B] interpreted these comments as the Member speaking as if she was finishing oral sex.

CNO STANDARDS

10. 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 the profession.
11. CNO's *Professional Standards* further provide, in relation to the Relationships standard, that nurses establish and maintain respectful, collaborative, therapeutic and professional relationships. The Professional Relationships standard notes that professional

relationships are based on trust and respect, and result in improved patient 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.
12. 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.
13. The Member admits and acknowledges that his conduct towards his co-workers fell below the standards of practice.
14. If the Member were to testify, he would say that he knew at the time that these comments and conversations, and the specific conduct described above at paragraphs 4 to 9, were inappropriate in the workplace and were in fact expressly prohibited by the Facility's workplace policies. He admits that his conduct caused distress and discomfort to his co-workers and in particular to [Co-worker A] and [Co-worker B], and he is remorseful for having done so.

ADMISSIONS OF PROFESSIONAL MISCONDUCT

15. The Member admits that he committed the acts of professional misconduct as alleged in paragraphs 1(a) to (c) of the Notice of Hearing in that he contravened a standard of practice of the profession or failed to meet the standards of practice of the profession, as described in paragraphs 4 to 14 above.
16. The Member admits that he committed the acts of professional misconduct as alleged in paragraphs 2 (a) to (c) of the Notice of Hearing, and in particular his conduct was disgraceful, dishonourable and unprofessional, as described in paragraphs 4 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.

Having considered the evidence and the onus and standard of proof, the Panel finds that the Member committed acts of professional misconduct as alleged in paragraphs #1(a), 1(b)(ii), (iii), (iv), (v), (vi), (viii), (x) and 1(c) of the Notice of Hearing. As to allegations #2(a), 2(b)(ii), (iii), (iv), (v), (vi), (viii), (x) and 2(c), the Panel finds that the Member engaged in conduct that would reasonably be considered by members to be disgraceful, dishonourable and unprofessional.

The College did not submit any evidence with respect to allegations 1(b)(i), (vii), (ix), 2(b)(i), (vii) and (ix). Accordingly, they are dismissed.

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.

Allegations #1(a), 1(b)(ii), (iii), (iv), (v), (vi), (viii), (x) and 1(c) in the Notice of Hearing are supported by paragraphs 4 to 15 in the Agreed Statement of Facts. Throughout the time period of the allegations, the Member participated in and instigated, discussions with co-workers about sexual subjects including personal sexual experiences and making jokes or remarks toward co-workers of a sexual nature. The Member admits that he committed acts of professional misconduct in that he contravened a Standard of Practice or failed to meet a Standard of Practice by making inappropriate sexual comments, gestures and lewd remarks to co-workers. The Member knew that the conduct was inappropriate in the workplace and was in fact expressly prohibited by the Facility's workplace policies. The College requires nurses to use role-modelling to promote positive collegial relationships in the workplace and encourages the use of a wide range of communication and interpersonal skills to effectively establish and maintain them. The Member failed to do so.

Allegations #2(a), 2(b)(ii), (iii), (iv), (v), (vi), (viii), (x) and 2(c) in the Notice of Hearing, are supported by paragraphs 4 through 14 inclusive and 16 in the Agreed Statement of Facts. The Panel finds that the Member's conduct in participation in and instigating, discussions with co-workers and/or in the presence of co-workers about sexual subjects, was unprofessional as it demonstrated a serious and persistent disregard for his professional obligations.

The Panel also finds that the Member's conduct was dishonourable. It demonstrated an element of moral failing through discussing personal sexual experiences and making unsolicited jokes or remarks of a sexual nature, with and toward co-workers.

Finally, the Panel finds that the Member's conduct was disgraceful as it shames the Member and by extension the profession. The conduct, and specifically, discussing a co-workers undergarments, telling her that he masturbated to her and moaning when she bent over, among other things casts serious doubt on the Member's moral fitness and inherent ability to discharge the higher obligations the public expects professionals to meet.

As to allegations #1(b)(i), (vii), (ix), 2(b)(i), (vii) and (ix), the College submitted no evidence with respect to them and they were accordingly dismissed.

Penalty

College Counsel and the Member 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 3 months of the date that this Order becomes final.

2. Directing the Executive Director to suspend the Member's certificate of registration for 5 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 practicing 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 effect 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*, and
 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, 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 that the Joint Submission on Order was negotiated carefully between the College and the Member and that it meets the goals of penalty which are specific and general deterrence, rehabilitation, remediation and protection of the public.

College Counsel indicated that the aggravating factors in this case were all self-evident in the Agreed Statement of Facts. The Member's conduct was serious and significant in that he made inappropriate and unwelcome sexual remarks and gestures to co-workers in a busy hospital emergency department, potentially negatively impacting vulnerable patients.

The mitigating factors in this case were that the Member attended the hearing and cooperated fully with the investigation. The Member has also shown remorse, accepts responsibility and acknowledges that he should have known better.

The proposed penalty provides for general deterrence through the five month suspension and the publication of this decision and reasons in the public record.

The proposed penalty provides for specific deterrence through the five month suspension and terms and conditions on the Member's certificate of registration, including two meetings with a nursing expert and twelve months of employer notification.

The proposed penalty provides for remediation and rehabilitation through a review, by the Member, of the College's description of what constitutes Professional Misconduct, the consequences of Professional Misconduct, strategies for preventing the misconduct from recurring, and the development of a learning plan in collaboration with the Expert.

Overall, the public is protected because the Member will have a five month suspension during which to reflect on his behaviors and make a plan to be rehabilitated, as well as a twelve month period of employer notification if he plans to return to nursing.

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

CNO v. Hirtle (Discipline Committee, January 2019 and September 2019): This case involved sexual harassment of nursing students by the member who was their instructor. The penalty imposed on the member was an oral reprimand, a five month suspension of his certificate of registration, two meetings with a nursing expert and eighteen months of employer notification.

CNO v. Phillips (Discipline Committee, November 2016): The member was not present nor represented. This case involved inappropriate conduct and sexual harassment toward female coworkers in the workplace. The penalty imposed was an oral reprimand, a five month suspension, two meetings with a nursing expert and twelve months of employer notification.

CNO v. Robichaud (Discipline Committee, December 2016): The allegations against this member were that he sexually harassed and made inappropriate remarks to a student and touched her leg with his leg while she was finishing her placement. The penalty imposed was an oral reprimand, four month suspension, two meetings with a nursing expert and twelve months of employer notification.

The Member did not make any submissions with respect to penalty.

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 3 months of the date that this Order becomes final.
2. The Executive Director is directed to suspend the Member's certificate of registration for 5 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 practicing 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 effect 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*, and
 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, 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.

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. The Panel finds that the penalty satisfies the principles of specific and general deterrence, rehabilitation and remediation, and public protection. There is no room in any workplace for any kind of harassment, but particularly not for the type of sexual impropriety to which the Member has admitted. Members of the profession will be reminded that there can be serious, tragic and irreversible consequences when hospital policies and College standards are not followed.

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

I, David Edwards, RPN, sign this decision and reasons for the decision as Chairperson of this Discipline Panel and on behalf of the members of the Discipline Panel.