

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

<b>PANEL:</b>	Sherry Szucsko-Bedard, RN	Chairperson
	Andrea Arkell	Public Member
	Dawn Cutler, RN	Member
	Neil Hillier, RPN	Member
	Carly Hourigan	Public Member

**BETWEEN:**

COLLEGE OF NURSES OF ONTARIO	)	<u>JEAN-CLAUDE KILLEY</u> for
	)	College of Nurses of Ontario
- and -	)	
	)	
CHRISTOPHER GIGUERE	)	<u>GRANT FERGUSON</u> for
Registration No. AE116795	)	Christopher Giguere
	)	
	)	<u>KIMBERLEY ISHMAEL</u>
	)	Independent Legal Counsel
	)	
	)	Heard: June 10, 2021

**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 June 10, 2021, 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 the publication or broadcasting of the names of the patients, or any information that could disclose their identities, referred to orally or in any documents presented in the Discipline hearing of Christopher Giguere.

The Panel considered the submissions of College Counsel and the Member’s Counsel and decided that there be an order preventing public disclosure and banning the publication or broadcasting of names of the patients, or any information that could disclose their identities, referred to orally or in any documents presented in the Discipline hearing of Christopher Giguere.

## **The Allegations**

The allegations against Christopher Giguere (the “Member”) as stated in the Notice of Hearing dated March 31, 2021 are as follows:

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 practicing as a Registered Practical Nurse at VON Middlesex-Elgin Branch in London, Ontario, you contravened a standard of practice of the profession or failed to meet the standards of practice of the profession, and in particular, between about August 2017 and May 2018, you engaged in a personal and/or sexual relationship with the mother of a patient;
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(7) of *Ontario Regulation 799/93*, in that, while practicing as a Registered Practical Nurse at VON Middlesex-Elgin Branch in London, Ontario, you abused a client verbally, physically or emotionally, and in particular, between about August 2017 and May 2018, you engaged in a personal and/or sexual relationship with the mother of a patient;
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, while practicing as a Registered Practical Nurse at VON Middlesex-Elgin Branch in London, Ontario, you engaged in conduct or performed an act, relevant to the practice of nursing, that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, and in particular, between about August 2017 and May 2018, you engaged in a personal and/or sexual relationship with the mother of a patient.

## **Member’s Plea**

The Member admitted the allegations set out in paragraphs 1, 2 and 3 in the Notice of Hearing. The Panel received a written plea inquiry which was signed by the Member. The Panel also conducted an oral plea inquiry and was satisfied that the Member’s admission was voluntary, informed, and unequivocal.

## **Agreed Statement of Facts**

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

### **THE MEMBER**

1. Christopher Giguere (the "Member") obtained a diploma in nursing from Confederation College in May 2015.
2. The Member registered with the College of Nurses of Ontario ("CNO") as a Registered Practical Nurse ("RPN") on August 5, 2015.
3. The Member was employed as a full-time RPN at the Victorian Order of Nurses – Middlesex-Elgin Branch from April 21, 2017 until his resignation on October 1, 2018. The Member provided client care in both home and school settings to approximately eight patients at a given time.
4. The Member is currently practicing as a full-time RPN on the Inpatient Unit at La Verendrye Hospital in Fort Frances, Ontario.

### **THE FACILITY**

#### *Victorian Order of Nurses*

5. The Victorian Order of Nurses – Middlesex-Elgin Branch (the "Facility") is located in London, Ontario.
6. The Facility had several policies in place at the time of the incidents, including but not limited to a zero-tolerance abuse policy, a code of conduct and a therapeutic nurse-client boundary policy modelled after the CNO practice standards. The Facility also published a manual to help staff set appropriate nurse-patient boundaries.
7. The Member was aware of, and agreed to comply with, these policies and Facility expectations, as evidenced by his completed orientation package upon hire.

#### *South West Local Health Integration Network*

8. The South West Local Health Integration Network ("LHIN") funds the Facility. The LHIN must be informed if patients' care plans are adapted to account for treatment outside of a home or school setting.
9. The Facility reported two incidents involving the Member to the LHIN: (1) August 11, 2017; and, (2) December 14, 2017.

10. On August 11, 2017, a clinical team lead from the Facility met with Member to discuss concerns that the Member had met with [the Patient] outside of the home, contrary to the Patient's care plan. The Facility specifically reviewed its therapeutic nurse-client relationship policy, as well as the LHIN and Facility's expectations around boundary setting. The Member signed a personal acknowledgement following the meeting. He wrote, in his own hand, *"I Chris Giguere was unaware of the strict guidelines of care outside the home. I have now been iformed [sic] of the care guidelines."*
11. On December 14, 2017, a clinical team lead from the Facility spoke to the Member regarding a report of inappropriate sexual interactions between [the Patient's] mother, [ ], and two male nurses from the Facility. The Member did not acknowledge any impropriety or boundary breach with [the Patient's mother]. Rather, he told the Facility that he had *"no fears"* working in [the Patient's] home and that he was willing to continue completing his assigned shifts.

### **[THE PATIENT]**

12. [The Patient] was an [ ]-year-old complex care paediatric patient with hypoplastic left-heart syndrome and plastic bronchitis, which result in several severe respiratory, cardiac and nutritional challenges. He lived at home with his mother, [ ], and sibling.
13. [The Patient] was required to be fed through a G-tube, undergo nightly BiPAP respirator hook-ups, and had a high risk of developing casts in his lungs due to a build-up of lymphatic fluid.
14. [The Patient's] health care team was comprised of approximately eight Facility-assigned nurses, including the Member.
15. The Member provided home care to [the Patient] from May 1, 2017 to April 25, 2018. The Member completed full-time RPN shifts (7.5 - 12 hours per shift) at a frequency of 8 - 20 times per month at [the Patient's] home.

### **INCIDENTS RELEVANT TO ALLEGATIONS OF PROFESSIONAL MISCONDUCT**

#### **Personal and Sexual Relationship with the [Patient's] Mother**

16. In or around August 2017, the Member and [the Patient's mother] commenced a personal and sexual relationship while the Member was [the Patient's] care provider.
17. The Member sent numerous romantic text messages to [the Patient's mother] that included but were not limited to the following (all messages below reproduce the spelling and capitalization of the original messages):

*Goodnight darling I'll call you in the morning. I love and miss you  
So proud of my kitten. Hoping your whole day was a beautiful as you are*

*I'll have a look at snaps in the morning. Have a great night Beautiful. I love you*

*I miss you more than I can say*

*There's the Beautiful woman I love*

*I want us, I want a future, I want you and the boys, I want you to know how much I love you. I feel as though i have failed at that, at being a good partner. I'm sorry if I have given you any doubt. I don't want you to second guess anything. [...] I love you and those boys. I immediately feel better walking through your door, seeing your face and the face of those boys.*

18. The Member and [the Patient's mother] also exchanged several intimate and personal text messages denoting the Member's involvement in [the Patient's mother's] and [the Patient's] lives, a sample of which is reproduced below:

[The Patient's mother]: *As I was leaving I told [the Patient] his key was in his bag and I might not be home when he gets home and he goes. "but will Chris be here to take care of me at 4?" Very concerned. It was kinda cute.*

[The Patient's mother]: *I love you and can't wait until you are my partner in life. Boyfriend just doesn't seem to cut it.*

Member: *You are so important to me. So beyond that. When we are life partners this will be amazing. I love you. [...] I look forward to nights sleeping with you and days when the boys wake us up. [...] We also said the boys come first and they will.*

19. The Member repeatedly referred to [the Patient's mother] and her family as his "people".
20. In a text message to [the Patient's mother] dated February 6, 2018, the Member refers to himself as [the Patient's] "step dad to be".
21. In February 2018, the Member told [the Patient's mother] to discontinue her birth control medication in order for them to conceive a child. Both the Member and [the Patient's mother] agreed that they wanted to become life partners and be "a family".
22. In a text message dated April 8, 2018, [the Patient's mother] relayed a story to the Member of how [the Patient's] PlayStation console broke and that [the Patient] said words to the effect, "I don't care about the system my game from chris is in it and he's going to be so upset with me will he still love me when he finds out?". The Member responded via text, "I

*will not be upset with him and of course I still love him [...] The kids deserve a Male role model...".*

23. In a text message dated April 20, 2018, [the Patient's mother] relayed a story to the Member of how [the Patient] was selling raffle tickets at school where one of the prizes was a Toronto Maple Leaf jersey. [The Patient] told her, "...technically all of my tickets are Chris' tickets too because he loves the leafs so if I win I'm going to give him the jersey".
24. In a text message dated April 30, 2018, [the Patient's mother] relayed a story to the Member of how she asked [the Patient] if he wanted to have lunch with his dad. [The Patient] responded by asking, "Chris or [ ]" referencing the Member and the [the Patient's] biological father.
25. The Member discontinued providing nursing care to [the Patient] through the Facility by May 2018 because he recognized that his therapeutic relationship with [the Patient] had become compromised by his personal relationship with both [the Patient] and [the Patient's mother]. He continued visiting the home in his capacity as [the Patient's mother's] boyfriend and strengthening his bond with [the Patient] as someone who was more than just [the Patient's] former nurse.
26. The Member's personal relationship with [the Patient] and [the Patient's mother] continued until February 2019, when the Member finally terminated it.

#### **Member's Interactions with [the Patient]**

27. From August 2017 until May 2018, the Member worked as [the Patient's] care provider through the Facility. The Member attended his scheduled shifts and returned to the home off-hours, where he interacted with the family in a non-nursing capacity and carried on a sexual relationship with [the Patient's mother].
28. The following are some examples of ways in which the Member crossed boundaries by interacting with [the Patient] in the following non-therapeutic ways during the currency of the nurse-patient relationship:
  - attending birthday parties and assembling toys with [the Patient];
  - opening Christmas gifts with family, including [the Patient], at which time the Member received a gift(s) from the family;
  - fixing household appliances and furniture;
  - playing road hockey and telling [the Patient] that he would teach him how to play hockey;
  - attending Father's Day baseball game with [the Patient] as his "dad";
  - e-transferring money to [the Patient's mother] to purchase items for [the Patient] and his sibling; and,
  - purchasing tablets for [the Patient] and his sibling.

29. Following the conclusion of the nurse-patient relationship in May 2018, the Member's involvement with [the Patient] continued, including celebrating positive school performance, watching sporting events and participating in volunteer activities.
30. From the time he discontinued providing nursing care to [the Patient] in May 2018 until he stopped seeing [the Patient's mother] and [the Patient] altogether in February 2019, the Member only saw [the Patient] within the context of his relationship with [the Patient's mother]. When the Member and [the Patient's mother] broke up between July 2018 and September 2018, the Member did not have any contact with [the Patient], nor has he had any contact with him since February 2019.
31. If [the Patient's mother] were to testify, she would state that the Member's sudden disappearance had a detrimental impact on herself and [the Patient] because they both believed the Member was sincere when he said he wanted to them to be a family and that he loved them. [The Patient's mother] would further testify that the Member had become a stable figure in [the Patient's] life and that his abrupt departure devastated [the Patient], who had begun considering the Member to be a father figure and steady caregiver who could take care of his health needs.
32. If the Member were to testify, he would state that the quality of his nursing care for [the Patient] was never compromised during his relationship with [the Patient's mother]. Nevertheless, the Member acknowledges the impact his actions had on [the Patient] and that he breached the standards of practice, crossed appropriate nurse-patient boundaries and that his actions were dishonourable, disgraceful and unprofessional.
33. Specifically, the Member admits that he demonstrated a self-serving disregard for the emotional and mental well-being of [the Patient] in both the short and long term through his conscious decision to continue a sexual relationship with [the Patient's mother], after being advised by the Facility in August 2017 to discontinue and distance himself from non-therapeutic interactions with the family outside regular shifts.
34. Upon personal reflection, the Member further recognizes that he had a duty to ensure [the Patient] was free from any type of abuse. Instead, the Member admits that he ignored his positive obligation to [the Patient] by violating therapeutic nurse-patient boundaries for personal gain by having a personal, sexual and romantic relationship with [the Patient's mother]. The Member takes full responsibility for his misconduct.

#### **CNO STANDARDS OF PRACTICE**

35. CNO's standards of practice set out specific expectations for nurses across Ontario. These published standards inform nurses of their accountabilities and apply to all nurses regardless of role, job description and practice setting.

36. The standards are authoritative statements that set out the legal and professional basis of nursing practice. These standards are intended to strengthen public confidence in CNO's high expectations regarding the conduct, comportment, and competency of its members.

### ***Professional Standards***

37. CNO's *Professional Standards* provides that each nurse is responsible for ensuring their conduct meets both the legislative requirements and the practice expectations shared amongst the membership.
38. A nurse demonstrates the *Professional Standards* by:
- a. ensuring [patients'] needs remain the focus of the nurse-client relationship;
  - b. ensuring that personal needs are met outside of therapeutic nurse-client relationships;
  - c. recognizing the potential for [patient] abuse;
  - d. identifying ethical issues and resolution options;
  - e. identifying personal values and ensuring they do not conflict with professional practice; and,
  - f. ensuring practice is consistent with CNO's standards of practice and guidelines, as well as legislation.
39. Effectively addressing patients' needs is central to patient-centred care. For patients to feel safe, the building of trust, empathy and respect between members and their patients is critically important.
40. Members must never lose sight, however, of the clear line between professional and non-professional therapeutic relationships in meeting patients' needs. Even if a nurse's actions do not appear outwardly harmful, such as physical abuse, boundary violation can take many forms and cause tacit harm, such as producing feelings of distrust toward members of the profession.

### ***Therapeutic Nurse-Client Relationship***

41. CNO's *Therapeutic Nurse-Client Relationship Standard* ("TNCR Standard") provides guidance on maintaining professional nurse-client relationships and avoiding inappropriate boundary crossing. Establishing positive and empathic therapeutic relationships with patients is at the



core of effective, compassionate nursing. Importantly, as stated above, setting appropriate boundaries with patients is also a vital aspect of a care provider's role.

42. The *TNCR Standard* specifies that therapeutic nursing services “*contribute to the [patient’s] health and well-being*” and require an acknowledgement of the “*appropriate use of power inherent in the care provider’s role.*”
43. The *TNCR Standard* states that nurses meet the standard for patient-centred care by ensuring that all behaviour and actions meet the therapeutic needs of the patient. Nurses meet the standard by:
  - a. setting and maintaining appropriate boundaries within the relationship;
  - b. being aware of his/her verbal and non-verbal communication style and how [patients] might perceive it; and,
  - c. committing to being available to the [patient] for the duration of care within the employment boundaries and role context.
44. For some nurses, it becomes especially important that they recognize the increased need for vigilance in maintaining professionalism in certain practice settings, such as home care. Nurses may need to continuously clarify their role to the family members of patients in home care settings, as well as hold themselves personally accountable for not becoming involved in the family's private life.
45. For clarity, nurses cannot interfere or become involved with the personal, non-therapeutic relationships and lives of patients and their families.

#### **ADMISSIONS OF PROFESSIONAL MISCONDUCT**

46. The Member admits that his personal and sexual relationship with [the Patient’s] mother between August 2017 and May 2018 breached the standards of practice as set out in CNO’s *Professional Standards* and the *TNCR Standard*. Specifically, the Member admits that his conduct demonstrated a serious disregard for maintaining appropriate boundaries between himself, [the Patient] and [the Patient’s] mother. His involvement in the family’s life not only strayed beyond the boundaries of a therapeutic nurse-patient relationship but also impacted [the Patient] emotionally as he grew to depend on and trust the Member as a steady male figure in the family unit.
47. The Member admits that he committed the acts of professional misconduct as alleged in paragraph 1 of the Notice of Hearing, as described in paragraphs 16-34 above, in that he failed to maintain the standards of practice of the profession.
48. The Member admits that he committed the acts of professional misconduct as alleged in paragraph 2 of the Notice of Hearing, as described in paragraphs 16-34 above, in that he

emotionally abused [the Patient] between August 2017 and May 2018 when he engaged in a personal and sexual relationship with the Patient's mother.

49. The Member admits that he committed the acts of professional misconduct as alleged in paragraph 3 of the Notice of Hearing, as described in paragraphs 16-34 above, and that such conduct is disgraceful, dishonourable and unprofessional.

### **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, 2 and 3 of the Notice of Hearing. With respect to allegation #2, the Panel finds that the Member emotionally abused the client. As to allegation #3, the Panel finds that the Member engaged in conduct that would reasonably be regarded by members of the profession to be disgraceful, dishonourable and unprofessional.

### **Reasons for Decision**

The Panel considered the Agreed Statement of Facts and the Member's plea and finds that the evidence supports findings of professional misconduct as alleged in the Notice of Hearing.

Allegation #1 in the Notice of Hearing is supported by paragraphs 16 through 47 in the Agreed Statement of Facts. By carrying on a personal and sexual relationship with the mother of a child while he was that child's care provider, the Member breached the College's *Professional Standards* and the *TNCR* Standard. The Panel saw many text message exchanges in the Agreed Statement of Facts, each of them underlining that the Member considered the patient, his mother and the patient's sibling to be his family. Examples of the Member crossing the boundaries included attending birthday parties, Christmas and Father's Day baseball games.

Allegation #2 in the Notice of Hearing is supported by paragraphs 16 through 34, and 48 in the Agreed Statement of Facts. The Panel found that the Member emotionally abused the patient by carrying on a personal and sexual relationship with the child's mother. The Member had been previously advised by the Facility to discontinue and distance himself from non-therapeutic interactions with the family outside regular shifts, but admits that he demonstrated a self-serving disregard for the emotional and mental well-being of the Patient in both the short term and long term through his conscious decision to continue a sexual relationship with the child's mother. Evidence showed that the end of the relationship had a detrimental impact on the patient and his mother because they both believed the Member was sincere when he said he wanted them to be a family and that he loved them. The Member admits that this constitutes emotional abuse.

With respect to Allegation #3, the Panel finds that the Member's conduct in carrying on a personal and sexual relationship with the mother of a Patient was unprofessional as it demonstrated a serious and persistent disregard for his professional obligations. The Patient was a vulnerable [child] with

severe and complex medical challenges. The Member commenced a personal and sexual relationship with the Patient's mother while he was a direct care provider. The Member in a text message referred to himself as a "step dad to be", attended birthday parties with the Patient, opened Christmas gifts with the family and received gifts from the family.

The Panel also finds that the Member's conduct was dishonourable. It demonstrated an element of dishonesty and deceit through continuing the relationship even after being warned by his Facility to stop. The Member knew or ought to have known that his conduct was unacceptable and fell below the standards of a professional.

Finally, the Panel finds that the Member's conduct was disgraceful as it shames the Member and by extension the profession. The Member told the mother of his Patient to discontinue her birth control medication in order for them to conceive a child together. Upon personal reflection, the Member recognized that he had a duty to ensure the Patient was free from any type of abuse, instead he admitted that he ignored his obligations by violating therapeutic nurse-patient boundaries for personal gain. The conduct casts serious doubt on the Member's moral fitness and inherent ability to discharge the higher obligations the public expects professionals to meet.

### **Penalty**

College Counsel and the Member's Counsel advised the Panel that a Joint Submission on Order had been agreed upon. The Joint Submission on Order requests that this Panel make an order as follows:

1. Requiring the Member to appear before the Panel to be reprimanded within 3 months of the date that this Order becomes final.
2. Directing the Executive Director to suspend the Member's certificate of registration for 9 months. This suspension shall take effect from the date that this Order becomes final and shall continue to run without interruption as long as the Member remains in a 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 a minimum of 2 meetings with a Regulatory Expert (the "Expert") at his own expense and within 6 months from the date of this Order becomes final. If the Expert determines that a greater number of sessions are required, the Expert will advise the Director of Professional Conduct (the "Director") regarding the total number of sessions that are required and the length of time required to complete the additional sessions, but in any event, all sessions shall be completed within 12 months from the date of this Order becomes final. 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. *Code of Conduct*,
  - 2. *Ethics*,
  - 3. *Professional Standards*, and
  - 4. *Therapeutic Nurse-Patient Relationship*;
- iv. Before the first meeting, the Member reviews and completes the CNO's self-directed learning package, *One is One Too Many*, at his own expense, including the self-directed *Nurses' Workbook*;
- v. At least 7 days before the first meeting, the Member provides the Expert with a copy of the completed Reflective Questionnaires, online participation forms and *Nurses' Workbook*;
- vi. 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;
- vii. 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;
- viii. 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 24 months from the date this Order becomes final, 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**

Submissions were made by College Counsel.

The aggravating factors in this case were:

- The seriousness and nature of the misconduct, including personal gain over a lengthy period of time;

- The Member ought to have known he was engaging in misconduct which would result in a significant impact on a young and vulnerable patient, thereby elevating this to a very serious level of misconduct.

The mitigating factors in this case were:

- That there was no evidence of any compromise in the clinical care to the patient;
- The Member fully and completely accepted and acknowledged responsibility for breaching the standards of practice by agreeing to the Agreed Statement of Facts and the Joint Submission on Order;
- The Member had no prior discipline history with the College;
- The Member was cooperative with the investigation and supportive of the resolution.

The proposed penalty provides for general deterrence through the oral reprimand and the lengthy suspension of nine months which will discourage other members of the profession from engaging in similar conduct.

The proposed penalty provides for specific deterrence through the oral reprimand, the suspension and terms and conditions on the Member's certificate of registration, including 24 months of employer notification. The Member will have a significant period of time to reflect on his behaviour and learn.

The proposed penalty provides for remediation and rehabilitation through two meetings with a Regulatory Expert, at his own expense. These meetings will be focused on the College's *Code of Conduct*, the *Ethics Standard*, the *Professional Standards* and the *Therapeutic Nurse-Client Relationship Standard* and the learning package, *One is One Too Many*.

Overall, the public is protected because the Member will be suspended for nine months, during which time he will be working through the required College standards. He will thereafter for a period of 24 months be required to notify his employers of the discipline process he has been involved in.

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. Trzop* (Discipline Committee, 2017 and 2018). This hearing involved a significant personal relationship with the family member of a patient in the circle of care. It also involved offering to obtain a controlled substance for the patient's daughter. The hearing proceeded by way of an Agreed Statement of Facts and a Joint Submission on Order. The penalty included an oral reprimand, a 12 month suspension of the member's certificate of registration, two meetings with a Nursing Expert, 12 months of employer notification. That panel also ordered the member to pay costs to the College in the amount of \$1,500.00 for the College's legal costs and expenses.

*CNO v. Eno* (Discipline Committee, 2016). This hearing involved soliciting and accepting sums of money from the husband of a patient. The penalty was an oral reprimand. No further terms,

conditions or limitations were imposed as the member had entered into an undertaking with the College to resign her position as a nurse and never reapply to be reinstated as a nurse in the future.

*CNO v. Duval* (Discipline Committee, 2003, 2004 and 2005). The allegations in this hearing were that the member engaged in a significant personal relationship with a former psychiatric patient within days of the client's discharge. The hearing was contested. The penalty included an oral reprimand, an 18 month suspension of the member's certificate of registration and special terms, conditions and limitations related to mental health and psychiatric nursing.

College Counsel submitted that these three case examples were all breaches of boundaries although each somewhat unique.

The Member's Counsel agreed with the submissions of College Counsel and added that as a mitigating factor, the Member needed to make a living and support himself so would not be likely to breach the standards in the future. One case was submitted by the Member's Counsel in support of the Joint Submission on Order.

*CNO v. O'Connell* (Discipline Committee, 2019). The case involved a personal (not sexual) relationship with a client including taking them bowling and texting while off duty. This hearing proceeded with an Agreed Statement of Facts and a Joint Submission on Order and the penalty included an oral reprimand, a five month suspension of the member's certificate of registration, two meetings with a Regulatory Expert and twelve months of employer notification.

The Member's Counsel submitted that many of the mitigating factors in *O'Connell* are shared with the case being heard today but the penalty being sought was more severe due to the length of the intimate relationship with the Patient's mother.

### **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 9 months. This suspension shall take effect from the date that this Order becomes final and shall continue to run without interruption as long as the Member remains in a 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 a minimum of 2 meetings with a Regulatory Expert (the "Expert") at his own expense and within 6 months from the date of this Order becomes final. If the Expert determines that a greater number of sessions are required, the Expert will advise the Director of Professional Conduct (the "Director") regarding the total

number of sessions that are required and the length of time required to complete the additional sessions, but in any event, all sessions shall be completed within 12 months from the date of this Order becomes final. 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. *Code of Conduct*,
  2. *Ethics*,
  3. *Professional Standards*, and
  4. *Therapeutic Nurse-Patient Relationship*;
- iv. Before the first meeting, the Member reviews and completes the CNO’s self-directed learning package, *One is One Too Many*, at his own expense, including the self-directed *Nurses’ Workbook*;
- v. At least 7 days before the first meeting, the Member provides the Expert with a copy of the completed Reflective Questionnaires, online participation forms and *Nurses’ Workbook*;
- vi. 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;



- vii. 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;
  - viii. 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 24 months from the date this Order becomes final, 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. Conduct by nurses that demonstrates a lack of integrity, dishonesty, abuse of power and authority, or disregard for the welfare and safety of members of the public is conduct that cannot be tolerated by the nursing profession. Nurses are responsible for their actions and the consequences of these actions. Nurses are accountable for conducting themselves in ways that promote respect for the profession. A nurse must demonstrate ethical conduct by creating environments that promote and support safe, effective and ethical practice.

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

I, Sherry Szucsko-Bedard, 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.