

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

PANEL:

Ingrid Wiltshire-Stoby, RN	Chairperson
Mary MacMillan-Gilkinson	Public Member
Ashleigh Molloy	Public Member
George Rudanycz, RN	Member
Terah White, RPN	Member

BETWEEN:

COLLEGE OF NURSES OF ONTARIO)	
)	<u>JEAN CLAUDE KILLEY</u> for
)	College of Nurses of Ontario
- and -)	
)	
)	<u>NO REPRESENTATION</u> for
)	Michael Richard Joseph Laviolette
)	
MICHAEL RICHARD JOSEPH LAVIOLETTE)	
Reg. No. 9603309)	
)	<u>CHRIS WIRTH</u>
)	Independent Legal Counsel
)	
)	
)	Heard: April 11, 2018

DECISION AND REASONS

This matter came on for hearing before a panel of the Discipline Committee (the “Panel”) on April 11, 2018 at the College of Nurses of Ontario (“the College”) at Toronto.

As Michael Richard Joseph Laviolette (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.

Counsel for the College provided the Panel with evidence that the Member had been sent the Notice of Hearing on January 19, 2018. The Panel was satisfied that the Member had received adequate notice and therefore proceeded with the hearing in the Member's absence.

The Panel ordered a publication ban following a motion brought by College Counsel, pursuant to s.45 (3) of the *Health Professions Procedural Code of the Nursing Act, 1991*. The order prohibits the publication and broadcasting of the identity of the victim referred to in this hearing or any information that could reasonably disclose the victim's identity.

The Allegations

The allegations against the Member as stated in the Notice of Hearing dated January 18, 2018, are as follows.

IT IS ALLEGED THAT:

1. You have committed an act of professional misconduct as provided by subsection 51(1)(a) of the *Health Professions Procedural Code of the Nursing Act, 1991*, S.O. 1991, c. 32, in that you were found guilty of an offence that is relevant to your suitability to practise, and in particular:
 - (a) on or about March 11, 2016, you were found guilty of the offence of touching, for a sexual purpose, the body of a person under the age of sixteen years, contrary to section 151 of the *Criminal Code of Canada*; and/or
 - (b) on or about March 11, 2016, you were found guilty of the offence of sexual assault, contrary to section 271 of the *Criminal Code of Canada*;
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 you contravened a term, condition or limitation on your certificate of registration, and in particular:
 - (a) on or about October 3, 2013, you failed to provide to the Executive Director the details of charges relating to the offence touching, for a sexual purpose, the body of a person under the age of sixteen years, contrary to section 151 of the *Criminal Code of Canada*, and/or relating to the offence of sexual assault, contrary to section 271 of the *Criminal Code of Canada*, as required by s. 1.5(1)(1) of *Ontario Regulation 275/94*;
 - (b) on or about March 11, 2016, you failed to provide to the Executive Director the details of findings of guilt relating to the offence touching, for a sexual purpose, the body of a person under the age of sixteen years, contrary to section 151 of the *Criminal Code of Canada*, and/or relating to the offence of sexual assault, contrary to section 271 of the *Criminal Code of Canada*, as required by s. 1.5(1)(1) of *Ontario Regulation 275/94*;

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(19) of *Ontario Regulation 799/93*, in that you contravened a provision of the Act, the *Regulated Health Professions Act, 1991* or the regulations under either of those Acts, and in particular, you contravened s. 85.6.1 of the *Health Professions Procedural Code of the Act*, in that on or about March 11, 2016, you failed to file a report with the Executive Director that you were found guilty of the offence touching, for a sexual purpose, the body of a person under the age of sixteen years, contrary to section 151 of the *Criminal Code of Canada*, and/or that you were found guilty of the offence of sexual assault, contrary to section 271 of the *Criminal Code of Canada*;
4. You have committed an act of professional misconduct as provided by subsection 51(1)(c) of the *Health Professions Procedural Code of the Nursing Act, 1991*, S.O. 1991, c. 32, as amended, and defined in subsection 1(37) of *Ontario Regulation 799/93*, in that, you engaged in conduct or performed an act, relevant to the practice of nursing, that, having regard to all the circumstances, would reasonably be regarded by members of the profession as disgraceful, dishonourable or unprofessional, and in particular:
 - (a) on or about October 7, 2013, and thereafter, until about November 2, 2016, you failed to inform your employer of your bail condition requiring that you not be alone with any patient under the age of 16;
 - (b) on or about October 3, 2013, you failed to provide to the Executive Director the details of charges relating to the offence touching, for a sexual purpose, the body of a person under the age of sixteen years, contrary to section 151 of the *Criminal Code of Canada*, and/or relating to the offence of sexual assault, contrary to section 271 of the *Criminal Code of Canada*; and/or
 - (c) on or about March 11, 2016, you failed to provide to the Executive Director the details of findings of guilt relating to the offence touching, for a sexual purpose, the body of a person under the age of sixteen years, contrary to section 151 of the *Criminal Code of Canada*, and/or relating to the offence of sexual assault, contrary to section 271 of the *Criminal Code of Canada*.

Member's Plea

Given that the Member was not present nor represented, he was deemed to have denied the allegations in the Notice of Hearing. The Hearing proceeded on the basis that the College bore the onus of proving the allegations in the Notice of Hearing against the Member.

Overview

The Member, a Registered Nurse ("RN") was employed at The Ottawa Civic Hospital on a part time basis in a 36 in-patient general thoracic surgery unit. His supervisor, [Witness A], testified that he was first employed there as an RN in 1995. He has had no previous disciplinary history and was considered by [Witness A] to be a "very good" nurse.

On October 3, 2013, the Member was criminally charged as a result of an incident involving a 15 year old girl on or about August 28, 2013. He was charged with directly or indirectly touching, for a sexual purpose, the body of a person under the age of 16. He was also criminally charged with sexual assault on the same individual. On October 7, 2013, the Member was released on bail and was required to abide by a number of conditions. One of the requirements was that, when he was at work he should “not be alone with any patient under the age of 16”. On March 11, 2016 the Member was found guilty of the two charges. Throughout this time, and for approximately three years following the charges, the Member continued to work as a nurse. It was only on October 13, 2016 that the Member finally notified his employer of the criminal charges and subsequently provided them with a copy of his bail conditions. On October 18, 2016 the Member was placed on paid administrative leave by his employer pending an investigation into his conduct related to the criminal charges. On November 17, 2016 the Member was sentenced to 7 months imprisonment followed by 24 months probation. On November 30, 2016 the Member resigned his position at the Ottawa Civic Hospital. At no time, did the Member notify the College of the criminal charges, the bail conditions or the criminal convictions. The College learned of the Member’s convictions in October 2016 through a third party who may have been associated with the criminal matter.

The issues are as follows: (a) did the Member commit offences that are relevant to his suitability to practice? (b) did the Member contravene a term, condition or limitation on his certificate of registration by failing to report his criminal charges and convictions to the College? (c) did the Member contravene a provision of the *Health Professions Procedural Code* by failing to report to the College that he was charged and found guilty of touching, for a sexual purpose, the body of a person under the age of sixteen years? (d) did the Member fail to report the bail condition to his employer that mandated that he not be alone with any patient under the age of 16? (e) did the Member commit professional misconduct that would be considered by members of the profession to be disgraceful, dishonourable and/or unprofessional?

The Panel heard from two witnesses and received two exhibits which included 15 pieces of documentary evidence to consider. The Panel found that the Member committed professional misconduct by failing to meet the standards of the profession and engaged in conduct that would be regarded by members of the profession as disgraceful, dishonourable and unprofessional.

The Evidence

Did the Member commit offences that are relevant to his suitability to practice?

The Panel received transcripts of the Member’s criminal hearing and certified copies of the court records relating to his criminal charges and convictions. The Honourable Madam Justice M.T. Linhares de Sousa, in her sentencing statements, emphasized that the Member was in a “position of trust” with the 15 year old victim. At the time, the Member was 56 years old. She stated that the victim was the half-sister of his biological daughter and that the Member was “clearly her adult caregiver” when she stayed with him. Over many years, the victim relied upon the Member for advice regarding medical issues as well as support in dealing with her educational challenges. The incident has caused great trauma for the victim and has resulted in increased anxiety, feelings of shame and a diminished trust in other individuals. Madam Justice M.T. Linhares de Sousa stated that the victim is reportedly both “angry” and “sad” because of the toll that this had taken on her relationship with her mother and her sister who have disengaged with her as a result of the incident.

Madam Justice M.T. Linhares de Sousa also stated that the damage to the victim was “palpable and ongoing”.

Did the Member fail to report the charges and convictions relating to the sexual offences?

Nurses are obligated to disclose charges and convictions to the College. This requirement is enshrined in:

- Section 1.5 (1)(1) of *Ontario Regulation 275/94* made under the *Nursing Act, 1991*;
- Sections 85.6.1(1) (2) & (3) of the *Health Professions Procedural Code*; and
- By-Laws 44.2.02 (ix) & (x) of the College of Nurses of Ontario.

[Witness B], Intake Reports Coordinator at the College testified. She confirmed that members are required to self-report charges and convictions. She stated that there is a self-reporting form on the College’s website that can be accessed, filled out and returned by mail or fax to her department. Members are required to complete this form within 30 days of a charge or conviction. She testified that she is aware of all self-reports but did not receive one from the Member. The College found out about the Member’s charges and convictions in October 2016. This was 3 years after he was charged and 7 months after his conviction. The information was relayed by a third party who, she testified, may have been associated with the Member’s criminal matter.

[Witness A] (the Member’s supervisor), testified that in a meeting that she had with the Member, he denied knowing that it is a requirement to report changes and convictions to the College. [Witness A] testified that she was “astonished” by his statement since this College requirement has been in place for many years. The Member then told [Witness A] that he did not mention anything to anyone because he needed to keep working to help support his daughter. The Member also told [Witness A] that his lawyer had reassured him that he would not be convicted so he should not report the charges to anyone.

Did the Member contravene a provision of the *Regulated Health Professions Act, 1991*?

It is clear in the *Health Professions Procedural Code* that a member must complete a report “as soon as reasonably practicable after a member receives notice of the finding of guilt.” It is to include, among other things, “the date the member was found guilty of the offence”. [Witness B] testified that no self-report was received from the Member.

Did the Member fail to inform his employer of the bail condition requiring not to be alone with any patient under the age of 16?

[Witness A], the Member’s supervisor, testified that she first learned of the Member’s criminal charges when he called her at home on October 13, 2016. In a subsequent meeting with relevant hospital staff and his union representative, the Member was asked if he had any bail conditions. He appeared “nonchalant” and acknowledged that he did have bail conditions but that they were nothing that the hospital needed to know about. Staff asked the Member to send his bail conditions to them which he did. At that point, [Witness A] began an investigation to determine if the Member

had breached the particular bail condition that required the Member to refrain from being alone with any patient under the age of 16.

Is the Member's conduct disgraceful, dishonourable and/or unprofessional?

The Panel reviewed the two Exhibits which included 15 pieces of documentary evidence. The Panel considered the fact that the Member continued to practice nursing without informing his employer of his bail conditions; in particular the requirement not to be alone with any patients under the age of 16. The Member's supervisor, [Witness A], determined through a thorough investigation that he could have looked after 12 clients under the age of 16 while he was under bail restrictions. Although [Witness A] found no documentary evidence that the Member actually looked after any of these clients, theoretically he could have cared for them since there are interactions with patients that are not documented.

The Panel considered the uncontested evidence with respect to the Member's failure to report charges and convictions to the Executive Director at the College. The Panel also took into account the profound and lasting impact that the sexual touching had on the victim and how, as a result, she feels that her relationship with her mother and sister has been destroyed.

Final Submissions

College Counsel submitted that the court transcripts and the certified copies of the court records were evidence that the Member had been charged and found guilty of criminal offences. The Member's act of committing a sexual offence on a young, vulnerable and trusting individual is relevant to his suitability to practice. The Member failed to fulfill his nursing requirement to self-report these serious charges and convictions to the College. He also failed to report his bail conditions to his employer which placed him in a position where he could have, and may have, breached his bail by being alone with a patient under the age of 16. College Counsel stated that none of these facts were disputed by the Member.

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), 2 (a), 2 (b) and 3 of the Notice of Hearing.

The Panel also finds that the Member engaged in conduct that would reasonably be considered by members of the profession as disgraceful, dishonourable and unprofessional as alleged in paragraph 4 (a), 4 (b) and 4 (c) of the Notice of Hearing.

Reasons for Decision

The Member committed acts of professional misconduct in that he was charged and convicted of sexually touching and the sexual abuse of a minor. The offences for which the Member was found

guilty are relevant to his suitability to practise because they involve a breach of trust with a young, vulnerable and susceptible minor.

The Member failed to report these charges and convictions to the College and therefore contravened a term, condition or limitation on his certificate of registration. The Panel did not give any significant amount of weight to the Member's comment that his lawyer told him not to report his charges to the College because he would not be convicted. The Panel considered this to be hearsay information that may have not been reported accurately by the Member.

The Member neglected to report his bail conditions to his employer thereby placing him in a position of potentially breaching his bail.

The Member's sexual abuse of a minor is disgraceful and casts a serious doubt on the Member's moral fitness and inherent ability to discharge the higher obligations that the public expects professionals to make. The Member ought to have known the long term impact of his actions on his victim. The Member's actions were dishonourable and showed dishonesty when he failed to report his charges and his convictions to the College and when he chose not to inform his employer of his bail conditions for approximately 3 years. This conduct is unprofessional and shows a serious and persistent disregard for his professional obligations as well as a consistent lack of good judgement and responsibility.

Penalty

The College submitted that in view of the Panel's findings of professional misconduct, the Panel should make the following order on penalty:

1. Requiring the Member to appear before the Panel to be reprimanded within three months of the date that this Order becomes final; and
2. Directing the Executive Director to immediately revoke the Member's Certificate of Registration.

Penalty Submissions

Counsel for the College stated that the Member has demonstrated that he is ungovernable. He failed to adhere to the College's mandate to self-report all charges and convictions. He failed to report his bail conditions to his employer even though one restriction was especially relevant to his work as a nurse.

He failed to respond to the College's multiple phone calls, voice messages and letters. The Affidavit of [Prosecution Clerk] (Prosecutions Clerk at the College) states that a letter enclosing a binder of documents consisting of the College's disclosure in the discipline proceedings was sent by courier to the Member's home address on file. It is unclear as to whether the Member failed to inform the College of a home address change or whether the Member has chosen to be non-responsive. [Prosecution Clerk]'s affidavit further states that "There is no record in the College's

files of the Member contacting the College in any way since his email to [College Investigator] on March 29, 2017”.

There is no evidence of any mitigating factors. The Member has totally disengaged from the College’s processes. The Member has not shown a willingness to rehabilitate or to take steps that would help him reintegrate back into the profession. He cannot be relied upon to respect the College’s authority over him as he has shown that he cannot follow rules. The self-reporting mandate is crucial because the College cannot be expected to access and verify all court records.

Revocation is required given the Member’s lack of governability and the need for the public to maintain confidence in the regulatory process.

College Council provided the Panel with five prior decisions which all involve findings of professional misconduct as a result of criminal charges. In all cases, the Members’ certificates of registrations were revoked.

In *CNO v. Timothy Allen Phillips* (Discipline Committee 2007), the member was not present and did not account for his actions. His offences were lengthy and occurred over a 10 year period. They involved violence and assault. The member made false and misleading statements relating to his findings of guilt. The panel found the member to be “ungovernable” and in violation of the principles of “honesty, integrity and trustworthiness”. The panel revoked the member’s certificate of registration.

In *CNO v. Carrie A Hardy* (Discipline 2016), the member was not present. The allegations involved failing to report several charges over a lengthy period of time. The member received convictions, was given penalties but continued to reoffend. The member had no mitigating factors except the fact that she did not have a prior disciplinary history. There was no evidence that she took responsibility for her actions. The panel determined that revocation was appropriate and reasonable given the “seriousness and repetitive nature of the conduct”.

In *CNO v. Helene Godard* (Discipline 2007), the member was absent. She was found guilty of the possession of two rings not exceeding a value of five thousand dollars. The member breached the trust of a vulnerable client. The member was not present or represented so the panel did not learn of the context relating to the conduct or hear any mitigating factors that might have helped them understand why the acts were committed. The member was considered “ungovernable” and her certification of registration was revoked.

In *CNO v. Nathaniel Wagner* (Discipline 2009), the member was present. He had been charged and convicted of sexual assault. The member agreed to the Joint Submission on Penalty which was revocation and an oral reprimand. The panel determined that revocation was “reasonable and appropriate due to the sexual nature and breach of trust involving an extremely vulnerable client”.

In *CNO v. Roland Joseph Huff* (Discipline 2012), the member was not present. He had been found guilty of 3 offences which included 2 counts of sexual assault and one count of gross indecency. The sexual assault occurred over a long period of time with a young person with whom the member was in a position of trust. The panel determined that the member’s actions violated the “cornerstone

of the nursing profession, those being honesty, integrity and trustworthiness". His certificate of registration was revoked.

Penalty Decision

The Panel makes the following order as to penalty:

1. The Member is required to appear before the Panel to be reprimanded within three months of the date that this Order becomes final; and
2. The Executive Director is directed to immediately revoke the Member's Certificate of Registration.

Reasons for Penalty Decision

The Panel deliberated and agreed with College Counsel that the Member, by his actions, was ungovernable. The Member's convictions, relating to sexual touching and sexual abuse of a person under the age of 16, are extremely serious. The Member's actions have caused the victim to experience great distress and long term consequences. The Member's unwillingness to follow the mandate of his regulatory college in regards to self-reporting and his failure to ensure that his bail conditions were shared with his employer and complied with, demonstrate a disrespect for rules. The Member's disregard for the processes of the College, by choosing not to respond to their communications or participate in any way in this disciplinary process, is very concerning to the Panel. There is no evidence that the Member has taken responsibility for his actions. The Member's actions violate the cornerstones of the nursing professions, those being honesty, integrity and trustworthiness.

The penalty of revocation is fair and appropriate in that it protects the public and sends a strong message to the membership that this type of behaviour will not be tolerated.

I, Ingrid Wiltshire-Stoby, 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