

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

PANEL:	Catherine Egerton, Public Member	Chairperson
	Tanya Dion, RN	Member
	Deborah Graystone, NP	Member
	Devinder Walia	Public Member

BETWEEN:

COLLEGE OF NURSES OF ONTARIO)	
)	<u>EMILY LAWRENCE</u> for
)	College of Nurses of Ontario
- and -)	
)	
)	<u>CAROL STREET</u> for
)	Larissa Van de Walle
LARISSA VAN DE WALLE)	
Reg. No. 14039603)	
)	
)	<u>ANDREA GONSALVES</u>
)	Independent Legal Counsel
)	
)	
)	Heard: October 20, 2017

DECISION AND REASONS ON PENALTY

The Panel made findings of professional misconduct following a hearing that was held on July 18-20, 2017 and on September 5-6, 2017. A penalty hearing was held on this day in Toronto, Ontario, following the release of the Panel's Decision and Reasons, dated October 16, 2017.

Penalty

Penalty Submissions

Submissions were made by College Counsel and the Member's Counsel.

Submissions by the College

The College of Nurses of Ontario (the “College”) submits that, in view of the Panel of the Discipline Committee’s (the “Panel”) findings of professional misconduct the Panel should make an Order as follows:

1. Requiring the Member to appear before the Panel to be reprimanded within three months of the date that this Order becomes final.
2. Directing the Executive Director to suspend the Member’s certificate of registration for two 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 the practising class.
3. Directing the Executive Director to impose the following terms, conditions and limitations on the Member’s certificate of registration:
 - a) The Member will attend two meetings with a Nursing Expert (the “Expert”), at her own expense and within six months from the date of this Order. To comply, the Member is required to ensure that:
 - i. The Expert has expertise in nursing regulation and has been approved by the Director of Professional Conduct (the “Director”) in advance of the meetings;
 - ii. At least seven days before the first meeting, the Member provides the Expert with a copy of:
 1. the Panel’s Order,
 2. the Notice of Hearing, and
 3. if available, a copy of the Panel’s Decision and Reasons;
 - iii. Before the first meeting, the Member reviews the following College publications and completes the associated Reflective Questionnaires, online learning modules, decision tools and online participation (where applicable):
 1. *Professional Standards*,
 2. *Therapeutic Nurse-Client Relationship*,
 3. *Mandatory Reporting: A process guide for employers, facility operators and nurses*

- iv. Before the first meeting, the Member reviews and completes the College's self-directed learning package, *One is One Too Many*, at her own expense, including the self-directed *Nurses' Workbook*;
 - v. At least seven 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 clients, colleagues, profession and self,
 - 3. strategies for preventing the misconduct from recurring,
 - 4. the publications, questionnaires and modules set out above, and
 - 5. the development of a learning plan in collaboration with the Expert;
 - 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 her behaviour;
 - viii. If the Member does not comply with any of the requirements above, the Expert may cancel any session scheduled, even if that results in the Member breaching a term, condition or limitation on her certificate of registration;
- b) For a period of 12 months from the date the Member returns to the practice of nursing, the Member will notify her employers of the decision. To comply, the Member is required to:
- i. Ensure that the Director is notified of the name, address, and telephone number of all employer(s) within 14 days of commencing or resuming employment in any nursing position;

- ii. Provide her employer(s) with a copy of:
 - 1. the Panel's Order,
 - 2. the Notice of Hearing, and
 - 3. a copy of the Panel's Decision and Reasons, once available;

- iii. Ensure that within 14 days of the commencement or resumption of the Member's employment in any nursing position, the employer(s) forward(s) a report to the Director, in which it will confirm:

- 1. that they received a copy of the required documents, and
 - 2. that they agree to notify the Director immediately upon receipt of any information that the Member has breached the standards of practice of the profession; and

- 4. All documents delivered by the Member to the College, the Expert or the employer(s) will be delivered by verifiable method, the proof of which the Member will retain.

College Counsel submitted that the mitigating factors in this case included that the Member had no prior complaints or involvement with discipline. At the time of the incident, the Member was newly registered with the College, just starting out her career. In addition, while the Member did not consent to the entirety of the penalty proposed, she has indicated a willingness to agree to most of the terms.

The aggravating factors in this case included that the allegations were serious in that failing to report abuse can result in significant harm to members of the public. It causes discredit to the profession and shows a disregard for the Member's professional obligations.

The proposed penalty provides general deterrence through the suspension, which will deter other members of the profession from engaging in similar conduct by helping them to understand the importance of their obligation to report as part of their obligation to the College and to public protection more generally.

As to specific deterrence, the proposed reprimand and two-month suspension will certainly deter the Member from ever engaging in this same type of conduct again. The Member will have a better understanding of the how significant her lack of action was in this case.

The proposed penalty provides remediation through the meetings with the Nursing Expert, the reprimand, and through the employer notification requirement. In particular, Counsel argued that the meetings with the Nursing Expert will provide the Member with an opportunity to reflect and learn from this event.

College Counsel provided the Panel with two cases which she submitted show that the College's proposal falls within a reasonable range of penalties.

CNO v Wilcox (Discipline Committee September 25, 2012). This case proceeded by way of an agreed statement of facts with a joint submission on order. The client involved reported to the member that a previous nurse had touched her inappropriately. The member did not document this conversation, nor did she elicit further information regarding the complaint, causing her to not fully appreciate the nature of the complaint. The member received an oral reprimand and terms, conditions and limitations on her certificate. The member in this case was not given a suspension.

CNO v Fisher (Discipline Committee March 10, 2017). This case was about the lack of reporting by the nurse who fell while trying to stop the client from leaving the unit and who was in charge of the client involved in the allegation. The member said she did not see anything upon being asked at the first meeting; however, several days later she did come forward to say that she saw her colleague strike the client a number of times with a closed fist. The member in this case received an oral reprimand, a one month suspension and terms, conditions and limitations on her certificate.

Submissions by Counsel for the Member

Counsel for the Member agreed with the College's position regarding aggravating and mitigating circumstances. Counsel reminded the Panel that the Member is young and was not as familiar with the "code white" situation as it occurred in this case. Counsel reminded the Panel that the Member has already informed her current employer about these allegations and findings. The Panel was also reminded that the fact the Member chose to come to the College to refute the allegations should not factor into our decision on penalty.

Ms. Street informed the panel that the Member was in agreement with the College's Submission on Order, except for the amount of time sought for the suspension. Counsel for the Member argued that the Panel should impose a suspension of six weeks, instead of two months.

Ms. Street referred to the cases that Ms. Lawrence had given the panel and also mentioned *CNO vs Wreaks* which had been given to the Panel during the liability phase of this matter. That case dealt with the same incident at issue here, except that it involved the nurse who was seen to be abusing the client on the video. In that decision, the nurse was given a 4-month suspension for her abuse of the client in the same case.

Penalty Decision

The panel makes the following order as to penalty:

1. Requiring the Member to appear before the Panel to be reprimanded within three months of the date that this Order becomes final.
2. Directing the Executive Director to suspend the Member's certificate of registration for two 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 the practising class.

3. Directing the Executive Director to impose the following terms, conditions and limitations on the Member's certificate of registration:
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 - i. The Expert has expertise in nursing regulation and has been approved by the Director of Professional Conduct (the "Director") in advance of the meetings;
 - ii. At least seven days before the first meeting, the Member provides the Expert with a copy of:
 1. the Panel's Order,
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 3. if available, a copy of the Panel's Decision and Reasons;
 - iii. Before the first meeting, the Member reviews the following College publications and completes the associated Reflective Questionnaires, online learning modules, decision tools and online participation (where applicable):
 1. *Professional Standards*,
 2. *Therapeutic Nurse-Client Relationship*,
 3. *Mandatory Reporting: A process guide for employers, facility operators and nurses*
 4. *Documentation, 2008*
 - iv. Before the first meeting, the Member reviews and completes the College's self-directed learning package, *One is One Too Many*, at her own expense, including the self-directed *Nurses' Workbook*;
 - v. At least seven 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 clients, colleagues, profession and self,
 - 3. strategies for preventing the misconduct from recurring,
 - 4. the publications, questionnaires and modules set out above, and
 - 5. the development of a learning plan in collaboration with the Expert;
 - 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,
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 - 3. that the Expert reviewed the required documents and subjects with the Member, and
 - 4. the Expert's assessment of the Member's insight into her behaviour;
 - viii. If the Member does not comply with any of the requirements above, the Expert may cancel any session scheduled, even if that results in the Member breaching a term, condition or limitation on her certificate of registration;
- b) For a period of 12 months from the date the Member returns to the practice of nursing, the Member will notify her employers of the decision. To comply, the Member is required to:
- i. Ensure that the Director is notified of the name, address, and telephone number of all employer(s) within 14 days of commencing or resuming employment in any nursing position;
 - ii. Provide her employer(s) with a copy of:
 - 1. the Panel's Order,
 - 2. the Notice of Hearing, and
 - 3. a copy of the Panel's Decision and Reasons, once available;

iii. Ensure that within 14 days of the commencement or resumption of the Member's employment in any nursing position, the employer(s) forward(s) a report to the Director, in which it will confirm:

1. that they received a copy of the required documents, and
2. that they agree to notify the Director immediately upon receipt of any information that the Member has breached the standards of practice of the profession; and

4. All documents delivered by the Member to the College, the Expert or the employer(s) will be delivered by verifiable method, the proof of which the Member will retain.

Reasons for Penalty Decision

The Panel concluded that the penalty as proposed by the College was appropriate, however, the Panel concluded that there needed to be an additional component of education with respect to proper documentation. The Panel added a term to the penalty at paragraph 3(a)(iii) above. The parties were advised of the Panel's decision to do so. Neither took issue with the addition.

The Panel concluded that a suspension of two months was warranted in the circumstance. While the Panel recognizes that the Member's proposal was for a suspension two-weeks less in duration, the Panel concluded that the two month suspension better addressed concerns of deterrence and public confidence in this process and in the College's ability to regulate its members. The Panel considered the penalties imposed upon the other nurses involved in this incident, but did not think it was appropriate to draw a straight-line comparison, since those cases involved admissions and uncontested facts. The Panel considered the Member's conduct in this case and concluded that the two month suspension was appropriate.

The Panel concluded that the proposed penalty is reasonable and in the public interest. The Member has co-operated with the College by agreeing to most of the College Submission on Order and accepted responsibility. The Panel finds that the penalty satisfies the principles of specific and general deterrence, rehabilitation and remediation, and public protection.

I, Catherine Egerton, sign this decision and reasons for the decision as Chairperson of this Discipline panel and on behalf of the members of the Discipline panel.

Chairperson

Date