

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

PANEL:

Sherry Szucsko-Bedard, RN	Panel Chair
Sylvia Douglas	Public Member
Shaneika Grey, RPN	Member
Karen Laforet, RN	Member
Lalitha Poonasamy	Public Member

BETWEEN:

COLLEGE OF NURSES OF ONTARIO)	<u>GLYNNIS HAWE</u> for
)	College of Nurses of Ontario
- and -)	
)	
JENNIFER PATRICIA PREVOST)	<u>NO REPRESENTATION</u> for
Registration No. 0201517)	Jennifer Patricia Prevost
)	
)	<u>CHRISTOPHER WIRTH</u>
)	Independent Legal Counsel
)	
)	Heard: September 28, 2020

AMENDED 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 September 28, 2020, via videoconference.

As Jennifer Patricia Prevost (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.

College Counsel provided the Panel with evidence that the Member had been sent the Notice of Hearing on August 17, 2020 by way of an affidavit from [College Staff Member A], Prosecutions Clerk, dated September 16, 2020, confirming that [College Staff Member A] sent correspondence which included the Notice of Hearing, on August 17, 2020 to the Member’s last known address on the College Register.

The Panel was satisfied that the Member had received adequate notice of the time, place and purpose of the hearing and of the fact that if she did not participate in the hearing, it may proceed

without her participation. Accordingly, the Panel decided to proceed with the hearing in the Member's absence.

The Allegations

The allegations against the Member as stated in the Notice of Hearing dated August 17, 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(24)(ii) of *Ontario Regulation 799/93*, in that you failed to carry out an agreement entered into with the College of Nurses of Ontario ("CNO") as follows:
 - (a) you failed to comply with the terms of a Resolution Agreement, executed by you, CNO, and a member of the public, and adopted by the Inquiries, Complaints, and Reports Committee on or about March 31, 2016; and/or
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 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 as follows:
 - (a) you failed to comply with the terms of a Resolution Agreement, executed by you, CNO, and a member of the public, and adopted by the Inquiries, Complaints, and Reports Committee on or about March 31, 2016.

Member's Plea

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

Overview

The Member was first registered as a Registered Practical Nurse with the College on October 26, 1998 and later as a Registered Nurse on January 24, 2002.

On May 5, 2015 the College received a letter of complaint from a member of the public regarding a breach of personal health information. Both parties agreed to a resolution process and signed a Resolution Agreement.

The Member was sent a letter by regular mail dated March 31, 2016, that included a copy of the Resolution Agreement, a copy of the Publication *Confidentiality and Privacy—Personal Health Information* and information regarding practice reflection.

The terms of the Resolution Agreement stated that the Member agrees to:

- a. Review the College Standard: *Confidentiality and Privacy - Personal Health Information*.
- b. Meet with the Manager of Complaints, Professional Conduct to engage in practice reflection. In the meeting the Member will have the opportunity to examine the issues raised in the letter of complaint in conjunction with the College's standards of practice listed in (a).
- c. Complete the Complaint Reflection Worksheet and will submit it to the Manager of Complaints in advance of their meeting.

The Resolution Agreement stated that all requirements are to be completed within 90 days of the Resolution Agreement adoption: specifically, by June 30, 2016.

The College alleges that the Member did not complete the terms of the Resolution Agreement within the timeline provided.

The Evidence

College Counsel submitted a Book of Documents containing exhibits. The College's one witness, [College Staff Member B], was first employed by the College as an Investigator in April 2018 and is currently the Team Lead, Investigations. [College Staff Member B] confirmed he oversees investigations into professional misconduct for both internal and external investigation teams. The external team assigned to the Member's case was [External Investigation Team].

[College Staff Member B] confirmed that the Member had an unrestricted Certificate of Registration at the time of the Resolution Agreement and that the Resolution Agreement dated March 31, 2016 was sent to the Member's address on file with the College.

[College Staff Member B] confirmed the Member did not meet the requirements of the Resolution Agreement by June 30, 2016. He testified that communications by phone, emails and letters were made to the Member's current contact information on file. Attempts were made to reach the Member in August 2016 by College staff, including [College Staff Member C], Complaints Coordinator at the College. These attempts, supported by exhibits included:

- a. [College Staff Member D] called the Member on August 26, 2016, but the Member's voicemail box was full; no response;
- b. [College Staff Member C] called the Member on August 26, 2016, but the Member's voicemail box was full;
- c. [College Staff Member C] emailed the Member on August 26, 2016; no response;

- d. [College Staff Member C] called the Member on August 31, 2016, leaving a voice message; no response;
- e. On September 7, 2016 a letter was sent to the Member indicating an extension until September 21, 2016 was granted to complete the terms of resolution. The Member did not respond.

The Member's failure to complete the Resolution Agreement was passed to the Reports Intake Team by [College Staff Member C].

[College Staff Member B] confirmed that he received a copy of the external investigator's report. Following this, he made attempts to contact the Member which, as supported by exhibits, included:

- a. Telephone messages left for the Member on November 30, 2018 and April 7, 2019;
- b. A couriered letter to the Member dated August 20, 2019 with a request to respond by September 24, 2019;
- c. An email to the Member dated September 24, 2019 at 5:14 pm stating that the Member did not respond as requested and that the matter will be considered by the Statutory Committee immediately.

Final Submissions

College Counsel submitted that the issues before the Panel are:

- a. Was the Member aware of the Resolution Agreement decision dated March 31, 2016 and the requirements imposed upon her as specified in the Resolution Agreement?
- b. Did the Member fail to complete the Resolution Agreement?
- c. Did the Member commit professional misconduct by engaging in conduct that would be considered by members of the profession to be unprofessional by failing to complete the Resolution Agreement?

The exhibits tendered by College Counsel and identified by the witness provide evidence of the chronology of the events leading up to the allegations in this hearing. The Member was provided numerous opportunities to respond to the College and to comply with the Resolution Agreement, and yet failed to do so.

Subsection 51(1)(c) of the *Health Professions Procedural Code* of the *Nursing Act, 1991*, S.O. 1991, c. 32 as amended (the "*Code*"), as specified in subsection 1(24)(ii) of *Ontario Regulation 799/93* indicates that it is professional misconduct for registered nurses to fail to carry out an agreement entered into with the College. Failure to complete such an agreement demonstrates a disregard for professional responsibilities and obligations under the *Code* as well as a disregard for the College and its regulatory function.

CNO v. Fabro (Discipline Committee, 2014) was a decision where the allegations were identical to the present ones and the panel in that decision found the member's conduct to be both a breach of subsection 1(24)(ii) of *Ontario Regulation 799/93* and to be unprofessional.

The Panel was concerned as to whether the Member's conduct could also be considered dishonourable or disgraceful and sought further submissions from College Counsel on this issue.

College Counsel submitted that while the Panel was not bound by the prior *Fabro* decision, it provides guidance to the Panel and there were not a lot of other decisions addressing a failure to comply with a resolution agreement. Further, while the Panel has a discretion to depart from her submissions, a finding of dishonourable or disgraceful conduct usually requires that the conduct involve an element of dishonesty and moral failing.

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) and 2(a) of the Notice of Hearing. With respect to allegation 2(a), the Panel finds that the Member engaged in conduct that would reasonably be regarded by members of the profession to be unprofessional.

Reasons for Decision

The Panel accepted [College Staff Member B's] testimony. [College Staff Member B's] testimony, in conjunction with the exhibits submitted, satisfied the Panel that the Member was aware of the Resolution Agreement and the deadline for completion and that the Member had received the mailings from the College in that, the couriered letter was indicated as received. The Panel found that the Member committed an act of professional misconduct as alleged in paragraph 1(a) of the Notice of Hearing in that she had failed to complete her Resolution Agreement with the College.

With respect to allegation 2(a), the Member's conduct was clearly relevant to the practice of nursing. The Panel determined that the Member's conduct was unprofessional because she failed to meet her professional obligation to complete the Resolution Agreement and to communicate with the College as necessary. The Panel also considered whether the Member's conduct was dishonourable and unprofessional, but for the same reasons set out in the submissions of College Counsel, agreed that the conduct was unprofessional, but not dishonourable or disgraceful.

Penalty

Penalty Submissions

College Counsel submitted that, in view of the Panel's findings of professional misconduct, it should 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 4 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 her own expense and within 6 months from the date that 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 that 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 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, and
 3. 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. *Professional Standards*, and
 3. *Confidentiality and Privacy – Personal Health Information*;
 - 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 her behaviour;
- vii. If the Member does not comply with any of the requirements above, the Expert may cancel any session scheduled, even if that results in the Member breaching a term, condition or limitation on her certificate of registration;
4. All documents delivered by the Member to CNO or the Expert will be delivered by a verifiable method, the proof of which the Member will retain.

College Counsel submitted that the proposed penalty reflects the seriousness of the Member's conduct and strikes an appropriate balance between it and the aggravating and mitigating factors. Specifically, the penalty, as presented, meets all key objectives, providing specific deterrence to the Member and general deterrence to the profession, thereby protecting the public.

The aggravating factors in this case were:

- The Member's conduct was intentional in that she repeatedly did not respond to the College;
- The Member was aware of the Resolution Agreement that was signed and then failed to complete her professional obligation;
- The Member demonstrated a lack of remorse;
- The Member showed a disregard for the self-regulatory process of the College.

The mitigating factor in this case was that the Member had no prior disciplinary history with the College.

The penalty package in its entirety demonstrates the College takes this type of conduct very seriously.

The proposed penalty provides for general deterrence through:

- The suspension and oral reprimand, which demonstrate to the membership that this conduct will not be tolerated.

The proposed penalty provides for specific deterrence through:

- The suspension and reprimand.

The proposed remediation and rehabilitation aspects of the penalty provide an opportunity for the Member to reflect and not repeat professional misconduct through:

- The terms, conditions and limitations outlined, including two meetings with a Regulatory Expert to review specific standards;
- The completion of Reflective Questionnaires to ensure more insight and learnings regarding the Nursing Standards and expectations of the profession.

Overall, the public is protected because the penalty meets all of the goals to protect the public interest through the suspension and reprimand. It sends a message to the profession by addressing the seriousness of the misconduct as well as by showing that it cannot ignore the College or the legislation. The proposed order is within the range of orders made in cases with similar findings.

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

CNO v. Fabro (Discipline Committee, 2014). The member in this case failed to comply with the terms of a Resolution Agreement and failed to respond to letters and voice messages from the College reminding her of the deadline for completion. The member was found guilty of professional misconduct and of engaging in conduct that was considered by members as unprofessional. The penalty imposed included a reprimand, a two-month suspension and terms, conditions and limitations requiring the member to attend two meetings with a Nursing Expert.

CNO v. Singh (Discipline Committee, 2016). The member in this case failed to comply with a Specified Continuing Education or Remediation Program within the timeline provided. The member did not attend the hearing. The member was found guilty of dishonourable and unprofessional conduct. The penalty imposed was a reprimand, a four-month suspension and terms, conditions and limitations requiring the member to attend two meetings with a Nursing Expert.

CNO v. McLaughlin (Discipline Committee, 2009). This case is similar in that the member did not complete remedial measures as ordered by the Quality Assurance Committee and the file was referred to the Inquiries, Complaints and Reports Committee and the Discipline Committee. In this case, the member was given multiple opportunities to complete the Quality Assurance Program but failed to do so. The panel found that the member's failure to comply with the directives would reasonably be regarded by members as dishonourable and unprofessional. The penalty imposed was a reprimand, a three-month suspension and terms, conditions and limitations which included a requirement that the member complete the remedial activities directed by the Quality Assurance Committee and attend one meeting with a Regulatory Expert.

Penalty Decision

The Panel accepts the College's 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 4 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 her own expense and within 6 months from the date that 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 that 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 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, and
 3. 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. *Professional Standards*, and
 3. *Confidentiality and Privacy – Personal Health Information*;
 - 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 her behaviour;

vii. If the Member does not comply with any of the requirements above, the Expert may cancel any session scheduled, even if that results in the Member breaching a term, condition or limitation on her certificate of registration;

4. All documents delivered by the Member to CNO or the Expert will be delivered by verifiable method, the proof of which the Member will retain.

Reasons for Penalty Decision

The Panel reviewed the cases provided to it by College Counsel and noted the suspensions ranged from two to four months. In the case of *CNO v Fabro*, the member was given a two-month suspension, rather than the one proposed in this matter, because the member participated in the hearing, had significant mitigating factors and expressed remorse. The Panel found that the four-month suspension reflects the seriousness of this case. The Member had the opportunity to comply with the Resolution Agreement and the College's repeated requests for compliance. The Member's lack of governability and disregard for meeting her obligations in the regulatory process is of grave concern. The penalty protects the public and sends a clear message to the membership that failing to comply with an order from a statutory committee of the College is serious and will not be tolerated.

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.