

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

PANEL:	Dawn Cutler, RN	Chairperson
	Carly Gilchrist, RPN	Member
	Carly Hourigan	Public Member
	Ian McKinnon	Public Member
	Patricia Sullivan, RN	Member

BETWEEN:

COLLEGE OF NURSES OF ONTARIO)	<u>ALYSHA SHORE</u> for
)	College of Nurses of Ontario
- and -)	
)	
SELENA PATRICE DOCKERY)	<u>KELSEY IVORY</u> for
Registration No.: 9326661)	Selena Patrice Dockery
)	
)	<u>CHRISTOPHER WIRTH</u>
)	Independent Legal Counsel
)	
)	Heard: September 29, 2020

DECISION AND REASONS

This matter came on for hearing before a panel of the Discipline Committee (the “Panel”) of the College of Nurses of Ontario (the “College”) on September 29, 2020, via videoconference

The Allegations

The allegations against Selena Patrice Dockery (the “Member”) as stated in the Notice of Hearing dated August 19, 2020 are as follows:

IT IS ALLEGED THAT:

1. You have committed an act of professional misconduct as provided by subsection 51(1)(b.0.1) of the *Health Professions Procedural Code* of the *Nursing Act, 1991*, S.O. 1991, c. 32, in that you failed to cooperate with the Quality Assurance Committee or any assessor appointed by that committee, and in particular, you:

- (a) Did not participate in Practice Assessment and/or did not complete activities directed by the Quality Assurance Committee in 2018; and/or
 - (b) Did not participate in the scheduled Practice Simulation(s) directed by the Quality Assurance Committee in 2018 and/or 2019.
- 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, in particular, you:
 - (a) Did not participate in Practice Assessment and/or did not complete activities directed by the Quality Assurance Committee in 2018; and/or
 - (b) Did not participate in the scheduled Practice Simulation(s) directed by the Quality Assurance Committee in 2018 and/or 2019.

Member's Plea

The Member admitted the allegations set out in paragraphs 1(a), 1(b), 2(a) and 2(b) 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. Selena Patrice Dockery (the "Member") initially registered with the College of Nurses of Ontario ("CNO") as a Registered Nurse on June 9, 1993. The Member registered in the Extended Class as a Nurse Practitioner on February 23, 2009, with a Specialty Certificate in Primary Health Care.
2. The Member is employed with Indigenous Services Canada, previously called Health Canada – First Nations and Inuit Health Benefits, in or around Sioux Lookout.

INCIDENTS RELEVANT TO ALLEGATIONS OF PROFESSIONAL MISCONDUCT

Quality Assurance

3. The Member failed to participate in a Quality Assurance (“QA”) Practice Assessment and Practice Simulation between March to October 2018 and again failed to participate in a QA Practice Simulation between April to September 2019.

March to October 2018

4. In March 2018, the Member was selected to participate in a Practice Assessment which included a Practice Simulation assessment, as part of CNO’s QA Program. The Member was notified of her selection by letter dated March 5, 2018, which was sent to her address on file with CNO.
5. The Member was asked to complete and submit her 2018 learning plan and objective multiple-choice tests (“Practice Assessment Activities”) by April 8, 2018. The Member was also notified that the Practice Simulation assessment was scheduled to be held in Toronto on October 12, 2018. The Member failed to complete the Practice Assessment Activities by the deadline.
6. On April 26, 2018, the QA Committee Chair notified the Member by letter that she had not completed the Practice Assessment and explained to the Member what Practice Assessment Activities she needed to complete. The Member was given a deadline of May 13, 2018 to complete the assigned activities. The Member was also advised that if she did not complete the assigned activities by the deadline, the QA Committee may report her to the Inquires, Complaints and Reports Committee (“ICRC”) for professional misconduct. The Member failed to complete the Practice Assessment Activities or contact CNO.
7. On June 20, 2018, the QA Committee Chair notified the Member by letter of her failure to participate in the 2018 Practice Assessment. The Member was given a further opportunity to complete the Practice Assessment Activities by July 3, 2018. The Member was advised that her failure to comply may result in the QA Committee referring her to the ICRC for lack of participation with the QA Program. The Member failed to comply.
8. On June 29, 2018, the QA Team emailed the Member to remind her that she had been selected for the 2018 Practice Simulation assessment as part of her required participation in Practice Assessment. The Member was provided with a confidentiality agreement which she was required to sign and send to CNO by July 9, 2018. The Member did not do so.

9. On July 10, 2018, the QA Manager emailed the Member stating that she had not responded to several letters from the QA Committee regarding practice assessment requirements of the QA Program. The email informed the Member that this was very serious. The QA Manager also stated that she had tried calling the Member and leaving a message, but that voicemail was not available.
10. On July 13, 2018, the QA Team emailed the Member to provide her with further information in respect of the Practice Simulation assessment.
11. On July 24, 2018, the QA Team phoned the Member at the phone number on file because it had not received the required confidentiality agreement for the Practice Simulation. The Member did not answer and there was no option to leave a voice message.
12. On July 31, 2018, the QA Manager emailed the Member twice - using both the email address the Member had provided CNO and a work email - about her ongoing lack of response. The Member was told it was very important that she be in touch. The QA Manager received an automated reply from the Member's work email stating that she was out of the office from July 30, 2018 to August 9, 2018.
13. On August 30, 2018, the QA Team emailed the Member using both email addresses to reiterate that she was required to participate in a Practice Simulation on October 12, 2018. The QA Team received an automated reply from the Member's work email stating that she was out of the office from August 13, 2018 to September 10, 2018. The emails were sent with tracking, and the QA Team received a notification that the email to the Member's work email was read on September 11, 2018.
14. The Member failed to attend the Practice Simulation assessment on October 12, 2018 and she also failed to complete the Practice Assessment Activities.
15. On October 31, 2018, the QA Committee Chair sent a letter to the Member setting out the above noted communications from CNO to the Member, and the Member's failure to participate in the QA Program. The letter stated that the QA Committee had formed the intention to refer the Member to the ICRC for lack of participation in the QA Program in 2018. The Member was provided with 14 days to make a written submission in response to the QA Committee's decision. The Member did not respond.
16. On November 16, 2018, the QA Committee forwarded information to the ICRC outlining how the Member had failed to comply with the QA Program.

April to November 2019

17. While waiting for the ICRC to address the reported information, the QA Committee provided the Member with a second opportunity to participate and complete the Practice Assessment, including the Practice Simulation. As such, in a letter dated April 25, 2019, the QA Committee directed the Member to participate in the Practice Simulation assessment scheduled for September 27, 2019. This letter also requested that the Member complete and return a signed confidentiality agreement form by May 16, 2019. The Member did not do so.
18. On July 10, 2019 and August 23, 2019, the QA Team emailed the Member to remind her of her required participation in the Practice Simulation assessment on September 27, 2019. The Member did not respond to these emails.
19. On July 10, 2019, the QA Team called the Member, but there was no answer and no option to leave a voice message.
20. On December 19, 2019, the ICRC reviewed the Member's history of failing to participate in the QA process in 2018 and 2019 and referred the Member to the Discipline Committee. The Member was informed of this decision by letter dated December 19, 2019.
21. The Member responded to CNO's correspondence in February 2020 and indicated that she did not receive all of the aforementioned correspondence.
22. If the Member were to testify, she would indicate that she had a number of personal and mail-related issues which led to her failure to respond to the QA Team in a timely manner, including that she works in a remote northern community without regular access to her telephone and mail. The Member would further testify that she has since rectified these issues.

ADMISSIONS OF PROFESSIONAL MISCONDUCT

23. The Member admits that she committed the acts of professional misconduct as alleged in paragraph 1 (a) to (b) of the Notice of Hearing in that she failed to participate in the Practice Assessment, did not complete activities directed by the QA Committee in 2018 and did not participate in the scheduled Practice Simulations directed by the QA Committee in 2018 and 2019, as described in paragraphs 3 -22 above.
24. The Member admits that she committed the act of professional misconduct as alleged in paragraph 2 (a) to (b) of the Notice of Hearing, and in particular, that her conduct was unprofessional, as described in paragraphs 3 to 22 above.

Decision

The College bears the onus of proving the allegations in accordance with the standard of proof, that being the balance of probabilities based upon clear, cogent and convincing evidence.

Having considered the evidence and the onus and standard of proof, the Panel finds that the Member committed acts of professional misconduct as alleged in paragraphs 1(a) and 1(b) of the Notice of Hearing. With respect to allegations 2(a) and 2(b), the Panel finds that the Member engaged in conduct that would reasonably be considered by members to be unprofessional.

Reasons for Decision

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

Allegations #1(a) and 1(b) in the Notice of Hearing are supported by paragraphs 3-23 in the Agreed Statement of Facts. The Member admits to her professional misconduct. In March 2018, the Member was selected to participate in a Practice Assessment which included a Practice Simulation assessment. The Member failed to complete the Practice Assessment Activities by the deadline. The Quality Assurance Team attempted to contact the Member via registered mail, email and telephone. The Quality Assurance Team was unable to reach the Member for a response. The Member ultimately did not complete her Practice Assessments or Simulations.

With respect to allegations #2(a) and 2(b), the Panel finds that the Member's conduct in failing to participate in her Practice Assessment and Simulation as required by the CNO's Quality Assurance Program was unprofessional as it demonstrated a serious and persistent disregard for her professional obligations. Being self-reflective and committed to life-long learning is a critical part of providing the safest and highest quality nursing care to patients. This is why all nurses engage in daily practice reflection and participate in quality assurance activities throughout their careers.

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 three months of the date that this Order becomes final.
2. Directing the Executive Director to suspend the Member's certificate of registration for 2 months. This 2-month suspension shall take effect from November 4, 2020 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 two meetings with a Regulatory Expert (the “Expert”) at her own expense and within 6 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 of Professional Conduct (the “Director”) in advance of the meetings;
 - ii. At least 7 days before the first meeting, the Member provides the Expert with a copy of:
 1. the Panel’s Order,
 2. the Notice of Hearing,
 3. the Agreed Statement of Facts,
 4. this Joint Submission on Order, and
 5. if available, a copy of the Panel’s Decision and Reasons;
 - iii. Before the first meeting, the Member reviews the following CNO publications and completes the associated Reflective Questionnaires, online learning modules, decision tools and online participation forms (where applicable):
 1. *Professional Standards*, and
 2. *Code of Conduct*;
 - iv. 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;
 - v. 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;

- vi. 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 her certificate of registration;
 - b) The Member shall participate in CNO's next available Quality Assurance program cycle, within 24 months from the date this Order becomes final.
- 4. All documents delivered by the Member to CNO and the Expert will be delivered by verifiable method, the proof of which the Member will retain.

Penalty Submissions

Submissions were made by College Counsel.

While in the past suspensions for this conduct have normally been one month, given the number of these type of cases still being referred to the Discipline Committee, the College is now seeking longer suspensions of two months to address general deterrence.

The aggravating factor in this case was the seriousness of the offence. Quality Assurance is a key element in maintaining high standards of all self-regulated professions. The success of the program relies on members participating when required to do so and being governed by the College.

The mitigating factors in this case were that the Member cooperated with the College, showed remorse, and agreed to the Agreed Statement of Facts and the Joint Submission on Order. There is no prior discipline history.

The proposed penalty provides for general deterrence as the suspension denounces the wrongful conduct. The proposed penalty provides for specific deterrence through the reprimand as it signals disapproval of misconduct of this nature.

The proposed penalty provides for remediation and rehabilitation through terms conditions and limitations on the Member's certificate, as well as meetings with the Nursing Expert to review standards of practice. The penalty is aimed at improving practice, public protection and maintaining confidence in standards and the regulatory process. The Member's requirement to participate in the next round of Quality Assurance will reinforce the importance of continued education.

Overall, the public is protected as this decision illustrates the denunciation of the conduct. Public confidence is maintained through self-regulation and maintenance of standards.

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

CNO v. Castor (Discipline Committee, 2017). In this case the member had identical allegations; failure to participate in the QA and unprofessional conduct. The member admitted to the allegations and the hearing was uncontested. The penalty in this hearing was an oral reprimand, a one-month suspension,

two meetings with a Nursing Expert, terms, conditions, and limitations on certificate of registration. The member was also required to participate in the College's 2017 Quality Assurance Program.

CNO v. Desante (Discipline Committee, 2016). In this case the member had identical allegations. The member did not participate in the hearing. The hearing was contested. The penalty in this hearing was an oral reprimand, a three-month suspension, two meetings with a Nursing Expert and, similar terms, conditions, and limitations on the member's certificate of registration.

The Member's Counsel agreed with the submissions of College Counsel and also submitted that the mitigating factors in this case, include:

- The Member admitted to the allegations;
- The Member has cooperated with the College;
- The Member has taken responsibility for her actions;
- The person receiving the Member's mail did not notify her of the correspondence from the College, but the Member recognizes that it was her responsibility to stay in communication with the College and has taken steps to correct this;
- The Member has support of her family to rectify the issues with communication;
- The Member is remorseful.

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 three months of the date that this Order becomes final.
2. The Executive Director is directed to suspend the Member's certificate of registration for 2 months. This 2-month suspension shall take effect from November 4, 2020 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 two meetings with a Regulatory Expert (the "Expert") at her own expense and within 6 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 of Professional Conduct (the "Director") in advance of the meetings;
 - ii. At least 7 days before the first meeting, the Member provides the Expert with a copy of:
 1. the Panel's Order,
 2. the Notice of Hearing,

3. the Agreed Statement of Facts,
 4. this Joint Submission on Order, and
 5. if available, a copy of the Panel's Decision and Reasons;
- iii. Before the first meeting, the Member reviews the following CNO publications and completes the associated Reflective Questionnaires, online learning modules, decision tools and online participation forms (where applicable):
1. *Professional Standards*, and
 2. *Code of Conduct*;
- iv. 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;
- v. 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;
- vi. 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 her certificate of registration;
- b) The Member shall participate in CNO's next available Quality Assurance program cycle, within 24 months from the date this Order becomes final.
4. All documents delivered by the Member to CNO and the Expert 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. The penalty is in line with what has been ordered in previous cases.

The Panel accepts College Counsel's submission that a penalty of 2 months suspension is warranted to send a stronger message of general deterrence to the profession.

I, Dawn Cutler, 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.