

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

PANEL:	April Plumton, RPN	Chairperson
	Jim Attwood, RN	Member
	Cheryl Evans, RN	Member
	Mary MacMillan-Gilkinson	Public Member
	Margaret Tuomi	Public Member

BETWEEN:

COLLEGE OF NURSES OF ONTARIO)	<u>JESSICA LATIMER</u> for
)	College of Nurses of Ontario
- and -)	
)	
ANDREA PARKER)	<u>ROBERT GILL</u> for
Registration No. JF675476)	Andrea Parker
)	
)	
)	Heard: June 6, 2016

DECISION AND REASONS

This matter came on for hearing before a panel of the Discipline Committee (“the Panel”) on June 6, 2016 at the College of Nurses of Ontario (“the College”) at Toronto.

The Allegations

The allegations against Andrea Parker (“the Member”) as stated in the Notice of Hearing dated April 28, 2016 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, as amended (the “Code”), in that, in or about March 2014 – October 2014, you failed to cooperate with the Quality Assurance Committee or any assessor appointed by that committee, and in particular, you failed to participate after being selected by the Quality Assurance Committee for practice assessment.
2. You have committed an act of professional misconduct as provided by subsection 51(1)(c) of the Code, and defined in subsection 1(37) of *Ontario Regulation 799/93*, in that, in or about March 2014 – October 2014, 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, by failing to participate after being selected by the Quality Assurance Committee for practice assessment.

Member's Plea

The Member admitted the allegations set out in paragraphs 1 and 2 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

Counsel for the College and the Member advised the panel that agreement had been reached on the facts and introduced an Agreed Statement of Facts, which reads as follows.

THE MEMBER

1. Andrea Parker (the "Member") obtained a diploma in nursing [] in 2006.
2. The Member registered with the College of Nurses of Ontario (the "College") as a Registered Practical Nurse ("RPN") on December 5, 2006.
3. The Member is employed at [the Facility] in [] Ontario as an MDS – RAI Coordinator.

INCIDENT RELEVANT TO ALLEGATIONS OF PROFESSIONAL MISCONDUCT

Quality Assurance

4. On March 24, 2014, the Member was notified by the College that she had been randomly selected to participate in a Practice Assessment as part of the College's Quality Assurance ("QA") program. The Member was given until April 25, 2014 to complete her 2014 Learning Plan and objective multiple choice tests online.
5. The Member failed to complete the required activities.
6. On May 21, 2014, the QA Committee wrote to the Member to inform her that its records indicated that she had not participated in the QA program. The Committee directed the Member to complete the required activities by June 15, 2014. Again, the Member failed to participate.
7. On July 28, 2014, the QA Committee wrote the Member to inform her that she had not participated in the QA program, as required. The letter stated that the Member

was now being directed to complete the following specified activities by September 8, 2014:

- Submit 2014 learning plan
 - Submit one case example that demonstrates application to practice [in] client-centred care: *Therapeutic Nurse-Client Relationships* (“TNCR”)
 - Submit one case example that demonstrates application to practice in maintaining boundaries: *TNCR*
 - Submit one case example that demonstrates application to practice in protecting client from abuse: *TNCR*
 - Submit one case example that demonstrates application to practice in therapeutic communication: *TNCR*
 - Submit one case example that demonstrates application to practice in security: *Documentation*
 - Submit one case example that demonstrates application to practice in communication: *Documentation*
 - Submit one case example that demonstrates application to practice in accountability: *Documentation*
8. The Member failed to complete any of these requirements by September 8, 2014.
 9. On October 1, 2014, the QA Committee advised the Member that it would refer her failure to comply with QA program to the College’s Inquiries, Complaints and Reports Committee.
 10. In August 2015, the College appointed an investigator and sent notice to the Member at the address on file as well as copies of the prior correspondence from the QA Committee. The investigator requested a response by September 4, 2015. The Member failed to provide a response.
 11. On September 10, 2015, the investigator spoke with the Member on the telephone. The Member advised that she had not received the July 2014 correspondence from the College. However, the Member confirmed that she had received the March 2014 letter from the QA Committee regarding the QA process. The investigator confirmed the Member’s home address (which was correct in the College’s records) and resent the material. A response was requested by October 19, 2015 but was not received.
 12. On October 20 and 21, 2015, the investigator followed up with the Member by email and voicemail. The Member responded by voicemail message on October 21, 2015

and said she had sent a response back via express mail. On October 22, 2015, the Member left a further voicemail message stating that she had meant to say that she was preparing a response, and that she had not sent it yet, but would do so.

13. On October 28, 2015, the investigator received a response from the Member, dated October 20, 2015.
14. If the Member were to testify, she would say that she had been having trouble with Canada Post and her mail was not being properly delivered and/or lost. The Member would say that she initiated a complaint with Canada Post about the problem in December 2014.
15. Despite her issues with Canada Post, the Member admits that she is obligated to provide the College with a valid mailing address and that the College can rely on regular mail delivery service to provide notice to its members.
16. In any case, the Member admits that she received the College's March 24, 2014 letter explaining her requirement to participate in the 2014 QA program and was therefore aware of her obligation.

ADMISSIONS OF PROFESSIONAL MISCONDUCT

17. The Member admits that she committed the acts of professional misconduct as alleged in paragraph 1 of the Notice of Hearing, as described in paragraphs 4 to 13 above, in that she failed to cooperate with the QA Committee or any assessor appointed by that Committee, and in particular, she failed to participate after being selected by the QA Committee for practice assessment.
18. The Member admits that she committed the acts of professional misconduct as alleged in paragraph 2 of the Notice of Hearing, and in particular her conduct was unprofessional, as described in paragraphs 4 to 13 above.

Decision

The panel finds that the Member committed acts of professional misconduct as alleged in paragraphs 1 and 2 of the Notice of Hearing. As to allegation #2, the panel finds that the Member engaged in conduct that would reasonably be regarded 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.

Allegation #1 in the Notice of Hearing is supported by paragraphs 4 – 13 & 16 in the Agreed Statement of Facts.

Allegation #2 in the Notice of Hearing is supported by paragraphs 4 – 13 & 16 in the Agreed Statement of Facts.

With respect to Allegation #2, the panel finds that the Member's failure to participate in the Quality Assurance Program was unprofessional as it demonstrated a serious and persistent disregard for her professional obligations.

Penalty

Counsel for the College and the Member advised the panel that a Joint Submission on Order had been agreed upon. The Joint Submission 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 one month. 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 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 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,
 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 College publications and completes the associated Reflective Questionnaires, online learning modules and online participation forms (where applicable):

1. *Professional Standards,*

- iv. At least seven 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 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;
 - 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 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 the College's 2017 Quality Assurance program (or the next available cycle) within 24 months from the date the Member's suspension ends.
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.

Penalty Submissions

Submissions were made by College counsel. The Member's paralegal indicated that he agreed with those submissions.

The mitigating factors in this case were that the Member has cooperated with the College's proceedings. She has admitted to the allegations and has accepted responsibility for her actions. The Member has no prior disciplinary history with the College.

The aggravating factors in this case included the seriousness of the Member's conduct. She did not complete the Quality Assurance activities in spite of being given extra time and multiple opportunities. The Quality Assurance program is essential to all self-regulating professions. It is intended to reassure the public and to maintain competence. The Member's failure to participate undermines the public's confidence in the nursing profession as well as the profession's ability to govern itself.

The proposed penalty provides for general deterrence through the Member's suspension and reprimand.

The proposed penalty provides for specific deterrence through the Member's suspension and reprimand.

The proposed penalty provides for remediation and rehabilitation through the terms, conditions and limitations imposed on the Member's certificate [including] meeting[s] with the Nursing Expert to review standards of practice. The Member's requirement to participate in the next round of Quality Assurance will reinforce the importance of continued education.

The public is protected by the reprimand, suspension as well as the terms, conditions and limitations placed on her certificate of registration.

The Joint Submission on Order is also in the profession's interest as the penalty sends a message that there are consequences for this type of behaviour. It sends the same message to the public.

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

- *CNO vs Florence Agyekum* (Discipline Committee, September 19, 2012). In this case the member failed to appear before a panel of the Inquiries, Complaints and Reports Committee to be orally cautioned. The member received an oral reprimand, one-month suspension, was required to attend an oral caution and received terms, conditions and limitations.
- *CNO vs Merlita Fabro* (Discipline Committee, January 10, 2014). In this case, the member failed to complete the terms of a Resolution Agreement. The member received an oral reprimand, a two-month suspension and terms, conditions and limitations. This

decision was different than the current one in that Ms Fabro, unlike the Member, did not accept responsibility for her actions.

Penalty Decision

The panel accepts the Joint Submission as to 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 one month. 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. 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 Nursing Expert (the "Expert"), at her own expense and within six 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 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,
 3. the Agreed Statement of Facts,
 4. [the] 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 College publications and completes the associated Reflective Questionnaires, online learning modules and online participation forms (where applicable):
 1. *Professional Standards*,
 - iv. At least seven 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 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;
- 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 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 the College's 2017 Quality Assurance program (or the next available cycle) within 24 months from the date the Member's suspension ends.
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 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 cooperated 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.

I, April Plumton, RPN, sign this decision and reasons for the decision as Chairperson of this Discipline panel and on behalf of the members of the Discipline panel as listed below:

Chairperson

Date

Panel Members:

Jim Attwood, RN

Cheryl Evans, RN

Mary MacMillan-Gilkinson, Public Member

Margaret Tuomi, Public Member