

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

<b>PANEL:</b>	Heather Stevanka, RN	Chairperson
	Neil Hillier, RPN	Member
	Carly Hourigan	Public Member
	Carolyn Kargiannakis, RN	Member
	Lalitha Poonasamy	Public Member

**BETWEEN:**

COLLEGE OF NURSES OF ONTARIO	)	<u>JESSICA LATIMER</u> for
	)	College of Nurses of Ontario
- and -	)	
	)	
MARTHA ANNE WYSOCKI	)	<u>NO REPRESENTATION</u> for
Registration No.: 9301151	)	Martha Anne Wysocki
	)	
	)	<u>CHRISTOPHER WIRTH</u>
	)	Independent Legal Counsel
	)	
	)	Heard: November 27, 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 November 27, 2020, via videoconference.

**The Allegations**

The allegations against Martha Anne Wysocki (the “Member”) as stated in the Notice of Hearing dated October 23, 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(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, and, in particular, you failed to complete a Remediation Program that you were ordered to complete by a decision of the Inquiries, Complaints and Reports Committee, dated in or around April 2018.

## **Member's Plea**

The Member admitted the allegations set out in paragraph 1 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 advised the Panel that agreement had been reached on the facts and introduced an Agreed Statement of Facts, which as amended reads, unedited, as follows:

### **THE MEMBER**

1. Martha Anne Wysocki (the "Member") obtained a diploma in nursing from Seneca College in May 1992.
2. The Member registered with the College of Nurses of Ontario ("CNO") as a Registered Nurse on August 5, 1992. The Member was suspended for non-payment of fees from April 24, 2003 until January 10, 2007. She is currently entitled to practice nursing without restrictions.
3. The Member is employed by Victorian Order of Nurses – Durham Region in a part-time administrative capacity, where she is responsible for visiting group homes for persons with special needs and answering questions of facility staff regarding patient safety. The Member does not examine residents and she is not responsible for providing them with health care follow-up or medication administration.

### **INCIDENTS RELEVANT TO ALLEGATIONS OF PROFESSIONAL MISCONDUCT**

4. On March 29, 2018, a panel of the Inquires, Complaints and Reports Committee ("ICRC") of CNO issued an order requiring the Member to complete a Remediation Program.
5. The Remediation Program included the following:
  - reviewing CNO's *Documentation* and *Professional Standards* with a pre-approved nursing regulatory expert;
  - completing the Reflective Questionnaires, Practice Reflection Online Participation forms, and online learning modules associated with each of the professional standards; and,
  - after completing the above, attending a meeting with the pre-approved expert to discuss the incidents investigated, the applicable nursing standards, and the Member's insights gained from reflection exercises.
6. On April 2, 2018, the Member was notified by a letter of the ICRC's decision. The ICRC's letter explained that the Member would receive the reasons for the decision in

approximately 4-6 weeks, along with instructions on how to complete the Remediation Program.

7. On June 19, 2018, the anticipated letter was sent to the Member setting out the Remediation Program requirements. CNO's Monitoring team followed up with the Member on June 20, 2018 with additional guidance on how to complete the Remediation Program.
8. The Member was given until September 19, 2018 to complete all requirements.
9. The Member did not reach out for assistance and did not respond by the deadline.
10. On November 8, 2018, CNO's Monitoring team sent the Member a letter informing her that she missed the Remediation Program completion deadline. The Member was told that, if she wished to request an extension, she was required to do so by November 29, 2019.
11. The Member did not respond by the extended deadline.
12. On December 13, 2018, CNO's Monitoring team sent another letter to the Member informing her that she had breached the ICRC's order and that she had failed to request an extension by the two previous deadlines. However, CNO's Monitoring team provided a third opportunity for the Member to request an extension. The Member had until January 3, 2019 to reply.
13. The Member did not respond by the third extended deadline.
14. On January 4, 2019, CNO Monitoring sent the Member a letter explaining that she breached the ICRC's order and that she had missed three extended deadlines. Nonetheless, CNO's Monitoring team provided the Member with a fourth opportunity for the Member to request an extension. The Member was given until January 25, 2019 to respond.
15. On January 16, 2019, the Member emailed CNO's Monitoring team. She stated that she received CNO's correspondence and "would appreciate an extension".
16. On January 22, 2019, a CNO Monitoring Administrator responded to the Member's request and asked her to offer a proposed date by which she would complete the Remediation Program.
17. The Member did not respond to the CNO Monitoring Administrator's email.
18. On February 1, 2019, the Member called the CNO Monitoring Administrator and left a message stating that she did not understand how to complete "the paperwork".
19. On February 5, 2019, the CNO Monitoring Administrator returned the Member's call and left a voicemail requesting that the Member call her back so she could guide her through the process.

20. The Member did not return the CNO Monitoring Administrator's voicemail.
21. On February 15, 2019, the CNO Monitoring Administrator tried calling the Member again and reached her this time. The CNO Monitoring Administrator spoke to the Member by phone and explained the terms of the Remediation Program, as well as how the Member could apply for an extension.
22. The Member thanked the CNO Monitoring Administrator and confirmed that she would call back if she had any questions. However, the Member did not request an extension, complete the Remediation Program, or reach out again to CNO.
23. On March 22, 2019, CNO's Monitoring team sent the Member a letter regarding her ongoing failure to complete the Remediation Program and the absence of any subsequent request for an extension or projected completion date.
24. The Member did not respond to CNO's Monitoring team.
25. If the Member were to testify, she would state that she is remorseful for her actions, including not demonstrating governability sooner in the process by completing the Remediation Program, requesting an extension, or meaningfully responding to CNO's Monitoring team when they made multiple attempts to assist her in completing the Remediation Program.
26. If the Member were to testify, she would also state that she acknowledges and accepts full responsibility for not following an order of CNO's statutory committee, which she recognizes is part of her obligation as a member of a regulated health profession. The Member commits to CNO that she will be accountable and engaged in all manner of CNO outreach going forward. The Member has proactively made contact with a nursing expert, for purposes of engaging in remediation, and has begun a review of CNO standards and reflective worksheets.
27. If the Member were to testify, she would state that she suffered from a health condition during the time period that influenced her behaviour and judgment. She has since sought treatment for her health condition and remains dedicated to her long-term stability.

#### **ADMISSIONS OF PROFESSIONAL MISCONDUCT**

28. The Member admits that she committed the acts of professional misconduct as alleged in paragraph 1 of the Notice of Hearing in that she failed to complete a Remediation Program pursuant to a decision of the ICRC, dated in or around April 2019, and that her conduct would be reasonably be regarded by members of the profession as unprofessional, as described in paragraphs 4 to 27 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 paragraph 1 of the Notice of Hearing and 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 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 4-28 in the Agreed Statement of Facts. This allegation was clearly a breach of the Member's obligations, as a registered member of the College, in that she did not abide by the order of the Inquiries, Complaints and Reports Committee ("ICRC") to complete a Remediation Program as she was required to do.

With respect to allegation #1, the Panel finds that the Member's conduct in failing to comply with an order by the ICRC is unacceptable conduct. Non-compliance with a direct order from a governing body is unprofessional as it demonstrates a serious and persistent disregard for her professional obligations.

## **Penalty**

College Counsel and the Member 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 one month. This suspension shall take effect on 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 Regulatory 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 CNO publications and completes the associated Reflective Questionnaires, online learning modules, decision tools and online participation forms (where applicable):
  - 1. *Professional Standards*,
  - 2. *Code of Conduct*, and
  - 3. *Documentation*;
- 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 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 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;

4. All documents delivered by the Member to the CNO, 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 aggravating factors in this case were:

- The Member's conduct was serious and intentional;
- The Member's conduct showed a disregard for her professional obligations. Remediation was ordered by the ICRC in response to the Member's conduct. By not completing the order the Member subverted the regulatory process;
- The Member's behaviour brought discredit to her profession.

The mitigating factors in this case were:

- The Member cooperated with the College and participated in the process;
- The Member admitted to the allegation and accepted responsibility for her actions by agreeing to the Agreed Statement of Facts and the Joint Submission on Order;
- The Member has no prior discipline with the College;
- The Member expressed remorse and regret for not following the ICRC's order;
- The Member had health issues during this period, which influenced her behaviour and her judgement and has since sought treatment;
- The Member has been proactive and has already started to review the College Standards.

The proposed penalty provides for general and specific deterrence through:

- The one-month suspension;
- The oral reprimand;

The proposed penalty provides for remediation and rehabilitation through:

- Two meetings with the Regulatory Expert, which will allow the Member to reflect on her professional standards and requirements;
- The terms, conditions and limitations placed on the Member's certificate of registration.

Overall, the public is protected because:

- The proposed Joint Submission on Order, in its totality is geared toward public protection. The order sends a message to nurses that there are consequences for their behaviour, and to the public of the profession's ability to self-regulate.

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

*CNO v. Reyes* (Discipline Committee, 2020). The member failed to appear before a panel of the ICRC to be orally cautioned and failed to complete a Specified Continuing Education or Remediation Program. The member was given a penalty which included an oral reprimand, a one-month suspension and two meetings with a Regulatory Expert.

*CNO v. Shawanda* (Discipline Committee, 2017). The member failed to appear before a panel of the ICRC to be orally cautioned and failed to complete a Specified Continuing Education or Remediation Program. The member was given a penalty which included an oral reprimand, a two-month suspension and two meetings with a Nursing Expert. In the present case, the Joint Submission on Order only seeks a one month suspension as there are additional mitigating factors.

### **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 one month. This suspension shall take effect on 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 Regulatory 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 CNO publications and completes the associated Reflective Questionnaires, online learning modules, decision tools and online participation forms (where applicable):
      1. *Professional Standards*,
      2. *Code of Conduct*, and
      3. *Documentation*;
    - 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 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 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;
4. All documents delivered by the Member to the CNO, 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 co-operated with the College and, by agreeing with 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 College is increasingly of the view that behaviour like this is to be taken seriously. However, in this case there are additional mitigating factors. The Member was proactive and recognized the need to rehabilitate in advance of today's hearing. The penalty is also in line with what has been ordered in previous cases.

I, Heather Stevanka, 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.