

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

PANEL:	Lindsay Hyslop, NP	Chairperson
	Cheryl Evans, RN	Member
	April Plumton, RPN	Member
	Ashleigh Molloy	Public Member
	Margaret Tuomi	Public Member

BETWEEN:

COLLEGE OF NURSES OF ONTARIO)	<u>NICK COLEMAN</u> for
)	College of Nurses of Ontario
- and -)	
)	
SHEILA MARY O'NEILL)	<u>PETER LOBO</u> for
Registration No. GJ10085)	Sheila Mary O'Neill
)	
)	
)	
)	
)	Heard: April 29, 2016

DECISION AND REASONS

This matter came on for hearing before a panel (“the Panel”) of the Discipline Committee on April 29, 2016 at the College of Nurses of Ontario (“the College”) at Toronto.

The Allegations

The original Notice of Hearing dated January 13, 2016 mistakenly identified Sheila Mary O’Neil (the “Member”) as a Registered Nurse rather than a Registered Practic[al] Nurse. The panel accepted that this was a typographical error.

The allegations against the Member as stated in the corrected Notice of Hearing 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(1) of *Ontario Regulation 799/93*, in that, while working as a Registered Practical Nurse at [the Facility] in [] Ontario, you contravened a standard of practice of the profession or failed to meet the standard of

practice of the profession with respect to attempting to force [the Client] to take medications without her consent, and/or assaulting the client when she refused, on or about November 25, 2011.

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(7) of *Ontario Regulation 799/93*, in that, while working as a Registered Practical Nurse at [the Facility] in [] Ontario, you abused a client verbally, physically or emotionally with respect to attempting to force [the Client] to take medications without her consent, and/or assaulting the client when she refused, on or about November 25, 2011.
3. 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(9) of *Ontario Regulation 799/93*, in that, while working as a Registered Practical Nurse at [the Facility] in [] Ontario, you did anything to a client for a therapeutic, preventative, palliative, diagnostic, cosmetic or other health related purpose in a situation in which a consent was required by law, without such consent with respect to attempting to force [the Client] to take medications without her consent, and/or assaulting the client when she refused, on or about November 25, 2011.
4. 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, while working as a Registered Practical Nurse at [the Facility] in [] Ontario, 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, with respect to attempting to force [the Client] to take medications without her consent, and/or assaulting the client when she refused, on or about November 25, 2011.

Member's Plea

The Member admitted the allegations set out in paragraphs 1, 2, 3 and 4 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's Representative advised the Panel that agreement had been reached on the facts and introduced an Agreed Statement of Facts, which reads as follows. The Appendix referred to in the Agreed Statement of Facts is not reprinted in these Reasons.

THE FORMER MEMBER

1. Sheila Mary O’Neill (“Ms O’Neill”) registered with the College of Nurses of Ontario (the “College”) as a Registered Practical Nurse (“RPN”) between January 1970 and March 2012.
2. Ms O’Neill was employed at [the Facility], a retirement residence [] for the entirety of her career, from January 1965 until January 2012, when she resigned from her position at the Facility.
3. Ms O’Neill resigned from the College as of March 28, 2012, is not practising nursing and does not intend to return to the practice of nursing.

THE CLIENT

4. [The Client] was 91 years old at the time of the incident. She had been a resident of the Facility since March 2010 and was discharged in December 2011.
5. Among other things, [the Client] was diagnosed with dementia, and although she was mobile, she sometimes required wheelchair assistance and she required assistance with personal care.

INCIDENT RELEVANT TO ALLEGATIONS OF PROFESSIONAL MISCONDUCT

6. On November 25, 2011, Ms O’Neill attempted to administer the Client’s medication, crushed, with applesauce.
7. The Client did not want to take the crushed pills with the applesauce.
8. An altercation arose between the Client and Ms O’Neill. Ms O’Neill pinched or twisted the skin on the Client’s knee, causing a bleeding wound. The Client cried out in pain and emotional upset.
9. On February 5, 2013, Ms O’Neill pled guilty to and was convicted of assaulting the Client, contrary to s. 266 of the *Criminal Code*. She was given a conditional discharge and three years of probation, which she has now completed.

REFERRAL TO DISCIPLINE COMMITTEE

10. In January 2012, the daughter of the Client, [], filed a complaint with the College regarding Ms O’Neill’s treatment of her mother, as described above.
11. Initially, the Inquiries, Complaints and Reports Committee (“ICRC”) declined to refer the allegations of professional misconduct against Ms O’Neill to the Discipline Committee because it was unable to assess the credibility of the witnesses.

12. [The Client's daughter] applied for review of the ICRC decision to the Health Professions Appeal and Review Board ("HPARB"). The ICRC's decision was overturned by HPARB on September 30, 2014. HPARB directed the ICRC to refer allegations of professional misconduct against Ms O'Neill to the Discipline Committee.
13. The ICRC referred the allegations of professional misconduct against Ms O'Neill to the Discipline Committee on July 22, 2015.

UNDERTAKING TO PERMANENTLY RESIGN FROM THE COLLEGE

14. Ms O'Neill does not intend to apply to the College for the return of her certificate of registration in the future because she will not be returning to the practice of nursing. As a result, Ms O'Neill has signed an Undertaking with the College, agreeing to permanently resign and not to apply again for membership with the College. []

ADMISSIONS OF PROFESSIONAL MISCONDUCT

15. Ms O'Neill admits that she committed the acts of professional misconduct as alleged in paragraphs 1-4 of the Notice of Hearing.
 - a. Ms O'Neill admits that she contravened the standards of practice of the profession when she attempted to compel the Client to take medications without her consent and by pinching the Client when she refused. In particular, Ms O'Neill admits that she breached the following standards of practice published by the College, which were in force at the time of the incident:
 - i. *Professional Standards, Revised 2002*;
 - ii. *Ethics*; and
 - iii. *Therapeutic Nurse-Client Relationship, Revised 2006*.
 - b. Ms O'Neill also admits that the conduct in relation to the Client constituted abuse.
 - c. Ms O'Neill also admits that she was required to have consent and did not have consent, contrary to s. 1(9) of *Ontario Regulation 799/93*, with respect to administering the medications to the client.
 - d. Ms O'Neill also admits that her conduct in relation to the client would reasonably be regarded by members of the profession as disgraceful, dishonourable and unprofessional.

Decision

The Panel finds that the Member committed acts of professional misconduct as alleged in paragraphs 1, 2, 3 and 4 of the Notice of Hearing. As to allegation 4, the Panel finds that the Member engaged in conduct that would reasonably be considered by members to be disgraceful, dishonourable, and 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 7, 8, 9, and 15(a) in the Agreed Statement of Facts.

Allegation #2 in the Notice of Hearing is supported by paragraphs 8, 9, and 15(a)(b) in the Agreed Statement of Facts.

Allegation #3 in the Notice of Hearing is supported by paragraphs 7, 8, 9, and 15(a)(c) in the Agreed Statement of Facts.

With respect to Allegation #4, the Panel finds that the Member's conduct in forcing an unwilling client to take medications by inflicting pain, and failing to obtain consent was disgraceful, dishonourable, and unprofessional as it demonstrated a serious and persistent disregard for her professional obligations, and casts serious doubt on the Member's moral fitness and inherent ability to discharge the higher obligations the public expects professionals to meet.

Penalty

Counsel for the College and the Member's Representative advised the Panel that a Joint Submission on Order had been agreed upon. The Joint Submission requests that this Panel make an Order requiring Ms O'Neill to appear before the Panel to be reprimanded within three months of the date that this Order becomes final.

Penalty Submissions

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

The parties agreed that the mitigating factors in this case were: the Member's age, her physical condition, [and] the fact that the Member had retired from practice, resigned from the College, and entered into a formal undertaking with the College to never reapply for registration in Ontario or any other jurisdiction as [a] nurse in the future.

The aggravating factors in this case were: professional misconduct occurred with a vulnerable client, and that [the Member] has a finding of guilt of assault contrary to s.266 of the *Criminal Code of Canada*.

The proposed penalty provides for general deterrence through demonstrating to the membership as a whole that conduct of this nature will not be tolerated.

Public protection is achieved by the Member's undertaking to resign from the College and not seek registration as a nurse in Ontario or in any other jurisdiction again in the future.

College Counsel submitted cases to the Panel to demonstrate that the proposed penalty fell within the range of similar cases from this Discipline Committee. One case involved an isolated incident of abuse and the Member received a reprimand, four month suspension, and terms, conditions, and limitations placed upon her certificate of registration: *CNO v. Baldin* (Discipline Committee, 2010). The second case also involved an isolated incident of abuse where the Member received a reprimand, two-month suspension, and terms, conditions, and limitations [] on her certificate of registration: *CNO v. Pottruff* (Discipline Committee, 2006).

Penalty Decision

The panel accepts the Joint Submission on Order and accordingly orders:

1. Ms O'Neill is required to appear before the Panel to be reprimanded within three months of the date that this Order becomes final.

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 general deterrence and public protection. The Panel considered the fact that the Member has undertaken to resign from practice, and has undertaken to never apply for registration as a nurse again in Ontario or in any other jurisdiction. The Panel considered that the Member is 76 years of age and has a serious mobility issue, and [that] it would be very unlikely that the Member would be able to return to practice in the future.

The Panel considered the cases submitted by College Counsel regarding the proposed penalty, and although they involved single episodes of abuse, the Panel did not find them particularly helpful as the circumstances of the Member in this case [were] significantly different. The Panel considered [that] the undertaking to resign from the profession and to never apply for registration

again renders a suspension, terms, conditions, and limitations unnecessary. Had the Member's situation been different, the Panel would have ordered a suspension, terms, conditions, and limitations on the Member's certificate of registration even though she had resigned.

I, Lindsay Hyslop, NP, 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:

Cheryl Evans, RN

April Plumton, RPN

Ashleigh Molloy, Public Member

Margaret Tuomi, Public Member