DISCIPLINE COMMITTEE
OF THE COLLEGE OF NURSES OF ONTARIO

PANEL:

Michael Hogard, RPN  Chairperson
Susannah Handley, RN  Member
Megan Sloan, RPN  Member
Margaret Tuomi  Public Member
Mary MacMillan-Gilkinson  Public Member

BETWEEN:

COLLEGE OF NURSES OF ONTARIO  )  JEAN-CLAUDE KILLEY  for
)  )  College of Nurses of Ontario
)  - and -
)  )
ELIZABETH BRANTON  )  NO REPRESENTATION  for
Registration No. HI06356  )  Elizabeth Branton
)  )
)  LUISA RITACCA
)  Independent Legal Counsel
)  )
)  Heard: October 18, 2013

DECISION AND REASONS

This matter came on for hearing before a panel of the Discipline Committee on October 18, 2013, at the College of Nurses of Ontario (“the College”) at Toronto.

As Elizabeth Branton (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 and was not represented.

College Counsel indicated that the Member was aware of the hearing and introduced an Affidavit of Service [ ] which outlined attempts made to serve the Member and efforts to contact her. The panel was satisfied that the Member had received adequate notice of the time, date, place and nature of the hearing, and therefore proceeded with the hearing in the Member’s absence.
The Allegations

The allegations against the Member as stated in the Notice of Hearing dated August 22, 2013, 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(18) of Ontario Regulation 799/93, in that you contravened one or more terms, conditions or limitations on your certificate of registration, and in particular:

   (a) you failed to attend two sessions with a Nursing Expert within four months of the date of the Order of a panel of the Discipline Committee dated January 24, 2012 (the “Order”), as required by and according to the terms set out in paragraph 3(a) of that Order;

   (b) you failed to successfully complete a course regarding working with aggressive clients in a long-term care setting within ten months of the Order, as required by and according to the terms set out in paragraph 3(b) of the Order;

   (c) you failed to notify your employer(s) of the decision of the panel of the Discipline Committee and/or the Order within fourteen days of commencing or resuming employment in a nursing position, as required by and according to the terms set out in paragraph 3(c) of the Order;

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(19) of Ontario Regulation 799/93, in that you contravened a provision of the Nursing Act, 1991, the Regulated Health Professions Act, 1991, S.O. 1991, c. 18, or the regulations under either of those Acts, and in particular, you held yourself out as qualified to practise in Ontario as a nurse, registered nurse, practical nurse or nurse practitioner or in a specialty of nursing, while your certificate of registration was suspended and you were therefore not a member of the College, contrary to s. 11(5) of the Nursing Act, 1991, on at least some or all of the following dates on which your certificate of registration was suspended: March 9, 13, 17, 18, 23, 26, 27, April 1, 6, 14, 15, 20, 21, 24, 28, 29, and May 4, 2012;

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(21) of Ontario Regulation 799/93, in that you failed to comply with an order of a panel of the Discipline Committee, and in particular:
(a) you failed to appear before a panel of the Discipline Committee to be reprimanded within three months of the date of the Order, as required by paragraph 1 of the Order;

(b) you practised nursing while your certificate of registration was suspended, contrary to paragraph 2 of the Order, and in particular, you practised nursing on at least some or all of the following dates on which your certificate of registration was suspended: March 9, 13, 17, 18, 23, 26, 27, April 1, 6, 14, 15, 20, 21, 24, 28, 29, and May 4, 2012.

(c) you failed to attend two sessions with a Nursing Expert within four months of the date of the Order, as required by and according to the terms set out in paragraph 3(a) of that Order;

(d) you failed to successfully complete a course regarding working with aggressive clients in a long-term care setting within ten months of the Order, as required by and according to the terms set out in paragraph 3(b) of the Order;

(e) you failed to notify your employer(s) of the decision of the panel of the Discipline Committee and/or the Order within fourteen days of commencing or resuming employment in a nursing position, as required by and according to the terms set out in paragraph 3(c) of the Order;

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 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:

(a) you failed to appear before a panel of the Discipline Committee to be reprimanded within three months of the date of the Order, as required by paragraph 1 of the Order;

(b) you practised nursing while your certificate of registration was suspended, contrary to paragraph 2 of the Order, and in particular, you practised nursing on at least some or all of the following dates on which your certificate of registration was suspended: March 9, 13, 17, 18, 23, 26, 27, April 1, 6, 14, 15, 20, 21, 24, 28, 29, and May 4, 2012.

(c) you failed to attend two sessions with a Nursing Expert within four months of the date of the Order, as required by and according to the terms set out in paragraph 3(a) of that Order;
you failed to successfully complete a course regarding working with aggressive clients in a long-term care setting within ten months of the Order, as required by and according to the terms set out in paragraph 3(b) of the Order;

(e) you failed to notify your employer(s) of the decision of the panel of the Discipline Committee and/or the Order within fourteen days of commencing or resuming employment in a nursing position, as required by and according to the terms set out in paragraph 3(c) of the Order.

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 the subject of a prior discipline hearing before this College on January 23 and 24, 2012. As a result of that hearing, on January 24, 2012 the panel of the Discipline Committee ordered a suspension, reprimand, and that terms and conditions be placed on the Member’s certificate of registration (the “2012 Order”). The Member did not comply with the Order.

The Member continued to hold herself out as a nurse while her certificate of registration was suspended. She also failed to appear before the Discipline panel for a reprimand, failed to meet with a Nursing Expert, failed to notify her employers of the decision and reasons of the panel, and did not complete the courses as ordered.

The Issues

The Panel identified two issues to be considered related to the allegations.

1. Did the Member continue to hold herself out as a nurse while her certificate of registration was suspended?

2. Did the Member comply with the 2012 Order?

The Evidence

The Panel received 14 exhibits and heard testimony from two witnesses.

Issue #1: Did the Member continue to hold herself out as a nurse while her certificate of registration was suspended?

[Witness #1] is an administrator at [the Facility], and has held that position since December 1997. Her duties include the oversight of fiscal and professional operations of the facility. She confirmed that the Member was an RPN at the facility from April 2009 until May 2012. The Member worked primarily the night shift. [Witness #1] identified [RPN Schedule and Payroll
Roster Details] and explained that these showed that the Member had worked as an RPN on March 9, 13, 17, 18, 23, 26, 27; April 1, 6, 14, 15, 20, 21, 24, 28, 29; and May 4, 2012.

The College tendered a Registration Status Report of the College of Nurses of Ontario [ ] which indicated that the Member was suspended by the Discipline Committee from March 7, 2012, to May 7, 2012, in accordance with the order of the Discipline Committee dated January 24, 2012 [ ].

**Issue #2**: Did the Member comply with the 2012 Order of the discipline panel dated January 24, 2012?

The 2012 Order was made against the Member on January 24, 2012.

[Witness #2] is a Monitoring Administrator in the professional conduct department at the College. She has held that role since January 2011. Her duties include ensuring that members of the College follow the orders and the terms placed on their certificates of registrations, and she assists them in doing so.

[Witness #2] testified to sending letters to the Member on February 1, March 7, and May 8, 2012, [ ] with enclosures of the 2012 Order, the Notice of Hearing, instructions, reflective questionnaire and notification of employment forms. She testified there were no written responses to the letters, they were not returned to the College and the address used was the one provided by the Member on her 2012 Annual Renewal form [ ].

[Witness #2] testified that [the] Discipline Committee panel’s Decision and Reasons dated March 21, 2012, would have been mailed to the Member by the Hearings Team. [Witness #2] testified the Member did not attend at the College or attempt to make contact to receive a reprimand, nor did the Member see the Nursing Expert or have a report submitted by her own expert. She noted that there was no proof of enrollment or completion of any courses received and no report from employers was received.

[Witness #2] testified to speaking to the Member over the phone on June 5, 2012. The Member advised she was “retired and will not be nursing so cross her name off”. [Witness #2] advised the Member to contact the Customer Service Department of the College for assistance in resigning her membership [ ]. On June 6, 2012, [Witness #2] sent a follow up letter to the Member advising her of the procedure to follow if she wished to resign her membership with the College [ ].

**Final Submissions**

College Counsel stated that the College bears the onus of proof, and the evidence presented by the two witnesses and the 14 exhibits proved the Member had not complied with the 2012 Order of the Discipline Committee, even though the Member was repeatedly sent instructions. The Member did not attend for a reprimand, see an expert, complete courses, or report to her employer, even though all those were clear features of the 2012 Order. The Member continued
to work while under suspension. All of the evidence presented shows a breach of the terms of the 2012 Order.

Decision

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, b, c, 2, 3 a, b, c, d, e, and 4 a, b, c, d, and e of the Notice of Hearing. As to paragraph 4 of the Notice of Hearing, the panel finds that the Member engaged in conduct that would reasonably be regarded by members of the profession as dishonourable, disgraceful and unprofessional by holding herself out as a nurse when she was suspended and by not adhering to any of the terms of the Discipline Committee’s 2012 Order.

Reasons for Decision

The panel recognized that the onus was on the College to prove the allegations on the balance of probabilities, using clear, cogent and convincing evidence.

The panel deliberated and found the Member to be ungovernable in all respects. The Member did not comply with any aspect the penalty contained in the 2012 Order. All of the Member’s actions involved deception. The Member practiced nursing while under suspension [ ], the requirement of employer notification was not complied with [ ], and the terms of the 2012 Order were not completed. This was substantiated by the two witnesses and the numerous exhibits.

The Member’s conduct in holding herself out as a nurse and failing to comply with the Discipline Committee’s 2012 Order would be considered by members of the profession to be disgraceful, dishonourable and unprofessional.

Penalty

Penalty Submissions

By the date of this hearing, the Member’s certificate of registration had been administratively revoked for non-payment of fees.

College Counsel submitted that it sought a penalty of revocation, however because the Member’s certificate of registration is revoked administratively, such a penalty cannot be imposed at this time. Revocation would have been the choice in the public interest.

Counsel asked the panel to order that if the Member ever successfully obtained reinstatement of her administratively-revoked certificate of registration, then at that point her certificate of registration shall be revoked. Such an order would be of value to the profession as a whole as an important guideline or message on how the Discipline Committee deals with such actions by members. It would also be of value if the Member ever reapplies for admission to this College, as it shows the seriousness of the misconduct of practic[ing] while under suspension and of breaching an order of the Discipline Committee.
College Counsel also submitted that the Member is ungovernable. The requested penalty speaks to general and specific deterrence of the Member and the profession at large. The acts of the Member were deliberate, she knew she was subject to an order and she knew what the terms of the order were. She showed no remorse or governability. In the interest of protection of the public, revocation is the only choice.

**Penalty Decision**

The panel deliberated and found that the only appropriate penalty would be revocation if the Member’s certificate of registration was current.

The panel made the following Order on Penalty:

1. The Executive Director is directed to revoke the Member’s certificate of registration immediately.

Because the Member’s certificate is currently revoked for administrative reasons, we understand that this order will come into effect if and when the Member successfully applies for reinstatement of her certificate of registration.

**Reasons for Penalty Decision**

In the absence of any evidence presented by or on behalf of the Member, the panel reached its decision based on the evidence and the witnesses presented by the College.

The penalty provides a deterrent to the Member and the profession, it protects the public and sends a clear message that members must be accountable to the College. Ungovernable members are not safe to practi[s]e. Public trust is paramount in the profession.

I, Michael Hogard, 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:**

Susannah Handley, RN
Megan Sloan, RPN
Mary MacMillan-Gilkinson, Public Member
Margaret Tuomi, Public Member