DISCIPLINE COMMITTEE
OF THE COLLEGE OF NURSES OF ONTARIO

PANEL:	Lois Vanson, RPN	Chairperson
	Monica Seawright, RPN	Member
	Fay Cole	Public Member

BETWEEN:

COLLEGE OF NURSES OF ONTARIO	)	LINDA ROTHSTEIN for College of Nurses of Ontario
- and -	)	NO REPRESENTATION for Ronald Ashley
RONALD ASHLEY Registration Nos. JA03861 & 0412734	)	CHRISTOPHER WIRTH; JOHANNA BRADEN Independent Legal Counsel
	)	Heard: March 29-31, 2005; April 5-7, 2005; July12-13, 2005; August 22-23, 2005; November 10-11, 2005; July 19-21, 2006

DECISIONS AND REASONS

This matter came on for hearing before a panel of the Discipline Committee as listed on the dates above, at the College of Nurses of Ontario ("the College") at Toronto.

The Allegations

The allegations against Ronald Ashley RPN ("the Member") as stated in the Notice of Hearing dated January 4, 2005 are as follows:

1. You have committed an act of professional misconduct as provided by subsection 51(1)(b.1) of the *Health Professions Procedural Code* of the *Nursing Act, 1991*, S.O. 1991, c. 32, as amended, in that during the period July 25, 2001 to September 5, 2001, while employed as a Registered Practical Nurse at [the facility], you sexually abused [client A];

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 in during the period July 25, 2001 to September 5, 2001, while employed as a Registered Practical Nurse at [the facility], 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, with respect to [client A], you:

    a) failed to maintain a therapeutic relationship with the client; and/or
    b) made a comment or comments to the client to the effect that you wanted to [have sexual relations]; and/or
    c) attempted to ensure that the client did not tell anyone else about your desire to have sexual contact with [client A]; and/or
    d) made secret arrangements to meet with the client away from [the facility]; and/or
    e) engaged in kissing and physical sexual contact including oral to genital contact with the client; and/or
    f) asked the client to spend a weekend with you away from [the facility]; and/or
    g) told the client that you loved [client A].

Member's Plea

The Member, who represented himself, denied the allegations set out in the Notice of Hearing (Exhibit #1).

Overview

The Member, at the time of the allegations, was employed as a Registered Practical Nurse at [the facility]. The allegations were that the Member 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 that the Member sexually abused a client during the period July 25, 2001 to September 5, 2001.

The Evidence

The panel heard testimony from 14 witnesses including the Member and admitted 36 exhibits into evidence.

Witnesses for the College

<u>Witness # 1 - [Nurse Manager]</u>

[The Nurse Manager] is a Registered Nurse and was a Patient Care Coordinator with [the facility] from 1999 through February 2002. [The Nurse Manager] worked closely with the front-line nursing staff. Her role was to focus on patient care, which included complaints and reporting back to the management team of that division.

[The Nurse Manager] explained the staffing schedules, provided an explanation of weekday staffing versus weekend staffing and outlined the various responsibilities of nursing staff.

The witness gave a specific geographic description of the Clinic internally and externally.

[The Nurse Manager] further testified she was one of two persons responsible for interviewing, hiring and follow up appraisals of the Member. [The Nurse Manager] was satisfied the Member had basic knowledge surrounding boundaries and maintaining therapeutic relationships.

[The Nurse Manager] stated that on her last day of employment at [the facility], she was informed by [the] Director of Patient Care and Chief Nursing Officer at [the facility] at the time of the allegations against the Member which were received from a physician in [another province].

As a result of this complaint, the Member was called in for an interview on February 14, 2002. [The Nurse Manager] stated during the interview, the Member was visibly distraught, anxious, diaphoretic and flushed and that he didn't answer questions directly and expressed an inability to remember this client.

Cross-examination by the Member

During the cross-examination by the Member, [the Nurse Manager] answered questions about probationary period, documentation, and peer feedback. There were additional questions by the Member regarding his medication errors and disclosure of personal information from staff to patients. The Member questioned [the Nurse Manager] about a previous boundary issue involving himself and another patient. The witness reminded the Member that for his own protection, he had been moved to another unit to work, until the patient was discharged.

Re-examination by College Counsel

During the re-direct by Counsel, [the Nurse Manager] clarified issues at [the facility] surrounding boundary workshops and education.

The panel found this witness to be knowledgeable, answered questions directly, and was consistent in her responses to both College Counsel and the Member. The panel found the witness to be credible and had no personal interest in the outcome of the case.

Witness # 2, [Client A]

[ ] [Client A] was a patient at [the facility] twice. [ ] The first visit was in [ ], the second being from [ ].

[Client A was admitted to the facility due to her addiction to prescription drugs.]

[ ]

[Client A] testified [client A] met the Member while sitting outside the nursing station while being monitored after [ ] meals. [Client A] had seen him around, found him attractive and thought sitting outside the nursing station was a good way to meet him directly. [Client A] testified the first time [client A] had a specific conversation with him he said, "one day I will be your nurse and we can sit down and have a chat". [Client A's testimony] continued with the recollection of their one-to-one meeting [ ]. [Client A] gave testimony that it was at this time [client A] flirted with him "…batting my eyes…" [Client A] testified that it was all the more exciting because he was a nurse. [Client A] stated that [client A] "…sort of felt a vibe…" and that he "…would like me too…". It was during one of these encounters the Member is alleged to have made encouraging comments like "…you may have done bad things, but you are not a bad person…" [Client A] testified the conversation became very personal and stated the Member said "…there are things I would like to say, but I can't …" [client A] said [that on the client pressing] him [ ] he replied "…it is all I can do not to come over and fuck you right now…". [Client A] testified even though [client A] felt oddly flattered [client A] also left shocked and speechless. [Client A] stated the Member appeared to be taking notes during this meeting.

[Client A] testified that later that night, [client A] wrote a letter to the Member saying [client A] was flattered, acknowledging it was a weird situation given that he was [client A's] nurse. [Client A] testified [of an attempt] to give the Member the letter in the hallway, outside the [room where they had had their one-to-one meeting]. He refused at first, stating "No, no not here" but later sought [client A] out and asked for the letter.

[Client A] testified [about telling] other patients about [client A's] attraction to the Member and made it known to them he had feelings for [Client A] too.

[Client A] continued to testify that the next encounter was when the Member came to [client A] and requested to meet [Client A] off site.

[Client A] testified [about taking] great care in preparing for [the] meeting with the Member, and said [client A] felt "…nervous and excited". [Client A] testified [Client A] arrived at the meeting place first, and the Member arrived shortly after in a blue, four door newer car. At this time counsel asked [Client A] if [Client A] had ever seen the Member's car before, [Client A] replied that [Client A] had not.

[Client A] began to describe the alleged sexual encounter in the car. [Client A] stated "…he was doing the oral sex and at some point he said *your [ ] taste good."* [Client A] testified [Client A] was a willing participant and was not in any way forced to engage in this activity. [Client A] expressed [ ] embarrassment and discomfort of what took place, stating it was at this time that [Client A] "…pushed him away from me". He had lost his glasses, so it took him some time to move the stuff which looked like a bag with gym clothes. [Client A] said [Client A] got out of the back seat to get into the front seat. Then he found his glasses. During the ride back towards [the city where the facility is located], the Member stated to [Client A] "…something like *Keep this to ourselves. Keep this* to *yourself".* However, upon [Cient A's] return to [to the facility], [Client A] stated [Client A] told fellow patient, [Client B].

[Client A] testified [Client A] graduated to another section [of the facility] where the Member had phoned [Client A] a couple of times, sharing [ ] personal information.

While on [that section], during a confrontation with [Client C] over clothes [Client C] had stolen from [Client A], [Client C] angrily commented to the Member "…and I know about the attraction between you and [Client A]…". Following this encounter, the Member phoned [Client A] inquiring what, if anything, did [Client A] say to [Client C] [Client A] stated [Client A] lied to him, as [Client A] didn't want to make him angry.

[Client A] testified the Member gave [Client A] his address and said [Client A] could write him first upon [Client A's] discharge. However, [Client A] stated he said his last name was "Ashbee." The Member, according to [Client A], was quite anxious regarding [Client A] writing him, and although [Client A] promised him [Client A] would write to him, [Client A] "…just couldn't wait to get out of there", and had no intention of writing to him. At the end of this last conversation [ ], [Client A] testified he said "I love you."

When questioned by Counsel for the College about [Client A's treatment] at [the facility], [Client A] testified that [Client A] had a relapse, [but] continued with treatment, and was honest about other issues, "But I never got out the issues of Ron. [Client A] testified [Client A] didn't want to get either of them in trouble.

[Client A] testified [Client A] completed [the treatment] at [the facility] and returned to [another province] upon discharge.

While in [the other province], during a routine examination by [Dr. A], [client A] told him about the sexual encounter with the Member while at [the facility]. [Dr. A] pursued with a complaint to the [facility].

In conclusion, [Client A] stated that [Client A] has had no contact with either [the Nurse Manager] or [the Administrator], but was in contact with [the Director of Patient Care/Chief Nursing Officer] at [the facility] and [the College investigator]. [Client A] testified [Client A] has not kept in touch with any former fellow patients including [Client C].
[Client A] identified the notation in the journal, Exhibit #17, made and signed by the Member which [Client A] testified was the only one made by a nurse.

<u>Cross-examination by the Member</u>

The Member asked [Client A] a series of questions including [Client A's] initial admission to [the facility]; [ ] subsequent life after discharge; [ ] relationships; [ ] interest in the [ ] program; [ ] employment history; [ ]; events surrounding the second admission to [the facility]; details of various incidents which took place, including [client A's] daily activities; patient's privileges, i.e. on and off site meetings and [Client A] sitting outside the nursing station after [Client A's] meals.

The Member asked [Client A] to explain what [Client A] meant by "…you sensed a vibe.", and asked [Client A] why [Client A] felt this? [Client A] replied, "I think it was the way you looked at me and your tone of voice."

[Client A] was asked by the Member, if [Client A] had a urine test or not. [Client A] answered that [Client A] did have a urine test, as [Client A] had relapsed on the weekend.

The Member's cross-examination included a reference to [Client A's] direct testimony regarding a letter [Client A] had given to him. The Member questioned the witness about the time and location regarding the note giving.

Throughout the cross-examination, the Member sought clarification from [Client A] about several issues asked by College Counsel including the alleged meeting outside of [the facility].

The Member continued this line of questioning. [Client A] reiterated the answers given in her direct examination by College Counsel.

Re-Examination by College Counsel

During re-examination, [Client A] clarified events including the alleged meeting with the Member, a discussion with the Member surrounding boundary issues, and clarification of a date of an examination by [Dr. A].

The witness had a good recollection of events and was unwavering and consistent in [Client A's] responses. [Client A] was occasionally emotional during sensitive testimony. The panel found the witness was credible and forthright and had moved on with [Client A's] life, and in [Client A's] estimation, gained a sense of self esteem and hope this would not happen to anyone else while in treatment.

Witness # 3 [The Director of Patient Care/Chief Nursing Officer]

[The Director of Patient Care/Chief Nursing Officer] is a Registered Nurse who graduated from [a community college] in 1979. Prior to that she was a graduate of the R.N.A. program, and later achieved a B.A. in Psychology from [a university].

She started at [the facility] in 1980, as a front line worker until 1994, when she became Director of Patient Care (DPC) and Chief Nursing Officer (CNO). She was responsible for setting and monitoring patient care and nursing standards in the facility. [The Director of Patient Care/Chief Nursing Officer] also stated that she was also responsible for a number of support departments, clinical support departments, including policy & procedures, managing complaints to the organization and clinical policy. [The Director of Patient Care/Chief Nursing Officer] testified to her role and the roles and responsibilities of other senior staff.

She testified that on February 13, 2003, she received a phone call from [Dr. A] making a complaint on his patient's behalf in relation to a person who he named as "Ron Ashby". She testified that she had recollection of the telephone call but not any independent recollection of

the actual content of the conversation and referred to her rough notes (Exhibit #24) and her rewritten notes (Exhibit # 25) to assist her in testifying. The notes indicated the patient was identified as [client A]. There was a discrepancy with respect to the last name of the nurse, Ashley as compared to Ashby.

[The Director of Patient Care/Chief Nursing Officer] testified, due to the nature of the call the contents of the conversation with [Dr. A] were written with many inconsistencies. After the phone call was complete, she testified "I rewrote the notes and tried to fill in the blanks, so to speak, that I couldn't get over the phone, and because I had written the notes in pencil, I wanted to re-record them in pen". [The Director of Patient Care/Chief Nursing Officer's] recollection of [Dr. A's] phone call was that he did not say [client A] had ever been to an apartment or cottage; didn't describe the location of where the alleged oral sex or sexual contact occurred, or that it had been on [the facility's premises or outside the premises]. She was not clear if it was [client A's] wish or [Dr. A's] personal opinion to have the Member fired. She further testified the conversation with [Dr. A] was "…he was very upset, bordering on aggressive".

[The Director of Patient Care/Chief Nursing Officer] testified that [client A] telephoned her 11 days after the initial call from [Dr. A] and got a general description of the Member from [her]. During that telephone conversation [client A] denied visiting the Member's apartment; [client A] denied going away for the weekend; and [client A] denied wanting the Member fired. Upon further questioning, [client A] stated to [the Director of Patient Care/Chief Nursing Officer] that, the Member was not responsible for [client A's] relapse.

Upon Counsel for the College's further questioning, [the Director of Patient Care/Chief Nursing Officer] stated the Member resigned from [the facility] without any pressure from the institution.

During the cross-examination, the Member asked [the Chief Nursing Officer] if during a phone conversation with her he had said "…did I state that I wanted to cooperate fully?" and "… did I make myself available?" [The Director of Patient Care/Chief Nursing Officer] responded "…I don't know, Ron." The Member questioned and verified her responsibilities of policy & procedure on the unit.

The panel accepted [the Director of Patient Care/Chief Nursing Officer's] testimony as being consistent, forthright and credible. The witness had no interest in the outcome of the case.

Witness #4 [The Administrator]

[The Administrator] has worked for [the facility] for close to 17 years. Her education background includes a Bachelor of Arts Degree, with a psychology focus; she is a certified Addiction Counsellor; a Certified Clinical Supervisor; and a Certified Health Executive. She has been the Administrator of the Addiction Division for the past seven or eight years. Prior to that, she was the Program Manager/Program Coordinator in the Addiction Division. She testified that although she doesn't have a nursing background she has been involved in health-care – addictions – for about 25 years.

[The Administrator] testified she first had an occasion to meet the Member in December, 2001 related to a patient complaint. She further testified there was an issue in February, 2003 regarding a former patient of [the facility] brought forth by [the Director of Patient Care/Chief Nursing Officer]. As a result, a meeting was held with the Member, [the Administrator] , [the Nurse Manager] and [the Patient Care Coordinator]. During this meeting, [the Patient Care Coordinator] recorded the minutes. Counsel for the College reviewed Exhibit #13 and Exhibit #28A which were typewritten and handwritten notes of the original meeting with the Member. [The Administrator] testified that at this meeting, initially the Member did not recall the patient, however, later did admit to having some recall, but denied the allegations. [The Administrator] advised the Member the investigation will continue. There were follow up phone calls between herself and the Member, at which time the Member volunteered his discomfort and confusion.

During the cross-examination, the Member asked [the Administrator] questions about self-disclosure, additional training or courses in the mental health setting; the complexities and behaviours of mental health patients and his submitting a letter requesting an extended leave of absence to pursue school full-time. The Member also questioned the witness about the policies on the addiction unit, specifically urine screening for the patients. The Member continued to seek in-depth clarification of urine testing on the unit.

[The Administrator's] testimony was direct, straightforward, and consistent in her answers. She had nothing to gain from the outcome of this hearing. The panel accepted her testimony as being credible and consistent.

Witness # 5, [The Expert Witness]

Counsel for the College presented [the Expert Witness] as an expert witness in Psychiatric Nursing, specifically on boundary issues and nurse-client relationships. A copy of [the Expert Witness's] CV was submitted (Exhibit # 29), detailing extensive knowledge in this area. [The Expert Witness] has been an expert witness for the College since 1995. She has appeared as an expert in Psychiatric Nursing, impact of sexual abuse, and on the scope of professional practice and the nature and limits of the nurse-patient relationship. [The Expert Witness] has been consulted by numerous professional organizations and regulating bodies of other health professions on these topics.

[The Expert Witness's] credentials were accepted by Counsel, the Member and the panel. [The Expert Witness] was qualified to testify as an expert in the field of psychiatric nursing, specifically on boundaries issues and nurse-client relationships.

[The Expert Witness] testified that the role of psychiatric nursing is the establishing of a therapeutic relationship with the client grounded in respect, empathy, and positive regard to help the client move forward. [The Expert Witness] testified that the nurse bears the responsibility to maintain the relationship as therapeutic, because the patient may view the relationship as special and may make unreasonable demands on the nurse. The nurse must be cognizant of these possibilities and must maintain appropriate boundaries at all times. There is an inherent power imbalance where the patient is extremely vulnerable and the nurse's job is to not exploit the patient. The nurse must be proactive, ensuring that the relationship remains therapeutic.

Counsel for the College presented [the Expert Witness] with a scenario similar to that which was before the panel. Having read the scenario [the Expert Witness] testified the patient with this type of history will often seek a special relationship, and will want a closeness and intensity of a relationship with a clinician. She stated the clinician then has to be very cognizant and aware of what are the limits of the relationship. [The Expert Witness] stated that the clinician should be extremely careful with any interactions with patients and documents and should always have consultations with the rest of the health team in regards to his/her therapeutic interactions with patients. [The Expert Witness] went on to testify, that if the clinician didn't follow the proper procedure, that possibly, the patient may interact with the clinician in a way that may make the clinician feel special and attractive and the clinician may like it. Because of that, they therefore may not have behaved in the most professionally appropriate manner. [The Expert Witness] pointed out the clinician would be crossing the boundaries of the nurse-client relationship if at any time he/she acknowledged mutual attraction. [The Expert Witness] stated, if the clinician and the patient are engaging in a note exchange situation, for example, and the note is not shared with the clinical team it implies secrecy. Secrecy is not part of the therapeutic relationship. There is usually shame attached to the secrecy, it is wrong right from the beginning. She testified there is often a wish for an intense, special relationship that somehow this is going to be better, different, save them, rescue them, and it always disappoints, because it doesn't do those things. Quite often, she testified, the patient may not tell anyone, it may interfere with their lives, it may trigger bad feelings, and that is why they might report it later, when it triggers again some bad feelings. She testified that under the legislation in Ontario, the clinician is legally required to report any unprofessional behaviour.

[The Expert Witness], in offering her expert opinion, stated that the client, in a mental health setting, is vulnerable and the client with a history of abuse or trauma is the most vulnerable population for abuse by health professionals. Counsel for the College, questioned [the Expert Witness] about the credibility of these clients and their complaints. [The Expert Witness] stated there is nothing in the research or empirical literature that supports evidence or provides evidence of a lot of false claims submitted by these vulnerable patients. Because of their vulnerability, quite often the client feels guilty and sometimes responsible. However, the greater risk is they may become quite depressed. Counsel for the College asked [the Expert Witness] if the client is rejected by the clinician does it usually result in a false report. [The Expert Witness] replied she was not aware of anything in the literature that matches that, and she couldn't imagine a situation, and she knew of nothing in the literature where there is a long time lapse between an event and a false report.

Counsel for the College asked [the Expert Witness] to comment on Exhibit #5 containing the Boundary Workshop offered by [the facility], which outlined certain behaviours. [The Expert Witness] testified that the issues in Exhibit #5, should "be like a loud, screaming bell", whether the clinician was new or old at practice. [The Expert Witness], referring further to Exhibit #5, stated that anyone completing this mandatory workshop at [the facility] should recognize and treat the behaviour as a large screaming bell that alerts the health care professional that boundaries are being crossed.

In closing of the direct testimony of [the Expert Witness], Counsel for the College brought forth the issue as to why a clinician would keep the facts as described in the scenario a secret, not documenting anything or communicating with the health care team. Her response was it showed the clinician was aware that boundaries were being crossed.

During the cross-examination, the Member questioned [the Expert Witness] about boundary issues and how the clinician should handle it. She responded the clinician must document, plus it is the clinician's responsibility to seek help. She testified the clinician needs to talk with the clinician's manager to perhaps understand what it is in his/her behaviour that is provoking remarks such as this. Often it can be in response to a clinician not making the boundaries clear and giving the message that there can be boundary crossing. [The Expert Witness] continued by saying clinicians do not have secrets, and that is why the clinician constantly shares with other team members, or why the clinician always seeks help. The Member questioned [the Expert Witness] as to the expectation of a "new grad." and the amount of knowledge he/she would have regarding boundary issues. [The Expert Witness] commented there is a certain basic knowledge that she would expect any new grad and anybody who had worked for a few months on an addiction unit or who had been through boundary workshops to have.

During re-examination, Counsel for the College confirmed with [the Expert Witness] that a new graduate and in particular anyone who had worked for a number of months in an addiction setting, would have a basic understanding of the mental health field. [The Expert Witness] continued to testify in her experience, that in every single incident of boundary issues there's secrecy involved and that the clinician would warn the patient not to tell anybody. The reason is, it is a boundary-crossing violation and they would get into trouble.

The panel accepted the evidence of [the Expert Witness]. The witness was credible, knowledgeable, and an informed expert in Psychiatric Nursing, specifically on boundary issues in nurse/client relationships which are relevant to the case before us.

<u>Witness #6 [RPN A]</u>

[RPN A] graduated as an RNA (now known as RPN) in 1978. She began a fulltime position at [the facility] in November of 1978, retiring in 2005. Since then, she has been working for [ ] as a Registration Officer. The primary function is to take calls from someone who is in need of employee assistance with regard to depression, etc. [RPN A] initially worked in the [ ] ward of the facility, but switched to psychiatry in 1980, switching to the addictions unit in 1990/91 until her resignation.

The witness identified the Member, testifying she had worked with him on a fairly regular basis. She testified the Member revealed personal information to her about himself, for example his relationship with his wife. The witness acknowledged the concept of boundaries and maintaining boundaries between patients and nurses, and the training provided for staff regarding these issues, stating it was pretty paramount with this type (psychiatric) of unit. She described generally, that the patients on this unit tend to share details to the staff that they would never share with anyone else and, as staff, one must not put him/herself in the position of crossing

boundaries. If it does occur, then there are procedures to follow, i.e., documenting and sharing it with the rest of the health team.

Counsel for the College asked the witness if she ever had occasion to speak to the Member about the issues of boundaries. Her personal observation of what she would term flirtatious behaviour of the Member towards certain female patients caused her to bring her concerns to the Member's attention. The witness testified she was further concerned because the Member's behaviour was being discussed by other staff members. In addition, the witness testified it was very rare for a part-time staff, especially on the evening shift, to facilitate a one-to-one meeting. The witness testified despite speaking with the Member regarding her concerns, she observed the Member continuing with these behaviours although, in her opinion, he was more cautious and guarded after their conversation.

Counsel for the College asked the witness if she was familiar with the parking at [the facility] for staff and patient/visitor. She testified the parking spots were a fair distance [ ]. Although in some areas you may be able to see the cars, it was impossible to see the interior of the cars from [ ] any entrance to the [facility].

During his cross-examination, the Member requested clarification on a couple of points. The first being the issue of parking [ ], and the availability of parking spots. When questioned about the metered parking spots, the witness testified you only needed to pay on civic holidays.

Counsel for the College, during her redirect questioned the witness about the [ ] parking lot. The witness testified that if a person was standing outside [the facility], because it was a fair hike, you wouldn't be able to see the insides of the vehicle.

The panel accepted the witness' testimony to be credible, straightforward and informative. She was consistent in her answers with no personal gain in the outcome of the hearing. Because she approached the Member with her observations she showed concerns for his professional well being and that of the patient.

<u>Witness # 7, [Client D]</u>

[ ]. [Client D] testified that in the summer of 2001, [client D] was treated at [the facility].

In [Client D's] testimony, [Client D] identified [Client A] as [someone Client D knew at the facility] for approximately eight to nine days. During this part of the testimony, Counsel for the College asked [Client D] to identify the Member, as an RPN working at [the facility]. The witness was able to identify the Member. The witness stated [Client D] and [client A] shared personal details about their lives and how they came to be admitted to [the facility].

[Client D] described [Client A] as needy, fragile, requiring a lot of attention by [Client D] and other patients. [Client D] stated [Client A] confided [ ] regarding [Client A's] attraction to the Member and [Client A's] perceived sense of mutual attraction by him. [Client D] testified [Client D] had spoken to [Client A], discouraging [Client A] from pursuing [any] course of action regarding the Member. In addition, [Client D] testified [Client D] had approached other staff

about the issue between [Client A] and the Member. [Client D] also approached the Member to share [ ] concern regarding what [Client A] described as a mutual attraction. When [Client D] and the Member met to discuss the situation, the Member asked [Client D] to go into the [appropriate] room. During the discussion with the Member, [Client D] testified he was asking questions and documenting.

[Client D] stated [ ] that in dealing with the Member, [Client D] found him to be polite and professional.

Counsel for the College concluded her direct examination by questioning the witness with regard to [Client D] having any contact with [Client A] since [Client A's] discharge from [the facility], at which time [Client D] said "no".

The Member had no questions for the witness for cross-examination.

The panel accepted the witness' testimony to be straightforward and knowledgeable. The panel believed [Client D] had a good recollection of the events and persons involved. In the panel's view the witness had nothing to gain from the outcome of this hearing.

Witness # 8 [RPN B]

[RPN B] graduated from [a community college] as an RPN in December, 2000. She testified she first became acquainted with the Member as a fellow nursing student, and worked with him on the addiction unit at [the facility] around the spring of 2001. She continued to work there for just over a year. Presently she is employed part time at [a hospital].

[RPN B] confirmed her attendance at a boundary workshop which was held at [the facility]. The workshop was in addition to what they were taught in nursing school while employed at [the facility].

Counsel for the College proceeded to ask the witness about her relationship with the Member, while they were both at College, to which [RPN B] testified they became fairly good friends. Their relationship continued, for a short period of time, when the two of them were employed at [the facility]. She stated problems with scheduling, in the summer/fall of 2001, were the downfall of their friendship. The Member spoke openly to [RPN B] about his marital and personal problems. She testified the Member made suggestive comments to her that left her to believe he would be open to pursue a relationship with her. She testified she did not act on his suggestion.

When asked by Counsel for the College if it were easy or difficult to be missed or not show up for a particular program at [the facility], the witness said it was a very busy unit, with many patients, and in her opinion it would be very easy and probably happened often that patients wouldn't go to their assigned groups in the afternoons and evenings.

During the cross-examination, the Member suggested to [RPN B] they had a flirtatious relationship, to which she agreed that at the beginning it was mutual, but eventually became uncomfortable.

[RPN B] recalls the Member offering her pornographic videos, of which he said he had many; she testified she accepted one video.

The panel accepted [RPN B's] testimony as credible with no interest in the outcome of the hearing. She had good recollection of the events when questioned, being consistent in her responses.

Witness # 9 [The Law Clerk]

[The Law Clerk] testified she is employed as a senior law clerk [ ]. In this capacity she reports to lawyers, assisting in the areas of litigation etc. She testified her involvement in this case included paying a visit to [the facility] for the purpose of taking some photographs and some general measurements.

[The Law Clerk] identified the photographs and the schematic drawings of the actual building of [the facility, including the parking lot] (Exhibit #32). A thorough discussion followed, identifying [the parking lot] and spots adjacent to and close to [facility] entrances. The result being it was impossible to see the interior of the cars in any of the said parking [ ] spots.

In the cross-examination, the witness conceded if a car was driving extremely slowly, and if someone was seated in certain areas they may be able to see the exterior of the car, but not the interior.

The panel agreed the witness was knowledgeable, clear and concise in providing factual information.

Witness # 10 [Client B]

[Client B] [ ] testified that in the summer of 2001 she was admitted to [the facility]. [ ].

[Client B] acknowledged meeting [Client A] at [the facility] during [this] stay. [Client B] stated [ ] that [Client B] and [Client A] spent almost every hour of the day together.

[ ] [Client B] stated the Member and [Client A] would openly flirt with each other. Both of them were aware of [Client B's] presence during this flirtatious behaviour. She testified that the Member told both [Client A] and [Client B] they were to keep it quiet. [Client B] was aware of the policy at [the facility], whereby there was not be any relationships at all between patient and patient or patient and staff. [Client B] [ ] stated [Client B] had observed the Member and [Client A] together frequently, pretty much every time he came on shift. [Client B] stated they would walk and flirt with each other, and that the Member had invited [Client A] out. In addition, [Client B] testified that [Client A] had told [Client B] on more than one occasion that the

Member was coming out to [Client A's province] to visit [Client A]. [Client B] said [Client B] didn't think that was right.

During the cross-examination, the Member questioned [Client B] about self-harm, to which [Client B] had admitted doing. The Member questioned [Client B] about drug use while at the facility. [Client B] again admitted to relapsing.

The Member continued to question [Client B] about the programs and schedules of exercise for the patients at [the facility], and asked [Client B] about the various parking spots [ ] near [the facility]. [Client B] was asked by the Member if [Client B] ever used drugs with [others]? The Member ended his cross-examination with asking [Client B] if [Client B] knew when [Client B's] discharge date was from [the facility].

The panel upon hearing the testimony of [Client B] believed it had the ring of truth, despite a few memory lapses. [Client B] had nothing to gain from the outcome of this hearing. [Client B] presented as being very honest about [Client B's] circumstances and down to earth.

Evidence on Behalf of the Defence

Witness # 11, Ronald Ashley

After consultation with Independent Legal Counsel, the Chairperson of the panel provided the Member with ample opportunity to present his defence. The Member was granted generous latitude within the realm of the procedure normally followed.

The Member started his testimony by stating he would like to show the kind of person he is, sharing his side of the story.

The Member testified he is a Registered Nurse, working on [ ] Psychiatric Units [ ], having graduated the RN program at [a community College] in December, 2003. In addition, he is employed at [another organization] in the Immunization Clinic. [ ]

The Member stated he was hired on the [addiction unit] of [the facility]. He testified in his opinion there was limited orientation. He was to refer to the Policies and Procedures as a reference guide when necessary. Other than five weeks of student consolidation, he had no other training in mental health. He continued to say he felt unsure of his role. He proceeded to give an outline of his duties as expected of him on the unit. The Member testified even though he is not trying to switch blame, his supervisor, [the Nurse Manager], should have seen to it that he received additional education.

The Member continued by referring to [the Nurse Manager's] testimony regarding the nursing station at [the facility] and its lack of adequate privacy. Because of this lack of privacy there was no way of knowing what if anything could be heard by those outside the station.

The Member included the policies and procedures regarding urine samples.

The Member stated the first time he had met [Client A] was when [the Client] was sitting outside the nursing station, where [the Client was being] monitored. He testified he told [Client A] when he became [the Client's] assigned nurse they could talk. Later, when he was [Client A's] assigned nurse, [Client A] asked if they could chat. The meeting took place in [a room], where [Client A] spoke of [Client A's past]. During the conversation, the Member testified that he remembers telling [Client A that Client A] was [attractive] and smart, and that he knew [the Client] was flirting with him, that he, the Member, had flirted back and that he felt flattered. He continued by saying he was aware of the boundary issues, but said he felt he could address the issue off the record, knowing these behaviours were not appropriate. He admitted to not documenting the conversation. He also admitted to having been offered a note from [Client A]. He stated he put the note in his pocket, not reading it until later in the day when he was off shift. He said he remembered feeling afraid and nervous because he knew it was inappropriate for a patient to give him a note. In his testimony, he stated he didn't know what to do, so he threw the note out. He said he was scared because he had told [Client A that Client A] was attractive, he knew [Client A] was flirting with him, that he had flirted back and he had allowed it to happen, knowing it was wrong.

The Member testified that [Client A] could have seen him entering and exiting his car. He parked in different places and patients often smoked outside in designated areas.

The Member further testified about his marriage [ ].

The Member commented on a former patient [ ] . [RPN B], whom he stated, had approached him cautioning him on boundary issues and his interaction with patients and advising him to be careful. [RPN B] had recommended that he direct all patients back to their primary nurse. The Member said he felt [RPN A's] nursing approach was different from his and that he only meant to help.

Upon commenting about [RPN B], his fellow nursing student, he admitted to having joked around [with RPN B], saying often some of the jokes were of a sexual nature. He admitted their friendship had a falling out because he had confronted her about talking about him behind his back.

The Member in regards to [Client D's] testimony stated that [Client A] was flirty and flighty, and was attracted to him, and [Client D] had gone to staff with complaints about [Client A's] behaviour. In addition the Member talked about how important it was for the patients to attend sessions and that if they attended, they would not get out until 3:30.

The Member referred to [the Expert Witness's] comments about the hypothetical situation and stated that he knew he shouldn't respond to [Client A's] flirtatious and seductive behaviour and that he shouldn't cross those boundaries. The Member described [Client A] as deceptive and manipulative. He stated he never meant for any of this to happen and he admitted he was flirtatious, therefore, aware of his boundary crossing issues, and that he knew he shouldn't have done it. The Member admitted to not having documented or reported these behaviours, reasoning he was a new nurse. He stated his further education gave him a better understanding of his role

as a nurse. He testified how important the policies are for the patient and the nurse. He states he is a better nurse now, because of his additional education and experience.

In his testimony he denied several of the allegations as put forth in the Notice of Hearing (Exhibit # 1), however, he did admit to committing professional misconduct by crossing boundaries when flirting with [Client A] and by not reporting it. In conclusion the Member stated "…the fact is, unfortunately, that there is no absolute concrete evidence in this case. At the very best in this case, it's my word against the complainant's word."

In the cross-examination, the Member confirmed his past education and work experience as well as his personal background including the difficulties in his marriage.

In response to the Member's testimony of limited education in mental health and psychiatric nursing, in the RPN program, Counsel questioned the Member about the basic concept of any nursing program was to maintain professional relationships with their patients. The Member testified that it was the job of the nurse to maintain a purely professional relationship.

The Member testified that he was familiar with persons with addictions, describing them as being largely manipulative and defective people with many other characteristics. When asked about the interview with [the Nurse Manager] regarding the issue of maintaining professional relationships, the Member testified that he knew about boundary issues long before he met [client A] and that he was not supposed to disclose any personal details from his own life. Counsel for the College asked the Member if, during the boundary session, he asked any questions for clarification or concerns.

During Counsel's cross-examination regarding the Member's first awareness of [Client A], he testified he thought [the Client] was very attractive and talkative. The Member agreed he first met [Client A] while [the Client] sat outside the nursing station. Initially, the Member denied being aware that [Client A] would hang around the nursing station when he was there. Counsel then introduced Exhibit #33, which indicated that he was indeed aware of [the Client's] being around the nursing station, as well as [the Client's] flirtatious behaviour towards him**.**

Counsel asked the Member about the one-to-one meeting in [a room in the facility]. The Member, like [the Client], could not remember the exact date of the meeting.

The Member acknowledged that he received a note from [Client A] which he re-read several times before throwing out. The Member acknowledged that he did not present nor share it with his colleagues. Exhibit #34 was introduced and verified by the Member as the letter he wrote to the Executive Committee. In this letter the Member did not disclose the fact of the note.

The Member testified that in the beginning he vaguely remembered [Client A]. He became more aware of who [Client A] was after doing some research. When asked by Counsel if he were intending to flirt with [Client A], he replied "yes", if in the sense that there was mutual attraction and that he wanted [Client A] to know this. He continued to say he enjoyed the flirtatious relationship with [Client A].

After extensive questioning regarding his car, i.e., colour, type, interior, contents, and tinted windows – the Member had little or no recollection of the interior of the car. The Member did concede to several areas of [the Client's] description of his car. The Member denied owning other vehicles, despite the presentation of documentation by Counsel. The Member was unable to explain why the Ministry of Transportation of Ontario's document (Exhibit # 35) showed him as currently owning other vehicles.

Counsel in her cross-examination introduced the issue of employee parking. The Member testified he never parked in the same place on a regular basis.

The Member, when responding to the issue of the notation in [the Client's] book, testified he just wrote what came to mind. He did not report this to the College investigator. Counsel asked the Member if he succeeded in persuading [Client A] into keeping this incident a secret, for fear of him being fired. The Member replied it was possible, he didn't know.

In closing, Counsel for the College asked the Member if everything [Client A] said was fabricated, to which he answered "No, there was some truth".

The Member declined the right of reply to respond to College counsel's cross-examination, and chose instead to respond in his closing submission.

The panel considered the testimony of the Member and the evidence submitted. It is their opinion that the Member was evasive, did not always answer questions directly, was not always honest and forthright in his answers and, in some cases, his answers were self serving. In certain instances, some of the Member's answers were revealed as half-truths.

Witness # 12 [RPN C]

[RPN C] a graduate of the RPN program in 1983, and later a graduate of the RN program at [a community College], worked at [the facility] as a RPN in 2002 in the addiction unit.

[RPN C] was questioned and ultimately described the working environment of the Addiction Unit at [the facility].

She testified her style of nursing was to keep her personal life private, stating she didn't believe it was any business of the patients or of the staff.

When asked questions how she would deal with certain difficult situations, [RPN C] gave a very thorough and lengthy response. She would speak to a Charge Nurse and/or other staff and would document her findings. She performed her responsibilities.

The Member questioned her about her choice of parking spots [ ] at [the facility] and whether or not she smoked. She testified her concerns over the choice of parking because of an incident which occurred while working at [the facility]. It involved male patients and their awareness of the type of vehicle she drove and the description of the car's interior. [RPN C] took this concern to her Charge Nurse.

[RPN C] testified she knew the Member from working with him at [the facility], working similar shifts and on the same unit. She stated the Member was a team player and was respected by his co-workers. She also testified that she never heard him complain about any assigned jobs and that he did his job.

[RPN C] testified she was aware that the Member worked at [another facility] in the Psychiatric Unit and further stated she had hired the Member at [another organization] in the Immunization Clinic, in September, 2004. She described the Member's job performance as excellent and professional.

The panel considered [RPN C's] testimony and found she was brief and direct, and was factual with regard to the knowledge she had of the Member.

Witness # 13, [The spouse]

[The spouse provided information about her educational background and employment.]

Upon questioning by the Member, the witness testified [about her relationship with the Member].

[The spouse] was asked by the Member to describe his personality plus their family situation. The Member was described by her to be shy, a private person, quiet, but sarcastic, friendly, but hard to read sometimes.

The Member asked her when she became aware of the allegations against him; she replied that it was the same day he did, February 14, 2003.

The witness went on to testify their relationship was not perfect, with a lot of stressors. He questioned her about their sexual relationship, whereby she denied him ever performing oral sex on her, saying "because it's ---your uncomfortable with it, you think it's gross, and you don't like doing it, you've told me that" .

Under cross-examination by Counsel for the College, [the spouse] [provided information about her age and her relationship with the Member].

She testified she knew the Member and personally wasn't concerned about the allegations, as she believed he was innocent. She stated initially the Member had no recall of who the patient was, but upon reading charts etc., he told her he then did have some recollection. She went on to testify that the Member, after recalling the patient, remembered flirting with [Client A]. The Member mentioned the letter from [Client A] to her, and that he was frightened.

When Counsel asked [the Spouse] if she had helped with his written response, she said she had. In response as to why he didn't have a lawyer, she stated he originally did have a lawyer, but they were of the opinion that the lawyer was expensive, was not helpful and was therefore terminated.

The panel after hearing the testimony of [the Spouse] agreed it was her own personal opinion, more of a personal character reference, based on her [ ] relationship with the Member. Therefore, she would have an interest in the outcome of the case. She was at times, emotional and tearful, argumentative and hostile. Her testimony left the panel feeling she was dismissive of the allegations brought against the Member.

Submission of Counsel for the College

College Counsel presented a submission which included an overview presenting the two fundamental issues to be determined:

1. Did the member fail to maintain appropriate boundaries with [Client A]?
2. Did the Member have a sexual encounter with [Client A]?

During the summer of 2001, the Member was one of the nurses caring for [Client A]. Counsel presented that the Member admitted to breaking the therapeutic boundaries of the nurse-client relationship in a number of ways, however denied the allegations of physical sexual contact, sexual remarks and making secret arrangements to meet [Client A].

In order for the allegations to be proven the College must establish two things; that [Client A's] evidence was clear, cogent and convincing i.e., "the Bernstein test", that [Client A's] testimony had a ring of truth; secondly that the Member's evidence is not credible, given his testimony had inconsistencies, was self-serving and self-protective, and showed a pattern of false denials and half truths.

Credibility is determined by following a general framework. Is the witness reliable; does he/she have an interest in the outcome of the case; have a good memory; is reasonable and consistent?

Counsel also pointed out in a sexual assault case, there does not need to be corroboration or confirmation, but is the evidence of the client clear, cogent and convincing and the evidence of the accused not believable. In addition, failure to make a timely complaint cannot be the subject of any presumptive adverse inference.

The Member argued that his being a good person would not allow him to have committed the act as alleged. Counsel for the College submits his good character should have little weight in determining the outcome of the allegations.

Moreover, it is important that the panel not be influenced by stereotypes about the perpetrators of sexual abuse or that the assumption that a person in the Member's position would be unlikely to commit the alleged acts.

College Counsel gave an overview of the Member's professional background, describing his role as a Registered Practical Nurse at [the facility].

College Counsel presented the client as having a history of [substance] abuse. [Client A's] admission showed [Client A] was honest about [Client A's] background and [client A] didn't try

to cover up [Client A's] past. [Client A] was honest in that said [client A] knew what [Client A] was doing was wrong – becoming intimate with [Client A's] nurse – but did it anyway. Neither the Member nor [Client A] disputed there was an inappropriate relationship between the two of them, with both admitting to openly flirting with each other.

Throughout the hearing, Counsel for the College pointed out inconsistencies in the Member's testimony, in contrast to the client's honesty about [client A's] life and the relationship [ ] with the Member. Inconsistencies and omissions were prevalent throughout the cross-examination of the Member.

The expert witness verified that the Member, in the scenario presented, did in fact commit an act of professional misconduct, that of crossing the boundaries of the nurse-client relationship.

College Counsel submitted that there was evidence from witnesses whose testimony stated the Member and [Client A] were observed engaging in flirtatious behaviour.

Counsel submitted that the panel should not be persuaded to rely on stereotypes. Counsel argues that the Member's assertion should not be accepted that because [client A] was an addict, [client A] was not a credible witness. According to Counsel, not only is the misconception inconsistent with the evidence, it is also contradicted by the Member's own admission in cross-examination that those suffering from addictions are not, in the main, manipulative and deceiving individuals.

Counsel further submitted that once all the evidence of the witnesses for both the College and the Member are carefully weighed, the panel will conclude that the Member is guilty of the allegations as stipulated in the Notice of Hearing.

Member's Closing Argument

The Member read from his written submissions in which he stated that he was representing himself and did not have a legal background or legal expertise to defend himself. The Member did advise that he had a lawyer hired originally but, regrettably, had to end the relationship due to cost.

The Member spoke at great length about his reputation, his employment and peers' respect and opinion about him.

The Member shared his opinion of the complainant. He described [Client A] as deceptive and attention seeking, and also commented on [Client A's] addiction and her associated relapses. The Member then discussed [Client A's] numerous previous relationships as well as the deception [respecting those individuals]; [and other actions] which led to [Client A's] second admission to [the facility].

The Member challenged [Client A's] testimony [ ] that [Client A] did not relate to being a drug abuser since [Client A] had sought education and subsequent employment [in an area that involved access to drugs]. The Member also wondered about the inventory system at [Client A's place of employment].

The Member discussed the admission and stays of [Client A] as well as [Client A's] behaviours while at [the facility], and went into specific details of several other roommates of [Client A].

The Member raised the earlier appointment with [Dr. A] and disputed [Client A's] testimony, because it was alleged that [Dr. A] did not take any notes. The Member stated he couldn't afford to subpoena [Dr. A] due to cost and speculated as to why Counsel for the College also did not. He asked the panel to assume that the reason why [Dr. A] was not called was because [Dr. A] couldn't corroborate the CNO's version of what was stated.

The Member discussed pictures and schematics of parking areas at and around the facility.

Additionally, the Member wondered why CNO had not obtained a copy of his phone bills, which could prove or disprove phone calls.

The Member discussed weekend passes, urine tests and staff scheduling. The Member also commented on the alleged invitation to go away for the weekend.

The Member discussed his relationship with his former wife, describing her as controlling and interfering, and asked the panel to assume that due to his ex-wife's behaviour he would not have been able to attend this alleged weekend away.

The Member also discussed his aversion to oral sex, and asked the panel to believe that he does not engage in these acts at home with his partner so how could he engage in these acts with a stranger or a patient.

The Member closed his summation by reiterating that he felt his lack of education and experience as a new nurse were responsible for this situation. The Member again reiterated his lack of legal assistance and experience which made his defence difficult.

Decision

The College bears the onus of proving the allegations in accordance with the standard of proof which the panel is familiar with, set out in *Re: Bernstein and College of Physicians and Surgeons of Ontario* (1977) 15 O.R. (2d) 477. The standard of proof applied by the panel, in accordance with the *Bernstein* decision, was a balance of probabilities with the qualification that the proof must be clear and convincing and based upon cogent evidence accepted by the panel. The panel also recognized that the more serious the allegation to be proved, the more cogent must be the evidence.

Having considered the evidence and the onus and standard of proof, the panel finds that the Member committed an act of professional misconduct as alleged in paragraph 1 of the Notice of Hearing in that the Member sexually abused a client, known as [client A]. The panel also found that the Member engaged in disgraceful, dishonourable and unprofessional conduct as alleged in paragraphs 2a, b, c, d, e, and g of the Notice of Hearing and, in particular, the panel found that the Member:

1. failed to maintain a therapeutic relationship with a client; and
2. made a comment or comments to client to the effect that he wanted to fuck [client A]; and
3. attempted to ensure that a client did not tell anyone else about his desire to have sexual contact with [client A]; and
4. made secret arrangements to meet with a client away from [the facility]; and
5. engaged in kissing and physical sexual contact including oral to genital contact with a client; and
6. told a client that he loved [client A].

The panel did not make a finding on allegation 2(f).

Reasons for Decision

After careful deliberation and review of the testimony of all witnesses and exhibits, the panel concluded the Member committed the acts of professional misconduct as set out above.

Throughout his testimony the member most frequently was not straight-forward, spoke in half truths, was evasive or did not answer questions fully. The Member was not truthful regarding the note from [Client A] and this important fact was not revealed until the actual hearing. The fact that the Member could not describe the interior of the vehicle which he had owned for two years is in contrast to [Client A's] thorough description of the interior of the vehicle. By the Member's own admission, he said the windows were tinted. Thus, it would be impossible for [Client A] to have seen the interior of the vehicle form the various parking spots the Member used.

The Member's behaviour on the unit had been observed by his colleagues as well as patients and their concerns were brought to the Member's attention – to caution the Member regarding his behaviour. The Member chose not to heed their advice.

The Member asked the panel to excuse some of his admitted behaviour due to his newness as a nurse as well as to the fact that at that time he was an RPN. The panel agrees with the opinion of the expert witness, that even a new nurse should be aware of boundary crossing issues.

In the Member's testimony and summation, the Member asked the panel not to believe [Client A's] testimony because of [client A's] past addiction and behaviour. At no time did [Client A] assign any blame to the Member for any of the events that occurred during [Client A's] admission to [the facility]. Throughout [Client A's] testimony there were no discrepancies that could sway the panel's findings.

The panel accepted [Client A's] account of the events, especially during the difficult, challenging and sometimes sensitive line of questioning. The panel found that [Client A] was able to thoroughly describe in detail the interior of the Member's vehicle. Additionally, there was the issue of [Client A] writing a personal note to the Member which initially the Member denied ever existed but admitted to receiving during the actual hearing. The panel found that [Client A] did not seek to embellish or exaggerate [Client A's] version of the events and accepted

responsibility for [Client A's] actions. [Client A] remained consistent in [Client A's] testimony of the sexual acts and [Client A's] other experiences. Throughout [Client A's] testimony the panel found that [Client A's] answers were straightforward, direct and that they had a ring of truth.

The panel considered the testimony of the Member and the evidence submitted and in contrast to [Client A's] evidence. The panel found that the Member was evasive and exhibited selected memory. For example, the Member denied owning other vehicles and was unable to explain why the Ministry of Transportation of Ontario's document (Exhibit # 35) showed him as currently owning more than one car. The panel also found that the member's testimony about where he parked did not ring true. It is the panel's opinion that the Member was evasive, did not always answer questions directly, was not always honest and forthright in his answers and in some cases his answers were self serving. In certain instances, some of the Member's answers were revealed as half-truths.

Generally speaking, in a sexual assault case, there does not need to be corroboration, or visual confirmation that a sexual assault had taken place.

Overall, the witnesses for the College provided straightforward, honest and direct testimonies with no interest in the outcome of the hearing. These witnesses' evidence had a ring of truth and was consistent in nature. The Member's witnesses spoke more towards giving a character reference rather than giving evidence.

The panel recognized [the Expert Witness] as a respected member in her field and accepted her as an expert in boundary issues. [The Expert Witness] was also accepted as an expert witness in boundary issues by the Member and Counsel for the College.

The panel is of the opinion that the Member was disrespectful, dishonourable and unprofessional in that the Member admitted flirting with [client A] and finally admitted to receiving a note from [client A]. Such behaviours are below the standards of practice of the profession and, as such, would be viewed as disrespectful, dishonourable and unprofessional among members of the profession. Honesty and integrity are the cornerstones of nursing and breaching the standards with such a vulnerable population is clearly below the standards of practice of the profession.

Penalty Submissions

The hearing was reconvened on July 19, 2006. Counsel for the College submitted two e-mails received from the Member. The contents of the e-mails, Exhibits #A and #B, suggested there had been a breach of confidentiality. After some discussion and clarification, and as there was no evidence that would cause the panel to determine that any breach of confidentiality had occurred, the Member stated, "I withdraw my concern".

Counsel for the College gave a brief overview of the mandatory nature of s-s. 51(5) of the *Health Professions Procedural Code* (Schedule 2 to the *Regulated Health Professions Act*), which provides as follows:

(5) If a panel finds a member has committed an act of professional misconduct by sexually abusing a patient, the panel shall do the following in addition to anything else the panel may do under subsection (2):

1. Reprimand the member.

2. Revoke the member's certificate of registration if the sexual abuse consisted of, or included, any of the following,

. . . .

ii. genital to genital, genital to anal, oral to genital, or oral to anal contact,

. . . .

Counsel for the College stated given the nature of the sexual abuse found by the panel, that the law of Ontario does not allow the panel any discretion.

In his submissions, the Member asked the panel to permit him to maintain his certificate of registration with the College until the end of September, 2006, and to direct that his name be withheld and not be published in the College publications. He also expressed his willingness to enrol in any courses recommended for his remediation and his desire that the name of his [spouse] be protected.

The Member went into detail about how those around him would suffer if the panel accepted the College Counsel's submission on penalty.

The Member stated that he recognized he crossed boundaries, was remorseful and was willing to take full responsibility for those behaviours. He stated that he was aware these behaviours were dishonourable in a profession that is so respected by the public.

During her reply submissions, College Counsel reminded the panel that the Member's requests in his submissions were moot, given the fact that the penalty sought by the College is mandatory in light of the panel's findings, without any exception.

Penalty Decision

The panel makes the following order as to penalty:

1. The Member is to ordered appear before the panel to receive an oral reprimand; and

2. The Executive Director is directed to revoke the Member's certificate of registration.

Reasons for Penalty Decision

The panel's first concern must be the protection of the public. The public is protected by an order that will generally deter other members of the nursing profession from engaging in sexual abuse of patients.

The *Health Professions Procedural Code* (in s-s. 51(5), set out above) legislates mandatory aspects of the penalty for professional misconduct by sexual abuse of patients of the type found here. Those mandatory aspects are that the Member be reprimanded and that the Member's certificate of registration be revoked.

However, regardless of the mandatory penalty, the panel wishes to convey that its penalty decision in this case would have been the same, even if it had discretion to impose another penalty. The panel recognizes that revocation is the most severe penalty available, but also feels that protection of vulnerable patients and protection of the public must take precedence at all times. Public confidence in the integrity of health care professionals must be judiciously fostered and scrupulously maintained.

The panel noted that in the Member's submission on penalty, he continued to be self-serving in that he requested consideration for himself, his family and his employer. At no time did the Member make any mention of [client A] and how the allegations impacted [client A]. The panel concluded that the Member exhibited an inability or unwillingness to take responsibility for all of his actions as identified.

I, Lois Vanson, 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:

Monica Seawright, RPN
Fay Cole, Public Member