DECISION AND REASONS

This matter came on for hearing before a panel of the Discipline Committee on February 3, 2014, at the College of Nurses of Ontario (“the College”) at Toronto.

The Allegations

The allegations against Gema Lineses (the “Member”) as stated in the Notice of Hearing dated October 31, 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(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 of the profession as disgraceful, dishonourable or unprofessional, and in particular:
you failed to complete a Specified Continuing Education or Remediation Program that you were required to complete by a decision of the Inquiries, Complaints and Reports Committee dated August 17, 2011.

Member’s Plea

The Member admitted the allegation set out in paragraph 1(a) in the Notice of Hearing. The panel received a written plea inquiry which was signed by the Member. The panel also conducted an oral plea inquiry and was satisfied that the Member’s admission was voluntary, informed and unequivocal.

Agreed Statement of Facts

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

THE MEMBER

1. Gema Lineses (the “Member”) obtained a diploma [ ] in 1997.

2. The Member registered with the College of Nurses of Ontario (the “College”) as a Registered Practical Nurse (“RPN”) on July 7, 2006.

INCIDENT RELEVANT TO ALLEGATIONS OF PROFESSIONAL MISCONDUCT

Specified Continuing Education or Remediation Program (“SCERP”)

3. On July 11, 2010, the College received a complaint from a member of the public about the Member’s nursing practice. The complaint related to events that occurred on May 25, 2010 while the Member was working at [the Facility].

4. The complainant alleged that the Member failed to reprogram an IV pump to administer the correct dose of morphine to his father after the morphine concentration was changed by the doctor. The client was supposed to receive the same dose of morphine but in a more concentrated solution so less volume of medication was administered. Instead, the client received five times the prescribed dose of morphine over a period of 12 hours.

5. A panel of the Inquiries, Complaints and Reports Committee (“ICRC”) reviewed the complaint and found that the Member had committed the medication error. On August 17, 2011, the panel of the ICRC ordered that the Member complete a SCERP (the “ICRC Decision”).

6. The terms of the SCERP required that the Member:

   o Review the *Medication* and *Professional Standards* and complete the online learning modules and reflective questionnaire for each standard;
o Attend a meeting with an expert to discuss the incident, after reviewing the standards and completing the online learning modules and reflective questionnaires as described above; and
o Appear before the panel of the ICRC to be cautioned.

7. On September 6, 2011, the College sent a letter to the Member enclosing a copy of the ICRC Decision, along with a SCERP Instruction Sheet, which included detailed instructions on all the steps the Member needed to take in order to comply with the ICRC Decision, and the dates by which she needed to complete them.

8. The ICRC Decision required that the Member complete the terms of the SCERP within three months of the date of the decision, or within another time period that was agreeable to the Director of Professional Conduct.

9. The Member was ultimately given three months from the time the ICRC Decision was first sent to her (which was on September 6, 2011) to complete the SCERP, which meant she was required to complete the SCERP by December 6, 2011.

The College’s Attempts to Administer the SCERP

10. On September 13, 2011, the College’s Monitoring Administrator spoke with the Member about the ICRC Decision. She explained to the Member the ways in which she could satisfy the expert meeting term of the SCERP, and explained that the Member should contact the College to schedule her oral caution once all the other terms of the SCERP had been completed.

11. On October 26, 2011, a SCERP reminder letter was sent to the Member enclosing the SCERP Instruction Sheet. This letter reminded the Member that she had outstanding terms of the SCERP yet to complete, and also highlighted that failing to comply with the terms of the SCERP could ultimately result in allegations of professional misconduct being referred to the Discipline Committee. The letter also indicated that the Member was to complete the SCERP terms by November 26, 2011, which was incorrect. In fact, the Member was not required to complete the SCERP terms until December 6, 2011. However, the Member did not complete the SCERP terms by either date.

12. On December 7, 2011, a Breach Warning Letter was sent to the Member. This letter stated that the College had received information suggesting the Member had failed to comply with the ICRC Decision, by failing to complete the SCERP. The Member was invited to request an extension of the due date for completing the SCERP by sending a request in writing to the Director of Professional Conduct by December 21, 2011.

13. The Monitoring Administrator spoke with the Member by phone on December 21, 2011. The Member explained that she did not pay attention to the deadline, was going through a divorce and had moved. She acknowledged receiving the December 7, 2011, letter at her new address. The Member said she would request an extension and contact the expert to arrange the expert meeting.
14. By January 19, 2012, the Member had not done either of these things. Consequently, the College sent another Breach Warning Letter to the Member, again inviting her to apply for an extension of the due date for completing the SCERP, this time by January 31, 2012.

15. Between January 31, 2012, and March 26, 2012, the College left five voicemail messages for the Member. A final Breach Warning Letter was sent on March 1, 2012, which again invited the Member to apply for an extension of the due date for completing the SCERP before March 30, 2012.

16. The College received no response from the Member to any of these letters or voicemails.

The Member’s Response

17. If the Member were to testify, she would say she was going through a difficult time in 2011-2012 because of her divorce. She would say that her attention was preoccupied with her personal problems and she did not intentionally ignore the College’s repeated requests for a response.

18. The Member admits that she failed to comply with any of the terms of the SCERP within the time required, or at all, and that she failed to request any extension of the time in which to complete the SCERP. She admits that her failure to comply with [the] SCERP was unprofessional.

ADMISSIONS OF PROFESSIONAL MISCONDUCT

19. The Member admits that she committed the acts of professional misconduct as described in paragraphs 3 to 16 above and as set out in the Notice of Hearing in paragraphs:

   • 1(a), in that her conduct was unprofessional.

Decision

The panel finds that the Member committed an act of professional misconduct as alleged in paragraph 1(a) of the Notice of Hearing. The panel finds that the Member engaged in conduct that would reasonably be considered by members to be unprofessional.

Reasons for Decision

The panel considered the Agreed Statement of Facts and the Member’s plea and finds that the evidence supports a finding of professional misconduct as alleged in the Notice of Hearing.

Allegation #1 in the Notice of Hearing is supported by paragraphs 3-19 in the Agreed Statement of Facts.
The panel finds that the Member’s conduct in her repeated failure to comply with the requirements ordered by the Inquiries, Complaints and Reports Committee was unprofessional, as it demonstrated a serious and persistent disregard for her professional obligations. This was despite repeated attempts by the College to promote compliance, which the Member completely disregarded.

Penalty

Counsel for the College and the Member advised the panel that a Joint Submission on Order had been agreed upon. The Joint Submission requests that this panel make an order as follows.

1. Requiring the Member to appear before the Panel to be reprimanded within three months [of the date] that this Order becomes final.

2. Directing the Executive Director to suspend the Member’s certificate of registration for one month. This suspension shall take effect from the date that this Order becomes final and shall continue to run without interruption as long as the Member remains in the practising class.

3. Directing the Executive Director to impose the following terms, conditions and limitations on the Member’s certificate of registration:

   a) The Member will attend three meetings with a Nursing Expert (the “Expert”), at her own expense and within six months of the date of this Order. To comply, the Member is required to ensure that:

      i. The Expert has expertise in nursing regulation and has been approved by the Director of Professional Conduct (the “Director”) in advance of the meetings;

      ii. At least seven days before the first meeting, the Member provides the Expert with a copy of:

          1. the Panel’s Order,
          2. the Notice of Hearing,
          3. the Agreed Statement of Facts,
          4. this Joint Submission on Order, and
          5. if available, a copy of the Panel’s Decision and Reasons;

      iii. Before the first meeting, the Member reviews the following College publications and completes the associated Reflective Questionnaires and online learning modules:

          1. *Professional Standards*
          2. *Medication;*
iv. At least seven days before the first meeting, the Member provides the Expert with a copy of the completed Reflective Questionnaires [and] online participation forms;

v. The subject of the sessions with the Expert will include:

1. the acts or omissions for which the Member was found to have committed professional misconduct,
2. the potential consequences of the misconduct to the Member’s clients, colleagues, profession and self,
3. strategies for preventing the misconduct from recurring,
4. the publications, questionnaires and modules set out above, and
5. the development of a learning plan in collaboration with the Expert;

vi. Within 30 days after the Member has completed the last session, the Member will confirm that the Expert forwards his/her report to the Director, in which the Expert will confirm:

1. the dates the Member attended the sessions,
2. that the Expert received the required documents from the Member,
3. that the Expert reviewed the required documents and subjects with the Member, and
4. the Expert’s assessment of the Member’s insight into her behaviour;

vii. If the Member does not comply with any [one or more] of the requirements above, the Expert may cancel any session scheduled, even if that results in the Member breaching a term, condition or limitation on her certificate of registration;

b) The Member will appear before the Inquiries, Complaints and Reports Committee to receive an oral caution within three months of the date of this Order.

4. All documents delivered by the Member to the College and the Expert will be [delivered] by verifiable method of delivery, the proof of which the Member will retain.

The panel received further submissions from the parties and it was mutually agreed that the word “employer(s)” be removed from section 4 of the Joint Submission on Order.

Penalty Submissions

Submissions were made by College Counsel. The Member chose not to make any submissions regarding penalty.

College Counsel submitted that this order meets the principles of general and specific deterrence, remediation and rehabilitation of the Member, as well as protects the public. College Counsel submitted that the proposed penalty is appropriate for the misconduct in this case. The proposed
reprimand and suspension signal disapproval and provide denunciation of wrongful conduct, offering both specific and general deterrence. The terms, conditions and limitations proposed to be imposed upon the Member’s certificate of registration are aimed at remediation of the Member and public protection. The proposed penalty does not abandon the prior concerns addressed by the Inquiries, Complaints and Reports Committee but incorporates the prior requirements into this order. The order, in its entirety, provides an opportunity for reflection and an opportunity for remediation and rehabilitation to support the Member’s successful return to practice.

Counsel submitted one case to the panel to demonstrate that the proposed penalty fell within the range of a similar case from this Discipline Committee, namely CNO v. Peters (Discipline Committee, 2012). Counsel submitted two cases to articulate the principles surrounding Joint Submissions as to Order: CPSO v. Muhammad (Discipline Committee, 2013) and CNO v. Sondy (Discipline Committee, 2012).

Penalty Decision

The panel accepts the Joint Submission as to Order, as amended, and accordingly orders:

1. The Member is required to appear before the Panel to be reprimanded within three months [of the date] that this Order becomes final.

2. The Executive Director is directed to suspend the Member’s certificate of registration for one month. This suspension shall take effect from the date that this Order becomes final and shall continue to run without interruption as long as the Member remains in the practising class.

3. The Executive Director is directed to impose the following terms, conditions and limitations on the Member’s certificate of registration:

   a) The Member will attend three meetings with a Nursing Expert (the “Expert”), at her own expense and within six months of the date of this Order. To comply, the Member is required to ensure that:

      i. The Expert has expertise in nursing regulation and has been approved by the Director of Professional Conduct (the “Director”) in advance of the meetings;

      ii. At least seven days before the first meeting, the Member provides the Expert with a copy of:

          1. the Panel’s Order,
          2. the Notice of Hearing,
          3. the Agreed Statement of Facts,
          4. [the] Joint Submission on Order, and
          5. if available, a copy of the Panel’s Decision and Reasons;
iii. Before the first meeting, the Member reviews the following College publications and completes the associated Reflective Questionnaires and online learning modules:

1. *Professional Standards*
2. *Medication;*

iv. At least seven days before the first meeting, the Member provides the Expert with a copy of the completed Reflective Questionnaires [and] online participation forms;

v. The subject of the sessions with the Expert will include:

1. the acts or omissions for which the Member was found to have committed professional misconduct,
2. the potential consequences of the misconduct to the Member’s clients, colleagues, profession and self,
3. strategies for preventing the misconduct from recurring,
4. the publications, questionnaires and modules set out above, and
5. the development of a learning plan in collaboration with the Expert;

vi. Within 30 days after the Member has completed the last session, the Member will confirm that the Expert forwards his/her report to the Director, in which the Expert will confirm:

1. the dates the Member attended the sessions,
2. that the Expert received the required documents from the Member,
3. that the Expert reviewed the required documents and subjects with the Member, and
4. the Expert’s assessment of the Member’s insight into her behaviour;

vii. If the Member does not comply with any [one or more] of the requirements above, the Expert may cancel any session scheduled, even if that results in the Member breaching a term, condition or limitation on her certificate of registration;

b) The Member will appear before the Inquiries, Complaints and Reports Committee to receive an oral caution within three months of the date of this Order.

4. All documents delivered by the Member to the College and the Expert will be [delivered] by verifiable method of delivery, the proof of which the Member will retain.
Reasons for Penalty Decision

The panel understands that the penalty ordered should protect the public and enhance public confidence in the College’s ability 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.

By incorporating the requirements of the Inquiries, Complaints and Reports Committee, this penalty does not undermine the previous requirements and adds a greater depth of rehabilitative factors which will benefit both the Member and the public. The panel concluded that the proposed penalty is reasonable and in the public interest. The Member has cooperated with the College and, by agreeing to the facts and a proposed penalty, has accepted responsibility. The panel finds that the penalty satisfies the principles of specific and general deterrence, rehabilitation and remediation, and public protection through the terms, conditions and limitations imposed on the Member’s certificate of registration.

The penalty is in line with what has been ordered in a previous case.

I, Spencer Dickson, RN, sign this decision and reasons for the decision as Chairperson of this Discipline panel and on behalf of the members of the Discipline panel as listed below:

________________________
Chairperson

________________________
Date

Panel Members:
Grace Fox, NP
Megan Sloan, RPN
Linda Bracken, Public Member
Catherine Egerton, Public Member