

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

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| PANEL: | Mary MacMillan-Gilkinson | Chairperson |
| | Margarita Cleghorne, RPN | Member |
| | Grace Fox, NP | Member |
| | Tania Perlin | Public Member |
| | Ingrid Wiltshire-Stoby, NP | Member |

BETWEEN:

| | | |
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| COLLEGE OF NURSES OF ONTARIO |) | <u>JESSICA LATIMER</u> for |
| |) | College of Nurses of Ontario |
| - and - |) | |
| |) | |
| DAVID NANA AMPONSA |) | <u>NO REPRESENTATION</u> for |
| Registration No. 08363763 |) | David Nana Amponsa |
| |) | |
| |) | <u>CHRIS WIRTH</u> |
| |) | Independent Legal Counsel |
| |) | |
| |) | Heard: December 10, 2018 |

DECISION AND REASONS

This matter came on for hearing before a panel of the Discipline Committee (the “Panel”) on December 10, 2018 at the College of Nurses of Ontario (the “College”) at Toronto.

As David Nana Amponsa (the “Member”) was not present and was not represented, 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.

Counsel for the College provided the Panel with evidence that the Member had been sent the Notice of Hearing on September 13, 2018. The Panel was satisfied that the Member had received adequate notice and therefore proceeded with the hearing in the Member’s absence.

Publication Ban

Counsel for the College brought a motion pursuant to s. 45(3) of the *Health Professions Procedural Code of the Nursing Act, 1991*, for an order preventing the public disclosure of the name of the victim referred to orally or in any documents presented in the Discipline hearing of David Nana Amponsa or any information that could disclose the identity of the victim, including a ban on the publication or broadcasting of these matters.

The panel considered the submissions of Counsel for the College and decided that there be an order preventing the public disclosure of the name of the victim referred to orally or in any documents presented in the Discipline hearing of David Nana Amponsa or any information that could disclose the identity of the victim, including a ban on the publication or broadcasting of these matters.

The Allegations

The allegations against David Nana Amponsa (the “Member”) as stated in the Notice of Hearing dated September 12, 2018, are as follows.

IT IS ALLEGED THAT:

1. You have committed an act of professional misconduct as provided by subsection 51(1)(a) of the *Health Professions Procedural Code of the Nursing Act, 1991*, S.O. 1991, c. 32, as amended, in that you were found guilty of an offence relevant to your suitability to practise, and in particular, in the Superior Court of Justice, in [], Ontario, on October 19, 2016, you were found guilty of sexual assault of [], contrary to Section 271 of the *Criminal Code*.

Member’s Plea

Given that the Member was not present nor represented, he was deemed to have denied the allegation 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 a Registered Nurse initially registered with the College of Nurses of Ontario in 2008. He was employed as a Registered Nurse in a remote [] community at the time of the incident (April 22, 2014). He was found guilty of sexually assaulting a co-worker contrary to section 271 of the *Criminal Code* on October 19, 2016. A hearing before the Court of Appeal for Ontario upheld the conviction on June 29, 2018.

As set out below, the Panel found the Member to have committed an act of professional misconduct relevant to his suitability to practice nursing. The Panel found that this sexual assault included violence and took place within the nursing residence []. This behaviour is fundamentally incompatible with the integrity of the profession. The Member’s registration was revoked.

The Evidence

Counsel for the College presented uncontested evidence included in a book of documents. Section 16 of the *Statutory Powers Procedures Act* and Section 22.1 of the *Ontario Evidence Act* gives the Panel the authority to rely upon certified copies of previous court documents as evidence in hearings without witness corroboration. These exhibits included certified copies of the Court information of [], a [] Police officer (dated July 3, 2014), Ontario Superior Court of Justice Indictment (dated July 21, 2015),

the decision of the Ontario Superior Court of Justice, in *Her Majesty the Queen v. D.A.* (2016) and the decision of the Court of Appeal for Ontario (dated July 6, 2018).

The Court in *Her Majesty the Queen v D.A.* (2016) states that D.A. admitted to touching [] in a sexual way. The issue during the trial was whether [] consented to the sexual contact. The witnesses during the trial were found to be credible. They supported testimony that [] had to return for her glasses and that her bra was ripped. This was not congruent with D.A.'s testimony. The Judge rejected D.A.'s testimony when it was in conflict with []'s testimony and convicted the Member of sexual assault contrary to section 271 of the *Criminal Code*.

The Court of Appeal for Ontario, in *Her Majesty the Queen v D.A.* (2018) heard an appeal from the Member's conviction. The Court of Appeal dismissed the Member's appeal. The Member had signed an Acknowledgment and Undertaking (February 2, 2018) to not practice nursing until the conclusion of the Criminal Proceeding, defined as the conclusion, dismissal or withdrawal of the appeal before the Ontario Court of Appeal.

Final Submissions

Counsel for the College submitted that the documents presented establish the Member's conviction for sexual assault of a co-worker and provided the context into the nature of the offence, namely, a sexual assault of a co-worker in a nursing residence []. This along with the sexual violence which occurred after the complainant said "no" and had to fight her way out of the apartment, are related to the suitability of a member to practice in the nursing profession.

Counsel for the College provided the Panel with the following previous decisions:

CNO v. Hough (Discipline Committee, 2016): The member was found guilty in criminal court. The sexual assault did not take place in the workplace but in her personal life. The offence was "a violent and dangerous act that is the complete opposite of the conduct expected of a nurse".

CNO v. McWaters (Discipline Committee, 2014): The allegations were in a non-practice setting but found to be relevant to the suitability to practice nursing.

Counsel for the College noted that this behaviour is harmful to the public and puts the safety of the public in jeopardy. It also threatens the trust that the public needs to have in nursing and the profession. It is fundamentally incompatible with the integrity of the profession.

Decision

The College bears the onus of proving the allegations in accordance with the standard of proof, that being the balance of probabilities and based upon clear, cogent and convincing evidence.

Having considered the evidence and the onus and standard of proof, the panel finds that the Member committed an act of professional misconduct as alleged in paragraph 1 of the Notice of Hearing in that the Member was found guilty of an offence relevant to his suitability to practise.

Reasons for Decision

The Panel found that the evidence presented established the Member's conviction for sexual assault contrary to section 271 of the *Criminal Code* on October 19, 2016 and provided context. The trial judge gave clear reasons for his decision and the Court of Appeal upheld his decision.

Sexual assault and violence involving a co-worker is related to suitability to practice as it undermines the integrity of the profession and the trust the public needs to have in the nursing profession.

Penalty

Penalty Submissions

Counsel for the College submitted that the Member's Certificate of Registration should be revoked and that the Voluntary Undertaking to not practice nursing that the Member entered into until the Court of Appeal decision was completed, should not be considered a mitigating factor. Public protection was required due to the seriousness of the allegation.

The sexual violence against a co-worker took place in the nursing residence, was intentional and for personal gain in the form of sexual gratification. The harm was not only to the victim, but also to the small community and other members of health care who work in isolated communities. It also threatens the reputation of the profession broadly.

The College presented the Panel with the following cases:

CNO v. Hough (Discipline Committee, 2016). The member did not report her charges of sexual assault of a domestic partner to the CNO. She participated in the College process and accepted responsibility for her conduct, demonstrating her rehabilitation potential. The hearing was completed by way of an Agreed Statement of Facts and Joint Submission on Order. The penalty ordered included a 12 month suspension, multiple meetings with a nursing expert and limitations on her ability to practice independently for 18 months.

CNO v. McWaters (Discipline Committee, 2014). The member admitted the allegations of professional misconduct in the notice of hearing. In particular, he admitted that he was found guilty of assault, contrary to sec. 266 of the *Criminal Code* R.S.C., 1985, c. C-46 and that this was an offence that was relevant to his suitability to practice. He also admitted that he had signed a document in his professional capacity that contained a false statement, by providing the College with a Self-Reporting Form that falsely described the nature of the offence for which he was found guilty. He participated in the hearings process and had insight into his behaviour. The Joint Submission on Order included a 9 month suspension.

CNO v. Huff (Discipline Committee, 2012). The member was found guilty by a Court of two counts of sexual assault and one count of gross indecency. The panel found these offences were relevant to his suitability to practise and therefore constituted professional misconduct. The member did not cooperate or participate in the hearing process. The penalty ordered was a revocation.

Penalty Decision

The Panel makes an order directing the Executive Director to immediately revoke the Member's certificate of registration.

Reasons for Penalty Decision

Revocation of the Member's certificate of registration as submitted by Counsel for the College is the appropriate penalty.

A Court found the Member guilty of sexual assault. Sexual assault including violence against anyone is very serious misconduct that is not taken lightly by members of this profession. The Member showed a disrespect for the law and a fellow colleague, which breaches trust in the nursing profession.

The Member has not participated in any way in the processes of the College, except by the signed Undertaking. He has not attended the hearing and therefore the Panel has no indication whether he has taken responsibility for his actions. There is no potential for remediation if the Member does not participate in the process.

The objectives of public protection and general deterrence have been maintained with this decision.

I, Mary MacMillan-Gilkinson, Public Member, Chairperson, sign this decision and reasons for the decision as Chairperson of this Discipline panel and on behalf of the members of the Discipline panel.

Chairperson