

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

PANEL:	Michael Hogard, RPN	Chairperson
	Antonia (Tina) Colarossi, NP	Member
	Sylvia Douglas	Public Member
	Karen Laforet, RN	Member
	Lalitha Poonasamy	Public Member

BETWEEN:

COLLEGE OF NURSES OF ONTARIO)	<u>DENISE COONEY</u> for
)	College of Nurses of Ontario
- and -)	
)	
SHYRELLA VALLEGA)	<u>ADRIENNE ANDERSON</u> for
Registration No. 0322958)	Shyrella Vallega
)	
)	<u>CHRISTOPHER WIRTH</u>
)	Independent Legal Counsel
)	
)	Heard: June 29, 2022

DECISION AND REASONS

This matter came on for hearing before a panel of the Discipline Committee (the “Panel”) of the College of Nurses of Ontario (the “College”) on June 29, 2022, via videoconference.

The Allegations

The allegations against Shyrella Vallega (the “Member”) as stated in the Notice of Hearing dated May 25, 2022 are as follows:

IT IS ALLEGED THAT:

1. You have committed an act of professional misconduct as provided by subsection 51(1)(c) of the *Health Professions Procedural Code* of the *Nursing Act, 1991*, S.O. 1991, c. 32, as amended, and defined in subsection 1(1) of *Ontario Regulation 799/93*, in that while working as a Registered Nurse at Toronto Western Hospital in Toronto, Ontario (the “Facility”), you contravened a standard of practice of the profession or failed to meet the standards of practice of the profession, and in particular, in or around 2016, you

submitted false claims under the Facility's employee group benefit plan (the "Benefit Plan").

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(8) of *Ontario Regulation 799/93*, in that while working as a Registered Nurse at the Facility, you misappropriated property from a client or workplace, and in particular, in or around 2016, you submitted false claims under the Benefit Plan.
3. You 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(14) of *Ontario Regulation 799/93*, in that while working as a Registered Nurse at the Facility, you falsified a record relating to your practice, and in particular, in or around 2016, you submitted false claims under the Benefit Plan.
4. You 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(15) of *Ontario Regulation 799/93*, in that while working as a Registered Nurse at the Facility, you signed or issued, in your professional capacity, a document that you knew or ought to have known contained a false or misleading statement, and in particular, in or around 2016, you submitted false claims under the Benefit Plan.
5. You have committed an act of professional misconduct as provided by subsection 51(1)(c) of the *Health Professions Procedural Code* of the *Nursing Act, 1991*, S.O. 1991, c. 32, as amended, and defined in subsection 1(37) of *Ontario Regulation 799/93*, in that while working as a Registered 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, in or around 2016, you submitted false claims under the Benefit Plan.

Member's Plea

The Member admitted the allegations set out in paragraphs 1, 2, 3, 4 and 5 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

College Counsel and the Member's Counsel advised the Panel that agreement had been reached on the facts and introduced an Agreed Statement of Facts, which reads, unedited, as follows:

MEMBER

1. Shyrella Vallega (the "Member") registered with the College of Nurses of Ontario ("CNO") as a Registered Nurse ("RN") on September 17, 2003.
2. The Member has been employed as an RN at Toronto Western Hospital (the "Facility"), located in Toronto, Ontario since 2003. The Member is also employed on a casual basis at SPA Medica (since 2010) and Avenue Road Surgical Centre Management Inc. (since 2017).

BENEFIT PLAN

3. The Facility's employee benefit plan (the "Benefit Plan") is a group insurance policy which provides coverage for extended health care, dental, and other insurance benefits. The Facility is the Plan Sponsor for the Benefit Plan and funds the cost of claims paid out under the plan. SunLife Insurance ("SunLife") administers the Benefit Plan on behalf of the Facility. Employees contribute to the cost of the Benefit Plan as set out in their employment agreement and/or collective agreement, and based on their election for individual or family coverage.
4. In order to submit a claim online, plan members must confirm that the information submitted is accurate and true, and agree, if requested, to provide original receipts and/or supporting documents.
5. The Benefit Plan provides that the Member and her dependents were entitled to orthopaedic shoes, when they are required for the correction of deformity of the bones and muscles and provided they are not solely for athletic use, limited to a maximum of \$250 in a calendar year. This includes extra width, extra depth, stock orthopaedic shoes and modifications. A prescription from a physician, podiatrist, chiropodist or chiropractor is required.

INCIDENTS RELEVANT TO ALLEGATIONS OF PROFESSIONAL MISCONDUCT

6. On or around June 25, 2016, the Member submitted false claims under the Benefit Plan in the amount of \$575 for chiropody services, custom orthotics and modifications to orthopaedic shoes. Instead of the services and items claimed, the Member received a pair of Birkenstock shoes.
7. The Facility conducted an internal investigation of claims submitted by employees and identified the Member as having submitted some claims that required review.

8. The Facility met the Member on September 11, 2018 in regard to these claims. During the meeting, the Member admitted to having received a pair of Birkenstocks as a result of the June 25, 2016 claim.
9. At the Facility's request, the Member paid restitution of \$500, and received a five-shift suspension in relation to this conduct.
10. If the Member were to testify, she would state that she is deeply remorseful for this one-time mistake and is committed to meeting her professional responsibilities going forward. The Member takes full responsibility for her actions.

BENEFIT FRAUD CASES

11. To date, a total of 52 benefit fraud cases involving substantially similar schemes as the one identified in this case, involving either cash or products not covered by the benefit plan, have been referred to the Discipline Committee. The dollar amounts of the false claims involved range from under \$500 to over \$45,000.

CNO STANDARDS

Professional Standards

12. CNO's *Professional Standards* provides an overall framework for the practice of nursing and a link with other standards, guidelines and competencies developed by CNO. It includes seven broad standard statements pertaining to accountability, continuing competence, ethics, knowledge, knowledge application, leadership and relationships.
13. CNO's *Professional Standards* provides, in relation to the accountability standard, that nurses are accountable to the public and responsible for ensuring his or her practice and conduct meets the legislative requirements and the standard of the profession. Nurses are responsible for their actions and the consequences of those actions as well as for conducting themselves in ways that promote respect for the profession. Nurses demonstrate this standard by actions such as ensuring their practice is consistent with CNO's standards of practice and guidelines as well as legislation.
14. CNO's *Professional Standards* provides, in relation to the leadership standard, that leadership requires self-knowledge (understanding one's beliefs and values and being aware of how one's behaviour affects others), respect, trust, integrity, shared vision, learning, participation, good communication techniques and the ability to be a change facilitator. The leadership expectation is not limited to nurses in formal leadership positions and all nurses, regardless of their position, have opportunities for leadership. Nurses demonstrate this standard by actions such as role-modelling professional values, beliefs and attributes.

Ethics

15. CNO's *Ethics Standard* describes ethical values that are important to the nursing profession in Ontario including patient well-being, patient choice, privacy and confidentiality, respect for life, maintaining commitments, truthfulness and fairness.
16. CNO's *Ethics Standard* provides, in relation to maintaining commitments, that nurses have a commitment to the nursing profession and being a member of the profession brings with it the respect and trust of the public. To continue to deserve this respect, nurses have a duty to uphold the standards of the profession, conduct themselves in a manner that reflects well on the profession, and to participate in and promote the growth of the profession.
17. CNO's *Ethics Standard* also provides, in relation to truthfulness, that truthfulness means speaking and acting without intending to deceive.
18. The Member admits and acknowledges that she contravened CNO's *Professional Standards* and *Ethics Standard* when she submitted false claims under the Benefit Plan on June 25, 2016.

ADMISSIONS OF PROFESSIONAL MISCONDUCT

19. The Member admits that she committed the acts of professional misconduct as alleged in paragraph 1 of the Notice of Hearing in that she contravened a standard of practice of the profession or failed to meet the standards of practice of the profession, as described in paragraphs 6 to 10 and 12 to 18 above.
20. The Member admits that she committed the acts of professional misconduct as alleged in paragraph 2 of the Notice of Hearing in that she misappropriated property from a workplace, as described in paragraphs 6 to 10 above.
21. The Member admits that she committed the acts of professional misconduct as alleged in paragraph 3 of the Notice of Hearing in that she falsified a record relating to her practice, as described in paragraphs 6 to 10 above.
22. The Member admits that she committed the acts of professional misconduct as alleged in paragraph 4 of the Notice of Hearing in that she signed or issued, in her professional capacity, a document that she knew or ought to have known contained a false or misleading statement, as described in paragraphs 6 to 10 above.
23. The Member admits that she committed the acts of professional misconduct as alleged in paragraph 5 of the Notice of Hearing, and in particular her conduct was dishonourable and unprofessional, as described in paragraphs 6 to 10 above.

Decision

The College bears the onus of proving the allegations in accordance with the standard of proof, that being the balance of probabilities 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 acts of professional misconduct as alleged in paragraphs 1, 2, 3, 4 and 5 of the Notice of Hearing. As to allegation #5, the Panel finds that the Member engaged in conduct that would reasonably be regarded by members of the profession to be dishonourable and unprofessional.

Reasons for Decision

The Panel considered the Agreed Statement of Facts and the Member's plea and finds that this evidence supports findings of professional misconduct as alleged in the Notice of Hearing.

Allegation #1 in the Notice of Hearing is supported by paragraphs 6–10 and 12-19 in the Agreed Statement of Facts. The Member admitted to this allegation. The Member submitted a false claim under Toronto Western Hospital's (the "Facility") employee group benefit plan (the "Benefit Plan") in the amount of \$575.00 on or around June 25, 2016 and received a pair of Birkenstock shoes in relation to this false claim. The College's *Professional Standards* indicate nurses are accountable for conducting themselves with integrity and with behaviours that promotes respect for the profession. The College's *Ethics Standard* requires members to ensure their conduct fosters trust and respect of the public. The Member's submission of a false claim breached both of these standards.

Allegation #2 in the Notice of Hearing is supported by paragraphs 6–10 and 20 in the Agreed Statement of Facts. The Member admitted to this allegation. The Member misappropriated property from the Facility when she submitted a false claim in the amount of \$575.00 under the Benefit Plan on or around June 25, 2016 and received a pair of Birkenstock shoes in relation to this false claim. Receiving personal items, such as shoes, as a result of a false benefit claim constitutes misappropriation of property.

Allegations #3 and #4 in the Notice of Hearing are supported by paragraphs 6–10, 21 and 22 in the Agreed Statement of Facts. The Member falsified a record related to her practice and signed, in her professional capacity, a document that she knew or ought to have known contained a false or misleading statement when she submitted a false claim to the Facility's Benefit Plan on June 25, 2016. The Member's employment relationship with Toronto Western Hospital as a RN and the benefit plan coverage provided to support her duties as a RN confirms the Member falsified a record related to her practice. The Member signed, in her professional capacity, a document which contained a false or misleading statement.

With respect to allegation #5, the Panel finds that the Member's conduct was clearly relevant to the practice of Nursing and was unprofessional as it demonstrated a serious and intentional disregard for her professional obligations.

The Panel also finds that the Member's conduct was dishonourable. It demonstrated an element of dishonesty and deceit through making a false claim to the Facility's Benefit Plan as stated in paragraphs 6 – 10 in the Agreed Statement of Facts. While the Member submitted only one false claim, fraud is fraud and casts a shadow of suspicion on herself and any other member using an employer-funded benefit plan. The Member's behaviour has brought discredit to the nursing profession. The Member also knew or ought to have known that her conduct was unacceptable and fell below the standards of a professional.

Penalty

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

1. Requiring the Member to appear before the Panel to be reprimanded within 3 months of the date that this Order becomes final.
2. Directing the Executive Director to suspend the Member's certificate of registration for 2 months. 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 a practicing 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 2 meetings with a Regulatory Expert (the "Expert"), at her own expense and within 6 months from the date that this Order becomes final. To comply, the Member is required to ensure that:
 - i. The Expert has expertise in nursing regulation and has been approved by CNO in advance of the meetings;
 - ii. At least 5 days before the first meeting, or within another timeframe approved by the Expert, 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 CNO publications and completes the associated Reflective Questionnaires, online learning modules and decision tools (where applicable):
 - 1. *Code of Conduct*,
 - 2. *Professional Standards*, and
 - 3. *Ethics*;
 - iv. At least 5 days before the first meeting, or within another timeframe approved by the Expert, the Member provides the Expert with a copy of the completed Reflective Questionnaires;
 - 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 patients, 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 their report to CNO, 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) For a period of 12 months from the date the Member returns to the practice of nursing, the Member will notify her employer(s) of the decision. To comply, the Member is required to:

- i. Ensure that CNO is notified of the name, address, and telephone number of all employer(s) within 14 days of commencing or resuming employment in any nursing position;
 - ii. Provide her employer(s) 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. a copy of the Panel's Decision and Reasons, once available;
 - iii. Ensure that within 14 days of the commencement or resumption of the Member's employment in any nursing position, the employer(s) forward(s) a report to CNO, in which it will confirm:
 1. that they received a copy of the required documents, and
 2. that they agree to notify CNO immediately upon receipt of any information that the Member has breached the standards of practice of the profession.
4. All documents delivered by the Member to CNO, the Expert or her employer(s) will be delivered by verifiable method, the proof of which the Member will retain.

Penalty Submissions

Submissions were made by College Counsel.

College Counsel urged the Panel to accept the Joint Submission on Order, which was negotiated by experienced counsel, unless to do so would bring the administration of justice into disrepute or be contrary to the public interest.

The aggravating factors in this case were:

- The Member engaged in deceit and dishonesty by filing a false claim; and
- The fraudulent act demonstrated the Member's breach of the professional integrity expected of nurses.

The mitigating factors in this case were:

- The Member made a one-time error in judgment in submitting a false claim of \$575.00 on or about June 25, 2016;
- The Member accepted full responsibility for her conduct with her employer and the College;
- The Member made restitution in the amount of \$500.00;

- The Member admitted to the allegations of professional misconduct by entering into an Agreed Statement of Facts and a Joint Submission on Order with the College; and
- The Member has no prior discipline history with the College.

The proposed penalty provides for general deterrence through the 2-month suspension of the Member's certificate of registration, which sends a clear message to the profession that similar misconduct involving submitting false claims is unacceptable.

The proposed penalty provides for specific deterrence through the oral reprimand and the 2-month suspension of the Member's certificate of registration. The oral reprimand ensures the Member understands how her actions are perceived by other members of the profession and the public. The suspension sends a strong signal that this behaviour is unacceptable with the intent to ensure it will not be repeated.

The proposed penalty provides for remediation and rehabilitation through the 2 meetings with a Regulatory Expert. The Member will be afforded the opportunity to return to ethical practice through completion of the College's learning modules on the College's *Professional Standards, Code of Conduct* and *Ethics*.

Overall, the public is protected through the 12 months of employer notification. The penalty sought shows that this conduct is serious and unacceptable. The penalty shows to the public that this profession is capable of governing itself and it strikes the right balance for deterrence, remediation, rehabilitation and public safety.

College Counsel submitted the following cases to the Panel to demonstrate that the proposed penalty fell within the range of similar cases from this Discipline Committee:

CNO v. Verde-Balayo (Discipline Committee, 2021): In this case, the misconduct involved a nurse who submitted fraudulent benefit claims over a number of years that amounted to \$7,982.50. The member did not make restitution. The penalty included an oral reprimand, a 4-month suspension of the member's certificate of registration, 2 meetings with a Regulatory Expert and 12 months of employer notification.

CNO v. Velasquez (Discipline Committee, 2021): In this case, the misconduct involved submissions of false benefit claims that took place between 2013–2016 in the amount of \$11,080.00. The member made restitution of the total amount and cooperated with the College. The penalty included an oral reprimand, a 3-month suspension of the member's certificate of registration, 2 meetings with a Regulatory Expert and 12 months of employer notification.

CNO v. Lagrimas-Mendiola (Discipline Committee, 2022): In this case, the misconduct is similar to the case before this Panel in that the member submitted a one-time false claim for \$750.00. The penalty included an oral reprimand, a 2-month suspension of the member's certificate of registration, 2 meetings with a Regulatory Expert and 12 months of employer notification.

Submissions were made by the Member's Counsel.

The Member's Counsel submitted further mitigating factors:

- The Member has been a registered nurse for 28 years and is recognized by her colleagues as putting patients first, is kind, professional and accountable;
- The Member admitted to her mistake in trusting the chiropractist and fully accepts responsibility for her actions;
- The Member has been fully cooperative with the investigation throughout and is looking forward to putting this all behind her; and
- The Joint Submission on Order protects the public and maintains the high standards for public safety.

Penalty Decision

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

1. The Member is required to appear before the Panel to be reprimanded within 3 months of the date that this Order becomes final.
2. The Executive Director is directed to suspend the Member's certificate of registration for 2 months. 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 a practicing 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 2 meetings with a Regulatory Expert (the "Expert"), at her own expense and within 6 months from the date that this Order becomes final. To comply, the Member is required to ensure that:
 - i. The Expert has expertise in nursing regulation and has been approved by CNO in advance of the meetings;
 - ii. At least 5 days before the first meeting, or within another timeframe approved by the Expert, 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 CNO publications and completes the associated Reflective Questionnaires, online learning modules and decision tools (where applicable):
 - 1. *Code of Conduct*,
 - 2. *Professional Standards*, and
 - 3. *Ethics*;
 - iv. At least 5 days before the first meeting, or within another timeframe approved by the Expert, the Member provides the Expert with a copy of the completed Reflective Questionnaires;
 - 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 patients, 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 their report to CNO, 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) For a period of 12 months from the date the Member returns to the practice of nursing, the Member will notify her employer(s) of the decision. To comply, the Member is required to:

- i. Ensure that CNO is notified of the name, address, and telephone number of all employer(s) within 14 days of commencing or resuming employment in any nursing position;
 - ii. Provide her employer(s) 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. a copy of the Panel's Decision and Reasons, once available;
 - iii. Ensure that within 14 days of the commencement or resumption of the Member's employment in any nursing position, the employer(s) forward(s) a report to CNO, in which it will confirm:
 1. that they received a copy of the required documents, and
 2. that they agree to notify CNO immediately upon receipt of any information that the Member has breached the standards of practice of the profession.
4. All documents delivered by the Member to CNO, the Expert or her employer(s) will be delivered by verifiable method, 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 ability of the College to regulate nurses. This is achieved through a penalty that addresses specific deterrence, general deterrence and, where appropriate, rehabilitation and remediation. The Panel also considered the penalty in light of the principle that joint submissions should not be interfered with lightly.

The Panel concluded that the proposed penalty is reasonable and in the public interest. The Member has co-operated with the College and, by agreeing to the facts and a proposed penalty, has accepted responsibility.

The proposed penalty provides for specific deterrence through the oral reprimand and 2-month suspension.

The proposed penalty provides for general deterrence through the 2-month suspension of the Member's certificate of registration, and sends a clear message to other members of the profession that such misconduct will not be tolerated. In consideration of the current environment with the volume of similar misconduct identified, this is particularly important.

The goal of remediation and rehabilitation through the two meetings with a regulatory expert, serves to deepen the Member's understanding of their obligations to the profession and to the public.

Overall, the public is protected through the 12-month employer notification period. The penalty agreed demonstrates that this conduct is serious and has attracted a serious sanction as a result. Taken together, the penalty demonstrates to the public that nursing is a profession that is capable of governing itself. In light of the multitude of fraudulent benefit claims referred to the College's Discipline Committee, the Panel finds that the penalty sends a clear statement to the members that benefit fraud will not be condoned.

The penalty is also in line with what has been ordered in previous cases in similar circumstances.

I, Michael Hogard, RPN sign this decision and reasons for the decision as Chairperson of this Discipline panel and on behalf of the members of the Discipline panel.