

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

PANEL:	Carly Gilchrist, RPN	Chairperson
	Dawn Cutler, RN	Member
	Catherine Egerton	Public Member
	Michael Schroder, NP	Member
	Richard Woodfield	Public Member

BETWEEN:

COLLEGE OF NURSES OF ONTARIO)	
)	<u>NICK COLEMAN</u> for
)	College of Nurses of Ontario
- and -)	
)	
)	
ROBERT PRICE)	<u>NO REPRESENTATION</u> for
Registration No. AF175906)	Robert Price
)	
)	
)	<u>CHRISTOPHER WIRTH</u>
)	Independent Legal Counsel
)	
)	
)	Heard: November 14-15, 2019

DECISION AND REASONS

This matter came on for hearing before a panel of the Discipline Committee (the “Panel”) on November 14, 2019 at the College of Nurses of Ontario (the “College”) at Toronto.

As Robert Price (the “Member”) was not present, the hearing recessed for 15 minutes to allow time for the Member to appear. Upon reconvening, the Panel noted that the Member was not in attendance and was not represented by Counsel.

College Counsel provided the Panel with evidence that the Member had been sent the Notice of Hearing on August 26, 2019. The Panel was satisfied that the Member had received adequate notice and therefore proceeded with the hearing in the Member’s absence.

The Allegations

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, as a Registered Practical Nurse (“RPN”), you contravened a standard of practice of the profession or failed to meet the standard of practice of the profession with respect to the following incidents:
 - (a) while employed as an RPN at William Osler Health System — Brampton Civic Hospital (“Hospital”) in Brampton, Ontario, between January 2017 and February 2018, you:
 - (i) misappropriated controlled substances, including narcotics, intended for approximately 75 clients on or about 182 occasions;
 - (ii) falsified electronic records indicating controlled substances, including narcotics, had been administered to approximately 75 clients on or about 182 occasions, when, in fact, you had misappropriated the controlled substances;
 - (iii) accessed the confidential health records for approximately 75 clients to whom you were not providing care, on or about 182 occasions, without the consent of the clients or other authorization; and/or
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, as an RPN employed at the Hospital, between January 2017 and February 2018, you misappropriated controlled substances, including narcotics, intended for approximately 75 clients on or about 182 occasions.
3. You have committed an act of professional misconduct as provided by subsection 51(1)(c) of the *Health Professions Procedural Code of the Nursing Act, 1991*, S.O. 1991, c. 32, as amended, and defined in subsection 1(14) of *Ontario Regulation 799/93*, in that, as an RPN employed at the Hospital, between January 2017 and February 2018, you falsified a record relating to your practice with respect to creating electronic records indicating controlled substances, including narcotics, had been administered to approximately 75 clients on or about 182 occasions, when, in fact, you had misappropriated the controlled substances.
4. 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, and defined in subsection 1(18) of *Ontario Regulation 799/93*, in that, as an RPN, you contravened a term, condition or limitation on your certificate of registration pursuant to *Ontario Regulation 275/94*, section 1.5 (under the *Nursing Act, 1991*), in that you failed to report to the College within 30 days that you had been charged with theft under \$5,000 and

criminal breach of trust, contrary to sections 334(b) and 336 of the *Criminal Code of Canada*, on or about September 18, 2018.

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, as an RPN, 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 with respect to the following incidents:
 - (a) while employed as an RPN at the Hospital, between January 2017 and February 2018, you:
 - (i) misappropriated controlled substances, including narcotics, intended for approximately 75 clients on or about 182 occasions;
 - (ii) falsified electronic records indicating controlled substances, including narcotics, had been administered to approximately 75 clients on or about 182 occasions, when, in fact, you had misappropriated the controlled substances;
 - (iii) accessed the confidential health records for approximately 75 clients to whom you were not providing care, on or about 182 occasions, without the consent of the clients or other authorization; and/or
 - (b) failed to report to the College within 30 days, as required by the terms, conditions or limitations on your certificate of registration and the by-laws of the College, that you had been charged with theft under \$5,000 and criminal breach of trust, contrary to sections 334(b) and 336 of the *Criminal Code of Canada*, on or about September 18, 2018.

Member's Plea

Given that the Member was not present nor represented, he was deemed to have denied the allegations in the Notice of Hearing. The hearing proceeded on the basis that the College bore the onus of proving the allegations in the Notice of Hearing against the Member.

Overview

The Member was employed as a part time RPN at the William Osler Health System on the Oncology and Palliative Care Inpatient Unit. On February 19, 2018 when he was not scheduled to work, he was found to be at the nursing station accessing the personal health records of clients on the unit and further to that he accessed the Automatic Dispensing Unit ("ADU") and withdrew narcotics and controlled substances.

Three witnesses testified about a thorough and in-depth investigation into the numerous times when the Member was not on duty but had accessed confidential health records and misappropriated narcotics and controlled drugs. The issues are as follows: Did the Member contravene or fail to meet a standard of practice of the profession? Did the Member misappropriate controlled

substances? Did the Member falsify electronic health records of approximately 75 clients? After charges were laid against him under the *Criminal Code of Canada*, did the Member fail to notify the College of the charges? Did the Member commit professional misconduct by engaging in conduct that would be considered by members of the profession to be disgraceful, dishonorable and/or unprofessional?

The Panel heard testimony from three very credible and professional witnesses and found that the Member committed professional misconduct by failing to meet the standards of practice, by misappropriating controlled substances, by falsifying records relating to his practice, by contravening a term, condition or limitation on his Certificate of Registration[,] by failing to report charges to the College and by engaging in conduct that would be regarded by members of the profession to be disgraceful, dishonorable and unprofessional.

The Evidence

The Panel heard testimony from three witnesses describing the sequence of events that led to the dismissal and eventual criminal charges against the Member.

On February 19, 2018, the Member was not scheduled to work, but was observed at the nursing station on the Oncology and Palliative Care Inpatient Unit, (the “Unit”) using his access card to enter the Medication room and the computer system which allows team members to withdraw drugs from the ADU. The Member withdrew a total of nine drugs from the ADU on this occasion. Access to the ADU was attributed to patients on the ward, but the nurses on duty, after observing the Member, searched for and discovered other unusual withdrawals and notified management of a potential problem. Management was able to check times and dates of suspicious transactions against the Member’s payroll records and found 182 occasions involving 75 different patients where the Member had falsely accessed records and misappropriated controlled substances.

The Member was criminally charged on September 18, 2018 by Peel Police. The charges included Theft Under \$5000 and Criminal Breach of Trust. The Member was further notified of the appointment of an investigator to ascertain whether he had committed an act of professional misconduct with respect to the charges under the *Criminal Code of Canada* and for not fulfilling reporting obligations to the College.

The College led evidence that the Member misappropriated controlled substances including narcotics; the Member falsified electronic records indicating that controlled substances including narcotics had been administered to approximately 75 clients on or about 182 occasions when in fact the controlled substances had been misappropriated; and lastly that the Member accessed the confidential health records for approximately 75 clients to whom he was not providing care.

The Member had a responsibility to report criminal charges and ongoing investigations surrounding those charges to the College in writing within thirty days. Eventually the Member did so but at that point the College was already investigating his actions.

Witness #1, ([]) is employed by the College as an investigator and was appointed to conduct the investigation into the conduct of the Member. She seemed calm, composed and confident in her responses to questions posed by College Counsel. The Witness led the Panel through the

investigative process, the information received from Peel Police and the steps she took to communicate with the Member regarding her findings.

The witness led the Panel through the Ontario *Nursing Act*, the College's Bylaws and the College's Standards of Practice and how they had been breached. The Panel was given copies of communication between the witness [] and the Member as the investigation unfolded.

Witness #2 ([]) was the Clinical Service Manager of the Oncology and Palliative Care Unit where the Member was working at the time of the investigation. When questioned her answers seemed to be focussed, coherent and her demeanor casual and relaxed. She had never met the Member but was aware of him and the allegations. The witness had received a phone call from a pharmacist who had been contacted in relation to the Member coming in on a day off and removing Hydromorphone 2mg/ml amps from the ADU. In addition, the witness later received emails from nurses on the floor related to the same issues. The witness explained how she had contacted the Police to do a "Wellness Check" on the Member when it was discovered how much medication was missing as she was concerned about his well being and the lethal potential of such large quantities if ingested.

The Panel was shown a detailed floor plan of the unit and it was explained how access to the ADU required a user name and fingerprint or biometric password. The witness explained that the passwords and pin were updated regularly. She then described the steps involved in removing medications. The witness explained a "Standard Deviation Report" which would show if an individual is accessing narcotics at a higher level than most staff and how the Member was flagged as excessive in his number of removals. Finally, the witness described how a three-month review of the Member's behaviour showed an increased number of withdrawals, so the Team Leader proceeded with an analysis of legitimate and non-legitimate withdrawals from the ADU.

Witness #3 ([]) was the Manager of Allied Health for the Hospital and a Physiotherapist. During questioning, he seemed calm, composed and eager to answer questions but willing to admit if he did not know the answers. He was involved in the investigation but had never met the Member. He led the Panel through the privacy policy, the confidentiality policy signed by the Member and the Employee Learning Record for the Member showing that he had in fact been properly trained in confidentiality and protection of privacy for clients. The witness was involved in the investigation into the Member's conduct. He reviewed the records of work and compared them to ADU transactions, legitimate or otherwise, and discovered 182 separate transactions involving 75 different clients, including one who was newly deceased and one not present on the unit.

Final Submissions

College Counsel reminded the Panel that it would be inappropriate to penalize the Member for not attending the hearing, but it must be considered that the information presented to the Panel at the hearing was not challenged due to the fact the Member was not present, nor represented.

The first allegation in the Notice of Hearing was supported by information from the payroll records and the ADU records, found in tabs 9, 10, 11 and 12 in the College's Book of Documents Volume 2 and reviewed thoroughly by Witnesses #2 and #3. The Member accessed confidential health records and used the information not for health care, but to misappropriate narcotics and also

falsified clients' electronic health records when he signed out the medications. The Member accessed the ADU to withdraw narcotics and attributed the withdrawals to other nurses who were attending to these patients. The Panel was given copies of the College's Practice Standards related to *Professional Standards, Ethics, Confidentiality and Privacy, Medication* and lastly *Documentation*, found under Tabs 13-17 in the College's Book of Documents Volume 1. The College's Standards of Practice strongly state that nurses are not to access records without reason, falsify records for any reason, nor steal narcotics.

College Counsel submitted that ethical values are shared by society and upheld by law. Nurses share relevant information with the healthcare team, whose members are obliged to maintain confidentiality. The *Medication* practice standard describes nurses' accountabilities when engaging in medication practices such as administration, dispensing, medication storage, inventory management and disposal.

Allegation #2 dealt with misappropriation of controlled substances as there was no justification for the action of withdrawal at the ADU.

Allegation #3 is based on the fact that the Member falsified entries with respect to the withdrawal of medication on or about 182 occasions.

Allegation #4 speaks to the criminal charges that were laid against the Member in relation to the theft of narcotics from the hospital. The Member did eventually report the charges, but the College investigator was already aware of the charges and pursuing the matter.

Allegation #5 related to the Member's conduct which could reasonably be regarded by members of the profession to be disgraceful, dishonorable and unprofessional.

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(a)(i), (ii), (iii); 2; 3; 4 and 5(a)(i), (ii), (iii) and 5 (b) in the Notice of Hearing. With regard to allegation 5, the Panel finds that the Member engaged in conduct that would reasonably be regarded by members of the profession as disgraceful, dishonorable and unprofessional.

Reasons for Decision

The Panel accepted the evidence of the three witnesses and found that the Member, by inappropriately accessing client records for the purpose of misappropriating controlled drugs and narcotics, had committed an act of professional misconduct. The Member further falsified electronic records and failed to report to the College that he had been charged under the *Criminal Code of Canada* as required by the terms, conditions and limitations on his Certificate of Registration.

By so doing, the Member also contravened and failed to meet the standards of practice of the profession.

The witnesses clearly articulated that the Member was not on duty on many occasions when he had accessed the records of at least 75 clients and thereby misappropriated narcotics and controlled substances. The Panel was shown the Standard Deviation Report that described a higher than normal usage of the ADU by the Member to withdraw narcotics and controlled drugs. That the Member accessed the electronic records of clients when not in the circle of care is a clear breach of the Standards of Practice. To withdraw the medication and misappropriate them, further exacerbates the breach. Finally, after being charged under the *Criminal Code of Canada* the Member was required to notify the College within thirty days of the relevant charges and he failed to do so.

The Standards of Practice related to ethics describe maintaining a commitment to clients to provide safe, effective and ethical care and maintaining this commitment to the profession as well. The Standard related to confidentiality and privacy states that a nurse is responsible for ensuring that they use personal health information only for the purpose it is collected.

The Panel decided that the Member committed an act of professional misconduct, relevant to the practice of nursing that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonorable and unprofessional in respect to misappropriating controlled substances, falsifying electronic records, accessing confidential health records for approximately 75 clients to whom he was not providing care and lastly by failing to report charges under the *Criminal Code of Canada*, to the College within thirty days, as required by the terms, conditions or limitations on his certificate of registration.

The Member ought to have known that theft of any kind falls well below the Standard. Taking medications from vulnerable, ill patients is disgraceful and the fact that the Member did this, numerous times resulting in criminal charges demonstrates a moral failing.

Penalty

College Counsel requested 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 immediately revoke the Member's certificate of registration.

Penalty Submissions

College Counsel asked that the Panel make an Order directing the Executive Director to immediately revoke the Member's Certificate of Registration. The seriousness of the misconduct over an extended period of time was cited as an aggravating factor and part of a pattern of conduct that is worrisome at best.

There were in essence no mitigating factors.

The goals of deterrence and rehabilitation are impossible to attain as the Member did not attend the hearing and without any insight into rehabilitation potential, we are unable to achieve this. The objective of deterrence would be to other members of the profession and will be made more effective by the revocation. The proposed penalty provides for general deterrence in that it sends a strong message to all members of the profession that there can be severe and long-term consequences when a member breaches the Standards of Practice to this extent.

The proposed penalty provides for specific deterrence to the Member in that his Certificate of Registration will be revoked.

Overall the Order meets the over-riding goal of protection of the public. The Order also helps maintain the public's confidence in the College by demonstrating its effectiveness in self-regulation.

College Counsel provided the Panel with five examples of previous discipline hearings, all slightly different from the present hearing. *CNO v Wardlaw* - March 19, 2018; *CNO v Rzeszutko* - September 21, 2012; *CNO v Calvano* - May 5, 2015; *CNO v Noseworthy-Gondermann* - August 28, 2018 and *CNO v Godmaire* - March 7, 2019. These cases demonstrated that the proposed penalty fell well within the range of penalties from this Discipline Committee for similar conduct.

Penalty Decision

The Panel accepts College Counsel's Submission on Order and makes the following Order:

1. The Member is directed 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 immediately revoke the Member's certificate of registration.

Reasons for Penalty Decision

The Panel deliberated and agreed with College Counsel that the Member's actions showed a disregard and disrespect for both the law and the profession. The Member demonstrated a clear unwillingness to be governed by not participating in the hearing process, further demonstrating an unwillingness to accede to the College's jurisdiction.

The Member accessed the personal health records for approximately 75 clients, falsified electronic records related to narcotics and controlled substances and misappropriated those narcotics and controlled substances for his own use and when charged with the related offences under the *Criminal Code of Canada*, failed to notify the College. The Member's actions violate cornerstones of the nursing profession namely honesty, integrity and trustworthiness.

The Member has no prior disciplinary history with the College. The Member chose not to participate in the hearing process and as a result was not present to share any information such as mitigating factors that may have assisted the Panel in its deliberations.

The Panel concludes that the penalty of revocation is appropriate given the seriousness of the Member's conduct, the length of time over which the infractions occurred and the number of clients involved. The penalty acts as a specific and a general deterrent and prevents the Member from using the protected title of nurse. It protects the public by ensuring that the Member is unable to practice nursing and discourages similar conduct by other members, demonstrating that such conduct will be met with severe consequences.

I, Carly Gilchrist, 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.