

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

PANEL:	Mary MacMillan-Gilkinson	Public Member, Chairperson
	Renate Davidson	Public Member
	Grace Fox, NP	Member
	Karen Laforet, RN	Member
	Winsome Plummer, RN	Member

BETWEEN:

COLLEGE OF NURSES OF ONTARIO)	<u>EMILY LAWRENCE</u> for
)	College of Nurses of Ontario
- and -)	
)	
XIN ZHOU)	<u>DANIELLE BISNAR</u> for
Reg. No: 07324102)	Xin Zhou
)	
)	
)	<u>CHRIS WIRTH</u>
)	Independent Legal Counsel
)	
)	
)	Heard: <u>MARCH 7, 2018</u>

DECISION AND REASONS

This matter came on for hearing before a panel of the Discipline Committee (“the panel”) on March 7, 2018 at the College of Nurses of Ontario (“the College”) at Toronto.

The Allegations

Counsel for the College advised the panel that the College was requesting leave to withdraw the allegations set out in paragraphs 1(a)(iv), 1(a)(v), 1(a)(vi), 1(e), 1(g), 1(h), 3(a)(iv), 3(a)(v), 3(a)(vi), 3(e), 3(g), and 3(h) of the Notice of Hearing dated February 1, 2018. The panel granted this request. The remaining allegations against Xin Zhou (the “Member”) 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 employed as a Registered Nurse at the Centre for Addiction and Mental Health (“CAMH”) and Toronto Western Hospital (“TWH”), 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) on or about the following dates, you called in sick at CAMH and were paid, and worked at TWH and were paid:
 - i. February 5, 2014;
 - ii. April 11, 2014;
 - iii. June 23, 2014;
 - iv. [Withdrawn];
 - v. [Withdrawn]; and/or
 - vi. [Withdrawn];
 - (b) on or about the following dates, you misappropriated property from a workplace when you called in sick and were paid for shifts at CAMH but you were not sick:
 - i. February 5, 2014;
 - ii. April 11, 2014;
 - iii. June 23, 2014; and/or
 - iv. December 31, 2014;
 - (c) On or about the following dates, you took unpaid family emergency days at CAMH when you did not have a legitimate family emergency, and worked at TWH,:
 - i. June 12, 2014;
 - ii. October 6, 2014;
 - iii. October 7, 2014;
 - iv. November 4, 2014;
 - v. November 5, 2014;
 - vi. November 17, 2014;
 - vii. November 18, 2014;
 - viii. December 17, 2014; and/or
 - ix. December 19, 2014;

- (d) on or about the dates listed in Appendix “A”, you were scheduled and worked shifts at TWH and CAMH that overlapped;
 - (e) [Withdrawn];
 - (f) on or about August 21, 2014, you requested from TWH an unpaid day off of work on August 22, 2014 for a family emergency, and worked at CAMH on August 22, 2014;
 - (g) [Withdrawn];
 - (h) [Withdrawn]
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 Centre for Addiction and Mental Health (“CAMH”) and Toronto Western Hospital (“TWH”), you misappropriated property from a workplace with respect to the following incidents:
- (a) on the following dates, you misappropriated property from a workplace when you called in sick and were paid for shifts at CAMH but you were not sick;
 - i. February 5, 2014;
 - ii. April 11, 2014;
 - iii. June 23, 2014;; and/or
 - iv. December 31, 2014
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(37) of *Ontario Regulation 799/93*, in that while working as a Registered Nurse at the Centre for Addiction and Mental Health (“CAMH”) and Toronto Western Hospital (“TWH”), 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 with respect to the following incidents:
- (a) on or about the following dates, you called in sick at CAMH and were paid, and worked at TWH and were paid:
 - i. February 5, 2014;
 - ii. April 11, 2014;
 - iii. June 23, 2014;
 - iv. [Withdrawn];
 - v. [Withdrawn]; and/or

- vi. [Withdrawn];
- (b) on or about the following dates, you misappropriated property from a workplace when you called in sick and were paid for shifts at CAMH but you were not sick:
 - i. February 5, 2014;
 - ii. April 11, 2014;
 - iii. June 23, 2014; and/or
 - iv. December 31, 2014;
- (c) On or about the following dates, you took unpaid family emergency days at CAMH when you did not have a legitimate family emergency, and worked at TWH.:
 - i. June 12, 2014;
 - ii. October 6, 2014;
 - iii. October 7, 2014;
 - iv. November 4, 2014;
 - v. November 5, 2014;
 - vi. November 17, 2014;
 - vii. November 18, 2014;
 - viii. December 17, 2014; and/or
 - ix. December 19, 2014;
- (d) on or about the dates listed in Appendix “A”, you were scheduled and worked shifts at TWH and CAMH that overlapped;
- (e) [Withdrawn];
- (f) on or about August 21, 2014, you requested from TWH an unpaid day off of work on August 22, 2014 for a family emergency, and worked at CAMH on August 22, 2014;
- (g) [Withdrawn];
- (h) [Withdrawn]

Member’s Plea

The Member admitted the allegations set out in paragraphs 1(a)(i), 1(a)(ii), 1(a)(iii), 1(b), 1(c), 1(d), 1(f), 2(a), 3(a)(i), 3(a)(ii), 3(a)(iii), 3(b), 3(c), 3(d), and 3(f) 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 admissions were voluntary, informed and unequivocal.

Agreed Statement of Facts

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

THE MEMBER

1. Xin Zhou (the "Member") obtained a degree in nursing from the University of Toronto in 2007. Prior to that, the Member studied and practised nursing in China.
2. The Member registered with the College of Nurses of Ontario (the "College") as a Registered Nurse ("RN") on July 19, 2007.
3. The Member was employed at Toronto Western Hospital ("TWH") from October 3, 2011 to January 1, 2015, when she resigned after being placed on a paid leave of absence.
4. The Member worked at the Centre for Addiction and Mental Health ("CAMH") from June 9, 2008 to January 28, 2015, when her employment was terminated. This termination was subsequently rescinded pursuant to a grievance by the Member's union and CAMH accepted the Member's resignation.

THE FACILITIES

TWH

5. TWH is located in Toronto, Ontario.
6. The Member worked at TWH on the Impact Team, which is an interdisciplinary team that provides outreach and support to mental health clients in the community. The team consists of three nurses, one occupational therapist, a psychiatrist, an addictions worker, a community worker, a social worker and a peer worker.
7. The Member primarily worked day shifts from 0830 to 1630, and occasionally worked evening shifts from 1100 to 1900.
8. The Member was the primary contact for eight clients and saw clients, in their homes, on every shift. As part of the community based model of care, the Member was sometimes required to locate clients outside of their homes in places they regularly frequented and also to provide care and support through accompanying them to various appointments.

CAMH

9. CAMH is located in Toronto, Ontario. It is a mental health and addictions services facility.
10. The Member worked as a full-time staff nurse in the Acute Care and General Psychiatry Units. The Acute Care Unit had six beds and the nurse to client ratio was 1:2. The General Psychiatry Unit had 22 beds and the nurse to client ratio was 1:4-5.
11. The Member worked day shifts from 0730 to 1530, and evening shifts from 1530 to 2330. These shifts included a one hour break.

FACILITY POLICIES

TWH

12. TWH had a policy that addressed Family/Emergency Days. Its purpose was to recognize “the need for staff to balance their personal and work responsibilities.” Employees were granted a maximum of five unpaid family emergency days per year. It stated that “[l]ast minute requests (i.e., with less than 24 hours’ notice) will be granted at the sole discretion of the manager, once appropriate coverage is determined.”

CAMH

13. CAMH had a policy called “Leave of Absence,” which addressed both sick days and personal emergency leave. The policy said that “[e]mployees accrue 12 sick days per year (one per month),” up to a maximum of 36 days. In terms of personal emergency leave, the policy stated that employees were entitled to an unpaid leave of ten days per calendar year in the event of “a personal illness, injury or medical emergency” or to deal with a personal emergency related to a family member.
14. On June 3, 2008, the Member signed an Agreement to Comply with Policies & Procedures, including abiding by any policies, manuals and guidelines relevant to her duties at CAMH.

INCIDENTS RELEVANT TO ALLEGATIONS OF PROFESSIONAL MISCONDUCT

15. In December 2014, TWH became concerned about the Member’s schedule and reached out to CAMH. The two facilities completed a joint investigation for the 2014 calendar year to assess whether the Member had overlapped shifts at both facilities.
16. The results of the investigation found that in 2014, the Member worked for CAMH and TWH concurrently on 83 occasions. There was a total of 292.5 hours of overlap recorded.

Called in Sick at CAMH but Worked at TWH

February 5, 2014

17. On February 5, 2014, the Member was scheduled to work the evening shift at CAMH, from 1530 to 2330, but she called in sick. The Member worked the day shift, from 0830 to 1630, at TWH.

18. The Member was paid by CAMH for the sick day.

April 11, 2014

19. On April 11, 2014, the Member was scheduled to work the evening shift at CAMH, from 1530 to 2330, but she called in sick.

20. The Member was not scheduled to work at TWH that day, but she worked the day shift, from 0830 to 1630, plus 3.75 additional hours beyond the normal end of the day shift, which earned her a shift premium.

21. The Member was paid by CAMH for the sick day.

June 23, 2014

22. On June 23, 2014, the Member was scheduled to work the evening shift at CAMH, from 1530 to 2330, but she called in sick.

23. The Member was scheduled to work the day shift at TWH, but she worked three hours of the evening shift as well, which earned her a shift premium.

24. The Member was paid by CAMH for the sick day.

December 31, 2014

25. On December 31, 2014, the Member was scheduled to work the day shift at CAMH, from 0730 to 1530. She was also scheduled to work 1100 to 1900 at TWH.

26. This shift gave rise to the investigation. The Member's manager at TWH, [the Manager], suspected the Member was working two jobs with overlapping shifts and receiving pay from both. She had heard the Member was working at CAMH.

27. Around 1100, the Member called [the Manager] to indicate she would be a bit late because she was looking for parking. When [the Manager] contacted CAMH, she was advised that the Member was on her lunch break. The Member was placed on paid leave by TWH, pending an investigation.

28. After being placed on leave by TWH, the Member called in sick to CAMH around 1400. She was paid for the remainder of her shift at CAMH.

Member's Response

29. The Member acknowledges that she called in sick to CAMH on the dates noted above and worked the same day at TWH. The Member further acknowledges that, in doing so, she was paid by both CAMH and TWH for the same shift, which amounts to misappropriation from CAMH.
30. If the Member were to testify, she would say that, on some of the occasions noted above, she was suffering from a respiratory illness that prevented her from working on the closed units at CAMH, but she was able to wear a surgical mask to complete her community-based duties with the Impact Team at TWH.

Unpaid Family Emergency Leave from CAMH but Worked at TWH

June 12, 2014

31. On June 12, 2014, the Member was scheduled to work an evening shift at CAMH, from 1530 to 2330. She took an unpaid family emergency day. The Member was scheduled, and worked, at TWH from 1100 to 1900. By taking a family emergency leave, the Member avoided a shift overlap of 4.5 hours.

October 6, 2014

32. On October 6, 2014, the Member was scheduled to work an evening shift at CAMH, from 1530 to 2330. She took an unpaid family emergency day. The Member was scheduled, and worked, at TWH from 1100 to 1900. She also worked an additional three hours at TWH and was paid a shift premium. By taking a family emergency leave, the Member avoided a shift overlap of 4.5 hours.

October 7, 2014

33. On October 7, 2014, the Member was scheduled to work an evening shift at CAMH, from 1530 to 2330. She took an unpaid family emergency day. The Member worked at TWH from 0830 to 1630. By taking a family emergency leave, the Member avoided a shift overlap of one hour.

November 4, 2014

34. On November 4, 2014, the Member was scheduled to work the day shift at CAMH, from 0730 to 1530. She took an unpaid family emergency day. The Member worked at TWH from 0830 to 1630. By taking a family emergency leave, the Member avoided a shift overlap of seven hours.

November 5, 2014

35. On November 5, 2014, the Member was scheduled to work the evening shift at CAMH, from 1530 to 2330. She took an unpaid family emergency day. The Member worked at

TWH from 0830 to 1630. By taking a family emergency leave, the Member avoided a shift overlap of one hour.

November 17, 2014

36. On November 17, 2014, the Member was scheduled to work the evening shift at CAMH, from 1530 to 2330. She took an unpaid family emergency day. The Member worked at TWH from 1100 to 1900. She also worked an additional three hours at TWH and was paid a shift premium. By taking a family emergency leave, the Member avoided a shift overlap of 4.5 hours.

November 18, 2014

37. On November 18, 2014, the Member was scheduled to work the evening shift at CAMH, from 1530 to 2330. She took an unpaid family emergency day. The Member worked at TWH from 0830 to 1630. By taking a family emergency leave, the Member avoided a shift overlap of one hour.

December 17, 2014

38. On December 17, 2014, the Member was scheduled to work the evening shift at CAMH, from 1530 to 2330. She took an unpaid family emergency day. The Member worked at TWH from 0830 to 1630. By taking a family emergency leave, the Member avoided a shift overlap of one hour.

December 19, 2014

39. On December 19, 2014, the Member was scheduled to work the day shift at CAMH, from 0730 to 1530. She took an unpaid family emergency day. The Member worked the day shift at TWH from 0830 to 1630. By taking a family emergency leave, the Member avoided a shift overlap of seven hours.

Member's Response

40. The Member acknowledges that she took unpaid family emergency leave on the dates noted above, and that she completed shifts for the Impact Team at TWH on the same dates.
41. If the Member were to testify, she would say that, at the time, her mother was experiencing health problems, including chest pains, and that she required emotional and translation support to obtain medical care. The Member would testify that she requested time off from CAMH to assist her mother, but was denied. The Member would further testify that she was able to complete her assigned client visits for TWH and attend to her mother's health needs.

Overlapping Shifts at TWH and CAMH

42. In 2014, the Member frequently worked overlapping shifts at TWH and CAMH.

43. The Member admits that the dates and shifts set out in Appendix "A" to the Notice of Hearing are accurate and that she did work those shifts at CAMH and/or TWH, on those days.
44. On 64 days between January 1, 2014 and December 29, 2014, the Member was scheduled to work, and did work, shifts at TWH and CAMH that overlapped by one hour.
45. On 15 days between February 8, 2014 and December 28, 2014, the Member was scheduled to work, and did work, shifts at TWH and CAMH that overlapped by two and a half hours.
46. On 14 days between January 27, 2014 and December 10, 2014, the Member was scheduled to work, and did work, shifts at TWH and CAMH that overlapped by three and a half hours.
47. On five days between February 4, 2014 and November 25, 2014, the Member was scheduled to work, and did work, shifts at TWH and CAMH that overlapped by four and a half hours.
48. On 12 days between January 5, 2014 and December 7, 2014, the Member was scheduled to work, and did work, shifts at TWH and CAMH that overlapped by five and a half hours.
49. On September 1, 2014, the Member was scheduled to work, and did work, shifts at TWH and CAMH that overlapped by seven hours.
50. On August 2, 2014, the Member was scheduled to work, and did work, shifts at TWH and CAMH that overlapped by eight hours.

Member's Response

51. If the Member were to testify, she would testify that she addressed the periods of overlapping shifts by completing her community-based duties at Impact outside of the regularly scheduled hours including, for example, by starting visits early and/or skipping breaks. However, she acknowledges that she did so without the knowledge or approval of her employers, and had no authority to address overlapping shifts in this manner unilaterally. She would further testify that she attempted to address the issue of overlapping shifts by requesting a reduction to part-time status at CAMH in the Fall of 2014 but that no change in her status was finalized prior to December 31, 2014 when TWH and CAMH initiated an investigation into the Member's conduct.

Unpaid Family Emergency Leave from TWH but Worked at CAMH

52. On August 21, 2014, the Member emailed her manager at TWH to request the following evening shift off. She was scheduled to work 1100 to 1900. The Member advised that she needed the shift off to attend her children's concert out of town the morning of August 22, 2014 and would not be back in time to work her scheduled shift. The Member was not paid for her shift at TWH.

53. On August 22, 2014, the Member was scheduled to work the day shift at CAMH, from 1530 to 2330, which she worked. She was paid for 7.5 hours.
54. The Member acknowledges that she took unpaid emergency leave from TWH and worked at CAMH on the same day. If the Member were to testify, she would say that her children attended a music camp in Stratford, Ontario and their concert was rescheduled to August 22, 2014 due to inclement weather. The Member would further testify that she recalls attending the concert in Stratford on August 22, 2014.

ADMISSIONS OF PROFESSIONAL MISCONDUCT

55. The Member admits that she did not advise her employers that she was attempting to work at both facilities. She further admits that, to the extent that she completed her work at these positions by shortening breaks or working after hours, she did so unilaterally and without employer approval or knowledge.
56. The Member acknowledges that it is a breach of the standards of practice, specifically ethical standards, to work overlapping shifts at two employers and be paid by both employers and to take paid or unpaid leave from one employer to work at another employer.
57. The Member admits that she committed the acts of professional misconduct as described in paragraphs 17-28 above, in that she called in sick at CAMH (when she was not sick) and worked at TWH, thereby misappropriating time from CAMH, as alleged in the following paragraphs of the Notice of Hearing:
- 1(a)(i), (ii) and (iii)
 - 1(b)(i), (ii), (iii) and (iv)
58. The Member admits that she committed the acts of professional misconduct as alleged in paragraphs 1(c)(i), (ii), (iii), (iv), (v), (vi), (vii), (viii), (ix) of the Notice of Hearing, as described in paragraphs 31-39 above, in that she took unpaid family emergency days at CAMH, and worked at TWH on the same dates.
59. The Member admits that she committed the acts of professional misconduct as alleged in paragraph 1(d) of the Notice of Hearing, as described in paragraphs 42-50 above, in that she was scheduled, and worked, shifts at TWH and CAMH that overlapped.
60. The Member admits that she committed the acts of professional misconduct as alleged in paragraph 1(f) of the Notice of Hearing, as described in paragraphs 52-54 above, in that she requested an unpaid day off work from TWH on August 22, 2014 and worked at CAMH on the same date.
61. The Member admits that she committed the acts of professional misconduct as alleged in paragraph 2(a) of the Notice of Hearing, as described in paragraphs 17-28 above, in that she

misappropriated property or time from CAMH when she called in sick and was paid for days when she was not sick.

62. The Member admits that she committed the acts of professional misconduct as alleged in paragraphs 3(a)(i)-(iii), (b)(i)-(iv), (c)(i)-(ix), and (f) of the Notice of Hearing, and in particular her conduct was disgraceful, dishonourable and unprofessional, as described in paragraphs 17-28, 31-39, and 42-54 above.

63. With leave of the Discipline Committee, the College withdraws the following allegations from the Notice of Hearing:

- 1(a)(iv), (v) and (vi)
- 1(e)
- 1(g)
- 1(h)
- 3(a) (iv), (v) and (vi)
- 3(e)
- 3(g)
- 3(h)

Decision

The panel finds that the Member committed acts of professional misconduct as alleged in paragraphs 1(a)(i), (ii) and (iii), 1(b)(i), (ii), (iii) and (iv), 1(c)(i), (ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), 1(d), 1(f), and 2(a) of the Notice of Hearing. As to allegation # 3(a)(i),(ii),(iii), 3(b)(i), (ii), (iii) and (iv), 3(c)(i), (ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), 3(d), and 3(f) in the Notice of Hearing, the panel finds that the Member engaged in conduct that would reasonably be considered by members to be disgraceful, 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(a)(i),(ii),(iii), 1(b)(i), (ii), (iii) and (iv) in the Notice of Hearing is supported by paragraphs 17 through 28, and 57 in the Agreed Statement of Facts. The Member called in sick at CAMH (when she was not sick) and worked at TWH. This constitutes misappropriation of funds from CAMH.

Allegation #1(c)(i), (ii), (iii), (iv), (v), (vi), (vii), (viii), (ix) in the Notice of Hearing is supported by paragraphs 31 to 39 and 57 in the Agreed Statement of Facts as the Member took unpaid family emergency days at CAMH, and worked at TWH on those same dates.

Allegation #1(d) in the Notice of Hearing is supported by paragraphs 42 to 50 and 59 in the Agreed Statement of Facts as the Member worked shifts at TWH and CAMH which overlapped.

Allegation #1(f) in the Notice of Hearing is supported by paragraphs 52, 53, 54 and 60 in the Agreed Statement of Facts as the Member worked a shift at CAMH when she had requested an unpaid day from TWH (August 22, 2014).

Allegation #2(a) in the Notice of Hearing is supported by paragraphs 17 to 28 and 61, in the Agreed Statement of Facts. The Member misappropriated property in the form of pay, or time from CAMH when she called in sick and was paid for days when she was not sick.

With respect to Allegation # 3 the panel finds that the Member's conduct in misappropriating funds from her employer by, calling in sick at CAMH and working at TWH, by calling in sick at CAMH when not sick, by working overlapping shifts and taking unpaid family emergency days to work at another institution, was unprofessional as it demonstrated a serious and persistent disregard for her professional obligations.

The panel also finds that the Member's conduct was dishonourable. It demonstrated an element of dishonesty and deceit as the Member should have been open, honest and transparent to the employer about working flex hours. She should only have received remuneration for the number of hours she worked at one facility and not for the over-lapping hours when she worked at the second facility. Finally, the panel finds that the Member's conduct was disgraceful as it shames the Member and by extension the profession. The conduct and the number of incidents, casts serious doubt on the Member's moral fitness and inherent ability to discharge the higher obligations the public expects professionals to meet.

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 seven 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 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 two meetings with a Nursing Expert (the "Expert"), at her own expense and within six months from 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, online learning modules, decision tools and online participation forms (where applicable):
 1. *Professional Standards*,
- 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) For a period of 24 months from the date the Member returns to the practice of nursing, the Member will notify her employers of the decision. To comply, the Member is required to:
 - i. Ensure that the Director 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 the Director, in which it will confirm:
 - 1. that they received a copy of the required documents, and
 - 2. that they agree to notify the Director immediately upon receipt of any information that the Member has breached the standards of practice of the profession; and
- 4. All documents delivered by the Member to the College, the Expert or the employer(s) will be delivered by verifiable method, the proof of which the Member will retain.

Penalty Submissions

Submissions were made by College Counsel. The Member's Counsel indicated that she agreed with those submissions.

The parties agreed that the mitigating factors in this case were:

- a) This is the Member's first appearance before a Discipline panel
- b) The Member has been registered with the CNO for 10 years
- c) The Member has cooperated with the investigation and has taken accountability for her actions
- d) This avoids the need for a contested case
- e) The Member did take steps to avoid/limit the number of overlapping shifts

The aggravating factors in this case were:

- a) There is a persistent pattern of conduct (83 instances)

- b) The conduct was dishonest in that the Member obtained financial benefit from employers.
- c) The conduct, given the practice location in a community based environment (TWH) has significant autonomy of practice leading to increased accountability and responsibility. The Member used this autonomy to her own benefit.
- d) Although the College did not present any proof of client harm, this was indeed a possibility as the Member was splitting her focus, attention and physical presence between clients and two different facilities.

The proposed penalty provides for general deterrence through the very significant 7 month suspension. It sends a strong message to the membership that conduct such as this will not be tolerated and will result in repercussions.

The proposed penalty provides for specific deterrence through the reprimand, suspension and employer notification. This is to ensure that the Member understands that the conduct is unacceptable and contrary to the expectations of members of the profession, employers and the public.

The proposed penalty provides for remediation and rehabilitation in that the meetings with the Nursing Expert will lead to a greater understanding of her accountabilities and obligations. This will prepare the Member to return to ethical practice.

Overall, the public is protected because there will be employer oversight, and rehabilitation and remediation of the Member. Public confidence will be maintained as this illustrates how members of the profession view this conduct and are able to self-govern. The Member will develop insight into her own conduct and return to practice with a renewed understanding of her accountability and professional standards.

There was no case law presented by Counsel. The parties agreed that this case is unique in that it involves a member using overlapping shifts in two different facilities in order to misappropriate funds.

Penalty Decision

The panel accepts the Joint Submission as to Order 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 seven 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 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 two meetings with a Nursing Expert (the "Expert"), at her own expense and within six months from 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, online learning modules, decision tools and online participation forms (where applicable):
 1. *Professional Standards*,
- 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) For a period of 24 months from the date the Member returns to the practice of nursing, the Member will notify her employers of the decision. To comply, the Member is required to:
 - i. Ensure that the Director 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 the Director, in which it will confirm:
 - 1. that they received a copy of the required documents, and
 - 2. that they agree to notify the Director immediately upon receipt of any information that the Member has breached the standards of practice of the profession; and
- 4. All documents delivered by the Member to the College, the Expert or the 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 panel finds that the penalty satisfies the principles of specific and general deterrence, rehabilitation and remediation, and public protection.

I, Mary MacMillan-Gilkinson, Public Member, 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

Date