

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

PANEL:	Carly Gilchrist, RPN	Chairperson
	Andrea Arkell	Public Member
	Tim Crowder	Public Member
	Lynn Hall, RN	Member
	Tyler Hands, RN	Member

BETWEEN:

COLLEGE OF NURSES OF ONTARIO)	<u>DENISE COONEY</u> for
)	College of Nurses of Ontario
- and -)	
)	
JUDITH AUROMA DAVIS)	<u>DENA SMITH-SPRINGER</u> for
REGISTRATION NO. 8224511)	Judith Auroma Davis
)	
)	<u>KIMBERLEY ISHMAEL</u>
)	Independent Legal Counsel
)	
)	Heard: October 12, 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 October 12, 2022, via videoconference.

The Allegations

The allegations against Judith Auroma Davis (the “Member”) as stated in the Notice of Hearing dated September 7, 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 Baycrest 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 2018, you submitted and/or accepted payment for 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 2018, you submitted and/or accepted payment for 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 2018, you submitted and/or accepted payment for 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 2018, you submitted and/or accepted payment for 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 2018, you submitted and/or accepted payment for 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. Judith Auroma Davis (the “Member”) registered with the College of Nurses of Ontario (“CNO”) as a Registered Nurse (“RN”) on January 1, 1982.
2. The Member was employed as an RN at Baycrest Health Sciences in Toronto, Ontario (the “Facility”), at the time of the incidents described below. The Member resigned her employment at the Facility in connection with the Facility’s investigation into these incidents.

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. Coughlin & Associates Ltd (“Coughlin”) 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, Benefit Plan members must complete a medical expense claim form provided by Coughlin. The claim form requires certain information, including information on the plan member, any dependents, and the nature of the claim. The plan member must certify “that the information given is true, correct and complete to the best of [their] knowledge”.

INCIDENTS RELEVANT TO ALLEGATIONS OF PROFESSIONAL MISCONDUCT

5. In 2018, the Member submitted false claims for a variety of medical services (such as physiotherapy) and products (such as compression socks and custom-made orthotics) under the Benefit Plan and received \$4,305 in monetary payments and/or store credits for items which were not covered by the Benefit Plan.
6. In January 2019, the Facility uncovered benefits irregularities and conducted an internal investigation. On February 28, 2019, the Member was interviewed by the Facility with respect to her claims. The Member admitted that she had participated in a fraudulent scheme. She admitted to not having received services, and instead that once the reimbursement funds were received by her, she would provide the entire amount to a contact at the store in exchange for items that she admitted were not orthopedic, such as Clarks, UGGs, and Michael Kors brand shoes. The Member apologized for her conduct.
7. The Member resigned from her employment at the Facility before the Facility could take any action. The Member made restitution.

BENEFIT FRAUD CASES

8. To date, a total of 75 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

9. 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.
10. CNO's *Professional Standards* provides, in relation to the accountability standard, that nurses are accountable to the public and responsible for ensuring their 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.
11. 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

12. 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.
13. 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.

14. CNO's *Ethics* Standard also provides, in relation to truthfulness, that truthfulness means speaking and acting without intending to deceive.
15. The Member admits and acknowledges that she contravened CNO's *Professional Standards* and *Ethics* Standard.

ADMISSIONS OF PROFESSIONAL MISCONDUCT

16. 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 5 to 7 and 9 to 15 above.
17. 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 5 to 7 above.
18. 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 5 to 7 above.
19. 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 5 to 7 above.
20. 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 5 to 7 and 9 to 15 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 unprofessional and dishonourable.

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 5-7 and 9-16 in the Agreed Statement of Facts. The Member admitted to submitting and accepting payment for false claims through the Baycrest Hospital's (the "Facility") employee benefit plan (the "Benefit Plan"). The Member submitted false claims for a variety of medical services (such as physiotherapy) and products (such as compression socks and custom-made orthotics) through the Benefit Plan in 2018 and received \$4,305.00 in monetary payments and/or store credits for items that the Benefit Plan did not cover, in relation to these false claims. The College's *Professional Standards* provides, in relation to the leadership standard, that the leadership expectation includes all nurses, regardless of their position and that leadership requires trust. The Member's actions of submitting false claims went against being trustworthy and were contrary to the *Professional Standards*. The *Ethics Standard* provides 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. The Member's actions went against the *Ethics Standard* by not being truthful, as she deceived the Facility and the Benefit Plan when submitting these false claims.

Allegation #2 in the Notice of Hearing is supported by paragraphs 5-7 and 17 in the Agreed Statement of Facts. The Member admitted to misappropriating property from the Facility by submitting false claims for a variety of medical services (such as physiotherapy) and products (such as compression socks and custom-made orthotics) to the Benefit Plan in 2018 and to receiving \$4,305.00 in monetary payments and/or store credits for items that the Benefit Plan did not cover, in relation to these false claims. Receiving money with respect to false benefit claims constitutes misappropriation of property.

Allegation #3 in the Notice of Hearing is supported by paragraphs 5-7 and 18 in the Agreed Statement of Facts. The Member admitted to falsifying a record relating to her practice when she filled and submitted false claims to the Benefit Plan in 2018. The Member had access to the Benefit Plan by virtue of her employment as a nursing professional. Accordingly, the facts support the allegation that the Member falsified a record relating to her practice and did so in the context of her employment as a Registered Nurse ("RN").

Allegation #4 in the Notice of Hearing is supported by paragraphs 5-7 and 19 in the Agreed Statement of Facts. The Member admitted to signing, in her professional capacity, a document that she knew or ought to have known contained a false or misleading statement, when she signed the false claim forms certifying "that the information given is true, correct and complete to the best of [their] knowledge". As noted above, the Member had access to the Benefit Plan by virtue of her employment as an RN at the Facility. The Member contributed to the cost of the Benefit Plan as set out in her employment agreement and/or collective agreement and based on her election for individual or family coverage. Accordingly, the facts support the allegation that the Member signed, in her professional capacity, a document that she knew contained a false or misleading statement.

Allegation #5 in the Notice of Hearing is supported by paragraphs 5-7, 9-15 and 20 in the Agreed Statement of Facts. The Panel finds that the Member's conduct in submitting false benefit claims was clearly relevant to the practice of nursing and was unprofessional as it demonstrated a persistent

disregard for her professional obligations as set out in the *Professional Standards* and the *Ethics Standard*.

The Panel also finds that the Member's conduct was dishonourable. It demonstrated dishonesty and deceit when the Member submitted false benefit claims and received a reimbursement of \$4,305.00 in relation to those false claims. Only when the Member's conduct was investigated by the Facility did the Member acknowledge her misconduct. The Member's repeated misconduct demonstrates an element of moral failing and a lack of integrity. The Member 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 3 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 the Member's 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 the Member's 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 the Member's 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 the Member's 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 the Member's 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 the Member's 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 aggravating factors in this case were:

- The Member made repeated false claims to the Benefit Plan;
- The value of the claims submitted by the Member were significant at \$4,305.00;
- The Member took advantage of the trust of the Facility; and
- The Member's behaviour abused the Facility's Benefit Plan.

The mitigating factors in this case were:

- The Member accepted full responsibility for her conduct by admitting to all of the allegations and entering into an Agreed Statement of Facts and a Joint Submission on Order with the College;
- The Member is a long serving member of the College with no prior discipline history; and
- The Member paid restitution.

The proposed penalty provides for general deterrence through:

- The 3-month suspension of the Member's certificate of registration.

The proposed penalty provides for specific deterrence through:

- The oral reprimand; and
- The 3-month suspension of the Member's certificate of registration.

The proposed penalty provides for remediation and rehabilitation through:

- The 2 meetings with a Regulatory Expert.

Overall, the public is protected through the 12 months of employer notification as it will ensure that the Member's employer is aware of her conduct and can monitor her, even if she changes employers.

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. Velasquez (Discipline Committee, 2021): This case proceeded by way of an Agreed Statement of Facts and a Joint Submission on Order. In this case, the member committed an act of professional misconduct when she was involved in a similar benefit fraud over several years. The member received at least \$11,080.00 in relation to the false claims, paid the amount back to the employer through a payment plan, remained employed at the facility and received a five-day unpaid suspension from the facility. 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. Lamasan (Discipline Committee, 2022): This case also proceeded by way of an Agreed Statement of Facts and a Joint Submission on Order. In this case, the member committed acts of professional misconduct when he was involved in similar benefit fraud over several years. The member received \$4,500.00 in relation to the false claims, paid the amount back to the employer through a payment plan, remained employed at the facility and received a five-day unpaid suspension from the facility. 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.

Submissions were made by the Member's Counsel.

The Member's Counsel submitted the following:

- The Member has been a nurse for 40 years and 33 years at the Facility;
- The Member is respected by her co-workers and was a model employee;
- The Member resigned from the Facility as she was upset with her behaviour;
- The Member was experiencing personal challenges which involved her marriage, harassment at work and a family member's health;
- The Member has reviewed the College's standards of practice and is aware of the seriousness of her conduct;
- The Member would make very different choices in the future and would seek the support available; and

- The Joint Submission on Order is appropriate and sufficiently demonstrates elements that would protect the public.

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 3 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 the Member's 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 the Member's 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 the Member's 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 the Member's 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 the Member's 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 the Member's 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. Specific deterrence is achieved through the oral reprimand and the 3-month suspension of the Member's certificate of registration, which will send a clear message to the Member that employee benefit fraud will not be tolerated. General deterrence is achieved through the 3-month suspension of the Member's certificate of registration, which will send a message to the members of the profession that there are serious consequences for engaging in similar misconduct. Rehabilitation and remediation will be achieved through the 2 meetings with a Regulatory Expert. The public is protected through the 12 months of employer notification which informs the employer of the misconduct and which has the potential for the Member's professional practice to be monitored more closely in the future. The Panel recognizes that the public needs to have trust and reassurance that the nursing profession demonstrates a high level of integrity and morality. Through this Penalty, the Panel hopes to send a strong message to the Member, members of the profession and the public that this act of professional misconduct will not be tolerated.

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

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.

Chairperson