

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

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| PANEL: | MARGARET TUOMI, Public Member | Chairperson |
| | DEBORAH GRAYSTONE, NP | Member |
| | KAREN LAFORET, RN | Member |
| | DEVINDER WALIA | Public Member |

BETWEEN:

| | | |
|------------------------------|---|------------------------------|
| COLLEGE OF NURSES OF ONTARIO |) | <u>JESSICA LATTIMER</u> for |
| |) | College of Nurses of Ontario |
| - and - |) | |
| |) | |
| BERNADETTE AMBER HALLADAY |) | <u>SELF-REPRESENTED</u> |
| REGISTRATION # 9903238 |) | |
| |) | |
| |) | <u>JUSTIN SAFAYENI</u> |
| |) | Independent Legal Counsel |
| |) | |
| |) | |
| |) | Heard: AUGUST 25, 2017 |

DECISION AND REASONS

This matter came for hearing before a panel (“the Panel”) of the Discipline Committee on August 25, 2017 at the College of Nurses of Ontario (“the College”) at Toronto.

As Bernadette Amber Halladay (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.

Counsel for the College provided the panel with evidence that the Member was sent the Notice of Hearing on July 12, 2017 (Exhibit 2). The panel was satisfied that the Member had received adequate notice and therefore proceeded with the hearing in the Member’s absence.

The Allegations

The allegations against the Member as stated in the Notice of Hearing dated July 12, 2017 are as follows:

IT IS ALLEGED THAT:

1. You have committed an act of professional misconduct as provided by subsection 51(1)(a) of the *Health Professions Procedural Code* of the *Nursing Act, 1991*, S.O. 1991, c. 32, as amended, in that on February 4, 2016, in the Ontario Court of Justice in Milton, Ontario, you were found guilty of an offence relevant to your suitability to practise, and in particular, you were found guilty of the following offence:
 - (a) On or about the 3rd day of November in the year 2015 at the City of Burlington in the said Region did steal merchandise the property of the LCBO of a value not exceeding five thousand dollars contrary to Section 334(b) of the *Criminal Code of Canada*.
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 practicing as a Registered Nurse at Care Partners in Kitchener/Waterloo, Ontario, you misappropriated property from a client or workplace, and in particular, in or about 2014, you misappropriated credit cards from clients [Client A] and [Client B].
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(18) of *Ontario Regulation 799/93*, in that, on February 4, 2016, you contravened a term, condition or limitation on your certificate of registration, imposed pursuant to s. 1.5(1)1.i. of *Ontario Regulation 275/94*, in that you failed to report findings of guilt to the Executive Director of the College of Nurses (the “College”), in particular, that on February 4, 2016, you were found guilty of the following offences, which you did not report:
 - (a) On or about the 3rd day of November in the year 2015 at the City of Burlington in the said Region did steal merchandise the property of the LCBO of a value not exceeding five thousand dollars contrary to Section 334(b) of the *Criminal Code of Canada*; and
 - (b) On or about the 28th day of November in the year 2015 at the Town of Halton Hills in the said Region did being at large on a recognizance entered into before a justice and being bound to comply with a condition of that recognizance directed by the said justice fail without lawful excuse to comply with that condition to wit: do not communicate directly or indirectly by any physical, electronic or other means with the following: [] except in the presence of legal counsel for the purposes of preparing defence contrary to section 145(3) of the *Criminal Code of Canada*.
4. 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(18) of *Ontario Regulation 799/93*, in that,

in 2015, you contravened a term, condition or limitation on your certificate of registration, imposed pursuant to s. 1.5(1)1.(ii) of *Ontario Regulation 275/94*, in that you failed to report charges relating to any offence to the Executive Director of the College, as follows:

- (a) On March 4, 2015, you were charged with the following offences, which you did not report:
 - (i) On or about the 22nd day of November in the year 2014 at the City of Cambridge in the said Region did steal a wallet and credit card, the property of [], of a value not exceeding five thousand dollars, contrary to Section 334(b) of the *Criminal Code of Canada*;
 - (ii) On or about the 22nd day of November in the year 2014 at the City of Cambridge in the said Region did use a credit card, to wit: a Canadian Tire MasterCard # [], knowing that the said card was obtained by the commission in Canada of an offence, contrary to Section 342(1)(c) of the *Criminal Code of Canada*;
 - (iii) On or about the 2nd day of January in the year 2015 at the City of Cambridge in the said Region, did use a credit card, to wit: a Canadian Tire MasterCard number [], knowing that the said card was obtained by the commission in Canada of an offence, contrary to Section 342(1)(c) of the *Criminal Code of Canada*;
 - (iv) Between the 2nd day of January in the year 2015 and the 11th day of January in the year 2015, both days inclusive, at the City of Cambridge in the said Region, and elsewhere in the Province of Ontario, did use a credit card, to wit: a Bank of Montreal credit card number [], knowing that the said card was obtained by the commission in Canada of an offence, contrary to Section 342(1)(c) of the *Criminal Code of Canada*;
 - (v) Between the 2nd day of January in the year 2015 and the 11th day of January in the year 2015, both days inclusive, at the City of Cambridge in the said Region, did use a credit card, to wit: a President's Choice Financial MasterCard number [], knowing that the said card was obtained by the commission in Canada of an offence, contrary to Section 342(1)(c) of the *Criminal Code of Canada*;
 - (vi) On or about the 14th day of January in the year 2015 at the City of Cambridge in the said Region, did use a credit card, to wit: a Bank of Montreal MasterCard card number [], knowing that the said card was obtained by the commission in Canada of an offence, contrary to Section 342(1)(c) of the *Criminal Code of Canada*;
 - (vii) On or about the 2nd day of January in the year 2015 at the City of Kitchener in the said Region, did steal credit cards, the property of [], of a value not exceeding five thousand dollars, contrary to Section 334(b) of the *Criminal Code of Canada*;

- (viii) On or about the 2nd day of January in the year 2015 at the City of Cambridge in the said Region, did traffic in a credit card, to wit: Canadian Tire MasterCard number [], knowing that the said card was obtained by the commission in Canada of an offence, contrary to Section 342(1)(c) of the *Criminal Code of Canada*;
 - (ix) On or about the 2nd day of January in the year 2015 at the City of Cambridge in the said Region, did traffic in a credit card, to wit: Bank of Montreal credit card number [], knowing that the said card was obtained by the commission in Canada of an offence, contrary to Section 342(1)(c) of the *Criminal Code of Canada*;
 - (x) On or about the 2nd day of January in the year 2015 at the City of Cambridge in the said Region, did traffic in a credit card, to wit: President's Choice Financial MasterCard number [], knowing that the said card was obtained by the commission in Canada of an offence, contrary to Section 342(1)(c) of the *Criminal Code of Canada*;
 - (xi) On or about the 7th day of January in the year 2015 at the City of Waterloo in the said Region, did steal a Bank of Montreal MasterCard, the property of [], of a value not exceeding five thousand dollars, contrary to Section 334(b) of the *Criminal Code of Canada*; and
 - (xii) On or about the 7th day of January in the year 2015 and the 14th day of January in the year 2015, both dates inclusive, at the City of Cambridge and elsewhere in the Province of Ontario, did traffic in a credit card, to wit: Bank of Montreal MasterCard number [], knowing that the said card was obtained by the commission of an offence, contrary to Section 342(1)(c) of the *Criminal Code of Canada*.
- (b) On August 31, 2015, you were charged with the following offences, which you did not report:
- (i) On or about the 30th day of August in the year 2015 at the City of Waterloo in the said Region, did steal groceries, the property of Zehrmart Inc. situated at 555 Davenport Road, Waterloo, Ontario, of a value not exceeding five thousand dollars, contrary to Section 334(b) of the *Criminal Code of Canada*;
 - (ii) On or about the 30th day of August in the year 2015 at the City of Waterloo in the said Region, did have in her possession property, to wit: groceries, of a value not exceeding five thousand dollars, knowing that all of the property was obtained by the commission in Canada of an offence punishable by indictment, contrary to Section 355(b) of the *Criminal Code of Canada*;
 - (iii) On or about the 21st day of August in the year 2015 at the City of Waterloo in the said Region, did being at large on her undertaking given to an office in charge and being bound to comply with a condition of that undertaking directed by the said officer, fail without lawful excuse to comply with that

condition to wit: abstain from communicating directly or indirectly with [Client A], [] or [Client B] or from going to any known residence or employment of [Client A], [] or [Client B] and do not attend any Zehrs located in the Region of Waterloo and do not attend or be within 50 metres of the Holiday Inn at 200 Holiday Inn Drive, Cambridge, Ontario, contrary to Section 145(5.1) of the *Criminal Code of Canada*; and

- (iv) On or about the 30th day of August in the year 2015 at the City of Waterloo in the said Region, did, being at large on her undertaking given to an officer in charge and being bound to comply with a condition of that undertaking directed by the said officer, fail without lawful excuse to comply with that condition to wit: abstain from communicating directly or indirectly with [Client A], [] or [Client B] or from going to any known residence or employment of [Client A], [] or [Client B] and do not attend any Zehrs located in the Region of Waterloo and do not attend or be within 50 metres of the Holiday Inn at 200 Holiday Inn Drive, Cambridge, Ontario, contrary to Section 145(5.1) of the *Criminal Code of Canada*.
- (c) On December 18, 2015, you were charged with the following offences which you did not report:
 - (i) On or about the 3rd day of November in the year 2015 at the City of Burlington in the said Region did steal merchandise the property of the LCBO of a value not exceeding five thousand dollars contrary to Section 334(b) of the *Criminal Code of Canada*;
 - (ii) On or about the 28th day of November in the year 2015 at the Town of Halton Hills in the said Region did being at large on a recognizance entered into before a justice and being bound to comply with a condition of that recognizance directed by the said justice fail without lawful excuse to comply with that condition to wit: do not communicate directly or indirectly by any physical, electronic or other means with the following: [] except in the presence of legal counsel for the purposes of preparing defence contrary to section 145(3) of the *Criminal Code of Canada*;
 - (iii) On or about the 28th day of November in the year 2015 at the Town of Halton Hills in the said Region did unlawfully possess a substance included in Schedule I to wit: methamphetamines, contrary to Section 4(1) of the *Controlled Drugs and Substances Act*;
 - (iv) On or about the 28th day of November in the year 2015 at the Town of Halton Hills in the said Region, did unlawfully possess a substance included in Schedule I to wit: to heroin, contrary to Section 4(1) of the *Controlled Drugs and Substances Act*; and
 - (v) On or about the 28th day of November in the year 2015 at the Town of Halton Hills in the said Region, did unlawfully possess a controlled substance, to wit: cannabis marihuana under thirty grams, contrary to Section 4(1) of the *Controlled Drugs and Substances Act*.

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(19) of *Ontario Regulation 799/93*, in that you contravened a provision of the *Nursing Act, 1991*, the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18, or the regulations under either of those Acts, and in particular, section 85.6.1 of the *Health Professions Procedural Code*, in that, on February 4, 2016, you failed to report findings of guilt to the Registrar (being the Executive Director) of the College, as follows:

- (a) On or about the 3rd day of November in the year 2015 at the City of Burlington in the said Region did steal merchandise the property of the LCBO of a value not exceeding five thousand dollars contrary to Section 334(b) of the *Criminal Code of Canada*; and
- (b) On or about the 28th day of November in the year 2015 at the Town of Halton Hills in the said Region did being at large on a recognizance entered into before a justice and being bound to comply with a condition of that recognizance directed by the said justice fail without lawful excuse to comply with that condition to wit: do not communicate directly or indirectly by any physical, electronic or other means with the following: [] except in the presence of legal counsel for the purposes of preparing defence contrary to section 145(3) of the *Criminal Code of Canada*.

6. 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 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 in that, between 2015 and 2016, in that you failed to report charges and/or findings of guilt to the Executive Director of the College, as follows:

- (a) On March 4, 2015, you were charged with the following offences, which you did not report:
 - (i) On or about the 22nd day of November in the year 2014 at the City of Cambridge in the said Region did steal a wallet and credit card, the property of [], of a value not exceeding five thousand dollars, contrary to Section 334(b) of the *Criminal Code of Canada*;
 - (ii) On or about the 22nd day of November in the year 2014 at the City of Cambridge in the said Region did use a credit card, to wit: a Canadian Tire MasterCard # [], knowing that the said card was obtained by the commission in Canada of an offence, contrary to Section 342(1)(c) of the *Criminal Code of Canada*;

- (iii) On or about the 2nd day of January in the year 2015 at the City of Cambridge in the said Region, did use a credit card, to wit: a Canadian Tire MasterCard number [], knowing that the said card was obtained by the commission in Canada of an offence, contrary to Section 342(1)(c) of the *Criminal Code of Canada*;
- (iv) Between the 2nd day of January in the year 2015 and the 11th day of January in the year 2015, both days inclusive, at the City of Cambridge in the said Region, and elsewhere in the Province of Ontario, did use a credit card, to wit: a Bank of Montreal credit card number [], knowing that the said card was obtained by the commission in Canada of an offence, contrary to Section 342(1)(c) of the *Criminal Code of Canada*;
- (v) Between the 2nd day of January in the year 2015 and the 11th day of January in the year 2015, both days inclusive, at the City of Cambridge in the said Region, did use a credit card, to wit: a President's Choice Financial MasterCard number [], knowing that the said card was obtained by the commission in Canada of an offence, contrary to Section 342(1)(c) of the *Criminal Code of Canada*;
- (vi) On or about the 14th day of January in the year 2015 at the City of Cambridge in the said Region, did use a credit card, to wit: a Bank of Montreal MasterCard card number [], knowing that the said card was obtained by the commission in Canada of an offence, contrary to Section 342(1)(c) of the *Criminal Code of Canada*;
- (vii) On or about the 2nd day of January in the year 2015 at the City of Kitchener in the said Region, did steal credit cards, the property of [Client A], of a value not exceeding five thousand dollars, contrary to Section 334(b) of the *Criminal Code of Canada*;
- (viii) On or about the 2nd day of January in the year 2015 at the City of Cambridge in the said Region, did traffic in a credit card, to wit: Canadian Tire MasterCard number [], knowing that the said card was obtained by the commission in Canada of an offence, contrary to Section 342(1)(c) of the *Criminal Code of Canada*;
- (ix) On or about the 2nd day of January in the year 2015 at the City of Cambridge in the said Region, did traffic in a credit card, to wit: Bank of Montreal credit card number [], knowing that the said card was obtained by the commission in Canada of an offence, contrary to Section 342(1)(c) of the *Criminal Code of Canada*;
- (x) On or about the 2nd day of January in the year 2015 at the City of Cambridge in the said Region, did traffic in a credit card, to wit: President's Choice Financial MasterCard number [], knowing that the said card was obtained by the commission in Canada of an offence, contrary to Section 342(1)(c) of the *Criminal Code of Canada*;

- (xi) On or about the 7th day of January in the year 2015 at the City of Waterloo in the said Region, did steal a Bank of Montreal MasterCard, the property of [], of a value not exceeding five thousand dollars, contrary to Section 334(b) of the *Criminal Code of Canada*; and
 - (xii) On or about the 7th day of January in the year 2015 and the 14th day of January in the year 2015, both dates inclusive, at the City of Cambridge and elsewhere in the Province of Ontario, did traffic in a credit card, to wit: Bank of Montreal MasterCard number [], knowing that the said card was obtained by the commission of an offence, contrary to Section 342(1)(c) of the *Criminal Code of Canada*.
- (b) On August 31, 2015, you were charged with the following offences, which you did not report:
- (i) On or about the 30th day of August in the year 2015 at the City of Waterloo in the said Region, did steal groceries, the property of Zehrmart Inc. situate at 555 Davenport Road, Waterloo, Ontario, of a value not exceeding five thousand dollars, contrary to Section 334(b) of the *Criminal Code of Canada*;
 - (ii) On or about the 30th day of August in the year 2015 at the City of Waterloo in the said Region, did have in her possession property, to wit: groceries, of a value not exceeding five thousand dollars, knowing that all of the property was obtained by the commission in Canada of an offence punishable by indictment, contrary to Section 355(b) of the *Criminal Code of Canada*;
 - (iii) On or about the 21st day of August in the year 2015 at the City of Waterloo in the said Region, did being at large on her undertaking given to an office in charge and being bound to comply with a condition of that undertaking directed by the said officer, fail without lawful excuse to comply with that condition to wit: abstain from communicating directly or indirectly with [Client A], [] or [Client B] or from going to any known residence or employment of [Client A], [] or [Client B] and do not attend any Zehrs located in the Region of Waterloo and do not attend of be within 50 metres of the Holiday Inn at 200 Holiday Inn Drive, Cambridge, Ontario, contrary to Section 145(5.1) of the *Criminal Code of Canada*; and
 - (iv) On or about the 30th day of August in the year 2015 at the City of Waterloo in the said Region, did, being at large on her undertaking given to an office in charge and being bound to comply with a condition of that undertaking directed by the said officer, fail without lawful excuse to comply with that condition to wit: abstain from communicating directly or indirectly with [Client A], [] or [Client B] or from going to any known residence or employment of [Client A], [] or [Client B] and do not attend any Zehrs located in the Region of Waterloo and do not attend of be within 50 metres of the Holiday Inn at 200 Holiday Inn Drive, Cambridge, Ontario, contrary to Section 145(5.1) of the *Criminal Code of Canada*.

- (c) On December 18, 2015, you were charged with the following offences which you did not report:
- (i) On or about the 3rd day of November in the year 2015 at the City of Burlington in the said Region did steal merchandise the property of the LCBO of a value not exceeding five thousand dollars contrary to Section 334(b) of the *Criminal Code of Canada*;
 - (ii) On or about the 28th day of November in the year 2015 at the Town of Halton Hills in the said Region did being at large on a recognizance entered into before a justice and being bound to comply with a condition of that recognizance directed by the said justice fail without lawful excuse to comply with that condition to wit: do not communicate directly or indirectly by any physical, electronic or other means with the following: [] except in the presence of legal counsel for the purposes of preparing defence contrary to section 145(3) of the *Criminal Code of Canada*;
 - (iii) On or about the 28th day of November in the year 2015 at the Town of Halton Hills in the said Region did unlawfully possess a substance included in Schedule I to wit: methamphetamines, contrary to Section 4(1) of the *Controlled Drugs and Substances Act*;
 - (iv) On or about the 28th day of November in the year 2015 at the Town of Halton Hills in the said Region, did unlawfully possess a substance included in Schedule I to wit: to heroin, contrary to Section 4(1) of the *Controlled Drugs and Substances Act*; and
 - (v) On or about the 28th day of November in the year 2015 at the Town of Halton Hills in the said Region, did unlawfully possess a controlled substance, to wit: cannabis marihuana under thirty grams, contrary to Section 4(1) of the *Controlled Drugs and Substances Act*.
- (d) On February 4, 2016, you were convicted of the following offences, which you did not report:
- (i) On or about the 3rd day of November in the year 2015 at the City of Burlington in the said Region did steal merchandise the property of the LCBO of a value not exceeding five thousand dollars contrary to Section 334(b) of the *Criminal Code of Canada*; and
 - (ii) On or about the 28th day of November in the year 2015 at the Town of Halton Hills in the said Region did being at large on a recognizance entered into before a justice and being bound to comply with a condition of that recognizance directed by the said justice fail without lawful excuse to comply with that condition to wit: do not communicate directly or indirectly by any physical, electronic or other means with the following: [] except in the presence of legal counsel for the purposes of preparing defence contrary to section 145(3) of the *Criminal Code of Canada*.

Member's Plea

Given that the Member was neither present nor represented, she was deemed to have denied the allegations. 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 first registered with the College as a Registered Nurse ("RN") in November, 1998. She practised as a RN from November 1998 until February 15, 2012, from March 27, 2012 until 15 February, 2015, and from March 19, 2015 until February 19, 2016.

Between March 4th, 2015 and March 14th, 2016 while a registered member of the College and employed as a nurse, the Member was charged with five counts of theft under \$5,000, one count of possession of stolen property under \$5,000, three counts of using a stolen credit card, four counts of trafficking a credit card, three counts of drug possession, and three counts of failure to comply with conditions of recognizance. On February 4th, 2016, while the Member was still registered with the College, the Member was found guilty of failure to comply with conditions of recognizance and one count of theft under \$5,000. The Member failed to report the charges and the convictions to the College.

The issues are as follows:

- a) Was the Member found guilty of an offence relevant to her suitability to practise?
- b) Did the Member misappropriate property (money) from clients?
- c) Did the Member engage in conduct that would reasonably be considered by members of the profession to be disgraceful, dishonourable and/or unprofessional?
- d) Did the Member commit an act of professional misconduct in that she failed to report charges relating to any offence and failure to report findings of guilt to the Executive Director?

The Evidence

Counsel for the College filed a number of documents into evidence, including the Member's record of registration with the College, the mandatory reporting requirements and timelines for reporting of the College and certified copies of the court records related to the Member's criminal convictions. In addition, the College called one witness.

Witness – [Witness 1]

[Witness 1] is the Reports Intake Coordinator for the College. [Witness 1] identified Exhibit #3: Self-reporting form and confirmed that it is included as part of the renewal form each nurse is required to complete. [Witness 1] confirmed that question #1: "*Have you been charged with an offence in any jurisdiction*" and question #2: "*Have you been found guilty of an offence?*" must be completed by a nurse upon registration and renewal.

[Witness 1] also explained that once a completed renewal form is received by the College it is sent to the Reports Intake Team. [Witness 1] further confirmed that any information or updates received by the Reports Intake Team are inputted into a member's file upon receipt and are made available for public viewing on the Register.

Exhibit #4, #5, #6

The panel reviewed the College's *Mandatory Reporting: A process guide for employers, facility operators and nurses* published in 2012, 2015, and 2016. The requirement for mandatory reporting and time frame for notification has not changed with each revision. Each version confirms that mandatory reporting is legislated in the *Regulated Health Professions Act, 1991*. On page 4 of each document the requirements for nurse reporting is outlined as follows:

- The nurse must self-report to the College within 30 days if s/he has been found guilty of any offence, finding of professional negligence/malpractice, charged with any offence in any jurisdiction, finding of misconduct, incompetence, incapacity or any similar finding in relation to nursing, or is a subject of a current investigation, inquiry or proceeding for professional misconduct, incompetence or incapacity or any similar investigation in relation to nursing or any other profession.

Exhibit #7

The Member's information as found on the College's Register (which is available to the public online) reveals that the Member was registered from 27th March, 2012 - 18th February, 2015 and from 15th March, 2015 – 19th February, 2016. The document also shows that the Member did not provide any information to the College regarding her criminal charges and convictions.

Exhibits #8-#12:

College Counsel provided the panel with a number certified court documents confirming the Member's various charges and convictions. In particular, the documents provided confirm that the Member was charged and convicted of a number of offences as alleged in the Notice of Hearing.

Final Submissions

College Counsel outlined the summary submission as follows:

Allegation #1: Theft

The College argued that the offense of theft directly speaks to the Member's suitability to practise. The nature of the offense is contrary to behaviour expected of the profession. Theft, even outside the nursing context, speaks to the moral cornerstones of trust, honesty and integrity. Past Discipline Committees have found that a conviction for theft is relevant to suitability to practice (*CNO v. M Besharah* (July, 2008)) (*CNO v. C.A. Hardy* (Aug, 2016)).

Allegation #2: Misappropriation of client's property

At the criminal proceedings, the Member admitted to stealing and then trafficking her clients' credit cards. The Member distracted the clients in order for someone else to break in to the home and steal their credit cards. The College argued that this is clearly professional misconduct as alleged and that in addition the conduct and subsequent convictions for the conduct would be regarded by the members of the profession as dishonourable, disgraceful and unprofessional.

Allegation #3, #4, #5

The *Regulated Health Professions Act* and *Ontario Regulation 275-94* requires members of the College to make timely and accurate reports. The College reminded the panel that [Witness 1], confirmed the Member had not reported any of the charges or convictions brought against her. The Member's failure to report any of the charges or convictions shows a blatant and repeated disregard for the profession and the regulations governing the profession.

Allegation #6

The Member's failure to report any of charges brought against her or any of the convictions, in addition to her misappropriation of client property, speaks of a serious lack of integrity and complete disregard for the College's processes. Her behaviour would no doubt be regarded as disgraceful, dishonourable and unprofessional. Non-reporting of any charge or conviction, regardless of setting, reflects a disregard for the nursing profession and impedes the College from fulfilling its role to protect the public. The Member's intentional and repeated deceit casts serious doubt on her moral fitness and her inherent ability to discharge a higher obligation that the public and college expect nurses to meet.

Decision

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

Having considered the evidence and the onus and standard of proof, the panel found the Member committed acts of professional misconduct as alleged in the Notice of Hearing in paragraphs: 1(a); 2; 3 (a), (b); 4 (a) subset (i), (ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), (x), (xi), (xii); (b) subset (i), (ii), (iii), (iv); (c) subset (i), (ii), (iii), (iv), (v); 5 (a) & (b); 6 (a) subset (i), (ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), (x), (xi), (xii); (b) subset (i), (ii), (iii), (iv); (c) subset (i), (ii), (iii), (iv), (v); (d) (i), (ii).

Reasons for the Decision

The Member was charged and convicted for eight criminal offences. Some of those offences included acts inflicted on her clients. Others were committed outside of her nursing duties, but all of the offences relate directly to her integrity and trustworthiness. In the circumstances, the panel is satisfied that the offences all relate to the Member's suitability to practise. Theft, even if committed outside the context of nursing, speaks to dishonesty and moral integrity. In addition,

misappropriation of vulnerable clients' property significantly damages trust for the entire profession as well as the individual involved. This showed blatant disregard for the law and an unwillingness to be governed by common decency.

The Member's failure to report any of her charges or convictions also demonstrates a serious disregard for integrity and speaks poorly of the Member's ability to be governed by this College. The failure to report is a breach of legislative requirements and is inconsistent with what is required from a nurse in this province.

The Panel found that the Member engaged in conduct that would reasonably be regarded by members of the profession as disgraceful, dishonourable, and unprofessional in that she showed no judgement and no remorse by repeatedly engaging in illegal behaviour and by failing to keep the College apprised of her criminal status. The Member's actions have, in effect, shamed her and by extension, the profession. Theft, distracting clients in order for another person to enter the client's home to steal credit cards, and failure to follow the law demonstrates a persistent disregard for the regulation. Failure to self-report the charges and convictions shows unwillingness to take responsibility for her actions. This behaviour falls well below what is expected of members of this profession. Her conduct was unprofessional, dishonourable and disgraceful.

Penalty Submissions

College Counsel made submissions with respect to penalty and provided the panel with one case, involving similar allegations. (*CNO v. H. Dinsmore*, August, 2016).

Counsel for the College asked that the panel make an order directing the Executive Director to revoke the Member's Certificate of Registration immediately.

Penalty Decision

The Panel makes the following order as to penalty:

The Executive Director is directed to revoke the Member's Certificate of Registration immediately.

Reasons for Penalty Decision

The Panel deliberated and agreed with College Counsel that the Member, by her actions, has shown disrespect for the law and the profession. There is a clear unwillingness to be governed. The Member continued to reoffend despite numerous charges against her. The Member chose not to participate in this hearing process, further demonstrating an unwillingness to accede to the College's jurisdiction.

The Member chose to not disclose relevant information to the College—i.e. self-reporting convictions and charges, despite this being a statutory and practice requirement. The Member's actions violate the cornerstones of the nursing profession: honesty, integrity, and trustworthiness. While the Member has no prior disciplinary history, she chose not to participate nor share any information such as mitigating factors that may have assisted the Panel in their deliberations.

In light of this, there is no reason to believe that the Member will not engage in similar conduct in the future.

The Panel concludes that the penalty of revocation is appropriate given the seriousness and repetitive nature of the Member's conduct. The penalty acts as a specific and general deterrent. It discourages similar conduct by other members, confirming that such conduct will be met with severe consequences.

I, MARGARET TUOMI, 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