

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

PANEL:

Dawn Cutler, RN	Chairperson
Renate Davidson	Public Member
Carly Gilchrist, RPN	Member
Michael Schroder, NP	Member
Devinder Walia	Public Member

BETWEEN:

COLLEGE OF NURSES OF ONTARIO)	<u>DENISE COONEY</u> for
)	College of Nurses of Ontario
- and -)	
)	
ERNST H. STEEN)	<u>NO REPRESENTATION</u> for
Registration No. IC04775)	Ernst H. Steen
)	
)	
)	<u>CHRIS WIRTH</u>
)	Independent Legal Counsel
)	
)	Heard: November 21, 2018

DECISION AND REASONS

This matter came on for hearing before a panel of the Discipline Committee (the “Panel”) on November 21, 2018 at the College of Nurses of Ontario (the “College”) at Toronto.

The Allegations

The allegations against Ernst H. Steen (the “Member”) as stated in the Notice of Hearing dated November 6, 2018 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 Practical Nurse at Acclaim Health, you contravened a standard of practice of the profession or failed to meet the standard of practice of the profession in that in or about

November and December 2009, you failed to maintain the boundaries of the therapeutic nurse-client relationship with [the Client] by:

- a. engaging in a financial transaction unrelated to the provision of care and services with [the Client].
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(37) of *Ontario Regulation 799/93*, in that while employed as a Registered Nurse at Acclaim Health, 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 in that in or about November and December 2009 you failed to maintain the boundaries of the therapeutic nurse-client relationship with [the Client] by:
- a. engaging in a financial transaction unrelated to the provision of care and services with [the Client].
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(1) of *Ontario Regulation 799/93*, in that you contravened a standard of practice of the profession or failed to meet the standard of practice of the profession in that:
- a. on or about January 29, 2013, you accepted a \$10,000 loan from your Client and/or Former Client [];
 - b. on or about February 5, 2013, you accepted a \$10,000 loan from your Client and/or Former Client []; and/or
 - c. in or around February 2013, you solicited a loan from your Client and/or Former Client [].
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(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 as disgraceful, dishonourable or unprofessional in that:
- a. on or about January 29, 2013, you accepted a \$10,000 loan from your Client and/or Former Client [];
 - b. on or about February 5, 2013, you accepted a \$10,000 loan from your Client and/or Former Client []; and/or

- c. in or around February 2013, you solicited a loan from your Client and/or Former Client [].

Member's Plea

The Member admitted the allegations set out in paragraphs 1(a), 2(a), 3(a), 3(b), 3(c), 4(a), 4(b) and 4(c) 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

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. Ernst H. Steen (the "Member") obtained a certificate in nursing from Mohawk College in 1992.
2. The Member registered with the College of Nurses of Ontario (the "College") as a Registered Practical Nurse ("RPN") on March 26, 1993.
3. The Member was employed at Acclaim Health (the "Agency") in Oakville, Ontario from February 2007 to February 13, 2013 as a part-time staff nurse, providing homecare to clients.

THE CLIENT

4. [The Client] was 69 years old at the time of the 2009 incident, described below.
5. The Client received homecare from the Agency. Over the years, she required medical care for various issues such as wound care for ulcers or assistance with a broken leg.
6. The Member provided homecare to the Client through the Agency from August 2009 to March 2011. At various points in time during this period, the Member provided care to the Client on an almost a daily basis.
7. The Client died in March 2016.

INCIDENTS RELEVANT TO ALLEGATIONS OF PROFESSIONAL MISCONDUCT

\$50,000 Gift from the Client

8. After the Client's death in March 2016, the Client's son (the "Complainant") was cleaning out her home. He was the co-executor of his mother's estate. In the course of going through

his mother's affairs, the Complainant found a purchaser's receipt for the Client's purchase of a bank draft, dated November 26, 2009, in the amount of \$50,000 payable to "E. Steen."

9. The Complainant also found a note with the Member's home address (at the time) on it – []. The note was attached to the bank draft and it was written in the Client's handwriting.
10. The Client's TD Bank records show the Client purchased a bank draft in the amount of \$50,000 payable to "E. Steen" on Thursday, November 26, 2009. TD Bank records also show the bank draft was cashed about two weeks after it was purchased, on Wednesday, December 7, 2009.
11. The Member attended at the Client's home to provide her with care several times in November and December 2009, including on November 26, 2009, the day the bank draft was drawn from the Client's account, and in the days immediately after November 26, 2009.
12. The Member acknowledges that he accepted a \$50,000 gift from the Client in the course of providing her with homecare. The Member further acknowledges that his personal relationship with the Client developed as a result of the therapeutic nurse-client relationship, and that it was therefore inappropriate for him to engage in a financial transaction with the Client, even if he was accepting a gift.
13. The Complainant reported this incident to the College in December 2016.
14. On March 29, 2018, a panel of the Inquiries, Complaints and Reports Committee ("ICRC") referred allegations of professional misconduct to the Discipline Committee, alleging that the Member engaged in a financial transaction unrelated to the provision of care with the Client in or around November 2009.

Additional Loans and Loan Request

15. In the course of preparing for the hearing related to the allegations referred to the Discipline Committee on March 29, 2018, the College learned that the Member engaged in further financial transactions with the Client unrelated to the provision of care. Allegations related to this conduct were referred by the ICRC to the Discipline Committee on October 31, 2018.
16. On February 26, 2013, the Client contacted her lawyer, [the Lawyer], to request his advice in connection with financial transactions involving the Member, who she described as her "previous caregiver" and a nurse. The Client advised [the Lawyer's] assistant, [the Assistant], and subsequently [the Lawyer], that:
 - she had previously given the Member a gift of \$50,000;
 - she had provided the Member with two \$10,000 loans; and

- the Member had requested she lend him a further \$100,000, however, she only had \$80,000 to lend him. The Member told her that he needed these funds by March 12, 2013.
17. The Client sought legal advice to ensure the Member would repay the loans. In order to advise the Client, [the Lawyer] and [the Assistant] made a number of inquiries about the Member's assets and liabilities. [The Assistant] spoke directly with the Member, who provided her with letters from his bank identifying the liabilities registered against his home, and a number of documents regarding the value of his home.
 18. After reviewing the documents, [the Lawyer] recommended that the Client not loan the Member \$80,000, which she did not.
 19. With respect to the two \$10,000 loans the Client had previously provided the Member, the Client provided her lawyer with copies of two \$10,000 promissory notes, dated January 29, 2013, and February 5, 2013, signed by the Member, as well as copies of cheques made payable to the Member from the Client, showing they had been cashed.
 20. The Member did not repay the two \$10,000 loans to the Client. The Member acknowledges that he accepted these amounts from the Client.
 21. The Member acknowledges that his continuing personal relationship with the Client was a result of the therapeutic nurse-client relationship, and that it was therefore inappropriate for him to engage in these financial transactions with the Client.

COLLEGE STANDARDS

22. The *Therapeutic Nurse-Client Relationship* ("TNCR") standard states that "[n]urses are responsible for effectively establishing and maintaining the limits or boundaries in the therapeutic nurse-client relationship."
23. The TNCR Standard also generally prohibits nurses from engaging in financial transactions unrelated to the provision of care, and activities that could result in monetary, personal, or other material benefit, gain or profit for the nurse (other than the appropriate remuneration for nursing care or services), or result in monetary or personal loss for the client.
24. The TNCR Standard specifically addresses gifts. It states that nurses meet the Standard by:

abstaining from accepting individual gifts unless, in rare instances, the refusal will harm the nurse-client relationship. If the refusal could be harmful, consult with a manager and/or the College and document the consultation before accepting the gift.
25. The *Professional Standards* also requires nurses to establish and maintain respectful, collaborative, therapeutic and professional relationships.

ADMISSIONS OF PROFESSIONAL MISCONDUCT

26. The Member admits that he committed the act of professional misconduct as alleged in paragraphs 1(a) of the Notice of Hearing, and in particular that he failed to maintain the boundaries of the nurse-client relationship when he engaged in a financial transaction with the Client, unrelated to the provision of care and services, when he accepted a \$50,000 gift, as described in paragraphs 8 to 14 above.
27. The Member admits that he committed the acts of professional misconduct as described in paragraphs 15 to 21 above, in that he contravened a standard of practice of the profession or failed to meet the standard of practice of the profession, as alleged in the following paragraphs of the Notice of Hearing:
- 3(a) in that, on or about January 29, 2013, he accepted a \$10,000 loan from the Client;
 - 3(b) in that, on or about February 5, 2013, he accepted a \$10,000 loan from the Client; and
 - 3(c) in that, in or around February 2013, he solicited a \$100,000 loan from the Client.
28. The Member admits that he committed the acts of professional misconduct as alleged in paragraphs 2(a) and 4(a), (b) and (c) of the Notice of Hearing, and in particular, his conduct was disgraceful, dishonourable and unprofessional, as described in paragraphs 8 to 21 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, the onus and standard of proof, the Panel finds that the Member committed acts of professional misconduct as alleged in paragraphs 1(a), 2(a), 3(a), 3(b), 3(c), 4(a), 4(b) and 4(c) of the Notice of Hearing. As to allegations 4(a), 4(b) and 4(c), 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) in the Notice of Hearing is supported by paragraphs 8 to 14, 21 and 22 in the Agreed Statement of Facts. The Member failed to maintain the standard of practice of the profession, i.e. the *Therapeutic Nurse-Client Relationship* Standard ("TNCR") when he engaged in a financial transaction with the Client, unrelated to the provision of care and services.

The TNCR Standard states that "nurses are responsible for effectively establishing and maintaining the limits or boundaries in the therapeutic nurse-client relationship." The TNCR Standard also generally

prohibits nurses from engaging in financial transactions unrelated to the provision of care and activities that could result in monetary, personal or other material benefit, gain or profit for the nurse (other than the appropriate remuneration for nursing care or services), or result in monetary or personal loss for the client. Nurses meet the Standard by: “abstaining from accepting individual gifts, unless, in rare instances, the refusal will harm the nurse-client relationship”. The Member admitted to accepting a \$50,000 gift from the Client. Bank records showed that the Client purchased a bank draft in the amount of \$50,000 on November 26, 2009 payable to the Member and that the bank draft was cashed by the Member on December 7, 2009. By accepting a \$50,000 gift from his Client, the Member clearly breached this standard.

Allegations 3(a) and 3(b) in the Notice of Hearing are supported by paragraphs 16, 19, 20 and 21 in the Agreed Statements of Facts. The Member admitted to accepting two separate \$10,000 loans from the Client on or about January 29, 2013 and February 5, 2013. Two promissory notes dated January 29, 2013 and February 5, 2013 were signed by the Member. The Client also provided her lawyer with copies of cheques made payable to the Member showing that they were cashed. These facts support the findings in these allegations. With regard to allegation 3(c) in the Notice of Hearing, the Member admitted to soliciting a loan of a \$100,000 from his Client. This is supported by paragraphs 16, 18 and 21 in the Notice of Hearing.

With respect to Allegations 2(a), 4(a), 4(b) and 4(c) in the Notice of Hearing, by breaching the TNCR Standard, the Panel finds that the Member’s conduct was unprofessional, dishonourable and disgraceful.

The Panel finds that the Member’s conduct was unprofessional as it lacked good judgement and demonstrated a serious and persistent disregard for his professional obligations.

The Panel finds that the Member’s conduct was dishonourable. It demonstrated an element of dishonesty and deceit through his repeated solicitation and acceptance of monetary value knowing he was breaching the Standard of Practice.

Finally, the Panel finds that the Member’s conduct was disgraceful as it shames the Member and by extension the entire nursing profession. The Member’s repeated unacceptable behaviour casts serious doubt on the Member’s moral fitness and inherent ability to discharge the higher obligations the public expects nursing 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 immediately revoke the Member’s certificate of registration.

Penalty Submissions

Submissions were made by Counsel for the College. The Member indicated that he agreed with those submissions.

The aggravating factors in this case were that the Member's conduct was very serious in nature as he was involved in three separate financial transactions totalling \$70,000 and furthermore attempted to solicit an additional loan of \$100,000. The Member's misconduct was not inadvertent but done with knowledge and intent for his own personal financial gain.

The mitigating factors in this case were the Member had no previous discipline record with the College. He has recently cooperated with the College in resolving these allegations and has accepted responsibility for his conduct.

Counsel for the College indicated there are no similar previous cases given the quantum of money at issue. However, Counsel provided two cases with persistent breach of boundaries including financial deceit.

CNO vs Eno (Discipline Committee, 2016). This case involved the member failing to maintain appropriate therapeutic boundaries with the spouse of the client by accepting money from the vulnerable client's spouse amounting to a total of \$55,863.94 as well as entering into a personal relationship with the client's spouse. The Member signed an undertaking resigning her certificate of registration.

CNO vs Ghesquiere (Discipline Committee, 2013). This case dealt with the member defrauding her employer of approximately \$30,000. The member was found guilty of a criminal offence. The member resigned her certificate of registration prior to the hearing, however, the Panel directed that the member's certificate of registration be revoked.

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 immediately revoke the Member's certificate of registration.

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 a Joint Submission should not be interfered with lightly.

The Panel recognizes the seriousness of the Member's conduct. The Member repeatedly chose to solicit and accept gifts for his own personal financial gain from an elderly vulnerable client, living alone. The Panel finds this behaviour reprehensible. It damages the public's trust in the profession which requires nurses to establish and maintain limits or boundaries in their therapeutic nurse-client relationships. Revocation of the Member's certificate of registration sends a clear message to the nursing profession that this type of behaviour will not be tolerated. Confidence in the nursing profession and the protection of public safety is strengthened by this message.

I, Dawn Cutler, RN, 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