

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

PANEL:	Grace Fox, NP	Chairperson
	Mary MacNeil, RN	Member
	Ian McKinnon	Public Member
	Kerrie Naylor, RPN	Member

BETWEEN:

COLLEGE OF NURSES OF ONTARIO)	<u>DENISE COONEY</u> for
)	College of Nurses of Ontario
- and -)	
)	
HYANG JIN IM)	<u>ADRIENNE ANDERSON</u> for
Registration No. 0323568)	Hyang Jin Im
)	
)	<u>KIMBERLEY ISHMAEL</u>
)	Independent Legal Counsel
)	
)	Heard: June 14, 2023

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 June 14, 2023, via videoconference.

The Allegations

The allegations against Hyang Jin Im (the “Member”) as stated in the Notice of Hearing dated April 10, 2023 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 Toronto General 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 2015, you

submitted and/or accepted payment for false claims under the Facility's employee group 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 Toronto General Hospital in Toronto, Ontario (the "Facility"), you misappropriated property from a client or workplace, and in particular, in or around 2015, you submitted and/or accepted payment for false claims under the Facility's employee group 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 Toronto General Hospital in Toronto, Ontario (the "Facility"), you falsified a record relating to your practice, and in particular, in or around 2015, you submitted and/or accepted payment for false claims under the Facility's employee group 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 Toronto General Hospital in Toronto, Ontario (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 2015, you submitted and/or accepted payment for false claims under the Facility's employee group 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 Toronto General Hospital in Toronto, Ontario (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 2015, you submitted and/or accepted payment for false claims under the Facility's employee group 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. Hyang Jin Im (the "Member") registered with the College of Nurses of Ontario ("CNO") as a Registered Nurse ("RN") in the General Class on September 19, 2003. The Member resigned her certificate of registration on February 16, 2023.
2. At the time of the incidents described below, the Member was employed at Toronto General Hospital in Toronto, Ontario (the "Facility").

BENEFIT PLAN

3. The Facility offers its employees a self-insured group insurance policy by which the Facility provides coverage to employees for extended health care, dental, and other insurance benefits (the "Benefit Plan"). Sun Life Financial ("SunLife") administers the Benefit Plan on behalf of the Facility. The Facility, however, is the plan sponsor for the Benefit Plan, and therefore funds the cost of claims paid out to employees under the plan.
4. In order to submit a benefit claim, members of the Benefit Plan complete a medical expense claim form provided by Sun Life. The medical expense 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 all goods and services being claimed have been received me and/or my spouse or dependents if applicable." The plan member must go on to "certify that the information in this form is true and complete", and sign each claims form.

INCIDENTS RELEVANT TO ALLEGATIONS OF PROFESSIONAL MISCONDUCT

5. Between 2014 and 2016, the Member submitted claims for products and services received by herself and her dependents at a service provider called Downtown Wellness and Foot Care in Toronto. The claims at issue were for compression stockings, custom orthotics, shoe modifications, and chiropody assessments. Instead of the products and services claimed, the Member received non-medical, brand-named products such as running shoes.
6. In 2017, Sun Life alerted the Facility that Sun Life had uncovered what was described as a fraudulent benefit scheme which implicated Downtown Wellness. The Facility initiated its own review of claims submitted by its employees for products or services claimed through Downtown Wellness.

7. In a meeting on January 29, 2018, the Member admitted to submitting claims for medical products and receiving non-medical products instead.
8. The Member admits that she submitted improper claim of approximately \$3,727. The Member paid restitution to the Facility of this amount, and received a five-day unpaid suspension.
9. If the Member were to testify, she would express deep remorse for her actions and apologize for her conduct. She appreciates the significance of her actions and takes accountability for her mistakes.

BENEFIT FRAUD CASES

10. To date, over 80 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

11. 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.
12. 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 standards 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.
13. 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

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

ADMISSIONS OF PROFESSIONAL MISCONDUCT

18. 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 8 and 11 to 17 above.
19. 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 8 above.
20. 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 8 above.
21. 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 8 above.
22. 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 8 and 11 to 17 above.

Submissions on liability were made by College Counsel.

College Counsel asked the Panel to accept the Agreed Statement of Facts, as well as the Member's admissions to all the allegations as set out in paragraphs 17-22 of the Agreed Statement of Facts and, on the basis of those facts and admissions, make findings of professional misconduct with respect to the allegations in the Notice of Hearing. College Counsel submitted that the Panel has taken the Member's plea, conducted a verbal plea inquiry, and received a written plea inquiry (Exhibit #2) which was voluntary, informed, and made on the advice of experienced Counsel. College Counsel submitted that based on the Agreed Statement of Facts, which specifically describes the facts in relation to the allegations, the Panel has enough evidence to find that the Member committed professional misconduct as set out in all of the allegations in the Notice of Hearing.

With regard to allegation #1, College Counsel submitted that the Panel was provided evidence of the relevant College standards, namely the *Professional Standards* and the *Ethics Standard* which the Member breached. The Member also admitted to breaching these standards. Therefore, this admission and supporting facts provide a basis for making a finding of professional misconduct.

With regard to allegation #5, College Counsel submitted that the Member's conduct was relevant to the practice of nursing since it was through her employment as a Registered Nurse ("RN") that she had access to the Toronto General Hospital's (the "Facility") employee group benefit plan (the "Benefit Plan"). College Counsel submitted that members of the profession would regard the Member's conduct to be dishonourable and unprofessional. College Counsel submitted that the Member submitted false claims to the Facility's Benefit Plan between 2014 and 2016 and received approximately \$3,727.00 in relation to those false claims.

College Counsel submitted that the Agreed Statement of Facts contains a summary of the relevant professional obligations required by nurses to act with honesty and integrity. A nurse submitting false insurance claims and false documentation to their employer with the intent to gain monetary benefit constitutes a serious and persistent disregard for the obligation to act with honesty and integrity and forms the basis of unprofessional conduct. The Member's conduct also involved dishonesty and deceit for the Member's personal gain over approximately a two-year period which was long enough to stop and take accountability. Instead, the Member failed on several occasions to act with the integrity the public expects of nurses and thereby brought shame to the nursing profession. In this way, the Member's conduct was also dishonourable.

The Member's Counsel made no submissions on liability.

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 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 in the Notice of Hearing is supported by paragraphs 5-8 and 11-18 in the Agreed Statement of Facts. The Member admitted to submitting false claims through the Facility's Benefit Plan between 2014 and 2016 for compression stockings, custom orthotics, shoe modifications and chiropody assessments and to instead receiving non-medical products such as running shoes in the amount of approximately \$3,727.00 in relation to those false claims. Sun Life Financial alerted the Facility to a fraudulent benefit scheme and in a meeting with the Facility on January 29, 2018, the Member admitted to submitting false claims. The College's *Professional Standards* require nurses to be truthful, have integrity and conduct themselves in a way that ensures respect for the nursing profession. The *Ethics* Standard also requires nurses to be truthful and act without intending to deceive. The Member failed to meet these standards when she submitted false claims through the Facility's Benefit Plan.

Allegation #2 in the Notice of Hearing is supported by paragraphs 4-8 and 19 in the Agreed Statement of Facts. The Member admitted to misappropriating property from the Facility when she submitted false claims through the Facility's Benefit Plan and received non-medical products for those false claims. Receiving non-medical products with respect to false benefit claims constitutes misappropriation of property.

Allegation #3 in the Notice of Hearing is supported by paragraphs 4-8 and 20 in the Agreed Statement of Facts. The Member admitted to falsifying a record relating to her practice when she signed and submitted false medical expense claim forms to the Facility's Benefit Plan and certified that "all goods and services being claimed have been received" and "the information in this form is true and complete". The Member, as an RN employed at the Facility, had access to the Benefit Plan by virtue of her employment as a nursing professional and so her actions were related to her practice as a nurse. 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 an RN at the Facility.

Allegation #4 in the Notice of Hearing is supported by paragraphs 4-8 and 21 in the Agreed Statement of Facts. The Member admitted to signing or issuing, in her professional capacity, a document that she knew or ought to have known contained a false or misleading statement. When the Member signed the medical expense claim forms that required her to certify that "all goods and services being claimed have been received" and "the information in this form is true and complete", she knew or ought to have known that she was signing a document that contained a false or misleading statement and that it was a false claim under the Facility's

Benefit Plan. As noted above, the Member had access to the Benefit Plan by virtue of her employment as a nursing professional. When she signed and submitted claim forms on her behalf, she did so in her capacity as an RN employee of the Facility. Accordingly, the facts support the allegation that the Member signed or issued, 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 4-8, 11-17 and 22 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. It was unprofessional as it demonstrated a serious and persistent disregard for her professional obligations as the Member failed to meet the College's *Professional Standards* and the *Ethics* Standard.

The Panel also finds that the Member's conduct was dishonourable. It demonstrated an element of dishonesty and deceit and showed an element of moral failing. 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 three months of the date that this Order becomes final.

Penalty Submissions

Submissions on penalty were made by College Counsel.

College Counsel submitted that the Joint Submission on Order also attaches in Appendix "A" an undertaking and agreement by the Member for the Member's permanent resignation as a member of the College effective June 14, 2023 (the "Undertaking"). Pursuant this Undertaking, the Member undertakes, acknowledges and agrees to:

- a) Permanently resign as a member of the College, effective from the date that the Order made by the Discipline Committee in accordance with the Joint Submission on Order becomes final;
- b) Not apply for membership with the College as a Registered Nurse or Registered Practical Nurse at any time in the future;
- c) Agree that the public portion of the College's Register will indefinitely reflect that the Member entered into an Undertaking with the Executive Director to

permanently resign as a member of the College as part of an agreed resolution of allegations of professional misconduct;

- d) No longer have a right to the issuance or reinstatement of a Certificate of Registration from the College;
- e) No longer have a right to use the title “Nurse”, “Registered Nurse”, “Registered Practical Nurse”, “RN”, “RPN” or a variation, an abbreviation or an equivalent in another language;
- f) No longer have a right to hold herself out as a Nurse, Registered Nurse, Registered Practical Nurse or as a person who is qualified to practise in Ontario as a Nurse, Registered Nurse or Registered Practical Nurse;
- g) No longer have a right to engage in the practice of nursing in any capacity; and
- h) Agree that the College is authorized to and may, in its sole discretion, provide a copy of the Undertaking and/or its terms to a governing body that regulates nursing in Canada or elsewhere in response to an inquiry or otherwise.

The aggravating factors in the case were:

- The Member admitted to submitting false claims in the amount of approximately \$3,727.00 to the Facility’s Benefit Plan;
- The Member’s conduct showed a serious and persistent dishonesty and deceit at the expense of the Benefit Plan funded by the Facility which is a public institution funded by the public purse;
- The Member’s conduct took place at the expense of the trust placed in her by the Facility, the Benefit Plan and the public;
- An employee benefit plan is not available to all members of the College and the Member’s conduct in submitting false claims abused this privilege; and
- The Member ought to have known her conduct was wrong.

The mitigating factors in the case were:

- The Member took responsibility for her conduct by entering into an Agreed Statement of Facts and a Joint Submission on Order with the College;
- The Member took responsibility for her conduct with the Facility and made restitution; and
- The Member has no prior disciplinary history with the College.

College Counsel submitted that the penalty meets the goals of penalty and that protection of the public interest is the primary goal. The Member has agreed to permanently resign and not reapply for reinstatement. She has also agreed that the College can share the terms of this case with other jurisdictions in response to an inquiry. Removing the Member from practice is the

ultimate form of public protection and, together with a public record of her admission to the allegations, will help inspire confidence that the College can protect the public from misconduct by its members. The penalty also provides transparency about what occurred.

Specific deterrence is not essential in this case because the Member has already undertaken to permanently resign from the practice of nursing. In such circumstances, the penalty of an oral reprimand is sufficient.

Rehabilitation and remediation are not essential components for this order given that the Member has agreed to permanently resign from the profession.

With regard to general deterrence, the Agreed Statement of Facts indicated over 80 benefit fraud cases with similar facts that are before the College which indicates there is a significant issue in the profession regarding the misuse of benefit plans. Therefore, there is a need to send a strong signal to members of the College and to the public that this behaviour is unacceptable. A permanent resignation from the College sends a strong message to the public that there are serious consequences for this kind of behaviour.

General deterrence is achieved through the oral reprimand and the fact that the findings will be publicly posted indefinitely and sends a clear message to other members of the profession that there are serious consequences for this type of conduct.

Overall, the public is protected by the resignation of the Member's certificate of registration and the ability of the College to communicate this to any governing body that regulates nursing in Canada. Accordingly, the Panel does not need to impose further conditions in order to achieve protection of the public.

College Counsel submitted the following case to demonstrate that the proposed penalty fell within the range of similar cases from this Discipline Committee:

CNO v. Zhang (Discipline Committee, 2022): This case proceeded by way of an Agreed Statement of Facts and a Joint Submission on Order and involved false benefit claims in the amount of \$5,420.00. The penalty included an oral reprimand and the member signed an undertaking to permanently resign as a member of the College.

College Counsel submitted that the *Zhang* case indicates that the penalty in this case is appropriate based on a previous case.

The following cases provided the Panel with an example of the consequences and penalties issued for false benefit claims where the member did not sign an undertaking to permanently resign as a member of the College:

CNO v. Padillo (Discipline Committee, 2022): This case proceeded by way of an Agreed Statement of Facts and a Joint Submission on Order and involved false benefit claims in the amount of \$4,000.00. The Member made restitution. 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. Nisbet (Discipline Committee, 2022): This case proceeded by way of an Agreed Statement of Facts and a Joint Submission on Order and involved false benefit claims in the amount of \$3,025.47. The Member made restitution. 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 on penalty were made by the Member's Counsel.

The Member has been a nurse for 40 years and served 20 years with the College. The case before the Panel is the first time the Member has been reported to the College. Over her career she has been a dedicated, empathetic nurse and has received recommendations for outstanding patient care. The Member's conduct heard by the Panel is not reflective of her overall nursing practice or who she is as an individual. The Member has taken full responsibility and expresses deep remorse to the College and the Facility. The Member has also made restitution to the Facility and served a five-day unpaid suspension. She has been accountable and fully cooperative throughout the process with the College and wants to put this issue behind her and enjoy her retirement after a long and successful nursing career.

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 three months of the date that this Order becomes final.

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. In the normal course, 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.

In this case, because the Member has undertaken to permanently resign, the oral reprimand is a sufficient penalty and no other specific deterrence is required.

Furthermore, because of the Member's resignation, it is not necessary to consider remediation and rehabilitation in determining the appropriate penalty.

General deterrence is also addressed as the Panel concluded had the Member's situation been different and no Undertaking given, the Panel would have ordered a suspension, and terms, conditions and limitations on the Member's certificate of registration which would have been in line with previous penalties.

Finally, the penalty of reprimand is appropriate because the public is already protected through the permanent resignation and the Undertaking to never apply for registration as a nurse in Ontario in the future.

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

I, Grace Fox, NP, sign this decision and reasons for the decision as Chairperson of this Discipline Panel and on behalf of the members of the Discipline Panel.