

DISCIPLINE COMMITTEE
OF THE COLLEGE OF NURSES OF ONTARIO

PANEL:

| | |
|---------------------|---------------|
| Grace Fox, NP | Chairperson |
| Catherine Egerton | Public Member |
| Heather Riddell, RN | Member |
| Terah White, RPN | Member |
| Chris Woodbury | Public Member |

BETWEEN:

| | | |
|------------------------------|---|------------------------------|
| COLLEGE OF NURSES OF ONTARIO |) | <u>ALYSHA SHORE</u> for |
| |) | College of Nurses of Ontario |
| - and - |) | |
| |) | |
| HARRY ROSS PHILLIPS |) | <u>NO REPRESENTATION</u> |
| Reg. No. HB00248 |) | for Harry Ross Phillips |
| |) | |
| |) | |
| |) | <u>PATRICIA HARPER</u> |
| |) | Independent Legal Counsel |
| |) | |
| |) | Heard: September 26, 2018 |

DECISION AND REASONS

This matter came on for hearing before a panel of the Discipline Committee (the “Panel”) on September 26, 2018 at the College of Nurses of Ontario (the “College”) at Toronto.

The Allegations

The allegations against Harry Ross Phillips (the “Member”) as stated in the Notice of Hearing dated August 8, 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 (the “Act”), and defined in subsection 1(1) of *Ontario Regulation 799/93*, in that, while employed as a Registered Practical Nurse by Extendicare Starwood in Ottawa, Ontario, you contravened a standard of practice of the profession or failed to meet the standards of practice of

the profession when you or one of your family members borrowed money from [the Client]'s husband in or about 2016.

2. You have committed an act of professional misconduct as provided by subsection 51(1)(c) of the *Health Professions Procedural Code* of the Act, and defined in subsection 1(26) of *Ontario Regulation 799/93*, in that, while employed as a Registered Practical Nurse by Extendicare Starwood in Ottawa, Ontario, you practised the profession while in a conflict of interest in that you or one of your family members borrowed money from the husband of your client, [the Client], in or about 2016.
3. You have committed an act of professional misconduct as provided by subsection 51(1)(c) of the *Health Professions Procedural Code* of the Act, and defined in subsection 1(37) of *Ontario Regulation 799/93*, in that, while employed as a Registered Practical Nurse by Extendicare Starwood in Ottawa, Ontario, 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 when you or one of your family members borrowed money from the husband of your client, [the Client], in or about 2016.

Member's Plea

The Member admitted the allegations set out in paragraphs 1, 2 and 3 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 received a signed copy of the document as an exhibit. The Panel 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. Harry Ross Phillips (the "Member") obtained a certificate in nursing from St. Lawrence College.
2. The Member registered with the College of Nurses of Ontario (the "College") as a Registered Practical Nurse ("RPN") on January 1, 1982.
3. The Member was employed at Extendicare Starwood (the "Facility") from February 9, 2011 to August 29, 2016, when he resigned. The Facility terminated the Member's employment on August 30, 2016, but the Member grieved the termination and it was converted to a resignation.

THE FACILITY

4. The Facility is a 192 bed long-term care home, located in Ottawa, Ontario. Approximately 85 percent of the clients in the Facility suffer from dementia.

5. There are four units in the Facility. The first floor typically houses patients with physical issues whereas the second floor houses patients with cognitive issues. Dementia patients are primarily located on the second floor.
6. The Member worked as a part-time staff nurse on the evening shift.

FACILITY POLICY

7. The Facility has a policy called the “Standards of Employee Conduct.” It contains a rule that states: “Employees will not seek or accept money or gifts from current or former residents or their families without the prior authorization of the Administrator.”

THE CLIENT AND HER HUSBAND

8. [The Client] is located on 2 South (second floor). She has dementia.
9. As the Client’s dementia progressed, her family, and specifically her husband, [], was unable to take care of her at home. However, [the Client’s husband] would visit the Client twice a day, until he became unable to do so as a result of his progressive lung cancer.

INCIDENTS RELEVANT TO ALLEGATIONS OF PROFESSIONAL MISCONDUCT

10. On or around July 26, 2016, [], a Personal Support Worker, reported to [], the Director of Care at the Facility, that the Member was borrowing money from staff members in amounts ranging from \$20 to \$75, which he would always pay back. [The Personal Support Worker] also reported that she received a complaint from [the Client’s husband], who indicated that he had lent money to the Member.
11. As a result, [the Director of Care] spoke with [the Client’s husband] the following day about his interactions with the Member. During this conversation, [the Client’s husband] advised [the Director of Care] that the Member told him he needed to borrow money for his daughter. Specifically, the Member asked [the Client’s husband] if he could borrow \$1,500 and he asked him not to tell anyone.
12. [The Client’s husband] brought the cash to the Facility and left it on the medication cart for the Member. The Member eventually paid back the money over a period of time, often delivering cash to [the Client’s husband] at his home. The Member subsequently borrowed a further \$500 from [the Client’s husband], which he also paid back.
13. [The Client’s husband] expressed to [the Director of Care] that he believed by lending the money to the Member, the Member may check on his wife more often. The Member provided care to the Client on several occasions in 2016.
14. If the Member were to testify, he would say that he did not realize that borrowing money from a client for his daughter was a breach of the College’s standards. The Member has reflected on his conduct and now acknowledges that accepting money from [the Client’s husband], either as loans or gifts, was contrary to the Facility’s policy and a breach of the College’s standards.

ADMISSIONS OF PROFESSIONAL MISCONDUCT

15. The Member admits that borrowing money from the Client's husband constitutes a breach of the College's standards, as set out in paragraphs 10 to 14 above, and as alleged in paragraph 1 of the Notice of Hearing.
16. The Member admits that he committed the acts of professional misconduct as alleged in paragraph 2 of the Notice of Hearing, as described in paragraphs 10 to 14 above, in that he practised the profession while in a conflict of interest when he borrowed money from the Client's husband.
17. The Member further admits that he committed the acts of professional misconduct as alleged in paragraph 3 of the Notice of Hearing, and in particular, that his conduct was disgraceful, dishonourable and unprofessional, as described in paragraphs 10 to 14 above.

Submissions

College Counsel presented the Panel with a copy of the Practice Standard: *Therapeutic Nurse-Client Relationship Revised 2006*. College Counsel brought to the Panel's attention the Glossary which defines the terminology of this standard and, in this case, the reference to Boundary. A boundary is defined as "A boundary in the nurse-client relationship is the point at which the relationship changes from professional and therapeutic to unprofessional and personal. Crossing a boundary means that the care provider is misusing the power in the relationship to meet her/his personal needs, rather than the need of the client, or behaving in an unprofessional manner with the client. The misuse of power does not have to be intentional to be considered a boundary crossing."

The College then referred to the standard statement on Maintaining Boundaries and the Indicator under that standard which states that the nurse meets the standard by "abstaining from engaging in financial transactions unrelated to the provision of care services with the client or the client's family/significant other".

College Counsel then presented five previous disciplinary cases from the College of Nurses:

CNO v. Leclair (Discipline 2011). This matter was contested in that one of the allegations was that this member had accepted and/or solicited gifts from a client. In this case, an expert witness had testified that a nurse must be cognizant of the challenges created by a relationship with a client. This member had accepted gifts of substantial amounts from a client. The member was found to have engaged in conduct that was disgraceful, dishonourable and unprofessional relevant to the practice of nursing.

CNO v. Kauling (Discipline 2013). This member did plead, and executed an Agreed Statement of Facts, to the attempt of trying to borrow funds from various clients. The member was found to have engaged in conduct that was disgraceful, dishonourable and unprofessional relevant to the practice of nursing.

CNO v. MacLeod (Discipline 2013). This member did plead, and executed an Agreed Statement of Facts, to accepting money from a client and/or his spouse as a gift and/or a loan. This member had

guidelines from the employer similar to those of the Member who is subject to the allegations before this panel. The member was found to have engaged in conduct that was disgraceful, dishonourable and unprofessional relevant to the practice of nursing.

CNO v. Kravitz (Discipline 2010). This member did plead, and executed an Agreed Statement of Facts, to borrowing funds from clients. The member was found to have engaged in conduct that was disgraceful, dishonourable and unprofessional relevant to the practice of nursing.

CNO v. MacDonald (Discipline 2017). This member did plead, and executed an Agreed Statement of Facts, that she had failed to maintain the therapeutic boundaries by the member taking payments from a client for rent while still being in a therapeutic relationship. The member was found to have engaged in conduct that was disgraceful, dishonourable and unprofessional relevant to the practice of nursing.

The Member advised that he did not understand the relevant standards at the time of the relevant acts and that he now regretted that fact.

Decision

The Panel finds that the Member committed acts of professional misconduct as alleged in paragraphs 1 and 2 of the Notice of Hearing. As to allegation 3, the Panel finds that the Member engaged in conduct that would reasonably be regarded 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 in the Notice of Hearing is supported by paragraphs 10, 11, 12, 13, 14 and 15 in the Agreed Statement of Facts in that the Member failed to meet the standards of practice when he borrowed money from a client's husband.

Allegation 2 in the Notice of Hearing is supported by paragraphs 10, 11, 12, 13, 14 and 16 in the Agreed Statement of Facts in that the Member practised while in a conflict of interest as he had borrowed money from the client's husband.

Allegation 3 in the Notice of Hearing is supported by paragraphs 10, 11, 12, 13, 14 and 17 in the Agreed Statement of Facts. The Panel finds the Member's conduct to be disgraceful, dishonourable and unprofessional as the Member persistently contravened the standard of practice by borrowing money from a client's husband. The actions of the Member led the client's husband to believe that lending the monies might result in the Member checking on the client more often.

Finally, the Panel finds that the Member's conduct was disgraceful as it shames the Member and, by extension, the profession. The conduct casts doubt on the Member's moral fitness and inherent ability to discharge the higher obligations the public expects professionals to meet.

Penalty

Counsel for the College and the Member advised the Panel that a Joint Submission on Order had been agreed upon and that the Member had undertaken to permanently resign his certificate of registration.

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.

Penalty Submissions

Submissions were made by College Counsel and the Member.

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

- The Member had been a long time member of the College of Nurses with no previous disciplinary history;
- The Member had cooperated with the College and came to an agreement; and
- The Member paid the loans back to the client's husband.

The aggravating factors in this case were:

- The Member had borrowed money on more than one occasion; and
- The Member had allowed the client's husband to believe the level of care could be related to the funds borrowed.

Overall, the public is protected because the Member has agreed to resign and never seek membership to be a nurse in any jurisdiction in Canada.

Counsel submitted cases to the Panel to demonstrate that the proposed penalty fell within the range of similar cases from this Discipline Committee.

CNO v. Eno (Discipline 2016). In this case, the Member had also accepted sums of money from a client's spouse. The member in this case also resigned her certificate of registration with no opportunity to reapply for registration in the future.

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 concludes that the proposed penalty is reasonable and in the public interest. The Member has cooperated with the College and, by agreeing to the facts and the proposed penalty, has accepted responsibility for his actions. The Panel took into consideration the Undertaking when accepting the Joint Submission as to Order. The Order is appropriate because it clearly indicates to the members of the profession that conduct such as this is not acceptable.

As the Member has signed the Undertaking there is no need for the education, remediation and rehabilitation component to the penalty. The Member will not be practising in the future. The findings this Panel made will be available on the public registry. The Panel has concluded that all of the expected elements of an Order have been met: protection of the public through providing general deterrence and specific deterrence. These are achieved and supported by the Joint Submission on Order and the Undertaking.

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.

Chairperson

Date