

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

<b>PANEL:</b>	Jane Mathews, RN	Chairperson
	Tim Crowder	Public Member
	Carly Gilchrist, RPN	Member
	Neil Hillier, RPN	Member
	Lalitha Poonasamy	Public Member

**BETWEEN:**

COLLEGE OF NURSES OF ONTARIO	)	<u>NICK COLEMAN</u> for
	)	College of Nurses of Ontario
- and -	)	
	)	
AZUCENA GEPILANO	)	<u>PHILIP ABBINK</u> for
Registration No. 9714551	)	Azucena Gepilano
	)	
	)	<u>CHRISTOPHER WIRTH</u>
	)	Independent Legal Counsel
	)	
	)	Heard: June 3, 2022

**DECISION AND REASONS**

This matter came on for hearing before a panel of the Discipline Committee (the “Panel”) of the College of Nurses of Ontario (the “College”) on June 3, 2022, via videoconference.

**The Allegations**

The allegations against Azucena Gepilano (the “Member”) as stated in the Notice of Hearing dated May 12, 2022 are as follows:

**IT IS ALLEGED THAT:**

1. You have committed an act of professional misconduct as provided by subsection 51(1)(c) of the *Health Professions Procedural Code* of the *Nursing Act, 1991*, S.O. 1991, c. 32, as amended, and defined in subsection 1(1) of *Ontario Regulation 799/93*, in that while working as a Registered Nurse at St. Michael’s 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 2012, 2014 and/or 2016, you submitted false claims under the Facility’s employee group benefit plan (the “Benefit Plan”).

2. You have committed an act of professional misconduct as provided by subsection 51(1)(c) of the *Health Professions Procedural Code* of the *Nursing Act, 1991*, S.O. 1991, c. 32, as amended, and defined in subsection 1(8) of *Ontario Regulation 799/93*, in that while working as a Registered Nurse at the Facility, you misappropriated property from a client or workplace, and in particular, in or around 2012, 2014 and/or 2016, you submitted false claims under the Benefit Plan.
3. You committed an act of professional misconduct as provided by subsection 51(1)(c) of the *Health Professions Procedural Code* of the *Nursing Act, 1991*, S.O. 1991, c. 32, as amended, and defined in subsection 1(14) of *Ontario Regulation 799/93*, in that while working as a Registered Nurse at the Facility, you falsified a record relating to your practice, and in particular, in or around 2012, 2014 and/or 2016, you submitted false claims under the Benefit Plan.
4. You committed an act of professional misconduct as provided by subsection 51(1)(c) of the *Health Professions Procedural Code* of the *Nursing Act, 1991*, S.O. 1991, c. 32, as amended, and defined in subsection 1(15) of *Ontario Regulation 799/93*, in that while working as a Registered Nurse at the Facility, you signed or issued, in your professional capacity, a document that you knew or ought to have known contained a false or misleading statement, and in particular, in or around 2012, 2014 and/or 2016, you submitted false claims under the Benefit Plan.
5. You have committed an act of professional misconduct as provided by subsection 51(1)(c) of the *Health Professions Procedural Code* of the *Nursing Act, 1991*, S.O. 1991, c. 32, as amended, and defined in subsection 1(37) of *Ontario Regulation 799/93*, in that while working as a Registered Nurse at the Facility, you engaged in conduct or performed an act, relevant to the practice of nursing, that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, and in particular, in or around 2012, 2014 and/or 2016, you submitted false claims under the Benefit Plan.

### **Member's Plea**

The Member admitted the allegations set out in paragraphs #1, #2, #3, #4 and #5 in the Notice of Hearing. The Panel received a written plea inquiry which was signed by the Member. The Panel also conducted an oral plea inquiry and was satisfied that the Member's admission was voluntary, informed and unequivocal.

### **Agreed Statement of Facts**

College Counsel and the Member's Counsel advised the Panel that agreement had been reached on the facts and introduced an Agreed Statement of Facts, which reads, unedited, as follows:

## THE MEMBER

1. Azucena Gepilano (the “Member”) obtained a degree in nursing from Riverside College in Bacolod City, Philippines in 1986.
2. The Member registered with the College of Nurses of Ontario (“CNO”) as a Registered Nurse (“RN”) in the General Class on February 20, 1997. She is also registered to practice nursing in the Philippines.
3. Between September 7, 1999 and February 13, 2017, the Member was employed as a full-time staff nurse at St. Michael’s Hospital in Toronto (the “Facility”). Her employment was terminated as a result of the incidents described below.

## THE BENEFIT PLAN

4. The Facility’s employee benefit plan (the “Benefit Plan”) is a group insurance policy which provides coverage for extended health care, dental, and other insurance benefits. The Facility is the Plan Sponsor for the Benefit Plan and funds the cost of claims paid out under the plan. SunLife Insurance (“SunLife”) administers the Benefit Plan on behalf of the Facility.
5. The Member, as an RN at the Facility represented by the Ontario Nurses’ Association (“ONA”), was a member of the Benefit Plan through the collective agreement between ONA and the Facility. The Member’s spouse also had coverage under the Benefit Plan.
6. In relation to extended health care, the Benefit Plan provided the Member and her family with coverage for medical equipment and supplies, among other things. In particular, the Benefit Plan provided 100% reimbursement for up to 4 pairs of support stockings annually (per person), up to a maximum of \$200/pair. To be eligible, the support stockings had to be prescribed by a physician and be medically necessary for the treatment of disease or injury.
7. Claims for equipment and supplies under the Benefit Plan, including support stockings, were to be submitted using a paper claim form with the receipt and prescription attached. The claim form included the following declaration to be signed by the employee submitting a claim:

Authorization and Signature

**I certify that all goods and services being claimed have been received by me and/or my spouse or dependents, if applicable. I certify that the information in this form is true and complete** and does not contain a claim for any expense previously paid for by this or any other plan. [emphasis added]

[...]

In the event there is suspicion and/or evidence of fraud and/or Plan abuse concerning this claim, I acknowledge and agree that Sun Life may investigate and that information about me, my spouse and/or dependents pertaining to this claim may be used and disclosed to any relevant organization including regulatory bodies, government organizations, medical suppliers and other insurers, and where applicable my Plan Sponsor, for the purpose of investigation and prevention of fraud and/or Plan abuse.

#### **INCIDENTS RELEVANT TO ALLEGATIONS OF PROFESSIONAL MISCONDUCT**

8. Between 2012 and 2016, the Member submitted false claims under the Benefit Plan and received a total of \$4,695 in relation to the false claims.
9. In or around early 2017, the Facility and SunLife uncovered a scheme whereby employees of the Facility were submitting false benefit claims, including in relation to support stockings. The joint investigation conducted by the Facility and SunLife (the "Facility's Investigation") identified a porter at the Facility, Gener Valle ("Valle"), as the central figure in the scheme. The Facility's Investigation concluded that Valle coordinated with other Facility employees to submit false claims to SunLife for products and services that were never purchased. Valle and the employee would then split the reimbursed funds.
10. As a result, the Facility and SunLife interviewed the Member on February 1, 2017 in respect of claims she and her spouse had submitted between 2012 and 2016 for support stockings. Specifically, the Member admitted that neither she nor her spouse purchased the support stockings listed in the receipts submitted with the claims, nor did they obtain the prescriptions submitted in support of the claim.
11. The Member claimed that Valle would tell her the amount to claim on the benefit claim form. She would then partially fill out the form, sign it, and provide it to Valle, who completed the form. Valle then attached false receipts and prescriptions and submitted the claim form to SunLife. The Member also claimed that, once she received payment for the claims from SunLife, she gave all the funds to Valle and he gave her support hose product in return. However, the Member now admits that she did not receive any product from Valle and that she split the proceeds of the false benefit claims with him.
12. The total amount paid to the Member for the claims from 2012 to 2016 was \$4,695.
13. The Facility terminated the Member's employment on February 13, 2017 as a result of this conduct.

14. If the Member were to testify, she would express her remorse for her actions, and would assure the Committee that this conduct will not be repeated.

## **BENEFIT FRAUD CASES**

15. To date, a total of 52 benefits fraud cases relating to 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 claims involved range from under \$500 to over \$45,000.

## **CNO STANDARDS**

### *Professional Standards*

16. 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.
17. CNO's *Professional Standards* provides, in relation to the accountability standard, that nurses are accountable to the public and responsible for ensuring their practice and conduct meets the legislative requirements and the standard of the profession. Nurses are responsible for their actions and the consequences of those actions as well as for conducting themselves in ways that promote respect for the profession. Nurses demonstrate this standard by actions such as ensuring their practice is consistent with CNO's standards of practice and guidelines as well as legislation.
18. 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*

19. 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.
20. 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.

21. CNO's *Ethics* Standard also provides, in relation to truthfulness, that truthfulness means speaking and acting without intending to deceive.
22. The Member admits and acknowledges that she contravened CNO's *Professional Standards* and *Ethics* Standard when she submitted false claims under the Benefit Plan between 2012 and 2016.

#### **ADMISSIONS OF PROFESSIONAL MISCONDUCT**

23. 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 8 to 14 and 16 to 22 above.
24. 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 8 to 14 above.
25. 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 8 to 14 above.
26. 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 8 to 14 above.
27. 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 8 to 14 and 16 to 22 above.

#### **Submissions**

Submissions were made by College Counsel.

College Counsel submitted to the Panel that it is not common practice for Counsel to provide the Panel with other decisions from the Discipline Committee regarding findings of professional misconduct during the liability phase of a hearing, however, there are numerous cases of benefit fraud before the Discipline Committee with either the same or similar schemes as the case before this Panel. College Counsel submitted that he and the Member's Counsel argued

through a previous "test case" on how findings of professional misconduct should be made as the allegations were substantially the same as the case before this Panel. College Counsel submitted that there was controversy at that time in relation to allegations #3 and #4 in the Notice of Hearing, in that there was no dispute that claims were falsified, but the issue was whether the misconduct was related to the member's practice or whether by submitting those false claims the member acted in her professional capacity.

College Counsel provided the Panel with a copy of the *CNO v. Verde-Balayo* decision (Discipline Committee, 2021) in case the Panel had any questions about the findings of professional misconduct and in particular in regards to allegations #3 and #4. College Counsel submitted that the substance of allegation #5 is that the Member engaged in conduct or performed an act that having regard to all circumstances would reasonably be regarded by members of the profession to be disgraceful, dishonourable or unprofessional.

College Counsel submitted to the Panel that as indicated in the Agreed Statement of Facts the Member has admitted, and the College has accepted, that the conduct in question would be reasonably regarded by members of the profession as both unprofessional and dishonourable, but not disgraceful. College Counsel submitted unprofessional conduct involves conduct from the Member that reflects a serious or persistent disregard for her professional obligations and that such conduct could amount to a breach of the standards of practice. With respect to conduct that would reasonably be regarded by members of the profession to be dishonourable College Counsel submitted that there must be in addition to substandard conduct, some element of moral failing. College Counsel submitted that typically such moral failing may be found when the member has engaged in a course of conduct that she knew or reasonably ought to have known was wrong or improper. College Counsel submitted that such definition could be met in various ways. However, in this case the conduct was blatantly dishonest which reflects the element of moral failing. College Counsel submitted to the Panel that disgraceful conduct is similar to dishonourable conduct and it involves an element of moral failing, but it is a descriptor reserved for the most egregious of misconduct. Examples of this would include sexual abuse of a patient and possibly theft not from a facility but directly from a patient. College Counsel reinforced to the Panel that this Member's conduct does not rise to that level, it is not egregious conduct that it should attract that characterization.

Submissions were made by the Member's Counsel.

The Member's Counsel submitted to the Panel that the Member completed a plea inquiry and that she voluntarily admitted to professional misconduct in all five allegations. The Member's Counsel submitted that the Panel has all the evidence required in the Agreed Statement of Facts as well as the Member's admission to her professional misconduct in paragraphs 23-27 in the Agreed Statement of Facts confirming these facts and the plea in the Notice of Hearing.

The Member's Counsel submitted that the *Verde-Balayo* case made the same findings which are submitted before this Panel in the context of similar events - submitting false claims and splitting the reimbursement with a third party. The Member's Counsel submitted that the

Discipline Committee made findings of professional misconduct in all five allegations and this case would support what Counsel has submitted to the Panel in the present situation. In terms of the plea in paragraph #5, the Member's Counsel submitted that the Member is pleading guilty to only unprofessional and dishonourable conduct not disgraceful which is set out in paragraph 27 in the Agreed Statement of Facts. The Member's Counsel submitted that disgraceful conduct generally is seen as far more serious than dishonorable such as sexual abuse and that in the *Verde-Balayo* case, her conduct was found to be unprofessional and dishonourable. Finally, the Member's Counsel wanted to confirm with the Panel that to make a finding of a breach of the standards, the Panel requires evidence of the standard which is contained in the Agreed Statement of Facts.

### **Decision**

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

Having considered the evidence and the onus and standard of proof, the Panel finds that the Member committed acts of professional misconduct as alleged in paragraphs #1, #2, #3, #4 and #5 of the Notice of Hearing. As to allegation #5, the Panel finds that the Member engaged in conduct that would reasonably be regarded by members of the profession to be unprofessional and dishonourable.

### **Reasons for Decision**

The Panel considered the Agreed Statement of Facts and the Member's plea and finds that this evidence supports findings of professional misconduct as alleged in the Notice of Hearing.

Allegation #1 in the Notice of Hearing is supported by paragraphs 8-14 and 16-23 in the Agreed Statement of Facts. The Member admitted to submitting false claims under the St. Michael's Hospital's (the "Facility") employee benefit plan (the "Benefit Plan") between the years of 2012 and 2016 and to receiving a total sum of \$4,695.00 in relation to these false claims. The Member admitted that neither she nor her spouse purchased the support stockings listed in the receipts submitted with the claim nor did they obtain prescriptions submitted in support of the claim. The Member contravened the College's *Professional Standards* and the *Ethics Standard* when she submitted the false claims under the Benefit Plan between the years of 2012 to 2016. The College's *Professional Standards* provide that nurses are accountable to the public and responsible for ensuring their practice meets the standards of the profession. Nurses demonstrate this standard by actions such as ensuring their practice is consistent with the College's standards of practice and guidelines as well as legislation. The College's *Professional Standards* provide that leadership requires self-knowledge (understanding one's beliefs and values and being aware of how one's behaviour affects others), respect, trust and integrity. Nurses demonstrate this standard by actions such as role-modelling professional values, beliefs and attributes. The College's *Ethics Standard* describes the ethical values which are important to the nursing profession in Ontario including but not limited to maintaining commitments,



truthfulness and fairness. Being a member of the nursing profession brings a certain level of respect and trust expected by the public.

Allegation #2 in the Notice of Hearing is supported by paragraphs 8-14 and 24 in the Agreed Statement of Facts. The Member admitted to misappropriation of property. Between the years of 2012 and 2016 the Member misappropriated property from the Facility by submitting false claims under the Facility's Benefit Plan and in relation to those false claims the Member received a total monetary value of \$4,695.00. The Member admitted that she did not receive any product and that she would in fact split the monetary proceeds from the false benefit claims. Receiving money with respect to false benefit claims constitutes misappropriation of property.

Allegation #3 in the Notice of Hearing is supported by paragraphs 8-14 and 25 in the Agreed Statement of Facts. The Member admitted that she falsified a record relating to her practice. In her role as a RN, employed by the Facility, the Member had access to the Benefit Plan which also covered her spouse. Among other things the Benefit Plan provided 100% reimbursement for up to 4 pairs of support stockings annually per person up to a maximum of \$200.00/pair. The support stockings had to be prescribed by a physician and be medically necessary for the treatment of disease or injury. Claims were to be submitted using a paper claim form with a receipt and prescription attached. Claim forms had to be signed by the employee submitting the claim. The claim form included a declaration which was to be signed by the employee submitting the claim. The declaration read as follows "I certify that all goods and services being claimed have been received by me and/or my spouse or dependents. I certify that the information in this form is true and complete". The Member admitted to signing this form and submitting false claims, collecting a total of \$4,695.00. As a part of this financial scheme the Member also admitted to splitting the reimbursement with the porter, Valle in conjunction with him falsifying the SunLife benefit claim form.

Allegation #4 in the Notice of Hearing is supported by 8-14 and 26 in the Agreed Statement of Facts. The Member admitted to committing an act of professional misconduct. As part of her employment with the Facility the Member was eligible for a Benefit Plan which provided her and her spouse 100% coverage for certain items such as support stockings. From the years 2012-2016, the Member signed falsified benefit claim forms for support stockings. These claim forms contained a declaration statement that read as follows: "I certify that all goods and services being claimed have been received by me and/or my spouse or dependents. I certify that the information in this form is true and complete". Over four years, the Member collected an amount of \$4,695.00 through false claims. The Member signed and acknowledged on the claim form "I certify that the information in this form is true". The Member would repeatedly sign these claim forms and as a result, would financially benefit based on this false statement. The Member knew or ought to have known that she was misleading SunLife through the false declaration statement. During the Facility's Investigation the Member initially claimed that she would provide Valle with her financial reimbursement from SunLife and would receive support hose product in return. She subsequently admitted that she did not receive any product from Valle and would split the reimbursement from the false claims with him.

With respect to allegation #5, the Panel finds that the Member's conduct in submitting false claims under the Facility's Benefit Plan was clearly relevant to the practice of nursing and was unprofessional as it demonstrated a serious and persistent disregard for her professional obligations as the Member failed to meet the *Professional Standards* and *Ethics* Standard of the profession. The Member did not role-model appropriate attributes consistent with the nursing profession. The Member's actions lacked integrity and truthfulness. Having trust in the nursing profession is paramount, when trust is broken it fractures the past, current and future nurse-client relationship. It is important to note that the Member only had access to these benefits due to her professional role within the Facility.

The Panel also finds that the Member's conduct was dishonourable. It demonstrated an element of dishonesty and deceit through a period of four years of repeatedly submitting false claims to the Benefit Plan for her own personal financial gain. The Member admitted to participating in a financial scheme by splitting her SunLife reimbursement with Valle and she also demonstrated deceit as neither she nor her spouse actually required the use of support stockings for medically necessary purposes for treatment of disease or injury.

### **Penalty**

College Counsel and the Member's Counsel advised the Panel that a Joint Submission on Order had been agreed upon. The Joint Submission on Order requests that this Panel make an order as follows:

1. Requiring the Member to appear before the Panel to be reprimanded within 3 months of the date that this Order becomes final.
2. Directing the Executive Director to suspend the Member's certificate of registration for 4 months. This suspension shall take effect from the date that this Order becomes final and shall continue to run without interruption as long as the Member remains in a practicing class.
3. Directing the Executive Director to impose the following terms, conditions, and limitations on the Member's certificate of registration:
  - a) The Member will attend 2 meetings with a Regulatory Expert (the "Expert"), at her own expense and within 6 months from the date that this Order becomes final. To comply, the Member is required to ensure that:
    - i. The Expert has expertise in nursing regulation and has been approved by CNO in advance of the meetings;

- ii. At least 5 days before the first meeting, or within another timeframe approved by the Expert, the Member provides the Expert with a copy of:
  - 1. the Panel's Order,
  - 2. the Notice of Hearing,
  - 3. the Agreed Statement of Facts,
  - 4. this Joint Submission on Order, and
  - 5. if available, a copy of the Panel's Decision and Reasons;
- iii. Before the first meeting, the Member reviews the following CNO publications and completes the associated Reflective Questionnaires, online learning modules and decision tools (where applicable):
  - 1. *Code of Conduct*,
  - 2. *Professional Standards*, and
  - 3. *Ethics*;
- iv. At least 5 days before the first meeting, or within another timeframe approved by the Expert, the Member provides the Expert with a copy of the completed Reflective Questionnaires;
- v. The subject of the sessions with the Expert will include:
  - 1. the acts or omissions for which the Member was found to have committed professional misconduct,
  - 2. the potential consequences of the misconduct to the Member's patients, colleagues, profession and self,
  - 3. strategies for preventing the misconduct from recurring,
  - 4. the publications, questionnaires and modules set out above, and
  - 5. the development of a learning plan in collaboration with the Expert;
- vi. Within 30 days after the Member has completed the last session, the Member will confirm that the Expert forwards their report to CNO, in which the Expert will confirm:
  - 1. the dates the Member attended the sessions,
  - 2. that the Expert received the required documents from the Member,
  - 3. that the Expert reviewed the required documents and subjects with the Member, and

4. the Expert's assessment of the Member's insight into her behaviour;
- vii. If the Member does not comply with any one or more of the requirements above, the Expert may cancel any session scheduled, even if that results in the Member breaching a term, condition or limitation on her certificate of registration;
- b) For a period of 12 months from the date the Member returns to the practice of nursing, the Member will notify her employer(s) of the decision. To comply, the Member is required to:
  - i. Ensure that CNO is notified of the name, address, and telephone number of all employer(s) within 14 days of commencing or resuming employment in any nursing position;
  - ii. Provide her employer(s) with a copy of:
    1. the Panel's Order,
    2. the Notice of Hearing,
    3. the Agreed Statement of Facts,
    4. this Joint Submission on Order, and
    5. a copy of the Panel's Decision and Reasons, once available;
  - iii. Ensure that within 14 days of the commencement or resumption of the Member's employment in any nursing position, the employer(s) forward(s) a report to CNO, in which it will confirm:
    1. that they received a copy of the required documents, and
    2. that they agree to notify CNO immediately upon receipt of any information that the Member has breached the standards of practice of the profession.
4. All documents delivered by the Member to CNO, the Expert, or her employer(s) will be delivered by verifiable method, the proof of which the Member will retain.

### **Penalty Submissions**

Submissions were made by College Counsel.

The aggravating factor in this case was:

- The Member was paid \$4,695.00 for reimbursement of falsified claims.

The mitigating factors in this case were:

- The Member has acknowledged her mistakes and accepted responsibility by entering into an Agreed Statement of Facts and a Joint Submission on Order with the College;
- The Member has demonstrated a willingness to make amends which Counsel submitted is a positive sign for rehabilitation;
- The plea also saves the College the time, expense and effort to prove this case; and
- The Member has expressed her remorse and indicated that she would not repeat this misconduct again.

The proposed penalty provides for general deterrence through the 4-month suspension of the Member's certificate of registration. It communicates a message to other members of the profession that similar conduct will attract a significant penalty sanction. General deterrence is an important element given the significant number of pending similar cases before the Discipline Committee. It will alert other members of the profession that this misconduct is taken seriously and will not be tolerated.

The proposed penalty provides for specific deterrence through the oral reprimand and the 4-month suspension of the Member's certificate of registration as it demonstrates to the Member the serious nature of her misconduct. The length of suspension will hopefully deter the Member from repeating this misconduct in the future.

The proposed penalty provides for remediation and rehabilitation through the 2 meetings with a Regulatory Expert. The Member will also review the College's publications and complete Reflective Questionnaires, online learning modules, decision tools and online participation forms, including the development of a learning plan in collaboration with the Expert. These requirements will help to deepen the Member's understanding and strengthen her insight of her misconduct and will help to ensure that this conduct is not repeated in her future practice.

Overall, the public is protected because this process will assist the Member in gaining additional insight and knowledge into her practice. This will inform her future practice. The public is also protected through the 12 months of employer notification requirements whereby the Member is required to notify her employers of the Panel's decision. This penalty sends a message to the public about the profession's ability to self-regulate and to ensure this conduct is not repeated in her future practice. The public must have confidence that what the member says is valid and true, even in the absence of direct patient care.

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

*CNO v. Verde-Balayo* (Discipline Committee, 2021): In this case, the hearing proceeded by way of a partial admission and an Agreed Statement of Facts on some of the allegations and a partial Joint Submission on Order. Similarities to the case before this Panel includes the member making fraudulent claims under the employee group benefit plan. The member submitted false claims under the benefit plan and was paid \$7,982.50. The member did not make any

restitution. The penalty included an oral reprimand, a 4-month suspension of the member's certificate of registration, 2 meetings with a Regulatory Expert and 12 months of employer notification.

*CNO v. Velasquez* (Discipline Committee, 2021): In this case, the hearing proceeded by way of an Agreed Statement of Facts and a Joint Submission on Order. Similarities to the case before this Panel include the member making fraudulent claims under her employee group benefit plan. The member submitted false claims under the benefit plan and was paid \$11,080.00. The member paid restitution in full. 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.

*CPSO v. Moore* (Divisional Court, 2003): The physician involved in this case pleaded guilty to defrauding OHIP of \$75,000.00 over a period of three years. Restitution was made in full. The penalty included an oral reprimand, a 12-month suspension of the member's certificate of registration, which would be reduced to 6 months if certain conditions were met. College Counsel submitted that this case indicates that general deterrence can be given special emphasis if there is a widespread problem in the profession.

College Counsel submitted that this is a negotiated joint submission between the parties and urged the Panel to accept it unless the Panel is of the view that making the penalty order would bring the administration of justice into disrepute or be contrary to the public interest. College Counsel submitted that the terms of the JSO are reasonable and appropriate and is consistent with recent decisions of the Discipline Committee involving benefit fraud claims. College Counsel submitted that there have been prior cases presented with similar misconduct and the same penalty has been accepted.

Submissions were made by the Member's Counsel.

The Member's Counsel submitted to the Panel that it should accept the JSO and that the penalty is within the appropriate range. The Panel should accept the JSO unless the proposed penalty would bring the administration of justice into disrepute or be contrary to the public interest. This is undeniably a high threshold. The Member's Counsel submitted that the JSO was the product of the adversarial process with the College and that the Member was represented by experienced and competent Counsel. The Panel was urged to consider these factors when deliberating on the proposed penalty.

### **Penalty Decision**

The Panel accepts the Joint Submission on Order and accordingly orders:

1. The Member is required to appear before the Panel to be reprimanded within 3 months of the date that this Order becomes final.

2. The Executive Director is directed to suspend the Member's certificate of registration for 4 months. This suspension shall take effect from the date that this Order becomes final and shall continue to run without interruption as long as the Member remains in a practicing class.
3. The Executive Director is directed to impose the following terms, conditions, and limitations on the Member's certificate of registration:
  - a) The Member will attend 2 meetings with a Regulatory Expert (the "Expert"), at her own expense and within 6 months from the date that this Order becomes final. To comply, the Member is required to ensure that:
    - i. The Expert has expertise in nursing regulation and has been approved by CNO in advance of the meetings;
    - ii. At least 5 days before the first meeting, or within another timeframe approved by the Expert, the Member provides the Expert with a copy of:
      1. the Panel's Order,
      2. the Notice of Hearing,
      3. the Agreed Statement of Facts,
      4. this Joint Submission on Order, and
      5. if available, a copy of the Panel's Decision and Reasons;
    - iii. Before the first meeting, the Member reviews the following CNO publications and completes the associated Reflective Questionnaires, online learning modules and decision tools (where applicable):
      1. *Code of Conduct*,
      2. *Professional Standards*, and
      3. *Ethics*;
    - iv. At least 5 days before the first meeting, or within another timeframe approved by the Expert, the Member provides the Expert with a copy of the completed Reflective Questionnaires;
    - v. The subject of the sessions with the Expert will include:
      1. the acts or omissions for which the Member was found to have committed professional misconduct,
      2. the potential consequences of the misconduct to the Member's patients, colleagues, profession and self,
      3. strategies for preventing the misconduct from recurring,
      4. the publications, questionnaires and modules set out above, and

5. the development of a learning plan in collaboration with the Expert;
  - vi. Within 30 days after the Member has completed the last session, the Member will confirm that the Expert forwards their report to CNO, in which the Expert will confirm:
    1. the dates the Member attended the sessions,
    2. that the Expert received the required documents from the Member,
    3. that the Expert reviewed the required documents and subjects with the Member, and
    4. the Expert's assessment of the Member's insight into her behaviour;
  - vii. If the Member does not comply with any one or more of the requirements above, the Expert may cancel any session scheduled, even if that results in the Member breaching a term, condition or limitation on her certificate of registration;
- b) For a period of 12 months from the date the Member returns to the practice of nursing, the Member will notify her employer(s) of the decision. To comply, the Member is required to:
- i. Ensure that CNO is notified of the name, address, and telephone number of all employer(s) within 14 days of commencing or resuming employment in any nursing position;
  - ii. Provide her employer(s) with a copy of:
    1. the Panel's Order,
    2. the Notice of Hearing,
    3. the Agreed Statement of Facts,
    4. this Joint Submission on Order, and
    5. a copy of the Panel's Decision and Reasons, once available;
  - iii. Ensure that within 14 days of the commencement or resumption of the Member's employment in any nursing position, the employer(s) forward(s) a report to CNO, in which it will confirm:
    1. that they received a copy of the required documents, and
    2. that they agree to notify CNO immediately upon receipt of any information that the Member has breached the standards of practice of the profession.
4. All documents delivered by the Member to CNO, the Expert, or her employer(s) will be delivered by verifiable method, the proof of which the Member will retain.



### **Reasons for Penalty Decision**

The Panel understands that the penalty ordered should protect the public and enhance public confidence in the ability of the College to regulate nurses. This is achieved through a penalty that addresses specific deterrence, general deterrence and, where appropriate, rehabilitation and remediation. The Panel also considered the penalty in light of the principle that joint submissions should not be interfered with lightly.

The Panel concluded that the proposed penalty is reasonable and in the public interest. The Member has co-operated with the College and, by agreeing to the facts and a proposed penalty, has accepted responsibility.

The Panel finds that the penalty satisfies the principles of specific and general deterrence, rehabilitation and remediation, and public protection. Specific and general deterrence is met through the oral reprimand and the suspension of the certificate of registration. Rehabilitation and remediation are met through meetings with the Regulatory Expert, completion of a learning plan and review of key professional standards that were breached. The public should feel confident that the penalty adequately provides element of protection. The penalty allows the Member to step away from their practice, reflect, learn and grow as a person as well as a nursing professional. The penalty sends a strong message to the nursing profession and the public that benefit fraud is taken seriously and it amounts to professional misconduct. When nurses act in a deceitful manner, trust is broken. The public needs to be able to trust that the nursing profession upholds honesty and high ethical integrity.

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

I, Jane Mathews, 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.