

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

PANEL:	Carly Gilchrist, RPN	Chairperson
	Andrea Arkell	Public Member
	Neil Hillier, RPN	Member
	Sandra Larmour	Public Member
	Mary MacNeil, RN	Member

BETWEEN:

COLLEGE OF NURSES OF ONTARIO)	<u>NICK COLEMAN</u> for
)	College of Nurses of Ontario
- and -)	
)	
DUEBEL BELCENA)	<u>REBECCA YOUNG</u> for
Registration No. 10426229)	Duebel Belcena
)	
)	<u>CHRISTOPHER WIRTH</u>
)	Independent Legal Counsel
)	
)	Heard: June 30, 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 30, 2022, via videoconference.

The Allegations

The allegations against Duebel Belcena (the “Member”) as stated in the Notice of Hearing dated May 2, 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 Trillium Health Partners – Credit Valley Hospital in Mississauga, 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 2016-2019, you:

- a. submitted false claims under the Facility's employee group benefit plan (the "Benefit Plan"); and/or
 - b. forged receipts in relation to false claims under 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 2016-2019, 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 2016-2019, you:
 - a. submitted false claims under the Benefit Plan; and/or
 - b. forged receipts in relation to 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 2016-2019, you:
 - a. submitted false claims under the Benefit Plan; and/or
 - b. forged receipts in relation to 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 2016-2019, you:
 - a. submitted false claims under the Benefit Plan; and/or
 - b. forged receipts in relation to false claims under the Benefit Plan.

Member's Plea

The Member admitted the allegations set out in paragraphs 1(a), (b), 2, 3(a), (b), 4(a), (b), 5(a) and (b) 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. Duebel Belcena (the "Member") obtained a Bachelor of Nursing degree from the University of New Brunswick (through a collaborative program with Humber College Institute of Technology and Advanced Learning) in 2010.
2. The Member registered with the College of Nurses of Ontario ("CNO") as a Registered Nurse ("RN") on August 9, 2010.
3. Between October 10, 2010 and February 26, 2019, the Member was employed as a full time staff nurse in the Intensive Care Unit at Trillium Health Partners – Credit Valley Hospital in Mississauga, Ontario (the "Facility"). His employment was terminated on February 26, 2019, as a result of the incidents described below.

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. Sun Life Insurance ("Sun Life") administers the Benefit Plan on behalf of the Facility.
5. In relation to extended health care, the Benefit Plan provided the Member with, among other things, coverage for paramedical services, including chiropractic, massage therapy, naturopath, orthotics, physiotherapy and podiatry services. These claims could be submitted online through Sun Life's e-claim portal.

INCIDENTS RELEVANT TO ALLEGATIONS OF PROFESSIONAL MISCONDUCT

6. From 2016 to 2019, the Member submitted false claims under the Benefit Plan and received \$34,667.45 in relation to the false claims.
7. In February 2019, Sun Life contacted the Facility regarding fraudulent claims submitted by the Member under the Benefit Plan. In particular, in December 2018-January 2019, Sun

Life conducted an audit of 8 physiotherapy claims the Member submitted online. When the physiotherapist told Sun Life that the services claimed had not been provided, Sun Life contacted the Member to request receipts for the claims in question. The Member responded by providing receipts which Sun Life determined were fraudulent.

8. Sun Life then initiated an investigation into the Member's claim history. Sun Life contacted the practitioners named in the claims to verify that the Member received the services and/or products as claimed. Sun Life received responses from multiple practitioners that orthotic, chiropractic, massage therapy, naturopath, physiotherapy and podiatry services were never provided to the Member.
9. On January 30, 2019, Sun Life asked the Member to provide receipts for all the claims he submitted online within the past 12 months. The Member responded to Sun Life on February 8, 2019, admitting to submitting false claims and expressing that he wanted to pay back the money he received from Sun Life for those claims.
10. Sun Life's investigation concluded that the Member submitted the following false claims:
 - 481 false claims for services dated from April 4, 2016 to January 15, 2019 at Physiomed Dixie in Mississauga. These false claims resulted in the Member receiving \$33,480 in relation to chiropractic, massage therapy, naturopath, physiotherapy and podiatry services not actually provided. As noted above, the Member also submitted 12 forged receipts in response to Sun Life's initial inquiry.
 - 4 false claims for services dated from November 3, 2016 to November 15, 2018 at The Orthotics Centre in Mississauga. These false claims resulted in the Member receiving \$1,187.45 in relation to orthotics which were not actually provided.
11. The Facility interviewed the Member in relation to Sun Life's investigation on February 15, 2019. In the interview, the Member admitted to the misconduct, including submitting false claims online and forging receipts.
12. The Member stated that he was very remorseful and believed that he had probably ruined his whole career. The Member further stated that he would like to resign, instead of being terminated. After the meeting, however, the Member provided the Facility with a letter rescinding his offer of resignation.
13. The Facility terminated the Member's employment in relation to this conduct on February 25, 2019.
14. The Member reimbursed Sun Life in the amount of \$34,667.45 on or around February 28, 2019 in relation to the false claims. The police contacted the Member but did not lay any charges in relation to this conduct.

15. If the Member were to testify, he would express remorse over his choices. The Member would further testify that he takes full responsibility for his actions and understands that he is accountable to the profession.

BENEFIT FRAUD CASES

16. To date, a total of 52 benefit 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 false claims involved range from under \$500 to over \$45,000.

CNO STANDARDS

Professional Standards

17. 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.
18. 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.
19. 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

20. 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.
21. 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.

22. CNO's *Ethics Standard* also provides, in relation to truthfulness, that truthfulness means speaking and acting without intending to deceive.
23. The Member admits and acknowledges that he contravened CNO's *Professional Standards* and *Ethics Standard* when he submitted false claims under the Benefit Plan from 2016 to 2019, and when he submitted forged receipts in relation to some of the false claims in 2019.

ADMISSIONS OF PROFESSIONAL MISCONDUCT

24. The Member admits that he committed the acts of professional misconduct as alleged in paragraph 1 of the Notice of Hearing in that he contravened a standard of practice of the profession or failed to meet the standards of practice of the profession, as described in paragraphs 6 to 14 and 17 to 23 above.
25. The Member admits that he committed the acts of professional misconduct as alleged in paragraph 2 of the Notice of Hearing in that he misappropriated property from a workplace, as described in paragraphs 6 to 14 above.
26. The Member admits that he committed the acts of professional misconduct as alleged in paragraph 3 of the Notice of Hearing in that he falsified a record relating to his practice, as described in paragraphs 6 to 14 above.
27. The Member admits that he committed the acts of professional misconduct as alleged in paragraph 4 of the Notice of Hearing in that he signed or issued, in his professional capacity, a document that he knew or ought to have known contained a false or misleading statement, as described in paragraphs 6 to 14 above.
28. The Member admits that he committed the acts of professional misconduct as alleged in paragraph 5 of the Notice of Hearing in that he 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 dishonourable and unprofessional, as described in paragraphs 6 to 14 and 17 to 23 above.

Submissions on liability were made by College Counsel.

College Counsel submitted the *CNO v. Verde-Balayo* (Discipline Committee, 2021) case as the first case in a series of benefit fraud cases being heard by the Discipline Committee. The allegations in *Verde-Balayo* were similar to the case before this Panel. In *Verde-Balayo* arguments were presented whether the benefit fraud was related to the member's practice and if the submissions of false claims were done as part of the member's professional capacity. That panel found that the conduct was related to the member's practice and was done as part of the member's professional capacity. College

Counsel submitted that all panels hearing benefit fraud matters have, to date, accepted the findings in *Verde-Balayo*, on all five allegations related to the fraud, as precedent.

With regard to allegations #5(a) and (b), College Counsel submitted that the Member has admitted, and the College has agreed, that the Member's conduct was relevant to the practice of nursing and that, having regard to all the circumstances, would reasonably be regarded by members as unprofessional and dishonourable conduct. College Counsel also reviewed the different meanings accorded to the disjunctive terms of unprofessional, dishonourable and disgraceful conduct and requested the Panel make a finding of unprofessional and dishonourable conduct only.

Submissions on liability were made by the Member's Counsel.

The Member's Counsel agreed with the submissions of College Counsel and asked the Panel to accept the admissions as stated 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(a), (b), 2, 3(a), (b), 4(a), (b), 5(a) and (b) of the Notice of Hearing. As to allegations 5(a) and (b), 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.

Allegations #1(a) and (b) in the Notice of Hearing are supported by paragraphs 6 to 14 and 17 to 24 in the Agreed Statement of Facts. The Member admitted to submitting false claims under the Trillium Health Partners – Credit Valley Hospital's (the "Facility") employee group benefit plan (the "Benefit Plan") from 2016 to 2019 and to receiving \$34,667.45 in relation to those false claims. In particular, at the start of the Sun Life Insurance ("Sun Life") investigation in February 2019, an audit of eight physiotherapy claims that the Member submitted online revealed that the physiotherapy services claimed had not been provided. When Sun Life contacted the Member to request receipts for the claims in question, the Member responded by providing twelve forged receipts in relation to the false claims. Along with the twelve forged receipts, the Sun Life investigation concluded that the Member submitted a total of 485 false insurance claims from 2016-2019. It was only as a result of the investigation and because he was caught that the Member stopped submitting false claims. The Member had no regard for his professional obligations as set out in the College's *Professional Standards* and *Ethics Standard*. The Member did not show integrity. The Member was not truthful and

his conduct did not promote respect and trust for the nursing profession. The Member failed to uphold the professional standards the public expects of nurses. The Panel acknowledged that the Member took accountability for his actions by admitting, eventually, to his misconduct and also reimbursing the fraudulent funds to Sun Life. However, submitting 485 false claims and forging additional receipts during the investigation resulting in fraud of \$34,667.45 was a deplorable act of professional misconduct that not only failed to meet the standards of the profession, but which clearly contravened the standards of practice.

Allegation #2 in the Notice of Hearing is supported by paragraphs 6 to 14 and 25 in the Agreed Statement of Facts. The Member admitted to committing this act of professional misconduct, being the misappropriation of property. The Member misappropriated property from the Facility by submitting false claims under the Facility's Benefit Plan from 2016 to 2019 which allowed him to receive a total of \$34,667.45 in relation to those false claims. During the investigation, Sun Life contacted the practitioners named in the claims to verify that the Member received the services and/or products as claimed. Sun Life received responses from multiple practitioners that orthotic, chiropractic, massage therapy, naturopath, physiotherapy and podiatry services were never provided to the Member. The Member received \$33,480.00 in relation to chiropractic, massage therapy, naturopath, physiotherapy and podiatry services not actually provided. Four false claims for orthotic services resulted in an additional \$1,187.45 in relation to orthotics which were not actually provided. Receiving money with respect to false benefit claims constitutes misappropriation of property.

Allegations #3(a) and (b) in the Notice of Hearing are supported by paragraphs 6 to 14 and 26 in the Agreed Statements of Facts. The Member admitted to committing this act of professional misconduct, when he falsified a record related to his practice. On January 30, 2019, Sun Life asked the Member to provide receipts for all the claims he submitted online within the past twelve months. In particular, an audit of eight physiotherapy claims that the Member submitted online revealed that the physiotherapy services claimed had not been provided. When Sun Life contacted the Member to request receipts for the claims in question, the Member responded by providing additional fraudulent receipts in relation to the false claims under the Benefit Plan. On February 8, 2019, in response to the Sun Life investigation, the Member admitted to submitting false claims. The investigation revealed that the Member submitted a total of 485 false insurance claims from 2016 to 2019. Accordingly, the facts support the allegation that the Member falsified a record related to his practice since the Member only had access to the Benefit Plan as a result of his employment as a nurse.

Allegations #4(a) and (b) in the Notice of Hearing are supported by paragraphs 6 to 14 and 27 in the Agreed Statements of Facts. The Member admitted to committing this act of professional misconduct, when he signed, in his professional capacity, a document that he knew or ought to have known contained a false or misleading statement. The Member signed 485 false insurance claim forms as well as another twelve forged receipts in response to Sun Life's initial inquiry. The false benefit claims included orthotic, chiropractic, massage therapy, naturopath, physiotherapy and podiatry services that were not actually provided or received. The Member admitted the claims were false and thereby was aware that the claims were false and misleading when he signed them. As well, the Member only had access to the insurance claim forms because they were part of the Benefit Plan offered as a result of his employment as a nurse. Therefore, when the member signed the documents, he was doing so

in his professional capacity from his employment as a nurse. Accordingly, the facts support the allegation that the Member signed, in his professional capacity, a document which contained a false or misleading statement.

With respect to allegations #5(a) and (b), the Panel finds that the Member's conduct in receiving \$34,667.45 from the Facility's Benefit Plan by submitting false benefit claims over three years and then submitting another twelve false receipts when questioned by investigators was blatantly unprofessional. This is supported in paragraph 6 to 14, 17 to 23 and 28 in the Notice of Hearing. The Member's conduct was relevant to the practice of nursing. The *Professional Standards* require nurses to be accountable, be truthful and conduct themselves in a way that ensures respect for the nursing profession. Nurses are also required to have integrity. The *Ethics Standard* require nurses to be truthful and act without intending to deceive. The Member ignored these standards over multiple years when he submitted the false insurance claims and also when he forged receipts in relation to the false claims under the Benefit Plan. The Member's conduct demonstrated a serious and persistent disregard for his professional obligations and an obvious failure to live up to the standards expected of him as a nurse.

The Panel also finds that the Member's conduct was dishonourable. It demonstrated an element of dishonesty and deceit through repeated submission of false claims over three years and also when he submitted another twelve forged receipts when questioned in February 2019. The Member's expression of remorse makes it clear that he knew or ought to have known that his conduct was unacceptable and fell below the standards of a professional. The Member only acknowledged accountability for his actions and showed remorse once he was caught during the investigation. Between 2016 and 2019, his remorse and accountability were conspicuously absent. The Member's conduct showed a clear moral failing.

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 5 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 his 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 his 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 his 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 his 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 his 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 his 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 factors in this case were:

- The Member's conduct was serious and blatantly dishonest, submitting 485 false claims over many years;
- There was no justification for the Member's actions;
- The Member simply enriched himself under the Benefit Plan by claiming for services he had not received nor was entitled to

- The Member's misappropriation involved a significant dollar amount; and
- When questioned by Sun Life the Member took the further step of forging receipts to justify the false claims.

The mitigating factors in this case were:

- The Member admitted to his misdeeds and professional misconduct and entered into an Agreed Statement of Facts and a Joint Submission on Order with the College; and
- The Member paid full restitution.

College Counsel submitted *CPSO v. Moore* (Divisional Court, 2003) for consideration by the Panel. This case was an appeal case which held that particular emphasis on general deterrence may be warranted for penalty when there is a widespread problem in the profession. The *Moore* case involved false OHIP billings. College Counsel submitted that this case is an example where general deterrence is an important consideration in determining penalty.

College Counsel submitted that protection of the public is the primary consideration when considering penalty. This is achieved through specific and general deterrence as well as rehabilitation and remediation of the Member.

The proposed penalty provides for specific deterrence through the oral reprimand and the 5-month suspension of the Member's certificate of registration, which sends a message to the Member to not engage in similar conduct in the future.

The proposed penalty provides for general deterrence through the 5-month suspension of the Member's certificate of registration, which sends a message to other members of the profession to not engage in similar conduct.

The proposed penalty provides for rehabilitation and remediation through the 2 meetings with a Regulatory Expert, which will help the Member understand the nature of his conduct so it is not repeated. The meetings will also ensure that the Member understands, as a member of a regulated profession, that nurses occupy a position of trust whereby what the Member says, does and documents, especially with regard to patient care is trustworthy and reliable. While this case does not involve patient care, it does indicate that the Member will lie and falsify documents. Such conduct leads to a crisis of trust particularly because the Member belongs to a regulated profession. It is important the Member understands his conduct as it relates to his status as a member of the nursing profession and that any professional misconduct undermines that position of trust.

Overall, the public is protected through the 12 months of employer notification, which will protect the public by ensuring that the Member's practice is monitored once he returns to practice.

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): This case involved a similar scheme whereby the fraudulent claims were in the amount of \$7,982.50 and the member did not make 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): This case proceeded by way of an Agreed Statement of Facts and a Joint Submission on Order. It involved fraudulent claims in the amount of \$11,080.00 and 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.

Other than the length of the suspension, the terms of the penalty in the above noted cases were identical. A distinguishing feature between the two cases is that restitution was paid in *Velasquez* whereas restitution was not paid in *Verde-Balayo*. College Counsel submitted that in the last twelve cases of similar misconduct heard by the Discipline Committee, the payment or non-payment of restitution has been the distinguishing factor. Where restitution was paid, the panels have issued 3-month suspensions. Where restitution was not paid, the panels have issued 4-month suspensions. Additionally, the previous twelve cases involved fraudulent claims between \$2,000.00 and \$12,000.00.

College Counsel submitted that the case before this Panel has unique features that justify the 5-month suspension. The amount of false claims submitted were \$34,667.45. When contacted by investigators, the Member forged receipts to substantiate the previously submitted false claims. College Counsel submitted that these aggravating factors justify a longer suspension. College Counsel also submitted that panels may need to impose a range of penalties considering that the fraudulent claims in the fifty-two cases before the Discipline Committee range between \$500.00 - \$45,000.00. Panels may need to adjust the duration of suspensions to allow for various dollar amounts misappropriated. When all cases have been heard, there should be a range of proportionality between the conduct and the penalty imposed. Having said that, College Counsel submitted that the Panel needs to decide the penalty based on the features of this case and not the features of all cases.

Submissions were made by the Member's Counsel.

The Member's Counsel submitted the following mitigating factors which are significant in this case:

- The Member fully repaid the amount misappropriated;
- The Member was terminated from a job he had held for nine years, was cautioned by the police and also faces punishment and reputational harm;
- The Member has no discipline history with the College;
- The Member has cooperated with the investigation and taken responsibility for his conduct by entering into an Agreed Statement of Facts and a Joint Submission on Order with the College;
- Early in the investigation when approached by the employer, the Member admitted and expressed his remorse; and

- The Joint Submission on Order was agreed to with the College and all terms address the requirements of penalty.

The Member's Counsel submitted that there is also a duty by the Panel to accept the Joint Submission on Order unless the terms of the penalty imposed would bring the administration of justice into disrepute.

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 5 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 his 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 his 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 his 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 his 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 his 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 his 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 agreed that the deceit level in this case was higher than in cases, of similar misconduct, heard to date. The Member misappropriated \$34,667.45, a significant sum over multiple years. When asked for proof of the insurance claims, the Member instead exacerbated his wrongdoing by submitting forged receipts. As well, the Member was purposeful and deliberate as he plotted and schemed to implicate multiple other legitimate healthcare providers in his deceitful actions. He showed moral failing with his deceit and greed. The Panel agreed with the longer suspension of 5 months. The Panel also recognizes the importance of trust that members of the public have in the nursing profession. Misconduct such as insurance fraud threatens this foundation of trust. The penalty should reinforce that this type of misconduct is unacceptable and will not be tolerated by the College and will thereby also deter similar misconduct by members of the profession in the future.

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. The proposed penalty provides for general deterrence through the 5-month suspension of the Member's certificate of registration. The proposed penalty provides for specific deterrence through the oral reprimand and the 5-month suspension of the Member's certificate of registration. The proposed penalty provides for remediation and rehabilitation through the 2 meetings with a Regulatory Expert. The 12 months of employer

notification will ensure the public is protected by the ongoing monitoring following the Member's return to practice.

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

I, Carly Gilchrist, RPN, sign this decision and reasons for the decision as Chairperson of this Discipline Panel and on behalf of the members of the Discipline Panel.