

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

PANEL:	Carly Gilchrist, RPN	Chairperson
	Mary MacNeil, RN	Member
	Ian McKinnon	Public Member
	Patricia Sullivan, RN	Member

BETWEEN:

COLLEGE OF NURSES OF ONTARIO)	<u>NICK COLEMAN</u> for
)	College of Nurses of Ontario
- and -)	
)	
CARMEN VERDE-BALAYO)	<u>PHILIP B. ABBINK</u> for
REGISTRATION NO. 0213520)	Carmen Verde-Balayo
)	
)	<u>CHRISTOPHER WIRTH</u>
)	Independent Legal Counsel
)	
)	Heard: June 8, 2021

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 8, 2021, via videoconference. Carmen Verde-Balayo (the “Member”) was present and represented.

The Allegations

The allegations against the Member as stated in the Notice of Hearing dated May 27, 2021 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 2012-2016, 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 2012-2016, 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 2012-2016, 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 2012-2016, 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 2012-2016, you submitted false claims under the Benefit Plan.

Member's Plea

The Member admitted the allegations set out in paragraphs 1, 2 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.

The Member denied the allegations set out in paragraphs 3 and 4 in the Notice of Hearing.

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, not including attachments as follows:

THE MEMBER

1. Carmen Verde-Balayo (the "Member") registered with the College of Nurses of Ontario ("CNO") as a Registered Nurse ("RN") on August 13, 2002. She is currently employed at Sunnybrook Health Sciences Centre – Bayview Campus.
2. The Member was employed as a full-time staff nurse at St. Michael's Hospital in Toronto (the "Facility") from July 2, 2002 to February 13, 2017. During this time, the Member was represented by the Ontario Nurses' Association ("ONA"), which represents approximately 1,900 registered nurses at the Facility.
3. The Member's employment at the Facility was terminated on February 13, 2017, after the Facility concluded that the Member had made fraudulent claims under its employee group benefit plan (the "Benefit Plan"). At the Member's request, the termination was converted to a resignation.
4. The Member's manager advised there were no issues regarding the Member's practice or conduct prior to the concerns regarding the claim submitted to the Benefit Plan.

BENEFIT PLAN

5. The Benefit Plan is a group insurance policy which provides coverage for extended health care, dental, and other insurance benefits. The employees covered by the Benefit Plan pay a partial premium for the coverage. 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") is the Plan Administrator on behalf of the Facility.
6. The Member, as an RN at the Facility represented by the ONA, was a member of the Benefit Plan through the collective agreement between ONA and the Facility. The collective agreement consists of a Central Hospital Agreement as well as a Local Agreement between ONA and the Facility. ONA represents only registered nurses and not employees in other positions at the Facility.
7. The Benefit Plan is provided to full-time nurses employed at the Facility, pursuant to the ONA collective agreement. A copy of the Benefit Plan booklet, for nurses hired before January 1, 2006, is attached at **Tab 1** [pp.80-106].

8. Part-time and casual registered nurses are not eligible for extended health benefits under the Benefit Plan, but instead are paid a percentage premium in lieu of benefits.
9. 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, including “compression host” [sic] (compression hose, also known as support stockings). In particular, and subject to limits set by Sun Life, the Benefit Plan provided 100% reimbursement for up to 4 pairs of support stockings annually (per person) that were “pressure gradient hose with 20-40mm compression”, up to a maximum of \$200/pair. To be eligible, the support stockings had to be prescribed by a physician, and had to be medically necessary for the treatment of a disease or injury.
10. 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]

If this claim is being made on behalf of my spouse and/or dependents. I am authorized to disclose information about them,

for the purposes of underwriting, administering and adjudicating claims. I confirm that my spouse and/or dependents, if any, also authorize Sun Life Assurance Company of Canada ('Sun Life') to disclose information about their claims to me for the purposes of assessing and paying a benefit, if any, and managing my group benefits plan.

I authorize Sun Life and its reinsurers to collect, use and disclose information about me, and if applicable, my spouse and/or dependents needed for underwriting, administration and adjudicating claims under this Plan to any other organization who has relevant information pertaining to this claim including health professionals, institutions, investigative agencies and insurers. I also understand that information pertaining to this claim may be reviewed in the event this Plan is audited.

[...]

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.

If there is an overpayment, I authorize the recovery of the full amount of the overpayment from any amount payable to me under my benefit plan(s), and the collection, use and disclosure of information about this claim to other persons or organizations, including credit agencies and, where applicable, my Plan Sponsor for that purpose.

11. Other employees at the Facility were represented by the Service Employees' International Union during the relevant period of time (and by the Canadian Union of Public Employees since 2019). The full-time employees under the SEIU Collective Agreement also had extended health benefit coverage which was administered by Sun Life. Part-time and casual employees were paid a percentage premium in lieu of the benefit coverage.

FALSE CLAIMS

12. In 2012-2016, the Member submitted false claims under the Benefit Plan. She was paid \$7,982.50 in relation to those claims.
13. In or around early 2017, the Facility and Sun Life uncovered a scheme through which employees of the Facility were submitting false benefit claims, including claims for support stockings. The joint investigation conducted by the Facility and Sun Life (the "Facility's Investigation") identified a Porter at the Facility, [the Porter], as a central figure in the scheme. In short, the Facility's Investigation concluded that [the Porter] had coordinated with other Facility employees to submit false claims to Sun Life for products and services (mostly support stockings) that were never purchased. [The Porter] and the employee would then split the payments made to the employees by Sun Life with respect to the false claims. This scheme included both regulated and non-regulated employees of the Facility.
14. The Facility and Sun Life interviewed Facility employees implicated by the information it obtained about the scheme. Most of these employees explained that they would give [the Porter] a signed claim form that was only partially completed, and that he would coordinate the rest, providing false prescriptions and receipts and entering the amounts claimed on the form the employee had already signed. The employee and [the Porter] would then split the payment issued by Sun Life as reimbursement of the claim. [The Porter] did not provide any information about the Member specifically, nor did the other employees who were interviewed.

15. The Member was interviewed by the Facility and Sun Life on February 1, 2017 in respect of 10 claims for support stockings she had submitted on behalf of herself and her spouse in 2012-2016. At the interview, the Member admitted to taking part in a scheme with [the Porter] regarding benefit claims for support stockings. In particular, the Member admitted that neither she nor her spouse purchased the support stockings listed in the receipts submitted with the 10 claims.
16. The Member explained that she signed partially filled out benefit claim forms and provided them to [the Porter], who completed the forms (including the information regarding the amount of the claim). [The Porter] then took the claim forms, obtained and attached the required (false) documents (receipts and prescriptions), and submitted the claim forms to Sun Life. When the Member received the payments for the claims from Sun Life, she provided half of the money to [the Porter], and kept the other half for herself. She received no product in relation to the 10 claims.
17. The total amount paid to the Member for the ten claims in 2012-2016 was \$7,982.50. A summary of the claim prepared by Sun Life is attached at **Tab 2** [p. 51]. Copies of the claim forms signed by the Member, with the false prescriptions and receipts, are attached at **Tab 3** [pp. 21-50]. In signing these claim forms, the Member did not include the designation “RN”, or any other indication of her profession.
18. As noted above, the Facility terminated the Member’s employment on February 13, 2017 as a result of her conduct in relation to the false claims.

CNO STANDARDS

19. CNO’s *Professional Standards* provides that each nurse is accountable to the public and responsible for ensuring her or his practice and conduct meets legislative requirements and the standards of the profession. Nurses are accountable for conducting themselves in ways that promote respect for the profession.
20. The *Professional Standards* practice standard sets out an expectation that nurses meet the leadership standard by, among other things, showing integrity and role-modelling professional values, beliefs and attributes. In particular, the practice standard describes the following standards for nurses:
 - Nurses are responsible for their actions and the consequences of those actions. They’re also accountable for conducting themselves in ways that promote respect for the profession [page 4].
 - 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. All nurses, regardless of their position, have opportunities for leadership [page 10].

21. The *Ethics* practice standard sets out the ethical standards that apply to nurses. One of the ethics standards addresses commitments to the nursing profession, and in particular:
 - Nurses have a commitment to the nursing profession. 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 [page 11].

PARTIAL ADMISSIONS OF PROFESSIONAL MISCONDUCT

22. The Member admits that she breached the *Professional Standards and Ethics* standards when she submitted false claims under the Benefit Plan. Accordingly, 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 standard of practice of the profession, as described in paragraphs 12-18 above.
23. 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 the Facility, as described in paragraphs 12-18 above.
24. The Member denies that she falsified a record relating to her practice as alleged in paragraph 3 of the Notice of Hearing. In particular, the Member acknowledges that the claim forms she submitted were falsified, as described in paragraphs 12-18 above, but she submits that the records were not related to her practice.
25. The Member also denies 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 alleged in paragraph 4 of the Notice of Hearing. In particular, the Member acknowledges that the claim forms she signed and issued contained statements that were false and misleading, as described in paragraphs 12-18 above, but she submits the documents were not signed or issued in her professional capacity.
26. The Member admits that she committed the acts of professional misconduct as alleged in paragraph 5 of the Notice of Hearing in that she submitted false claims

under the Benefit Plan, and that this conduct was dishonourable and unprofessional, as described in paragraphs 12-18 above.

Submissions

College Counsel

College Counsel advised the Panel that this case would be a case of first impression as multiple other cases with similar allegations were being processed by the College. While a decision in this case may provide guidance for the other cases, College Counsel advised the Panel that a decision in this case should be made based only on the facts of this case alone.

College Counsel advised the Panel that there would be a partial joint submission as the Member only admitted to allegations #1, #2 and #5 in the Notice of Hearing. College Counsel stated that the Member admitted to the facts of the case in that she falsified records, but she disputes the characterization of her conduct and thereby denied allegation #3, that submitting false records was related to her practice. The Member also denied allegation #4, that the falsified records were submitted in her professional capacity. College Counsel advised the Panel that despite the Member's position, the College would be requesting that the Panel make findings for all five allegations.

With regard to allegations #1, #2 and #5 in the Notice of Hearing, College Counsel reviewed three attachments included with the Agreed Statement of Facts:

- Attachment 1: Benefits Program, Ontario Nurses Association (Hired before January 2006) (the "Benefits Program");
- Attachment 2: Summary of claims totaling \$7,982.50;
- Attachment 3: falsified prescriptions for compression hose, falsified receipts for compression hose, and claim forms the Member submitted to Sunlife Insurance for herself as well as her husband.

College Counsel submitted that the Member admitted to the facts as set out in the Agreed Statement of Facts and allegations #1, #2 and #5 in the Notice of Hearing and on this basis requested that the Panel make findings of professional misconduct. With regard to allegation #5, College Counsel submitted that the Member admitted she performed an act relevant to the practice of nursing and that her conduct was unprofessional and dishonourable. The Member did not admit that her conduct was disgraceful. College Counsel submitted professional misconduct is judged on a continuum whereby disgraceful conduct is reserved for the most serious offenses. Unprofessional misconduct involves a serious and persistent disregard for professional obligations. Dishonourable conduct involves an element of moral failing or moral turpitude such as dishonesty. In this case, the Member acted with blatant dishonesty by submitting false insurance claims to gain funds for herself which was something the Member knew or ought to have known was wrong. The fact that this conduct persisted between 2012-2016 was further evidence of a moral failing on the part of the Member. College Counsel asked

the Panel to make findings of professional misconduct that would be characterized as unprofessional and dishonourable, but not disgraceful.

With regard to allegations #3 and #4, College Counsel submitted the essence of the misconduct by the Member is based on false records and false documents and the submission of the false documents for benefit dollars. The Member admitted to misappropriating property, contravening the standards of the profession and participating in unprofessional and dishonourable conduct. College Counsel submitted that allegation #3 and #4 specifically relate to the nature of the misconduct and the means by which it was carried out i.e. the falsified claims, the attestation of claims and the employment context.

Regarding the falsified claims and attestation of claims, College Counsel submitted that the Member admitted that the claims she submitted were false. There was no true prescription for compression hose nor were compression hose purchased. College Counsel submitted that by signing the claims forms the Member verified that they were true and complete which was a verification that the Member knew was false.

Regarding the employment context, College Counsel submitted that the Member was employed as an RN and it was only by nature of her employment as an RN at the Facility that she had benefit coverage. Therefore, submissions of claims for benefit coverage were carried out in her professional capacity as a RN. The Member was employed by the Facility to work exclusively as a RN and in exchange for her nursing services and pursuant to the agreement with ONA, she was provided access to the Benefits Program. The Member had no other relationship with the Facility except as an employee and a RN with ONA. The benefit plan provided coverage to ONA members with the intent to support them in their duties as a RN. College Counsel submitted that it was in the context of this RN employee relationship that the Member submitted the false claims.

With regard to allegation #3, College Counsel submitted the definition of “relate” from the Cambridge English Dictionary which is: “to find or show the connection between two things”. College Counsel submitted that there only needs to be a connection to the Member’s practice and stated that the submission of the falsified documents were related and connected sufficiently to the Member’s practice to make a finding of professional misconduct. Allegation #3 does not specify how related the connection needs to be.

College Counsel submitted a Book of Authorities containing multiple documents for consideration by the Panel. College Counsel drew the Panel’s attention to Section 3 of the *Nursing Act, 1991, S.O. 1991, c. 32* (the “*Nursing Act*”) concerning the scope of practice of nursing and submitted that the scope of a nurse’s practice does not cease at the patient’s bedside but has a broader meaning. Nurses, including the Member, have responsibilities to the public, to the profession, to colleagues, to employers and to the regulator. The standards of the

profession deal with obligations to all these various factions and most especially to the public at large. College Counsel submitted that the broader definition of nursing practice is the operative definition that relates to the Member's submission of falsified documents. Additionally, the Member admitted she misappropriated funds and contravened the standards of the profession and her obligations to the public and the profession. College Counsel submitted that the broader definition of nursing does not suggest any falsification of records would lead to professional misconduct. Activities as a private citizen may not relate to practice unless a member signed a record claiming status as a nurse. However, in this case, the falsification was sufficiently related and connected to her practice.

With regard to allegation #4, College Counsel submitted that the Member signed and issued false claims to Sunlife in her professional capacity since her RN employment with the Facility was the only capacity the Member had and the only entitlement the Member had to be submitting claims. If the Member signed a document unrelated to nursing, perhaps in her role as a private citizen, this would be unrelated to her professional capacity providing her signature did not include her RN status. College Counsel also submitted that suggesting the Member could separate her RN status from her status as a Facility employee was an untenable argument since the only status the Member had as an employee was in her professional capacity as a RN. College Counsel also submitted definitions of professional misconduct as provided by subsection 51(1)(c) of the *Health Professions Procedural Code* of the *Nursing Act* drawing comparisons to this case with references to subsections 1(1), 1(8), 1(14), 1(15) and 1(37).

College Counsel also reviewed a number of previous decisions of this Committee relevant to allegations #3 and #4:

CNO v Nolan (Discipline Committee, 2006). The member falsified patient care documentation and time sheets for community visits she did not make. The panel found the falsified patient records and time sheets were both relevant to the member's practice and that the member had committed professional misconduct.

CNO v Codinha (Discipline Committee, 2008). The member falsified a New Hire Statement affirming to his employer that he had not been convicted of a criminal offence when in fact he had been convicted of impaired driving. The member also forged a Police Information Search Letter for Individuals Working with Vulnerable Persons. College Counsel submitted these documents were not signed in relation to patient care but were provided with the intention to support the member's hiring as a professional nurse. The panel found the member committed an act of professional misconduct falsifying a record relating to his practice and that he also signed a document in his professional capacity that the member knew or ought to have known contained false information.

CNO v Hrycio (Discipline Committee, 2002). The member lied when completing a Workplace Safety and Insurance Board (WSIB) form and also lied about completing a BScN program. The panel found that the member falsified a record relating to her practice and also signed and issued the WSIB forms in her professional capacity as a nurse. The panel made a finding of professional misconduct.

CNO v Rousseau (Discipline Committee, 2012). The member signed and submitted financial documents that allowed \$25,000 from the facility to be directed to her personal bank account. The panel found the member engaged in acts of professional misconduct in that she signed or issued in her professional capacity, documents which she knew or ought to have known contained misleading statements.

CNO v Charania (Discipline Committee, 2014). The member provided false dates of employment on a job application and/or resume. The member was found to have committed professional misconduct in that he signed or issued in his professional capacity, documents which he knew or ought to have known contained misleading statements.

College Counsel submitted the definition of professional misconduct from Section 1 of the *Ontario College of Teachers Act* specifically identifying paragraph 12 and 13 as defining professional misconduct in the same way as defined in the *Health Professional Procedural Code*. College Counsel also submitted relevant cases from the Ontario College of Teachers.

Ontario College of Teachers v Paik (Discipline Committee, 2019). The member submitted false insurance claims. The panel found that the member engaged in acts of professional misconduct in her capacity as a teacher by submitting multiple fraudulent benefit claims.

Ontario College of Teachers v Mackenzie (Discipline Committee, 2019) and *Ontario College of Teachers v Syed* (Discipline Committee, 2020). In both these cases, the members submitted false insurance claims. Both members were found to have committed professional misconduct in that they signed or issued in their professional capacity, documents which they knew or ought to have known contained false, improper or misleading statements.

College Counsel submitted that the Panel should make findings of professional misconduct for allegations #1, #2 and #5 and also make findings for professional misconduct for allegations #3 and #4 since the Member falsified records relating to her practice and in her professional capacity as an RN. College Counsel submitted that nursing is not just concerned with patient care but that as a member of a regulated health profession, it includes a broader definition that involves professional standards and ethics.

Member's Counsel

The Member's Counsel submitted that the Member has taken accountability for her actions by admitting to allegations #1, #2 and #5. The Member has agreed that she submitted misleading

documents, acted inappropriately and committed an act of professional misconduct. The Member's Counsel submitted that the remaining issue for the Panel to consider for allegations #3 and #4 is the relationship between the Member's conduct, her practice and her professional capacity.

The Member's Counsel submitted that the Member had an unblemished fifteen-year nursing career with no issues in the past with her practice or conduct. The Member would be characterized as a "good nurse".

The Member's Counsel submitted that because the Benefits Program was available to only full time ONA members and not part time or casual ONA members, RN status alone did not guarantee access to the plan. Other non-ONA employees, through their employment with the Facility, also had access to the Sun Life benefits program.

The Member's Counsel submitted that since compression hose needed to be prescribed, the client submitting the prescription becomes a patient and is no longer a provider.

The Member's Counsel submitted that the Agreed Statement of Facts identified both regulated and non-regulated employees who were involved in the insurance fraud. The Member only completed and signed the form and handed it to another employee who submitted the claims and falsified documents on the Member's behalf. The Member's Counsel identified from Attachment 3 in the Agreed Statement of Facts, a signed copy of the Extended Health Form, a prescription for support stockings for the Member's husband which was signed, purportedly, by a physician and also invented receipts for the compression hose for the Member and her husband. The Member's Counsel submitted that the transaction of obtaining and purchasing the supplies would have been done by a patient. In this case, the Member was functioning as a patient, not a provider, and as a patient would not be in a position to practice on herself.

The Member's Counsel submitted a Book of Authorities containing multiple documents for consideration by the Panel. With regard to the definition of professional misconduct as provided by subsection 51(1)(c) of the *Health Professions Procedural Code* of the *Nursing Act* and defined in subsection 1(8) of *Ontario Regulation 799/93*, the Member's Counsel submitted that the statement does not define the nature of misappropriation that needs to occur for a finding of professional misconduct i.e., misappropriation only needs to take place in the workplace. The Member's Counsel submitted that the workplace is not the same as practice or professional capacity. While College Counsel might argue that practice includes the workplace, the Member's Counsel submitted that the workplace has to mean something distinct from practice and professional capacity.

With regard to the definition of professional misconduct as provided by subsection 51(1)(c) of the *Health Professions Procedural Code* of the *Nursing Act* and defined in subsection 1(14) of

Ontario Regulation 799/93, the Member's Counsel submitted that the statement says falsifying a record needs to relate to a member's practice. It does not say falsifying a record needs to relate to a member's workplace.

With regard to the definition of professional misconduct as provided by subsection 51(1)(c) of the *Health Professions Procedural Code* of the *Nursing Act* and defined in subsection 1(15) of *Ontario Regulation 799/93*, the Member's Counsel submitted that the statement refers to "the member's professional capacity" and not "general capacity". The Member's Counsel submitted that by specifically including "the member's professional capacity" there is an implication that there are more capacities which exist which are not defined in legislation. The Member's Counsel submitted that the statement also implies that members of Regulated Health Professional Act Colleges can function in other capacities.

With regard to the definition of professional misconduct as provided by subsection 51(1)(c) of the *Health Professions Procedural Code* of the *Nursing Act* and defined in subsection 1(37) of *Ontario Regulation 799/93*, the Member's Counsel submitted that the use of the term "relevant" to the practice of nursing has a broader definition than "the member's practice" (subsection 1(14)) or "the member's professional capacity" (subsection 1(15)).

The Member's Counsel provided the Panel with an excerpt from *Sullivan on the Construction of Statutes*, 6th Ed. referencing Chapter 8, "The Presumption Against Tautology", paragraph 8.23 and 8.24. The Member's Counsel submitted that legislation generally avoids superfluous words and that every word in legislation has a specific meaning, role and function. The Member's Counsel further submitted that courts should avoid adopting interpretations to render a statute meaningless, pointless or redundant. The Member's Counsel submitted that this has meaning in the context of the *Health Professions Procedural Code* 51 (1) (c) definition of professional misconduct, where there is a difference made between falsifying a record relating to the "member's practice", subsection 1(14), and "signing or issuing, in the member's professional capacity", subsection 1(15).

The Member's Counsel submitted the *Nursing Act, 1991* definition of the scope of practice of nursing and submitted that the Member was the client and not practicing nursing or providing care to anyone in the transaction of the insurance claim submissions. With regard to the authorized acts aligned to nursing, the Member's Counsel submitted that the Member was not authorized to prescribe compression hose. Additionally, the Member's Counsel submitted that the Member cannot be a practitioner in the transaction of the insurance claim submissions as this would breach the therapeutic nurse-client boundary and privacy issues by giving care to herself and/or her spouse.

Referencing the College's *Professional Standards*, the Member's Counsel submitted that a guiding principle of the *Professional Standards* is that clients are the central focus of nursing

professional services. The professional standard relating to ethics also directly refers to clients as the receiver of nursing services. Therefore, in the transaction of the insurance claim submissions, the Member's Counsel submitted that the Member could not misappropriate funds in her professional capacity as a nurse since she was not providing nursing services but instead was acting as a client receiving care.

The Member's Counsel submitted that the Panel should consider the legislation, specifically the *Nursing Act, 1991* and the College Standards to help define nursing practice in the decision related to allegations #3 and #4. The Member's Counsel submitted that any suggestion that completing an insurance claim form equates to practicing nursing or that the Member was acting in her professional capacity would mean that all employees submitting claims forms are practicing nursing and this would be absurd.

The Member's Counsel provided the Panel with a number of relevant cases:

CNO v Kravitz (Discipline Committee, 2010). The member made claims to an insurance company that she was providing client services at a time when she was not. The Member's Counsel submitted that part of the fraud was that in submitting the falsified insurance claim, the member was misrepresenting herself as a nurse. In this case, the Member was not misrepresenting herself as a nurse.

CNO v Stromme (Discipline Committee, 2005). The member lied about being ill and also claimed sick leave while working at another facility. The panel made a finding of professional misconduct that the member's conduct was disgraceful, dishonourable and unprofessional. The Member's Counsel submitted that there was no finding that the member breached subsection 51(1)(c) of the *Health Professions Procedural Code* of the *Nursing Act* and specifically subsection 1(14) and 1(15) of *Ontario Regulation 799/93*.

CNO v Cuppage (Discipline Committee, 2005). The member forged medical certificates. The panel made findings of professional misconduct provided by subsection 51(1)(c) of the *Health Professions Procedural Code* of the *Nursing Act* and defined in subsection 1(8) and 1(37) of *Ontario Regulation 799/93*. The Member's Counsel submitted that there was no finding under subsection 1(14) or 1(15).

CNO v Mohammed, H (Discipline Committee, 2008). The member claimed that he had a BScN when in fact he did not. The Member's Counsel submitted that this false claim was related to the member's practice since he was making a representation about himself as a RN.

CNO v Mohamed, S (Discipline Committee, 2008). The member misappropriated funds by receiving sick leave benefits that were based on false information provided to her employer, but there was no finding pursuant to subsections 1(14) or 1(15).

The Member's Counsel also made submissions on the cases submitted by College Counsel.

CNO v Nolan (Discipline Committee, 2006). The member lied about practicing nursing. The Member's Counsel submitted it was abundantly clear the member submitted the false documents on the basis she was practising nursing.

The Member's Counsel submitted that in *CNO v Codinha* (Discipline Committee, 2008) the member deceived the employer to secure a nursing position which was directly related to practicing nursing and therefore different than this case.

CNO v Hrycio (Discipline Committee, 2002). The member lied when completing a Workplace Safety and Insurance Board (WSIB) form while applying for employment as a RN. The member also lied about completing a BScN program which was also directly related to the practice of nursing. The Member's Counsel submitted that there was no finding of professional misconduct provided by subsection 51(1)(c) of the *Health Professions Procedural Code of the Nursing Act* and defined in subsection 1 (14) of *Ontario Regulation 799/93*.

CNO v Rousseau (Discipline Committee, 2012). The member signed and submitted financial documents that allowed money from the facility to go to her personal bank account. The Member's Counsel submitted that the member was employed in a nursing role whereby she had access to funds and it was the member's nursing position that enabled the fraud.

CNO v Charania (Discipline Committee, 2014). The member provided false dates of employment on a job application and/or resume which the Member's Counsel submitted was also a falsification related to the practice of nursing.

The Member's Counsel identified the definition of teaching according to the *Education Act* R.S.O. c E2, s 264 (1) (c) and submitted that the Panel should not use this act as a reference in this case since the duties of teachers are very different than the practice of nursing.

Finally, the Member's Counsel submitted that the Panel needs to be principled and accurate in applying the definition of nursing and understanding the regulations. The Member could not have been operating in a professional capacity when completing the forms as it would have been a violation of the College's *Therapeutic Nurse-Client Relationship Standard* and the *Professional Standards*. The Member could not be a client and a nurse at the same time nor could her husband be her patient. As well, if the Member were practicing nursing, so too were all the other non-regulated staff who also submitted false claims. The Member's Counsel submitted that it would also be absurd for the Member to provide care to herself. The Member's Counsel also submitted that not all standards established by the College need to be

breached for a finding of professional misconduct. However, the standards that are breached need to be referable in legislation.

College Counsel's Reply

College Counsel submitted that the definition of professional misconduct is quite distinctly defined.

With regard to the definition of professional misconduct provided by subsection 51(1)(c) of the *Health Professions Procedural Code* of the *Nursing Act* and defined in subsection 1 (1) of *Ontario Regulation 799/93*, College Counsel submitted that the Member admitted to contravening this regulation.

With regard to the definition of professional misconduct provided by subsection 51(1)(c) of the *Health Professions Procedural Code* of the *Nursing Act* and defined in subsection 1(8) of *Ontario Regulation 799/93*, College Counsel submitted that the Member admitted to contravening this regulation.

With regard to the definition of professional misconduct provided by subsection 51(1)(c) of the *Health Professions Procedural Code* of the *Nursing Act* and defined in subsection 1(14) of *Ontario Regulation 799/93*, College Counsel submitted that this regulation requires a record to be falsified and the falsification needs to relate to the member's practice. The regulation does not stipulate that the falsification needs to be part of nursing services but the intention is for the regulation to be broader in meaning and that a connection to the member's practice is all that is required. College Counsel submitted that this regulation applies since the Member is part of the nursing profession.

With regard to the definition of professional misconduct provided by subsection 51(1)(c) of the *Health Professions Procedural Code* of the *Nursing Act* and defined in subsection 1(15) of *Ontario Regulation 799/93*, College Counsel submitted that signing a false document that is not relevant to the practice of nursing (e.g. income tax fraud) would not be applicable. Rather the signing needs to be something the Member would do in their professional capacity.

With regard to the definition of professional misconduct provided by subsection 51(1)(c) of the *Health Professions Procedural Code* of the *Nursing Act* and defined in subsection 1(37) of *Ontario Regulation 799/93*, College Counsel submitted that "relevant to nursing" has a broader meaning than "relating to practice".

College Counsel submitted that there are no deficiencies in the definition of professional misconduct as defined in the legislation.

With regard to professional misconduct related to the Member's practice, College Counsel submitted that while the scope of practice in the *Nursing Act* is unique to nurses, nursing is not just about giving care to patients. Professional misconduct in subsection 51(1)(c) of the *Health Professions Procedural Code* of the *Nursing Act* and defined in subsection 1(1) of *Ontario Regulation 799/93* is about contravening the standards of the profession and those standards go beyond just providing patient care. College Counsel submitted that there are many practice standards that relate to providing care but the College has historically interpreted nursing to be more than care provided to patients. The Member also admitted to professional misconduct as defined in this subsection.

Regarding the Member's Counsel's submission that the Member would be providing care to herself and her husband, College Counsel submitted that the substance of the Member's conduct was not about issuing prescriptions and receipts for compression hose as there were no valid prescriptions or receipts or basis for a valid benefit claim. The misconduct was submitting the false claim which the Member admitted. College Counsel also submitted that while some RNs did not have access to the Benefits Program, the Member did have access to the Benefits Program as a result of her employment as a RN at the Facility.

Advice from Independent Legal Counsel ("ILC")

ILC advised that allegations #1, #2 and #5 are not in dispute since the Member admitted to the allegations. Regarding allegation #5, the Panel needs to be satisfied that the conduct was relevant to the practice of nursing. With regard to allegations #3 and #4, the Panel must consider subsection 51(1)(c) of the *Health Professions Procedural Code* of the *Nursing Act* and particularly subsections 1(14) and 1(15) of *Ontario Regulation 799/93*. ILC advised the Panel to consider the plain and ordinary meaning of professional misconduct and to interpret the subsections in relation to the regulation they relate to (i.e. subsection 51(1)(c) of the *Health Professions Procedural Code*). With regard to subsections 1(14) and 1(15), there has been no decision from the Divisional Court which clearly interpret them, but College Counsel and the Member's Counsel have provided cases from the College and the College of Teachers to help interpret these sections.

ILC advised that subsection 51(1)(c) of the *Health Professions Procedural Code* of the *Nursing Act* and specifically subsection 1 (37) of *Ontario Regulation 799/93*, uses the term "relevant to the practice of nursing" which has a broader meaning.

ILC advised that with respect to subsection 51(1)(c) of the *Health Professions Procedural Code* of the *Nursing Act* and specifically subsection 1(14) of *Ontario Regulation 799/93*, the issue to consider is the phrase "relating to the member's practice" which suggests some connection to practice. The Panel must decide if there is a sufficient connection between the falsified

documents and the Member's practice such that the Member's conduct would be considered professional misconduct.

ILC advised the Panel to also consider subsection 51(1)(c) of the *Health Professions Procedural Code* of the *Nursing Act* and specifically subsection 1(16) of *Ontario Regulation 799/93*, which uses the term "in respect of the member's practice" as both subsections 1(14) and 1(16) use the phrase "the member's practice".

ILC advised the Panel that subsection 51(1)(c) of the *Health Professions Procedural Code* of the *Nursing Act* and specifically subsection 1 (15) of *Ontario Regulation 799/93*, requires the Panel to consider if the Member signed or issued the false documents in her professional capacity. The Panel must consider the definition of professional capacity and if the facts warrant a finding of professional misconduct.

College Counsel's Response to ILC Advice

College Counsel submitted that in subsection 51(1)(c) of the *Health Professions Procedural Code* of the *Nursing Act* there is a difference between subsection 1(14) and 1(16) of *Ontario Regulation 799/93*. In subsection 1(14) the term "relating to the member's practice" has a narrower definition than relating to the practice of nursing. In subsection 1(16) the term "in respect of the member's practice" is not the same as "relating to the practice of nursing". Subsection 1(16) suggests a closer relationship and is about the member's practice.

The Member's Counsel 's Response to ILC Advice

The Member's Counsel submitted that "related to" and "in respect of" have different meanings. "Relating to" indicates some connection. Professional capacity is used throughout the legislation so it means the same thing in all instances. Similarly, "the member's practice" must mean the same thing throughout the legislation.

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 considered by members of the profession to be dishonourable and unprofessional.

Reasons for Decision

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

Allegation #1 in the Notice of Hearing is supported by paragraphs 1-3, 5-10 and 12-22 in the Agreed Statement of Facts. The evidence in the Agreed Statement of Facts outlined the Member's participation in submitting false insurance claims. The Member also admitted to the allegation. The College's *Professional Standards* states that nurses are accountable for conducting themselves with integrity and in a way that promotes respect for the profession. The College *Ethics* practice standard requires members to uphold the standards of the profession with conduct that fosters the trust and respect of the public. The Member's participation in the insurance fraud breached both of these standards.

Allegation #2 in the Notice of Hearing is supported by paragraphs 12–18 and 23 in the Agreed Statement of Facts. The evidence in the Agreed Statement of Facts outlined the process by which the Member participated in misappropriating \$7,982.50 from her employer, the Facility's Benefits Program with Sun Life through false insurance claims. The Member also admitted to this allegation. The Member not only misused the claims form by falsifying information, but her actions facilitated the misappropriation of funds from the Benefits Program to herself as well as another employee. The Member had been an employee in the Facility for fifteen years. She was identified as a "good nurse". Nurses with this level of experience and reputation are generally considered role models and held to a high standard by nursing and non-nursing colleagues. The Member not only participated in the insurance fraud but continued to do so for four years and was only held to account as a result of an investigation. She did not come forward independently and on her own accord to take accountability for her actions. For four years, the Member misappropriated funds through the false insurance claims and modeled behavior that brought dishonour to the profession.

In deciding allegations #3 and #4, the Panel reviewed the various cases submitted by College Counsel and the Member's Counsel in which members engaged in various elements of professional misconduct as defined by legislation. In many, but in not all cases, allegations were made that were relevant to subsection 51(1)(c) of the *Health Professions Procedural Code* of the *Nursing Act* subsections 1(14) and 1(15) of *Ontario Regulation 799/93*. A common theme in all the cases were the member's deceitful actions, the lack of integrity and the dishonour the member's actions brought to their respective professions.

As a case of first impression, College Counsel and the Member's Counsel have suggested that the language and the meaning of the phrases "relating to practice" and "professional capacity" contained within subsection 1(14) and 1(15) of *Ontario Regulation 799/93* are particularly relevant for this case. The Panel reviewed the various documents submitted by College Counsel and the Member's Counsel. While the *Nursing Act* outlines what nurses do and the controlled acts they can perform, the College outlines how nurses perform these duties through the

publication of various practice standards and various programs established by the College (e.g. the College's Quality Assurance Program). The College's *Professional Standards* does not rely on the terms "relating to practice" or "professional capacity" in defining professional standards of the profession suggesting the terms are either interchangeable or not significantly relevant to warrant distinction. Therefore, for the purpose of this case, the Panel accepts a plain and ordinary interpretation of "relating to practice" and "professional capacity" applying a broad meaning to these terms and not finding significant differences in their meaning or application.

The *Professional Standards* state "clients are the central focus of the professional services that nurses provide". This statement does not infer that clients are the only focus for nursing services, but rather that clients are the central focus. The College's *Professional Standards* goes on to state in the *Ethics* Standard of the document that ethical nursing care means "...maintaining commitments, respecting truthfulness, ensuring fairness in the use of resources. It also includes acting with integrity, honesty and professionalism with the client and other health care team members." Therefore, the Panel accepts that "other health care team members" that is mentioned in the *Ethics* Standard is an acknowledgement of the broader context that nurses find themselves working, either with clients or others in the workplace. Hence, nurses are therefore expected to conduct themselves in an ethical manner in both client and non-client facing activities when employed and/or practicing as a nurse, recognizing some nurses may be self-employed. This would include activities such as applying for nursing work, activities when on shift and/or activities related to nursing employment, such as submitting time sheets and claiming WSIB or other employee benefits, including insurance benefits. It is during all these times and in all these activities that the work nurses do relate to their nursing practice and they are operating in their professional nursing capacity. This interpretation is supported by the cases presented during this hearing:

CNO v Codinha (Discipline Committee, 2008). The member falsified a New Hire Statement affirming to his employer that he had not been convicted of a criminal offence when in fact he had been convicted of impaired driving. The member also forged a Police Information Search Letter for Individuals Working with Vulnerable Persons. College Counsel submitted these documents were not signed in relation to patient care but were provided with the intention to support the member's hiring as a professional nurse. The panel found the member committed an act of professional misconduct falsifying a record relating to his practice and that he also signed a document in his professional capacity that the member knew or ought to have known contained false information.

CNO v Hrysio (Discipline Committee, 2002). The member lied when completing a Workplace Safety and Insurance Board (WSIB) form and also lied about completing a BScN program. The panel found that the member falsified a record relating to her practice and also signed and issued the WSIB forms in her professional capacity as a nurse. The panel made a finding of professional misconduct.

CNO v Rousseau (Discipline Committee, 2012). The member signed and submitted financial documents that allowed \$25,000 from the facility to be directed to her personal bank account. The panel found the member engaged in acts of professional misconduct in that she signed or issued in her professional capacity, documents which she knew or ought to have known contained misleading statements.

CNO v Charania (Discipline Committee, 2014). The member provided false dates of employment on a job application and/or resume. The member was found to have committed professional misconduct in that he signed or issued in his professional capacity, documents which he knew or ought to have known contained misleading statements.

Cases presented in this hearing showed that teachers are also held accountable for non-direct-teaching related activities:

Ontario College of Teachers v Paik (Discipline Committee, 2019). The member submitted false insurance claims. The panel found that the member engaged in acts of professional misconduct in her capacity as a teacher by submitting multiple fraudulent benefit claims.

Ontario College of Teachers v Mackenzie (Discipline Committee, 2019) and *Ontario College of Teachers v Syed* (Discipline Committee, 2020). In both these cases, the members submitted false insurance claims. Both members were found to have committed professional misconduct in that they signed or issued in their professional capacity, documents which they knew or ought to have known contained false, improper or misleading statements.

Allegation #3 in the Notice of Hearing is supported by paragraphs 1-3, 5-7, 9-10, 12-18, 22 and 24-26 in the Agreed Statement of Facts. The issue for this allegation is whether the Member falsified a record relating to her practice. The Member admitted to falsifying records. The Member also admitted to allegation 5 which includes an admission that her conduct was relevant to the practice of nursing. The Panel finds that the Member's actions of falsifying a record was also related to her practice. The Member was hired by the Facility to practice as a fulltime RN. The Facility expected the Member to not only care for patients and carry out nursing duties as described in the *Nursing Act*, but also to adhere to all College practice standards in her role as a professional RN. This expectation to practice according to the *Professional Standards* was also present from the Member's College. It was in her role as a professional RN, registered with the College and as an ONA member with access to the Benefits Program, that the Member participated in falsifying the Sun Life insurance claim. Therefore, the falsification of records was related to her practice as a RN at the Facility. Additionally, the Member's co-conspirator, the Porter, could not have initiated and perpetuated the fraud without the Member's participation. The fact that other employees did or did not have access to the Benefits Program is irrelevant, as the matter before the Panel rests only with the actions of the Member. The Panel also agrees that there is no basis to suggest any employee who

submits insurance claims is practicing nursing. Submitting insurance forms is not covered as a nursing duty under the *Nursing Act*. However, the manner by which the Member participated in submitting false insurance claims is covered under the College's *Professional Standards* and *Ethics* Standard and it was the College's standards that the Member breached. Additionally, the Member admitted to contravening the standards and engaging in professional misconduct.

The misappropriation of funds as a result of submitting the falsified claims over the course of four years would not have taken place without the Member's participation. Submission of the falsified claims was related to the Member, it was related to the fact she was employed as a RN and related to the fact that because of her RN employment she had access to the Benefits Program. The submission of the falsified forms by extension was related to the Member, her RN status and her employment to practice as a RN, i.e. her RN practice.

Allegation #4 in the Notice of Hearing is supported by paragraphs 1-3, 5-7, 9-10, 12-18 and 24-26 in the Agreed Statement of Facts. The Member was hired to practice as a RN and it was this arrangement, her professional capacity as a RN, that gave her access to the forms that she signed with an intent to mislead the insurance company. There was no situation of the Member being a patient nor was she in a position of caring for her spouse. The characterization of the Member as a patient requiring compression hose is a characterization based on a situation that did not exist. The Member did not have a diagnosis for which compression hose were required. The Member's physician did not issue a prescription for compression hose. The Member did not actually buy compression hose. The Member was not in a patient role. She was only acting in her full time RN role, employed by the Facility, and then used this relationship to misappropriate funds. The Member admitted to submitting false insurance claims which indicated she knew at the time when she signed the forms that she was signing a document that was false and misleading. The Facility expected the Member to conduct herself in a professional capacity to provide patient care and to uphold the College's standards. It was in this broader expectation of her RN duties to act in a professional manner, in her professional capacity, that the Member breached the College's standards and engaged in professional misconduct. As a result, the Panel finds that the Member's actions occurred in her professional capacity.

With respect to Allegation #5, the Panel finds that the Member's conduct in submitting and signing falsified insurance claims and misappropriating funds from her employer, the Facility's Benefits Program with Sun Life Insurance was unprofessional as it demonstrated a serious and persistent disregard for her professional obligations. The Member failed to act with integrity, she failed to uphold the trust of the public, she disrespected her profession and failed to demonstrate self-knowledge that her actions were unprofessional. The Panel also finds that the Member's conduct was dishonourable. The Member's actions breached multiple standards, her actions were deceitful and were carried out over a four-year period which was long enough to reconsider her actions and take accountability. By participating in and continuing with the insurance fraud, particularly over many years, the Member demonstrated unprofessional conduct and brought dishonour to the profession.

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