

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

PANEL:	Susan Roger, RN	Chairperson
	Carly Hourigan	Public Member
	Aisha Jahangir, RN	Member
	Michael Schroder, NP	Member

BETWEEN:

COLLEGE OF NURSES OF ONTARIO)	<u>DOUGLAS MONTGOMERY</u> for
)	College of Nurses of Ontario
- and -)	
)	
UYVALIN PENNANT)	<u>SEMONE COGHIEL</u> Paralegal for
Registration No. JJ09670)	Uyvalin Pennant
)	
)	<u>CHRISTOPHER WIRTH</u>
)	Independent Legal Counsel
)	
)	Heard: October 11, 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 October 11, 2022, via videoconference.

The Allegations

The allegations against Uyvalin Pennant (the “Member”) as stated in the Notice of Hearing dated September 6, 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 Practical Nurse at Baycrest 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 2011 to 2018, you submitted and/or accepted payment for 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 Practical Nurse at the Facility, you misappropriated property from a client or workplace, and in particular, in or around 2011 to 2018, you submitted and/or accepted payment for 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 Practical Nurse at the Facility, you falsified a record relating to your practice, and in particular, in or around 2011 to 2018, you submitted and/or accepted payment for 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 Practical 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 2011 to 2018, you submitted and/or accepted payment for 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 Practical 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 2011 to 2018, you submitted and/or accepted payment for false claims under the Benefit Plan.

Member's Plea

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

Agreed Statement of Facts

College Counsel and the Member's Representative 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. Uyvalin Pennant (the “Member”) registered with the College of Nurses of Ontario (“CNO”) as a Registered Practical Nurse (“RPN”) on July 26, 2000. The Member’s certificate was suspended for non-payment of fees from April 24 to May 22, 2003, and administratively suspended from February 18 to 20, 2014.
2. The Member was employed as an RPN at the Apotex Centre, Jewish Home for the Aged, a long-term care facility associated with Baycrest Health Sciences, located in Toronto, Ontario (the “Facility”). The Facility terminated the Member’s employment on July 10, 2019 as a result of the incidents described below.

BENEFIT PLAN

3. The Facility offers its employees a self-insured group insurance policy by which the Facility provides coverage to employees for extended health care, dental, and other insurance benefits (the “Benefit Plan”). Coughlin & Associates Ltd (“Coughlin”) administers the Benefit Plan on behalf of the Facility. The Facility, however, is the plan sponsor for the Benefit Plan, and therefore funds the cost of claims paid out to employees under the plan. Employees contribute to the cost of the Benefit Plan as set out in their employment agreement and/or collective agreement, based on their election for individual or family coverage.
4. To submit a benefit claim, members of the Benefit Plan would complete a medical expense claim form provided by Coughlin. The medical expense claim form requires certain information, including information on the plan member, any dependents, and the nature of the claim. The plan member must certify “that the information given is true, correct and complete to the best of [their] knowledge”.

INCIDENTS RELEVANT TO ALLEGATIONS OF PROFESSIONAL MISCONDUCT

5. In 2011, 2012, and 2018, the Member submitted false claims for medical services (such as physiotherapy) and products (such as compression stockings, orthopaedic shoes and orthotics) under the Benefit Plan. The total value of the Member’s false claims amounted to \$7,140.
6. In January 2019, the Facility uncovered benefits irregularities and conducted an internal investigation. The Facility interviewed the Member with respect to her claims on February 4, 2019, and April 4, 2019. During the second interview, the Member admitted that she had not received the services and products as claimed. Instead, once the Member received reimbursement from Coughlin for the false claims, she would pay a “processing fee” that went to a third party facilitating the benefits fraud scheme.

7. The Facility terminated the Member's employment on July 10, 2019 as a result of this conduct. The Member did not pay restitution.

BENEFIT FRAUD CASES

8. To date, a total of 75 benefit fraud cases involving substantially similar schemes as the one identified in this case, involving either cash or products not covered by the benefit plan, have been referred to the Discipline Committee. The dollar amounts of the false claims involved range from under \$500 to over \$45,000.

CNO STANDARDS

Professional Standards

9. 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.
10. CNO's *Professional Standards* provides, in relation to the accountability standard, that nurses are accountable to the public and responsible for ensuring their practice and conduct meets the legislative requirements and the standards of the profession. Nurses are responsible for their actions and the consequences of those actions as well as for conducting themselves in ways that promote respect for the profession. Nurses demonstrate this standard by actions such as ensuring their practice is consistent with CNO's standards of practice and guidelines as well as legislation.
11. 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

12. 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.
13. 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.

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

ADMISSIONS OF PROFESSIONAL MISCONDUCT

16. The Member admits that she committed the acts of professional misconduct as alleged in paragraph 1 of the Notice of Hearing in that she contravened a standard of practice of the profession or failed to meet the standards of practice of the profession, as described in paragraphs 5 to 7 and 9 to 15 above.
17. The Member admits that she committed the acts of professional misconduct as alleged in paragraph 2 of the Notice of Hearing in that she misappropriated property from a workplace, as described in paragraphs 5 to 7 above.
18. The Member admits that she committed the acts of professional misconduct as alleged in paragraph 3 of the Notice of Hearing in that she falsified a record relating to her practice, as described in paragraphs 5 to 7 above.
19. The Member admits that she committed the acts of professional misconduct as alleged in paragraph 4 of the Notice of Hearing in that she signed or issued, in her professional capacity, a document that she knew or ought to have known contained a false or misleading statement, as described in paragraphs 5 to 7 above.
20. The Member admits that she committed the acts of professional misconduct as alleged in paragraph 5 of the Notice of Hearing, and in particular her conduct was dishonourable and unprofessional, as described in paragraphs 5 to 7 and 9 to 15 above.

Decision

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

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

that would reasonably be regarded by members of the profession to be dishonourable and unprofessional.

Reasons for Decision

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

Allegation #1 in the Notice of Hearing is supported by paragraphs 5-7 and 9-16 in the Agreed Statement of Facts. The Member submitted false claims through the Baycrest Health Science's (the "Facility") employee benefit plan (the "Benefit Plan") in 2011, 2012 and 2018 and received \$7,140.00 in relation to those false benefit claims. The College's *Professional Standards* outlines that "Nurses are responsible for....conducting themselves in ways that promote respect for the profession". The Member demonstrated a lack of respect for the profession and contravened the *Professional Standards* by receiving money through submitting false claims to the Facility's Benefit Plan. The Member breached the College's *Ethics Standard* by intending to deceive the Benefit Plan provided to her by her employer by way of receiving money through submitting false benefit claims.

Allegation #2 in the Notice of Hearing is supported by paragraphs 5-7 and 17 in the Agreed Statement of Facts. The Member submitted false claims for services and products which were covered under the Facility's Benefit Plan. The Member misappropriated property from the Facility when she submitted the false benefit claims and received reimbursement money which she split with a third party who was facilitating the benefit fraud scheme. Receiving money with respect to false benefit claims constitutes misappropriation of property.

Allegations #3 and #4 in the Notice of Hearing are supported by paragraphs 5-7 and 18-19 in the Agreed Statement of Facts. The Member, as a Registered Practical Nurse ("RPN") employee of the Facility, received access to a Benefit Plan which provided coverage for extended health care, dental and other insurance benefits by virtue of her employment as a nursing professional. The Member contributed to the cost of the Benefit Plan. The Member submitted false claims to the Benefit Plan for medical services and products in 2011, 2012 and 2018 that she did not receive. To submit a benefit claim, the Member had to complete a medical expense claim form which contained the certification statement "that the information given is true, correct and complete to the best of [their] knowledge". When the Member signed the claim forms, she attested to a false statement. The Panel finds that the Member committed acts of professional misconduct in that, in her professional capacity as an RPN employee at the Facility, she falsified a record relating to her practice and signed or issued a document that she knew contained a false or misleading statement.

Allegation #5 in the Notice of Hearing is supported by paragraphs 5-7, 9-15 and 20 in the Agreed Statement of Facts. The Panel finds that the Member's conduct was clearly relevant to the practice of nursing as the Member had access to the Benefit Plan through her employment as a nursing professional. The Member's repeated submission of false benefit claims over a

period of 3 years was unprofessional as it demonstrated a serious and persistent disregard for her professional obligations as set out in the *Professional Standards* and the *Ethics Standard*.

The Panel also finds that the Member's conduct was dishonourable. It demonstrated an element of dishonesty and deceit through misappropriating funds from the Benefit Plan for her own personal gain. The Member knew or ought to have known that her behaviour was unacceptable and fell below the standards of a professional.

Penalty

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

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

- i. Inform any employer of the decision prior to commencing or prior to resuming employment in any nursing position;
 - ii. 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;
 - iii. Provide the Member's 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;
 - iv. 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 the Member's 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 misconduct was serious and persistent dishonesty at the expense of her employer funded Benefit Plan;
- The false claims amounted to \$7,140.00 which is a significant amount;
- The fraud took place over the course of 3 years;
- The Member had ample time to stop and reconsider her actions;
- The Member took advantage of the trust that was placed in her by her employer and the Benefit Plan; and
- The Member took advantage of the privilege of having an employer sponsored benefit plan.

The mitigating factors in this case were:

- The Member is remorseful;
- The Member took responsibility for her actions with her employer;
- The Member has taken responsibility with the College by admitting to the allegations and entering into an Agreed Statement of Facts and a Joint Submission on Order with the College;
- The Member has been an RPN since 2000; and
- The Member has no prior discipline history with the College.

The penalty provides for general deterrence through:

- The 4 month suspension of the Member's certificate of registration which sends a signal to members of the profession and the public that this type of misconduct is unacceptable.

The penalty provides for specific deterrence through:

- The oral reprimand which will assist the Member with understanding how her actions are perceived by both fellow members of the profession and the public; and
- The 4 month suspension of the Member's certificate of registration which will signal to the Member that this type of misconduct is unacceptable.

The proposed penalty provides for remediation and rehabilitation through the 2 meetings with a Regulatory Expert and review of the College's publications which will assist with returning the Member back to ethical nursing practice.

Overall, the public is protected through the 12 months of employer notification which will provide a heightened level of oversight on the Member's return 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 proceeded by way of a partial Agreed Statement of Facts and a partial Joint Submission on Order. The member submitted false benefit claims to her employer sponsored benefit plan in the amount of \$7,982.50. 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. Samuels (Discipline Committee, 2022): This case proceeded by way of an Agreed Statement of Facts and a Joint Submission on Order. The member submitted false benefit claims to her employer sponsored benefit plan in the amount of \$8,170.00. 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. Loydman (Discipline Committee, 2022): This case proceeded by way of an Agreed Statement of Facts and a Joint Submission on Order. The member submitted false benefit claims to his employer sponsored benefit plan in the amount of \$5,985.00. 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.

The Member's Representative made no submissions on penalty.

Penalty Decision

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

1. The Member is required to appear before the Panel to be reprimanded within 3 months of the date that this Order becomes final.
2. The Executive Director is directed to suspend the Member's certificate of registration for 4 months. This suspension shall take effect from the date that this Order becomes final and shall continue to run without interruption as long as the Member remains in a practicing class.
3. The Executive Director is directed to impose the following terms, conditions and limitations on the Member's certificate of registration:
 - a) The Member will attend 2 meetings with a Regulatory Expert (the "Expert"), at the Member's 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 the Member's 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 the Member's 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 the Member's employer(s) of the decision. To comply, the Member is required to:
- i. Inform any employer of the decision prior to commencing or prior to resuming employment in any nursing position;

- ii. 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;
 - iii. Provide the Member's 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;
 - iv. 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 the Member's employer(s) will be delivered by verifiable method, the proof of which the Member will retain.

Reasons for Penalty Decision

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

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

The Panel finds that the penalty satisfies the principles of specific and general deterrence, rehabilitation and remediation, and public protection. Specific deterrence is achieved through the oral reprimand and the 4 month suspension of the Member's certificate of registration which will send a clear message to the Member that submitting false claims to an employer funded benefit plan will not be tolerated. General deterrence is achieved through the 4 month suspension of the Member's certificate of registration which will signal to the membership that there are serious consequences for the misuse of employer funded benefit plans. Rehabilitation and remediation will be achieved through the 2 meetings with a Regulatory Expert and the

review of the College's publications. The public is protected through the 12 months of employer notification as the Member's employer will provide a heightened level of monitoring on the Member's return to practice.

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

I, Susan Roger, RN, sign this decision and reasons for the decision as Chairperson of this Discipline Panel and on behalf of the members of the Discipline Panel.