DISCIPLINE COMMITTEE
OF THE COLLEGE OF NURSES OF ONTARIO

PANEL:
Tammy Hedge, RPN Chairperson
Lorenza Barron, RN Member
Jim Attwood, RN Member
Mary MacMillan-Gilkinson Public Member
Catherine Egerton Public Member

BETWEEN:
COLLEGE OF NURSES OF ONTARIO
) JEAN-CLAUDE KILLEY for
) College of Nurses of Ontario
) - and -
) NO ONE PRESENT for
) Barbara Pierce-Nagel
) Registration No. 0350561
) JOHANNA BRADEN Independent Legal Counsel
) Heard: July 17 & 18, 2013

DECISION AND REASONS

This matter came on for hearing before a panel of the Discipline Committee on July 17 and 18, 2013, at the College of Nurses of Ontario (“the College”) at Toronto.

As Barbara Marie Pierce-Nagel (the “Member”) was neither present nor represented by counsel, the hearing recessed for 15 minutes to allow time for the Member to appear. Upon reconvening, the panel noted that the Member was not in attendance and was not represented.

Counsel for the College provided the panel with evidence that the Member had been sent the Notice of Hearing on May 6, 2013, and July 15, 2013. The panel was satisfied that the Member had received adequate notice of the time, place, date and nature of the hearing, and therefore proceeded with the hearing in the Member’s absence.
The Allegations

The allegations against the Member as stated in the Notice of Hearing dated June 19, 2013, 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(7) of *Ontario Regulation 799/93*, in that, while employed at [the Facility] (the “Facility”), you misappropriated property from a client or workplace with respect to the following incidents:

   a) You misappropriated approximately $916.00 from [Client A] at about the end of August, 2011;

   b) You misappropriated approximately $916.00 from [Client A] at about the end of September, 2011;

   c) You misappropriated approximately $585.53 from [Client B] on or about June 24, 2011;

   d) You misappropriated approximately $602.00 from [Client C] on or about October 6, 2011;

   e) You misappropriated approximately $1532.00 from [Client D] on or about October 14, 2011;

   f) You misappropriated approximately $70.00 from the Facility by charging an unauthorized expense to the Facility’s credit card on or about June 1, 2011;

   g) You misappropriated approximately $66.67 from the Facility by charging an unauthorized expense to the Facility’s credit card on or about July 12, 2011;

   h) You misappropriated approximately $232.00 from the Facility by charging an unauthorized expense to the Facility’s credit card on or about August 2, 2011;

   i) You misappropriated approximately $528.12 from the Facility by charging an unauthorized expense to the Facility’s credit card on or about August 8, 2011;

   j) You misappropriated approximately $75.00 from the Facility by charging an unauthorized expense to the Facility’s credit card on or about September 5, 2011;

   k) You misappropriated approximately $44.58 from the Facility by charging an unauthorized expense to the Facility’s credit card on or about September 28, 2011;

   l) You misappropriated approximately $66.67 from the Facility by charging an unauthorized expense to the Facility’s credit card on or about September 28, 2011;

   m) You misappropriated approximately $232.00 from the Facility by charging an unauthorized expense to the Facility’s credit card on or about October 6, 2011;
You misappropriated approximately $50.00 from the Facility by charging an unauthorized expense to the Facility’s credit card on or about October 10, 2011;

You misappropriated a sum of money from the Facility’s trust account by writing improper cheques to petty cash between approximately September 6, 2011 and October 19, 2011;

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 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 of the profession as disgraceful, dishonourable or unprofessional with respect to the following incidents:

You misappropriated approximately $916.00 from [Client A] at about the end of August, 2011;

You misappropriated approximately $916.00 from [Client A] at about the end of September, 2011;

You misappropriated approximately $585.53 from [Client B] on or about June 24, 2011;

You misappropriated approximately $602.00 from [Client C] on or about October 6, 2011;

You misappropriated approximately $1532.00 from [Client D] on or about October 14, 2011;

You misappropriated approximately $70.00 from the Facility by charging an unauthorized expense to the Facility’s credit card on or about June 1, 2011;

You misappropriated approximately $66.67 from the Facility by charging an unauthorized expense to the Facility’s credit card on or about July 12, 2011;

You misappropriated approximately $232.00 from the Facility by charging an unauthorized expense to the Facility’s credit card on or about August 2, 2011;

You misappropriated approximately $528.12 from the Facility by charging an unauthorized expense to the Facility’s credit card on or about August 8, 2011;

You misappropriated approximately $75.00 from the Facility by charging an unauthorized expense to the Facility’s credit card on or about September 5, 2011;

You misappropriated approximately $44.58 from the Facility by charging an unauthorized expense to the Facility’s credit card on or about September 28, 2011;

You misappropriated approximately $66.67 from the Facility by charging an unauthorized expense to the Facility’s credit card on or about September 28, 2011;

You misappropriated approximately $232.00 from the Facility by charging an unauthorized expense to the Facility’s credit card on or about October 6, 2011;
n) You misappropriated approximately $50.00 from the Facility by charging an unauthorized expense to the Facility’s credit card on or about October 10, 2011; and/or

o) You misappropriated a sum of money from the Facility’s trust account by writing improper cheques to petty cash between approximately September 6, 2011 and October 19, 2011.

Member’s Plea

Given that the Member was not present nor represented, she was deemed to have denied the allegations in the Notice of Hearing. The Hearing proceeded on the basis that the College bore the onus of proving the allegations in the Notice of Hearing against the Member.

Overview

The Member is a registered nurse who was employed at [the Facility] as an Administrator. The Member was responsible for all cash procedures within the facility including deposits and withdrawal of funds. The Member also had access to the petty cash, could withdraw cash from the company trust account, and had use of a corporate credit card for minor and major purchases as authorized by the facility.

The issues for the panel to consider were as follows:

1. Did the Member misappropriate cash from various residents who paid their rent at [the Facility] in cash?

2. Did the Member misappropriate funds from the Facility by charging unauthorized expenses to the Facility’s credit card?

3. Did the Member misappropriate money from the Facility’s trust account by writing improper cheques to petty cash?

4. If proven, does this conduct breach the standards of practice of the profession?

5. If proven, would this conduct reasonably be considered by members of the profession to be disgraceful, dishonourable and/or unprofessional?

After considering all the evidence and the onus and standard of proof, the panel found the Member committed all the factual acts as alleged. She thereby committed professional misconduct by failing to meet the standards of practice of the profession, and by engaging in conduct that would be regarded by members of the profession to be disgraceful, dishonourable and unprofessional.
The Evidence

The evidence presented by the College consisted of six witnesses and seventeen exhibits.

[Witness #1]

[Witness #1] held the position of Regional Manager at [the Facility] at the time of the allegations. The Member reported directly to her. [The manager]’s responsibilities included orientating new administrators to their role within the facility.

She testified that she first became suspicious of the Member when a reliable resident became delinquent on her rent payments. This led to the investigation which found discrepancies in petty cash. When [the manager] went to [the Facility] home where the Member worked to address the issue with the Member, the Member abruptly left the facility and never returned. The Member refused to be interviewed, or to present herself at any [Facility] property in person to return items such as deposit books, trust account cheque books, documents, cash and keys. However, the Member’s keys and corporate [credit] card did get returned to [the Facility].

[The Facility] had to investigate the matter without the Member’s involvement. Upon further investigation, [the manager] uncovered that money had been removed from petty cash and that there was missing cash from other residents. She submitted a Report Form for facility operators and employers to the College on November 9, 2011.

On the allegations of money taken from residents, [the manager] testified as follows.

- In August of 2011, the Member had been working as an Administrator at [the Facility]. The family of [Client B] paid the Member $585.53 in cash for [Client B]’s rent. The Member signed the invoice to reflect that the amount had been paid in full. However, the Member never deposited this cash into [the Facility]’s account.

- After this event occurred (but before it was discovered by [the Facility]), the Member was transferred [ ] to another [site of the Facility].

- [The manager] reviewed the rent arrears for [ ] residents on a regular basis. She noticed that three residents ([Client A], [Client C] and [Client D]) were behind in their rent payments, and she told the Member to send them collection letters. The Member drafted collection letters and sent them to [the manager], representing that they had been sent to the residents. The Member had signed the letters on behalf of [the Facility]. However, [the manager] determined that the letters had never been given to the residents.

- The three residents in question ([Client A], [Client C] and [Client D]) typically paid their rent in cash. Each of them told [the manager] that they had paid the rent for the missing months in cash. [Client D] showed [the manager] a petty cash voucher [ ] that was meant to be a receipt for the cash paid by [Client D]. [Client C]’s evidence that he paid cash was supported by witnesses who had been present (and whose evidence is summarized below). [Client A] had no receipts to show for her alleged payments, but [the manager]
said she had known [Client A] for a long time and she had always paid cash, on time, for her rent.

- [The manager] explained how the cash would have gone to the Member, and that the Member was the only person from [the Facility] who made bank deposits. However, the cash paid by these three residents was never deposited into [the Facility]’s bank account.

On the issue of the petty cash, [the manager] explained that the purpose of petty cash was mostly to have cash on hand to give to residents who wanted to access their trust accounts to make purchases. She explained the procedure that the Administrator was required to follow to ensure that all petty cash was spent in a manner that could be tracked and identified.

[The manager] identified [ ] photocopies of cheques drawn on [the Facility] bank account. [The manager] confirmed the signature on the copies of the cheques was that of the Member. These cheques showed that from September 6 to October 19, 2011, a sum of approximately $2,800 was withdrawn from the bank account by the Member through cheques made out to “Petty Cash”. There were no records indicating that residents had requested money and no documented signature sheets were signed to indicate that the money was requested. The locked petty cash box was empty. When the petty cash and bank account were reconciled, there was a shortage of $4,619.02 which could not be accounted for.

The final issue about which [the manager] testified related to the allegations that the Member charged eight unauthorized purchases to her [Facility] [credit] card. As per the facility’s policy, the Member had a [ ] credit card which was to be used to purchase incidentals and emergency sundries such as milk, bread, flowers, etc. for the residents’ use. These purchases were to be substantiated with receipts. Again, the Member did not submit a receipt as requested by the facility. [A document] clearly shows purchases for insurance, gas, [ ] and a flight, as well as other miscellaneous purchases. The total of all unauthorized purchases on the Member’s [credit] card was $1,387.11.

[Witness #2]

[Witness #2] was the Director of Nursing [(DON)] at [the Facility] where the Member worked. She reported directly to the Member. Her responsibilities included overseeing resident care, staff supervision, and similar duties.

This witness reported that there were no particular issues with the Member in terms of a working relationship with staff. She gave evidence with respect to the allegations involving the resident [Client C]. She testified that [Client C] changed his method of paying his rent when he changed banks and stopped his automatic withdrawal. He switched to paying for his rent with cash. This led to one incident where [Client C] withdrew a large amount of cash. [Client C] was observed sitting on the patio with cash falling out of his pockets, which caused staff members some concern. [The DON] gained permission from [Client C] to lock up his cash at the nurses’ station, as the Member was not available to secure the cash in the usual manner. The ward clerks on duty (Witnesses #3 and #4) only had access to the locked box at the nursing station. [The DON] observed one ward clerk (Witness #3. []) take the cash from [Client C], count it out with the
resident present, and indicate that there was $700.00. The cash was then secured in the locked drawer.

[The DON] testified that over the weekend, [Client C] requested cash and was given $100.00 by a second ward clerk (Witness #4). [Witness #4] then noted on the cash envelope the amount given to [Client C] ($100) and the remaining balance ($600). Upon the Member’s return from vacation, [the DON] received the envelope from the ward clerk, presented it to the Member and saw the Member take the envelope and place it behind her.

Finally, [the DON] testified that when [the manager] came to the facility to investigate, the Member seemed anxious and indicated that she needed to leave and then left the building.

[Witness #3]

[Witness #3] has worked at [the Facility] for 32 years as a ward clerk. She testified that [Client A] always paid her rent in cash at the end of the month. [Client A] would present herself at the nursing station and the cash would be counted, the envelope sealed and amount recorded on the front. [Client A] always refused a receipt from the ward clerk. These funds were then handed to the Member for deposit.

This witness indicated that she was working when the incident with [Client C] occurred. She agreed to lock the $700.00 in the drawer and had no further contact with these funds after they were locked up.

[Witness #4]

[Witness #4] has been the ward clerk at [the Facility] since 1984. She corroborated the testimony of [Witness #3], stating that [Client A] always paid her rent in cash at the end of the month.

In the case of the rent at the end of August, [Witness #4] recalled receiving the cash, counting and sealing it in an envelope in the usual fashion and then placing it on the Member’s desk. [Witness #4] has no idea what happened to the envelope after that, but confirmed this is the usual practice.

On the allegation regarding [Client C], [Witness #4] testified that she gave [Client C] $100.00 from the envelope that [Witness #3] had locked up for the weekend. The resident wanted to go shopping so [Witness #4] removed $100.00 from the envelope and gave it to him.

[Witness #5]

[Witness #5] held the position of Accounts Manager for [the Facility] for three years. Part of his job description was to reconcile accounts and to assist with payroll and similar duties. This witness testified that the Member did not reconcile the facility’s accounts for a couple of months prior to her termination. When the reconciliation was done by the accountant, the discrepancies were then found. [Witness #5] testified about the reconciliation he performed.
According to [Witness #5], if any monies had been deposited without a deposit slip, this would have been found during the reconciliation. He found no unaccounted cash deposits. He did testify that his reconciliation revealed cancelled cheques made out to petty cash by the Member, totalling $4,540.00 over a period of less than two months. He testified that this was an unusual amount. The normal amount would only be $500-$600 per month.

[Witness #6]

[Witness #6] was the investigator with the College but not the original investigator for this case. She testified that she did have contact with the Member at one time, however the Member declined to respond to the specific incidents which were under criminal investigation.

Evidence Regarding the Criminal Proceedings

The College submitted a certified transcript of proceedings at the Ontario Court of Justice on May 7, 2013 [ ]. The transcript reveals that the Member was charged with theft pursuant to s. 334(b) of the Criminal Code of Canada, and that the Member pleaded guilty to two of those charges. The charges relate to the allegations made in this case regarding [Client B] and to the allegations of the Member’s unauthorized use of her credit card.

Final Submissions

College Counsel noted that there were thirty allegations of professional misconduct, involving fifteen separate factual allegations. The onus is on the College to prove the case on the balance of probabilities.

College Counsel summarized the allegations and the evidence, submitting that the Member committed the theft and fraud over a period of time and could be characterized as an opportunistic thief. The Member was the only person with control over petty cash, keys to the petty cash drawer and keys to the office. The [credit] card was issued in her name and in [the Facility]’s name.

College Counsel submitted that in this case, the panel could rely on similar fact evidence. There were multiple incidents of misconduct and evidence specific to certain allegations. The theft occurred over a span of a few months. Only the Member could use the petty cash and credit card and she was responsible for deposits. College counsel relied on the Ontario Court of Appeal’s case of R. v MacCormack, (2009) ONCA 72 (CanLII) at paragraphs 48, 49 and 60-62 with respect to the application of similar fact evidence.

Finally, on the issue of how best to describe the Member’s conduct for allegation #2, College Counsel submitted that the Member showed a marked departure from the standard of honesty. Her conduct was willful and deliberate and brings shame to the Member and the profession. The Member’s betrayal of her employer’s trust and client trust was calculated. The allegations are uncontradicted. The Member appeared not to dispute the allegations. As noted [ ], she did not deny the allegations but merely declined to comment. Accordingly, the College asked for a finding that the Member’s conduct was disgraceful, dishonourable and unprofessional.
Decision

The College bears the onus of proving the allegations in accordance with the standard of proof, that being the balance of probabilities and 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 and 2 of the Notice of Hearing. In particular, the panel finds that the Member:

i. charged her facility credit card with unauthorized expenses of approximately $1387.00;

ii. misappropriated approximately $4550.00 from residents of [the Facility]; and

iii. wrote several [Facility] cheques to petty cash for a substantial amount of money unsupported by receipts.

This conduct breached the standards of practice of the profession. In addition, the panel finds that the Member engaged in conduct that would reasonably be regarded by members of the profession as disgraceful, dishonourable and unprofessional.

Reasons for Decision

The panel heard evidence from six witnesses and considered seventeen exhibits. The witnesses were forthright, credible and consistent. The exhibits were mostly documents that were contemporaneous with the events in question, and which outlined and documented the professional misconduct alleged.

The factual allegations could be grouped into three types:

1. Allegations that the Member charged unauthorized purchases to her [Facility] credit card;

2. Allegations that the Member took cash from residents who paid their rent at [the Facility] in cash, and that instead of depositing these amounts into [the Facility]’s bank account, the Member took the cash for herself; and

3. Allegations that the Member misappropriated an unidentified sum of petty cash. This was based on the evidence that, in less than two months, the Member accessed petty cash totalling approximately $4,500, when the usual sum required for petty cash was generally $500-$600 per month. There were no receipts or other evidence to explain how the Member might have legitimately used this large sum of petty cash.

As to the first group of allegations regarding the unauthorized use of [the Facility]’s credit card, in addition to the evidence of [the manager.] the panel also had the evidence of the criminal proceeding, where the Member admitted this misconduct. The panel accepted as fact that the Member was issued a company [credit] card in her name and that she was the person responsible.
for this card. Therefore any unauthorised purchases on this card could only have been made by her.

As to the second group of allegations, the Member also admitted in the Ontario Court of Justice that she misappropriated rent money paid to her in cash in respect of [Client B] on or about June 24, 2011. The panel relied on this, as well as the supporting evidence presented by [the manager]. A fraudulent receipt was issued to the family of [Client B]. There was no evidence the money that was given to the Member by the family of [Client B] was actually deposited, although the receipt issued to the family clearly stated “Paid in full”.

In considering the five separate allegations that the Member misappropriated cash paid by the residents of [the Facility], the panel found that there was such a high degree of similarity between these five allegations that the probative value of the evidence outweighed their prejudicial effect. Therefore, the panel relied on all the evidence led on all five of these allegations in determining the sufficiency of the College’s proof for each one of them. The panel relied on R. v. MacCormack, supra.

The evidence from [the accounts manager] and others satisfied the panel that the amounts drawn on petty cash by the Member were significantly in excess of what was usual for the time period. No one could testify exactly how that money had been spent. There were no receipts. The panel was satisfied that the reasonable inference from all the circumstances was that the Member had misappropriated at least some of this petty cash money.

As to allegation 2, the panel determined that the Member engaged in conduct that would reasonably be regarded by members of the profession as dishonourable and unprofessional by defrauding her clients, making unauthorized purchases on the employer’s credit card and misappropriating a substantial amount of money from the petty cash account. These thefts resulted in her being criminally charged and convicted of theft and fraud. Further, the significant deceit and dishonesty inherent in the Member’s repeated actions brings shame to the profession and infringes on the confidence and trust the public has in the nursing profession. It is therefore disgraceful as well as dishonourable and unprofessional.

**Penalty**

**Penalty Submissions**

College counsel submitted the only appropriate penalty would be revocation of the Member’s certificate of registration. The College has three interests which are protection of the public, general and specific deterrence and rehabilitation of the Member. The Member’s conduct involves a breach of trust of many clients on many occasions and there is no evidence of rehabilitative capacity in the Member. The Member’s conduct was deliberate, deceitful and calculated. Revocation will help restore public confidence; will serve as a general deterrent, in that fraud for personal gain must be denounced.

Counsel presented the panel with two previous cases of this Discipline Committee: CNO v. Amanda Rousseau (Discipline Committee, 2012) and CNO v. Mary Ellen Janzen (Discipline...
Committee, 2002). Both cases involved theft of money and fraud and both resulted in revocation of the Member’s certificate of registration.

**Penalty Decision**

The panel orders that the Member’s certificate of registration is to be revoked immediately.

**Reasons for Penalty Decision**

Considering the serious nature of the offences the panel unanimously agrees with the submissions of College Counsel that revocation is appropriate.

The panel considered as a mitigating factor that this was the first offence for the Member. However, the Member was criminally charged and pled guilty to theft and fraud. No effort was made by the Member to take responsibility for her actions before the College. The egregious nature of her repeated, serious, deliberate and deceitful conduct is an aggravating factor. Further, the panel is of the view that this severe penalty, while protecting public interest, will act as deterrence to the general membership.

I, Tammy Hedge, 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 as listed below:

_____________________________            __________________________
Chairperson                                 Date

**Panel Members:**

Tammy Hedge, RPN  
Lorenza Barron, RN  
Jim Attwood, RN  
Mary MacMillan-Gilkinson, Public Member  
Catherine Egerton, Public Member