

IN THE MATTER OF:

The Registered Nurses Act, R.S.M. 2001, c. R40

AND IN THE MATTER OF:

A hearing into the conduct of [REDACTED]

DECISION



**College of
Registered Nurses
of Manitoba**

890 Pembina Highway
Winnipeg, MB R3M 2M8
Telephone: 204-774-3477
Fax: 204-775-6052

IN THE MATTER OF: **The Registered Nurses Act, R.S.M. 2001, c. R40 (the "Act")**


AND IN THE MATTER OF: **A Hearing into the Conduct of** 

DECISION

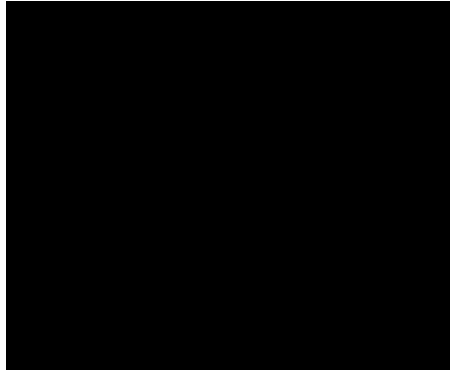
Panel Members:




Counsel to the Investigation Committee:

Counsel to 

Counsel to the Panel:



Introduction

On October 18, 2018, a Panel of the Discipline Committee (the "Panel") of the College of Registered Nurses of Manitoba (the "College") held a hearing into the charges against  (the "Member"), a member of the College. The charges are set out in the Notice of Hearing which was marked as Exhibit 1.

At the commencement of the hearing, it was agreed that the Notice of Hearing had been properly served and the time limits set forth in section 34 of the Act had been met.

No objections were raised as to the composition of the Panel and the Panel proceeded to hear the matter.

The Panel raised a preliminary matter respecting whether the applicable statute was the Act or *The Regulated Health Professions Act*. The parties made submissions and both parties agreed that the applicable statute was the Act.

The Panel has determined that the applicable statute in this case is the Act and not *The Regulated Health Professions Act*. The Practice of Registered Nursing Regulation, Man. Reg. 113/2017 provides as follows in s. 7(12):

“If, on the day this regulation comes into force, the investigation committee under the former Act has directed that an investigation into the conduct of a member or former member be held, the matter must be concluded under the former Act as though *The Regulated Health Professions Act* had not come into force.”

The regulation came into force on May 31, 2018. The parties agreed that the Investigation Committee directed an investigation before May 31, 2018 being November 2016. Exhibit 4 being the Notice of Decision and Reasons of the Complaints Investigation Committee indicates that the Case Manager, Professional Conduct of the College commenced an investigation into the Member in November 2016. Accordingly, pursuant to section 7(12) of the Regulation the Act is the applicable statute.

Further, a member of the Panel indicated after review of an exhibit tendered on the day of the hearing that the Panel member was employed at the [REDACTED] at the same time that the Member was employed at the [REDACTED] in 2007. The Panel Member did not recall the Member. The Panel raised this issue with the parties at the hearing and no one raised any objection to the Panel proceeding. Accordingly the full Panel proceeded to hear the matter before it.

The Member appeared at the hearing without legal counsel. The Member pled guilty to the following count in the Notice of Hearing (Exhibit 1) “AND FURTHER TAKE NOTICE THAT the allegation made against you is that you [REDACTED] ... are suffering from an ailment that might if you continue to practice, constitute a danger to the public in that you breached the terms of an Order of the Discipline Committee dated October 19, 2012.”

The Counsel for the Investigation Committee did not proceed with the charge of professional misconduct outlined in the Notice of Hearing.

The Panel then heard submissions from Counsel for the Investigation Committee, respecting the background facts giving rise to the matters raised in the Notice of Hearing and the appropriate disposition of the matter. This was followed by submissions from the Member in which the Member indicated agreement with the disposition proposed by Counsel to the Investigation Committee.

After hearing the submissions of Counsel to the Investigation Committee and of the Member, the Panel adjourned to consider the matter. The following facts are not in dispute:

1. The Member has been a registered nurse since 2007.
2. In December 2007, the College received a complaint respecting the Member alleging that the Member had taken 6 vials of morphine from the workplace. The Member admitted to same which lead to an interim suspension.
3. In January 2009, the Investigation Committee authorized a return to practice by the Member.
4. In March 2009, the Member signed an undertaking respecting conditions on the Member's practice.
5. In June 2009, a second complaint respecting the Member was made which lead to the Member voluntarily surrendering the Member's license in September 2009.
6. In March 2010, the Member was reinstated under a new Undertaking which set out conditions on the Member's practice.

7. In October 2010, the College received a third complaint respecting the Member.
8. In April 2011, the Investigation Committee issued a Notice of Decision and Reasons and accepted a 5 year undertaking from the Member respecting the Member's practice.
9. After a complaint respecting the Member's conduct in June and September 2011, the matter was referred to a Discipline Committee.
10. On October 19, 2012 a Panel of the Discipline Committee conducted a Hearing respecting the Member wherein the Member acknowledged that the Member's conduct constituted professional misconduct. The Discipline Panel issued an Order which included the following provisions:

"17. In the case of a relapse, the Member will immediately withdraw from nursing practice, report the relapse to the Member's physician and the CRNM Manager, Complaints Resolution and not return to nursing practice without the approval of CRNM."

...

"19. The Member will abstain from alcohol and all mood altering prescription and non-prescription substances except those prescribed by one physician/health care provider who is knowledgeable about the history of substance abuse for the duration of this Order."

11. The October 2012 decision also provided that the Member would be suspended for one month.
12. The Member appeared before a Panel of the Discipline Committee again in 2015. The Discipline Panel issued an order respecting the member on October 6, 2015 which included a reprimand.
13. On November 18, 2016, the Case Manager, Professional Conduct received information from the Member's manager that:
 - a. On November 10 - 15, 2016, there were multiple unexplainable Pyxis discrepancies and other concerns respecting the Member's medication administration practices which ultimately led to correspondence to the Case Manager, Professional Conduct. In the context of the Hearing the Member pled guilty to the relevant charge on the Notice of Hearing and accordingly accepted that from November 10 - 15, 2016 the Member failed to abstain from all mood altering prescription and non- prescription substances.
 - b. On November 21, 2016, the Member contacted the Case Manager advising that the Member experienced a relapse in the Member's depression and addiction illness. This was the first time the Member contacted anyone in respect to a relapse. In the context of the Hearing the Member pled guilty to the relevant charge on the Notice of Hearing and accordingly accepted that the Member failed to immediately withdraw from nursing practice and to report a relapse to the Member's Case Manager and physician.
 - c. On November 24, 2016, the Member again advised the Case Manager that The Member would be entering a treatment program respecting a relapse. The Member withdrew from practice pursuant to a voluntary surrender of the Member's nursing license.

The Panel is satisfied that the facts submitted demonstrate that the Member is suffering from an ailment that might, if the Member continues to practice, constitute a danger to the public pursuant to section 42 (f) of the Act.

After considering the submissions of Counsel for the Investigation Committee and of the Member with respect to discipline, the Panel makes the following Order attached hereto as Schedule A.

The Panel considers the foregoing disposition to be appropriate for the following reasons:

1. The Member has an extensive discipline history with the College commencing post-graduation in 2007.
2. Since the Member's graduation in 2007,
 - a. The Member entered into undertakings in March 2009, March 2010, and April 2011.
 - b. The Member was interim suspended in December 2007.
 - c. The Member voluntarily surrendered the Member's registration in September 2009 and November 2016.
 - d. The Discipline Panel has issued Orders respecting the Member on October 19, 2012 and October 5, 2015.
3. This is the Member's third appearance before a Panel of the Discipline Committee.
4. The Member has admitted to an addiction issue. If the Member continues to practice as a Registered Nurse, the Member's ailment of addiction could constitute a danger to the public. The terms of the order proposed by Counsel to the Investigation Committee and the Member includes provisions to abstain from alcohol/mood altering prescription/non-prescription substances; drug testing; and limiting the Member's ability to practice in certain high pressure environments. The term of the order is 7 years.
5. The Panel accepts the joint recommendation and accordingly makes the within Order. The Panel is of the view that the terms of the Order protects the public and places reasonable provisions to monitor and address the Member's addiction ailment.
6. On the issue of costs, the parties agreed that the amount of costs should be \$5,000. The Member requested additional time in which to pay the cost award and submitted a time frame between 12-18 months. Counsel to the Investigation Committee did not take a position on time frame in which to pay costs. The Panel concludes that the Member should pay costs of \$5,000 within 6 months of the date of this Order. The Panel notes that the previous Order dated October 19, 2012 provided for payment of the cost award within 18 months of returning to registered nursing employment. Further, the October 6, 2015 Order provided for payment of the cost award within 18 months of the Order. In light of the past Orders and the fact that this is now the third Order of a Discipline Panel, this Panel considers it appropriate to stipulate a shorter time period of 6 months in which to pay the cost award.

DATED at Winnipeg, Manitoba, the 18th day of October 2018.

