

IN THE MATTER OF: **The Regulated Health Professions Act S.M. 2009 c. 15**

AND IN THE MATTER OF: **An inquiry hearing into the conduct of Shannon Hancock,
CRNM #135095-092**

DECISION

Important note regarding redactions in this document:

In compliance with s. 129(2) of the *Regulated Health Professions Act*, the College of Registered Nurses of Manitoba may edit the decision or order. In compliance with Council Policy GP-11 and the *Regulated Health Professions Act*, the College redacted the names of individuals not directly involved in the hearing. Other information is redacted to maintain the privacy of the Member's personal information.



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IN THE MATTER OF: The Regulated Health Professions Act S.M. 2009 c. 15

**AND IN THE MATTER OF: A Inquiry Hearing into the Conduct of Shannon Hancock,
CRNM #135095-092**

DECISION

Inquiry Panel Members: Sandy Forrest, RN – Panel Chair
Michelle Prange, RN – Inquiry Panel Member
Michele Groff, Former Member – Inquiry Panel Member
Joanna Knowlton, Public Representative – Inquiry Panel Member
Patricia Conroy, Public Representative – Inquiry Panel Member

Counsel to the Investigation Committee: Bernice Bowley
Fillmore Riley LLP

Counsel to the Panel: Susan B. Barber, Q.C.
McDougall Gauley LLP

Introduction

1. On October 1, 2020, April 28, 2021 and April 29, 2021 a panel of the inquiry committee (the “**Panel**”) of the College of Registered Nurses of Manitoba (the “**College**”) held a hearing into charges against Shannon Hancock, a suspended member of the College (the “**Member**”). The charges are set out in the Notice of Hearing dated August 28, 2020.

2. Counsel to the Complaints Investigation Committee (“**CIC**”) advised the Panel in her opening statement on April 28, 2021 that, of the 44 outlined particulars of the allegations against the Member in the Notice of Hearing, no evidence would be led with respect to the particulars outlined in paragraphs 7, 10, 11, 15, 18, 24, 25, 27, 28, 30-34, 36, 38 and 41.

3. The Panel was originally scheduled to convene on October 1 and 2, 2020, initially to establish jurisdiction and to hear any preliminary motions. The Member raised a number of issues in relation to the fairness of the proceeding and her view that the College ought to appoint counsel for her. During the hearing the Member indicated that she would not be continuing and chose to leave.

4. Following the hearing on October 1, 2020, the Panel was satisfied that the Notice of Hearing had been properly served on the Member and the time limits set forth in paragraph 116(4) of *The Regulated Health Professions Act*, S.M. 2009, c. 15 (the “RHPA”) had been met, or that s. 120 (2) of the RHPA applied. Accordingly, the Panel determined that it had jurisdiction to hear and to determine the matter.

5. When the Panel resumed the hearing on April 28, 2021, the Member did not appear. The Panel was satisfied that the Member had notice of the continuation of the proceedings on April 28 and 29, 2021 and that she had been advised that, if she did not appear, the hearing would continue. In any event, s. 118 of the RHPA provides as follows:

118 If it has been proved that the investigated member has received notice of the hearing, the panel may

- (a) proceed with the hearing in the absence of the investigated member; and
- (b) act or decide or report on the matter being heard in the same way as if the member were in attendance.

6. Accordingly, the Panel carried on with the hearing in the Member’s absence and heard the evidence and arguments against her in relation to the charges.

7. This case involves a complaint brought forward by the registrar of the College in relation to the conduct of the Member. S. 90(3) of the RHPA gives the registrar the authority to take complaints forward in the absence of a complaint having been made by a third party. It provides as follows:

90(3) If the registrar believes that the conduct of a member or former member may constitute conduct about which a finding could be made under subsection 124(2), the registrar may treat the information as a complaint even though no complaint has been made under subsection (2), and may refer it to the complaints investigation committee under clause 91(2)(b). The information is deemed to be a complaint.

8. Although the particulars of the complaint against the Member are extensive, at its core the allegation is that the Member is guilty of professional misconduct in that, from on or about August 19, 2019, and continually thereafter, she refused to cooperate with requests and to respond substantively to

repeated inquiries made by representatives of the College for disclosure of [information], and instead engaged in a pattern of making unfounded allegations against numerous persons. The Notice of Hearing alleges that, as a result of her conduct, she has breached s. 100(2) of the RHPA, Practice Directions: Practice Expectations for RNs 1, 6 and 19 and primary value G of the *Code of Ethics for Registered Nurses*. The CIC seeks a declaration from the Panel that the Member is ungovernable.

Evidence

9. The only witness called on behalf of the CIC was Tracey Legary. Ms. Legary is presently the Manager of Professional Conduct for the College and, in that capacity, she serves as the staff liaison to the CIC, which is seized with upholding the mandate of the College. She has been a registered nurse since 1988.

10. Ms. Legary said that she first became involved with this complaint as a result of previous proceedings involving the Member before another panel. In relation to those proceedings the panel rendered a decision on July 9, 2019 which imposed a two month suspension, effective immediately and directed the Member to successfully complete a remedial course of at least 8 hours on appropriate boundaries in a medical context. The panel also directed the Member to pay costs in the amount of \$15,000.00 within two years from August 1, 2019.

11. Ms. Legary said that she was given direction from the registrar of the College to put the order arising from the panel's July 9, 2019 decision into effect. Her responsibilities included notifying the Member's employer of the sanction and making changes to the register that members of the public can access to determine the status of a member at any given time.

12. Sometime in July, 2019, Ms. Legary spoke to the Member's nursing manager at [Employer] to disclose the sanctions made against the Member.

13. Ms. Legary then received an email from the Member dated July 30, 2019 (exhibit 13) [in which the Member disclosed information affecting her practice as a registered nurse].

14. Ms. Legary said that, when she received the email, she was concerned because she did not know what impact the [information] might have on the Member's ability to provide nursing care and related

services. She said that the College has a policy – AA-█ [which directs a member to cooperate in providing information to the College in particular circumstances].

15. Ms. Legary was concerned about the Member's ability to provide timely care to [clients in light of the information]. She wondered, in light of the [employment] restrictions, how approvals might be received and what collaboration might look like in providing care and services without a reporting structure in place. She decided to refer the matter to the registrar for the College to determine next steps.

16. As a result of the referral from Ms. Legary, the registrar for the College, Katherine Stansfield, sent a letter to the Member dated August 15, 2019, with a copy of policy AA-█ attached and requested a copy of the [information in question, together with additional information in accordance with the College policy].

17. The request by the registrar was met with an email in response from the Member on August 19, 2019 in which, among other things, the Member denied disclosing [the information in question]. She alleged retaliation and conflict on the part of the registrar and Ms. Legary and declined to provide the requested information

18. The Member's response set off a chain of dealings from August 19, 2019 until the charges that are the subject matter of this proceeding were ultimately brought forward. Throughout that chain of dealings the Member refused to comply with repeated requests for information and accused College employees and representatives of conflicts and discreditable conduct.

19. Ms. Legary reviewed in detail in her evidence all of the relevant communications between the Member and the College and its representatives dealing with the matters in issue. Her evidence revealed that the Member was presented with 14 requests, indications and opportunities to comply with the request that she produce the report referenced in her July 30, 2019 email, together with occasions of advice from counsel for the regulator and the court. Thirteen of those requests came from the College directly, the CIC, its personnel, its co-chair and its counsel. The communications were outlined in Ms. Legary's evidence as follows:

1. Exhibit 14 – August 15, 2019 – letter from Katherine Stansfield to the Member, requesting disclosure of the [information] together with other related information;

2. Exhibit 15 – August 27, 2019 – email from Katherine Stansfield to the Member, reiterating the request contained in exhibit 14;
3. Exhibit 17 – September 11, 2019 – letter from Katherine Stansfield to the Member, advising the Member that her refusal to provide the requested information has resulted in a referral to the CIC;
4. Exhibit 18 – September 20, 2019 – letter from Heather Kolowca, investigator, to the Member, requesting a copy of the [information] referenced in the Member’s July 30, 2019 email;
5. Exhibit 19 – September 24, 2019 – letter from Tracey Legary to the Member to advise of the referral to investigation as a result of the Member’s failure to comply;
6. Exhibit 27 - October 10, 2019 – Notice of Decision and Reasons requesting a copy of a full, unredacted copy of the [information] by October 15, 2019;
7. Exhibit 30 – October 15, 2019 – Notice of Decision and Reasons, directing suspension of the Member’s Certificate of Practice, with an opportunity for the Member to appear before the committee (or call in by teleconference) to explain her non-compliance and to submit the information that has been repeatedly requested. The Notice of Decision and Reasons indicated that the committee would be prepared to review the interim suspension at that time for further decision;
8. Exhibit 33- November 20, 2019 – Notice of Decision and Reasons for Council Appeal Panel, confirming the interim suspension as communicated to the Member in exhibit 30;
9. Exhibit 35 – January 16, 2020 – Notice of Decision and Reasons, reiterating the request for the original [information] before considering any [new information];
10. Exhibit 38 – February 13, 2020 – letter to Shannon Hancock from [CIC legal counsel], requesting that the Member disclose the [information];
11. Exhibit 42 – May 14, 2020 Investigation Report of Heather Kolowca at p.521, containing advice from the Court of Queen’s Bench management judge, suggesting that the request by the licensing body that the Member produce the [information] is reasonable;
12. Exhibit 40 – March 31, 2020 – letter to the Member from [CIC legal counsel], reiterating the request from the CIC to produce the [information] and indicating that it is for the member to decide if she will cooperate with the regulator;

13. Exhibit 47 – June 8, 2020 – email from [co-chairs of the CIC], reiterating that the Member has been advised by the committee what she must do in order to address the interim suspension;
14. Exhibit 39 – June 18, 2020 – Notice of Decision and Reasons, indicating that the Member will be provided an opportunity to appear before the committee once the requested information has been provided and, further, that the committee will address the interim suspension once the information has been provided.

20. Despite all of the opportunities granted to the Member to produce the information, she continued to steadfastly refuse to do so and compounded her refusal with unsubstantiated allegations against those making the requests and others. The charges that are the subject matter of this hearing followed.

Issues

21. The issue to be determined in this proceeding is whether or not the CIC has established that the Member is guilty of professional misconduct and whether, as a result, she is ungovernable by the College.

Decision of the Committee and Reasons

22. The Panel finds that the CIC has established that the Member is guilty of misconduct as alleged in the Notice of Hearing and, further, that she is ungovernable by the College.

23. At the outset, it is significant to note that the chain of events leading to the request for disclosure, to the suspension and ultimately to the charges against the Member was triggered by the Member's own disclosure of [information] in an email from her to Tracey Legary on July 30, 2019. In that email the Member [disclosed information affecting her practice as a registered nurse]. Ms. Legary was concerned, as outlined in policy AA■ that the [information disclosed may affect the Member's ability to provide registered nursing care]. Accordingly, on that basis and in light of the disclosure, the registrar for the College requested the information that it did. No inquiry would have been made but for the disclosure by the Member. In response, not only did the Member refuse to cooperate; she alleged conflicts, denied the jurisdiction of the College and its committees and attempted to put up every possible roadblock to any form of resolution.

24. The College is given the mandate under s. 10(2) of the RHPA to, among other things, regulate the practice of the health profession and to govern its members in accordance with the RHPA, the regulations and by-laws. In carrying out its mandate the College must do so in a manner that serves and protects the

public interest (s.10(1) of the RHPA). Its mandate also includes establishing and maintaining standards of practice for members and establishing a code of ethics through the College's council.

25. Corresponding to the mandate of the College, s. 86 of the RHPA requires that a member must comply with the RHPA and the regulations, by-laws, standards of practice, code of ethics and practice directions for the member's health profession.

26. In this case, the Member not only failed to comply with s. 86 of the RHPA; she also failed to produce records to the investigator appointed by the CIC, contrary to s. 100(2) of the RHPA. Such conduct, in and of itself, is deemed to be professional misconduct under the RHPA. Relevant sections of s. 100(2) provide as follows:

100(2) Any of the following actions done by an investigated member or any other member or former member is professional misconduct:

(a) failing to produce to an investigator any record, substance or thing in his or her possession or under his or her control;

...

(c) failing to provide any information to an investigator or answer any questions that the investigator may have relating to the investigation;

...

(e) withholding or concealing from an investigator any record, substance or thing relevant to an investigation.

27. In her unrelenting refusal to comply with the provision of the RHPA and of the obligations imposed under the College's mandate, the Member also breached certain practice expectations established by the College to regulate the quality of practice of registered nurses. Those include:

1. Failure to demonstrate understanding of legislation governing the practice of registered nursing and the Member's practice of registered nursing;
6. Failure to take personal responsibility for professional conduct and fitness to practice;
and
19. Failure to practice in accordance with the values outlined in the Code of Ethics.

28. In addition, under the Code of Ethics established by the council, the Member violated the requirement (G) that the Member be accountable for her actions and answerable for her practice in a self-regulating profession.

29. As revealed in the evidence, the Member's refusal was not a one-time occurrence. She stubbornly refused to respond to the College's repeated, legitimate requests for information and maintained her position of defiance from August 15, 2019 until charges were brought in June, 2020, a period of about 10 months. Her misconduct within the meaning of the RHPA is clear.

30. In addition to finding the Member guilty of misconduct, the Panel concludes that she is ungovernable.

31. In *Law Society of Upper Canada v. Ebagua*, 2012 ONLSHP 0123 ("Ebagua #1") a hearing panel of the Ontario Law Society outlined the need for the public to have confidence that the regulator in a self-regulated profession can properly and effectively govern its members. The hearing panel in that case concluded that if members of the legal profession are not willing to be governed by the Law Society, the public cannot be protected.

32. In *Ahluwalia v. The College of Physicians and Surgeons of Manitoba*, 2017 MBCA 15 ("Ahluwalia"), the Manitoba Court of Appeal, citing from the decision of the hearing panel (quoting from *Mundulai v The Law Society of Upper Canada 2014 OMSC 7208*), described ungovernability as follows, at para. 44:

...A professional person will be considered "ungovernable" if the nature, duration and repetitive character of the person's misconduct demonstrates an inability on the part of that person to respond appropriately to the authorities who are authorized to regulate the individual's professional activities.

33. Also in *Ahluwalia, supra*, the Manitoba Court of Appeal confirmed, at para. 43, that the notion of ungovernability, initially developed in the context of the legal profession, applies equally to health professionals.

34. The court accepted the application of a two-step analysis to a determination of ungovernability. The first step involves an assessment of the objective seriousness of the past and present misconduct, based on the nature, duration and repetitive character. The second stage of the analysis looks at any mitigating factors that might suggest that a finding of ungovernability should not be made,

notwithstanding the seriousness of the past and present conduct. The same approach was endorsed by the Law Society Tribunal Appeal Division, 2014 ONLSTA 40 (“Ebagua #2”) (paras. 40, 44 and 45) after Mr. Ebagua appealed the hearing panel decision.

35. It is notable that the Manitoba Court of Appeal in *Kuny v. College of Registered Nurses of Manitoba*, 2017 MCCA 111 (“Kuny”) has held that failure to cooperate with an investigation, without reasonable explanation, is an objectively serious matter, since lack of cooperation makes it impossible for the governing body to determine if a complaint is substantiated. In *Kuny* the Manitoba Court of Appeal upheld the finding of the discipline committee of the College that Kuny was ungovernable due to his failure to cooperate with an investigation into the reasons for two workplace suspensions and subsequent termination by his employer.

36. In *Ebagua #2*, *supra*, a law society appeal tribunal upheld the hearing panel’s determination that the licensed paralegal was ungovernable due to his failure over a substantial period of time to provide substantive responses to inquiries and to produce records required in investigations undertaken by the Law Society. The hearing panel concluded as follows in *Ebagua #1* :

[21] Fundamental to governability is cooperation with Law Society investigations and reporting to the Law Society as required by the By-Laws. Where a paralegal member cannot be relied upon to cooperate and report when required, governability is lacking.

...

[77] Mr. Ebagua has repeatedly failed to properly respond to Law Society investigations of his conduct. He has previously been disciplined for the same misconduct but he was not deterred by the penalty in that proceeding. Mr. Ebagua has not reported criminal proceedings taken against him to the Law Society as required.

[78] Mr. Ebagua shows no remorse and no understanding of the effect of his misconduct on his clients and the public. We have no confidence that Mr. Ebagua will conduct himself any differently in the future. We conclude that Mr. Ebagua is ungovernable.

[79] Indeed, the positions taken by Mr. Ebagua in this proceeding cause further concern and tend to corroborate our conclusion that Mr. Ebagua is ungovernable.

37. The similarities between the conduct of Mr. Ebagua and of the Member in this case are striking. Like Mr. Ebagua, the Member has repeatedly failed to respond to appropriate inquiries from her regulator

and, through her communications, has showed no remorse and no understanding of the obligations on her or of the effect of her misconduct on the public and others.

38. Moreover, in this case, the Member has a history of misconduct in light of the finding of the College's discipline committee on July 9, 2019 which imposed a two month suspension, completion of remedial courses and payment of costs in the amount of \$15,000.00. In connection with that decision, also entered into evidence as exhibit 12, was the Notice of Decision and Reasons dated October 18, 2016 which found significant concerns on the part of the investigation committee that the Member:

- Lacks insight;
- Repeatedly deflects responsibility for her actions;
- Responds to allegations against her by discrediting members of the health care team;
- Characterizes reasonable efforts by the Investigation Committee, the Investigation Committee's legal counsel, the investigator, and Professional Conduct staff as being retaliatory, vindictive, lacking in humanity and aimed at personally punishing her.

39. Those very same characteristics were displayed by the Member in connection with this proceeding in many of her communications. All of those concerns are legitimate in assessing the Member's past and present misconduct. She has shown and continued to show a repeated pattern to respond inappropriately to legitimate requests by the body that is statutorily authorized and, in fact, mandated to regulate her. Her continued refusal to cooperate has serious ramifications and implications for the public's confidence in the College's ability to serve and protect the public interest. The Member's ungovernability is clear.

40. The second part of the analysis looks at any mitigating factors that militate against a finding of ungovernability. In *Ebagua #2, supra*, the appeal division outlined the following mitigating factors:

- (a) Any character evidence;
- (b) The existence of remorse and a recognition and understanding of the seriousness of the misconduct;
- (c) Evidence that the member is willing to be governed by the College;
- (d) Medical or other evidence that explains (although does not excuse) the misconduct;
- (e) The likelihood of future misconduct, having regard to any treatment or other remedial efforts undertaken; and
- (f) The Member's ongoing co-operation with the College in addressing the outstanding matters that are the subject of the misconduct and other regulatory matters.

41. In this case the Member chose not to appear before the Panel to give evidence, notwithstanding that she was aware of the hearing dates. In those circumstances there is no evidence before the Panel of any mitigating factors and, accordingly, none apply.

42. This Panel finds the Member guilty of misconduct and ungovernable.

DATED at Winnipeg, Manitoba, the 12th day of May, 2021.