

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 Douglas Kuny, CRNM #143324**

DECISION



**College of
Registered Nurses
of Manitoba**

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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 Douglas Kuny, CRNM #143324**

DECISION

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Introduction

On December 9, 2015, 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 Douglas Kuny (the "Member"), a member of the College. The charges are set out in the Notice of Hearing. 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. It was also agreed that the Panel was properly constituted and had jurisdiction to proceed to deal with the referral that was made by the Investigation Committee on October 29, 2015.

At the request of counsel for the Investigation Committee and the Member, the hearing was adjourned to March 15 & 16, 2016 and April 25 & 26, 2016 to afford the parties the opportunity to exchange documentation and lists of proposed witnesses. The Panel was to make itself available on January 12, 2016, if necessary, should any issues arise.

On January 12, 2016, the Panel convened and made its ruling on the production of documents.

The Panel convened on March 15, 2016 but adjourned the hearing originally scheduled for March 15 & 16, 2016 due to the unavailability of the Member. However, the Panel did determine to convene on April 18, 2016 to deal with preliminary motions.

On April 18, 2016 the Panel convened and, following submissions by the Member and counsel to the Investigation Committee, provided its ruling on the issues to be determined as follows:

1. Was an agreement reached by way of communications between the Member's then legal counsel, [REDACTED], and counsel to the Investigation Committee, [REDACTED] and, if so, what was the nature of that agreement;
2. If such an agreement was reached, did the Member comply with that agreement;
3. If the Member did not comply, was he prevented from doing so by the College of Registered Nurses of Manitoba;
4. Did the Member knowingly misstate the facts in his correspondence to the Executive Director of the College of Registered Nurses of Manitoba dated October 15, 2015;
5. On the basis of the Member's communications and correspondence with the College of Registered Nurses of Manitoba, as well as the Member's conduct in dealing with this matter, is the Member guilty of professional misconduct;
6. On the basis of the Member's communications and correspondence with the College of Registered Nurses of Manitoba, as well as the Member's conduct in dealing with this matter, is the Member ungovernable;
7. If the Member is guilty of professional misconduct and/or ungovernable, what is(are) the appropriate sanction(s); and
8. If the Member is not guilty of professional misconduct and/or ungovernable, what is(are) the appropriate consequence(s).

The hearing was scheduled to reconvene June 7, 8, 13 and 14, 2016.

On June 7, 2016, the Member pled not guilty to the allegations of professional misconduct as set out in the Notice of Hearing dated October 29, 2015.

On June 7, 8, 14, August 22, 23, 2016, the Panel heard evidence, and submissions from counsel for the Investigation Committee and the Member.

Notice of Hearing

This case involves a complaint by the CRNM Investigation Committee relating to the conduct of the Member.

The matters at issue set out in the Notice of Hearing are that the Member failed to comply with a component of an agreement reached between the Member and the College on or about September 24, 2013 (the 'Agreement'). In particular, he failed to comply with a term of the Agreement that required him to complete a paper to demonstrate insight and learning regarding specific issues raised by a complaint received by the College on January 31, 2011 (the "Complaint").

Further particulars of the Member's alleged failure to comply with the Agreement are as follows:

- a) On June 24, 2013, the Investigation Committee decided to enter into an agreement with the Member which provided that within six (6) months he would complete remedial measures to address specific issues arising out of the Complaint;

- b) The remedial measures which the Investigation Committee required the Member to complete and which he agreed to complete were as follows:
- i. Participate and successfully complete the Communication at Work and Accountability in Action courses; and
 - ii. Complete a paper to demonstrate insight and learning that will use the College's Standards of Practice for Registered Nurses and Canadian Nurses Association's Code of Ethics for Nurses as a framework to discuss and evaluate the issues that brought forth the Complaint. The paper will:
 - Articulate the situation/concern raised;
 - Explain the link between the Complaint and professional concerns;
 - Specify relevant Standards of Practice for Registered Nurses;
 - Identify relevant values and responsibilities from the Code of Ethics for Registered Nurses;
 - Reflect on how the situation could have been handled differently;
 - Incorporate what has been learned from the education activities;
 - Utilize at least five (5) current peer reviewed references from the last five years;
 - The paper is limited to 1,500 words or less.

Review the completed paper with the Manager, Professional Conduct or delegate of the College within one month of completion.

- c) Prior to the Committee rendering its decision of June 24, 2013, considerable discussion occurred between the Member's counsel, [REDACTED], and counsel to the Investigation Committee, [REDACTED]. In the course of these discussions the issues in the Complaint that were of concern to the Committee were identified as well as those the Committee did not intend to pursue. By a letter from Mr. [REDACTED] to Mr. [REDACTED] dated June 6, 2013, communication and accountability concerns were identified in specific detail.
- d) The Member completed the Communication at Work and Accountability in Action courses.
- e) On or about September 24, 2013, with the Member's authority and knowledge, the scope of the Paper was agreed to. It was agreed that the Paper would only deal with the matters relating to communication and accountability arising out of the Complaint and only as it pertained to documents the College provided to Mr. [REDACTED]. It was also a term of the Agreement that:
- i. The Paper was to be private and confidential and for use of the College only;
 - ii. The Agreement shall remain in effect for six (6) months and that at any time should the Member not be listed on the practicing register, then all obligations shall be held in abeyance, as will the computation of the 6 month term of the Agreement; and

- iii. Should the Member apply for reinstatement on the practicing register, then the obligations under the Agreement will immediately resume as will the computation of the 6 month term of the Agreement.
- f) The Member did not apply for registration renewal for the 2014 calendar year. As a result, on January 1, 2014, the Member was no longer listed on the practicing register.
- g) The Member returned to the practicing register on April 1, 2015. On July 6, 7 and 8, 2015, he was the subject of a hearing before a panel of the Discipline Committee for other acts of alleged misconduct. The term of his Agreement was to expire at or about July 1, 2015, and therefore the Paper was to be provided by that time. Professional Conduct staff for the College did not contact him regarding the Paper until after the discipline hearing of July 6, 7 and 8, 2015.
- h) On August 17, 2015, Professional Conduct staff for the College wrote to the Member advising that the computation of the term of his Agreement was revised reflecting the date he was reinstated and that he was required to provide the Paper by no later than September 17, 2015.
- i) On August 18, 2015, the Member wrote to the College indicating, among other things, that there was no agreement by him to provide the Paper.
- j) On August 20, 2015, Professional Conduct staff for the College wrote to the Member and provided details of the Agreement negotiated, with his knowledge and authority, by his lawyer, [REDACTED]. The Member was provided with correspondence which detailed the Agreement and again advised that the Paper was required by September 17, 2015. The information and documentation provided by Professional Conduct staff in the August 20, 2015 letter was information which had previously been provided to the Member by his counsel, [REDACTED].
- k) On August 22, 2015, the Member wrote to Professional Conduct staff at the College and denied that there was an agreement in place for him to complete the Paper.
- l) On August 26, 2015, Professional Conduct staff for the College wrote to the Member and indicated that the documentation provided to him with the letter of August 20, 2015, indicated that the Agreement was in place and that the Paper was due September 17, 2015.
- m) On August 28, 2015, the Member wrote to Professional Conduct staff and indicated, among other things, that he had not received documentation from Mr. [REDACTED] which confirmed the Agreement and that if this documentation could be provided to him, he would "have no problem producing the Paper".
- n) On September 18, 2015, the Member again wrote to Professional Conduct staff at the College and advised, among other things, that an agreement between him and the College was not finalized. In this correspondence he also repeated his request that proof of the Agreement be provided to him.
- o) On October 2, 2015, Professional Conduct staff for the College wrote to the Member and provided a chronology of events which lead to the Agreement being finalized and again provided documentation in support thereof. This letter also advised that the Investigation Committee directed Professional Conduct staff to inform him that the documentation exchanged between Mr.

██████████ and Mr. ██████████ clearly confirm the Agreement and demanded that he produce the Paper by no later than October 23, 2015.

p) On October 8, 2013, the Member wrote to Professional Conduct staff and indicated, among other things:

- iv. that the Investigation Committee has not been straightforward in responding to his enquiries regarding the Agreement;
- v. that he had a number of questions, which he then itemized, and that he expected an answer to these questions in less than ten days; and
- vi. that he would not produce the Paper until he received responses to his questions and "agreement to the matters as presented by factual evidence"

q) On October 14, 2015, Professional Conduct staff wrote to the Member and again confirmed the issues to be addressed in the Paper. This correspondence advised that there was no need to respond to the questions set out in his email of October 8, 2015, and repeated that the Paper was due by no later than October 23, 2015.

r) On October 15, 2015, the Member wrote to the Executive Director of the College and indicated, among other things:

- that Professional Conduct staff and the Investigation Committee has treated him in an unprofessional and unethical manner when attempting to have him produce the Paper;
- that his requirement to produce the Paper was questionable as a statement made by Mr. ██████████ before the Disciplinary Panel on his prior charges indicated that the issue of the Paper was closed.
- that Professional Conduct staff has manipulated its responses to him and attempted to be evasive;
- that he would not produce the Paper until the questions posed in his email of October 8, 2015, were answered in a "straightforward manner";
- that the College was "manipulating" the terms of the Paper;

The Member did not mention to the Executive Director that Mr. ██████████ subsequent to making that statement before the Discipline Panel, clarified, in his presence, that this statement was made in error and that the issue of the Paper remained open;

s. On October 22, 2015, the Member again wrote to the Executive Director of the College and indicated, among other things:

- that the investigation Committee and Professional Conduct staff "is the problem" that this resulted in his not producing the Paper;
- that Professional Conduct staff was "covering up" from directions given by the Investigation Committee;

- that the Investigation Committee and Professional Conduct staff had been "very evasive and manipulated and totally skewed the evidence".

t. The Member failed to produce the Paper on October 23, 2015, or at any time thereafter.

As a result, the Notice of Hearing alleged that the Member had breached the Standards of Practice for Registered Nurses, Standard II Professional Practice including indicators 11 and 13, Standard IV Ethical Practice including indicator 23 and Primary Value G of Part I of the Code of Ethics for Registered Nurses. It was also alleged that his conduct, as described above, indicated that he was ungovernable.

Throughout the course of the hearing, the Panel heard evidence on behalf of the Investigation Committee from two witnesses, [REDACTED] and [REDACTED] and on behalf of the Member from three witnesses, [REDACTED], [REDACTED] and the Member himself. In addition, the Member provided written questions and answers from [REDACTED], [REDACTED] and [REDACTED]. By agreement these were entered as exhibits.

Evidence

The Investigation Committee first called [REDACTED] with the College. Ms. [REDACTED] role is to oversee the staff of the Professional Conduct department and to act as a resource to the Investigation Committee. Ms. [REDACTED] testified as to the circumstances leading up to the initial Notice of Decisions and Reasons ("NODR") of the Investigation Committee dated November 2, 2012. That NODR required a one-year undertaking from the Member that included provisions to complete educational courses and provide a paper. Ms. [REDACTED] reviewed documentation whereby the Investigation Committee agreed to accept an agreement between counsel to the Investigation Committee and counsel to the Member in place of the undertaking. She identified the revised NODR of the Investigation Committee dated June 24, 2013 whereby the Investigation Committee accepted a six (6) month agreement from the Member that included provisions to complete educational courses and provide a paper.

Ms. [REDACTED] identified the documents exchanged between counsel, which comprised the agreement reached on September 24, 2013 (the "Agreement"). The Agreement required that the Member complete a paper, the form and substance of which would be acceptable to the College, that would deal with matters relating to communication and accountability pertaining to documents which the College had released to the Member through his counsel. The form and substance agreed to was that set forth in the standard agreement of the College, which had been provided to the Member through counsel by the exchange of August 2, 2013 (the "Paper").

Ms. [REDACTED] explained that although the Agreement was finalized and the term commenced September 24, 2013, the Member did not renew his 2014 registration and therefore the requirements were held in abeyance. When the Member went back on the practicing register in April 2015 the time requirements under the Agreement resumed. Although the Paper had not been provided, as the Member was involved in another disciplinary matter, there was no contact by the College until August 17, 2015. At that time staff in Professional Conduct requested that the Paper be submitted by September 17, 2015.

Ms. [REDACTED] reviewed the extensive correspondence between the Member and Professional Conduct which, in the view of Professional Conduct, reflected a denial of the existence of an agreement, a dispute as to the content of the Agreement and repeated demands for additional information and documentation. The Investigation Committee met

on September 22, 2015 and directed that Professional Conduct correspond with the Member and direct that he comply with the Agreement and produce the Paper by October 23, 2015.

The Member responded by continuing to question the existence/content of an agreement and requesting further information. Ms. [REDACTED] addressed the exchange between the Member and [REDACTED] of the College, including the Member's email of October 15, 2015. In that email the Member indicated that the requirement to provide a paper was "questionable as Mr. [REDACTED] has told the Disciplinary Panel that this matter was closed. A(t) no time in any of the correspondence did Mr. [REDACTED] or the Investigation Committee state that Mr. [REDACTED] was wrong in his assertion which also was backed by Ms. [REDACTED]' This comment related to a statement Mr. [REDACTED] had made in another disciplinary matter and Ms. [REDACTED] referenced transcripts of evidence adduced in that other hearing wherein the Member himself had pointed out that Mr. [REDACTED] was incorrect and that the requirements of the Agreement had not been completed in that the Paper had not been produced.

Ms. [REDACTED] denied that the Member was prevented in any way by the College from complying with the Agreement and producing the Paper.

The Investigation Committee reviewed the matter on October 29, 2015 and referred the matter to the Discipline Committee.

In cross examination, the Member challenged Ms. [REDACTED] as to the existence of an agreement and/or the authority of Ms. [REDACTED]/Mr. [REDACTED] to enter into an agreement on behalf of the Investigation Committee. The Member questioned the conduct of both Professional Conduct staff and the Investigation Committee.

[REDACTED] testified as to his role as counsel to the Investigation Committee. Although he had opened the file sometime earlier, he became actively involved in early 2013 when Professional Conduct was corresponding with the Member's counsel, [REDACTED]. In consultation with Professional Conduct, Mr. [REDACTED] entered into discussions with Mr. [REDACTED] and in the absence of an undertaking, they turned their attention to negotiating an agreement which would be satisfactory to the Investigation Committee and the Member. Mr. [REDACTED] testified that his discussions with Mr. [REDACTED] culminated in the Agreement which was finalized on September 24, 2013.

Both in his direct evidence and in cross examination by the Member, Mr. [REDACTED] maintained that he had the authority to confirm the Agreement on behalf of the Investigation Committee, as did Mr. [REDACTED] on behalf of the Member. Mr. [REDACTED] was also satisfied that the Member was well aware of what was required of him under the Agreement with respect to the Paper. (It is noted that in the questions and answers of [REDACTED] Chair of the Investigation Committee, submitted by the Member, [REDACTED] confirms that Mr. [REDACTED] was acting on behalf of and with the authority of the Investigation Committee.)

Mr. [REDACTED] acknowledged that on March 2, 2015 he had erroneously indicated to counsel to the Discipline Panel in the other matter his belief that the Member had completed the Paper. The Agreement with its six (6) month term had been entered into in September 2013. Mr. [REDACTED] confirmed that at the discipline hearing on March 4, 2015 the Member pointed out his error and advised the Discipline Panel that the Agreement had not been fulfilled in that the Paper had not been completed. In Mr. [REDACTED] view the Member's email to Ms. [REDACTED] of October 15, 2015 was inaccurate.

The Member's first witness was [REDACTED] who is employed by the College [REDACTED]. He was questioned by the Member as to the delay in the August 17, 2015 request for the Paper and Mr. [REDACTED] failure/refusal to provide further information and/or documentation. Mr. [REDACTED] explained the

various timeframes and pointed out that it was the Member's obligation to comply with the terms of the Agreement. Further, Mr. [REDACTED] reviewed the various correspondence in which he responded to the Member's queries and attempted to clarify, for the Member, the requirements of the Agreement.

The Member called [REDACTED] who confirmed that the Investigation Committee had agreed to accept an agreement rather than the usual undertaking and had authorized Mr. [REDACTED] to pursue same. The Agreement was finalized September 24, 2013. The Investigation Committee subsequently met on September 22, 2015, was advised that the Paper had not been completed and instructed Professional Conduct to communicate with the Member and extend the deadline to October 23, 2015. The Investigation Committee again met on October 29, 2015, was advised that the Paper had not been completed and referred the matter to discipline.

The Member testified that having regard to Mr. [REDACTED] statement in March 2015 that the matter was completed, and given that the initial letter from Professional Conduct was not until August 17, 2015, he could well have thought that the Paper was no longer required. He was critical of Professional Conduct for not communicating with him until August 17, 2015 when the Agreement was concluded on September 24, 2013 and he had been back on the register since April 2015. He raised concerns as to the very existence of the Agreement given that there was no formal signed document, nor any confirmation from the Investigation Committee that an agreement had been finalized.

The Member reviewed his exchanges with Professional Conduct and indicated that there was a common theme that he was always prepared to provide the Paper if Professional Conduct would confirm the Agreement and provide various answers to his questions concerning framework and content.

As to his email to Ms. [REDACTED] of October 15, 2015, the Member maintained that it was the truth.

The Member presented two drafts of the Paper dated January 22, 2014 and July 16, 2016 which he said reflected the difference between the Agreement, as understood by he and Mr. [REDACTED] which was different than what was being stipulated by Professional Conduct. He acknowledged that he had never presented a draft to Professional Conduct for its consideration.

In cross examination the Member confirmed that Mr. [REDACTED] had been retained in January 2013, continued to act until March 2014 and had authority to act as his counsel throughout that period. He testified that Mr. [REDACTED] shared with him all of the documents exchanged with Mr. [REDACTED]. The Member acknowledged that he instructed Mr. [REDACTED] to accept the terms of the agreement provided by Mr. [REDACTED] on August 2, 2013 subject to the conditions stipulated in Mr. [REDACTED] email of September 24, 2013. It had always been a condition and it was a condition of that Agreement that he provide the Paper. To date, no paper had been provided with the exception of the drafts he submitted at the outset of his testimony.

The Member was cross examined on his position at the discipline hearing in March 2015, with Professional Conduct between August and October 2015, and up to and including his testimony at the hearing, that an agreement had never been finalized. He maintained that he was still looking for confirmation that the terms agreed to by Mr. [REDACTED] and Mr. [REDACTED] had been agreed to by the Investigation Committee.

Submissions

On behalf of the Investigation Committee, Mr. ██████ asserted that with the Member having refused the undertaking, counsel were engaged to negotiate an agreement under similar terms. On September 24, 2013, the Agreement was concluded. At all times it was known that the Member would be required to provide a paper; the content and format of that paper were agreed to as of September 24, 2013. Compliance with that provision was the responsibility of the Member. The requirements with respect to the Paper were the same when Mr. ██████ wrote on August 17, 2015 as they had been when the Agreement was finalized on September 24, 2013. There was an agreement to which the Member has not complied.

While preparation of the Paper would have been a straightforward matter, if there had been any confusion on the part of the Member he could have submitted a draft and worked out any issues with Professional Conduct, as has often been done. Instead, the Member determined to question the existence or scope of the Agreement, to seek additional information/documentation and to accuse Professional Conduct staff and the Investigation Committee of nefarious behavior.

The rationale for and the concept of the Paper was communication and accountability. In Mr. ██████ submission, the Member has shown no accountability and poor communication throughout this entire process. The Member is not prepared to accept the authority of the College and is ungovernable. The Member's responses are demanding, not cooperative and represent conduct inappropriate of a member.

As to the assertion that the Member was prevented from complying with the Agreement, counsel argued that there was no evidence that Professional Conduct staff did anything but respond to and provide direction to the Member. On the contrary, Professional Conduct staff extended the deadline on more than one occasion.

It was further submitted that in his email to the Executive Director, the Member knowingly misstated facts. Although Mr. ██████ had erroneously indicated that this matter was completed, that comment was corrected by the Member himself within days. As for Ms. ██████ there was no evidence that she had said anything of the sort. In Mr. ██████ view, this conduct was misleading and reprehensible.

Mr. ██████ asserted that the Member continues to display a lack of accountability and an unwillingness to accept responsibility, as evidenced by his draft paper of July 16, 2016, in which he makes disparaging comments about coworkers and College personnel. This is a clear breach of the Code of Ethics for Registered Nurses.

On his own behalf, the Member referred to Mr. ██████ comment in the letter of March 2, 2015 and the transcript of the hearing on March 4, 2015 and asserted that it's Mr. ██████ and Ms. ██████ that should be held accountable. He indicated that he thought that maybe the matter was closed and didn't hear anything until August 17, 2015.

As to the Agreement, the Member acknowledged that the emails confirm an Agreement between counsel but asserted that there was a difference as to what was in the minds of he and Mr. ██████ and those of Mr. ██████ and the Investigation Committee. Attempts to clarify "went for naught".

In response to Mr. ██████ allegations that he was belligerent, he did acknowledge that perhaps his email to the Executive Director could have been worded differently. However, he stated that Mr. ██████ and Ms. ██████ did what he said they had done.

The Member argued that he did not comply due to confusion as to the nature of the Agreement and that he had, on numerous occasions, indicated he would do the paper if he could get closure from Professional Conduct and the Investigation Committee. He asked "who wasn't accountable". The Member stated it was clear from the correspondence with Mr. [REDACTED] that he was prevented from complying with the Agreement. He expected his governing body to be straightforward, cooperative, and to assist, not prevent.

Issues

The Panel is satisfied that the issues to be determined are as contained in its ruling of April 18, 2016, set out on page 2 hereof.

Decision

1. Was an agreement reached by way of communications between the Member's then legal counsel, [REDACTED] and counsel to the Investigation Committee, [REDACTED] and, if so, what was the nature of that agreement.

The Panel is satisfied that an agreement was reached. The Agreement was concluded on September 24, 2013 between legal counsel for the Investigation Committee and for the Member, each with the authority and upon the instruction of the respective parties. The Agreement consisted of the agreement provided to Mr. [REDACTED] by Mr. [REDACTED] on August 2, 2013 subject to the conditions set out in Mr. [REDACTED] email to Mr. [REDACTED] on September 24, 2013. As part of that Agreement, the Member was to prepare the Paper, the content and subject matter of which was contained in the Agreement. The Member had to have known as of September 24, 2013 that the Agreement had been concluded and of his responsibilities pursuant thereto.

2. If such an agreement was reached, did the Member comply with that agreement;

The Member did not comply with the Agreement in that he failed to produce the Paper as required.

3. If the Member did not comply, was he prevented from doing so by the College of Registered Nurses of Manitoba;

The Panel finds that the Member was not prevented by the College from complying with the terms of the Agreement. Professional Conduct staff responded to the Member's numerous inquiries and extended the deadline on more than one occasion.

4. Did the Member knowingly misstate the facts in his correspondence to the Executive Director of the College of Registered Nurses of Manitoba dated October 15, 2015;

By advising the [REDACTED] that Mr. [REDACTED] had told a disciplinary panel that this matter was closed when he knew that that erroneous statement had been corrected, the Member knowingly misstated the facts. By failing to advise that the statement had been corrected, the Panel concludes that the Member intentionally misled the [REDACTED]

5. On the basis of the Member's communications and correspondence with the College of Registered Nurses of Manitoba, as well as the Member's conduct in dealing with this matter, is the Member guilty of professional misconduct;

The Member's communications and correspondence with the College, including comments with respect to his co-workers and former employer, demonstrate disrespectful, disparaging, threatening, vindictive, and abusive conduct. The Member's approach from the outset and his conduct throughout the process of this matter has been unreasonable. The Member has breached the Standards of Practice for Registered Nurses, Standard II Professional Practice including indicators 11 and 13, Standard IV Ethical Practice including indicator 23 and Primary Value G of Part I of the Code of Ethics for Registered Nurses. The Panel finds the Member has contravened the code of ethics of the College and is guilty of professional misconduct and conduct unbecoming a member.

6. On the basis of the Member's communications and correspondence with the College of Registered Nurses of Manitoba, as well as the Member's conduct in dealing with this matter, is the Member ungovernable;

There has been a complete failure on the part of the Member to accept responsibility or to be accountable for his actions. The Member refuses to accept the authority of or to take direction from the College, his governing body. For these reasons, combined with those as set out in #5 above, the Panel finds the Member to be ungovernable.

7. If the Member is guilty of professional misconduct and/or ungovernable, what is(are) the appropriate sanction(s);

The Registered Nurses Act, Section 4(2):

The college must carry out its activities and govern its members in a manner that serves and protects the public interest.

The Discipline Committee provides a mechanism by which the College can meet this obligation.

In a previous ruling (November 2015), the Member was given a four month suspension together with remediation in the form of a paper regarding why a nurse must be accountable/cooperate with their regulatory body. The Panel has considered whether, based upon the evidence before it, and in the absence of the other discipline matter, a lengthy period of suspension, with a requirement for both a course of studies and counseling (with specific reference to accountability and communication), with provision for supervision upon reinstatement and the maximum fine, would be appropriate. However, the Panel is concerned, having regard to the Member's complete lack of insight, his failure/refusal to acknowledge or accept any responsibility, and his overall conduct throughout, that any period of

suspension with remediation could facilitate the required change in this Member's behaviour. Professional misconduct and conduct unbecoming undermine public confidence in the profession.

In the *College of Nurses of Ontario v. Hunter*, a 2014 decision of the Discipline Committee of the College of Nurses of Ontario where the member was found to be ungovernable and her certificate of registration revoked, the panel stated:

This penalty provides general deterrence in sending the message to the membership that members of the profession must be accountable for their actions, or lack of actions. Ungovernable members are not safe, and public safety is paramount in the profession.

The Panel has no doubt that, given the previous discipline and having regard to its primary mandate of protecting the public, the only appropriate response is to cancel the Member's registration. The Panel so orders.

Counsel to the Investigation Committee estimated the costs in this matter to be in excess of \$100,000. With respect to costs, and in any event, the Panel orders that the Member pay costs of \$30,000. The Member may confer with the College as to the terms of payment but in the absence of any agreement, the costs are to be paid within one year of the date hereof.

DATED in Winnipeg, Manitoba this 29th day of September, 2016.

