

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 Rebekah Grenkow,
CRNM #142036**

DECISION



College of
Registered Nurses
of Manitoba

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DECISION AND REASONS

Inquiry Panel Members: Lydia Harris RN, Panel Chair
Michele Groff, Former RN
Carol Renner, Public Representative

Counsel to the Panel: Sacha Paul
Thompson Dorfman Sweatman LLP

Counsel to the Complaints Investigation Committee: William G. Haight
Phillips Aiello Barristers & Solicitors

Member: Rebekah Grenkow

Counsel to the Member: Susan Dawes
Myers LLP

Introduction

On November 21, 2022, a Panel of the Inquiry Committee (the “Panel”) of the College of Registered Nurses of Manitoba (“the College”) held a hearing into the charges against Rebekah Grenkow (the “Member”), a member of the College.

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 paragraph 116(4) of *The Regulated Health Professions Act* (the “RHPA”) had been met. No objections were raised as to the composition of the Panel and the Panel proceeded to hear the matter.

The Member appeared at the hearing with legal counsel and plead guilty to professional misconduct.¹ More specifically, the Member plead guilty to and admitted the facts found in paragraphs 1 and 2 of the Notice of Hearing. The Member also plead guilty to the facts outlined in paragraph 4, as amended by the parties, indicating she improperly accessed the electronic patient records of five (5) individuals, not seven (7) as originally described in the Notice of Hearing.

Counsel for the Complaints Investigation Committee (the "CIC") stayed the charges contained in paragraph 3 of the Notice of Hearing.

The Panel then heard submissions from counsel for the CIC as well as counsel for the Member, respecting the background facts giving rise to the matters raised in the Notice of Hearing and the appropriate disposition of the matter.

After hearing submissions of counsel, the Panel adjourned to consider the matter. The following facts are not in dispute:

1. The Member has been a Registered Nurse ("RN") for 16 years. She graduated in 2005.
2. At the material time, the Member was employed as an RN at Employer A. She also worked at another location in addition to Employer A (the Employer B "Other Employer").
3. Between December 1, 2020 and February 4, 2021, while employed at Employer A, the Member improperly accessed the Employer A Electronic Patient Records ("EPRs") of five individuals who were not receiving care from the Member.
4. The Member improperly accessed the EPRs of these five patients on multiple instances during which the Member accessed progress notes, medical histories, the results of physical examinations, consultation notes and test results.
5. Between January 22, 2021 and February 17, 2021, while employed at Employer A, the Member improperly accessed EPRs for a patient who was known to the Member, but was not receiving care from the Member (the "Employer A Patient").
6. In accessing EPRs, a person, like the Member, will see a number of "pop ups" to reinforce the importance of maintaining privacy.
 - a. Many of the pop ups provided to the Panel have a heading which reads, "You are key in protecting patient privacy."
 - i. Some of the pop ups read as follows:
 - ii. "Patient privacy is important. Patients rely on you to keep their information private and not discuss it in public or with those who don't need to know." "Snooping: Never

¹ The Notice of Hearing to which the Member plead guilty reads in part:
"The alleged conduct set out herein are breaches of:

- a. CRNM Practice Direction: Practice Expectations for Registered Nurses, indicators 1, 13, 19, and 20;
- b. The Code of Ethics for Registered Nurses, Primary Value A, Ethical Responsibility 1; Primary Value D, Ethical Responsibility 7; Primary Value E, Ethical Responsibilities 1, 3, 7 and 8; and Primary Value G, Ethical Responsibility 1;
- c. CRNM Entry Level Competency 2.4, 2.6 and 2.8; and
- d. The Personal Health Information Act, C.C.S.M. c. P33.5"

access information you don't need to do your job. If you are caught **snooping**, you will be **disciplined**" (emphasis in original).

- iii. "Accessing information: Only access information you need to do your job. Looking up information for personal reasons is a breach of policy."
7. On January 23, 2021, during a phone call, the Member disclosed personal health information of the Employer A Patient to a colleague of the Member when that colleague did not have a legitimate need to know the information.
8. Both the colleague and the Employer A Patient were employed at Employer B the Other Employer.
9. In the January 23, 2021 phone call between the Member and a colleague, the Member told the colleague the Employer A Patient:
 - a. had been admitted to the Intensive Care Unit ("ICU") at Employer A;
 - b. was pregnant;
 - c. was undergoing a specific course of treatment; and
 - d. had recently contracted COVID-19.
10. The intent of the Member at the commencement of the phone call was not to disclose the information, but the Member did so during the course of the call.
11. After the call, the colleague reported the inappropriate disclosure to Employer B the Other Employer.
12. In total, the Member improperly accessed the EPRs of 6 individuals.
13. The Employer B Other Employer imposed a 1-day suspension on the Member for the disclosure.
14. Employer A originally terminated the Member for her conduct, but the termination was later changed to a 15-day suspension through the grievance process. Although reinstated, the Member resigned and did not return to Employer A.
15. As of the date of the hearing, the Member is employed at Employer C outside of Winnipeg e.g. She is no longer employed at Employer A.
16. Prior to this matter, the Member has had no prior complaints to the College and no prior discipline from her employer.

Decision

The Panel is satisfied that the facts submitted constitute professional misconduct, as alleged in the Notice of Hearing and, accordingly, the member is guilty of professional misconduct, as charged in charges 1, 2, and the amended facts contained in paragraph 4 of the Notice of Hearing.

The Panel heard submissions from counsel. In essence, counsel for the CIC argued for a suspension of one month plus \$4,000 in costs with 12 months to pay. Counsel for the Member argued for a 2-week suspension plus costs of \$1,000 and a period of time to pay.

After considering the submissions of counsel, the Panel makes the following Order:

1. The Member's registration is suspended for one month commencing on February 1, 2023 and ending on February 28, 2023, both dates inclusive;

2. The Member is ordered to pay costs to the College in the amount of four thousand dollars (\$4000) to be paid on or before March 31, 2024.

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

1. Both counsel to the CIC and the Member acknowledge that the Member is a “professional nurse.”
2. The Member has been an RN for 16 years with no prior complaints or employer discipline before the matter before this Panel.
3. The Panel notes the submissions of counsel to the Member of a number of personal stressors in her life at the material time, including working in the midst of the COVID pandemic. We have factored this into our assessment of penalty.
4. The importance of patient privacy and confidentiality is clear for RNs. For example, The Code of Ethics for Registered Nurses, Value E reads as follows:
 - a. “Maintaining Privacy and Confidentiality: Nurses recognize the importance of persons receiving care in the lawful collection, use, access and disclosure of personal information.”
 - b. The Ethical Responsibilities under Value E read in part:
 - i. “1. Nurses respect the interests of persons receiving care in the lawful collection, use, access and disclosure of personal information.”
 - ii. “3. Nurses collect, use and disclose health information on a need-to-know basis with the highest degree of anonymity possible in the circumstances and in accordance with privacy laws.”
 - iii. “7. Nurses respect policies that protect and preserve the privacy of persons receiving care, including security safeguards in information technology.”
 - iv. “8. Nurses do not abuse their access to information by accessing health-care records, including those of a family member or any other person, for purposes inconsistent with their professional obligations.”
5. The conduct of the Member is a clear violation of the six individual patients’ privacy interests.
6. In addition, the Member took it upon herself to disclose the medical information of the Employer A Patient to a colleague when there was no legitimate reason to do so. As noted above, the inappropriately disclosed information was very sensitive. It included admission to ICU and her pregnant status. The Member’s counsel argued that she made this disclosure because of her concern about pregnant employees at work. The Member has acknowledged that this was a breach and she plead guilty to such breach.
7. The Panel finds this disclosure to be very concerning. We have accounted for the Member’s stated motive. We acknowledge that this disclosure was made in the course of a phone call and the intent was not to make this disclosure when the call was initially made. It was made more spontaneously. However, the professional obligations to protect privacy are there to guard against spontaneous disclosures. Patients and the public deserve more than to be at risk of spontaneous disclosures.
8. We heard argument from both Counsel to the CIC and the Member about the recent decision in *Rerick* made by the Inquiry Panel on November 3, 2022.

9. The Panel acknowledges that the number of inappropriate accesses of the EPR is far less than seen in *Rerick*. In *Rerick*, over 200 patients were implicated. In this case, it was 6 patients. We acknowledge that the period of unauthorized access here is far less than in *Rerick* (2 months to 11 months).
10. In *Rerick*, a suspension of 3 weeks was imposed. However, in *Rerick*, the Member did not make a disclosure of the sensitive information. In the case at hand, the Member did make an unauthorized disclosure. This case is then more serious than *Rerick* because of this inappropriate disclosure. This is a breach of the trust that the public expects within the health care systems and of RNs in particular. The public must be assured that their information will be kept confidential. Further, the public must be assured that if there is a breach then appropriate action will be taken.
11. As such, the Panel is of the view that a one-month suspension is appropriate to account for the disclosure not seen in *Rerick*.
12. The Panel accepts the submissions of the counsel for the CIC and the Member that specific deterrence is not an issue in this case. After pleading guilty at the outset of the hearing, the Member made a statement to the Panel during the hearing wherein she apologized and accepted responsibility for her actions. The Panel notes that the Member has completed a course on "Righting a Wrong- Ethics and Professionalism in Nursing" on 06/08/2021. In addition, the Member received a "Certificate of Completion of the Personal Health Information Act (PHIA) Online Training Course Direct PHI Version" dated June 8, 2021. The courses she has taken and the statement made at the hearing suggest that specific deterrence is not an issue.
13. On the issue of when the suspension should begin, counsel for the Member indicated (and counsel for the CIC took no position) that the Member is engaged with her current employer from December 19, 2022 to January 10, 2023. The Member requested that the Panel consider any suspension should occur after this period so as not to adversely affect holiday scheduling. The Panel agrees with this consideration. Accordingly, the Panel orders that the suspension of one month commence as of February 1, 2023 ending February 28, 2023 both dates inclusive.
14. On the issue of costs, the Panel orders that \$4,000 is appropriate. In order to provide time to pay, the Panel considered the impact of the suspension on her ability to pay and accordingly, we grant the 12 months requested by both sides to pay but such time to pay will commence as of April 1, 2023 and end one year thereafter on March 31, 2024.

DATED at Winnipeg, Manitoba, the 2nd day of December 2022

