

**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 Yonatan Nguse,  
CRNM #403037**

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**DECISION**

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## **DECISION AND REASONS**

**Inquiry Panel Members:** Tricia Tyerman, RN, Panel Chair  
Brenda Sullivan, RN  
Donald Solar, Public Representative

**Counsel to the Panel:** Terra Welsh  
Thompson Dorfman Sweatman LLP

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

**Member:** Yonatan Nguse

**Counsel to the Member:** Trevor Ray & Andrew Fenwick (Articling Student)  
Myers LLP

### **Introduction**

On January 24, 2023, 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 Yonatan Nguse (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 pleaded guilty to professional misconduct.<sup>1</sup> More specifically, the Member pleaded guilty to and admitted the facts found in paragraphs 1 to 4 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.

The member also made a submission on his own behalf to the Panel.

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

1. The Member has been a Registered Nurse (“RN”) for 3 and a half years. He graduated with his Bachelor of Nursing in June of 2019.
2. At the material time, the Member was employed as an RN at ██████████ Hospital ██████████
3. Between April 19, 2021 to July 3, 2021, the Member improperly accessed his own personal health information from ██████████ Electronic Patient Records (“EPRs”) on nine (9) occasions when he had no legitimate reason to do so.
4. During the months of April 2021 and June 2021, the Member improperly accessed the EPRs of three (3) patients who were not receiving care from him. Two (2) of these patients were the ██████████ and the ██████████
5. Between May 3, 2021 to May 20, 2021, the Member improperly accessed the EPR of ██████████, who was not receiving care from him.
6. Between May 3, 2021 to May 10, 2021, the Member improperly accessed the EPRs of at least thirty-two (32) patients who were not receiving care and who were not receiving treatment within the ██████████ department in which he carried out his nursing practice.

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<sup>1</sup> The allegations to which the Member plead guilty reads in part:

“The alleged conduct set out herein are breaches of:

- a. CRNM’s Practice Direction: Practice Expectations for Registered Nurses, indicators 1, 2, 5, 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”

7. In addition, the Member acknowledged during the investigation process that he improperly searched the EPRs of other individuals which were not captured by his employer's audit.
8. In total, the Member improperly accessed the EPRs of more than 37 individuals.
9. On July 26, 2021, █████ imposed a 5-day unpaid suspension for the Member's conduct.
10. On July 29, 2021, the Member resigned from his position at █████.
11. In August of 2021, the Member began employment at the █████ Hospital and was still employed there at the time of the hearing.
12. Prior to this matter, the Member had no previous complaints with the College and no prior discipline from his 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 the Notice of Hearing.

With respect to disposition, counsel for the CIC argued for a three-week suspension plus \$4,000 in costs. Counsel for the Member argued for a suspension in the range of 10-14 days plus \$2,500 in costs and a period of time to pay. The CIC was not opposed to granting the Member a period of time to pay any costs ordered.

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

1. The Member's registration is suspended for three (3) consecutive weeks commencing three weeks after the date of this Order; and
2. The Member is ordered to pay costs to the College in the amount of four thousand dollars (\$4,000) to be paid within twelve (12) months following the completion of the Member's suspension.

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

1. The Member has been an RN for over 3 years with no prior dealings with the College or employer discipline prior to the matter before this Panel.

2. The Member submitted a letter of reference from his current employer, which highlights that the Member is a skilled nurse demonstrating competence, he has respected patients' privacy, and completed PHIA training in September of 2022 well in advance of the required re-certification date.
3. The Member also submitted a certificate of Course Completion for "Righting a Wrong – Ethics & Professionalism in Nursing v3.5" and provided a written explanation of the knowledge he gained when he took the course. The Panel appreciates the efforts taken by the Member to learn from his mistakes.
4. The Panel also received a copy of the Member's reply to the complaint dated September 13, 2021 which outlined the Member's reasons for having accessed the EPRs described in the Notice of Hearing, while stating he had no justifiable explanation for his conduct. Those reasons included concern over his own specific medical condition, concern over potential family health traits, reviewing records in an attempt to be proactive in caring for patients – i.e, the Member advised he would typically view admission orders, entrance complaints, medication orders, and lab results in order to prepare for the patients' possible admission to the unit he was working on - and concerns over potential exposure to COVID-19 and workload stress throughout the COVID-19 waves.
5. 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:

Maintaining Privacy and Confidentiality

Nurses recognize the importance of privacy and confidentiality and safeguard personal, family and community information obtained in the context of a professional relationship.

Ethical Responsibilities:

1. Nurses respect the interests of persons receiving care in the lawful collection, use, access and disclosure of personal information.

...

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.

...

7. Nurses respect policies that protect and preserve the privacy of persons receiving care, including security safeguards in information technology.

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.

6. In addition, the College's Entry-Level Competencies for the Practice of Registered Nurses include the following:

2.4 Maintains client privacy, confidentiality, and security by complying with legislation, practice standards, ethics, and organizational policies.

...

2.6 Establishes and maintains professional boundaries with clients and the health care team.

...

2.8 Demonstrates professional judgment to ensure social media and information and communication technologies (ICTs) are used in a way that maintains public trust in the profession.

7. The Member's conduct is a clear violation of the foregoing provisions and the individual patients' privacy interests whose records he accessed.
8. We heard argument from both counsel to the CIC and counsel for the Member about the recent decisions of the Inquiry Panels in *Rerick* on November 3, 2022 and *Grenkow* on November 21, 2022. Both decisions involved members improperly accessing patient records. In *Rerick*, the member received a three-week suspension and was ordered to pay \$4,000 in costs. In *Grenkow*, the member received a one-month suspension and was ordered to pay \$4,000 in costs.
9. Counsel for the CIC submitted there should be consistency in the penalties imposed and asked for the same orders as those made in *Rerick*. Counsel for the Member submitted *Rerick* involved a higher volume of accesses over a lengthier period of time and suggested the type of "snooping" was more serious in that *Rerick* searched patients that had been in her care and in this way knew the patients she was searching.
10. The Panel acknowledges that the number of inappropriate accesses of EPRs by the Member is far less than in *Rerick*. In *Rerick*, over 200 patients were implicated. In this case, it was more than 37 patients. The Panel also acknowledges that the period of unauthorized access by the Member is far less than in *Rerick* (3 months as compared to 11 months). However, the Panel does not find the shorter period of improper access to be a mitigating factor as there was no self-disclosure by the Member prior to him being confronted with the misconduct.

11. When comparing the type of “snooping” conducted in *Rerick* to the searches done by the Member, counsel for the Member submitted that some of the Member’s searches were “preparatory”, “proactive”, and patient focused. It was noted that the bulk of his searches were not of people known to the Member, unlike in *Rerick* where searches were done of patients who had been cared for by the member. The Panel’s view of the seriousness of the misconduct is not altered by these points. The Panel notes that a prudent and competent nurse would not conduct “proactive” searches. Reviewing the records of potential patients is not an efficient use of time and assessments must be done at the time of admission.
12. In addition, the Panel noted that many of the searches were in fact Member-focused in light of concerns for his own well-being, including concerns about potential exposure to COVID-19
13. Counsel for the Member also suggested that the public would not be as concerned with the “proactive” searches of potential patients as compared to other improper searches. The Panel is not prepared to make that assumption on behalf of the public.
14. With respect to *Grenkow*, both counsel noted that it involved disclosure of personal health information in addition to improper access. It was acknowledged by the CIC that the lack of disclosure was a distinguishing factor from the current matter.
15. Counsel noted that *Grenkow* involved a senior nurse and the Member is relatively junior. The Panel does not accept the Member’s relatively short career as a mitigating factor with respect to the misconduct because confidentiality and privacy are, as counsel for the CIC submitted, a “cornerstone” of nursing. As noted above, it is an entry level competency for the profession. The Member would have received training related to these concepts both during his formal education and when he commenced employment at [REDACTED]. Unlike some practical nursing skills which may require on the job experience to master, confidentiality and privacy should be ingrained in an RN by their first day of practice.
16. The Panel accepts the submissions of the counsel for the CIC and the Member that specific deterrence is not an issue in this case. Both counsel noted that the Member acknowledged wrongdoing from the outset of the complaint process, and this was confirmed by his reply letter submitted into evidence. The Panel also found his acknowledgment and remorse during his submission at the hearing to be sincere. That said, the Panel recognized the Member did not self-disclose the breach prior to being confronted with his misconduct.
17. In light of the foregoing, the Panel is of the view that a three-week suspension is appropriate to emphasize that all improper accesses of patient records are inappropriate, regardless of the motivation for the searches or the seniority of the nurse. The “need-to-know” principle (as described in the Code of Ethics for Registered Nurses, Primary Value E – Maintaining Privacy

and Confidentiality, Ethical Responsibility 3) establishes that any searches conducted without a need-to-know basis constitute misconduct.

18. The Panel agrees with the CIC that this type of misconduct damages the public's confidence in the nursing profession. In addition, the Panel notes that it is important for the College to apply consistent penalties for similar infractions in order for the College to be viewed as fair and just. In that regard, the Panel agrees with Counsel for the CIC that a strong and consistent message is needed to maintain the public confidence in the College's ability to supervise its members.
19. On the issue of costs, the Panel determined that \$4,000 is appropriate. Counsel for the Member argued for lower costs because the Member cooperated with the complaints process. In response, counsel for the CIC acknowledged the Member's cooperativeness but noted that the \$4,000 contribution sought constituted roughly 25% of the approximate costs of the matter to date. Had the Member not been cooperative and further investigation been required, more costs would have been incurred. In this way, the \$4,000 request by the CIC already reflected the Member's cooperativeness throughout the process.
20. The Panel considered the impact of the suspension on the Member's ability to pay and accordingly granted a 12-month time frame post-suspension to pay the costs ordered.

DATED at Winnipeg, Manitoba, the 30<sup>th</sup> day of January, 2023.

