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

AND IN THE MATTER OF: **An Inquiry Committee Panel into the Conduct of**
                                 KAREN ANDREW, CRNM #133364

DECISION AND REASONS

College of
Registered Nurses
of Manitoba

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Inquiry Committee Panel Members:	Jennifer Colvine, Chair, RN
	Anne-Marie Brown, RN
	Joseph Lovelace, Public Representative
	Evelyn Mayor, Public Representative
	Brenda Sullivan, RN

Counsel to and representative of the Complaints Investigation Committee ("CIC"):	William G. Haight Phillips Aiello
	Denise Nakonechny CRNM Manager of Professional Conduct

Registrant:	Karen Andrew (attended virtually)

Counsel to the Panel:	Jeff Hirsch K.C. Thompson Dorfman Sweatman LLP

Introduction and Preliminary Issues

1.   On Tuesday, July 23, 2024, an Inquiry Committee Panel (the "Panel") of the College of Registered Nurses of Manitoba (the "College") held a hearing into charges against a registrant of the College, Karen Andrew (the "Registrant").

2.   The initial return date for the hearing was January 16, 2024 and it was adjourned on January 10, 2024 on the basis of the Registrant's signed waiver. A subsequent return date, as agreed by all parties, was set on July 5, 2024 for July 23, 2024.

3.   Prior to the hearing, the Registrant had requested permission to attend virtually and counsel for the CIC consented to the request which was granted by the Chair.

4.	At the commencement of the hearing, it was established that the Notice of Hearing dated December 5, 2023 (the "Notice"), had been properly served and the jurisdictional requirements set forth in subsections 102(3), 116(2), and 116(4) of *The Regulated Health Professions Act* (the "RHPA") had been met.

5.	No objections were raised as to the composition of the Panel.

6.	The Registrant indicated their intention to enter a plea of guilty to the charges contained in the Notice. At the direction of the Chair, counsel to the Panel conducted a plea inquiry. The Panel was satisfied that the Registrant understood that by pleading guilty: they gave up the right to a hearing where the CIC would need to prove the allegations and they would have an opportunity to defend the allegations; and that they were not being influenced by anybody else and their plea was voluntary.

7.	The Registrant entered a plea of guilty to all the counts in the Notice, namely that:

(a)	On or about October 17, 1990, they made a false declaration, without reasonable explanation, on their initial application for registration with the predecessor of the College, the Manitoba Association of Registered Nurses (the "MARN"). When asked on the MARN registration form if they were ever convicted of a criminal offence, they answered "No" when they knew or ought to have known this statement was incorrect (On or about May 3, 1988, they were convicted of the *Criminal Code* offence of driving with more than 80mgs of alcohol in 100mls of blood, contrary to section 237 of the *Criminal Code* (the "Criminal Conviction"));

(b)	Subsequent to their registration with MARN and later the College, they failed to disclose the Criminal Conviction;

(c)	On each annual registration renewal with the College in 2018, 2019, 2020, 2021, and 2022, they answered falsely when asked if they were ever convicted of a criminal offence when they knew or ought to have known these answers were incorrect; and,

(d)	During an interview with a College investigator on June 19, 2023, they falsely advised that they had not obtained a criminal record check in the course of applying for employment as a registered nurse, when they had obtained one in 2012.

8.	The Registrant admitted that their conduct described above constituted professional misconduct.

9.	The Panel heard submissions from counsel for the CIC, describing the background facts giving rise to the matter raised in the Notice.

10.	The Panel also heard from the Registrant who provided additional information on their personal background and current circumstances.

11.	The parties made separate submissions as to disposition of the matter but agreed during the hearing that the Registrant should pay a contribution to costs in the amount of $3,750.

12.	Counsel for the CIC requested a fine of $10,000 and the Registrant requested that the Panel consider a lower amount.

13.   After hearing those submissions, the Panel briefly adjourned to consider and then advised the parties it would reserve its decision on disposition and would subsequently provide written reasons. These are those reasons.

Facts

14.   The Registrant is 60 years old and has been a Licensed Practical Nurse ("LPN") since 1985 and a Registered Nurse ("RN") since 1990.

15.   The Registrant has no previous discipline history as an LPN, RN, or with her previous employers.

16.   As a result of the May 3, 1988 Criminal Conviction, they were fined $450 and prohibited from driving for three months.

17.   As noted above, they made a false declaration on their initial application for registration with MARN in 1990 when they answered "No" when asked if they were ever convicted of a criminal offence when they knew or ought to have known this statement was incorrect.

18.   After their registration with MARN and later the College, the Registrant failed to disclose the criminal Conviction.

19.   In or about 2012, they applied for employment at the Minnedosa Health Centre. They were required to provide a criminal record check as a term of their employment. They applied to the Royal Canadian Mounted Police to verify if they had a criminal record, and this application disclosed the Criminal Conviction. Despite this knowledge, they failed to report the Criminal Conviction to the College.

20.   In 2018, the College revised its registration renewal form to include the following question:

> "Have you ever been charged, convicted or found guilty (ie conditional discharge, absolute discharge or suspended sentence) of an offence under the *Criminal Code*, *Controlled Drugs and Substances Act* or *Food and Drug Act*? (the "Renewal Question").

21.   The Registrant was asked the Renewal Question when they renewed their College registration for 2018 and on all subsequent annual registration renewals. Despite the Criminal Conviction and the results of the 2012 criminal record check, they answered "No" to the Renewal Question for each of their renewal forms 2018, 2019, 2020, 2021, and 2022 registration years when they knew or ought to have known these answers were incorrect.

22.   In April 2022, the College selected the Registrant and other nurses to provide a criminal record background check. They complied with this request, and in December 2022, this process confirmed the Criminal Conviction. They were requested to provide additional information about this conviction, and on December 2, 2023, they advised the College as follows:

"I feel very remorseful for neglecting to disclose my criminal record for so many years! I honestly do not know why I neglected that in the first few years, other than, being young and naïve, that I was afraid to disclose it in case it caused me to not carry on with my career as a registered nurse. For the last 20+ years, I have honestly forgotten all about it!

…

Please accept my remorse for failing to disclose information involving my criminal record!"

(the "Conviction Information Email")

23.   The Registrant was interviewed by a College investigator on June 19, 2023. During this interview, they were shown the Conviction Information Email. The Registrant attempted to retract the words they used in the Conviction Information Email indicating the contents of this email were not entirely accurate. They stated to the investigator that they "totally forgot about" the Criminal Conviction and advised that "[They] didn't feel it was a criminal offence". They could not explain why they had advised the College in the Conviction Information Email that they were afraid to disclose it when they initially registered with MARN.

24.   During the (first) June 19, 2023 interview with the investigator, they were asked whether a criminal record check had been obtained in the course of their applying for employment as an RN. Despite the criminal record check provided to them in 2012, they indicated they had not obtained a criminal record check.

25.   Within minutes of completing the first interview, they sent an email to the investigator which indicated:

"On further reflection, I do remember getting a criminal record check when I applied for a casual position in Minnedosa personal care home. I can't remember which year that was, possibly 2012 or 2013. again, I don't know why I did not disclose it then! I realize that this reflects very badly on me! I honestly can't say why I have never disclosed this information!

I'm sorry that I didn't think of it while I was just speaking with you!"

26.   After receiving this email, the investigator immediately called the Registrant and conducted a second interview by telephone. During the second interview, the Registrant stated that: they had obtained a criminal record check in 2012 or 2013, and that it came back positive with the Criminal Conviction; after this (in 2012 or 2013), they were aware of the positive criminal record check and did not disclose it on their renewal applications; and, during their first interview when they stated they were unaware of their criminal record until the 2022 criminal record check, they were not lying but had forgotten about it until the investigator brought it up.

Submission of the CIC

27.   Counsel for the CIC characterized the Registrant's misconduct as: first, the false declarations to the MARN (paragraph 2 of the Notice); second, the false declarations to the College on the annual registration renewals from 2018 to 2022 (paragraph 5 of the Notice); third, the ongoing failure to report the Criminal Conviction (paragraph 3 of

the Notice); and finally, the false statements made to the College investigator on June 19, 2023 (paragraphs 7 and 8 of the Notice).

28.   Counsel described the Registrant's behaviour as inconsistent – at times demonstrating a lack of honesty and forthrightness and at other times showing a degree of self-awareness and accountability. It was submitted and, as will be noted later in these Reasons, the Panel agreed that the Registrant's conduct displayed both mitigating and aggravating features.

29.   The Registrant admitted that when they initially applied for registration with MARN, they gave a false answer related to their Criminal Conviction.

30.   Counsel pointed to the Registrant's Conviction Information Email as proof that the Registrant had admitted knowing they had a criminal record and acknowledging they had made a false statement. Mr. Haight stated that the Registrant admitted in the email that they were afraid to disclose it for fear of jeopardizing their nursing career. He characterized these admissions as an acknowledgment of "non-disclosure out of self-interest" but gave the Registrant credit for the email which acknowledged the wrongdoing and showed accountability.

31.   Counsel referred the Panel to the *CRNM Practice Direction: Self-Disclosure* (the "PD") which states in its preamble:

> *"Compliance with practice directions are required…*
>
> *It is the responsibility of all registered nurses or RNs in Manitoba to understand all practice expectations and be accountable to apply them to their own nursing practice. regardless of roles or practice settings. Responsibility is the duty to satisfactorily complete your obligations. Accountability means being capable to explain why you did or did not meet these expectations."*

32.   At article 2(b) of the PD, it states that applicants must make written disclosure of "a charge, conviction or a finding of guilt… for a criminal offence…".

33.   The failure to disclose the Criminal Conviction effectively occurred six times – first on the initial application for registration and then five more times in providing false answers on renewal applications from 2018 to 2022, inclusive.

34.   Counsel also noted that the Registrant was in breach of their obligations on an ongoing basis by failing to disclose the Criminal Conviction and referred the Panel to the *CRNM Entry-Level Competencies (ELC) for the Practice of Registered Nurses (2019)* which states that RNs are to "uphold the profession's practice standards and ethics and are accountable to the public and the profession." Article 2.11 specifies, as an ELC, that RNs are to "[a]dhere to the duty to report requirements."

35. Mr. Haight submitted that the Registrant's failure to be forthright and honest was also demonstrated by her false statements to the investigator in the June 19, 2023 interviews, specifically her denial (in the first interview) that she ever obtained a criminal record check for employment purposes and her statement (in the second interview) that she had forgotten about the 2012 criminal record check.

36. Counsel for the CIC submitted that this behaviour demonstrated a lack of integrity on the part of the Registrant. He cited the *CRNM Practice Direction: Practice Expectations for RNs* which states (among other things):

> Registered nurses are accountable and responsible to demonstrate professional behaviours, attributes and values that uphold trust in the profession of registered nursing. As an RN, you must:
> …
>
> 2. Promote a practice environment that supports responsibility, accountability, professional development, and respect for others by:
> …
>   b. Taking personal responsibility for your professional conduct and fitness to practice including responsibility to notify the College as required according to College regulations and practice directions.
>   …
>   e. Demonstrating an understanding of and adherence to your duty to report, including reporting of unsafe practice, professional incompetence, professional misconduct and incapacity or unfitness to practice.
>
>   …
>
> Registered nurses recognize, promote, and uphold the ethical standards of the nursing profession. As an RN, you must:
>
> 14. Practise in accordance with the values outlined in the *Code of Ethics*

37. In addition, Mr. Haight referred the Panel to several provisions in the *Code of Ethics*, including Primary Value A, Ethical Responsibilities 1 and 5, and Primary Value G, Ethical Responsibilities 1 and 2:

> A. Providing Safe, Compassionate, Competent and Ethical Care
>
> Nurses provide safe, compassionate, competent and ethical care.
>
> 1. Nurses have a responsibility to conduct themselves according to the ethical responsibilities outlined in this document and in practice standards in what they do and how they interact with persons receiving care and other members of the health-care team.
>
> 5. Nurses are honest and take all necessary actions to prevent or minimize patient safety incidents. They learn from near misses and work with others to reduce the potential for future risks and preventable harms…
>
> G. Being Accountable
>
> Nurses are accountable for their actions and answerable for their practice.

> 1. Nurses, as members of a self-regulating profession, practise according to the values and responsibilities in the *Code* and in keeping with the professional standards, laws and regulations supporting ethical practice.
>
> 2. Nurses are honest and practise with integrity in all of their professional interactions. Nurses represent themselves clearly with respect to name, title and role.

38.   With respect to penalty, counsel for the CIC reviewed the general principles related to the purposes of sentencing with particular emphasis on general deterrence. He maintained that the Panel need not be concerned about having to specifically deter the Registrant as they had learned their lesson.

39.   Mr. Haight submitted that the sentencing objectives the Panel ought to keep in mind were punishment, denunciation, and ensuring the public retained confidence in the ability of the College to properly regulate its registrants.

40.   Counsel listed mitigating factors as the acceptance of responsibility through the guilty plea and the absence of a discipline record.

41.   He noted as an aggravating factor the Registrant's attitude and repeated falsehoods and omissions.

42.   Counsel for the CIC referred the Panel to the *Kist* decision of the CRNM Inquiry Committee dated May 28, 2024, a decision involving the failure to disclose prior criminal convictions.

43.   In *Kist*, there was a failure to disclose four prior criminal convictions and the registrant was issued a $10,000 fine and costs of $3,750. That registrant also had no disciplinary history, was of a similar age and stage of their professional career.

44.   Mr. Haight submitted that the Panel ought to send a strong message about honesty and the penalty in *Kist* ought to be replicated in this case.

Submission of the Registrant

45.   The Registrant apologized for her conduct and made a brief submission emphasizing their remorse.

46.   They stated that the Criminal Conviction occurred over 36 years ago.

47.   The Registrant was prepared to agree to the proposed costs contribution of $3,750 but expressed concern over not having the means to pay such a large fine as proposed by the CIC. They suggested it be less but did not offer a suggestion as to the amount.

48.   In their submission, the Registrant stated she now works only casually and has had a 39-year career with exemplary evaluations from her employers, and no prior discipline history or evidence of dishonesty in caring for patients. They said it was not in their nature to be dishonest.

49.   The Registrant suggested that the fine be reduced as they had no means by which they could pay such a high amount.

Analysis and Decision

50.   The Panel finds that the facts submitted establish that the Registrant is guilty of professional misconduct as alleged in the Notice. The Registrant acknowledged and admitted that their conduct amounted to professional misconduct. The panel accepted the guilty plea.

51.   Subsection 124(1) of the Act authorizes the Panel to make any finding permitted under subsection 124(2) which includes that an investigated member has breached the Code of Ethics or Standards or is guilty of professional misconduct.

52.   The authority of a Panel to make sentencing orders, and orders related to costs are found in sections 126 and 127 of the Act.

53.   In reaching its decision, the Panel acknowledges the submissions of counsel to the CIC and the Registrant and was mindful of the objectives of such orders which have been articulated by various authorities.

54.   In *The Regulation of Professions in Canada*, Carswell 2021, James T. Casey describes the purpose of sentencing in professional discipline cases, citing *McKee v. College of Psychologists* (British Columbia), [1994] 9 W.W.R. 374 (at page 376):

> [W]here the legislature has entrusted the disciplinary process to a self-governing professional body, the legislative purpose is regulation of the profession in the public interest. The emphasis must clearly be upon the protection of the public interest...

55.   Citing *McKee* and a number of other authorities, Casey goes on to list the factors in determining how the public is protected including:

> … specific deterrence of the member from engaging in further misconduct, general deterrence of other members of the profession, rehabilitation of the member, punishment of the offender, ..., the denunciation by society of the conduct, the need to maintain the public's confidence in the integrity of the profession's ability to properly supervise the conduct of its members and ensuring that the penalty imposed is not disparate with penalties in other cases.

56.   When determining an appropriate penalty, in accordance with *Jaswal v. Medical Board* (Nfld.) 1996 CanLII 11630 (NLSC), the Panel considered the following factors:

(a)   the nature and gravity of the proven allegations;

(b)   the experience of the Registrant;

(c)   the absence of any prior discipline history;

(d) the number of times the offence was proven to have occurred;

(e) the role of the Registrant in acknowledging what had occurred;

(f) the presence or absence of any mitigating circumstances;

(g) the need to promote specific and general deterrence and, thereby, to protect the public;

(h) the need to maintain the public's confidence in the integrity of the profession; and,

(i) the degree to which the offensive conduct that was found to have occurred was clearly regarded, by consensus, as being the type of conduct that would fall outside the range of permitted conduct the range of sentence in other similar cases.

57.   Several factors may serve to mitigate the severity of an appropriate penalty in a particular case. As noted by Casey in his text, these include:

(a) the attitude of the [Registrant] since the offence was committed, with a less severe punishment being justified where the individual genuinely recognizes that their conduct was wrong;

(b) the age and inexperience of the [Registrant] at the time the offences were committed;

(c) whether the misconduct was a "first offence" for the [Registrant]; and

(d) whether the [Registrant] pleaded guilty to the charges of professional misconduct, which may be taken as demonstrating the acceptance of responsibility for their actions.

58.   In this case, the Panel noted the following aggravating factors:

(a) the number of untruthful applications to MARN and the College;

(b) the ongoing failure to disclose the Criminal Conviction; and

(c) the untruthful interviews with the investigator and ongoing lack of accountability.

59.   The Panel also took into consideration the following mitigating factors, noting that the Registrant:

(a) has no previous discipline/complaints history;

(b) is 60 years old and working only casual hours;

(c) at various times, has accepted responsibility for their actions;

(d) pled guilty to all charges thereby saving the time and expense of a protracted disciplinary hearing; and

(e) has apologized for their misconduct.

60.   The Panel accepted the CIC submission that the Registrant's need for specific deterrence was significantly lessened in light of their acknowledgment, apology, and remorse

61.   The Panel finds however that the Registrant has exhibited repeated bouts of dishonest behaviour in connection with the failure to disclose their Criminal Conviction and that this went on for a long period of time and in different ways. The Panel agrees that this behaviour is inconsistent with the ethical and professional obligations of an RN and is to be denounced. RNs must be honest. Anything less is unacceptable.

62.   Registrants often cause themselves more harm over the cover-up than the crime. This is particularly so when to comes to the failure to disclose criminal involvement as CRNM Policy AA-26 *Background Check Findings/Disclosure by Registrants*, alluded to at page 5 of the Investigation Report dated July 31, 2023, sets out a clear and nuanced process for the College's assessment of registration eligibility. The Policy does not suggest disclosure results in automatic ineligibility. Disclosure is in the best interests of registrants and the public.

63.   Here, the Panel concludes that the Registrant would have been far better off making the appropriate self-disclosure and conducting themselves in an honest and forthright matter. The consequences for them would almost certainly have been less.

64.   The issue for the Panel was whether the required denunciation and message of general deterrence to registrants justifies a $10,000 fine, the statutory maximum, in these circumstances.

65.   The Registrant agreed to the figure proposed by the CIC for a contribution to costs. This might have been the category most suited to be reduced on account of the mitigating factors. The Panel is left therefore to address its consideration of the mitigating factors and their impact, if any, on the amount of a suitable fine.

66.   The Registrant has demonstrated imperfect accountability. The Panel specifically noted their commendable retraction within minutes of completing the first interview on June 19, 2023 while at the same time offering an illogical, and therefore incredible, excuse of forgetfulness.

67.   The Panel is persuaded that the recent *Kist* decision relied upon by the CIC has many similarities and, in a general sense, provides good guidance as to penalty. The Panel does find that there are distinguishing facts in *Kist* including the number of undisclosed criminal convictions, the breach of undertaking, and the unjustified failure to attend the hearing, all of which contributed to the imposition of the maximum permissible fine.

68.   In light of the Panel's overall assessment of the various aggravating and mitigating factors, it is not prepared to impose the maximum statutory fine but does order a fine of $8,000 as it is satisfied that is in line with prior decisions acknowledging the seriousness of the misconduct and sending a message to the profession that the College's laws, standards, regulations, *Code of Ethics*, and practice directions apply to all registrants who must be accountable for their conduct.

69.   The Panel is of the view that the penalty it is imposing properly addresses and protects the public interest, and achieves the purpose of:

(a) providing general deterrence to all registered nurses that this type of conduct will be investigated, reviewed, and punished; and

(b) reassuring the public that the College is working to maintain standards and ensure continued trust in registered nurses.

70.   The Panel has therefore accepted the guilty plea and makes the following Order:

(a) The Registrant is hereby fined in the amount of $8,000;

(b) The Registrant is to pay costs to the College in the amount of $3,750.00; and,

(c) There will be publication of the Decision and Reasons.

DATED at Winnipeg, Manitoba, the 1st day of August, 2024.

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JENNIFER COLVINE, Chair of the Panel *has authorized the use of electronic signature*

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BRENDA SULLIVAN, Member *has authorized the use of electronic signature*

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EVELYN MAYOR, Public Representative *has authorized the use of electronic signature*

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ANNE-MARIE BROWN, Member *has authorized the use of electronic signature*

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JOSEPH LOVELACE, Public Representative *has authorized the use of electronic signature*