

INVESTIGATION COMMITTEE
of the
SASKATCHEWAN REGISTERED NURSES ASSOCIATION

-and-

Jessica L. Wagner
Saskatchewan RN #0045495
SASKATOON, SASKATCHEWAN

DECISION

of the

DISCIPLINE COMMITTEE

of the

SASKATCHEWAN REGISTERED NURSES ASSOCIATION

Legal Counsel for the Investigation Committee:
Legal Counsel for Jessica L. Wagner:
Legal Counsel for the Discipline Committee:
Chairperson for the Discipline Committee:

Roger Lepage
Marcus Davies
Brittnee Holliday
Frank Suchorab, RN

Date of Penalty Hearing: **June 22, 2021**

Location: *Via Videoconference*
Saskatchewan Registered Nurses Association
2066 Retallack Street
Regina, Saskatchewan
S4T 7X5

Date of Penalty Decision: **July 29, 2021**

INTRODUCTION

1. The Discipline Committee of the Saskatchewan Registered Nurses Association (SRNA) convened to hear and determine a complaint of professional misconduct against Registered Nurse #0045495, Jessica L. Wagner on June 22, 2021. The Discipline Committee is established pursuant to section 30 of *The Registered Nurses Act 1988* ("the Act").
2. The charges against Jessica L. Wagner are outlined in a Notice of Hearing of Complaint dated March 30, 2021. There are two charges of professional misconduct and those charges are as follows:

Charge Number 1

You, JESSICA L. WAGNER, are alleged to be guilty of professional misconduct, as defined in section 26(1) of *The Registered Nurses Act, 1988*, regarding the following matter:

- (a) On December 9, 2019, the Discipline Committee of the SRNA found you guilty of professional misconduct and ordered that:
 - (i) within six months from the date of the order of December 9, 2019 you provide the Registrar proof of attendance at counselling;
 - (ii) within six months you read the *Code of Ethics for Registered Nurses, 2017* and submit a 500-word essay to the Registrar outlining what you learned regarding the need to cooperate with your regulatory body; and
 - (iii) within six months you write a 500-word self-reflective essay and submit it to the Registrar regarding the SRNA *Standards and Foundation Competencies for the Practice of Registered Nurses, 2013* and explain what you have learned regarding the need to cooperate with your regulatory body.
- (b) You have failed to abide by these three conditions that allowed you to continue to practice nursing. You filed the essays on the *Code of Ethics, 2017* and the SRNA *Standards and Foundation Competencies for the Practice of Registered Nurses, 2013*, on June 30, 2020 rather than June 9, 2020, as required by the discipline order. As of the date of this Notice of Hearing, you have failed to file proof of attendance at counselling.

Charge Number 2

You, JESSICA L. WAGNER, are alleged to be guilty of professional misconduct, as defined in section 26(1) and (2) (l) (m) and (q) of *The Registered Nurses Act, 1988*, regarding the following matter:

- (a) You failed without reasonable cause to respond to the inquiries regarding allegations of professional misconduct from the Registrar and the Investigation Committee as follows:
 - (i) A letter from the Registrar dated June 15, 2020 advising you had missed the deadline of June 9, 2020 as set in the discipline order;
 - (ii) A letter from the Investigation Committee dated June 29, 2020 requesting a written response to the allegation of professional misconduct by July 20, 2020; and
 - (iii) A letter from the Investigation Committee dated October 21, 2020 stating the matter is being referred to a discipline hearing.
- (b) This is the second time you have failed to respond to the SRNA regarding allegations of professional misconduct. Your failure to respond to the written allegation of professional misconduct and to respond to inquiries from the Association regarding this alleged professional misconduct is contrary to *The Registered Nurses Act, 1988*, subsection 26(1).

3. The Notice of Hearing of Complaint also sets out particulars for each charge and it is helpful to set out those particulars as follows:

On December 9, 2019, the Discipline Committee of the SRNA issued an Order, after you pleaded guilty to giving false answers to the SRNA at the time of your initial registration on November 6, 2017. You also pleaded guilty to a charge of failing without reasonable cause to respond to inquiries from the Association regarding alleged professional misconduct, regarding a complaint received by the SRNA from SALPN dated April 6, 2018.

On February 3, 2020 the Discipline Committee of the SRNA issued a written decision with respect to your case.

Within the 6 months that expired on June 9, 2020, you had failed to communicate with the Registrar of the SRNA regarding the three practice conditions contained in the Order of December 9, 2019. On June 30, 2020 you provided two essays to the SRNA. As of the date of this Notice of Hearing you have failed to file proof of attendance at counselling.

A letter from the Registrar to you dated June 15, 2020 stated that you had failed to communicate with the Registrar with respect to the three practice conditions between the dates of December 9, 2019 and June 9, 2020 and noted that you had failed to file the necessary documentation as required by the Order.

On June 29, 2020, the Investigation Committee sent you a letter and a copy of the complaint of professional misconduct by both post and email, stating a requirement of response in writing by July 20, 2020. You failed to respond by that deadline.

On June 30, 2020, you telephoned the SRNA office to say that you had received the communication of June 29, 2020. You were informed that you needed to respond in writing to the complaint of professional misconduct but you failed to do so.

On September 28, 2020, the Investigation Committee moved your case to a Discipline Hearing. You were advised in writing of this decision.

4. The Notice of Hearing of Complaint alleges that Jessica L. Wagner is guilty of professional misconduct contrary to subsections 26(1) and (2) of *The Registered Nurses Act, 1988*, as follows:

Professional Misconduct

26(1) For the purpose of this Act, professional misconduct is a question of fact but any matter, conduct or thing, whether or not disgraceful or dishonourable, that is contrary to the best interests of the public or nurses or tends to harm the standing of the profession of nursing is professional misconduct within the meaning of this Act.

(2) Without restricting the generality of subsection (1), the discipline committee may find a nurse guilty of professional misconduct if the nurse has:

...

(l) failed to comply with the code of ethics of the association;

(m) failed without reasonable cause to respond to inquiries from the association regarding alleged professional misconduct or professional incompetence; and

...

(q) contravened any provision of this Act or the bylaws.

5. The Notice also alleges that numerous provisions of the *Code of Ethics for Registered Nurses, 2017* and *The Registered Nurse Practice Standards 2019*, have been breached. Those provisions are set out in Appendix A.

HEARING

6. There was no objection raised by counsel for the Investigation Committee nor counsel for the Member regarding the composition of the Discipline Committee.

SUMMARY OF EVIDENCE

7. The following evidence was tendered during the hearing:
 - a. Exhibit P1
8. Exhibit P1 is a binder of documents consisting of:
 - a. Tab A: Notice of Guilty Plea
 - b. Tab B: Agreed Statement of Facts
 - c. Tab C: Joint Proposal for Discipline
 - d. Book of Exhibits, including, *inter alia*, Notice of Hearing of Complaint, Ms. Wagner's verification of registration status, Order and Decision of the Discipline Committee, letter and email correspondence between the SRNA and Ms. Wagner, and notes of SRNA staff.

ANALYSIS

9. The Agreed Statement of Facts (Exhibit P1, Tab B) includes an agreement between the Investigation Committee and Ms. Wagner that the facts and allegations contained in the two charges set out in the Notice of Hearing of Complaint dated March 30, 2021 are true. The Book of Exhibits was filed by consent and it was agreed the documents therein contain the context of facts relevant for the Discipline Committee's consideration.
10. Paragraph 2 of the Notice of Guilty Plea (Exhibit P1, Tab A) states:

I plead guilty to the two charges of professional misconduct in the Notice of Hearing of Complaint dated March 30th, 2021.

11. The remainder of the Agreed Statement of Facts is a reiteration of the Particulars found in the Notice of Hearing of Complaint. The facts set out in the Agreed Statement of Facts provide a factual background to the two charges. Neither Ms. Wagner nor her legal counsel provided any further information, context, or explanation.
12. The Discipline Committee accepts Ms. Wagner's Guilty Plea and finds that each of the Charges have been proven based on the evidence and that the facts underlying each Charge constitutes professional misconduct.

SANCTION

13. Having found the two charges are sustained, the next task for the Discipline Committee is to impose a sanction pursuant to section 31 of the *Act*.
14. Exhibit P1 contained a document entitled "Joint Proposal for Discipline" (Exhibit P1, Tab C) which suggests a 14 day suspension and that Ms. Wagner take counselling, pay a fine of \$5,000.00, and pay costs of \$5,000.00.
15. The Discipline Committee is aware of the legal principles of joint submissions. In *Rault v Law Society of Saskatchewan, 2009 SKCA 81*, our Court of Appeal stated that discipline committees have a "duty to consider" joint submissions and to accept a joint submission if it is within a range of reasonable outcomes, fit and consistent with the public interest. In *R v Druken, 2006 NLCA 67*, the Newfoundland Court of Appeal indicated that a sentence is contrary to the public interest when it is "markedly out of line with the expectations of reasonable persons aware of the circumstances of the case".
16. Despite previous sanction, Ms. Wagner has again come before this Committee. This is especially concerning given her relatively short career. While the Discipline Committee remains hopeful that Ms. Wagner is able to meet the Conditions as proposed, it is uncertain whether she realizes the gravity of her repeated actions and the impact of these on her professional identity and her responsibility to the public inherent in being a Registered Nurse. As noted previously, there were no submissions made providing an explanation for Ms. Wagner's failure to comply with the

previous Order of the Discipline Committee and failing to respond to her regulatory body, other than the Notice of Guilty Plea and agreement as to the facts and circumstances set out in the Notice of Hearing of Complaint. The Discipline Committee is concerned about Ms. Wagner's ability to be accountable to the Joint Proposal for Discipline as set out.

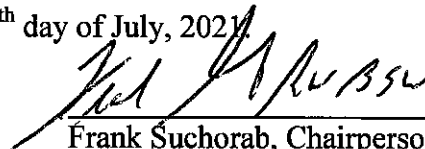
17. Paragraph 2 of the Joint Proposal for Discipline indicates "Pursuant to paragraph 31 (1) (c) of *The Registered Nurses Act, 1988*, within six months of the date of this Order, the member shall take counselling to manage the stressors in her life that led her to avoid communicating with her regulatory body and meeting the conditions in the Order of December 9, 2019. Ms. Wagner shall bear the costs of the counselling and the report...". The Discipline Committee would like to emphasize the importance of counselling. To not continue in this vein, it is hoped that Ms. Wagner will engage in a therapeutic relationship with a counsellor to develop insight into precipitating factors and stressors ([REDACTED]) which led to a failure to comply with the Discipline Committee's Order of December 9th, 2019 and to her failure to respond to her regulatory body.
18. After considering all of the evidence, the Discipline Committee accepts the Joint Proposal for Discipline as set out, with one clarification. The Discipline Committee has concluded that paragraph 2 of the Joint Proposal for Discipline does not provide enough clarity surrounding Ms. Wagner's requirements surrounding attendance at counselling. As such, the Discipline Committee has concluded that Ms. Wagner shall provide to the Registrar the name of the registered professional and frequency of expected sessions within one month. Within six months, Ms. Wagner shall provide the Registrar a report from a registered professional confirming her engagement in counselling, as well as confirmation of her continued attendance per recommendations made by the registered professional. Ms. Wagner shall bear the costs of the counselling and the report.

ORDER OF THE DISCIPLINE COMMITTEE

19. The Discipline Committee therefore orders the following:

- (a) Pursuant to section 31 (1)(b) of *The Registered Nurses Act, 1988*, Jessica Wagner shall be suspended from the Saskatchewan Registered Nurses Association for a period of 14 days commencing September 14, 2021 at midnight and ending September 28, 2021 at midnight.
- (b) Pursuant to section 31 (1) (c) of *The Registered Nurses Act, 1988*, Jessica Wagner shall engage in a therapeutic relationship with a counsellor to develop insight into precipitating factors and stressors (including, but not limited to, relationship issues, financial management, stress management) which led her to not meet the Conditions of the Order of December 9th, 2019 and which led her to avoid communicating with her regulatory body. Within one month of the date of this Order, Ms. Wagner shall provide the Registrar with the name of the registered professional and frequency of expected sessions. Within six months of the date of this Order, Ms. Wagner shall provide the Registrar with proof of attendance at counselling, including confirmation of continued attendance per recommendations made by the registered professional. Ms. Wagner shall bear the costs of the counselling and the report.
- (c) Pursuant to paragraph 31(2)(a)(i) of *The Registered Nurses Act, 1988*, the member shall pay a fine in the amount of \$5,000.00.
- (d) Pursuant to paragraph 31(2)(a)(ii) of *The Registered Nurses Act, 1988*, the member shall pay costs of \$5,000.00.
- (e) The fine shall be paid on or before March 21, 2025. The costs shall be paid on or before March 31, 2027. Failing payment, Ms. Wagner shall be suspended from the Association pursuant to paragraph 31(2) (b) of *The Registered Nurses Act, 1988* until such a time as payment in full is made.

Dated at Regina, Saskatchewan, this 30th day of July, 2021.



Frank Suchorab, Chairperson
*On behalf of Members of the
Discipline Committee*

Michell Jesse, RN

Joanne Blazieko, RN

Anne KoKesch, RN

Sophie Grahame, Public Representative (Writer)

Pursuant to section 31(2)(a)(ii) of *The Act*, a copy of this decision shall be sent to Jessica L. Wagner and the SRNA Registrar.

A copy of this decision shall be forwarded to:

- (i) The editor of the SRNA news bulletin and the administrator for the SRNA website;
- (ii) All Canadian Registrars of registered nurses;
- (iii) Saskatchewan Association of Licensed Practical Nurses;
- (iv) Registered Psychiatric Nurses Association of Saskatchewan;
- (v) The College of Physicians and Surgeons of Saskatchewan;
- (vi) Any other jurisdictions or other stakeholders as may be seen as appropriate by the Registrar.

Right of Appeal

Pursuant to section 34(1) of *The Registered Nurses Act, 1988*, a nurse who has been found guilty by the discipline committee or who has been expelled pursuant to section 33 may appeal the decision or any order of the discipline committee within 30 days of the decision or order to:

- (a) the council by serving the executive director with a copy of the notice of appeal; or
- (b) a judge of the court by serving the executive director with a copy of the notice of appeal and filing it with a local registrar of the court.

Appendix A

The relevant provisions of the *Code of Ethics for Registered Nurses, 2017* are as follows:

A. Providing Safe, Compassionate, Competent and Ethical Care

Nurses provide safe, compassionate, competent and ethical care.

Ethical responsibilities:

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**.

G. Being Accountable

Nurses are accountable for their actions and answerable for their practice.

Ethical responsibilities:

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.

The relevant provisions of *The Registered Nurse Practice Standards, 2019* are as follows:

Standard 1: Professional Responsibility and Accountability

The registered nurse is responsible for practicing safely, competently and ethically, and is accountable to the client, public, employer and profession.

The registered nurse upholds this standard by:

1. Being accountable and accepting responsibility for their own actions and decisions.

9. Practicing in accordance with agency policy and legislation, and in a timely manner, recognizes and reports near misses and errors (own and others), adverse events and critical incidents, and taking action to stop and minimize harm.

Standard 3: Ethical Practice

The registered nurse applies the principles in the current *CNA Code of Ethics for Registered Nurses* when making practice decision and using professional judgment. The registered nurse engages in critical inquiry to inform clinical decision-making, and establishes therapeutic caring and culturally-safe relationships with clients and the health care team.

The registered nurse upholds this standard by:

26. Practicing in accordance with the current *CNA Code of Ethics for Registered Nurses*.

Standard 4: Service to the Public

The registered nurse demonstrates leadership in quality and ethical nursing practice, delivery of health care services and establishing professional relationships.

The registered nurse upholds this standard by:

35. Demonstrating professional presence and modelling professional behaviour.

Standard 5: Self-Regulation

The registered nurse demonstrates an accountability to regulate themselves in accordance with their legislated scope of practice.

The registered nurse upholds this standard by:

49. Practicing in accordance with *The Registered Nurses Act, 1988*, other current relevant legislation, bylaws, scope of practice, standards, entry-level competencies, guidelines and employer policies.
51. Recognizing and addressing professional practice, legal or ethical violations by themselves or others in a timely and appropriate manner.
53. Reporting to employers and/or the appropriate regulatory body concerns related to professional incompetence, professional misconduct and/or incapacity of registered nurses and/or other health care providers.

