

COLLEGE AND ASSOCIATION OF REGISTERED NURSES OF ALBERTA

DECISION OF THE HEARING TRIBUNAL

RE: CONDUCT OF **GREGORY STEWART**, R.N., REGISTRATION **#50,720**

AS A RESULT OF A HEARING HELD BEFORE

THE HEARING TRIBUNAL

OF THE

COLLEGE AND ASSOCIATION OF REGISTERED NURSES OF ALBERTA

11120 178 STREET

EDMONTON, ALBERTA

ON

AUGUST 10, 2020

INTRODUCTION

- [1] A hearing was held on **August 10, 2020** by Webex videoconference before the Hearing Tribunal of the College and Association of Registered Nurses of Alberta ("CARNA") to hear a complaint against Gregory Stewart, R.N. registration #50,720.
- [2] Those present at the hearing were:
- a. Hearing Tribunal Members:**
 - Jason Anuik, Chairperson
 - Stephen Caron
 - Kelly Osuna
 - Nancy Brook, Public Representative
 - b. Independent Legal Counsel to the Hearing Tribunal:**
 - Julie Gagnon
 - Justine Fay, summer student with Ms. Gagnon
 - c. CARNA Representative:**
 - Natasha Nakai, Conduct Counsel
 - d. Regulated Member Under Investigation:**
 - Gregory Stewart (sometimes hereinafter referred to as "the Regulated Member")
 - e. Regulated Member's Labour Relations Officer:**
 - Jacob Schweda

PRELIMINARY MATTERS

- [3] Conduct Counsel and the Labour Relations Officer for the Regulated Member confirmed that there were no objections to the composition of the Hearing Tribunal or to the Hearing Tribunal's jurisdiction to proceed with the hearing. No preliminary applications were made.
- [4] The Chairperson noted that pursuant to section 78 of the *Health Professions Act*, RSA 2000, c. H-7 ("HPA"), the hearing was open to the public. No application was made to close the hearing.
- [5] The Chairperson noted that there were members of the public present as observers.
- [6] Conduct Counsel confirmed that the matter was proceeding by Agreement.

ALLEGATIONS AND ADMISSION

[7] The allegations in the Notice to Attend are as follows:

While employed as a registered nurse (RN) at the [facility redacted], [city redacted], Alberta, your practice fell below the standard expected of an RN when:

1. On or about June 26, 2019, you made inappropriate comments of a sexual nature to nursing colleague [RN co-worker 1] which included "God bless those titties";
2. On or about June 29, 2019, you interacted disrespectfully with nursing colleague [RN co-worker 1] when you kicked and dropped medication cups that she was trying to manage;
3. On or about July 1, 2019, you made inappropriate comments of a sexual nature to nursing colleague [RN co-worker 2] when you said "I knew I could make you come with my finger";
4. On or about July 26, 2019, you made inappropriate comments of a sexual nature to nursing colleague [RN co-worker 2] when you said that you were looking through files for "a blonde with big breasts and no brains";
5. On unspecified dates you:
 - a. Despite being directed not to do so, held the hands of [patients] when administering medications and told them "I'm memorizing your face" which you ought to have known caused discomfort or distress to the [patients];
 - b. Engaged in sexual misconduct, as defined in the *Health Professions Act*, RSA 2000, c H-7 ("**HPA**") when you inappropriately suggested to two [patients] that if they were going to share water "why don't you kiss", when you knew or ought reasonably to know that it would cause offence or humiliation to the [patients] or adversely affect the [patients]' health and well-being;
6. On or about May 2019, you engaged in sexual misconduct, as defined in the *HPA*, when you inappropriately asked an unidentified [patient] about the size of his penis, when you knew or ought reasonably to know that it would cause offence or humiliation to the [patient] or adversely affect the [patient]'s health and well-being;
7. On or about July 2019 you engaged in sexual misconduct, as defined in the *HPA*, when you inappropriately fondled the earlobe of a female [patient] and stated words to the effect, "Oh coochie coo, you're so cute. I thought you were going to come back and see me", when you knew or ought reasonably to know that it would cause offence or humiliation to the [patient] or adversely affect the [patient]'s health and well-being.

[8] The Hearing Tribunal was asked to confirm the withdrawal of Allegation 5(a) and amend Allegation 5 as follows:

On unspecified dates you engaged in sexual misconduct, as defined in the *Health Professions Act*, RSA 2000, c H-7 ("**HPA**") when you inappropriately suggested to two

[patients] that if they were going to share water “why don’t you kiss”, when you knew or ought reasonably to know that it would cause offence or humiliation to the [patients] or adversely affect the [patients]’ health and well-being;

- [9] The Hearing Tribunal agrees to the withdrawal of Allegation 5(a) and the amendment of Allegation 5 as noted.
- [10] The Regulated Member has admitted to the conduct in the allegations in the Consent Agreement (Exhibit #2).

EXHIBITS

- [11] The following documents were entered as Exhibits:

Exhibit #1 – Notice to Attend a Hearing by the Hearing Tribunal of the College and Association of Registered Nurses of Alberta;

Exhibit #2 – Consent Agreement between Gregory Stewart, #50,720 and Natasha Nakai, Conduct Counsel;

Exhibit #3 – Appendices A to E to Consent Agreement;

Exhibit #4 – CARNA Practice Standards for Regulated Members (“Practice Standards”);

Exhibit #5 -- 2017 Edition of the Canadian Nurses Association Code of Ethics for Registered Nurses (“Code of Ethics”);

Exhibit #6 – Copies of signature pages of the Regulated Member;

Exhibit #7 – Joint Recommendations;

Exhibit #8 – Undertaking of the Regulated Member;

Exhibit #9 – Affidavit of CARNA Paralegal.

SUBMISSIONS ON THE ALLEGATIONS

Submissions by Conduct Counsel:

- [12] Conduct Counsel made brief submissions. Conduct Counsel submitted that the conduct constitutes unprofessional conduct under sections 1(1)(pp)(i), (ii) and (xii) of the HPA.
- [13] Conduct Counsel noted that the following Practice Standards were applicable: Standards 3.1 to 3.4, and 5.3. Conduct Counsel also noted that the following provisions from the Code of Ethics applied: A1, A12, D2, D7 and D13. Conduct Counsel noted there may be other applicable provisions, but that in her view, these were applicable. Conduct Counsel reviewed the Agreement (Exhibit #2).

Submissions by the Labour Relations Officer for the Regulated Member:

[14] The Regulated Member's Labour Relations Officer advised he had no submissions.

Questions from the Hearing Tribunal:

[15] After adjourning to review the exhibits and consider the submissions, the Hearing Tribunal advised the parties that it was considering Standards of Practice, section 1.1, 1.2 and 5.2 and Code of Ethics, sections A12, A15, C4, D1, D14, F3, F5, G1, G2. The Hearing Tribunal asked Conduct Counsel and the Labour Relations Officer whether they had any submissions with respect to these.

[16] Conduct Counsel confirmed she had no submissions with respect to these sections. After a short adjournment for the Labour Relations Officer to consult with the Regulated Member, the Labour Relations Officer confirmed he had no submissions with respect to these sections.

DECISION AND REASONS OF THE HEARING TRIBUNAL ON THE ALLEGATIONS

[17] The Hearing Tribunal has reviewed the exhibits and considered the submissions made by the parties.

[18] The Hearing Tribunal considered the definition of unprofessional conduct under section (1)(1)(pp) of the HPA. The Hearing Tribunal finds that the Allegations are proven and that the Regulated Member's conduct constitutes unprofessional conduct under section (1)(1)(pp) of the HPA, as follows:

Unprofessional conduct means one or more of the following, whether or not it is disgraceful or dishonourable:

- (i) displaying a lack of knowledge of or lack of skill or judgment in the provision of professional services;
- (ii) contravention of this Act, a code of ethics or standards of practice;
- (xii) conduct that harms the integrity of the regulated profession.

[19] The Regulated Member obtained his nursing education with an Entry Level Diploma in Nursing from the University of Alberta School of Nursing. The Regulated Member registered with CARNA in July 1985.

[20] The Regulated Member's supervisor submitted the complaint on September 16, 2019 following the Regulated Member's termination from the [facility redacted].

[21] The Regulated Member has admitted as fact, the conduct in the Notice to Attend. The Regulated Member admits that the conduct constitutes unprofessional conduct. The Hearing Tribunal finds that the admitted conduct occurred based on these admissions. The following facts are agreed to in the Consent Agreement (Exhibit #2).

- [22] On or about June 26, 2019, the Regulated Member was working at the [facility redacted] with a female in the medication room. After she sneezed into her scrubs numerous times, the Regulated Member said to her words to the effect, "God bless those titties". He apologized by saying words to the effect, "I'm sorry, I should apologize in case those titties have a chance of hitting me in the face later".
- [23] On or about June 29, 2019, the Regulated Member was working at the [facility redacted]. A female nurse dropped some medication cups and attempted to pick them up. As the female nurse was bending down to pick them up, the Regulated Member kicked them out from underneath her hand. The Regulated Member then picked up the cups and when the nurse extended her hand to receive them, the Regulated Member dropped them on the floor again.
- [24] During the week of July 1, 2019, while the Regulated Member was working at the [facility redacted], he called a female nurse to attend his location across the hall while beckoning her with his finger. The Regulated Member continued to call and beckon to her. When she walked to his location he stated, "I knew I could make you 'come' with my finger".
- [25] On or about July 26, 2019, while the Regulated Member was working at the [facility redacted], the Regulated Member was looking at some files and when a female nurse inquired what he was looking for, the Regulated Member replied, "A blonde, with big breasts and no brains."
- [26] On one occasion, the Regulated Member was working at the [facility redacted], after observing two patients drinking from the same water cup, the Regulated Member stated, "If you're going to be sharing water, you might as well kiss. Why don't you kiss right now?"
- [27] In or about May 2019, while the Regulated Member was working at the [facility redacted], the Regulated Member asked a male patient what size his penis was and how round and long it was. The Regulated Member was framing it as a joke, but neither the patient nor a witness observed it as such. The witness observed that the patient seemed embarrassed and walked away.
- [28] In or about July 2019, while the Regulated Member was working at the [facility redacted], a female patient was standing in the door frame of the "tank", which is a small room for patients to wait if not being seen by staff members. A female nurse stated that she observed that the Regulated Member walked up to the tank and a Correctional Officer stated that the patient was there to see him. The Regulated Member walked up to the patient and fondled her earlobe and said "oh coochie coo, you're so cute. I thought you were going to come back and see me." The female patient stated that she was just there to get her medications. The Regulated Member would have been aware that patients are not allowed to react or they can face consequences.
- [29] The Hearing Tribunal finds that the Regulated Member's conduct shows a serious lack of judgment with respect to professional services. Registered Nurses are expected to conduct themselves in a professional manner at all times. This also extends to colleagues as nurses provide professional services as part of a team. The Regulated Member's conduct with respect to both his colleagues and his patients showed a serious lack of professionalism which reflects negatively on the field of Registered Nurses.

[30] The Hearing Tribunal finds that the Regulated Member also breached a number of provisions of the Practice Standards and Code of Ethics.

[31] The Regulated Member breached the following provisions of the Practice Standards: 1.1, 1.2, 3.1, 3.2, 3.3, 3.4, 5.2 and 5.3:

Standard One: Responsibility and Accountability

The nurse is personally responsible and accountable for their nursing practice and conduct.

Indicators

1.1 The nurse is accountable at all times for their own actions.

1.2 The nurse follows current legislation, standards and policies relevant to their practice setting.

Standard Three: Ethical Practice

The registered nurse complies with the *Code of Ethics* adopted by the Council in accordance with Section 133 of *Health Professions Act* and CARNA bylaws (CARNA, 2012).

Indicators

3.1 The nurse practices with honesty, integrity and respect.

3.2 The nurse protects and promotes a client's right to autonomy, respect, privacy, dignity and access to information.

3.3 The nurse ensures that their relationships with clients are therapeutic and professional.

3.4 The nurse communicates effectively and respectfully with clients, significant others and other members of the **health care team** to enhance client care and safety outcomes.

Standard Five: Self-Regulation

The nurse fulfills the professional obligations related to self-regulation.

Indicators

5.2 The nurse follows all current and relevant legislation and regulations.

5.3 The nurse follows policies relevant to the profession as described in CARNA standards, guidelines and position statements.

[32] The Hearing Tribunal finds that the Regulated Member breached the following provisions of the Code of Ethics: A1, A2, A12, A15, C4, D1, D2, D7, D13, D14, F3, F5, G1, and G2:

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**.
2. Nurses engage in compassionate care through their speech and body language and through their efforts to understand and care about others' health-care needs.
12. Nurses foster a safe, quality practice environment (CNA & Canadian Federation of Nurses Unions [CFNU], 2015).
15. Nurses support each other in providing person-centred care.

C. Promoting and Respecting Informed Decision-Making

Nurses recognize, respect and promote a person's right to be informed and make decisions.

Ethical responsibilities:

4. Nurses are sensitive to the inherent power differentials between care providers and persons receiving care. They do not misuse that power to influence decision-making.

D. Honouring Dignity

Nurses recognize and respect the intrinsic worth of each person.

Ethical responsibilities:

1. Nurses, in their professional capacity, relate to all persons receiving care with respect.
2. Nurses support persons receiving care in maintaining their dignity and integrity.
7. Nurses maintain appropriate professional **boundaries** and ensure their relationships are always for the benefit of the person. They recognize the potential vulnerability of persons receiving care and do not exploit their trust and dependency in a way that might compromise the **therapeutic relationship**. They do not abuse their relationship for personal or financial gain and do not enter into personal relationships (romantic, sexual or other) with persons receiving care.

13. Nurses treat each other, colleagues, students and other health-care providers in a respectful manner, recognizing the power differentials among formal leaders, colleagues and students. They work with others to honour dignity and resolve differences in a constructive way.
14. Nurses foster a moral community in which ethical values and challenges can be openly discussed and supported.

F. Promoting Justice

Nurses uphold principles of justice by safeguarding **human rights**, equity and **fairness** and by promoting the **public good**.

Ethical responsibilities:

3. Nurses refrain from judging, labelling, stigmatizing and humiliating behaviours toward persons receiving care or toward other health-care providers, students and each other.
5. Nurses provide care for all persons including those seen as victims and/or abusers and refrain from any form of **workplace bullying** (CNA, 2016a).

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, practice 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 practice with integrity in all of their professional interactions. Nurses represent themselves clearly with respect to name, title and role.

[33] The breaches of the Practice Standards and the Code of Ethics are serious and constitute unprofessional conduct pursuant to section 1(1)(pp)(ii) of the HPA.

[34] The Regulated Member engaged in humiliating behaviour towards his colleagues and towards patients. He showed a serious lack of respect for his colleagues and patients. He did not respect the dignity of his patients or colleagues or treat them in a professional matter. He did not engage in compassionate care and did not maintain appropriate boundaries. The comments he made were of a sexual nature to both colleagues and patients and were completely inappropriate.

[35] Registered Nurses are expected to conduct themselves in a professional manner at all times. This becomes especially important in situations where a power differential is present. The population he was serving was already underserved and would have been at a substantial power differential with respect to the Regulated Member. The patients, by virtue of their situation at the [facility redacted] were in a position of extreme

powerlessness when receiving professional services. The Regulated Member should have recognized this extreme power differential and conducted himself in a manner appropriate to the situation. No Regulated Member should ever exploit a power differential when treating a patient.

- [36] In addition, the Hearing Tribunal finds that the conduct by the Regulated Member undermines the integrity of the profession of nursing. The Regulated Member's comments constitute inappropriate sexual comments to female colleagues and vulnerable patients. Such conduct clearly undermines the trust that the public places in Registered Nurses. The public expects Registered Nurses to conduct themselves professionally and with integrity at all times. The Regulated Member's actions erode the public's trust and integrity of the profession.

SUBMISSIONS ON SANCTION

Submissions by Conduct Counsel:

- [37] Conduct Counsel noted there was a joint proposal on sanction and reviewed the Joint Recommendations (Exhibit #7).
- [38] Conduct Counsel noted that section 82(1.1)(b) of the HPA provides that where a decision of a Hearing Tribunal relates in whole or in part on sexual misconduct, the Hearing Tribunal must order the suspension of the investigated person's practice permit for a specified period of time. Conduct Counsel noted that given that the Regulated Member was not currently working as a Registered Nurse and was giving an undertaking to not seek to re-register, that this was more stringent than section 81(1.1)(b).
- [39] It was also noted that section 81.1(2) of the HPA required that for a decision relating to sexual abuse or sexual misconduct, the Hearing Tribunal must provide the patient the opportunity to present any written or oral statements. In this case, CARNA had made reasonable efforts to identify the affected patients, but was unable to do so. The efforts made by CARNA are set out in Exhibit #9.
- [40] Conduct Counsel also requested that the Hearing Tribunal order that the Regulated Member provide the executed documents to CARNA within 7 days of the date of the hearing.

Submissions by the Labour Relations Officer for the Regulated Member:

- [41] The Labour Relations Officer made brief submissions in support of the joint proposal on sanction. The Labour Relations Officer noted that the Regulated Member had already taken steps to provide the executed documents to CARNA and so had no objection to the request by Conduct Counsel for this Order.

DECISION AND REASONS OF THE HEARING TRIBUNAL ON SANCTION

- [42] The Hearing Tribunal considered the Joint Recommendations (Exhibit #7) and the submissions of Conduct Counsel and the Labour Relations Officer. The Hearing Tribunal

also considered the various factors relevant to sanction as set out in the decision in *Jaswal v. Newfoundland Medical Board*.

- [43] The Hearing Tribunal finds that the conduct of the Regulated Member was extremely serious. He showed a clear disregard for the dignity of his colleagues and patients. He engaged in behaviour that was intimidating and humiliating towards female nurses and patients and which constituted sexual misconduct. This conduct also erodes public trust in the profession.
- [44] The Hearing Tribunal notes that if the Regulated Member had not provided the Undertaking, the conduct would have attracted very serious sanctions, including a period of suspension.
- [45] In the present case, the Undertaking is more severe than a period of suspension and as such, the Hearing Tribunal accepts the submissions of Conduct Counsel that the requirements of HPA, section 82(1.1)(b) are met.
- [46] The Hearing Tribunal also accepts that it is able to make the Orders below, although CARNA was unable to identify the patients involved in the allegations in order to provide them the opportunity to make a statement in accordance with HPA, section 81.1(2).
- [47] The Hearing Tribunal accepts that the proposed Orders are reasonable and protect the public interest. The Hearing Tribunal also accepts that the joint recommendation is a result of a negotiated agreement between CARNA and the Regulated Member and should not be rejected unless it is contrary to the public interest or otherwise unreasonable or unfit. As such, the Hearing Tribunal is prepared to accept the joint recommendation.

ORDER OF THE HEARING TRIBUNAL

- [48] The Hearing Tribunal orders that:
1. The Regulated Member, Gregory Stewart (the “**Regulated Member**”), shall receive a reprimand for unprofessional conduct.
 2. The Regulated Member has confirmed that he is not currently employed as a RN and no longer intends to be.
 3. The Hearing Tribunal accepts the Regulated Member’s Permanent and Irrevocable Undertaking Not to Practice as a Registered Nurse ever again, whereby:
 - a. The Regulated Member gives his solemn promise and permanent and irrevocable undertaking to CARNA that the Regulated Member will not:
 - i. work or practice as a regulated member (RN, Nurse Practitioner, Temporary Permit Holder), whether as a paid or unpaid employee, a volunteer, a contractor or a student in a clinical setting;

- ii. use the title RN or Registered Nurse, or in any way hold out to be, or make representation of being, an RN; and
- iii. apply to be as a regulated member of CARNA, or RN, ever again;

(the “**Undertaking**”);

- b. The Undertaking means that the Regulated Member must never apply for a practice permit with the CARNA, ever again, and that he must never work as a Regulated Member (RN, Nurse Practitioner, Temporary Permit Holder) ever again.

COMPLIANCE

- 4. Compliance with this Order shall be determined by the Complaints Director of CARNA. All decisions with respect to the Regulated Member’s compliance with this Order will be in the sole discretion of the Complaints Director.
- 5. Should the Member fail or be unable to comply with any of the requirements of this Order, or if any dispute arises regarding the implementation of this Order, the Complaints Director may exercise the authority under section 82(3) of the HPA, and, in so doing, may rely on any non-compliance with this Order as grounds to make a recommendation under section 65 of the HPA which may include suspension of the Regulated Member’s practice permit.
- 6. The responsibility lies with the Regulated Member to comply with this Order. It is the responsibility of the Regulated Member to initiate communication with CARNA for any anticipated non-compliance and any request for an extension.

CONDITIONS

- 7. The Registrar of CARNA will be requested to put the following condition against the Regulated Member’s practice permit (current and/or future) and shall remain until the condition is satisfied:
 - a. ***Permanent and Irrevocable Undertaking not to Practice as a RN (call CARNA).***
- 8. Effective August 10, 2020 or the date of this Order if different from the date of the Hearing, notifications of the above condition shall be sent out to the Regulated Member’s current employers (if any), the regulatory college for Registered Nurses in all Canadian provinces and territories, and other professional colleges with which the Regulated Member is also registered (if any).
- 9. For clarity, as soon as this Order of the Hearing Tribunal takes effect, the previous conditions on the Regulated Member’s practice permit shall be expired as follows:

- a. The conditions placed on the Regulated Member's practice permit pursuant to section 65 of the *Health Professions Act*, RSA 2000, c H-7.
10. This Order takes effect August 10, 2020 and remains in effect pending the outcome of any appeal, unless a stay is granted pursuant to section 86 of the HPA.
11. In addition to the Orders above, the Regulated Member shall provide the executed documents to CARNA within 7 days of the date of the hearing.

[49] This Decision is made in accordance with Sections 80, 82 and 83 of the HPA.

Respectfully submitted,



Jason Anuik, Chairperson
On Behalf of the Hearing Tribunal

Date of Order: August 10, 2020