



COLLEGE AND ASSOCIATION OF REGISTERED NURSES OF ALBERTA

DECISION OF THE HEARING TRIBUNAL

RE: CONDUCT OF **CINDY SMITH**, R.N. REGISTRATION #**48,428**

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

NOVEMBER 17, 18 & 19, 2020

INTRODUCTION

1. A hearing was held virtually on November 17, 18 & 19, 2020 by the Hearing Tribunal of the College and Association of Registered Nurses (“CARNA”) to hear a complaint against Cindy Smith, R.N. registration #48,428.

Those present at the hearing were:

a. Hearing Tribunal Members:

Jason Anuik, Chair
Bonnie Bazlik
Carol Brouwer
David Rolfe, Public Representative

b. Independent Legal Counsel to the Hearing Tribunal:

Fred Kozak QC

c. CARNA Representative:

Vita Wensel, Conduct Counsel

d. Regulated Member [or former member] Under Investigation:

Cindy Smith (sometimes hereinafter referred to as “the Regulated Member”) who joined the Hearing Tribunal proceedings on November 18, 2020

PRELIMINARY MATTERS

2. Conduct Counsel confirmed that the Complaints Director had no objection to the composition of the Hearing Tribunal, or to the Hearing Tribunal’s jurisdiction to proceed with the hearing.

3. 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. No members of the public were present.

4. This proceeding commenced as a contested matter and proceeded on that basis throughout November 18, 2020 and for a portion of the proceedings on November 19, 2020. On November 18, 2020, at the commencement of the hearing, Conduct Counsel applied pursuant to section 79(6) of the HPA to proceed in the absence of the Regulated Member based on proof of service of the Notice to Attend a Hearing. After hearing submissions from Conduct Counsel, and reviewing evidence of service of the Notice to Attend a Hearing on the Regulated Member, the Hearing Tribunal allowed the application and agreed to proceed in the absence of the Regulated Member.

5. The Hearing Tribunal heard testimony from a number of witnesses on November 17, 2020 and November 18, 2020. During a break in the proceedings on November 18, 2020, it was apparent to the Hearing Tribunal that the Regulated Member was prepared to join the virtual

hearing and participate in the proceedings. The proceedings were adjourned to permit Conduct Counsel an opportunity to speak with the Regulated Member, and outline options for proceeding and report back to the Hearing Tribunal during the afternoon of November 18, 2020.

6. On November 18, 2020, following an adjournment, Conduct Counsel confirmed that the Regulated Member understood her right to have a lawyer or counsel assist her, and that she also understood that she had a right to be represented by a lawyer or a Labour Relations Officer at the Hearing, but the Regulated Member indicated and confirmed that she was prepared to admit to the conduct alleged in an amended Notice of Hearing, and sign an Agreed Statement of Fact and Liability, and a Joint Recommendation for Sanction. Conduct Counsel indicated those documents would be prepared and that the hearing would then proceed on a Consent basis on November 19, 2020. The Hearing was adjourned, and was scheduled to reconvene on November 19, 2020.

ALLEGATIONS

7. The allegations in the amended Notice to Attend a Hearing are as follows:

While employed as a Registered Nurse (RN) at the Foothills Medical Centre, Alberta Health Services, Calgary, AB, your practice fell below the standard expected of an RN when:

Allegation 1:[

On or about July 7, 2018, you fraudulently signed a physician name on a Consent for Autopsy form for deceased [children] of Patient 1, when you knew or ought to have known that a physician must sign the consent form to confirm informed consent has been obtained from the patient;

Allegation 2:

On or about July 7, 2018, you verbalized your intent to forge a physician signature on a Consent for Autopsy form to your colleague RNs, and then asked your RN colleagues to witness the patient signature on the fraudulent consent form, when you knew or ought to have known that a physician must obtain the signature of the patient on the consent form,

collectively referred to as the “**Conduct**”.

8. The Regulated Member admitted to the Conduct in relation to Allegation 1 and Allegation 2, set out in the Agreed Statement of Facts and Liability, marked as Exhibit 10 in these proceedings.

EVIDENCE

9. 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 – Book of Authorities

Exhibit #3 – Affidavit of [staff member 1] sworn November 12, 2020 and Certificate dated November 16, 2020

Exhibit #4 - Affidavit of [staff member 2] sworn November 12, 2020 and Certificate dated November 12, 2020

Exhibit #5 – Amended Notice of Attend

Exhibit #6 – Form 10 Consent for Autopsy

Exhibit #7 – Policy Level 1 Consent to Treatment/Procedure(s)

Exhibit #8 - Affidavit of [Physician 1] sworn November 9, 2020 and Certificate dated November 9, 2020

Exhibit #9 – Consent for Autopsy Form

Exhibit #10 – Confirmation of Understanding of Rights and Obligations in a Consent Hearing

Exhibit #11 – Agreed Statement of Facts and Liability

Exhibit #12 – Appendices

Exhibit #13 – Joint Recommendations on Sanction

Exhibit #14 – Course Descriptions Relating to Unlock the Leader in You, NURS 0170, and Bringing the Code of Ethics to Life

Exhibit #15 – Estimated Statement of Costs

10. The following individuals were called as witnesses:

[RN 1]

[RN 2]

[RN 3]

[RN 4]

[RN 5]

[RN 6]

HEARING TRIBUNAL FINDINGS

11. Further to, and in support of the Conduct and related admissions set out in paragraphs 7 and 8 herein, the Regulated Member also admitted the following facts, all of which were accepted as facts by the Hearing Tribunal:

- a. The Regulated Member was acting as team lead on [unit redacted] on July 7, 2018 and was working with two junior RN Colleagues on [unit redacted] for the

day shift. [Unit redacted] is a high-risk unit and is considered a part of Unit 51. Although acting as team lead on [unit redacted], she reported to the Charge Nurse on Unit 51. Patient 1 attended [unit redacted] and delivered stillborn [children] early in the morning on July 7, 2018.

- b. Patient 1's family was anxious to leave the hospital. The Regulated Member tried to have the Consent for Autopsy form signed by the on-call physician but was unable to do so. The attending physician, [1], was not working on July 7-8, 2018.
- c. The Regulated Member knew that the Consent for Autopsy form was required to be signed by the most responsible healthcare provider, specifically a physician. The Regulated Member knew that a RN could not sign the form and that it could invalidate the form. Finally, the Regulated Member knew that the form was a legal document and would be placed on Patient 1's chart and would be sent to the morgue.
- d. The Regulated Member signed the Consent for Autopsy forms relating to Patient 1 while at the nursing station on [unit redacted]. The Regulated Member forged physician [1]'s signature on the form.
- e. The Regulated Member made a statement out loud, in the presence of two junior RN colleagues, that she was going to "forge" the form while at the nursing station. The Regulated Member knew that the form was invalid because she had forged physician [1]'s signature but asked her two RN colleagues to witness the patient signature so the form could be processed. Two junior RN colleagues refused to witness the form.
- f. Later in her shift, the Regulated Member removed the original Consent for Autopsy form that included the forged signature and asked her colleague, [1], to assist her to complete a new Consent for Autopsy form, which was then added to Patient 1's chart. The Regulated Member disposed of the original Consent for Autopsy form.
- g. The Regulated Member did not advise the Charge Nurse on Unit 51, who is responsible for both units, about the difficulty obtaining the signature, forging the physician's signature, her decision to replace the form or disposing of the original form.

DECISION AND REASONS OF THE HEARING TRIBUNAL ON THE ALLEGATIONS

12. The Hearing Tribunal reviewed all of the Exhibits and testimony, considered the submissions made by the parties, and determined that the two Allegations in the amended Notice to Attend a Hearing have been proven on a balance of probabilities.

13. The Hearing Tribunal considered the definition of unprofessional conduct under section (1)(1)(pp) of the HPA. The Hearing Tribunal finds that the admitted Allegations constitute unprofessional conduct under section (1)(1)(pp) of the *Health Professions Act*, 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.

14. The Hearing Tribunal finds that the Regulated Member breached the following provisions of the Practice Standards, as follows: standards 1.1, 1.2, 2.1, 2.3, 2.4, 2.5, 2.7, 3.1, 3.4, 5.2, 5.3, and 5.4;

15. The Hearing Tribunal finds that the Regulated Member breached the following provisions of the Code of Ethics, as follows: responsibilities a.1, a .5, a.7, a.12, d.13, f .8, g.1, g.2 and g.4.

16. 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.

SUBMISSIONS ON SANCTION

17. The Hearing Tribunal invited submissions from the parties on the appropriate sanction. Conduct Counsel noted there was a joint proposal on sanction and reviewed the Joint Recommendations (Exhibit #13).

18. Conduct Counsel also reviewed the factors in the decision of *Jaswal v. Newfoundland Medical Board* and how those factors applied to the present case. Those factors include:

The nature and gravity of the proven allegations:

The age and experience of the member:

The previous character of the member:

The age and mental condition of the offended patient:

The number of times the offence was proven to have occurred:

The role of the registered nurse in acknowledging what occurred:

Whether the member has already suffered other serious financial or other penalties:

The impact on the offended patient:

The presence or absence of any mitigating factors:

The need to promote specific and general deterrence:

The need to maintain public confidence:

Degree to which offensive conduct is outside the range of permitted conduct.

Submissions of Conduct Counsel

19. Conduct Counsel indicated that the Regulated Member admitted intentionally forging a physician's signature on a legal document while she was the team lead on her unit, and she admitted to doing so in the presence of junior RNs, in disregard of her ethical obligations as the senior member on the unit. The Regulated Member has been an RN since 1983, and in her long career, there are no previous regulatory incidents. Conduct Counsel submitted that the sanctions outlined in the joint sanction proposal included a \$500 fine, which was intended to be punitive. All of the elements of the joint sanction proposal together were intended to act as both a specific and general deterrent. Conduct Counsel noted that in the two years since the incident in question, there have been no additional concerns, but nevertheless felt that remediation and rehabilitation were best served by requiring the Regulated Member to successfully complete appropriate courses of study outlined in Exhibit 12. In terms of the costs sought, Conduct Counsel indicated that the costs sought by CARNA represented less than 25% of the total costs incurred by CARNA, and that CARNA was prepared to enter into an appropriate payment schedule to ease the financial burden, given the Regulated Members impending retirement.

Submissions of the Regulated Member

20. The Regulated Member confirmed her agreement and acceptance of the joint sanction proposal detailed in Exhibit 13.

DECISION AND REASONS OF THE HEARING TRIBUNAL ON SANCTION

21. The Regulated Member, CINDY SMITH, #48,428 (the "Regulated Member"), shall receive a reprimand for unprofessional conduct.

22. The Regulated Member shall pay a fine in the amount of \$500.00 whereby such fine is paid via MyCARNA on or before March 31, 2021.

23. By no later than **March 31, 2021**, the Regulated Member shall provide proof satisfactory to the Complaints Director, that the Regulated Member has successfully completed and passed the following courses of study:

- a. **Responsible Nursing (NURS 0170 MacEwan University):**
- b. **CNA online Code of Ethics Modules; and**
- c. **CARNA online Learning Module – "Unlock the Leader in You".**

24. The Regulated Member shall pay costs, pursuant to section 82(1)(j) of the HPA, of **\$5,000.00** to CARNA by **November 19, 2025**. The costs may be paid in full at any time before the deadline. However, the Regulated Member must make minimum payments in the following installments:

- a. \$1,000.00 due on **November 19, 2021**;
- b. \$1,000.00 due on **November 19, 2022**;
- c. \$1,000.00 due on **November 19, 2023**;
- d. \$1,000.00 due on **November 19, 2024**; and
- e. \$1,000.00 due on **November 19, 2025**.

25. The Hearing Tribunal found the joint sanction proposal to be reasonable, and taken together, the sanctions amounted to a proportionate denunciation and penalty for a serious ethical breach by a Registered Nurse in the role of team lead. Given that the costs sought to be recovered amounted to less than 25% of the costs actually incurred in the investigation and hearing of this matter, such an award does not amount to a crushing blow to a Regulated Member and cannot be said to deter others from defending themselves in conduct matters. The Hearing Tribunal notes that a significant percentage of the costs largely reflect the fact that the Regulated Member failed or refused to cooperate during the investigation of this matter, resulting in a contested hearing which initially proceeded in the absence of the Regulated Member. Given these circumstances, the costs sought by CARNA and awarded by the Hearing Tribunal is modest.

ORDER OF THE HEARING TRIBUNAL

26. The Hearing Tribunal orders that:

1. The Regulated Member, CINDY SMITH, #48,428 (the "Regulated Member"), shall receive a reprimand for unprofessional conduct.
2. Regulated Member shall pay a fine in the amount of **\$500.00** whereby such fine is paid via MyCARNA on or before **March 31, 2021**.
3. By no later than **March 31, 2021**, the Regulated Member shall provide proof satisfactory to the Complaints Director, that the Regulated Member has successfully completed and passed the following courses of study:
 - a. **Responsible Nursing (NURS 0170 MacEwan University):**
 - b. **CNA online Code of Ethics Modules;** and
 - c. **CARNA online Learning Module – "Unlock the Leader in You".**
4. The Regulated Member shall pay costs, pursuant to section 82(1)(j) of the HPA, of **\$5,000.00** to CARNA by **November 19, 2025**. The costs may be paid in full at any time before the deadline. However, the Regulated Member must make minimum payments in the following installments:
 - a. \$1,000.00 due on **November 19, 2021**;
 - b. \$1,000.00 due on **November 19, 2022**;
 - c. \$1,000.00 due on **November 19, 2023**;
 - d. \$1,000.00 due on **November 19, 2024**; and
 - e. \$1,000.00 due on **November 19, 2025**.
5. Further to paragraph 4, the Regulated Member understands and acknowledges that:
 - a. Costs will be payable via MyCARNA;
 - b. The Regulated Member must pay the costs owed, whether or not the Regulated Member has an active practice permit with CARNA, and the costs are a debt due to CARNA and if they are not paid, may be

recovered by CARNA by an action in debt, pursuant to section 82(4) of the *HPA*.

- c. The costs owed reflect the importance of responding to their regulatory body, specifically that a regulated member has a duty to respond to communications from CARNA and that duty is essential to the regulation of registered nurses in Alberta, to uphold public confidence in the profession and to ensure that CARNA can carry out their mandates;
 - d. Failing to respond to their regulatory body between January 2020 to November 2020 affected the administration of justice and resulted in practical and real costs, that they now agree to pay to CARNA in the amount described above; and
 - e. The amount of costs is a substantial reduction from actual costs incurred and is reasonable and appropriate in the circumstances, with consideration to the amount of time to pay the costs, the proposed sanction, seriousness of the admissions and their failure to respond to CARNA in advance of the Hearing of this matter.
6. The Regulated Member acknowledges that pursuant to section 82(3)(c) of the *HPA*, the usual terms of fine or costs payment apply whereby the Regulated Member may be automatically suspended for any non-payment.

(the “**Condition(s)**”)

COMPLIANCE

- 7. For clarity and certainty, the Regulated Member is, in addition to what is set out in this Order, is required to complete any and all requirements as have been, or may be, imposed from CARNA’s Registration Department. This Order does not supersede, or if complied with serve to satisfy, any such requirements from CARNA’s Registration Department.
- 8. 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.
- 9. The Regulated Member will provide proof of completion of the above-noted Condition(s) by the dates set out therein, to the Complaints Director, via e-mail at procond@nurses.ab.ca or confidential fax to 780.453.0546. If the Complaints Director deems it appropriate, and for the sole purpose of permitting the Regulated Member to proceed toward compliance with this Order, the Complaints Director may in her sole discretion make other minor adjustments to the Order that are in keeping with this Hearing Tribunal Order, without varying the substance of the Order.
- 10. Upon written request by the Regulated Member, any timelines outlined in this Order may be extended at the unfettered discretion of the Complaints Director, acting reasonably.

11. Should the Regulated 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*, or the information may be treated as reasonable grounds under section 56 of the *HPA* and subject to a new complaint under Part 4 of the *HPA*.
12. 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

13. The Regulated Member confirms the following list sets out all the Regulated Member's employers and includes all employers even if the Regulated Member is under an undertaking to not work, is on sick leave or disability leave, or if the Regulated Member have not been called to do shifts, but could be called. Employment includes being engaged to provide professional services as a Registered Nurse on a full-time, part-time, casual basis as a paid or unpaid employee, consultant, contractor or volunteer. The Regulated Member confirms the following employment:

Employer Name	Employer Address & Phone Number
Alberta Health Services	1403 29 Street NW
Foothills Medical Centre	Calgary, Alberta
[Unit redacted] – Labor and Delivery	T2N 2T9 403 944 1351

14. The Regulated Member understands and acknowledges that it is the Regulated Member's professional responsibility to immediately inform CARNA of any changes to the Regulated Member's employers, and employment sites, including self-employment, for purposes of keeping the Registrar current and for purposes of notices under section 119 of the *HPA*.
15. 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. ***Shall pay fine – Arising from Disciplinary Matter;***
 - b. ***Course work required – Arising from Disciplinary Matter;***
 - c. ***Must pay costs – Arising from Disciplinary Matter.***

16. Effective on November 19, 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).
17. Once the Regulated Member has complied with a condition listed above, it shall be removed. Once all the conditions have been removed, the Registrar will be requested to notify the regulatory colleges in the other Canadian jurisdictions.
18. This Order takes effect on November 19, 2020, and remains in effect pending the outcome of any appeal, unless a stay is granted pursuant to section 86 of the *HPA*.

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: **November 19, 2020**