

INVESTIGATION COMMITTEE  
of the  
SASKATCHEWAN REGISTERED NURSES' ASSOCIATION

-and-

Michele M. Moore  
Saskatchewan RN # 0035075

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PENALTY DECISION  
of the  
DISCIPLINE COMMITTEE  
of the  
SASKATCHEWAN REGISTERED NURSES' ASSOCIATION

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Appearance for the Investigation Committee:	Mr. Roger Lepage
Appearance for Michele M. Moore:	None
Appearance for the Discipline Committee:	Darcia G. Schirr, Q.C.
Chairperson for the Discipline Committee:	Ms. Lynda Kushnir Pekrul

Date of Penalty Hearing: July 8, 2016

Location: Saskatchewan Registered Nurses' Association  
2066 Retallack Street  
Regina, Saskatchewan

Date of Penalty Decision: December 9, 2016

## PHASE ONE HEARING

1. By a decision dated March 22, 2016, the Discipline Committee of the Saskatchewan Registered Nurses' Association ("SRNA") found Michele M. Moore guilty of professional misconduct pursuant to section 26(1) and 26(2)(c), (g) and (l) of *The Registered Nurses Act, 1988* (the "Act") and guilty of breaching certain provisions of the *Standards & Foundation Competencies for the Practice of Registered Nurses, 2007* and *Code of Ethics*. Those provisions are set out in the March, 2016 decision.

## PHASE TWO HEARING

2. The Discipline Committee reconvened on July 8, 2016 to hear submissions regarding penalty and disposition. The options are set out in section 31:

**31(1) Where the discipline committee finds a nurse guilty of professional incompetence or professional misconduct it may:**

**(a) order that the nurse be expelled from the association and that the nurse's name be struck from the register;**

**(b) order that the nurse be suspended from the association for a specified period;**

**(c) order that the nurse may continue to practise only under conditions specified in the order which may include, but are not restricted to, an order that the nurse;**

**(i) not do specified types of work;**

**(ii) successfully complete specified classes or courses of instruction;**

**(iii) obtain treatment, counselling or both;**

**(d) reprimand the nurse; or**

**(e) make any other order that to it seems just.**

**(2) In addition to any order made pursuant to subsection (1), the discipline committee may order:**

**(a) that the nurse pays to the association within a fixed period:**

**(i) a fine in a specified amount;**

**(ii) the costs of the inquiry and hearing into the nurse's conduct and related costs, including the expenses of the investigation committee and the discipline committee; or**

**(iii) both of the things mentioned in subclauses (i) and (ii); and**

**(b) where a nurse fails to make payment in accordance with an order pursuant to clause (a), that the nurse be suspended from the association.**

3. When the discipline hearing was held from June 22 through June 26, 2015, Ms. Moore was represented by legal counsel, Marcus Davies. At the opening of the penalty hearing, legal counsel for the Investigation Committee advised that Mr. Davies had contacted him to indicate that he was not retained to represent Ms. Moore at the penalty hearing. Further and when the penalty hearing opened, Ms. Moore was not present. The Investigation Committee tendered the following:
  - (a) Letter dated June 2, 2016 (Exhibit SH-1) hand delivered to Ms. Moore on June 8, 2016, indicating that the SRNA had not received a response from her regarding her availability for a penalty hearing. As such, the SRNA scheduled the hearing for July 8, 2016.
  - (b) Letter dated June 23, 2016 (Exhibit SH-2), which was hand delivered to Ms. Moore on June 27, 2016. The letter reaffirmed the July 8, 2016 hearing date and inquired as to whether she would be attending in person. The letter also provided Ms. Moore with the option to appear by telephone.
  - (c) Affidavit of Service sworn June 20, 2016 (Exhibit SH-3), showing that Ms. Moore was served on June 20, 2016 by email with a Brief of Law prepared by the Investigation Committee legal counsel.
4. The Investigation Committee confirmed that no response was received from Ms. Moore via email, mail, or telephone prior to the commencement of the penalty hearing.
5. Section 30(9) of the Act gives the Discipline Committee the discretion to proceed in the nurse's absence. Based on the exhibits filed, the Discipline Committee was

satisfied that Ms. Moore was aware of the proceedings and ordered that the penalty hearing should continue in her absence.

6. Counsel for the Investigation Committee then filed a Brief of Fact and Argument and began making oral submissions regarding the penalty proposed by the Investigation Committee.
7. Counsel's submissions were interrupted when it was learned that Ms. Moore had sent an email at 11:30 a.m. to \_\_\_\_\_ of the SRNA. Ms. Moore's email was provided to the Discipline Committee and the email reads as follows:

**I tried calling but have not been able to get through, I got back here late cause I had car trouble and broke down on my way back from Halifax. I assume the hearing is over but if by chance it's not could you give me the number to call in? I will keep checking my email.**

8. Upon receipt of this email, the Discipline Committee directed that SRNA staff make efforts to contact Ms. Moore and make arrangements for her to address the Discipline Committee by telephone. The penalty hearing stood down until it was reconvened at 13:00 hours when Ms. Moore was on the speaker phone. Ms. Moore was advised that the hearing had begun and that the Investigation Committee had begun making submissions as to the appropriate penalty. Ms. Moore was also advised that a court reporter was not able to be present for the afternoon portion of the hearing but that the proceedings were being audio recorded.
9. Ms. Moore acknowledged that she had received Exhibits SH-1 and SH-2. Ms. Moore indicated she did not receive Exhibit SH-3 which is the Brief of Law filed by the Investigation Committee. The hearing stood down for a further 30 minutes to allow Ms. Moore to review the Brief of Law which was provided to her by SRNA staff. The penalty hearing reconvened after Ms. Moore confirmed that she had reviewed the Brief and she advised that she was prepared to continue with the hearing.

**Submissions on Behalf of the Investigation Committee**

10. Counsel for the Investigation Committee submitted a written Brief and made oral submissions broadly proposing the following:
  - (a) Ms. Moore shall be suspended from the Association for six months.
  - (b) Ms. Moore shall be subject to restrictions upon returning to work and for 2,000 hours of actual registered nursing practice, Ms. Moore shall be restricted from serving in a supervisory role and from working in an independent environment or practice.
  - (c) At certain increments, Ms. Moore will provide four written performance reviews completed by her employer noting her ability to demonstrate competency in accordance with the SRNA *Standards and Foundation Competencies for the Practice of Registered Nurses* and within the CNA *Code of Ethics* for Registered Nurses.
  - (d) Ms. Moore will complete the Canadian Nurses Association *Code of Ethics* online course.
  - (e) Ms. Moore shall review the *Standards and Foundations Competencies for the Practice of Registered Nurses* (December 1, 2013) and after review, submit a self-reflective essay to the Registrar of the SRNA.
  - (f) Ms. Moore shall pay a fine in the amount of \$20,000.00 to be paid in monthly installments of \$500.00 commencing the month after completion of the six month suspension.
  - (g) Ms. Moore shall pay costs of the investigation committee and hearing fixed in the amount of \$25,000.00 to be paid in monthly installments of \$500.00 commencing the month after completion of the six month suspension.
11. Ms. Moore responded to the Investigation Committee's submissions and described her current circumstances. She advised that she is not working as a registered nurse in

Nova Scotia where she now resides and that she had not attempted to obtain a nursing license in Nova Scotia. She further indicated that she has children in her care and that her financial situation is not good. Her plans are to remain in Nova Scotia and she has no plans to return to Saskatchewan.

12. As to the Investigation Committee's recommendations, Ms. Moore did not take issue with a suspension of her license for six months. Ms. Moore indicated she was not generally opposed to the other aspects of the penalty submission. Regarding the costs, she indicated she could not really argue against those and that she could pay them if she was working.

### Analysis

13. In the written Brief filed by the Investigation Committee, reference is made to factors discipline committees should consider in imposing a penalty order. The factors are set out in a case called *Jaswal v Medical Board (Newfoundland)* (1992) Admin. L.R. 2<sup>d</sup> 233 and *Jaswal* has been cited by many discipline committees including this Discipline Committee.
14. The Discipline Committee agrees that not all the factors outlined in the *Jaswal* case apply here. The *Jaswal* factors most relevant in this case are bold printed:
  - (a) **The nature and gravity of the proven allegations;**
  - (b) The age and experience of the offending professional;
  - (c) **The previous character of the professional and in particular the presence or absence of any prior complaints or convictions;**
  - (d) **The number of times the offence was proven to have occurred;**
  - (e) **The role of the professional in acknowledging what had occurred;**
  - (f) Whether the offending professional had already suffered other serious financial or other penalties as a result of the allegations having been made;

- (g) The presence or absence of any mitigating circumstances.
  - (h) The presence or absence of any aggravating circumstances;
  - (i) The need to promote specific and general deterrence and, thereby, to protect the public and ensure the safe and proper practice of a professional;**
  - (j) The need to maintain the public's confidence in the integrity of the profession;**
  - (k) The range of sentence in other similar cases.**
15. As is clear from this Committee's decision dated March 22, 2016, the facts underlying the proven allegations were significant and of serious concern to the Committee. Independence and autonomy are valued attributes for nurses when exercised appropriately. However in this case, Ms. Moore abused her position. She was a charge nurse and she also had additional administrative responsibilities. She was in a position of authority. She took advantage of a call back system that relied on the employees' honesty. Ms. Moore claimed for seven call-backs and created seven call-back records for seven different patients on seven different occasions which she did not attend to. The call back system at (the "Health Region") had no verification process between the call-back sheets and other documents. For these reasons, the Health Region largely relied on the professionalism and integrity of the local nurses with respect to reporting call-backs.
16. Ms. Moore has a history of involvement with the SRNA investigation process. In 2010, a complaint was submitted to the SRNA by a co-worker alleging Ms. Moore made false accusations against him and breaching confidentiality by bringing in family members and others into the health centre where they had access to confidential information. Although the Investigation Committee dismissed the complaint, a letter of guidance was issued to Ms. Moore outlining her professional responsibilities. Prior to these matters, Ms. Moore has never been the subject of a discipline hearing by the SRNA.

17. Ms. Moore completed her nursing program on June 1, 1995. In her testimony, she outlined her extensive nursing experience. The witnesses who testified at the discipline hearing agreed that Ms. Moore had excellent hands-on nursing skills. Ms. Moore advised the Discipline Committee that she has not been employed as a registered nurse since her termination by the Health Region on July 9, 2012. The Discipline Committee recognizes that Ms. Moore would have to inform any nursing regulatory body about this Discipline Committee's decision of March, 2016. However, it should also be pointed out that the SRNA has not imposed any condition on Ms. Moore's ability to seek work as a registered nurse in Saskatchewan or in any other jurisdiction.
18. Ms. Moore's failure to respond to the SRNA regarding the penalty hearing is a concern to the Discipline Committee. Ms. Moore admitted that she had received the hand delivered letters. Her failure to respond until the very day of the hearing demonstrates a lack of accountability for her own actions.
19. This being said, the Discipline Committee was encouraged by some of the comments Ms. Moore made. She indicated that she had "definitely learned (her) lesson". She also appeared to be apologetic for her actions. Ms. Moore stated a number of times that there was never any issue about her care of patients. While that may be true, Ms. Moore does not appear to understand the full implications of her actions on the registered nursing profession as a whole. The public expects nurses to act with integrity and honesty.
20. The Investigation Committee suggested that Ms. Moore be suspended for a period of six months. As indicated in the Discipline Committee's decision of *Arla Ryan*, (June 10, 2016) conduct that illustrates dishonesty and repetitive acts of dishonesty or deceit as a general statement require a suspension.
21. The Discipline Committee agrees that a suspension is required in this case. However and after considering all of the circumstances and other discipline cases, the Discipline Committee has concluded that a suspension of three months is appropriate.

22. In the case of *Laura Watson* (September 22, 2014), Ms. Watson appeared before the Discipline Committee for the second time. She had been found guilty of a number of charges of professional misconduct including a breach of a previous Discipline Committee Order. In the *Watson* case, the Discipline Committee imposed a six month suspension.
23. In the *Arla Ryan* decision, Ms. Ryan was found guilty of professional misconduct for submitting six fraudulent illness notes. As a result of her conduct, Ms. Ryan obtained financial remuneration from her employer that she was not entitled to. Ms. Ryan's conduct was not isolated nor was it a momentary lapse of judgment. In the *Ryan* case, the Discipline Committee imposed a 30 day suspension.
24. The Discipline Committee sees the range of a possible suspension in this case to be 30 days to six months. Reconciling the facts in this case and other discipline committee decisions and considering all of the relevant factors, the Discipline Committee finds that a suspension in the middle of that range is more appropriate.
25. As to the restrictions on Ms. Moore's continued practice, the Discipline Committee finds those restrictions to be appropriate and reasonable.
26. The Investigation Committee also proposed that Ms. Moore complete the CNA *Code of Ethics* online learning modules and a self-reflective written essay after reviewing the *SRNA Standards and Foundations Competencies for the Practice of Registered Nurses* (December 1, 2013). The Discipline Committee expects that Ms. Moore will benefit from both of these professional development exercises.
27. The Investigation Committee proposes that Ms. Moore should pay a fine in the amount of \$20,000.00. The Discipline Committee finds that amount excessive particularly in light of the fact Ms. Moore's license shall be suspended for three months. A significant fine plus a suspension is excessive. The Discipline Committee finds that a fine in the amount of \$5,000.00 is appropriate and serves the purposes of disciplinary penalties. Further, a fine amount in the amount of \$5,000.00 bears a rational connection to the

amount of compensation Ms. Moore collected from her employer that she was not entitled to.

28. As to costs, the Discipline Committee concludes that Ms. Moore should pay costs of the investigation and hearing fixed in the amount of \$20,000.00. A total monetary order of \$25,000.00 for costs and a fine is significant. The Discipline Committee finds that such amounts serve the purposes of discipline sanctions. The Discipline Committee will not include in its Order the suggestion that costs be paid by monthly installments. If Ms. Moore chooses to make monthly payments, that will be up to her. Further and for certainty, the Discipline Committee will provide a set date for payment of the costs and the fine.

### **Penalty Order**

29. The Discipline Committee therefore makes the following Order under section 31 of the Act:
- (a) Pursuant to section 31(b) of the Act, Michele M. Moore shall be suspended for a period of three months which suspension shall commence on the first day of the month following the date of this Decision.
  - (b) Pursuant to section 31(1)(c) of the Act, Michele M. Moore may continue to practice under the following conditions:
    - (i) Upon returning to work and for 2000 hours of actual registered nursing practice, Michele M. Moore will be restricted from:
      - (A) Being in a supervisory role (i.e. Charge Nurse); and
      - (B) Working in an independent environment or practice.
    - (ii) Michele M. Moore shall ensure that her nursing employer provides four written performance reviews verifying that there are no competency or conduct concerns and that the above restrictions have been met. The performance reviews will be submitted to the Registrar in a format

provided by the SRNA. The performance reviews shall be provided as follows:

- (A) After having completed 500 hours actual worked hours of RN practice;
- (B) After having completed 1000 hours actual worked hours of RN practice;
- (C) After having completed 1500 hours actual worked hours of RN practice; and
- (D) After having completed 2000 hours actual worked hours of RN practice.

If any competency or conduct concerns are identified during the existence of the conditions and/or restrictions on Michele M. Moore's license, they must be reported to the Registrar for review and possible further action.

- (iii) Michele M. Moore shall review the *Standards and Competencies for the Practice of Registered Nurses* (December 1, 2013). Upon completion of this review, Ms. Moore shall provide a written self-reflective essay to the Registrar of the SRNA referencing the relevant competencies related to professional conduct identified in this case and how the Standards document will guide her future nursing practice. Ms. Moore shall submit the essay before returning to the practice of registered nursing or within one month of her return.
  - (iv) Michele M. Moore shall complete the Canadian Nurses Association *Code of Ethics* online learning modules and provide proof of completion to the Registrar of the SRNA. Completion certificates will be submitted prior to Michele M. Moore returning to the practice of registered nursing.
- (c) Pursuant to section 31(2)(a)(i) of the Act, Michele M. Moore shall pay a fine in the amount of \$5,000.00 to be paid on or before December 1, 2019.

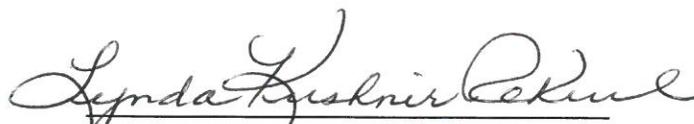
- (d) Pursuant to section 31(2)(a)(ii) of the Act, Michele M. Moore shall pay the costs of the investigation and hearing which shall be fixed in the amount of \$20,000.00. The costs shall be paid on or before December 1, 2019.
- (e) If Michele M. Moore is a member in good standing with the SRNA as of December 1, 2019 and if the fine and costs have not been paid in full by December 1, 2019, Ms. Moore's license shall be suspended until the costs and fine are paid in full pursuant to section 31(2)(b) of the Act.
- (f) Pursuant to section 31(1)(e) of the Act:
  - (i) Any breach of the terms of this order shall be referred back to the Investigation Committee for investigation and a possible referral to the Discipline Committee for a hearing regarding professional conduct.
  - (ii) In the event Michele M. Moore fails to complete the terms of this order within the timeline specified, she shall be suspended from the SRNA until such time as she has completed the terms;
  - (iii) Any communication and required filing of documents shall be directed to the Registrar SRNA, 2066 Retallack Street, Regina, SK, S4T 7X5. The documents and information must be sent to the SRNA directly from source marked "Personal and Confidential".
  - (iv) Michele M. Moore must keep the Registrar informed in writing of any change in registered nursing employment, including any leave of absence greater than one month;
  - (v) When practising as a registered nurse, Michele M. Moore shall keep the Registrar verbally informed, on a monthly basis, of her progress in meeting the above conditions and restrictions;
  - (vi) Michele M. Moore shall ensure that the Registrar is provided with updated and current telephone, address, and email information on an ongoing basis until all terms and conditions are concluded;
  - (vii) For as long as this order remains in effect, Michele M. Moore shall forthwith disclose the order to prospective and existing registered nurse employers; and

- (g) Once all conditions and terms of this order have been complied with, the Registrar of the SNRA shall so advise the member in writing and this order shall no longer be in effect from and after that date.
30. Pursuant to section 31(3), a copy of this Order shall be sent to \_\_\_\_\_ at the \_\_\_\_\_ Health Region.
31. A copy of this Order shall also be sent to the following:
- (a) All Registrars of the registered nurses regulatory bodies in Canada;
  - (b) The editor of the SRNA News Bulletin;
  - (c) Other jurisdictions where the member may have practiced;
  - (d) Any other jurisdiction which the Registrar considers appropriate;
  - (e) The webmaster of the SRNA, to be posted on the SRNA website.

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.

December 9, 2016



Lynda Kushnir Pekrul, RN, Chairperson  
*On behalf of Members of the  
Discipline Committee*  
Stella Swertz, RN  
Anne Marie Edmonds, RN  
Beth Ann Schiebelbein, RN  
Frances Passmore, Public Representative