Saskatchewan Registered Nurses Association T. Kelene Neitzel, RN#0024189

INVESTIGATION COMMITTEE of the SASKATCHEWAN REGISTERED NURSES ASSOCIATION

- and -

T. Kelene Neitzel

Saskatchewan RN #0024189

DECISIONof the **DISCIPLINE COMMITTEE**

of the SASKATCHEWAN REGISTERED NURSES ASSOCIATION

Legal Counsel for the Investigation Committee:

Legal Counsel for T. Kelene Neitzel:

Legal Counsel for the Discipline Committee: Chairperson for the Discipline Committee: Roger Lepage

None

Brittnee Holliday Joanne Blazieko, RN

Date of Hearing:

June 10, 2019

Location:

Saskatchewan Registered Nurses Association

2066 Retallack Street

Regina, Saskatchewan S4T 7X5

Date of Decision:

September 6, 2019

INTRODUCTION

- The Discipline Committee of the Saskatchewan Registered Nurses' Association ("SRNA")
 convened to hear and determine a complaint of professional misconduct against Registered
 Nurse #0024189, T. Kelene Neitzel, on April 11, 2019.
- 2. The allegations against T. Kelene Neitzel were outlined in a Notice of Hearing of Complaint dated January 31, 2019. The Notice sets out two charges which, due to new information arising just prior to the Discipline Hearing, were amended by way of an Amended Notice of Hearing of Complaint dated April 9, 2019.
- 3. Ms. Neitzel nor counsel on her behalf attended on April 11, 2019. The Discipline Committee determined pursuant to subsection 30(9) of *The Registered Nurses Act, 1988* ("The Act") that while Ms. Neitzel had been served with the Amended Notice of Hearing of Complaint, she should be given additional time to respond to the Amended Notice of Hearing of Complaint.
- 4. On June 10, 2019, the Discipline Committee of the Saskatchewan Registered Nurses Association (SRNA) reconvened to hear and determine the complaint of professional misconduct against Ms. Neitzel. The Discipline Committee is constituted under the provision outlined in Section 30 of *The Act*.
- 5. The allegations against Ms. Neitzel are outlined in the Amended Notice of Hearing of Complaint dated April 9, 2019. The Amended Notice sets out two charges which are as follows:

Charge Number 1

You, T. KELENE NEITZEL, are alleged to be guilty of professional misconduct that occurred between the dates of December 4, 2017

December 1, 2016 and December 5, 2017 when you worked two full evening shifts a full year, at 3/4 time, as a Registered Nurse at in Saskatoon while not registered with the

SRNA.

Charge Number 2

You, T. KELENE NEITZEL, are alleged to be guilty of professional misconduct that occurred between the dates of January 26, 2018 and May 4, 2018, when you failed without reasonable cause to respond to inquiries from the SRNA regarding alleged professional misconduct or professional incompetence.

6. The particulars of the charges are as follows:

Charge Number 1

(a)	You were scheduled for and worked two full evening shifts at
` ′	for a full year between December 1, 2016
	on December 4, 2017 and December 5, 2017 without being registered
	with the SRNA.

- (b) You failed to advise your employer that your registration with the SRNA had lapsed prior to working your two evening shifts on December 4 2017 and December 5, 2017.
- (c) On December 7, 2017, your manager at discovered that you were not registered with the SRNA by consulting the SRNA website. advised you that you would not be permitted to work any further shifts at until your registration with the SRNA was complete. offered to assist you with the SRNA registration process, which could be completed by December 13, 2017 if it was filed by December 11, 2017. You did not provide a response to You also failed to be honest with her regarding the length of time you had not been registered.

Charge Number 2

- (d) On January 26, 2018, Carol Reece ("Ms. Reece", RN Investigator for the SRNA) wrote to you via registered mail to advise you that it had received a report on January 23, 2018 from your employer expressing concerns about your professional nursing practice. A copy of the report was attached for your information. The SRNA requested a response from you by February 9, 2018.
- (e) On February 12, 2018, Ms. Reece wrote to you via e-mail to advise you that the registered letter dated January 26, 2018 was returned to the SRNA office and requesting an updated address from you. On March 19, 2018, Ms. Reece wrote to you a second such email requesting an updated address from you by April 10, 2018. Ms. Reece also advised you that failure without reasonable cause to respond to inquiries by the SRNA

constitutes professional misconduct pursuant to Section 26(2)(m) of *The Registered Nurses Act*, 1988.

- (f) On April 20, 2018, Ms. Reece wrote to you again via e-mail requesting a response by May 4, 2018. Ms. Reece advised you that if it did not hear back from you by this date, the Investigation Committee would proceed with its investigation solely on the basis of the information it had and the matter could be referred to a discipline hearing. Ms. Reece also reiterated that failure without reasonable cause to respond to inquiries by the SRNA constitutes professional misconduct pursuant to Section 26(2)(m) of *The Registered Nurses Act*, 1988.
- (g) On June 8, 2018, Ms. Reece wrote to you via e-mail to advise you that the Investigation Committee of the SRNA would be reviewing the complaint it received regarding your practice and rendering a decision on June 21, 2018.
- (h) On June 22, 2018, Ms. Reece wrote to you via registered mail and via email to advise you that the Investigation Committee met on June 21, 2018 and referred your case to a Discipline Hearing.
- (i) The SRNA received no response from you to any of its correspondence to you between January 26, 2018 and the present.
- 7. The Notice of Hearing alleges that Ms. Neitzel is guilty of professional misconduct contrary to subsection 24(1), subsection 26(1) and subsection 26(2)(1), (m) and (q) of *The Act*, as follows:
 - 24(1) No person, other than a nurse, shall engage, with or without hope of reward, in the practice of nursing.

• • •

- 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;

...

- (q) contravened any provision of this Act or the bylaws.
- 8. The Amended Notice also alleges that Ms. Neitzel has breached the Saskatchewan Registered Nurses Association Bylaws, 2017 Bylaw V, Section 3(3)(4)(5), Maintaining Eligibility for Registration, and Bylaw VII, Section 4(1)(2)(3), Annual Registration Fee. As well as sections A.1., A.3., B.1., D.1., F.3., G.1. and G.2. of the Code of Ethics for Registered Nurses and Standards and Foundation Competencies for the Practice of Registered Nurses, 2013 and, more particularly, Standard I Competencies 1 and 4; Standard III Competency 62; Standard V Competency 85 (Appendix "A").

HEARING

- 9. When the Discipline Hearing reconvened on June 10, 2019, T. Kelene Neitzel was not present nor did any legal counsel appear for her. The Discipline Committee was informed that on multiple occasions, counsel for the Investigation Committee initiated contact with T. Kelene Neitzel and that T. Kelene Neitzel did not respond.
- 10. The Investigation Committee tendered an exhibit book which contained Affidavits of Service (P1) showing that Ms. Neitzel was personally served with the Notice of Hearing and the Book of Evidence and Liability and Sentencing Brief on behalf of the Investigation Committee. The Discipline Committee determined that the hearing would proceed in her absence pursuant to section 30(9) of *The Act*.

SUMMARY OF EVIDENCE

7. The Investigation Committee tendered an exhibit book (Exhibits P1-P6) and did not call any witnesses to testify. Pursuant to subsection 30(10) of *The Act*, the Discipline Committee accepted evidence on Affidavit.

- 8. Based on the exhibit book, these are the material facts:
 - (a) The employer of the member (Affidavit of ______, P2) discovered in December 2017 that the member had failed to complete, for the December 1, 2017 through November 30, 2018 registration year, the prescribed application and renewal form and the annual registration fee. The Daily Flow Sheet Time Record (P2, exhibit 7), indicates that the member worked two shifts during the December 1, 2017 through November 30, 2018 registration year one on December 4, 2017 and the other on December 5, 2017.
 - (b) The SRNA Registrar found that the member had also failed to complete, for the December 1, 2016 through November 30, 2017 registration year, the prescribed application and renewal form and the annual registration fee.
 - (c) Exhibit P2 indicates that the member worked at during the December 1, 2016 through November 30, 2017 registration year.
 - (d) Seven attempts were made through various methods to contact and obtain a response from the member regarding her failure to complete and submit the prescribed application and renewal form and annual registration fee (Exhibit P3).
 - (e) On January 26, 2018, Carol Reece, RN Investigator for the SRNA, wrote to the member via registered mail to advise her that it had received a report on January 23, 2018 from her employer expressing concerns about the member's professional nursing practice. A copy of the report was attached for information. A response was requested by February 9, 2018.
 - (f) On February 12, 2018, Ms. Reece wrote to the member via e-mail to advise that the registered letter dated January 26, 2018 was returned to the SRNA office and that an updated address was requested.
 - (g) A private investigator was also retained to locate updated contact information for Ms. Neitzel on February 27, 2019 (Exhibit P5).
 - (h) On March 19, 2018, Ms. Reece wrote the member a second such email requesting an updated address by April 10, 2018. Ms. Reece also advised the member that failure without reasonable cause to respond to inquiries by the SRNA constitutes professional misconduct pursuant to Section 26(2)(m) of *The Act*.
 - (i) On April 20, 2018, Ms. Reece wrote to the member again via e-mail requesting a response by May 4, 2018. Ms. Reece advised that if the SRNA did not hear back from the member by this date, the Investigation Committee would proceed with its investigation solely on the basis of the information it had and the matter could be referred to a discipline hearing. Ms. Reece also reiterated that failure without reasonable cause to respond to inquiries by the SRNA constitutes professional misconduct pursuant to Section 26(2)(m) of The Act.

- (j) On June 8, 2018, Ms. Reece wrote to the member via email to advise that the Investigation Committee of the SRNA would be reviewing the complaint it received and rendering a decision on June 21, 2018.
- (k) On June 22, 2018, Ms. Reece wrote to the member via registered mail and via email to advise that the Investigation Committee met on June 21, 2018 and referred the case to a Discipline Hearing.
- (l) On March 8, 2019, Ms. Neitzel was personally served with a Notice of Hearing.
- (m) On March 14, 2019, Karen Rhodes, who at the time was the Hearing Facilitator at the SRNA, wrote and advised Ms. Neitzel to confirm by March 21, 2019 if she would be represented by legal counsel at the hearing and if there was any conflict of interest with the Discipline Committee. Ms. Rhodes also noted that on September 27, 2018 an email was sent from the Registrar to Ms. Neitzel advising that the matter had been referred for a discipline hearing and requesting information on legal counsel, if any.
- (n) On March 28, 2019, Ms. Rhodes left a voice message for Ms. Neitzel advising her of the Case Management Hearing on April 3, 2019 (Exhibit P4). Ms. Neitzel did not contact the SRNA or attend the Case Management Hearing.

ANALYSIS

Charge 1

- 11. The Investigation Committee relies on subsection 24(1) of *The Act* which provides that no person who is not a nurse shall engage in the practice of registered nursing.
- 12. The Discipline Committee also notes the following provisions relevant to Charge 1:
 - (a) Section 2(n) of *The Act* defines *registered nurse* to mean "a person who is registered pursuant to section 19 and whose registration is not suspended or who is not expelled."
 - (b) Section 19 of *The Act* requires the obligation to be registered and also to be licensed.
 - (c) Subsection 19(1)(c) of *The Act* also requires a nurse to comply with the Bylaws in order to obtain a license to practice nursing.

- (d) Bylaw VII, Section 4(1) of the SRNA Bylaws, 2018 states: "December 01 of the previous year to November 30 of the current year shall be defined as the registration year."
- (e) Bylaw VII, Section 4(3) of the SRNA Bylaws, 2018 states: "A member of the association who has not paid the annual registration fee on or before November 30, shall cease to be a practicing member."
- (f) Bylaw VII, Section 4(4) of the SRNA Bylaws, 2018 states: "A member of the association who has not paid the annual registration fee, in the method prescribed by council on or before November 30, shall cease to be a practicing member of the association."
- (g) Bylaw IV, Section 2(1) of the SRNA Bylaws, 2018 provides that registration as a practicing member is limited to a nurse who is eligible for a license, has completed the prescribed application form, and has paid the fees set by the SRNA.
- (h) Bylaw IV, Section 2(2) of the SRNA Bylaws, 2018 provides that a practicing membership entitles a person to practise registered nursing and to use the title "nurse" or "registered nurse".
- (i) Bylaw IV, Section 9(2) and (4) of the SRNA Bylaws, 2018 provide that a person who has not renewed her membership will become an inactive member and an inactive member has no privileges with the SRNA.
- 13. Based on the evidence and a consideration of the above provisions, the Discipline Committee finds the member had ceased to be a practicing member of the SRNA and for an extended period of time continued to be engaged as a nurse without being licensed to practice registered nursing and without being registered as a registered nurse.
- 14. The Discipline Committee finds that Ms. Neitzel failed to be registered from December 1, 2016 to December 5, 2017 while working as a nurse. The Discipline Committee concludes the conduct of Ms. Neitzel is professional misconduct and is contrary to *The Act* and the SRNA Bylaws, 2018. As such, the Discipline Committee finds Ms. Neitzel guilty of Charge 1.

Charge 2

- 15. The Investigation Committee relies on Section 26(2)(m) of *The Act* which provides that professional misconduct includes failing without reasonable cause to respond to inquiries from the SRNA regarding alleged professional misconduct or professional misconduct.
- 16. The Discipline Committee finds that the evidence submitted shows numerous attempts to contact Ms. Neitzel through various means and that a private investigator was even hired to locate Ms. Neitzel (Exhibit P5). The Discipline Committee finds that Ms. Neitzel had an obligation to notify the SRNA of any change of address, which she did not do.
- 17. The Discipline Committee accepts that Ms. Neitzel was advised by her employer that the SRNA was going to be contacted and that at no time since that communication has Ms. Neitzel responded to any inquiries from the SRNA, including the Investigation Committee.
- 18. The Investigation Committee properly pointed out that there is no right to remain silent in a disciplinary proceeding (*Ontario* (*College of Physicians and Surgeons of Ontario*) v *Mrozek*, 2018 ONCPSD 17).
- 19. The Discipline Committee concludes the conduct of Ms. Neitzel was contrary to *The Act*, the *Code of Ethics for Registered Nurses*, 2008 and, more particularly, Ethical Responsibilities A.1., A.3., D.1., F.3., G.1. and G.2. The conduct of Ms. Neitzel was also found to be contrary to the Standards and Foundation Competencies for the Practice of Registered Nurses, 2013 and, more particularly, Standard I- Competencies 1 and 4, Standard III- Competency 62, and Standard V- Competency 85.
- 20. The Discipline Committee has found no reasonable cause for failure by the member to respond to the inquiries from the SRNA and has found Ms. Neitzel guilty of Charge 2.

SANCTION

- 21. Having found Ms. Neitzel guilty of both charges, the next issue is the imposition of a sanction. Section 31 of *The Act* sets out the range of sanctions available to the Discipline Committee.
- 22. In this case, the Investigation Committee recommends that Ms. Neitzel be fined \$18,000.00, that she provide an explanation for her actions and prepare an essay on her ethical duties towards the SRNA before she can be re-licensed, and costs in the amount of \$30,000.00 pursuant to subsections 31(1)(e) and 31(2)(a)(i) and (ii) of *The Act*. The Investigation Committee recommended that no suspension or revocation be ordered as for a person nearing the age of retirement, a suspension or revocation would have little impact.
- 23. The Investigation Committee recommended an \$18,000.00 fine as a result of decisions from the College of Physicians and Surgeons which imposed a \$1,500.00 fine on physicians who did not respond and where the sole charge was a failure to respond. The Investigation Committee explained the communications were not dealing with a disciplinary matter or were eventually adequately responded to. The Investigation Committee states that Ms. Neitzel should be required to pay \$18,000.00, broken down into \$1,500.00 per month that she was working as a nurse unlicensed.
- 24. An Affidavit from the legal assistant at Miller Thomson was included in the exhibit book (P6) which provides a breakdown of the legal costs incurred by the Investigation Committee as of May 23, 2019 along with an estimation of anticipated costs, in the amount of approximately \$33,500.00.
- 25. The relevant sections of *The Act* are as follows:
 - 31 Where the discipline committee finds a nurse guilty of professional incompetence or professional misconduct, it may:
 - (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 pay 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 discipline committee; or
 - (iii) both of the things mentioned in subclauses (i) and (ii)
- 26. In its brief, the Investigation Committee referred to the factors set out in Camgoz v College of Physicians and Surgeons (1993) 114 Sask R161. The Discipline Committee is well familiar with the Camgoz factors. From the Camgoz case:

55 In my respectful view, in determining an appropriate sentence to be imposed on a member of the medical profession found guilty of unbecoming, improper, unprofessional and discreditable conduct, the factors which the respondent ought to take into account include:

- 1. The nature and gravity of the proven allegations;
- 2. The age of the offending physician;
- 3. The age of the offended patient;
- Evidence of the frequency of the commission of the particular acts of misconduct within particularly, and without generally, the Province;
- 5. The presence or absence of mitigation circumstances, if any.
- 6. Specific deterrence;
- 7. General deterrence;
- 8. Previous record, if any, for the same, or similar, misconduct; the length of time that has elapsed between the date of any previous misconduct and conviction thereon; and, the member's (properly considered) conduct since that time;
- 9. Ensuring that the penalty imposed will, as mandated by s. 69.1 of the Act, protect the public and ensure the safe and proper practice of medicine;

- 10. The need to maintain the public's confidence in the integrity of the respondent's ability to properly supervise the professional conduct of its members;
- 11. Ensuring that the penalty imposed is not disparate with penalties previously imposed in this jurisdiction, particularly, and in other jurisdictions in general, for the same, or similar acts of misconduct.
- 27. The Investigation Committee states that the seriousness of the initial offence is moderate and explains there was no direct harm to any individuals, only a potential harm because of lack of insurance. The Investigation Committee also states there is no evidence of an intention by Ms. Neitzel to harm the public or profit from her actions but is more akin to extreme negligence, worthy of sanction.
- 28. The Investigation Committee argued the following aggravating factors: significant length of time being unlicensed, presumed intentional dishonesty, risk to the public of being uninsured, repeated non-cooperation with the investigation, choosing to retire and disappear rather than dealing with the matter, and contempt in the failure to renew her license and then total unresponsiveness. The Investigation Committee further argued that there was no attenuating factors but noted that the case was unique in that Ms. Neitzel was of retirement age and a suspension would have little effect on her and that the costs were increased due to her failure to respond or appear at the April 11, 2019 Hearing.
- 29. The Discipline Committee agrees that aggravating factors include that Ms. Neitzel practised nursing for a significant period of time in a unlicensed and unregistered status and finds it particularly concerning as an unlicensed provider of registered nursing care would not have professional insurance coverage, potentially exposing her employer and the public to financial loss.
- 30. The Investigation Committee also finds Ms. Neitzel's repeated unwillingness to participate and cooperate in the Investigation process was contrary to her obligations as a registered nurse.

- 31. The Discipline Committee has the discretion to order a fine and/or costs of the investigation and hearing pursuant to section 31(2)(a)(i) and (ii) of *The Act*.
- 32. The Discipline Committee has reviewed the cases and submissions of the Investigation Committee and does not agree that a fine of \$18,000.00 would be appropriate or justified. The Discipline Committee instead orders Ms. Neitzel to pay a fine of \$5,000.00, in noting that a suspension would not likely satisfy the *Camgoz* factors in the circumstances.
- 33. The rationale for a costs order has been set out in previous Discipline Committee decisions and that rationale comes from an Alberta Court of Queen's Bench decision called *Hoff v. Alberta Pharmaceutical Association* (1994):

As a member of the pharmacy profession, the appellant enjoys many privileges... One of them is being part of a self-governing profession. Proceedings like this must be conducted by the respondent association as part of its public mandate to assure to the public competent and ethical pharmacists. Its costs in so doing may properly be borne by the member whose conduct is at issue and has been found wanting.

34. The Discipline Committee concludes that it would be appropriate and justified for Ms. Neitzel to pay costs in the amount of \$15,000.00. The Discipline Committee expects that some of the increased costs of preparations for the Hearing were in relation to both Affidavit and witness evidence being prepared and related to the delay of the April 2019 Hearing as a result of the Amended Notice being provided shortly before the Hearing, which would not properly be born by Ms. Neitzel.

ORDER OF THE DISCIPLINE COMMITTEE

- 35. The Discipline Committee therefore orders the following:
 - (a) Ms. Neitzel shall pay a fine in the amount of \$5,000.00, pursuant to subsection 31(2)(a)(i) of *The Act*;
 - (b) Before Ms. Neitzel can provide nursing care to the public or be registered as a registered nurse she must provide an explanation for her actions or inactions and

- an essay on her compliance obligations and ethical duties towards the public pursuant to subsection 31(e) of *The Act*;
- (c) Ms. Neitzel shall pay the costs of the investigation and hearing fixed in the amount of \$15,000.00 pursuant to subsection 31(2)(a)(ii) of *The Act*;
- (d) All fines and costs shall be payable in full on or before July 31, 2021 pursuant to subsection 31(2)(a) of *The Act*; and,
- (e) 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; and,
 - (vi) Any other jurisdiction or other stakeholders as may be seen as appropriate by the Registrar.

Date: September 6, 2019

Joanne Blazieko, RN, Chairperson on behalf of Members of the Discipline Committee Stella Swertz, RN, Writer Lynda Kushnir Pekrul, RN Leonard Wegner, RN Daniel Kishchuk, Public Representative, Writer

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

CODE OF ETHICS (CANADIAN NURSES ASSOCIATION, 2008)

Ethical responsibilities:

- A.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 as well as with families, communities, groups, populations and other members of the health-care team.
- A.3 Nurses build trustworthy relationships as the foundation of meaningful communication, recognizing that building these relationships involves a conscious effort. Such relationships are critical to understanding people's needs and concerns.
- B.1 Nurses provide care directed first and foremost toward the health and wellbeing of persons receiving care, recognizing and using the values and principles of primary health care.
- D.1 Nurses in their professional capacity, relate to all persons with respect.
- F.3 Nurses do not engage in any form of lying, punishment or torture or any form of unusual treatment or action that is inhumane or degrading. They refuse to be complicit in such behaviours. They intervene, and they report such behaviours.
- G.1 Nurses, as members of a self-regulating profession, practise according to the values and responsibilities in the *Code of Ethics for Registered Nurses* and in keeping with the professional standards, laws and regulations supporting ethical practice.
- G.2 Nurses are honest and practise with integrity in all of their professional interactions.

STANDARDS AND FOUNDATION COMPETENCIES FOR THE PRACTICE OF REGISTERED NURSES, 2013

Standard 1 – Professional Responsibility and Accountability

The registered nurse:

1. Is accountable and accepts responsibility for own actions and decisions.

4. Demonstrates professional presence and models professional behavior.

Standard III - Ethical Practice

The registered nurse:

62. Practises in accordance with the current CNA Code of Ethics for Registered Nurses and the accompanying responsibility statements.

Standard V - Self-Regulation

The registered nurse:

85. Practises within the scope of registered nursing practice as defined in *The Registered Nurses Act, 1988.*