

INVESTIGATION COMMITTEE
of the
SASKATCHEWAN REGISTERED NURSES ASSOCIATION

-and-

Jessica L. Wagner
Saskatchewan RN #0045495
SASKATOON, SASKATCHEWAN

DECISION of the DISCIPLINE COMMITTEE
of the

SASKATCHEWAN REGISTERED NURSES ASSOCIATION

Legal Counsel for the Investigation Committee:	Roger Lepage
Legal Counsel for Jessica L. Wagner :	None
Legal Counsel for the Discipline Committee:	Darcia Schirr, Q.C.
Chairperson for the Discipline Committee:	Michell Jesse, RN

Date of Hearing: December 9, 2019

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

Date of Decision: February 3, 2020

INTRODUCTION

1. On December 9, 2019, the Discipline Committee of the Saskatchewan Registered Nurses Association (SRNA) convened to hear and determine a complaint of professional misconduct against Registered Nurse #0045495, Jessica L. Wagner. The Discipline Committee is established pursuant to section 30 of *The Registered Nurses Act, 1988* (the “Act”).
2. The charges against Jessica L. Wagner are outlined in a Notice of Hearing of Complaint dated November 5, 2019. There are three charges of professional misconduct and those charges are as follows:

Charge Number 1

- (a) You, JESSICA L. WAGNER, are alleged to be guilty of professional misconduct that commenced on November 1, 2017, when contrary to section 26 of *The Registered Nurses Act, 1988*, you gave false answers to questions 1 and 2 of the RN Initial Registration Good Character Declaration. By so doing, you led the SRNA to believe that there was no encumbrance on your LPN licence at the Saskatchewan Association of Licensed Practical Nurses (SALPN). As a result, the SRNA granted you an RN licence on November 6, 2017.

Charge Number 2

- (b) You, JESSICA L. WAGNER, are alleged to be guilty of professional misconduct when at the end of November of 2017, contrary to section 26 of *The Registered Nurses Act, 1988*, you submitted your renewal form for 2018 and answered “no” to the good character question “Are you currently the subject of a discipline hearing, investigation or is your registration [sic] currently encumbered with conditions or restriction in any way by a registration/licensing authority for any occupation/profession in any province,

territory, state or country?” This was a false answer. By so doing, you led the SRNA to believe that there was no encumbrance at SALPN regarding your LPN licence. As a result, the SRNA granted you an RN licence from December 4, 2017 through to November 30, 2018.

Charge Number 3

- (c) You, JESSICA L. WAGNER, are alleged to be guilty of professional misconduct when from August 23, 2018 to January 28, 2019, contrary to section 26(2)(m) of *The Registered Nurses Act, 1988*, you failed without reasonable cause to respond to inquiries from the association regarding alleged professional misconduct regarding a complaint received by the SRNA from SALPN dated April 6, 2018 and forwarded as a complaint to the Investigation Committee on August 22, 2018.
3. The Notice also sets out particulars for each charge and it is helpful to set out those particulars.
- (a) On July 28, 2017, you completed the Saskatchewan Collaborative BSc in Nursing. At the time, you were working as an LPN and licensed by SALPN.
 - (b) On October 22, 2017, you applied for initial RN registration with the SRNA. On November 1, 2017, you submitted your RN Initial Registration Good [sic] Character Declaration form and answered “no” to questions 1 and 2. These answers were false.
 - (c) At the end of November 2017, you answered “no” to the good character question “are you currently the subject of a discipline hearing, investigation or is your registration currently encumbered with conditions or restrictions in any way by a registration/licensing authority for any occupation /profession in any province, territory, state or country?” This answer was false.

- (d) On April 6, 2018, SALPN sent a letter to the Registrar of the SRNA advising that you were in breach of good standing at SALPN. On March 10, 2017, you were found to be in non-compliance for a criminal record check audit. On April 10, 2017, you signed a ticket pleading guilty to the charge but did not attach a payment for the \$500.00 fine. On May 4, 2017, you agreed to pay to SALPN four installments of \$125.00 fulfilling your guilty plea requirement. On August 24, 2017, you told SALPN you would send four post-dated cheques for September 2017 to December 2017 but you failed to do so.
- (e) The letter of April 6, 2018 from SALPN led the Registrar to review your registration file. She determined that you had provided false answers in your application and licence documentation and, after you failed to respond to her inquiries, she sent a letter of complaint to the Investigation Committee of the SRNA on August 20, 2018.
- (f) The Registrar and the Investigation Committee sent you communications requesting a response to the alleged professional misconduct as follows:
 - (i) voice mail from SRNA to you on April 18, 2018 asking you to call the SRNA but received no response;
 - (ii) e-mail from SRNA to you dated April 18, 2018, but received no response;
 - (iii) registered letter from SRNA to you dated April 25, 2018 stating you must contact the SRNA to provide a response by May 7, 2018. The letter was returned unclaimed on May 22, 2018;
 - (iv) on July 9, 2018, SRNA retains the services of a process server to personally serve you with a letter to request that you respond no later than July 27, 2018 to the SALPN allegation. The process server served you personally on July 10, 2018 but no response was received from you;

- (v) registered letter from Carole Reece, SRNA, to you dated August 23, 2018 asking that you respond no later than September 7, 2018 to the allegations of professional misconduct. The letter was returned unclaimed on September 11, 2018;
- (vi) e-mail and phone call from Carole Reece, SRNA, to you dated September 11, 2018. You failed to respond;
- (vii) phone call from Carole Reece, SRNA, to you on September 19, 2018 leaving a message. You failed to respond;
- (viii) phone call from Carole Reece, SRNA, to you on September 19, 2018 leaving a message. You failed to respond;
- (ix) phone call from Carole Reece, SRNA, to you on September 24, 2018 leaving a message. You failed to respond;
- (x) registered letter from Amanda Haas, SRNA, to you dated September 27, 2018 asking that you respond no later than October 12, 2018;
- (xi) phone call from Amanda Haas, SRNA, to you on October 3, 2018 leaving a message requesting a call back;
- (xii) e-mail from you to Carole Reece dated October 9, 2018 apologizing for the delay in responding and states "I have not been diligent in dealing with this manner, this has been a very difficult year, mentally, emotionally and financially for myself and I have been avoiding dealing with many issues, which is not the best way to handle it. I apologize for this, and I would like to rectify this situation and do anything I need to clear it up."
- (xiii) e-mail from Amanda Haas, SRNA, to you dated October 15, 2018 saying you need to respond to the allegations of professional misconduct. You failed to respond;
- (xiv) e-mail from Amanda Haas, SRNA, to you dated November 5, 2018 giving final notice that Investigation Committee meeting on November 15, 2018 and need your response no later than November 9, 2018. You failed to respond;

- (xv) licensing department of SRNA received communication from you completing your licence renewal for December 1, 2018 through to November 30, 2019 where you correctly identified that you were under investigation;
- (xvi) e-mail from Amanda Haas, SRNA, to you dated November 5, 2018 saying they have not received your formal response to the allegations against you nor received any contact since October 9th, despite numerous attempts to reach you by phone and e-mail. Advised that Investigation Committee is meeting to consider the complaint November 15, 2018. You were advised on how to proceed and that a formal written, signed and dated response to the allegation of professional misconduct was required. The SRNA has not heard from you despite two additional e-mails. You were advised that you had until November 9, 2018 to respond to the allegation. You failed to respond;
- (xvii) registered letter from Amanda Haas, SRNA, to you dated December 10, 2018 sending a Consensual Complaint Resolution Agreement (CCRA) for your signature and to be returned no later than December 24, 2018. The Investigation Committee decided at its November 15, 2018 meeting to offer this CCRA. The letter was returned unclaimed on January 2, 2019;
- (xviii) January 3, 2019, Amanda Haas, SRNA, spoke to you at work at St. Paul's Hospital, ER, and you provided the following new address, [REDACTED], Saskatoon, SK, [REDACTED]. You were advised that should you not return the signed CCRA, your case would be referred to a discipline hearing. You assured Amanda Haas that you would sign it and return it back in time. You confirmed that your phone number on the SRNA file is still current. As a result, the SRNA started sending registered letters to that address;

- (xix) registered letter from Amanda Haas, SRNA, to you dated January 7, 2019 to new address, [REDACTED], Saskatoon, SK, [REDACTED], sending the CCRA for your signature and to be returned no later than January 21, 2019. The letter was returned unclaimed on January 28, 2019;
- (xx) phone message from Amanda Haas, SRNA, to you on January 29, 2019 advising that the CCRA was returned unclaimed and that the matter was being referred to a discipline hearing. You failed to respond; and
- (xxi) registered letter from Amanda Haas, SRNA, to you dated January 30, 2019 sending the CCRA for your signature and to be returned no later than February 12, 2019. The letter was returned unclaimed on February 19, 2019.

4. The Notice alleges that Ms. Wagner is guilty of professional misconduct contrary to section 26(1) and (2) of the *Act*. The relevant provisions are as follows:

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;
failed without reasonable cause to respond to inquiries from the association regarding alleged professional misconduct or professional incompetence;**

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

(p) obtained registration by misrepresentation or fraud;

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

5. The Notice also alleges that numerous provisions of the Bylaws, Code of Ethics and Standards and Foundation Competencies have been breached. Those provisions are set out in Appendix A.

HEARING

6. Ms. Wagner appeared without legal counsel and advised the Discipline Committee she was prepared to proceed without counsel.
7. There was no objection taken by either the Investigation Committee or Ms. Wagner to the composition of the Discipline Committee.

SUMMARY OF EVIDENCE

8. The following evidence was tendered during the hearing:
 - (a) Exhibit P1 Book of Evidence
 - (b) Exhibit D1 Letter from Jessica Wagner to Investigation Committee dated November 20, 2019
9. Exhibit P1 is a binder of documents consisting of, *inter alia*, Ms. Wagner's verification of registration status, letter and email correspondence between the SRNA and Ms. Wagner, interview notes of witnesses, and a document entitled "Notice of Guilty Plea". Paragraph 2 of the Notice of Guilty Plea (Tab 16) states:

I hereby plead guilty to the three charges of professional misconduct laid by the Investigation Committee. I admit to the particulars in the Notice of Hearing with respect to the three charges of professional misconduct.

10. With respect to charge 2, the Discipline Committee questioned legal counsel for the Investigation Committee to point out the evidence that supported charge 2. After a discussion, the Investigation Committee withdrew charge 2, recognizing that the evidence submitted did not support the charge. Ms. Wagner indicated that her guilty plea to charges 1 and 3 would stand and the Discipline Committee accepted that.

ANALYSIS

11. The particulars set out in the Notice are self explanatory and provide the factual background to the two remaining charges.

Charge Number 1

12. Ms. Wagner has offered a guilty plea to this charge. The Discipline Committee accepts the guilty plea and finds that the evidence proves the charge.
13. Ms. Wagner explained in her letter dated November 20, 2019, (D-1) that:
 - (a) She was experiencing a breakdown in the relationship with her partner at the time SALPN requested a criminal record check as part of their licensure auditing practice. At the same time, she was also studying to obtain her degree in nursing.
 - (b) Her partner at the time had substance abuse problems that “lead to months of physical, emotional and mental abuse.”
 - (c) As a result of the breakup of her relationship, Ms. Wagner’s spouse withdrew savings from their bank accounts, maximized the debt on their joint line of credit and maximized the debt on jointly held credit cards. Ms. Wagner was left with numerous unpaid bills and a large amount of debt.
14. Ms. Wagner explained that at the time SALPN requested a copy of a criminal record check, she simply could not afford this because of all the financial

pressures she was experiencing. Further, she was beginning a clinical rotation at the regional psychiatric centre in Saskatoon and they too requested a criminal record check. She made a choice to supply the criminal record check to the psychiatric centre first. Her rationale was that she would supply SALPN with a criminal record check after their deadline and she contacted SALPN informing them. She states that “I called SALPN to explain the circumstance, and they were not understanding, saying it would be considered late and that I would be required to pay a fine.” Ms. Wagner did eventually supply SALPN with the criminal record check after their deadline.

15. This action was the basis of her being charged by SALPN for professional misconduct. Subsequently, Ms. Wagner signed a guilty plea in which she agreed to pay a \$500.00 fine to SALPN.
16. Tab 4 Appendix 2 of the Book of Evidence shows that Ms. Wagner on November 1, 2017 gave false answers to questions 1 and 2 of the RN Initial Registration Good Character Declaration. By doing so, Ms. Wagner led the SRNA to believe that there was no encumbrance on her LPN licensure by SALPN. This was false and incorrect. The SRNA relied on Ms. Wagner’s declarations and as a result, granted her an RN license to practice on November 6, 2017.

Charge Number 3

17. Ms. Wagner has offered a guilty plea to this charge. The Discipline Committee accepts the guilty plea and finds that the evidence proves the charge.
18. The evidence provided to the Discipline Committee shows that Ms. Wagner failed without reasonable cause to respond to numerous inquiries by the SRNA regarding the complaint received by the SRNA from SALPN.

19. Ms. Wagner provided various explanations for her failure to respond to correspondence from the SRNA. She stated “When the SRNA called me, I didn’t answer and I didn’t listen to voicemails. Not because I was avoiding them, but because I was avoiding everything else in my life.” As to the registered letters that the SRNA sent, her explanation was “I was at work so I was unable to sign for them, they kept being sent back because I could not get to the post office to pick them up as I still did not have a vehicle.” Overall, Ms. Wagner painted a picture of numerous stressors in her life and to use her words “things snowballed out of control”.
20. Ms. Wagner acknowledged that, in hindsight, she wished she had not abandoned her responsibility to communicate with both SALPN and SRNA and regrets those actions.
21. In its decision involving *Chelsea Kemp*, (February 28, 2019), the Discipline Committee stated:

Members of any regulated profession are expected to cooperate with the regulatory body and that is an implicit obligation if it is not expressly set out in any code. If members of a regulated profession do not cooperate, the very purpose of self regulation breaks down.

SANCTION

22. Having found that the two charges are sustained, the next task for the Discipline Committee is to impose a sanction pursuant to section 36 of the Act.
23. The Book of Evidence contained a document entitled “Joint Submission Regarding Proposed Penalty” (Tab 17) which broadly provided that Ms. Wagner should be suspended for a period of 7 days commencing January 24, 2020 at midnight and ending January 31, 2020 at midnight and upon expiry of that

suspension, that Ms. Wagner be allowed to practice under certain conditions. As to costs, the joint submission provided:

2(b) That Jessica Wagner pay a total amount of \$5,200 to the SRNA to be paid at \$100 per month commencing January 1, 2020 and on the 1st of each month thereafter until fully paid. The first five payments shall be paid by the SRNA to SALPN in order for Jessica Wagner to be returned to the status of good standing with SALPN.

24. With the exception of the provisions regarding costs, the Discipline Committee endorsed the joint submission and made an order on December 9, 2019.
25. Tab 18 of the Book of Evidence contains the Affidavit of Nicole Garner, legal assistant with Miller Thomson. Based on the Affidavit, the total actual and anticipated costs of the investigation and hearing are in the area of \$20,000.00. The Discipline Committee accepts Ms. Wagner's submissions regarding her financial circumstances which are set out in Exhibit D1. In her submissions to the Discipline Committee, Ms. Wagner indicated that her financial circumstances are such that she has recently met with a bankruptcy trustee.
26. The Investigation Committee has not suggested that the total actual and anticipated costs should be borne by Ms. Wagner and the Discipline Committee would not impose such costs given her circumstances. However, the Discipline Committee made it clear during the hearing that there were two problems with the submission regarding costs:
 - (a) Installment payments at the rate of \$100.00 per month until the costs are paid;
 - (b) The notion that the first 5 payments should be made to SALPN.
27. Ms. Wagner advised the Discipline Committee that she was currently a permanent full-time nurse, working between two hospitals in Saskatoon. She is earning employment income. If installment payments were ordered and an installment payment was missed, Ms. Wagner would be suspended and the SRNA would

have to take the appropriate steps, including advising stakeholders, that Ms. Wagner is suspended. If the defaulted installment payment was made, she would be reinstated and the entire suspension process unwound. Installment payments in this case are unwieldy and would appear unnecessary when the fact is that Ms. Wagner is earning some income. As a result, the Discipline Committee concluded that a fixed date for payment should be made. It will be up to Ms. Wagner to determine when she wishes to make payments, keeping in mind there will be a fixed deadline date as required under the Act.

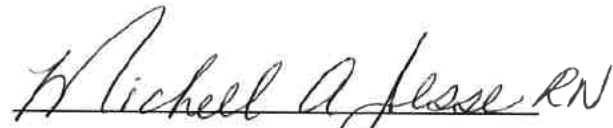
28. As the Discipline Committee concludes that installment payments are not appropriate, the concept that the first 5 installment payments should be paid to SALPN would not apply. In any event, the Discipline Committee does wish to comment on that suggestion. Ms. Wagner bears the full responsibility to deal with SALPN if she so chooses and to clear off the outstanding matter left with SALPN. The SRNA should not be in the position of paying third party debts or liabilities of its members.
29. Ms. Wagner is to be commended for entering guilty pleas which meant that the hearing could proceed on the basis of documents and in this case, a joint submission. While the Discipline Committee has some sympathy for Ms. Wagner and her apparent difficult personal circumstances, discipline proceedings are costly and the membership as a whole should not fully bear the costs of these proceedings which were entirely brought about by Ms. Wagner's conduct. As such, the Discipline Committee fixes the costs of the investigation and hearing in the amount of \$4,800.00 and orders that Ms. Wagner pay those costs on or before March 31, 2022. Such a deadline date is fair and reasonable given Ms. Wagner's circumstances.

ORDER OF THE DISCIPLINE COMMITTEE

30. The Discipline Committee therefore orders the following:
- (a) Pursuant to section 31(1)(b) of *The Registered Nurses Act, 1988* (the “Act”), Jessica Wagner shall be suspended from the SRNA for a period of seven days commencing January 24, 2020 at midnight and ending January 31, 2020 at midnight.
 - (b) Pursuant to section 31(1)(c) of the Act, Ms. Wagner may continue to practice under the following conditions:
 - (i) She shall take counselling to manage the stressors in her life that led her to avoid communicating with her regulatory body. Within six months of the date of this Order, Ms. Wagner shall provide the Registrar proof of attendance at counselling. Ms. Wagner shall bear the costs of the counselling and the report.
 - (ii) Within six months of the date of this Order, Ms. Wagner shall read the *Code of Ethics for Registered Nurses, 2017* and submit a 500-word essay to the Registrar outlining what she has learned regarding the need to cooperate with her regulatory body.
 - (iii) Within six months of this Order, Ms. Wagner shall write a 500-word self-reflective essay about *The Registered Nurses Act, 1988* and the *SRNA Standards and Competencies* and explain what she has learnt regarding the need to cooperate with her regulatory body.

- (c) Pursuant to section 31(2)(a)(ii), Ms. Wagner shall pay the costs of the inquiry and hearing which costs shall be fixed in the amount of \$4,800.00. The costs shall be paid on or before March 31, 2022. Failing payment, Ms. Wagner shall be suspended from the Association pursuant to section 31(2)(b) of the Act.

February 3, 2020



Michell Jesse, RN, Chairperson

On behalf of Members of the Discipline Committee

Chris Etcheverry, RN

Joanne Blazieko, RN

Stella Swertz, RN

David Millar, Public Representative

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 for Registered Nurses

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 and other members of the health-care team.

A.3 Nurses build trustworthy relationships with persons receiving care 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.

D.1 Nurses, in their professional capacity, relate to all persons receiving care with respect.

F.4 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 if observed or if reasonable grounds exist to suspect their occurrence.

G.1 Nurses, as members of a self-regulating profession, practise according to the values and responsibilities in the Code and in keeping with the professional standards, laws and regulations supporting ethical practice.

G.2 Nurses are honest and practise with integrity in all of their professional interactions. Nurses represent themselves clearly with respect to name, title and role.

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.**

25. **Demonstrates professional leadership by:**
 - a. **building relationships and trust;**
 - b. **creating an empowering environment;**
 - c. **supporting knowledge development and integration within the health care team;**
 - d. **leading and sustaining change; and**
 - e. **balancing competing values and priorities.**

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.**
70. **Uses an ethical and reasoned decision-making process to address situations of ethical distress and dilemmas.**

STANDARD V – SELF-REGULATION

The registered nurse:

84. **Demonstrates knowledge of the registered nursing profession as self-regulating, autonomous, and mandated by provincial legislation.**