

INVESTIGATION COMMITTEE
of the
SASKATCHEWAN REGISTERED NURSES ASSOCIATION

-and-

SHARRON ANN MCSTAY

DECISION
of the
DISCIPLINE COMMITTEE
of the
SASKATCHEWAN REGISTERED NURSES ASSOCIATION

Legal Counsel for the Investigation Committee:	Roger Lepage
Legal Counsel for Sharron Ann McStay	Michael Phillips
Legal Counsel for the Discipline Committee:	Darcia Schirr, Q.C.
Chairperson for the Discipline Committee:	Stella Swertz, RN

Date of Hearing: August 4, 2020

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

Date of Decision: September 08, 2020

INTRODUCTION

1. The Discipline Committee of the Saskatchewan Registered Nurses Association (SRNA) convened via Zoom video conference to hear and determine a complaint of professional misconduct against Registered Nurse #0034531, Sharron Ann McStay on August 4, 2020. The Discipline Committee is established pursuant to section 30 of *The Registered Nurses Act, 1988* (the Act).
2. The charges against Sharron Ann McStay are outlined in a Notice of Hearing of Complaint dated July 9, 2020. There are three charges alleging professional misconduct and those charges are as follows:

Charge Number 1

You, SHARRON ANN McSTAY, are alleged to be guilty of professional misconduct contrary to section 26 of *The Registered Nurses Act, 1988* and the SRNA bylaws 2018 regarding events that occurred on February 28, 2019.

- (a) On that date, you ordered a urine analysis on a resident of [REDACTED]. At the time, you were not licensed as an RN.
- (b) Further, commencing in April 2018, you were determined to be medically unfit to practice registered nursing by your physician and you continued to be unfit on February 28, 2019. You sent the order to the lab and M.K. received the lab results for a client at [REDACTED] personal care home, [REDACTED].
- (c) Even if you had been licensed and fit to practice as an RN at the time, you would have been practising outside the scope of practice of a general category RN since ordering a urine analysis test falls within the scope of a nurse practitioner or physician.
- (d) Further, when ordering the urine analysis, you misrepresented that it was nurse practitioner M.K. who was ordering it when in fact it was you. Through your actions you compromised the public's trust, you demonstrated disgraceful and dishonorable conduct that is contrary to the best interest of the public and harmed the standing of the profession of nursing.

Charge Number 2

You, SHARRON ANN McSTAY, are alleged to be guilty of professional misconduct contrary to section 26 of *The Registered Nurses Act, 1988* and the SRNA bylaws 2018 regarding events that occurred between December 1, 2018 and October 2019:

- (a) [REDACTED] the majority shareholder of [REDACTED].
- (b) [REDACTED] website publicly advertised the service of “RN on call 24/7”. You have admitted to being the RN referred to. [REDACTED] failed to take reasonable steps to remove that information on the website when your Practising Registered Nurse licence was not renewed on November 30, 2018.

Charge Number 3

You, SHARRON ANN McSTAY, are alleged to be guilty of professional misconduct contrary to section 26 of *The Registered Nurses Act, 1988* and the SRNA bylaws 2018 regarding events that occurred on November 30, 2018:

- (a) For the practice year December 1, 2017 to November 30, 2018, you reported 1,237 registered nurse practice hours when in fact you only had 442.5 hours. You failed to ensure the accuracy of the practice hours that you reported.

3. The Notice also sets out particulars for the charge. It is helpful to set those out verbatim as they essentially serve as the underlying facts:

- (a) (Charges 1 – 3) [REDACTED] is a privately owned and operated personal care home located at [REDACTED] in Regina. [REDACTED] is owned by the [REDACTED], of which [REDACTED] the majority shareholder and a Director and the contact person for the business.
- (b) (Charge 1 & 3) In April 2018, while employed with the Saskatchewan Health Region in Regina you applied for and received disability benefits. You made a subsequent application to extend your disability benefits to the present, on the basis that you were mentally and emotionally unfit to practice as an RN.
- (c) (Charge 2) According to [REDACTED] business website, [REDACTED] charged clients \$3,000 to \$3,400 per month in part based on information listing that there is a “RN on call 24/7”. You admitted to being that RN even though you knew you were unfit to practice nursing at the time and after November 30, 2018 that you were not licensed to practice nursing.

- (d) (Charge 3) Regarding the reporting of registered nursing hours to the SRNA on November 30, 2018, you did not work 1,237 hours in a 4 ½ month period. You misrepresented sick leave hours as practice hours. You only worked as an RN 442.50 hours.
 - (e) (Charge 1) Requesting a lab test without an order is practising outside the scope of practice of a registered nurse in the general category. Further, you were practising without a license at the time you ordered the urine analysis test.
 - (f) (Charge 1) You misrepresented to the laboratory that it was M.K., a nurse practitioner who had ordered the urine analysis because you knew that even if you had been licensed at the time it was outside your scope of practice to order a urine analysis test for one of your clients.
4. The Notice alleges that Ms. McStay is guilty of professional misconduct contrary to section 26(1) and (2) of the Act. In particular, it is alleged the following provisions apply:
- 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:**
 - (c) inappropriately used the nurse’s professional status for personal gain;**
 - (i) falsified a record with respect to the observation, rehabilitation or treatment of a client;**
 - (l) failed to comply with the code of ethics of the association;**
 - (p) obtained registration by misrepresentation or fraud;**
 - (q) contravened any provision of this Act or the bylaws.**
5. It is also alleged that a number of *Practice Standards, Entry Level Competencies* and *Code of Ethics* provisions have been breached. Those are set out in the Notice of Hearing.

HEARING

6. At the outset of the hearing, counsel for the Investigation Committee tendered a binder entitled “Book of Exhibits and Disclosure Documents”. The binder consisted of a Notice of Guilty Plea, Joint Proposal for Discipline, Ms. McStay’s verification of registration with the SRNA and a series of documents relevant to the charges.

7. Paragraph 3 of the Notice of Guilty Plea executed by Ms. McStay on July 17, 2020 states:
3. I plead guilty to the three charges of professional misconduct in the Notice of Hearing of Complaint dated July 9, 2020.
8. At the hearing, Ms. McStay, through her counsel confirmed her guilty pleas for the record.
9. Based on a document entitled “Verification of Registration Status” (P1, Tab 2), Ms. McStay first registered with the SRNA on September 5, 1995. She remained a practicing member up and until November 30, 2018 when she did not renew. Her current registration status is “inactive” which is a category of membership under Bylaw IV, section 1 of the SRNA Bylaws.

FACTS

10. Based on the documents filed by the Investigation Committee and the submissions of legal counsel, these are the key facts:
 - (a) Sharron McStay was a practicing registered nurse from September 5, 1995 through to November 30, 2018, approximately 23 years. There was some information that for a number of years, Ms. McStay was employed with the Saskatchewan Health Authority at the Pasqua Hospital and for a time, as a public health nurse.
 - (b) Ms. McStay is also involved with a company called the [REDACTED] which first incorporated in March 2012. [REDACTED] is a director and shareholder of that company. The company owns and operates a personal care home in Regina called [REDACTED].
 - (c) In April 2018, Ms. McStay applied for and began receiving disability benefits. In June 2019, she brought an application for continuation of those benefits on the basis that she could not return to her regular occupation as a nurse.

- (d) Upon leaving her employment as a registered nurse with the Saskatchewan Health Authority, she took on further and additional responsibilities at [REDACTED]
- (e) On March 2, 2019, the SRNA received an email from [REDACTED] [REDACTED] is a nurse practitioner. The email is entitled “Reporting of Professional Misconduct Issue” and the relevant portions of the email are these (P1, Tab 3):

I am reporting receiving a lab result, that has my name attached as the person who ordered the lab, which I did not order (see attached blinded lab result).

I have followed this up and found out that Sharon (sic) McStay RN, [REDACTED] PCH home in Regina, collected this sample, attached my name, and sent it to the lab.

Sharon (sic) is aware that I did not order this sample, but thought it would be good if I received the result as I have been the last primary care provider to see this patient.

I informed Sharon (sic), that sending a lab test without an order is out of the scope of an RN, Sharon did apologize at this time.

- (f) The urine test was submitted on February 28, 2019. Ms. McStay identified the ordering provider as [REDACTED] which was false. Ms. McStay did not provide any rationale for her conduct although her counsel advised that she made an error in judgment because of her mental health problems at the time.
- (g) The complaint from [REDACTED] lead the SRNA to investigate other matters including examining the website for [REDACTED] (P1, Tab 9). Under the heading “Staffing”, the website states:
- R.N. on call 24/7.**
- (h) Ms. McStay’s intention with the website was to show [REDACTED] professional experience which would be an incentive to potential residents. By using the term “R.N.” she was referring to herself although in fact, nursing care for the residents at [REDACTED] is

provided by a Regina Qu'Appelle Health Region program called "Seniors House Calls".

- (i) The website for [REDACTED] has been changed and Ms. McStay advised that occurred the moment the SRNA became involved.
- (j) Ms. McStay has not held a practicing license since November 30, 2018. Ms. McStay's counsel advised the Discipline Committee that Ms. McStay has not provided nursing care services to the [REDACTED] residents at any time after her license lapsed, other than the incident described in charge #1. As indicated, [REDACTED] has access to the Seniors House Call program.
- (k) Although it was not clear, [REDACTED] complaint likely led to a review by the SRNA of Ms. McStay's reporting of registered nurse practice hours when she held a license. Bylaw V, section 3(1) of the Bylaws provides:

SECTION 3. MAINTAINING ELIGIBILITY FOR REGISTRATION.

(1) To maintain eligibility for registration as a practicing member, a nurse must:

(a) work in registered nursing activities approved by the association for at least eleven hundred and twenty-five hours in the five year period immediately preceding the registration year for which registration is sought; and

(b) hold a practicing membership with the association or a regulatory body recognized by the council while working in approved registered nursing activities for these hours to contribute to eligibility for registration.

- (l) As indicated in Charge #3, Ms. McStay reported her registered nurse practice hours for the period December 1, 2017 to November 30, 2018 as 1,237 hours. In fact, and for that time period, she only had 442.5 hours (P1, Tabs 10 and 11). Ms. McStay misrepresented sick leave hours as practice hours.
11. The Discipline Committee finds that the evidence substantiates each charge and the Discipline Committee accepts Ms. McStay's guilty pleas to the charges.

SANCTION

12. Having found that the charges are sustained and that the guilty pleas were appropriate, the next task for the Discipline Committee is the appropriate sanction under section 31 of the Act. A Joint Proposal for Discipline was submitted (P3) which provided as follows:
 - (a) Pursuant to section 31(1)(b) of the Act, Ms. McStay shall be suspended from the Association for a period of six months from the date of this Order.
 - (b) Pursuant to section 31(2)(a)(i), Ms. McStay shall pay a fine of \$5,000.00.
 - (c) Pursuant to section 31(2)(a)(ii), Ms. McStay shall pay \$15,000.00 of 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.
13. The Affidavit of Nicole Garner, Mr. Lepage's legal assistant, was filed with the Discipline Committee which showed that the total approximate costs were \$41,962.76. Although that was the total actual and anticipated cost, the Joint Proposal provides that Ms. McStay would pay \$15,000.00 of that amount or 36%.
14. The Discipline Committee agrees with counsel for the Investigation Committee that charge 1(d) and charge 3 are the most serious. By entering a guilty plea to charge 1(d), Ms. McStay acknowledges that she misrepresented that a nurse practitioner had ordered the resident's urinalysis. There are many concerning aspects to charge 1 – the misrepresentation, the fact Ms. McStay did not hold a valid license at the time and further and even if she did, ordering a urinalysis test is outside the scope of a registered nurse.
15. Charge 3 essentially alleges misrepresentation to the SRNA. Ms. McStay provided no rationale or reason for her conduct. Misrepresentation to a regulatory body is a serious matter justifying a significant sanction such as a suspension.


16. The Discipline Committee also heard that Ms. McStay fully cooperated with the Investigation Committee. She took responsibility and by entering guilty pleas, she acknowledged her responsibility.
17. The Discipline Committee is aware of the legal principles regarding joint submissions and concludes that the joint submission was fit, reasonable and consistent with the public interest mandate of the SRNA. As a result and after hearing from counsel and considering all of the material, the Discipline Committee issued an Order on August 5, 2020 endorsing the Joint Submission.

ORDER OF THE DISCIPLINE COMMITTEE

18. The Discipline Committee makes the following order:
 - (a) Pursuant to section 31(1)(b) of *The Registered Nurses Act, 1988* (the “Act”), Sharron Ann McStay shall be suspended from the SRNA for a period of six months effective August 5, 2020.
 - (b) Pursuant to section 31(2)(a)(i) of the Act, Ms. McStay shall pay a fine in the amount of \$5,000.00 on or before August 1, 2021. Failing payment, Ms. McStay shall be suspended from the SRNA until payment is made pursuant to section 31(2)(b) of the Act.
 - (c) Pursuant to section 31(2)(a)(ii) of the Act, Ms. McStay shall pay the costs of the inquiry and hearing which costs shall be fixed in the amount of \$15,000.00. The costs shall be paid on or before August 1, 2021. Failing payment, Ms. McStay shall be suspended from the SRNA until payment is made pursuant to section 31(2)(b) of the Act.
 - (d) Pursuant to section 31(2)(a)(ii) of *The Act*, a copy of this decision shall be sent to Sharron Ann McStay and the complainant.
 - (e) Pursuant to section 31(3) of the Act, a copy of this decision shall be sent to [REDACTED]. Further, a copy of this decision should 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;
- (vi) Any other jurisdictions or other stakeholders as may be seen as appropriate by the Registrar.

September 11, 2020


Stella Swertz, RN, Chairperson
On behalf of Members of the Discipline Committee
Joanne Blazieko, RN
Frank Suchorab, RN
Russ Marchuk, Public Representative, Writer
Ambrosia Varaschin, Public Representative