

INVESTIGATION COMMITTEE
of the
SASKATCHEWAN REGISTERED NURSES ASSOCIATION

-and-

CHELSEA B. KOWALCHUK (COPELAND)

DECISION

of the

DISCIPLINE COMMITTEE

of the

SASKATCHEWAN REGISTERED NURSES ASSOCIATION

Legal Counsel for the Investigation Committee:	Roger Lepage
Legal Counsel for Chelsea Kowalchuk:	N/A
Legal Counsel for the Discipline Committee:	Darcia Schirr, Q.C.
Chairperson for the Discipline Committee:	Joanne Blazieko, RN
Reasons for the Discipline Committee:	Ambrosia Varaschin. Q.Arb ACI Arb

Date of Hearing: June 17, 2020

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

Date of Decision: November 19, 2020

I. INTRODUCTION

1. The Discipline Committee of the Saskatchewan Registered Nurses Association (SRNA) convened to hear and determine a complaint of professional misconduct and professional incompetence against Registered Nurse #0043049, Chelsea B. Kowalchuk on June 17, 2020. The Discipline Committee is established pursuant to section 30 of *The Registered Nurses Act, 1988* (the *Act*).
2. The allegations against Ms. Kowalchuk were outlined in an amended Notice of Hearing dated June 16, 2020, charging her with professional incompetence and professional misconduct contrary to sections 25 and 26(1) and 26(2)(f), (g), (i), (l) and (n) of the *Act*.
3. The Notice of Hearing contained three charges against Ms. Kowalchuk which are as follows:

Charge Number 1

You, CHELSEA B. KOWALCHUK (COPELAND), are alleged to be guilty of professional misconduct and/or professional incompetence contrary to sections 25 and 26 of *The Registered Nurses Act, 1988*, regarding events that occurred during your employment at the [REDACTED] :

- a) **Between December 15, 2014 and May 24, 2018, you admitted to being addicted to opiates, narcotics and other habit forming substances such as Graval for its hypnotic effect.**
- b) **Your addiction and numerous relapses during that period of time frequently rendered you unfit to practice registered nursing or to provide one or more services ordinarily provided as part of the practice of registered nursing.**
- c) **You knew of these addictions and that you were unfit to practice safely and competently, yet you continued to attend work putting patients and other staff at risk. You failed to remove yourself from work as an RN. Despite support from your employer and despite numerous leaves of absence for purposes of addiction treatment and counselling, you continued to have relapses and to attend work on occasions when you were unfit to do so.**

Charge Number 2

You, CHELSEA B. KOWALCHUK (COPELAND), are alleged to be guilty of professional misconduct contrary to section 26 of *The Registered Nurses Act, 1988* regarding events that occurred on May 23, 2016 that led to you signing a Consensual Complaint Resolution Agreement on March 28, 2017.

a) During the investigation you falsified the facts to the Investigation Committee. You denied that the Graval and IV supplies that you stole from the [REDACTED] were for your personal consumption and you stated that you had discarded it in the garbage. As a result, based on the facts you provided, the Investigation Committee offered you a Consensual Complaint Resolution Agreement which you signed March 17, 2017.

b) On or about September 20, 2018, you admitted to Thorpe Recovery Centre that you had used the Graval and the IV supplies for your personal consumption.

Charge Number 3

You, CHELSEA B. KOWALCHUK (COPELAND), are alleged to be guilty of professional misconduct and professional incompetence contrary to sections 25 and 26 of *The Registered Nurses Act, 1988* regarding events that occurred between the dates of May 15, 2018 and May 19, 2018.

a) You were one of the RNs on shift on May 15, 2018. You falsified a patient's chart by noting that you had taken their vitals at 0200 hours and 0600 hours when you were not at the hospital at that time.

b) You also falsified a record on a patient's chart indicating that you had administered a nebulizer to the patient when you had not done so.

c) You also falsified a patient chart by writing that you had given the patient Dilaudid when the patient "requested it for persisting back pain" when in fact the patient was unable to verbalize and was very confused. Shortly after having purportedly given the Dilaudid to the patient, you left the [REDACTED] saying that there was a family emergency.

d) Further, on May 19, 2018, you attended work at the [REDACTED] in a state other than normal. You were at the nursing desk when a call bell for one of your patients rang. Rather than answer it, you ran down the hall and screamed at two other RNs to stop

speaking about you. You spent the rest of the evening on your iPad in the conference room and then left work early and failed to return to work the following shift.

II. RELEVANT LEGISLATION

4. These sections of the *Act* are relevant:

Professional Incompetence

25 For the purposes of this Act, professional incompetence is a question of fact, but the display by a nurse in the professional care of a client of a lack of knowledge, skill or judgment or a disregard for the welfare of a client of a nature or to an extent that demonstrates that the nurse is unfit:

- (a) to continue in the practice of registered nursing; or**
- (b) to provide one or more services ordinarily provided as part of the practice of registered nursing;**

is professional incompetence within the meaning of this Act.

Professional misconduct

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.

26(2) Without restricting the generality of subsection (1), the discipline committee may find a nurse guilty of professional misconduct if the nurse has:

- (f) misappropriated drugs;**
- (g) misappropriated property belonging to a nurse's employer;**
- (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;**
- (n) an addiction to the excessive or habitual use of intoxicating liquor, opiates, narcotics or other habit forming substances;**

5. The Notice of Hearing also alleges that the following provisions of *The Code of Ethics for Registered Nurses, 2017* have been breached:

F - PROMOTING JUSTICE

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 - BEING ACCOUNTABLE

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

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

5. Nurses maintain their fitness to practice. If they are aware that they do not have the necessary physical, mental, or emotional capacity to practice safely and competently, they withdraw from the provision of care after consulting with their employer. If they are self-employed, they arrange for someone else to attend to their clients' health-care needs. Nurses then take the necessary steps to regain their fitness to practice, in consultation with appropriate professional resources.

6. Further, it is alleged that the following provisions of *The Registered Nurse Practice Standards* and *RN Entry Level Competencies* have been breached:

STANDARD I - PROFESSIONAL RESPONSIBILITY AND ACCOUNTABILITY

The registered nurse consistently demonstrates professional conduct and competence while practicing in accordance with the SRNA standards for registered nursing practice and CNA's *Code of Ethics for Registered Nurses*. Further, the registered nurse demonstrates that the primary duty is to the client to ensure safe, competent, ethical registered nursing care.

The registered nurse:

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

3. Recognizes the registered nurse scope of practice and individual competence limitations within the practice setting and seeking guidance as necessary.

STANDARD III - ETHICAL PRACTICE

The registered nurse demonstrates competence in professional judgement and practice decisions by applying the principles in the current CNA *Code of Ethics for Registered Nurses*. The registered nurse engages in critical inquiry to inform clinical decision-making, establishes therapeutic, caring, and culturally-safe relationships with clients and the health care team.

The registered nurse:

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

66. Demonstrates knowledge of the difference between ethical and legal considerations and their relevance when providing registered nursing care.

STANDARD V – SELF REGULATION

The registered nurse demonstrates an understanding of professional self-regulation by advocating in the public interest, developing and enhancing own competence, and ensuring safe practice.

The registered nurse:

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

III. HEARING

7. At the outset of the hearing Ms. Kowalchuk confirmed that she was representing herself and that she was prepared to proceed without a lawyer.

8. The Investigation Committee filed a book of documents which contained a Notice of Guilty Plea executed by Ms. Kowalchuk on May 14, 2020, an Agreed Statement of Facts, a Joint Proposal for Discipline, a Chronology, and a Book of Documents. The Investigation Committee also filed a Brief of Fact and Law.

9. Counsel for the Discipline Committee asked Ms. Kowalchuk a series of questions to ensure that she was entering her guilty pleas to the charges voluntarily and unequivocally. Ms. Kowalchuk advised that she understood the consequences of a guilty plea and that she entered the

guilty pleas voluntarily and freely. After hearing from Ms. Kowalchuk, the Discipline Committee accepted her guilty pleas.

10. Upon the filing of exhibits, counsel for the Investigation Committee provided background to the charges by referencing a portion of the Book of Documents. Counsel for the Investigation Committee discussed the Agreed Statement of Facts, parts of the Chronology and the Notice of Hearing, and several email and letter communications regarding the Member's behaviour. He then addressed the Joint Proposal for Discipline signed by Ms. Kowalchuk and counsel for the Investigation Committee on May 14, 2020, which provided that Ms. Kowalchuk would be suspended for one year, that she successfully complete an inpatient treatment program of at least 30 days length before applying for reinstatement, and that she be allowed to return to the practice under certain specified conditions for five years. The Joint Proposal also provided for drug screens and performance appraisals. Finally, the Proposal addressed costs suggesting that Ms. Kowalchuk pay \$30,000.00 for costs, which was stated to be 50% of the actual expenses incurred by the SRNA.

11. Following the submissions of counsel for the Investigation Committee, the Discipline Committee asked to hear from Ms. Kowalchuk. In her lengthy submissions, Ms. Kowalchuk began by emphatically stating that her primary reason for submitting her guilty pleas and agreeing to the Joint Proposal for Discipline was her lack of financial ability to "fight this with everything [she has]". She indicated that she did not think that these proceedings, including the investigation, were conducted fairly nor did she feel the Proposal was appropriate. Ms. Kowalchuk was adamantly opposed to returning to an in-patient treatment program, which she referred to as "forced rehab", as she had already attended treatment. She maintained she had been abstinent for over a year. Ms. Kowalchuk specifically stated that certain conditions in the Joint Proposal regarding relapses were "unrealistic" and that she hoped the Discipline Committee would consider the modern context of mental health and addictions. If the conditions remained she "would choose to accept [it], but that [she hoped] going forward in the future...that [this] could be considered for the next person that this happens to [as it is] not conducive to mental health, nor is it realistic".

12. Ms. Kowalchuk claimed that she and her husband put off marriage and children because of her longstanding addictions issues. She submitted that her recent marriage and their decision

to start a family as proof that she has her mental health under control. She also claimed that her current nursing manager was willing to provide her with a reference to attend a Masters of Nursing program. However, without evidence to support this claim, the Discipline Committee does not rely on that statement.

13. Ms. Kowalchuk went on to say that while it had taken her a long time to understand the SRNA's stance, she does so now. However, she does not understand why these proceedings have commenced now, nor why the latest complaint against her was submitted a year after her actions were first noticed. She specifically asked, "why did you allow me to go to rehab and rebuild my life for two years only to crash it all down in front of me?"

14. Ms. Kowalchuk reiterated that her last relapse was May 2019, that she is currently seeing a psychiatrist monthly by phone, and that she is seeking a counsellor that "is a good fit". Chairperson Blazieko questioned Ms. Kowalchuk regarding her treatment and the conditions proposed:

CK "It's really hard for me to comprehend that I'm being forced into treatment now, after I've stayed clean, so to be honest I haven't looked at any [in patient facilities] because I don't want to leave my family for a month again."

JB "But if it was a condition, would you consider doing it to get back?"

CK "Yes."

15. After hearing Ms. Kowalchuk, counsel for the Investigation Committee argued that the Discipline Committee should refuse Ms. Kowalchuk's guilty pleas. The argument seemed to be that as Ms. Kowalchuk was backing away from the Joint Proposal for Discipline, the guilty pleas should be set aside, and a full contested hearing held.

16. Counsel for the Discipline Committee asked Ms. Kowalchuk whether she wished to withdraw her guilty pleas. Ms. Kowalchuk was resolute that she did not wish to withdraw her guilty pleas. Discipline Committee counsel pointed out that this was an unusual circumstance where Ms. Kowalchuk did not wish to withdraw her guilty pleas, yet the Investigation Committee

suggested that the Discipline Committee should not accept them.

17. Ms. Kowalchuk made it clear that her primary concern was with the requirement in the Joint Proposal that she attend an inpatient treatment program. She repeated that she stood by her guilty pleas.

18. After hearing further submissions and considering all of the circumstances, the Discipline Committee concluded that it could not and would not set aside Ms. Kowalchuk's guilty pleas.

IV. FACTS

19. Based on the documents filed and the submissions by both counsel for the Investigation Committee and Ms. Kowalchuk, the relevant facts are these:

- (a) Ms. Kowalchuk is 27 years of age. She completed her nursing degree from Lethbridge University in the spring of 2014. Upon graduation, she was a practicing graduate nurse in psychiatry at Regina General Hospital and was first registered as a registered nurse with the SRNA on August 14, 2014.
- (b) Ms. Kowalchuk has admitted to using narcotics since she was 17 years old.
- (c) Ms. Kowalchuk began employment at the [REDACTED] on December 15, 2014, and shortly thereafter required an extended medical leave for severe mental health issues from April through December 2015. Ms. Kowalchuk returned to her role on December 9, 2015 on a Graduated Return-To-Work program.
- (d) Ms. Kowalchuk attended a detox at Victoria Hospital in Prince Albert from January 4 to 11, 2016 and advised her employer that she was receiving treatment for a narcotic addiction. She engaged in a second Graduated Return-To-Work program from March 8 through May 26, 2016, during which she admitted to abusing IV Gravol several times.
- (e) On May 23, 2016, Ms. Kowalchuk attended [REDACTED] while off-duty and stole

a quantity of injectable Gravol and IV supplies. She admitted that she had appropriated them for her palliative father, and then later claimed to have used the IV fluids on herself and discarded the Gravol. The following week Ms. Kowalchuk texted a co-worker, and later admitted in rehab, that she had used the drugs on herself.

- (f) From May 27 through October 2, 2016, Ms. Kowalchuk was on an unpaid leave of absence. Through her leave she attempted to seek multiple avenues of mental health treatment and was twice admitted to hospital for opioid and Gravol addiction, eating disorders, depression, and other mental health complications.
- (g) On September 20, 2016 Chelsea Kowalchuk was administered a two-day suspension by her employer for the IV Gravol theft. The employer submitted a formal complaint to the SRNA on September 29, 2016. This was the first complaint from [REDACTED] and the first report of misconduct from an employer regarding Ms. Kowalchuk.
- (h) During the complaint investigation, Chelsea Kowalchuk admitted to requiring hospital treatment for suicidal ideation and drug addiction over the past four years for abuse of Dilaudid, Morphine, and Codeine, but claimed to be abstinent for over one year. She falsely claimed to have disposed of both the stolen IV supplies and Gravol rather than administering them to herself. Ms. Kowalchuk signed her first CCRA on March 28, 2017.
- (i) On November 7, 2017, Ms. Kowalchuk attended an employer disciplinary meeting where she was formally disciplined for excessive absences from work, medication errors, failing to communicate with supervisors and management about her situation, and fostering a hostile work environment by claiming harassment and bullying from management conducting regular supervisory duties. Her 1,000-hour mandatory review under the CCRA on November 27, 2017 noted numerous unsatisfactory items by her nursing manager directly related to the issues discussed during the discipline meeting.
- (j) From January 28, through April 4, 2018 Ms. Kowalchuk was again on an unpaid leave of absence for mental health issues. Upon her return to work, her nursing manager

- noted in her 1,500-hour CCRA mandatory review dated May 7, 2018, that Ms. Kowalchuk had no further attendance, attitude, or performance issues and appeared “bubbly, polite, and professional”.
- (k) On May 10, 2018, Ms. Kowalchuk suffered a drug relapse, taking Dilaudid daily for a two-month period while continuing to report for work. On May 15, a co-worker filed a complaint regarding Ms. Kowalchuk’s behaviour and practice, specifically falsifying vital checks, administering Dilaudid, and leaving work abruptly. On May 19, a second co-worker filed a complaint for ignoring a patient call bell, inappropriate workplace behaviour, leaving work abruptly, and failing to attend shift the following day. Ms. Kowalchuk attended a disciplinary meeting on May 23, 2018 and was provided a written warning on June 6, 2018 as a result.
 - (l) On May 24, 2018 Chelsea Kowalchuk started a new position at a different facility in Nipawin. This position was at a worksite where Ms. Kowalchuk would be the only Registered Nurse on duty, with minimal supervision, and would be responsible for administering the drugs to which she is addicted.
 - (m) On July 10, 2018, Ms. Kowalchuk admitted to relapsing and once again took an unpaid leave of absence until July 31, 2018, during which she made plans to attend treatment.
 - (n) On September 17, 2018, Chelsea Kowalchuk attended a 72-hour detox program at Thorpe Recovery Centre in Lloydminster, followed by a 42-day residential addictions program. She admitted to using Dilaudid daily, or Oxycontin and Morphine when Dilaudid was unavailable, with her first use at 17 years of age and her last use on September 18, 2018. Ms. Kowalchuk was discharged from the program on November 2, 2018. She attempted to follow a 6-month online continuing care program but discontinued it after one week, finding it was not beneficial.
 - (o) Ms. Kowalchuk returned to practice on November 7, 2018.
 - (p) From May 3 to 8, 2019, Ms. Kowalchuk suffered a relapse and was placed on leave for one week. However, she chose not to disclose this relapse when contacted by the

SRNA on August 1, 2019 - claiming her last drug use was June 2018.

- (q) From January 8, through February 13, 2020, Ms. Kowalchuk was again on an unpaid leave of absence.
- (r) In January 2020, the SRNA Investigation Committee recommended a 5-year CCRA due to Ms. Kowalchuk's repeated relapses and practice issues. Ms. Kowalchuk did not sign the proposed CCRA by the February 4, 2020 deadline, and the matter was therefore sent to the Discipline Committee for adjudication.
- (s) Ms. Kowalchuk is currently suspended with pay from her current occupation pending the outcome of this hearing.

VII. ANALYSIS

A. Duty to Accommodate

20. Addictions are considered a mental disorder and are therefore a “disability” as defined by *The Saskatchewan Human Rights Code 2018*¹. The SRNA is bound by a duty to accommodate Ms. Kowalchuk, and she has the right to engage in and carry on the occupation of registered nursing², as well as the right to membership in any professional society and all the benefits thereof³, to the point of undue hardship⁴. The SRNA is also bound by a statutory obligation to protect the public by ensuring safe and competent nursing and to uphold the integrity of the nursing profession. While *The Registered Nurses Act, 1988* does not include a “fitness to practice” standard as many other provinces have adopted, multiple cases have determined that when a member’s professional misconduct is linked to a disability, the duty to accommodate members, including

¹ 2(1) In this Act “disability” means:

- b) Any of the following disabilities:
 - (iii) A mental disorder

² 9 Every person and every class of persons has the right to engage in and carry on any occupation, business, or enterprise under the law without discrimination on the basis of a prohibited ground.

³ 17 Every person and every class of persons has the right to membership, and to all the benefits appertaining to membership, in any professional society or other occupational association without discrimination on the basis of a prohibited ground.

⁴ 2(1) “undue hardship” ... means intolerable financial cost or disruption to business having regard to the effect on:

- c) The essence or purpose of the business undertaking; and
- d) The employees, customers, or clients of the business undertaking, disregarding personal preferences

those with addictions, directly impacts the penalties that may be imposed by a regulatory body, such as the SRNA⁵.

21. The current standard for *prima facie* discrimination has been determined by the Supreme Court decision in *Stewart v. Elk Valley Coal, 2017 SCC 30*, which requires an individual to establish that she has a characteristic that is protected from discrimination, that she has experienced an adverse impact, and that her protected characteristic was a factor in said adverse impact. It is the responsibility of the Discipline Committee to ensure that:

- (a) the sanctions rendered in this case focus on the effects that the member's mental disorders have had on her nursing and employment, and the actions that she chose to undertake, regardless of the influence of her addiction on those choices;
- (b) the public interest is protected; and,
- (c) discipline is not punitive in nature for simply suffering from drug addiction.

22. Ms. Kowalchuk has received no less than six extended leaves of absence from her employers and was offered multiple CCRAs by the SRNA. Given these facts, the Discipline Committee is satisfied that Ms. Kowalchuk has been accommodated to the point of undue hardship by both her employers and the SRNA. The purpose of the current proceeding is to ensure the right balance between public protection and the interests of Ms. Kowalchuk.

B. Violation of the *Act* and Bylaws

23. As a member of the SRNA, Ms. Kowalchuk has a statutory duty to cooperate honestly and completely with her regulatory body, as stated in section 26(2)⁶ and 28(2)⁷ of the *Act*. In addition to the *Act*, the Ontario Divisional Court has clearly established the requirement of regulated professionals to be forthright with *Wise v. LSUC, 2010 ONSC*:

⁵ *Wright v. College of Registered Nurses of Alberta 2012*; *Fossum v. Society of Notaries Public of BC 2011*; *Law Society of Upper Canada v. Kelly 2014*; *Fossum and Duval v. College of Dental Surgeons of BC 2011*; *MacNeil v. College of Registered Nurses of Nova Scotia 2010*

⁶ "Without restricting the generality of subsection (1), the discipline committee may find a nurse guilty of professional misconduct if the nurse has:

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

⁷ "The investigation committee may investigate the report by taking any steps it considers necessary"

It is well recognized that to ensure the effective discharge of the responsibilities of professional regulators, every professional has an obligation to co-operate with the self-governing body.

The duty to co-operate is such an important and clear obligation, that s.49.8(1) of the Act provides that a licensee is required to provide information even if it is privileged or confidential.

The important and onerous duty of Law Societies and other professional colleges to protect the public interest is recognized by the Supreme Court of Canada.⁸

24. The SRNA investigated the first complaint against Chelsea Kowalchuk with an interview. Ms. Kowalchuk intentionally misled the investigator, claiming she discarded misappropriated supplies and medication when she had, in fact, administered them to herself. Her dishonesty with the SRNA undermined the Investigation Committee from sufficiently protecting the public as it proceeded with a CCRA based on false information. In addition, during her interview in August 2019, she claimed to have “prior problems” with addictions but that she had remained abstinent for over one year. This was false as she had relapsed in May 2019.

25. By being untruthful, Chelsea Kowalchuk has not only violated several sections of the *Act*, she has violated several provisions of Part 1 of the *RN Code of Ethics, 2017*, namely:

F - Promoting Justice

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 the report such behaviours if observed or if reasonable grounds exist to suspect their occurrence.

G - Being Accountable

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

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

⁸ *Wise v. LSUC, 2010 ONSC page 137, paragraphs 19-21*

26. According to section 26(2)(l) and section 26(2)(q) of the *Act*, any violation of the bylaws or Code of Ethics constitutes professional misconduct. In addition, the theft of IV supplies and Gravol is in contravention of Section 26(2)(f)⁹ and 26(2)(g)¹⁰ of the *Act*, again constituting professional misconduct.

C. Duty to Withdraw

27. The *Act* fails to include a separate provision for addressing fitness to practice issues due to disability. Historically such matters have been dealt with under sections 25 or 26 as professional incompetence or professional misconduct. Specifically to this case, section 26(2)(n) states that the Discipline Committee may find a nurse guilty of professional misconduct if the nurse has “an addiction to the excessive or habitual use of intoxicating liquor, opiates, narcotics, or other habit forming substances”. While the Discipline Committee must tread carefully on this principle as addictions are a disability and therefore a protected characteristic, the *CNA Code of Ethics, 2017* does require nurses to maintain their fitness to practice:

Part 1 (G - Being Accountable)

5. Nurses maintain their fitness to practise. If they are aware that they do not have the necessary physical, mental or emotional capacity to practise safely and competently, they withdraw from the provision of care after consulting with their employer. If they are self-employed, they arrange for someone else to attend to their clients’ health-care needs. Nurses then take the necessary steps to regain their fitness to practise, in consultation with appropriate professional resources.

28. It is clear upon reviewing Ms. Kowalchuk’s medical records that she was aware that she has a substance abuse problem and that her addiction was not yet under control. In addition, she repeatedly expressed significant issues with managing sleep and stress which directly contribute to the mental and emotional capacity of a nurse to practice safely and competently. She sought in-patient treatment, addictions counselling, and psychiatric support but continued to relapse repeatedly. Whether she was in denial as to the severity of her addiction, or intentionally disregarded it, does not absolve her of her professional obligation to recuse herself from practice

⁹ “misappropriated drugs”

¹⁰ “misappropriated property belonging to a nurse’s employer”

until such time as she was assured that she could safely return. Instead, Ms. Kowalchuk obtained a position at a facility where she would have access to her drugs of choice with little to no supervision.

29. Considering all of the facts, the Discipline Committee finds significant support for a finding of professional incompetence and professional misconduct. Ms. Kowalchuk's conduct was wrong and contrary to all nursing principles and a fundamental breach of trust with her employers. The Discipline Committee must fashion a sanction that meets the public protection mandate of the SRNA, serves the integrity of the profession and serves to accommodate and rehabilitate Chelsea Kowalchuk.

VIII. SANCTION

30. The material presented to the Discipline Committee included a document entitled "Joint Proposal for Sanction" which was signed by counsel for the Investigation Committee and Ms. Kowalchuk.

31. The Joint Proposal was lengthy, and it is as follows:

2(a) Pursuant to paragraph 31(1)(b) of The Registered Nurses Act, 1988, the member shall be suspended from the association for a period of one year from the date of this order;

(b) Pursuant to paragraph 31(1)(c) of The Registered Nurses Act, 1988, the member shall successfully complete an inpatient addictions treatment program of at least 30 days duration, prior to applying for a registered nurse licence with the SRNA. The Registrar must consent to the choice of the inpatient treatment program. A report of successful completion shall be filed with the Registrar.

(c) Pursuant to paragraph 31(1)(c) of The Registered Nurses Act, 1988, the member shall be allowed to return to the practice of registered nursing only under the following conditions that shall be in place for five years after she resumes full-time practice or such additional time as may be required by the member to complete the following conditions:

(i) prior to returning to the practice of registered nursing, the member shall file with the Registrar a written report from an addictions counselor or psychiatrist approved by the Registrar

confirming that the member is fit to return to the practice of registered nursing;

(ii) remain abstinent from all alcohol and drugs unless prescribed by a physician who is knowledgeable of the member's addictions;

(iii) annually submit to the Registrar a written report from the member's addictions counselor approved by the Registrar containing the details of the treatment plan that the member must follow. The treatment plan must be submitted by the addictions counselor to the Registrar for approval;

(iv) annually submit to the Registrar a written report from the member's psychiatrist/psychologist approved by the Registrar containing the details of the counselling plan that the member must follow. The counselling plan must be submitted by the psychiatrist/psychologist to the Registrar for approval;

(v) for the first 480 hours of practice, the member shall be directly supervised by another registered nurse. Direct supervision means that a registered nurse must be with the member at all times during the provision of nursing care; and

(vi) for the first 2000 hours of practice:

(A) the member shall not have access to nor administer narcotics, controlled substances or Dimenhydrinate (Gravol);

(B) the member shall not be in a supervisory role nor work in an independent environment or practice;

(C) the member and the addictions counselor shall jointly file signed monthly treatment reports with the Registrar regarding the member's compliance with the treatment plan;

(vii) for the first 4000 hours of practice, the member shall provide a minimum of 12 random drug screenings per year to the Registrar as requested by the addictions counselor, the Registrar or the member's employer;

(viii) for the remainder of the duration of this order, the member shall provide a minimum of 6 random drug screenings per year to the Registrar as requested by the addictions counselor, the Registrar or the member's employer;

(ix) the member's employer shall file with the Registrar, the written performance reviews required by the SRNA confirming the member's professional competence and professional conduct. Any unfavourable reviews shall be reported by the Registrar to the Investigation Committee. The written performance reviews shall be provided as follows:

- (A) after having completed 240 hours of practice;
- (B) after having completed 480 hours of practice;
- (C) after having completed 960 hours of practice;
- (D) after having completed 1500 hours of practice;
- (E) after having completed 2000 hours of practice; and
- (F) at the end of each of the next four calendar years or such length of time as required for the member to complete these conditions.

3. In the event of a positive drug screen or other evidence of a relapse, the member shall immediately withdraw from practice, report to the Registrar and not return to practice without the prior written approval of the Registrar.

4. Pursuant to clause 31(2)(a)(ii), the member shall pay 50% of the costs of the inquiry and hearing into the member's conduct and related costs, including the expenses of the Investigation Committee and the Discipline Committee fixed in the amount of \$30,000.00.

5. The member shall have time to pay the costs as may be determined by the Discipline Committee. It is proposed that the costs be paid at the rate of \$500.00 per month for 60 months commencing no later than January 1, 2022. Failure to pay the costs within the time set by the Discipline Committee shall result in the immediate suspension of the member's license until payment is made in full.

32. As previously indicated, it was clear from Ms. Kowalchuk's submissions that she did not agree with many of the aspects of the Joint Proposal.

33. Counsel for the Investigation Committee maintained that the Discipline Committee must accept this Joint Proposal "as is" and without variation despite the objections of Ms. Kowalchuk.

In its Brief, the Investigation Committee wrote:

The Discipline Committee should accept joint submissions even if the Discipline Committee may wish to have imposed different terms, conditions, or limitations. It should be presumed that the parties considered and rejected proceeding in the way the Discipline Committee would have preferred. In other words, the Discipline Committee should not "tinker" with a joint submission.¹¹

¹¹ *Brief of Fact and Law of the Investigation Committee of the SRNA for Discipline Hearing of June 17, 2020*, page 22, paragraph 83

34. The Discipline Committee is aware of the legal principles of joint submissions. In *Rault v Law Society of Saskatchewan*, 2009 SKCA 81, our Court of Appeal stated that discipline committees have a “duty to consider” joint submissions and to accept a joint submission if it is within a range of reasonable outcomes, fit and consistent with the public interest. In *R v Druken*, 2006 NLCA 67, the Newfoundland Court of Appeal indicated that a sentence is contrary to the public interest when it is “markedly out of line with the expectations of reasonable persons aware of the circumstances of the case”.

35. Ms. Kowalchuk represented herself in these proceedings; whether by choice or circumstance, it is a relevant factor in considering whether a “joint” sanction submission should be treated with the same level of deference as when a member is represented by legal counsel. In a number of criminal cases judges have expressed the need for caution when dealing with unrepresented accused. In the Newfoundland case *R v Bambrick*, 2011 NLCA 79, Bambrick represented himself at trial. He plead guilty with his rationale being that he would serve his sentence outside of Newfoundland which is what he preferred. Crown counsel “suggested” a two-year sentence as well. At paragraphs 13 and 14 of the decision:

[13] This situation cannot be characterized as a joint submission requiring deference by the sentencing judge as discussed in *R. v. Oxford*, 2010 NLCA 45, 299 Nfld. & P.E.I.R. 327. Generally, a joint submission will be the result of a “plea bargain” between counsel for the accused and the Crown. The accused would expect to receive a reduced sentence in exchange for agreeing to forego the right to a full trial. The *quid pro quo* central to a plea bargain, ordinarily resulting from negotiations between experienced and knowledgeable Crown and defence counsel, has been recognized as an appropriate procedure in the criminal law context.

[14] However, the situation, as in this case, where the Crown simply agrees with or accepts the submission of a defendant regarding sentence, particularly where the defendant is unrepresented, cannot be characterized as a joint submission as contemplated in *Oxford* and to which judicial deference must be accorded. Accordingly, rather than proceeding on the assumption that he was dealing with a joint submission, the trial judge here should have determined an appropriate sentence in the ordinary way, taking into account the submissions of both Mr. Bambrick and the Crown and imposing a sentence consistent with the law and the

facts of the case. Mr. Bambrick's submission that he wanted out of this Province as the reason for requesting a "federal sentence" is not a proper basis on which to determine an appropriate sentence. It follows that the trial judge erred in law insofar as he considered the submissions of Crown counsel and Mr. Bambrick to constitute a joint submission as contemplated in *Oxford*.

36. In *R v Therres, 2014 SKPC 159*, Judge Agnew allowed defence counsel to withdraw, leaving Therres unrepresented. Judge Agnew set out the degree of deference owed by courts to joint submissions where the accused is self represented. At pages 2 and 3 of the decision:

2. in my view, a mutual sentencing position put forward by the Crown and a self-represented accused does not attract the same degree of deference from the Court. The self-represented accused will typically not be in the same position as counsel with respect to knowledge of the law, sentencing options, sentencing ranges set out in caselaw, and other relevant matters. These typically inform defence counsel's negotiations with the Crown, and thus the joint submission. Counsel's expertise in these matters is a factor in the deference the Court pays to joint submissions. I have not been able to locate any cases which specifically address whether or not a joint submission can be made by the Crown and a self-represented accused; I have, however, found a large number of cases which emphasize the reliance, in accepting joint submissions, which the courts place on the presence of skilled and knowledgeable defence counsel in the process;

3. while presumably counsel has been involved in the negotiation of the sentence submission expected to be offered in the present matter, the caselaw also indicates that counsel have a very important role in defending a joint submission if the sentencing judge is unpersuaded. The deference given to a joint submission relies in part on the opportunity the parties have to defend a joint submission if the Court is disinclined to accept it. ... A self-represented accused is unlikely to be able to properly defend a joint submission in the manner it may require;

4. an accused lacking in knowledge, as most of them are likely to be, could end up in a joint submission which, while not outside the appropriate range, is not the most fit sentence...

37. Upon reviewing the Joint Proposal and all of the material and submissions within the context of the Agreed Statement of Facts, the Discipline Committee finds that the Joint Proposal

for Discipline does not sufficiently protect the public interest and does not adequately support Ms. Kowalchuk in her struggles with mental health and addictions. It is therefore not appropriate, fit, or reasonable. It is the view of the panel that the Joint Proposal for Discipline does not meet the standard of current medical views and opinions as to addictions treatment and would therefore also not serve to uphold the integrity of the nursing profession.

38. Given Ms. Kowalchuk's submissions and all of the facts, the Discipline Committee views the Joint Proposal as a recommendation made by the Investigation Committee rather than a Joint Submission that is entitled to deference. The Discipline Committee must engage in its own assessment as to whether the recommendation is fit and reasonable. In many respects, the Discipline Committee has concluded that the recommended sanction does not meet that standard.

39. Addictions and mental health are very individualistic conditions with no standard timelines for recovery or guaranteed results from treatment. A suspension for a fixed period of time is an arbitrary mechanism which fails to adequately protect the public nor does it consider the health and wellbeing of Ms. Kowalchuk. Furthermore, if Ms. Kowalchuk has her addictions under control and is fit to practice before the expiration of a finite suspension, the suspension is punitive, contravenes the duty to accommodate Ms. Kowalchuk, and serves little purpose.

40. On March 6, 2009, the Discipline Committee rendered a decision in a case involving Lorrie Dodwell. Ms. Dodwell had a cocaine addiction. The Discipline Committee ordered that Ms. Dodwell would be suspended and remain suspended until she met certain conditions. Thereafter and if she was reinstated, she would be subject to further conditions. Her appeal was dismissed. Mr. Justice Foley wrote:

[8] In my opinion, the analysis performed by the Discipline Committee reflects its appreciation of the seriousness of the issue, its recognition of drug addictions as a disability that can affect all aspects of one's work and life, and the need for the SRNA to balance its need to be supporting of Ms. Dodwell with its obligations to make public protection a primary concern...

[11]...The reality is the respondent Association must be in a position to ensure itself and hence the public that rehabilitation is ongoing, and that rehabilitation is ensured by third party monitoring. These steps in fact enable Ms. Dodwell being permitted to continue practising her profession. The four-year period is

undoubtedly obtrusive, but that intrusion and its length make it one valuable and necessary to ensure the appellant's, Association's and the public's welfare.

41. Ms. Kowalchuk has already completed an inpatient rehabilitation program of her own volition. She argues that she does not see a reason why she must repeat that. The Discipline Committee agrees. The only explanation offered by the Investigation Committee was that such a requirement is a staple in CCRAs and other discipline decisions involving addictions. As inpatient treatment programs are extremely limited in Saskatchewan, it is the Discipline Committee's opinion that taking up a valuable space in an inpatient facility without any evidence of its necessity would be pointlessly robbing another patient of the opportunity to obtain crucial treatment.

42. The Discipline Committee also does not accept paragraph 2(c) of the Joint Proposal. Imposing arbitrary restrictions and timelines that fail to consider the individualistic nature of mental health and addictions treatment does not serve the public interest or the member facing discipline.

43. Regarding costs, the Investigation Committee filed an Affidavit sworn by [REDACTED]. The Affidavit provides a breakdown of the costs showing that \$73,650.94 are the legal costs incurred by the Investigation Committee. In accordance with Section 31(2) of the *Act* the Discipline Committee is in agreement with the Investigation Committee and requires Ms. Kowalchuk to reimburse the SRNA 50% of the costs associated with these proceedings, fixed at \$30,000.

44. As the governing body of the registered nursing profession in Saskatchewan, it is paramount that the SRNA set the standard for ethical treatment of individuals suffering from mental health disorders, including addictions, and establish protocols that protect the public while enabling Members to manage their disease(s) and practice responsibly. The currently established CCRAs and discipline measures pertaining to mental health and addictions are not adequate to address either of these issues in a modern society, and it is the panel's considered opinion that a modern approach to managing Members with mental health disorders is vital to protecting the integrity of the nursing profession in Saskatchewan. In addition, Saskatchewan is one of the last provinces without a "Fitness to Practice Standard", which treats substance abuse and mental health

issues as a disability to be managed rather than seeking punitive measures as if they were crimes.

45. The *Act* and Bylaws have no provision for a fitness to practise committee or process. Instead, such matters are dealt with by way of discipline or a step below discipline with a CCRA. There is a definitive discord between the requirements of *The Saskatchewan Human Rights Code, 2018* and section 26(2) of the *Act*. The Discipline Committee seeks to mitigate this gap with their Order, which draws heavily on the sanctions imposed by the Discipline Committee in Ontario in the two cases presented by the Investigation Committee. Those cases were *College of Nurses of Ontario v. Mohammed, 1999* and *College of Nurses of Ontario v. Del Bianco, 2001*.

IX. ORDER

The Discipline Committee makes the following Order pursuant to section 31 of the *Act*:

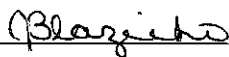
1. Pursuant to section 31(1)(b) of the *Act*, Chelsea Kowalchuk shall be suspended and shall remain suspended from the SRNA until the following conditions are met:
 - (a) Ms. Kowalchuk shall provide reports to the Registrar from a psychiatrist or psychologist and an addictions counsellor (or another person who provides equivalent care and has equivalent qualifications). The reports shall address, *inter alia*:
 - (i) Confirmation that Ms. Kowalchuk has undertaken treatment and counselling for a period of at least nine consecutive months;
 - (ii) Confirmation that Ms. Kowalchuk's mental health has been stable for at least nine consecutive months prior to the date of the report;
 - (iii) Confirmation that Ms. Kowalchuk has complied with the treatment recommendations regarding her mental health disorder and addictions including regularly attending office visits, participating in recommended programming and taking medication as prescribed for at least nine consecutive months prior to writing the report;

- (iv) Whether Ms. Kowalchuk's mental health is such that she is capable of returning to the practice of nursing safely and without risk of harm to patients.
 - (b) Ms. Kowalchuk shall provide a minimum of nine consecutive negative drug screens as may be requested by the Registrar.
2. Upon compliance with these conditions and upon reinstatement, Ms. Kowalchuk's continued practice for an initial period of 2000 hours shall be subject to the following conditions:
- (a) For the first 240 hours of practice, Ms. Kowalchuk shall not practice nursing unless she is under the direct supervision of a registered nurse or registered psychiatric nurse.
 - (b) Ms. Kowalchuk shall remain abstinent from all alcohol and drugs unless prescribed by a physician who is knowledgeable about her addictions.
 - (c) Ms. Kowalchuk shall provide a minimum of 12 random drug screens as may be requested by the Registrar.
 - (d) Ms. Kowalchuk may not practice nursing in the homes of clients nor may she practice in an independent environment unless advance approval has been given by the Registrar.
 - (e) Ms. Kowalchuk shall not, at any time, have access to nor administer narcotics, controlled substances or dimenhydrinate (Gravol) without direct supervision of another registered nurse or registered psychiatric nurse being in attendance with Ms. Kowalchuk at all times.
 - (f) Ms. Kowalchuk shall not assume any over time hours or serve in a supervisory role.
 - (g) Should Ms. Kowalchuk fail to meet any of the provisions of her 2000 hour nursing period, she shall be immediately suspended from practice subject to 1(a) and (b) of this Order.
3. Upon successfully meeting the conditions of the initial 2000 nursing hour period, Ms. Kowalchuk's continued practice shall be subject to the following conditions:

- (a) Ms. Kowalchuk shall remain abstinent from all alcohol and drugs unless prescribed by a physician who is knowledgeable about her addictions.
 - (b) For a period of five years, Ms. Kowalchuk shall produce annual reports to the Registrar from her addictions counsellor and psychologist or psychiatrist outlining her compliance with her treatment plan.
 - (c) For a period of five years, Ms. Kowalchuk may only practice nursing where another registered nurse or registered psychiatric nurse is available to monitor her practice and provide indirect supervision.
 - (d) For a period of five years, Ms. Kowalchuk shall provide random drugs screens as may be requested by the Registrar. It is expected that the Registrar would seek drug screens for a minimum of 6 times per year.
 - (e) Ms. Kowalchuk shall not, at any time, have access to nor administer narcotics, controlled substances or dimenhydrinate (Gravol) without direct supervision of another registered nurse or registered psychiatric nurse being in attendance with Ms. Kowalchuk at all times.
4. Ms. Kowalchuk's nursing employer shall file with the Registrar written performance reviews confirming Ms. Kowalchuk's professional competence and professional conduct. Any unfavourable reviews shall be reported by the Registrar to the Investigation Committee. Performance reviews shall be provided at the following increments:
- (a) after 240 hours of practice
 - (b) after 480 hours of practice
 - (c) after 960 hours of practice
 - (d) after 1500 hours of practice
 - (e) after 2000 hours of practice, and
 - (f) at the end of each of the next 5 calendar years or such length of time as may be required for Ms. Kowalchuk to complete the conditions.

5. Ms. Kowalchuk shall provide a copy of this decision to all nursing employers within 15 days of the commencement of her employment and provide written verification to the Registrar that she has done this.
6. If, at any time during practice, Ms. Kowalchuk exhibits any evidence of a relapse, including but not limited to a positive drug screen, Ms. Kowalchuk shall immediately remove herself from practice and seek appropriate medical care from her psychiatrist, substance abuse worker, or in-patient treatment program. Ms. Kowalchuk shall report her withdrawal from practice to the Registrar. Ms. Kowalchuk shall not return to practice without the prior written approval of the Registrar, who must be satisfied that she is capable of returning to the practice of nursing without the risk of harm to patients.
7. Pursuant to section 31(2)(a)(ii) of the *Act*, Ms. Kowalchuk shall pay the costs of the investigation and hearing fixed in the amount of \$30,000.00. Such costs shall be paid on or before January 1, 2025. Failing payment, Ms. Kowalchuk's license shall be suspended until payment is made pursuant to section 31(2)(b).
8. Ms. Kowalchuk shall bear the costs, if any, of all reports and drug screen results.

November 19, 2020



Joanne Blazieko, RN, Chairperson

On behalf of Members of the Discipline Committee:

Michell Jesse, RN

Stella Swertz, RN

Ambrosia Varaschin, Public Representative, Writer

Russ Marchuk, 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.