

## ADDENDUM

On May 25, 2021, the Discipline Committee reconvened to hear submissions from counsel regarding the following provisions of the Discipline Committee's Order dated April 27, 2021:

1. Paragraph 68(a)(i) obligates Ms. Dabao's employers to provide three written performance reviews. Ms. Dabao seeks clarification regarding the first performance review as the Order provides:

**The first performance review shall be provided within thirty days of the date of this Order**

At the time of the hearing, Ms. Dabao was employed as a nurse. Her counsel advises and the Discipline Committee accepts that at present, Ms. Dabao is not working as a registered nurse as she is on maternity leave.

2. Paragraph 68(a)(ii), (iii), (iv), (v), (vi), (vii) and (viii) obligates Ms. Dabao to provide essays to the Registrar and complete certain courses within a specified time period starting from the date of the Order. Ms. Dabao's counsel advises that because of Ms. Dabao's health before her child was born on April 29, 2021, and the health of both Ms. Dabao and her child after birth, she seeks amendments or in effect, extensions of the deadline dates. Ms. Dabao requests that the time period for completion start from a date other than the date of the Order and in particular, the suggestion is that the start date run as of June 27, 2021.

3. Paragraph 68(a)(viii) obligates Ms. Dabao to complete a certain course. In particular, the Order provides:

**Ms. Dabao shall complete the course *Conflict Management* provided by the ACHIEVE Center for Leadership and Workplace Performance. Within four months of this Order, Ms. Dabao shall provide a certificate of completion of the said course. Ms. Dabao is responsible for the expense incurred in completing the course**

Ms. Dabao's counsel advises that they have been unable to locate a course called "Conflict Management" on the Achieve website, noting that there is a course called "Conflict Resolution".

Regarding the first performance review, the Discipline Committee amends its Order as follows:

- i. **Ms. Dabao's employers will provide three written performance reviews noting the member's ability to demonstrate professional competence and professional conduct regarding nursing knowledge, skills and judgment and meet the SRNA *Standards and Foundation Competency for the Practice of Registered Nurses (2019)* and work within the *Canadian Nurses***

***Association Code of Ethics for Registered Nurses (2017). The performance reviews shall be submitted to the Registrar in the format provided by the registrar, signed by Ms. Dabao and the employer and sent directly by the employer to the SRNA. Unfavorable reviews will be reported by the Registrar to the Investigation Committee for further action. The first performance review shall be provided within 30 days after the date in which Ms. Dabao returns to work as a registered nurse and thereafter upon having completed 240 actual work hours of RN practice and lastly after having completed 480 actual work hours of RN practice.***

Regarding the Achieve course described at paragraph 68(a)(iii), the Achieve website contains information entitled “Self-Guided Certificate in Conflict Management”. The Discipline Committee assumes that this is the course that was contemplated and sees no need to amend paragraph 68(a)(viii) of the Order. If confusion still exists, the Registrar will determine the course to be taken.

Regarding the remaining courses and the essays that Ms. Dabao must provide to the Registrar, the Investigation Committee argues that the principle of *functus officio* applies and that none of the exceptions to that legal doctrine apply with the result that the Discipline Committee has no jurisdiction to amend the deadline dates. The Investigation Committee suggests that Ms. Dabao’s remedy is to appeal the decision of the Discipline Committee to either Council or to the Court of Queen’s Bench and in either forum, present new evidence. The Investigation Committee further advises that it would consent to the admission of new evidence and it would consent to Ms. Dabao’s appeal being allowed.

The principal of *functus* means that once a tribunal or a court has reached a final decision, that decision cannot be “revisited” or reconsidered, subject to certain exceptions. Both counsel referred to the Supreme Court of Canada decision in *Chandler v. Alberta Association of Architects*, [1989] 2 SCR 848. In that case, the Supreme Court uses the word “revisited”. In the text, “*The Law of Professional Regulation*” by Bryan Salte, the author summarizes a number of cases and uses the word “reconsider” to describe the general principles of *functus*.

Ms. Dabao’s request does not amount to a reconsideration or revisiting of the substantive provisions of the Order but rather it is an adjustment of deadline dates. The intention and purpose behind the essays and courses remains unchanged. It is questionable whether the doctrine of *functus* applies at all.

Even if *functus* does apply, the Discipline Committee should be guided by common sense. To put Ms Dabao and the SRNA through an appeal where the end result will be the same is not practical. The public protection mandate behind the order as a whole and in particular, the provisions regarding education and essays is served by the deadline date adjustments set out in this addendum. As stated in the case law provided by Ms. Dabao’s counsel “finality, however, is not an absolute

value, and so the *functus officio* rule is mitigated in certain circumstances in order to serve the goal of effectiveness”.(see *N.S.G.E.U. v Capital District Health Authority*, 2006 NSCA 85).

Paragraph 68 of the decision will be amended as follows:

- ii. Ms. Dabao shall review the *Standards and Foundation Competencies for the Practice of Registered Nurses (2019)*. On or before August 27, 2021, Ms. Dabao shall provide a succinct, reflective essay to the Registrar of the SRNA referencing the relevant competencies related to the concerns identified in the three charges in the Notice of Hearing of Complaint. This essay shall identify how the RN Practice Standard and RN Entry Level Competencies documents will guide her current and future nursing practice.
- iii. Ms. Dabao shall review the *Canadian Nurses Association Code of Ethics for Registered Nurses (2017)*. On or before August 27, 2021, Ms. Dabao shall provide a thorough, reflective essay to the Registrar of the SRNA that references the relevant ethical values and responsibilities arising from the three charges in the Notice of Hearing of Complaint. The essay shall identify how the *Code of Ethics* will guide her current and future nursing practice.
- iv. Ms. Dabao shall complete the *Canadian Nurses Association Code of Ethics for Registered Nurses Learning Modules* and on or before August 27, 2021, Ms. Dabao shall provide the completion certificates to all 10 modules to the Registrar of the SRNA. The cost of these modules is the responsibility of the member.
- v. Ms. Dabao shall complete the online course *NCSBN Sharpening Critical Thinking Skills*. On or before October 27, 2021, the member shall provide the assignment booklet and the post-test with a minimum score of 75% to the Registrar of the SRNA. Ms. Dabao is responsible for the expenses incurred in completing this requirement.
- vi. Ms. Dabao shall review *Documentation: Guidelines for Registered Nurses (2021)*. On or before September 27, 2021, Ms. Dabao shall provide a self reflective essay to the SRNA that identifies the areas that are related to the concerns identified in the three charges in the Notice of Hearing of Complaint. The

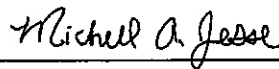
essay shall identify how this document will guide her current and future nursing practice.

- vii. Ms. Dabao shall complete the course *Patient Safety* (NRSG-252CE) provided through Saskatchewan Polytechnic. Order On or before December 27, 2021, Ms. Dabao shall provide to the Registrar of the SRNA an official transcript as proof of completion of this course. Ms. Dabao is responsible for the expenses incurred in completing the course.
- viii. Ms. Dabao shall complete the course *Conflict Management* provided by the ACHIEVE Center for Leadership and Workplace Performance. On or before October 27, 2021, Ms. Dabao shall provide a certificate of completion of the said course. Ms. Dabao is responsible for the expense incurred in completing he course.

In all other respects, the Order of the Discipline Committee set out in its decision dated April 27, 2021 shall stand.

June 2/2021

(date)



Michell Jesse, RN, Chairperson  
*On behalf of Members of the  
Discipline Committee*  
Christine Barlow, RN,  
Frank Suchorab, RN  
Ruth Black, RN  
Sophie Grahame, Public Representative