

INVESTIGATION COMMITTEE
of the
COLLEGE OR REGISTERED NURSES OF SASKATCHEWAN

-and-

Jessica J. V. McCulloch
RN # 0039641

PENALTY DECISION

of the

DISCIPLINE COMMITTEE

of the

COLLEGE OF REGISTERED NURSES OF SASKATCHEWAN

Legal Counsel for the Investigation Committee:	Roger Lepage and Titli Datta
Legal Counsel for Jessica McCulloch:	Brandi Rintoul
Legal Counsel for the Discipline Committee:	Darcia Schirr, Q.C.
Chairperson for the Discipline Committee:	Chris Etcheverry

Date of Hearing: December 15, 2021

Location: By video conference

Date of Decision: March 25, 2022

I. PHASE ONE HEARING

1. By a decision dated October 25, 2021, the Discipline Committee found that the following charges were substantiated by the Investigation Committee and that Ms. McCulloch was guilty of professional incompetence and/or professional misconduct:

Charge Number 2

You, JESSICA J.V. McCULLOCH, 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 on October 4 and 5, 2015. You were the RN on shift when 40 acetaminophen with codeine 30 mg tabs belonging to a Churchill Unit patient went missing. On October 4, 2015 at 2210 hours, you documented on the Narcotic Administration Record "wasted rack fell, meds stepped on" and you proceeded to change the documented count from 40 to 0. You did not sign the Narcotic Administration Record nor did you have another RN co-sign that the narcotics had been wasted. You failed to follow the proper procedure to account for drug wastage. You changed your explanation during the investigation. You failed to honestly account for the missing drugs. There was no evidence that the drugs had been wasted as you stated. You failed in your obligation to properly secure and account for the drugs under your control. You failed to properly account for the drugs and the missing medication card.

Charge Number 5

You, JESSICA J.V. McCULLOCH, 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 on February 26, 2016. You falsely documented the administration and wastage of narcotics and then wrote the name of a correctional officer as a witness to the wastage. You failed to follow the appropriate standards in relation to the administration of narcotics as well as to account for narcotics and/or wastage. You falsely documented on the Narcotic Administration Record the name of a person who did not witness the alleged wastage of a narcotic. You administered double the dose that had been prescribed. Your actions have potentially contributed to the underground economy of the drug trade among the inmate population at RPG. This can increase the propensity for violence and unrest by creating and sustaining the black market currency in the institution.

Charge Number 8

11. You, JESSICA J.V. McCULLOCH, 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 between the dates of January 1, 2019 and April 25, 2019, as follows:

(b) You brought contraband items such as Q-tips® and newspapers for specific patients onto the corrections unit;

(e) You completed a patient's puzzle in his absence knowing that it would be upsetting to the patient and stated that you were doing it just to "piss him off";

Charge Number 9

You, JESSICA J.V. McCULLOCH, 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 between the dates of April 9 and 10, 2019. You failed to meet the SRNA Standards and Foundation Competencies and the Standards and Policies and Procedures of your employer, the Saskatchewan Health Authority as follows:

(a) You provided canteen privileges to patients who had lost their privileges;

(b) You provided a patient with his canteen privileges in a cup hidden by a rubber glove and allowed the patient to proceed to his room;

(c) You failed to be truthful with your work colleagues about providing the canteen privileges to two patients;

(e) Your interaction with these two patients violated your obligation to maintain a therapeutic relationship with patients

2. All other charges set out in a Notice of Hearing of Complaint dated January 28, 2020 were dismissed.

II. PHASE TWO

3. On December 15, 2021, the hearing reconvened to hear submissions regarding sanctions. In advance of the hearing, counsel for the Investigation Committee and for Ms. McCulloch filed briefs of law.

4. Section 31(1) and (2) of *The Registered Nurses Act, 1988* (the “Act”) sets out the range of sanctions available to the Discipline Committee:

31(1) Where the discipline committee finds a nurse guilty of professional incompetence or professional misconduct, it may:

(a) order that the nurse be expelled from the association and that the nurse’s name be struck from the register;

(b) order that the nurse be suspended from the association for a specified period;

(c) order that the nurse may continue to practise only under conditions specified in the order which may include, but are not restricted to, an order that the nurse:

(i) not do specified types of work;

(ii) successfully complete specified classes or courses of instruction;

(iii) obtain treatment, counselling or both;

(d) reprimand the nurse; or

(e) make any other order that to it seems just.

(2) In addition to any order made pursuant to subsection (1), the discipline committee may order:

(a) that the nurse pay to the association within a fixed period:

(i) a fine in a specified amount;

(ii) the costs of the inquiry and hearing into the nurse’s conduct and related costs, including the expenses of the investigation committee and the discipline committee; or

(iii) both of the things mentioned in subclauses (i) and (ii); and

(b) where a nurse fails to make payment in accordance with an order pursuant to clause (a), that the nurse be suspended from the association.

Submissions on Behalf of the Investigation Committee:

5. In its brief, the Investigation Committee recommended the following:

(a) Pursuant to Section 31(1)(b) of the RN Act, that Jessica be suspended from the association for a period of two years from the date of the issuance of the penalty decision;

(b) Pursuant to Section 31(1)(c)(i) of the RN Act, that Jessica be subject to permanent restrictions upon her return to work from taking care of patients within the corrections system and within acute, community and long-term mental health units. Jessica's nursing employment shall have to be approved by the Registrar of the CRNS. Further, Jessica must disclose the Penalty Order issued by the DC to her employer.

(c) Pursuant to Section 31(1)(c)(ii) of the RN Act, that Jessica shall review the Code of Ethics and provide a self-reflective essay to the Registrar of the CRNS, referencing the relevant ethical values and responsibilities related to professional competence and conduct and how this document will guide Jessica's future nursing practice.

(d) Pursuant to Section 31(1)(c)(ii) of the RN Act, that Jessica shall complete the Code of Ethics online learning modules and provide proof of completion to the Registrar of the CRNS. Completion certificates will be submitted within two months of receipt of proof of completion.

(e) Pursuant to Section 31(1)(c)(ii) of the RN Act, that Jessica shall review *Professionalism in Nursing* (RNAO publication) with an emphasis on *Advocacy and Accountability* and upon completion, provide a self-reflective essay to the CRNS identifying areas in the document that are related to the professional competence/conduct expressed in the report and how this document will guide her current and future nursing practice. The CRNS will provide Jessica with a copy of this document.

(f) Pursuant to Section 31(1)(c)(ii) of the RN Act, that Jessica shall complete a mental health course approved by the Registrar of the CRNS.

(g) Pursuant to Section 31(1)(c)(iii) of the RN Act, that prior to returning to work as a registered nurse, Jessica shall file with the registrar a report from a registered psychiatrist, approved by the registrar in advance, that confirms she is fit to practice registered nursing as per the provisions of the RN Act. She shall also develop a wellness plan on how to keep herself safe while in practice. The said plan shall be approved by the Registrar of the CRNS.

(h) Pursuant to Section 31(1)(e) of the RN Act, that upon commencement of registered nursing employment, Jessica shall be under the direct supervision of a senior registered nurse in Saskatchewan for four hundred and eighty

(480) hours, with performance reviews to be conducted and completed successfully at two hundred and forty (240) hours and four hundred and eighty (480) hours, followed by indirect supervision in the same building and within the same unit on which Jessica works for an additional five hundred (500) hours, followed by performance reviews to be conducted and completed successfully at one thousand (1000) hours, one thousand five hundred (1500) hours, two thousand (2000) hours and two thousand five hundred (2500) hours.

(i) Pursuant to Section 31 (2)(a)(ii) of the RN Act, that Jessica pay 50% of the costs of the investigation and discipline hearing to a maximum of \$250,000, to be paid in yearly instalments of \$10,000 for a total period of twenty-five (25) years, commencing the year after completion of the Suspension Period. Pursuant to Section 31 (2)(b), failure to pay any instalment of the Costs by the end of a particular calendar year during the twenty-five (25) year period shall result in the member being suspended until the instalment is made.

6. In summary, the recommendation is a two-year suspension and upon reinstatement, restrictions, supervision, course work, self-reflective essays and costs totalling \$250,000.00.

Submissions on Behalf of Jessica McCulloch:

7. Ms. McCulloch recommended the following:

- (a) A reprimand;
- (b) “Receipt of an independent psychological report to confirm fitness to practice as a registered nurse”.

8. In Ms. McCulloch’s brief, no reference is made to costs. In oral submissions, Ms. McCulloch’s counsel suggested that costs not exceed \$10,000.00.

Purpose of Discipline Sanctions:

9. There are four broad purposes of discipline sanctions: specific deterrence, general deterrence, improved competence, rehabilitation and/or restitution and finally, maintaining public confidence in the profession. (*Law Society of Upper Canada v Kazman*, 2008 ONLSAP 7)

10. In fulfilling those purposes, the courts have set out a number of factors to be considered by discipline committees. Counsel referred to the case of *Jaswal v Medical Board (Newfoundland)*, 1996 CanLII 11630 (NLSC) and that case has been frequently cited in Saskatchewan by both courts and discipline committees. The *Jaswal* factors are as follows:

- 1. the nature and gravity of the proven allegations;**
- 2. the age and experience of the offending [professional];**
- 3. the previous character of the [professional] and in particular the presence or absence of any prior complaints or convictions;**
- 4. the age and mental condition of the offended [party];**
- 5. the number of times the offence was proven to have occurred;**
- 6. the role of the [professional] in acknowledging what had occurred;**
- 7. whether the offending [professional] had already suffered other serious financial or other penalties as a result of the allegations having been made;**
- 8. the impact of the incident on the offended [party];**
- 9. the presence or absence of any mitigating circumstances;**
- 10. the need to promote specific and general deterrence and, thereby, to protect the public and ensure the safe and proper practice of [the profession];**
- 11. the need to maintain the public's confidence in the integrity of the profession;**
- 12. the degree to which the offensive conduct that was found to have occurred was clearly regarded, by consensus, as being the type of conduct that would fall outside the range of permitted conduct; and**
- 13. the range of sentence in other similar cases.**

11. It is also clear that the *Jaswal* factors are neither exhaustive nor do all factors always apply to all cases.

12. In this case, the Discipline Committee sees the following factors as particularly relevant:

(a) The nature and gravity of the proven allegations:

The facts underlying charges 2 and 5 are serious. Out of the total of the ten global charges Ms. McCulloch faced, these are likely the most serious. As the findings made by the Discipline Committee illustrate, Ms. McCulloch showed reckless disregard for processes and procedures regarding narcotics. Adherence to processes and procedures regarding narcotics is fundamental in any health care facility and arguably even more so in a psychiatric facility that houses offenders involved in the criminal justice system.

(b) The age, experience and mental condition of the offending professional:

Ms. McCulloch is [redacted] years of age and she was first granted a practicing membership with the College in July 2009. Approximately two months after her initial registration, she began her employment at the Regional Psychiatric Centre. For the most part, it appears her exclusive nursing experience has been in forensic mental health correctional facilities. As indicated in the liability decision, Ms. McCulloch “was an experienced nurse working in a unique and specialized environment given the nature of the patients”.

Ms. McCulloch has been diagnosed [redacted] which [redacted] called an umbrella diagnosis. Secondary to that diagnosis are other [redacted] conditions for Ms. McCulloch including [redacted]. At the hearing on December 15, 2021, Ms. McCulloch tendered two update letters from [redacted] dated May 18, 2021 and July 20, 2021. It is clear from those letters that Ms. McCulloch continues to report [redacted] [redacted]. In the letter dated May 18, 2021, [redacted] states “Jessica describes her [redacted] [redacted] [redacted]”.

- (c) Whether the professional has already suffered other serious financial or other penalties as a result of the allegations having been made.

Ms. McCulloch's employment at RPC was terminated effective January 20, 2017. Her employment at the Sask Hospital was suspended in April 2019. She has not practiced nursing since April 9, 2019. In March 2020, Ms. McCulloch executed a Voluntary Non-Practice Agreement with the SRNA (now called the College of Registered Nurses of Saskatchewan).

The Investigation Committee suggests Ms. McCulloch has not suffered any financial penalty which is clearly not accurate. Ms. McCulloch has not had the benefit of employment income as a nurse since April 2019.

- (d) Mitigating circumstances:

The Investigation Committee argued that there were no mitigating circumstances other than the fact that Ms. McCulloch has never been disciplined by the CRNS. The Discipline Committee does not accept that submission. Firstly, Ms. McCulloch signed a Voluntary Undertaking of Non-Practice in March 2020. Had she not, the Investigation Committee would have been put to the time and expense of bringing an injunction application for Ms. McCulloch's interim suspension. Secondly, and while the Discipline Committee did not accept that there was a direct nexus or connection between Ms. McCulloch's acts and omissions and her mental health (affording her a complete defence), [REDACTED] has to be a factor in crafting an appropriate and meaningful sanction. Whether Ms. McCulloch's [REDACTED] is called a mitigating circumstance really does not matter but the fact is it must be considered when imposing a sanction intended to meet the purposes of discipline sanctions.

(e) Aggravating circumstances:

The Investigation Committee argued that Ms. McCulloch showed no remorse and refused to acknowledge any wrongdoing and that those were aggravating circumstances. Remorse may be a mitigating factor but lack of remorse is not an aggravating factor. Ms. McCulloch was entitled to contest the charges and entitled to a hearing.

Analysis:

13. Fashioning an appropriate sanction is undeniably the most difficult task a Discipline Committee faces. This case is no exception. The obvious elephant in the room is Ms. McCulloch’s [REDACTED]. The Discipline Committee is faced with the task of imposing a penalty order with all the checks and balances necessary to promote Ms. McCulloch’s rehabilitation should she chose to return to nursing - but at the same time, the order must meet the overarching goal of public protection.

14. At the hearing, [REDACTED] was asked “Is nursing a realistic occupation for Jessica?” His answer was that given the sequence of events, there are significant problems for Ms. McCulloch to return to functioning as a nurse.

15. The two letters prepared by [REDACTED] tendered at the hearing on December 15, 2021 provide further context to that answer. In his letter dated May 18, 2021 (D1-PH):

Discussion:

[REDACTED]

16. [REDACTED]'s letter of July 20, 2021 answered questions posed by Ms. McCulloch's WCB representative. In that letter (D2-PH):

1. What is needed in terms of ongoing treatment? (ie: ongoing primary treatment with yourself, a mental health program with yourself, or another psychologist?)

[REDACTED]

2. Will there be any additional permanent restrictions outside of nursing?

[REDACTED]

17. In light of those comments, the Discipline Committee sees little point in suspending Ms. McCulloch for some finite period of time. This is a case where Ms. McCulloch should not practice as a nurse unless and until the College can be satisfied that she can, to use [REDACTED] words, "focus and concentrate enough to function effectively as a nurse". This is a case where an indefinite suspension is warranted and to remain in place until a number of conditions are met. The conditions have to focus on Ms. McCulloch's fitness to practice.

18. One of the conditions proposed by the Investigation Committee is that Ms. McCulloch "complete a mental health course approved by the Registrar". It is not clear what is meant by that. If the suggestion is that Ms. McCulloch needs to take an education course related to her mental health, it is hard to see how that would apply or assist. Further and in his letter of July 20, 2021, [REDACTED] states: "a mental health program is not required at this time".

19. The Investigation Committee also recommends that Ms. McCulloch complete certain online courses and provide self-reflective essays. To the extent that discipline proceedings invariably involve Code of Ethics breaches, the Discipline Committee will order that Ms. McCulloch complete a Code of Ethics online course but the provision of self-reflective essays is not a meaningful sanction given the facts of this case.

20. To fulfil its public protection mandate, the CRNS and the Discipline Committee has to be satisfied that Ms. McCulloch is fit to return to the safe practice of nursing. Fitness to practice means having the necessary physical and mental health to provide safe, competent and ethical nursing care. The order the Discipline Committee will make in this case is built on that foundation as it will consist of conditions that Ms. McCulloch must meet before she may be reinstated and conditions that would apply following reinstatement. The conditions for continued practice are intended as oversight and monitoring by the CRNS.

Costs:

21. Section 31(2)(a)(i) of the Act gives the Discipline Committee the discretion to order “the 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”.

22. In *Abrametz v The Law Society of Saskatchewan*, 2018 SKCA 37(CanLII), Schwann J. A. wrote for the court:

[43] Costs are at the discretion of the Discipline Committee, with discretion to be exercised judicially (*Brand v College of Physicians and Surgeons of Saskatchewan* (1990), 72 DLR (4th) 446 (CanLII) (Sask CA) [*Brand*]). Even though the Act expressly authorizes the discipline body to impose an order requiring the disciplined member to pay costs of the inquiry, the legislation does not prescribe any principles to guide the exercise of that discretion. For that, I turn to the jurisprudence and other authorities.

23. Bryan Salte in his text *The Law of Professional Regulation* summarized the factors that the courts have considered in making an order for costs:

- 1. Whether the costs are so large that the costs are punitive;**

- 2. Whether the costs are so large that they are likely to deter a member from raising a legitimate defence;**
- 3. The member's financial status;**
- 4. A member has an obligation to provide financial information to support a contention that a cost award will impose an undue hardship;**
- 5. The regulatory body should provide full supporting material for the amount of costs claimed;**
- 6. The regulatory body should provide the individual with an opportunity to respond to the information and respond to the total quantum of costs which may be ordered before costs are imposed;**
- 7. The regulatory body should provide reasons for reaching the decision that it made;**
- 8. If the decision is made in British Columbia, it appears that the cost award will have to be based upon the tariff of costs that is awarded in court actions.**

24. There are other factors as identified in the *Abrametz* case and in particular, a consideration of the respective degrees of success and the other sanctions imposed and the expenses that come with those sanctions.

25. In applying those factors to this case:

- (a) The Investigation Committee has submitted the Affidavit of [REDACTED] sworn December 1, 2021 which sets out the total costs of this hearing as \$573,295.75. The majority of those costs are the legal costs of the Investigation Committee as those fees (without disbursements) appear to be in excess of \$342,000.00. The Investigation Committee proposes that Ms. McCulloch “pay 50% of the costs... to a maximum of \$250,000.00”.
- (b) Ms. McCulloch has tendered documentation that illustrates she has [REDACTED] [REDACTED] on November 5, 2020 (D3-PH). She has not yet [REDACTED] [REDACTED].
- (c) Ms. McCulloch has not been employed as a nurse since April 2019. At the penalty

hearing, her counsel advised that she has not been employed in any capacity since April 2019. In the [REDACTED] documentation Ms. McCulloch shows monthly income of [REDACTED] and the source of that is [REDACTED].

- (d) Given the way the charges were drafted in the Notice of Hearing of Complaint, Ms. McCulloch originally faced 21 charges. The Discipline Committee has found her guilty of nine.

26. Counsel for the Investigation Committee advised that this has been the most expensive discipline hearing conducted by the College (and its predecessor SRNA). During submissions, both parties recognized that the costs order is one of the most significant issues in this case. Ms. McCulloch argued that the legal costs should be subject to a “taxation” or assessment by a taxing officer of the Court of Queen’s Bench. This suggestion had some appeal to the Discipline Committee and it was one that warranted further review. As such, the Discipline Committee requested that counsel submit supplementary briefs to assist the Committee in determining whether the Discipline Committee has the jurisdiction to order taxation of legal costs and if jurisdiction existed, whether this was an appropriate case for that process.

27. The Discipline Committee is grateful to counsel for their helpful briefs on the issues. In the end result and after reviewing those briefs, the Committee concludes that the legal costs incurred by both the Investigation and Discipline Committees should not be referred to the Court of Queen’s Bench for a taxation for the following reasons:

- (a) There is no section in *The Registered Nurses Act, 1988* that expressly provides for taxation of legal costs by a Queen’s Bench taxing officer. Section 31(1)(e) does give the Discipline Committee the discretion to “make any other order that to it seems just”. However, that has be read in light of the balance of section 31(1). Put another way, section 31(2)(a)(ii) expressly deals with costs and in section 31(2), there is no similar language that would give the Discipline Committee a broad power to deal with the imposition of costs in some other way. The obligation to fix the amount of the costs and provide terms for payment is exclusively a task for the Discipline Committee given the structure of section 31.

- (b) In two cases involving the Law Society of Saskatchewan, the Court of Appeal ordered that the legal costs claimed by the Law Society be assessed in a taxation. This order was made in *Merchant v Law Society of Saskatchewan*, 2009 SKCA 33 and *MacKay v Law Society of Saskatchewan*, 2021 SKCA 99. However, and as pointed out by the Investigation Committee in its brief, section 56(5) of *The Court of Appeal Act* gives the Court of Appeal the power to make any order it considers appropriate on appeal. It was in that context that the Court of Appeal ordered that legal costs be taxed in *Merchant* and *MacKay*.

- (c) Under *The Legal Professions Act*, 1990, taxation of an account is the product of a court application or if both parties agree to a taxation, the application can be made to the Local Registrar. The Investigation Committee does not agree to taxation and as such, an application to the court would be necessary. There are complications in interpreting section 67 and 70 of *The Legal Professions Act*, 1990 in determining who might bring a court application. In the end result, sorting out those issues simply means more costs for the College which, in all of the circumstances, is not desirable.

28. To characterize the total costs of the investigation and hearing as significant would be an understatement. As indicated, the legal fees and disbursements of the Investigation Committee constitute the majority of the total fees at \$386,065.95. The Investigation Committee proposes that Ms. McCulloch be ordered to pay 50% of the total costs to a maximum of \$250,000.00 to be paid in yearly instalments for 25 years. This concession or compromise has to be premised on the position that the total costs are fair and reasonable. The Discipline Committee finds that the legal costs incurred by the Investigation Committee are excessive for a number of reasons.

29. The Investigation Committee called 27 witnesses and would have prepared those 27 witnesses in advance of the hearing. The testimony of a number of the witnesses covered the same ground and the evidence was repetitive on a number of points.

30. The Investigation Committee has two fundamental tasks: to prove the facts as alleged in a charge and if those facts are proven, the Investigation Committee must satisfy the Discipline Committee that those proven facts amount to professional misconduct or professional

incompetence. An objective advance assessment of the evidence underlying charges 1 and 4 should have illustrated that there was no charge to be had against Ms. McCulloch. Yet the Discipline Committee heard from seven or eight witnesses on those charges alone as called by the Investigation Committee. Charge 3 (the greeting card) is in the same category and here to the Discipline Committee heard from multiple witnesses called by the Investigation Committee addressing the facts in that charge. These were charges that should not have been brought.

31. The Affidavit of [REDACTED] attaches a document called “Miller Thomson Client Reconciliation Report”. This appears to be a summary of accounts rendered to the Investigation Committee. There is no breakdown of hours or hourly rates. The significant accounts were rendered in September and October 2020 and February and March 2021 which would match the hearing times. At the hearing, the Investigation Committee had two counsel. It is likely that both counsel were also involved in preparing the case in advance of the hearing. While the Discipline Committee appreciates that a more junior lawyer benefits from participating in a discipline hearing, this was not a case that required two legal counsel - especially where the expectation is that the member should bear the legal costs incurred by the Investigation Committee.

32. In past discipline decisions, the Discipline Committee has referred to an Alberta Court of Queen’s Bench case called *Hoff v Pharmaceutical Association (Alberta)*, 1994 CanLII 8950 (AB QB). In that case, the court stated:

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

33. Ms. McCulloch proposes that she pay \$10,000.00 in costs. Ms. McCulloch has been found guilty of nine charges of professional misconduct and/or professional incompetence. Two of those charges were serious matters. Costs fixed in the amount of \$10,000.00 is not a fair and reasonable allocation as that would result in the membership bearing a disproportionate burden of the costs of this investigation and hearing.

34. Considering all of the relevant legal factors and Ms. McCulloch's personal and financial circumstances, the Discipline Committee orders that Jessica McCulloch pay costs of the investigation and hearing fixed in the amount of \$50,000.00. While this is a significant amount, it is a reasonable and appropriate order. The Act requires that a deadline date for payment should be fixed. Given all of the circumstances, the Discipline Committee will provide a lengthy payment period. The Discipline Committee orders that the costs shall be paid on or before April 1, 2026. If Ms. McCulloch is a member as of April 1, 2026 and the costs are not paid as of that deadline date, Ms. McCulloch shall be suspended until payment is made pursuant to section 31(2)(b) of the Act.

III. ORDER

35. The Discipline Committee makes the following Order:

1. Pursuant to section 31(1)(b) of the Act, Jessica McCulloch shall be suspended and remain suspended until the following conditions are met:
 - (a) Ms. McCulloch shall provide a report or reports to the Registrar from her treating psychiatrist (and her treating psychologist) if any which reports shall address the following:
 - (i) Confirmation that Ms. McCulloch's mental health has been stable for at least twelve consecutive months prior to the date of the report.
 - (ii) Confirmation that Ms. McCulloch has complied with the treatment recommendations regarding [REDACTED] including regularly attending office visits, participating in recommended programming and taking medication as prescribed for at least twelve months prior to writing the report.
 - (iii) Whether Ms. McCulloch's mental health is such that she is capable of returning to the practice of nursing safely, competently and without risk of harm to patients.
 - (b) In addition to a report or reports from her treating psychiatrist and/or treating psychologist if any, Ms. McCulloch shall undergo a neuro-psychological assessment

by a qualified psychologist who will conduct a comprehensive evaluation of her cognitive abilities and cognitive functioning. Arising out of the assessment, the psychologist shall produce a report addressing whether Ms. McCulloch has the cognitive abilities and cognitive functioning to safely and competently practice as a nurse. Ms. McCulloch shall bear any and all costs of the assessment and report.

2. Pursuant to section 31(1)(c) of the Act and upon reinstatement and commencement of registered nursing employment:
 - (a) For the first 480 hours of practice, Ms. McCulloch shall not practice nursing unless she is under the direct supervision of a registered nurse or registered psychiatric nurse.
 - (b) For the next 500 hours of practice, Ms. McCulloch shall be under the indirect supervision of a registered nurse or registered psychiatric nurse.
 - (c) For a period of one year, Ms. McCulloch shall be restricted from practicing nursing in the corrections system.
 - (d) For so long as Ms. McCulloch holds a practicing license, she shall not, at any time have access to nor administer substances listed in the *Controlled Drugs and Substances Act*, the Regulations under that Act and those listed in the Prescription Review Program of the College of Physicians and Surgeons unless she is under the direct supervision of another registered nurse or registered psychiatric nurse.
 - (e) For a period of one year, Ms. McCulloch shall not assume any overtime hours or serve in a supervisory role in any nursing environment.
3. Ms. McCulloch's nursing employer shall file with the Registrar written performance reviews confirming Ms. McCulloch's professional competence and professional conduct. Any unfavorable 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 RN practice

- (b) After 480 hours of RN practice
 - (c) After 960 hours of RN practice
 - (d) After 1500 hours of RN practice
 - (e) After 2000 hours of practice
4. Pursuant to section 31(1)(c)(ii) of the Act and within 60 days of commencing nursing employment, Ms. McCulloch shall complete the Code of Ethics online learning modules and provide proof of completion to the Registrar. Ms. McCulloch shall bear the costs if any of these online courses.
5. Ms. McCulloch shall provide a copy of this decision to all prospective nursing employers prior to the commencement of her employment and provide written verification to the Registrar that she has done so.
6. Pursuant to section 31(2)(a)(ii) of the Act, Ms. McCulloch shall pay the costs of the investigation and hearing fixed in the amount of \$50,000.00. Such costs shall be paid on or before April 1, 2026. Failing payment on April 1, 2026, Ms. McCulloch's license, if any, shall be suspended until payment is made pursuant to section 31(2)(b) of the Act.

Dated March 25, 2022.



Chris Etcheverry, RN Chairperson
On Behalf of Members of the Discipline Committee:
Russ Marchuk, Public Representative
Stella Swertz, RN
Janna Balkwill, RN

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.