

THE COLLEGE OF REGISTERED PSYCHIATRIC NURSES OF MANITOBA

IN THE MATTER OF: *The Regulated Health Professions Act, CCSM, c. R117*

AND IN THE MATTER OF: **KELLY MUIRHEAD, a registered psychiatric nurse
registered with the College of Registered Psychiatric
Nurses of Manitoba**

**DECISION AND REASONS OF
THE INQUIRY COMMITTEE PANEL
HEARING DATE: April 29, 2024**

**College of
Registered Psychiatric Nurses
of Manitoba**

1854 Portage Avenue
Winnipeg, MB R3J 0G9
Telephone: 204-888-4841
Fax: 204-888-8638

3. At the outset of the hearing, it was established that the Notice of Hearing had been properly served and that the jurisdictional requirements set out in subsections 102(3), 116(2), 116(3), 116(4) and 120(1) of *The Regulated Health Professions Act* (the “RHPA”) had been satisfied.
4. The parties agreed on the composition of the Panel, including the substitution of the initially agreed upon public representative for another public representative. The Panel therefore proceeded with the hearing.
5. The Member waived reading of the allegations in the Amended Notice of Hearing and entered pleas of guilty to all charges contained within the Notice. A plea inquiry was conducted, which indicated the Member was entering her pleas voluntarily and understood the following:
 - (a) by pleading guilty,
 - i. she was giving up her right to a hearing of the allegations contained in the Amended Notice of Hearing;
 - ii. she was acknowledging breaches of the Standards and of the Code as specified in the Notice of Hearing. She was also acknowledging that the conduct to which she was pleading guilty constituted professional misconduct, conduct unbecoming and/or a lack of knowledge, or lack of skill or judgment in the practice of Registered Psychiatric Nursing; and
 - (b) even though a joint recommendation was to be made regarding the appropriate sanction, the Panel was, subject to the law applying to joint recommendations, not bound to follow the joint recommendation, and that the Panel would determine the appropriate penalty.

6. The Panel heard submissions from counsel for the CIC and from the Member. The parties made a joint recommendation as to the disposition of all charges recommending the Panel impose the following:
 - (a) a reprimand;
 - (b) a fine of \$5,000.00;
 - (c) contribution to the costs of the investigation and the hearing in the amount of \$5,000.00;
 - (d) the Member will be given five (5) years to pay the costs and fine; and
 - (e) the Panel's decision will be made available to the public.

7. After hearing submissions, the Panel adjourned to consider the joint recommendation but requested the parties remain at both the on-site and virtual hearing locations. Upon concluding its consideration of the joint recommendation, the Panel reconvened the hearing and advised it was prepared to accept the joint recommendation with written reasons to follow. These are those reasons.

Procedural Facts

8. A Statement of Agreed Facts was tendered as **Exhibit #2**. Both the CIC and the Member relied upon the facts and documents contained in **Exhibit #2**. As a result, there is no dispute regarding the facts.

9. The Member graduated with a Bachelor of Science in psychiatric nursing in 2011 and has been a registered psychiatric nurse since May, 2011.

10. The Member has no previous disciplinary history with the College and was continuously employed as an RPN between July 2011 and November 2021.

11. From January 7 to 11, 2022, the College received several emails advising of the Member's conduct on social media. The College then received a written complaint from the Member's former employer, the Centre for Adult Psychiatry, an inpatient unit operated by Prairie

Mountain Health, in Brandon, Manitoba (respectively, “the Centre” and “the Health Authority”). The complaint, dated January 10, 2022, repeated the information received regarding the Member’s social media conduct and identified issues which were then under investigation by the Centre and the Authority. The Centre advised that the investigation was not completed as a result of the Member resigning from her position. One of the issues under investigation involved a seclusion incident as described in paragraphs 26-28 of these reasons.

12. Discussions ensued between the Member and the CIC regarding a voluntary surrender or the possibility of an interim suspension. The Member indicated she was prepared to voluntarily surrender her certificate of registration. Due to the nature of the concerns and the inability of the Member to promptly sign and return the voluntary surrender, the CIC met on January 12, 2022, and directed the Executive Director of the College to interim suspend the Member’s certificate of registration.
13. The Member signed a voluntary surrender certificate on January 14, 2022, which was accepted by the CIC.
14. On June 7, 2022, the Member submitted an application to establish eligibility for registration with the College and, by email dated August 25, 2022, submitted further documents to support this application.
15. The Member’s reinstatement request was referred to the CIC, which then carried out an investigation of the unresolved matters arising from the Centre’s complaint.

Substantive Facts

Count 1

16. The January 10, 2022 complaint was prepared and submitted by the Member’s former manager from the Centre. The complaint indicated that the Member had posted two (2) videos on TikTok, Facebook and Instagram, which targeted specific staff of the Centre and the Centre generally. Counsel for the CIC offered to play the videos at the hearing. As a

transcript of one of the videos was contained within the Agreed Statement of Facts, the Panel determined a viewing to be unnecessary.

17. The transcript of the video indicated troubling and unprofessional conduct on behalf of the Member. By way of example, the Member:

(a) referred to coworkers, who she specifically named, as “a bunch of idiot nurses”;

(b) accused the same individuals as being horrible nurses who don’t care about patients;

(c) used profanity and vulgar language;

(d) accused, in a profane manner, a specific health care aide of being lazy;

(e) accused a specific nurse of obtaining her degree from a Cracker Jack box;

(f) specifically named the Centre and attempted to dissuade members of the public from seeking medical assistance at the Centre.

18. The aforementioned conduct is contrary to the following Standards of Psychiatric Nursing Practice 2019 (the “Standard”) and the College’s Code of Ethics (the “Code”):

The Standard

Standard 1. Therapeutic Relationships

A Registered Psychiatric Nurse:

1. Continually applies the therapeutic use of self within the professional practice.

Standard 3. Professional Responsibility and Accountability

A Registered Psychiatric Nurse:

10. Uses technology, electronic communication and social media responsibly and professionally.

Standard 4. Leadership and Collaboration in Quality Psychiatric Nursing Practice

A Registered Psychiatric Nurse:

6. Promotes collaborative practice among health care professionals through respectful working relationships and appropriate documentation practices.

The Code

Safe, competent, and ethical practice to ensure the protection of the public

The Registered Psychiatric Nurse:

- 1) Knows the difference between personal and professional relationships and assumes responsibility for those relationships.
- 2) Commits to building therapeutic relationships and behaves in a manner that protects the integrity of those relationships.
- 7) Ensures that no one neither initiates nor participates in any practice that is considered harmful to the welfare of others.
- 10) Conducts one's self in a manner that reflects honesty, integrity, reliability, impartiality, and diligence.
- 16) Conducts one's self in a manner that promotes a positive image of the profession at the local, community, provincial, and national levels.
- 17) Practices according to the federal statutes/acts/regulation/by-laws and the *Standards of Psychiatric Nursing Practice*.
- 18) Understands, promotes, and upholds the ethical values of the profession.

Quality Practice

The Registered Psychiatric Nurse:

- 4) Contributes to quality practice by promoting positive, healthy, and ethical working environments.
 - 8) Respects and values the knowledge and contributions of other health care providers and works in collaborative partnerships with others.
19. In addition to the foregoing, the College, in conjunction with the College of Registered Nurses of Manitoba, issued a social media and social networking guideline, which

addresses specific issues surrounding social media and professional conduct in both the practice settings and personal lives of RPNs. Among other things, the social media guideline notes that the College may investigate social media conduct, including the use of social networking to bully and/or intimidate colleagues or coworkers. It notes that conduct online and in person will be judged and examined in the same way and held to the same standard. The guideline also provides that there may be instances where social media, social networking and online communications outside the practice area can become a professional issue, and that nurses should be concerned with protecting and upholding the image of the profession. In particular, under the heading “Conduct Outside of the Workplace”, the guideline lists a number of examples of behaviour that may be investigated by a nursing regulator. These examples include posting comments or blogs about clients, coworkers or colleagues.

20. In addition, the Authority developed and issued a policy which, in part, dealt with acceptable use of social media. Among other things, this policy provided:

Employees of a public body and members of professional regulatory bodies have a responsibility to protect confidential information and ensure their online presence is a positive reflection of them, their employer and their profession. When employees of PMH use social media inappropriately, they may breach the privacy of their clients or co-workers, reduce public trust in regional health services, and violate professional standards and codes of ethics, placing them at risk of disciplinary action.

21. The policy also confirmed that posting or communicating defamatory, damaging or embarrassing comments about the Authority, its services, employees or any persons associated with the Authority on social media is strictly prohibited.
22. While it is clear that the Member’s conduct breached the Standard, the Code, as well as policies and guidelines of the Centre and the Authority, the Panel believes the fact this conduct occurred while the Member was off duty requires comment. Counsel for the CIC provided several authorities which deal with professionals charged with regulatory offences as a result of their use of social media while “off duty”. In addition, reference was made to the College’s social media guideline.

23. A recent decision from the Divisional Court, Superior Court of Justice, in *Jordan Peterson v. College of Psychologists of Ontario* dealt with the issue of “off duty” social media commentary. The Panel notes the following comments from this decision:

[49] ...But Dr. Peterson cannot have it both ways: he cannot speak as a member of a regulated profession without taking responsibility for the risk of harm that flows from him speaking in that trusted capacity.

[50] High standards are imposed on the members of the College of Psychologists who, like members of other regulated professions, take on responsibilities to their profession and to the public. As the Supreme Court observed in *Pharmascience Inc. v. Binet*, 2006 SCC 48, [2006] 2 SCR 513, at para. 36, “[t]he importance of monitoring competence and supervising the conduct of professionals stems from the extent to which the public places trust in them.”

24. The Panel finds these comments apply to the profession of registered psychiatric nursing. Further, the College’s social media guideline makes it clear that social media conduct in a member’s private life can be a professional issue.

25. The Panel believes the public statements made by the Member, in which she clearly identified herself as an RPN and a manager at the Centre, contained degrading and demeaning language which was inconsistent with the applicable professional standards and could undermine public trust in the profession of registered psychiatric nursing. It could also undermine the confidence of the public in the Centre and dissuade members of the public from seeking needed treatment. The fact the Member was off-duty when she made these postings does not insulate the conduct.

Count 2

26. In pleading guilty to Count 2, the Member admitted that she failed to exercise critical thinking and clinical judgment by unnecessarily directing that a client under her care be secluded.

27. On November 6, 2021, the Member was working and had assumed in-charge nurse duties for the evening shift at the Centre.
28. The Member directed the patient be secluded. Other RPN's believed it to be unnecessary. The Member did not confer with colleagues regarding her seclusion direction. During that shift, a patient was brought into the Centre on an involuntary admission. The patient had a history of violence and was escorted into the Centre by police officers.
29. An incident report with respect to the care that the Member provided to this patient was filed by another Registered Psychiatric Nurse on duty that evening at the Centre. An investigation ensued, however, the Member resigned and the investigation was held in abeyance.
30. The conduct admitted in Count 2 is contrary to the following provisions of the Standard and the Code:

The Standard

Standard 1. Therapeutic Relationships

A Registered Psychiatric Nurse:

3. Ensures client needs remain the focus of the therapeutic relationship.
9. Applies critical thinking and professional judgment in therapeutic relationships.

Standard 4. Leadership and Collaboration in Quality Psychiatric Nursing Practice

A Registered Psychiatric Nurse:

1. Engages in practices that promote physical, environmental and psychological safety.
4. Collaborates with client, team members, families and other stakeholders to develop comprehensive psychiatric nursing care to achieve the client's health goals.

The Code

Safe, competent, and ethical practice to ensure the protection of the public

The Registered Psychiatric Nurse:

- 4) Practices within one's own level of competence and seeks out additional information or guidance when required.
- 7) Ensures that no one neither initiates nor participates in any practice that is considered harmful to the welfare of others.
- 17) Practices according to the federal statutes/acts/regulation/by-laws and the *Standards of Psychiatric Nursing Practice*.

Respect for the inherent worth, right of choice, and dignity of persons

The Registered Psychiatric Nurse:

- 3) Respects the unique, inherent worth and dignity of all persons and strives to ensure that the rights of individuals are upheld.
- 8) Provides opportunities for persons to make choices and decisions to the extent that those persons are capable.

Quality Practice

The Registered Psychiatric Nurse:

- 2) Ensures that approaches to physical and mental health are collaborative, holistic, and dynamic and include promoting health, preventing illness, and ensuring interventions that promote rehabilitation and recovery.
 - 5) Contributes to promoting and maintaining safe practice environments.
 - 8) Respects and values the knowledge and contributions of other health care providers and works in collaborative partnerships with others.
31. The acknowledged conduct of the Member occurred at a time that a seclusion policy of the Health Authority was in place and effect at the Centre.

32. By her plea of guilty to this Count, the Member has acknowledged that:
- (a) she ordered the seclusion of the patient despite information from colleagues who were in a position to assess the patient, that the patient was fine and seclusion was not required;
 - (b) she ordered security to take the patient to seclusion and physically remove him from his bed. She made the decision regarding seclusion unilaterally without conferring with her colleagues when she was in possession of information from colleagues that seclusion may not be required;
 - (c) she failed to follow the Authority's seclusion policy.

Count 3

33. The Member's plea of guilty to Count 3 is an admission that she did not properly document the seclusion incident described in Count 2.
34. The aforementioned conduct is contrary to Statement 8 of Standard 2 of the Standards, which provides:

The Standard

Standard 2. Competent, Evidence-Informed Practice

A Registered Psychiatric Nurse:

8. Applies documentation principles to ensure effective written/electronic communication.

35. The seclusion policy of the Authority requires an RPN to prepare and maintain documentation with respect to the seclusion of a patient. In particular, the policy requires an RPN to prepare Initial Patient Progress Notes, which include a description of the patient's behaviours that resulted in seclusion, other interventions attempted and the outcome of those attempted interventions, the date and time at which the patient was secluded, behaviours required to end seclusion, how the patient was secluded, the patient's response to seclusion, the staffing requirements to seclude the patient, and any garments, personal belongings and nutrition left in the room.

36. The Member admits she did not document her decision to place the patient in seclusion, thereby breaching the Authority's policy and the Standard.

Decision

37. As indicated previously, the parties jointly recommended that the Member be reprimanded, pay a fine of \$5,000.00, pay a contribution to the College's costs in the amount of \$5,000.00, be given five (5) years to pay the costs and fine, and that the Panel's decision will be made available to the public (the "Joint Recommendation").
38. In *Anthony Cook v Her Majesty the Queen*, 2016 SCC 43 ("Anthony-Cook"), the Supreme Court of Canada confirmed that an adjudicator may reject and depart from a joint recommendation on penalty only where the proposed disposition would bring the administration of justice into disrepute or would otherwise be contrary to the public interest.
39. At paragraph 34 of that decision, the Court described this as an "undeniably high threshold", writing:

[A] joint submission should not be rejected lightly... Rejection denotes a submission so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down.

R v Anthony-Cook, 2016 SCC 43 at para 34

40. Though the principles in Anthony-Cook were articulated in the context of a criminal prosecution, the “public interest test” has been adopted by healthcare regulators and regulators of other self-governing professions in Manitoba.

Re Pillay, 2018 Carswell Man 223 at para 48

41. The Panel was mindful that the College must protect and serve the public interest through quality registered nursing regulation. The public must have confidence in the profession. The College can maintain this confidence by overseeing the conduct of its members appropriately and consistently, and by inquiry panels imposing a serious sanction where appropriate to deter serious misconduct.
42. The Panel is satisfied that the Joint Recommendation is in line with the principles of sentencing applicable to professional regulatory proceedings as well as prior decisions. The Joint Recommendation properly addresses and protects the public interest, and achieves the purpose of:
- a. providing general deterrence to all registered nurses that this type of conduct will be investigated, reviewed, and punished; and
 - b. reassuring the public that the College is working to maintain standards and ensure continued trust in registered nurses.
43. The Panel therefore makes the following Order:
- (a) The Member is hereby reprimanded;
 - (b) The Member is to pay a fine of \$5,000.00;
 - (c) The Member shall pay a contribution to the College’s costs of the investigation and the hearing in the amount of \$5,000.00; and
 - (d) The Member shall be given five (5) years to pay the costs and fine; and
 - (e) This decision will be made available to the public.

44. These reasons will be signed in counterpart by the Panel members and an electronic copy of this signature shall be provided to the parties.

DATED at Winnipeg, Manitoba, the 24th day of May, 2024.


Alexandria Taylor (May 24, 2024 17:28 CDT)
ALEXANDRIA TAYLOR, RPN-Chair


Jacquie Williams (May 24, 2024 11:12 CDT)
JACQUIE WILLIAMS, RPN – Public Representative


Patrick Desrochers (May 24, 2024 11:14 CDT)
PATRICK DESROCHERS – Public Representative

APPENDIX "A"

THE COLLEGE OF REGISTERED PSYCHIATRIC NURSES OF MANITOBA

In the matter of:

The Regulated Health Professions ~~Registered Psychiatric Nurses Act~~, CCSM, c R11745 (the "Act")

And in the matter of:

Kelly Muirhead, a registered psychiatric nurse registered with the College of Registered Psychiatric Nurses of Manitoba

AMENDED NOTICE OF HEARING

Take notice that a hearing will be conducted by a panel of the Inquiry Committee of the College of Registered Psychiatric Nurses of Manitoba (the "College") at 1700-242 Hargrave ~~1854 Portage Avenue~~, Winnipeg, Manitoba, commencing on Monday Thursday, April 29, 2024 ~~May 25, 2023~~ at 9 a.m., with respect to charges formulated by the Complaints Investigation Committee of the College alleging that you, being a member of the College under the provisions of *The Registered Psychiatric Nurses Act, CCSM, c R45* (the "Act"), are guilty of professional misconduct, conduct unbecoming a member, have displayed a lack of knowledge, skill, or judgment in the practice of psychiatric nursing, or have contravened the Act, the *College of Registered Psychiatric Nurses of Manitoba General Regulation Man Reg 57/2002 60/2022* (the "Regulation"), the *Standards of Psychiatric Nursing Practice 2019* (the "Standards"), the College's *Code of Ethics 2017* (the "Code"), or any of the above, in that:

1. contrary to statement 10 of standard 3 of the Standards, statement 6 of standard 4 of the Standards, statement 1 of standard 1 of the Standards, and statements 1, 2, 7, 10, 16, 17, and 18 of the Safe, competent, and ethical practice provisions of the Code, and statements 4 and 8 of the Quality Practice provisions of the Code, or any of them, you did not use social media, technology, and electronic communication professionally and/or responsibly by posting on social media defamatory and/or disparaging videos which used vulgar and disrespectful language;
2. contrary to statements 3 and 9 of standard 1 of the Standards, statements 1 and 4 of standard 4 of the Standards, and statements 4, 7, and 17 of the Safe, competent, and ethical practice provisions of the Code, and statements 3 and 8 of the Respect for the inherent worth, right of choice and dignity of persons provisions of the Code, and statements 2, 5, and 8 of the Quality Practice provisions of the Code, or any of them, you failed to exercise critical thinking and clinical judgment by unnecessarily directing that a client under your care be secluded; and

3. contrary to statement 8 of standard 2 of the Standards, you did not properly document the seclusion incident referred to in count 2 above.

And further take notice that you are required to personally attend at the time and place set for the hearing and that you have the right to be represented by legal counsel of your choice. At the hearing, you may adduce evidence, examine and cross-examine witnesses appearing at the hearing, and make such representations as may be material to these charges. Should you fail to attend at the time and place appointed for the hearing, the Inquiry Committee may proceed with the hearing in your absence without further notice to you and may take such action as it deems fit pursuant to the Act.

And further take notice that if the Inquiry Committee finds you to be guilty of professional misconduct, conduct unbecoming a member, or having contravened the Act, the Regulation, the Standards, the Code, or any of the above, as alleged or at all, you may be liable to sanction in accordance with sections 12643 and 12744 of the Act, including reprimand, fine, suspension or cancellation of your certificate of registration.

DATED at Winnipeg, Manitoba this 28th day of March, 2024 ~~April, 2023~~.

THE COLLEGE OF REGISTERED PSYCHIATRIC NURSES OF
MANITOBA



Per: _____

Christine Prociuk, RPN, BA
Chair, CRPNM Complaints Investigation Committee

TO: Kelly Muirhead

