Hearing Committee Notice of Determination

Complaint # 2020-001

Re: Yvonne Mariwande, Member Registration #004722

A Hearing Committee of the College of Registered Nurses of Prince Edward Island (the "Committee") conducted a hearing in Charlottetown, PE on January 5, 6, and 21, 2021, to consider a complaint dated June 4, 2020 against Registered Nurse Yvonne Mariwande, registration number 004722. The Hearing followed a meeting of the Investigation Committee which resulted in a written notice of referral from the Investigation Committee dated October 8, 2020 to proceed to a hearing.

Members of the Committee in attendance at this hearing were: Chelsea Chessman (Chair); Janet MacIntyre (member); and Phyllis Horne (public representative). Also, in attendance were: Respondent Yvonne Mariwande; Prosecutor Gary Demeulenaere; and Legal Counsel and Advisor for the Committee Doug Drysdale. A representative from Island Confidential Associates Inc. (Christine MacDougall) audio recorded the formal hearing.

At the beginning of the hearing, the respondent indicated she was not represented by legal counsel. She stated that she had financial obligations to her family here and in Africa and was a single person and, therefore, could not afford a lawyer. The hearing proceeded after the respondent declined the opportunity to adjourn in order to seek legal counsel.

The purpose of the hearing on January 5, 6, and 21, 2021, was to determine whether Yvonne Mariwande engaged in activities that were professional misconduct and/or incompetence, as those terms are defined in the Regulated Health Professions Act (RHPA), on May 30-31, 2020. The conduct to be reviewed is as follows:

> Allegation #1. On May 30-31, 2020, while employed as a Registered Nurse ("RN") at the Medical/Palliative Unit of the Prince County Hospital ("PCH") in Summerside, Prince Edward Island, Yvonne Mariwande engaged in conduct which violated the provisions of the Act, in that she did not communicate effectively with her LPN team member by being rude, bullying, and demeaning to the LPN;
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> Allegation #2. On May 30-31, 2020, while employed as a RN at the Medical/Palliative Unit of the PCH in Summerside, Prince Edward Island, Yvonne Mariwande engaged in conduct which violated the provisions of the Act, in that she did not exercise appropriate care and judgment and did not follow proper procedure by using a mechanical lift independently to transfer a patient; and

Allegation #3. On May 30-31, 2020, while employed as a RN at the Medical/Palliative Unit of the PCH in Summerside, Prince Edward Island, Yvonne Mariwande engaged in conduct which violated the provisions of the Act, in that she grabbed a patient's shoulders and spoke to the patient in a loud voice and/or yelled at the patient who has hearing difficulty.

All of the three allegations against Ms. Mariwande charged her with professional misconduct and incompetence pursuant to the provisions of the Act.

"Professional misconduct" and "incompetence" are discipline offences which are defined in Section 57 of the RHPA:

Professional Misconduct

1. The conduct of a respondent may be found to constitute professional misconduct if:

(a) the respondent contravenes this Act, the regulations, the bylaws, standards of practice, code of ethics or practice directions in a manner that in the opinion of the investigation committee or the hearing committee, relates to the respondent's suitability to practise a regulated health profession;

(a.1) in the opinion of the investigation committee or the hearing committee, the conduct is harmful to the best interests of a client or other person, or to the integrity of the profession;

(b) the respondent has been found guilty of an offence that, in the opinion of Investigation committee or the hearing committee, relates to the respondent's suitability to practise a regulated health profession;

(c) the respondent refuses or fails to cooperate fully in respect of the Investigation or hearing of a complaint;

(d) the respondent contravenes an order made under this Act; or

(e) the conduct of the respondent constitutes professional misconduct as set out in the regulations.

Incompetence

(2) The conduct of a respondent may be found to constitute incompetence where:

a. An act or omission of the respondent

i. Demonstrates a lack of knowledge, skill, or judgment

ii. Demonstrates disregard for the safety or welfare of a client, or

iii. Constitutes incompetence as set out in the regulations; or

b. The respondent is unable to practise in a regulated health profession in accordance with accepted professional standards for any reason,

including that the respondent is impaired by illness, addiction or other incapacity.

FINDINGS

The hearing lasted for one full day and parts of two other days. The prosecutor presented evidence through four (4) witnesses and thirteen (13) documents. The member respondent presented evidence through four (4) witnesses and five (5) documents.

The complainant, Jana Corish, gave evidence when called by the prosecutor, Gary Demeulenaere. A copy of the complaint as well as the respondent Yvonne Mariwande's written response to the complaint was included in the booklet of procedural documents submitted by the prosecutor. The respondent did not object to any of the exhibits presented by the prosecutor, and all of those were entered into evidence by consent.

The respondent did testify in her own defence. She did attempt to present additional documents at the hearing; these were objected to by Mr. Demeulenaere as he was not made aware of them prior to the hearing, and the people who wrote them were not present to testify about them. Documents that could be connected to witnesses that Ms. Mariwande called were entered into evidence following their testimony.

The first witness was complainant Jana Corish, nurse manager of the Medical/Palliative Unit at the Prince County Hospital (PCH). She stated she filed the complaint following concerns she was made aware of by Caitlin MacLennan, an LPN and RN student who worked casual on the Medical/Palliative floor.

Regarding allegation number 1, which occurred on the Medical/Palliative Unit of the PCH on May 30-31, 2020, Caitlin MacLennan reported feeling undermined and disrespected during her shift, like she couldn't do anything right. She worked with Ms. Mariwande that shift. She felt Ms. Mariwande embarrassed her several times during the shift by drawing attention to a mistake in front of the nurse's station on one occasion and by loudly asking what she was still doing charting at the end of their shift on another occasion. Ms. MacLennan was so upset by Ms. Mariwande's actions that she decided to complain. She appeared to be a sincere and truthful witness. Ms. MacLennan felt these two interactions would have been acceptable had they been completed privately rather than publicly, in front of her peers. When questioned about these two events, Ms. Mariwande saw no issue with the way she handled the conversations and did not recognize the impact of her behaviour on Ms. MacLennan.

Emily MacDonald, a PCW doing constant care with another patient, testified that when Ms. Mariwande passed her in the hall that evening, she was muttering under her breath and cursing about a medication error that happened. She also stated that Ms. Mariwande's tone made her uncomfortable and that she overheard Ms. Mariwande tell Ms. MacLennan that the physician was "pissed" at her, and reminded MacLennan to do the incident report several times at the nurse's station.

Ms. MacLennan testified that she felt disrespected and undervalued as a nurse during the shift in question on May 30-31, 2020. When attempting to complete hourly rounds on their patients, Ms. Mariwande abruptly stopped her from going into a room to check on a patient, instead insisting that she do it her way. Ms. MacLennan felt she was corrected in a disrespectful manner, and that her way wasn't wrong, so why did it need to be corrected at all? She felt embarrassed by comments that Ms. Mariwande made about the error she had made and the incident report that needed to be filed, and again at the end of the shift when Ms. Mariwande asked what was she even doing, Ms. MacLennan felt she was insinuating that she hadn't gotten her work done. When she left the shift, she was upset, crying, and questioning her future in the career.

Ms. Mariwande stated that she felt that she and Ms. MacLennan had a good shift together and did not have any problems. She acknowledged that she did the things Ms. MacLennan stated, but she did not see how they could have affected her so much. She felt they had a good shift together and stated so to Ms. MacLennan at the end of their shift.

Several witnesses, including Jana Corish, Caitlin MacLennan, and Cathy Boylan (a nursing supervisor at PCH) indicated that Ms. Mariwande's general attitude and behaviour could be aloof and unfriendly at times. Jana Corish explained to the Committee that she has received complaints about Ms. Mariwande's behaviour before and that staff are anxious about speaking with her directly because Ms. Mariwande can be aggressive or dismissive with them. Ms. Boylan recounted a time where Ms. Mariwande was disrespectful and rude to her because she was late delivering a medication to her. Ms. Boylan stated that she let it go because it seemed out of character for Mariwande at the time, but that she was shocked at how Ms. Mariwande had spoken to her that day. Ms. Mariwande stated that she had no idea that Ms. Boylan had felt this way after their encounter that day. Another supervisor at PCH, Bonita Caseley stated that although she has not had any issues with Ms. Mariwande, she was aware that other nurses thought that Mariwande was confrontational and "direct". This leads the Committee to believe that this type of behaviour is a common occurrence for Ms. Mariwande and that she lacks insight into how her attitude and behaviours affects others.

Regarding allegation number 2, at the beginning of the same night shift on May 30, 2020 on the Medical/Palliative Unit at the PCH, Ms. MacLennan stated that she asked Ms. Mariwande for help getting a patient to the commode using the mechanical lift, a device which is used to help staff move patients. At that time, Ms. Mariwande was not ready to help her, so Ms. MacLennan carried on with some other work until Ms. Mariwande would be available to help. When Ms. Mariwande was ready, though, she did not go find Ms. MacLennan; instead, she proceeded to get the patient into the lift sling and used the mechanical lift by herself. Ms. MacLennan walked in after the patient was already seated on the commode chair.

The problem is that the Musculoskeletal Injury Prevention Policy at the PCH states that Transferring Lifting Repositioning (TLR) training is mandatory for all nursing and

caregiving staff. TLR recommends a minimum of two staff be present for a patient who requires a mechanical lift. The TLR logo for a total lift was also posted at this patient's bedside which depicts 2 people using the lift with the option for a third if needed. Ms. Mariwande admitted during questioning by Mr. Demeulenaere that she was aware of the policy and the requirements of the TLR training and when asked if the rules apply to everyone, she agreed that they did. She admitted to knowing these facts and still deciding that she could do it herself. In fact, she had admitted in her written response to the complaint that she had made a mistake in not following the TLR guidelines.

Ms. Mariwande did not deny using the lift by herself, she admitted that Ms. MacLennan had originally asked for her help but Ms. Mariwande wasn't ready at that time. Once she was ready, she did not wait for her LPN teammate to use the mechanical lift to move the patient from the bed to the commode chair. Ms. Mariwande stated that she made the decision that she could do it herself based on the size of the patient. She stated that she did know she was supposed to have a second person, but felt that she could do it on her own. We heard evidence that Ms. Mariwande was up to date with her TLR education, having received it approximately 6 months prior to the incident.

The Committee felt that regardless of the size of the patient, the policy and the TLR program are in place to protect patients and staff from injury. The safety of the patient is paramount, and ignoring the rules for your own convenience is indefensible, particularly where another staff person was present and available to help.

In regards to allegation number 3, which arose out of the same shift, at the same location, same circumstances as in allegation number 2, Caitlin MacLennan testified that she was in the room outside the curtain helping another patient when she heard Ms. Mariwande yelling at her patient to sit down. When MacLennan came around the curtain, she witnessed Ms. Mariwande put her hands on the patient. Ms. MacLennan did not see the patient trying to get off the commode. Ms. Mariwande testified in her defence that she had raised her voice because the patient was hard of hearing and her hearing aids did not work well for her. She also admitted that she did use one or two hands in an effort to keep the patient on the commode.

Another witness, Emily MacDonald, stated that she heard Ms. Mariwande's voice from where MacDonald was, up the hall, during this event. However, Ms. Mariwande pointed out in the investigation report, which was put into evidence, that another PCW who was sitting roughly as close to the room where Mariwande was as Ms. MacDonald was, did not hear anything at this time.

The member defended herself by saying that she isn't there to make friends, just to do her work. She is private and not friendly with her co-workers; she is there to work and nothing else. Ms. Mariwande stated that there are several coworkers who do not like her and were trying to get her fired. She stated that Caitlin MacLennan is not friends with them, but Emily MacDonald is and that is why she is saying she heard yelling/loud voices. Ms. Mariwande also felt like Caitlin MacLennan was pushed into reporting her by these same people.

She stated she is currently taking courses to improve communication and interpersonal skills, as well as professional working relationships (teamwork). Ms. Mariwande indicated that she recognizes the importance of socialization in her work environment, and how she does need to rely on and maintain a good working relationship with her colleagues.

DECISION

Based on all of the evidence presented and after considering the submissions of the parties, the Committee has decided:

Allegation 1

It is the Committee's decision that Ms. Mariwande has violated Section A under the Code of Ethics, responsibilities one (1) and twelve (12), Section D, responsibility 13 (thirteen), and Section F, responsibility five (5). Under the Standards for Nursing Practice, the Committee has determined the respondent's actions are also a violation of Standard 2, indicator 2.3 and Standard 4, indicator 4.7. A copy of these sections and others were attached to the Notice of Formal Hearing, and we will attach the same pages to this decision, for ease of reference. These violations amount to professional misconduct under section 57(1)(a) of the RHPA.

The Committee notes that it came up frequently throughout the hearing that Ms. Mariwande's attitude towards others was often described as disrespectful and rude. It was also mentioned by witnesses and Ms. Mariwande herself that she has been spoken to by her employer about this behaviour before, both formally and informally, so it is evident that she is aware that her attitude has been an issue, but she has failed to correct it.

While it is acceptable not to be friends with everyone you work with, it is however, expected that you will treat everyone you work with, with care, respect and a professional attitude. It was the Committee's feeling that Caitlin MacLennan was an experienced LPN, not new to the profession, and, as such, would be used to working with all different personalities. The fact that she felt this interaction was bad enough to submit a complaint is telling. The evidence established that Ms. Mariwande's employer spoke to about her attitude and behaviour towards her co-workers several times in the past, and the concerns had been documented, and Ms. Mariwande was told that she had to improve her practice in these areas. It is clear to the Committee that while she may have learned something at the time of the other incidents, the knowledge and insight has not made its way into her everyday practice.

Nurses are expected to use reflection, experience, and good judgement in their practice. The Committee felt that Ms. Mariwande was not demonstrating respect and professionalism in compliance with the Code of Ethics for Registered Nurses and the Standards of Nursing Practice in her interactions with her Ms. MacLennan during that shift.

The Committee has determined that member Yvonne Mariwande is guilty of professional misconduct in Allegation 1. The Committee did not find Ms. Mariwande guilty of incompetence as it relates to this allegation. It is our view that she is an experienced nurse with suitable skills, and this allegation does not involve an error in practice, but in professionalism.

Allegation 2

The Committee has determined that member Yvonne Mariwande is guilty of professional misconduct and incompetence in Allegation 2. It is the Committee's decision that Ms. Mariwande has violated Section A under the Code of Ethics, responsibility five (5), Section D responsibility six (6), and Section G responsibility four (4). Under the Standards for Nursing Practice, the Committee has determined the respondent's actions are also a violation of Standard 3 indicators 3.4, 3.5, & 3.6 as well as Standard 5, indicator 5.6. These violations amount to professional misconduct and incompetence under section 57(1)(a) and 57(2) of the RHPA.

Ms. Mariwande freely admitted that she utilized the mechanical lift by herself without waiting for help despite the fact that she was aware that the policy required two people, and Caitlin MacLennan was available and had asked her for help initially. Ms. Mariwande acknowledged in her written response to the complaint and in her testimony at the hearing that she knew about the policy, but decided not to follow it. Ms. Mariwande received TLR refresher training approximately 6 months before the incident, indicating that she was aware of how to properly use the mechanical lift safely. When asked by Mr. Demeulenaere if she was aware of the requirement of two staff members to operate the mechanical lift, she stated she was. When asked why she decided to go ahead without waiting for help, she stated she made a decision that she could do it by herself.

The Committee was very concerned by this - that she both knew the policy, and was adequately trained in TLR and still made a conscious decision to go against the Health PEI Policy. Nurses are accountable to follow prescribed policies and to exercise reasonable judgement at all times. The Committee finds that Ms. Mariwande failed to meet this standard on the shift in question. The fact that she knowingly put the patient and herself in danger of being harmed/injured while she was operating the lift independently is the reason the Committee has found Ms. Mariwande guilty of both professional misconduct and incompetence.

Allegation 3

The Committee has determined that there is insufficient evidence to support a guilty verdict with regards to the allegation that Ms. Mariwande grabbed the patient's shoulders and spoke to the patient in a loud voice and/or yelled at a patient who has hearing difficulty.

LPN MacLennan testified that she arrived in the room as this event was occurring but after Nurse Mariwande had helped the patient on to the commode. The patient in question was physically unharmed (no reports or documentation of bruising or any other

unexplained injuries) and the loudness of Ms. Mariwande's voice and whether it was appropriate is difficult to evaluate. A loud voice could be explained if the patient appeared to be about to fall and Ms. Mariwande was trying to communicate with her to remain seated; it also might have been used because the patient was hard of hearing. MacLellan also stated that she saw the patient grimacing; however, given that she was seated on a commode chair and had a fracture to her right greater trochanter, we feel this could have been a reasonable response to the situation and not related to anything improper done by Nurse Mariwande.

Ms. Mariwande and Ms. MacLennan both stated that the patient was hard of hearing, this was confirmed by the patient's daughter, Ruth Henderson, who also testified as a witness. Ms. Mariwande stated that she had to speak up to communicate with the patient as she wasn't able to hear her, so it is possible that she would have raised her voice even further when she was concerned that the patient was going to fall and injure herself. With regards to Ms. Mariwande putting her hands on the patient's shoulders, Ms. Mariwande stated this was as much to steady her as it was to draw attention to the fact that she was trying to get her attention. By her own admission she doesn't remember if she reached out with one or two hands, but either way this would be a reasonable response if the patient was about to fall. Given that Ms. MacLennan wasn't there until after the patient stopped moving and the lack of evidence of physical harm to the patient, the Committee felt it reasonable to conclude that it was neither forceful or rough.

The Committee felt that the evidence was circumstantial and difficult to determine what occurred. The witness to this event arrived as it was occurring, but after the precipitating event. We felt that if a patient were moving to fall off a commode, we would raise our voices and put our hands on the patient to steady them and bring attention to our request. Loud voices and yelling are subjective terms, which makes it problematic when each person who is saying the event happened, describes it differently.

In the circumstances, the Committee finds that it has not been proven that Ms. Mariwande engaged in professional misconduct as alleged, nor that she demonstrated incompetence in this instance. She is not guilty of allegation 3.

In her written response to the complaint, Ms. Mariwande stated that she felt discriminated against and that certain co-workers do not like her. If this is true, it is regrettable and something the employer should look into, but the Committee was not convinced by the evidence at the hearing that there had been any discrimination, or that feelings of ill-will towards Ms. Mariwande justified her actions as described in allegations 1 and 2.

In the result, Yvonne Mariwande is guilty of two allegations of professional misconduct, and was also incompetent with respect to one of those allegations.

If either party wishes to appeal, an appeal of this determination must be made to the Supreme Court of Prince Edward Island within 30 days of receiving the decision – please refer to section 59(2)(b) of the RHPA.

We need to decide on an appropriate sentence for these offences, and we will meet with the Prosecutor and the member to hear submissions from them on this issue. We will ask CRNPEI's Coordinator of Regulatory Services to arrange a hearing for this purpose in the near future, and the parties will be provided with advance notice of the date.

Respectfully submitted at Charlottetown, Prince Edward Island this 22 day of February, 2021.

Chelsea Chessman, Chair of the Hearing Committee

Schedule "A"

CODE OF ETHICS FOR REGISTERED NURSES (2017)

PART I. NURSING VALUES AND ETHICAL RESPONSIBILITIES

A. Providing Safe, Compassionate, Competent and Ethical Care

Nurses provide safe, compassionate, competent and ethical care.

Ethical responsibilities:

1. Nurses have a responsibility to conduct themselves according to the ethical responsibilities outlined in this document and in practice standards in what they do and how they interact with persons receiving care and other members of the health-care team.

2. Nurses engage in compassionate care through their speech and body language and through their efforts to understand and care about others' healthcare needs.

5. Nurses are honest and take all necessary actions to prevent or minimize patient safety incidents. They learn from near misses and work with others to reduce the potential for future risks and preventable harms (see Appendix B).

12. Nurses foster a sage, quality practice environment.

14. When differences among staff members of the health-care team affect care, nurses seek constructive and collaborative approaches to resolving them and commit to conflict resolution and a person-centered approach to care.

15. Nurses support each other in providing person-centred care.

B. Promoting Health and Well-Being

Nurses work with persons who have health-care needs or are receiving care to enable them to attain their highest possible level of health and well-being.

Ethical responsibilities:

1. Nurses provide care directed first and foremost toward the health and wellbeing of persons receiving care, recognizing and using the values and principles of primary health care.

D. Honouring Dignity

Nurses recognize and respect the intrinsic worth of each person.

Ethical responsibilities:

1. Nurses, in their professional capacity, relate to all persons receiving care with respect.

2. Nurses support persons receiving care in maintaining their dignity and integrity.

6. Nurses utilize practice standards, best practice guidelines, policies and research, to minimize risk and maximize safety, well-being and/or dignity for persons receiving care.

13. Nurses treat each other, colleagues, students and other health-care providers in a respectful manner, recognizing the power differentials among formal leaders, colleagues and students. They work with others to honour dignity and resolve differences in a constructive way.

F. Promoting Justice

Nurses uphold principles of justice by safeguarding human rights, equity and fairness and by promoting the public good.

Ethical responsibilities:

5. Nurses provide care for all persons including those seen as victims and/or abusers and refrain from any form of workplace bullying.

8. Nurses work collaboratively to develop a moral community. As part of this community, all nurses acknowledge their responsibility to contribute to a positive and healthy practice environments. Nurses support a climate of trust that sponsors openness, encourages the act of questioning the status quo and supports those who speak out in good faith to address concerns.

G. Being Accountable

Nurses are accountable for their actions and answerable for their practice.

Ethical responsibilities:

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

4. Nurses are accountable for their practice and work together as part of teams. When the acuity, complexity or variability of a person’s health condition increases, nurses assist each other.

9. Nurses share their knowledge and provide feedback, mentorship and guidance for the professional development of nursing students, novice nurses, other nurses and other health-care providers.

STANDARDS FOR NURSING PRACTICE – December 2018

STANDARD 2 - Competent Application of Knowledge

Each nurse demonstrates competency relevant to area of nursing practice.

Indicators

Each nurse:

2.2 Uses current theoretical knowledge and professional judgment, critical inquiry and reflection in making decisions and implements actions relevant to the needs of the client and area of practice.

2.3 Uses communication processes to establish, maintain and conclude therapeutic and professional relationships.

STANDARD 3 - Responsibility and Accountability

Each nurse demonstrates responsibility and accountability to the public by providing competent, safe and ethical nursing practice.

Indicators

Each nurse:

3.2 Practices in accordance with the RHPA and its Regulations and Bylaws; the CRNPEI Standards for Nursing Practice; the CNA Code of Ethics; other relevant CRNPEI documents; other relevant Acts and legislation; and individual competence and ability to evaluate own practice.

3.4 Is responsible and accountable for her/his actions and decisions at all times.

3.5 Exercises reasonable judgment in decision making.

3.6 Follows established policies and procedures.

STANDARD 4 - Advocacy

Each nurse demonstrates advocacy for clients in their relationship with the health system by responding to their needs in a way that supports, protects and safeguards the client's rights and interests.

Indicators

Each nurse:

4.5 Develops and sustains collaborative partnerships with clients, colleagues, health providers and the public, which promote advocacy.

4.6 Supports the development and implementation of policies which ensure the client's right are respected.

4.7 Communicates, collaborates and consults with nurses and other members of the health team about the provision of health care services.

STANDARD 5 - Continuing Competence

Each nurse demonstrates responsibility for maintaining competence, fitness to practice and integrating new knowledge and skills in own area of practice.

Indicators

Each nurse:

5.6 Applies problem solving processes in decision-making and evaluates these processes