

College of Registered Nurses of PEI (CRNPEI)

Hearing Committee Decision

Complaint # 2017-007

A Hearing Committee of the College of Registered Nurses of Prince Edward Island (the "Committee") conducted a hearing in Charlottetown, PE on March 7, 2019 to consider a complaint dated July 21<sup>st</sup>, 2017 against Registered Nurse Lisa Brennan, Registration number 003858. The hearing followed a meeting of the Investigation Panel of the former Professional Conduct Review Committee which resulted in a written decision from that Panel dated July 30<sup>th</sup>, 2018 to proceed to a formal inquiry (now, a hearing), which, since July 4, 2018, is governed by the *Regulated Health Professions Act* (the "RHPA").

Members of the Committee in attendance at this hearing were Kathy Larter (chair); Debbie Flood-Vickerson (member); and William Caw (public representative). Also in attendance were: Respondent, Lisa Brennan, Legal Counsel for the Respondent, Shannon Farrell, Adducer, Tom Keeler, and Legal Counsel and Advisor for the Committee, Doug Drysdale. The Complainant, Tammy Mackenzie, was unable to travel to PEI [REDACTED]. Mr. Keeler reported she was available by teleconference if the parties agreed. All agreed that was acceptable, and Ms. MacKenzie participated in the hearing remotely. Christine MacDougall from Island Confidential Associates was also present and audio recorded the hearing.

The purpose of the hearing on March 7, 2019, was to determine whether Lisa Brennan engaged in activities that were any of the types of bad behavior or misconduct identified in the former *Registered Nurses Act* (the "RN Act") and the Professional Conduct Review Regulations (the "PCR Regulations"), between approximately Aug 2016 and July 2017. A Notice of Formal Hearing dated December 17, 2018, had been circulated to the complainant, Tammy MacKenzie and the respondent Lisa Brennan before the hearing, and it identified 7 incidents, and alleged that Lisa Brennan had committed professional misconduct or had been incompetent in relation to the first six incidents, and alleged professional misconduct, conduct unbecoming the profession of nursing, or lack of fitness to practice in relation to the seventh. Lisa Brennan's conduct was reviewed against these allegations.

The RN Act and the PCR Regulations were repealed on the 4<sup>th</sup> day of July, 2018, and were replaced by the RHPA, but the Committee received legal advice that the repealed laws continued to be relevant at the hearing, both with respect to the types of misconduct to be considered, and the penalty that was available in the event of a finding of guilt, because of section 99 of the RHPA, and sections 32 and 33 of PEI's *Interpretation Act*. The Committee accepts this advice, and evaluated Ms. Brennan's conduct against the legal standards that were in place at the time of the incidents, while conducting the hearing according to the procedure described in the RHPA. This makes sense according to the legal provisions, and is fair to the member, Lisa Brennan.

The seven allegations against the respondent, Lisa Brennan, were as follows:

1. In or about April 2017, you engaged in conduct which violated the provisions of the Act, in that you did not take reasonable steps to report an incident involving the alleged abuse of a patient (identified as Patient T.N) by a staff member of Clinton View Lodge after becoming aware of this incident, as required under the provisions of the Adult Protection Act;
2. On or about October 30, 2016, you engaged in conduct which violated the provisions of the Act, in that you failed to take reasonable steps to conduct an investigation or review following an incident in which a patient (identified as Patient F.F.) suffered a fractured hip, including, but not limited to, a failure to contact the family of Patient F.F. following the above-mentioned incident;
3. On or about August 11, 2016, you engaged in conduct which violated the provisions of the Act, in that you advised staff members to delay the transfer of a patient (identified as Patient E.C.) to the Prince County Hospital, following an incident in which Patient E.C. had suffered an ankle fracture at Clinton View Lodge, resulting in a delay of approximately 40 hours in the patient being transferred to the PCH;
4. During or between March 29, 2017 and April 4, 2017 you engaged in conduct which violated the provisions of the Act, in that you failed to intervene sufficiently, or support staff interventions or requests relating to a patient ( identified as Patient M.F.), despite M.F. showing a significant decline in her health condition during this period of time;
5. During or between July 1, 2016 and July 19, 2017, you engaged in conduct which violated the provisions of the Act, in that you failed to appropriately respond to staff and resident concerns regarding staffing levels and patient care, failed to use information to ensure that human and other resources were used efficiently to maintain client safety, and failed to appropriately support staff in the planning and delivery of health care services;
6. During or between June 1, 2017 and July 19, 2017, you engaged in conduct which violated the provisions of the Act, in that you failed to take appropriate steps to investigate an incident involving the alleged abuse of one staff member, despite receiving an incident report in relation to the above-referenced incident; and
7. On three occasions between March 31, 2017 and May 30, 2017, you engaged in conduct which violated the provisions of the Act, in that you engaged in the practice of nursing while under the influence of an intoxicating substance.

It was noted at the hearing on March 7, 2019, that the Notice of Formal Hearing referred to January 16 and 17 as the dates for the hearing, but Adducer Tom Keeler explained that everyone had been advised of the March date and, in fact, all were in attendance at the hearing on March 7, except the complainant, who was prepared to participate by telephone, and everyone agreed to proceed.

The conduct which was reviewed occurred while Lisa Brennan was working at Clinton View Lodge, Kensington, PE.

At the beginning of the hearing, Chair Kathy Larter read the Notice of Formal Hearing to all in attendance, The Chair confirmed that written notice of this Hearing had been received by all parties.

The Chair asked if there were any objections to the inclusion of any of the Committee Members on the Hearing Committee. There were none.

The Chair asked Tom Keeler, Adducer of evidence, to begin the presentation of evidence. He reviewed a Book of Documents which had been circulated, and which included the original complaint, Ms. Brennan's written responses, and the Notice of Formal Hearing, as well as the legislation and a few resource documents. Mr. Keeler indicated he and Shannon Farrell had prepared an Agreed Statement of Facts, which the member agreed to, for the Committee's consideration. This document was circulated and Tom Keeler read through the Agreed Statement of Facts for the benefit of all in the room, and Tammy MacKenzie. He noted that he would not be presenting evidence in relation to allegations 4 and 7, and suggested that the Committee could dismiss those allegations. The Agreed Statement of Facts was signed by Tom Keeler, Shannon Farrell, Lisa Brennan and dated March 7, 2019 Tammy MacKenzie clarified a statement at paragraph 14 in the Agreed Statement of Facts that she only became aware of the staff concern of being overworked at Clinton View Lodge at the same time that Lisa Brennan was made aware by staff, not before. The Committee recessed to consider the Agreed Statement of Facts, and, when the hearing resumed, Chair Kathy Larter stated that the Committee accepted the Agreed Statement of Facts and agreed that no further presentation of evidence would be necessary.

In the Agreed Statement of Facts, Lisa Brennan admitted the conduct described in that document as it related to five of the seven allegations contained in the Notice of Formal Hearing allegations 1, 2, 3, 5, and 6 and admitted that the conduct described constituted professional misconduct contrary to the RN Act, and she admitted that she had also been incompetent, contrary to the RN Act, in the circumstances described in Allegation 3. In accepting the Agreed Statement of Facts, the Committee found Lisa Brennan to be guilty of professional misconduct in relation to allegations #1, 2, 5, and 6 in the Notice of Formal Hearing. The panel found Lisa Brennan to be guilty of professional misconduct and incompetence in relation to allegation #3. The panel dismissed allegations # 4 and 7, as no evidence had been presented with respect to these two. The committee noted there was more than one incident reported where there was a delay in the appropriate actions being taken. Lisa Brennan's actions had a negative impact to a number of patients and families. There were a number of incidents spanning over a year so these were not isolated incidents. The Committee acknowledges Lisa Brennan accepted responsibility for her actions as in the Agreed Statement of Facts.

Tom Keeler then presented a document entitled “Joint Recommendation on Penalty” to the Committee, which was signed by Tom Keeler and dated March 7<sup>th</sup>, 2019, but he clarified that this document was not a joint recommendation, but rather his recommendation as Adducer of evidence. He said that Shannon Farrell and Lisa Brennan did not agree to all the recommendations. Mr. Keeler explained why he felt the penalty described in the document was appropriate in the circumstances of this case.

Shannon Farrell, legal counsel for the Respondent, then was given an opportunity to explain her client’s perspective on an appropriate penalty. Shannon Farrell spoke to the Joint Recommendation on Penalty presented by Tom Keeler and spoke to crafting a penalty that is proportional, to provide deterrence to Lisa Brennan as well other Registered Nurses and also allow for rehabilitation of Lisa Brennan. Shannon Farrell listed factors for the Committee to consider when deciding on penalty. Lisa has been working in a safe and ethical manner, no past discipline on her record, and family responsibilities and finances that would be negatively impacted by a large financial penalty. She provided the Committee documents in support of her submissions which the committee considered carefully. Shannon Farrell noted that the Respondent has acknowledged the seriousness of this matter and has cooperated throughout this process. The Respondent has agreed with the Statement of Facts and accepts responsibility for her actions.

At this point, Mr. Keeler, Lisa Brennan, the Respondent and the Complainant were dismissed from the hearing and the hearing was adjourned to allow the Panel to reach its final decision.

Following the adjournment of the hearing, the Committee met to review and consider the submissions on penalty.

The Committee noted the mitigating factors outlined in the Agreed Statement of Facts, and commented on by Shannon Farrell on behalf of the respondent. The Respondent, Lisa Brennan has accepted responsibility for professional misconduct and incompetence. The Committee recognizes the allegations considered in the hearing were serious and non-professional and considered the nature and gravity of the allegations and the impact of the incidents on individuals (patients, patient’s families, employer, co-workers) and agrees that a registration suspension is warranted. Also, some improvement in Lisa Brennan’s practice abilities is needed. The Committee decided to accept most of the recommendations on Penalty, but felt that some changes were necessary and appropriate. Lisa Brennan was a Director of Nursing at community care facilities for six years. In this supervisory role part of her responsibilities was to create a workplace environment that promotes and supports the standards of Nursing Practice and the Code of Ethics. Lisa Brennan did take some appropriate actions but did not do everything necessary to protect patients and staff.

The following penalty shall be issued to the Respondent (and is ordered, as the RHPA requires us to do):

1. Lisa Brennan shall be issued a formal reprimand from the College of Registered Nurses of Prince Edward Island (CRNPEI). The reprimand shall be prepared by the Coordinator of Regulatory Services, for review and approval by the Chair.
2. Lisa Brennan's registration to practice nursing shall be suspended for a period of fourteen (14) days following the date that this decision is delivered to Lisa Brennan or her lawyer, Shannon Farrell.
3. Lisa Brennan shall comply with two (2) continuing competency audits coordinated by the Coordinator of Regulatory Services at CRNPEI, which will take place in October of each year for the next two consecutive years starting in Oct 2019.2020, and shall include, but are not limited to, a detailed assessment of Lisa Brennan's practice skills as a Registered Nurse, including organizational assessment, and documentation skills. These continuing competency audits, are in addition to any continuing competency requirements imposed by the *Regulated Health Professions Act*, or otherwise;.
4. Within six months of the date that this decision is delivered to Lisa Brennan or Shannon Farrell, Lisa Brennan shall complete refresher training with a Nursing Expert ("Expert"), at her own expense. To comply, Lisa Brennan is required to ensure that:
  - a. The Expert has expertise in nursing regulation and has been approved by the CRNPEI Coordinator of Regulatory Services to provide refresher training;
  - b. The Expert has been provided with a copy of:
    1. The Complaint;
    2. The Notice of Hearing;
    3. The Agreed Statement of Facts; and
    4. This decision;
  - c. Lisa Brennan has reviewed the CRNPEI Standards of Practice and the CAN Code of Ethics (2017), and at least seven days before meeting with the Expert has provided the Expert with a short written statement of at least five hundred (500) words reflecting on the issues identified in this decision issued by the hearing committee;
  - d. The subject of the sessions with the Expert will include:
    - i. any acts or omissions committed by Lisa Brennan identified in the Agreed Statement of Facts and the Notice of Formal Hearing, including any misconduct or violations of the CRNPEI Standards of Practice or the Code of Ethics (2017);
    - ii. the potential consequences of the misconduct to Lisa Brennan's clients, colleagues, profession and self;
    - iii. strategies for preventing the misconduct from recurring;
    - iv. refresher training, as identified by the Expert; and
    - v. the development of a learning plan in collaboration with the Expert;
  - e. Within thirty (30) days of the completion of the final session with the Expert, Lisa Brennan shall confirm that the Expert has forwarded a report to the CRNPEI Coordinator of Regulatory Services, in which the Expert has confirmed:
    - i. The dates of any completed sessions;
    - ii. That Lisa Brennan reviewed the CRNPEI Standards of Practice and the Code of Ethics (2017) prior to meeting with the Expert;

- iii. That the Expert reviewed or confirmed appropriate review of the required documents and subjects with Lisa Brennan
    - iv. The successful completion of any required learning plan; and
    - v. The Expert's independent assessment of Lisa Brennan's insight into her behavior;
  - f. If Lisa Brennan does not comply with any one or more of the requirements above, the Expert may cancel any scheduled session, even if the cancellation results in a breach of a term, condition or limitation on Lisa Brennan's certificate of registration;
5. Failure by Lisa Brennan to comply with these conditions may result in further suspension of her registration and a new discipline complaint, or both. Lisa Brennan shall be required to pay CRNPEI the amount of Two Thousand, Five Hundred Dollars (2,500.00) in respect of the expenses associated with the investigation and adjudication of this complaint. These expenses may be paid in monthly instalments of no less than One Hundred Twenty Five Dollars (125.00), payable on the first of each month, and beginning in the first month following the date that this decision is delivered to Lisa Brennan or Shannon Farrell.
6. There shall be no fine.
7. Lisa Brennan shall provide a copy of this decision to any current employer, or any employer who offers her employment as a Registered Nurse, and shall provide written verification to CRNPEI from the employer that the employer has received this. This is to stay in effect until Lisa Brennan has completed all of the above conditions.

The Committee concluded that the penalty is reasonable and in the public interest. The Committee felt that the penalty was reasonable when compared to those issued in other CRNPEI cases. The contribution-to-costs penalty is meant to recuperate some of the financial loss to CRNPEI related to this investigation and to deter other members from performing in a way that constitutes misconduct and incompetence.

The member may appeal the decision to the appeals committee by filing a written notice of appeal, setting forth the grounds of the appeal and the relief sought, not later than 20 days from the date that the report of the Review Committee is delivered to the member.



Kathy Larter, RN

Dated March29, 2019.