

COLLEGE AND ASSOCIATION OF REGISTERED NURSES OF ALBERTA

DECISION OF THE HEARING TRIBUNAL

RE: CONDUCT OF **KEVIN DENNIS**, R.N. REGISTRATION #57,715

AS A RESULT OF A HEARING HELD BEFORE

THE HEARING TRIBUNAL

OF THE

COLLEGE AND ASSOCIATION OF REGISTERED NURSES OF ALBERTA

11120 178 STREET

EDMONTON, ALBERTA

ON

SEPTEMBER 14, 2021

INTRODUCTION

A hearing was held on **September 14, 2021**, via WebEx videoconference by the College and Association of Registered Nurses of Alberta (“CARNA”) by the Hearing Tribunal of CARNA to hear a complaint against Kevin Dennis, R.N. registration #57,715.

Those present at the hearing were:

a. Hearing Tribunal Members:

Bonnie Bazlik, Chairperson
Lisa Heighington
David Rolfe, Public Representative
Naz Mellick, Public Representative

b. Independent Legal Counsel to the Hearing Tribunal:

Mary Marshall

c. CARNA Representative:

Mick Wall, Conduct Counsel

d. Registrant Member Under Investigation:

Kevin Dennis (sometimes hereinafter referred to as “the Registrant”)

e. Registrant’s Labour Relations Officer:

Manar Nidah

PRELIMINARY MATTERS

Conduct Counsel and the Labour Relations Officer for the Registrant confirmed that there were no objections to the composition of the Hearing Tribunal or to the Hearing Tribunal’s jurisdiction to proceed with the hearing. No preliminary applications were made.

The Chairperson noted that pursuant to section 78 of the *Health Professions Act*, RSA 2000, c. H-7 (“HPA”), the hearing was open to the public. No application was made to close the hearing. The Chair read the rules for the members of the public.

Conduct Counsel confirmed that the matter was proceeding by Agreement.

ALLEGATIONS AND ADMISSION

The allegations in the Notice to Attend are as follows:

1. On or around October 1, 2018, the Registrant, while working as a Registered Nurse in a long term care facility, failed to document care, contrary to the Canadian Nurses Association Code of Ethics, 2017 (“**CNACE**”), the Documentation Standards for Regulated Members (“**CDSRM**”) and the Practice Standards for Regulated Members, 2013

("CPSRM"), when he failed to update [Patient 1]'s Care Plan following a care conference with [Patient 1]'s family; and

2. On or around November 2018, the Registrant, while working as a Registered Nurse in a long term care facility, failed to exercise reasonable judgment and set justifiable priorities, contrary to the CNACE and the CPSRM, when he failed, on several occasions, to review computer generated alerts that were intended to inform care providers at the facility of a potential change in patient health status.

The Registrant has admitted to the conduct in the allegations in the Agreed Statement of Facts and Admission of Unprofessional Conduct entered as Exhibit #1 as follows (the "Allegations") and admits that the conduct constitutes unprofessional conduct:

On or around:

- a) October 1, 2018, the Registrant, while working as a Registered Nurse in a long term care facility, failed to document care in a timely manner, contrary to the Canadian Nurses Association Code of Ethics (2017) ("**Code of Ethics**"), the Documentation Standards for Regulated Members ("**Documentation Standards**") and the Practice Standards for Regulated Members (2013) ("**Practice Standards**"), when the Registrant failed to update [Patient 1's] Care Plan in a timely manner following a Family Conference with [Patient 1's] family; and
- b) November 2018, the Registrant, while working as a Registered Nurse in a long term care facility, failed to exercise reasonable judgment and set justifiable priorities, contrary to the Code of Ethics and the Practice Standards, when he failed, on several occasions, to review computer generated alerts that were intended to inform care providers at the facility of a potential change in patient health status.

EXHIBITS

The following documents were entered as Exhibits:

NUMBER	DESCRIPTION
Exhibit #1:	Agreed Statement of Facts and Admission of Unprofessional Conduct Containing Appendices "A" through "P"
A	Registrant's Resume
B	Complaint received January 28, 2020
C	Protection for Persons in Care Decision, dated October 31, 2019
D	Notice to Attend, dated July 26, 2021
E	Licensed Practical Nurse Job Description
F	Health Care Aide Job Description
G	Registered Nurse Job Description
H	Care Plan, initiated August 2, 2016

NUMBER	DESCRIPTION
I	Clinical Assessment Protocol Summary dated August 2, 2016, and July 9, 2018
J	Progress Notes for [Patient 1]
K	[Patient 1] Fluid Intake, October - November 2018
L	Extendicare Physician Communication Form
M	Physician's Orders re [Patient 1]
N	Practice Standards for Regulated Members (2013)
O	Canadian Nurses Association Code of Ethics (2017)
P	Documentation Standards for Regulated Members (2013)
Exhibit #2:	Joint Recommendation on Sanction
Exhibit #3:	Excerpt from <i>Jaswal v. Newfoundland Medical Board</i> , (1996), 42 Admin L.R. (2d) 233 (" <i>Jaswal</i> ")

SUBMISSIONS ON THE ALLEGATIONS

Submissions by Conduct Counsel:

Conduct Counsel made brief submissions. The complaint came from the son of [Patient 1]. He alleged that the Registrant had failed to care for his elderly mother by not prescribing her [medication] for a [health information redacted], failing to update her care plan following a family care conference in October 2018, failing to monitor electronic alerts regarding her health status, and failing to advise and call the attending physician or family in a timely manner to advise them of his mother's health concerns. The complaint alleges that the Registrant failed to notice that [Patient 1] was becoming critically [health information redacted] and that the Registrant's failure resulted in [Patient 1's] admission to hospital.

Conduct Counsel reviewed the Agreed Statement of Facts and Admission of Unprofessional Conduct (Exhibit #1) and submitted that there is a sufficient basis for a finding of unprofessional conduct.

Conduct Counsel submitted that the conduct constitutes unprofessional conduct under sections 1(1)(pp)(i) and (ii) of the HPA.

Conduct Counsel noted that the following Practice Standards were applicable: Standards 1.4, 2.2, 2.3, 2.4, 2.5, 2.7, and 4.1. Conduct Counsel noted that the following provisions in the Documentation Standards for Regulated Members were applicable: 1.1 and 1.4(e). Conduct Counsel also noted that the following provisions from the Code of Ethics applied: A1, A7, G1, and G4.

Submissions by the Labour Relations Officer:

The Registrant's Labour Relations Officer advised that she was in agreement with the submissions from Conduct Counsel.

Questions from the Hearing Tribunal:

The Hearing Tribunal requested submissions on the applicability of section 1(1)(pp)(xii) of the HPA; and standards 1.1 and 5.3 of the Standards of Practice.

Submissions by Conduct Counsel:

Conduct Counsel submitted that section 1(1)(pp)(xii) of the HPA often refers to off-duty conduct that occurs outside of the practice of the profession. Further, the type of conduct that is at issue here would not necessarily impugn the nursing profession as a whole.

Conduct Counsel submitted that the Registrant had demonstrated accountability in the circumstances and that standard 1.1 stipulating that the “nurse is accountable at all times for their own actions” was not applicable. He was cooperative with the investigation, and admitted unprofessional conduct.

Conduct Counsel had no objections to Standard 5.3.

Submissions by the Labour Relations Officer for the Registrant:

The Labour Relations Officer for the Registrant further submitted that she was in agreement with the submissions made by Conduct Counsel.

Further Submissions by Conduct Counsel:

Conduct Counsel submitted that the Protection for Persons in Care Decision entered as part of Exhibit #1 was clear that there were systemic failures that may impugn the facility, including compliance with policies and training. These systemic issues may have contributed to the outcome. However, it is going too far to say that the Registrant’s conduct harmed the integrity of the profession of nursing.

DECISION AND REASONS OF THE HEARING TRIBUNAL ON THE ALLEGATIONS

The Hearing Tribunal has reviewed the exhibits and considered the submissions made by the parties. The Hearing Tribunal noted the differences between the allegations in the Notice to Attend dated July 26, 2021, and the allegations in the Agreed Statement of Facts and Admission of Unprofessional Conduct, and amended the allegations accordingly.

The Hearing Tribunal considered the definition of unprofessional conduct under section (1)(1)(pp) of the HPA. The Hearing Tribunal finds that the Allegations are proven and that the Registrant’s conduct constitutes unprofessional conduct under section (1)(1)(pp)(i) and (ii) of the *Health Professions Act*, as follows:

Unprofessional conduct means one or more of the following, whether or not it is disgraceful or dishonourable:

- (i) displaying a lack of knowledge of or lack of skill or judgment in the provision of professional services;
- (ii) contravention of this Act, a code of ethics or standards of practice;

The Hearing Tribunal does not accept the restrictive interpretation proposed by Conduct Counsel regarding section 1(1)(pp)(xii) of the HPA. However, the Hearing Tribunal determined that the conduct in the Allegations is covered appropriately in section 1(1)(pp)(i) and (ii) of the HPA. The Hearing Tribunal accepted the arguments of the parties that standard 1.1 did not apply to this situation.

The Hearing Tribunal finds that the proven conduct breached the following provisions in the Standards of Practice: 1.4, 2.2, 2.3, 2.4, 2.5, 2.7, 4.1, and 5.3

Standard One: Responsibility and Accountability

The nurse is personally responsible and accountable for their nursing practice and conduct.

Indicators

1.4 The nurse practices competently.

Standard Two: Knowledge-Based Practice

The nurse continually acquires and applies knowledge and skills to provide competent, evidence-informed nursing care and service.

Indicators

2.2 The nurse uses appropriate information and resources that enhance client care and the achievement of desired client outcomes.

2.3 The nurse uses critical inquiry in collecting and interpreting data, planning, implementing and evaluating all aspects of their nursing practice.

2.4 The nurse exercises reasonable judgment and sets justifiable priorities in practice.

2.5 The nurse documents timely, accurate reports of data collection, interpretation, planning, implementation and evaluation of nursing practice.

2.7 The nurse applies nursing knowledge and skill in providing safe, competent, ethical care and service.

Standard Four: Service to the Public

The nurse has a duty to provide safe, competent and ethical nursing care and service in the best interest of the public.

Indicators

4.1 The nurse coordinates client care activities to promote continuity of *health services*.

Standard Five: Self-Regulation

The nurse fulfills the professional obligations related to self-regulation.

Indicators

- 5.3** The nurse follows policies relevant to the profession as described in CARNA standards, guidelines and position statements.

The Hearing Tribunal finds that the proven conduct breached the following provisions in the Documentation Standards for Regulated Members: 1.1 and 1.4(e)

Standard One: Nurses document the nursing care they provide accurately and in a timely, factual, complete and confidential manner.

Criteria:

The nurse must:

- 1.1** Record a complete account of nursing assessment of the client's needs, including:
- a. identified issues and concerns
 - b. assessment findings
 - c. diagnosis
 - d. plan of care
 - e. intervention(s) provided
 - f. evaluation of the client care outcomes
- 1.4** Record:
- e. ***contemporaneously***

The Hearing Tribunal finds that the proven conduct breached the following provisions in the 2017 Code of Ethics: A1, A7, G1, and G4.

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**.
7. When resources are not available to provide appropriate or safe care, nurses collaborate with others to adjust priorities and minimize harm. Nurses keep persons receiving care informed about potential and actual plans regarding the delivery of care. They inform employers about potential threats to the safety and quality of health care.

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 (LPNAPEI et al., 2014).

The Hearing Tribunal finds that the proven conduct relating to documentation and failure to respond to alerts demonstrates a lack of skill or judgment in the provision of professional services; and a failure by the Registrant to meet the Practice Standards, Code of Ethics, and Documentation Standards for Regulated Members, all of which is unprofessional conduct as defined by sections 1(1)(pp)(i) and (ii) of the HPA. The Documentation Standards for Regulated Members provide clear guidance regarding record keeping, and the Registrant's conduct was not in compliance. The Allegations refer to the Registrant's failure to respond to computer generated alerts that were intended to inform care providers at the facility of a potential change in [Patient 1's] health status. The breaches of the Practice Standards, Code of Ethics, and the Documentation Standards for Regulated Members are serious and constitute unprofessional conduct pursuant to section 1(1)(pp)(ii) of the HPA. The Registrant failed to meet the standards of the profession.

SUBMISSIONS ON SANCTION

The Hearing Tribunal heard submissions on the appropriate sanction.

Submissions by Conduct Counsel:

Conduct Counsel noted there was a joint proposal on sanction and reviewed the Joint Recommendation on Sanction (Exhibit #2). The primary aim is remediation. The Registrant failed to update the patient records regarding a plan for care, and failed to prioritize checking the alert system for updates. The course in time management and the course in documentation will be aimed at remediating the issues identified in the Allegations. Conduct Counsel further submitted that CARNA is seeking confirmation from the Registrant's current supervisor that he has been practising up to the required standards over the past six months. Typically, that type of confirmation is sought prospectively. In this situation, the Registrant has already practised under indirect remote supervision for over a year due to conditions imposed under section 65 of the HPA. A report from the Registrant's current supervisor following this period of supervision will confirm that the Registrant is practising to required standards and has maintained that up until the date of the hearing.

Conduct Counsel reviewed some of the factors in the decision of *Jaswal v. Newfoundland Medical Board* and how those factors applied to the present case.

1. The age and experience of the member: The Registrant is a nurse of long experience having practised for 32 years.
2. The previous character of the member: There are no previous complaints.

3. The age and mental condition of the offended patient: The patient was [age] years old with previous conditions including [health information redacted]. She was a vulnerable person.
4. The role of the registered nurse in acknowledging what occurred: The Registrant has demonstrated accountability and taken responsibility. A hearing is costly.
5. The impact on the offended patient: The patient's health declined, and she passed away. It is not the Complaints Director's position that the Registrant's conduct caused the outcome. The Registrant failed to document and check the alerts. While the result was catastrophic for the patient, the Complaints Director does not see the nexus between the Registrant's behaviour and the outcome. The care was in the hands of several professionals. The Registrant failed to update the care plan and follow up.
6. The need to promote specific and general deterrence: The principles of remediation as well as specific and general deterrence are met through the Joint Recommendation on Sanction.
7. The need to maintain public confidence: The Registrant has been subject to conditions imposed pursuant to section 65 of the HPA, and he has been subject to more than a year of indirect supervision of his nursing practice.

Submissions by the Labour Relations Officer for the Registrant:

The Labour Relations Officer for the Registrant submitted that she was in agreement with Conduct Counsel regarding the mitigating factors but also wanted to make a few additional remarks on behalf of the Registrant. The Registrant has been a registered nurse for more than 32 years, and never been the subject of an investigation by employers or CARNA. He has a clean and unblemished record. The Registrant prides himself on being an excellent nurse. He abides by the values of excellence, compassion and safety on every single shift. He became a nurse to improve quality of life of patients. It is not just a career for him. The Registrant has learned from the conduct and took responsibility for it. This conduct will not happen again.

Further Submissions by Conduct Counsel:

In response to a question from the Hearing Tribunal, Conduct Counsel confirmed that the Registrant had not completed the courses at the time of the hearing.

DECISION AND REASONS OF THE HEARING TRIBUNAL ON SANCTION

The Hearing Tribunal has carefully considered the joint submissions on sanction and the submissions of the parties. The Hearing Tribunal has considered the factors noted in *Jaswal v. Newfoundland Medical Board*. The Hearing Tribunal accepts the joint recommended sanction. The joint recommendations take into account the nature of the findings of the Hearing Tribunal. They also address the issues that brought this Registrant before the Hearing Tribunal. The Hearing Tribunal finds that this recommended sanction appropriately considers the factors in *Jaswal*. The Hearing Tribunal also considered the penalty in light of the principle that joint submissions should not be interfered with lightly.

The Registrant should take the comments in the written decision as well as the concerns expressed by the Hearing Tribunal with respect to his conduct as his reprimand. In addition, the Registrant should consider his experiences in dealing with this complaint before this Hearing

Tribunal and CARNA, as well as the joint submissions on sanction as a reminder of how important it is to practise in accordance with the Practice Standards and Code of Ethics.

The Hearing Tribunal understands that the penalty ordered should protect the public and enhance public confidence in the ability of the College to regulate nurses. This is achieved through a penalty that addresses specific deterrence, general deterrence and, where appropriate, rehabilitation and remediation. This penalty would serve to remind the profession that proper charting is a necessary obligation related directly to good patient care. To be remiss in recording accurately may result in disciplinary proceedings and, most importantly, compromises safe patient care, putting in jeopardy the well-being of those whom nurses are entrusted to serve. Similarly, the failure to respond to alerts that are generated to ensure that changes in a patient's status are noted compromises safe patient care. The penalty will assure the public that serious transgressions will be met with sanctions. The Registrant will be deterred from further unprofessional conduct by this penalty. The courses will reinforce high standards for his practice. The Registrant has already been practising under supervision pursuant to section 65 of the HPA. The requirement for a reference from his supervisor in these circumstances will promote safe patient care by ensuring that the Registrant is practising to required standards and has maintained that up until the date of the hearing.

ORDER OF THE HEARING TRIBUNAL

The Hearing Tribunal orders that:

I. SANCTION

1. The Registrant shall receive a reprimand for unprofessional conduct.
2. By no later than **January 31, 2022**, the Registrant shall provide proof, satisfactory to the Complaints Director, that the Registrant has successfully completed and passed the following course of study:
 - a. **Time Management for Nursing Practice (John Collins Consulting)**
 - b. **The Essentials of Nursing Documentation (CARNA Learning Module)**
3. By **October 31, 2021**, the Registrant shall provide to the Complaints Director an Employer Reference Form, completed by their RN Supervisor, that meets the following conditions:
 - a. The RN Supervisor has reviewed the Hearing Tribunal's decision;
 - b. The RN Supervisor supervised the Registrant between March 14, 2021, and September 14, 2021 (the "Reference Period");
 - c. The Registrant accumulated at least 600 practice hours during the Reference Period; and

- d. The Registrant's nursing practice met or exceeded the standards reasonably expected of an RN during the Reference Period.

(the "**Condition(s)**")

4. The Registrant will provide proof of completion of the above-noted Conditions to the Complaints Director via e-mail to procond@nurses.ab.ca.

(the "**Condition(s)**").

II. COMPLIANCE

5. For clarity and certainty, the Registrant is, in addition to what is set out in this Order, required to complete any and all requirements as have been, or may be, imposed from CARNA's Registration Department. **This Order does not supersede, or if complied with serve to satisfy, any such requirements from CARNA's Registration Department.**
6. Compliance with this Order shall be determined by the Complaints Director of CARNA. All decisions with respect to the Registrant's compliance with this Order will be in the sole discretion of the Complaints Director.
7. The Registrant will provide proof of completion of the above-noted Condition(s) by the dates set out therein, to the Complaints Director, via e-mail at procond@nurses.ab.ca or confidential fax to 780.453.0546. If the Complaints Director deems it appropriate, and for the sole purpose of permitting the Registrant to proceed toward compliance with this Order, the Complaints Director may in her sole discretion make other minor adjustments to the Order that are in keeping with this Hearing Tribunal Order, without varying the substance of the Order.
8. Upon written request by the Registrant, any timelines outlined in this Order may be extended at the unfettered discretion of the Complaints Director, acting reasonably.
9. Should the Registrant fail or be unable to comply with any of the requirements of this Order, or if any dispute arises regarding the implementation of this Order, the Complaints Director may exercise the authority under section 82(3) of the *HPA*, or the information may be treated as reasonable grounds under section 56 of the *HPA* and subject to a new complaint under Part 4 of the *HPA*.
10. The responsibility lies with the Registrant to comply with this Order. It is the responsibility of the Registrant to initiate communication with CARNA for any anticipated non-compliance and any request for an extension.

III. CONDITIONS

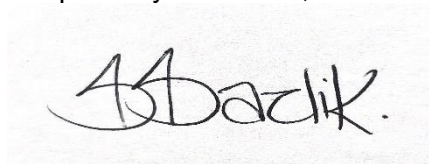
11. The Registrant confirms the following list sets out all the Registrant's employers and includes all employers even if the Registrant is under an undertaking to not work, is on sick leave or disability leave, or if the Registrant have not been called to do shifts, but could be called. Employment includes being engaged to provide professional services as a Registered Nurse on a full-time, part-time, casual basis as a paid or unpaid employee, consultant, contractor, or volunteer. The Registrant confirms the following employment:

Employer Name	Employer Address & Phone Number
[a long term care facility in Alberta]	[a long term care facility in Alberta contact information redacted]

12. The Registrant understands and acknowledges that it is the Registrant's professional responsibility to immediately inform CARNA of any changes to the Registrant's employers, and employment sites, including self-employment, for purposes of keeping the Registrar current and for purposes of notices under section 119 of the *HPA*.
13. The Registrar of CARNA will be requested to put the following condition against the Registrant's practice permit (current and/or future) and shall remain until the condition is satisfied:
 - a. **Course work required;** and
 - b. **Employer Reference(s) (practice report) required.**
14. Effective on September 14, 2021, or the date of this Order, if different from the date of the Hearing, notifications of the above condition shall be sent out to the Registrant's current employers (if any), the regulatory college for Registered Nurses in all Canadian provinces and territories, and other professional colleges with which the Registrant is also registered (if any).
15. Once the Registrant has complied with a condition listed above, it shall be removed. Once all the conditions have been removed, the Registrar will be requested to notify the regulatory colleges in the other Canadian jurisdictions.
16. This Order takes effect on **September 14, 2021**, and remains in effect pending the outcome of any appeal, unless a stay is granted pursuant to section 86 of the *HPA*.

This Decision is made in accordance with Sections 80, 82 and 83 of the *HPA*.

Respectfully submitted,



Bonnie Bazlik, Chairperson
On Behalf of the Hearing Tribunal

Date of Order: **September 14, 2021**