

COLLEGE AND ASSOCIATION OF REGISTERED NURSES OF ALBERTA

DECISION OF THE HEARING TRIBUNAL

RE: CONDUCT OF **ANSHU MEHRA**, R.N. REGISTRATION #**77,883**

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

MAY 4, 2021

INTRODUCTION

A hearing was held on May 4, 2021 by the Hearing Tribunal of the College and Association of Registered Nurses of Alberta (“CARNA”) by way of a video conference hearing to hear a complaint against Anshu Mehra, R.N. registration #77,883.

Those present at the hearing were:

a. Hearing Tribunal Members:

Jason Anuik, Chairperson
Terrie Tietz
Nancy Brook, Public Representative
David Rolfe, Public Representative

b. Independent Legal Counsel to the Hearing Tribunal:

Julie Gagnon

c. CARNA Representative:

Mick Wall, Conduct Counsel

d. Regulated Member Under Investigation:

Anshu Mehra (sometimes hereinafter referred to as “the Regulated Member”)

e. Regulated Member’s Labour Relations Officer:

Silvie Montier, for the purposes of a preliminary application only

f. Observers:

Jennifer Bullaj
Silvie Montier

PRELIMINARY MATTERS

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 opened the hearing and asked the parties if there were any objections to the composition of the Hearing Tribunal or its jurisdiction to proceed with the hearing. The Labour Relations Officer stated she had not been provided with the names of the Hearing Tribunal members in advance of the hearing and could not comment on the composition of the Hearing Tribunal.

Jurisdictional Issue

The Labour Relations Officer indicated she had a preliminary application regarding jurisdiction. She stated the Hearing Tribunal had no jurisdiction to proceed as the Regulated Member was a former member of CARNA and this hearing was an abuse of process. The Labour Relations Officer stated the Regulated Member had resigned and had provided a permanent undertaking to the Complaints Director not to practice. She noted the purpose of the hearing is to ensure the safety of the public and nursing skills of a nurse. The Regulated Member is no longer a nurse and as such, there is no issue of protection of the public.

Conduct Counsel advised he had not been provided with prior notice of the application but indicated there was jurisdiction under the HPA over a former member. Conduct Counsel noted the hearing has been scheduled since February 5, 2021.

The Labour Relations Officer was asked by the Hearing Tribunal to confirm in what capacity she was representing the Regulated Member. She advised she had instructions to explain to the Hearing Tribunal that the Regulated Member had resigned and signed a permanent undertaking and to make an application that there was no need for a hearing, since the Regulated Member has provided everything that CARNA has asked for.

In Response to a question from the Hearing Tribunal as to when the Regulated Member had resigned, the Labour Relations Officer advised there was a letter from the Registrar dated March 17, 2021, acknowledging the Regulated Member's resignation.

Decision of the Hearing Tribunal on the Jurisdictional Issue

The Hearing Tribunal adjourned to deliberate on the preliminary issue regarding jurisdiction. The Hearing Tribunal noted the Labour Relations Officer did not provide any information or case law to support the position that there was no jurisdiction or that there was an abuse of process.

As noted by Conduct Counsel, the HPA indicates a college continues to have jurisdiction over a Regulated Member even if the Regulated Member has ceased to be registered with a college. The HPA sections 54(2) and (3) state:

54(2) A complaint under subsection (1) is not affected by the person about whom the complaint is made ceasing to be a regulated member before the proceedings with respect to the complaint are completed.

(3) Despite subsection (1), a complaint cannot be made about a former member if 2 years have elapsed since the person became a former member.

The Hearing Tribunal has jurisdiction even though the Regulated Member is a former member and even though he has provided his resignation. No support was provided for the position that the Hearing Tribunal has no jurisdiction to proceed. There was also no caselaw or evidence provided to support the submissions regarding abuse of process. The Hearing Tribunal determined that it had the jurisdiction to proceed.

Further preliminary issue – Role of the Labour Relations Officer

The role of the Labour Relations Officer was then clarified going forward. The Labour Relations Officer noted she did not have instructions to represent the Regulated Member and acknowledged her role would be as a member of the public.

Preliminary Application – Proceeding in the Absence of the Investigated Member

Conduct Counsel provided the Notice to Attend (Exhibit #1) and an Affidavit regarding service of the Notice to Attend on the Regulated Member (Exhibit #2). Conduct Counsel noted section 79(6) of the HPA was met and the hearing should proceed.

Decision of the Hearing Tribunal on the Application to Proceed in the Absence of the Investigated Member

Section 79(6) of the HPA states:

(6) Despite section 72(1), if the investigated person does not appear at a hearing and there is proof that the investigated person has been given a notice to attend the hearing tribunal may:

- (a) proceed with the hearing in the absence of the investigated person, and
- (b) act or decide on the matter being heard in the absence of the investigated person.

The Hearing Tribunal notes the requirements of section 79(6) of the HPA have been met. The Affidavit (Exhibit #2) indicates that a letter confirming referral to a hearing and attaching the Notice to Attend was served on the Regulated Member by email and registered mail. The Affidavit (Exhibit #2) also includes an email from the Regulated Member acknowledging receipt of the CARNA communications and confirmation of delivery of the registered mail.

In addition, it is clear from the submissions of the Labour Relations Officer that the Regulated Member was aware of the hearing scheduled to commence on May 4, 2021 and that the Regulated Member chose not to attend the hearing.

The Hearing Tribunal found this was an appropriate case to proceed in the absence of the Regulated Member.

ALLEGATION

The allegation in the Notice to Attend is as follows:

1. On or about March 25, 2019, you were convicted of criminal behavior that harms the integrity of the profession of registered nursing when you were found guilty of sexual assault pursuant to section 271 of the *Criminal Code*, RSC 1985, c C-46.

EXHIBITS

The following documents were entered as Exhibits:

Exhibit #1 – Notice to Attend a Hearing by the Hearing Tribunal of the College and Association of Registered Nurses of Alberta

Exhibit #2 - Affidavit of Ms. Marina Skoreiko sworn May 3, 2021 regarding service of documents

Exhibit #3 – Affidavit of Ms. Marina Skoreiko sworn May 3, 2021 regarding court documents

Exhibit #4 – Sopinka, Lederman & Bryant - The Law of Evidence in Canada, 5th ed. at Ch 18 (Judicial Documents)

Exhibit #5 – Sopinka, Lederman & Bryant - The Law of Evidence in Canada, 5th ed. at Ch 6 (Hearsay)

Exhibit #6 – *Toronto (City) v. CUPE Local 79* (2003 SCC 63)

Exhibit #7 – *Cst. Ioan Floria v. Toronto Police Service* (2020 ONCPC 6)

Exhibit #8 – *College of Physicians and Surgeons of Alberta v. Ali* (2017 ABCA 442)

Exhibit #9 – *Erdmann v. Complaints Inquiry Committee* (2013 ABCA 147)

Exhibit #10 – James T. Casey - Regulation of the Professions in Canada (Online ed., continuously updated) at Ch. 13.4 Private Conduct

Exhibit #11 – *Strom v. Saskatchewan Registered Nurses' Association* (2020 SKCA 112)

Exhibit #12 – Excerpts from the *Health Professions Act*, RSA 2000, c. H-7

Exhibit #13 – *Jaswal v. Newfoundland Medical Board*, 1996 CanLII 11630 (NL SC)

Exhibit #14 – CARNA Hearing Tribunal Decision dated October 4, 2012

Exhibit #15 – CARNA Hearing Tribunal Decision dated December 2013

Exhibit #16 – CARNA Hearing Tribunal Decision dated November 2018

Exhibit #17 – *College of Nurses of Ontario v Amponsa*, 2018 CanLII 142718 (ON CNO)

Exhibit #18 – *College of Nurses of Ontario v Hough*, 2016 CanLII 152838 (ON CNO)

Exhibit #19 – *College of Nurses of Ontario v Huff*, 2012 CanLII 98103 (ON CNO)

Exhibit #20 – Chronology of Communication AM - Redacted

Exhibit #21 – Estimate Statement of Costs

Exhibit #22 – *Facey v Bantrel Management Services Co.*, 2020 ABQB 719

Exhibit #23 – *Facey v Bantrel Management Services Co.*, 2019 AHRC 4

Exhibit #24 – James T. Casey - Regulation of the Professions in Canada (Online ed., continuously updated) at Ch. 14.3 Costs

SUBMISSIONS ON THE ALLEGATION

Submissions by Conduct Counsel:

Conduct Counsel made submissions on the allegation. Conduct Counsel submitted the conduct constitutes unprofessional conduct under sections 1(1)(pp)(xii) of the HPA as conduct that harms the integrity of the profession.

Conduct Counsel presented further information through an Affidavit enclosing court documents from the criminal proceedings involving the Regulated Member (Exhibit #3). Conduct Counsel acknowledged such documents are hearsay, however, the documents are reliable as they are court documents. Conduct counsel also referenced section 26 of the *Alberta Evidence Act* and noted under the HPA, the Hearing Tribunal is not bound by the rules of law respecting evidence in judicial hearings.

Conduct Counsel submitted the information in the Affidavit (Exhibit #3) should go in for the truth of its contents. Conduct Counsel noted there was no need to call the victim in this hearing as she gave evidence under oath and was subjected to cross examination in the criminal proceedings. The issue before the Court was the same as the issue before this Hearing Tribunal. Conduct Counsel submitted where there is a criminal conviction, the essential facts of the conviction cannot be questioned later by a Hearing Tribunal (Exhibit #6 - *Toronto City v CUPE, Local 79*). Conduct Counsel noted in Exhibit #7 *Cst. Ioan Floria v Toronto Police Service*, transcript evidence was used in a similar type hearing. Conduct Counsel also referred the Hearing Tribunal to Exhibits #4 and 5, excerpts from *Sopinka, Lederman and Bryant*.

Conduct Counsel stated private conduct can amount to conduct that harms the profession. He noted there must be a sufficient nexus between the conduct and the profession. Conduct Counsel referred the Hearing Tribunal to the cases at Exhibit #8 (*College of Physicians and Surgeons of Alberta v Ali*) and Exhibit #9 (*Erdmann v Complaints Inquiry Committee*) and Exhibit #11 (*Strom v. Saskatchewan Registered Nurses' Association*). Factors to consider include the nature of profession, the relationship between the misconduct and the character needed for the profession, whether the member identified themselves as a member of the profession and whether the public would say that the conduct harms the integrity of profession.

Conduct Counsel referred to the reasons for judgment in the criminal matter (Exhibit #3). The Regulated Member attended at the dentist. He was getting his teeth cleaned by a dental hygienist. He was lying supine in the chair and initiated discussions with the dental hygienist of a personal and sexual nature. He reached behind himself and grabbed her inner thigh and stomach. The dental hygienist's evidence was accepted, and the Court found the Regulated Member's actions were not consensual and constituted sexual assault. The Regulated Member's evidence that she consented to the touching and that he was reaching to tickle her at her request was rejected.

A victim impact statement was provided as part of the criminal proceedings, in which the dental hygienist indicated she suffered from anxiety and had a reduced workload. She was now nervous when dealing with clients.

Conduct Counsel noted the indicia of behaviour that brings it into the profession in this case, was the sexual assault in a health care setting. Although the Regulated Member was not acting as a nurse, the conduct occurred in a health care setting. The Regulated Member referenced nursing in his defence. In giving evidence in court, the Regulated Member referenced the fact that he was a nurse and gave evidence about his practice to have another healthcare provider present for certain types of procedures with female patients. There is a sufficient nexus between the conduct and the profession, and the conduct clearly harms the integrity of the profession.

DECISION AND REASONS OF THE HEARING TRIBUNAL ON THE ALLEGATION

The Hearing Tribunal reviewed the exhibits and considered the submissions made by Conduct Counsel.

The Hearing Tribunal considered the definition of unprofessional conduct under section (1)(1)(pp) of the HPA. The Hearing Tribunal finds the Allegation is proven and the Regulated Member's conduct constitutes unprofessional conduct under section (1)(1)(pp) of the Health Professions Act, as follows:

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

- (xii) conduct that harms the integrity of the regulated profession.

The Hearing Tribunal finds the alleged conduct is proven on a balance of probabilities. It is clear from the court documents provided in Exhibit #3 that on or about March 25, 2019, the Regulated Member was convicted of sexual assault pursuant to section 271 of the *Criminal Code*, RSC 1985, c C-46. Such behavior harms the integrity of the profession of registered nursing.

The Hearing Tribunal considered the evidence presented in Exhibit #3. The Hearing Tribunal placed a high degree of weight on the transcript evidence of the dental hygienist. The Hearing Tribunal also considered the reasons for judgment of the Court. The Court found the Regulated Member to not be credible, in part given his evidence as to his background as a healthcare provider and that he was very careful in his own dealings with patients of the opposite sex and had a female caregiver present whenever there was a sensitive evaluation taking place. The Court found that the Regulated Member had touched the dental hygienist without her consent in the manner she described by pinching and poking her stomach over her clothing and by squeezing where her thigh meets her hip, over her clothing. The Court found it was significant that the touching occurred after the Regulated Member told the dental hygienist that she was pretty and after he said he wanted to see sex videos on her phone and asked if she was ticklish. (Exhibit #3, Exhibit D to the Affidavit)

Regulated Members of the nursing profession are held to a high standard. Registered Nurses hold a strong position of trust. Sexual assault by a Regulated Member is conduct that clearly harms the integrity of the regulated profession of nursing. Even where the conduct is in the member's private life, where it involves sexual assault, such conduct can harm the integrity of the profession and it did so here.

The Hearing Tribunal found it serious that the Regulated Member's conduct, although in his personal life, occurred in a health care setting. The Regulated Member attempted to use his position as a Registered Nurse in his defence in the criminal case. The Hearing Tribunal found this fact made it even more clear that a nexus between the personal conduct and his professional responsibility was established and that the personal conduct directly harmed the integrity of the profession.

SUBMISSIONS ON SANCTION

The Hearing Tribunal heard submissions on the appropriate sanction from Conduct Counsel.

Submissions by Conduct Counsel:

Conduct Counsel made submissions regarding sanction. Conduct Counsel referenced the factors in the decision of *Jaswal v. Newfoundland Medical Board* (Exhibit #13). Conduct Counsel noted that while the Regulated Member had resigned his practice permit with CARNA, he was still shown as having an active practice permit with CARNA. Practice permits are renewed on an annual basis, which may account for why the practice permit is still shown as active.

Conduct Counsel stated the Complaints Director was seeking cancellation of the Regulated Member's registration.

Conduct Counsel noted the Regulated Member had three prior Hearing Tribunal findings (Exhibits #14, 15 and 16). The conduct in the prior matters was unrelated to the current allegation. The first two cases related to documentation and practice issues. The third case related to the removal of a G-J tube by the Regulated Member using an unsterile object found on his way to work.

Conduct Counsel also referenced cases from the College of Nurses of Ontario (Exhibits #17, 18 and 19) as cases supporting a cancellation of registration for similar conduct. Conduct Counsel noted the case of *College of Nurses of Ontario v Huff* was the most relevant.

Conduct Counsel made submissions regarding costs. The Complaints Director was seeking costs in the range of \$10,000 which would represent close to full indemnity of costs. Conduct Counsel noted that this was a relatively straight forward matter. Conduct Counsel has been in communications with the Regulated Member on how to proceed since late November. As of the morning of the hearing, the Regulated Member still had not admitted to the allegations and as such, Conduct Counsel had to prepare to proceed.

Conduct Counsel directed the Hearing Tribunal to an April 15, 2021 email (Exhibit #20) where Conduct Counsel reiterated the need to know the Regulated Member's position and advising that CARNA would seek costs. The Regulated Member has not cooperated and has not been accountable. The hearing today was necessary and was held at a significant cost of membership.

Conduct Counsel presented an Estimated Statement of Costs and cases and supporting information on costs. (Exhibits #21, 22, 23 and 24)

Conduct Counsel noted an award of costs will encourage proper conduct by parties before a Hearing Tribunal. Regulated Members must take their obligations to respond to CARNA seriously. The Regulated Member did not appear today or participate in the process.

DECISION AND REASONS OF THE HEARING TRIBUNAL ON SANCTION

The Hearing Tribunal considered the exhibits and submissions on sanction. The Hearing Tribunal considered the factors in the decision of *Jaswal v. Newfoundland Medical Board* and how those factors applied to the present case.

1. The nature and gravity of the proven: the conduct is extremely serious. Registered Nurses are held in a very high position of trust. The Regulated Member engaged in conduct that undermined the integrity of the profession.
2. The age and experience of the member: The Regulated Member has been in practice for many years. However, regardless of the experience of a member, such conduct is completely unacceptable.
3. The previous character of the member: The Regulated Member has three prior findings of unprofessional conduct.
4. The number of times the offence was proven to have occurred: There is one instance of conduct.
5. The role of the registered nurse in acknowledging what occurred: The Regulated Member did not participate in the hearing or facilitate the admission of the allegation or of exhibits.
6. Whether the member has already suffered other serious financial or other penalties: There is no information with respect to this factor.
7. The presence or absence of any mitigating factors: There is no information with respect to this factor.
8. The need to promote specific and general deterrence: This is a particularly important factor. The Hearing Tribunal wishes to send a strong and a clear message to the profession that sexual assault, even in the context of personal conduct will not be tolerated.
9. The need to maintain public confidence: This is another significant factor. The Hearing Tribunal recognizes that there must be a very significant sanction associated with such conduct.
10. Degree to which offensive conduct is outside the range of permitted conduct: The conduct was clearly outside of the range of permitted conduct.

The Hearing Tribunal noted the decision in *College of Nurses of Ontario v Huff* (Exhibit #19). The member was convicted of a sexual assault and gross indecency. He did not cooperate or appear before the discipline tribunal. The discipline tribunal made a finding of unprofessional conduct and cancelled the member's certificate of registration with immediate effect.

The Hearing Tribunal also considered that this was the fourth finding of unprofessional conduct against the Regulated Member. Although the conduct in this case was unrelated to the previous

findings, the Hearing Tribunal noted an escalation in the level of concern and seriousness of the conduct with the decision in 2018 being of significant concern. The conduct in this case is the most serious and requires a significant sanction. During its deliberations and upon reviewing the documents provided, it was noted that two of the Hearing Tribunal members were involved in the 2018 case, however neither had recognized the name of the Regulated Member at the outset of the hearing or realized that this was the same Regulated Member until seeing the 2018 decision.

The Hearing Tribunal was also concerned that given there were now four decisions with findings of unprofessional conduct and the Regulated Member had failed to attend the hearing, this raised issues about CARNA's ability to govern the member. The Hearing Tribunal also noted the Regulated Member has chosen to try to resign his registration with CARNA following the criminal conviction.

A sexual assault is at the most serious end of the spectrum of unprofessional conduct. Although not conduct against a patient, the Hearing Tribunal found the conduct to be extremely serious. The Hearing Tribunal was particularly concerned that the conduct occurred in a health care setting and that the Regulated Member attempted to use his profession as a Registered Nurse in his defense at the criminal trial.

The Hearing Tribunal finds this is an appropriate case to cancel the registration and practice permit of the Regulated Member. The cases presented and a consideration of the *Jaswal* factors support this is an appropriate sanction.

The Hearing Tribunal considered the issue of the costs of the investigation and hearing. The Hearing Tribunal wishes to send a strong message that regulated members must respond to the College during proceedings. Regulated members are required to attend hearings before a Hearing Tribunal. Regulated members must take their obligations to respond to their College seriously.

The Regulated Member did not appear or participate in the hearing process. This made it necessary for Conduct Counsel to prepare for a full hearing. While a regulated member is entitled to fully defend themselves in a hearing against allegations of unprofessional conduct, the Regulated Member in this did not cooperate or participate in any fashion. He did nothing to either facilitate admissions of fact or agreed exhibits. Costs had to be incurred to bring this hearing before a Hearing Tribunal. It should not be the responsibility of the membership to bear the costs of the investigation and hearing in this case. The Hearing Tribunal considered the Estimated Statement of Costs (Exhibit #21) and finds it is appropriate for the Regulated Member to pay the full costs of the investigation and hearing, to a maximum of \$10,000.

ORDER OF THE HEARING TRIBUNAL

The Hearing Tribunal orders:

1. The Regulated Member's registration and practice permit are cancelled, effective on the date of the Hearing Tribunal's decision.
2. The Regulated Member shall pay the costs of the investigation and hearing, to a maximum of \$10,000.00 payable within 6 months of the date of the written decision of the Hearing Tribunal, or such further time as may be agreed to by the Complaints Director.

COMPLIANCE

3. For clarity and certainty, the Regulated Member 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.
4. This Order remains in effect pending the outcome of any appeal, unless a stay is granted pursuant to section 86 of the HPA.

CONDITIONS

5. The Registrar of CARNA will be requested to put the following condition against the Regulated Member's practice permit (current and/or future) and shall remain until the condition is satisfied:
 - a. Shall pay costs to CARNA; and
 - b. Cancelled.

The Hearing Tribunal considered section 80(2) of the HPA. Although the conduct involves criminal conduct, given that there has been a criminal conviction, there is no need to send the decision to the Minister of Justice and Solicitor General.

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

Respectfully submitted,



Jason Anuik, Chairperson
On Behalf of the Hearing Tribunal

Date of Order: **May 4, 2021**