

## Investigation Committee Notice of Dismissal

TO: Jarrett Power, Angela Jenkins and Council of the College of Registered Nurses and Midwives of Prince Edward Island:

This is to inform you that the Investigation Committee of the College of Registered Nurses of Prince Edward Island has considered the Investigation Report dated October 12, 2022, in relation to the complaint made by Angela Jenkins, NP, against Jarrett Power, RN, registration number 006536, as required by section 52 of the *Regulated Health Professions Act (RHPA)*.

Section 52 requires the Investigation Committee to choose one of four options:

- (a) dismiss the complaint, if in the opinion of the investigation committee
  - (i) the allegations are frivolous, vexatious or without merit, or
  - (ii) there is insufficient evidence to support the allegations;
- (a.1) refer the complaint to a mediator for mediation, if
  - (i) the investigation committee is satisfied that the referral is appropriate in the circumstances and not contrary to the public interest, and
  - (ii) the complainant and the respondent agree to participate in mediation;
- (b) make any order that the hearing committee is authorized to make under subsection 58(2), if the respondent consents to the order; or
- (c) request that the person or persons who appointed the investigation committee appoint a hearing committee and refer the complaint to the hearing committee for a hearing.

The members of the Committee are the same as when the decision was made to investigate the complaint: Meghan MacDonald, RN (Chair), Pam Berrigan, RN (Member) and Gerry McPhee (Public Representative).

The complaint submitted by Angela Jenkins described eleven incidents which the complaint says occurred at Beach Grove Home from December 2020 to January 2022. The Investigation Report 2022-003, dated October 12, 2022, condenses these incidents into six allegations, combining several similar allegations. For the purposes of this report, the Committee agrees with the Investigator's grouping of similar issues, and accepts that there are really six allegations:

1. The first allegation is that Jarrett Power lacked critical nursing knowledge and skills.
2. The second allegation is that Jarrett Power lacked critical thinking ability.

3. The third allegation is that Jarrett Power lacked insight of the harm to residents that could result from his errors.
4. The fourth allegation is that Jarrett Power failed on multiple occasions, to communicate resident health issues to the Complainant in a complete, timely, and/or clear manner.
5. The fifth allegation is that Jarrett Power, on multiple occasions made treatment and diagnosis suggestions that were not in the scope of RN practice.
6. The sixth allegation is that Jarrett Power made a referral that was not in the scope of RN practice.

The Committee recalls that in his written response to the complaint dated May 25, 2022, Jarrett Power, the Respondent, acknowledged that he had made mistakes in his practice, consistent with those identified in the original complaint. He expressed willingness to participate in any assistance as recommended by the Committee, and appears from the Investigation Report to have been a willing participant in such a process.

After consideration of the very thorough, 23-page Investigation Report written by Investigator Rosemary White, and discussion amongst Committee members, the Committee has decided to dismiss the complaint in its entirety under section 52(1)(a)(i) of the RHPA, because the allegations are without merit.

This conclusion requires some explanation because the events described in the complaint, for the most part, appear to have taken place and, in fact, the Respondent admits this. But every professional is aware that mistakes happen in the busy and high-pressure environment where nursing takes place, and the entire health care industry would grind to a halt if every mistake amounted to professional misconduct, and very few professional nurses would be able to continue in practice.

In reviewing the Investigation Report, the Committee was aware that there must be evidence of professional misconduct or incompetence, as those terms are explained in section 57 of the RHPA, for allegations in a complaint to be referred to mediation, dealt with through orders on consent, or be referred to a hearing, under section 52. It is particularly significant to the Committee's decision that the Committee has express authority in section 57(1) of the RHPA to decide that the conduct of a member was not related to the member's suitability to practice nursing, when considering if misconduct occurred:

- 57 (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;

Although considering that section from the opposite perspective is a little awkward, the Committee has concluded that the circumstances under which the events described in the complaint occurred seem to have been part of a young nurse's practical education and for that reason it is the Committee's view that any violations of the Act, regulations, standards, code, etc. that occurred do not relate to Jarrett Powers' suitability to practice (we note that section 57 refers to investigation committees expressly, which gives us confidence that our assessment, at the investigation stage of the proceeding, is correct).

In relation to the first and second allegations, multiple health care professionals who had knowledge of events support that Mr. Power has grown in his practice in terms of his nursing knowledge and skills throughout the timeline of the complaint. The Committee does not feel that there is sufficient evidence to conclude either professional misconduct has occurred or that Jarrett Power is incompetent in his practice in relation to his critical nursing knowledge, nursing skills, and/or critical thinking ability, based on the information contained in the Investigation Report.

Note is made that "incompetence" is described in section 57(2) of the RHPA to be an act or omission that demonstrates a lack of knowledge, skill or judgment, but that description is obviously too broad because it could not have been intended that every mistake would be incompetence. It seems appropriate to qualify that language in the same manner as in section 57(1), that is, by allowing this Committee to decide if the errors relate to Mr. Power's suitability to practice nursing. We have decided that they do not.

In relation to the third allegation, the Committee found that Jarrett Power did acknowledge his mistakes. There is no evidence that he tried to hide any mistakes or to blame them on others. He took responsibility and ownership for these mistakes, and ultimately, no one was harmed as a result of any of his actions. Upon discovery of his mistake regarding the blood sampling tube, he accepted ownership of the mistake and notified the Complainant, indicating that he understood the importance of this error and showing insight as to potential implications of his error. The Committee finds no

evidence to support professional misconduct or incompetence in relation to this allegation.

With respect to the fourth allegation, the Committee finds the interpersonal relationship between Jarrett Power and Angela Jenkins to be the most significant factor to consider in evaluating Mr. Powers' conduct. Not only did Jarrett Power state in an interview with the Investigator that he was intimidated by Angela Jenkins and would often become flustered when interacting with her, other staff (potential witnesses) had also noted harsh treatment by Angela Jenkins to Jarrett Power. In light of this, it is highly unlikely that a Hearing Committee would be able to conclude that Mr. Power was guilty of misconduct or incompetence if a hearing were to be held.

Additionally, as mentioned earlier, Jarrett Power came to the position at Beach Grove with beginner assessment and critical thinking skills. It is not abnormal for a new nurse to be nervous or uncomfortable performing "new" assessments, such as after a fall, and due to chronic short staffing and the sheer volume of clients with minimal RN's availability, and a more experienced nurse to rely on to assist with unfamiliar situations is not always available in present times. While there may have been inconsistencies between what was reported by Mr. Power to Angela Jenkins and what was documented, there is no evidence to support that any harm was done as a result of these inconsistencies, and as such we find the evidence is lacking to support professional misconduct or incompetence.

With respect to the fifth allegation, the Committee notes that part of the learning process as a new graduate is learning what to anticipate as well as learning how to communicate with other practitioners. Although the ordering of medication is not in the scope of the General Practice RN, recommending that a medication dose may need to be adjusted based on clinical assessment findings is part of the Nursing Process and also demonstrates critical thinking on behalf of the RN. Related to this allegation, the Committee is of the view that a finding of professional misconduct or incompetence is not likely.

In relation to the sixth and final allegation, the evidence that appears to be available as found in the Investigation Report is that a referral to outside sources is a "gray area". Without a policy to specify who can and cannot make a referral, the Committee finds it is likely impossible to determine fault, and as such cannot conclude that the question of whether professional misconduct or incompetence occurred should proceed further in the discipline process.

The Committee has carefully considered the Complaint, the Response and the Investigation Report, and has come to the conclusion that though Jarrett Power has made mistakes in his nursing practice, these mistakes are not consistent with

professional misconduct or incompetence as defined in the RHPA. As a result, the complaint cannot proceed, and is dismissed.

Having made its decision under section 52, the Committee has decided to comment on several factors involved in this complaint, to provide some clarity and insight with respect to the decision.

Jarret Power was granted registration as a RN in October 2020, and was hired as a RN Supervisor in that same month. It appears from the Investigation Report that Jarrett Power was expected in this position to have the knowledge and skills of a RN Supervisor (which historically is a RN with at least 2 years experience) when in reality, he had the knowledge and skills of a new graduate. While it appears that he knowingly accepted this position, he was apparently hired into a position that he was not readily equipped for, in terms of experience, knowledge or skills. There is also evidence in the Report of chronic staffing issues, lack of consistency in management, and inconsistent mentorship to consider in relation to this complaint, all of which support the view that a guilty finding against this nurse would be unlikely at a hearing.

Numerous witnesses in the Investigation Report noted that his critical thinking ability has grown with experience, and there has been improvement in his skills and growth in his knowledge base. This growth is part of the process of learning as a new graduate. It is perhaps unwise to involve the professional discipline process in the first experiences of a skill/situation (e.g. pronouncing a death, emergency situations), as these are experiences that are unpredictable and happen in real time, and simulations do not adequately prepare one for the real life experience – nurses learn by doing.

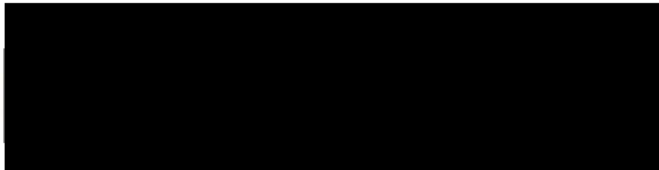
The Committee also wants to make note of the difficult working relationship that seems to have existed between Angela Jenkins and Jarrett Power, and the Investigation Report provided a perspective that the written complaint and response did not make apparent. It was stated by Jarrett Power to the Investigator that he found Angela Jenkins to be intimidating, and this was confirmed by other witnesses in the Investigation Report, and caused the Committee to consider the complaint carefully. One effect of the decision to dismiss the complaint now is that the Complainant will not be asked to explain her actions and decisions at relevant times. Certain comments attributed to her by others, and evidence of lack of support by her, would be concerning, if true. These circumstances caused the Committee to view the complaint in a different light than was the case when the decision was made to investigate.

If it is not clear from what has been said, the Committee would like to emphasize that this complaint was not taken lightly, and has been examined thoroughly. We are confident in our decision and have considered the true meaning of professional misconduct and incompetence as per the definitions outlined in the RHPA and feel that

neither has occurred in this case, and could not be proved if a hearing was held. Additionally, in the interest of public safety, we feel that the nursing practice of Jarrett Power poses no risk to the general public at this time, based on the information in the Investigation Report.

Please TAKE NOTICE that the Complainant, Angela Jenkins has the right to appeal this dismissal to the Supreme Court of Prince Edward Island under subsection 59(1) of the RHPA, within 30 days of being served with this document, if she is dissatisfied with the decision.

Dated this 22<sup>nd</sup> day of November, 2022, at Charlottetown, PEI



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Meghan MacDonald, Chair of the Investigation Committee