

**CRNPEI Investigation Committee
Decision – Section 52, RHPA
Complaint No. PE-2017-011
Regarding Member: Catherine MacIsaac, Member
Registration Number 004051**

This is a decision of the Investigation Committee of the College of Registered Nurses of Prince Edward Island (“CRNPEI”) in Complaint Number PE-2017-011 pertaining to Registered Nurse Catherine MacIsaac (the “Respondent”), made under section 52(1) of the *Regulated Health Professions Act* (the “RHPA”).

The Investigation Committee met on October 2, 2018 to consider the investigation report dated April 23, 2018 pertaining to a complaint against Catherine MacIsaac, member registration number 004051. The complaint was made and the investigation report was completed while the former *Registered Nurses Act* and its Professional Conduct Review Regulations were the law, but that legislation was repealed and replaced by the *Regulated Health Professions Act* on July 4, 2018. Section 99(3) of that Act applies here because, on the date of the change, no hearing had yet been scheduled:

- 99 (3) Where, under another Act, a matter was pending before a college immediately before the day the college was continued under this Act, and was not set for a hearing to commence within 60 days of
- (a) the coming into force of this Act; or
 - (b) the designation of the college’s health profession as a regulated health profession under clause 2(1)(a),
- whichever is the later, the matter shall be referred as a complaint to a hearing committee appointed under subsection 51(1) of this Act, and the matter shall be concluded under this Act.

Unfortunately, section 99(3) directs the complaint to be sent to a hearing committee, but that is a problem because no one has yet made a decision that a hearing is needed. As a result, this Committee has decided to first consider the investigation report under section 52 of the RHPA, before referring the complaint to a hearing committee, if that is necessary (see section 52 below).

The Prince Edward Island *Interpretation Act* gives guidance about changes in legislation, and permits us to adapt the process in the RHPA to the circumstances of this complaint (see sections 32 and 33 of the *Interpretation Act* below). We also conclude that reviewing this complaint before it proceeds to a hearing is fair to the Respondent: both the *Registered Nurses Act* and the RHPA require a complaint to be reviewed by an investigation panel or committee, and at that stage, part or all of a complaint can be dismissed. If the complaint was sent straight to a hearing without it first being considered under section 52, the member would lose the potential benefit of having two groups consider the merits of the complaint.

As well, having the complaint considered under section 52 of the RHPA allows legal counsel to

be appointed to adduce evidence under section 52(4)(c). If the complaint is sent straight to a hearing, because of section 99(3), there is no direction in the Act about who will prepare and present the case at the hearing. We also conclude that section 99(3) is not correct because it refers to “a hearing committee appointed under subsection 51(1)”, but section 51(1) does not even refer to a hearing committee at all.

This Committee relies on the following sections of the *Interpretation Act* in deciding that it may exercise the authority in section 52 of the RHPA:

- 32 Where an enactment is repealed in whole or in part, whether or not another enactment is substituted for it, the repeal does not
- ...
- (c) affect any right, privilege, obligation or liability acquired, accrued, accruing or incurred under the enactment so repealed;
- ...
- and subject to subsection 33(1), an investigation, proceeding or remedy as described in clause (e) may be instituted, continued or enforced and the penalty, forfeiture or punishment imposed as if the enactment had not been repealed.
- 33 (1) Where an enactment (in this section called the “former enactment”) is repealed and another enactment (in this section called the “new enactment”) is substituted therefor,
- ...
- (c) the procedure established by the new enactment shall be followed as far as it can be adapted thereto
- ...
- (ii) in the enforcement of rights existing or accruing under the former enactment,

This Committee consists of three persons - two registered nurses and a public representative - Jo-Ann MacDonald RN (chair and CRNPEI member), Susan Clory RN (CRNPEI member), and Richard Collins (Public Representative). Doug Drysdale acted as Legal Counsel and Advisor for the Investigation Committee. The Committee received guidance from Mr. Drysdale, and then met without him to consider the investigation report and make our decision.

The options available to an Investigation Committee after an investigation report has been reviewed are explained by section 52 of the *Regulated Health Professions Act* which states that the Committee shall do one of the following:

- (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;
- (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

In the meeting, Committee members reviewed the complaint, the nurse respondent's response to the complaint and the investigation report.

The Committee has decided to exercise the option in section 52(1)(c) of the RHPA to request that Council appoint a hearing committee, and to refer the complaint to that hearing committee for a hearing.

The RHPA directs us, in section 52(4), as follows:

- (4) Where an investigation committee refers a complaint to the hearing committee under clause (1)(c), the investigation committee
 - (a) shall serve written notice of the referral on the complainant, the respondent and the council;
 - (b) shall provide the hearing committee with a copy of the complaint and any response to the complaint submitted under subsection 38(2); and
 - (c) may appoint legal counsel to adduce evidence at the hearing.

This decision is intended to be the 'written notice of the referral' required by section 52(4)(a). It is perhaps more detailed than similar notices will be in future because this case began under one statute and is being completed under another. The RHPA does not say what the written notice should include, but this Committee believes that it should include some guidance for the person who will be presenting evidence at the hearing.

The Committee has decided to review the allegations contained in the complaint according to the law as it was at the time the events occurred; that is, the *Registered Nurses Act* and the Professional Conduct Review Regulations. The member's conduct was subject to those laws as far as determining the type of conduct to be reviewed is concerned, and the Committee believes that we must apply these laws now, rather than the types of conduct described in the RHPA, although we will follow the procedure set out in the RHPA in doing so. This is consistent with the *Interpretation Act*, and is fair to the Respondent.

There were five types of bad nursing conduct described in the *Registered Nurses Act*:

- 25 Any person may file with the Executive Director a written complaint alleging professional misconduct, conduct unbecoming the profession of nursing, incompetence, incapability or lack of fitness to practise by a member, but the complaint need not refer specifically to any of these phrases.

Only one of those types of conduct is defined. Professional misconduct is defined in section 1 of the *Registered Nurses Act*, and makes a contravention of any code of ethics or set of professional standards of practice examples of professional misconduct. The *Canadian Nurses Association Code of Ethics for Registered Nurses (2008)* and *The Association of Registered Nurses of Prince Edward Island Standards for Nursing Practice (2016)* are the documents which applied to nursing

practice in Prince Edward Island at the time of the incidents which have been complained about here.

Another serious factor in this case is that the complaint against Catherine MacIsaac described incidents which occurred, allegedly, while Ms. MacIsaac's nursing license was still subject to conditions which had been imposed after a previous professional conduct review panel had found her guilty of similar conduct. This is what the complainant, Vicki Foley, wrote in the complaint:

1. The drug seeking behavior occurred at work and involved multiple staff people;
2. The misconduct appears to have gone on for an extended period of time, much longer than was identified in the first complaint; and
3. Catherine's nursing license was subject to conditions pertaining to drug use at the time of these events.

The Committee noted that the allegation of misconduct described in the complaint dated November 8, 2017 became known to Vicki Foley as a result of the member Catherine MacIssac requesting that the conditions/restrictions on her RN license related to the previous finding of professional misconduct (formal hearing April 23, 2015) be removed.

The Committee agrees with Investigator Rosemary White that the written complaint against Catherine MacIsaac has three allegations contained in White's report and the committee is adding two charges, one related to breach of license conditions, and one related to failure to cooperate. The five allegations to be reviewed at a hearing are:

1. MacIsaac was not truthful to ARNPEI about adhering to the conditions on her license.
2. MacIsaac sought prescriptions for narcotic drugs from multiple physicians at her workplace.
3. MacIsaac was "high" while on nursing duty.
4. The complaint against MacIssac relates to incidents which took place while her nursing license was subject to conditions pertaining to drug use, and the allegations relate to drug use.
5. MacIsaac failed to meet with the investigator to be interviewed.

We have decided to refer the complaint to a hearing committee because each of these allegations relates to possible "professional misconduct", which the *Registered Nurses Act* describes as:

- (i) engaging in the practice of a registered nurse or the practice of a nurse practitioner while suspended,
- (ii) engaging in the practice of a registered nurse while impaired or incapacitated,
- (iii) doing any act that contravenes
 - (A) A provision of this Act or the regulations,
 - (B) A provision of the bylaws, including a provision of any code of ethics or set of professional standards of practice established or adopted by the bylaws
- (iv) failing to respond to or cooperate with the Executive Director, the Professional Conduct Review Committee or an investigator in relation to the complaint,
- (v) disclosing information without proper authorization or consent,

- (vi) falsifying or concealing records directly or indirectly related to the provision of health services, or
- (vii) abusing a person verbally, physically, emotionally or sexually;

Contravening the Code of Ethics or Standards for Nursing Practice can be professional misconduct, and a hearing is needed to find out if that misconduct happened in Ms. MacIsaac's case. To assist the lawyer to be appointed to adduce evidence, the Committee has reviewed the Code and the Standards, and suggests that the following excerpts be considered at the hearing:

Allegation 1. MacIsaac was not truthful to ARNPEI about adhering to the conditions on her license.

Standard 1 of the Association of Registered Nurses of Prince Edward Island Standards for Nursing Practice (2016) is Code of Ethics and states:

The nurse in practice will demonstrate adherence to, understanding and promotion of the ethical standards of the profession as stated in the *2008 Canadian Nurses Association Code of Ethics for Registered Nurses*.

The Indicator of *Standard 1*, Code of Ethics that relates to Allegation 1 is:

1.7 Being Accountable

Nurses are accountable for their actions and answerable for their practice. The relevant ethical responsibilities include: 2. Nurses are honest and practice with integrity in all of their professional interactions, and 4. Nurses maintain their **fitness to practice**. If they are aware that they do not have the necessary physical, mental or emotional capacity to practice safely and competently, they withdraw from the provision of care after consulting with their employer . . . ,

Standard 4 of the Association of Registered Nurses of Prince Edward Island Standards for Nursing Practice (2016) is Responsibility and Accountability and states:

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

The Indicators of *Standard 4* that relate to Allegation 1 are:

4.1 Maintains current license

(The investigative report documents that Catherine MacIsaac was not practicing in accordance with the conditions of her license to abstain from mood altering substances.)

4.2 Practices in accordance with the RN Act and its regulations and bylaws; the *ARNPEI Standards for Nursing Practice*, the *CNA Code of Ethics*,

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

Catherine MacIsaac allegedly did not reveal the full extent to which she was using mood-altering substances during the 2-plus years (June 2015 to November 2017) that she was under the license

condition to abstain from mood altering substances. The investigation report (p. 16) reports 50 instances where MacIsaac filled a prescription for an opioid medication during the 2-year period.

Allegation 2. MacIsaac sought prescriptions for narcotic drugs from multiple physicians at her workplace.

Standard 1 of the Association of Registered Nurses of Prince Edward Island Standards for Nursing Practice (2016) is “Code of Ethics”, which states:

The nurse in practice will demonstrate adherence to, understanding and promotion of the ethical standards of the profession as stated in the 2008 Canadian Nurses Association Code of Ethics for Registered Nurses.

The Indicator of Standard 1, Code of Ethics that relates to Allegation 2 is:

- 1.1 Providing Safe, Compassionate, Competent and Ethical Care
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 in how they interact with persons receiving care as well as with families, communities, groups, populations and other members of the health-care team.

There is information in the investigation report that suggests that MacIsaac’s interaction with some physicians was not proper – it describes what she did and how she interacted with physicians as members of the health care team to secure personal prescriptions for narcotic drugs.

There is information in the investigation report (pp. 15 & 17) that Catherine MacIsaac did not reveal she had an addiction to narcotics to two of the physicians (Drs. Barton, Molyneaux) she sought prescriptions from for narcotic drugs at her workplace.

Allegation 3. MacIsaac was “high” while on nursing duty.

The investigation report indicates that eight people suspected MacIsaac was high at work or behaving in a manner unusual for her. These people should be heard at a hearing in order to decide if the respondent worked while under the influence of substances.

Standard 1 of the *Association of Registered Nurses of Prince Edward Island Standards for Nursing Practice (2016)* is Code of Ethics, states:

The nurse in practice will demonstrate adherence to, understanding and promotion of the ethical standards of the profession as stated in the 2008 Canadian Nurses Association Code of Ethics for Registered Nurses

The Indicators of *Standard 1*, Code of Ethics that supports Allegation 3 and were previously described above are:

- 1.1 Providing Safe, Compassionate, Competent and Ethical Care
- 1.7 Being Accountable

Allegation 4 (new charge). MacIsaac sought or used drugs while her license included conditions pertaining to drug use.

The Indicators of *Standard 4* that relate to breach of license conditions are:

- 4.1 Maintains current license
(The investigative report documents that Catherine MacIsaac was not practicing in accordance with the conditions of her license to abstain from mood altering substances.)
- 4.2 Practices in accordance with the RN Act and its regulations and bylaws; the ARNPEI Standards for Nursing Practice, the CNA Code of Ethics,
- 4.4 Is responsible and accountable for her/his actions and decisions at all times.
- 4.5 Exercises reasonable judgment in decision making

Allegation 5 (new charge). MacIsaac did not cooperate in the investigation.

There is another aspect of this complaint which should be considered at a hearing: Failing to respond to or cooperate with an investigator see paragraph 1(t)(iv) of the *Act*.

There is information in the investigation report (pp.1-2) that Catherine MacIsaac did not provide a response to the allegations in the complaint to the investigator. The report suggests that on five separate occasions during the period January 3, 2018 to April 6, 2018, Rosemary White contacted MacIsaac by email to set up a mutually convenient time to meet so MacIsaac could provide Rosemary White with information related to MacIsaac's written response to the complaint, but she allegedly did not comply.

In conclusion, after considering the investigation report and in accordance with the powers of the Committee explained in subsection 52(1)(c) of the *Regulated Health Professions*, the Committee requests that the council of CRNPEI (who appointed the investigation committee) appoint a hearing committee and refer the complaint to the hearing committee for a hearing. In accordance with subsection 52(4), the investigation committee

- (a) will serve this written notice of the referral on the complainant Vicki C. Foley, the respondent Catherine MacIssac, and the council of CRNPEI.
- (b) will provide the hearing committee, when it is appointed, with a copy of the complaint #PE-2017-011 and Catherine MacIsaac's response to the complaint; and
- (c) appoints Tom Keeler of the law firm of McInnes Cooper as legal counsel to adduce evidence at the hearing.

The Chair expressed sincere thanks to Committee members who assisted in making this decision.

Respectfully submitted at Charlottetown, Prince Edward Island, this 5th day of November 2018.



Jo-Ann MacDonald, RN PhD (on behalf of the Investigation Committee)