

COLLEGE AND ASSOCIATION OF REGISTERED NURSES OF ALBERTA also known
as COLLEGE OF REGISTERED NURSES OF ALBERTA (the “**College**”)

DECISION OF THE HEARING TRIBUNAL

RE: CONDUCT OF **PATRICIA LOEB**, R.N. REGISTRATION #**61,613**

AS A RESULT OF A HEARING HELD BEFORE

THE HEARING TRIBUNAL

OF THE COLLEGE

11120 178 STREET

EDMONTON, ALBERTA

ON

AUGUST 26, 2022

INTRODUCTION

A hearing was held on August 26, 2022, via Microsoft Teams videoconferencing by the Hearing Tribunal of the College of Registered Nurses of Alberta (the “**College**”) to hear a complaint against Patricia Loeb, R.N. registration #61,613.

Those present at the hearing were:

a. Hearing Tribunal Members:

Grace Brittain, RN Chairperson
Tracey Komant, RN
Doug Dawson, Public Representative
David Rolfe, Public Representative

b. Independent Legal Counsel to the Hearing Tribunal:

Mary Marshall

c. CRNA Representative:

Kate Whittleton, Conduct Counsel

d. Registrant Under Investigation:

Patricia Loeb (sometimes hereinafter referred to as “the **Registrant**”)

e. Registrant’s Labour Relations Officer:

Marilyn Vavasour

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.

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 about April 9, 2021, the Registrant failed to demonstrate adequate judgment when they accessed their own personal health care records for purposes inconsistent with their

professional responsibilities, contrary to the *CNACE*, the *CPSRM* and the *CPMHIS* and one (1) or more Alberta Health Services (“**AHS**”) policies.

2. Between April 19, 2021 and April 27, 2021, and while in the role of [RN] with the [Program], the Registrant failed to ensure a client’s right to confidentiality and privacy when they accessed the personal health care records of a [patient] on three (3) occasions, for purposes inconsistent with their professional responsibilities, contrary to the *CNACE*, the *CPSRM*, the *CPMHIS* and one (1) or more AHS policies.
3. On or about April 21, 2021, and while in the role of [RN] with the [Program], the Registrant failed to ensure a client’s right to confidentiality and privacy when they accessed the personal health care records of three (3) patients for purposes inconsistent with their professional responsibilities, contrary to the *CNACE*, the *CPSRM*, the *CPMHIS* and one (1) or more AHS policies.
4. Between April 9, 2021 and April 27, 2021, and while in the role of [RN] with the [Program], the Registrant failed to ensure a client’s right to confidentiality and privacy when they accessed the personal health care records of multiple patients in a manner and/or for purposes inconsistent with their professional responsibilities, specifically conducting Medication Reconciliation Audits, contrary to the *CNACE*, the *CPSRM*, the *CPMHIS* and one (1) or more AHS policies.
5. On May 13, 2021, and while in the role of [RN] with the [Program], the Registrant failed to ensure a client’s right to confidentiality and privacy when they accessed the personal health care records of approximately thirteen (13) patients at the [health centre in Alberta], for purposes inconsistent with their professional responsibilities, contrary to the *CNACE*, the *CPSRM*, the *CPMHIS* and one (1) or more AHS policies.
6. On May 13, 2021, and while in the role of [RN] with the [Program], the Registrant failed to ensure a client’s right to confidentiality and privacy when they accessed the personal health care records of two (2) patients at the [health centre in Alberta], for purposes inconsistent with their professional responsibilities, contrary to the *CNACE*, the *CPSRM*, the *CPMHIS* and one (1) or more AHS policies.

The Registrant has admitted to the conduct in the allegations in the Agreed Statement of Facts and Liability (Exhibit #2).

EXHIBITS

The following documents were entered as Exhibits:

EXHIBIT	DESCRIPTION
Exhibit #1:	Notice to Attend a Hearing by the Hearing Tribunal of the College of Registered Nurses of Alberta;
Exhibit #2:	Agreed Statement of Facts and Liability
Appendix A:	CARNA Employer Complaint Form dated June 2, 2021
Appendix B:	Curriculum Vitae of Trish Loeb
Appendix C:	Education Report
Appendix D:	Practice Standards for Regulated Members effective April 2013
Appendix E:	Code of Ethics for Registered Nurses - 2017 Edition
Appendix F:	Privacy and Management of Health Information Standards dated March 2020
Appendix G:	AHS Privacy Protection and Information Access Policy with Revision Effective Date of October 16, 2019
Appendix H:	AHS Job Title: Instructor - Safe Clinical Practice Program
Appendix I:	AHS Calgary Zone Medication Reconciliation Urban Acute Care: Admission to Discharge
Appendix J:	AHS Medication Reconciliation Process Overview - Acute Care Inpatients
Appendix K:	AHS Admission Medication Reconciliation Auditing dated July 2019
Appendix L:	AHS Guide to Understanding MedRec Audits dated November 2016
Appendix M:	AHS SCM Audit By User Report dated April 9, 2021
Appendix N:	AHS SCM Audit By User Report dated April 19, 2021
Appendix O:	AHS SCM Audit By User Report dated April 21, 2021
Appendix P:	AHS SCM Audit By User Report dated April 27, 2021
Appendix R:	AHS SCM Audit By User Report dated April 13, 2021

EXHIBIT	DESCRIPTION
Appendix S:	AHS SCM Audit By User Report dated April 15, 2021
Appendix T:	AHS SCM Audit By User Report dated May 13, 2021
Exhibit #3:	Joint Recommendations on Sanction
Exhibit #4:	CNA's Learning Modules: Bringing the Code of Ethics to Life - Code of Ethics for Registered Nurses
Exhibit #5:	Excerpt from <i>Jaswal v. Newfoundland Medical Board (1996)</i> , 42 Admin L.R. (2d) 233 (" <i>Jaswal</i> ")
Exhibit #6:	Statement from the Registrant
Exhibit #7:	P. Loeb Certificate of Completion dated July 29, 2022 for Introduction to the Code of Ethics
Exhibit #8:	P. Loeb Certificate of Completion dated September 2, 2021 for Privacy and Management of Health Information

SUBMISSIONS ON THE ALLEGATIONS

Submissions by Conduct Counsel:

Conduct Counsel thanked the Registrant for her cooperation in bringing this matter forward to a hearing. There is one complaint and one Notice to Attend. Conduct Counsel made brief submissions. The Registrant accessed her own files. She also reviewed patient charts which were beyond the scope of her professional responsibilities. Conduct Counsel reviewed the Agreed Statement of Facts and Liability (Exhibit #2). Conduct Counsel submitted that the admitted facts support the admissions made by the Registrant, and that they are sufficient to make 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 1.1, 1.2, 2.2, 2.3, 3.2, 5.2, 5.3. Conduct Counsel also noted that the following provisions from the Code of Ethics applied: A1, E1, E3, E7, E8, G1. Conduct Counsel also noted that the following provisions from the Privacy Standards applied: 1.1, 1.2, 1.3.

Submissions by the Labour Relations Officer for the Registrant:

The Labour Relations Officer submitted that the Registrant agrees that she should never have accessed her own chart. The Registrant's explanation as to why she accessed the other patient charts is found in paragraph 35d of the Agreed Statement of Facts and Liability. The Registrant's conduct was unintentional, and she believed that she was accessing the other patient charts as part of the duties of her job.

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 considered the definition of unprofessional conduct under section (1)(1)(pp) of the HPA. The Hearing Tribunal finds that the Allegations admitted to by the Registrant are proven. The Registrant accessed her own personal health information, and accessed personal health information of patients while in the role of [RN] with the [Program]. All of these accesses were for purposes that were inconsistent with the Registrant's professional responsibilities.

The Hearing Tribunal finds that the proven 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:

- (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 finds that the proven conduct breached the following provisions of the Practice Standards: **1.1, 1.2, 2.2, 2.3, 3.2, 5.2, 5.3**, as follows:

Standard One: Responsibility and Accountability

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

Indicators

- 1.1** The nurse is accountable at all times for their own actions.
- 1.2** The nurse follows current legislation, standards and policies relevant to their practice setting.

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.

Standard Three: Ethical Practice

The nurse complies with the Code of Ethics adopted by the Council in accordance with Section 133 of HPA and CARNA bylaws (CARNA, 2012).

Indicators

- 3.2** The nurse protects and promotes a client's right to autonomy, respect, privacy dignity and access to information.

Standard Five: Self-Regulation

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

Indicators

- 5.2** The nurse follows all current and relevant legislation and regulations.
- 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 Registrant breached the following provisions of the Code of Ethics: **A1, E1, E3, E7, E8, G1**, as follows:

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**.

E. Maintaining Privacy and Confidentiality

Nurses recognize the importance of privacy and confidentiality and safeguard personal, family and community information obtained in the context of a professional relationship.

Ethical responsibilities

1. Nurses respect the interests of persons receiving care in the lawful collection, use, access and disclosure of personal information.
3. Nurses collect, use and disclose health information on a need-to-know basis with the highest degree of anonymity possible in the circumstances and in accordance with privacy laws.
7. Nurses respect policies that protect and preserve the privacy of persons receiving care, including security safeguards in information technology.

8. Nurses do not abuse their access to information by accessing health-care records, including those of a family member or any other person, for purposes inconsistent with their professional obligations. When using photo, video or other technology for assessment, diagnosis, planning, implementation and evaluation of persons receiving care, nurses obtain their consent and do not intrude into their privacy. They handle photos or videos with care to maintain the confidentiality of the persons involved, including colleagues and students.

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.

The Hearing Tribunal finds that the proven conduct breached the following provisions in the Privacy and Management of Health Information Standards (2020) Privacy Standards: **1.1, 1.2, 1.3**, as follows:

Standards for Privacy and Management of Health Information

Regulated members as custodians have additional roles and responsibilities as affiliates. However, all regulated members must ensure they understand all responsibilities with respect to privacy and management of health information, as affiliates or as custodians.

Standard 1: All Regulated Members

Regulated members are responsible and accountable for ensuring they follow all relevant privacy legislation and policies, and understand the privacy requirements that apply to their nursing practice.

All regulated members must

- 1.1** access personal and health information, including electronic health records (EHR), only for purposes that are consistent with their professional responsibilities;
- 1.2** collect, use, and disclose only health information that is essential for the intended purpose, with the highest degree of confidentiality possible, and in accordance with legislation;
- 1.3** know their custodian's policies and procedures regarding collection, use, disclosure, and security of health information;

The breaches of the Practice Standards, the Code of Ethics and the Privacy Standards are serious and constitute unprofessional conduct pursuant to section 1(1)(pp)(i) and (ii) of the HPA. Personal health information is among the most confidential and private information of individuals. Patients receiving care, as well as the public generally, must have confidence that health professionals safeguard this very private and sensitive information and access it only as

permitted and where it is relevant to the professional services. The Registrant displayed a lack of judgment in the provision of professional services, and failed to comply with the applicable provisions in the Practice Standards, Code of Ethics, and Privacy Standards.

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 Recommendations (Exhibit #3). The Joint Recommendations propose a reprimand, educational courses, and a fine. There has been partial compliance with the proposed sanction through the completion of educational courses and this is subject to the Complaints Director's acceptance. The Registrant intends to pay the fine of \$750 as soon as reasonably practicable after the invoice is generated. The Registrant wants to be accountable. The Registrant continues to work with the same employer although there has been a change in practice setting. The outstanding conditions will be placed on the Registrant's practice permit. Publication is within the discretion of the Registrar.

Conduct Counsel submitted that the decision in *Jaswal* outlines the factors that should be considered when determining the appropriate sanction. Sanctions are designed to protect the public and maintain confidence in the regulation of the profession. Any sanctions should be measured, proportionate and reasonable.

Conduct Counsel reviewed 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 allegations:* These are serious allegations involving unauthorized access to health information multiple times. This is a breach of trust for patients. There is an expectation that information is treated with care and sensitivity and the Registrant's behaviour is not acceptable.
2. *The age and experience of the member:* The Registrant has been registered since August 1992, and she should be aware of her responsibilities.
3. *The previous character of the member:* The Registrant does not have a prior discipline history and there are no prior complaints.
4. *The age and mental condition of the offended patient:* The breach involved accessing the personal health information of [patients]. These are vulnerable patients with very sensitive personal health information.
5. *The number of times the offence was proven to have occurred:* There were a number of breaches that took place just over one month.
6. *The role of the registered nurse in acknowledging what occurred:* The Registrant admitted to the allegations and that they constitute unprofessional conduct. She expressed remorse and apologized. This is a significant mitigating factor. They arrived at

the hearing with cooperation and an acknowledgment of the allegations and an acceptance that they constitute unprofessional conduct. The Registrant has accepted responsibility in an open hearing.

7. *Whether the member has already suffered other serious financial or other penalties:* The Registrant was suspended by her employer for 10 days, and this is a significant penalty.
8. *The impact on the offended patient:* There is no direct evidence about impact on patients. However, privacy breaches have a significant impact and can undermine trust. Healthcare professionals have a duty not to misuse their access to electronic health records.
9. *The presence or absence of any mitigating factors:* Conduct Counsel is not aware of further mitigating circumstances.
10. *The need to promote specific and general deterrence:* General deterrence is paramount so that members of the profession are aware of the consequences if they breach privacy. The public will be aware that this type of behaviour is not tolerated. With regard to specific deterrence, the reprimand, education and fine will ensure that the behaviour is not repeated.
11. *The need to maintain public confidence:* If patients do not trust the system to ensure their privacy, the lack of trust will have a detrimental impact on future care.
12. *Degree to which offensive conduct is outside the range of permitted conduct:* The conduct is clearly outside the range of permitted conduct, and the Registrant has admitted that it is unprofessional conduct.

Conduct Counsel submitted that the proposed penalty is fit, proportionate and not overly harsh. Fines have been awarded for privacy breaches. The Joint Recommendations are appropriate, and Conduct Counsel submitted that they should be accepted.

Submissions by the Labour Relations Officer for the Registrant:

The Registrant's Labour Relations Officer stated that the Registrant has a new manager position with the same employer, and that she disclosed that there was a College investigation underway during the hiring process. [RN's] do not receive a formal orientation on precisely what they can and cannot look at on a patient's chart although they do take privacy modules. As a mitigating factor, the Registrant had no intent to violate the patient's privacy or harm them in any way.

Statement by the Registrant:

As a long-term nurse who has been in an educational management role, the Registrant believes that mistakes should lead to change and an improvement in process. The Registrant stated that she wanted to work with her employer's privacy services and the College's practice consultant to drive fundamental change, and ensure that people do not mistakenly access patient information for their work.

DECISION AND REASONS OF THE HEARING TRIBUNAL ON SANCTION

The Hearing Tribunal carefully considered the joint submissions on sanction, and the submissions of the parties. The Hearing Tribunal 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 Hearing Tribunal carefully considered the Registrant's explanation for her conduct and her statement at the hearing. In the Agreed Statement of Facts and Liability the Registrant stated that she now understands that seeking information in patient charts for quality improvement must be done following proper process and permission sought prior to engaging in that type of work. The Registrant says she has changed her practice and will continue to be diligent in maintaining patient privacy and confidentiality.

The Registrant further stated at the hearing that she was not aware of the requirements relating to privacy and access to patient records. The Hearing Tribunal finds that this is not a mitigating factor when considering sanction. The Privacy Standards specifically state that nurses are responsible and accountable for ensuring they follow all relevant privacy legislation and policies, and understand the privacy requirements that apply to their nursing practice. The Registrant is an experienced nurse who admits that her conduct was contrary to her employer's standards and policies: Privacy Protection and Information Access, October 16, 2019; and Collection, Access, Use, and Disclosure of Information, October 16, 2019.

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. These factors are addressed through the course requirements, fine and reprimand.

The Registrant should take the comments in the written decision as well as the concerns expressed by the Hearing Tribunal with respect to her conduct as her reprimand. In addition, the Registrant should consider her experiences in dealing with this complaint before this Hearing Tribunal and the College, as well as the Joint Recommendations on Sanction as a reminder of how important it is to practise in accordance with the Practice Standards, Code of Ethics, and the Privacy Standards.

The Hearing Tribunal acknowledges the submission by the Registrant's Labor Relations Officer that in this case, a mitigating factor was that [RN's] do not receive a formal orientation on precisely what they can and cannot look at on a patient's chart although they do take privacy modules. The Hearing Tribunal is of the view that a Registered Nurse of the Registrant's tenure and in the role of a [RN] charged with educating others, could have and ought to have sought guidance from her employer on policies and procedures governing access to patient or client information. The Hearing Tribunal is also of the view that patient and client confidentiality is a foundational element of ethical patient/client care.

In imposing this penalty, the Hearing Tribunal recognizes the importance of public trust in nurses. This trust is undermined by intrusion into health records which, by their very nature,

incorporate highly sensitive and personal information. The Hearing Tribunal recognizes that electronic health records offer a means of access that is much easier than that afforded by conventional hard copy records, and for this reason, protection must be very secure. Breaches of privacy must be condemned and met with significant penalties. Having regard to the nature of the misconduct, the Hearing Tribunal finds that the imposition of a fine is appropriate in this case.

ORDER OF THE HEARING TRIBUNAL

The Hearing Tribunal orders that:

1. The Registrant shall receive a reprimand for unprofessional conduct.
2. By **December 1, 2022**, the Registrant shall provide proof satisfactory to the Complaints Director that they have successfully completed and passed the following courses of study and learning activities:
 - a. *Canadian Nurses Association Ethics Modules*; and
 - b. *Privacy and Management of Health Information* (CRNA eLearning on College Connect).
3. By **December 1, 2022**, the Registrant shall provide a written declaration to the Complaints Director, in the form attached as “**Schedule A**” to this Joint Recommendations on Sanction, confirming that they have read and reviewed:
 - a. the Canadian Nurses Association *Code of Ethics for Registered Nurses (2017)*;
 - b. the *Practice Standards for Regulated Members (2013)*;
 - c. the *Entry-Level Competencies for the Practice of Registered Nurses (2019)*; and
 - d. the *Privacy and Management of Health Information Standards (2020)*.
4. By **December 1, 2022**, the Registrant shall pay a fine in the sum of **\$750.00**, via payment to the College (the “**Fine**”), and noting the following terms may apply:
 - a. pursuant to Section 82(3)(c) of the *HPA*, the Registrant may be automatically suspended for any non-payment;
 - b. if the Registrant fails to pay the Fine by the deadline indicated, the Complaints Director may publish an administrative notice regarding non-payment of the Fine on the College’s website including the Registrant’s name and registration number and that the Fine arose from a resolution agreement with the College (the “**Administrative Notice of Non-Payment**”); and
 - c. the Registrant must pay the Fine owed to the College, whether or not the Registrant has an active practice permit with the College.

(the “**Condition(s)**”)

COMPLIANCE

5. Compliance with this Order shall be determined by the Complaints Director of the College. All decisions with respect to the Registrant's compliance with this Order will be in the sole discretion of the Complaints Director.
6. The Registrant will provide proof of completion of the above-noted Conditions to the Complaints Director via e-mail to procond@nurses.ab.ca or via fax at 780-453-0546.
7. 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 HPA.
8. The responsibility lies with the Registrant to comply with this Order. It is the responsibility of the Registrant to initiate communication with the College for any anticipated non-compliance and any request for an extension.

CONDITIONS

9. 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 has 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
Alberta Health Services	[information redacted]

10. The Registrant understands and acknowledges that it is the Registrant's professional responsibility to immediately inform the College 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.
11. The Registrar of the College will be requested to put the following conditions against the Registrant's practice permit (current and/or future) and shall remain until the conditions are satisfied:
 - a. **Course work required – Arising from Disciplinary Matter**, and
 - b. **Shall pay fine – Arising from Disciplinary Matter**.
12. Effective on the date of the Hearing, 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).

13. 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.
14. This Order takes effect on August 26, 2022 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,

A handwritten signature in cursive script that reads "Grace Brittain".

Grace Brittain, Chairperson
On Behalf of the Hearing Tribunal

Date of Order: August 26, 2022