

**THE COLLEGE OF REGISTERED PSYCHIATRIC NURSES OF
BRITISH COLUMBIA**

In the matter of the *Health Professions Act*, R.S.B.C. 1996, c. 183

**And a hearing into the conduct of
KIMBERLY HURLSTON
RESPONDENT/REGISTRANT**

DECISION OF THE DISCIPLINE COMMITTEE HEARING PANEL

ON FACTS AND DETERMINATION

Hearing Dates: June 6 and June 7, 2017

Panel: Tim Holmes, Chair, Public representative
David Reid, Registrant
Gavin Wallace, Registrant

Counsel for the College James D. Kondopulos
Christopher J. Munroe

No one appearing on behalf of the
Respondent/Registrant

INTRODUCTION

[1] The discipline committee hearing panel of the College of Registered Psychiatric Nurses of British Columbia (the 'College'), held a hearing on June 6 and 7, 2017, in the matter of a citation against Kimberly Hurlston, a College registrant, ('Ms. Hurlston). The panel's authority to hear and determine a matter set for hearing by citation is set out in section 38 of the ***Health Professions Act, [RSBC 1996] chapter 183***, (the 'Act').

[2] Some of the background is described in the panel's Decision to Proceed with the Hearing in the Absence of Ms. Hurlston. Written reasons were delivered on June 9, 2017, which also explain why the complainant is not identified but is referred to as 'K.W.'

CITATION

[3] The Amended Notice of Hearing and the citation were duly served on Ms. Hurlston on March 5, 2017. The purpose of the hearing is to inquire into Ms. Hurlston's conduct and determine if she:

- a) Committed professional misconduct, as defined in section 26 of the Act;
- b) Failed to comply with the Act and/or a regulation, a bylaw or a standard, limit or condition imposed by the Act;
- c) Failed to conduct herself in accordance with the Professional Standards for Psychiatric Nursing, the Code of Ethics and any other applicable standards of conduct or practice; and
- d) If her conduct is deserving of sanction in accordance with section 39 of the Act."

[4] The citation refers to schedule "A" which provides particulars of the allegations, as follows.

1. From approximately the fall of 2011 to June 2012, while registered as a registered psychiatric nurse with CRPNBC and employed by Baldy Hughes Treatment Centre (the "Treatment Centre") as a registered psychiatric nurse, you engaged in an inappropriate and/or intimate relationship with [K.W.], who was at the relevant time a resident of the Treatment Centre receiving treatment for alcohol addiction and/or other mental health issues, all of which constituted conduct in breach of appropriate professional boundaries in the nurse-client relationship.

2. In or around April 2012, on behalf of [K.W.] and from a place of employment other than the Treatment Centre, you sent personal fax communications pertaining to [K.W.] to third parties and offered or agreed to receive fax or other forms of communication on behalf of [K.W.], all of which also constituted conduct in breach of appropriate professional boundaries and which conduct was undocumented in any clinical notes or treatment plan relating to [K.W.].
3. You engaged or continue to engage in misconduct including the following:
 - a) You allowed [K.W.], a former client, to reside with you and your family members at your home situated at 329 Pioneer Avenue, Prince George, BC, and/or allowed him to reside at that address in your basement as a tenant
 - b) On or around March 16, 2012, you signed a document entitled "Shelter Information" which was submitted to the BC Ministry of Social Development on March 19, 2012, and indicated that, effective March 15, 2012, [K.W.] was a tenant of 329 Pioneer Avenue, Prince George, BC, and you as the landlord and/or the registered owner of the land were receiving monthly rental payments of \$400 from him;
 - c) In or around the spring of 2012, on various occasions, you allowed [K.W.] to store his personal items in the basement of your home at 329 Pioneer Avenue, Prince George, BC, and/or to visit with you and your family members, there or elsewhere in the city
 - d) You allowed [K.W.] to receive personal mail which was addressed to him at your residential address at 329 Pioneer Avenue, Prince George, BC, V2M 4L9, which mail was from third parties including:
 - i) The Canadian Revenue Agency; and/or
 - ii) The BC Ministry of Social Services
 - e) in or around the spring of 2012, you provided [K.W.] with transportation in your personal vehicle, including from your home at 329 Pioneer Avenue, Prince George, BC, to various locations elsewhere in the city.
 - f) Over the period of time from approximately the fall of 2011 to approximately the spring of 2012, you served alcohol to and/or drank alcohol with [K.W.], a former client who had received or was receiving treatment for an ongoing alcohol addiction; and/or
 - g) In or around the fall of 2011 and spring of 2012, you exchanged personal email messages and/or had telephone communications with [K.W.] and/or his stepsister regarding personal matters, leading him to believe that he had a personal rather than only a professional treatment relationship with you and, further, you failed to document any such exchanges or interactions in any clinical notes or treatment plan related to [K.W.].

All of the foregoing constituted conduct in breach of professional boundaries with a client or former client and further constituted an exercise of poor clinical and professional judgment by you. You additionally failed to

appropriately document any of the foregoing conduct in the clinical record and/or treatment plan or [K.W.].

4. You have failed to be forthcoming and have been and continue to be untruthful in your communications and interaction with the CRPNBC, including, without limitation, in the course of the investigation into your suspected misconduct.

5. You have engaged and continue to engage in conduct which is in breach of the Professional Standards for Psychiatric Nursing and the Code of Ethics and which is conduct unbecoming a member of the health profession.

BURDEN AND STANDARD OF PROOF

[5] The burden of proof in professional regulatory matters rests with the College. The standard of proof is the civil standard, the balance of probabilities, which has been described as "50 percent plus 1."

[6] In *F.H. v. McDougall*, 2008, SCC 53, Rothstein, J., for the Court reviewed the authorities and rejected the notion that there is some intermediate standard of proof, higher than a mere 'balance of probabilities' but less than 'beyond a reasonable doubt'.

[7] At paragraph 40 the Court stated:

... it is time to say, once and for all in Canada, that there is only one civil standard of proof at common law and that is proof on a balance of probabilities. Of course, the context is all important and a judge should not be unmindful, where appropriate, of inherent probabilities, or improbabilities, or the seriousness of the allegation or consequences."

At paragraph 46 the Court went on to say:

Similarly, evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test. But again, there is no objective standard to measure sufficiency.

[8] The test in McDougall has been applied by self-regulating professional bodies in British Columbia.

EVIDENCE

[9] In addition to his letters of complaint dated February 19 and 26, 2014, (Exhibit 1, College's Book of Documents, Tabs 14 and 15), K.W. gave oral testimony. The College's Regulatory Counsel and Deputy Registrar, Susan Rutherford, also testified. Steve King, a counsellor at Pathways Addictions Resource Centre, gave evidence by telephone. We also reviewed two letters from Ms. Hurlston dated March 31, 2016, and August 17, 2016 (Exhibit 1, Tabs 17 and 18), responding to the complaint, which we took to be her evidence in response to the citation.

K.W.

[10] K.W. told us that he was a former lawyer who had practised law in a midsize town in the interior of British Columbia between 1991 and 2016. He became a partner in 2000 and had a busy practice. In 2006, he worked for about one year from home. He then ceased practice and began work as a volunteer in a variety of community projects.

[11] K.W. described how in 1996 his four month old son died, and shortly thereafter his marriage broke up. He testified that as a result of his unresolved grief he began drinking alcohol in excess. By 2011 he had used up all of his savings, his house and recreational property were foreclosed and he was living with his stepsister and stepbrother.

[12] K.W. said he set himself on a course of self-destruction. He left his relatives' home and became homeless. He said he began to drink as much as possible.

[13] He testified that his counsellor, Steve King, recommended treatment and rehabilitation and arranged for him to be admitted as a client at Baldy Hughes Treatment Centre near Prince George, ('Baldy Hughes'). He said his primary diagnosis was depression and secondary diagnosis was alcohol abuse.

[14] He was admitted to Baldy Hughes on June 30, 2011. He described himself as withdrawn, ashamed and with very low self-esteem. He acknowledged that he

was a reluctant client and was resistant to committing to a 12-month residential programme.

[15] K.W. described the treatment facility as isolated and rustic, approximately 30 kilometres from Prince George. Clients were driven in a van to and from Prince George for medical appointments, court dates, appointments with probation officers and the like.

[16] He testified that on weekends, one of two nurses provided general nursing duties, one of whom was Ms. Hurlston. K.W. said he met her in July 2011 when she took his blood pressure and checked his weight. He said that she was friendly and kept an open door for clients to come in and chat. He claimed he did not require the assistance of a psychiatric nurse, but he went as often as possible to talk with Ms. Hurlston.

[17] She began coming in both weekend days, and then in the evenings after her regular daytime job in Prince George. K.W. said that they began spending more time together, sometimes behind closed doors, and their conversations with one another became more personal and confidential.

[18] K.W. testified that as time went on, he and Ms. Hurlston began opening up to one another. She spoke about her children. He disclosed that he was a former lawyer. The relationship between them was became friendly and warm. He said their conversations were “poignant and profound” and that they were both “breaking down barriers and drawing each other out”.

[19] K.W. was assigned to the front desk as a receptionist at Baldy Hughes. He had access to the internet which was not otherwise available to clients. He also negotiated certain privileges such as after-hours access to the kitchen where he could make phone calls whenever he wanted without prior permission. K.W. said that he used the internet and telephone to communicate with Ms. Hurlston, contrary to the rules. At some point, Ms. Hurlston gave him her mobile phone number.

[20] When he got permission from the treatment team to go south and visit his relatives over Christmas 2011, he discussed his plans and had many conversations with Ms. Hurlston about the trip. He told her he might not return to Baldy Hughes as he had finished his counselling.

[21] K.W. testified that Ms. Hurlston's response was professional. She told him to do what he had to do, but to make sure he did not quit the programme unless he was ready.

[22] K.W. said that he was then talking with Ms. Hurlston most evenings and that their conversations were warm, easy, and comfortable. He said that he was becoming attracted to Ms. Hurlston and he thought his feelings were reciprocated

[23] On either December 14 or 17, 2011, K.W. was uncertain of the date, he was scheduled to take the 4:00 p.m. Greyhound bus south. He said he asked Ms. Hurlston if she would have dinner with him before he left. She agreed. After he was dropped off at the Greyhound station, he stored his bag, changed his ticket for the 11:00 p.m. bus and went to meet Ms. Hurlston at a restaurant.

[24] On her arrival, Ms. Hurlston told him that she had an indoor soccer game to go to and they went to her home so she could change clothes. K.W. said they went to her ex-husband's house to pick up her two children and take them to the game. After the game, they returned the children to the father's house and went on to have dinner. He said they were like a couple on their first date.

[25] When Ms. Hurlston dropped him off at the bus station, K.W. said they embraced and kissed. When the bus stopped at Kelowna on the way south, he phoned her and they talked about the "wonderful kiss".

[26] Over Christmas he and Ms. Hurlston exchanged many emails and phone calls. He said that they communicated up to 10 times a day, sometimes until 4 in the morning. Ms. Hurlston told him she had quit her job in Prince George and would now work as a full-time psychiatric nurse at Baldy Hughes.

[27] K.W. was scheduled to return to Baldy Hughes on January 3, 2012. He testified that in the meantime he and Ms. Hurlston had conceived a plan that he should return early and spend a few days with her at her home. He came back to Prince George approximately December 29, 2011. To avoid being seen by anyone from Baldy Hughes, they arranged to meet at the airport stop, about 10 kilometres outside Prince George.

[28] K.W. said Ms. Hurlston met him in her vehicle. They embraced, and she told him that the plan had changed. They went to the Sandman Hotel and spent the night together there and had sexual intercourse. The following day, they went to Ms. Hurlston's house and stayed there together and had sexual intercourse many times over the next four days.

[29] K.W. said he met Ms. Hurlston's parents, Ted and Carol Hurlston, one evening at her house. He testified that on New Year's Eve, Ms. Hurlston opened a bottle of wine which they shared at dinner.

[30] K.W. returned to Baldy Hughes on January 3, 2012.

[31] He testified that he and Ms. Hurlston saw each other most days in January 2012, and often lunched together in the common dining hall. He said that they exchanged intimate notes and began to contrive ways to be alone.

[32] For example, K.W. said that he would avoid lining up to take his medications with the other clients. Instead, he would arrange to have Ms. Hurlston give him his medications privately in the medication room, behind closed doors, where they would kiss and embrace.

[33] In January 2012, K.W. negotiated leave for a three or four-day weekend once a month. He said that his plan was to spend time with Ms. Hurlston at her house.

[34] On the first extended weekend, February 3 to 7, 2012, K.W. said that Rodger Travale, the director of Baldy Hughes, walked into Ms. Hurlston's house looking for her. K.W. testified that Ms. Hurlston and Mr. Travale sometimes worked together on

Sundays, taking medication to residents at homeless shelters. K.W. said that he hid downstairs in the basement while Ms. Hurlston ushered Mr. Travale out of the house.

[35] Mr. Travale came to the house twice more that weekend, but he did not get past the front door. K.W. said that Ms. Hurlston and Mr. Travale had previously had a relationship, before either of them were employed at Baldy Hughes. Mr. Travale apparently did not want the relationship to end.

[36] The day after he returned to Baldy Hughes, February 9, 2012, K.W. said Mr. Travale phoned him and told him that he was to leave Baldy Hughes at once because he was having an affair with Ms. Hurlston. K.W. denied it, but Mr. Travale said that he had phone records and Ms. Hurlston's admission as proof. He accused K.W. of taking advantage of a single mother who was about to lose her job. K.W. said that he still had four months remaining in his programme and that he was given two hours to leave Baldy Hughes.

[37] K.W. called Ms. Hurlston and she told him she had admitted their relationship to Mr. Travale and that her employment at Baldy Hughes was terminated. Ms. Hurlston met K.W. at the bus station and they went to her house. They began to live together.

[38] K.W. said he gave Ms. Hurlston advice about severance and after a brief period she found another position. Meanwhile, he remained at her home as a homemaker looking after domestic chores, doing laundry, making breakfast for the children, walking the dog, and taking the children to school.

[39] He said that when the children were at Ms. Hurlston's house, he would sleep on the couch in the basement. When the children were at their father's home he would sleep with Ms. Hurlston. They would occasionally drink wine at dinner. According to K.W., he and Ms. Hurlston began to form an intention to live together and make a life together.

[40] K.W. returned to his stepsister's house for a 50th birthday party, and when he returned he brought back clothing, cookware, and other personal items, which he moved into Ms. Hurlston's home.

[41] K.W. applied for social assistance benefits in order to help with the groceries. He also applied for a housing allowance. Referring to Exhibit 1, at Tab 4, K.W. testified that Ms. Hurlston signed the application, dated March 16, 2012, as his landlord, with an address at 329 Pioneer Avenue, Prince George, indicating that he was paying \$400 per month rent to her.

[42] K.W. pointed to other pieces of correspondence in Exhibit 1, indicating that Ms. Hurlston had communicated with other people on his behalf or allowed him to use her fax and mailing address for his mail. At Tab 3 Ms. Hurlston sent a letter dated March 13, 2012, to a friend of K.W. concerning some personal matters. She indicated that the fax letter was from her work and that the recipient, Dave Fraser, should not reply to that fax but communicate directly with K.W. by telephone.

[43] Tabs 6, 7 indicate that on April 12, 2012, K.W. communicated with his doctor, Dr. Cobbin using Ms. Hurlston's work fax machine at Northern Health, Mental Health and Addiction Services. At Tab 8, Dr. Cobbin replied on April 17, 2012 to the same fax number.

[44] At Tabs 5 and 13, K.W. identified two letters addressed to him at 329 Pioneer Avenue, Prince George, from the Law Society of British Columbia dated April 11, 2012, and August 6, 2013, dealing with the custodianship of his law practice.

[45] At Tab 9, K.W. identified a Notice of Deposit of \$610 being employment and assistance benefits from the Ministry of Social Development. The Notice of Deposit is dated April 25, 2012 and is addressed to K.W. at the basement suite of 329 Pioneer Avenue, Prince George.

[46] At Tab 10, K.W. identified a Notice of Assessment from the Canada Revenue Agency dated May 22, 2012, addressed to him at 329 Pioneer Avenue, Prince George.

[47] In mid-June 2012, K.W. went south to attend his daughter's high school graduation. When he returned to Prince George on June 17, 2012 he found Ms. Hurlston's house locked and nobody was home. He surmised that Ms. Hurlston was avoiding him as he had begun to drink more than she liked.

[48] K.W. testified that he slept that night in the garden shed. The next afternoon when he phoned Ms. Hurlston, she told him that the relationship was not working. He pleaded with her to make it work, but she was adamant. He said he went to the University Hospital in Prince George, and after being turned away he convinced the medical staff to admit him on the basis of suicidal thoughts. He acknowledged that he was not, in truth, suicidal, but he was desperate for a place to stay.

[49] He said he contacted Ms. Hurlston a few times in the two-week period he was at the hospital. She told him she would leave his wallet and identification in her mailbox for him. When he went to retrieve these items, he found a note from her which read "I hope you get well. Where's my camera?" K.W. testified that while he was at the hospital he was trying to find a place to live in the hopes that he and Ms. Hurlston might get back together.

[50] Eventually, K.W. left Prince George. He stayed with his stepsister and then with his brother for several months. In the meantime, his belongings remained at Ms. Hurlston's home.

[51] K.W. said that he agonized over whether to make the complaint or not, but eventually, in February 2014, he filed the complaint with the College.

[52] He said that Ms. Hurlston's letter to him urging him to get better had caused him much anguish. He interpreted that letter as an expression of her disdain and contempt for him.

[53] At the close of his evidence the panel asked K.W. questions intended to test the consistency and veracity of his testimony. We were concerned that with Ms. Hurlston absent and no one representing her, K.W.'s evidence was untested. We asked questions which were intended to either corroborate his testimony, fill in

gaps in the narrative or probe his credibility. K.W. responded to those questions readily and without apparent artifice.

[54] One issue was that there was no evidence other than his statement that he and Ms. Hurlston had concocted a plan for him to return early from his Christmas visit in December 2011, to stay with her at her house. Counsel for the College agreed to arrange for K.W. to go through his email records overnight to provide further evidence in that regard.

[55] On the second day of hearing we received a package of emails, marked as Exhibit 4, which confirmed that K.W. and Ms. Hurlston communicated on numerous occasions between December 20, 2011, and January 12, 2012. The emails are replete with exchanges of terms of endearment. Some content is explicitly sexual in nature. The emails confirm that Ms. Hurlston and K.W. were involved in an intimate personal relationship. It is apparent that by January 12, 2012 K.W. and Ms. Hurlston regarded each other as intimate partners.

[56] The emails make no reference to the plan to return to Prince George before January 3, 2012. When asked how the plan was formulated, K.W. testified that all of the planning was by telephone. K.W.'s explanation is consistent with his earlier evidence that he and Ms. Hurlston spent many hours talking by telephone over the Christmas period.

[57] In response to questions about his increased drinking, he said he drank in downtown bars in Prince George. He said that Ms. Hurlston did not like him drinking in this fashion.

[58] The panel asked K.W. if anyone could corroborate his evidence about him living with Ms. Hurlston and the nature of their relationship. He responded without hesitation and said Ms. Hurlston's parents were aware of the circumstances. They had dinners at each other's homes, including Easter dinner at Ms. Hurlston's parents. They attended church together. He said he and Ms. Hurlston's father painted out a room and repaired a water tank together. He said he met Ms.

Hurlston's cousin in Hixon where Ms. Hurlston kept a horse at her great aunt's property.

[59] We asked K.W. who completed the application form found at Exhibit 1, Tab 4. He stated that the handwriting on the form was his, but that the signature at the foot of the form is that of Ms. Hurlston.

Susan Rutherford

[60] Ms. Rutherford testified that she assumed her duties as Regulatory Counsel and Deputy Registrar with the College in May 2015. As part of her duties she reviewed K.W.'s complaint, and noted that the complaint was received in February 2014.

[61] Ms. Rutherford said that Ms. Hurlston first registered with the College in November 2009 and that her status at the time of the hearing was that of Inactive. On February 28, 2014, Ms. Hurlston failed to renew her registration. Ms. Rutherford pointed out that under section 26 of the *Act*, the definition of 'registrant' includes 'former registrant'.

[62] Ms. Rutherford identified documents contained in Exhibit 1 including the letters of complaint, Ms. Hurlston's two letters of reply dated December 29, 2014, and March 31, 2016. She also identified the College Bylaws, Code of Ethics and Standards of Psychiatric Nursing Practice, and the Position Statement regarding the Prevention of Abuse, Neglect, and Sexual Exploitation which were in force at the times relevant to the citation.

[63] Ms. Rutherford emphasized that the College treated K.W.'s complaint as a serious breach of boundaries, with allegations amounting to the "top end of inappropriate conduct." She noted that the Inquiries Committee directed contact with Ms. Hurlston in February 2014 and the complaint was sent to her then.

[64] A representative of the College had a brief conversation with Ms. Hurlston, but the College did not receive a substantive response until December 2014. In the intervening period, Ms. Hurlston ignored any contact with the College.

[65] Ms. Rutherford referred to correspondence from herself to a representative of the Minister of Social Development seeking confirmation that the housing application (Tab 4), was authentic. At Tab 18 the Ministry confirmed it as such.

[66] Similarly, at Tab 19, a representative of the C.R.A. confirmed that K.W.'s 2011 Notice of Assessment was mailed to him 329 Pioneer Avenue, Prince George, which was then Ms. Hurlston's address.

[67] Ms. Rutherford noted that although Ms. Hurlston was personally served with the Amended Notice of Hearing on March 5, 2017, the College has had no contact with her since then.

[68] Ms. Rutherford pointed out that the relationship between a nurse and a client or patient, (the terms are interchangeable by definition under the Bylaws), is a therapeutic relationship and that the Code of Ethics emphasizes that the nurse is required to maintain boundaries and to recognize that a power imbalance exists between nurse and client.

[69] Responding to questions from the panel, Ms. Rutherford stated that based on her review of the College's investigation file, she was satisfied that Ms. Hurlston and K.W. were in a nurse-client relationship when Ms. Hurlston was employed at Baldy Hughes. She was satisfied that K.W. was a client and a resident under care at Baldy Hughes and not an employee or co-worker as Ms. Hurlston claimed.

[70] She testified that communication with Ms. Hurlston was sporadic throughout the investigation. An investigator interviewed Ms. Hurlston in 2016, but Ms. Hurlston declined to sign any notes of the interview or sign a witness statement.

[71] In her correspondence Ms. Hurlston advised that she had suffered a head injury which prevented her from responding to the complaint in a substantive

manner. Ms. Rutherford said the College asked for some medical evidence to support her claim, but Ms. Hurlston did not reply to the request.

[72] Ms. Rutherford testified that the investigator inspected the medication room at Baldy Hughes to confirm or deny Ms. Hurlston's comment that the room was not private. Ms. Rutherford recalled that the investigator noted that the medication room afforded privacy.

[73] We asked Ms. Rutherford if the College had asked Ms. Hurlston to provide supporting information about her allegation that she had complained to the RCMP about K.W.'s conduct. Ms. Rutherford confirmed that was the case, but Ms. Hurlston had not responded to that query.

[74] In answer to our question about the allegation that Ms. Hurlston's response to the complaint was untruthful, Ms. Rutherford said that in her view Ms. Hurlston had been untruthful generally. Specifically, she said that Ms. Hurlston's denial of the nurse-client relationship was not true.

[75] We asked if the investigation file contained documents from Baldy Hughes confirming the nurse-client relationship, since the only evidence before us on this crucial point was K.W.'s uncorroborated oral statement. Ms. Hurlston's central defence is her assertion that K.W. was not a client, but a co-worker. Ms. Rutherford said that the College's efforts to obtain records from Baldy Hughes were frustrated as the records were either lost or had been burned.

[76] We stood down to allow Mr. Kondopoulos to make enquiries of Pathways Addictions Resource Centre, the referral agent which arranged for K.W.'s admission to Baldy Hughes.

Steve King

[77] After the break, we received and reviewed documents from Pathways, (Exhibit 5), which confirmed that on June 27, 2011, Steve King, K.W.'s counsellor, applied to Baldy Hughes to admit K.W. for treatment for a history of alcohol abuse

and depression. The referral noted that K.W. was receiving medication, specifically Ativan, Cipralex, and Clonazepam, which are medications used to treat anxiety and depression.

[78] We also spoke directly with Mr. King by telephone. He confirmed unequivocally that his client K.W. was referred to and admitted to Baldy Hughes as a client/patient in order to receive treatment for alcohol abuse and depression.

Kimberly Hurlston

[79] As noted earlier, Ms. Hurlston wrote two letters to the College. She explained her tardiness in responding by noting that she had received a concussion in April 2013 and had been off work and basically disabled since then. She said that she might never be able to return to nursing as a result of the injury. She provided no details of her injury, but wrote that her doctor advised her not to engage in any stressful activity, which could include an interview with the College.

[80] Ms. Hurlston stated that psychiatric nursing was her passion and that she loved her job and working with her clients. She stated that she would never jeopardize her career or her family's safety and wellbeing for anything. She wrote that she would not have allowed the facts alleged against her to have occurred, thereby threatening her security and her professional reputation.

[81] Ms. Hurlston urged the College to examine the medication room as it could not afford privacy as alleged by K.W. She said that her kissing K.W. there was untrue.

[82] Ms. Hurlston stated emphatically that K.W. was never a client under her care but was in fact a staff member and a co-worker. She said her relationship with K.W. was strictly professional.

[83] She indicated that she had complained to the RCMP about K.W. harassing her.

[84] She also claimed that emails between her and K.W., which K.W. had given to the College as part of his complaint, were false and that somebody had accessed her email account. Those emails are found at Tab 1 of Exhibit 1 and were dated December 16, 2011. She was not referring to the emails which were marked as Exhibit 4 at the hearing.

[85] Ms. Hurlston went on to say that she often left her personal email open while she was at work at Baldy Hughes and that other people could have written emails purporting to be her.

[86] Ms. Hurlston wrote that although she offered to store K.W.'s personal belongings in her basement, he never lived with her as he was a near stranger and one who had "complex issues that I was only scratching the surface of knowing".

[87] Ms. Hurlston claimed that K.W. had misled the Ministry into believing he was renting her basement suite so that he could receive more money. She claimed that K.W. wanted to have his mail directed to her address. She acknowledged sending some correspondence by fax for K.W.

[88] Ms. Hurlston confirmed that her address between February and June 2012 was 329 Pioneer Avenue, Prince George, B.C.

[89] The panel's questions directed at K.W. and Ms. Rutherford would not likely have been necessary had Ms. Hurlston or her representative appeared. Some of our questions required Ms. Rutherford to give hearsay evidence. We also directed counsel to make an inquiry which resulted in Mr. King giving evidence. We are satisfied that those actions did not prejudice any party and were necessary in the circumstances.

[90] In fairness to Ms. Hurlston, we determined it appropriate to test the credibility of K.W., and to put the College under an obligation to meet Ms. Hurlston's main defence regarding K.W.'s status at Baldy Hughes, beyond merely his statement that he was in a nurse-client relationship with her and the College's statement of belief that his assertion was true. Section 38 (4.2) of the Act permits a hearing panel some

latitude with respect to the rules of evidence and allows a panel to make such direction it considers appropriate to ensure the legitimate interests of a party will not be unduly prejudiced.

CREDIBILITY

[91] This case presents particular, though not uncommon issues regarding credibility. We have the written and oral evidence of K.W., which is denied and contradicted by Ms. Hurlston in her written response. K.W. was not subject to cross-examination. To use a colloquialism, it is a case of “he said, she said.”

[92] In these circumstances, we are required to scrutinise the evidence and test it for credibility. The case to which many courts and tribunals turn to for guidance is *Faryna v. Chorny* [1952] 2 D.L.R. 354, a decision of the British Columbia Court of Appeal. In that case Mr. Justice O'Halloran wrote at paragraph 9:

But the validity of evidence does not depend in the final analysis on the circumstance that it remains uncontradicted, or the circumstance that the Judge may have remarked favourably or unfavourably on the evidence or the demeanour of a witness; these things are elements in testing the evidence but they are subject to whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time.

Further on the Court remarks at paragraph 11:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. Only thus can a Court satisfactorily appraise the testimony of quick-minded, experienced and confident witnesses, and of those shrewd persons adept in the half-lie and of long and successful experience in combining skilful exaggeration with partial suppression of the truth.

[93] *Faryna* was reviewed by the Supreme Court of British Columbia in *Bradshaw v. Stenner*, 2010 B.C.S.C. 1398. In that case, at paragraph 186, Madam Justice Dillon wrote:

Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides (*Raymond v. Bosanquet (Township)* (1919), 59 S.C.R. 452, 50 D.L.R. 560 (S.C.C.)). The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally (*Wallace v. Davis*, [1926] 31 O.W.N. 202 (Ont.H.C.); *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (B.C.C.A.) [*Farnya*]; R. V. S.(R.D.), [1997] 3 S.C.R. 484 at Para.128 (S.C.C.)). Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time (*Farnya* at para. 356)

[94] In assessing K.W.'s credibility, we observed him to present himself as both victim and instigator. He was guarded and vulnerable at times, yet self-possessed. He gave evidence as professional witness might, no doubt a reflection of his court experience. He spoke in a particular and careful manner. He was detailed and meticulous in his recollection of events.

[95] K.W. appeared to want to keep control of the content and the manner of delivery of his evidence. We queried whether K.W. was 'tailoring' his evidence or if he was just approaching the task of giving evidence in a business-like way. We took into account not only was K.W. a willing participant in the relationship but he was also the instigator. As a rejected lover he has a motive to get back at her.

[96] K.W. said he pondered long and hard about making his complaint to the College, but he ultimately concluded that the letter Ms. Hurlston left for him in her mailbox represented such a high level of disdain and rejection, that the complaint was justified. We took him to mean that his complaint was driven by personal and subjective motives and not a purely objective goal to maintain the public interest.

[97] We have set out K.W.'s evidence in some detail so that the context of our assessment of his credibility and the internal consistency of his evidence is embedded in these reasons. In *Farnya*, the Court made it clear that when credibility

is in issue, a practical and informed person ought readily to be able to conclude that the evidence given is consistent with and is in ‘harmony with the preponderance of probabilities’.

[98] After analyzing K.W.’s evidence and comparing it with the evidence of Ms. Hurlston, we concluded that he was forthright, sincere and truthful. We determined that his evidence is to be preferred to Ms. Hurlston’s and is credible, whereas hers is not. We concluded that K.W.’s testimony is consistent with what was likely and probable under the circumstances which existed at the time.

[99] First, if none of the events took place, as Ms. Hurlston claims, K.W. would have no motive to complain.

[100] Second, it runs contrary to common-sense that K.W. conceived of a plan to attack Ms. Hurlston’s professional character by fabricating a set of false emails, arranging for his correspondence to be sent to her address, concocting a story about a failed love affair and then waiting nearly two years before making a complaint to the College. In our view that conclusion is not plausible.

[101] Third, the emails which form Exhibit 4 are very persuasive in establishing as a fact that K.W. and Ms. Hurlston were intimate partners by January 2012. Further, when we place the emails into context with the timing of the other events described by K.W. at that time, that is to say his trip south, the early return to Prince George, the two long weekends spent at Ms. Hurlston’s home and their joint dismissal from Baldy Hughes, all within a period of less than eight weeks, what emerges is a pattern of events which strikes us possible and likely. The scenario is logically consistent with a rapidly developing and inappropriate love affair. The unhappy outcome fits the circumstances.

[102] Fourth, we accept K.W.’s evidence that he filled out the housing allowance application at Tab 4 of Exhibit 1 and that Ms. Hurlston signed the form, contrary to her claim that this was an initiative of K.W. alone. We compared the handwriting on the housing application and the signature on that form, with the handwriting on the

fax cover sheet and signature on the attached letter from Ms. Hurlston, (Exhibit 1, Tab 17). The two signatures appear to be written by the same person, Ms. Hurlston. The handwriting samples at Tabs 4 and 17 appear to be made by two different persons, which is consistent with K.W.'s evidence.

[103] Fifth, K.W.'s evidence as to his dealings with Ms. Hurlston's family members was spontaneous and in answer to questions from the panel for which he had no opportunity to prepare. The small details he described have the ring of truth. It is not likely that K.W. would invent such evidence on the spur of the moment, if he knew the individuals he spoke about would deny it, if asked.

[104] Sixth, the independent evidence of Mr. King confirming that K.W. was a client at Baldy Hughes, and not a fellow employee as Ms. Hurlston rigidly asserted, persuaded us that her version of events generally could not be relied upon and thus, K.W.'s evidence generally, is to be preferred.

FINDINGS OF FACT

[105] From November 2009 until February 2014, Ms. Hurlston was a registrant with the College. She was employed as a psychiatric nurse at Baldy Hughes from about July 2011 to February 9, 2012.

[106] Between June 30, 2011 and February 9, 2012, K.W. was a resident client at Baldy Hughes, receiving treatment for alcohol abuse and depression. He was a vulnerable individual.

[107] Before February 9, 2012, K.W. was a client of Ms. Hurlston. After that date he was a former client.

[108] While he was a client receiving treatment at Baldy Hughes, K.W. and Ms. Hurlston met privately on many occasions and talked about personal and private matters. They communicated privately and against Baldy Hughes rules, by telephone and email.

[109] In December 2011 and January 2012, K.W. and Ms. Hurlston exchanged emails which were personal, intimate, romantic and sexual in nature.

[110] In late December 2011 the relationship between K.W. and Ms. Hurlston became physical and sexual. K.W. secretly stayed with Ms. Hurlston at her house for several days in December 2011 and January 2012 and again in February 2012. In January 2012 K.W. and Ms. Hurlston had romantic encounters and embraced while at Baldy Hughes. When discovered by the director of Baldy Hughes, Ms. Hurlston's employment was terminated and K.W. was dismissed from the programme as a client.

[111] After February 9, 2012 K.W. lived with Ms. Hurlston at her home until June 17, 2012. Their relationship was intimate, romantic and sexual during that time.

[112] In 2012, Ms. Hurlston; sent and received fax mail on K.W.'s behalf to and from third parties from her work fax number; assisted K.W. to claim that he was a tenant at her residence so as to receive housing benefits from the Ministry of Social Development; allowed K.W. to use her address for the purpose of receiving regular mail there; permitted K.W. to move personal belongings to her house.

[113] In 2011 and 2012, Ms. Hurlston shared alcohol with K.W. when she knew he was a resident at Baldy Hughes receiving treatment for alcohol abuse. After the nurse-client relationship ended, she shared alcohol with K.W. knowing he had a history of alcohol abuse.

[114] Ms. Hurlston's correspondence with the College denying all allegations, (other than acknowledging that she allowed K.W. to store some of his property at her house), was not truthful.

BYLAWS, CODE OF ETHICS AND STANDARDS

[115] At the time these events took place, Ms. Hurlston was bound by the College of Registered Psychiatric Nurses of BC Bylaws, the Registered Psychiatric Nurses of Canada Code of Ethics and Standards of Psychiatric Nursing Practice, and the

College of Registered Psychiatric Nurses of British Columbia Position Statement, 'Preventing Abuse, Neglect and Sexual Exploitation'.

[116] Extracts of the rules and guidelines shown below were in effect between June 2011 and June 2012.

1. BYLAWS

[117] Sections 54 and 55 of the Bylaws deal with professional misconduct and sexual misconduct. The relevant parts are as follows:

54. – Professional Misconduct.

Professional misconduct includes the following conduct of a registrant who has:

- (d) contravened a standard of practice or a provision of the code of ethics
- (e) contravened the Act, regulation, Bylaws or consent order
- (f) abused a client physically, verbally, sexually, psychologically, financially or otherwise
- (g) taken unfair advantage of the confidence and trust within the client relationship
- (m) practiced the profession while in a conflict of interest
- (p) engaged in conduct or performing an act, in the course of practicing the profession, that having regard to all the circumstances would reasonably be regarded by registrants as disgraceful, dishonourable or unprofessional.

56. – Sexual Misconduct

- (1) Sexual misconduct by a registrant includes:

- (a) sexual intercourse or other forms of physical sexual relations between the registrant and the client
- (b) inappropriate touching of a sexual nature of the client by the registrant
- (c) inappropriate behaviour or remarks of a sexual nature by the registrant toward the client
- (d) for the purposes of subsections (b) and (c) 'sexual nature' does not include touching, behaviour or remarks of a clinical nature appropriate to the service being provided.

- (2) Sexual misconduct is professional misconduct.

2. CODE OF ETHICS

[118] The relevant portions of the Code are as follows:

Safe, competent, and ethical practice to ensure the protection of the public

The registered nurse:

The Registered Psychiatric Nurse:

- 1) Knows the difference between personal and professional relationships and assumes responsibility for those relationships.
- 2) Commits to building therapeutic relationships and behaves in a manner that protects the integrity of those relationships.
- 3) Ensures that the vulnerabilities of others are not exploited for one's own interests.
- 7) Ensures that one neither initiates nor participates in any practice that is considered harmful to the welfare of others.
- 10) Conducts one's self in a manner that reflects honesty, integrity, reliability, impartiality, and diligence.
- 14) Accepts responsibility and accountability for one's own actions taking all necessary steps to prevent or minimize harm.
- 16) Conducts one's self in a manner that promotes a positive image of the profession at the local, community, provincial, and national levels.
- 17) Practices according to provincial and federal statutes/acts/regulations/by-laws and the Standards of Psychiatric Nursing Practice.
- 18) Understands, promotes, and upholds the ethical values of the profession.

Health, mental health, and well-being

The Registered Psychiatric Nurse:

- 3) Recognizes the complex relationships between emotional, developmental, physical, and mental health and the influence of social factors on physical and mental health and on illness.

3. STANDARDS

[119] The following Standards apply:

Standard 1: Therapeutic Interpersonal Relationships

A Registered Psychiatric Nurse:

Acts as role model for positive professional, interpersonal, and therapeutic relationships.

Uses professional judgment and practices with personal integrity to initiate, maintain, and terminate professional, interpersonal, and therapeutic relationships.

Recognizes and addresses power imbalances in professional, interpersonal, and therapeutic relationships.

Standard 3: Professional Responsibility

A Registered Psychiatric Nurse:

Practices in accordance with the Code of Ethics, Standards of Psychiatric Nursing Practice, and relevant legislation.

Assumes responsibility and accountability for own practice.

Recognizes personal and professional limitations and consults and refers appropriately.

Creates and maintains professional boundaries.

Standard 4: Professional Ethics

A Registered Psychiatric Nurse:

Practices and conducts one's self in a manner that reflects positively on the profession.

Promotes and adheres to the professional Code of Ethics.

Recognizes the power imbalance in the therapeutic relationship and mitigates the risks of exploiting that power.

Maintains boundaries between professional and personal relationships.

[120] "Boundaries" is defined in the standards as:

Boundaries are limits that protect the space between the professional's power and the client's vulnerability. Boundaries define and separate professional roles from other roles. Boundaries are the limits that allow a safe connection between a professional and a client and are always based on the client's needs (Peterson, M. 1992).

4. POSITION STATEMENT

[121] The College of Registered Psychiatric Nurses of British Columbia issues publications from time to time instructing registrants as to the importance of maintaining boundaries and in particular, avoiding abuse and sexual exploitation. The Position Statement that was in effect at the time the events complained about took place is titled Preventing Abuse, Neglect and Sexual Exploitation.

[122] In the introduction, the following paragraphs appear:

At the core of psychiatric nursing practice is the therapeutic relationship between the client (individual, family, group and/or community) and the individual Registered Psychiatric Nurse. Establishing and maintaining a professional therapeutic relationship is the responsibility of the Registered Psychiatric Nurse.

This relationship is based on trust, respect, empathy and power. Any act of abuse or neglect by the registrant, whether it be sexual, physical, verbal, emotional, neglectful or financial is a betrayal of this relationship.

[123] “Abuse” is defined as follows:

Abuse in our context is the misuse of power or the betrayal of trust, respect or intimacy between the nurse and the client that the nurse knows can cause, or be reasonably expected to cause, physical or emotional harm to a client. This includes all types of abuse of clients by nurses:

[Including] sexual, emotional.

[124] Under the heading "Sexual Abuse" is the following:

Interacting with clients in a manner that may be reasonably perceived by the client, nurse or others to be of a sexual nature. The following are some examples of sexual exploitation and abuse:

Dating, suggestions of sexual involvement, sexual conversation, unnecessary probing for sexual information, failure to show respect for personal boundaries and need for privacy, sexual contact ranging from inappropriate touching to intercourse and rape.

[125] Under the heading "Power", the statement reads:

Registered Psychiatric Nurses often perceive themselves as allies of the client because of their responsibility to act as advocates for clients. At its core, however, the psychiatric nurse-client relationship is one of unequal power, in which the psychiatric nurse has authority, knowledge, access to privileged information, and influence. Regardless of the nature and context of the therapeutic relationship, and whether or not the Registered Psychiatric Nurse is the primary or secondary caregiver, these components are present.

[126] The “Therapeutic Relationship” is described thus:

The basic premise of the nurse-client relationship is that it is therapeutic and based on the needs of the client. The nurse-client relationship is based on trust and respect.

A therapeutic relationship refers to a relationship intended to gain an understanding of the clients need for care, and to assist clients to set and implement goals for themselves, and to evaluate the outcome.

[127] The Position Statement goes on to refer to “Guiding Principles.” The following are relevant:

1. Abuse, neglect or sexual exploitation by the registrant of the College of Registered Psychiatric Nurses of British Columbia is considered gross misconduct.
2. The onus for maintaining the professional relationship is on the registrant, regardless of the client’s behaviour.

4. The nurse must not touch the client in a manner that may be reasonably perceived by the client, nurse or others to be of a sexual nature. The nurse must not engage in sexual intercourse or other forms of physical sexual contact with a client.
6. The interpersonal relationship between a nurse and a client is a professional relationship that is therapeutic and is used to meet the needs of the client. Difficulties often arise when there is an attempt to have a professional and a non-professional relationship at the same time.

[128] Finally, the Position Statement refers to “Romantic Sexual” relationships. That section contains the following paragraphs:

When a nurse-client relationship exists, initiating or engaging in a romantic or sexual relationship with a client is not acceptable. This includes dating.

Nurses who engage in romantic (dating) or sexual relationships with a former client (or their significant others) following termination of the nurse-client relationship, must not use information or knowledge about a client acquired through the nurse-client relationship to initiate romantic (dating) or sexual relationships. If it is anticipated that a client will require further care, a decision must be made by the nurse to pursue either the romantic (dating) or sexual relationship, or the nurse-client relationship, and withdraw from the other.

DISCUSSION

[129] The Bylaws, the Code and the Standards refer to, among other things, to the duties and obligations of a psychiatric nurse towards a client or patient. Those rules and guidelines conspicuously do not deal with the nurse and former client relationship. The Position Statement, (as it existed at the relevant time), makes a single reference to the possibility that a nurse might engage in a romantic or sexual relationship with a former client, but only if the nurse does not use information or knowledge acquired through the nurse-client relationship to *initiate* a romantic or sexual relationship.

[130] The absence of further commentary regarding nurse and *former client* relationships, given the importance of maintaining strict boundaries in the therapeutic relationship with a client and the plethora of material available to nurses elsewhere in the rules set out above, is remarkable. Under the ‘Guiding Principles’ of the Position Statement, section 6 advises nurses that ‘Difficulties can arise when there is an attempt to have a professional relationship and a non-professional

relationship at the same time'. In the circumstances of this case, that is a gross understatement. In our view, the concept of professionalism in this context and the dangers of pursuing a relationship with a former client are inadequately highlighted in the materials published to the profession.

[131] If Ms. Hurlston had commenced a romantic relationship with K.W. on February 10, 2012, without using confidential information gained during the course of the nurse-client relationship to initiate the relationship and without there being any misconduct on her part prior to that date, would the College have grounds to proceed with a citation?

[132] We reviewed publications from other nursing agencies currently available online regarding boundaries and the former client, but found little to assist us. One agency has published a general comment to the effect that a nurse should exercise caution about socializing with a former client. Another recommends a 'cooling off' period between the time the client relationship ends and any other type of relationship, including romantic, begins.

[133] Even though that type of advice is not set out in the College materials relevant here, we are of the view that the concept is common-sense, not alien and should be on any professional person's radar, no matter which discipline they practice. But that does not mean that we consider the College materials to be adequate in coming to grips in a meaningful way, with the sensitive problem of giving clear and firm guidance to registrants about their professional duties and obligations towards former clients, in a society which values the right to self-determination in the matter of private relations.

[134] In the present circumstances, we conclude that Ms. Hurlston's participation in a relationship with K.W. while he was a client was unprofessional and reckless. We also conclude that her continuation of the relationship when K.W. ceased to be a client was a continuation of the same unprofessional recklessness. Although K.W. was no longer an actual client after February 9, 2012, we are not able to say that he immediately became a former client. There has to be a period of time and a

significant and demonstrable change in the former client's psychological circumstances before such a transition becomes complete. The best we can say is that at least until June 2012, K.W. was in the position of being a 'near-client' as regards Ms. Hurlston. As a client, K.W. was vulnerable and dependant on February 9, 2012. That reality did not change overnight. Ms. Hurlston knew this as she acknowledged that K.W. had "complex issues". At a minimum, her decision to continue the relationship is evidence of poor judgment at the very top end of the scale, raising numerous red flags which are clearly listed in the Code and the Standards.

DECISION

[135] We find that the College has proved Count 1 to Schedule "A" of the citation and that Ms. Hurlston's conduct was in breach of appropriate professional boundaries. We also find her conduct constitutes professional misconduct as defined in section 26 of the *Act*, section 54 (2) of the Bylaws as they existed at the time and as elsewhere described in the Code of Ethics and the Standards. The Position Statement describes 'sexual exploitation' as 'gross misconduct'. Given the mutuality of the relationship and the fact that K.W. was not a patient hospitalised with a major psychiatric disorder, we cannot conclude that this is a case of exploitation.

[136] We find that the College has proved Count 2 to Schedule "A" by showing that Ms. Hurlston sent and received fax communications for K.W. from her place of work. (We find there is no evidence that Ms. Hurlston failed to document that conduct in either clinical notes, a treatment plan or in any other manner in this count, or in Count 3 (g) below.) By itself, we do not find this conduct to be so egregious as to amount to a breach of professional boundaries in a nurse-client relationship. It may be that an employer would view this conduct as worthy of sanction, depending on the circumstances. In our view, subject to the comments in paragraph 137 below, merely using a work fax to send and receive mail for a former client such as K.W. is not a matter sufficiently serious as to amount to a separate count of misconduct.

[137] We find that the College has proved the allegations in Count 3 a), b), c), d), f) and g) of Schedule “A”. There is insufficient evidence to support the allegation in subsection e) of this count. Taken as a whole, particularly the conduct described in subsections a) and f), and together with the conduct described in Count 2, we find that Ms. Hurlston breached her duty to maintain professional boundaries with K.W., a former client.

[138] We recognise that a registrant has a less well defined duty to maintain a professional distance from a former client than with a current client, so as to comply with the boundaries mandated in the Code and the Standards. In this case however, we conclude that although K.W.’s status as a client may have changed abruptly on February 9, 2012, his character or his nature did not. In these circumstances, a psychiatric nurse acting in accordance with the Bylaws, Code and Standard should have been alert to the very grave dangers of pursuing or continuing to pursue any kind of relationship with a former client. A right thinking psychiatric nurse, acting professionally, would know that a former client would have to achieve significant clinical gains over a long period of time before crossing, (or in this case, continuing to cross), even minor boundaries with a former client. As the College stated in its written argument, this was not a ‘momentary lapse of judgment.’ Ms. Hurlston’s conduct was all part of a continuum.

[139] Based on the evidence and the finding of credibility against her, we find that the College has proved the allegation in Count 4 of Schedule “A”, and that the bulk of Ms. Hurlston’s response to the complaint/citation was untruthful.

[140] Ms. Hurlston did not appear at this hearing, although duly served. Had she attended, she would have had an opportunity to vigorously defend her position, cross-examine K.W. and adduce evidence in her favour. Given the seriousness of the allegations and her comment that she values her designation as psychiatric nurse to a high degree, her non-attendance and lack of communication supports the view that her correspondence with the College was untruthful and amounts to a breach of the Code and Standards.

[141] As to Count 5 of Schedule “A”, this count appears to be a generally stated rounding up of the four areas of conduct to be enquired into, which form the citation. Other than the allegation that Ms. Hurlston *continues* to breach the Code and Standards, which amounts to conduct unbecoming, the count appears to be superfluous. As there is no specific allegation before us of breaches continuing after the date set for hearing, we are unable to deal with this count.

[142] Section 26 of the *Act* defines “professional misconduct” as including sexual misconduct, unethical conduct, infamous conduct and conduct unbecoming a member of the health profession. The totality of the evidence and our findings of fact and credibility lead us to conclude that Ms. Hurlston’s conduct meets that definition. We find that the evidence is sufficiently clear, cogent and convincing to satisfy us that her conduct would ‘reasonably be regarded as disgraceful, dishonourable or unbecoming by well-respected members of the profession - persons of integrity and good reputation amongst the membership’. (See *Law Society of Manitoba v. Savino*, [1983] 6 W.W.R. 538, 1 D.L.R. (4th) 285 at p.292).

[143] In light of all of the above, we find that Ms. Hurlston’s conduct is deserving of sanction as set out in section 39 of the *Act*.

Reasons written by Tim Holmes with the concurrence of David Reid and Gavin Wallace.