

**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 DISCIPLINARY ACTION**

Hearing Date: October 3, 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 of the College of Registered Psychiatric Nurses of British Columbia, (the 'College'), re-convened on October 3, 2017, to hear submissions and to determine an appropriate penalty in the matter of Kimberly Hurlston, ('Ms. Hurlston'). Earlier this year the panel determined that Ms. Hurlston committed professional misconduct, most significantly by engaging in a personal and sexual relationship with a client, K.W., permitting him to live with her after the nurse-client relationship ended and by denying the allegations when they were put to her by the College. The panel issued written reasons on July 28, 2017, setting out findings of fact and determination. This hearing is held pursuant to section 39 of the ***Health Professions Act, [RSBC 1996] chapter 183***, (the 'Act').

[2] Having determined under section 39(1) of the Act that Ms. Hurlston's conduct is deserving of sanction, the panel may make orders under section 39(2) of the Act, as follows:

If a determination is made under subsection (1), the discipline committee may, by order, do one or more of the following:

- (a) reprimand the Respondent;
- (b) impose limits or conditions on the Respondent's practice of the designated health profession;
- (c) suspend the Respondent's registration;
- (d) subject to the by-laws, impose limits or conditions on the management of the Respondent's practice during the suspension;
- (e) cancel the Respondent's registration;
- (f) fine the Respondent in an amount not exceeding the maximum fine established under section 19(1) (w).

[3] Section 39(8) of the Act provides that If the registration of the respondent is suspended or cancelled under subsection (2)(c) or (e), the discipline committee may impose conditions on the lifting of the suspension or eligibility to apply for reinstatement and may set a date for reinstatement.

[4] The Act is silent with respect the timing of eligibility to apply for reinstatement in the case of a registrant who has allowed her registration to lapse, as is the case with Ms. Hurlston. She did not renew her registration in February 2014, which coincidentally is when she was notified of the complaint against her.

[5] Section 26 of the Act defines 'registrant' to include a 'former registrant'.

[6] Section 19(1) (w) of the Act provides that a board established by the College, may set the maximum fine the discipline committee can impose. Section 69 of the College by-laws sets the amount at \$35,000.

[7] The discipline committee may award costs under either section 39(4) or (5) of the Act, to partially indemnify a successful party for expenses incurred in the preparation and conduct of hearings. Provision for costs is made under section 69.1 of the by-laws, and by reference to Schedule J of the by-laws which sets out a Tariff of Costs. In essence, the successful party may recover expenses up to 50% of legal fees, 100% of expert witness fees and 100% of reasonable and necessary disbursements.

PROCEEDING IN MS. HURLSTON'S ABSENCE

[8] Ms. Hurlston did not attend the hearing in June, although she was duly served with notice of the date, place and time of the hearing. Neither she nor her representative attended or provided any written material explaining her absence or indicating her position with respect to facts.

[9] At this hearing, the panel convened at 9:35 am. Mr. Kondopulos, submitted that we should proceed in Ms. Hurlston's absence pursuant to section 38 (5) of the Act. As previously, Ms. Hurlston did not attend, nor did she take any steps to explain her absence or put forward her position regarding penalty.

[10] The College tendered an Affidavit of Attempted Service, (Exhibit 6), attaching documents which were left at Ms. Hurlston's address,

, on August 9, 2017. The attachments comprise copies of the two earlier decisions in this matter, a Notice of Continuation setting out the date, place and time of the hearing, and a cover letter advising Ms. Hurlston of the purpose of the hearing and referring to the sections of the Act dealing with penalty and her right to appeal an order of the discipline committee to the Supreme Court of British Columbia. The process server attended at Ms. Hurlston's address on August 1, 7 and 9, 2017 but was unable to serve her personally. On August 1, 2017 he met a young man at the residence who told him Ms. Hurlston was not at home at that time.

[11] The panel stood down until 10:05 am and determined to proceed with the hearing in Ms. Hurlston's absence.

POSITION OF THE COLLEGE

[12] The College proposes the following sanctions:

(a) An order that Ms. Hurlston may not apply to be reinstated to registration with the College as a Registered Psychiatric Nurse for a period of ten years from February 28, 2014, the date her registration lapsed, **or** an order that Ms. Hurlston may not apply to be reinstated to registration for a period of five years from July 28, 2017, when the panel issued its reasons on Facts and Determination.

(b) A declaration and order that if Ms. Hurlston elects to apply for reinstatement after a date set by the Discipline Committee, she will be subject to all of the usual requirements and conditions applicable for reinstatement of registration.

(c) A fine of \$35,000, the maximum allowable under the College by-laws.

(d) An order that Ms. Hurlston pay the College's actual legal costs and disbursements in the maximum amount allowable under the College by-laws.

[13] We queried how the discipline committee could set a date for a registrant to apply for reinstatement, unless first suspended under section 39(2) (c). As a lapsed registrant, Ms. Hurlston has no registration to suspend. Mr. Kondopulos submitted that our authority to set a date for Ms. Hurlston to apply for reinstatement must be inferred from the broad language found in section 39(2) (b) of the Act. That subsection permits a discipline committee to impose limits or conditions on a registrant's practice. He argued that the Legislature could not have intended to allow a lapsed registrant to avoid the delayed return to practice provision which is applicable to an active registrant who is subject to a suspension order. Mr. Kondopulos argued that such a result would be absurd.

EVIDENCE OF MS. RAMSAY

[14] Ms. Ramsay is the Registrar and Director of Operations of the College. She said that Ms. Hurlston was previously the subject of a complaint brought by a former employer on January 23, 2012. Ms. Hurlston responded on May 8, 2012, and the matter was resolved shortly thereafter by consent remedial action. On July 27, 2012, Ms. Hurlston agreed with the inquiry committee finding, that taking client files home without authorisation and failing to return employer's property in a timely fashion, amounted to breaches of the Code of Ethics and Standards of Practice. Ms. Hurlston undertook to review the Code and Standards and ensure that her future practice would uphold all professional and ethical standards. A copy of the undertaking was filed as Exhibit 7.

[15] In support of the College's claim for costs and expenses, Ms. Ramsay filed Exhibit 8, a schedule of fees and disbursements incurred by the College as of the date of this hearing. Mr. Kondopulos later updated the schedule to include fees and expenses related to this hearing. 50% of legal fees including applicable taxes

comes to \$22,965.58. 100% of disbursements including applicable taxes comes to \$18,093.86. The total of costs and expenses claimed therefore is \$41,059.44.

[16] Referring to the 'usual requirements and conditions applicable for reinstatement of registration' proposed by the College, Ms. Ramsay indicated that the requirements change from time to time as the College amends its by-laws. She said that if a registrant applies for reinstatement after five years out of practice, he or she must meet specified educational requirements, including an approved psychiatric nursing refresher course, as well as proof of competence, good character and fitness to practice. There will likely be significant financial cost involved which is estimated to be in the range of \$5,000, although we were not provided with details of educational expenses.

ARGUMENT OF THE COLLEGE

[17] Mr. Kondopulos briefly recapped the facts found by the panel. He noted that Ms. Hurlston had breached the Act, the by-laws, the Code and the Standards set by the College, by crossing professional boundaries and by being untruthful when confronted with the allegations by the College.

[18] Mr. Kondopulos stressed that the panel found Ms. Hurlston's professional misconduct was also conduct unbecoming which is disgraceful and dishonourable. He submitted that we should impose significant sanctions.

[19] Mr. Kondopulos pointed out that Ms. Hurlston's misconduct was not a momentary lapse, but a continuing breach which occurred over many months. He submitted that having undertaken to review the Code of Ethics and Standards of Practice, Ms. Hurlston ought to have known that she was placing herself in grave danger of serious professional jeopardy by pursuing a relationship with a client and a former client.

[20] Mr. Kondopulos submitted that the relationship and the manner of its ending, caused K.W. serious and foreseeable harm. He submitted that when the relationship ended, K.W. was vulnerable. He had 'no income, no job and nowhere to

turn.’ In effect, the College says that the facts and their outcome amount to a case study why registrants should respect and maintain professional boundaries.

[21] Mr. Kondopulos emphasised Ms. Hurlston’s lack of candour and her untruthful responses to the complaint. He characterised her lack of communication and her failure to attend the hearings contemptuous and unremorseful. He said that her dealings with the College were calculated to mislead. Ms. Hurlston denied the basic elements of the complaint and took the offensive by casting K.W. as the wrongdoer. Mr. Kondopulos pointed out that Ms. Hurlston did not provide any credible evidence in support of her position. He said we should consider Ms. Hurlston’s failure to engage with the disciplinary process in a realistic fashion as an exacerbating factor.

[22] Mr. Kondopulos referred to the only similar case which the College has dealt with involving sexual misconduct, **Muhammad Mamdeen**, (2014). That matter concluded by way of a consent order permanently barring Mr. Mamdeen from obtaining registration as a Registered Psychiatric Nurse.

PRINCIPLES AND DISCUSSION

[23] Other than the reference to the **Mamdeen** case, we were not provided with any other authority to guide us as to what penalty might be appropriate in the circumstances. From our review of websites of other nursing disciplinary bodies, we were unable to find relevant cases with similar fact patterns.

[24] In terms of principles to be applied, discipline panels of several designated British Columbia health professions have turned to **Law Society of B.C. v. Ogilvie** [1999] LSBC 17, for assistance. The following extract from **Ogilvie** is relevant:

10 The criminal sentencing process provides some helpful guidelines, such as: the need for specific deterrence of the respondent, the need for general deterrence, the need for rehabilitation and the need for punishment or denunciation. In the context of a self-regulatory body one must also consider the need to maintain the public’s confidence in the ability of the disciplinary process to regulate the conduct of its members. While no list of appropriate factors to be taken into account can be considered exhaustive or appropriate in all cases, the following might be said to be worthy of general consideration in disciplinary dispositions:

(a) The nature and gravity of the conduct proven;

- (b) The age and experience of the respondent;
- (c) The previous character of the respondent including details of prior discipline;
- (d) The impact upon the victim;
- (e) The advantage gained, or to be gained by the respondent;
- (f) The number of times the offending conduct occurred;
- (g) Whether the respondent has acknowledged the misconduct and taken steps to disclose and redress the wrong and the presence or absence of other mitigating circumstances;
- (h) The possibility of remediating or rehabilitating the respondent;
- (i) The impact on the respondent of criminal or other sanctions or penalties;
- (j) The impact of the proposed penalty on the respondent;
- (k) The need for specific and general deterrence;
- (l) The need to ensure the public's confidence in the integrity of the profession, and;
- (m) The range of penalties imposed in similar cases.

[25] Ms. Hurlston's conduct is at the high end of the type of offence with which a psychiatric nurse may be charged. She crossed professional boundaries by engaging in a sexual relationship with a client and by continuing that relationship when the nurse/client relationship ended. The prohibition and dangers of entering into such a relationship are spelled out clearly and repeatedly in the Act, by-laws, Code and Standards governing the profession. Ms. Hurlston was not truthful in her response to the complaint and by placing herself beyond the reach of the College and its duty to pursue this matter in the public interest, she compounded the nature and gravity of the conduct proven.

[26] We do not know Ms. Hurlston's age, although we know she is the mother of young children. She had been a registrant of the College less than two years when she met K.W., and just over two years when she began the relationship with him. We consider her to be inexperienced as a professional person.

[27] Ms. Hurlston was the subject of a complaint which arose in January 2012, about two weeks before her relationship with K.W. was discovered and her employment at Baldy Hughes was terminated. The earlier complaint involved poor

judgment regarding workplace etiquette and practice. In the present case she demonstrated similar poor judgment by using her work fax to facilitate K.W.'s interests. The College argued that having undertaken to review the Code and Standards, the provisions of which would have been fresh in her mind, Ms. Hurlston ought to have known that by engaging in the relationship with K.W., she had crossed an ethical line.

[28] It is correct to say that the pre-existing complaint was prior in time to the K.W. complaint. Ms. Hurlston responded to that matter in May 2012. She ended her relationship with K.W. on June 17, 2012, and some five weeks later she gave her undertaking to the College to review the Code and Standards. Thus one cannot say that Ms. Hurlston's review of the Code and Standards ought to have been fresh in her mind and she should therefore have known of her peril when she became involved with K.W., as a result of complying with the undertaking.

[29] Ms. Hurlston was relatively new to the profession in late 2011 and early 2012, and thus her education and training was recent. Her appreciation of ethical standards ought to have been current when she first encountered K.W. In any event, registrants are deemed to know the rules of conduct at all times, regardless of refresher courses or reviews.

[30] K.W. testified that he was devastated when the relationship ended. He said he felt he had been treated with contempt and disdain. We accept that K.W. was in a vulnerable state and he was poorly treated by Ms. Hurlston. Instead of maintaining a professional distance from him, she encouraged him to pursue a personal relationship with her. She brought him into her home, lived with him and let him foster the hope that they might make a life together. She shared alcohol with him knowing he was an abuser of alcohol. She was aware he had 'complex issues'.

[31] In assessing the impact of Ms. Hurlston's conduct on K.W., we take into account that it was he who took the first critical step in the relationship by inviting Ms. Hurlston to have dinner with him in December 2011. Although K.W. was a troubled person in need of rehabilitation when he went to the Baldy Hughes treatment centre, he was also a sophisticated, articulate and educated man, aware

of his situation, and a voluntary participant at the centre. He was not an involuntary hospital patient diagnosed with a major mental illness or lacking in capacity.

[32] When K.W. entered Baldy Hughes he had no income, no job and no home of his own. We also recall evidence that his stepsister and later his brother took him in when Ms. Hurlston rejected him. Thus, when the relationship ended, his situation in terms of income, job and home was no different than when he commenced his stay at Baldy Hughes. We do not think it is appropriate to lay all of the responsibility for K.W.'s personal circumstances at Ms. Hurlston's door.

[33] We have not identified any advantage which Ms. Hurlston may have gained by her conduct. Indeed, the opposite appears to be the case.

[34] The offending conduct occurred over a period of several months. It escalated from conversations where the parties exchanged personal confidences, to dating behaviour, to a consensual sexual relationship. This was no isolated or minor slip. Ms. Hurlston had many opportunities to recognise and undo her errors, but she persisted with her ill-advised conduct until ultimately, she had to take drastic action.

[35] Regrettably, Ms. Hurlston has not acknowledged the misconduct nor has she taken any steps to redress the wrong. Indeed, she aggravated her misconduct by denying the allegations without advancing any reliable or credible evidence to support or mitigate her position and by failing to attend the hearing.

[36] Since Ms. Hurlston did not make submissions regarding the possibility of remediation or rehabilitation, we are unable to reach any conclusion on the issue. The College proposal that she take such courses as are required under the by-laws, should she seek renew her registration, will meet that need to some degree.

[37] There is no evidence before us of other sanctions or penalties to which Ms. Hurlston is exposed as a result of the facts found at this hearing.

[38] We have no information about Ms. Hurlston's personal or financial circumstances, and therefore cannot assess on an evidentiary basis the impact on her of the penalty proposed by the College. We can infer that the citation itself and our findings of fact have already had and in the future will have a severe impact

upon her reputation in the profession. We can also predict that the financial implications of the penalty sought, will likely be onerous.

[39] Ms. Hurlston does not have a significant disciplinary history suggesting we need to consider specific deterrence at any length. The evidence indicates that Ms. Hurlston blundered into an ill-advised relationship which has had a devastating impact on her career. The consequences to her so far have likely already had a significant deterrent effect on her. As for general deterrence, any psychiatric nurse who becomes aware of this case will doubtless find confirmation that the rules regarding professional boundaries are fundamental to good practice.

[40] We are satisfied that the process we have engaged in meets the need to ensure the confidence of the public in the integrity of the profession. The College has pursued the matter with the seriousness it deserves. In doing so, the College has acted consistently with its obligation to protect the public and to regulate the profession.

[41] There does not appear to be a readily accessible line of cases involving (psychiatric) nurses in British Columbia or elsewhere in Canada, providing a range of penalties imposed by other panels.

[42] We looked at cases where physicians who have had inappropriate relationships with patients have been disciplined by the College of Physicians and Surgeons of British Columbia, ('CPSBC'), and found them to be of some assistance. For example, in **Rohani**, CPSBC, October 2013, a case involving a sexual assault of a 16 year old patient, the doctor's registration was cancelled. He was ordered to pay \$14,000 in costs but no fine was imposed.

[43] In **de Wit**, CPSBC, March 2013, the doctor entered into a personal and sexual relationship with a patient with whom he had a professional physician-patient relationship. He was subject to a six month suspension, a formal reprimand and was required to complete a multi-disciplinary assessment and education programme. There was no fine imposed.

[44] In two further CPSBC cases in 2013, **Fritz** and **Ghahary**, both involving doctors who pursued personal and sexual relationships with patients, the penalties followed **de Wit**, but with periods of suspension of 18 months and two years respectively, and again, no fine in either case.

[45] In another CPSBC case, **Hardin**, CPSBC, January 2014, the doctor engaged in hand-holding, hugging and farewell kisses with a patient as part of a therapeutic approach during counselling sessions, reportedly held between 1969 and 2009. The College reprimanded the doctor, suspended him for two months and fined him \$2,000.

[46] Clearly, each case must be determined on its own facts, having regard to its own particular circumstances.

DECISION

[47] In considering what action is appropriate, first we note that we are dealing with a class of misconduct which is at the high end of the scale. We must decide how serious the misconduct is within the class.

[48] In **Mamdeen**, the offending conduct was of such gravity, that after the discipline committee made an initial ruling with respect to the conduct of the hearing, Mr. Mamdeen consented to an order permanently barring him from obtaining registration as a psychiatric nurse in B.C. In that case, the registrant groomed a hospital patient who was diagnosed with a major mental illness, and had sex with her while she while was still hospitalised. The patient's competence and the degree to which she was a willing participant was questionable. The patient later complained about the unwanted attention paid by Mr. Mamdeen.

[49] There is no evidence of predatory behaviour on Ms. Hurlston's part. K.W. was a competent and a fully consenting partner. He was not a patient in a hospital. He initiated the relationship and had much to gain from its continuation. He complained nearly two years after the relationship ended, not so much about the inappropriateness of the relationship, but more because of the callous way Ms. Hurlston rejected him.

[50] The two cases differ greatly in degree. That difference gives us some measure by which to gauge what action is appropriate. Although no criminal charges were pursued against Mr. Mamdeen, we would put his case alongside the **Rohani** case in terms of seriousness. Unlike **Mamdeen** or **Rohani**, we are not dealing with a case of breach of boundaries which itself is at the high end of the scale in its class.

[51] Regarding the issues of a fine and the timing of Ms. Hurlston's return to the profession, should she wish to do so, we take into consideration the trio of doctor cases, **de Wit, Fritz** and **Ghahary**. We find the time periods for suspension or reapplication in those cases helpful, but we disagree with the decisions not to impose a fine.

[52] We take into consideration Ms. Hurlston's junior status as a psychiatric nurse. We place a high value on the possibility of her rehabilitation, and we do not wish to impose a financial penalty so severe as to close off that option.

[53] We recognise that the order we make must send a message to the profession and to the public that the College views its mandate to protect the public with the utmost seriousness. The order as to costs reflects our disapprobation of Ms. Hurlston's non-attendance and her failure to co-operate with the process. Costs might have been less had Ms. Hurlston 'come to the table'.

[54] We make the following orders:

(a) Ms. Hurlston may not apply for reinstatement with the College until after February 28, 2019, being a period of five years since her registration lapsed and 19 months after this panel issued its Decision on Facts and Determination.

(b) If Ms. Hurlston decides to apply for reinstatement, she will be subject to all of the usual requirements and conditions applicable for reinstatement of her registration.

(c) Ms. Hurlston is to pay a fine in the amount of \$7,000.

(d) We assess costs and disbursements against Ms. Hurlston in the amount of \$35,000.

(e) Ms. Hurlston is formally reprimanded.

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

Dated October 31, 2017