

**IN THE MATTER OF
THE COLLEGE OF REGISTERED NURSES OF BRITISH COLUMBIA
AND CITATION ISSUED UNDER THE HEALTH PROFESSIONS ACT,
R.S.B.C. 1996, chapter 183 (the “Act”)**

BETWEEN:

THE COLLEGE OF REGISTERED NURSES OF BRITISH COLUMBIA

(the “College” or “CRNBC”)

AND:

LAURIE JEANNE TINKHAM

(the “Respondent”)

Date and Place of Hearing:

Date: September 29, 2017

Place: By written submissions

Members of the Hearing Panel of the Discipline Committee (the “Panel”):

Bob Johnstone (Chair)

Sarah Virani

Star Mahara

Counsel for the College:

Miriam Isman

Counsel for the Respondent:

No response by the Respondent or counsel

Independent Legal Counsel for the Panel:

Lisa C. Fong

Court Reporter

None

**REASONS FOR DECISION AND ORDER
OF THE DISCIPLINE COMMITTEE
ON PENALTY, COSTS AND PUBLIC NOTICE**

1. The Panel reconvened on September 29, 2017 to consider written submissions on penalty, costs and public notice. This hearing follows an earlier determination by the Panel, after an oral hearing, that the Respondent engaged in professional misconduct, and breached practice standards imposed under the Act. The Panel found, more specifically, that the Respondent

contravened a Boundary Standard and a Conflict Standard as set out in the Panel’s earlier “verdict” decision.

Proceeding without the Respondent

2. The Respondent did not attend the first “verdict” stage of the hearing.

3. Due to a request from the College that this second “penalty” stage of the hearing occur in writing, independent legal counsel for the Panel, Ms. Fong, sent an inquiry to the Respondent on behalf of the Panel, asking if the Respondent intended to attend, and would prefer an oral hearing. She further advised that if the Respondent did not deliver a response by July 14, the hearing would proceed in writing, and she provided dates for the parties to exchange written materials. The Respondent did not provide any response by July 14, 2017 or at all. The Respondent has not contacted Ms. Fong or the Panel.

4. On July 20, 2017, Ms. Isman delivered written submissions on behalf of the College (the “College Submission”), along with an affidavit of Ms. Greer sworn July 20, 2017 (“Greer #1”). Ms. Isman delivered the College Submission and Greer #1 to the Panel and the Respondent. As it did during the “verdict” portion of this hearing, the Panel may accept evidence in such a form, based on its control over its process. Such evidence is sworn, and satisfies the requirement, under section 38(4)(a) of the Act, that testimony of witnesses be taken “on oath”. The Respondent, who did not attend, failed to request that the affiant attend to be cross-examined.

5. The Respondent did not provide any response to the College Submission.

The penalty jurisdiction of the Discipline Committee

6. Under HPA section 39(2), if a determination is made under subsection 39(1), the Discipline Committee may make orders respecting penalty:

39 (2) 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 bylaws, 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).

The additional evidence

7. Greer #1 establishes that the College delivered the Panel’s “verdict” reasons for decision and order to the Respondent on May 8, 2017. The affidavit also establishes various expenses relating to issue of costs under section 39(5) of the Act.

Submissions of the College

8. **Factors that the Panel may consider:** Counsel for the College submitted that the Panel could consider a number of factors in deciding on appropriate penalty, including the following factors as set out in *Law Society of British Columbia v. Dent*, 2016 LSBC 05:

- a. “Nature, gravity and consequences of conduct”;
- b. “Character and professional conduct record of the respondent”;
- c. “Acknowledgement of the misconduct and remedial action”;
- d. “Public confidence in the legal profession including public confidence in the disciplinary process”.

9. The College also referred to a previous decision of the Discipline Committee, in which it accepted that it may decide on an appropriate measure under HPA s. 39(2) with a view to a number of objectives, including the following:

- a. the need for specific deterrence of the Respondent;
- b. general deterrence of other registrants who might otherwise offend;
- c. educating registrants and the public about professional standards; and
- d. promoting public confidence in the profession and its ability to self-regulate.

10. As the Discipline Committee has previously stated, a penalty must fall within a reasonable range of appropriate penalties, having regard to the circumstances of the misconduct and the evidence in mitigation.

11. Respecting the nature, gravity and consequences of conduct, the College reviewed the Panel’s findings that while providing nursing care to Mr. and Mrs. W, the Respondent accepted an appointment as Mr. W’s attorney, received various personal benefits in addition to her pay, including joint ownership of a mobile home, and benefits totalling over \$11,000 from Mr. W’s bank account. The College submitted that the Respondent’s violation of professional standards was severe, involving long-term exploitation of a nurse-client relationship with an elderly and infirm couple.

12. Respecting the Respondent’s experience, the College noted her 28 years of experience, including her registration in British Columbia from Sept. 5, 2001 to Mar. 1, 2003, and again from Nov. 12, 2010 to Mar. 1, 2013.

13. Respecting the Respondent’s acknowledgement of her misconduct and remedial action, the College submitted that the Respondent has not recognized her misconduct, or demonstrated insight into her behaviour. Instead, she attempted to justify her behaviour, on the basis that her relationship with her clients was mutually beneficial.

14. The College further submitted that, as noted in the *Aubut* case (addressed below), the Panel should send a “strong message to the profession” that nurses must maintain appropriate boundaries at all times, and that the public could lose confidence in the College and in the disciplinary process in the absence of such a message.

15. **Authorities:** The College referred to the Panel to four cases that the Panel addressed in its “verdict” reasons for decision. A brief description and the measures ordered in those cases are as follows:

- a. *College of Nurses of Ontario v. Tomaszewska*, 2004 CanLII 73647 (ON CNO) (a nurse in a psychiatric setting became a patient's attorney, and executrix and beneficiary under his will; she made payments to herself of \$240,000; the panel found professional misconduct and ordered her registration cancelled, a fine of \$15,000, and costs of over \$51,000);
- b. *College of Nurses of Ontario v. Aubut*, 2009 CanLII 92107 (ON CNO) (a nurse in hospice/palliative care facility for HIV/AIDS patients formed a personal relationship with a patient, and became the patient's attorney and a beneficiary under his will; the nurse admitted misconduct; the panel suspended her registration for three months, and imposed various limits and conditions for a 24-month period, including that she attend counselling, complete self-study and provide notice of the order to her employer);
- c. *College of Nurses of Ontario v. Leclair*, 2011 CanLII 100585 (ON CNO) (a nurse at a seniors facility formed a personal relationship with an elderly male patient, and had accepted gifts, cheques (totalling \$2,100) and a car (worth about \$10,800); the panel found no undue influence, but decided she had failed to maintain appropriate boundaries; in a separate decision (2012 CanLII 100087), the panel suspended her registration for three months, imposed limits and conditions requiring that she attend personal education sessions, and ordered costs of \$10,000);
- d. *College of Registered Nurses of British Columbia v. Orina*, March 22, 2016 (CRNBC IC) (a nurse who was the Director of Care in a seniors facility formed a relationship with an elderly woman, F, who was the sister of a patient in the facility; she caused F to become a resident in the facility, disposed of F's possessions, and became F's attorney; the nurse entered an agreement consenting to cancellation of her registration, undertook not to apply for reinstatement for five years, and consented to practice limits, including that she not act as an attorney, engage in independent practice, or work in any capacity where she was in direct control of the finances of her employer or her clients).

16. **Proposed measures:** The College noted that the Respondent is no longer a registrant, but that had she still been registered, cancellation of registration would have been appropriate. Instead, the College suggested the following:

- a. a statement to the effect that, if the Respondent had been registered, her registration would have been cancelled;
- b. a restriction on the Respondent's eligibility to apply for reinstatement of registration for at least five years, pursuant to s. 39(8)(a) of the Act;
- c. limits on subsequent practice after reinstatement, pursuant to s. 39(8)(c) of the Act, which limits would require that the Respondent
 - i. not act or allow herself to be designated as a Power of Attorney under the *Power of Attorney Act*, and not perform a like function under any similar or successor legislation;
 - ii. not engage in the independent practice of nursing through an agency or practise independently in the community or otherwise, and only practice nursing for an employer in a setting where other nurses are employed;
 - iii. not work in any capacity where she has any direct control or responsibility over the finances or financial affairs of her employer or her clients; and

- iv. prior to commencing any future employment, she must
 - 1. notify the College of the name, address and telephone number of any proposed employer at least 30 days before the proposed commencement of employment;
 - 2. provide the proposed employer with the Panel's decisions in this matter, and the decision of the Registration Committee as to any requirements, limits or conditions upon her practice; and
 - 3. only practice for an employer who provides the College written confirmation that it has received a copy of the documents referred to above, that it will employ her subject to the limits upon her practice by the Panel and the Registration Committee, and that it will notify the College immediately upon receipt of any information that she has breached such limits or the required standards of practice of the nursing profession;
- d. a fine of \$20,000.

Submissions of the Respondent

17. The Respondent did not provide any additional evidence, and did not provide any submissions concerning penalty.

Reasons for decision

18. The Respondent violated core professional standards. As the Panel stated in its earlier reasons for decision, the Boundary Standard recognizes an inherent imbalance of power in the nurse-client relationship. Registrants must maintain appropriate boundaries with clients, who are often vulnerable. The Respondent violated this principle when she formed a personal relationship with her elderly patients, accepted a power of attorney, and gained inappropriate financial or personal benefits, including payment for dental work, an ownership interest and eventually full ownership of a mobile home, and additional cash payments, at the expense of Mr. and Mrs. W. The Respondent has not shown any remorse, or any insight into her misconduct. She did not attend before the Panel to speak to any mitigating circumstances.

19. In normal circumstances, the serious misconduct engaged in by the Respondent would warrant cancellation of her registration, and all of the associated restrictions and reinstatement, and limits or conditions in the event of reinstatement, as requested by counsel for the College. The Respondent's registration with the College is, however, already cancelled. Part 3 of the Act applies to former registrants, but the power of the Panel to cancel the Respondent's registration does not clearly include a power to symbolically cancel a registration that has already been cancelled for other reasons. Section 39(2) of the Act simply empowers the discipline committee to "(e) cancel the respondent's registration". Section 39(8) of the Act allows the discipline committee to impose limits and conditions "[i]f the registration of the respondent is suspended or cancelled under subsection (2)..." The College has recognized the difficulty of this wording in the Act, where former registrants are concerned.

20. The Panel is aware of the decision of an Ontario court in *College of Nurses of Ontario v. Mark Dumchin*, 2016 ONSC 626. That case addressed the issue of whether a committee could revoke the certificate of registration of someone who had already voluntarily resigned as a member. While this decision suggests that disciplinary bodies are authorized to penalize

registrants with revocation even after they have resigned, the decision interprets the *Health Professions Procedural Code*, which is Schedule 2 of Ontario's *Regulated Health Professions Act*, 1991, S.O. 1991, c. 18. Here, Part 3 of the Act has allowed the Panel to find the Respondent guilty of professional misconduct, but its wording does not necessarily support a power of the Panel to cancel a registration already cancelled. The Panel has not heard full argument about how sections 39(2) and (8) should apply to former registrants.

21. To avoid inadvertently exceeding its jurisdiction, but without prejudice to any future orders the Discipline Committee may make in other matters under sections 39(2) and 39(8), the Panel concludes and declares that *were she still registered*, the Respondent's conduct would warrant the following measures, limits and conditions under sections 39(2) and 39(8):

- a. cancellation of registration;
- b. no eligibility to reapply for registration, including reinstatement, for five (5) years;
- c. the following limits and conditions, in the event of subsequent registration, including reinstatement, requiring that the Respondent
 - i. not act or allow herself to be designated as a Power of Attorney under the *Power of Attorney Act*, and not perform a like function under any similar or successor legislation;
 - ii. not engage in the independent practice of nursing through an agency or practise independently in the community or otherwise, and only practice nursing for an employer in a setting where other nurses are employed;
 - iii. not work in any capacity where she has any direct control or responsibility over the finances or financial affairs of her employer or her clients; and
 - iv. prior to commencing any future employment,
 1. notify the College of the name, address and telephone number of any proposed employer at least 30 days before the proposed commencement of employment;
 2. provide the proposed employer with the Panel's decisions in this matter, and the decision of the Registration Committee as to any requirements, limits or conditions upon her practice; and
 3. only practice for an employer who provides the College written confirmation that it has received a copy of the documents referred to above, that it will employ her subject to the limits upon her practice by the Panel and the Registration Committee, and that it will notify the College immediately upon receipt of any information that she has breached such limits or the required standards of practice of the nursing profession

(the "Appropriate Measures").

22. The Panel also wishes to impose additional measures reflecting its disapproval of the Respondent's behaviour. Under Bylaw 6.11, the maximum amount of a fine that the Discipline Committee may order is \$35,000. While the Respondent's behaviour was not at the farthest end of the spectrum of serious misconduct, her behaviour was still egregious. Her failing to maintain appropriate boundaries involved her reaping substantial financial benefits from Mr. and Mrs. W,

and her also gaining access to assets through a power of attorney. Such conduct stands to significantly erode the public's confidence in nurses, whom the public trusts to care for vulnerable clients. The Respondent's conduct engages a need for measures that will deter similar conduct by other registrants, and promote public confidence in the profession and its ability to self-regulate. Given the Panel's concern for both specific and general deterrence, especially where registrants may reap financial gains from their failing to keep proper boundaries, the Panel notes that in 2004 an Ontario college imposed a \$15,000 fine, as well as cancellation, in the *Tomaszewska* matter. Given inflation in the intervening 13 years, which may translate into a fine of about \$18,500 in current-day dollars (at least according to the Bank of Canada's Inflation Calculator), the Panel considers a fine of \$17,500 approximately comparable, and in any event enough to deter the Respondent and to warn other registrants.

23. Given that the Respondent was not registered with the College at the time of this hearing, and for the reasons set out above, the Panel orders a reprimand, and a fine of \$17,500. The Panel further orders that the Appropriate Measures be entered onto the register, pursuant to section 21(2)(g) and (5) of the Act, once no further appeal is available under the Act. Should the Respondent reapply for registration, the Registration Committee may consider this Panel's conclusions about the Appropriate Measures under section 20(2.1) of the Act, and especially under paragraph (b.1). The entry on the register will also be relevant to any other regulator, inside or outside of British Columbia, to which the Registrant may apply for registration.

Costs

24. With respect to costs, the Panel awards costs to the College against the Respondent, pursuant to HPA s. 39(5), Bylaw s. 6.12, and Schedules F and G.

25. The College seeks costs of \$16,535.69, consisting of the following amounts:

- a. \$14,353.53, as one-half actual legal fees; and
- b. \$2,182.16, as one-half of disbursements (including court reporter costs) and taxes.

The College provided evidence of legal fees and disbursements as part of Greer #1, at paragraphs 7 and 8, Exhibit C (legal fees, disbursements and taxes), and Exhibit D (court reporter fees). Although some legal fees were classified as disbursements, due to the involvement of two law firms, the calculation above treats all legal fees as such. The Panel recognizes that in seeking only one-half of disbursements, the College has sought less than its full entitlement under the Bylaws.

26. The College also suggested that costs be paid in full by December 31, 2017.

27. The costs sought by the College are appropriate, and the Panel orders costs against the Respondent in the amount of \$16,535.69, to be paid in full by December 31, 2017.

Order of the Committee on Penalty

28. The Panel orders the following:

- a. a reprimand;
- b. a fine of \$17,500; and
- c. that the Respondent pay costs to the College in the amount of \$16,535.69 by December 31, 2017.

29. The Panel also specifies, pursuant to s. 21(5)(b) of the Act, that the Appropriate Measures be entered onto the register, to indicate – for purposes of s. 20(2.1)(b.1) of the Act, among others – what measures the Discipline Committee would have found appropriate had the Respondent still been a registrant subject to cancellation.

Publication

30. The Panel directs the registrar to notify the public of its order (pursuant to HPA s. 39.3(1)(e)). The registrar must also notify all registrants, and the regulatory bodies governing the practice of registered nursing in every other Canadian jurisdiction (pursuant to Bylaw s. 6.08(1)(a)), and may notify other regulatory or governing bodies of a health profession inside or outside of Canada (pursuant to Bylaw s. 6.08(1)(b)).

Notice

31. A Respondent aggrieved or adversely affected by an order of the Discipline Committee under HPA s. 39 may appeal the order to the Supreme Court (under HPA s. 40(1)). An appeal must be commenced within 30 days after the date on which this order is delivered to the Respondent (under HPA s. 40(2)).

These are the Panel’s Reasons for Decision and Order concerning penalty.

Dated for reference this ____ day of October 2017.

| Name | Place | Date |
|------|-------|------|
| | | |

| Name | Place | Date |
|-------------------|---------------------|-------------------------|
| <i>M. Arghara</i> | <i>Kamloops, BC</i> | <i>October 27, 2017</i> |

| Name | Place | Date |
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