

**IN THE MATTER OF A HEARING BY
THE DISCIPLINE COMMITTEE OF THE BRITISH COLUMBIA COLLEGE OF NURSES
and MIDWIVES CONVENED PURSUANT TO THE PROVISIONS OF
THE *HEALTH PROFESSIONS ACT* RSBC 1996, c.183**

BETWEEN:

The British Columbia College of Nurses and Midwives

(the “College” or “BCCNM”)

AND:

Amanda Parniak

(the “Respondent”)

DETERMINATION OF THE DISCIPLINE COMMITTEE

Penalty and Costs

Hearing Dates: By written submission

Discipline Committee Panel: Sheila Cessford, Chair
Dr. Thomas Ward
Dr. Catharine Schiller, RN

Counsel for the College: Michael Seaborn

No one appearing for the Respondent

Introduction

1. A panel of the Discipline Committee (the “Panel”) of the British Columbia College of Nurses and Midwives (the “College” or “BCCNM”) conducted a hearing to determine, pursuant to section 39 of the *Health Professions Act* RSBC 1996 c.183 (the “Act” or the “HPA”), whether Amanda Parniak failed to comply with a standard imposed under the Act, breached the Act or bylaws, or committed unprofessional conduct.
2. On September 3, 2020, the Panel issued a written determination (the “Conduct Decision”) in which the Panel found that allegations 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11,

12, 13, 14, 15, 16, 19, 20, 21, 22, 29, and 30 of the citation dated October 1, 2019 (the "Citation") were proven to the requisite standard. The Panel determined that Ms. Parniak breached a standard imposed under the Act and committed professional misconduct in relation to the allegations which were proven. The Panel dismissed allegations 17, 18, 23, 24, 25, 27, 28, 31, 32, 33, 34, 35, and 36.

3. The Panel set a schedule for written submissions on penalty and costs.
4. On September 29, 2020, the College delivered its written submissions on penalty and costs. Ms. Parniak's written submissions on penalty and costs were due on October 15, 2020. She did not provide any written submissions or other communication to the Panel.
5. The College is seeking the following orders pursuant to section 39 of the Act:
 - a. The Respondent's registration is canceled.
 - b. The Respondent is not eligible to apply for reinstatement of registration for a period of five years from the date the Order is finalized.
 - c. The Respondent pay costs to BCCNM in the amount of \$7,895.46.
6. As noted, Ms. Parniak chose not to participate in this hearing process and therefore took no position on the College's proposed terms.

Legal Framework for Assessing Penalty

7. Having found that Ms. Parniak breached a standard imposed under the Act and committed professional misconduct, the Panel must decide what, if any, penalty is appropriate.
8. Section 39 of the Act authorizes the Panel to impose the following penalties:
 - 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).

9. If the Panel orders a suspension or cancellation, the following additional provisions apply:

39 (8) If the registration of the respondent is suspended or cancelled under subsection (2), the discipline committee may

(a) impose conditions on the lifting of the suspension or the eligibility to apply for reinstatement of registration,

(b) direct that the lifting of the suspension or the eligibility to apply for reinstatement of registration will occur on

(i) a date specified in the order, or

(ii) the date the discipline committee or the board determines that the respondent has complied with the conditions imposed under paragraph (a), and

impose conditions on the respondent's practice of the designated health profession that apply after the lifting of the suspension or the reinstatement of registration.

10. The relevant factors to consider in determining an appropriate penalty are set out in *Law Society of British Columbia v. Ogilvie*, [1999] LSBC 17:

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 circumstance;

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.

[the “Ogilvie Factors”]

11. *Law Society of BC v. Dent*, 2016 LSBC 05 held that it is not necessary to consider each *Ogilvie* factor in every case. In *Dent*, the following consolidated list was suggested:
 - a. Nature, gravity and consequences of conduct;
 - b. Character and professional conduct record of the respondent;
 - c. Acknowledgement of the misconduct and remedial action; and
 - d. Public confidence in the legal profession including public confidence in the disciplinary process.
12. The Panel considers the *Ogilvie / Dent* factors to be the appropriate framework for assessing penalty and costs in this case.

Analysis and Findings

Nature, Gravity and Consequences of the Conduct

13. The College submits that the nature, gravity, and consequences of Ms. Parniak’s conduct is captured in paragraphs 174 to 177 of the Conduct Decision:

174. The magnitude of Ms. Parniak’s drug diversion and falsification of medical documentation was significant. For approximately six months, Ms. Parniak engaged in a pattern of conduct where she falsified medical records and diverted injectable hydromorphone from specific patients at the Hospital. Hydromorphone is a pain medication. The patients from whom she diverted medication are vulnerable persons. The quantity of medication Ms. Parniak diverted was significant.

175. Ms. Parniak accessed private information of individuals who were not her patients. Ms. Parniak should not have accessed their patient orders or falsified their medical documentation.

176. Ms. Parniak’s actions had serious consequences. In allegation 1, for example, the patient who complained of pain was delayed in receiving his pain medication and having his condition managed in a timely manner. Another nurse was caring for that patient and Ms. Parniak’s actions caused concern and confusion among several

members of the Hospital staff in relation to this incident. Ms. Parniak's falsification of patient medical records created serious risks to patient safety and continuity of care.

177. Ms. Parniak's actions departed from the professional and ethical responsibility to ensure the patient remains the focus and the primary concern. She failed to demonstrate honesty and integrity.

14. The Panel agrees with the College's submission that the findings above from the Conduct Decision set out the nature, gravity, and consequences of Ms. Parniak's conduct. The conduct falls at the most serious end of the spectrum. This factor favours a serious penalty.

Character and Professional Conduct

15. Ms. Parniak has been a registered nurse since 2011 and has no prior disciplinary record with the College or its legacy colleges. The Panel notes that the period from the time of registration in 2011 until 2017, when the conduct at issue occurred, is approximately six years.
16. Ms. Parniak did not present any mitigating evidence to be considered with respect to her character or professional conduct.
17. The following comments from the Conduct Decision are relevant to the assessment of Ms. Parniak's character and professional conduct:

185. While it is not necessary for the Panel to find Ms. Parniak's conduct to be "disgraceful or dishonourable" in order to find that it amounts to professional misconduct, for the reasons described above, the Panel does find that Ms. Parniak's proven conduct, when taken together, represents a pattern of professional misconduct which is disgraceful, dishonourable and unbecoming of a member of the profession. It is also a marked departure from the conduct which the College expects of its registrants.

18. Ms. Parniak occupied a position of trust. She diverted medication from vulnerable patients and accessed their confidential medication records in the process.
19. The Panel considers this factor favours a more serious penalty.

Acknowledgement of the Misconduct and Remedial Action

20. The College submits that Ms. Parniak has not acknowledged the misconduct or taken any remedial action. The College submits that Ms. Parniak attended three meetings with her employer over concerns that had arisen about her hydromorphone withdrawals, but after that failed to engage with her employer as its investigation continued. The College submits that she did not cooperate with the College's investigation and did not attend the discipline hearing.
21. The Panel agrees Ms. Parniak did not attend or otherwise participate in the disciplinary process. There is no evidence of any acknowledgement of her misconduct or of any remedial steps undertaken by her.
22. Accordingly, there is no evidence in this factor of mitigating circumstances that might otherwise favour a lesser penalty.

Public Confidence in the Profession including Public Confidence in the Disciplinary Process

23. In this case, the penalty imposed should address the need for both specific and general deterrence. In addition, it must promote public confidence in the profession, including its ability to self-regulate. A central feature of a profession's ability to self regulate is its disciplinary process.
24. The College submits:
 22. The Respondent's proven conduct is very serious. In the College's submission, the public's confidence in the profession would be shaken if a nurse who has diverted significant amounts of a narcotic over a prolonged period of time, including from patients for whom it was intended as pain management, does not receive a serious penalty commensurate with such egregious conduct.
25. The Panel agrees entirely with this submission. This is a case in which there was significant drug diversion and falsification of medical documentation, over a six-month period of time, and involving multiple vulnerable persons. The proven conduct did not involve a single instance but a pattern of drug diversion by Ms. Parniak from her employer, from the public health system and most importantly, from

patients for whom health professionals are entrusted to care. A strong message must be sent to the registrant, the profession, and the public that this conduct will not be tolerated.

26. Overall, this factor favours a serious penalty.

Penalties in similar cases

27. The College relies upon the following three cases:

- a. *College of Nurses of Ontario v. Price*, 2019 CanLII 139978 (ONCNO): a registrant was found to have misappropriated (in Ontario, diversion is called misappropriation) controlled substances, including narcotics, intended for approximately 75 clients on approximately 182 occasions. For the same clients and occasions, the registrant was found to have falsified records and accessed confidential health records. The panel revoked the license of the registrant.
- b. *Ontario (College of Pharmacists) v. Patel*, 2013 ONCPDC 11: the panel ordered the revocation of the registrant's practicing license after finding that the registrant misappropriated a substantial amount of narcotics.
- c. *College of Nurses of Ontario v. Kirkland*, 2006 CanLII 81787 (ONCNO): the registrant's registration was revoked after the panel found 68 instances in which the registrant signed out narcotics for administration to residents without conducting or charting an adequate assessment of the need for the narcotic; signed out narcotics for administration to residents and failed to administer or dispose of those narcotics, or record the administration or disposal of those narcotics on the medication administration record; or signed out duplicate doses of narcotics for administration to residents. In 27 instances, the registrant signed out narcotics for administration to residents and failed to administer or dispose of those narcotics. The panel was of the view that the registrant misappropriated as there is no other reasonable explanation as to where the narcotics went.

28. The Panel notes that in all three cases, cancellation of registration was ordered for conduct that is very similar to the proven conduct in this case. As in the case before the Panel, none of the registrants in the above cases attended their disciplinary proceedings. In *Price*, the registrant had no prior disciplinary record.

Penalty

29. The Panel has carefully considered this matter and has taken the above factors into consideration when considering the appropriate penalty. The Panel considers that in light of all of the circumstances, the seriousness of the conduct, the number of times that it occurred, the length of time over which it occurred, the fact that vulnerable patients were affected, the position of trust occupied by Ms. Parniak, and the need for deterrence and to maintain public confidence in the profession, the appropriate penalty is cancellation of Ms. Parniak's registration.

30. The Panel orders that Ms. Parniak's registration is cancelled effective as of the date of this Order, and that she is not eligible to apply for reinstatement of registration for a period of five years from the date the Order is finalized.

Costs

31. Section 39 of the HPA authorizes the Panel to impose costs. Section 212 of the College's Bylaws establishes a tariff of cost for a discipline hearing. Schedule J sets out the tariff and qualifying expenses.

32. The College claims 85 units at \$120 per unit for a total of \$10,200 in costs.

33. The College is seeking \$5,100 in legal costs, based upon 50% of its actual legal fees as calculated under the tariff. The College seeks 100% of the following disbursements:

- a. Court reporter for the three days, inclusive of taxes: \$1,323.00, and
- b. Witness expenses of \$1,472.46

34. The total amount claimed in legal costs and disbursements is \$7,895.46.

35. The Panel considers the College's costs claim to be reasonable. The College proved 22 of 36 counts at the discipline hearing. The counts which were proven

were the most serious allegations in the citation and involved the vast majority of witness time and documents that were placed before the Panel. All of the witnesses who attended testified as to the proven allegations. The counts which were unproven occupied a small fraction of the time at the discipline hearing. In any event, those counts which were unproven were still reasonable to pursue in the public interest and in light of the College's public protection mandate. The College diligently and fairly prosecuted its case. The fact that Ms. Parniak did not participate meant that there was no possibility of admissions or negotiated settlement.

36. The Panel does not consider the costs to be so large as to be punitive to Ms. Parniak. To the contrary, the costs are reasonable in all the circumstances.

Order

37. The Panel orders that:

- a. The Respondent's registration is canceled, effective as of the date of this Order.
- b. The Respondent is not eligible to apply for reinstatement of registration for a period of five years from the date of this Order.
- c. The Respondent pay costs to BCCNM in the amount of \$7,895.46 within six months of the date of this Order.

Notice of Right to Appeal

38. Ms. Parniak is advised that under section 40(1) of the Act, a respondent aggrieved or adversely affected by an order of the Discipline Committee under section 39 of the Act may appeal the decision to the Supreme Court. Under section 40(2), an appeal must be commenced within 30 days after the date on which this order is delivered.

Date: December 7, 2020



Sheila Cessford, Chair



Dr. Thomas Ward



Dr. Catharine Schiller, RN