

**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* RSCB 1996, c.183**

BETWEEN:

The British Columbia College of Nurses and Midwives

(the “College”)

AND:

Allen Pangburn

(the “Respondent”)

**DETERMINATION OF THE DISCIPLINE COMMITTEE
(Penalty and Costs)**

Hearing Dates: By written submissions

Discipline Committee Panel: Edna McLellan, RN(T) (Chair)
Dorothy Barkley (Public Member)
Kira Antinuk, RN

Counsel for the College: Jennifer Groenewold

The Respondent: Self-represented

Introduction

1. On January 7, 2022 a panel of the Discipline Committee (the “Panel”) of the British Columbia College of Nurses and Midwives (the “College” or “BCCNM”) determined that the Respondent Allen Pangburn (hereinafter, the “Former Registrant” or the “Respondent”) committed unprofessional conduct in relation to the first two allegations of the Citation dated April 23, 2021 (the “Citation”) and that he committed professional misconduct in relation to the third allegation of the Citation (hereinafter, the “Conduct Decision”).
2. The Panel set a schedule for written submissions on penalty and costs. The College

subsequently provided the Panel with written submissions and affidavit evidence in support of the penalty and costs it seeks in this matter. The Respondent has not provided the Panel with any submissions or evidence in response.

3. The College seeks the following orders pursuant to section 39 of the *Health Professions Act* [RSBC 1996] Chapter 183 (the “Act” or the “HPA”):

“ ...

- a. Upon the Former Registrant successful reapplication for practising registration, wherein he must meet all requirements of fitness, competence and character, the Respondent’s registration be suspended for four (4) months and during this time he will be prohibited from practising as a Registered Nurse.
- b. The Former Registrant is reprimanded.
- c. After the Former Registrant suspension is completed, the Former Registrant be subjected to the following conditions and limits:

Conditions

- i. Prior to a return to nursing practice, the Former Registrant will complete the following remedial education courses:
 1. Ethics for Healthcare Professionals <https://ceufast.com/course/ethics-for-healthcare-professionals>
 2. CNA Code of Ethics for Registered Nurses: Bringing the Code to Life <https://www.cna-aiic.ca/en/nursing/continuing-education>
 3. Care and Management of the Deteriorating Patient available through the Australian College of Nursing <https://www.acn.edu.au/education/cpd-online/care-management-deteriorating-patient>
 4. Nurse and Interprofessional Team Communication available through nurse.com <https://www.nurse.com/ce/hcahps-series-nurse-and-interprofessional-team-communication>
- ii. The Former Registrant will provide their BCCNM Monitor with proof of successful completion of each of the above remedial courses.
- iii. Should one of the directed remedial education courses be unavailable, the Former Registrant and/or the BCCNM Monitor may propose an alternative that covers the same material and is of a similar duration. Approval of any substitute remedial course will be at the sole discretion of the BCCNM Monitor.
- d. Prior to his return to practice, the Former Registrant will develop a learning plan, in keeping with the Learning Plan terms below, that addresses the nursing practice issues that underpin this agreement.

- e. Prior to any employment as a Registered Nurse in British Columbia, the Former Registrant must identify a supervisor in their new work setting and will provide the BCCNM Monitor with the Supervisor's name, position, and contact information. The specific supervision terms are enumerated under the "limits" section.

Limits

- f. The Former Registrant will not work overtime for a period of 6 months (or equivalent of 900 nursing hours, whichever is longer).
- g. The Former Registrant will not work in a critical care unit for a period of one year (or equivalent of 1800 nursing hours, whichever is longer).
- h. The Former Registrant will not be the sole RN on duty on a unit, floor, or in a facility for a period of 12 months (or equivalent of 1800 nursing hours, whichever is longer).
- i. The Former Registrant will not provide regulatory supervision to nursing students and/or act in a role of providing orientation for new staff in the nursing environment for a period of 12 months (or equivalent of 1800 nursing hours, whichever is longer).
- j. The Former Registrant will not work except under supervision for a period of four months (or the equivalent of 600 nursing hours, whichever is longer). The terms of the supervision will be as follows:
 - i. The Former Registrant agrees to work in an area where they can be supervised by a regulated health care professional through random chart audits, unscheduled practice audits, and regular shift "check-ins";
 - ii. The supervisor is to be a Registered Nurse, preferably the Clinical Nurse Educator or equivalent in the employment setting and must have a minimum of five years of nursing experience (the "Supervisor").
 - iii. For clarity, to allow for the realities of shift work, vacation, and illness, the Former Registrant may have two, but not more than three, Supervisors, one of whom **must** be the clinical nurse educator (or equivalent in the employment setting), the other may be an experienced Registered Nurse who is approved to be a supervisor by the clinical nurse educator of the nursing unit where the Former Registrant will work and whose name and contact details will be communicated to the BCCNM monitor **prior to the Former Registrant's return to work.**
 - iv. For further clarity, the Supervisor must be reasonably available to the Former Registrant during the course of their shift, either in person, or by telephone. The Supervisor must be on site where the Former Registrant is working.
 - v. The Former Registrant will meet with his supervisor each shift to "check-in" and to discuss their plan for their shift.
 - vi. The timing of these "check-ins" will be determined between the Former

Registrant and his Supervisor.

- vii. The Supervisor will select a minimum of 5 charts at random from the charts of patients that the Former Registrant has cared for each month and conduct an audit.
- viii. The Supervisor(s) is required to provide reports to the unit leadership and to notify BCCNM promptly, and in writing, if the Former Registrant does not comply with the terms of the supervision and/or the Supervisor believes there has been a reportable incident or practice concern potentially impacting public safety.

Learning Plan

2. Prior to his return to practice, the Former Registrant will develop a learning plan that addresses the nursing practice and professional standards that the Former Registrant was found to have breached as outlined in the Decision. At minimum, documentation, medication administration, managing patient assignments and prioritizing care, ethics, and professional responsibility. Each focus area must have an associated goal, resources and/or strategies, and a section for evaluation. The intent of the Learning Plan is to support the Former Registrant in ensuring that his future nursing practice is safe, competent, and ethical.
3. The Former Registrant will update his learning plan every week to reflect learning, growth, and updated learning needs.
4. The Former Registrant will provide his learning plan on request to the BCCNM Monitor. The BCCNM Monitor will have unfettered discretion to determine if and when the Former Registrant must provide them with a copy of their learning plan, including any mandated updates throughout the term of this Agreement.
5. The Learning Plan will remain in place for a minimum of three (3) of months. Once he returns to work, the Former Registrant will begin to utilize the Learning Plan. Specifically, the Former Registrant will, at least weekly, populate the plan with relevant learning or training completed, self-reflective entries and/or illustrative clinical examples from his practice.
6. The updated Plan must be submitted by email to the Supervisor and/or Clinical Nurse Educator by the Former Registrant after each update.
7. For a period of two years, once the Former Registrant reinstates his registration to practising, he must provide a copy of the Panel's decisions, both the liability and penalty decisions, to any employer within five (5) business days of accepting an offer of employment, and the BCCNM Monitor may confirm that this disclosure has taken place.

Costs

8. The Former Registrant is ordered to pay BCCNM their costs in the amount of **\$15,214.04**, payable within four months from the date of this order.”

Legal Framework for Assessing Penalty

4. Having determined in the Conduct Decision that the Respondent committed

unprofessional conduct and professional misconduct, the Panel must next determine an appropriate penalty, if any. Section 39(2) of the Act authorizes the Panel to impose penalties and costs. It provides as follows:

39 (1) ...

(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).

(3) An order of the discipline committee under this section must

- (a) be in writing,
- (b) include reasons for the order,
- (c) be delivered to the respondent and to the complainant, if any, within 30 days after the date the order is made, and
- (d) advise the registrant of the registrant's right to appeal the order to the Supreme Court.

(4) ...

(5) If the discipline committee acts under subsection (2), it may award costs to the college against the respondent, based on the tariff of costs established under section 19 (1) (w.1).

(6)....

(7) Costs awarded under subsection (5) must not exceed, in total, 50% of the actual costs to the college for legal representation for the purposes of the hearing.

(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
- (c) 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.

- (9) If an order under subsection (2) is appealed under section 40, the discipline committee, on application of the respondent under this section, may, by order,
- (a) stay the order made under subsection (2) pending the hearing of the appeal, and
 - (b) impose limits or conditions on the practice of the designated health profession by the respondent during the stay....

5. Additionally, section 39.2 of the Act permits the Panel to consider any action previously taken under Part 3 of the Act with respect to the Respondent in determining an appropriate penalty. Section 39.2 of the Act provides the following:

Consideration of past action

- 39.2 (1) Before taking any action respecting a registrant under the following provisions, the registrar, inquiry committee or discipline committee may consider any action previously taken under Part 3 respecting the registrant:
- (a) in the case of the registrar or the inquiry committee, section 32, 32.2 or 32.3;
 - (b) in the case of the inquiry committee, section 33 or sections 35 to 37.1;
 - (c) in the case of the discipline committee, section 38 (8), 39 (2), (5), (8) or (9) or 39.1 (1).
- (2) The registrar, inquiry committee or discipline committee may, in applying subsection (1), consider
- (a) any action under Part 3 respecting the registrant that occurred or was recorded before the coming into force of this section, or
 - (b) any action, similar to an action that may be taken under Part 3, that was taken by the governing body for a health profession under a former enactment regulating the health profession.

6. The College submits some of the more common factors to consider in determining an appropriate penalty are:

- 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*”].

7. The College further submits that in *Law Society of BC v. Dent*, 2016 LSBC 05 (“*Dent*”) a panel of the Law Society of British Columbia suggested moving away from a rigid application of each of the *Ogilvie Factors* in every case and encouraged a consolidation of these factors into the following broader categories or issues for consideration (hereinafter, the “*Dent Factors*”). In this regard, the panel in *Dent* said:

[18] In addition, it is time to consolidate the *Ogilvie* actors. It is also important to remember that the *Ogilvie* factors are non-exhaustive in nature. Their scope is only limited by the possible frailties that a lawyer may exhibit and the ability of counsel to put an imaginative spin on it.

[19] Therefore, we set out a “consolidated list of *Ogilvie* factors” as indicated below. We have reduced them from 13 to the four general factors outlined below.

Nature, gravity and consequences of conduct

[20] This would cover the nature of the professional misconduct. Was it severe? Here are some of the aspects of severity: For how long and how many times did the misconduct occur? How did the conduct affect the victim? Did the lawyer obtain any financial gain from the misconduct? What were the consequences for the lawyer? Were there civil or criminal proceedings resulting from the conduct?

Character and professional conduct record of the respondent

[21] What is the age and experience of the respondent? What is the reputation of the respondent in the community in general and among his fellow lawyers? What is contained in the professional conduct record?

Acknowledgement of the misconduct and remedial action

[22] Does the respondent admit his or her misconduct? What steps, if any, has the respondent taken to prevent a reoccurrence? Did the respondent take any remedial action to correct the specific misconduct? Generally, can the respondent be rehabilitated? Are there other mitigating circumstances, such as mental health or addiction, and are they being dealt with by the respondent?

Public confidence in the legal profession including public confidence in the disciplinary process

[23] Is there sufficient specific or general deterrent value in the proposed disciplinary action? Generally, will the public have confidence that the proposed disciplinary action is sufficient to maintain the integrity of the legal profession? Specifically, will the public have confidence in the proposed disciplinary action compared to similar cases?

8. The College points out that the Dent Factors have been applied by discipline panels of the BCCNM's legacy college, the College of Registered Nurses of British Columbia, in *Re: Jean Marlyn Cunningham (Cunningham Penalty Decision, June 22, 2017)*, and also more recently in the *Hansen Penalty Decision, February 2, 2019* and the *Whieldon Penalty Decision, April 14, 2020*.

9. In *Cunningham* the discipline panel also held:

19...the Panel 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 the 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.

20. Ultimately, a penalty must fall within a reasonable range of appropriate penalties, having regard to the circumstances of the misconduct and the evidence in mitigation.

Analysis and Findings

10. The Panel finds the provisions of sections 39(2) and 39.2 of the Act, the Dent Factors, and the penalty objectives outlined in *Cunningham* as the appropriate legal framework for assessing the appropriate penalty in this case.

11. The Panel will now turn to each of the Dent Factors as they pertain to this matter.

Nature, gravity and consequences of the conduct

12. The College submits the Respondent's proven professional misconduct and unprofessional conduct is indicative of serious problems in his nursing practice. The College submits the Panel's findings of unprofessional conduct in the Conduct Decision relate to the Respondent's failure to appropriately prioritize patient care because of a lack of knowledge or indifference to the patient condition. It says the

Respondent's failure to protect patient privacy and to prioritize a potentially life-threatening condition – the report of a resident being acutely short of breath – over the completion of a dressing change - represents a gap in knowledge that is basic and ought to have been mastered by a nurse with his level of experience, which included work in a critical care environment.

13. The College also argues that the Panel's finding about the Respondent's professional misconduct in the Conduct Decision is particularly serious. The Respondent made a medication error, which resulted in a patient at the end of life not receiving the appropriate type and dose of benzodiazepine. It says the patient potentially experienced distress which was not adequately addressed when it may have been, and the Respondent then fabricated a telephone order to conceal that fact he made medication errors.
14. Counsel for the College points out that the Respondent maintained his untruthfulness regarding this order up to and during the discipline hearing, and that this shows he has not taken any responsibility for or displayed any insight into his actions.
15. The College submits that the Respondent's attempts to conceal his error by fabricating a doctor's order represents a serious breach of trust in the relationship between members of the health care team and with the public in general. It says that while registered nurses are not expected to be perfect or to never make an error, but by concealing his error and not taking responsibility for it, the Respondent put his own interests first, and not those of a vulnerable patient who was under his care.
16. The Panel accepts the College's submissions. The Panel finds that the Respondent's proven conduct was overall serious and favours a significant penalty.

Character and Professional Conduct Record of the Respondent

17. The College says a significant consideration in assessing penalty is the protection of the public from other acts of misconduct by the registrant who is the subject of the hearing. This requires consideration of the individual circumstances of the Respondent.

18. The College submits there is no evidence before the Panel about the Respondent's character or professional conduct record that might mitigate the penalty imposed in this matter. To the contrary, the College argues that the evidence before the Panel regarding the Respondent's record with the Inquiry, Discipline and Monitoring department at the College must be regarded as an aggravating factor in determination of the appropriate penalty. This evidence shows the Respondent's initial registration with the College's legacy institution, the College of Registered Nurses of British Columbia, was in 2005. The evidence further shows that during July and October of 2017, the Legacy College (The College of Registered Nurses of British Columbia at that time) received two separate complaints about the Respondent from Iwan van Veen, the manager of Willington Creek Village as well as Evergreen Extended Care in Powell River, British Columbia. Specifically, that he carried out an invasive and unnecessary physical examination on a vulnerable female resident without obtaining informed consent, and for administering an injectable anti-psychotic medication without a valid order.
19. The evidence also indicates that on February 14, 2019, the Respondent entered into a consent agreement with the Legacy College to address the conduct outlined in the 2017 complaints. The Respondent agreed not to repeat the conduct and to complete remedial course work aimed at communication, medication administration, and documentation, and that he also agreed to develop a learning plan to be utilized in the clinical environment. The evidence further shows that the term of the consent agreement was not yet complete when Mr. van Veen again notified the College regarding the practice concerns that gave rise to the findings in the Conduct Decision.
20. In the 2017 case, the Respondent administered a psychotropic drug to an elderly resident that had been discontinued. When that medication error was discovered, the Respondent reported the error to the most responsible physician, completed an incident report, but was subsequently reported to the regulator which resulted in a consent agreement that had yet to be completed by the time the Respondent was reported to the College with respect to the subject matter of this hearing.
21. The College submits the Respondent accordingly had knowledge and experience of

what he ought to do when confronted with the fact he made a medication error. The evidence shows he followed the proper procedure in 2017 when he administered an anti-psychotic to a resident without a valid physician's order. The evidence further indicates the Respondent received supportive regulatory intervention after that incident was reported to the Legacy College. However, when faced with having made the medication error that was the subject of the Panel's Conduct Decision of January 7, 2022, the Respondent tried to obscure his error by falsifying a doctor's order.

22. The Panel has considered the evidence of the Respondent's nursing experience and past professional conduct record with the College and finds this to be an aggravating factor in assessing the appropriate penalty. With his years of nursing experience and the supportive regulatory intervention that he received in the past, the Respondent knew or should have known that his conduct fell below the applicable professional and ethical standards.

Acknowledgement of Misconduct and Remedial Action

23. The College points out that the Respondent did not admit his misconduct during the discipline hearing. Also, he has not provided any evidence that he engaged in any remedial action to address his practice issues prior to allowing his registration to lapse, or of any other mitigating circumstances, such as a mental health or addiction issue.
24. The Panel finds that the absence of an admission or demonstrated remorse is not an aggravating factor but is the absence of a mitigating factor.

Public confidence in the legal profession including public confidence in the disciplinary process

25. With respect to the issues for consideration under this Dent factor the College drew the Panel's attention to the objectives outlined in the *Cunningham*. As noted, in this case a discipline panel of the Legacy College held the following:

19...the Panel 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 the 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.

General Deterrence

- 26. The College submits that practicing competently and ethically is a core component of safe and client centered care. It is fundamental for all registrants of the College. Creating appropriate and accurate documentation in a clinical record is a fundamental and basic nursing skill. It is critical for effective communication of the patient's status at a point in time, and the plan of care to address all patient concerns and variances in health.
- 27. The College argues that the failure to create documentation that is accurate and comprehensive is a serious breach of the College's standards. Being a self-regulated professional is a privilege and comes with obligations and responsibilities which cannot be ignored or disregarded.
- 28. The College submits the penalty imposed in this case must emphasize the College's regard for the importance of regulated professionals to adhere to standards, to practice competently and ethically, to exercise clinical judgment prudently and to put patient needs and safety first.

Educating registrants and the public about Professional Standards

- 29. The College further says that adherence to professional, practice, and ethical standards is of vital importance to members of the profession and to members of the public. Patients rely on their nurse to administer medications as ordered and should an error occur, to act immediately to ensure their safety and to remedy the issue. It argues that the imposition of the combination of penalties sought by the College reinforces the importance of these concerns to other members of the profession and enhances trust in the profession.

Public Confidence in the Profession

- 30. The College also submits that the penalty imposed should reinforce public confidence in the regulatory body's ability to effectively govern the profession, including the disciplinary process. It says that in this case, that is an important

concern given the fundamental principles of nursing care and self-regulation for professionals at issue and the potentially serious consequences of the Respondent's actions.

31. The College submits that the penalty it proposes is consistent with comparable cases, will serve to reinforce public confidence in the profession, and will protect the public from an incompetent practitioner who has demonstrated that he will not be governed by his regulator. It submits the proposed penalty sends a strong and appropriate message to the public and other members of the profession.
32. The College refers to several published cases in which other discipline panels that made a finding that the registered nurses committed professional misconduct, ordered a suspension of varying lengths together with other conditions and terms. In this regard, the College relied on the following cases:

- a. *College of Nurses of Ontario v Nugent*, 2015 CanLII 89631 (ON CNO) ("*Nugent*") in which case a registered nurse, while working in a long-term care facility, did not complete three dressing changes for residents, but documented that she had, and that she did not provide medications for 13 residents, but also documented that she had. The discipline panel found that the registrant in this case had committed professional misconduct by failing to meet the standards of the profession, falsifying records relating to her practice, signing documents she knew or ought to have known contained a false or misleading statement, and engaged in conduct that a member of the profession would find disgraceful, dishonourable, and unprofessional.

In devising an appropriate penalty in *Nugent*, the Panel noted that the registrant did not participate and did not attend the hearing. Further, the Panel determined that the registrant's conduct, in creating false clinical records, her conduct fell well below the expected standard for a registrant. The panel considered the seriousness of the impugned conduct and the deliberate breach of trust as well as the fact the registrant had a history with the complaints department at the CNO resulting from similar bad conduct in the past with respect to medication administration and documentation. The panel ordered a reprimand, a suspension of her registration for 6 months,

remedial education, and disclosure to employers of the hearing decision.

- b. *College of Nurses of Ontario v Ohiegbomwan*, 2020 CanLII 116003 (ON CNO), (“*Ohiegbomwan*”), where a registered nurse was assigned to care for a 91-year-old patient post-operation. The patient was suspected of having a urinary tract infection and low urinary output. The physician ordered that her urinary output be assessed and documented and to notify the physician if her urine output dropped below a certain threshold. The RN only documented on this patient three times during her 12-hour shift and the only notation in relation to her urine output was “500”. There was no indication that the RN assessed the patient for urosepsis or UTI progression and the RN admitted and acknowledged that she did not do so. The RN admitted that she did not appropriately document a head-to-toe assessment, although she believed that she did complete one and she did not communicate any concerns about the patient’s output and vital signs to the oncoming shift. The patient was found with decreased level of consciousness the afternoon following this night shift and passed away a few hours later. In a second incident discussed in *Ohiegbomwan* which occurred at a different facility the RN admitted that she did not appropriately monitor and assess a patient on a mental health unit while she was required to directly observe and assess him. Instead, she relied on a live video feed of the patient room. She documented that he was “sleeping” and there were no problems and communicated the same to the RN taking over responsibility for the patient. The patient was found unresponsive by the oncoming nurse at 1200 – and he was declared dead at 1230. The cause of death was acute bronchopneumonia and aspirational pneumonia with significant levels of blood opioid levels.

The panel found aggravating factors in assessing penalty was that there were two incidents of similar misconduct at two different practice settings. The incidents showed a lack of obligation to care for and monitor vulnerable patients. The conduct of charting an assessment that was not carried out involves dishonesty and breach of trust. The mitigating factors were that the registrant attended her discipline hearing, had no prior discipline history and

by agreeing to an agreed statement of facts, including that her conduct amounted to professional misconduct, and by making a joint submission on the penalty order that she accepted responsibility for her conduct. The panel ordered a reprimand, a three-month suspension, limits and conditions on the RN's practice, remedial education, and disclosure to new employers for a period of 18 months.

- c. *College of Nurses of Ontario v Beerschoten*, 2020 CanLII 44200 (ON CNO) ("*Beerschoten*"), where a registered nurse, while acting as a unit leader in a psychiatric facility, failed to assign the responsibility to complete hourly rounds to herself or to her colleagues, failed to complete hourly rounds or ensure that they were completed, and while she was responsible for a patient between 0845 and 1230 she did not complete the close observation monitoring q15 minutes as required by the physician's orders but documented that she had completed the monitoring. The patient was later found in her bathroom deceased by suicide. The registrant attended her hearing and agreed to an agreed statement of facts and made joint penalty submissions. The panel considered the following mitigating factors: the registrant had a lengthy nursing career with no past discipline history, and the registrant took responsibility for her actions and expressed deep remorse. She proactively sought out advice from a nurse expert at her own expense. The panel considered the following aggravating factors: the registrant failed to complete hourly checks and fifteen minutes checks on the patient as per physician's orders, and she documented that the safety checks were completed by herself personally which amounted to a form of dishonesty and a breach of trust. The registrant's actions led to serious harm of the patient and ultimately a devastating outcome. The panel ordered a two-month suspension, reprimand, and remedial education and disclosure to employers.
33. The Panel agrees with the College's above submissions. The Panel also finds there is a need for specific deterrence in this case. While the Respondent is presently not registered, it is possible for him to apply to return to the profession. There is currently no evidence before the Panel to suggest that the Respondent would not again

conduct himself in the same manner if he were to have his registration reinstated. He has already previously made medication and documentation errors. While the specific deterrence factor may be less significant due the fact that the Respondent is no longer a registrant, it is a factor, nonetheless.

34. The Panel also considers that there is also a strong need for general deterrence in this case. It is important that other members of the profession understand that they must not falsify doctor's orders and maintain proper medical records.
35. It is equally important that public confidence in the integrity of the nursing profession is always maintained and that the public is aware that members are held to account for failing to uphold the applicable standards and failing to conduct themselves professionally and ethically, especially in relation to standards that exist to prevent risk to public well-being.
36. Further, the Panel has carefully reviewed the other reported cases to which it was referred. Although the Panel is not bound by these cases, they are of assistance in determination of an appropriate penalty in this case. Consideration of penalties assessed in other cases of professional misconduct, and unprofessional conduct are helpful to establish a range of sanctions by which to judge the current case. The Panel notes that the penalties imposed in these cases range from a two-month period of suspension of membership to a six-month suspension and also include additional limits and and/or conditions on practice.
37. In *Nugent*, the registrant was suspended for six (6) months. In that case, the registrant had more than one instance of falsifying clinical records and a discipline history for similar conduct. The registrant also refused to attend her own discipline hearing which can be considered aggravating. Overall, the Panel is on the opinion that the conduct described in *Nugent* was more pervasive and directly harmed residents than the Respondent's conduct as found by the Panel in the Conduct Decision.
38. In *Ohiegbomwan* the registrant received a three (3) month suspension for documenting events/observations when she did not directly assess or observe her patients. The Panel finds that her conduct can be distinguished as less serious from

the present case because in *Ohiegbomwan* the registrant admitted her wrongdoing and expressed remorse. She also obviated the need for a lengthy hearing by agreeing to an Agreed Statement of Facts and making joint submissions on penalty. This is in contrast with the Respondent who denied his professional misconduct prior to and during the discipline hearing.

39. In *Beerschoten*, the registrant received a two (2) month suspension for failing to make sure appropriate observational checks were completed as ordered and for charting that they were. In *Beerschoten*, the impugned wrongdoing was less egregious than the present case. There were several mitigating factors in *Beerschoten* that are not present in this case, for instance, the circumstances surrounding the breach in standards – an extremely busy unit that day and a mistaken belief that the necessary checks had been carried out by one of the registrant's colleagues. The registrant in *Beerschoten* attended her hearing and agreed to an agreed statement of facts and made joint penalty submissions. The registrant was deeply remorseful and took remedial steps prior to the discipline hearing, which is in contrast to the Respondent's conduct in this matter.
40. In weighing all the submissions and evidence pertaining to the Dent factors, including the objectives outlined in *Cunningham*, and the other case law to which the College referred, the Panel considers a significant penalty is warranted in this case. The Panel considers a suspension from practice together with a reprimand to be the appropriate penalty, and that the appropriate length of suspension is four (4) months. A four (4) month suspension with a reprimand will serve to emphasize the Panel's disapproval and condemnation of the Respondent's professional misconduct and is proportional to the sanctions set out in the comparable cases to which the Panel was referred.
41. Additionally, the Panel agrees with the College's submissions that the Respondent need further education and will require close oversight and supervision in the workplace for him to practice safely should he be successful in a future application for registration in British Columbia. The Respondent appears not to have learnt from the past medication error he made or from the past related learning plan. As noted, the Respondent previously entered into a consent agreement with the Legacy

College to address his previous medication error. In that agreement, the Respondent agreed not to repeat the conduct and to complete remedial course work aimed at communication, medication administration, and documentation. He also agreed to develop a learning plan to be utilized in the clinical environment. The terms of the consent agreement were not yet complete when the College was notified about the practice concerns that gave rise to the medication error findings addressed in the Conduct Decision. The Respondent has also not acknowledged his misconduct nor is there evidence before the Panel that he engaged in any remedial action to address his practice issues prior to allowing his registration to lapse. In these circumstances, the Panel is satisfied it is also reasonable and appropriate to impose those supportive limits and conditions on his nursing practice which the College proposes, should he again obtain registration in British Columbia in future. The Panel has added the following terms to the proposed orders regarding the limits and conditions on practice for clarification:

- i. Upon the Respondent successful reapplication for practising registration the College will appoint a Monitor for the Respondent.
- ii. Prior to a return to nursing practice, the Respondent will complete such remedial education courses as directed by the Monitor, which may, but need not, include those courses outlined below.
- iii. The Respondent must provide his proposed learning plan to the Monitor for approval. The Monitor may approve or reject the proposed plan, and if the plan is rejected, may provide an alternate learning plan to be completed by the Respondent prior to his return to practice.
- iv. The Learning Plan will remain in place for a minimum of three (3) of months or the equivalent of 450 hours of work and will remain in place until such time as BCCNM certifies that all goals have been successfully completed, whichever period is longer.

Costs

42. Further, the College submits that an award of costs is discretionary, however, costs should be awarded in this matter so that the membership does not bear the entire costs of conducting the discipline proceedings.

43. Section 39 of the Act authorizes the Panel to impose costs as follows:

(5) If the discipline committee acts under subsection (2), it may award costs to the college against the respondent, based on the tariff of costs established under section 19 (1) (w.1).

...

(7) Costs awarded under subsection (5) must not exceed, in total, 50% of the actual costs to the college for legal representation for the purposes of the hearing.

44. Section 212 of the College's Bylaws establishes the tariff of costs for a discipline hearing. Schedule J sets out the tariff and qualifying expenses as follows:

1. For the purpose of assessing costs under this tariff, qualifying expenses incurred from the time the inquiry committee directs the registrar to issue a citation under section 33(6)(d) of the Act until the time

(a) the inquiry committee accepts a written proposal for a consent order under section 37.1(2) or (5) of the Act,

(b) the discipline committee dismisses the matter under section 39(1) of the Act, or

(c) the discipline committee issues an order under section 39(2) of the Act,

are deemed to be expenses incurred in the preparation for and conduct of the hearing.

2. (1) The value for each unit allowed on an assessment of costs is \$120.

(2) Where maximum and minimum numbers of the units are provided for in an item in the Tariff, the discipline committee has the discretion to allow a number within that range of units.

(3) In assessing costs where the Tariff indicates a range of units, the discipline committee must have regard to the following principles:

a) One unit is for matters upon which little time should ordinarily have been spent;

b) The maximum number of units is for matters upon which a great deal of time should ordinarily have been spent.

3. In addition to the Tariff, actual reasonable disbursements are recoverable.

45. Costs awarded must be reasonable. In *The Law of Professional Regulation (Markham, Ontario: LexisNexis Canada, 2015) Salte, Bryan*, the author lists the following factors for consideration in determining whether a cost award was reasonable:

a. Whether the costs are so large that the costs are punitive;

b. Whether the costs are so large that they are likely to deter a member from raising a legitimate defense;

c. The member's financial status;

d. The regulatory body should provide full supporting material for the amount of

costs claimed;

- e. The regulatory body should provide the individual with an opportunity to respond to the information and respond to the total quantum of costs which may be ordered before costs are imposed;
- f. The regulatory body should provide reasons for reaching the decision that it made; and
- g. If the decision is made in British Columbia, the costs award will have to be based upon the tariff of costs that is awarded in court action. British Columbia stands alone in limiting costs recovery by regulatory bodies to the tariff of costs that applies in civil court proceedings.

46. Further, in *Jaswal v Newfoundland Medical Board*, 1996 CanLII 11630 (NL SC), the Court adopted the following principles with respect to awards of costs:

(50) It is necessary, therefore, to determine the factors appropriate to the proper exercise of the judicial discretion to make an order for payment or partial payment of expenses. In my view, based on the submissions of counsel, the following is a non-exhaustive list of factors which ought to be considered in a given case before deciding to impose an order for payment of expenses:

1. the degree of success, if any, of the physician in resisting any or all of the charges
2. the necessity for calling all of the witnesses who gave evidence or for incurring other expenses associated with the hearing
3. whether the persons presenting the case against the doctor could reasonably have anticipated the result based upon what they knew prior to the hearing
4. whether the doctor cooperated with respect to the investigation and offered to facilitate proof by admissions, etc.
5. the financial circumstances of the doctor and the degree to which his financial position has already been affected by other aspects of any penalty that has been imposed.

(51) In examining the scope of the inquiry and the manner and focus of the investigation the Court, or the Board, ought to be careful not to apply, with the benefit of hindsight, too high a standard for the imposition of costs. The decision to call witnesses and to take a certain approach is made before the disposition in the case is known. The test is therefore not one of necessity viewed in the light of the resulting decision but one of reasonableness viewed from the perspective of the persons investigating and preparing the case for hearing.

47. In this case, the discipline hearing was conducted by in-house legal counsel, who is a salaried employee of BCCNM. The College claims 99 units according to the tariff in Schedule J of the Bylaws, calculated as follows:

TARIFF			
Item	Description	Units	Claimed Units
1.	Initiating Process in Respect of Citation All process for which provision is not made elsewhere in this tariff for commencing a proceeding.	Minimum 1 Maximum 5	5
2.	Disclosure All processes associated with obtaining or providing disclosure of evidence, including documents.	Minimum 1 Maximum 10	8
3.	Experts	Minimum 1 Maximum 5	n/a
	All processes and correspondence associated with retaining and consulting all experts for the purposes of obtaining opinions for use in the discipline hearing		
4.	Witnesses All process and correspondence associated with contacting, interviewing, and preparing summons to all witnesses	Minimum 1 Maximum 10	10
5.	Pre-Hearing Conferences Preparation for attendance at a pre-hearing conference for each day of attendance	Minimum 1 Maximum 3	3
6.	Attendance at Pre-Hearing Conference for each day.	Minimum 1 Maximum 5	3
7.	Discipline Committee Hearing Preparation for each day of hearing.	8	24
8.	Attendance at discipline committee hearing for each day.	10	30
9.	Process for making admission of fact	Minimum 1 Maximum 10	1
10.	Preparation of closing submission for the discipline committee	Minimum 1 Maximum 10	8
11.	Attendance at the hearing where party is ready to proceed and when hearing not commenced.	3	n/a
12.	Settlement of Costs	Minimum 1 Maximum 5	5
13.	Settlement of Order	Minimum 1 Maximum 3	2

48. 99 units x \$120 per unit is \$11,880.

49. The College submits that costs should be awarded and that it ought to be

indemnified for the number of tariff units it claims under Schedule J of the Bylaws.

50. The Panel agrees. The College proved all the allegations in the Citation. The allegations were serious, particularly those allegations relating to the Respondent's medication error and his subsequent fabrication of a physician's order. It was also necessary for the College to pursue the hearing considering the Respondent's continual denial of this allegation. The costs claimed by the College are also supported by appropriate evidence. The hearing lasted for three days of testimony and required several witnesses and a moderate amount of documentation. All the witnesses the College called gave relevant evidence in relation to the alleged conduct. The hearing was diligently pursued and prosecuted by the College.
51. The Panel finds the College's units claimed for legal costs to be fair and reasonable in the circumstances. The Panel is satisfied the total amount of tariff units claimed for each step of the proceeding is rationally connected to the length and level of difficulty to conduct those steps.
52. The College further claims \$3334.04 as disbursements consisting of \$3318.00 for the Court reporter's fee and \$16.04 for Canada Post fees to serve of the Citation.
53. The Panel also finds the College's disbursements to be reasonable and necessary. The hearing had to be recorded by a Court reporter, and the Citation had to be served on the Respondent.
54. The Respondent has not provided any evidence or submissions regarding his financial circumstances. The Panel is however satisfied that the amount of costs and disbursements the College claims is not so large as to be punitive to the Respondent.
55. The Panel must specify a time for payment of the costs. The College submits the Panel should permit the Respondent a period of approximately four (4) months to pay any costs ordered. The Panel accepts this submission.

Order: Penalty and Costs

56. In conclusion, the Panel determines and orders pursuant to ss. 39 and 39.3 of the Act the following:

1. The Respondent is reprimanded.
2. Upon the Respondent successful reapplication for practising registration, wherein he must meet all requirements of fitness, competence and character, the Respondent's registration will be suspended for four (4) months and during this time he will be prohibited from practising as a Registered Nurse.
3. Upon the Respondent successful reapplication for practising registration the College will appoint a Monitor for the Respondent.
4. After the Respondent's suspension is completed, the Respondent will be subjected to the following conditions and limits:

1. Conditions

- a. Prior to a return to nursing practice, the Respondent will complete remedial education courses as directed by their Monitor, which courses may, but need not, include those courses outlined below:
 - i. Ethics for Healthcare Professionals <https://ceufast.com/course/ethics-for-healthcare-professionals>
 - ii. CNA Code of Ethics for Registered Nurses: Bringing the Code to Life <https://www.cna-aiic.ca/en/nursing/continuing-education>
 - iii. Care and Management of the Deteriorating Patient available through the Australian College of Nursing <https://www.acn.edu.au/education/cpd-online/care-management-deteriorating-patient>
 - iv. Nurse and Interprofessional Team Communication available through nurse.com <https://www.nurse.com/ce/hcahps-series-nurse-and-interprofessional-team-communication>
- b. The Respondent will provide their BCCNM Monitor with proof of successful completion of each of the remedial courses.
- c. Should one of the directed remedial education courses be unavailable, the Respondent and/or the BCCNM Monitor may propose an alternative that covers the same material and is of a similar duration. Approval of any substitute remedial course will be at the sole discretion of the BCCNM Monitor.

- d. Prior to his return to practice, the Respondent will develop a Learning Plan that addresses the nursing practice issues and professional standards that the Respondent was found to have breached as outlined in the Conduct Decision, and at minimum the following: documentation, medication administration, managing patient assignments and prioritizing care, ethics, and professional responsibility.
- e. The Respondent must provide his proposed learning plan to the Monitor for approval. The Monitor may approve or reject the proposed plan, and if the plan is rejected, may provide an alternate learning plan to be completed by the Respondent prior to his return to practice.
- f. Each focus area of the Learning Plan must have an associated goal, resources and/or strategies, and a section for evaluation. The intent of the Learning Plan is to support the Respondent in ensuring that his future nursing practice is safe, competent, and ethical.
- g. The Respondent will update his Learning Plan every week to reflect learning, growth, and updated learning needs.
- h. The Respondent must provide his Learning Plan to the BCCNM Monitor. The BCCNM Monitor will have unfettered discretion to determine if and when the Respondent must provide them with a copy of their learning plan, including any mandated updates throughout the term of this Agreement.
- i. The Learning Plan will remain in place for a minimum of three (3) of months or the equivalent of 450 hours of work, whichever period is longer, and will remain in place until such time as BCCNM certifies that all goals have been successfully completed. Once he returns to work, the Respondent will begin to utilize the Learning Plan. Specifically, the Respondent will, at least weekly, populate the plan with relevant learning or training completed, self-reflective entries and/or illustrative clinical examples from his practice. The updated Plan must be submitted by email to the Supervisor and/or Clinical Nurse Educator by the Respondent after each update.
- j. Prior to any employment as a Registered Nurse in British Columbia, the Respondent must identify a supervisor in their new work setting and will provide the BCCNM Monitor with the Supervisor's name, position, and contact information. The specific supervision terms are enumerated under the "limits" section.

2. Limits

- k. The Respondent will not work overtime for a period of 6 months (or equivalent of 900 nursing hours, whichever is longer).

- l. The Respondent will not work in a critical care unit for a period of one year (or equivalent of 1800 nursing hours, whichever is longer).
- m. The Respondent will not be the sole RN on duty on a unit, floor, or in a facility for a period of 12 months (or equivalent of 1800 nursing hours, whichever is longer).
- n. The Respondent will not provide regulatory supervision to nursing students and/or act in a role of providing orientation for new staff in the nursing environment for a period of 12 months (or equivalent of 1800 nursing hours, whichever is longer).
- o. The Respondent will not work except under supervision for a period of four months (or the equivalent of 600 nursing hours, whichever is longer). The terms of the supervision will be as follows:
 - p. The Respondent agrees to work in an area where they can be supervised by a regulated health care professional through random chart audits, unscheduled practice audits, and regular shift “check-ins”;
 - q. The supervisor is to be a Registered Nurse, preferably the Clinical Nurse Educator or equivalent in the employment setting and must have a minimum of five years of nursing experience (the “Supervisor”).
 - r. For clarity, to allow for the realities of shift work, vacation, and illness, the Respondent may have two, but not more than three, Supervisors, one of whom must be the clinical nurse educator (or equivalent in the employment setting), the other may be an experienced Registered Nurse who is approved to be a supervisor by the clinical nurse educator of the nursing unit where the Respondent will work and whose name and contact details will be communicated to the BCCNM monitor *prior to the Respondent’s return to work*.
 - s. For further clarity, the Supervisor must be reasonably available to the Respondent during the course of their shift, either in person, or by telephone. The Supervisor must be on site where the Respondent is working.
 - t. The Respondent will meet with his supervisor each shift to “check-in” and to discuss their plan for their shift.
 - u. The timing of these “check-ins” will be determined between the Respondent and his Supervisor.
 - v. The Supervisor will select a minimum of 5 charts at random from the charts of patients that the Respondent has cared for each month and conduct an audit.

- w. The Supervisor(s) is required to provide reports to the unit leadership and to notify BCCNM promptly, and in writing, if the Respondent does not comply with the terms of the supervision and/or the Supervisor believes there has been a reportable incident or practice concern potentially impacting public safety.
5. For a period of two years, upon the Respondent reinstating his registration to practising, he must provide a copy of the Panel's decisions, both the Conduct Decision and this penalty decision, to any employer within five (5) business days of accepting an offer of employment, and the BCCNM Monitor may confirm that this disclosure has taken place.
6. The Respondent must pay BCCNM costs in the amount of \$15,214.04, payable within four (4) months from the date of this order.

Publication

57. The Panel directs the Registrar to notify the public of its decisions pursuant to section 39.3(1)(e) of the Act.

Notice of right to appeal

58. The Respondent Allen Pangburn 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.

Dated: June 21, 2022

Edna McLellan, RN (T)(Chair)



Dorothy Barkley

A handwritten signature in black ink, appearing to read "Dorothy Barkley". The signature is cursive and somewhat stylized, with the first name being more prominent. It is positioned above a horizontal line.

Kira Antinuk, RN

A handwritten signature in black ink, appearing to read "Kira Antinuk". The signature is very stylized and abstract, with sharp angles and a long horizontal stroke. It is positioned above a horizontal line.