

IN THE MATTER OF THE
HEALTH PROFESSIONS ACT, R.S.B.C. 1996, c. 183, s. 39.1
AND
BRITISH COLUMBIA COLLEGE OF NURSES AND MIDWIVES
AND
VIVIANNE LACHANCE

SECTION 39.1 DECISION

Discipline Committee
Panel: Edna McLellan, R.N. (T), Chair
Carol Bernardo, L.P.N.
Dorothy D. Barkley

Counsel for the Panel: Angela R. Westmacott, K.C.

Vivianne Lachance: Unrepresented

Counsel for the
College: Nazio Filice

A. Introduction

[1] A panel of the Discipline Committee of the British Columbia College of Nurses and Midwives (the “BCCNM Panel”) was appointed to consider whether to take action against Vivianne Lachance under s. 39.1 of the *Health Professions Act*, R.S.B.C. 1996, c. 183 (the “Act”). Ms. Lachance was formerly registered as a Licensed Practical Nurse in British Columbia but ceased to hold registration effective April 1, 2023.

[2] In December 2022, a Hearing Panel of the Nova Scotia College of Nursing (the “NSCN Hearing Panel”) found that Ms. Lachance engaged in professional misconduct when she permanently destroyed health records for 435 clients contrary to her employer’s hard copy file management policy and College standards, failed to respond to communications from the NSCN staff, and failed to comply with directives

of the Complaints Committee to provide a written response to the matters under investigation and to attend an interview. In February 2023, the NSCN Hearing Panel issued its decision on disposition ordering amongst other things: (a) a reprimand for permanently destroying patient medical records, failing to cooperate with the NSCN, and failing to comply with directives of the Complaints Committee; (b) suspension of Ms. Lachance's licence for a period of six months; (c) a requirement to complete and obtain an unconditional pass on the PROBE: Ethics & Boundaries Program – Canada ("PROBE Program"); and (d) hearing costs.

[3] Section 39.1 of the Act provides that where a college in another province or foreign jurisdiction has found that a registrant committed an act that constitutes unprofessional conduct, or the registrant admits to committing an act that constitutes unprofessional conduct, the Discipline Committee of the BCCNM may, without issuing a citation under s. 37 or conducting a hearing under s. 38 of the Act, make an order under s. 39(2) respecting the registrant. By virtue of s. 26, a "registrant" under Part 3 of the Act includes a "former registrant".

[4] The BCCNM Panel convened to consider whether the decision of the NSCN Hearing Panel that Ms. Lachance engaged in unprofessional conduct warrants an order under s. 39.1 of the Act in British Columbia. For the reasons that follow, the BCCNM Panel has determined that an order is warranted under s. 39.1 of the Act.

B. Facts

[5] In June 2020, CBI Health Group (formerly known as We Care Health Services Inc.) filed a complaint with NSCN alleging that its former employee, Ms. Lachance, had destroyed client records without authorization. After initially responding to communications from NSCN regarding the complaint, Ms. Lachance ceased all communications and failed to comply with directives issued by the Complaints Committee during the investigation; her failure to communicate led to the issuance of an interim suspension of her Nova Scotia licence in January 2022.

[6] The matter was referred to the NSCN Professional Conduct Committee. On October 4, 2022, a Notice of Hearing was issued to Ms. Lachance setting out the following allegations:

That being registered under the Nursing Act at the time of the subject matter of the allegations leading to this Notice of Hearing, it is alleged that Vivianne Lachance engaged in professional misconduct by:

1. *In or around June 2020, Vivianne Lachance permanently destroyed health records for 435 clients, contrary to her employer's 'Hard Copy File Management' policy.*

And that being registered under the Nursing Act at the time of the subject matter of the allegations leading to this Notice of Hearing, it is alleged that Vivianne Lachance engaged in professional misconduct and/or conduct unbecoming the profession by:

2. *Beginning in or about March 2021 through to present, Vivianne Lachance failed to co-operate with NSCN by failing to respond to NSCN communications, inquiries and requests for information in a timely, full and substantive manner, contrary to section 45(1)(b) of the Nursing Act and the Responsibility and Accountability Standard of Practice. Vivianne Lachance did not respond to the following communications, inquiries and requests for information from NSCN in a timely, full and/or substantive manner:*
 - a. *a letter dated March 8, 2021 from Darlene Mott, Director – Professional Conduct, sent via Titanfile;*
 - b. *an email dated March 22, 2021 from Kim Shears, Administrative Assistant;*
 - c. *a telephone call on March 26, 2021 from Kim Shears, Administrative Assistant;*
 - d. *a telephone call on March 29, 2021 from Kim Shears, Administrative Assistant;*
 - e. *a letter dated April 12, 2021 from Darlene Mott, Director – Professional Conduct, sent via Titanfile, email, and registered mail*
 - f. *a letter dated June 1, 2021 from Darlene Mott, Director – Professional Conduct, sent via TitanFile, email, and registered mail;*
 - g. *a letter dated October 19, 2021 from Kimberley Pochini, Professional Conduct Consultant, sent via TitanFile, email, mail, and registered mail; and*
 - h. *a letter dated December 22, 2021 from Kimberley Pochini, Professional Conduct Consultant, sent via email and registered mail.*
3. *Beginning in or about November 2021 through to present, Vivianne Lachance failed to provide a written response to matters under investigation as directed by the Complaints Committee, contrary to section 74(1)(c) of the Nursing Act and the Responsibility and Accountability Standard of Practice.*
4. *On or about January 10, 2022, Vivianne Lachance failed to attend an interview with respect to matters under investigation as directed by the Complaints Committee, contrary to section 74(1)(e) of the Nursing Act and the Responsibility and Accountability Standard of Practice.*

[7] On November 9, 2022, the NSCN Hearing Panel convened a discipline hearing. Although Ms. Lachance was personally served with the Notice of Hearing, she did not attend the hearing.

[8] On December 1, 2022, the NSCN Hearing Panel issued its decision on verdict finding that the four allegations in the Notice of Hearing were proven. The NSCN Hearing Panel concluded that Ms. Lachance had engaged in professional misconduct and invited submissions on disciplinary action.

[9] On February 10, 2023, the NSCN Hearing Panel resumed the hearing to determine the appropriate disciplinary action. Ms. Lachance did not provide submissions on disposition but accepted the disposition proposed by the NSCN. On February 10, 2023, the NSCN Hearing Panel issued its decision on disciplinary action. Accepting the penalty proposed by discipline counsel, the NSCN Hearing Panel made the following orders:

- i) *Ms. Lachance is reprimanded for permanently destroying patient medical records;*
- ii) *Ms. Lachance is reprimanded for failing to co-operate with the College and failing to comply with orders of the Complaints Committee;*
- iii) *Ms. Lachance's licence to practice is suspended for a period of six months, which is considered to have been served as she has not practiced for close to one year, following the interim suspension of her licence by the Complaints Committee;*
- iv) *At her own cost, Ms. Lachance is required to successfully complete the PROBE Program and provide the College with proof of her unconditional pass;*
- v) *The lifting of the interim suspension of Ms. Lachance's licence is conditional upon her attaining an unconditional pass of PROBE Program and the College receiving written confirmation of her attendance and her unconditional pass directly from the PROBE Program;*
- vi) *Ms. Lachance shall pay costs to the College in the amount of \$10,000 and she shall negotiate a payment plan with the College;*
- vii) *The lifting of the interim suspension of Ms. Lachance's licence and her ongoing licensure is conditional upon her negotiating a payment plan with the College and her honouring the payment plan.*

[10] The NSCN Hearing Panel's decisions on verdict and disposition were referred to the BCCNM Discipline Committee. Counsel for the BCCNM subsequently confirmed with the NSCN that it has not received confirmation that Ms. Lachance has completed the PROBE Program nor has she made arrangements to enter a payment plan for the hearing costs.

C. Relevant Statutory Provisions

[11] Where there is a finding or admission of unprofessional conduct in another jurisdiction, the Discipline Committee may, without issuing a citation or conducting a discipline hearing, take action under s. 39.1(1) of the Act:

Unprofessional conduct in another jurisdiction or while practising as a registrant of another college

39.1(1) If the discipline committee learns that

- (a) another college established under this Act or a body in another province or a foreign jurisdiction that regulates a health profession in that province or foreign jurisdiction has found, either before or after the registrant was registered under section 20, that the registrant committed an act that, in the opinion of the discipline committee, constitutes professional misconduct under this Act, or
- (b) the registrant has admitted, either before or after the registrant was registered under section 20, to another college established under this Act or to a body in another province or a foreign jurisdiction that regulates a health profession in that province or foreign jurisdiction, that the registrant committed an act that, in the opinion of the discipline committee, constitutes professional misconduct under this Act,

the discipline committee may, without issuing a citation under section 37 or conducting a hearing under section 38, make an order under section 39(2) respecting the registrant, and sections 39(3), (5) and (7) to (10) applies as if a determination had been made under section 39(1) by the discipline committee.

- (2) The discipline committee may take action under subsection (1) only after giving the registrant the following:
 - (a) notice of the proposed action, in accordance with the bylaws;
 - (b) a copy of the record of the relevant decision or findings made or action taken by the other college or body;
 - (c) an opportunity to be heard, which may be limited to a hearing in writing;

...

[12] Section 39(2) of the Act sets out the range of orders that can be made when the Discipline Committee concludes that a registrant has engaged in professional misconduct:

Action by discipline committee

...

- (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).

[13] Section 39.1(2) provides that the Discipline Committee may take action only after giving the registrant:

- (a) notice of the proposed action;
- (b) a copy of the record of the relevant decision or findings made or action taken by the other college or regulatory body; and
- (c) an opportunity to be heard, which may be limited to a hearing in writing.

D. Notice of Proposed Action, Disclosure and Opportunity to be Heard

[14] By letter dated May 17, 2023, Angela R. Westmacott, K.C., the BCCNM Panel's independent legal counsel, provided formal notice to Ms. Lachance that this matter had been referred to the Panel to determine whether an order should be made under s. 39.1 of the Act and invited a written response. The notice letter, which was copied to counsel for the BCCNM, included certified copies of the NSCN Hearing Panel decisions on verdict and disposition. The notice letter set a schedule for the exchange of written submissions. Ms. Lachance was requested to provide a written submission by June 2, 2023, the BCCNM was requested to provide a written submission by June 16, 2023, and Ms. Lachance was requested to provide a reply submission by June 23, 2023. The notice letter was sent by registered mail to the address provided by Ms. Lachance to the BCCNM and sent electronically to the email address she provided to the

BCCNM as well. Canada Post records confirmed that the notice letter was delivered to Ms. Lachance's address at 12:15 p.m. on May 23, 2023.

[15] Ms. Lachance did not provide a written submission. On June 8, 2023, counsel for the BCCNM filed a written submission which was copied to Ms. Lachance; she did not file a reply submission or otherwise provide information to the BCCNM Panel.

E. College's Position

[16] Counsel for the BCCNM observed that s. 39.1 is not designed to punish a professional again for unprofessional conduct which occurred outside of British Columbia but rather to ensure protection of the public in this province based on the findings of unprofessional conduct made in another jurisdiction.

[17] Counsel for the BCCNM maintains that Ms. Lachance engaged in serious professional misconduct when she permanently destroyed health records for 435 clients and failed to respond to, and cooperate with, the NSCN during the investigation of the complaint filed by her former employer. Mr. Filice submits that the gravity of the misconduct, which places the public at risk, warrants a serious outcome such as a suspension of registration.

[18] Specifically, counsel for the BCCNM proposes a six-month suspension of registration in view of the severity of Ms. Lachance's misconduct and the need to foster public confidence in the regulation of nursing in this province. Mr. Filice endorses the NSCN Hearing Panel's rationale for determining that a six-month suspension was appropriate. He also notes that Ms. Lachance, while still a practising registrant in British Columbia, became subject to an order under s. 35 of the Act effective August 2, 2022, which suspended her registration during the BCCNM's investigation into this matter. As Ms. Lachance's registration remained suspended until her registration lapsed on March 31, 2023, counsel for the BCCNM suggests that that any suspension imposed should be deemed "time already served" during the period of her interim suspension as she was unable to practice in British Columbia during that timeframe.

[19] Counsel for the BCCNM also seeks a term requiring Ms. Lachance to successfully complete the PROBE Program which was imposed by the NSCN Hearing Panel. Mr. Filice notes that the PROBE program

can be specifically tailored to address the type of misconduct that occurred and will assist with Ms. Lachance's remediation to ensure public protection in the event she returns to practice.

F. Analysis and Findings

[20] Section 39.1 confers discretion on the BCCNM Panel to determine whether, based on proven or admitted unprofessional conduct in another jurisdiction, it is necessary to take steps to protect the public in British Columbia. The BCCNM Panel recognizes that the legislative objective is not to impose punishment on a registrant for unprofessional conduct that occurred in another jurisdiction; rather, it is designed to provide a mechanism for addressing any risk that may arise from the fact that disciplinary orders made by regulators in other jurisdictions are not enforceable in this province. That objective is achieved by empowering the BCCNM Panel to make an order under s. 39(2) of the Act that is necessary to protect the public in British Columbia. There is no requirement to make the same, or even a similar, order to the one made in the other jurisdiction. Instead, the BCCNM Panel may tailor the order to best achieve the goal of public protection in British Columbia having regard to any remedial or rehabilitative steps that a registrant has taken in the intervening time, and any consequent abatement of risk.

[21] There is no question that s. 39.1 is engaged in this case because the NSCN Hearing Panel made a finding that Ms. Lachance engaged in unprofessional conduct. The NSCN Hearing Panel found that Ms. Lachance contravened her employer's "Hard Copy File Management" policy as well as basic standards of practice for nurses generally in destroying the health records for 435 clients. The unauthorized permanent destruction of health care records poses a serious risk to the health and well-being of patients whose records have been destroyed and adversely impacts continuity of care which is so central to the proper delivery of health care services. It also undermines the ability of a regulator to investigate alleged professional misconduct. The Discipline Committee's observations in *Ontario (College of Massage Therapists of Ontario) v. Brown*, 2021 ONCMTO 5 are apposite:

2. *Failure to maintain records as required:* The Registrant shredded all of his client records despite being required to retain records for a period of at least ten years from a client's last visit. The Panel emphasized that the College is unable to fulfill its public protection mandate if its registrants choose to willfully disregard the regulations governing them. Requirements pertaining to record keeping are designed to protect clients being treated and to facilitate oversight of registrants by the College. A failure to retain records, and the resulting failure to produce them upon request of the College, can frustrate the College's ability to investigate alleged professional misconduct. ...

[22] The BCCNM Panel finds that Ms. Lachance's actions in engaging in the unauthorized permanent destruction of health records for 435 clients pose a serious risk to patient safety and the proper delivery of health care. Her actions adversely and irrevocably impacted many clients.

[23] The NSCN Hearing Panel also found that Ms. Lachance failed to respond to multiple communications from the NSCN during the complaint investigation and failed to comply with directives of the Complaints Committee to provide a written response and to attend an interview. This conduct is equally serious. As an NSCN licensee, Ms. Lachance had both a common law and statutory duty to cooperate with her college during the investigation. The law is clear that the failure to respond to communications from, and cooperate with, a regulator constitutes a "significant departure from professional standards" expected of a licensed professional: *Law Society of Ontario v. Diamond*, 2021 ONCA 255 at para. 61. As the NSCN discipline counsel argued during the discipline hearing, Ms. Lachance's actions in ignoring the NSCN's inquiries made a "mockery" of the statutory requirements and frustrated its ability to conduct a proper investigation and to self-regulate. The BCCNM Panel agrees that Ms. Lachance's failure to respond to communications and inquiries from NSCN staff and her failure to comply with directives from the Complaints Committee reflected a flagrant breach of her duty to cooperate with her regulatory body. The BCCNM Panel notes that Ms. Lachance also failed to avail herself of the opportunity to provide information regarding her conduct in this proceeding.

[24] Having determined that Ms. Lachance's conduct in permanently destroying health records for 435 clients without authorization, failing to respond to communications from the NSCN staff, and failing to comply with the Complaints Committee's directives also constitutes unprofessional conduct under the Act in British Columbia, the next question is whether action is warranted under s. 39.1. In addressing that question, the BCCNM Panel must consider factors such as the nature and seriousness of the misconduct, the risk that it poses, the impact of the misconduct on the public, whether there are any mitigating circumstances, whether Ms. Lachance has insight into her misconduct, whether Ms. Lachance has undertaken any remedial or rehabilitative steps, and the range of sanctions imposed for similar conduct in other cases. Ultimately, any s. 39.1 order that is made must be proportionate to the risk that Ms. Lachance may pose if she seeks to return to practice in British Columbia.

[25] The BCCNM Panel finds that Ms. Lachance's unprofessional conduct falls at the serious end of the misconduct continuum. Her actions were harmful to the 435 clients who have permanently lost access to their health records, which may jeopardize their continuity of care; her failure to respond to the NSCN impeded its ability to conduct the investigation which is a fundamental regulatory responsibility. In short, Ms. Lachance's conduct posed a serious risk to the public and undermined the ability of NSCN to regulate her actions. As Ms. Lachance did not participate in this proceeding, the BCCNM Panel is not aware of any mitigating factors apart from those identified by the NSCN Hearing Panel (*i.e.* her lack of disciplinary history and acceptance of the NSCN's proposed penalty). There is no evidence of exceptional circumstances that would explain Ms. Lachance's misconduct nor is there any evidence that she has gained insight or undertaken any remedial or rehabilitative steps. The NSCN Hearing Panel observed in its decision on disposition that Ms. Lachance had not demonstrated remorse for her actions and had not apologized for destroying the patient records. As reflected above, NSCN has not received confirmation that Ms. Lachance has completed the PROBE Program.

[26] In terms of the range of potential sanctions, the failure to cooperate with an investigation and the destruction of health care records has, in some cases, resulted in revocation of licensure or suspensions: *Ontario (College of Massage Therapists of Ontario) v. Brown*, 2021 ONCMTO 5; *Ontario (College of Massage Therapists of Ontario) v. Wang*, 2022 ONCMTO 42. In *Wang*, for example, a hearing panel found that a registered massage therapist failed to maintain and secure treatment records as well as falsified records. The discipline hearing panel issued a reprimand and ordered a 12-month suspension of registration, requirements to complete an ethics course and a workshop on standards and regulations, compliance audits, and hearing costs. The nature of the misconduct in these cases is more egregious insofar as it involved the destruction of records to frustrate investigations and/or the falsification of records. There is no suggestion that Ms. Lachance destroyed health care records to frustrate the complaint investigation or falsified clinical records although her failure to respond to the NSCN communications and comply with the directives would have made the complaint investigation more challenging.

[27] The sanctions for the failure to cooperate with a regulator or comply with a regulatory directive or order generally range from the imposition of a suspension between one to three months and/or the imposition of a fine and hearing costs: *College of Registered Nurses of British Columbia v. Cunningham*, 2017 BCCNM 4 (CanLII); *Sereio (Re)*, 2017 CanLII 18843 (BC CPS); *Olszewski (Re)*, 2016 CanLII 84668 (BC CPS). In *College of Physicians and Surgeons of Ontario v. Gill*, 2021 ONCPSD 51, the physician failed to

cooperate with the College's request for an interview and respond to the investigator's inquiries and questions. The Discipline Committee in that case issued a reprimand and imposed a four-month suspension and a requirement to complete the PROBE program, as well as hearing costs.

[28] Counsel for the BCCNM maintains that the imposition of a six-month suspension (to be treated as time served) and a requirement to successfully complete and unconditionally pass the PROBE Program are sufficient measures to ensure protection of the public and maintain public confidence in the regulation of the profession. The BCCNM Panel agrees. Cumulatively, the imposition of a six-month suspension and a requirement to successfully complete an ethics program falls within the range of sanctions imposed in cases involving destruction of patient health records and failing to cooperate with an investigation. In the *Gill* decision, the physician received a four-month suspension for failing to cooperate with his regulator. In the present case, Ms. Lachance not only failed to cooperate with her regulator but also permanently destroyed health records for 435 clients; this additional misconduct militates in favour of a somewhat longer period of suspension. As there is no evidence that Ms. Lachance has completed the PROBE Program in Nova Scotia, the BCCNM Panel further believes it is necessary to impose this remedial requirement in British Columbia to mitigate the risk of future misconduct.

[29] In the BCCNM Panel's view, the imposition of a six-month suspension together with a requirement to successfully complete the PROBE Program and obtain an unconditional pass represents a sufficient regulatory response to address the risk to the public and deter Ms. Lachance from future misconduct in the event she seeks reinstatement of registration.

G. ORDER

[30] Under s. 39.1 and 39(2) of the Act, the BCCNM Panel orders:

- (a) a six-month suspension of Ms. Lachance's registration in the event she applies for and is granted reinstatement of registration with the BCCNM, which suspension will be deemed served given her previous s. 35 interim suspension that was in place from August 2, 2022 to March 31, 2023; and

(b) Ms. Lachance must, at her cost, complete the PROBE Program and obtain an unconditional pass and provide confirmation that she has done so to the Registrar of the BCCNM prior to being eligible for reinstatement in any class of registration with the BCCNM.

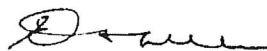
[31] If Ms. Lachance has in fact successfully completed the PROBE Program in Nova Scotia and obtained an unconditional pass, she may provide documentary proof to the Registrar of the BCCNM which will be acceptable to fulfill the requirement set out in para. 30(b) of this order.

[32] The BCCNM Panel directs the Registrar to notify the public of its order pursuant to s. 39.3(1) of the Act as well as notify all registrants, and the regulatory bodies governing the practice of registered nursing in every other Canadian jurisdiction pursuant to Bylaw s. 74(1)(a), and the Registrar may notify other regulatory or governing bodies of a health profession inside or outside of Canada pursuant to Bylaw s. 74(1)(b).

H. NOTICE

[33] Under s. 40(1) of the Act, Ms. Lachance may appeal this order to the British Columbia Supreme Court. Section 40(2) provides that an appeal must be commenced within 30 days after the date on which the order is delivered to Ms. Lachance.

Dated for reference this 5 day of July, 2023 and signed in counterpart.



Edna McLellan, R.N.(T), Panel Chair

Carol Bernardo, L.P.N

Dorothy D. Barkley

(b) Ms. Lachance must, at her cost, complete the PROBE Program and obtain an unconditional pass and provide confirmation that she has done so to the Registrar of the BCCNM prior to being eligible for reinstatement in any class of registration with the BCCNM.

[31] If Ms. Lachance has in fact successfully completed the PROBE Program in Nova Scotia and obtained an unconditional pass, she may provide documentary proof to the Registrar of the BCCNM which will be acceptable to fulfill the requirement set out in para. 30(b) of this order.

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