

**IN THE MATTER OF A HEARING BY
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")**

AND:

**Sean Taylor
(the "Respondent")**

**Determination of the Discipline Committee
on Penalty and Costs**

Date and Place of Hearing:

By written submissions

Panel of the Discipline Committee (the "Panel")

Dr. Catharine Schiller, RN, Chair
Hanna Ridley, RN
Joshua Tan, Public Member

Counsel for the College:

Brent Olthuis, KC
Jeffrey Hernaez

Counsel for the Respondent:

Lee C. Turner

Independent Legal Counsel for the Panel:

Fritz C. Gaerdes

A. Introduction

1. On September 27, 2022 the College issued a citation (the "Citation"), pursuant to section 37 of the *Health Professions Act*, RSBC 1996, c. 183 (the "HPA" or the "Act"), naming Sean Taylor as the Respondent. The particulars of the College's allegations against the Respondent were set out in the Citation as follows:

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The purpose of the hearing is to inquire into your conduct as follows:

1. Between approximately 31 March 2020 and 2 November 2020, you made the following statements while identifying yourself as a registered nurse:
 - a. (about COVID-19) "...[Y]ou will get people to wear your masks and put them in your internment camps ... but there is a group of people, myself included, and you, and a bunch of friends, who will not comply. We will meet you in the streets and do this the old fashioned way."
 - b. (about movements including Black Lives Matter) "The restraint that's being shown on the Right... I watch that shit, I wanna take a road trip and go down and play paint ball."
 - c. (about COVID-19) "[W]here does influenza come from? It is an avian virus and a porcine virus that usually comes from China because of the interface with Chinese culture".
 - d. "There are so many times that I am comforting people in triage, who are terrified to be in the hospital, and I tell them there is no virus here. Don't worry about it. [...] We had no cases admitted to the hospital. [...] They still buy into this narrative."
 - e. "I don't wear a mask [...] it's a load of horse shit."

These remarks, made in these contexts, are contrary to BCCNM's Professional Standards and/or Practice Standards, including: the *Professional Responsibility and Accountability* Professional Standard, the *Knowledge-Based Practice* Professional Standard, and the *Ethical Practice* Professional Standard. They also constitute professional misconduct, unprofessional conduct, and/or a breach of the Act or by-laws, under s. 39(1) of the Act.

2. On 22 June 2020, you gave an interview to Global News (the "Segment"). The Segment was titled "*A Kelowna nurse says alleged racism in the emergency rooms having a negative impact on medical staff*". The Segment was filmed outside the Kelowna General Hospital, and you wore your scrubs with a stethoscope around your neck. In the Segment, you

discussed allegations of racial discrimination against Indigenous patients and expressed the view that such news resulted in patients making allegations of racism against a nurse when they do not get their way.

This conduct is contrary to BCCNM's Professional Standards and/or Practice Standards, including: the *Professional Responsibility and Accountability* Professional Standard, the *Knowledge-Based Practice* Professional Standard, the *Client-Focused Provision of Service* Professional Standard, and the *Ethical Practice* Professional Standard. It also constitutes professional misconduct, unprofessional conduct, and/or a breach of the Act or by-laws, under s. 39(1) of the Act.

2. There were three pre-hearing conferences (on 4 November 2022, 27 February 2023 and 5 July 2023), preceding the seven-day discipline hearing, which took place by videoconference on 18 to 20 July 2023; 4, 5 and 20 October 2023; and 7 December 2023. Both parties tendered documentary, video and expert evidence, and examined and cross-examined witnesses, including expert witnesses, and made lengthy written and oral submissions during the course of the Discipline Hearing.
3. On February 2, 2026, the Panel issued its determination and reasons pursuant to section 39(1) of HPA with respect to the Respondent's conduct alleged in the Citation (the "Conduct Decision").
4. The Panel determined that the College had proven on a balance of probabilities, with clear and convincing evidence, that the Respondent committed the conduct set out in paragraphs 1.a, 1.b, and 2 of the Citation.
5. The Panel further determined that the allegations set out in paragraphs 1.c, 1.d and 1.e of the Citation had not been proven on a balance of probabilities, and those allegations were accordingly dismissed pursuant to section 39(1) of the HPA (Conduct Decision, at para 520).
6. With respects to the allegations in paragraphs 1.a and 1.b of the Citation, the Panel held that the evidence established, on a balance of probabilities, that on October 30, 2020 the Respondent, while identifying himself as a nurse, made the following comments on the publicly available *Grizzly Patriot* YouTube vlog:

"... All this stuff, it may go down -- yeah, you'll get people to wear your masks, and you can put them in, in, in your internment camps and stuff like that, lalalalalala, but there is a

group of people, myself included, and you and a bunch of friends, who will not comply. We will meet you in the streets and do this the old fashion way."

...

... But you look, you look at the shit that's going on with Antifa and Black Lives Matter are burning cities in the States. The restraint that's being shown on the right -- like I got to tell ya, I watched that shit. I want to take a road trip and go down and play paintball right?

Conduct Decision, at paras. 283 and 319.

7. The Panel found that at the time the comment was made, a reasonable person who heard the Respondent say "*We will meet you in the streets and do this the old-fashioned way*" would have perceived that comment as advocating for or suggesting a favourable disposition towards violence (i.e. to physically fight their opposition in the streets), rather than as advocacy for peaceful protest in the streets (Conduct Decision, at para 288).
8. The Panel also found that the Respondent's comment about wanting to "play paintball" is a euphemism for shooting. During cross-examination, the Respondent did not deny that the phrase "play paintball" is a euphemism for shooting someone. The Panel accepted the College's submission that it does not matter if the Respondent was simply joking when he made that comment. What matters is how a reasonable listener might perceive the comment. The Panel found that a reasonable person who heard the Respondent's comment at the time that he made it would also understand that the Respondent was referring to shooting those people who were burning cities in the United States. The Panel held that the Respondent's comment, whether made in jest or not, suggests that an appropriate way to deal with violent protests or the burning of cities in the United States is through violence, that is, to shoot people. Accordingly, the Panel found that the Respondent's comment is a statement that advocates violence, even if it was made in a farcical or jocular manner (Conduct Decision, at paras 323, 324 and 325).
9. Further, with respect to the allegations in paragraph 2 of the Citation, the Panel found that while holding himself out as a nurse, the Respondent gave an interview to

Global News (i.e. the "Segment") during which he made a discriminatory statement about Indigenous people. The Panel held that the evidence established, on a balance of probabilities, that on June 22, 2020, Global News aired the Segment in which the Respondent appeared in front of the Kelowna General Hospital in his nursing scrubs and with a stethoscope around his neck. In the Segment, the Respondent, the Globe News reporter, Ms. Van Emmerik, and others make the following statements:

"MR. TAYLOR: It's disheartening to the staff. It's had a negative impact on us with patient interactions and it's --yeah, it's been a hard pill to swallow.

MS. VAN EMMERIK: Sean Taylor says it's been a hard few days in the ER ward at Kelowna General Hospital.

MR. TAYLOR: Me and the people that I work with are quite distraught over this.

MS. VAN EMMERIK: The ER nurse is referring to disturbing allegations involving medical staff in emergency rooms playing racially motivated games, namely health staff betting on the blood-alcohol level of primarily Indigenous patients. Taylor, who's worked in emergency rooms all over the Okanagan says while it's common practice to take educated guesses before patients' test results come back, he says it's not a game and certainly not racial. At least not something he has ever experienced.

MR. TAYLOR: We do this all day, every day in every ER that I've ever worked in, right? We have people coming in and with various conditions and we're trying to figure out what's going on. We're guessing numbers all the time for all our patients. But to say that it's specifically happening against Indigenous people? I have not witnessed that.

MS. VAN EMMERIK: The shocking allegations of the racially motivated games being played in B.C.'s emergency rooms first surfaced last week, prompting the Province's Health Minister to launch an immediate investigation.

MR. DIX: If true, it is intolerable, unacceptable and racist.

MS. VAN EMMERIK: It's not clear which hospitals these alleged games were played at or how long it's been going on. And that's something B.C.'s former children's watchdog and prominent Indigenous lawyer, Mary Ellen Turpel-Lafond, has been tasked to find out.

MS. TURPEL-LAFOND: Any workplace in British Columbia where people are playing games at the expense of the health or safety of indigenous

people, one can only expect someone in those roles to face severe consequences.

MS. VAN EMMERIK: And while that happens, Taylor was compelled to come forward to say all the medical staff he's ever worked with are caring and dedicated. That the allegations have resulted in some unpleasant situations at KGH in the last few days.

MR. TAYLOR: When someone doesn't get what they want and they, they just call you a racist. I've just noticed an increase in the last couple days since all this started, right? We've had a couple incidences recently.

MS. VAN EMMERIK: Something he says is hurtful.

MR. TAYLOR: And when you start slandering people, just saying that there's racism in emergencies across British Columbia, I think it paints us with an unfair brush.

MS. VAN EMMERIK: Klaudia Van Emmerik, Global News Kelowna."

Conduct Decision, at para. 415

10. The Panel accepted the Respondent's submissions regarding the context that statements of the Globe News Reporter had provided for the Respondent's own statements in the Segment; however, the Panel did not accept the Respondent's submission that his statements were neither discriminatory nor pejorative about Indigenous people. The Panel held that a discriminatory statement is a statement that holds a person in contempt or judges them, based not on their actual individual capacities but on stereotypical characteristics ascribed to the group of which the person is a member (Conduct Decision, paras 346 to 347). The Panel found that the Respondent's statement "*When someone doesn't get what they want and they, they just call you a racist*" is a discriminatory statement. The Respondent was asked during cross examination if the comment he had made suggested that allegations of racism were being made for an improper purpose. The Respondent's answer to this question was "sometimes". The Panel held that the Respondent's defense of nurses in relation to the allegation that hospital staff had played a "game" of guessing blood-alcohol levels of Indigenous persons attending the Emergency Room, while suggesting that patients were making such allegations of racism because they did not "get what they want", and that it slanders healthcare providers to allege that

racism exists in ERs across British Columbia, is a racially insensitive remark in response to the concerns of Indigenous persons. The Panel held that the insinuation or suggestion that arises from the Respondent's comment is that the experience of Indigenous persons who raise concerns about racism in healthcare is being falsely presented, and that such false allegations against healthcare providers are being made only because the complainants are not getting what they wanted from those providers. The Respondent's comment sends a message to the public that healthcare professionals, including nurses who operate within the public health apparatus, harbour harmful stereotypes about Indigenous persons. As such, the Respondent's statement is a discriminatory statement, as defined in *Kempling v. British Columbia College of Teachers*, 2005 BCCA 327 ("*Kempling BCCA*") (Conduct Decision, at paras. 416 to 419).

11. The Panel held that professional misconduct is generally more serious than unprofessional conduct. The Panel considered the definitions in section 26 of the HPA and decided to characterize conduct that it regards to be of a more serious or egregious nature as professional misconduct rather than unprofessional conduct, since the definition of that phrase includes unethical conduct and infamous conduct.
12. As the Supreme Court held in *Pearlman v. Manitoba Law Society Judicial Committee*, [1991] 2 SCR 869 ("*Pearlman*"), the Panel held that professional misconduct is conduct that would be reasonably regarded as disgraceful, dishonorable, or unbecoming of a member of the profession by his well-respected brethren in the group - persons of integrity and good reputation amongst the membership. The Panel also relied on *Law Society v. Martin*, 2005 LSBC 16 ("*Martin*") in which professional misconduct is described as conduct that is a "marked departure from the standard expected of a competent" registrant. Pursuant to section 39(1)(c) of the HPA, the Panel found that the Respondent's comments referenced in paragraph 1.a and 1.b of the Citation met the descriptions in *Pearlman* and *Martin* and constitute professional misconduct for purposes of the HPA. Those comments are unbecoming a member of the nursing profession, and in making them while identifying as a nurse, the Respondent acted in a manner that was a marked departure from the standard expected of a competent registrant.

13. Further, relying on *The British Columbia College of Teachers*, 2004 BCSC 133 (*"Kempling BCSC"*) the Panel held that discriminatory statements about vulnerable and marginalized persons are unbecoming a member of the nursing profession. However, on the facts of this case, the Panel was not satisfied that the Respondent's comments during the Segment crossed the serious threshold to constitute professional misconduct. In reaching that conclusion, the Panel accepted and gave considerable weight to the Respondent's evidence that he did not intend to deny the experiences of Indigenous persons nor did he intend to deny that racism exists in the healthcare system. However, the Panel held that public commentary may, as in this case, still be discriminatory and harmful even if those public comments are not intended to be. The Panel accordingly found that the Respondent's comments referenced in paragraph 2 of the Citation constitutes unprofessional conduct for purposes of the HPA (Conduct Decision, at paras 516 to 519).
14. In its Conduct Decision, the Panel set a schedule for the exchange of written submissions relating to what orders, if any, should be made pursuant to section 39(2) of the HPA with respect to penalty and costs.
15. During February and March 2026, the parties provided the Panel with written submissions with respect to penalty and costs. On April 1, 2026, the *Health Professions and Occupations Act* [SBC 2022], Chapter 43 (the "HPOA") came into force. The HPOA repealed the HPA. However, pursuant to section 543 of the HPOA, the Panel must continue to exercise powers and must perform duties in this proceeding under the HPA as if the HPA had not been repealed.
16. Pursuant to section 39 of the HPA, the College seeks the following penalty and cost orders:
 - a. an order that the Respondent is suspended for a period of two (2) months, to be served if and when he returns to nursing practice; and
 - b. an order that the Respondent pay costs to the College in the amount of \$27,000.00.

17. The Respondent disagrees with the College's position on the disposition of penalty and costs. His position is that the appropriate sanction in this matter is a reprimand and that each party should bear their own costs and disbursements.
18. For the reasons that follow, the Panel orders that:
 - a. the Respondent is suspended for thirty (30) calendar days, to be served commencing on the date of the Respondent's return to nursing practice should he successfully apply for reinstatement as a registrant of the College in the future; and
 - b. the Respondent shall pay the College costs and disbursements in the amount of \$21,900.00 pursuant to section 39(5) of the HPA, to be paid by the Respondent within two (2) years from the date of service of this order on his counsel, or by such alternative date or according to a payment plan as otherwise may be agreed to in writing between the College and the Respondent.

Legal Framework

Former registrants

19. The Respondent is a former registrant of the College. As the Respondent acknowledged in his written submissions, he allowed his nursing registration with the College to lapse in March 2022. Under the HPA, the Panel retains jurisdiction over former registrants. Section 26 of the HPA defines "registrant" as including "former registrant" for the purposes of Part 3 of the Act, which deals with "Inspections, Inquiries and Discipline."

HPA provisions on penalty

20. Section 39(2) of the HPA 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).

21. Sections 39(5) and (7) of the HPA authorize the Panel to award costs to the College in an amount not to exceed 50% of the actual legal costs to the College for the hearing:

39 (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.

Approach to determination of appropriate penalty

22. The imposition of a disciplinary order under section 39(2) of the HPA is something over which the Panel holds significant discretion. The primary purpose of the imposition of sanctions is the protection of the public.
23. In *Law Society of British Columbia v. Ogilvie*, [1999] LSBC 17 ("Ogilvie") a disciplinary panel of the law society set out the following list of factors in determining an appropriate penalty:

- a. the nature and gravity of the conduct proven;
- b. the age and experience of the respondent;
- c. the previous character of the respondent, including details of prior discipline;
- d. the impact upon the victim;
- e. the advantage gained, or to be gained, by the respondent;
- f. the number of times the offending conduct occurred;
- g. whether the respondent has acknowledged the misconduct and taken steps to disclose and redress the wrong and the presence or absence of other mitigating circumstances;
- h. the possibility of remediating or rehabilitating the respondent;
- i. the impact on the respondent of criminal or other sanctions or penalties;

- j. the impact of the proposed penalty on the respondent;
 - k. the need for specific and general deterrence;
 - l. the need to ensure the public's confidence in the integrity of the profession; and
 - m. the range of penalties imposed in similar cases.
24. In *Law Society of BC v. Dent*, 2016 LSBC 05 ("*Dent*") another disciplinary panel of the law society consolidated the *Ogilvie* factors into the following four general factors for consideration, also noting that not all of the factors are engaged in every case:
- i. Nature, gravity, and consequences of conduct;
 - ii. Character and professional conduct record of the respondent;
 - iii. Acknowledgement of the misconduct and remedial action; and
 - iv. Public confidence in the legal profession, including public confidence in the disciplinary process.
25. This framework has consistently been applied by the College's Discipline Committee in recent decisions, including *BCCNM v. Lord*, 2020 BCCNM 4 at paras. 8-10; *BCCNM v. Parniak*, 2020 BCCNM 5 at paras. 10-12; *BCCNM v. Pangburn*, 2022 BCCNM 5 at paras. 8-10; and *BCCNM v. Hamm*, 2025 BCCNM 2 ("*Hamm*") at paras 12-14.

Analysis and Findings

26. The Panel finds that the *Dent* framework is the proper approach to apply in this case in determination of an appropriate penalty. The Panel notes that the application of the *Dent* factors calls for an individualized approach. Accordingly, the Panel will consider the *Dent* factors as they pertain to the relevant facts of this matter.

Nature, gravity and consequences of the conduct

27. The first of the *Dent* factors requires consideration of the nature of the professional misconduct, including its severity, how many times it occurred, the impact on any victims, and whether there were any consequences for the professional because of their misconduct (*Dent*, para. 20).

28. The College says the Panel's findings that the Respondent's statements would reasonably have been perceived by members of the public as advocating violence, and that the Respondent's discriminatory statements in the Global News segment were directed towards Indigenous people, who are recognized as a vulnerable and marginalized group in Canadian society, are relevant considerations under this *Dent* factor.
29. In this regard, the College refers the Panel to the following findings made in the Conduct Decision:

488. Similarly, the Respondent's defen[c]e of nurses in relation to the allegation that hospital staff played a "game" of guessing the blood-alcohol level of Indigenous persons attending the Emergency Room to receive healthcare services, while suggesting that patients were making allegations of racism because they did not "get what they want", was a racially insensitive remark in response to Indigenous persons' concerns. As previously noted, this comment sends the message to the public that people, including nurses, operating within the public health apparatus, harbour harmful stereotypes about Indigenous persons. It is a discriminatory statement as defined by *Kempling [v. British Columbia College of Teachers]*, 2005 BCCA 327].

[...]

515. The Panel does not accept the Respondent's submission that disciplining him would do nothing other than have a salutary effect by perhaps providing some satisfaction to the complainant and those at the College who believe that his statements are worthy of punishment. A finding that the Respondent's statements advocating violence constitutes professional misconduct, and that his discriminatory comment constitutes unprofessional conduct, would support and further the pressing and substantial objectives of restoring and upholding public confidence in the healthcare system and the nursing profession, and to ensure an equal, tolerant, and discrimination-free healthcare environment for all. Disciplining the Respondent will make a strong statement to the public that what he did was wrong and that the Panel and the College do not condone advocating either discrimination or violence. This statement will go some way to repair the damage done to, and of restoring and upholding public confidence in the healthcare system and the nursing profession, and to ensure an equal, tolerant, and discrimination-free health care environment for all.

30. The College says the College expert's opinion was that nurses expressing or publishing views that deny the experience and identity, or threaten the safety, of racialized persons are harmful in at least four ways: (1) racism's profound negative

physiological and health effects; (2) racism deterring racialized persons from accessing health care; (3) racism expressed by individuals contributing to collective discrimination; and (4) the harm posed by racism to the health care workforce.

31. The College submits that the Panel accepted (at paragraph 504 of the Conduct Decision) that: "Dr. Varcoe's evidence shows, a nurse who makes public statements that are discriminatory while trading on the credibility associated with their professional status, erodes the trust the public has in the healthcare system and no doubt fosters a reluctance or unwillingness by Indigenous persons to access healthcare for fear they will face further discrimination."
32. The College argues that it is an aggravating factor that the Respondent's comments were directed towards a vulnerable, marginalized group already facing barriers to accessing health care, likely resulting in a further depressive effect on that group seeking health care.
33. In his Response, the Respondent says he was suspended from his employment as a nurse in September 2021 and his employment was terminated in October 2021 because of statements made by him of the nature referred to in the Citation. The Respondent says he let his nursing registration lapse in March 2022 and has not been a registrant of the College since that time. The Respondent claims that, since September 2021, he has struggled to find suitable employment that would allow him to earn sufficient funds to pay for basic necessities of life. He submits that he has been unable to pay for the cost of his own legal expenses to defend himself in regard to these accusations. He says he is in significant debt and is impecunious, and that he could not afford to pay the costs sought by the College, and if ordered to do so, he would likely be forced into bankruptcy. The Respondent further submits that the years-long College discipline process has, in part, been the punishment. He says the allegations and the Citation have been "hanging over" his head since September 2022, and he has not worked as a nurse since September 2021. The Respondent submits that he has suffered greatly, both in terms of his reputation and by losing his career as a nurse, which he had begun in 2005 and very much enjoyed, and to which he was devoted.

34. The Panel finds that the Respondent's conduct in making two public statements that advocate violence and one that is discriminatory, while identifying or holding himself out as a nurse, is serious. As the Panel held in the Conduct Decision:

503. Statements by a nurse advocating violence or violent behavior, whether or not those statements were made as a joke, are inimical to the profession's foundational values of tolerance, non-violence, and respect for the inherent dignity of all people and undoubtedly erode the public's trust in members of the nursing profession.

504. Further, as Dr. Varcoe's evidence shows, a nurse who makes public statements that are discriminatory while trading on the credibility associated with their professional status, erodes the trust the public has in the healthcare system and no doubt fosters a reluctance or unwillingness by Indigenous persons to access healthcare for fear they will face further discrimination. This is harmful, and in opposition to the foundational values of the nursing profession and Canada's healthcare system.

505. The Respondent's comments advocating violence, and his discriminatory comments, are not only contrary to the foundational values of the healthcare system but also to the obligation of the nursing profession to treat individuals with tolerance, respect, and dignity and to facilitate and promote equitable access to health care services without regard to irrelevant personal attributes or characteristics.

506. The Respondent's comments went beyond mere inflammatory speech. His remarks disparaging Indigenous people may have had the compounding effect of creating distrust in the healthcare system and its providers, negatively impacting quality of care, and increasing harmful outcomes. Dr. Varcoe's evidence, considered in conjunction with the Respondent's statements, emphasize the harm caused by the Respondent to the healthcare system, and to Indigenous persons who often engage with nurses at first instance.

507. By identifying himself as a nurse while publicly making statements that advocate violence and making discriminatory comments about a vulnerable and historically disadvantaged group, the Respondent undermined the reputation and integrity of the nursing profession and caused harm to the healthcare system.

Conduct Decision, at para. 426

35. The Respondent has not provided any evidence to the Panel about his current financial situation, nor about the facts that led to his suspension (or termination) from his employment with Interior Health. There is, accordingly, no evidence before the Panel that the Respondent was indeed suspended and/or terminated from his

employment as a result of the allegations that were proven by the College in the Discipline Hearing. The Panel notes that the Respondent let his nursing registration lapse in March 2022. His current inability to practice nursing, and to earn an income by working as a registered nurse, is accordingly due to his own volition and not because of the discipline proceeding nor because Interior Health may have dismissed him as a result of the allegations in the Citation. Nevertheless, the Panel accepts that the Respondent has suffered some financial hardship from the loss of his employment with Interior Health and defending himself against the allegations in the Citation. The Panel also acknowledges that a suspension imposed on the Respondent, to be served if he decides to return to the practice of nursing in future, would cause some additional financial hardship.

36. The Panel further recognizes that the College's investigation and discipline process is inherently stressful for nursing professionals. However, the Panel does not accept that such impact constitutes a form of punishment that, in this case, would preclude the need for any further disciplinary action or punishment. The Respondent has also not provided the Panel with any case law in support of such a proposition.
37. Overall, the Panel finds that the seriousness of the Respondent's misconduct, and the fact that he committed several separate acts of misconduct, outweigh the other factors outlined above, and militates in favour of the imposition of a more severe penalty.

Character and professional conduct record of the Respondent

38. The second of the *Dent* factors requires consideration of the Respondent's age and experience, professional reputation, reputation in the community, and discipline record.
39. The College acknowledges that the Respondent has no prior discipline history, and submits that this is the only mitigating factor present in this case.
40. The College says there are various learning resources available to registrants regarding their professional responsibilities. As an example, the College refers to

the BCCNM's Entry Level Competencies for Registered Nurses, which states that a registered nurse:

2.8 Demonstrates professional judgement to ensure social media and information and communication technologies (ICTs) are used in a way that maintains public trust in the profession.

41. The College argues that it was the Respondent's responsibility as a regulated professional to avail himself of these resources, which would have clearly informed him that he ought not tie personal statements to his professional designation.
42. In response, the Respondent says that he had been practicing as a nurse since 2005 and that he was well-regarded by his peers and he had never before been accused of any professional performance or competence issues. The Respondent also says that he had successfully worked in hospitals and in the military in active combat operations.
43. The Respondent has not provided any evidence, such as letters of reference from former colleagues or people in his community, about his professional reputation or his general reputation in the community. Accordingly, the Panel is not able to assess the Respondent's reputation amongst his peers and in his community.
44. The Panel accepts that the Respondent has no prior disciplinary record and finds that the absence of any past discipline is a mitigating factor. However, the Panel notes that the Respondent was not a new nurse at the time he made the discriminatory comment and the statements that advocated violence. At the time of these events, he was an experienced nurse who had practiced for more than 15 years. The Panel finds that the Respondent's years of experience as a practising nurse placed him in a position where he should have realized that linking his professional nursing designation to public statements that could be perceived as discriminatory or as advocating violence would not be appropriate professional conduct. The Respondent's evidence during cross-examination shows that he appreciated this. In response to questioning by the College, the Respondent testified as follows:

Q And you also said, "We will go out in the streets and do this the old-

fashioned way,” and I’m asking you sir, do you have any regret with how you expressed yourself in that clip?

A I wouldn’t say regret, but I could have worded it differently.

Q Did you give any thoughts before you uttered that phrase as to whether a listener might perceive it as advocating violence?

A When conducting interviews in a podcast, Mark Friesen is a very dear close friend, and sometimes, sometimes the way those interviews go, it ends up being more like a conversation with a friend than something that’s in a public forum. Sometimes things are said that you normally wouldn’t say in public. I wasn’t there as a nurse, I wasn’t there – yeah, representing nursing. I was in a political podcast talking about political things, right? And sometimes, you know, colloquial language and jocularity is used. Would I use those terms and that type of language in a nursing forum? No I would not. Would I use it in a business forum? No I would not. But in that podcast, and in that milieu, jocularity and colloquial language is just a norm. So, I can’t think it strayed out of the norm for that podcast.

Q. Well, I won’t comment on that, sir, but I’m going to ask you to admit that in the course of those podcasts, you were identified as a nurse, you self-identified as a nurse on several occasions throughout. Did you not?

A When asked my background? I – yeah, it’s not a secret that I’m a nurse, it’s not a secret that I was in the Canadian Armed Forces. It’s not a secret that I was a firefighter. Yeah, when people asked, I stated it.

Q But it is not just when you were asked sir, you sometimes referred to the fact that you were a nurse when you were buttressing the knowledge you had about certain aspects of public health.

A If I was talking about my experiences in healthcare, yes, that would identify me as a nurse.

45. Overall, the Panel finds that there are both mitigating and aggravating factors under this *Dent* category. The absence of any prior discipline history provides some mitigation, but the fact that the Respondent was an experienced nurse at the time of the misconduct, whose own testimony during the Discipline Hearing shows that he appreciated that some of his comments would not be acceptable if he had made them in a professional or business setting, is an aggravating factor weighing in favour of a more significant penalty.

Acknowledgement of the misconduct and remedial action

46. The third category of *Dent* factors involves consideration of whether a respondent has admitted their misconduct, whether they have taken any steps to prevent a reoccurrence, whether they have taken any remedial action to correct the specific misconduct, whether they generally can be rehabilitated, and if there are other mitigating circumstances to consider (such as mental health or addiction issues).
47. The College says that the Respondent has not shown that he acknowledges his wrongful conduct, and he has also shown no interest in redressing the harm it caused. The College says that the Respondent's submissions on penalty and costs read as though he perceives himself as the victim. The College argues that a unifying theme, running throughout the Respondent's submissions, is a failure on the Respondent's part to accept the Panel's findings in the Conduct Decision and to take responsibility for his misconduct. The College says the Respondent continues to complain about the College's conduct, i.e. he claims that he has "suffered greatly" and yet he says nothing to acknowledge the Panel's findings that, while identifying himself as a nurse, he conducted himself in a manner that brought the profession or the healthcare system into disrepute by making off-duty statements that conflicted with the fundamental values of both the healthcare system and the nursing profession. The College submits that the kinds of findings confirmed by the Panel, made against an ex-registrant, would appropriately lead to a suspension of two months' duration (commencing the date the person returns to nursing practice), even if the ex-registrant had demonstrated an acknowledgement of, and desire to redress the harm caused by their wrongful conduct. The College says that the Respondent's proposal, consisting of a reprimand and no order of costs, would be manifestly unfit in these circumstances, and would effectively reward the Respondent for his contumeliousness.
48. The Panel finds that the absence of remorse is not an aggravating factor but instead is the absence of a mitigating factor.

49. There is no evidence before the Panel of any remedial steps or actions the Respondent has undertaken to correct or try to correct his misconduct. As such, the Respondent does not benefit from any mitigating consideration in that regard.
50. There is also no evidence of any mental health or addiction issues or concerns that caused or contributed to the misconduct of the Respondent. The Respondent accordingly also does not benefit from any mitigating consideration in that regard.
51. Overall, the Panel finds that there are no mitigating or aggravating components under this *Dent* factor.

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

52. The final *Dent* factor involves consideration of whether there is sufficient specific and general deterrent value in the proposed disciplinary action, whether the public will have confidence that the proposed disciplinary action is sufficient to maintain the integrity of the profession, and whether the proposed disciplinary action is in line with penalties imposed in similar cases.
53. The College submits that the penalty imposed should serve to promote public confidence in the profession, including its ability to self-regulate in the public interest. The College says, as was also expressed in *Dent*, that the penalty imposed in this case should address the need for both general and specific deterrence, ensure the penalty is sufficient to maintain the integrity of the nursing profession, and promote public confidence in the College's disciplinary response by being aligned with professional disciplinary actions in similar cases. The College further submits that the following cases support the two-month suspension it seeks:
 - a. *Kempling v. British Columbia College of Teachers*, 2004 BCSC 133, aff'd 2005 BCCA 327, which involved a teacher and a registered clinical counsellor who faced a citation for professional misconduct for an article and letters to the editor he wrote to a local newspaper over a three-year period, in which he expressed his views on homosexuality, including associating homosexuals with immorality, abnormality, perversion and

promiscuity. Mr. Kempling had publicly identified himself as a teacher on three occasions. The College of Teachers Disciplinary Committee found his writings to be discriminatory and demonstrated that Mr. Kempling was not prepared to accommodate the core values of the education system, one of which was non-discrimination. He was suspended for one month. In doing so, the Discipline Committee took into account Mr. Kempling's long and unblemished teaching career and his record of community service. The Court of Appeal upheld the penalty.

- b. *Ontario College of Teachers v. Le Blanc*, 2022 ONOCT 108 ("*Le Blanc*") which involved a teacher who made discriminatory statements over a number of years about homosexuals in his online blog, in which he also identified himself as an educator. He also authored several "homophobic and transphobic" tweets in his Twitter account. While the teacher did not expressly identify in his tweets that he was a teacher, he was recognized by students and former students. The teacher entered into a consent agreement to resolve the matter, acknowledging that his conduct amounted to professional misconduct. A suspension of one month was imposed, along with a reprimand and remedial education.
- c. *Hamm*, above, involved a registered nurse accused of making discriminatory and derogatory statements about transgender people on various online platforms. The College's discipline panel considered whether these off-duty statements constituted unprofessional conduct, whether there was a sufficient nexus between the statements and the profession of nursing, and whether finding the statements to be unprofessional was an unjustified infringement of Ms. Hamm's *Charter* rights. The alleged discriminatory and derogatory statements were not particularized in the Citation; rather, the College tendered over 300 pages of material containing the alleged statements into evidence. It subsequently distilled that material down to a binder containing 22 tabs, which contained the allegedly discriminatory and derogatory statements. The College's discipline panel determined that statements in 6 of those 22 tabs were discriminatory and

derogatory to transgender people and had the requisite nexus to the nursing profession. Those statements were posted between July 7, 2018 and September 14, 2020. A suspension of one month was imposed. Ms. Hamm has appealed the panel's conduct decision, and the parties agreed that her suspension will be served after that appeal, should the panel's conduct decision be upheld by the Court.

54. As noted, the Respondent has let his nursing registration with the College lapse and he submits that he has no intention of ever returning to nursing practice. The Respondent argues that a suspension of practice to be imposed if he ever returns to nursing practice should be considered excessive and unwarranted. He says the College has only proven three of the six allegations in the Citation and that in the circumstances, and given the equally divided success of the parties, the appropriate penalty is a reprimand.
55. In Reply submissions, the College submits that this is not a case in which the parties "were equally successful in these proceedings". The College submits the Respondent's assertions to that effect are misguided and demonstrate that he lacks remorse or an appreciation of the harm his speech has caused. The College had issued a Citation, listing a series of ways in which it said the Respondent had committed disciplinable conduct. The Panel found that the College had successfully established that the Respondent was not only guilty of unprofessional conduct, but also professional misconduct. The College states that it is "strange" to read the Respondent's submissions, referring to a ruling that found he had engaged in professional misconduct and unprofessional conduct—by making statements that advocated violence and that amounted to discrimination against an historically vulnerable group—as any form of "success". The College argues that it is manifestly not, and it would not be consonant with the applicable principles for the Panel, to issue a reprimand for a person against whom such findings had been made.
56. A consideration of penalties imposed in other comparable cases of professional misconduct or unprofessional conduct are helpful to establish a range of sanctions

by which to judge the current case. Although the Panel is not bound by those other cases, they are of assistance in determining an appropriate penalty in this case.

57. The parties did not bring any case law to the Panel's attention in which a professional registrant had been disciplined for advocating violence. However, the Panel notes that in *Hamm*, reference is made to *Foo v. Law Society of British Columbia*, 2017 BCCA 151 ("*Foo*") which involved a lawyer who told a social worker outside a courtroom that he should shoot her for taking away too many kids. The lawyer had a previous citation on his regulatory record and three conduct reviews. The law society's discipline panel ordered a two-week suspension and costs. Unlike the situation in *Kempling*, *Hamm*, *Le Blanc*, and this case, the lawyer's impugned comment was not broadcast to a wider audience either through television or online publication.
58. The Respondent has not provided the Panel with any case law that supports his submission that a reprimand would be the appropriate penalty in the circumstances of this case.
59. While the cases before the Panel are each in some respect factually different from this case, and from each other, the misconduct represented in those cases is of a similar underlying nature to those in this case [i.e. publicly making discriminatory statements about vulnerable and marginalized members of society and making statements advocating (or threatening) violence]. Those cases accordingly confirm that a suspension from practice for misconduct of such nature is justified.
60. The Panel also notes that, in every case that the College brought to the Panel's attention in which professional registrants were found to have publicly made discriminatory or derogatory comments about vulnerable or marginalized members of society, including those cases in which the professional registrant, like the Respondent, had an unblemished discipline record (e.g. *Kempling* and *Hamm*), a suspension from practice of one month was imposed. In *Le Blanc*, additional penalties were also imposed.

61. The Panel finds that on the facts of this case, and despite the Respondent having an unblemished prior discipline record and having successfully worked in hospitals and in the Canadian military in active combat operations, a suspension from practice is an appropriate penalty, consistent with the case law referenced above.
62. In the case before the Panel, there is a strong need for general deterrence. It is important that other members of the nursing profession understand that they must not, while identifying or holding themselves out as a nurse, and even if they are off-duty, make public statements that are discriminatory or that can be perceived by members of the public as advocating violence, and that if they do so, then a suspension from nursing practice may follow.
63. There is also a need for specific deterrence in this case, which the Panel finds will be achieved by a suspension from practice should the Respondent decide to return to practice in future. While the Respondent is presently not a registrant of the College, and although he submits that he has no interest in ever returning to practice, it is possible that he may change his mind and apply for re-instatement and, if such re-application is granted, then he would return to the profession in the future. There is currently no evidence before the Panel to suggest that the Respondent would not again conduct himself in the same manner if he did return to practice. While the specific deterrence factor may be less significant in this case given that the Respondent is no longer a registrant, it remains a factor, nonetheless.
64. Imposing a suspension from practice is further appropriate in this case because it would achieve the objectives of promoting public confidence in the nursing profession, including its ability to self-regulate. It is important that public confidence in the integrity of the nursing profession is maintained and that the public is aware that members are held to account if they fail to uphold the applicable standards and/or fail to conduct themselves professionally and ethically. As the Panel held in the Conduct Decision:

515. The Panel does not accept the Respondent's submission that disciplining him would do nothing other than have a salutary effect by perhaps providing some satisfaction to the complainant and those at the College who believe that his statements are worthy of punishment. A

finding that the Respondent's statements advocating violence constitutes professional misconduct, and that his discriminatory comment constitutes unprofessional conduct, would support and further the pressing and substantial objectives of restoring and upholding public confidence in the healthcare system and the nursing profession, and to ensure an equal, tolerant, and discrimination-free healthcare environment for all. Disciplining the Respondent will make a strong statement to the public that what he did was wrong and that the Panel and the College do not condone advocating either discrimination or violence. This statement will go some way to repair the damage done to, and of restoring and upholding public confidence in the healthcare system and the nursing profession, and to ensure an equal, tolerant, and discrimination-free health care environment for all.

65. In conclusion, after weighing all the parties' submissions pertaining to the *Dent* factors, and considering the case law to which the College referred, the Panel finds that a significant penalty is warranted in this case, and that despite the Respondent's unblemished disciplinary record, a suspension from practice of thirty (30) days falls within the range of reasonable penalty outcomes imposed in the other comparable cases before the Panel. Based on the facts and the law present in this case, a strong message must be sent to the Respondent, the profession, and the public that the type of misconduct that occurred in this case will not be tolerated. An appropriate and reasonable penalty on the facts of this case is a suspension from practice for thirty (30) calendar days, to be served commencing on the date of the Respondent's return to the practice of nursing.

Costs

66. The College submits that section 39(5) of the HPA permits the Panel to award costs when the College has been successful in establishing the allegations in a Citation. It says the College is funded by registrants and the purpose of the recovery of costs for disciplinary proceedings involves the important policy consideration that the College's membership in general should not have to bear the entire cost of conducting discipline hearings. The College relies on *Casey, James The Regulation of Professions in Canada* (Toronto, Ontario: Thomson Reuters, 2024) ["Casey"] p. 14-21 to 14-22:

The focus of a cost award is to ensure that a member found to have committed unprofessional conduct bears the costs of the process as opposed to the membership as a whole. Bearing the burden of an award

of costs reflects the consequences of being a member of a self-regulating profession and having engaged in unprofessional conduct.

67. The College submits that this is particularly important in this case where the College has incurred significant expenses in conducting the discipline hearing, given its length and complexity. The College submits that the following additional factors articulated by Casey are also relevant and should be considered in determining the appropriate cost award:

- a. The amount of time and expenses associated with the investigation and hearing.
- b. The need to find an appropriate balance by considering the impact of the cost award on the member. Costs should not be punitive in nature.
- c. Potential cost awards should not be so large as to prevent individuals from raising reasonable defences against allegations of unprofessional conduct.
- d. The member's personal financial circumstances and the impact of a cost award. In appropriate cases, consideration should be given to providing an adequate amount of time to pay the costs imposed.
- e. The impact of the other sanctions imposed should be considered as part of the context.
- f. The extent to which the conduct of each of the parties resulted in costs accumulating or, conversely, being saved.
- g. Any other factors considered relevant given the particular circumstances of the case.

68. The College submits that in determining an appropriate costs award, the Panel may also consider factors that a reviewing court would consider in assessing whether such an award is reasonable. In this regard, the College refers the Panel to *Jaswal v. Newfoundland Medical Board*, 1996 CanLII 11630 (NL SC), where the Court found that Courts have adopted the following principles when reviewing a cost award:

(51) 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.

(52) 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.

69. For purposes of calculating the costs of legal representation, the College has adopted a tariff as allowed by section 19(1) (w.1) of the Act. The College's Bylaw 212(2) establishes a tariff of costs for discipline hearings:

(2) The tariff of costs set out in Schedule J, to partially indemnify parties for their expenses incurred in the preparation for and conduct of hearings under section 38 of the Act, is established under section 19(1) (w.1) of the Act.

70. Tariff of costs in Schedule J sets a value of \$120 for each unit claimed. Pursuant to section 39(7) of the HPA, costs awarded must not exceed, in total, 50% of the actual costs to the College for legal representation for the purposes of the hearing.
71. Section 3 of Schedule J provides that in addition to the tariff, actual reasonable disbursements are recoverable.

72. There is no dispute between the parties that pursuant to section 39(5) of the HPA, the Panel has jurisdiction to award costs, and that Schedule J of the Bylaws is relevant to the determination of the appropriate amount of the cost award. The Panel also finds the list of factors outlined by Casey to be a helpful guideline for determining the appropriate cost award. Most of the factors outlined in *Jaswal* are subsumed in Casey's list, and some of the factors also overlap. Casey's list is not closed, and each of the factors will also not always be applicable nor required to be considered in every case. The Panel finds factors (a) to (d), and (f) of Casey's list to be applicable in this case.

The amount of time and expenses associated with the discipline hearing

73. The College has provided a draft bill of costs. It claims 170 units at \$120 per unit for a total of \$20,400.00 in costs. The College submits that based on the tariff in Schedule J to the Bylaws, the following are reasonable units claimed:

TARIFF			
Item#	Description	Units Available	Units Claimed
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	4
2.	Disclosure All processes associated with obtaining or providing disclosure of evidence, including documents.	Minimum 1 Maximum 10	8
3.	Experts All processes and correspondence associated with retaining and consulting experts for the purposes of obtaining opinions for use in the discipline hearing	Minimum 1 Maximum 5	4
4.	Witnesses All process and correspondence associated with contacting, interviewing, and preparing summons to all witnesses	Minimum 1 Maximum 10	8

5.	Pre-Hearing Conferences Preparation for attendance at a pre-hearing conference for each day of attendance (4 November 2022, 27 February 2023, and 5 July 2023)	Minimum 1 Maximum 3	9
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	56
8.	Attendance at discipline committee hearing for each day.	10	70
9.	Process for making admission of fact	Minimum 1 Maximum 10	N/A
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	N/A
13.	Settlement of Order	Minimum 1 Maximum 3	N/A
Total			170

74. The College retained external legal counsel to handle the Discipline Hearing. It submits that the claim of \$20,400.00 for costs does not exceed 50% of the actual costs to the College for such external legal representation.
75. The College says that the Discipline Hearing was somewhat complex, raising legal issues regarding disclosure, expert evidence, off-duty conduct and freedom of expression as protected under the *Charter*. It says the tariff amounts claimed appropriately reflect this level of complexity.
76. The College also claims as a disbursement the invoices of Dr. Varcoe to the College, which it says totaled \$6,600.00.

77. The Respondent disagrees with the College's position on costs. He submits that the College has only proven three of the six allegations in the Citation, and given the equally divided success, each party should bear their own costs and disbursements.
78. The Panel accepts the College's submission (and Casey's opinion) that professional regulators like the College are funded by registrants and that the purpose of the recovery of costs for disciplinary proceedings is the important consideration that the regulator's membership generally should not have bear the entire cost of conducting discipline hearings.
79. The Panel is not convinced that this is an appropriate case in which to make an order that each party should bear their own costs. The Respondent has not provided the Panel with any case law that supports his submission in that regard. Given that the College was successful in proving three serious allegations of misconduct against the Respondent, the Panel is of the opinion that the College's membership should not have to bear the entire cost of conducting the Discipline Hearing.
80. The Panel is satisfied that the amount of tariff units claimed by the College for each step of the Discipline Hearing is reasonable, necessary, and rationally connected to the length and level of difficulty involved in conducting the Discipline Hearing. The Panel is satisfied that the total amount of the tariff units (i.e. \$20,400.00) does not exceed 50% of the actual costs incurred. Further, the Respondent did not argue that it does.
81. The Panel also finds the College's claim of \$6,600.00 for disbursements to be reasonable and necessary in the circumstances. The College tendered Dr. Varcoe's evidence as expert evidence. The Panel accepted Dr. Varcoe's evidence, and it was helpful and necessary for determining the College's allegations in paragraph 2 of the Citation.

The extent to which the conduct of each of the parties resulted in costs accumulating or conversely being saved

82. The Panel will next consider whether the College's alleged conduct should cause a reduction in the costs awarded, as the Respondent argues.
83. With respect to the allegations in paragraph 1.a of the Citation, the Respondent submits that the Panel accepted his submission that the College had omitted information that was necessary to consider the proper context of his impugned statements and that when he made these comments he had been expressing opposition to wearing a mask outside that was in line with public health guidance at the time. He submits that the Panel also accepted that he was speaking out against the changeover of a woman's penitentiary into an internment camp in Saskatchewan, suggesting that he was not going to go along with that, and that he was not going to go to an internment camp.
84. With respect to the allegations in paragraph 1.b of the Citation, the Respondent submits that the Panel accepted the Respondent's submission that there was information that had been omitted by the College that provided important context for the impugned statement and that made it clear that the Respondent was expressing frustration about the destruction and burning of cities in the United States as shown in the video that he tendered into evidence, and his comments had been an argument for bringing the people responsible to justice. The Panel also accepted that the Respondent's reference to wanting to "play paintball" was a turn of phrase.
85. With respect to the allegations in paragraph 2 of the Citation, the Respondent submits that the Panel accepted the Respondent's submissions about the context that the Global News Reporter's statements provided for his own statements in the Segment but that were omitted by the College in the Citation.
86. With respect to the allegations in paragraph 1.e of the Citation, the Respondent submits that the Panel accepted his argument that the College had omitted important context pertaining to his statement, and when placed in context, it was clear that the Respondent had been expressing opposition to the ever-changing and contradictory

advice being provided by the CDC and the WHO, not opposition to mask-wearing itself. The Respondent submits that if the College had properly put his statement in context, rather than cherry picking a small portion of what he said, it would have been obvious that the accusation against him was without merit. The Respondent says he, instead, had to spend significant time, effort and expense to gather and organize evidence to defend himself against this false accusation.

87. The Respondent submits that is clear that the actions of the College in withholding evidence until being compelled by order to disclose it, taking the Respondent's statements out of context, and refusing to withdraw allegations in the Citation when evidence clearly demonstrated that the statement in question did not amount to professional misconduct or unprofessional conduct, has resulted in a significant extension in the time required for hearing, and required the Respondent to incur significant additional expenses, legal and otherwise, to gather evidence and defend himself against the accusations which were then dismissed by the Panel, and having to deal with these accusations since September 2022.
88. The Respondent further submits (in para 42) that, even regarding those statements of the Respondent that the Panel found constituted professional misconduct or unprofessional conduct, the College was found to have omitted important context, and attributed inaccurate meaning to portions of those statements, which required additional time, effort and expense to defend and to address in the Discipline Hearing.
89. The Respondent submits that in these circumstances, and given the equally divided success of the parties, the parties should each bear their own costs and disbursements.
90. In reply, the College strongly opposes these submissions by the Respondent. The College argues that the Respondent continues to take "meritless swipes" at the College, including by making what can only be characterized as a scandalous insinuation that the College wrongly withheld evidence until compelled to act otherwise. The College submits the Respondent's statement is scandalous and is itself deserving of rebuke.

91. The College submits the Respondent seeks to mischaracterize the Conduct Decision as containing findings critical of the College. The College says the Respondent's argument that the College's conduct "has resulted in a significant extension in the time required for hearing, and required the Respondent to incur significant additional expenses, legal and otherwise to gather evidence and defend himself against the accusations that were dismissed" are without merit.
92. The College submits that the Respondent's submissions (at paras. 18, 20, 23, 39 and 42 of his submissions), that the Panel accepted his arguments, or otherwise found that the College "omitted" relevant contextual information, is not correct. The College argues that the Respondent's insinuation, at its most charitable, is that the College ought to have acted otherwise. At its least charitable, the insinuation is that the College acted improperly in some way—which the Respondent has chosen not to specifically articulate as such.
93. The College says the Panel should reject these submissions in their entirety because they amount to collateral attacks on the Panel's earlier findings, they constitute an unnecessary distraction, they are inaccurate, and they, in fact, provide further support for the College's case for costs.
94. The College further submits that the Respondent's argument that the abovementioned actions of the College have resulted in a significant extension in the time required for the Discipline Hearing, and required the Respondent to incur significant additional expenses, legal and otherwise is not only inaccurate, but also a mirror image of reality. The College argues that it was the Respondent's conduct that caused delay and additional expenses through him pursuing unmeritorious Summary Dismissal and *Voir Dire* Applications and by continuing during the Discipline Hearing to level meritless accusations of non-compliance with the Disclosure Order against the College.
95. For principally the same reasons as explained in detail in the College's written submissions in Reply, the Panel is not satisfied that the College's alleged conduct outlined above resulted in significantly increased costs or expense as the Respondent alleges. The Panel is also of the opinion that there is some merit in the

College's submissions that the Respondent's conduct as outlined above caused delay and additional expenses in conducting the Discipline Hearing. The Panel accordingly declines to reduce the cost award on the above-mentioned bases, as was urged by the Respondent.

96. Nevertheless, the Panel has decided to exercise its discretion and reduce the cost award on an alternate basis, which was also advanced by the Respondent. The Respondent submits that the College should not have pursued the allegation in paragraph 1.d of the Citation because it had the Internal Health Statistics document (Exhibit 27) months before the Discipline Hearing commenced and accordingly knew that the allegation in paragraph 1.d was without merit. In Reply submissions, the College did not answer the Respondent's submissions in this regard.
97. In the Conduct Decision, the Panel accepted the Respondent's submission and evidence that, in the conversation during which he made the comments referenced in paragraph 1.d of the Citation, the Respondent was speaking about COVID-19 hospital admissions and expressing frustration about the media's reporting regarding this issue (Conduct Decision at para. 380).
98. The Panel also accepted that the combination of the Internal Health Statistics document (Exhibit 27) and the Respondent and the College Investigator's evidence, clearly showed that there were no COVID-19 admissions (or hospitalizations) in the Grand Forks Hospital (where the Respondent primarily worked) between March 1, 2020 and November 2, 2020, or during the shifts that the Respondent worked at the Kelowna General Hospital on June 22, 2020 and in August 2020 (Conduct Decision at para. 382).
99. The Panel found that the College had not proven on a balance of probabilities with clear and convincing evidence that the Respondent's comments referenced in paragraph 1.d of the Citation could reasonably be regarded as inaccurate or misleading and therefore unbecoming a member of the profession of nursing (Conduct Decision at para. 383).

100. During cross examination, the College Investigator admitted that she did not know that the Respondent was primarily working in the hospital in Grand Forks or that he only picked up occasional shifts at other hospitals.
101. The College also had Exhibit 27 in its possession before the Discipline Hearing commenced. The Panel finds that the College should reasonably have anticipated the dismissal of the allegation in paragraph 1.d of the Citation if it had properly investigated the Respondent's work locations or, alternatively, after it became clear from Exhibit 27 and from the College Investigator and the Respondent's testimony, that there were no COVID-19 admissions (or hospitalizations) in the hospitals where the Respondent worked. The Panel is of the opinion that continuing to pursue the allegation in paragraph 1.d of the Citation, despite this evidence, caused some accumulation of costs for the Respondent in having to continue to defend the allegation.
102. The Panel notes that in *Hamm*, the College put into evidence a binder with 22 tabs containing allegedly discriminatory and derogatory statements by the registrant. The discipline panel in that case determined that statements in 6 of those 22 tabs were discriminatory and derogatory to transgender people and had the requisite nexus to the nursing profession. The panel discounted its cost award by 20% based on principles of proportionality and to reflect the College's more limited degree of success. The panel held that the College was entitled to tariff costs of \$40,992, which represented 80% of the total fees claimed in the proposed bill of costs (*Hamm*, at paras. 22 and 61).
103. In the circumstances of this case, the Panel considers that proportionality and fairness to the Respondent also requires some reduction to account for the fact that not all of the allegations in the Citation were proven and that the continued prosecution of the allegation in paragraph 1.d of the Citation caused some accumulation of costs. The Panel is prepared to discount the total cost award by 25% to reflect this. The College is accordingly entitled to tariff costs of \$15,300.00, which represents 75% of the total fees claimed in the College's proposed bill of costs.

Personal financial circumstances and impact of a cost award on the Respondent

104. As noted, the Respondent submits that he has struggled to find suitable employment since September 2021 to allow him to earn sufficient funds to pay for the necessities of life. He says he has been unable to pay the cost of his own legal expenses to defend himself from the College's accusations. The Respondent further submits that he is in significant debt and is impecunious and cannot afford to pay the costs sought by the College, and if so ordered, it would likely force him into bankruptcy.
105. As outlined above, the Panel accepts that the Respondent has suffered some financial hardship due to losing his employment with Interior Health and having to defend himself against the allegations in the Citation. The Panel further recognizes that a suspension imposed on the Respondent, to be served if he decides to return to nursing practice, would cause him some financial hardship. The Panel also acknowledges that a cost award will also cause him some financial hardship.
106. The Respondent has not provided the Panel with any evidence about his current financial situation, including the amount of debt he has or its sources, the amount he requires to pay his monthly necessities of life, or whether he earns any employment or other income, a portion of which could be allocated towards the payment of a cost award. As a result, the Panel is entirely unable to assess either his ability to pay a cost award or the extent of the financial impact that having to pay a cost award would have on the Respondent.

Consideration should be given to providing time to pay costs

107. The Panel has discretion to set the amount of time within which payment of a cost award should be made. In light of the Respondent's submission about his dire current financial situation, and despite the lack of evidence presented by the Respondent to support his assertions in this regard, the Panel has decided that he will be given two (2) years from the date that this penalty and cost determination is served on his counsel by email, or such alternative time-period or in accordance with such payment plan as the parties may agree, to pay the cost award.

108. As the Panel already noted, the Respondent let his nursing registration lapse in March 2022. His current inability to practice nursing, and to earn income by working as a registered nurse, is due to his own volition.

109. In the Panel's opinion, a period of two (2) years will provide the Respondent with reasonable time and a fair opportunity to raise the necessary funds to pay the cost award.

Cost awards should not be punitive in nature or so large to prevent individuals from raising reasonable defences against allegations of misconduct

110. The Panel is satisfied that even if it had decided to award the full amount of costs claimed by the College, it would not have been such a large amount as to be punitive to the Respondent, particularly considering the length and complexity of the matter, and more importantly, because the Respondent will have two (2) years, or such alternative time-period or in accordance with such payment plan agreed with the College as the parties, to raise funds, if necessary, to pay the cost award.

111. Similarly, the Panel is also satisfied the cost award is not so large that it will deter others from raising reasonable defences against allegations of professional misconduct or unprofessional conduct.

Order

112. Accordingly, for the reasons outlined above, the Panel orders that:

- a. the Respondent is suspended for thirty (30) calendar days, to be served commencing on the date of the Respondent's return to nursing practice should he successfully apply for reinstatement as a registrant of the College in the future; and
- b. the Respondent shall pay the College costs and disbursements in the amount of \$21,900.00 pursuant to section 39(5) of the HPA, to be paid by the Respondent within two (2) years from the date this order is served on his counsel, or by such alternative date or according to a payment plan as otherwise may be agreed to in writing between the College and the Respondent.

Publication

113. The Panel directs that pursuant to section 39.3 of the HPA, the Registrar should publish notification of the determinations that were made in this matter.

Notice of Right of Appeal

114. The Respondent is advised that, under section 40(1) of the HPA, 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 9, 2026

Signed by:

Dr. Catharine Schiller, RN, Chair

Hanna Ridley, RN

Joshua Tan, Public Member