

**IN THE MATTER OF THE COLLEGE OF LICENSED PRACTICAL
NURSES OF BRITISH COLUMBIA (The "College")
AND
IN THE MATTER OF A HEARING PURSUANT TO SECTIONS 33 OF THE
HEALTH PROFESSIONS ACT (THE "ACT") INTO THE CONDUCT OF
BRIGITTA PELCZ, REGISTRATION NO. 44857**

**ORDER OF THE DISCIPLINE PANEL (THE "PANEL")
PURSUANT TO SECTIONS 39 AND 39.3 OF THE ACT**

Panel: Madelon Stevens, Chair
Samantha Love
David Rush

Appearances: Tamara Hunter, for the College
Brigitta Pelcz, on her own behalf
Craig Munroe, for the Panel

Hearing Dates: October 31 – November 10, 2016, February 8, 2017

Background

1. The Panel conducted a hearing into the Amended Citation issued by the College, dated 28 September 2016 (the "Citation") from October 31 – November 10, 2016.
2. With the agreement of the Parties, the Panel heard evidence and submissions on those dates with respect only to whether Ms. Pelcz engaged in the conduct set out in the Citation, and whether that conduct amounted to breaches as described therein.
3. Also with the agreement of the Parties, the Panel rendered an interim determination and reasons on those questions on December 12, 2016 (the December 12 Determination), with the understanding that the Panel, should it find that any of the alleged breaches occurred, would re-convene the matter to complete its deliberations and hear further from the parties with respect to any orders that the Panel should make pursuant to Section 39 of the Act.
4. As set out in the December 12 Determination, the Panel concluded that the College has established that some, but not all, of the allegations in the Citation have been proven.
5. Accordingly, the Panel re-convened the matter for hearing on February 8, 2017. The Parties had agreed in advance that neither would be leading any further evidence. Rather, both parties advised that they would be making their submissions with respect to the appropriate orders based on the record from the October 31 – November 10, 2016 hearing days.

Established Breaches

6. We will not repeat the reasons and conclusions set out in the December 12 Determination, other than to confirm that the Panel is relying on those conclusions and reasons for the purpose of making the Orders set out herein.
7. We will, however, list very briefly the breaches that have been found by the Panel to have occurred (the "Breaches"):
 - i. The "Staples" Incident – Breach of CLPNBC Professional Standards of Practice 1.1.6, 1.1.9, 2.1.1, 2.2.1, 3.2.1, CLPNBC 2010 Practice Guideline: Documentation,
 - ii. The Intramuscular Injection Incident – Breach of CLPNBC 2010 Practice Guideline: Medication Administration
 - iii. The Catheter Incidents – Breach of CLPNBC 2010 Professional Standards of Practice 1.1.2, 1.1.6, 1.1.9, 2.3.1, 2.3.2, 3.2.2 and 3.3.1
 - iv. Charting Issues – Breach of CLPNBC 2010 Practice Guideline: Documentation
 - v. Administration of Sleeping Medication Incident – Breach of CLPNBC 2010 Practice Guideline: Documentation
 - vi. The Emesis Incident – Breach of CLPNBC Professional Standards of Practice 2.1.1, 2.1.2, 2.2.1, 2.2.2, 2.3.1 and 2.3.3
 - vii. Telephone Call Regarding Resident – Breach of CLPNBC 2010 Practice Guideline: Documentation
 - viii. The Administration of Cipro Incident – Breach of CLPNBC 2014 Professional Standards for LPNs: Standard 1, Standard 3, Standard 4, CLPNBC 2014 Practice Standard: Documentation, and CLPNBC 2014 Practice Standard: Medication Administration

Discussion

8. The Panel has considered all of the evidence and the submissions made by the Parties. We do not intend to set out all of these submissions, however any failure to specifically refer to evidence or arguments tendered by the parties does not mean that they have not been considered.
9. The College submitted that the Panel has determined that Ms. Pelcz engaged in eight separate breaches of established standards for Licensed Practical Nurses, and that these eight incidents not only were failures to comply with standards pursuant to Section 39(1)(c), which gave rise directly to a need for the College to protect the public, but also taken together demonstrated that Ms. Pelcz has committed professional misconduct pursuant to Section 39(1)(c) and/or incompetently practiced nursing pursuant to Section 39(1)(d), making the need for protection of the public even more necessary.
10. The College also submitted that many of Ms. Pelcz's breaches also showed that Ms. Pelcz did not demonstrate basic skills that would be expected of a nursing graduate.
11. The College then sought certain orders pursuant to Section 39(2) on the basis of the above, as well as an order for costs pursuant to Section 39(5).

12. Ms. Pelcz submitted that she is competent to practice nursing and that the suspension should immediately be lifted.
13. Ms. Pelcz also submitted that the entire process leading up to the issuance of the Citation was unfair to her, and she spent some time explaining that history and the impact it has had on her financial, emotional and physical health.
14. Ms. Pelcz submitted that, while she may have made some errors, these are not unusual for a novice nurse in her circumstances. Ms. Pelcz also appeared to continue to deny or minimize some of the facts found by the Panel in the December 12 Determination.
15. Finally, Ms. Pelcz repeatedly submitted that her suspension should be overturned and that she should be able to return to practice without penalty. However, Ms. Pelcz also appeared to submit that, while she would be prepared to undertake a competency assessment, she might have difficulty successfully passing the assessment due to the passage of time not being engaged in practice, along with the changing standards of practice.
16. Specifically, Ms. Pelcz submitted, as follows:

And okay, the competency assessment test, okay, let's do it again. We need to take into account that it's been three years almost. I have no problem doing it, but I would like that to be taken into account please, that I was not able to practice for – for that amount of time. It is a large – huge amount of time. The standards of practice have changed since then. And it's – I have no problem doing it, but it's – it's something that – it should not have taken this long, period.
17. If Ms. Pelcz is not confident that she can pass a competency assessment at this time, then the Panel finds it difficult to understand how it would be appropriate to return her to practice without limitation.
18. Ms. Pelcz referred somewhat obliquely at times to discipline cases involving other nurses to suggest that she was being singled out for overly harsh treatment, and at one point suggested that the Panel review “over 25 cases” on the College’s website. However, Ms. Pelcz has not referred the Panel to any specific cases to establish that she has been treated differently and, accordingly, the Panel was not in a position to consider whether this was the case.
19. We agree with the College that the eight failures by Ms. Pelcz to comply with standards established by the College have given rise to a need to protect the public, and that certain orders are necessary pursuant to Section 39(2) in order to ensure that protection.
20. We do not agree that these incidents, taken together, amount to professional misconduct or the incompetent practice of nursing as set out in Section 39.
21. We also did not have any evidence about the standards of LPN training institutions upon which we could conclude that Ms. Pelcz’s conduct failed to meet the basic expectations of any graduate LPN.
22. While College counsel suggested that the two LPN’s on the Panel could rely on their own experiences in that regard, we were not convinced that this would be appropriate and, in any event, the two LPN Panel members could only rely on their experience at their own specific institutions which, in one case, was some time ago.

23. Accordingly, we do not make any findings with respect to whether Ms. Pelcz failed to meet basic expectations of a graduate LPN.
24. We have also not relied upon the history of Ms. Pelcz's interactions with the College prior to the issuance of the Citation, other than the fact that Ms. Pelcz has been suspended for a significant period of time, with consequences both to her registration status and her financial circumstances.
25. We have no doubt that Ms. Pelcz is sincere in her belief that she has been treated unfairly by the College, however we have concluded that most of the issues of fairness that she raised were not material to the questions before this Panel and many have been dealt with in another forum.
26. We have considered Ms. Pelcz's assertions that she is a competent nurse, that the suspension should be immediately lifted, and that all that might be necessary is some specific remedial work.
27. However, we are convinced that more is necessary in the circumstances and we agree with the College that the Breaches do require certain measures be ordered in order to properly protect the public.
28. This is not a case of a single error that can be addressed through remedial course work. Rather, we are convinced that the number of errors, along with their breadth of subject matter, require a more significant assessment and review of Ms. Pelcz's capabilities before we can be confident that she can safely return to practice.
29. Upon careful consideration of the Breaches, we do not consider it necessary to cancel Ms. Pelcz's registration or permanently prohibit Ms. Pelcz from returning to practice.
30. However, this same consideration does cause us to conclude that there is a risk to the public should Ms. Pelcz be permitted to return to her practice without any meaningful conditions, as Ms. Pelcz suggests.
31. It is our view that most of the orders sought by the College are proportionate to the breaches that have been found, respect the obligation of the College to serve and protect the public, yet also allow an opportunity for Ms. Pelcz to resume practice if it is determined that she is competent to do so.
32. Ms. Pelcz provided evidence and submissions to the Panel with respect to her passion for nursing and her commitment to the patients in her care. It is our hope that Ms. Pelcz recognizes these events as an opportunity to re-commit herself to renewing and demonstrating her competencies so that she can return to practice.
33. In breaching the Professional Standards of Practice as set out above and in the December 12 Determination, Ms. Pelcz has, in the various ways described, not complied with a standard, limit or condition imposed under the *Act*, as identified in Section 39(1)(b) of the *Act*.
34. The Panel does not find that any of the other provisions of Section 39(1) apply.
35. For the foregoing reasons, we make the following determinations and orders.

Determinations and Orders

Suspension & Assessment

36. Given the Panel's determination under Section 39(1), the Panel makes the following Orders under Section 39(2):
- a. Pursuant to Section 39(1) of the *Act*, the Panel declares and determines that Ms. Pelcz has not complied with the identified standards imposed under the *Act*;
 - b. Ms. Pelcz' registration is suspended pursuant to Section 39(2)(c) of the *Act* (the "Suspension");
 - c. The Suspension shall remain in place pursuant to Section 39(8) until Ms. Pelcz undertakes a Licensed Practical Nurse competency assessment with an independent College-approved assessor, incorporating the following elements:
 - i. The content of the competency assessment will cover the College's Standards of Practice and the Entry to Practice Competencies for Licensed Practical Nurses;
 - ii. The assessor will prepare a report of Ms. Pelcz's nursing skills, knowledge, judgment and attitude as well as her nursing strengths, weaknesses and any gaps as they relate to the assessment and submit this report to the College and to Ms. Pelcz;
 - iii. The cost of the assessor will be borne equally by the College and Ms. Pelcz;
 - iv. The College may provide information to the assessor that the assessor advises is necessary for the purpose of the assessment; and,
 - v. The assessor will provide an opinion to the College and to Ms. Pelcz with respect to whether Ms. Pelcz meets the Standards of Practice and Entry to Practice Competencies for a Licensed Practical Nurse, as well as any recommendations that the assessor may have with respect to meeting these requirements.
 - d. Upon completion of the assessment, as well as successfully completing any remediation recommendations made by the assessor, Ms. Pelcz may apply to the College's Registration Committee for reinstatement of her registration. If the Registration Committee determines that Ms. Pelcz should be granted reinstatement, then the Suspension shall expire on the date of that determination.

Costs

37. The College has sought costs pursuant to Sections 39(5) and (7) of the *Act* in the amount of 40% of legal fees and 75% of disbursements. Other than these figures, we were not provided with the actual fees and disbursements and so were unable to determine with any degree of certainty the magnitude of this request.
38. We recognize the appropriateness of a costs award in certain circumstances, including these, but are of the view that costs in the amount sought by the College, even without an accurate understanding of actual figures, are excessive, taking into account all of the circumstances of these matters.
39. We view costs in the amount of \$3000, inclusive of legal fees and disbursements, payable by Ms.

Pelcz to the College to be appropriate. However, a unique factor in this case is the prior offer of the College to pay Ms. Pelcz's competency assessment costs in the amount of \$3000 relating to certain events that occurred between the parties prior to the Citation being issued.

40. Accordingly, we consider it appropriate, and so order, that the costs award of \$3000 be set off by the \$3000 that the College had previously offered, with a resulting net costs award of zero.

Public Notification

41. Pursuant to Section 39.3(1) of the Act, and not being advised of any exceptions pursuant to Section 39.3(3) or (4), we direct the College's registrar to notify the public pursuant to Section 39.3(7) of the information set out in Section 39.3(2).

Right of Appeal

42. Ms. Pelcz has the right to appeal this order to the Supreme Court. For greater clarity, this right of appeal applies to the entire decision of the Panel with respect to the Citation, including both the orders and reasons set out herein and the December 12 Determination.

Madelon Stevens
Madelon Stevens, Chair
(on behalf of the Panel)

07 March 2017
Date