

IN THE SUPREME COURT OF BRITISH COLUMBIA

Date: 20171020
Docket: S114963
Registry: Kelowna

Between:

Brigitta Pelcz

Petitioner

And

College of Licensed Practical Nurses of British Columbia

Respondent

Corrected Judgment: The text of the judgment was corrected at
paras. 3, 14, 28 and 33 on April 26, 2018.

Before: The Honourable Mr. Justice Cole

Oral Reasons for Judgment

Appearing on her own behalf:

B. Pelcz

Counsel for the Respondent:

J.K. Herbert

Place and Date of Hearing:

Kelowna, B.C.
October 20, 2017

Place and Date of Judgment:

Kelowna, B.C.
October 20, 2017

[1] **THE COURT:** This is a statutory appeal by the petitioner of a disciplinary order that was made against her by a panel of the Discipline Committee of the College of Licensed Practical Nurses of BC ("CLPNBC").

[2] This matter was set for a one-day hearing but because the petitioner was self-represented, the matter turned into a three-day hearing.

[3] This matter was initiated by an individual (the "complainant") who was also employed at the same institution as the petitioner. The petitioner, however, did not take any steps to serve the complainant on or before April 21, 2017 and the respondent says this matter should be dismissed because of the failure to serve the complainant.

[4] I want the parties to know that I have considered all the material. This is the third day that we have had a hearing which was originally set for one day. I have given a great deal of leeway to the petitioner because she is self-represented here, and she is entitled to it.

[5] I accept that the respondent has a good technical argument but the petitioner is acting on her own and fairness dictates that I not dismiss her appeal because of this technicality. I am of the view that the petitioner is entitled to have this court consider the substance of the complaint.

[6] A hearing was conducted under the *Health Professions Act*, R.S.B.C. 1996, c. 183 [HPA] with respect to the suspension of the petitioner's registration as a licensed practical nurse ("LPN").

[7] Between October 31 and November 10, 2016 the Discipline Committee conducted a nine-day evidentiary hearing under s. 38 of the *HPA* and a series of allegations regarding the petitioner's nursing practice and her failure to comply with the standards of practice established by the CLPNBC in connection with multiple instances between September 2013 and May 2014.

[8] At the time of the Discipline Committee's hearing the petitioner's licence was already subject to an interim suspension order issued by the Inquiry Committee of December 31, 2014 under s. 35(1)(b) of the *HPA* to protect the public during the investigation and pending the outcome of a hearing.

[9] The petitioner never appealed the interim suspension order.

[10] Following the evidentiary hearing, December 12, 2016, the Discipline Committee determined that under s. 39(1)(b) of the *HPA* the petitioner had breached various standards of practice established by the CLPNBC in connection with eight sets of incidents between September 2014 and May 2015.

[11] On February 8, 2017 the Discipline Committee panel reconvened to conduct a further hearing in light of the series of breaches of standards found by the committee.

[12] On March 7, 2017, the Discipline Committee issued an order for the suspension of the petitioner's registration under s. 39(2)(c) of the *HPA* and imposed certain conditions under s. 39(a) of the *HPA*.

[13] In their interim determination, in reasons on December 12, 2016, the panel concluded the College had established that some, but not all, of the allegations in the citation had been proven. The breaches that were found by the panel are as follows:

- (a) The "staples" – breach of the CLPNBC Professional Standards of Practice;
- (b) The intramuscular injection incident;
- (c) The catheter incidents;
- (d) Charting issues;
- (e) Administration of sleeping medication incident;
- (f) The emesis incident;
- (g) Telephone call regarding resident;
- (h) The administration of Cipro incident.

[14] After hearing submissions the panel found as follows:

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

[15] It is well settled that the Discipline Committee's decision is reviewable by the court on a standard of reasonableness.

[16] The petitioner seeks an order setting aside the Discipline Committee's order of March 7, 2017. Her position is that although the panel treated her fairly the discipline was too harsh and she should be allowed to continue to practice as a licensed practical nurse.

[17] The petitioner, however, did not offer any evidence that would lead this court to conclude her treatment was harsh.

[18] The petitioner also wishes to appeal the December 31, 2014 interim suspension and she has the right to do so, but was required to initiate her appeal within 30 days, and she failed to do that. The interim suspension order, however, expired on March 7, 2017 and is no longer in effect and the petitioner's continued suspension is now governed by the final order of March 7, 2017 of the Discipline Committee.

[19] The petitioner also says that the inquiry committee did not complete its investigation within the total prescribed period of 255 days under s. 50.55 of the *HPA* and s. 7 of the *Health Profession General Regulations*, B.C. Reg. 275/2008. This issue, I am satisfied, is outside of the permissible scope of this appeal.

[20] The petitioner requested a refund of her renewal fee that she paid to CLPNBC for renewal of her suspension registration for 2015. The petitioner refers to a \$356 "reinstatement" fee, but the petitioner did not in fact pay such a reinstatement fee to CLPNBC. She paid CLPNBC a routine non-refundable renewal fee of \$270. Furthermore, this application for the renewal fee is outside of the scope of this appeal and is unrelated to the proceedings or decision of the Discipline Committee.

[21] When the petitioner was asked what facts were found that could not be supported by the evidence she was unable to point to any facts. During the evidentiary hearing that took place over a period of eight days between November 1-10, 2016, the panel heard evidence from a total of 13 witnesses called on behalf of CLPNBC and from the petitioner, as well as oral submissions from the parties.

[22] The petitioner also claims for compensation for damages because of the respondent's treatment of her. However, the relief that she seeks is outside this court's jurisdiction. On this appeal, under s. 40(9) of the *HPA*, this appeal is an administrative law proceeding, not a civil action for damages: *Taylor v. The Law Society of British Columbia*, 2010 BCSC 1098.

THE MERITS OF THE DISCIPLINE COMMITTEE'S DECISION

[23] The reasonableness standard is set out in *Farbeh v. The College of Pharmacists of British Columbia*, 2015 BCSC 642, paras. 12-13, affirmed in 2016 by the Court of Appeal. It is well settled that reasonableness is a differential standard. A reviewing court is not permitted to substitute its own appreciation of the appropriate solution, but must rather determine whether the outcome falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law. The role of the court is not to review the evidence or substitute its view for that of a Discipline Committee: See *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, para 59.

REASONABLENESS OF THE DECISION, DECEMBER 12, 2016 DETERMINATION

[24] The petitioner does not identify any valid basis to question the reasonableness of any of the findings made by the discipline panel in the December 12, 2016 determination, including the various breaches of the CLPNBC's standard of practice.

[25] Although the petitioner asserts that there was "no evidence, no proof" of the allegations against her, there was no merit at all to that

assertion. The Discipline Committee summarized the principal evidence supporting each of its eight findings of breach in the course of their reasons it gave in support of the December 12, 2016 determination.

[26] I am satisfied that in the Discipline Committee panel's reasons the panel reviewed all the evidence critically and took a very balanced and even-handed approach in concluding that some of the allegations pursued by the CLPNBC had not been proven and some were proven.

[27] I am satisfied that there is no basis for this court to question the reasonableness of any aspect of the December 12, 2016 determination.

REASONABLENESS OF THE MARCH 7, 2017 ORDER

[28] There is nothing in the amended petition that identifies any valid basis to question the reasonableness of the remedial order issued by the Discipline Committee panel under s. 39(2) and (8) of the *HPA* in the panel's March 7, 2017 order.

[29] I am satisfied that the final suspension order made by the Discipline Committee panel under s. 39(2)(c) of the *HPA* and the conditions imposed by the panel under s. 39(8) of the *HPA* are within “the range of possible, acceptable outcomes which are defensible in respect of the facts and the law.”

[30] This satisfies the reasonableness standard of review.

[31] Considering the pattern of the breaches of standards demonstrated in the petitioner's nursing practice, giving rise to the need to protect the public, and given the petitioner's own admission that she expected that she would have difficulty successfully passing a

competence assessment, the Discipline Committee panel reasonably concluded that this was not a case of a single error, but a number of errors, along with the breadth of the subject matter, requires a significant assessment and review of the petitioner's capabilities to safely return to practice.

[32] I therefore dismiss the amended petition on its merits.

[33] I confirm the decision of the Discipline Committee of the CLPNBC under s. 40(9)(a) of the *HPA*.

[34] The respondents are entitled to costs.

The Honourable Mr. Justice F.W. Cole