

**IN THE MATTER OF
THE COLLEGE OF REGISTERED NURSES OF BRITISH COLUMBIA
AND CITATION ISSUED UNDER THE HEALTH PROFESSIONS ACT,
R.S.B.C. 1996, chapter 183 (the “Act”)**

BETWEEN:

THE COLLEGE OF REGISTERED NURSES OF BRITISH COLUMBIA

(the “College” or “CRNBC”)

AND:

SANDRA MURPHY, RN

(the “Respondent”)

Date and Place of Hearing:

Date: June 26 and 27, 2017

Place: 2855 Arbutus Street, Vancouver, B.C.

Members of the Hearing Panel of the Discipline Committee:

Marilyn Loewen-Mauritz (Chair)

Brenda Downey

Catharine Schiller, RN

Counsel for the College:

Jean Whittow, Q.C.

Counsel for the Respondent:

No attendance by the Respondent or counsel

Independent Legal Counsel for the Panel:

Lisa C. Fong

Court Reporter

Rose Halendy

**REASONS FOR DECISION AND ORDER
OF THE DISCIPLINE COMMITTEE**

1. A hearing panel of the Discipline Committee (the “Panel”) convened on June 26th, 2017 at 10:00 a.m. to inquire into allegations of unprofessional conduct.

Pre-hearing matters

2. At the start of the oral hearing, Ms. Murphy was absent. Prior to hearing submissions from College counsel about the Panel proceeding with the hearing without Ms. Murphy, the Panel commented on three matters that it had resolved prior to the oral hearing.

3. First, this oral hearing was originally set for May 30 and 31, 2017. The College applied to adjourn the hearing to June 26 and 27, 2017. Ms. Murphy left two voicemails for the Panel through its Independent Legal Counsel (“ILC”). In one voicemail, she advised that accommodations in Vancouver would be too expensive for June 26 and 27, due to tourism. In a second voicemail, Ms. Murphy advised that she refused to participate further in the process, or attend any hearing, due to unreasonable delay. The Panel granted the College’s application for an adjournment. The positions of the parties, and the Panel’s reasons, are set out in a letter from ILC to the parties, on behalf of the Panel, dated May 3, 2017 (the “Adjournment Reasons”) attached as Appendix A.

4. Second, Ms. Murphy asserted an unreasonable delay. In light of this assertion, the Panel invited response submissions from the College, which the College provided. The Panel gave Ms. Murphy an opportunity to provide a reply. She did not provide a reply. The Panel decided against any stay of the proceeding due to delay. A timeline of the complaint and investigation concerning Ms. Murphy, and the Panel’s reasons, are set out in a letter from ILC to the parties, on behalf of the Panel, dated June 23, 2017 (the “Delay Reasons”) attached as Appendix B.

5. Third, the College applied to have a witness, the complainant [name redacted], testify by teleconference. The Panel gave Ms. Murphy an opportunity to provide a response. She did not provide a response. The Panel decided to require that [redacted] attend in person. The Panel’s reasons are set out in a letter from ILC to the parties, on behalf of the Panel, dated June 23, 2017 (the “Attendance Reasons”) attached as Appendix C.

Proceeding without the Respondent

6. As noted above, Ms. Murphy did not attend at the hearing. Section 38(5) of the *Health Professions Act*, R.S.B.C. 1996, c. 183 (the “Act”) reads as follows:

- [38] (5) If the respondent does not attend, the discipline committee may
- (a) proceed with the hearing in the respondent’s absence on proof of receipt of the citation by the respondent, and
 - (b) without further notice to the respondent, take any action that it is authorized to take under this Act.

7. Prior to hearing submissions and evidence from College counsel as to whether the Panel could and should proceed with the hearing, it reviewed five letters circulated between the parties and ILC:

- a. First, in a letter from ILC, Ms. Fong, to College counsel, Ms. Whittow, dated June 20, 2017 (Tuesday), Ms. Fong provided two transcripts of two voicemails left by Ms. Murphy for Ms. Fong on June 19, 2017. In the voicemails, Ms. Murphy indicated she would not be attending the hearing, and provided her reasons. She stated, among other things, that “I will humbly and peacefully demonstrate it’s about disobedience by not presenting myself for discipline in

June,” and also stated that, “I really have been injured my knee and probably need a knee replacement....”

- b. Second, in a letter from Ms. Whittow to Ms. Fong dated June 21, 2017 (Wednesday), Ms. Whittow advised of her own communications with Ms. Murphy, and referred to three items:
 - i. a voicemail from Ms. Murphy on June 19, 2017 (Monday);
 - ii. a letter from Ms. Whittow to Ms. Murphy served on Ms. Murphy on June 20 (Tuesday); and
 - iii. a voicemail from Ms. Murphy to Ms. Whittow on June 20, 2017 (Tuesday). Ms. Whittow advised that if the Panel wished to offer Ms. Murphy an opportunity to participate in the process other than by her attending personally, she expected that the College would consent, except for cross-examination.
- c. Third, in a letter from Ms. Fong to Ms. Murphy dated June 21, 2017 (Wednesday), advising that she could attend by electronic means, and also that if she wished to apply for an adjournment, she could bring an application. The Panel notes that Ms. Fong had this letter delivered directly to Ms. Murphy’s residential address.
- d. Fourth, in a letter from Ms. Fong to Ms. Whittow dated June 22, 2017 (Thursday), Ms. Fong provided one transcript of a voicemail from Ms. Murphy which she left that day. Ms. Murphy confirmed that she would not be attending, and said she was not going to open Ms. Fong’s letter. She stated, among other things, that “I am suffering with a cold on top of it and everything else,” that “I am not going to open up the letter that you’ve just sent me because I am not well,” and that “I am going to focus on my health and I am going to get my knee better....”
- e. Fifth, in a letter from Ms. Fong to Ms. Whittow dated June 25, 2017 (Sunday), Ms. Fong attached one transcript of a voicemail from Ms. Murphy which she left on June 23, 2017 (Friday). Ms. Murphy confirmed that she received Ms. Fong’s letter of Wednesday, but that everything had to be sent to her post-office box, and that she would not be reviewing anything until she was better. She stated, among other things, that “I’m on medical leave and I’m not reading any of your letters, Lisa, until I’m better.”

8. Apart from the effect of section 54 of the Act, which deems receipt of documents mailed by registered mail to the last address for a registrant that is recorded in the register, the Panel is satisfied that Ms. Murphy did in fact receive letters from Ms. Whittow, and from Ms. Fong, advising that she could attend this hearing by electronic means, or apply for an adjournment.

9. In the context of these prior communications between the parties and ILC, the Panel asked the College whether the hearing should proceed without Ms. Murphy.

10. Ms. Whittow tendered into evidence the Affidavit of Service of [name redacted] dated December 5, 2016 (marked as **Exhibit 1**), to prove service of the original citation (the “Citation”) on Ms. Murphy. The College also provided a number of pre-hearing documents showing, among other things, service on Ms. Murphy, on May 31, 2017, of the amended citation

(the “Amended Citation”) (marked as **Exhibit 5**). The Panel notes that both the Citation and the Amended Citation warned that if Ms. Murphy failed to attend the hearing, the Panel could proceed with the hearing in her absence. The Panel marked various pre-hearing documents, including transcripts of Ms. Murphy’s emails, as an exhibit (marked as **Exhibit 2**).

11. The Panel was satisfied that the requirement of section 38(5) of the Act, that Ms. Murphy received the Citation and the Amended Citation, was met. The Panel went on to consider if Ms. Murphy’s asserted physical disability was a reason for not proceeding with the hearing. For the following reasons, it determined that her asserted physical disability was not a reason for adjourning the hearing.

12. Ms. Murphy had asserted she is unable to attend the hearing due to her having a physical disability which she has described as a knee injury, and her being on “medical leave” from work. In a letter from Ms. Whittow to Ms. Fong dated June 21, 2017 (which forms part of **Exhibit 2**), Ms. Whittow recounted advice from a process server who delivered a letter to Ms. Murphy’s home that Ms. Murphy came to the door using a crutch. Ms. Murphy has not, however, provided any evidence showing that her knee injury prevents her from participating in the hearing, either physically or by way of electronic means, e.g., via telephone conference.

13. Both Ms. Fong and Ms. Whittow advised Ms. Murphy that she could attend the hearing by electronic means, or provide medical information in order to apply for an adjournment of the hearing.

- a. On June 21, 2017, Ms. Fong advised Ms. Murphy in a letter (which forms part of **Exhibit 2**) that, “my understanding from your voicemails is that you have elected to not attend the hearing, entirely apart from any illness or condition,” but that if Ms. Murphy’s position was different, Ms. Fong could arrange for Ms. Murphy to attend by electronic means. Ms. Fong further advised that if Ms. Murphy wished to attend in person, she could apply for an adjournment, and should provide any notes or reports from her health care providers about the nature and severity of her condition.
- b. Ms. Whittow also advised Ms. Murphy in a letter dated June 21, 2017 (marked as **Exhibit 3**) that if she wanted the hearing postponed, she should make an application, indicate reasons for the request, and include any medical evidence. Ms. Whittow also stated in a letter dated June 21, 2017 that she expected the College would consent to Ms. Murphy having an opportunity to participate in the hearing electronically, with the exception of any cross-examination of Ms. Murphy.

14. Despite Ms. Murphy being able to leave numerous voicemail messages for Ms. Whittow and Ms. Fong, Ms. Murphy did not apply for an adjournment, or provide any medical evidence relating to her physical condition. Instead, she advised that she was declining to read any correspondence. For example, Ms. Murphy left a voicemail for Ms. Fong on Friday, June 23, 2017 (transcript marked as **Exhibit 4**), stating that, “I’ve told you that I’m sick, I’m on medical leave and I’m not reading any of your letters, Lisa, until I’m better. And that includes this one.”

15. Ms. Murphy has announced on various occasions that she would not be attending the hearing for reasons unrelated to any medical condition. For example, when objecting to the College’s application to adjourn the hearing to June 26 and 27, Ms. Murphy asserted that

accommodations in Vancouver would be too expensive. Ms. Murphy later advised that she was refusing to participate further in the process, or attend any hearing, due to unreasonable delay. In her voicemails of June 19, 2017, she said, among other things, that, “I will humbly and peacefully demonstrate it’s about disobedience by not presenting myself for discipline in June”, and also that, “I’m not able to present myself following seven consecutive years of investigation when I am innocent”.

16. Ms. Murphy failing to provide any evidence about her physical condition, her declaring that she would not attend the hearing due to her objecting to the process itself, and her failing to avail herself of offers that she attend by electronic means, led the Panel to conclude that even if Ms. Murphy were unable to attend physically, which is not supported by evidence, she does not wish to attend the hearing. No purpose would be served by the Panel adjourning the hearing.

17. The Panel decided to proceed with the hearing without Ms. Murphy, pursuant to section 38(5)(a) of the Act. The Panel may take any action that the Discipline Committee is authorized to take under the Act without further notice to Ms. Murphy, pursuant to section 38(5)(b) of the Act.

The Amended Citation

18. The Amended Citation (**Exhibit 5**) sets out factual allegations in six paragraphs, which the Panel sets out for ease of reference:

1. While employed by the Vancouver Island Health Authority (“VIHA”) between 2003 and 2012, you took and retained, without authorization, VIHA documents, including documents referencing VIHA staff and patients that contained third-party information (“Documents”).
2. You continued to retain Documents, without any legal right or authority to do so, following your termination by VIHA on May 4, 2012.
3. On or about October 11, 2012, at a meeting with VIHA, you indicate that you had certain Documents in your possession, but when asked to return certain Documents, you declined to do so.
4. On October 31, 2012, you filed a complaint with the Human Rights Tribunal over your termination by VIHA (the “HRT Complaint”). On August 2, 2013, you delivered a Response to Application to Dismiss made by the respondents to the HRT Complaint. You attached over 26 exhibits to your Response, including certain Documents. The VIHA staff and third-party information in the Documents filed as exhibits had been only partially redacted by hand.
5. On August 20, 2013, VIHA wrote you a letter advising that Documents believed to be in your continued possession contained personally identifiable information and must be returned to VIHA. You did not return any Documents. You subsequently made Freedom of Information requests to VIHA to obtain specified Documents. VIHA provided some documents to you, but maintained that the majority of the Documents requested were not disclosable.
6. To date, you continue to retain Documents without legal right or authority, and, or in the alternatively, have refused the requests made by VIHA for the return of the Documents.

Ms. Whittow clarified that the College did not allege breaches of professional standards, professional misconduct, or unprofessional conduct based Ms. Murphy taking documents without authorization (Amended Citation para. 1). The objectionable conduct relates to Ms. Murphy retaining, refusing to return, and using documents after May 4, 2012.

19. The College also provided an “Appendix A” document listing twelve documents. Ms. Whittow clarified the College was not proceeding with documents 2, 9 and parts of 10 on the list. The remaining listed documents are as follows:

- a. Doc #1: Transcriptions of tape-recordings of “fact-finding meetings” between Ms. Murphy and VIHA, Mar. and Jun. 2010
[Ex. 7 pp. 163-198 and 278-306; Ex. 8, Tab 8; also, referenced at Ex. 6 (redacted), para. 13];
- b. Doc #3: 9 bedmaps (with patient names)
[Ex. 6 (redacted), p. 49-57; Ex. 8, Tab 6, pp. 13-21];
- c. Doc #4: Aboriginal Liaison Referral Forms (circa 2009) (with patient information)
[Ex. 6 (redacted), pp. 58-60 (re: patient K) and 62-63; also Ex. 8, Tab 6 (FIPPA disclosure), pp. 3-5 and 22-23];
- d. Doc #5: Patient evaluation and progress notes, Sept. 18, 2007;
[Ex. 6 (redacted), p. 61 (re: patient K); also Ex. 8, Tab 6 (FIPPA disclosure), p. 8]
- e. Doc #6: Physician orders, Sept. 15, 2007
[Ex. 6 (redacted), p. 64 (re: patient K); also Ex. 8, Tab 6 (FIPPA disclosure), p. 6];
- f. Doc #7: History of case, Sept. 16, 2009;
[Ex. 6 (redacted), p. 65 (re: patient K); also Ex. 8, Tab 6 (FIPPA disclosure), p. 7];
- g. Doc #8: Notes to former [job title redacted], Mar. 30, 2010;
[Ex. 6 (redacted), p. 66; also Ex. 8, Tab 6 (FIPPA disclosure), p. 9]
- h. Doc #11: Emails between Ms. Murphy and VIHA staff on a variety of issues, 2004-2010
[Ex. 6 (redacted), pp. 72-75; also Ex. 8, Tab 6 (FIPPA disclosure), pp. 28-31]; and
- i. Doc #12: Letter of complaint by patient’s daughter to VIHA’s PCQO (Patient Care Quality Office) dated Mar. 9, 2010
[Ex. 6 (redacted), p. 76; also Ex. 8, Tab 6 (FIPPA disclosure), p.

32] (collectively the “Documents at Issue”).

Order concerning confidentiality of patient information

20. To address the fact that the evidence before the Panel would include or address third party patient records, and the right of the public under College Bylaw 6.07(5) to request transcripts of the hearing, the Panel directed that any transcripts of copies of exhibits disclosed to the public first be redacted to protect third party privacy.

Evidence

21. The College tendered both witness and documentary evidence. The Panel notes that in receiving this evidence, the Panel is not bound by the rules of evidence that courts apply to their own proceedings: "...a tribunal is entitled to consider any evidence it deems relevant, accepting portions of some and rejecting others as it sees fit." *Hale v. B.C. (Superintendent of Motor Vehicles)*, 2004 BCSC 358 at para. 23.

(a) Witnesses

22. The College called the complainant, [name redacted] as a witness. [Redacted] confirmed the contents of an affidavit that he swore, and which the College had applied to tender in the place of his appearing to testify (marked as **Exhibit 6**).

23. The College also called Tansey Romanzin, the College's investigator. The College tendered a binder of documents (marked as **Exhibit 8**) and a timeline (marked as **Exhibit 9**).

24. The College also tendered an affidavit of [name redacted] sworn June 23, 2017.

(b) Exhibits

25. The Board marked the following documents as Exhibits:

- a. EXHIBIT 1: Citation and Affidavit of Service;
- b. EXHIBIT 2: Various pre-hearing communications;
- c. EXHIBIT 3: Letter of Ms. Whittow to Ms. Murphy dated June 20, 2017, with affidavit of service;
- d. EXHIBIT 4: Memorandum of Ms. Fong concerning a voicemail of Ms. Murphy received Friday, June 23, 2017 at 5:47 p.m.;
- e. EXHIBIT 5: Amended Citation;
- f. EXHIBIT 6: Affidavit of [redacted], with an affidavit body (pages 1-6) and exhibits A to J (pages 7-76);
- g. EXHIBIT 7: Ms. Murphy's Human Rights Tribunal Response to Application to Dismiss, with an affidavit body (pages 1-132), exhibits (pages 133-441) and an end-page (page 442);
- h. EXHIBIT 8: Book of Documents, with the following documents:
 - i. TAB 1: Letter from CRNBC to Ms. Murphy dated Sept. 6, 2013;
 - ii. TAB 2: Email from BCNU to CRNBC dated Nov. 20, 2013;

- iii. TAB 3: Letter from BCNU to CRNBC Inquiry Committee dated Feb. 18, 2014;
- iv. TAB 4: Fax from Ms. Murphy to CRNBC dated Feb. 2, 2015;
- v. TAB 5: Letter from VIHA [redacted] to CRNBC dated Apr. 16, 2015, with document attachments (all totalling 23 pages);
- vi. TAB 6: Letter from VIHA ISAP to CRNBC dated Aug. 26, 2015, attaching redlined but unredacted records provided to Ms. Murphy (in redacted form) on Sept. 4, 2013, and three letters sent by VIHA to Ms. Murphy dated Jan. 31, Feb. 26 and Aug. 20, 2013 (all totalling 39 pages);
- vii. TAB 7: Notes of telephone calls between CRNBC and Ms. Murphy with various dates;
- viii. TAB 8: Notes/transcripts of Tape-Recorded Fact-Finding Meetings dated Mar. and May 2010, and Nov. 2011;
- i. EXHIBIT 9: Document entitled, “Timeline of Events / File 2013-0568 / September 2013 to June 2016”; and
- j. EXHIBIT 10: Affidavit of [redacted] sworn June 23, 2017, with an affidavit body (page 1) and Exhibits A to C (pages 2-6).

Findings of fact

26. As submitted by the College, the burden of proof lies on the College, and the standard of proof is the civil standard of a balance of probabilities: *F.H. v. McDougall*, [2008] 3 S.C.R. 41.

27. Given that Ms. Murphy did not attend to testify or provide other evidence, the evidence provided by the College is uncontested. The Panel makes the following findings, and has endeavoured to provide references to the documents or statements supporting each finding.

(a) Ms. Murphy’s employment with VIHA

28. VIHA first employed Ms. Murphy in 2003. (Ex. 6, Affidavit of [redacted], para. 3) VIHA hired Ms. Murphy as an aboriginal liaison nurse at [facility name redacted] on June 1, 2007.(Ex. 6, Affidavit of [redacted], paras. 3 and 4)

29. VIHA has a number of policies which require VIHA employees to maintain confidentiality of VIHA records. (Ex. 6, Affidavit of [redacted], para. 6 and Ex. A, pages 7-23)

- a. Policy Number 1.5.1 of VIHA’s “General Administrative” policy, which according to its own terms applies to all VIHA employees (under section 3.0), states
 - i. in section 2.2 that, “Personal information obtained in the course of an agent’s affiliation with VIHA must be held in confidence. All reasonable measures must be taken to ensure that personal information is collected, used and disclosed only in circumstances necessary and authorized for client care, research, education, or as necessary in the conduct of the business of the organization”; (Ex. 6, Affidavit of [redacted], Ex. A, p. 8)

- ii. in section 2.2 that, “Client information in VIHA is collected and used for the provision of care or a healthcare related service. Disclosure of client information for other than that purpose, or as authorized by the appropriate legislative Act (e.g. FOIPPA), without informed client consent is a breach of client privacy and confidentiality”;
 - iii. in section 2.4 that, “Breaches of confidentiality include intentional and unauthorized access to, use and/or disclosure of, confidential information”; and
 - iv. in section 5.0 that the definition of “Personal and confidential information” includes personal information about an identifiable individual, including such information as a person’s name, address or telephone number, race, national or ethnic origin, age, sex, sexual orientation, marital status, family status, identifying numbers, blood type, information about the individual’s health care history, including a physical or mental disability.
- b. Policy Number 1.6.2.1, relating to information management and health records, and which according to its own terms applies to all VIHA employees and contractors (under section 3.0) states among other things
- i. in section 2.0.7 that, “VIHA employees and physicians who have been granted printing privileges may print *transitory* patient information from the electronic health record for the purposes of providing care to patients”;
 - ii. in section 2.0.9 that, “The integrity of the health record will be maintained by ensuring the security and protection of both the paper and electronic record”; and
 - iii. in section 2.0.10 that, “In addition to all terms related to electronic records, image produced (scanned) records will be treated as copies of originals....”
- c. Policy Number 1.6.4.2.2, relating to information management and security of health records, which according to its own terms applies to all VIHA employees and contractors (under section 3.0) states in section 2.0 that the “Health Record, regardless of the form it is created in (paper, hybrid or electronic) is a physical asset and as such, the property of the VIHA.”

30. In April 2012, on the basis that Ms. Murphy had to provide documents to the College, Ms. Murphy requested that VIHA provide her with various emails from her VIHA email account from Feb. 20 to 23, 2012, and a copy of the bed map outlining the nine patients she was caring for on Feb. 23, 2012. [Redacted] provided Ms. Murphy with a copy of the bedmap. [Redacted] advised her that she was not authorized to share that document with anyone other than the College (Ex. 6, Affidavit of [redacted], paras. 7 and 9, and pp. 24-29). [Redacted] later discovered that he should not have provided Ms. Murphy with the bedmap given the personal information within and requested that Ms. Murphy return it to him, which she refused to do.

31. On May 4, 2012, VIHA terminated Ms. Murphy’s employment for cause. VIHA instructed Ms. Murphy to contact [redacted] to return her nametag “and any other property of the [VIHA] that is within your possession.” (Ex. 6, Affidavit of [redacted], para. 11 and Ex. D, pp.

31) Ms. Murphy's union, BCNU, filed a grievance. As set out below, BCNU eventually withdrew the grievance.

(b) Transcripts and recordings of fact-finding meetings

32. In May 2012, [redacted] learned that in making complaints to the College, Ms. Murphy provided notes or transcriptions that she made of recordings of meetings she had with VIHA in March and June 2010.

33. On Jun. 5, 2012, VIHA made a request to Ms. Murphy's union that she return the notes/transcriptions of meetings, and recordings. VIHA advised that the notes or transcriptions included names of physicians and patient, patients' medical status, and names of family members.

34. On Oct. 11, 2012, during a Step 3 grievance meeting between VIHA and Ms. Murphy's union, BCNU, VIHA requested the documents and tapes, but Ms. Murphy advised that she was not prepared to hand over the tapes. (Ex. 6, Affidavit of [redacted], Ex. E, pp. 33-34) Ms. Murphy did not deny having documents and related recordings, and the Panel accepts that Ms. Murphy has possession of such documents.

35. On Jan. 31, 2013, VIHA sent a letter to Ms. Murphy demanding that she return documents containing the personal information of VIHA clients by Feb. 11, 2013, and more generally, "any documentation – including the tape and original transcript – in your possession that was created during, or as a result of, the meeting reference [sic] above that contains personally identifiable information about VIHA patients." (Ex. 6, Affidavit of [redacted], Ex. 6, 35)

36. On Feb. 26, 2013, VIHA sent another letter to Ms. Murphy demanding, pursuant to section 73.1(1) of the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165 ("FIPPA"), that she immediately return all copies of records within 20 calendar days. VIHA advised that, "The patient information in your possession legally belongs to the patient and the record itself is the legal property and under the control of VIHA." (Ex. 6, Affidavit of [redacted], Ex. H, pp. 36-37)

37. On Mar. 20, 2013, Ms. Murphy sent an email to VIHA's information office, ISAP. Ms. Murphy said, among other things, the following:

"... I have instructed [[redacted] of the BCNU] in regards to my position of not returning the documentation as it is needed as evidence to support my innocence and pending lawsuit, and he has failed his responsibility again.

"I have stated to [redacted] and [redacted] many times that I am not prepared to release any information until my current situation is resolved be it with a reinstatement of a position with VIHA or the pending Human Rights Tribunal case (#11014) with a possible trial date June/July 2013."

(Ex. 10, Ex. C, p. 6)

(c) Human rights proceedings

38. On Oct. 21, 2012, Ms. Murphy filed a complaint against VIHA and several VIHA employees with the Human Rights Tribunal (the "HRT"). (Ex. 6, Affidavit of [redacted], para. 20) She later added the BCNU as a respondent. (Ex. 6, Affidavit of [redacted], para. 20)

39. On Apr. 17, 2013, the VIHA respondents filed a response stating that Ms. Murphy's termination was solely due to "ongoing behavioural, performance and practice concerns". (Ex. 6, Affidavit of [redacted], para. 21)

40. On Jun. 20, 2013, the VIHA respondents filed an application to dismiss Ms. Murphy's HRT complaint. (Ex. 6, Affidavit of [redacted], para. 21)

41. On Aug. 2, 2013, Ms. Murphy filed a response to Ms. Murphy's application to dismiss (the "HRT Response"). Ms. Murphy included most of the Documents at Issue, namely Docs #3, 4, 5, 6, 7, 8, 11 and 12. (Ex. 6, Affidavit of [redacted], paras. 24-25).

42. Although Ms. Murphy redacted parts of the Documents at Issue that she filed with the HRT as part of her application, the College submits that those documents contained personal patient information, and that Ms. Murphy's redactions were partial and incomplete. The College invited a comparison between the documents that Ms. Murphy filed with the HRT, and those same documents redlined for privacy redactions pursuant to FIPPA (Ex. 8, Tab 6).

43. Our review of the Documents at Issue as disclosed by Ms. Murphy shows that some of them contain significant personal information. Additionally, one Aboriginal Liaison Referral Form (Doc #4) has the name of patient "K" scribbled out, but the form still includes identifying information, such as the name of patient "K"'s landlord and her roommates, her province of origin, and the telephone number of her sister. As a result, this information provides a means of identifying patient "K" whose medical information is included in Doc #4, Doc #5, Doc #6 and Doc #7.

(d) The complaint to the College

44. On Aug. 20, 2013, [redacted] filed a complaint with the College. (Ex. 6, paras. 24-25 and pp. 41-42 (letter) and 43-76 (extracts from Ms. Murphy's affidavit and exhibits filed with the Human Rights Tribunal on Aug. 2, 2013))

(e) Subsequent demands and FIPPA requests

45. On Aug. 20, 2013, VIHA sent a letter to Ms. Murphy demanding return of all VIHA documents in her possession:

"Further to our letter dated January 31, 2013 and our recent conversation we require that you provide the Vancouver Island Health Authority with any and all copies of documentation in your possession that contains personally identifiable information about VIHA patients."

VIHA provided a list of specific materials in her possession that she should return forthwith. The last item on that list was, "Any other applicable VIHA documentation and copies within your possession." VIHA also provided Ms. Murphy a letter by which she could request copies of documents "through the proper channels". (Ex. 8, Tab 6, pp. 36-37 (letter), 38 (draft request letter) and 39 (draft declaration by Ms. Murphy that she has surrendered all original and copies of documentation which are the property of VIHA))

46. On Aug. 23, 2013, Ms. Murphy used the draft request letter that VIHA provided on Aug. 20, 2013 to request copies of specific documents (the "2013 FIPPA request"). (Ex. 8, Tab 5, p. 7)

47. On Sept. 4, 2013, VIHA responded to the 2013 FIPPA request by providing records located in response to her request, with some information excepted from disclosure pursuant to section 22 of FIPPA. (Ex. 8, Tab 5, pp. 8-9; unredacted versions of the documents that VIHA sent to Ms. Murphy are at Ex. 8, Tab 6.)

48. Ms. Murphy did not return any documents to VIHA, including any notes or transcripts of recordings, or the recordings themselves, of VIHA meetings at which patient care was discussed. (Ex. 6, Affidavit of [redacted], para. 32)

(f) Termination of other proceedings

49. In Sept. 2013, BCNU notified VIHA that Ms. Murphy's grievances were withdrawn on a "without prejudice" basis. (Ex. 6, Affidavit of [redacted], para. 30)

50. On Jan. 20, 2014, the HRT dismissed Ms. Murphy's complaint. Ms. Murphy has applied for a judicial review of the HRT's decision but according to [redacted] the matter has not yet been heard by the court. (Ex. 6, Affidavit of [redacted], para. 30)

(g) The Documents at Issue

51. The College has advised that it is proceeding under the Amended Citation only in respect of the Documents at Issue.

52. Ms. Whittow submitted that while the College did not know how or when Ms. Murphy acquired possession of them, the Panel could find, on the balance of probabilities, that Ms. Murphy acquired them during the course of her employment with VIHA between 2003 and 2012. The evidence of [redacted] was that the Documents at Issue were all VIHA documents and could only have been obtained by Ms. Murphy through her employment. The Panel is satisfied that Ms. Murphy created (e.g., in the case of Doc #1, made recordings) or otherwise acquired the Documents at Issue during the course of her employment with VIHA.

53. Given and in addition to its findings above, the Panel is satisfied of the following.

- a. The Documents at Issue are VIHA records and VIHA property.
- b. The Documents at Issue contain personal and confidential information of VIHA clients.
- c. Ms. Murphy had possession of the Documents at Issue after VIHA terminated her employment, and continues to possess them, without any authorization by VIHA. No evidence shows that VIHA authorized Ms. Murphy to retain the Documents at Issue. VIHA's requests that Ms. Murphy to return VIHA records is evidence that VIHA did not authorize her to retain documents. The notes of the Step 3 grievance meeting on Oct. 11, 2012 show that Ms. Murphy was not willing to turn over any documents. Even if VIHA had authorized her at some point, which is not supported by the evidence, VIHA's various requests would have amounted to VIHA withdrawing its authorization.
- d. No evidence before the Panel shows that Ms. Murphy obtained any sort of consent from any specific VIHA clients, or their representatives, allowing her to retain, use or disclose documents with their personal information. Ms. Romanzin testified, in response to a question from the Panel, that she asked Ms. Murphy for particulars of the consent she said she obtained, but did not receive a response.

The College need not disprove consent as part of its case. The burden of establishing any affirmative defence of consent lies with Ms. Murphy.

- e. Ms. Murphy disclosed a number of the Documents at Issue in the HRT matter. Although Exhibit 7 does not include any filing stamp indicating it was filed with the HRT, the evidence of [redacted] is that Ms. Murphy filed her response. (Ex. 6, Affidavit of [redacted], para. 23)
- f. Ms. Murphy did not fully redact all personal information from the Documents at Issue that she disclosed in the HRT matter. The Panel did not have evidence before it as to when documents filed with the HRT are or might be further available to the general public. The fact remains, however, that Ms. Murphy disclosed personal information from the Documents at Issue to the HRT itself, for her own purposes.
- g. Ms. Murphy refused to return the Documents at Issue, despite demands by VIHA that she return them.

54. Although Ms. Murphy obtained redacted versions of documents as a result of her FIPPA request of Aug. 23, 2013 – namely Docs #4, 5, 6, 7, 9, 11 and 12 – this does not alter her having, used them before the HRT, and refusing to return, other versions of those VIHA records after the end of her employment on May 4, 2012.

55. The Panel finds, that Ms. Murphy used and disclosed Documents at Issue for her own purposes in the HRT matter. Ms. Murphy asserted that the Documents at Issue were in fact the documents she obtained through her FIPPA request and therefore were properly redacted. However, on examination of the Documents at Issue and the documents produced pursuant to the FIPPA request, it was clear that the former included redactions which were not made in the Documents at Issue. No evidence shows that Ms. Murphy obtained any of the Documents at Issue through the HRT's processes, or otherwise pursuant to law including her FIPPA request.

56. For clarity, the Panel is satisfied that the College has made out all of the material facts set out in the Amended Citation.

57. Finally, while the College did not include the Feb. 23, 2012 bedmap as one of the Documents at Issue in this hearing and therefore no conclusion on conduct will be drawn by the Panel, the Panel does find that Ms. Murphy refused to return this document and that she used it for her own purposes.

Conduct subject to action

58. Under section 39(1) of the Act, the Discipline Committee may determine that Ms. Murphy

- a. “has not complied with this Act, a regulation or a bylaw,”
- b. “has not complied with a standard, limit or condition imposed under this Act,” or
- c. “has committed professional misconduct or unprofessional conduct....”

59. The Amended Citation alleges that Ms. Murphy

- a. did not comply with “the Act”;

- b. failed to comply with Standards 1 and/or 4 of the College’s Professional Standards, and/or the “Privacy and Confidentiality” Practice Standard; or
- c. committed professional misconduct or unprofessional conduct.

60. **The College’s Bylaws:** The College referred to College Bylaws 7.08 and 7.09:

- a. Bylaw 7.08 specifies when a registrant may use personal information about a patient:

Use of personal information by a registrant

7.08 A registrant may use personal information about a patient **only**

- (a) for the purpose of providing health care services to, or performing health care services for, the patient, or for a related administrative purpose,
 - (b) for a use or disclosure consistent with a purpose specified in paragraph (a),
 - (c) if the patient has consented to the use,
 - (d) for a purpose for which that information may be disclosed by the registrant under section 7.09 or 7.11, or otherwise under the Act, or
 - (e) for a use that is authorized under section 14 or 15 of the *Personal Information Protection Act* or section 32 of the *Freedom of Information and Protection of Privacy Act*, as the case may be, or otherwise by law. (emphasis added)
- b. Bylaw 7.09 specifies that a registrant may disclose personal information about a patient only in specific circumstances. The Bylaw is lengthy – it refers to circumstances in subsections (a) through (o) – but includes situations such as where “the patient concerned as consented to the disclosure” (subsection (a)), and also “if the disclosure is authorized under sections 17 to 22 of the *Personal Information Protection Act* or sections 33 to 36 of the *Freedom of Information and Protection of Privacy Act*, as the case may be, or is otherwise required or authorized by law.”

61. The College did not focus on Bylaws 7.08 and 7.09, and given the Panel’s other findings. Ms. Murphy did not, however, obtain the versions of VIHA records that she used in the HRT matter through a FIPPA request, or pursuant to law through the HRT’s processes. As a result, none of the provisions of Bylaw 7.08 or 7.09 appear to cover Ms. Murphy’s use and disclosure of any of the Documents at Issue in the HRT matter.

62. **Professional and practice standards:** The College referred the Panel to Standards 1 and/or 4 of the College’s Professional Standards. The Panel notes that Standard 4 includes Clinical Practice Principle 5:

STANDARD 4: Ethical Practice

CLINICAL PRACTICE

...

5. Protects client privacy and confidentiality.

63. The College also referred the Panel to the College's Practice Standards, and specifically, the Practice Standard on Privacy and Confidentiality:

a. The version in effect from November 2011 onward:

- i. This version states that, "Nurses have an ethical responsibility to 'recognize the importance of privacy and confidentiality and safeguard personal, family and community information obtained in the context of a professional relationship'.
- ii. Principle 1 states that, "Nurses know what specific legislation applies to their practice and follow legislated requirements."
- iii. Principle 10 states that, "Nurses access personal and health information only for purposes that are consistent with their professional responsibilities."

Practice Standard, *Privacy and Confidentiality* (College Book of Authorities, Tab 9)

b. The version in effect from July 2012 onward:

- i. This version states that, "Nurses have an ethical responsibility to safeguard information obtained in the context of the nurse-client relationship. When clients entrust their health care and health information to a nurse, they expect and rely on it being kept confidential."
- ii. This version also contains Principles 1 and 10 as set out in the previous version.

Practice Standard, *Privacy and Confidentiality* (College Book of Authorities, Tab 10)

c. The most recent version in effect from April 2017:

- i. This version contains the same opening statement as the July 2012 version.
- ii. Principle 1 states that, "Nurses know what specific legislation applies to their practice and follow legislated requirements".
- iii. Principle 6 states that, "Nurses safeguard personal and health information learned in the context of the nurse-client relationship and disclose this information (outside of the health care team) only with client consent or when there is a specific ethical or legal obligation to do so".
- iv. Principle 10 states that, "Nurses access personal and health information only for purposes that are consistent with their professional responsibilities".

All versions of the Practice Standard applied at various times between Ms. Murphy's end of employment in May 2012 and the commencement of this hearing.

64. The Panel is satisfied that by disclosing Documents at Issue containing personal patient information to the HRT as part of her advancing a personal complaint, without patient consent and without such disclosure being authorized by law, Ms. Murphy contravened Professional Standard 4, Clinical Practice Principle 5, and also contravened Principles 1, 6 and 10 of the Privacy and Confidentiality Practice Standard, as well as earlier iterations of the Practice Standard that reflect these principles.

65. **Professional misconduct and unprofessional misconduct:** The College submitted that Ms. Murphy engaged in professional misconduct, or alternatively, unprofessional conduct.

- a. Section 26 of the Act defines “professional misconduct” as including “unethical conduct, infamous conduct and conduct unbecoming a member of the health profession”. Professional misconduct has been described by a court as “conduct which would be reasonably regarded as disgraceful, dishonourable, or unbecoming a member of the profession by his well-respected brethren in the group – persons of integrity and good reputation amongst the membership”: *Pearlman v. Manitoba Law Society Judicial Committee*, [1991] 2 S.C.R. 869, 1991 CanLII 26 (S.C.C.).
- b. Section 26 also defines “unprofessional conduct” as a wider term that “includes professional misconduct”. Unprofessional conduct has been described by a court as conduct “which violates the ethical code or rules of a profession or such conduct which is unbecoming a member of the profession in good standing”: *Millar v. College of Physicians and Surgeons of British Columbia*, 1994 CanLII 1010 (B.C.S.C.).

66. The College also referred the Panel to a number of cases which demonstrate that access to, and disclosure of, personal patient information may constitute professional misconduct or unprofessional conduct:

- a. *College of Nurses of Ontario v. Calvano*, 2015 CanLII 89633, where a nurse was held to have committed professional misconduct by her accessing personal health information of 338 clients over a two-year period, which demonstrated “a serious and persistent disregard for her professional obligations”;
- b. *College of Nurses of Ontario v. Kaufman*, 2012 CanLII 99767, where a nurse was held to have committed professional misconduct for allowing her husband to access client charts to prepare her pay records, and also posted information about a client on the Internet along with her opinions about that client;
- c. *Heaslip v. Saskatchewan Registered Nurses Association*, 2006 SKQB 406, where a nurse was held to have committed professional misconduct for providing a non-nurse with a list of the names and addresses of the patients of a physician, Dr. Huerto, to solicit support for a doctor’s “defence fund”;
- d. *College of Physicians and Surgeons of Alberta v. Watrich* (Feb. 12, 2013, AB CPSDC, also summarized at 2013 CanLII 14735), where a physician was held to have engaged in unprofessional conduct due to her inappropriately accessing the electronic health records of three people, including people connected to her former spouse; and

- e. *College of Physicians and Surgeons of Alberta v. Paola*, 2016 ONCPSD 48 (CanLII), where a physician was held to have committed professional misconduct due to her improperly accessing the health records of two persons, each on multiple occasions.

67. The Panel took special note of the *Heaslip* case, where a nurse, among other things, identified the names and addresses of people who had signed a petition as being patients of Dr. Huerto, and allowed the patient list to be disclosed to others, so that the patients could be invited to write to the President of the College of Physicians and Surgeons in support of Dr. Heurto, and to help with his legal expenses. She was held to have violated applicable ethical standards, including standards that nurses observe practices that protect the confidentiality of each client's health and health care information, and that nurses disclose confidential information only as authorized by the client. Although she "chose to disclose the patient names as being necessary for the greater good," the Committee rejected the submission that the ends sought to be achieved justified the disclosure of patient names.

68. The Panel is satisfied that Ms. Murphy engaged in professional misconduct by disclosing Documents at Issue, including personal information of VIHA clients, to the HRT without client consent and to advance her own complaint against VIHA and others. The Panel is satisfied that Ms. Murphy engaged in professional misconduct by refusing to return her unredacted versions of the Documents at Issue to VIHA. Her continuing possession of unredacted versions of the Documents at Issue after the end of her employment is equivalent to Ms. Murphy continuing to access personal information of VIHA clients.

69. The Panel is aware of Ms. Murphy's likely position that she retained the unredacted versions of the Documents at Issue to support the BCNU's grievance, and to advance her complaint to the HRT. Such personal purposes are not, however, grounds for her to retain and use property of VIHA that she acquired in the ordinary course of her employment. Ms. Murphy would have been entitled to use any versions of the Documents at Issue that she is authorized by law to acquire from VIHA. No evidence shows, however, that Ms. Murphy was authorized by law, or by VIHA or by VIHA clients, to retain any of the Documents at Issue, or to disclose the personal information on them.

Penalty, publication and costs

70. Given this Panel's decision on verdict, a hearing will be scheduled to address, penalty, publication, and costs.

71. Issuing a penalty is a serious matter for a professional and so, to encourage Ms. Murphy to attend this upcoming hearing, the Panel directs the College to provide to her a copy of its submissions, authorities, and any evidence it intends to rely upon at least ten (10) calendar days before the scheduled hearing.

Notice

72. The Respondent is advised that under section 40(1) of the Act, a respondent aggrieved or adversely affected by an order of the Discipline Committee under section 39 of the Act may appeal the decision to the Supreme Court. Under section 40(2), an appeal must be commenced within 30 days after the date on which this order is delivered.

These are the Panel's Reasons for Decision and Order.

Catherine Hill Prince George, BC September 27/17

Name	Place	Date
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Name	Place	Date
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Name	Place	Date
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Notice

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These are the Panel's Reasons for Decision and Order.

Marilyn Mauritz		September 29, 2017
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Name	Place	Date
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Name	Place	Date
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Notice

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These are the Panel's Reasons for Decision and Order.

Brenda J Downey

<i>B.J. Downey</i>	<i>Terniè BC</i>	<i>02 Oct. 2017</i>
Name	Place	Date

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