

**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: December 20, 2017

Place: 2855 Arbutus Street, Vancouver, BC,

Members of the Hearing Panel of the Discipline Committee (the “Panel”):

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
ON PENALTY, COSTS AND PUBLIC NOTICE**

1. The Panel reconvened on December 20, 2017, to continue its hearing so that it could hear evidence and submissions on penalty, costs, and public notice. This hearing follows an earlier finding by the Panel that the Respondent, after working for Vancouver Island Health Authority (“VIHA”), retained VIHA documents which included personal information of VIHA clients. By using the documents before the Human Rights Tribunal, without patient consent, and by refusing

to return the documents to VIHA, the Respondent contravened professional standards and committed professional misconduct.

Proceeding without the Respondent

2. The hearing came to order at 10:00 a.m. As in the case of the verdict hearing, the Respondent did not attend. The Panel asked that College counsel, Ms. Jean Whittow, Q.C., advise of any information she had about notice to the Respondent for this portion of the hearing on penalty, costs and public notice. Ms. Whittow tendered a number of affidavits, which the Panel accepted:

- a. an affidavit of Clifford Betz, a process server, sworn October 19, 2017 (Betz #1), marked as **Exhibit 11**;
- b. an affidavit of Gillian Morgan, Ms. Whittow's legal assistant, sworn December 18, 2017 (Morgan #1), marked as **Exhibit 12**;
- c. an affidavit of Tammy Arnold, a process server, sworn on December 13, 2017 (Arnold #1), marked as **Exhibit 13**; and
- d. an affidavit of Natasha Dookie, sworn on December 4, 2017 (Dookie #1), marked as **Exhibit 14**.

3. **Delivery of the verdict decision:** On October 13, 2017, Ms. Whittow had Mr. Betz personally serve the Respondent with a letter from Ms. Whittow to the Respondent, dated October 13, 2017, enclosing the verdict decision of the Panel (Betz #1, paras. 2 and 3, and Ex. A).

4. **Delivery of notice of the hearing on penalty:** On October 19, 2017, Ms. Whittow sent a letter to the Respondent (the "Oct. 19 Letter") by XPresspost (Morgan #1 at para. 2 and Ex. A). Canada Post confirmed delivery of the Oct. 19 Letter on October 23, 2017 (Morgan #1 at para. 3 and Ex. B). Ms. Whittow told the Respondent a "penalty hearing" would occur on December 20, 2017, at 10:00 a.m., that she could attend, and that she could elect to have legal counsel represent her. Ms. Whittow also told the Respondent that she would deliver submissions and any evidence the College intends to rely upon at least ten (10) calendar days before the hearing.

5. **Delivery of documents:** In its verdict decision, to encourage the Respondent to appear, the Panel had directed that the College give to the Respondent a copy of its submissions, authorities, and any evidence it intended to rely upon at least ten (10) calendar days before the scheduled hearing. As detailed below, the College tried to deliver these materials to the Respondent. The effective delivery of these materials was not, however, a statutory prerequisite to the Panel continuing its hearing. As set out in the verdict decision, the Panel started the hearing without the Respondent, based on the Respondent having received the citation, and the Discipline Committee being able to take any action under the Act without further notice to her, under section 38(5)(b) of the Act.

6. On December 4, 2017, Ms. Whittow sent a letter with enclosures to the Respondent (the "Dec. 4 Letter"), for delivery via personal service (Morgan #1 at para. 3 and Ex. C). The enclosures included the College's submissions on penalty, authorities, and copies of Betz #1 and Dookie #1. Ms. Whittow also sent a copy of the Dec. 4 Letter to the Respondent, under cover of a second letter also dated December 4, 2017, by regular mail (Morgan #1 at para. 4 and Ex. C).

7. A process server, Tammy Arnold, attempted to serve the Dec. 4 Letter on the Respondent, at her residence, on several occasions between December 6 and December 11, 2017 (Arnold #1).

On several occasions, a blue car was in the driveway (Arnold #1 at paras. 4 and 5). On one occasion, Ms. Arnold heard someone on the other side of the door, and the outside light turned on then off (Arnold #1 at para. 3). Ms. Arnold said she left her contact information at her residence but the Respondent has not contacted her; Ms. Arnold opined that “Sandra Murphy is evading service of the documents” (Arnold #1 at para. 8).

8. Ms. Whittow told the Panel that the Respondent has not contacted her or the College about attending the hearing to address penalty, costs, or public notice. Ms. Whittow told the Panel she most recently checked her voicemail immediately before the hearing.

9. Given the circumstances, the Panel decided to continue the hearing to address penalty, costs, and public notice, under HPA section 38(5).

Proceedings to date

10. On June 26 and 27, 2017, the Panel examined the Respondent’s conduct relating to her using and retaining specific documents (the “Documents at Issue”), which for ease of reference were as follows:

- a. Doc #1: Transcriptions of tape-recordings of “fact-finding meetings” between Ms. Murphy and VIHA, March and June 2010
[Ex. 7 pp. 163-198 and 278-306; Ex. 8, Tab 8; also, referenced at Ex. 6 (Knipe), para 13];
- b. Doc #3: 9 bedmaps, for weeks between March 22, 2010 and June 17, 2010
[Ex. 6 (Knipe), p. 49-57; Ex. 8 Tab 6, pp. 13-21];
- c. Doc #4: Aboriginal Liaison Referral Forms (circa 2009) (with patient information)
[Ex. 6 (Knipe), pp. 58-60 (re: patient K) and 62-63; also Ex. 8, Tab 6 (FIPPA disclosure), pp. 3-5 and 22-33];
- d. Doc #5: Patient evaluation and progress notes, September 18, 2007
[Ex. 6 (Knipe), p. 61 (re: patient K); also Ex. 8, Tab 6 (FIPPA disclosure), p. 8];
- e. Doc #6: Physician orders, September 15, 2007
[Ex. 6 (Knipe), p. 64 (re: patient K); also Ex. 8, Tab 6 (FIPPA disclosure), p. 6];
- f. Doc #7: History of Case, September 16, 2009
[Ex. 6 (Knipe), p. 65 (re: patient K); also Ex. 8, Tab 6 (FIPPA disclosure), p. 7];
- g. Doc #8: Notes to former CRH Site Director, March 30, 2010
[Ex. 6 (Knipe), 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 (Knipe), 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 Patient Care Quality Office dated March 9, 2010

[Ex. 6 (Knipe), p. 76; also Ex. 8, Tab 6 (FIPPA disclosure), p. 32].

11. The Documents at Issue did not include a bedmap of patients the Respondent cared for on Feb. 23, 2012, which Mr. Knipe had provided to the Respondent by electronic mail in April 2012 (the "February Bedmap").

12. As set out in its verdict decision, the Panel decided that the Respondent had engaged in professional misconduct

- a. by disclosing the Documents at Issue to the Human Rights Tribunal without client consent and to advance her own complaints against VIHA and others, and
- b. by refusing to return unredacted versions of the Documents at Issue to VIHA.

Statutory powers of the Discipline Committee

A. Disciplinary measures

13. If the Discipline Committee makes an adverse determination under HPA s. 39(1)(a) to (e), it may order one or more disciplinary measures under HPA section 39(2):

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).

14. If the Discipline Committee suspends or cancels the Respondent's registration, it may also make orders under HPA section 39(8):

39 (8) If the registration of the respondent is suspended or cancelled under subsection (2), the discipline committee may

- (a) impose conditions on the lifting of the suspension or the eligibility to apply for reinstatement of registration
- (b) direct that the lifting of the suspension or the eligibility to apply for reinstatement of registration will occur on
 - (i) a date specified in the order, or

(ii) the date the discipline committee or the board determines that the respondent has complied with the conditions imposed under paragraph (a), and

(c) impose conditions on the respondent's practice of the designated health profession that apply after the lifting of the suspension or the reinstatement of registration.

B. Costs

15. If the Discipline Committee acts under HPA section 39(2), it may award costs against the Respondent under HPA section 39(5) and (7):

(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.

C. Directing public notice

16. If the Discipline Committee acts under any of several HPA provisions, including HPA sections 39(2), (5) or (8), it *must* direct the registrar to notify the public of specific information, unless it must withhold information to protect a complainant or another person, under HPA section 39.3(2) and (3).

Additional evidence

17. The College tendered Dookie #1 for evidence of, among other things,
- a. the Respondent's registration history with the College (Dookie #1 para. 3); and
 - b. expenses relating to the investigation and the hearing (Dookie #1 paras. 5-9), including legal fees (\$58,280) legal counsel disbursements (\$7,087.78), court reporter fees and taxes (\$866.25) and witness travel and accommodation costs (\$246.80).

Submissions of the College

A. Overview

18. As set out in more detail below, the College provided the Panel with a summary of the legal framework for penalties, including examples of penalties in other nursing cases involving breaches of privacy, and suggested various sanctions, including a four-month suspension; that the suspension continue until the Respondent deliver all VIHA records with patient information, and an affidavit confirming that she has not retained the records; costs; and public notice.

19. For reasons set out below the Panel has decided, after hearing from Ms. Whittow about the College's rationale for the sanctions and allowing her to address the Panel's concerns, to depart somewhat from these proposals.

B. Purposes underlying sanctions

20. The College provided the Panel with an extract from James T. Casey's text on professional regulation, *The Regulation of the Professions in Canada*, (Carswell: 2001) ("Casey"), respecting the purposes of sanctions:

- a. **the paramount purpose** served by the imposition of sanctions in discipline proceedings **is protection of the public** against unprofessional conduct;
- b. factors to take into account in determining how the public might best be protected include **specific deterrence** of the regulated professional from engaging in further acts of unprofessional conduct, and **deterrence of other members** of the profession who might consider committing similar conduct; and
- c. disciplinary sanctions **communicate to the profession and to the public the standards** expected of members of the profession **and the consequences** of the failure to adhere to those standards, **thereby promoting public confidence** in the profession. (emphasis added)

Casey, Chapter 14, p. 14-6 to 7

21. **Factors that the Panel may consider:** The College identified factors that the Panel could consider respecting penalty, as possible mitigating or aggravating factors:

- 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. its impact upon the victims;
- 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.

Casey, Chapter 14, p. 14-6 to 9; 14-14.1

22. The College also referred to *Law Society of BC v. Dent*, 2016 LSBC 05 ("Dent"), where a hearing panel suggested a consolidated list of various factors:

Nature, gravity and consequences of conduct

[20] This would cover the nature of the professional misconduct. Was it severe? Here are some of the aspects of severity: For how long and how many times did the misconduct occur? How did the conduct affect the victim? Did the lawyer obtain any financial gain from the misconduct? What were the consequences for the lawyer? Were there civil or criminal proceedings resulting from the conduct?

Character and professional conduct record of the respondent

[21] What is the age and experience of the respondent? What is the reputation of the respondent in the community in general and among his fellow lawyers? What is contained in the professional conduct record?

Acknowledgement of the misconduct and remedial action

[22] Does the respondent admit his or her misconduct? What steps, if any, has the respondent taken to prevent a reoccurrence? Did the respondent take any remedial action to correct the specific misconduct? Generally, can the respondent be rehabilitated? Are there other mitigating circumstances, such as mental health or addiction, and are they being dealt with by the respondent?

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

[23] Is there sufficient specific or general deterrent value in the proposed disciplinary action? Generally, will the public have confidence that the proposed disciplinary action is sufficient to maintain the integrity of the legal profession? Specifically, will the public have confidence in the proposed disciplinary action compared to similar cases?

23. The College further referred to a previous decision of the Discipline Committee, *Re: Jean Marlyn Cunningham, June 22, 2017 Penalty Decision ("CRNBC v. Cunningham")*, where the panel referred to the above authorities and reasoned as follows:

[19] ... the Panel may decide on an appropriate measure under HPA s. 39(2) with a view to a number of objectives, including the following:

1. the need for specific deterrence of the Respondent;
2. general deterrence of other registrants who might otherwise offend;
3. educating registrants and the public about professional standards; and
4. promoting public confidence in the profession and its ability to self-regulate.

[20] Ultimately, a penalty must fall within a range of appropriate penalties, having regard to the circumstances of the misconduct and the evidence in mitigation.

24. When organized in terms of the consolidated factors in *Dent*, the College's submissions may be summarized as follows:

- a. Respecting the nature, gravity and consequences of conduct, the Respondent's actions were deliberate, for a personal benefit, and occurred over a prolonged

period. She did not return the records despite repeated requests. She disregarded lawful avenues available to her to pursue the records.

- b. Respecting the Respondent's experience, she had been a registrant with the CRNBC since 1984 and has disciplinary record. However, the Respondent also had enough experience to know that her conduct fell below the standards of professional conduct.
- c. Respecting the Respondent's acknowledgement of her misconduct and remedial action, the Respondent has not recognized her misconduct, or shown insight into her behaviour. Her explanation to the College that she had the consent of VIHA and the patients to obtain and retain the Documents at Issue had no evidentiary foundation. The Respondent's claim that she had received the documents through legal means was, in fact, directly contradicted by the evidence presented to the Panel. Her continuing conduct turned misconduct that she could have easily abated into a more serious and unabated breach.
- d. A penalty must encourage the Respondent to address her continuing breaches; reduce the risk that the Respondent would repeat her misconduct; provide general deterrence to protect patient privacy; and maintain public confidence in the College's ability to effectively govern the profession.

25. **Authorities:** The College referred to the Panel to several cases, including cases before the Panel for purposes of verdict:

- a. In *College of Nurses of Ontario v. Kaufman*, 2012 CanLII 99767 (ON CNO) [*Kaufman*], a nurse committed professional misconduct by allowing her husband to access personal health information about clients to prepare pay records, without their consent, and posted personal health information and negative personal opinions about a client on a publicly-accessible Internet page. Sanctions involved a reprimand; a three-month suspension; limits and conditions requiring that she attend personal education sessions and review specific material; and an order that she must inform employers of the decision for 12 months after the suspension.
- b. In *CNO v. Calvano*, 2015 CanLII 89633 (ON CNO) [*Calvano*], a nurse committed professional misconduct by intentionally accessing medical records of 338 patients without their consent. She did not however disclose that information to others, and she admitted to the allegations. Sanctions involved a reprimand; a three-month suspension; conditions requiring that she review specific educational materials and meet with a nursing expert for two sessions to discuss specific issues; and conditions requiring that she notify her employers of the decision for 18 months.
- c. In *Heaslip v. Council of Saskatchewan Registered Nurses Association*, 2006 SKQB 406 ("Heaslip"), a nurse committed professional misconduct by disclosing patient information without their consent, so that they could be asked to contribute to a legal defence fund for a physician. The sanction was a two-month suspension.
- d. In *College of Physicians and Surgeons of Alberta v. Deanne Watrich*, 2013 CanLII 14735 (AB CPSDC) ("Watrich"), a physician committed professional misconduct by using ER computers to access records of three people with whom she had no patient-physician relationship. She did not however disclose or make use of the accessed

information. She cooperated fully with investigation and apologized for her conduct to those affected. Sanctions involved a 60-day suspension (with 30 days held in abeyance, conditional on good behaviour), and a condition that she complete a specific ethics course.

- e. In *College of Physicians and Surgeons of Alberta v. Di Paola*, 2016 ONCPSD 48 (“Di Paola”), a physician committed professional misconduct by accessing the information of two patients, intentionally and without their consent, on 19 occasions. The physician admitted professional misconduct. Sanctions involved a reprimand, a three-month suspension, a condition requiring that he take an individualized medical ethics course.

26. Additionally, the College referred to the following cases involving breaches of privacy:

- a. In *CNO v. Hooker*, 2006 CanLII 81736 (ON CNO) (“Hooker”), a nurse committed professional misconduct by accessing the records of two physician who were also patients, and after being suspended by the hospital for four shifts, she later accessed further records of many (19) patients in relation to whom she had no responsibilities. She agreed about the facts and about a proposed penalty. Sanctions involved a reprimand, a 30-day suspension, and a condition that she meet with a nursing expert and review material.
- b. In *CNO v. Oliveira*, 2015 CanLII 100721 (ON CNO) (“Olivier”), a nurse committed professional misconduct by accessing information of about 1,300 clients without consent or authorization. She agreed about the facts and admitted to professional misconduct. Sanctions included a reprimand, a five-month suspension, a condition that she meet with a nursing expert and review educational material, and a condition that she notify employers of the decision for 18 months.
- c. In *CNO v. McLellan*, 2016 CanLII 102076 (ON CNO) (“McLellan”), a nurse committed professional misconduct by accessing the information of about 5,800 patients without consent or authorization. She did not however disclose information to others. She also admitted the allegations. Sanctions included a reprimand, a four-month suspension, conditions that she meet with a nursing expert and review educational material, and a condition that she notify employers of the decision for 18 months.
- d. In *Ontario (College of Physicians and Surgeons of Ontario) v. Brooks*, 2016 ONCPSD 29 (“Brooks”), a physician committed professional misconduct by repeatedly accessing the records of two patients whom he knew personally. He admitted to the facts and to professional misconduct, and he apologized to those involved. Sanctions involved a reprimand, a five-month suspension, and conditions requiring that he take an educational course.

27. The College also referred the Panel to cases involving a “continuing breach,” and a failure to cooperate with a regulatory body:

- a. In *CRNBC v. Cunningham*, June 22, 2017 Penalty Decision, a nurse engaged in unprofessional conduct by not responding to communications from the Inquiry Committee. The nurse did not display any hindsight into their behavior, and no

evidence provided of mitigating factors. Sanctions involved a suspension *until the later of* three months, or her providing a substantive written response to the Registrar concerning a complaint.

- b. In *College of Dental Surgeons of BC v. Kaburda*, 2015 CanLII 60483 (BC CDS) (“*Kaburda*”), a dentist failed to produce records for a patient’s later dentists, and also failed to cooperate with a college during the investigation. He had a history of not following orders in other forums. He did not attend the penalty hearing. Sanctions involved a reprimand, \$10,000 fine, and a suspension *until the later of* six months, and his producing a complete copy of the complainant’s records to the College.
- c. In *Law Society of Upper Canada v. David Gicza*, 2005 ONLSHP 28 (“*Gicza*”), a lawyer committed professional misconduct by failing to fully serve and report to many clients, and apart from a voicemail, his failing to respond to communications from the Law Society. Sanctions included a suspension *until the later of* three-months and his both responding in writing to his clients and paying costs, and his entering a program of practice review within six months of his returning to practice.
- d. In *Law Society of Upper Canada v. Desjardins*, 2016 ONLSTH 197, a lawyer’s license was (administratively) suspended for his not filing a required form. He then committed professional misconduct by his failing to fully respond to the Law Society, and by his not following a Small Claims Court order for payment. He had a prior disciplinary record for not cooperating with another Law Society investigation. His financial difficulties were, however, a mitigating circumstance. Sanctions included a reprimand, a suspension *until the later of* one-month, his allowing the Law Society to confirm that his trust account was closed, and his confirming that the Small Claims Court order has been satisfied.

28. **Proposed measures:** The College proposed the following measures:

- a. The Respondent’s registration be suspended for 4 months, under s. 39(2)(c) of the HPA;
- b. The suspension continues thereafter, unless and until
 - i. The Respondent delivers to VIHA all copies of the Documents at Issue, as defined in the Decision, and all records obtained by the Respondent from VIHA that contain patient information,
 - ii. The Respondent delivers to VIHA an affidavit confirming that she has delivered the VIHA Records to VIHA and does not retain or have access to a copy of any of the VIHA Records (the “Affidavit”),
 - iii. The Respondent delivers a copy of the Affidavit to the CRNBC Registrar, and
 - iv. This Panel, or the CRNBC Registrar, as a delegate of this Panel, is satisfied that the Respondent has delivered all copies of the VIHA Records to VIHA and does not retain copies or access to a copy of any of the VIHA Records;

- c. The Respondent pay costs of \$34,251.14 by September 1, 2018, under HPA s. 39(5); and
- d. The Respondent publish public notice of the disposition, under HPA s. 39.3.

Submissions of the Respondent

29. The Respondent did not attend the penalty hearing, did not provide any mitigating evidence, and did not provide any submissions concerning penalty.

Reasons for Decision

30. The Panel accepts that it may decide on measures under HPA s. 39(2) with a view to several objectives, which include

1. specific deterrence of the Respondent;
2. general deterrence of other registrants who might otherwise offend;
3. educating registrants and the public about professional standards; and
4. promoting public confidence in the profession and its ability to self-regulate.

31. A penalty must fall within a reasonable range of penalties, having regard to the circumstances of the misconduct, and evidence of mitigating and aggravating factors. The Panel is also aware of the general principle that the Panel should endeavour to order measures that are similar to the sanctions ordered by tribunals for similar misconduct in similar circumstances.

32. The Panel has decided, however, that this case involves factors that distinguish this case from the authorities presented by the College and call for a suspension-period longer than four months.

33. First, while the Respondent has been practicing for 32 years and has had no complaints against her, she has more than enough experience as a nurse to know that her conduct would infringe the privacy of patients and contravene professional standards. She knowingly violated patient confidentiality, kept VIHA documents, and used them for personal purposes. The Respondent was not forthright in explaining how she came into possession of the VIHA documents, wrongfully claiming that she had received them through legal means. Despite repeated requests from VIHA, she has stubbornly refused to return the unredacted documents to VIHA. Unlike many other cases involving breaches of privacy where registrants or members have acknowledged their wrongs, such as *Di Paola*, *Hooker*, *Oliveira*, *McLellan*, and *Brooks*, the Respondent has not acknowledged her misconduct or shown any insight into her behaviour. These aggravating factors warrant the Panel ordering a lengthier suspension to achieve the goal of specific deterrence.

34. The Panel orders a six-month suspension of the Respondent's registration. The suspension shall start on the fifth calendar day after the earlier date of the Respondent receiving the Panel's order by personal service, her receiving the order upon delivery via registered mail, and her deemed receipt of the order after the College has sent the Panel's order by registered mail, under HPA s. 54(1).

35. One month of the suspension-period may, however, be "suspended" – resulting in a total five-month suspension of registration – if, within 30 calendar days of the date on which the College delivers the Panel's order to the Respondent, the Respondent delivers all of the Documents at Issue to VIHA, and further delivers an affidavit to both VIHA and to the Registrar

of the College, confirming that she has not retained within her possession or control any electronic or physical copy of any of the Documents at Issue, except for any copies that she lawfully obtained from VIHA under the *Freedom of Information and Protection of Privacy Act* (the “Return Conditions”). For clarity, the condition that the Respondent return documents to VIHA applies only to the Documents at Issue, which are the documents that the College proved had been kept and used by the Respondent.

36. Second, despite the fixed minimum-period of suspension, the suspension shall not lift until such time the Respondent meets the Return Conditions. For clarity, the Respondent will remain suspended until she returns the Documents at Issue to VIHA and confirms, in the manner noted previously as required, that she has not kept any unlawful copies.

37. Third, to ensure that the Respondent gains insight into her actions and despite the fixed minimum-period of suspension, the suspension shall not lift until such time as the Registrar is satisfied that the Respondent has met the following conditions, which shall be at her own expense:

- a. the Respondent successfully completes the online course, “Righting A Wrong: Ethics & Professionalism in Nursing” developed by the National Council of State Boards of Nursing, and provides a certificate of completion to the Registrar;
- b. the Respondent completes the College’s online learning module, “Privacy & Confidentiality,” prints the completed workbook, and submits the workbook to the Registrar;
- c. the Respondent completes the College’s online learning module, “Jurisprudence,” prints the completed workbook, and submits the workbook to the Registrar; and
- d. after completing the above-noted three courses, the Respondent attends 3-5 meetings with a practice consultant satisfactory to the Registrar, with the precise number of meetings and their duration to be at the practice consultant’s discretion, to learn to apply what she has learned in various scenarios, and afterwards the Respondent provides a note to the Registrar from the practice consultant confirming attendance, as proof of her having attended these meetings.

38. Fourth, many cases illustrate disciplinary tribunals ordering a reprimand, in conjunction with a suspension, where a professional has deliberately breached patient privacy without a legitimate purpose, as in *Kaufman* (CNO), *Calvano* (CNO), *Hooker* (CNO), *Oliveira* (CNO), *McLellan* (CNO), *Di Paola* (CPSAlta), and *Brooks* (CPSO). The Panel has a power under HPA s. 39(2) to order more than one measure under paragraphs (a) through (f). While some tribunals may be of the view that a reprimand is not necessary where a tribunal has already ordered a suspension, the Panel is of the view that, despite a suspension, an order for a reprimand would still usefully show the Panel’s disapproval of the Respondent’s actions. For this reason, the Panel orders a reprimand.

39. Fifth, the Panel orders, as a condition of practice, that the Respondent

- a. promptly provide to any and every person or institution that employs her, during the 24-month period following the end of her suspension, a copy of the Panel’s reasons for decision and order, and

- b. promptly provide to the College, at the end of the 24-month period following the end of her suspension, the name and contact information of every person or institution that employed her during that period, and confirmation that she provided a copy of the Panel's reasons for decision and order to that employer.

Costs

40. With respect to costs, the College established professional misconduct, and the Panel awards costs to the College against the Respondent, pursuant to HPA s. 39(5), Bylaw s. 6.12, and Schedules F and G. Schedule G authorizes, among other things, costs for legal representation, for purposes of the College preparing for and conducting the hearing, of up to 50 percent of actual legal fees. The College seeks costs of \$34,251.14, consisting of the following amounts:

- a. \$29,140.00, as one-half of actual legal fees; and
 - b. \$5,111.14 as one-half of disbursements and other expenses (including court reporter costs and travel costs for out of town witnesses) and taxes.
41. The College provided evidence that establishes these sums:
- a. a sworn statement of actual legal fees totaling \$58,280 (Dookie #1, para. 5);
 - b. a sworn statement of disbursements by legal counsel (such as photocopying, airfare and travel costs) totaling \$2,021.45 and taxes of \$7,087.78 (Dookie #1, paras. 5 and 6); and
 - c. a sworn statement of court reporter fees and taxes of \$866.25, and witness travel costs of \$246.80 (Dookie #1, para. 9).

The College did not provide the accounts of legal counsel, but the Respondent has not challenged or sought to cross-examine on these sums. The Panel recognizes that in seeking only one-half of disbursements, the College has sought less than its full entitlement under the Bylaws.

- 42. The College suggested that costs be paid in full by February 15, 2018.
- 43. The costs sought by the College are appropriate, and the Panel orders costs against the Respondent in the amount of \$34,251.14. Costs must be paid by September 1, 2018.

Order

44. The Panel orders the following:
- 1. a written reprimand of the Respondent;
 - 2. that the Respondent's registration be suspended, effective the fifth calendar day after the Respondent actually or constructively receives notice of this order, until the later of all of the following events:
 - a. the Respondent meets all of the following return conditions relating to her returning the Documents at Issue:
 - (1) the Respondent delivers all of the Documents at Issue to VIHA; and
 - (2) the Respondent delivers an affidavit to VIHA and to the Registrar of the College confirming she has not retained within her possession or control any electronic or physical copy of the

Documents at Issue, except for any copies that she lawfully obtained from VIHA under the *Freedom of Information and Protection of Privacy Act*

(the “Return Conditions”);

- b. the Respondent meets all of the following educational conditions:
- (1) the Respondent successfully completes the online course, “Righting A Wrong: Ethics & Professionalism in Nursing” developed by the National Council of State Boards of Nursing, and provides a certificate of completion to the Registrar;
 - (2) the Respondent completes the College’s online learning module, “Privacy & Confidentiality in Nursing Practice”;
 - (3) the Respondent completes the College’s online learning module, “Jurisprudence”; and
 - (4) after completing the above-noted three courses, the Respondent attends, at her own expense, 3-5 meetings with a practice consultant satisfactory to the Registrar, with the precise number of meetings and their duration to be at the practice consultant’s discretion, to learn to apply what she has learned in various scenarios

(the “Educational Conditions”); and

- c. the expiry of a six-month suspension period, or the expiry of a five-month period if the Respondent satisfies the Return Conditions within 30 calendar days of the College delivering the Panel’s order;

3. the Respondent must, as a condition of practice,
- a. promptly provide to any and every person or institution that employs her, during the 24-month period following the end of her suspension, a copy of the Panel’s reasons for decision and order, and
 - b. promptly provide to the College, at the end of the 24-month period following the end of her suspension, the name and contact information of every person or institution that employed her during that period, and confirmation that she provided a copy of the Panel’s reasons for decision and order to each of these persons or institutions.
5. costs payable to the College in the amount of \$34,251.14, to be paid by September 1, 2018.

Publication

45. The Panel directs the registrar to notify the public of its order (pursuant to HPA s. 39.3(1)(e)). The registrar must also notify all registrants, and the regulatory bodies governing the practice of registered nursing in every other Canadian jurisdiction (pursuant to Bylaw

s. 6.08(1)(a)), and may notify other regulatory or governing bodies of a health profession inside or outside of Canada (pursuant to Bylaw s. 6.08(1)(b)).

Notice

46. A Respondent aggrieved or adversely affected by an order of the Discipline Committee under HPA s. 39 may appeal the order to the Supreme Court (under HPA s. 40(1)). An appeal must be commenced within 30 days after the date on which this order is delivered to the Respondent (under HPA s. 40(2)).

These are the Panel's Reasons for Decision and Order concerning penalty, costs and public notice.

Dated for reference this 22 day of February 2018.

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Catharine Schiller Vancouver, BC February 22, 2018

Name	Place	Date
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Name	Place	Date
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Name	Place	Date
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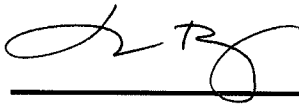
s. 6.08(1)(a)), and may notify other regulatory or governing bodies of a health profession inside or outside of Canada (pursuant to Bylaw s. 6.08(1)(b)).

Notice

46. A Respondent aggrieved or adversely affected by an order of the Discipline Committee under HPA s. 39 may appeal the order to the Supreme Court (under HPA s. 40(1)). An appeal must be commenced within 30 days after the date on which this order is delivered to the Respondent (under HPA s. 40(2)).

These are the Panel's Reasons for Decision and Order concerning penalty, costs and public notice.

Dated for reference this 26 day of February 2018.



Name Marilyn Mauritz Place Vancouver, B.C. Date February 26, 2018

Name Place Date

Name Place Date


s. 6.08(1)(a)), and may notify other regulatory or governing bodies of a health profession inside or outside of Canada (pursuant to Bylaw s. 6.08(1)(b)).

Notice

46. A Respondent aggrieved or adversely affected by an order of the Discipline Committee under HPA s. 39 may appeal the order to the Supreme Court (under HPA s. 40(1)). An appeal must be commenced within 30 days after the date on which this order is delivered to the Respondent (under HPA s. 40(2)).

These are the Panel's Reasons for Decision and Order concerning penalty, costs and public notice.

Dated for reference this 28th day of February 2018.

Brenda J Downey	Casa Grande	28 Feb 2018
Name	Place	Date
	Arizona	

Name	Place	Date
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Name	Place	Date
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