

**IN THE MATTER OF A HEARING BY
THE DISCIPLINE COMMITTEE OF THE BRITISH COLUMBIA COLLEGE OF NURSES
AND MIDWIVES CONVENED PURSUANT TO THE PROVISIONS OF
THE *HEALTH PROFESSIONS ACT* RSBC 1996, c.183**

BETWEEN:

The British Columbia College of Nurses and Midwives

(the “College” or “BCCNM”)

AND:

Coralee Lord

(the “Respondent”)

**DETERMINATION OF THE DISCIPLINE COMMITTEE
(Penalty and Costs)**

Hearing Dates:	By written submissions
Discipline Committee Panel:	Sheila Cessford, Chair Edna McLellan, RN (T) Stephanie Buckingham, RN (T)
Counsel for the College:	Michael Seaborn
The Respondent:	appearing on her own behalf

Introduction

1. A panel of the Discipline Committee (the “Panel”) of the British Columbia College of Nursing Professionals (the “College” or “BCCNP”) conducted a hearing to determine, pursuant to section 39 of the *Health Professions Act* RSBC 1996 c.183 (the “Act” or the “HPA”), whether the Respondent, Coralee Lord, failed to comply with the Act or bylaws, or committed unprofessional conduct.
2. The Panel issued a written determination on August 25, 2020 (the “Conduct Decision”) in which the Panel found that allegations 1, 3, 5 and 6 of the Citation dated July 29, 2019 (the “Citation”) were proven to the requisite standard. The Panel

found that Ms. Lord breached a standard imposed under the Act and committed professional misconduct in relation to the allegations which were proven. The Panel dismissed allegations 4 and 7.

3. The Panel set a schedule for written submissions on penalty and costs. On September 29, 2020, the College provided written submissions on penalty and costs. On October 14, 2020, Ms. Lord provided written submissions in response. The College did not submit any reply submissions.
4. The College is seeking the following orders pursuant to section 39 of the Act:
 - a. Ms. Lord is suspended for a period of 4 months;
 - b. Ms. Lord is reprimanded;
 - c. At the end of the suspension, Ms. Lord will have limits and conditions on her registration, as follows:
 - i. She will not be permitted to work as the sole Registered Nurse on duty or the nurse in charge, or to have oversight of other staff or students for a period of 6 months from the date the Order is finalized; and,
 - ii. She will only work in an area where there is direct supervision by another Registered Nurse, Supervisor, or physician for a period of 6 months from the date the Order is finalized.
 - d. Ms. Lord must, at her own expense, successfully complete the following educational courses within 6 months from the date the Order is finalized:
 - i. Professional Standards web module and workbook available through BCCNM;
 - ii. Boundaries web module and workbook available through BCCNM;
 - iii. Privacy and Confidentiality web module and workbook available through BCCNM;
 - iv. Nurse and interprofessional Team Communication available through Nurse.com;

- v. Righting a Wrong: Ethics and Professionalism in Nursing available from NCSBN; and
 - vi. PROBE Ethics & Boundaries Course.
- e. Upon successful completion of each of the above courses, Ms. Lord must immediately provide BCCNM with a transcript or other documentation indicating successful completion of each course, including the course outline and/or syllabus for each course.
- f. Ms. Lord must meet with a BCCNM Regulatory Practice Consultant to discuss the conduct issues outlined in the Decision in relation to the Standards of Practice, including those of professional conduct established by the BCCNM. The Practice Consultant will have the discretion to determine the appropriate number of sessions.
- g. Ms. Lord will immediately update BCCNM with the following:
- i. New personal contact information;
 - ii. New or additional employer contact information; and
 - iii. The suspension or termination of employment by any employer, any leave of absence (including medical leave), and resignation of employment.
- h. Ms. Lord must:
- i. Immediately release the Order to the below-listed individuals, and BCCNM may do the same:
 - 1. All employers for a period of 6 months from the date the Order is finalized;
 - 2. All direct supervisors for a period of 6 months from the date the Order is finalized; and
 - 3. Any prospective employer upon acceptance of a new position for 6 months from the date the order is finalized; and

- ii. Provide BCCNM with a letter from her employer, or prospective employer confirming that they have received and read a copy of the Order.
 - i. Ms. Lord pay costs to the BCCNM in the amount of \$7926.07 to be payable within six months from the date the Order is finalized.
5. Ms. Lord's position on these proposed terms is:
- a. She disputes the four-month suspension and the six-month term for payment of costs;
 - b. She agrees to complete all of the courses set out in paragraph 4(d);
 - c. She agrees to meet with a Practice Consultant as set out in paragraph 4(f).
 - d. She agrees to provide the notice set out in paragraph 4(g); and
 - e. She agrees to some of the disclosure set out paragraph 4(h); namely 4(h)(i)(1) and (2).

Legal Framework for Assessing Penalty

6. Having found that Ms. Lord breached a standard imposed under the Act and committed professional misconduct, the Panel must decide what, if any, penalty is appropriate. Section 39 of the Act authorizes the Panel to impose the following penalties:

39 (2) If a determination is made under subsection (1), the discipline committee may, by order, do one or more of the following:

- (a) reprimand the respondent;
- (b) impose limits or conditions on the respondent's practice of the designated health profession;
- (c) suspend the respondent's registration;
- (d) subject to the bylaws, impose limits or conditions on the management of the respondent's practice during the suspension;
- (e) cancel the respondent's registration;
- (f) fine the respondent in an amount not exceeding the maximum fine established under section 19 (1) (w).

7. If the discipline committee orders a suspension or cancellation, the following additional provisions apply:

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

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.

8. The relevant factors to consider in determining an appropriate penalty are set out in *Law Society of British Columbia v. Ogilvie*, [1999] LSBC 17:

a. the nature and gravity of the conduct proven;

b. the age and experience of the respondent;

c. the previous character of the respondent, including details of prior discipline;

d. the impact upon the victim;

e. the advantage gained, or to be gained, by the respondent;

f. the number of times the offending conduct occurred;

g. whether the respondent has acknowledged the misconduct and taken steps to disclose and redress the wrong, and the presence or absence of other mitigating circumstance;

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.

[the "Ogilvie Factors"]

9. *Law Society of BC v. Dent*, 2016 LSBC 05 held that it is not necessary to consider each Ogilvie factor in every case. In *Dent*, the following consolidated list was suggested:
 - a. Nature, gravity and consequences of conduct;
 - b. Character and professional conduct record of the respondent;
 - c. Acknowledgement of the misconduct and remedial action; and
 - d. Public confidence in the legal profession including public confidence in the disciplinary process.
10. Many professional regulation tribunals, including this College, have considered the Ogilvie / Dent factors. The Panel considers this to be the appropriate framework in this case.

Analysis and Findings

Nature and gravity of the conduct proven

11. The Panel considers Ms. Lord's threatening statements and conduct towards and about her supervisor to be serious conduct. The statements themselves were graphic threats to do serious physical harm. Ms. Lord's conduct created fear and stress for colleagues. Her supervisor felt unsafe. Ms. Lord's conduct was unpredictable, disruptive and took members of the team away from their health care duties. Ms. Lord's supervisor and her colleague, Ms. Welsh, both left the Riverstone team, at least in part, because she made them feel unsafe.
12. The Panel also considers that buying beer for a patient who was diagnosed with alcohol dependency, failing to inform the detox team or physicians, and failing to have documented that interaction to be serious conduct. By providing beer to her patient and failing to communicate that the provision of beer to the treatment team, Ms. Lord crossed boundaries and risked compromising continuity of care and delivery of services to that patient.

13. While the Panel did find that Ms. Lord met or was otherwise in communication with patient BD outside of working hours, the Panel considers the proven conduct underlying that allegation to be less serious. Ms. Lord communicated with BD while she was on paid leave during the investigation into complaints against her. While she should not have maintained contact with any patients during that period, the evidence at issue was that she received a text message from BD and passed that along to the Riverstone Team, indicating that they should reach out to him to provide assistance. As noted in the Conduct Decision, this patient's specific circumstances of being First Nations, homeless, seriously ill, and lacking trust in the Hospital are significant facts which explain Ms. Lord's conduct. The Panel considers there are significant mitigating circumstances pertaining to allegation 5.
14. Ms. Lord's proven conduct did not involve an isolated incident. Rather, there were multiple instances of misconduct. The conduct in allegation 3, in and of itself, involved a pattern of aggressive and threatening statements made over a period of several months.
15. While Ms. Lord may not have gained any personal benefit from the misconduct, it did negatively affect her supervisor and coworkers.
16. Overall, this factor favours a more serious penalty.

Character and professional conduct record of the respondent

17. Having practised nursing for 25 years, Ms. Lord should have been aware of the applicable standards and expectations. Her conduct cannot be excused due to inexperience. This weighs in favour of a more serious penalty.
18. However, the Panel also recognizes that Ms. Lord has no past disciplinary history with the College which is an important factor that weighs in favour of a lesser penalty.
19. Ms. Lord has provided the Panel with several letters of reference, which the Panel has considered in its assessment of penalty. The Panel recognizes that the letters speak positively about Ms. Lord's character. For example, a May 2017 letter "to whomever it may concern" written by a psychiatric consultant at Chilliwack General Hospital, described being "impressed with Ms. Lord's professionalism and

commitment to the welfare of her patients. She has always impressed me with her positive, can-do attitude, but her professionalism in an emergency situation setting really surpassed my expectations.” Another reference letter from the same period described her interpersonal relationships as “good to excellent”. A 2009 reference letter was also positive, noting the Respondent’s verbal communication skills were strong and that she had clear, respectful interactions with others. These positive comments must also be considered in context and given appropriate weight. The letters were not written for the purpose of this penalty hearing, there is no indication as to whether the authors were made aware of the findings in the Conduct Decision, and at least one letter was written prior to the events that are the subject of this College proceeding.

20. The Panel acknowledged Ms. Lord was selected by the Fraser Health Authority to be a poster representative for Cultural Safety in 2016.
21. Overall, this factor has considerations weighing both in favour of a more serious penalty and weighing in favour of a more lenient penalty.

Acknowledgement of the misconduct and remedial action

22. Ms. Lord acknowledged she purchased the beer for BD. Otherwise, she has not acknowledged her misconduct.
23. Indeed, a substantial part of Ms. Lord’s written submissions on penalty and costs were devoted to re-arguing many points from the conduct hearing. This included re-arguing points in which the Panel had agreed with the Respondent in its Conduct Decision (for example, allegations pertaining to the Respondent’s driving and treatment in the alley). Likewise, Ms. Lord included as part of her response materials on penalty and costs, a letter from her father raising similar arguments.
24. Ms. Lord has done some coursework and coaching. She has also participated in meetings. While this appears to be positive work generally, all continuing education courses are not necessarily undertaken as remedial action. The Panel is not satisfied that Ms. Lord’s coursework and coaching is remedial action that was undertaken to correct the misconduct and prevent it from repeating in future. For example, the

Canadian Nurses Protective Society one-hour CNPS webinar "Nurses in Independent Practice (Jan 2018)" is a course about practicing independently, whereas the misconduct in this case arose from communications and boundary issues.

25. Nevertheless, the Panel considers that there is a strong possibility of remediation for Ms. Lord. She appears to embrace learning and continuing education. The Panel recognizes that Ms. Lord is committed to completing all of the courses proposed by the College, and to meet with a Practice Advisor for the number of sessions that the Practice Advisor deems appropriate.
26. The Panel finds this factor is neutral as to whether there should be a stronger or lesser penalty.

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

27. The Panel finds there is a need for both specific and general deterrence in this case. It is important that both Ms. Lord, and other registrants in the profession, are made aware that threatening statements in the workplace and crossing boundaries with patients, is unacceptable and will not be tolerated. Likewise, both Ms. Lord and other registrants need to be made aware that violations of the Ethical Practice and Professional Responsibility and Accountability standards are serious.
28. The Panel finds it is equally important that public confidence in the integrity of the nursing profession is maintained and that the public is aware that members are held to account for these shortcomings.
29. This factor favours a more serious penalty.

Penalties in similar cases

30. The College relies upon the following cases:
 - a. *College of Nurses of Ontario v. Bass*, 2010 Canlii 100023 (ONCNO): the College of Nurses of Ontario reprimanded and imposed a 3 month suspension for a registrant who had uttered threats, including death threats, against co-workers. That registrant admitted the allegations prior to the

discipline committee hearing, expressed contrition and attended counseling for this anger issues.

- b. *College of Nurses of Ontario v. Walschots*, 2006 Canlii 81761 (ONCNO): the College of Nurses of Ontario reprimanded the registrant and imposed a 4 month suspension for a registrant who threatened a colleague and a former colleague. That registrant admitted the allegations and wrote an apology to one person. In addition, the Panel found that that registrant had grown and learned from the experience and expressed a deeper understanding of the role of a nurse and was wiser and calmer as a result of the experience.
 - c. *College of Physicians and Surgeons of Ontario v. Drone*, 2018 Canlii 38 (CPSO), the College of Physicians and Surgeons of Ontario reprimanded a physician and imposed a 1 month suspension for a physician who repeatedly use profanities towards other physicians. These included gendered slurs. The physician admitted the allegations, apologized, and took professional communications coaching and completed an ethics and boundary course.
31. Ms. Lord submits that she has been “suspended” during the entire period she has not worked as a registered nurse. The Panel does not agree with this characterization. Ms. Lord was terminated from her position at Fraser Health Authority, and subsequently stopped practising nursing. There is a distinction between time away from the practice because of a workplace termination and a voluntary change in registration categories, and time away from the practice due to a suspension or cancellation that is ordered by the Discipline Committee. When a registrant voluntarily converts their status to non-practising or becomes a former registrant, those changes do not present a sanction to the public or the rest of the profession. The Panel has considered Ms. Lord’s financial circumstances, the impact of the process upon her, and the time away from practice in deciding on its penalty, while at the same time recognizing the need for an appropriate penalty in this case.

32. The Panel notes the range of penalties in similar cases is a suspension of 1 to 4 months. The Panel considers the *Bass* and *Waschots* decisions to be the most similar to this case. The Panel views the features of this case to be more serious.

Penalty

33. The Panel has carefully considered both the College's and Ms. Lord's submissions and has taken into account the factors cited above when considering the appropriate penalty.

34. The Panel orders the following penalty:

- a. Ms. Lord is suspended for a period of 4 months, which may be reduced to 3 months, if the coursework in (d) is completed within the period ordered;
- b. Ms. Lord is reprimanded;
- c. At the end of the suspension, Ms. Lord will have limits and conditions on her registration, as follows:
 - i. She will not be permitted to work as the sole Registered Nurse on duty or the nurse in charge, or to have oversight of other staff or students for a period of 6 months from the date the Order is finalized; and
 - ii. She will only work in an area where there is direct supervision by another Registered Nurse, Supervisor, or physician for a period of 6 months from the date the Order is finalized.
- d. Ms. Lord must, at her own expense, successfully complete the following educational courses within 6 months from the date the Order is finalized:
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- e. Upon successful completion of each of the above courses, Ms. Lord must immediately provide BCCNM with a transcript or other documentation indicating successful completion of each course, including the course outline and/or syllabus for each course.
- f. Ms. Lord must meet with a BCCNM Regulatory Practice Consultant to discuss the conduct issues outlined in the Decision in relation to the Standards of Practice, including those of professional conduct established by the BCCNM. The Practice Consultant will have the discretion to determine the appropriate number of sessions.
- g. Ms. Lord will immediately update BCCNM with the following:
- i. New personal contact information;
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 - iii. The suspension or termination of employment by any employer, any leave of absence (including medical leave), and resignation of employment.
- h. Ms. Lord must:
- i. Immediately release the Order to the below-listed individuals, and BCCNM may do the same:
 - 1. All employers for a period of 6 months from the date the Order is finalized;
 - 2. All direct supervisors for a period of 6 months from the date the Order is finalized; and

3. Any prospective employer upon acceptance of a new position for 6 months from the date the order is finalized; and
 - ii. Provide BCCNM with a letter from her employer, or prospective employer confirming that they have received and read a copy of the Order.

Costs

35. Section 39 of the HPA authorizes the Panel to impose costs, as follows:

(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.

36. Section 212 of the College's Bylaws establish the tariff of costs for a discipline hearing. Schedule J sets out the tariff and qualifying expenses:

For the purpose of assessing costs under this tariff, qualifying expenses incurred from the time the inquiry committee directs the registrar to issue a citation under section 33(6)(d) of the Act until the time

- (a) the inquiry committee accepts a written proposal for a consent order under section 37.1(2) or (5) of the Act,
- (b) the discipline committee dismisses the matter under section 39(1) of the Act, or
- (c) the discipline committee issues an order under section 39(2) of the Act,

are deemed to be expenses incurred in the preparation for and conduct of the hearing.

<i>Expense</i>	<i>Rate of Indemnity</i>
Legal representation for the purposes of preparing for and conducting the hearing.	Up to 50% of actual legal fees.
Reasonable and necessary expert witness fees for the purposes of preparing for and conducting the hearing.	100% of actual fees.
Other reasonable and necessary disbursements incurred for the purposes of preparing for and conducting the hearing (including disbursements incurred by legal counsel).	100% of actual disbursements.

37. The College is seeking \$4500 in legal costs, based upon 50% of its actual legal fees, as calculated under the tariff. The College seeks \$3426.07 in disbursements, comprised of:
 - a. Court reporter \$1517.25;
 - b. Witness expenses \$774.82; and
 - c. Security expenses of \$1134.
38. The College submits that it was largely successful at the hearing and ought to be indemnified to the maximum amount allowable under the Act, bylaws and tariff.
39. Ms. Lord submits that she has experienced significant financial hardship and income loss since her termination as she has not been able to work as a registered nurse. She noted that she experienced stress and her husband experienced health problems. Ms. Lord submits that payment of costs within six months is unreasonable in considering her circumstances.
40. The Panel finds that the College was successful in proving most of the allegations in the Citation (allegations 1, 3 ,5, and 6). Allegation 2 was abandoned, and allegations 4 and 7 were dismissed. The conduct alleged in this case is serious. The most serious of those allegations were all proven. The proven allegations addressed the primary concerns that were raised in the hearing regarding Ms. Lord and the protection of the public. The hearing was diligently pursued and prosecuted. All of the witnesses gave evidence in relation to the proven conduct.
41. The Panel finds the College's units and scale claimed for legal costs to be fair and reasonable. In many instances, the College has claimed at the lowest end of the available range of units.
42. The Panel also finds the College's disbursements to be reasonable. The Panel considers the presence of the security guard was a reasonable expense given the allegations of threats to do physical harm to one of the witnesses who attended the hearing in person. The Panel notes that the security guard's services were also required in connection with an outburst and disruption at the hearing caused by an

individual associated with one of College's witnesses. In these unique circumstances, the Panel considers it fair to discount 50% of the security expenses.

43. For these reasons, the Panel orders that Ms. Lord pay costs to the College in the amount of \$7359.07, consisting of:
 - a. \$4500 of actual legal fees; and
 - b. \$2859.07 in disbursements.
44. The costs are payable within one year of the date of this Order.
45. In making this award for costs, the Panel has taken into consideration Ms. Lord's financial circumstances. The Panel considers the costs award to be low compared to other similar cases (see for example, the *Hansen* penalty decision (BCCNP February 2, 2019) which was cited by the College). Moreover, this Panel has reduced the security expenses by 50% and has directed Ms. Lord to pay costs within one year (as opposed to the six months requested by the College).

Order

46. The Panel orders:
 - a. Ms. Lord is suspended for a period of 4 months, which may be reduced to 3 months, if the coursework in (d) is completed within the period ordered;
 - b. Ms. Lord is reprimanded;
 - c. At the end of the suspension, Ms. Lord will have limits and conditions on her registration, as follows:
 - i. She will not be permitted to work as the sole Registered Nurse on duty or the nurse in charge, or to have oversight of other staff or students for a period of 6 months from the date the Order is finalized; and
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 - i. New personal contact information;
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 - 1. All employers for a period of 6 months from the date the Order is finalized;
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 - ii. Provide BCCNM with a letter from her employer, or prospective employer confirming that they have received and read a copy of the Order.
- i. Ms. Lord pay costs to the BCCNM in the amount of \$7359.07 to be payable within one year from the date the Order is finalized.

Publication

- 47. The Panel directs the Registrar to notify the public of its decisions pursuant to section 39.3(1)(e) of the HPA.

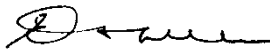
Notice of right to appeal

48. Ms. Lord 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.

Dated: November 25, 2020



Sheila Cessford, Chair



Edna McLellan, RN (T)



Stephanie Buckingham, RN (T)