

**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:

Laura Atcheson

(the “Respondent”)

DETERMINATION OF THE DISCIPLINE COMMITTEE

Hearing Dates:	By written submissions
Discipline Committee Panel:	Sheila Cessford, Chair Edna McLellan, RN (T) Dr. Catharine Schiller, RN
Counsel for the College:	Aisha Ohene-Asante
The Respondent:	Self-represented
Counsel for the Panel:	Susan Precious

A. INTRODUCTION

1. On March 14, 2022, a panel of the Discipline Committee (the “Panel”) of the College issued a written determination (the “Conduct Decision”) in which the Panel found that the College proved the allegations set out in paragraphs 1(a) to (f) of the Citation to the requisite standard and determined that the Respondent committed professional misconduct.
2. The Panel set a schedule for the parties to provide written submissions on penalty and costs. The College provided written submissions to the Panel. The Respondent did not provide any submissions regarding penalty and costs.

3. The College seeks the following orders pursuant to section 39 of the *Health Professions Act* RSBC 1996 c.183 (the “Act” or the “HPA”):

Suspension

- i. The Respondent’s registration be suspended for 4 months, starting on the day this Order is finalized.

Reprimand

- ii. The Respondent is reprimanded.

Remedial Education

- iii. Prior to returning to practice, the Respondent will complete the following remedial education:

- (a) Righting a Wrong - Ethics & Professionalism in Nursing - Nurse CEs (icrsncsbn.org);
- (b) Patient Privacy - Nurse CEs (icrsncsbn.org);
- (c) BCCNM online module Privacy and Confidentiality in Nursing Practice (bccnm.ca);
- (d) BCCNM online module Taking Action on Concerns About Practice (bccnm.ca)

- iv. The Respondent will provide her BCCNM Monitor with proof of successful completion of each of the above remedial courses.

- v. Should one of the directed remedial education courses be unavailable, the Respondent and/or the BCCNM Monitor may propose an alternative that covers the same material and is of a similar duration. Approval of any substitute remedial course will be at the sole discretion of the BCCNM Monitor.

Costs

- vi. The Respondent pay costs and disbursements to BCCNM in the amount of \$4,451.79 to be paid within 4 months from the day this Order is finalized.

Public Notification

- vii. That the penalty decision of the Panel relating to the Respondent be published pursuant to section 39.3 of the Act.

B. LAW and ANALYSIS

General Approach for Assessing Penalty

4. Having determined that the Respondent committed professional misconduct, the Panel must decide what, if any, penalty is appropriate.
5. Section 39(2) 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).
6. If the Panel 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.
7. The College relies on *Law Society of BC v. Dent*, 2016 LSBC 05 which referred to *Law Society of British Columbia v. Ogilvie*, 1999 LSBC 17. Both cases dealt with the relevant factors to consider in the assessment of an appropriate penalty. In *Dent*, the tribunal held that it is not necessary to consider each *Ogilvie* factor in every case, and set out the following consolidated list of factors:

- 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.
8. The College points out that the *Dent* factors have been applied by discipline panels of the BCCNM's legacy college, the College of Registered Nurses of British Columbia, in *Re Cunningham* (June 22, 2017) and *Re Hansen* (February 2, 2019).
 9. The Panel notes that this College's Discipline Committee has also applied the *Dent* factors in many cases, including *Re Pangburn* (June 21, 2022), *Re Byelkova* (January 30, 2023), *Re Christie* (January 27, 2023), and *Re Fung* (April 18, 2023).
 10. The Panel considers section 39 of the Act and the *Dent* factors to be the appropriate legal framework for assessing an appropriate penalty in this case.
 11. The Panel will now turn to consideration of each of the *Dent* factors as they pertain to the facts of this case.

Nature, Gravity and Consequences of the Conduct

12. The College submits that the Respondent completed Interior Health's Annual Information Privacy & Security training three times: on September 15, 2015, June 7, 2016, and May 22, 2017. Nevertheless, on September 19, 2016, October 3, 2016, November 2, 2016, July 4, 2017, August 10, 2017, and September 10, 2017, the Respondent inappropriately accessed the medical files of patients DM, DB, WR, JB, LT, GB, and IP. As noted by the Panel in the Conduct Decision "[e]ach access took place after the Respondent had received at least one privacy training session."
13. The College submits that although the Respondent made admissions at the hearing with respect to accessing the medical records of three patients, this mitigating factor is outweighed by the following aggravating factors which the College submits are illustrative of the Respondent's wanton disregard for patient privacy:

i. In accessing the medical record of patients not assigned to her care the Respondent abused her status and privilege as a nurse. Only a health care professional would be able to improperly access electronic medical records in the way that the Respondent did. The Respondent allowed her curiosity to overcome respect for patients' right to privacy.

ii. Although the Respondent had completed Interior Health's Annual Information Privacy & Security training and was aware that accessing the medical record of patients not assigned to her was a breach of patient privacy, the Respondent repeatedly accessed patient records she was not authorized to access. In total the respondent accessed medical records of seven patients on six separate occasions.

iii. On March 14, 2017, the Respondent, her union representative, a human resources representative, and the Respondent's acting manager met to discuss the Respondent's unauthorized access of patients DM, DB, and WR's medical records. Despite this meeting, and retaking Interior Health's Annual privacy training on May 22, 2017, the Respondent subsequently breached the privacy of patients LT, JB, GB, and IP.

iv. After accessing WR's medical records, a family member, the Respondent disclosed WR's medical information to her mother, further breaching WR's privacy.

14. The Panel accepts the College's submissions. The nature, gravity and consequences of the Respondent's misconduct were serious. The Panel described the seriousness of the Respondent's misconduct at paragraph 67 of the Conduct Decision:

...The Respondent's conduct was unprofessional in that she accessed private information of patients who were not in her direct care. The Respondent's actions were dishonest as she breached the confidentiality and privacy of those patients by accessing the medical files without authorization. Her conduct was dishonourable when she violated her employer's policies multiple times by accessing patient information and continued to do so after receiving privacy training and after being confronted about her unauthorized access of three patients' medical files. Accordingly, the Panel finds the Respondent's conduct is a marked departure from the expected standards of the members of the profession and constitutes professional misconduct.

15. The Panel finds that this factor favours the imposition of a more serious penalty.

Character and Professional Conduct

16. The College submits that a significant consideration in assessing an appropriate penalty is the protection of the public from other acts of misconduct by the Respondent. This factor requires consideration of the circumstances, character and professional conduct record of the Respondent.
17. The College submits that there is no evidence before the Panel about the Respondent's personal or professional history that might mitigate the appropriate penalty in this case. The College submits that the Respondent first became a registrant of CLPNBC in 2006, and as such ought to have been aware of CLPNBC's Privacy and Confidentiality Standard which explicitly and unambiguously states: "Access information for your assigned clients only."
18. There is no evidence before the Panel that the Respondent has previously been disciplined by the College. The Panel finds that the absence of past action taken under Part 3 of the HPA is a mitigating circumstance in this case.
19. However, the Panel agrees with the College, and finds that the Respondent's years of experience as an LPN means that her conduct cannot be excused by age or inexperience.
20. This *Dent* factor has an aspect that favours a less serious penalty and an aspect that favours a more serious penalty.

Acknowledgement of the Misconduct and Remedial Action

21. The College submits that during the discipline hearing the Respondent admitted to breaching the privacy of three patients. It says that while the Respondent made limited admissions to her employer during their investigation of the breaches, the Respondent made no admissions to the College during its investigation. The College also argues that the Respondent has been untruthful and has not taken accountability for her actions. The College submits that the Respondent's lack of accountability and truthfulness is an aggravating factor that calls into question her ability to engage in self-regulation. In essence, the College argues that the Respondent has shown no remorse.

22. The Panel finds the Respondent's admission during the discipline hearing that she breached the privacy of three patients shows some acceptance of responsibility and insight into some of the misconduct.
23. The Panel finds that the absence of remorse during the discipline hearing is not an aggravating factor but constitutes an absence of a mitigating factor.
24. There is no evidence before the Panel of any remedial action undertaken by the Respondent since the misconduct occurred.
25. Overall, the Panel accordingly finds this *Dent* factor to be neutral.

Public Confidence in the Profession including in the Disciplinary Process

26. The College submits that the penalty imposed should serve to promote public confidence in the profession, including its ability to self-regulate; address the need for both general and specific deterrence; and serve to educate registrants and the public about professional standards.
27. The Panel accepts the College's submissions. The Panel finds that in this case there is a need for specific deterrence, general deterrence, and the need to maintain public confidence.
28. The Panel finds that the very nature of the conduct in this case underlines the need for specific deterrence. The Respondent not only repeatedly accessed records of patients that were not assigned to her care but continued to do so after meeting with her employer and being told that such conduct amounts to a breach of privacy. Patient information was also shared with a family member.
29. In terms of general deterrence, the Panel finds that it is also important that other members of the nursing profession understand that they are under an obligation to maintain the privacy of their patients, and if they do not, suspension from practice may follow.
30. The Panel finds that there is a strong need to uphold public confidence in both the integrity of the profession and in the College's ability to regulate members of the profession in the public interest. The collection of sensitive private information is

inextricably linked with the provision of care. It is important that the public is assured that their medical records are not accessed by unauthorized individuals and disclosed to third parties. It is imperative that the public be assured that the trust that they are asked to place in health care professionals who have access to their private sensitive information is not betrayed. Since the provision of care cannot properly function without trust, it is imperative that the trust is not broken. When trust is broken by an individual registrant, it risks affecting the reputation of the nursing profession and the healthcare system as a whole.

31. It is accordingly extremely 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 failing to uphold the applicable standards and failing to conduct themselves professionally and ethically, particularly in relation to standards that exist to ensure accountability for misconduct and to protect the public.
32. The Panel finds that this *Dent* factor favours the imposition of a more serious penalty.
33. The College submits that the penalty it proposes is consistent with cases with comparable facts. In this regard, the College relies on the following cases:
 - a. *Ontario (College of Physicians and Surgeons of Ontario) v. Yaghini*, 2017 ONCPSD 15 (“*Yaghini*”). In this case, the respondent accessed the medical record of a colleague. He was suspended for three months, reprimanded, and ordered to receive instructions on medical ethics. In its decision the panel noted that “[t]he privacy of a person’s health information is sacrosanct. Individuals have a right to assume that their information is kept private and everyone in the health care system has a profound obligation to protect that information.” Noting that only individuals who are “inside the circle of care” should access patient records, the panel further noted that “[p]rivacy of patient health information is a fundamental rule and universal value.”
 - b. *Ontario (College of Physicians and Surgeons of Ontario) v. Brooks*, 2016 ONCPSD 29, (“*Brooks*”). In this case, the respondent was reprimanded, suspended for five months, and ordered to receive instructions on medical

ethics following his breach of privacy of two patients. In coming to its decision, the panel considered aggravating and mitigating factors. The aggravating factors included the fact that the respondent abused his status as a physician. Further, the respondent's violations of patient privacy were recurring in that he accessed one Family Medicine record on five occasions, a second Family Medicine record on eight occasions, and the hospital record on two occasions. A further aggravating factor was that his privacy violations took place over a significant length of time – almost a decade – and had a significant impact on the patients and their families. The mitigating factors identified by the panel included the respondent's full admission to the allegations, his apology to the patients involved, and that he had undergone both a self-directed and a separate preceptorship-directed educational program.

34. The College argues that taking the above cases into consideration, a suspension of four months, a reprimand, and remedial education is an appropriate penalty consistent with case precedent and will achieve the goals of specific and general deterrence – sending a clear message of denunciation to both the public and the profession with respect to the Respondent's conduct. The Panel agrees.
35. The Panel has considered the cases provided by the College. Although the Panel is not bound by these cases, penalties in other comparable cases are helpful to establish a range of sanctions by which to assess the current case.
36. The Panel notes that in both *Yaghini* and *Brooks*, a period of suspension from practice, a reprimand and remedial education were found to be appropriate penalties for unauthorized viewing of patient information by a health professional.
37. The Panel finds that on the specific facts of this case, considering the *Dent* factors discussed above, and the range of the penalties imposed in comparable cases, an appropriate penalty is a four-month suspension from practice, a reprimand, and remedial education.
38. The Panel finds that suspending the Respondent for four months, as opposed to three months (in the case of Dr. Yaghini) or five months (in the case of Dr. Brooks),

is appropriate because, unlike Dr. Yaghini, who accessed the medical records of only one individual, on one occasion, the Respondent accessed the records of seven patients on six separate occasions. Conversely, while Dr. Brooks breached the privacy of two patients, he did so over a period of almost a decade and on more occasions than the Respondent. Also, the mitigating factors that were present in both *Yaghini* and *Brooks*, that is that both physicians made full admissions with respect to their conduct and took a course on privacy on their own accord prior to their respective discipline hearings, are not present in this matter.

39. The Panel is satisfied that this penalty is appropriate and necessary to achieve specific and general deterrence, and to maintain confidence in the profession. Having regard to all the proven conduct of the Respondent, the Panel is satisfied public confidence in the profession will be preserved by this penalty.

Costs

40. The College submits that an award of costs should be made against the Respondent pursuant to sections 39(5) and (7) of the Act.
41. Section 39(5) of the Act permits a panel to award costs against a respondent if a tariff has been adopted by the College as allowed by section 19(1)(w.1) of the Act. Section 212(2) of BCCNM's Bylaws establishes a tariff of costs for discipline hearings as follows:

212 (2) The tariff of costs set out in Schedule J, to partially indemnify parties for their expenses incurred in the preparation for and conduct of hearings under section 38 of the Act, is established under section 19(1)(w.1) of the Act.

42. Schedule J to the College's Bylaws also provides:

Qualifying Expenses

1. 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.

Value of Units

- 2.(1) The value for each unit allowed on an assessment of costs is \$120.
- (2) Where maximum and minimum numbers of units are provided for in an Item in the Tariff, the discipline committee has the discretion to allow a number within that range of units.
- (3) Costs where the Tariff indicates a range of units, the discipline committee must have regard to the following principles:
 - (a) one unit is for matters upon which little time should ordinarily have been spent;
 - (b) the maximum number of units is for matters upon which a great deal of time should ordinarily have been spent.

Disbursements

- 3. In addition to the Tariff, actual reasonable disbursements are recoverable.

43. The College claims 43 units, according to the tariff in Schedule J of the Bylaws at \$120 per unit, for a total of \$5,160 in costs. The 43 units claimed are calculated as follows:

TARIFF			
Item	Description	Units	Claimed Units
1.	Initiating Process in Respect of Citation All process for which provision is not made elsewhere in this tariff for commencing a proceeding.	Minimum 1 Maximum 5	3
2.	Disclosure All processes associated with obtaining or providing disclosure of evidence, including documents.	Minimum 1 Maximum 10	5
3.	Experts	Minimum 1 Maximum 5	n/a
	All processes and correspondence associated with retaining and consulting all experts for the purposes of obtaining opinions for use in the discipline hearing		

4.	Witnesses All process and correspondence associated with contacting, interviewing, and preparing summons to all witnesses	Minimum 1 Maximum 10	3
5.	Pre-Hearing Conferences Preparation for attendance at a pre-hearing conference for each day of attendance	Minimum 1 Maximum 3	1
6.	Attendance at Pre-Hearing Conference for each day.	Minimum 1 Maximum 5	1
7.	Discipline Committee Hearing Preparation for each day of hearing.	8	10
8.	Attendance at discipline committee hearing for each day.	10	15
9.	Process for making admission of fact	Minimum 1 Maximum 10	n/a
10.	Preparation of closing submission for the discipline committee	Minimum 1 Maximum 10	5
11.	Attendance at the hearing where party is ready to proceed and when hearing not commenced.	3	n/a
12.	Settlement of Costs	Minimum 1 Maximum 5	n/a
13.	Settlement of Order	Minimum 1 Maximum 3	n/a

44. Under section 39(7) of the Act, costs awarded must not exceed, in total, 50% of the actual costs to BCCNM for legal representation for the purposes of the hearing. Based on that, the College's claim for costs is \$2,580. The College submits this sum is reasonable in the circumstances.
45. The College's Bylaws permit the College to be indemnified for any disbursements that were reasonably incurred. The evidence shows that the College incurred disbursements of \$1,871.79 in relation to the hearing, calculated as follows:

- a. Court reporter fees and taxes of \$651.00, and
- b. Personal Service fees and taxes of \$1,220.79

46. In total, the College claims 50% of its legal fees (\$2,580) and 100% of its disbursements (\$1,871.79). As such, the total amount of costs sought by the College is \$4,451.79.
47. The applicable statutory and legal framework provides the Panel with a broad discretion over the award of costs. The College submits that costs should be awarded in this case. The Panel agrees.
48. The College proved the allegations in the Citation. The allegations were serious. The Respondent did not fully admit her misconduct. In the absence of a full admission, it was necessary for the College to pursue the discipline hearing considering the prolonged and serious nature of the Respondent's misconduct. Due to the serious nature of the misconduct in question, the pursuit of the discipline hearing was also in the public interest and in furtherance of the College's public protection mandate.
49. Further, the College's witness provided relevant affidavit evidence in relation to the alleged conduct. The Panel agrees with the College that the extensive preparation that went into the presentation of its case by way of affidavit evidence facilitated the hearing unfolding in an efficient manner. The Panel finds the hearing was diligently pursued and prosecuted by the College.
50. The Panel also finds the College's units claimed for legal costs to be reasonable in the circumstances. The Panel is satisfied that the total number of tariff units claimed for each step of the proceeding is reasonable and is rationally connected to the length and level of difficulty to conduct those steps.
51. The Panel is further satisfied that the expenses were reasonable and reasonably incurred for the preparation and conduct of the discipline hearing. It was reasonable and necessary under the *Act* for the Citation to be served on the Respondent and for the discipline hearing to be recorded by a Court reporter.
52. The Panel agrees with the College that the final amount of costs the College claims is not so large as to be punitive to the Respondent. To the contrary, the costs are reasonable in all the circumstances.

53. The College proposes that the costs be payable in full four months from the date an order on penalty and costs is issued by the Panel. Given the length of the suspension, it is the Panel's preference that a period of six months from the date of the Panel's order is provided to fully pay the cost award.

C. ORDER

54. For the above reasons, the Panel orders that:

- a. The Respondent's registration is suspended for four months, starting on the day this Order is delivered to the Respondent, unless otherwise agreed in writing between the College and the Respondent.
- b. The Respondent is reprimanded.
- c. Prior to returning to practice, the Respondent will complete the following remedial education:
 - (a) Righting a Wrong - Ethics & Professionalism in Nursing - Nurse CEs (icrsncsbn.org);
 - (b) Patient Privacy - Nurse CEs (icrsncsbn.org);
 - (c) BCCNM online module Privacy and Confidentiality in Nursing Practice (bccnm.ca);
 - (d) BCCNM online module Taking Action on Concerns About Practice (bccnm.ca)
- d. The College will as soon as possible appoint a BCCNM Monitor for the Respondent and provide the Respondent with the name and contact details of that Monitor. The Respondent will provide her BCCNM Monitor with proof of successful completion of each of the above remedial courses.
- e. Should one of the directed remedial education courses be unavailable, the Respondent and/or the BCCNM Monitor may propose an alternative that covers the same material and is of a similar duration. Approval of any substitute remedial course that is proposed will be at the sole discretion of the BCCNM Monitor.
- f. The Respondent pay costs and disbursements to BCCNM in the amount of \$4,451.79 to be paid within six months from the date of this Order.

D. NOTICE OF RIGHT TO APPEAL

55. The Respondent is advised that under section 40(1) of the Act, that 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.

E. DELIVERY AND PUBLIC NOTIFICATION

56. The Panel reminds the College of the requirements in section 39(3)(c) of the HPA.

57. The Panel directs that the Registrar notify the public of the order made herein pursuant to section 39.3 of the Act.

Dated: September 20, 2023

Sheila Cessford, Chair

Edna McLellan, RN (T)

Dr. Catharine Schiller, RN