IN THE MATTER OF THE *HEALTH PROFESSIONS ACT*, R.S.B.C. 1996, c. 183

AND IN THE MATTER OF

THE COLLEGE OF REGISTERED NURSES OF BRITISH COLUMBIA

(the "College" or "CRNBC")

AND:

KATEY MCLELLAN

(the "Registrant")

CONSENT ORDER PROPOSAL

BACKGROUND and FACTS

1. This Proposal is made by the Registrant to the Inquiry Committee of the CRNBC (the "Committee") under s. 37. 1 of the Health Professions Act ("HPA").

2. The background and facts related to this matter are set out in the Reasons for Decision and Order of the Discipline Committee of the College, attached hereto as Appendix "A" (the "Decision").

ADMISSIONS

3. The Registrant accepts and admits the facts and findings of the Discipline Committee of the College set out in the Decision.

CONSENT TO ORDER

4. The Registrant proposes resolution of the Citation on the following terms:

    a. that, pursuant to s. 39(2)(c) of the HPA, the Committee order that she be suspended for a period of six weeks; and

    b. that costs shall be payable by the Registrant to the College under s. 33(7) of the HPA and 39(5) of the HPA, in the amount of $12,500, to be paid on or before July 1, 2019.

ACKNOWLEDGEMENTS

5. The Registrant acknowledges that, if this Proposal is accepted by the Committee, it will issue a Consent Order consistent with this Proposal that is considered to be an order of the

discipline committee made under s. 39 of the HPA. If the Proposal is rejected, the hearing will proceed as though the Proposal had not been made and without consideration of its contents.

6. The Registrant acknowledges that, if this Proposal is accepted by the Committee, publication of this Proposal and the Consent Order issued will be made in accordance with section 39.3 of the HPA.

7. The Registrant acknowledges that she has had an opportunity to obtain legal advice and representation throughout the CRNBC processes and before making this Proposal and that she fully understands and agrees to the terms and conditions set out herein.

SIGNED in Prince George, B.C. the 23 day of Sept, 2018.

Katey Mclellan, Registrant

Signature of Katey McLellan witnessed on above date by:

Shaun Whyman

Witness Name (**P**lease Print) and Signature

SIGNED in Prince George, B.C. the 23 day of Sept, 2018.

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:

KATEY MCLELLAN, RN

(the "Respondent")

Date and Place of Hearing:

Date: February 27, 28, and March 23, 2018.

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

Members of the Hearing Panel of the Discipline Committee:

Sheila Cessford (Chair)
Thomas Ward
Robert Halliday, non-practising RN

Counsel for the College:

Miriam Isman (Sugden, McFee, Roos LLP)

Counsel for the Respondent:

Peter Eastwood (HHBG Lawyers)

Independent Legal Counsel for the Panel:

Lisa C. Fong

Court Reporter

Rose Halendy

REASONS FOR DECISION AND ORDER OF THE DISCIPLINE COMMITTEE

1. A hearing panel of the Discipline Committee (the "Panel") convened on February 27, 28, at 10:00 a.m., and on March 23rd at 9:00 a.m. to inquire into allegations of the breach of professional standards and professional misconduct.

A. The Citation

2. The Citation (**Exhibit 1**) sets out the factual allegations that Ms. Mclellan, between July and October 2015, while employed at an addiction recovery facility, entered into a personal, romantic, or sexual relationship with a client either while he was at the facility or shortly after he discharged himself from the facility and prior to completion of the recovery program he was undertaking.

3. At the outset of the College's closing submissions, Ms. Isman clarified that the College would not be proceeding with the allegation that the Respondent entered into a relationship with the client *while* the client was at the facility.

4. The Citation alleged that the factual allegations, if proven, would constitute a breach of CRNBC's Professional Standards 1, 2, and/or 4 of the Registered Nurses and Nurse Practitioners. the "Conflict of Interest" Practice Standard, and/or the "Boundaries in the Nurse-Client relationship" Practice Standard. The Citation further alleged that the Respondent committed professional misconduct or unprofessional conduct.

B. Evidence

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

a. Witnesses

6. The College called one witness, [name redacted], the former Executive Director of [name of facility redacted].

7. Ms. Mclellan testified on her own behalf and called one other witness Ms. A, a former employee of [facility]. Ms. A was not available to testify in person as she was employed overseas. She testified by way of video-conference by agreement between the parties.

b. Exhibits

8. The Board marked the following documents as Exhibits:

a. EXHIBIT 1: Citation dated November 16, 2017;

b. EXHIBIT 2: Joint Book of Documents with documents at Tabs A-P;

c. EXHIBIT 3: September and October 2015 Calendar with markings;

d. EXHIBIT 4: CRNBC Phone call report from [name redacted] to Margaret Gauthier dated October 16, 2015;

e. EXHIBIT 5: Interview of [name redacted] by Margaret Gauthier on January 26, 2016; and

f. EXHIBIT 6: Affidavit of Margaret Gauthier sworn on February 21, 2018 with exhibits.

C. Findings of fact

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

10. The material facts about the Respondent's relationship with the client are not, however, in dispute; rather each party emphasizes the importance of different facts to support their legal positions.

11. The Panel has found facts as set out below, in accordance with testimony or documentary evidence, except as otherwise noted, such as where the Panel refers to a factual dispute between the parties.

a. The Respondent

12. The Respondent is a registrant, is currently 30 years old, and became registered with the College as a registered nurse ("RN") in 2014. She testified that she studied nursing with a focus on mental health.

13. Ms. Mclellan agreed in cross-examination that she was, as a registrant, governed by the College's standards, and that the College had minimum standards of practice relating to boundaries in the nurse-client relationship.

14. After becoming registered at the College, Ms. Mclellan worked as an RN at [redacted], a facility that offers support and accommodation for the [redacted] and as a casual nurse for Northern Interior Health Unit. Neither of these positions involved significant clinical nursing work.

15. The Respondent testified that because she had an interest in mental health and addictions, she applied for an RN position at [facility]. She was successful in obtaining the position and started full-time employment as an RN at [facility] on July 28, 2015, with regular shifts from 7a.m. to 3 p.m.

b. The treatment facility

16. [Facility] is a year-long residential treatment facility for men located [redacted]. It is publicly-funded and free for residents of BC to attend. [The witness] testified that the mission and vision of [facility] is, as set out in its Vision, Mission and Core Values Statement, offering specialized support and programs to men living with addictions. The facility is "dedicated in providing compassionate assistance to individuals... to overcome the potentially devastating effects of living with addictions" (Ex. 2, Tab A). [The facility] provides a lengthy program for addiction treatment. [The facility] can be described as a "last chance" addiction facility, because more often than not, individuals who attend [facility] have tried other programs first and have struggled with addictions for a long time. The program is publicly funded and free because most individuals who attend the program have, through their addictions, lost family and financial means to pay for a year-long residency.

17. [The witness] described the residents at [facility] as comprising of 45-55 residents and approximately 20 staff members. All residents at [facility] are men.

c. [Facility] policies

18. [The witness] testified that [facility] has internal policies for residents about personal relationships with staff and each other. He testified that one such policy is that any former resident who engaged in a relationship with a staff member cannot return to the program. He explained that the reason for this policy is that it would be very difficult for staff and other residents to allow this to occur. He stated that since [facility] offers a unique publicly funded program for individuals suffering from serious addiction problems, it would be very difficult for a resident who is no longer able to return to find help elsewhere.

19. [The witness] testified that [facility] policies included a staff code of ethics and standards which set out requirements that included employees recognizing the difference between personal and professional relationships and recognizing the power imbalance in a therapeutic relationship and maintaining boundaries between professional and personal relationships. He testified to the existence of an orientation manual and a policy and procedure manual. He also testified to two specific policies. First, for [facility] employees, a policy prohibiting contact with former clients of a personal nature for a minimum of two years after the resident completed their treatment (the "Relationship Policy") (Ex. 2, Tab C). Second, for residents, a policy preventing any former resident who engaged in a relationship with a staff member from returning to the program (the "Disqualification Policy"). He further testified that a resident no longer able to return would have difficulty finding help elsewhere, given that [facility] offers a unique publicly-funded program for individuals suffering from serious addiction problems.

20. Ms. Mclellan testified that she received very little training and that on her first day she basically shadowed Ms. A, and she went through her usual activities as an RN. Ms. Mclellan testified that she was not given any policies or employee manual to review and did not discuss any policies including a staff relationship policy with any person. She testified that at some point during the first day, Ms. A told her there was a policy and procedure manual in the office and that she should read it when she had some time. She testified that based on her discussion with Ms. A, Ms. Mclellan understood that it was there if she needed advice on a policy or procedure. She testified she was not aware of it being available online and did not think of it while she was employed given how rustic the facility was and the fact that employees did not even have email. Ms. Mclellan signed an orientation form. In doing so, she testified she did not understand that she was agreeing that she had read and understood [facility] policies.

21. Ms. A testified that when she started working at [facility] in early July 2015, several weeks before Ms. Mclellan, she was not given any policy manual to review, and was not provided with any policy concerning relationships with residents. She did not recall ever discussing any policies in any policy manual with Ms. Mclellan.

22. Ms. Mclellan found the working environment at [facility] stressful and chaotic. She soon decided she would not be able to work there for long as it wasn't a good environment in which to work. She was concerned something could go horribly wrong and she didn't want to be a part of it.

d. Involvement with Mr. SM pre-discharge

23. Mr. M became a patient at [facility] before Ms. Mclellan started working there. They had not previously met. Ms. Mclellan testified that while Mr. M was at [facility], and

while she was working there, she had minimal interaction with Mr. M. Ms. Mclellan testified that the staff including herself would eat lunch in the same room with the residents each day. She testified that he was into mechanics and spent much of his time in the shop. She recalls that he came to her once because he believed he might have arthritis. She scheduled an appointment with the doctor on the next doctor's clinic. She also arranged for him to see the results of some blood work. She recalls speaking to him as part of a larger group about dirt biking. She also recalls giving him medication for pain on a few occasions. She testified that she spoke to him a total of six to seven times while he was at [facility].

24. In September 2015, Mr. M was about six months through his one-year program at [facility] and was reportedly doing really well. However, on September 24, 2015 he withdrew from [facility] prior to completing his full program. At the time of Mr. M's discharge, Ms. Mclellan was aware of the discharge because she was present when he was speaking with Ms. A.

25. Ms. Mclellan admitted under cross-examination that she and Mr. M were in a nurse-client relationship, despite their interaction being minimal. She was aware that he was attending [facility] to address a substance use disorder. Mr. M was not a witness and did not testify to his condition at the time he discharged himself. The evidence of Ms. Mclellan was that Mr. M was clean and doing well, and that this continued. The Panel did not however receive evidence showing that Mr. M was, at the time he discharged himself, free from a risk of relapse, and that he might need to return to complete or even restart his program to address his addiction.

e. Involvement with Mr. M post-discharge

26. After Mr. M withdrew from [facility] on September 24, 2015, prior to completing his full program, Mr. M moved to [redacted], B.C.

27. Within a week of Mr. M's discharge, Mr. M added Ms. Mclellan as a friend on Facebook. She had not had any previous electronic communications with Mr. M. She accepted his friend request, as she did not think it was a big deal. She was aware that Mr. M had attended [facility] to address a substance use disorder, and that he had not completed his program. Ms. Mclellan considered the Boundary Standard as she recalled it but believed that it was referring to a current patient. She did not, at the time, think that Mr. M was vulnerable, as he was clean and doing well. She was aware that Ms. A and Ms. S.P.– a counselor at [facility] – had become Facebook friends with Mr. M. As the College noted, however, Ms. Mclellan testified in cross-examination that, in retrospect, Mr. M was vulnerable at the time the relationship began. Ms. Mclellan's counsel agreed that she "admitted that with her subsequent experience in addictions she now can see that she may have put her own needs ahead of Mr. M's at the time she commenced the relationship… " (submissions at para. 35).

28. While Ms. Mclellan was in Prince George and Mr. M was in [redacted] they began talking, using Facebook Messenger the first night, and again on the next night, and then on the telephone on the third night. Their first conversation likely took place about six to eight days after Mr. M had left [facility], between September 30 and October 2, 2015. During their calls, they talked for hours. They talked about their families, Mr. M's experience at [facility], and their lives. He told her that he wanted to move back to Prince George to teach a program at a college and start a new life. Ms. Mclellan and Mr. M discovered they had much in common. Their

communications became frequent, lengthy, and more flirtatious. The Panel is satisfied that the precise date on which they first spoke falls within that range of dates, and that the precise date is not material to the outcome of the matter.

29. After speaking with Mr. M, Ms. Mclellan considered her professional obligations and reviewed the Boundaries Standard. She testified she was concerned about the relationship being so soon, but did not consider Mr. M to be vulnerable, and that he was doing well. Ms. Mclellan talked to Ms. A, who had since left [facility], about a relationship with Mr. M. She testified that Ms. A encouraged her to pursue a relationship with Mr. M. Ms. A confirmed she thought Ms. Mclellan should pursue the relationship with Mr. M, as he was no longer a patient and was doing well. Neither the testimony of Ms. Mclellan nor Ms. A show, however, they discussed the Boundaries Standards, or how professional standards did or might apply to a former client.

30. As shown by various posts on Mr. M's Facebook page, their relationship progressed very rapidly. Ms. Mclellan described their relationship as a "whirlwind". Ms. Mclellan testified that she had been "incredibly heartbroken" by a previous relationship and was looking for a "Prince Charming", although she realizes now this was in the wrong places. She said that parts of her mind told her she should slow it down, but it made her heart feel good. Their Facebook posts included the following:

a. On October 5, when Mr. M posted a photo of himself on Facebook, and Ms. Mclellan commented "such a babe", followed by an emoji of a smiling face with heart-shaped eyes. Below this picture, Mr. M wrote he was [m]oving to Prince George" and that his "girlfriend lives there". The Panel is satisfied that this referred to Ms. Mclellan. They intended to continue their relationship in the same city.

b. Also, on October 5, 2015, Mr. M posted that he would be applying to college in Prince George. Ms. McLellan commented with six happy face emojis.

c. On October 9, 2015, Mr. M posted an inspirational passage ("Life is too short to argue and fight with the past. Count your blessings, value your love [sic] ones, and move on with your head held high") and included the comment, "This last post is for you, Katey Mclellan. It killed me to post it LOL". She responded with various happy face emojis, and said, "You loved it".

d. On October 9, 2015, Mr. M posted a photo of a t-shirt bearing the words, "sorry this guy is already taken by a smart & sexy nurse", with the caption, "I am one lucky guy!".

Ms. Mclellan testified that at the time, she concluded that the relationship was not harmful to Mr. M, as she was not exploiting him in any way, and was trying to support him. She testified that she believed she had his best interests at heart.

f. Termination of employment at [facility]

31. In early October of 2015, [redacted] held some morning staff meetings at which he discussed staff relationships with clients, but Ms. Mclellan had not attended those meetings, as she was busy in the mornings as the only nurse dealing with medications and concurrent disorder clients.

32. On the afternoon of Thursday, October 15, 2015, Ms. Mclellan attended a staff meeting at which [redacted] discussed issues about staff having relationships with clients. He provided everyone with a copy of the [facility] Relationship Policy. Ms. Mclellan testified that she was "terrified" when she learned of the Relationship Policy during the meeting, and she realized she had breached it. She did not however have opportunity to speak to [redacted] the next day,

as she had to leave after her morning shift on Friday to attend a job interview in the afternoon. She planned to speak to him on her next shift on Monday, October 19, after finishing her morning medication work. [Redacted], however, already aware that Ms. Mclellan was engaging in a personal relationship with Mr. M through their Facebook posts, and on Friday, October 15, 2015, he called the College to say he would be sending a written complaint about Ms. Mclellan.

33. On Monday, October 19, 2015, as soon as she arrived at work, [redacted] brought her into his office, showed her copies of Facebook screenshots showing her communications with Mr. M, and terminated her employment at [facility]. Some dispute arose as to whether [redacted] made threatening statements to Ms. Mclellan during this meeting, but such facts are not key to the issues before the Panel. After the meeting, the Assistant Director for [facility], [name redacted], walked Ms. Mclellan to her car. He told her that it was common for people with addictions to latch on to someone, and that she should get away from him.

34. On October 21, 2015, [redacted] sent a written complaint to the College about Ms. Mclellan. [Redacted] testified that if Mr. M had needed further treatment at [facility] in the future, the Disqualification Policy might have prevented such further treatment, due to a personal relationship between Ms. Mclellan and Mr. M.

g. A continuing relationship

35. On the weekend following the end of her employment at [facility], Ms. Mclellan travelled to [redacted] to have eye surgery. She and Mr. M met in person, went out on a date, and started a sexual relationship. After he visited her in Prince George for job interviews, he received an offer for a position, and he came to stay with her.

36. During their relationship, Ms. Mclellan and Mr. M discussed his substance use disorder. Ms. Mclellan was no longer part of Mr. M's care, but strongly encouraged him to attend Narcotics Anonymous meetings and counselling.

37. On April 20, 2016, the Inquiry Committee told Ms. Mclellan that upon a review of investigative materials and Ms. Mclellan's written response, it determined on a provisional basis that Ms. McClellan's conduct of entering into a personal relationship with a former client was not satisfactory (Ex. 6, Tab D). The Inquiry Committee asked about the status of her relationship with Mr. M (Ex. 6, Tab D). Ms. Mclellan said she was "currently still in a very positive relationship with [Mr. M]" (Ex. 6, Tab E).

38. Ms. Mclellan's relationship with Mr. M continued until June 2016. Mr. M wanted to marry and have children, but Ms. Mclellan was not comfortable with this.

39. Ms. Mclellan later obtained employment at an Adult Withdrawal Management Unit. Ms. Mclellan has also provided evidence of her now having completed four courses on nursing standards, including "Professional Boundaries and Ethics" offered by the National Council of State Boards of Nursing (NCSBN) and "Professional Boundaries and Professional Standards" offered by the College. She testified to her current understanding that Mr. M was vulnerable at the time their relationship began, that she had placed her own need to be loved and wanted before Mr. M's needs, and that she made a mistake by entering a personal relationship with Mr. M too soon after he discharged himself from [facility]. Ms. Mclellan testified that, although she did not believe she was in breach of the Boundaries Standard in October 2015, that is no

longer her belief. Ms. Mclellan has not had any further problems in her performance as a nurse, or with boundary issues.

D. Provisions and standards relating to possible wrongful conduct

40. Ms. Mclellan's evidence was that she did not become aware of the [facility] staff relationship policy until shortly before her employment ended. In closing submissions, the College clarified its position that this matter does not require that the Panel decide if the employer's policies were enforceable or breached, or if such breach was grounds for the employer to end the Respondent's employment.

41. Under section 39(1) of the Act, the Discipline Committee may dismiss the matter, or determine that Ms. Mclellan

a. "(a) has not complied with this Act, a regulation or *a bylaw*,"

b. "(b) has not complied with *a standard*, limit or condition *imposed under this Act*," or

c. "(c) has committed *professional misconduct* or *unprofessional conduct*..." (emphasis added).

42. **Relevant bylaws**

42. Bylaw 8.01 states that registrants "must conduct themselves in accordance with the standards of practices and the standards of professional ethics". Under s. 19(1)(k) and s. 19(1.1), the College's board may also establish "standards, limits or conditions" for practice other than through a bylaw.

b. Professional and practice standards

43. **Professional standards:** The College referred the Panel to *Professional* Standards 1, 2, and 4. These Professional Standards confirm and codify both broad and more specific standards:

a. Professional Standard 1 ("Standard 1") provides that a registrant, "Maintains standards of nursing practice and professional conduct determined by CRNBC."

i. More specific standards relate to Clinical Practice (8), Education (8), Administration (8), and Research (8).

ii. For example, Standard 1 (Clinical Practice 1) states that a registrant "(1) is accountable and takes responsibility for own nursing actions and professional conduct."

b. Professional Standard 2 ("Standard 2") provides that a registrant, "Consistently applies knowledge, skills and judgment in nursing practice."

i. More specific standards relating to Clinical Practice (13), Education (13), Administration (13), and Research (12).

ii. For example, Standard 2 (Clinical Practice 2) states that a registrant "(2) Knows how and where to access information to support the provision of safe, competent and ethical client care."

c. Professional Standard 4 ("Standard 4") provides that a registrant, "Understands, upholds and promotes the ethical standards of the nursing profession."

i. More specific standards relating to Clinical Practice (13), Education (13), Administration (13) and Research (12).

ii. For example, Standard 4 (Clinical Practice 13) states that a registrant "(13) Initiates, maintains and terminates nurse-client relationships in an appropriate manner."

44. **Practice standards:** The College also relies on two Practice Standards documents published by the College:

a. first, the Practice Standard entitled, "Boundaries in the Nurse-Client Relationship" (the "Boundaries Standard") and

b. second, the Practice Standard entitled "Conflict of Interest Practice Standard" (the "Conflicts Standard").

45. **The Boundaries Standard:** As the start of the conduct at issue occurred in late 2015, the relevant version of the Boundaries Standard is the one the College published on or about January 21, 2013 (Ex. 2, Tab 5). The College relied on Boundaries Standards #1, #2, #4, #5, #10 and #11:

a. Boundaries #1: "Nurses use professional judgment to determine the appropriate boundaries of a therapeutic relationship with each client. The nurse – not the client – is always responsible for establishing and maintaining boundaries."

b. Boundaries #2: "Nurses are responsible for beginning, maintaining and ending a relationship with a client in a way that ensures the client's needs are first."

c. Boundaries #4: "Nurses do not enter into sexual relations with clients."

d. Boundaries #5: "Nurses are careful about socializing with clients and former clients, especially when the client or former client is vulnerable or may require ongoing care."

e. Boundaries #10: "Nurses in a dual role make it clear to clients when they are acting in a professional capacity and when they are acting in a personal capacity."

f. Boundaries #11: "Nurses have access to privileged and confidential information, but never use this information to the disadvantage of clients or to their own personal advantage."

Boundaries #3 also states, "Nurses do not enter into a friendship or a romantic relationship with clients."

46. The College also relied on the following guidelines in the "Boundaries Standard", which are under the heading "Applying the principles to practice" (at p. 3):

> "Be transparent, therapeutic and ethical with all your clients and former clients. When the issues are complex, and boundaries are not clear, discuss your concerns with a knowledgeable and trusted colleague."
>
> ...
>
> "Recognize that if you accept clients as personal contacts on social media sites, you may be crossing a boundary. You may also breach client privacy and confidentiality. Do not discuss clients (even anonymously or indirectly) or share client pictures on social media sites or in any public forum."

> "Understand that nurses who work and live in the same community often have a dual role. If you have a personal relationship with a client or former client, be clear about when you are acting in a personal relationship and when you are acting in a professional relationship. Explain your commitment to confidentiality and what the client can expect of you as a nurse. Consider the difference between being friendly and being friends."
>
> "Be cautious in forming a personal relationship with a former client. Consider the amount of time that has passed since the professional relationship ended; how mature and vulnerable the former client is; whether the former client has any impaired decision-making ability; the nature, intensity, and duration of the nursing care that was provided; and whether the client is likely to require your care again."

47. The Boundaries Standard primarily addresses relationships between registrants and *current* clients, but it also applies to relationships between registrants and *former* clients, based on continuing client vulnerabilities. Persons are, as clients, "often vulnerable because the nurse has more power than the client. The nurse has influence, access to information, and specialized knowledge and skills." Clients may also be vulnerable due to their addictions, or from needs or risks relating to their conditions. Vulnerabilities may not disappear once clients are non-clients. Professional boundaries exist to prevent actual and perceived abuses of power. For this reason, Boundaries #5 states that, "Nurses are careful about socializing with clients *and former clients*, especially when the client or former client is vulnerable or may require ongoing care." (emphasis added)

48. Said another way, people who are no longer receiving care – "former clients" – may still be "clients" for purposes of how registrants must deal with them.

49. Unlike the Relationship Policy of [facility] which prohibits employees from contact of a personal nature for a fixed minimum period of two years (but which the Panel recognizes is an *employer* policy that does not necessarily reflect professional standards), the Boundary Standard does not set a "bright line" rule for when a registrant must refrain from sexual or other types of personal relationships with former patients.

50. The Boundaries Standard indicates some factors relevant to whether a former patient is vulnerable, when it instructs registrants to consider "the amount of time that has passed since the professional relationship ended"; "how mature and vulnerable the former client is"; "whether the former client has any impaired decision-making ability"; "the nature, intensity, and duration of the nursing care that was provided"; and "whether the client is likely to require [the registrant's] care again."

51. **The Conflicts Standard:** The College published the relevant version of the Conflicts Standard in or about February 2006 (Ex. 2, Tab 6). This version should not be confused with a later version that the College published in or around April 2016. The College relied on Conflicts Standard bullet 1 ("Conflicts #1"):

a. Conflicts #1 states, "Nurses identify and seek to *avoid actual, potential* or perceived *conflicts of interest*." (emphasis added)

b. A conflict of interest occurs "when a nurse's *personal* or private *interests interfere with a client's best interests* or the nurse's own professional

responsibilities." (emphasis added) A conflict of interest "may or *may not lead to undesirable outcomes.*" (emphasis added) Said another way, the lack of a negative outcome does not determine if a registrant has allowed her personal interests to interfere with a client's best interests.

c. Bullet 3 ("Conflicts #3") also states, "If a conflict of interest is unavoidable, nurses identify the problem, *discuss it with the appropriate people* and manage it ethically." (emphasis added)

52. **Procedural fairness issues:** Counsel for Ms. Mclellan argued the College only referred in the Citation to Standards 1, 2 and/or 4, and did not particularize which of the 134 different standards she violated or call evidence on the Standards. The College only focused on violations of the Boundaries Standard and/or professional misconduct and did not refer to any specific item of Standards 1, 2 or 4. The College submitted that Standards 1, 2 and 4 each set out a general standard, with more specific examples showing how the general standard applies to each of four "domains" or practice areas, i.e., clinical practice, education, administration, and research.

53. The Panel is satisfied that Ms. Mclellan received enough notice of the matters at issue that she had opportunity to prepare her response. The College told Ms. Mclellan in the Citation the matter at issue was her entering a "personal, romantic and/or sexual relationship with a client" before he completed his recovery program. The College gave notice of two Practice Standards at issue: the Boundaries Standard and the Conflicts Standard. Each Practice Standard applies Standards 1, 2 and 4 to specific situations. The Introduction to the College's four Professional Standards on the College's website explains that in relation to the Professional Standards, "*Indicators* provide specific criteria for meeting each Professional Standard in each of the four main areas of practice..." (emphasis added). Given the matters at issue, and notice of the two Practice Standards, Ms. Mclellan had means to know how Standards 1, 2 and 4 were at issue. She also had opportunity to ask the College to clarify any ambiguities respecting Standards 1, 2 and 4 before the hearing.

c. Professional misconduct and unprofessional misconduct

54. The College asserted that Ms. Mclellan engaged in professional misconduct. Professional misconduct falls within the wider term of "unprofessional misconduct" under the Act:

a. Section 26 of the Act defines "professional misconduct" as including "unethical conduct, infamous conduct and conduct unbecoming a member of the health profession". Professional misconduct has been described by a court as "conduct which would be reasonably regarded as disgraceful, dishonourable, or unbecoming a member of the profession by his well-respected brethren in the group – persons of integrity and good reputation amongst the membership": *Pearlman v. Manitoba Law Society Judicial Committee*, [1991] 2 S.C.R. 869, 1991 CanLII 26 (S.C.C.).

b. Section 26 defines "unprofessional conduct" as a wider term that "includes professional misconduct". A court has described unprofessional conduct broadly as conduct "which violates the ethical code or rules of a profession or such conduct which is unbecoming a member of the profession in good standing": *Millar v. College of Physicians and Surgeons of British Columbia*, 1994 CanLII 1010 (B.C.S.C.).

Since unprofessional conduct encompasses "off-duty" conduct. the Panel may perhaps most usefully approach the matter using the wider term "unprofessional conduct".

55. An important feature of professional misconduct, or unprofessional misconduct, is that a professional standard of practice may arise from different sources: standards may arise from a profession's "culture", such as a common understanding within a profession as to expected behaviour, or from formal written guidelines published by a regulatory body. One may reflect or influence the other.

56. The discipline committee may receive evidence on standards from an expert witness, but it may also rely on a written code of conduct or deduce standards from the fundamental values of the profession. Sometimes finding a standard is easy and straightforward, such as where a rule in a written code is directly on point. Sometimes finding a standard involves difficulty, such as where a code expresses a standard as a general principle, and the committee must apply a more fact-specific standard. A committee may find a more fact-specific standard by deducing the standard from the fundamental values of the profession, or from the values and the principles expressed in a written code, and by interpreting general principles using its own expertise. A committee may also consider the rationales accepted and expressed by other panels of nurses or other health professionals, which have applied professional standards in more or less similar circumstances. Finding a standard may be most difficult where different bodies of responsible professional opinion may differ about the propriety of conduct in a specific situation.

57. The College referred the Panel to cases where discipline panels have addressed how health care values have grounded standards that govern personal relationships between registrants and former clients. Like the Boundaries Standard and the Conflicts Standard, the cases show that whether a relationship between a registrant and a former client is unprofessional depends on the circumstances.

58. In *College of Nurses of Ontario v. Duval*, 2005 CanLII 79646 ("Duval"), a member engaged in a personal and sexual relationship with a former patient within days of her discharge from a psychiatric assessment unit where the member worked. The client entered the psychiatric unit after an aspirin overdose and met the member. After discharge, she called the hospital to speak to the member, who called her back. After this contact, they engaged in a sexual, romantic relationship, which included kissing, hugging and holding hands.

59. The decision of the discipline committee summarized the evidence of "Dr. B" (Witness #11), an expert in psychiatric nursing, that after a suicide attempt, the goals of the nurse-patient relationship is ensuring safety and assisting the client in dealing with the stressors that may have caused the behaviour. "As a result, this is often an intense relationship where the client talks about very personal and intimate issues. This may be the first time that the patient perceives that they have been listened to. [Dr. B] testified that the nurse bears the responsibility to maintain the relationship as therapeutic, because the client may view the relationship as special and may make unreasonable demands on the nurse." He further testified that, "There is an inherent power imbalance where the client is extremely vulnerable, and the nurse's job is to not exploit the client." Dr. B also testified that, "When a nurse gets involved in a social relationship with a patient, it changes the availability of the care the patient may need in future admissions."

60. The panel determined that the member had violated the standards of the profession. It notably "accepted" the submissions of College counsel that, "It is inconceivable that a member

so recently graduated from a Nursing program, and having just finished training in Psychiatric nursing, would be unaware of the inappropriateness of forming a personal relationship with a patient who has just been discharged from hospital. His protestations that he acted as a 'compassionate' nurse are beyond belief."

61. The College also relied on a decision of the discipline committee in *College of Registered Psychiatric Nurses of BC v. Kimberly Hurlston* (July 28, 2017) ("Hurlston"). That case involved a registered psychiatric nurse registered with CRPN and working at [facility] who engaged in a personal, romantic, and sexual relationship with a client. When [facility] terminated her employment in February of 2012, and dismissed the client from the program, she continued their relationship. In addition to finding that the registrant engaged in professional misconduct by failing to maintain boundaries with a current patient, the panel found a breach as a result of her continuing a relationship after the client was dismissed from [facility]. The Panel reasoned as follows:

> [134] ... We also conclude that her continuation of the relationship when K.W. ceased to be a client was a continuation of the same unprofessional recklessness. Although K.W. was no longer an actual client after February 9, 2012, **we are not able to say that he immediately became a former client. There has to be a period of time and a significant and demonstrable change in the former client's psychological circumstances before such a transition becomes complete.** The best we can say is that at least until June 2012, **K.W. was in the position of being a 'near-client'** as regards Ms. Hurlston. As a client, **K.W. was vulnerable** and dependent on February 9, 2012. **That reality did not change overnight.** Ms. Hurlston knew this as she acknowledged that K.W. had "complex issues". At a minimum, her decision to continue the relationship is evidence of poor judgment at the very top end of the scale, raising numerous red flags which are clearly listed in the Code and the Standards.
>
> ...
>
> [138] We recognize that a registrant has a less well-defined duty to maintain a professional distance from a former client than with a current client, so as to comply with the boundaries mandated in the Code and the Standards. In this case however, we conclude that **although K.W.'s status as a client may have changed abruptly on February 9, 2012, his character or his nature did not.** In these circumstances, a psychiatric nurse acting in accordance with the Bylaws, Code and Standard should have been alert to the very grave dangers of pursuing or continuing to pursue any kind of relationship with a former client. A right thinking psychiatric nurse, acting professionally, would know that **a former client would have to achieve significant clinical gains over a long period of time before crossing**, (or in this case, continuing to cross), **even minor boundaries with a former client**. As the College stated in its written argument, this was not a 'momentary lapse of judgment.' Ms. Hurlston's conduct was all part of a continuum." (emphasis added)

The panel in *Hurlston* noted, however, that the concept of professionalism and the dangers of pursuing a relationship with a former client was "inadequately highlighted in the materials published to the [*psychiatric nurse*] profession" (at para. 130).

62. Counsel for Ms. Mclellan argued that the facts in *Hurlston* are distinguishable, as the psychiatric nurse in that case, Ms. Hurlston, started a relationship with a current patient while he was on leave from [facility] That patient suffered from depression and alcohol abuse. They contrived to continue their relationship in secret. After the administration at [facility] discovered their relationship, and ended Ms. Hurlston's employment, Ms. Hurlston and the former client lived together. In mid-2012, she locked him out of their home, and he later convinced hospital staff that he had suicidal thoughts, so that he would have a place to stay for a two-week period. While the *Hurlston* case involved facts with no parallel here, these differences do not, in the Panel's view, take away from the merits of the approach to Ms. Hurlston continuing a personal relationship with someone who was a "near client" after leaving [facility].

63. The College also referred to some other cases, including the following:

a. In *Ontario (College of Physicians and Surgeons of Ontario) v. Horri*, 2017 ONCPSD 12 ("Horri"), a family doctor was treating a patient previously diagnosed with depression. The patient attended twelve sessions with him, and after their final session, the physician suggested that she call him if she needed a friend. The patient developed a friendship with the physician over the course of weeks, and two weeks after their final session, they began a sexual relationship which lasted several years. The physician admitted to professional misconduct by having engaged in a sexual relationship "too soon after the termination of the doctor-patient relationship". Evidence the panel considered in relation to penalty showed that the physician assumed that since the patient was no longer under his care, he could engage in a relationship with her. He also considered the patient as not vulnerable towards the end of their physician-patient relationship. In addressing penalty, the Panel concluded that the patient was vulnerable (at p. 21), and that "the power imbalance in this doctor-patient relationship could not just disappear after two weeks..." (at p. 23).

b. In *College of Nurses of Ontario v. Wood* ("Wood"), 2012 CanLII 99771, a female patient with a history of mental health issues was a client of the Mental Health Services unit at a hospital between 2006 and 2010. A registered nurse at that unit provided her with care. From late 2008 onward, the nurse had social contact with the client by telephone, in person and by text messages. He also met her at parties and bars between 2008 and 2010. The relationship began in the Fall of 2008 "within weeks of the Member's Crisis Assessment of [the Client] [in] August [ ], 2008 [ ]". When their relationship ended in 2010, the client felt she could not seek ongoing therapy at the hospital, as she could not disclose her relationship with the nurse, and her change of health care providers was detrimental to her health care progress. The member admitted a breach of standards with respect to the therapeutic nurse-client relationship, and that his not maintaining boundaries was professional misconduct.

64. Finally, the Panel notes it has *ignored* recent well-known legislative amendments in Ontario, which are well-known to regulators across Canada, that categorically prohibit activities of a sexual nature between health professionals and former patients for a minimum of one-year. This "bright line" prohibition was the result of Bill-87, *Protecting Patients Act, 2017*, which changed the definition of "patient" for purposes of sexual abuse to include anyone who was a

member's patient within a one year: s. 1(6) the *Health Professions Procedural Code*, which is Schedule 2 of the *Regulated Health Professions Act*, 1991, S.O. 1991, c. 18. The Panel is aware that this rule in Ontario, *set by statute* for all health professions, does not reflect the standards in the College's Boundaries Standard as it existed in 2015, and does not necessarily reflect professional standards of the nursing profession in British Columbia in 2015. The change to the Ontario law does highlight, however, that the Ontario decisions about health professionals having relationships with former clients, when they might need further care (Duval) or in any event "too soon" after treatment (Horri), did not depend on any specific, written "bright line" rule prohibiting registrants or members from having romantic or sexual relationships with former clients within an fixed period of time after the end of a professional relationship.

E. Analysis

65. **The Boundaries Standard:** Upon Mr. M entering the program at [facility], Ms. Mclellan and Mr. M had a therapeutic nurse-client relationship, despite their interaction being minimal. Ms. Mclellan agreed to this fact.

66. When Mr. M discharged himself from [facility] on September 24, 2015, he became a "former client" in the technical sense that Ms. Mclellan and others would no longer be providing him with nursing or other medical care relating to his substance use disorder. The Panel is satisfied however that Mr. M was still vulnerable at that time. Mr. M had entered [facility] for treatment of a substance use disorder. [Facility] is a "last chance" addiction treatment facility for clients who have struggled with addictions. The program involves a lengthy program of residential treatment. Mr. M had not completed the program at the time he discharged himself. The Panel is satisfied that, despite his being described by Ms. Mclellan as "clean" and doing well, and despite his remaining clean in the years after he left [facility], Mr. M still faced, when he left [facility], some degree of struggle with addiction, and a risk of his needing further treatment. His stay at [facility] did not entirely resolve his addiction issues, as shown by Ms. Mclellan later strongly encouraging Mr. M to attend Narcotics Anonymous meetings and counselling. Mr. M's need to manage his disorder, even after his stay at [facility], would have resulted in a continuing power imbalance between Mr. M and health professionals at [facility], like Ms. Mclellan.

67. Ms. Mclellan conceded that her current understanding, after more work experience and training in boundary violations, is that Mr. M was vulnerable when he discharged himself. While the parties have disputed what her current understanding means in terms of admitted misconduct, Ms. Mclellan's current understanding at least confirms the Panel's independent factual conclusion that Mr. M was vulnerable. For example, Ms. Mclellan testified to [redacted] telling her that people with addictions commonly "latch on" to people. She also testified about her perceiving the quick development of her relationship with Mr. M as romantic, before she understood the impulsive nature of addiction, and that she has since learned from her work with Northern Health, in the last two years, about the impulsive nature of people with addictions.

68. Boundary standards and conflicts of interest standards prevent situations where professionals are, or may be, in a position to take advantage of current or former professional relationships. When Ms. Mclellan became a registrant, she subjected herself to professional standards. Professional standards apply to all registrants, even if they may produce different requirements in different contexts. Professional standards may be in writing, or unwritten. The College may also set or redefine professional standards for any situation. That said, the Panel

does not see that the Boundaries Standard, the Conflicts Standard, or any Professional Standard diverges from the common understanding of the profession: nurses must not engage in romantic or sexual relationships with former clients who are or may be vulnerable.

69. Professional nursing standards in British Columbia do not currently set a "bright line" for when a registrant may, or must not, engage in a personal relationship with a former client. The variety of different circumstances that may arise, involving different clients and different intervals, may require that committees address situations where reasonable members of the profession would disagree that allowing a personal relationship is unprofessional conduct. In difficult situations, a committee might have to consider if a responsible and legitimate body of professional opinion supported the conduct, even if a majority of the profession disapproved. But this is not one of those situations.

70. As addressed above, Mr. M was in a vulnerable position, regardless of his being "clean" and "doing well" for someone in his position. Part of his vulnerability may have involved behaviours tied to his addiction disorder, such as impulsivity, or partiality for people who cared for him, such as Ms. McLellan. He also likely faced the risk of a future need for treatment, and an impediment due to the Disqualification Policy to his accessing treatment should he enter a personal relationship with a staff member at [facility]. Ms. Mclellan did not recognize Mr. M's vulnerabilities, but they were factors that boundary standards exist to address.

71. Even though Mr. M sought Ms. Mclellan out, and was clearly willing to pursue a relationship with her, Ms. Mclellan had the professional obligation to recognize the risk that he was vulnerable, to set appropriate boundaries, and to maintain those boundaries. Ms. McLellan was aware Mr. M attended [facility] to address a substance use disorder. While some passage of time might have alleviated Mr. M's vulnerabilities, Ms. Mclellan allowed a personal relationship with Mr. M to start about a week after he left treatment, and to develop rapidly in the following weeks. As in the *Horri* case, the personal relationship clearly started "too soon" after the technical end of the nurse-patient relationship. As in the *Duval* case, the personal relationship also started when Mr. M might still have to return to [facility]. Given that Mr. M had not completed his program, given his addiction condition, and given the short time that had elapsed after his departure, the Panel did not see that he could have, using the language of the committee in *Hurlston*, transitioned from "near-client" to former patient based on, "a period of time and a significant and demonstrable change in the former client's psychological circumstances...." This was also not a case where Ms. Mclellan had a pre-existing relationship with Mr. M, so that she had to negotiate a dual role from the start of her working at [facility].

72. Counsel for Ms. Mclellan relied on the *Stuart* case, where a teacher with bipolar disorder carried out acts caused by a change in his medication, and the court decided that professional misconduct under the *Teaching Profession Act* was a public welfare offence that involved strict liability: ***Stuart v. British Columbia College of Teachers***, 2005 BCSC 645. The court referred to three categories of offence: first, those that required proof of *mens rea*, meaning a positive state of mind such as intent, knowledge or recklessness; second, those where the doing of a prohibited act "prima facie imports the offence, leaving it open to the accused to avoid liability by proving that he took all reasonable care"; and third, those involving absolute liability where an accused cannot exculpate himself by showing that he was free from fault. The court decided that professional misconduct fell in the second category (at para. 47):

> Offences which are criminal in the true sense fall in the first category. Public welfare offences would prima facie be in the second category. They are not subject to the presumption of full *mens rea*. An offence of this type would fall in the first category only if such words as "wilfully," "with intent," "knowingly," or "intentionally" are contained in the statutory provision creating the offence. On the other hand, the principle that punishment should in general not be inflicted on those without fault applies.

The court in *Stuart* decided that treating professional misconduct, or conduct unbecoming, as an absolute liability offence would do nothing to promote the objects of the *Teaching Profession Act* (at para. 58).

73. Counsel for Ms. Mclellan also relied on a decision of the Supreme Court of Canada involving the improper use of unregistered broker, contrary to a statutory requirement: ***La Souveraine, Compagnie d'assurance generale v. Autorite des marches financiers***, [2013] 3 S.C.R. 756, 2013 SCC 63. The court treated the regulatory offence as a "strict liability" offence (at paras. 49 and 50):

> [49] ...I consider the situation to be quite different in the context of regulatory offences. Those who engage in regulated activities agree in advance to adhere to strict standards, and they accept that they will be rigorously held to those standards, which are typical of such spheres of activity. It is therefore not surprising in the regulatory context to find strict liability offences that encompass forms of secondary penal liability for the ultimate purpose of vigilantly ensuring compliance with a regulatory framework established to protect the general public.
>
> [50] For these reasons, I conclude that the offence provided for in s. 482 of the ADFPS is one of strict liability and that it was not necessary to prove that the appellant knew its broker intended to break the law or that the former had the specific intent of helping or inducing the latter to do so. Proof that the appellant's actions *in fact* helped or induced its broker to contravene s. 71 of the ADFPS by distributing insurance products without holding the required licences is sufficient to convict the appellant.

74. The relevance of professional misconduct or unprofessional conduct as being like a strict liability offence is the principle that a registrant may avoid responsibility by showing that she took all reasonable care. For example, the court in *Stuart* found that the primary cause of the teacher's behaviour was his medical condition, which was beyond his control, and that his condition worsened with a transition in his medication (at para. 79).

75. Counsel for Ms. Mclellan submitted that Ms. Mclellan considered the amount of time that had passed, whether Mr. M was vulnerable, and the limited degree of nursing care she provided. She also spoke to Ms. A. He submitted that her conclusion was reasonable.

76. The Boundaries Standard speaks to the vulnerabilities of clients arising from nurse-client relationships. This rationale for the Boundaries Standard is knowledge that all registrants know or should know. Boundaries #5 goes on to clarify that, "Nurses are careful about socializing with clients and former clients, especially when the client or former client is vulnerable or may require ongoing care." Given the circumstances of Mr. M's addiction, his failure to complete the program, and the possibility that Mr. M might need ongoing care after he discharged himself

from the program, the Panel is not satisfied that Ms. Mclellan's conclusion is one that a reasonable nursing professional could have reached. Starting a romantic relationship with a former patient about a week after his discharge from a residential treatment program for a substance use disorder – someone who was, in the language used in *Hurlston*, a "near-client" – was a "clear" or "obvious" breach of standards. The cases noted above confirm standards which the Panel accepts as shared by the nursing profession in British Columbia.

77. The Panel is also not satisfied that Ms. Mclellan took all reasonable care to uncover her professional obligations in the situation. The nature of Mr. M's illness and the short period of time since his discharge would have at least demanded a rigorous inquiry. Ms. Mclellan did not speak to or approach a regulatory practice consultant at the College. She also did not seek any information from her employer. Ms. Mclellan called Ms. A, but Ms. A had at that point left her employment at [facility]. Evidence shows that Ms. Mclellan and Ms. A talked about Mr. M, but no evidence shows they specifically talked about nurse-patient boundaries, or Ms. Mclellan's professional obligations. Some events show a degree of willful blindness to boundary issues. For example, Ms. Mclellan chose to continue the relationship despite her employer dismissing her for a boundary violation, and despite [redacted] telling her it was common for people with addictions to latch on to someone, and that she should 'get away" from Mr. M. She also chose to continue the relationship despite the Inquiry Committee's advice of its provisional conclusion that her conduct was unsatisfactory.

78. **The Conflicts Standard:** Boundary-related professional standards exist in part to prevent situations where health professionals do or may possibly abuse imbalances of power. Boundaries in nurse-client relationships prevent registrants from being in positions where their interests conflict with their duties. A boundary violation may therefore coincide, as in this case, with a situation where a registrant puts herself in a position where her personal or private interests in having a relationship interferes with her continuing to act in the best interests of a client or a "near client". Ms. Mclellan allowed her desire for a personal relationship with Mr. M to take priority over her ability to continue as his health care provider, should he need further care. Indeed, she put Mr. M in a position where he might be unable to return to [facility], due to the Disqualification Policy, should he need further treatment. A personal relationship between Ms. Mclellan and Mr. M right after he discharged himself from an incomplete addictions program was not, from a health-care perspective, in his best interests.

79. The fact that Mr. M remained "clean" and ultimately did not consider any return for treatment at [facility] does not show that Ms. Mclellan's actions were harmless to him, or harmless to the public interest. Mr. M was at risk of a relapse, especially given that he had not completed his program. A personal relationship between Ms. Mclellan and Mr. M compromised their ability to have a professional relationship in the future, overlapped with a continuing professional relationship to the extent that Mr. M was still vulnerable, and compromised his future access to health care at [facility] Counsel for Ms. Mclellan argued that no evidence showed any "exploitation" of Mr. M by Ms. Mclellan. This argument fails to address impairments of future health care, and ignores the purpose of the Boundaries Standard and the Conflicts Standard in protecting clients prohibiting personal relationships between them and registrants who *may* benefit personally from a power imbalance.

80. **Professional Standards:** Ms. Mclellan breached Standards 1, 2 and 4 which contribute to the Boundaries Standard and the Conflicts Standard. For example, Ms. Mclellan entered into a relationship with a "near client" and failed to maintain standards of nursing practice and

professional conduct determined by the College (Standard 1); she failed to know how and where to access information to support her providing safe, competent and ethical client care, such as by her contacting the college (Standard 2 (Clinical Practice 1)); and she failed to understand, uphold and promote the ethical standard of the nursing profession (Standard 4), by her failing to recognize potential conflicts and take action to prevent or resolve them (Clinical Practice 11), failing to consult with the appropriate person or body about an ethical issue (Clinical Practice 12), and failing to terminate a nurse-client relationship in an appropriate manner (Clinical Practice 13).

81. **Professional misconduct or unprofessional conduct:** Given the circumstances already set out above, including Mr. M's vulnerability and the short time after the end of the therapeutic nurse-client relationship, the Panel is satisfied that Ms. Mclellan significantly departed from professional standards, as expressed by the Boundaries Standard, the Conflicts Standard, and Standards 1, 2 and 4. While Ms. Mclellan did not intend to exploit Mr. M, the Panel is satisfied that Ms. Mclellan failing to enforce a boundary led to Mr. M suffering harms to his ability to access future health-care at [facility].The fact that he did not need that access from [facility] is fortuitous. Furthermore, Ms. Mclellan engaged in a power-imbalanced personal relationship, with someone who is well-described as a "near client", that was, apart from any actual exploitation, conduct unbecoming a registrant. From a professional standards perspective, given Mr. M's very recent departure from a residential program that he did not complete, and his ongoing vulnerability, Mr. M was someone with whom Ms. Mclellan could not have a romantic or sexual relationship at that time, no matter how well-intentioned.

82. The Panel recognizes that Ms. Mclellan did not intend to exploit any vulnerability of Mr. M, or to prioritize her emotional needs over Mr. M's ability to obtain further treatment. Such factors do not alter her duty to meet written standards under the Act, or to refrain from unprofessional conduct based on professional standards that all registrants know or should know. She did not take all reasonable care to uncover her professional obligations. The Panel may consider mitigating factors, such as her lack of experience, as part of assessing penalty.

83. Given that Mr. M still had, given the circumstances and due to his vulnerability, many qualities of a client – he was a "near-client" – the Panel is satisfied that Ms. Mclellan failed to maintain appropriate boundaries. By engaging in a romantic and eventually sexual relationship with Mr. M shortly after he discharged himself prematurely from a long-term addiction treatment program, Ms. Mclellan

a. engaged in professional misconduct or unprofessional conduct,

b. contravened the Boundaries Standard (specifically Boundaries #1, #2, #3, #4, #10),

c. contravened the Conflicts Standard (specifically Conflicts #1),

d. by extension, contravened Standards 1, 2 and 4.

F. Penalty, publication and costs

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

Notice

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

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

Sheila Cessford Delta, BC May 14, 2018

Name Place Date

Name Place Date

Name Place Date

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Name	Place	Date
Thomas Fairhurst	VANCOUVER	MAY 16, 2018
Name	Place	Date
Name	Place	Date

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Name	Place	Date
Name	Place	Date
Robert J. Holliday	Vancouver	May 15, 2018
Name	Place	Date