

**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:

Roshanak Rahi

(the “Respondent”)

DECISION OF THE DISCIPLINE COMMITTEE

(Penalty and Costs)

Hearing Dates: Conducted by way of written submissions
concluding on June 15, 2024

Discipline Committee Panel: Sheila Cessford, Chair
Samantha Love, LPN
Hannah Varto, MN, NP(F), SANE-A

Counsel for the College: Jessica Lithwick

For the Respondent: appearing on her own behalf, self-represented

Counsel for the Panel: Susan Precious

A. INTRODUCTION

1. A panel of the Discipline Committee (the “Panel”) of the British Columbia College of Nurses and Midwives (the “College” or “BCCNM”) conducted a hearing pursuant to section 38 of the *Health Professions Act* RSBC 1996 c.183 (the “Act” or the “HPA”), to determine whether Roshanak Rahi (the “Respondent”) failed to comply with the College’s standards, failed to comply with the Act or the College’s Bylaws,

committed professional misconduct or unprofessional conduct, or incompetently practised the profession.

2. On March 14, 2024, the Panel released its decision finding that all the allegations set out the Further Amended Citation (the "Citation") were proved to the requisite standard and determined that the Respondent committed professional misconduct (the "Conduct Decision").
3. In the Conduct Decision, the Panel requested written submissions on the appropriate penalty and whether costs should be imposed. The Panel set a timetable for exchange of written submissions. The College requested an extension of time which was granted. The Panel directed a revised timetable with submission deadlines of April 19, 2024, May 10, 2024, and May 17, 2024. The Respondent did not follow the timetable and delivered her written submissions on April 4, 2024. The College delivered its written submissions on April 19, 2024. Nevertheless, the Respondent was reminded of her entitlement to respond to the College's submissions by May 10, 2024. As the Respondent did not deliver further submissions, the College did not deliver any reply submissions. The Respondent wrote the Panel again on June 15, 2024 reiterating many of the points in her April 4, 2024 submissions.
4. The College seeks the following orders:
 - a. That the Respondent is reprimanded.
 - b. That the Respondent's registration be suspended for five months, with her suspension taking effect from the date that she obtains an active certificate of registration and continuing to run without interruption as long as she retains that status.
 - c. That, prior to returning to practice after her suspension, the Respondent shall complete the following remedial education at her own expense:
 - i. She must achieve an unconditionally passing grade in completing the PROBE Ethics & Boundaries Course (the "PROBE Course") and, if she does not achieve an unconditionally passing grade, she must

consent to her course provider sharing her course information and work product with BCCNM and must complete such further and other retraining as her BCCNM Monitor may reasonably require.

ii. The Respondent must complete the following BCCNM LPN learning modules:

1. Documentation, including completing the Documentation workbook; and
2. Understanding the Medication Practice Standard.

iii. The Respondent must review the following BCCNM LPN learning resources and any documents hyperlinked in those resources and must prepare a detailed written summary of lessons learned in the course of that review:

1. Understanding Scope of Practice;
2. LPN Scope of Practice;
3. Medical aesthetics; and
4. Self-employed Practice.

- d. That, in the event that any of the resources listed above should no longer be available when the Respondent seeks to fulfill the requirements above, the Respondent and/or the BCCNM Monitor may propose an alternative that addresses the same subject matter. Approval of any substitute remedial course will be at the sole discretion of the BCCNM Monitor.
- e. That the Respondent must provide her BCCNM Monitor with proof of completion of the above remedial education, including transcripts, work product, evaluations and such further and other related records as her Monitor may request.
- f. That prior to returning to practice and subsequent to completing the remedial education identified above, the Respondent will meet with a BCCNM Practice Consultant and:

- i. Discuss the acts and omissions for which she was found to have committed professional misconduct in the Conduct Decision;
 - ii. Discuss the potential consequences of her misconduct for clients, colleagues, the profession, the Respondent and other health care professionals;
 - iii. Discuss strategies for preventing the misconduct from reoccurring;
 - iv. Discuss the summaries, publications, work modules and assignments completed pursuant to the above learning requirements;
 - v. Discuss the information learned from the above-ordered remedial education and how she will integrate that knowledge into future practice; and
 - vi. Discuss the role of the College's practice advisors and other departments.
- g. That after the Respondent's suspension is completed, the Respondent shall not be self-employed for 18 months or 2700 nursing practice hours (whichever is longer) unless, prior to commencing her self-employed practice:
- i. She secures one or more mentor approved by her BCCNM Monitor who:
 1. Has at least 5 years of nursing experience;
 2. Experience with self-employment as a nurse; and
 3. Who understands an LPN's scope of practice (her "Mentor").
 - ii. She provides her Mentor(s) with a copy of the Conduct Decision, along with the Panel's decision on sanction (the "Decisions"); and
 - iii. Each Mentor signs a mentorship agreement substantially in the form attached to these submissions as Schedule 1 (the "Mentorship

Agreement”) and the Respondent provides the signed copy(ies) to BCCNM.

- h. If the Respondent is obligated to work with a Mentor pursuant to the above because she is engaged in self-employed practice, she:
 - i. Is solely responsible for all third-party costs, including fees charged by her Mentor (if any);
 - ii. Must promptly notify her BCCNM Monitor should her Mentor(s) change and provide her BCCNM Monitor with a signed Mentorship Agreement for any new Mentor; and
 - iii. Must promptly notify BCCNM should she become aware that the contact information for any Mentor has changed.
- i. That after the Respondent’s suspension is completed, for 18 months or 2700 nursing practice hours, the Respondent must:
 - i. Provide her BCCNM Monitor with the name, address, and telephone number of all employers prior to commencing work in any nursing position; and
 - ii. In the event that the Respondent will practice within a facility that performs medical aesthetics or administers Botox, whether or not the Respondent participates in the provision of those services, prior to commencing work:
 - iii. Provide her employer(s) with copies of the Decisions; and
 - iv. Provide her BCCNM Monitor with a signed acknowledgment from her employer(s) of their receipt of the Decisions.
- j. That for six months or 900 nursing practice hours (whichever is longer), whether or not the Respondent is involved in a medical aesthetics practice, the Respondent must not be the sole regulated health professional on duty in any facility that provides services which include medical aesthetics or the use of Botox.

5. In terms of costs and disbursements, the College seeks an order that the Respondent pay \$30,425.90 to the College within 12 months from the day that the Panel's order is finalized.
6. The College also seeks an order for public notification pursuant to section 39.3 of the Act.
7. The Respondent did not substantively respond to the College's proposed penalties and costs set out above. The Respondent instead requested payment for "lost income" in the amount of \$185,760.

B. LAW

HPA

8. If a determination is made by the Panel under section 39(1) of the HPA, it may order any of the penalties set out in section 39(2) of the Act. Section 39(2) of the HPA provides:

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)

9. If the Panel orders a suspension or cancellation, the following additional provisions in the HPA 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

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

10. Section 39(5) of the HPA authorizes the Panel to award costs to the College against the Respondent based upon the tariff of costs enacted under section 19 of the HPA. Section 39(7) provides that costs awarded under section 39(5) must not exceed 50% of the actual costs to the College for legal representation for the purposes of the hearing.

Former Registrant

11. The Respondent is no longer a registrant of the College. Her registration lapsed this year when she did not renew it.
12. The Panel retains jurisdiction to impose orders under section 39 of the HPA against the Respondent as a "former registrant."
13. Section 26 of the HPA defines "registrant" to include "former registrant" for the purposes of Part 3 of the Act which deals with "Inspections, Inquiries and Discipline":

"registrant" includes a former registrant, and a certified non-registrant or former certified non-registrant to whom this Part applies;

General Approach

14. The imposition of penalty is at the Panel's discretion. The purpose of a penalty is to protect the public from unprofessional conduct, in accordance with the College's statutory public protection and public interest mandates. In addition to deterring the Respondent and other members of the profession from engaging in future similar misconduct, sanctions establish the standards of the profession and communicate

to registrants and the public the consequences of failing to adhere to those standards. This in turn promotes public confidence in the nursing profession.

15. The relevant factors to consider in determining an appropriate penalty are set out in *Law Society of British Columbia v. Ogilvie*, [1999] LSBC 17:
 - a. the nature and gravity of the conduct proven;
 - b. the age and experience of the respondent;
 - c. the previous character of the respondent, including details of prior discipline;
 - d. the impact upon the victim;
 - e. the advantage gained, or to be gained, by the respondent;
 - f. the number of times the offending conduct occurred;
 - g. whether the respondent has acknowledged the misconduct and taken steps to disclose and redress the wrong and the presence or absence of other mitigating circumstances;
 - h. the possibility of remediating or rehabilitating the respondent;
 - i. the impact on the respondent of criminal or other sanctions or penalties;
 - j. the impact of the proposed penalty on the respondent;
 - k. the need for specific and general deterrence;
 - l. the need to ensure the public's confidence in the integrity of the profession;
and
 - m. the range of penalties imposed in similar cases.

16. *Law Society of BC v. Dent*, 2016 LSBC 05 consolidated the list of relevant factors to consider in determining an appropriate penalty:
 - 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.
- 17. Not all factors are engaged in every case.
- 18. The *Ogilvie / Dent* framework has been repeatedly applied by many professional regulation tribunals, including this College's Discipline Committee in *BCCNM v. Parniak*, 2020 BCCNM 5 and *BCCNM v. Lord*, 2020 BCCNM, in considering the appropriate sanction for a registrant or former registrant. The Panel adopts that approach in this case.

C. ANALYSIS

Dent Factor 1: Nature, Gravity and Consequences of the Conduct

- 19. In *Dent*, the nature, gravity and consequences of the conduct is described as follows:

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

- 20. The College argues that the conduct in this case is serious.
- 21. The Respondent did not make any arguments relevant to this factor.
- 22. The Panel finds that the Respondent's conduct in this case was serious. All four of the allegations in the Citation were proved against the Respondent to the requisite standard. The Panel determined that the Respondent committed professional misconduct.
- 23. With respect to the first Citation allegation, the Respondent engaged in unauthorized practice in relation to drug administration. She structured her business and advertised services to the public that she knew were outside of her scope of practice. This was aggravated due to the potential dangers associated with the products. The Panel found that the Respondent was aware of the potential dangers associated with Botox and derma fillers. The Panel found that the Respondent's conduct was also aggravated by the sense of legitimacy that the Respondent's business structure

could have conveyed due to its location at an established medical clinic and because her advertising materials emphasized her status as a nurse, including by using her title and pictures of herself wearing a stethoscope.

24. With respect to the second Citation allegation, the Panel found that the Respondent purchased a prescription-only substance without a prescription contrary to the *Drugs Schedules Regulation*. The Respondent acquired Botox in preloaded syringes in a bag of ice raising concerns around the proper preparation and handling of medications. The Respondent administered Botox without personal experience, without physician involvement, and in a medical clinic that had no knowledge or experience with Botox.
25. With respect to the third Citation allegation, the Panel found that the Respondent made false statements to College investigators that she had not purchased or received Botox from Mr. Honardoust, the individual from whom she did acquire the products. This conduct was contrary to the Respondent's duty to fully cooperate with the College's investigation. The Panel found that the Respondent's failure to cooperate was on the more serious and egregious end of the spectrum in this case because she made false statements to the College, the false statements were in relation to dangerous conduct, the false statements were part of the Respondent's general lack of respect for and resistance to the College's investigation into the matters it was required to investigate, the Respondent told the investigator she had no business investigating her and that the matter should be thrown out, the Respondent alleged that the College was creating mistrust and had a special relationship with the institution where the Respondent did her coursework, the Respondent told the investigator that she possessed clinical records which were never provided, and she was resistant in scheduling an investigation interview.
26. With respect to the fourth Citation allegation, the Panel found that the Respondent told the College of Physicians and Surgeons of British Columbia and the Plateau Medical Clinic that administering Botox was within her scope of practice or had been approved by the College. This Panel found that the Respondent failed to

demonstrate honesty and integrity. The Panel found that the Respondent misled four separate people.

27. The Panel found that the Respondent not only knew or should have known that she was operating outside of her scope of practice, but she was also engaged in a dangerous activity and told registrants and staff from another health profession college that her activities were within her scope of practice and approved by her own College. The relationships between registrants and staff of other health profession colleges are important to the functioning of all regulated health professions. The Panel found this to be serious conduct as well.
28. There was no evidence before this Panel that any members of the public were harmed (or were not harmed) so the Panel does not make any findings about the consequences of the conduct other than to find that the Respondent's misconduct created a serious risk of harm.
29. The Panel considers that this factor weighs in favour of a more serious penalty.

Dent Factor 2: Character and Professional Conduct Record of the Respondent

30. The *Dent* decision describes the second factor in this way:

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

31. The College argues that there are no significant mitigating circumstances in this case in relation to this factor.
32. The Respondent did not address this factor in any substantive manner.
33. The Panel finds that the Respondent was a new registrant when the misconduct took place. She was registered on July 24, 2018 and her misconduct began in October 2018.
34. The Panel notes that inexperience can sometimes be a mitigating circumstance for the purposes of this factor, however, the Panel does not consider that the Respondent's misconduct arose from her inexperience. The dangerous and dishonest aspects of the conduct were not attributed to inexperience in this case.

35. In terms of her registration history, the Respondent signed a voluntary undertaking with BCCNM on July 5, 2019, which she has asserted prohibits her from practicing as an LPN. The College notes that this is incorrect. The voluntary undertaking only restricts the Respondent from performing cosmetic injections including Botox and dermal fillers. It does not otherwise prohibit her from practicing. The Panel accepts the College's point.
36. The Respondent has no prior disciplinary record. That is typically a mitigating circumstance. In this case, the Panel finds that it does not act as a mitigating consideration because there is no meaningful period of registration during which the Respondent was free from misconduct. The Respondent's misconduct began shortly after she was registered.
37. The Panel agrees with the College's submission that the Respondent has no post-misconduct positive performance record to her credit. She was dismissed by Kinetix Medicine on April 17, 2019, while she was still a probationary employee, due to poor performance and unresponsiveness to feedback from management.
38. The Panel considers that this factor weighs in favour of a more serious penalty.

Dent Factor 3: Acknowledgement of Misconduct and Remedial Action

39. The *Dent* decision describes the third factor in this manner:

[22] Does the respondent admit his or her misconduct? What steps, if any, has the respondent taken to prevent a reoccurrence? Did the respondent take any remedial action to correct the specific misconduct? Generally, can the respondent be rehabilitated? Are there other mitigating circumstances, such as mental health or addiction, and are they being dealt with by the respondent?
40. The College argues that at no point has the Respondent taken meaningful responsibility for her actions, which is an important mitigating factor. The Respondent objected to the propriety of the investigation leading to this proceeding and continued to assert that she was a victim. She also repeatedly declined to acknowledge service of records, as is demonstrated in the affidavits of service that were filed at the hearing. She was disruptive at the hearing and, at one point in the hearing had to be compelled to answer a question asked by the College. The College argues that although the Respondent is entitled to mount a vigorous defence and

doing so is not an aggravating factor, the Respondent's behavior in this case went further than that, demonstrating irreverence for the process itself.

41. The College also notes that in her correspondence to the Panel in relation to the penalty and costs submissions, the Respondent has continued to refuse to accept the outcome of the Conduct Decision, stating (amongst other things) that the Panel has not found any fault on her part.
42. The College argues that while voluntary undertakings tend to reflect a measure of accountability, the mitigation of the voluntary undertaking in this case is reduced because the Respondent has demanded compensation for her purported inability to work and despite the limited scope of the undertaking, she has repeatedly expressed that she wanted to revoke her voluntary undertaking but declined to do so when she was told that the College might then seek an order under section 35 of the Act, and the Respondent made informal requests that the College omit that she was subject to an interim undertaking when verifying her BCCNM registration to a nursing regulator in another jurisdiction.
43. The Respondent did not make any submissions relevant to this factor other than to state "the panel has not found any fault on my part", which the Panel finds is wholly incorrect.
44. The Panel finds that there is no evidence before it of any remedial steps or action undertaken by the Respondent. While the refusal to take responsibility is not an aggravating factor, it does represent the absence of mitigating circumstances. In this case, there are no mitigating circumstances in the Respondent's favour in relation to this factor.

Dent Factor 4: Public Confidence in the Profession Including Public Confidence in the Disciplinary Process

45. The Dent decision made the following remarks regarding the assessment of this factor:

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

Specifically, will the public have confidence in the proposed disciplinary action compared to similar cases?

46. The College notes that this factor also involves consideration of similar cases. In that regard, the College submits that there are no similar cases in British Columbia involving nurses, and the Ontario cases in which nurses were disciplined for administering or offering Botox without proper authorization do not assist. The College submits that the sanction range in the Ontario cases is too low because the majority of those cases were consent resolutions or had other significant mitigating factors present that do not exist in this case. The College submits that the following cases assist:

- a. In *Ontario (College of Physicians and Surgeons of Ontario v. Kakar)*, 2017 ONCPSD 8, the physician psychiatrist admitted that he had failed to maintain the standards of the profession with respect to record-keeping, acting outside the scope of his practice by providing non-psychiatric care to a patient, altering the patient's medical record to mislead the College, and repeatedly lying to the College about his prescribing. He also admitted to plagiarizing a portion of another professionals' report into a third-party medical report. The physician had a history with the College that included practice monitoring and practice restrictions. The College and the physician provided a joint submission, which the panel accepted. The panel ordered a reprimand, a six-month suspension, terms and conditions on his certificate of registration and educational requirements.
- b. In *College of Nurses of Ontario v Russon*, 2018 CanLII 139525, the member had been a registered nurse for approximately nine years at the time of the misconduct but had voluntarily surrendered her license about a week before the hearing and did not attend the hearing. She injected neuromodulators outside of her scope of practice and without an order on two occasions while working at a medical spa. While the panel found that the conduct was very serious and that registrant was aware of the need for a physician or nurse practitioner to assess clients and provide a prescription before she could administer Xeomin, there were no flagrant elements of deceit or deception

in the misconduct. The panel ordered a four-month suspension and a reprimand. It also ordered terms, conditions and limitations placed on the member's certificate, including further education and a 2-year requirement to notify her employer of her disciplinary history.

- c. In *College of Nurses of Ontario v Zorn*, 2017 CanLII 49763, the member had been a registered nurse since 1976. She administered Botox by injection on the basis of telephone orders from a doctor who had not seen the clients. This was not proper authorization under the relevant legislation. She admitted to improper advertising on her website including using testimonials and non-verifiable information. The member also admitted to subleasing space to an individual who held herself out as a nurse and provided Botox injections without taking adequate steps to verify that the subtenant was authorized to administer substances by injection. The member fully cooperated with the discipline process including through an agreed statement of facts and a joint submission on penalty. The member was given a three-month suspension, an oral reprimand, and terms, conditions and limitations were imposed on her certificate of registration in the form of two meetings with a nursing expert and 18 months of working with a nurse mentor once she returned to the practice of nursing.
- d. In *College of Nurses of Ontario v. Cecilioni*, 2013 CanLII 91850, a registered nurse had a prior history with the College from 2008 whereby she had been suspended for one month involving the injection of Botox for therapeutic purposes. The member had been licensed since 1968 and, until the issues in 2008, had no discipline history. The member was found to have intended to inject Botox without a physician's order or proper delegation. The member did not actually inject the Botox because the client, an undercover reporter, advised her that she was pregnant. The member also failed to meet the conditions of a medical directive in place for the administration of Botox, and failed to ensure the client was assessed by a physician. The member cooperated with the discipline process through an agreed statement of facts and a joint submission on penalty. The member was

given a four-month suspension, an oral reprimand, and terms, conditions and limitations were on her certificate of registration in the form of two meetings with a nursing expert and a 12-month employer notification.

- e. In *College of Nurses of Ontario v Ozueh*, 2017 CanLII 84900, a registered practical nurse had been a registrant for approximately six years at the time of the misconduct. She was self-employed and was found to have injected Botox and/or dermal fillers without proper authorization on twenty clients, selling Botox without proper authorization, misusing the title of Registered Nurse (she was a Registered Practical Nurse), and failing to engage in proper assessment and documentation practices. The member cooperated with the discipline process through an agreed statement of facts and joint submission on penalty, was obtaining Botox through physician prescriptions, albeit without sufficient documentation or physician involvement in her practice. The member was given a three-month suspension, an oral reprimand, and terms, conditions and limitations were imposed on her certificate of registration in the form of two meetings with a nursing expert and 12 months of working with a nurse mentor once she returned to the practice of nursing.
- f. In *College of Nurses of Ontario v. Roode*, 2004 CanLII 95208, this case involved a registered nurse treating clients outside of the scope of her practice by administering intravenous therapies such as chelation therapy, IV vitamin and mineral therapy. The drugs were provided by a naturopath who was not an authorized person to prescribe drugs to be given intravenously. The member had been a nurse for approximately fourteen years at the time of the misconduct. She initially denied the allegations, but later changed her plea and entered into an agreed statement of facts. The panel accepted the joint submission of penalty which was a five-month suspension, a reprimand, and various terms, conditions, and limitations on her certificate of registration.

- g. In *British Columbia College of Nurses and Midwives v. Fung*, a four-month suspension was imposed after a contested conduct hearing resulting in a finding of professional misconduct on the 1-count citation for a prolonged failure to cooperate in an investigation contrary to s. 338 of the Bylaws of one of the BCCNM's predecessor colleges, the British Columbia College of Nursing Professionals. The registrant in that case did not oppose the College's sanction position.
- h. In *Ontario (College of Physicians and Surgeons of Ontario) v. Price*, 2016 ONCPSD 30, the registrant was found to have altered a patient chart in a misleading fashion after the patient made a complaint to the College. He then misled a College investigator by denying he had altered the patient chart and misled the investigator about his charting practices. The panel accepted a joint submission of a three-month suspension.
- i. In *Re Ames*, 2022 CanLII 24365 (MB CPSDC), the physician had admitted to committing professional misconduct and conduct unbecoming a member by failing to maintain appropriate professional boundaries and exploiting a patient for his personal advancement and then misleading the College in his written communications and in an interview during the course of the investigation. The panel ordered a reprimand, a six-month suspension, and conditions on his entitlement to practice medicine.
- j. In *Kuny v College of Registered Nurses of Manitoba*, 2017 MBCA 111, a registered nurse was suspended for four months, ordered to complete a reference paper, and ordered to pay costs of \$15,000 because of a pattern of refusal or resistance to cooperating in a college investigation, coupled with demands for significant disclosure throughout the process as a precondition to his participation at various times.
- k. In *Lambert v. College of Physicians & Surgeons (Saskatchewan)*, 1991 CanLII 7898 (SKKB), a medical doctor was suspended for three months (reduced from six months by the court) for failing to produce documents to his college during its investigation.

- I. In *Ontario (College of Physiotherapists of Ontario) v. Tsaprailis*, 2016 ONCPO 5, a physiotherapist employed a person who was not a registered massage therapist to give massages at his clinic. He invoiced the patients using his name and registration number. He misled the College investigator by fabricating clinical notes for patient files requested by the investigator and made false representations to the College about the validity of the patient files. His record keeping fell below the standard of the profession and he had failed to obtain informed consent from patients about the involvement of the unregistered massage therapist in their care. The physiotherapist and the College entered into an agreed statement of facts and the physiotherapist admitted to the misconduct. The panel accepted the joint submission on penalty of a six-month suspension to be remitted to a period of three months if the physiotherapist complied with other terms and conditions, including educational requirements.
47. The College submits that in this case a five-month suspension is warranted having regard to the consolidated *Dent* factors and the decisions outlined above. The College argues that this case belongs at the higher end of the range because of the seriousness and varying nature of the misconduct, the lack of accountability, and the fact that Respondent immediately undertook dangerous and dishonest acts upon joining the profession.
48. The College also submits that the remedial education sought by the College is appropriate as it speaks to remedying the specific conduct issues at play. Further, it argues that the limits and conditions sought by the College are necessary and appropriate to protect the public. The restrictions are tailored to be of limited duration and scope; the majority of them will only apply should the Respondent immediately resume self-employment or working in facilities that provide medical aesthetics services or Botox treatments.
49. The Panel largely agrees with the College submissions. The Panel finds that specific deterrence, general deterrence and the need to maintain public confidence in the profession are all engaged in this case. The Panel finds that a strong message must

be sent to the Respondent and to the profession about unauthorised practice outside of a nurse's scope, particularly where it involves medication administration of products carrying risks and dangers to the public. General deterrence is also required with respect to the requirement to cooperate with College investigations.

50. The College has statutory duties to at all times serve and protect the public and to exercise its powers and discharge its responsibilities under all enactments in the public interest. The Panel finds that there is a strong need to uphold public confidence in the integrity of the profession and in the College's ability to regulate the profession in the public interest given the pressing issues regarding medication administration, scope of practice and the duty to cooperate.
51. The Panel has weighed all of the *Dent / Ogilvie* factors and considered the cases outlined by the College and considers that the appropriate penalty in this case is the issuance of a reprimand, the imposition of a five-month suspension, and the requirement that the Respondent complete remedial education and is subject to limits and conditions. The Panel has made some slight adjustments to the limitations and conditions as it wants to make clear that the "Monitor" is an individual who is designated by the College, and the "Practice Consultant" shall inform the "Monitor" of the completion of the term in which they are involved.

Costs

52. Section 39(5) of the Act permits a panel to award costs against a Respondent if a tariff has been adopted pursuant to s. 19(1)(w.1) of the Act.
53. Bylaw 212(2) of the College's Bylaws establishes a tariff of costs for discipline hearings, which is set out in Schedule J to the Bylaws. Schedule J states:

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) In assessing 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.

54. The College has provided a bill of costs claiming 169 tariff units for a total of \$20,280.
55. The disbursements incurred by the College were \$10,145.90 for transcripts.
56. The total amount sought by the College is \$30,425.90.
57. The College argues that the costs sought are not so large as to be punitive to the Respondent. The sum sought is rationally connected to the length and level of difficulty of the hearing, which was notably prolonged by the Respondent's lengthy cross-examinations, refusal to answer questions, failure to make reasonable admissions and the piecemeal production of previously undisclosed documents at the hearing by the Respondent.
58. The College submits that the majority of the units sought relate to tariff items 7 and 8 which allow 8 units for hearing preparation for each day of a discipline hearing and 10 units for attendance for each day of a discipline hearing. The College submits that the remainder of the units sought are also reasonable. The conduct at issue engaged multiple BCCNM standards and occurred over a prolonged period of time, which required careful consideration in the citation-drafting process. Further, the processes of preparing and serving disclosure in this case was labour intensive. The College was required to call many witnesses (seven), draft lengthy closing submissions given the complicated regulatory framework applicable to an LPN's medical aesthetics practice and the multiple witnesses called.
59. The College submits that costs should be payable within 12 months from the date the Order is finalized.

60. The Panel finds the College's costs to be reasonable and necessary in the circumstances. This case was relatively complex involving an intricate regulatory framework with many witnesses. Most facts and issues pertinent to the case were contested. The Panel appreciates that the Respondent was self represented and is not experienced at cross-examination, something the Panel has not counted against her in the assessment of costs. However, this is distinct from the Respondent's conduct during the hearing which did prolong the proceedings. During her testimony, the Respondent was often evasive and inconsistent. She made excessive and unfounded objections throughout most of the witnesses' testimony and did not adhere to many of the Panel's directions.
61. The Panel finds that the College's disbursements were reasonable and necessary. The transcripts were required to prepare and conduct this hearing, including the helpful closing submissions from the College.
62. The Panel recognizes that the costs sum will have a significant impact upon the Respondent. The Panel does not consider the costs award to be punitive in nature or so large that it will prevent other individuals from raising reasonable defences. The 12-month period allows for a reasonable time for the Respondent to pay the costs.
63. Finally, in relation to the Respondent's request for loss of income payments, the Panel previously informed the Respondent that it does not have the jurisdiction to make such an award under the HPA. Even if it did, the Panel would not have done so as the Respondent did not provide any evidence in support of her claim. Moreover, the College was wholly successful in this matter, and therefore, there are no costs flowing to the Respondent in this case.
64. The Respondent also asks that the Panel reconsider its decision because she was unable to secure a lawyer due to her financial constraints from her loss of income. Her request is bare and does not identify any legal authority for the Panel to reconsider its conduct decision at the penalty stage. Leaving aside the issue as to whether the Panel could reconsider its conduct decision, there are several other fundamental flaws with the Respondent's request. As noted above, there is no

evidence before the Panel establishing that the Respondent experienced any loss of income. In addition, the Panel notes that it granted the Respondent an adjournment of the discipline hearing in order to allow her time to retain and instruct legal counsel in this matter. She was reminded at that time to take immediate and diligent steps to retain a lawyer. At the outset of the disciplinary proceedings, the Respondent indicated that she consulted with legal counsel but ultimately chose not to retain any legal counsel. The Respondent was provided with the opportunity to be represented in these proceedings by legal counsel and did not exercise that opportunity. The Panel dismisses the Respondent's request for reconsideration contained in her penalty and costs submissions.

D. ORDER

65. The Panel orders that:

- a. The Respondent is reprimanded.
- b. The Respondent's registration be suspended for five months, with her suspension taking effect from the date that she obtains an active certificate of registration and continuing to run without interruption as long as she retains that status.
- c. Prior to returning to practice after her suspension, the Respondent shall complete the following remedial education at her own expense:
 - i. She must achieve an unconditionally passing grade in completing the PROBE Ethics & Boundaries Course (the "PROBE Course") and, if she does not achieve an unconditionally passing grade, she must consent to her course provider sharing her course information and work product with BCCNM and must complete such further and other retraining as her BCCNM Monitor may reasonably require. The BCCNM Monitor is an individual who is designated by BCCNM.
 - ii. The Respondent must complete the following BCCNM LPN learning modules:

1. Documentation, including completing the Documentation workbook; and
 2. Understanding the Medication Practice Standard.
- iii. The Respondent must review the following BCCNM LPN learning resources and any documents hyperlinked in those resources and must prepare a detailed written summary of lessons learned in the course of that review:
1. Understanding Scope of Practice;
 2. LPN Scope of Practice;
 3. Medical aesthetics; and
 4. Self-employed Practice.
- d. In the event that any of the resources listed above should no longer be available when the Respondent seeks to fulfill the requirements above, the Respondent and/or the BCCNM Monitor may propose an alternative that addresses the same subject matter. Approval of any substitute remedial course will be at the sole discretion of the BCCNM Monitor.
- e. The Respondent must provide her BCCNM Monitor with proof of completion of the above remedial education, including transcripts, work product, evaluations and such further and other related records as her Monitor may request.
- f. Prior to returning to practice and subsequent to completing the remedial education identified above, the Respondent will meet with a BCCNM Practice Consultant, the number of times they meet shall be within the discretion of the BCCNM Practice Consultant, and:
- i. Discuss the acts and omissions for which she was found to have committed professional misconduct in the Conduct Decision;

- ii. Discuss the potential consequences of her misconduct for clients, colleagues, the profession, the Respondent and other health care professionals;
- iii. Discuss strategies for preventing the misconduct from reoccurring;
- iv. Discuss the summaries, publications, work modules and assignments completed pursuant to the above learning requirements;
- v. Discuss the information learned from the above-ordered remedial education and how she will integrate that knowledge into future practice; and
- vi. Discuss the role of the College's practice advisors and other departments.

The BCCNM Practice Consultant shall inform the BCCNM Monitor of the completion of this term.

- g. That after the Respondent's suspension is completed, the Respondent shall not be self-employed for 18 months or 2700 nursing practice hours (whichever is longer) unless, prior to commencing her self-employed practice:
 - i. She secures one or more mentors approved by her BCCNM Monitor who:
 - 1. Has at least 5 years of nursing experience;
 - 2. Has experience with self-employment as a nurse; and
 - 3. Understands an LPN's scope of practice (her "Mentor").
 - ii. She provides her Mentor(s) with a copy of the Conduct Decision, along with the Panel's decision on sanction (the "Decisions"); and
 - iii. Each Mentor signs a mentorship agreement substantially in the form attached to these submissions as Schedule 1 (the "Mentorship

Agreement”) and the Respondent provides the signed copy(ies) to BCCNM.

- h. If the Respondent is obligated to work with a Mentor pursuant to the above because she is engaged in self-employed practice, she:
 - i. Is solely responsible for all third-party costs, including fees charged by her Mentor(s) if any);
 - ii. Must promptly notify her BCCNM Monitor should her Mentor(s) change and provide her BCCNM Monitor with a signed Mentorship Agreement for any new Mentor(s); and
 - iii. Must promptly notify BCCNM should she become aware that the contact information for any Mentor has changed.
- i. That after the Respondents’ suspension is completed, for 18 months or 2700 nursing practice hours, the Respondent must:
 - i. Provide her BCCNM Monitor with the name, address, and telephone number of all employers prior to commencing work in any nursing position; and
 - ii. In the event that the Respondent will practice within a facility that performs medical aesthetics or administers Botox, whether or not the Respondent participates in the provision of those services, prior to commencing work:
 - 1. Provide her employer(s) with copies of the Decisions; and
 - 2. Provide her BCCNM Monitor with a signed acknowledgment from her employer(s) of their receipt of the Decisions.
- j. That for six months or 900 nursing practice hours (whichever is longer), whether or not the Respondent is involved in a medical aesthetics practice, the Respondent must not be the sole regulated health professional on duty in any facility that provides services which include medical aesthetics or the use of Botox.

- k. The Respondent must pay costs and disbursements in the amount of \$30,425.90 to the College within 12 months of the date of this Order.

Delivery and Public Notification

66. The Panel reminds the College of the requirements in section 39(3)(c) of the HPA.
67. The Panel directs that the Registrar notify the public of the order made herein pursuant to section 39.3 of the Act.

Notice of Right to Appeal

68. 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.

Dated: November 8, 2024

Sheila Cessford, Chair

Samantha Love, LPN

Hannah Varto, MN, NP(F), SANE-A