

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

BETWEEN:

The British Columbia College of Nurses and Midwives

(the “College” or “BCCNM”)

AND:

Julia Filtness

(the “Respondent”)

DETERMINATION OF THE DISCIPLINE COMMITTEE

Hearing Dates:	Conducted by way of oral hearing and written submissions concluded on November 17, 2022
Discipline Committee Panel:	Dr. Catharine Schiller, RN, Chair Stephanie Buckingham, RN (non-practising) Dorothy Barkley
Counsel for the College:	Jennifer Groenewold Mike Shirreff
Counsel for the Respondent	Joven Narwal, K.C. Angela Boldt Alexandre Giroux
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 discipline hearing pursuant to section 38 of the *Health Professions Act*, RSBC 1996 c.183 (the “Act” or the “HPA”) by way of oral hearing and written submissions that concluded on

November 17, 2022 (the “Discipline Hearing”) in relation to the Respondent’s conduct alleged in the citation dated April 8, 2021 (the “Citation”).

2. The particulars of the allegations in the Citation are as follows:

1. Between [material dates], while you were employed with Corrections Services Canada at the [Correctional Facility] as a clinical services nurse, you entered into a personal, romantic, and/or sexual relationship with an incarcerated person and/or you continued this personal, romantic, and/or sexual relationship when the incarcerated person was released into the community contrary to one or more of the following Professional Standards and/or Practice Standards including: the *Responsibility and Accountability* Professional Standard, the *Client-Focused Provision of Service* Professional Standard, the *Ethical Practice* Professional Standard, *Boundaries in the Nurse-Client Relationship* Practice Standard.

This conduct also constitutes unprofessional conduct and/or professional misconduct and/or a breach of the Act or bylaws, under s.39 (1) of the Act.

3. The Panel’s determination considers the evidence adduced at the hearing, the parties’ oral and written submissions, and the legal authorities provided by the parties.
4. For the reasons set out below, the Panel finds that the College has proven the allegation in the Citation on a balance of probabilities, and has determined that the Respondent has committed professional misconduct including sexual misconduct.

B. LEGAL FRAMEWORK

Citation

5. The Discipline Hearing was conducted by videoconference. The Respondent attended the Discipline Hearing with legal counsel. No issues were raised with respect to service of the Citation. The Panel is satisfied that the Respondent received the Citation and that she had notice of the date and time of the Discipline Hearing as required by legislation.

Action by the Panel

6. Pursuant to section 39(1) of the HPA, the Panel may dismiss the matter, or make the following determinations:

39 (1) On completion of a hearing, the discipline committee may, by order, dismiss the matter or determine that the respondent

- (a) has not complied with this Act, a regulation or a bylaw,
- (b) has not complied with a standard, limit or condition imposed under this Act,
- (c) has committed professional misconduct or unprofessional conduct,
- (d) has incompetently practised the designated health profession, or
- (e) suffers from a physical or mental ailment, an emotional disturbance or an addiction to alcohol or drugs that impairs their ability to practise the designated health profession.

Burden and Standard of Proof

7. The College acknowledges that it has the burden of proving the case against the Respondent. It relies on *F.H. v. McDougall*, [material date] SCC 53 and submits that the standard of proof in professional discipline matters is the “balance of probabilities.” The College notes that the evidence must be “sufficiently clear, convincing and cogent.”
8. The Respondent agrees with the College that *McDougall* applies to this proceeding and that the applicable standard of proof is a balance of probabilities.
9. The Respondent submits that the allegation of a sexual relationship is serious and carries a significant stigma. The Respondent acknowledges that this does not mean that she benefits from a higher standard of proof due to the seriousness of the allegations, but rather that she should expect that this context will be considered by the Panel in determining whether the College has satisfied its burden of proof on the basis of clear, cogent, and convincing evidence.
10. The Respondent submits that in applying this standard, the Panel must not simply choose between two opposing theories of the case. The Panel must assess the circumstances and determine whether the College has satisfied its onus, without

shifting the onus to the Respondent. In this regard, she relies on *Hamilton v Law Society of British Columbia*, 2006 BCCA 367, in which the Court stated:

56 The hearing was, in essence, a credibility case. The Panel stated the issue to be whether the appellant had introduced Ms. Neeld as her assistant and proceeded to treat the case as a contest of credibility between the appellant and the witnesses for the Law Society. It is apparent from the decision, however, that the Panel proceeded with only two possibilities in mind: either the appellant was lying or the Officers were lying. There is no indication in the decision that the Panel was alive to the possibility that there was a miscommunication between the Officers and the appellant or how that may have come about.

57 It is my respectful view that the Panel fell into the trap of attempting to choose between two conflicting versions of events as if it were obliged to resolve the factual question of what happened, which it was not. The result is a failure not dissimilar to the one that the instruction suggested by Cory J. in *R. v. W.(D.)*, [1991] 1 S.C.R. 742, was designed to avoid. In order to render a verdict in this case, the Panel did not have to decide whether to believe one or the other version of events. What the Panel ultimately had to decide was whether there was clear and cogent evidence to establish that the appellant had done what she was alleged to have done in the citation.

...

66 The Panel's statement also illustrates the flaw in the reasoning process which posits a choice between two opposing views without ever entertaining the possibility that the existence of such irreconcilable views may produce a situation in which the standard of proof cannot be satisfied.

...

80 ...the Panel failed to take relevant considerations into account: "The [administrative tribunal] must be seen not only to have restricted its gaze to factors within its statutory mandate but must also be seen to have turned its mind to all the factors relevant to the proper fulfilment of its statutory decision-making function": *Oakwood Development Ltd. v. St. François Xavier (Rural Municipality)*, [1985] 2 S.C.R. 164 at 174-175, 20 D.L.R. (4th) 641. The Panel should have been alive to the possibility that there was a miscommunication. The Panel's failure to turn its mind to the potential for miscommunication was, in my opinion, a failure to take all relevant considerations into account. By taking a "preferred version of events" approach, and thereby limiting the possibilities to either the appellant was lying or the Officers were lying, the Panel failed to assess the evidence to the requisite standard of proof.

11. The Panel agrees with the parties and finds that the College must prove its case on a balance of probabilities. To satisfy a balance of probabilities, the evidence must be sufficiently clear, convincing, and cogent. Further, as the Supreme Court of

Canada also stated in *McDougall*, without changing that standard of proof, that the "...context is all important and a judge should not be unmindful, where appropriate, of inherent probabilities or improbabilities or the seriousness of the allegations or consequences."

12. The Respondent submits that the onus is on the College to establish each of the elements set out in the Citation and argues that it would be an error of law for a finding to be made with respect to conduct not alleged in the Citation because doing so would be procedurally unfair. The Respondent relies on the following statements in *Whieldon v British Columbia College of Nurses and Midwives*, 2021 BCSC 1648 ("*Whieldon*"):

38 As further stated in *Vavilov* at para. 133, the decision-maker must afford "greater procedural protection when the decision in question involves the potential for significant personal impact or harm", such as "decisions with consequences that threaten an individual's . . . dignity or livelihood". The inclusion of the term "livelihood" clearly implicates professional disciplinary panels. The particular salience of the duty and goals of procedural fairness to administrative hearings involving employment and professional misconduct was recognized in *Kane v. Board of Governors of University of British Columbia*, [1980] 1 S.C.R. 1105 at 1113.

39 The duty of procedural fairness includes the principle of *audi alteram partem*, which requires that individuals be made aware of the case against them. It also includes a requirement to sufficiently specify, in unambiguous language, any charges of professional misconduct such that their target has meaningful opportunity to respond to them: *Donegan v. Association of Professional Engineers and Geoscientists of British Columbia*, 2001 BCSC 1448 at paras. 36, 41-44 [*Donegan*]; *MacLeod v. Alberta College of Social Workers*, 2018 ABCA 13 at paras. 24, 28 [*MacLeod*]. These charges are to be communicated to the respondent by the citation. The burden is on the professional association to prove the charges on the balance of probabilities.

...

61 As noted above, the duty of procedural fairness includes a requirement to notify the respondent of the particulars of the case against them. This includes the *specific content* of the charges against them. This requirement is vital.

13. *Whieldon* involved an appeal by a Registered Nurse of the Disciplinary Committee's finding that she breached standards of the Act, committed professional misconduct, and incompetently practiced the profession. The Respondent submits that the Court

outlined an elevated duty of procedural fairness that exists in professional disciplinary proceedings such as the present case:

60 The circumstances of this professional disciplinary process give rise to an elevated duty of procedural fairness. Considering the relevant factors from *Baker*, I find that: (i) the hearing before the Panel was quasi-judicial; (ii) the decision seriously impacted the petitioner's professional (and almost certainly personal) life by implicating her livelihood and issues of self-worth and dignity bound up in her employment; and (iii) given the foregoing, the petitioner had an elevated expectation of procedural fairness, that certainly extends to proper construal of the charges levied against her.

14. The Respondent argues that the Citation contains the following elements:

- a. between [material dates];
- b. while employed with Corrections Services Canada ("CSC") at the [Correctional Facility] as a clinical services nurse;
- c. entered into a personal, romantic, and/or sexual relationship;
- d. with an incarcerated person;
- e. and/or continued this personal, romantic, and/or sexual relationship when the incarcerated person was released into the community;
- f. contrary to one or more of the following Professional Standards and/or Practice Standards:
 - i. Responsibility and Accountability Professional Standard;
 - ii. Client-Focused Provision of Service Professional Standard;
 - iii. Ethical Practice Professional Standard;
 - iv. Boundaries in the Nurse-Client Relationship Practice Standard;
- g. This conduct also constitutes unprofessional conduct and/or professional misconduct and/or a breach of the Act or bylaws, under s 39(1) of the Act.

15. The Respondent submits that the College must prove each of these elements, as written, for the Panel to make a finding of a breach of standards, unprofessional conduct and/or professional misconduct.

16. The College agrees that a registrant is entitled to know the case they must meet in a discipline hearing conducted by the College's Discipline Committee. The College submits that in this case the Respondent was alleged to have committed professional misconduct and/or unprofessional conduct when she entered into a personal, romantic and/or sexual relationship with an incarcerated person while she was working as a Registered Nurse at [Correctional Facility] between [material dates]. The College says the alleged misconduct is clearly set out in the Citation and the Respondent has always known the case to meet.
17. The College says there is no basis, as the Respondent seems to propose, to introduce criminal standards and procedures into this administrative law professional discipline hearing. It would be incorrect in the administrative law context to adopt a criminal law approach whereby the Citation is broken down into a series of constituent parts or elements, with the College bearing the onus of proving each "element" of the Citation in a similar manner as to how a judge in a criminal proceeding must determine if the Crown has proved every element of an information or charge, and then dismissing the Citation if some aspect of it has not been proven.
18. The College submits that *Whieldon* does not support a position whereby the allegations in the Citation ought to be analyzed in the hyper-specific manner as proposed by the Respondent. Rather, in *Whieldon* the Court quashed the findings of one allegation in the Citation related to Ms. Whieldon's escalation of care of an infant (when faced with concerning assessment findings) by determining that the Discipline Committee erred when it did not address in its reasons Ms. Whieldon's evidence that she had advised the charge nurse of her assessment findings and had spoken to a nursery nurse about her unusual findings.
19. The College further argues that the Court's analysis in *Whieldon* also does not stand for any broad principle that criminal law procedure is to be utilized when analyzing the allegations in a professional discipline citation. The College says the "elements" of the Citation, and the Respondent's arguments, as described in her written response submissions, stand in opposition to the common sense reading of the Citation and the nature of administrative law proceedings. The College submits it is

not appropriate to attempt to dissect or evaluate the Citation in the manner proposed or undertaken by the Respondent.

20. The Panel agrees with and accepts the College's submissions in this regard.
21. In his text *Regulation of Professions in Canada*, at Chapter 8.5, p.2, James Casey summarizes the case law on what is required in professional discipline hearings in Canada. First, a registrant needs to be aware of the case that they must meet (the *audi alteram partem* rule). Second, a citation must comply with the specific legislative requirements.
22. At pages 3 to 4 of chapter 8.5, Casey states that a citation in a professional disciplinary hearing is not subject to the same technical requirements as a criminal information or indictment:

While a charge is to be correct in form, a charge of professional misconduct should not be subjected to the same degree of technical requirements as a criminal information or indictment:

In cases of this type, no one would suggest that an allegation of professional misconduct need have that degree of precision that is required in a criminal prosecution.

...

I think that it can also be said that such administrative tribunals performing judicial functions are not bound by the technical rules involved in the drafting of indictments and informations, provided always that the provisions of the statute involved are carried out and the proceedings are conducted within the bounds of "natural justice".

Charges brought against a professional person by his or her governing body should not be approached as if they were counts in an indictment alleging the committal of an offence contrary to the *Criminal Code*. The essence of the discipline hearing is to determine whether or not there has been professional misconduct. Charges of professional misconduct should avoid using the wording of the *Criminal Code*. Rather, they should state that there has been "professional misconduct", "conduct deserving of sanction" or whatever phrase the governing statute uses and set out the particulars relied up on to demonstrate such misconduct. Such particulars should not be given the designation of "counts" for fear that this would imply that the procedures in the *Criminal Code* would have to be followed. Criminal law concepts should not be injected directly into professional discipline proceedings.

23. The Panel notes that there is a significant line of cases regarding how charges or citations in professional discipline hearings ought to be approached, which was not referred to by the Respondent. The Panel notes these cases were also not considered or analyzed by the Court in *Whieldon*.
24. These cases confirm that the purpose of a citation is to advise a registrant with reasonable precision of the allegations they are facing so that they have knowledge of the case they have to meet; that the essence of a discipline hearing is to determine whether there has been professional misconduct or incompetence; and that discipline panels are not bound by the technical rules involved in the drafting of a criminal information or indictment, which also recognizes the overriding public interest in ensuring that alleged professional misconduct or conduct unbecoming is evaluated to the fullest extent possible, on the merits, while ensuring fairness to a registrant.
25. The following statements by the discipline panel in *Law Society of British Columbia and Harding*, 2013 LSBC 25 are instructive:

[60] The purpose of a citation is to advise the Respondent with reasonable precision of the allegations he is facing. Citation No. 1 sets out that a Hearing Panel will enquire into his conduct or competence as a member of the Law Society in accordance with Section 38 of the Legal Profession Act and Parts 4 and 5 of the Law Society Rules.

...

[64] In *Law Society of BC v. Rutley*, 2013 LSBC 16, the hearing panel considered the wording of a citation at para. 16 as follows:

As counsel for the Law Society stated in supplementary submissions, hearing panels are not bound by the technical rules involved in the drafting of a criminal information or indictment. The purpose of the citation is to ensure that the respondent lawyer has knowledge of the case she has to meet. In this case, the Respondent had knowledge of what conduct was in issue and of the specific provisions that her conduct was alleged to violate. At no time did the Respondent ask for particulars of the specific portions of Chapter 2, Rule 1 that she was alleged to have violated. As James Casey states in *The Regulation of Professions in Canada*, p. 8-16, "If a charge is defective in that it does not contain sufficient information to enable the member to properly prepare a defence, then the remedy is to ask for particulars."

[65] In *Novak v. Law Society of British Columbia*, 1972 CanLII 987 (BC SC), [1972] 6 WWR 274 (BCSC), the Court stated at para. 11:

I am not, however, dealing with a criminal or quasi-criminal charge but rather with a disciplinary hearing before an administrative tribunal. In *Re: Legal Professions Act and The Benchers of Law Society of British Columbia*, (1945) 1945 CanLII 256 (BC CA), 4 DLR 702, Farris CJSC in delivering the judgment of a special visitorial tribunal of five Judges of the Supreme Court of British Columbia, sitting in appeal from a decision of the Benchers of the Law Society suspending a solicitor from practice, said [p. 703]:

Administrative tribunals performing judicial functions are required to act judicially but are not required to follow Court procedure.

... I think it can also be said that such administrative tribunals performing judicial functions are not bound by the technical rule; involved in the drafting of indictments and informations, provided always that the provisions of the statute involved are carried out and the proceedings are conducted within the bounds of “natural justice”.

[66] The essence of a discipline hearing is to determine whether there has been professional misconduct or incompetence. Citation No. 1 provided the Respondent with clear notice that the misconduct alleged concerned rude and discourteous remarks directed to the complainant in the First and Second March 15 Letters.

26. Similarly, in *Law Society of Upper Canada v. Spiegel*, 2017 ONLSTH 188, a discipline tribunal held that citation allegations should not be treated as counts in a criminal indictment:

[103] This is consistent with the jurisprudence of this Tribunal. As explained on appeal in *Law Society of Upper Canada v. Dmello*, 2013 ONLSAP 5 at paras. 108-109:

First, it is well established that particulars are not to be treated as if they are counts in a criminal indictment. This means, amongst other things that:

(a) A notice of application should not be critiqued in an overly technical manner. (See *Re Cwinn, supra*)

(b) The doctrines of *res judicata* or issue estoppel do not preclude findings of misconduct on overlapping particulars. (See *Re Stevens and Law Society of Upper Canada*, (1979), 1979 CanLII 1749 (ON SC), 55 O.R. (2d) 405 (Div.Ct.))

(c) The failure to plead the most applicable rule will not preclude a finding of professional misconduct, **as long as the licensee has had a fair opportunity to respond to the substance of the allegations being made.** (See *McSween, supra*, at para. 37; *Paul John Anderson v. Law Society of Upper Canada*, 2010 ONLSAP 4 (CanLII) at para. 59 and footnote 1; *Law Society of Upper Canada v. Norman Silver*, 2012 ONLSAP 4 (CanLII) at para. 19; *Law Society of Upper Canada v. Meera Bharadwaj*, 2011 ONLSHP 4 (CanLII) at para. 12)

(d) Similarly, deviations between the facts alleged in the notice of application and those ultimately proven by the Society will not preclude a finding of professional misconduct, **unless the licensee has been prejudiced in his/her ability to respond to the allegations.** (See *Law Society of Upper Canada v. Clifford Michael Sunday*, [material date] ONLSAP 11 (CanLII) at para. 46)

(e) Where a hearing panel concludes that the proven facts support a finding of conduct unbecoming rather than professional misconduct as alleged in the notice of application, the latter finding can nonetheless be made. (See *Law Society of Upper Canada v. Jonathan Howard Marler*, 2010 ONLSAP 29 (CanLII) at para. 44).

This principle recognizes the overriding public interest in ensuring that alleged professional misconduct or conduct unbecoming is evaluated, to the fullest extent possible, on the merits, while ensuring fairness to the licensee. The importance of fairness to the affected lawyer is captured in the highlighted passages contained in subparagraphs 108(c) and (d) above.

[emphasis in original]

27. In *College of Physicians and Surgeons of Ontario v. Gerber*, 2022 ONPSDT 21, a discipline tribunal held that:

[9] Values of fairness, proportionality and balance should guide the Tribunal's application of procedural rules. It is well established that allegations in a professional discipline case should not be approached as though they were counts in a criminal indictment and that a discipline tribunal should avoid technical application of rules: *Re Golomb and College of Physicians and Surgeons of Ontario*, 1976 CanLII 752 (Div Ct.); *Re Stevens and Law Society of Upper Canada*, 1979 CanLII 1749 (Div. Ct). The Tribunal's responsibilities to protect the public and ensure substantive fairness are inconsistent with a technical approach. It would be inappropriate for a panel to allow the College to rely on a basket clause to pull an obscure allegation from a dark corner of the disclosure or to refuse to consider allegations that do not take the physician by surprise because they are not precisely set out in a Statement of Particulars.

28. In *Olson v. Law Society of Manitoba*, 1994 CanLII 16945 (MBCA), the Court held that even if one or more of the particulars contained in a citation are not proven, this

does not mean that the entire citation for professional misconduct must be dismissed. The task for the Panel is to determine, based on the individual particulars found to have been proven, whether the registrant committed professional misconduct.

29. The Panel is not satisfied that *Whieldon* stands for the proposition that the allegations in a citation must be broken up into specific elements, each of which must be individually and separately proven for a finding of unprofessional conduct or misconduct to be made. Moreover, the Court in *Whieldon* did not consider or analyze the guiding law outlined above regarding how to properly approach allegations of unprofessional conduct or professional misconduct contained in a citation issued for purposes of a professional discipline hearing.
30. The Panel also notes that the Court in *Whieldon* did not consider or analyze the law regarding a decision-maker's reasons in circumstances where a party has made a concession. The Discipline Committee in *Whieldon* found that Ms. Whieldon had conceded the point of escalation of care in allegation 1(c)¹ – the allegation cited by the Respondent. There is well established case law that party concessions obviate a decision-maker's need to fully adjudicate an issue and provide comprehensive reasons in those circumstances. This point was recognized in *Vavilov*. The Court in *Whieldon* did not address the Respondent's concession, the Discipline Committee's reasons in light of her concession, or the law in *Vavilov* on this point. Those unique circumstances do not arise in this case. This is a further reason that the *Whieldon* decision does not assist the Respondent in this case and in the manner that she submits.
31. The Panel agrees with and accepts the statements by *Casey* and the reasoning in the *Harding*, *Molson*, *Spiegel* and *Gerber* decisions. The Panel finds that those authorities set out the appropriate legal framework for assessing the allegations in the Citation. The Panel does not accept the Respondent's argument that the Citation should be broken up into technical elements each of which must be proven, exactly

¹ see para. 83 of the *Whieldon* conduct decision

as written, in order for the Panel to make a finding of a breach of College standards, unprofessional conduct and/or professional misconduct.

32. While it is not necessary to decide the issue given that the Panel is not applying criminal law, the Panel nevertheless recognizes the College's alternative argument that even at criminal law where an indictment or charging document contains details that are not essential elements of the offence, they are to be treated as "surplusage" and are not required to be proven unless this would somehow cause prejudice to the accused (see *R v Zamora*, [2013] B.C.J. No. 557 at para.23-24). As the College points out, this principle is described by the Supreme Court of Canada in *Vézina and Côté v. The Queen*, [1986] 1 SCR 2 as follows (at para. 49):

The "surplusage rule", which has been developed by the courts over a great many years, is succinctly stated as follows, in Ewaschuk, *Criminal Pleadings and Practice in Canada* (1983), at pp. 222-23:

If the particular, whether as originally drafted or as subsequently supplied, is not essential to constitute the offence, it will be treated as surplusage, i.e., a non-necessary which need not be proved.

Unprofessional Conduct, Professional Misconduct and Sexual Misconduct

33. Section 39(1)(c) of the HPA provides that on completion of the hearing, the discipline committee may determine that the Respondent "has committed professional misconduct or unprofessional conduct."
34. "Professional misconduct" and "unprofessional conduct" are defined in section 26 of the Act as follows:

"professional misconduct" includes sexual misconduct, unethical conduct, infamous conduct and conduct unbecoming a member of the health profession;

"unprofessional conduct" includes professional misconduct.

35. In *Re McLellan*, a Discipline Committee panel of one of the College's legacy colleges held that:

55. An important feature of professional misconduct, or unprofessional conduct, 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 the 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 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 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 health professionals, which have applied 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.

36. Unprofessional conduct includes professional misconduct. Unprofessional conduct connotes the breach of a standard, rule, or expected behaviour, while professional misconduct is unprofessional conduct that has crossed a more serious threshold (See *Re Pangburn BCCNM 2022* paras. 81-82).
37. Professional misconduct is generally accepted to involve an element of moral turpitude. In *Pearlman v. Manitoba Law Society Judicial Committee*, [1991] 2 S.C.R. 869, the Supreme Court of Canada held that professional misconduct is “conduct which would be reasonably regarded as disgraceful, dishonorable, or unbecoming of a member of the profession by his well-respected brethren in the group – persons of integrity and good reputation amongst the membership”. The Panel notes that professional misconduct has also been described as a “marked departure” from the expected standards of the members of the profession (see for example, *Re Pangburn* para. 84).
38. Section 26 of the Act, and cases such as *Pearlman*, *Re McLellan* and *Re Pangburn* assist the Panel’s interpretation and measure of whether the Respondent’s proven conduct in this case constitutes unprofessional conduct or professional misconduct.
39. In assessing whether a registrant’s conduct constitutes unprofessional conduct or professional misconduct, the Panel may also draw on its own judgment, experience,

and expertise. The Panel is guided by the standards of the profession and what is expected of a professional person in the circumstances or context of a case. The standards of the profession do not need to be in writing. While professional nursing standards should be considered, those standards are not solely determinative. Ultimately, it is for the disciplinary body of a professional organization to decide what the appropriate standards for members of the profession are and whether there has been a departure from those standards that constitutes either unprofessional conduct or professional misconduct. In conducting this assessment, the Panel may also consider the registrant's practice setting and workplace policies.

C. EVIDENCE

The College's Evidence

40. The College called five witnesses during the discipline hearing: three CSC employees: [the Warden], the Prison Warden; [SIO1], a Security Intelligence Officer ("SIO"); and [the Nurse], a Registered Nurse and the Regional Manager of Clinical Services at [the Correctional Facility]; [the Broker], who testified about the Respondent's plan to lease a condo to the inmate in question ("Inmate A"); and [the Investigator], the College investigator.
41. The College witnesses testified to general information regarding the [the Correctional Facility] Institution. [the Correctional Facility] is one of [] security institutions in Canada that houses offenders who have been sentenced [] years of incarceration. [the Correctional Facility] is located in [the City], British Columbia. It accommodates approximately [] inmates.
42. [the Warden] was the Warden at [Correctional Facility] at the material times in the Citation. [the Warden] testified that she has been with CSC for approximately [] years. As the Warden, she has many responsibilities, including:
 - a. the safety of the institution;
 - b. the safe care and custody of all the inmates housed there;
 - c. the control over who may enter and exit the institution;

- d. encouraging and engaging inmates to work on their correctional plans and to return to society as law-abiding citizens;
 - e. the oversight and responsibility for a large operational budget;
 - f. decisions in conjunction with the Parole Board as to whether inmates can leave [the Correctional Facility] on escorted or unescorted leaves, and/or work releases;
 - g. decisions on whether to transfer inmates to lower or higher security settings depending on the particular situation; and
 - h. the oversight and responsibility for all physical and mental health services.
43. [SIO1] testified about his role and responsibilities as an SIO at [the Correctional Facility]. [SIO1] has been in this role for approximately [] years. [the Nurse] is a Registered Nurse who was working in the role of [] for the [name of region], which included [the Correctional Facility] Institution, at the material times. [the Nurse] was one of the complainants who reported the alleged inappropriate relationship between the Respondent and Inmate A to the College. [the Nurse] has worked for CSC for [] years.

Health Care Services at [the Correctional Facility]

44. [the Nurse] testified about her role generally and provided background about the health services mandate at [the Correctional Facility]. She explained how this health services mandate falls under the *Corrections and Conditional Release Act* which sets out CSC's obligation to provide essential health services to every inmate and reasonable access to non-essential health services inclusive of medical care, dental care, and mental health care. [the Nurse] noted that each CSC institution, including [the Correctional Facility], has a health care unit staffed by Registered Nurses. The nurses within the unit are responsible for delivering essential health services, screenings, assessments, and discharge planning services. They work with contract physicians, dentists, and other allied health care professionals. Among other services, nurses in the health care units provide the following care:

- a. intake processes for inmates coming to the unit;
 - b. assessments and ongoing care for patients;
 - c. delivery of medications through the health care unit and at the medication wicket;
 - d. public health nursing services, including infectious disease management, screening, and assessment;
 - e. discharge planning for when the inmate goes into the community, including:
 - i. obtaining consent from the inmate to disclose information to the parole officer as needed;
 - ii. arranging two weeks of medication for the inmate to take with them upon release;
 - iii. if the inmate is on opiate substitution therapy, assisting to set up appointments in the community or follow up in clinics; and
 - iv. ensuring that inmates are aware of any follow-up appointments arranged in the community.
45. [the Nurse] testified that nurses do not assist inmates with finding housing in the community; instead, it is the role of an inmate's parole officer to assist with that planning.
46. [the Nurse] described the patient population at [the Correctional Facility] as being a younger population. [the Nurse] testified that nurses at [the Correctional Facility] take care of inmates who have substance use disorders, infectious diseases, mental health issues, and who require end-of-life and palliative care. Nurses also attend if there is a medical emergency and provide emergency care until emergency medical services arrive to take over and the patient is transported to hospital.
47. [the Nurse] testified that inmates who need to access medical care at [the Correctional Facility] can access healthcare services in different ways. They could ask a corrections officer to call the [the Correctional Facility] medical clinic if

appropriate in the situation, they could submit an inmate request (which is a form to see a nurse, doctor or another professional as needed), or they could attend at the medication wicket or medication line to seek care.

48. Health care records at [the Correctional Facility] are typically in electronic record form. At the material times, there were still some paper health care records being used, such as inmate request forms, as the institution was still transitioning to electronic health record format. Any nurse who accesses an inmate's electronic health record does so with their own unique identifier and password.

Boundaries

49. The CSC witnesses testified about the importance of boundaries between [the Correctional Facility] staff and inmates. [the Warden] testified "I will start off with a firm statement. Boundaries are extremely important."
50. [SIO1], [the Warden], and [the Nurse] testified about the expectations of employees and staff at [the Correctional Facility], including those set out in the Code of Discipline or Code of Conduct for employees of CSC.
51. [SIO1] testified that the Code of Discipline has not had any substantive changes during the material times. [SIO1] testified that the Code of Discipline:
 - a. ensures a high standard of conduct for employees in the service of the CSC;
 - b. addresses conflicts of interest;
 - c. touches on discharge of duties, conduct, and appearance of CSC employees; and
 - d. deals with protection and sharing of information.
52. [SIO1] testified about the section of the Code of Discipline regarding relationships with offenders which provides:

Relationships with Offenders

10. Staff must actively encourage and assist offenders to become law abiding citizens. This includes establishing constructive relationships with offenders to encourage their successful reintegration into the community. Relationships shall demonstrate honesty, fairness and integrity. Staff shall promote a safe and secure workplace, free of mistreatment, harassment, and discrimination, and respect of an offender's cultural, racial, religious and ethnic background, and their civil and legal rights. Staff shall avoid conflicts of interest with offenders and their families.

Infractions

11. An employee has committed an infraction, if they:

- a. maltreat, humiliate, harass, discriminate and/or are abusive by work or action, to an offender or the offender or the offender's friends or relatives
- b. improperly use their title or authority to personal gain or advantage
- c. enter into any kind of personal or business relationship not approved by their authorized superior with an offender or ex-offender or the offender's or ex-offender's friends or relatives
- d. give, or receive, any gift, gratuities, benefits or favours, or engages in personal business transactions with an offender or ex-offender or the offender's or ex-offender's friends or relatives
- e. hire an offender to perform any work or provide any services without first obtaining the written permission of their supervisor
- f. give to, or receive from any offender or ex-offender, or the offender's or ex-offender's friends or relative, either directly or indirectly, any contraband
- g. fail to report situations of mistreatment, harassment and/or discrimination of offenders by employees.

53. The CSC witnesses testified that prison staff, including health care staff, were made aware of the Code of Discipline and the importance of boundaries in the following ways:

- a. [SIO1] testified that this occurs through the SIO staff orientation. This is a security briefing that occurs monthly. All staff attend these briefings, including those in health care. [SIO1] said that SIOs set the tone for the relationships that employees will have with inmates. The orientation includes information about how to write reports and communicate information to the SIOs.

- b. [the Warden] testified that every staff member at CSC receives a letter of offer when they are hired. This letter contains links to: various Commissioner's Directives, the value statement of the organization, and the standards of professional conduct.
- c. [the Nurse] testified that new staff members take an oath at the time of their hiring which requires them to review the Code of Discipline, or to review it with their manager.
- d. [the Warden] and [SIO1] testified that new staff members must take the New Employees Orientation Program ("NEOP") through the Correctional Learning and Development Centre where their job expectations are explained.
- e. [the Warden] testified that Assistant Wardens conduct frequent institutional orientations with new staff members. These sessions orient staff to the physical aspects of the [Correctional Facility] and review the importance of search procedures, for example keeping their private items locked away and only bringing to work what is needed for the day.
- f. [the Nurse] testified that there is online access to the "HUB" or intranet where nurses working at [the Correctional Facility] can access policies and guidelines relevant to CSC, as well as policies and procedures specific to health services.
- g. [the Nurse] testified that nurses can direct questions about appropriate boundaries to more senior nurses on the unit, their chief of health, or [the Nurse].

54. The orientation provided by the Security Intelligence Office includes:

- a. stressing the importance of CSC staff establishing and maintaining professional relationships with inmates;
- b. information and education about "inmate culture" in a prison environment;

- c. encouraging staff to say “no” if they are unsure of anything and then seek out information and guidance;
 - d. information about what is a “bump” and what to do when staff are “bumped” by an inmate. A “bump” is when an inmate poses a question or makes a request that is inappropriate in that professional relationship;
 - e. that all “bumps” must be rebuffed and reported to a staff member’s supervisor;
 - f. education about how a successful “bump” compromises CSC staff and the prison environment;
 - g. information about the types of actions that the SIOs will take and/or recommend after they are made aware that an inmate has “bumped” a CSC staff member;
 - h. information about how to prepare an observation report of an incident or abnormal behaviour that staff might witness or hear; and
 - i. education about safe key management, managing the doors, narcotic safes in the medication rooms, personal portable alarms, and other safety measures in the institution.
55. [the Nurse] was asked how a nurse in the prison environment develops and maintains a therapeutic relationship with an inmate without breaching professional boundaries and the Code of Discipline. [the Nurse] testified that nurses, working within nursing standards, recognize that trust and empathy are important to establish a therapeutic relationship. She described how this therapeutic nurse-client relationship involves access by nurses to an inmate’s personal information. There is an element of professional intimacy because of the context that exists between nurses and patients, for example when they are talking about sexually transmitted infections. She stated that an effective boundary relies upon nurses being clear that they are to serve the patient’s and not their own interests.

56. [the Nurse] testified that it would be clear to a Registered Nurse working at [the Correctional Facility] that there is a difference between creating a therapeutic relationship with a client, and crossing the important boundaries and breaching the Code of Discipline.

The Security Intelligence Office

57. [SIO1] described the role of the Security Intelligence Office as being a gatekeeper of information about the security and safety of the institution.
58. He testified that the Security Intelligence Office receives information through several sources including officers' reports, reports from other staff, cameras, and confidential informants.
59. Following receipt of this information, the SIOs will consider the potential investigation methods available, and they identify and consider potential issues and how to manage them. This would include a decision about whether an inmate can remain in the institution or if their security level needs to be increased; [SIO1] testified that such a decision would be made by the Warden or Deputy Warden.
60. [SIO1] testified that there, if telephone interception of an inmate's telephone calls has been determined by the SIOs to be an appropriate investigation method in the circumstances, there is a specific process for SIOs to obtain authorization from the Deputy Warden or the Warden to intercept an inmate's telephone calls. He indicated that the SIOs must prove that all other means of obtaining the necessary information are unavailable. [SIO1] described that there are checks and balances put into place, such as a prescribed period of time for the interception and the need to obtain approval for extensions throughout the process. [SIO1] indicated that these checks and balances are necessary because telephone interceptions (or "wiretaps") are one of the most intrusive things that SIOs can do in their department.
61. [the Warden] testified about Directive 568-10 which provides for the authorization of the interception of an inmate's communications. [the Warden] testified that there are signs posted on entry to [the Correctional Facility] and throughout the institution informing people that phone calls may be intercepted.

62. [SIO1] testified about the information gathering process involved for telephone interceptions. Once the SIOs obtain authorization to intercept an inmate's telecommunications, the SIOs use a specific machine located at a workstation in a "protected C" environment (an area of heightened protection with alarmed doors and stricter rules on sharing of information that could result in harm) to enter a "tap warrant into the system." This involves the SIO entering the inmate's name, unique identifying information, and the inmate's "PIN" number which is specific to the calls that the inmate makes. Every inmate who makes phone calls possesses a specific PIN number, which is what they enter (by swipe card or manually) to place a phone call. The SIOs also enter a "do not record list" (which includes for example, prison legal services). The SIOs review the inmate's callout list and ensure that any lawyers' names are placed on the "do not record" list. After this initial set up, the SIOs commence listening to the phone calls.
63. [SIO1] testified about the SIOs' routine during an intercept. The SIOs look at the machine that intercepts the telephone calls in the morning and identify if the inmate has made any calls. If they have, the SIOs put those calls on their audio and listen to the phone calls. The SIOs have a small office, and the phone calls are played out loud. There is generally one officer who will take charge of that process per day. There is a document that the SIOs create and use for this purpose that lists the date and the time of the phone call, the initials of who is being intercepted ("U" may be used to identify if person is "unknown"), and the "gist" of the conversation. [SIO1] testified that both SIOs listen to each intercept and then summarize the "gist" or the content of the call in the single document (usually a Word format document) that the SIOs use for that intercept. When important statements are made, the recording is listened to multiple times and often direct quotes will be included in the document. The document also includes the SIOs' analysis of the information received from intercepts and any directions or steps that they intend to take with respect to same.
64. [SIO1] testified that creating this document and listening to the intercepts are collaborative efforts between the two SIOs at [the Correctional Facility]. If relevant information is obtained, and if the SIOs are of the view that they need to continue to obtain relevant information from the intercept beyond the 30 days initially authorized,

they seek an extension from the Warden or Deputy Warden. When the telecommunication intercept is concluded, the inmate is advised that the interception has taken place.

65. [the Warden] testified that at the material times, the Security Intelligence Department at [the Correctional Facility] was comprised of two SIOs, [SIO1] and [SIO2]; and one security intelligence assistant. The SIOs work closely with one another. [the Warden] testified that “they work absolutely in unison with one another. They’re – there would be – there would be nothing that one knows that the other doesn’t cause they are – they are a small united team.”

Inmate A Intercepts

66. [the Warden] testified that she first became aware of a potential breach of conduct by a staff member with respect to Inmate A when she was briefed about it by [the Deputy Warden]. [the Deputy Warden] had been briefed by [SIO1] and [SIO2]; [SIO2] was the SIO who had received the information from a confidential prison informant (the “Informant”). [the Deputy Warden] authorized the intercept in her capacity as Acting Warden during [the Warden]’s absence. [the Warden] later signed off on this same intercept as the Warden on the security intelligence reports (“SIRs”).
67. [the Warden] testified that after the authorization to intercept Inmate A’s telecommunications, she received regular verbal briefings from [SIO2] and [SIO1] about the intercept. A written report of the intercepts was also prepared by the Security Intelligence Office. [the Warden] identified the SIRs in this matter, including her signature on the documents.
68. [SIO1] testified that [SIO2] had received information from the Informant about a potential boundary violation between the Respondent and Inmate A and [SIO2] had shared that information with [SIO1].
69. [SIO1] identified the SIRs pertaining to this matter. He testified about the content of the SIRs including:
- a. The dates of the SIRs ([material date]; [material date]);

- b. That his partner at the Security Intelligence Office, [SIO2], signed the SIRs;
- c. The SIRs possess a unique file number;
- d. The coding in the SIRs which refers to other documents (for example an observation report from a staff member);
- e. The level of confidentiality related to these reports;
- f. The subject matter of the reports;
- g. The inmate who has been identified for the purpose of these proceedings as Inmate A;
- h. The identification of a staff member and community members;
- i. The identification of the Respondent in particular and her birth date; and
- j. The coding system regarding the level of reliability for the various pieces of information.

70. [SIO1] testified that his office created the SIRs pertaining to this matter. [SIO1] pointed out aspects of the SIRs in which the analysis was done by [SIO2] and the intercept was possibly done by both [SIO2] and [SIO1]. [SIO1] also testified that overall the creation of the reports was collaborative and that [SIO2] had kept him apprised of all information. [SIO1] testified that both he and [SIO2] listened to the same intercepts. He noted that it is a tight office, they are both located at the same desk, and the intercepts are played over the speaker. [SIO1] testified that they cross-reference all information with each other.

71. On cross-examination, [SIO1] acknowledged that he could not say for certain which specific aspects of the SIRs he was involved in assisting with producing. [SIO1] did resist the proposition on cross-examination that [SIO2] prepared the reports and was the better person to speak to those, indicating that they both had the same knowledge about the reports. [SIO1] added that despite the passage of time, he could say for certain that he listened to all of the intercepted calls identified in the

SIRs. [SIO1] also conceded on cross-examination that he could not say for certain that every single line of the reports had been transcribed accurately from the calls.

72. [SIO1] testified about the content of the SIRs and reviewed the SIOs' analysis in the SIRs. [SIO1] provided some clarifications about the SIRs. [SIO1] testified that the female voice on Inmate A's intercepts was identified as the Respondent based upon multiple identifiers. [SIO1] noted that he is not an expert in voice recognition but testified that both he and [SIO2] had recognized the Respondent's voice based on their past interactions working with her. Other identifiers relating to the Respondent that [SIO1] outlined from the SIR included: characteristics about the female caller's family members, that the female caller is involved in real estate in [the City], and that the SIOs located the Respondent's Facebook profile which contained corroborative information. [SIO1] testified that any communications that he and [SIO2] felt were relevant were listened to repeatedly, given the importance of the matter and the need to be accurate. [SIO1] testified that the Respondent's supervisor [the Respondent's Manager] was later brought in, and she also identified the female voice on the intercepts with Inmate A as being the Respondent.
73. On cross-examination, [SIO1] acknowledged that the process of voice identification is not easy, and voices can be altered due to a number of factors such as intonation and illness.
74. [SIO1] was asked on cross-examination about the SIRs' conclusion that the [] number belonged to the Respondent. [SIO1] acknowledged that there is no indication in the SIR as to how it was determined that a three-way call was placed to the [] number. [SIO1] acknowledged that the Respondent did not identify herself by name in the intercepts. [SIO1] also acknowledged on cross-examination that based upon the Informant's information, the Respondent was already considered a subject of the investigation.
75. [SIO1] acknowledged on cross-examination that there was a reference to another woman but that the SIOs did not determine who that woman was. He did elaborate that it was his understanding there was not another female caller to identify rather there was only a reference to another woman.

76. [SIO1] testified that the SIOs recommended that the Respondent be removed from her employment because it was their conclusion that she had been compromised due to her relationship with Inmate A.
77. [the Warden] testified that she was briefed by the SIOs, who advised her that they had concluded there was a relationship between Inmate A and the Respondent. The SIOs had linked Inmate A and the Respondent by analyzing the information that they had obtained through the intercepts, including:
- a. The female caller on the intercepts was being encouraged by Inmate A to book sick time from work on a specific day corresponding with Inmate A's release day and on a day that she routinely worked;
 - b. There was discussion about the female caller's work schedule which sounded as though Inmate A was speaking with a CSC staff member;
 - c. An apartment was being arranged for Inmate A and the intercepts included information about a lease for that apartment;
 - d. There was information about a transfer of money for Inmate A, thought to be from the Respondent; and
 - e. There was discussion about Inmate A meeting up with the female caller at a location approximately 20 minutes away from [the Correctional Facility] Institution. The Warden testified that this was unusual. Typically, inmates were met by their family members, friends or a taxi at the front entrance of the institution when they were released.
78. [the Warden] testified that, after her briefing from the SIOs and before making her decision to prevent the Respondent from returning to [the Correctional Facility], she had the opportunity to listen to a portion of the audio from the intercept. [the Warden] testified that while she was not trained in voice recognition, she was a trained and a very experienced Warden and the female voice she heard definitely sounded to her like the Respondent.

79. [the Warden] testified that she had worked closely with the Respondent at times in the past. [the Warden] knew the Respondent from when the Respondent was working on a program regarding the support of offenders with substance abuse issues. [the Warden] had met with the Respondent in her office regarding this prospective program at least twice, testified that she may have seen the Respondent when the Warden was regularly out and about in the institution, and that she remembered sitting at an adjacent table with her spouse at a staff holiday party at a local restaurant. Based on her familiarity with the Respondent, [the Warden] testified that she was able to recognize the Respondent's voice on the recording.
80. [the Warden] testified that, after the first SIR, she made the decision that the Respondent not be permitted to enter [the Correctional Facility] Institution. She interacted with her counterpart, [the Regional Director for Health Services] with CSC, who along with human resources, has the authority with respect to the Respondent's position at [the Correctional Facility]. [the Warden] had a clear recollection that these events happened on a Friday.
81. [the Warden] testified about briefing [the Regional Director for Health Services] about her decision to bar the Respondent from entering [the Correctional Facility]. [the Warden] brought in [the Respondent's Manager], who was the physical on-site manager that day in the institution and who had also received a briefing on the situation from [the Warden] and [SIO2]. [the Warden] testified that [the Respondent's Manager] was played a portion of audio from the intercepts, and she also identified the female caller on those intercepts as the Respondent. [the Respondent's Manager] had been brought into the situation to ensure that health services at [the Correctional Facility] would not be interrupted by the Respondent's absence.
82. The second SIR report was created after some further intercepts were obtained. By that time, the Respondent had been advised that she was going to be subject to an investigation about an alleged inappropriate relationship with an inmate. [SIO1] testified about the second SIR report and the steps that the Security Intelligence Office took with respect to that information.

83. [the Warden] testified that [the Regional Director for Health Services] advised her that the Respondent resigned her position at [the Correctional Facility].

84. Counsel for the Respondent chose not to cross-examine [the Warden] or [the Nurse].

The College's Investigation

85. [the Nurse] and [the Regional Director for Health Services] reported the Respondent to the College in writing on January 10, 2018.

86. [the Investigator] testified that she is a Professional Conduct Review Consultant at BCCNM. [the Investigator] was assigned as the College Investigator in the investigation involving the Respondent.

87. [the Investigator] completed an Access to Information and Privacy ("ATIP") request to the CSC. The disclosure received in response included:

- a. The Respondent's employment records;
- b. A letter from [the Regional Director for Health Services] to the Respondent;
- c. The Respondent's resignation letter;
- d. Inmate A's health records; and
- e. The SIRs (redacted by CSC).

88. [the Investigator] testified about the investigative steps and findings in this matter, including:

- a. The employment records showed that the Respondent went from a full-time position to a part time position in [material date], which resulted in her working only on [days of the week].
- b. The employment records included a vacation request made by the Respondent on [material date] to book [Inmate A's Release Date] off from work. [the Investigator] confirmed that this was Inmate A's scheduled release date.

- c. A letter dated [material date], from [the Regional Director for Health Services] to the Respondent informing her that a disciplinary hearing was scheduled for [material date] in relation to allegations that she engaged in and continues to engage in an inappropriate relationship with an inmate.
- d. The Respondent resigned her position as a Registered Nurse with CSC by letter dated [material date].
- e. The Respondent was in a nurse-client relationship with Inmate A during his incarceration and provided him with nursing care, including arranging medical appointments and medical assessments, medication administration, filling out disability applications and screening for sexually transmitted infections.
- f. With respect to the phone numbers contained in the SIRs, [the Investigator] could not identify to whom the [] number belonged but confirmed that the [] number belonged to the Respondent. This was one of the phone numbers the Respondent provided to the College as one of her contact telephone numbers. [the Investigator] referenced the case management report she obtained from the College's Customer Relational Management database ("CRM") where she cross-referenced the [] number.
- g. With respect to the property that was described in the SIRs, [the Investigator] noted that Inmate A had described it on an intercept as being "all open" and the SIR had noted it was a "loft". [the Investigator] also noted the rental amount, and that the Respondent would be renting it to Inmate A through [the Property Management Company]. The intercepted conversation referenced that the property was in [the City]. [the Investigator] conducted various searches on BC Assessments Online. [the Investigator] discovered through her searches that the Respondent owned two properties in [the City], BC. The first was located on [the Street Name]. [the Investigator] ruled that

out as the description did not correspond to a studio type apartment. The second property was on [the Street Name] in [the City], BC. [the Investigator] entered the [the Street Name] property location and its postal code into Google Maps which resulted in showing her a four-level building, with a name that [the Investigator] provided. [the Investigator] obtained the BC Assessment report for the [the Street Name] property. The BC Assessment report for the [the Street Name] property showed that the Respondent was listed as the owner with a home address that matched the information contained in the College's database. [the Investigator] conducted a title search on that property which showed that the Respondent had bought the property on or about [material date] and was the sole registered owner. A picture of the Respondent's property was captured via a YouTube screen capture.

- h. [the Property Management Company] was referenced in the SIRs as the property management company for the [the Street Name] property. [the Investigator] conducted a search of the BC Real Estate Council's website because any company involved in property management in BC must be licensed. [the Investigator] confirmed that [the Property Management Company] was a licensed property management company, and that [the Broker] was the managing broker with a business address located in [the City]. [the Investigator] wrote to [the Broker] to request any documents that he may have with respect to the Respondent and the [the Street Name] property. [the Broker] provided the requested documents, which included emails from the Respondent, the Respondent's driver's license and a tenancy agreement with Inmate A with the Respondent's instructions to [the Broker] to mail the tenancy agreement to Inmate A. The Respondent's contact information included a telephone number that [the Investigator] recognized as being the [] number from the SIRs and which the College has on file for the Respondent.

89. [the Investigator] also identified the College's Practice and Professional Standards.
90. The Respondent's counsel chose not to cross-examine [the Investigator].
91. [the Broker] testified that he is the managing broker with [the Property Management Company]. [the Property Management Company] manages commercial and rental real estate and offers property and strata management. [the Broker] is a licensed realtor and has been with [the Property Management Company] since 2005.
92. [the Broker] testified that he met the Respondent in approximately 2014 when [the Property Management Company] managed a strata council in [the City] where the Respondent was a strata council member. [the Broker] had corresponded with the Respondent through email and he had met her in person on multiple occasions for strata council meetings and annual general meetings.
93. [the Broker] testified that the Respondent retained him to manage her rental property on [the Street Name]. By email dated [material date], the Respondent advised [the Broker] that she had arranged her own tenant but wanted [the Property Management Company] to manage the property and send the lease for that property to the tenant. The Respondent provided [the Broker] with Inmate A's name and his address, and advised [the Broker] that Inmate A was the tenant to whom she wished to lease the property. The address given to [the Broker] by the Respondent was [the Correctional Facility] Institution's address.
94. The Respondent completed the residential tenancy forms with the name of Inmate A but without including her own name. The monthly rent is indicated as \$980 per month. [the Broker] testified that typically the property owner's name is listed on the lease.
95. On [material date], the Respondent emailed the completed agency agreement and provided a copy of her photo ID.
96. [the Broker] testified that he arranged for the tenancy documents to be sent to the address provided by the Respondent.
97. [the Broker] testified that the documents that were tendered as evidence and that related to the [the Street Name] property are documents that [the Property

Management Company] keeps as part of its ordinary business at [the Property Management Company].

98. The Respondent retained [the Property Management Company] on [material date] and terminated the arrangement with [the Property Management Company] by email on or about [material date] stating that she thought it made more sense to manage the [the Street Name] property herself.
99. Counsel for the Respondent chose not to cross-examine [the Broker].

The Respondent's Evidence

100. The Respondent was examined during the College's case in the manner of a cross-examination.
101. The Respondent testified that she obtained a British Columbia Institute of Technology (BCIT) Diploma of Technology in Nursing in June of 2001. In July 2001, she was granted practising registration as a Registered Nurse in British Columbia. The Respondent has been a registrant with the College since that time.
102. The Respondent obtained her Bachelor of Science in Nursing and graduated with distinction in June of 2004.
103. From [material date] until she resigned in [material date], the Respondent held a nursing position at CSC. She was a clinical services nurse. The Respondent filled the role of Interim Chief of Health on more than one occasion, which is a leadership role at CSC. The Respondent converted to part time status at CSC in [material date], after which she worked only Monday to Wednesday.
104. The Respondent testified that she received an orientation to her role at CSC, and that she was aware of the Code of Discipline. She testified that she received this orientation from CSC officers and from the SIOs. The Respondent testified that she took all of the orientation and training that was provided by CSC on a regular basis.
105. As part of this orientation, the Respondent was trained in boundaries between CSC staff and inmates. The Respondent was educated about inmate culture and what a

“bump” was, what to do when an inmate “bumped her”, and appropriate reporting within the institution when a “bump” does occur. As part of the training, the Respondent knew, for example, not to disclose personal information to an inmate, phone a friend for them, or deliver mail on their behalf. The Respondent testified that she understood the importance of strict boundaries, and she knew that there were resources at [the Correctional Facility] where she could go and ask for help if she had questions or concerns about her role.

106. The Respondent testified that she had access to CSC policies and procedures as well as to the Commissioner’s Directives. The Respondent testified that she took regular interval training in relation to those documents. The Respondent testified that she was familiar with the prohibition on relationships with inmates. The Respondent testified that she possessed this knowledge and had access to key documents during the material times in the Citation.
107. The Respondent agreed that all the College’s Professional and Practice Standards for Registered Nurses applied to her. She agreed that she was well aware of the applicable standards as she was a College workplace representative. The Respondent testified that the College and members of the public could expect a new RN, on their first day of practice, to meet all the applicable standards.
108. The Respondent testified that she spent time with [SIO2] and [SIO1], in particular when she was in the role of Interim Chief of Health, and she attended the morning meetings with the SIOs. The Respondent testified that she knew [SIO1] less well than [SIO2]. She testified that she also knew [the Warden]. The Respondent initially denied attending any meetings with [the Warden]. Later in her testimony, the Respondent acknowledged it was possible she had attended meetings with [the Warden].
109. The Respondent admitted that from [material date], until at least [material date], she was in a nurse-client relationship with Inmate A, with a break from [material date] to [material date] when Inmate A was in the community.

110. The Respondent admitted that she was in a nurse-client relationship with Inmate A from as early as about [material date], until at least [material date], while in her role as a Registered Nurse at [the Correctional Facility] Institution. During this time, she provided nursing care to Inmate A that included infectious disease testing, medication administration, assessment of an eye injury, health care advice in relation to his ear, assistance with a disability insurance form and facilitating medical appointments for Inmate A to attend in the community while he was on parole. The Respondent identified her signature on the relevant clinical records associated with these aspects of Inmate A's patient care.
111. The Respondent testified that between [material date] and [material date], Inmate A was on parole and living in the community. The Respondent admitted that during this time, she saw Inmate A in the community. The Respondent testified that Inmate A reached out to her on Facebook to thank her for her care at [the Correctional Facility]. She could not recall how many exchanges they had. At some point their interactions moved off Facebook and they met in person in the community. The Respondent could not recall whether she saw Inmate A more than twice in the community. She specifically recalled two instances: once where they met for coffee and another time when they went for a walk. The Respondent denied that their relationship became romantic. The Respondent denied meeting Inmate A at a hotel in the community.
112. The Respondent testified that she did not report her interactions with Inmate A to anyone at CSC because at the time she reasoned that she had not crossed a boundary due to the amount of time that had passed since she had been in a nurse-client relationship with Inmate A, and because it was her expectation that Inmate A would have no reason to return to [the Correctional Facility]. She said her assessment of whether there was a nurse-client relationship was in line with that of the College's witness, [the Nurse], who stated that the nurse-client relationship is time-limited. The Respondent admitted during her examination that she had, however, crossed a boundary with Inmate A:

Q So you acknowledge you crossed a boundary here?

A I crossed the boundary into a friendly relationship, not expecting that he was my patient anymore. If he had contacted me -- you mentioned a bump, right, that -- that SIOs speak of that they teach us when we get into corrections. We always hear of the story of the downing duck where, you know, inmates will start with something small and work their way up into having you bring something in, for example.

This wasn't a case like that at all. If -- if he had attempted to initiate any kind of -- any kind of relationship that was not professional while he was under my care or under the care of corrections, there's no way that I would have proceeded with -- with anything.

113. The Respondent testified that the reason she did respond to Inmate A, and the reason she did not cease communications with him was because she felt it was best for Inmate A, "given his background" with relationships (the details of which the Respondent did not describe) that she did not cut it off immediately. The Respondent conceded that her knowledge about Inmate A's circumstances arose from the nurse-client relationship she held with Inmate A.
114. The Respondent testified that Inmate A returned to [the Correctional Facility] on [material date]. The Respondent testified that from [material date] to [material date], she continued in a nurse-client relationship with Inmate A. During this time the Respondent provided nursing care to Inmate A that included facilitating an appointment with a physician to discuss Inmate A's medication, testing Inmate A for infectious diseases and providing him with the results, assessing a concern with Inmate A's hand, assessing a concern regarding increased urinary frequency and collecting a specimen for laboratory analysis, and removing sutures from Inmate A's face.
115. The Respondent testified that on approximately [material date] or [material date], she received a call from [the Regional Director for Health Services] and was told not to come to work. This was followed by a letter from [the Regional Director for Health Services] dated [material date], regarding the disciplinary process. The Respondent testified that she attended a meeting with [the Regional Director for Health Services] on [material date]. Thereafter, the Respondent chose to resign her position rather than face an investigation.

116. The Respondent was taken by College counsel to the first SIR and asked about the information that linked her to the female caller in the intercept. The Respondent agreed that she shared each of the characteristics listed about the female caller's family members. The Respondent denied that she was "involved with, sells real estate, and lives in [the City]." She said that she would not describe herself as being "involved in real estate." When pressed, she admitted that at that time she was looking to purchase an investment property and that she was living in [the City].
117. With respect to the [Phone intercept date] intercept, the Respondent agreed that she requested a day off on [Inmate A's Release Date]. She denied it pertained to Inmate A's release date. Rather, she stated that her reason for requesting the day off was to attend [Respondent's family member]'s holiday concert. The Respondent stated that the [] number on that intercept does not belong to her. When asked whether she was the female caller on that intercept, she said "this is not my call". Later, the Respondent denied that it was her on the intercepted calls at all.
118. In relation to the [Phone intercept date] intercept, the Respondent admitted that the [] number in the three-way call is her phone number but denied that she was the female caller:

Q But turning to the intercepts from -- here we are -- in [Phone intercept date], the beginning of that intercept is between a community member and Inmate A where they discuss that -- the community member says:

"There's an issue. She's told she can't come in to work, and she will be told Monday what's up. She was told not to go in to work. She's freaking out. She's scared as

fuck, and she doesn't know what's up."

Inmate A:

"I have no clue what the F is going on with her. I just tried to call."

Over the page to page 72:

"Are you calling the [] number?"

The community member completes a three-way call to []- [] That's your phone number, isn't it?

A I'm sorry. Just give me a minute. My -- I'm just catching up here.

Q Sure. We're at the top of page 72, looking at the phone number []- [] That was your cellphone number at the time, wasn't it?

A I apologize. I just want to make sure I'm in the right spot here.

Q That's fine. Take your time. Top of page 72.

A So you're looking at -- at 6? Number 6?

Q Yeah. D, who is identified as a community member, completes a three-way call to []- []- []. That was your cellphone number at the time, wasn't it, Ms. Filtness?

A That's my number, but number 26 is not my number.

Q Ms. Filtness, you're connected to a conversation, while you're still technically employed at this time at Correction Services Canada, with Inmate A; isn't that right? And you say -- or the exchange starts at line 7. Inmate A:

"Okay. What did they say?"

"D: They said she's not to go to work on Monday."

That's the community member.

"They're going to let her know why."

"F: She's not to go to work?"

"D: Yeah. She is shitting her pants."

"What could that be?"

"She doesn't know. It could be a couple of different things."

"What did she say?"

"Could be because of that communication on the other thing, something else. You know what I mean. I was going to hold on to that money anyway, the \$1,000. It got automatically deposited into my account."

Mr. Inmate A asked to conference call Julie. He tries again at that phone number listed at 26.

They go back and forth. And then finally, the call goes through. And []- []- [] may just be a typo. It's the same last four numbers. And then we have -- perhaps. Then we have at the top of page 73:

"Call goes through to Julia."

"What the F?"

Again, Inmate A asks her about sending the lease. Now, we know that you sent a lease to the prison. And here we have Inmate A asking if you sent the lease; isn't that right? Isn't that right?

A Yes. Well, I've already established I sent the lease. But I really can't speak to this call. I didn't have a call with anyone outside the prison. So that was a conversation with two other people that I can't really speak to. Yeah. I sent him the lease.

Q Ms. Filtness, the conversation that's excerpted and gisted at the top of page 73, you were that caller speaking with Inmate A, weren't you?

A No.

119. The Respondent testified about her interactions with [the Broker] from [the Property Management Company]. The Respondent admitted that the email address (bearing her full name) in the [material date] emails to [the Broker] belongs to her. The Respondent acknowledged sending and receiving the [material date] emails with [the Broker] regarding the tenancy arrangements for Inmate A at the [the Street Name] apartment. The Respondent admitted that the name of the tenant on the tenancy documents was Inmate A. The Respondent admitted that the []-phone number listed on the tenancy documents is her phone number. The Respondent admitted that the address in the forms that was indicated for Inmate A is the address for [the Correctional Facility] Institution. The Respondent admitted that the driver's license provided to [the Broker] was her driver's license.

120. The Respondent agreed that she took possession of the [the Street Name] apartment one month prior to Inmate A's release but denied that she purchased the apartment for Inmate A to live in. The Respondent admitted that she did not want her name or identifying information on the tenancy documents because she would get in trouble with her employer because as a staff member, she was not to have any personal or business dealings with an inmate. The Respondent acknowledged this constituted a personal relationship with Inmate A:

Q Okay. And you knew that Correction Services Canada would be very concerned if you were renting a property to an inmate, didn't you?

A Yes.

Q Because renting a property to an inmate is evidence of a personal relationship with that inmate, isn't it?

A It could be.

Q In this case, it was; isn't that true, Ms. Filtness?

A Yes.

121. The Respondent denied that there was anything more than a personal relationship between herself and Inmate A.

122. The Respondent testified that after Inmate A returned to [the Correctional Facility] in [material date] she received several telephone calls from him. At one point in her testimony, the Respondent described those calls as "harassing." The Respondent testified that Inmate A had her phone number because she had given it to him in the [material date]. The Respondent did not report the telephone calls or any of her contact with Inmate A to anyone at CSC. The Respondent admitted that she knew it was a breach of the Code of Discipline, but she was concerned about the consequences should her relationship with Inmate A be discovered. The Respondent testified:

Q: ...And you said that you received a number -- a variety of calls from various numbers. And when you would answer, sometimes it would be Inmate A. Did you report those telephone calls to anybody at [the Correctional Facility] Institution?

A: No.

Q: Why not?

A: When he came back in in September, I was -- I was actually acting chief of health at the time. And I realized the position that I was in. I was utterly shocked that he came back in. I was not expecting that at all. And I felt like I was stuck. I felt that I was -- might be worse off to report it -- he would be worse off; I would be worse off -- and that I could just maintain a professional relationship until he was released because he was only there for a very short period.

When people come back in, they're often only there for 30 days and then re-released. So that's what I was expecting, and I thought it would just be better to leave it, maintain the professional relationship that we had previously, which was what I was able to do, and leave it at that.

Q: But, Ms. Filtness, you know that having a personal relationship, as you termed it, with an inmate meant -- was a breach of the Code of Discipline; right? And so it's your evidence that you thought it would all blow over if you didn't say anything?

A: Yeah. Reflecting back, that – that occurrence in [material date] was my error in judgment of when it would have been best, in hindsight, to report it at that time.

Q: But then in –

A: It –

Q: I'm sorry. Finish your answer.

A: No. Sorry. That – that's all.

Q: But that, quote/unquote, error of judgment wasn't just in [material date], was it? It carried right through until your termination in [material date]. At no point during that period of time did you report to anybody at [the Correctional Facility] that you were getting calls from an inmate?

A: No.

Q So you kept quiet? And you just described those phone calls as harassing; isn't that right?

A Yes.

Q But yet, you still planned to rent your apartment to Inmate A?

A Yeah. It was -- while he was out, it – housing is always a big issue. And because at the same time, that's when I was looking for a place, it just -- it just seemed to make sense that he could have it for a few months. It was going to be limited until he could find his own place. It was three months maximum, as you can see on the RTA, until he could find his own place. And then when he came back in, I felt I didn't want to let him down. I didn't want to be just another person that let him down. I kind of already made this promise to him if I were to get a place. And so, you know, that's what he -- that's what he was expecting.

Q But, Ms. Filtness, this goes beyond merely just a friendship. If you're feeling harassed by phone calls coming from Inmate A, you refused to report them, as is your duty as a member of staff of Correction Services Canada, and because of a promise made to rent him an apartment that you hadn't even bought by the time he was re-incarcerated; isn't that right?

A Well, I was in the process of doing it at the same time.

Q So when Inmate A was in the community, you were already talking about buying a place so that he could live in it?

A Well, not so that he could live in it, no. No.

Q That's when you made the promise, isn't it?

A That's when we had discussed it, yes. Yeah. He was aware that I was buying an investment property to -- to, in the future, you know, do short-term rentals. That was the idea because I was going to be part-time. And so it -- that was my plan.

And, yeah, we had discussed, you know, maybe once I got it, he could have it initially, and then he could find his own long-term accommodation. And he had been trying during that time. He was working on getting long-term accommodation instead of this as an option. So he wasn't necessarily going to take it.

Q Ms. Filtness, isn't it true that it's really not the job of a clinical services nurse or a – to arrange housing for inmates?

A Well, clearly, no. It's not.

...

A Just to clarify that point. So if he had approached me while he was under my care and asked me to, you know, arrange housing or stay in a place that I might have owned, that wouldn't have occurred. But it was because it had started prior to his return to custody.

Q But, Ms. Filtness, he did return to custody. He was in your care as a patient. He was in your care as a patient when you arranged to rent your condo to him; isn't that true?

A As I mentioned, [material date] when he came in, that was my error in judgment not to report it to corrections. I felt like I was stuck between a rock and a hard place. At that point, I should have reported it.

123. Counsel for the Respondent chose not to ask the Respondent any questions.

D. SUBMISSIONS

The College's Submissions

Violation of the Professional and Practice Standards

124. The College points to section 19(1)(k) of the Act which provides that the College's board may "establish standards, limits or conditions for the practice of the designated health profession by registrants." The College says it has established both Professional and Practice Standards, and it is those standards against which the Respondent's conduct is to be measured.

125. The College notes that the applicable Bylaw at the material times was section 8.01 which stipulated: "Registrants must conduct themselves in accordance with the standards of practice and the standards of professional ethics." Accordingly, a registrant who does not comply with the standards of practice does not comply with section 8.01 of the College's Bylaws.
126. The College says that a professional standard "is an expected and achievable level of performance against which actual performance can be compared. It is the minimum level of acceptable performance." (quoting from page 5 of the College's Professional Standards for Registered Nurses and Nurse Practitioners).
127. The College submits that during the period material to this proceeding, the Respondent had approximately 15 years of nursing experience, eight of which she had spent working for CSC. Further, as an experienced CSC nurse she was, at times, entrusted to act in the leadership role of Interim Chief of Health for [the Correctional Facility].
128. The College argues that the Respondent knew, or ought to have known, the expected professional and practice standards of care dictated by the College and the policies and procedures that she was required to meet as a Registered Nurse working in a carceral setting.
129. The College submits that the Professional and Practice Standards confirm and codify both broad and more specific standards, and that the nursing standards breached by the Respondent when she engaged in a personal, romantic, and/or sexual relationship with Inmate A include:
- a. Professional Standard 1, Responsibility and Accountability
 - b. Professional Standard 3, Client-Focused Provision of Service
 - c. Professional Standard 4, Ethical Practice
 - d. Boundaries in the Nurse-Client Relationship Practice Standard
130. The College further submits that the Boundaries in the Nurse-Client Relationship Practice Standard sets out the following principles to which nurses are expected to adhere:

- a. 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. 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. Nurses do not enter into a friendship or a romantic relationship with clients.
- d. Nurses do not enter into sexual relations with clients.
- e. Nurses are careful about socializing with clients and former clients, especially when the client or former client is vulnerable or may require ongoing care.
- f. Nurses disclose a limited amount of information about themselves only after they determine it may help to meet the therapeutic needs of the client.
- g. Nurses do not communicate with or about clients in ways that may be perceived as demeaning, seductive, insulting, disrespectful, or humiliating. This is unacceptable behaviour.

131. The Boundaries in the Nurse-Client Relationship Practice Standard also provides the following guidelines on how to apply these principles to practice:

- a. 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.
- b. Disclose your personal information only with a therapeutic intent, such as to develop trust and establish a rapport with a client. Focus on the client's needs. Do not disclose intimate details or give long descriptions of your personal experience.

- c. Recognize that if you accept clients as personal contacts on social media sites, you may be crossing a boundary. You may also be breaching client privacy and confidentiality.
- d. 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.

132. The College argues that the Boundaries Standard also applies to relationships between nurses and former clients. In this regard it relies on *Re McLellan*, CRNBC 2018, a case in which a Registered Nurse entered a romantic and sexual relationship with a person who had been her patient one week prior in a drug and alcohol rehabilitation facility. A panel of the Discipline Committee of the College's legacy college found that:

[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 in original].

[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.

...

[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.

133. The College submits that, as set out in *Re McLellan*, even if the Respondent’s testimony were accepted, there is no merit to the Respondent’s assertion that her professional obligations to Inmate A ended when he was no longer incarcerated at [the Correctional Facility]. The College submits that even on the Respondent’s account, she was required to reasonably consider Inmate A’s ongoing vulnerability and potential to require future care when considering the Boundaries Standard.
134. The College also submits that there is no basis to the Respondent’s conclusion that the phrase “former client” is a “grey area” or “fuzzy.” The Respondent was required to take further reasonable steps to consider Inmate A’s vulnerabilities. A reasonable nursing professional in a similar situation would have reached the conclusion that there was a clear violation of the nursing standard. Further, the Respondent’s employer, CSC, has a strict prohibition on personal involvement with ex-offenders, a prohibition the Respondent was well aware of at the time, yet she took no action to seek support, clarification, or authorization for her relationship with Inmate A.
135. In the circumstances of this case, the College submits the Respondent violated the Professional Standards set out above.

Professional Misconduct and Unprofessional Conduct

136. The College further submits that the Respondent’s conduct amounts to “professional misconduct” for purposes of section 39(1)(c) of the HPA. The College points to

section 26 of the Act which defines professional misconduct as including “sexual misconduct, unethical conduct, infamous conduct and conduct unbecoming of a member of the health profession.” Unprofessional conduct is defined in section 26 as being included in the definition of professional misconduct. The College also notes that *Re McLellan* held that unprofessional conduct can also be broadly thought of 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.”

137. The College submits that in *Pearlman v. Manitoba Law Society Judicial Committee*, [1991] 2 S.C.R. 869, the Supreme Court of Canada accepted that professional misconduct is “conduct which would be reasonably regarded as disgraceful, dishonorable, or unbecoming of a member of the profession by his well respected brethren in the group – persons of integrity and good reputation amongst the membership.” As emphasized in *Pearlman*, a professional’s conduct should be measured against the judgment of other members of the profession who are competent and in good standing. In this case, the Respondent’s conduct should be measured against the judgment of a competent Registered Nurse.
138. The College submits that the test set out in *Pearlman* is met on the facts of this matter and the behaviour and conduct alleged against the Respondent in the Citation can only be regarded as professional misconduct. The only reasonable conclusion is that the Respondent’s conduct was disgraceful, dishonorable, and unbecoming of a member of the nursing profession.

Sexual Misconduct and Boundary Violations

139. The College argues that in cases involving serious boundary violations and sexual misconduct like this one, the Panel should have zero tolerance for breaches of the Professional and Practice Standards. The College submits that nurses hold positions of trust in the community at large and with their clients/patients in particular. Accordingly, misconduct arising from a boundary violation of the nature alleged in this case is serious.
140. The College submits that section 26 of the Act defines professional misconduct to include sexual misconduct, unethical conduct, infamous conduct and conduct

unbecoming a member of the health profession. Sexual misconduct is not specifically defined in the Act; however, the College says that the Respondent's conduct, in terms of her relationship with Inmate A, constituted sexual misconduct and that her violation of the BCCNM Boundaries Practice Standard was at the very serious end of the spectrum of sexual misconduct.

141. The College submits that in support of a policy of zero tolerance with respect to serious boundary violations and sexual misconduct, the following principles should be considered:

- a. patients are the vulnerable party in these types of "relationships";
- b. the power imbalance between a nurse and a client/patient nearly always exists in favour of the nurse;
- c. nurses hold a position of trust in society and ought not to abuse that trust;
- d. there can be serious, long-term injury to the victim, both physical and emotional and could impact their ability to trust health care providers in the future;
- e. sexual misconduct and/or serious boundary violations tarnish the public trust in the profession; and
- f. the issue of consent between a nurse and a client/patient is irrelevant.

142. The College submits that the evidence establishes that the Respondent:

- a. failed to comply with the College's standards for the practice of nursing and standards of professional ethics for registrants;
- b. has not complied with the Act;
- c. has committed professional misconduct; and
- d. has committed sexual misconduct.

143. The College submits that the Respondent specifically admitted during testimony that she developed a personal relationship with Inmate A and therefore the allegation in

the Citation has been proven based on the admissions the Respondent made during her testimony.

144. The College further argues that sexual misconduct has also been proven on a balance of probabilities despite the Respondent maintaining that she was not in a romantic and/or sexual relationship with Inmate A but that they were only “friendly” while he was living in the community on parole.

Credibility

145. The College notes that the Respondent emphatically denied that she was the female caller captured on the intercepts of Inmate A’s telecommunications in the SIRs. The College submits that where there are conflicts in the evidence between the Respondent and the other College witnesses, the College witnesses’ evidence should be preferred and given more weight.
146. The College argues that where such contradictions in the evidence exist, the Panel must assess credibility and decide whose account to believe. The College argues that in assessing credibility, the reasoning in *Bradshaw v. Stenner*, 2010 BCSC 1398 applies:

[186] Credibility involves an assessment of the trustworthiness of a witness’ testimony based upon the veracity of sincerity of a witness and the accuracy of the evidence that the witness provides (*Raymond v. Bosanquet (Township)* (1919), 1919 CanLII 11 (SCC), 59 S.C.R. 452, 50 D.L.R. 560 (S.C.C.)). The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness’ evidence harmonizes with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness’ testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally (*Wallace v. Davis*, [1926] 31 O.W.N. 202 (Ont HC); *Faryna v. Chorny*, 1951 CanLII 252 (BCCA), [1952] 2 D.L.R. 354 (B.C.C.A.) [*Faryna*]; *R. v. S. (R.D.)*, 1997 CanLII 324 (SCC), [1997] 3 S.C.R. 484 at para 128 (S.C.C.)). Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time (*Faryna* at para 356).

[187] It has been suggested that a methodology to adopt is to first consider the testimony of a witness on a ‘stand alone’ basis, followed by an analysis of whether the witness’ story is inherently believable. Then, if the witness testimony has survived relatively intact, the testimony should be evaluated

based upon the consistency with other witnesses and with documentary evidence. The testimony of non-party, disinterested witnesses may provide a reliable yardstick for comparison. Finally, the court should determine which version of events is the most consistent with the “preponderance of probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions” (*Overseas Investments (1986) Ltd. V. Cornwall Developments Ltd.* (1993), 1993 CanLII 7140 (AB QB), 12 Alta. L.R. (3d) 298 at para 13 (Alta. Q.B.)). I have found this approach useful.

The Respondent was the Caller on the Intercepts

147. The College argues that on the preponderance of the evidence, the only reasonable conclusion is that the Respondent was the female caller on the intercepts. [SIO1], [the Warden], and [the Respondent's Manager] (the Respondent's direct supervisor) listened to all or some of the audio and all had identified the female voice as the Respondent.
148. The College acknowledges that the voice identification of the Respondent by [the Respondent's Manager] is hearsay evidence because it is contained in the SIRs and was noted by [SIO1] and [the Warden] in their testimony. However, the College argues that the Panel is not bound by the rules of evidence applied in Court. The College submits that the Panel may consider all evidence, including hearsay evidence, particularly when the statements were recorded at or near the time they were made. Such evidence can be contradicted by a respondent with credible testimony (*Re Hansen* at paras. 78 and 81).
149. The College submits that the Panel has already confirmed that it can receive hearsay evidence in its decision on September 16, 2022, regarding the Respondent's objection to the admissibility of the SIRs with any arguments going to the weight the hearsay evidence ought to be given.
150. The College submits that the identification made by the SIOs and by [the Respondent's Manager] were recorded in the SIRs close to the time that they heard the recordings, and there has been no credible testimony tendered to contradict that evidence. The College underlines that the Respondent declined to cross-examine

[the Warden] and did not challenge her evidence regarding her identification of the Respondent on the intercepts.

151. Further, [the Warden] was asked by the Panel about her evidence regarding the voice identification and [the Warden] was firm that the female caller on the intercepts was the Respondent.
152. While the Respondent minimized her work interactions with [SIO1] and [the Warden], both of whom said they had sufficient contact with the Respondent in the workplace to be familiar with her voice, the College submits that the Respondent did so in a further attempt to avoid responsibility for her actions. [SIO1] and [the Warden] have no reason to lie or to exaggerate their interactions with the Respondent. Both witnesses have worked with CSC for multiple decades. They are both clearly committed to creating a safe and secure institution for offenders. Misidentifying a potentially compromised staff member works against those professional interests. In short, they have no motive to lie, and they are “disinterested witnesses” within the meaning of the excerpt from *Bradshaw and Stenner*, with no motive to deceive the Panel.
153. The College further argues that beyond the voice recognition evidence, there is ample evidence establishing that the Respondent was the female caller noted in the SIRs as communicating with Inmate A.
154. The College submits that the Informant told the SIOs that Inmate A was involved with a staff member. The Informant described characteristics of the staff member’s family members, and said that the staff member was involved in real estate and lives in [the City]. This description matched the Respondent on each of those points. While the Respondent minimized her involvement in real estate during her testimony, she owned multiple properties and had chosen to move to a part time position with CSC so she could find an investment property and concentrate on short term rentals. In her testimony, the Respondent confirmed that she shared each of the characteristics listed about the female caller’s family members (though she did note the existence of an additional family member who was not referenced). The

Respondent's home address in the College database at the relevant time was in [the City].

155. The College notes that in the intercept of [Phone intercept date] at 17:15, the discussion between the female caller and Inmate A included the following:

- a. The female caller stated that it had been "a while" since Inmate A had phoned her.
- b. Inmate A asked the female caller to take sick leave around the time of his statutory release, which was scheduled to be [Inmate A's Release Date], noting that she worked three days a week; and
- c. The female caller and Inmate A discussed what their friends would think if they were aware that the female caller and Inmate A were involved in a romantic relationship.

156. The Respondent worked three days a week and requested a vacation day for [Inmate A's Release Date] two days after this call occurred. The Respondent said in her testimony that she requested this day off work for [Respondent's family member]'s holiday concert. However, even if she attended a holiday concert, she could still have met Inmate A at some other point that same day. The College submits that the intercept details worry about what would happen if this relationship between them was discovered, which points to the fact that the Respondent was communicating the obvious to Inmate A – if their relationship was discovered, there would be significant consequences for the Respondent.

157. In the intercept of [Phone intercept date] at 17:34, Inmate A placed a call to a third party who forwarded the call to the female caller. The College notes that the discussion between the female caller and Inmate A included the following:

- a. The female caller stated that she was unsure why her number had not been added to Inmate A's call list;
- b. Inmate A asked about the condominium that the female caller bought for Inmate A to live in when he was released from [the Correctional Facility] Institution;

- c. The female caller described the condominium as one that was “all open”;
- d. The female stated that “they” cannot know that she owns the property in which Inmate A will be living upon his release from [the Correctional Facility] Institution, stating her “name can’t even be on the property at all”;
- e. Inmate A asked the female caller for her opinion on whether he should go on welfare upon his release from [the Correctional Facility] Institution;
- f. The female caller stated that she “missed” Inmate A and they spoke about having sex when Inmate A was released; and
- g. The female confirmed that she had spoken to Inmate A’s “buddy.”

158. The College submits that the Respondent had recently purchased the [the Street Name] property which matches the description of the “all open” property described in this call, and the Respondent had taken steps to ensure that her name did not appear on the lease through her arrangements with [the Property Management Company].

159. In the intercept of [Phone intercept date] at 19:40, Inmate A placed a phone call to a third party who forwarded the call to the female caller. The College notes that the discussion between them included the following:

- a. Inmate A stated that the female caller needed to mail him the lease for the condominium;
- b. Discussion on how Inmate A would pay the rent of the condominium that was located in [the City]. The female caller stated it would be \$1000 per month with “everything included.” The lease would be month to month and the arrangement would be managed by a property management company; and
- c. Inmate A asked the female caller for a ride from [the Correctional Facility] to the property in [the City] upon his release. The female caller

stated that it was “obvious” that she could not come to get him. The female caller said that she would be unable to meet him if he were to be with someone else. Inmate A and the female caller discussed how Inmate A would take a cab from the prison to a location twenty minutes away and then the female caller could pick him up and drive him to the rental property in [the City]. Inmate A again confirmed that the female caller would take the day of his release off work. At the end of the conversation, Inmate A and the female caller agreed to meet at the bus station on the day of Inmate A’s release.

160. The College notes that the Respondent admitted during her testimony that she intended to rent her condominium in [the City] to Inmate A. [the Property Management Company] was the property management company that she retained to assist with, among other tasks, mailing the lease to Inmate A at [the Correctional Facility]. A family member or friend of Inmate A would have no “obvious” reason why they could not be waiting at the prison doors to pick him up upon his statutory release. However, the Respondent obviously could not be seen picking up Inmate A on his release, hence the need for the subterfuge discussed during this call.
161. On [material date], the SIOs determined that the information received from the Informant was confirmed and reliable on the basis of the intercepted calls. The SIOs recommended that the Respondent be removed from her position as a nurse at [the Correctional Facility] Institution. [the Warden] briefed [the Regional Director for Health Services] and advised him that the Respondent would no longer be permitted to enter [the Correctional Facility] Institution. [the Regional Director for Health Services] contacted the Respondent and advised her that she was not permitted to go to work and there would be an investigative meeting would occur the following week in accordance with the collective agreement.
162. In the intercept of [Phone intercept date] at 20:49, Inmate A called an acquaintance. In this phone call the acquaintance confirmed that he received \$1000 for rent on the condominium in [the City]. Inmate A and the acquaintance also discussed the female caller’s emotional state after she had been informed not to go to work. She was

purportedly “freaking out” and “scared.” The acquaintance then made a few attempts to connect with the female caller by text message to arrange to conference her into the call with Inmate A. The telephone number that the acquaintance used was the telephone number that the Respondent had on record with the College. These efforts were eventually successful. Inmate A and the female caller had a discussion which included the following:

- a. Inmate A asked the female caller if she sent the lease for the condominium by mail and she replied that she had;
- b. The female caller asked Inmate A if he talked to anyone about their relationship and told him that she likely lost her job because of him;
- c. Inmate A stated that he loved the female caller and would never betray her. The female caller stated that she knew he would not betray her;
- d. Inmate A stated that the only thing that “it could have been” would have been a phone call. The female caller responded that it was obviously a phone call, because she had told him that everything was recorded; and
- e. The female caller stated that “she wasn’t coming back.”

163. The College argues that the Respondent was aware at the time of the intercept described above that she was facing investigation for a purported inappropriate relationship with an inmate. She knew that, if found to be true, it was a serious breach of the Code of Discipline and would likely result in her termination. The Respondent’s phone number was contacted, and, contrary to her testimony, she did not tell Inmate A that she could not speak to him. The [the Property Management Company] records show that the Respondent had just arranged with [the Broker] to mail the lease to [the Correctional Facility] on [material date], a few days prior to this intercepted call.
164. On [material date], [the Regional Director for Health Services] sent the Respondent a letter notifying her that there would be a meeting on [material date], for her to provide an explanation for her interactions with Inmate A and to provide any mitigating evidence

prior to a decision being made about whether a formal investigation should take place.

165. On [material date], [the Regional Director for Health Services] met with the Respondent. She opted to resign her position without notice and emailed [the Regional Director for Health Services] a resignation letter later that same day.
166. On [material date], the Respondent terminated the agency agreement with [the Property Management Company] saying that she now wished to manage the property herself.
167. The College argues that it would be inconceivable that the female caller was someone other than the Respondent. The College submits that the preponderance of probabilities are consistent with the College witnesses' version of events and not the Respondent's version of events.
168. Further, the College argues it is clear from the subject matter of the intercepts that the nature of the relationship between the Respondent and Inmate A was not just "friendly" but romantic and sexual in nature.
169. The College submits that in developing a personal, romantic, and/or sexual relationship with Inmate A, the Respondent has committed sexual misconduct. The College submits that the sexualized nature of the dialogue between Inmate A and the Respondent constitutes sexual misconduct and falls on the serious end of the spectrum of professional misconduct.
170. The College also submits that the context within which this misconduct arose (i.e. with an incarcerated person) is an argument for a finding of sexual misconduct at the very serious end of the spectrum. The College argues that it is difficult to imagine a more vulnerable patient population than those who are incarcerated. The College submits that it is also irrelevant that Inmate A may have obtained material gain and/or other benefits from the relationship with the Respondent. By the very definition of being incarcerated, an inmate cannot provide consent to a "romantic" or sexual relationship with a CSC staff member who is in a position of authority over them.

171. Lastly, the College notes that throughout the hearing the Respondent made claims such as feeling “harassed” by Inmate A, and about having concerns for her safety. The College notes that there was no evidence presented in that regard. The College submits that these concerns have been advanced to minimize and/or deflect from the Respondent’s misconduct. The College argues that had Inmate A been female and the Respondent male, the Respondent would likely not have attempted to advance such claims or continued to rationalize the misconduct away by vague allusions to distress in her personal life.
172. For the above reasons, the College submits that the allegations in the Citation have been proven on a balance of probabilities and establishes that the Respondent:
- a. failed to comply with the professional and practice standards imposed by the College (s.39(1)(b));
 - b. committed professional misconduct (s. 39(1)(c); and
 - c. committed sexual misconduct (s. 39(1)(c).

The Respondent’s Submissions

173. The Respondent argues that the College has not proven the Citation because several elements of the allegation have not been proven.

Alleged Timing is Unsupported by the Evidence

“Between [material dates]”

174. The Respondent argues that there is no evidence of any type of relationship other than a nurse-client relationship from [material date] to the [material date]. It is the Respondent’s evidence that, after Inmate A was released from custody in [material date], he contacted her in the [material date]. The Respondent submits that Inmate A was not an incarcerated person from this time until [material date] when he returned to [the Correctional Facility], as he was living in the community. Therefore, the Respondent argues that the relevant timeframe is limited to [material date] to [material date].

“Entered into” with an “incarcerated person”

175. The Respondent submits that the Citation alleges that she had a personal, romantic, and/or sexual relationship that was entered into with an incarcerated person, and/or continued after the incarcerated person was released. She says there is no evidence that any type of relationship other than nurse-client existed prior to the [material date], months after Inmate A’s release into the community. The Respondent submits that the limited interactions she had with Inmate A after his release could not accurately be described as her “entering into” a relationship with an “incarcerated person”, as he had been living in the community for months by that time.

“Continued” when the incarcerated person was released into the community.

176. The Respondent also submits that since there is no evidence of any personal, romantic, and/or sexual relationship beginning prior to Inmate A’s release in [material date], it follows that there is no evidence to support the allegation that a relationship continued after his release.

177. The Respondent argues that the Citation does not allege that a personal, romantic, and/or sexual relationship was entered into months after the nurse-client relationship ended, nor does it allege that a personal, romantic and/or sexual relationship continued after the individual was re-incarcerated and returned to being the Respondent’s patient.

No Romantic or Sexual Relationship

178. The Respondent argues that she has never had a romantic or sexual relationship with Inmate A. She says the College’s evidence fails to establish that the Respondent engaged in a romantic or sexual relationship with Inmate A at any time.

Weight to be given to SIRs

179. The Respondent says that she adopts and relies on her previous written submissions regarding the admissibility of the SIRs made by the SIOs. Additionally, considering the unreliability of these records and in particular the unreliability of the opinions and assumptions documented in them, including the belief that the

Respondent is the individual speaking with Inmate A, she submits that no weight should be given to this evidence. The Respondent submits that there are several factors that bring the reliability of the SIRs into question.

180. The College chose not to call as a witness [SIO2], the SIO who signed the SIRs, despite [SIO1] giving evidence that it was [SIO2] who performed the analysis for the SIRs, and that [SIO1] could not be certain that every line in the reports was transcribed accurately from the intercepted calls as it was [SIO2] who wrote the reports.
181. In response to the College's submission that [SIO1], [the Warden], and [the Respondent's Manager] listened to all or some of the audio and identified the female voice as hers, the Respondent argues that [SIO1] said he "would have" listened to the audio, not that he had a specific recollection. He also said that he and the other SIO had another individual attend to make a voice identification. The Respondent submits that there was no evidence from that individual about what information they were given beforehand (i.e., whether they had been told the female voice belonged to the Respondent and were asked to confirm it, or whether they had listened to the audio with no prior information and then made an independent identification). [the Warden]'s evidence was that she listened "for a minute or two". The Respondent submits that since the College did not call [the Respondent's Manager] as a witness, there is no evidence with respect to how long she listened to the audio or why she believed it belonged to the Respondent or how confident she was in that belief.
182. In response to the College's submission that [the Warden] was firm in her evidence that the female caller on the intercepts was the Respondent, the Respondent submits that while [the Warden] is experienced in her role as a warden, she admitted to being untrained in voice recognition and not having prior experience with voice identification. Further, the Respondent says that in response to questions from the Panel, [the Warden]'s evidence was that she listened to only a minute or two of the recording, not for the purpose of identification but rather as part of being updated on the situation by [SIO2]. The Respondent argues that when asked by the Panel whether she had ever been asked to listen to voice intercepts before for the purpose

of identification, [the Warden] stated that she had never listened to an intercept for the sole purpose of voice identification and she admitted to not being trained in this technique.

183. The Respondent says the voice recognition/identification evidence relied upon by the College is not reliable. There is a real risk that confirmation bias could have operated to falsely inflate their confidence in identifying the speaker, as they listened to the recordings only after they were told that it was believed to be the Respondent.
184. The Respondent also argues that the hearsay evidence given by any witness about [the Respondent's Manager], who is an individual the College did not call as a witness, should be afforded no weight. The Respondent says that while the Panel is permitted to consider hearsay evidence, the College still bears the burden of proving its case. Hearsay evidence can be reliable in some circumstances, such as where there is contemporaneous documentation by the witness, or necessary in circumstances where the witness is unable to give evidence. In this case, no documentation with respect to [the Respondent's Manager]' voice identification has been provided. The Respondent argues that she had no knowledge of [the Respondent's Manager]' involvement until the hearing of this matter. The Respondent argues that if the College wants the Panel to give weight to the evidence of [the Respondent's Manager], then the College ought to have called her as a witness.
185. With respect to the College's submission that [the Warden] and [SIO1] have no reason to lie or to exaggerate their interactions with the Respondent, the Respondent submits that the absence of a motive to lie or exaggerate should not lead the Panel to embrace their evidence as credible. It is possible that the misidentification of the Respondent was an honest mistake, and similar to what occurred in *Hamilton*, could create the same difficulty as a deliberate dishonesty.
186. The Respondent says that the College did not ask [SIO1] for any contemporaneous notes or materials made at the time of the SIRs. The College also did not obtain the audio recording of the intercepted calls and therefore did not produce any evidence

in response to the Respondent's challenge to the reliability of the voice identification. The College did not undertake its own investigation to verify the voice identification. The Respondent argues it would be unfair for this unreliable evidence to be afforded any weight by the Panel.

Evidence that Inmate A was Talking to a Woman Who Was Not the Respondent

187. The Respondent submits that another reliability issue with the SIRs relates to whether the Respondent was the individual speaking with Inmate A. The Respondent submits that there is evidence that Inmate A was speaking with another woman who was not the Respondent. She says there is a reference to an "other woman" in one of the SIRs, and [SIO1] admitted that they never determined who the other woman was. The Respondent argues that it is possible that Inmate A was in a relationship with another woman, and that this is the woman associated with the '[]' phone number. Further supporting this theory are Inmate A's medical records: upon his reincarceration in [material date], as part of an ongoing assessment for bloodborne and sexually transmitted infections, he indicated "Yes" to "Unprotected sex with casual partners, multiple lifetime partners, or sex with a sex trade worker". The Respondent submits this contradicts the theory that he was in a romantic and/or sexual relationship with her at the time, and supports the theory that he was involved in a relationship with a woman who was not her, given the reference to multiple partners.

188. Additionally, the Respondent submits that an email address documented in a SIR believed to be the Respondent's address could actually belong to this other woman. The Respondent argues there is no evidence connecting the listed email address to her, nor did the College cross-examine her on whether this email address belonged to her. Notably, this is a different email address than the address the Respondent used with the property management company.

There is No Evidence Linking the Respondent to the '[]' Number

189. The Respondent submits that the evidence is that the phone number with area code '[]' for which calls were intercepted does not belong to her. She says there is no

evidence connecting this phone number to her, and she denies that this number is hers. She argues that [SIO1] gave evidence that this number was associated to a person that he believed to be male.

190. The Respondent says the College did not attempt to contradict or challenge her credibility with respect to her evidence that the '[]' number was not hers. She submits that pursuant to the rule in *Browne v Dunn*, the College cannot now cast doubt on her credibility with respect to this unchallenged evidence.
191. The Respondent submits the only time that an intercept was made with respect to her phone number, area code '[]', was a call that did not connect. She says the "text reply" from this number to the individual speaking with Inmate A is unreliable hearsay evidence. There is no evidence that the individual speaking to Inmate A did text her phone number when he said that he did, also no evidence of a response from her, and no evidence about the true content of such messages, if they exist. The Respondent denies receiving these alleged texts.
192. The Respondent argues that on a balance of probabilities, it cannot be said that it is more likely than not that the '[]' number, for which there is no evidence connected to her, belongs to her. Accordingly, it must follow that she was not the woman described in the SIRs.

Evidence of Sexual Misconduct Not Put to the Respondent

193. The Respondent submits that the College compelled her to testify, and it was required to put its case to her. In particular, the Respondent submits that the College failed to put to her the evidence of the Informant alleging she had a sexual relationship with Inmate A. The Respondent says the College failed to put to her any evidence alleging sexual misconduct between her and Inmate A. She argues this failure was akin to a breach of the rule in *Browne v Dunn*, which places a duty on cross-examining counsel to put to a witness all significant matters relating to the opposing party's theory of the case.

194. Similarly, with respect to the College's allegation that she "said [requesting a vacation day on [Inmate A's Release Date]] was for [Respondent's family member]'s holiday concert, but even if she attended a holiday concert, she could still have met Inmate A at some point during that day," the Respondent suggests that the College failed to put this theory to her during cross-examination.
195. The Respondent submits that it is unfair for the College to cast doubt on the veracity of her evidence after seeking an order forcing her to testify and then failing to cross-examine her on what is purported to be false. The Respondent says that had there been an alleged inconsistency giving rise to an inference of falsity and malicious intent, she would have been cross-examined on it. The fact that she was not cross-examined on this suggests there is no portion of evidence tendered or heard in the context of this hearing that could give rise to that inference. She says it therefore follows that she should be treated as a credible witness.
196. The Respondent argues that if the Panel does choose to afford any weight to the SIRs, it should be clear that this evidence actually demonstrates there was no sexual misconduct as the phone call intercepted on [Phone intercept date] at 17:34:15 clearly demonstrates that Inmate A and the woman using the '[]' number had never before engaged in sexual intercourse. [SIO1] gave evidence that gossip was common in the prison population. The Respondent urges the Panel not to afford any weight to unreliable prison gossip.

Personal Relationship

197. The Respondent testified that when Inmate A contacted her in the [material date], months after his release from custody, she did not view it as a nurse-client relationship, and she did not anticipate that Inmate A would again become incarcerated at [the Correctional Facility]. She argues that her assessment of whether there was a nurse-client relationship was in line with that of the College's witness, [the Nurse], who stated that the nurse-client relationship is time-limited.
198. She submits that further supporting her view that there was no nurse-client relationship in the [material date] is the fact that she was not working in clinical

services at [the Correctional Facility] from [material date] to [material date] as she had taken a position at Regional Headquarters.

199. The Respondent submits that after Inmate A again became incarcerated in [material date], she resumed professional boundaries and had no relationship with him other than a nurse-client relationship. The Respondent says that with respect to an agreement to rent property to Inmate A on his release, something that had been discussed during the time before his reincarceration, she took steps to ensure a professional boundary by employing a property management agency who would interact with Inmate A so that the Respondent would not be directly interacting with Inmate A about the property rental at all. The evidence of [the Broker], the managing broker for [the Property Management Company], was that [the Property Management Company] would be responsible for inspecting the property with the tenant, collecting rent from the tenant, and dealing with any issues that might arise between tenant and landlord.
200. The Respondent says the sole relationship that could be argued to have existed is a personal relationship from the [material date] to [material date] with a member of community, not an incarcerated person, depending on the definition of personal relationship. The Respondent argues that the definition and guiding principles of the College are unclear in this regard; there is ambiguity as to what exactly constitutes a personal relationship. The Respondent submits it appears to refer to relationships with family members and to friendships. Having this in mind, the question then becomes whether the Respondent's relationship with Inmate A amounted to a personal relationship, in the sense of a friendship, as they were not family members.
201. The Respondent submits that to answer whether the relationship between her and Inmate A amounted to a personal relationship, the Panel needs to turn to the evidence presented by the College, who bears the burden of proof in this matter. She says the College's evidence does not establish that she had a personal relationship with Inmate A. At best, their relationship amounted to one of limited social interaction months after Inmate A was released from custody, as well as some form of an agreement to assist Inmate A with finding accommodations. The

Respondent submits this is not a personal relationship. She says it must be remembered that she would have been Inmate A's landlord through a third party acting as her agent, as she had hired a property management company. She argues a prospective tenant and a prospective landlord do not create a personal relationship by discussing the potential rent of the landlord's property. An actual landlord-tenant relationship is not a personal relationship, either. A Registered Nurse's interactions with others do not more easily become personal relationships simply because of the particular rules that apply to nurses. The Respondent submits that in this case, there was no personal relationship between her and Inmate A during his incarceration.

Professional Standards and/or Practice Standards

202. With respect to the three professional standards specified in the Citation (*Responsibility and Accountability* Professional Standard; *Client-Focused Provision of Service* Professional Standard; and *Ethical Practice* Professional Standard), the Respondent argues that the College has not provided any clear, cogent, or reliable evidence to prove that she failed to meet any of these three standards.
203. The Respondent submits that she complied with the minimum requirements set out in these three professional standards at all times during her career as a Registered Nurse. With respect to the practice standard specified in the Citation (*Boundaries in the Nurse-Client Relationship* Practice Standard), the Respondent submits that her interactions with Inmate A during his release from custody and her subsequent healthcare services to him after his return to custody complied with this standard.
204. The Respondent submits that she did not engage in a romantic or sexual relationship with Inmate A. She argues that the evidence establishes that she was a successful and ethical nurse for 15 years, that she was very professional, and that she understood the guidelines and standards applicable to nurses, in particular with respect to boundaries between nurses and patients. The Respondent says the evidence establishes that she was contacted by a former patient months after their nurse-client relationship concluded; between [material date] and [material date] she had some exchanges with him over Facebook and eventually went for a walk and for a coffee; she took steps to rent a property to him; when he returned to being her

patient, an event unexpected to her, she took steps to resume a professional nurse-client relationship by hiring a property management company to deal with her rental property so that she would not need to directly interact with Inmate A about the prospective landlord-tenant relationship.

205. The Respondent submits that the question for the Panel is whether this amounted to a personal relationship with an incarcerated person in breach of the practice standard. She says it does not. At best, it amounts to limited interactions at a time when there was no nurse-client relationship and providing assistance the same way that almost any prospective tenant would with a prospective landlord.
206. The Respondent further submits that if an individual contacts a prospective landlord and meets with them to discuss renting their property, it cannot be said that they have a personal relationship.
207. The Respondent argues that the mere existence of standards applying to nurses does not mean that what would be a business relationship or tenant-landlord relationship for one person is actually a personal relationship for the nurse. She submits that if that is how the standards are intended to apply, then the boundaries are ambiguous, and her interpretation of the standard is reasonable, and she ought not be disciplined in relation to a standard that is not sufficiently clear. She submits that the practice standard itself acknowledges the ambiguity of some boundaries: "Some boundaries are clear cut. Others are not so clear and require the nurse to use professional judgment."
208. The Respondent points to Principle 2 of this Practice Standard which provides that "Nurses are responsible for beginning, maintaining and ending a relationship with a client in a way that ensures the client's needs are first." The Respondent submits that the evidence shows that she tried to ensure that Inmate A's needs would be met by resuming their nurse-client relationship upon his unexpected return to the institution. The Respondent notes that both she and [SIO1] gave evidence that Inmate A was considered by CSC staff to be difficult. The Respondent submits that she was well-versed at managing difficult patients and others would refer Inmate A to her to deal with. Additionally, it was in Inmate A's best interests to have a nurse

who was familiar with his health history and challenging personality. While the Respondent acknowledged that it is not the role of a nurse to assist a client with living accommodations, she testified about feeling under significant pressure from Inmate A not to back out on their agreement, and reporting this would have had severe consequences to Inmate A's ability to find housing and even a risk that he would be disciplined and/or transferred to another institution, further impacting his ability to reintegrate into the community on his release.

209. The Respondent argues there is no evidence of any friendship, romantic relationship, or sexual relationship between her and Inmate A contrary to principles 3 and 4 that provide: "Nurses do not enter into a friendship or a romantic relationship with clients" and "Nurses do not enter into sexual relations with clients, with or without consent." She submits there is, at best, evidence of a prospective landlord-tenant relationship that began when there was no nurse-client relationship. The Respondent submits that even if the Panel were to find a personal relationship began after she was contacted in the [material date], there was no nurse-client relationship at that time.
210. The Respondent says that Principle 5, which states: "Nurses are careful about socializing with clients and former clients, especially when the client or former client is vulnerable or may require ongoing care," does not prohibit any form of socializing, rather it is a guideline for nurses to be "careful" about it. The Respondent argues that socializing is not strictly forbidden as Principles 8 to 10 would not be included, i.e., a nurse can be permitted to provide care for family and friends.
211. The Respondent argues that in applying the principles to practice, nurses are directed to "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." She submits this is not a clear rule prohibiting such interactions; rather, it is a warning that such interactions may be crossing a boundary. The Respondent submits that after Inmate A contacted her through Facebook, she did not add him as a "friend" (i.e., personal contact), but rather she responded to messages he had sent to her through the application.

212. The Respondent argues that the standard directs nurses to “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.”
213. The Respondent says that she was friendly to Inmate A during his time in the community when there was no nurse-client relationship between them, and this did not develop into a friendship that would amount to a personal relationship.
214. The Respondent submits that the practice standard includes the following direction for applying the principles to practice:

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.

215. She argues that a relationship with a former client is not prohibited; rather, the nurse is directed by the regulatory body to be cautious. The Respondent submits that the evidence demonstrates her compliance with this direction. She submits that contrary to the College’s submissions, she had no reason to believe that Inmate A had an active substance misuse disorder or mental health concerns that would cause him to be more vulnerable or impair his decision-making. The Respondent says her evidence was that she did not believe Inmate A would ever require her care again in the future as she did not believe he would have occasion to be reincarcerated, citing his motivation to complete his education as part of the reason for this belief.
216. The Respondent also argues that *Re McLellan* is distinguishable from her case. She says the nurse in *Re McLellan* was engaged in a romantic and sexual relationship with an individual who had been her patient only one week prior, while at a rehabilitation facility that the individual left without being discharged, and the

individual used substances. She submits this is different than the present situation, in which a former client reached out to her months after he had been her patient, she was not aware of any drug or alcohol issues, and she did not anticipate that he would return to [the Correctional Facility] months later.

217. The Respondent further submits that the context and her circumstances should not be overlooked. She says the fact that she was being harassed by an individual that [SIO1] described as verbally abusive to staff members and was known for being difficult and whom they considered for transfer to a [], is relevant. The Respondent argues that the College's submissions that "Had Inmate A been female and the Registrant male, the Registrant would likely not have attempted to advance such claims or continued to rationalize the misconduct away by vague allusions to distress in her personal life" engages dangerous reasoning that is based upon harmful gender stereotypes and biases. The Respondent argues there is no evidence that only female CSC employees are at risk of being harassed by inmates, or that female inmates never cause safety concerns or never harass male employees. The Respondent says there is also no evidence that in a given situation, a male nurse would feel or act any differently than a female nurse solely due to their gender.

CSC's Code of Discipline

218. The Respondent acknowledges that the situation between her and Inmate A could have resulted in a conflict of interest or may have been a business transaction contrary to the Code of Discipline of the CSC. However, she argues that this is not what the Citation alleges. She submits that the Citation alleges that she entered into a personal, romantic, and/or sexual relationship with an incarcerated person and that the evidence presented by the College simply does not establish that any of these three types of relationships materialized in this case.
219. The Respondent argues that what she has admitted to is a potential breach of the Code of Discipline of her then-employer, CSC. She admits that section 11 of CSC's Code of Discipline prohibits an employee from engaging in a business relationship with an ex-offender or offender and prohibits personal business transactions. She submits that what occurred from [material date] to [material date] is a breach of her

employer's Code of Discipline, not her professional standards as a Registered Nurse.

220. The Respondent admits that when Inmate A returned to [the Correctional Facility] in [material date], she did not report the relationship because she knew she had violated her employer's rules. However, she argues she was not in violation of her own professional standards as a Registered Nurse. She argues the only relationship she had was that of prospective landlord and tenant, and she took steps to ensure that this was not a personal relationship by hiring a property management company to add another layer of separation between herself and Inmate A. She submits she did not back-out on her agreement to rent to Inmate A as she argues this would have been a further contravention of her employer's Code of Discipline (specifically section 10 regarding respect of legal rights, being fair and having integrity).
221. The Respondent says she explained on cross-examination that the reason for not telling her employer about her prospective landlord-tenant relationship with Inmate A was because she believed it was in both of their best interests to continue a professional relationship and she believes that she maintained a professional relationship at that time. She submits her evidence about crossing a boundary was in view of her employer's standards, not the College's standards. She submits that on cross-examination she gave clear evidence that she did not believe she breached her professional standards as a Registered Nurse.
222. The Respondent argues that the Panel is not responsible for investigating or disciplining her with respect to CSC's own policies, only CSC has such authority and CSC determined that such actions were unnecessary. The Respondent submits this proceeding is specific to her compliance with BCCNM's rules and the professional standards specific to her role as a Registered Nurse, not as a CSC employee.

E. ANALYSIS AND FINDINGS

223. The Panel now turns to a determination of whether the evidence establishes the allegation in the Citation.
224. As noted above, the Citation alleges that:

1. Between [material dates], while you were employed with Corrections Services Canada at the [Correctional Facility] as a clinical services nurse, you entered into a personal, romantic, and/or sexual relationship with an incarcerated person and/or you continued this personal, romantic, and/or sexual relationship when the incarcerated person was released into the community contrary to one or more of the following Professional Standards and/or Practice Standards including: the *Responsibility and Accountability* Professional Standard, the *Client-Focused Provision of Service* Professional Standard, the *Ethical Practice* Professional Standard, *Boundaries in the Nurse-Client Relationship* Practice Standard.

This conduct also constitutes unprofessional conduct and/or professional misconduct and/or a breach of the Act or bylaws, under s.39 (1) of the Act.

The Respondent's employment at CSC

225. The Panel finds that from [material date] until [material date], the Respondent was employed with CSC. The Respondent worked as a clinical services nurse at [the Correctional Facility]. She filled the role of Interim Chief of Health on more than one occasion, which is a leadership role at CSC. Between [material date] and [material date], the Respondent held a position at Headquarters. The Respondent converted from full time status to part time status at CSC in [material date], after which she worked only Monday to Wednesday. The Respondent resigned her position at [the Correctional Facility] on [material date].

226. The Panel finds that Inmate A was incarcerated at [the Correctional Facility] between [material date] and [material date], and then again from [material date] until [material date]. The Panel finds that Inmate A's scheduled release date was [Inmate A's Release Date]. Inmate A was in the community on parole from [material date] to [material date].

227. The Respondent admitted, and the Panel finds, that she was in a nurse-client relationship with Inmate A from [material date] until at least [material date], while in her role as a nurse at [the Correctional Facility]. The Panel notes that the Respondent's admission excludes the period from [material date] to [material date] when Inmate A was on parole in the community. However, the Panel finds that the Respondent was still governed by College's standards which applied to her interactions with Inmate A as a former client during the period that he was on parole.

228. During Inmate A's time at [the Correctional Facility], the Respondent provided nursing care to Inmate A. The Respondent's care to Inmate A is detailed in the evidence summarized above. The Panel finds this nursing care spanned many months and involved many different aspects of Inmate A's health.

Personal relationship

229. The Panel finds that between mid-[material date] and [material date], while Inmate A was on parole and living in the community, he contacted the Respondent via social media. The Respondent admitted that she engaged with Inmate A by messaging him on Facebook. The Respondent admitted that she gave her phone number to Inmate A. The Respondent also admitted that at some point, her exchanges with Inmate A moved from social media exchanges to personal meetings in the community. The Respondent admitted that she met Inmate A on at least two occasions (once for coffee and once for a walk) and the Respondent referred to these visits as "friendly."

230. The Panel finds that the Respondent also received telephone calls from Inmate A after he returned to [the Correctional Facility] in [material date]. As set out earlier, the Respondent made admissions regarding her participation in these calls and her failure to have reported them to CSC because she knew that they violated the CSC Code of Discipline.

231. The Panel finds that the Respondent purchased the [the Street Name] property on or about [material date].

232. The Panel finds that on [material date], the Respondent emailed [the Broker] of [the Property Management Company] and requested that he provide some property management services for the [the Street Name] property. The Respondent advised [the Broker] that she had arranged her own tenant but wanted [the Property Management Company] to manage the property and send the lease to the tenant.

233. The Panel finds that Inmate A was the tenant for whom the Respondent had arranged a lease to the [the Street Name] property; Inmate A was incarcerated in [the Correctional Facility] at the time this lease was arranged by the Respondent for him. The Respondent completed the residential tenancy forms. The monthly rent

was indicated as \$980 per month. The Respondent listed [the Property Management Company] as the landlord and Inmate A as the tenant. The Respondent indicated the tenant's mailing address as [the Correctional Facility]'s address.

234. The Panel finds that the Respondent wrote to [the Broker] saying "I need this to be sent out by mail tomorrow (Monday) to the tenant for signature ..." on [material date], [the Broker] confirmed to the Respondent that the tenancy agreement was mailed to Inmate A. The Panel finds that [the Broker] sent the tenancy agreement to Inmate A at [the Correctional Facility].
235. At that time, [the Broker] also asked the Respondent for her identification and confirmation that she was the sole owner of the [the Street Name] property. The Panel finds that on [material date], the Respondent executed the written agency agreement with [the Property Management Company]. She returned the agency agreement, confirming she was the sole owner of the [the Street Name] property, and enclosed a copy of her driver's license. Less than 2 weeks later, on [material date], the Respondent terminated her arrangement with [the Property Management Company].

Conduct contrary to the College's Standards

236. The Panel finds that the Respondent's conduct was contrary to several of the College's Professional Standards and Practice Standards.
237. The College's Scope of Practice Standard for RNs expressly provides that restrictions contained in employer policies control a Registered Nurse's practice:

Controls on Nursing Practice

There are four levels of controls on registered nurses' practice:

1. Nurses (Registered) and Nurse Practitioners Regulation, which sets out the scope of practice in fairly broad strokes.
2. BCCNP standards, limits and conditions, which complement and further define and limit the scope of practice set out in the Regulation.
3. Employer policies, which may restrict registered nurses' practice in a particular agency or unit.
4. An individual registered nurse's competence to carry out a particular activity.

238. Section 11 of CSC's Code of Discipline provides that a CSC employee commits an infraction if they:

c. enter into any kind of personal or business relationship not approved by their authorized superior with an offender or ex-offender or the offender's or ex-offender's friends or relatives

d. give, or receive, any gift, gratuities, benefits or favours, or engages in personal business transactions with an offender or ex-offender or the offender's or ex-offender's friends or relatives

239. The Respondent acknowledged that section 11 of CSC's Code of Discipline prohibits an employee from engaging in a business relationship with an ex-offender or offender and prohibits personal business transactions, and the Respondent knew in 2016 and 2017 that those would be considered infractions.

240. In her written closing submissions, the Respondent admits that the contact she had with Inmate A from [material date] to [material date] was a breach of her employer's Code of Discipline. She also admits that she did not report it to CSC because she knew it violated the Code of Discipline. The Panel finds that by interacting with Inmate A on social media, messaging with Inmate A on Facebook, providing her personal telephone number to Inmate A, meeting with Inmate A in the community on multiple occasions for coffee and for a walk, and discussing the rental of property she personally owned to Inmate A, the Respondent entered into a personal and business relationship with Inmate A that was not approved by her authorized supervisor contrary to section 11(c) of CSC's Code of Discipline.

241. The Respondent admitted, and the Panel finds, that she agreed to rent the [the Street Name] property to Inmate A. The Respondent admitted, and the Panel finds, that renting her property to Inmate A constitutes evidence of a personal relationship with Inmate A:

Q: Okay. And you knew that Correction Services Canada would be very concerned if you were renting a property to an inmate, didn't you?

A: Yes.

Q: Because renting a property to an inmate is evidence of a personal relationship with that inmate, isn't it?

A: It could be.

Q: In this case, it was; isn't that true Ms. Filtness?

A: Yes.

242. The Panel finds that the Respondent did not seek approval from her authorized superior at CSC regarding this aspect of her personal and business relationship with Inmate A. To the contrary, the Panel finds that the Respondent deliberately concealed the residential tenancy agreement with Inmate A from CSC because she knew that CSC would be very concerned about her renting a property to an inmate, because doing so is evidence of a personal relationship contrary to the CSC Code of Discipline. The Panel finds that the Respondent acted contrary to section 11(c) of the CSC Code of Discipline in this respect as well.
243. The Panel finds that by agreeing to rent her property to Inmate A, the Respondent also "gave or received a benefit" and "engaged in personal business transactions with an offender or ex-offender" contrary to section 11(d) of the CSC Code of Discipline.
244. The Respondent's failure to adhere to the CSC Code of Discipline is contrary to the College's Scope of Practice Standard for RNs.
245. The Panel finds that the Respondent's failure to disclose her personal and business interactions with Inmate A is also contrary to the College's Responsibility and Accountability Professional Standard requirement to be accountable and take responsibility for her nursing actions and professional conduct. The Respondent was not accountable when she deliberately concealed the multiple interactions she had with Inmate A over a period of months. Those interactions spanned social media, telephone calls, in person meetings, and business arrangements involving the Respondent's property and Inmate A's living arrangements.
246. The Panel finds that the Respondent's conduct is also contrary to the Client-Focused Provision of Service Professional Standard. Client-focused provision of

service requires that a nurse “understands and communicates the role of nursing in the health of clients.” The Panel accepts [the Nurse]’s evidence that it is not the role nurses in the prison setting to assist inmates with finding housing in the community and notes the Respondent’s admission that she was aware this was not her role. It is certainly not the role of nurses to house former inmates at their own property. The Respondent’s involvement in housing Inmate A demonstrated a failure to understand and communicate her role properly.

247. The Panel finds that the Respondent’s conduct is also contrary to the Ethical Practice Professional Standard. By engaging in a personal relationship with Inmate A, the Respondent did not make the client the primary concern in the nursing care she provided. By concealing the relationship, the Respondent did not demonstrate honesty and integrity. The Respondent also failed to identify the ethical issues that were present and did not consult with the appropriate persons about it, and she failed to terminate the nurse-client relationship with Inmate A.
248. The evidence before the Panel establishes that nurses within [the Correctional Facility] are not left on their own with respect to ethical issues. If a CSC staff member is encountering problems maintaining boundaries, there are resources available to them. This includes the ability to speak to their direct manager or report matters to the Security Intelligence Office. Further, if a staff member realizes that they made a mistake and committed a boundary violation, they are encouraged to report immediately so that any necessary action can be taken to safeguard the inmate, institution, and staff.
249. The Respondent provided no evidence that she had ever raised her concerns about her situation with anyone at CSC, including her suggestion that, had she backed out of the agreement to rent the [the Street Name] property to Inmate A, that would have breached section 10 of the Code of Discipline.
250. The Panel finds that the Respondent’s conduct is also contrary to the College’s Boundaries in the Nurse-Client Relationship Practice Standard. This standard is clear that it is the nurse and not the client who is responsible for establishing and maintaining boundaries. The standard provides that nurses do not enter into a

friendship or a romantic relationship with clients, are careful about socializing with clients and former clients especially when the client or former client is vulnerable or may require ongoing care, and nurses disclose a limited amount of information about themselves only after they determine it may help to meet the therapeutic needs of the client.

251. The Panel does not agree with the Respondent's submissions that the College's boundary principles are unclear. The Respondent's arguments are in fact arguments about how the evidence in this case should be characterized, not about how the language in the standards is unclear. For example, she submits that the Respondent engaged in "a limited social interaction months after Inmate A was released from custody as well as some form of an agreement to assist Inmate A with finding accommodations" which does not amount to a "personal relationship." This does not go to the clarity of the boundary but whether there is sufficient evidence that the Respondent violated the boundary. The Panel disagrees with the Respondent's characterization of the evidence as not meeting the threshold for a personal relationship.
252. The Panel accepts [the Nurse]'s evidence that an effective boundary relies upon nurses being clear that they are to serve the patient's and not their own interests. The Panel finds that this is critical in the prison environment where the therapeutic nurse-client relationship involves access by nurses to an inmate's personal information and sensitive health information, and where the patient is an incarcerated person.
253. The Respondent failed to abide by the Boundaries Standard. She engaged with Inmate A in multiple personal and business aspects. When those situations arose, the Respondent neither established nor maintained adequate boundary lines between them.
254. The Respondent failed to abide by the College's requirement to refrain from entering into a friendship or a romantic relationship with clients when she engaged with Inmate A on social media, by telephone, and in person.

255. Similarly, the Respondent failed to follow the standard's requirement 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. There was no compelling evidence that the Respondent gave adequate thought or care about her admitted socialization with Inmate A.
256. The Respondent also breached the requirement that nurses disclose a limited amount of information about themselves only after they determine it may help to meet the therapeutic needs of the client; this breach occurred when the Respondent engaged with Inmate A on social media, providing her telephone number and disclosing information about her property investment plans and property details to Inmate A.
257. The Panel is not persuaded by the Respondent's argument that the College's Boundaries Standard regarding social media *only* states that "if you accept clients as personal contacts on social media sites, you *may* be crossing a boundary." In this case, the Respondent's social media engagement clearly did cross a boundary. The Respondent's social media contact led to further and deeper engagement with Inmate A over many months. The Respondent described interactions that moved from social media to telephone to in-person contact. Those interactions are more serious - not less, as the Respondent has argued - boundary violations than adding a patient as a contact. The standard does not require adding a patient as a contact on social media as a precondition for social media use to cross problematic boundaries.
258. The Panel does not accept the Respondent's arguments regarding the implications of the timing of Inmate A's parole. Some of the Respondent's boundary violations occurred while the Respondent and Inmate A were both at [the Correctional Facility]. To suggest that the chronology can be siloed in the manners that the Respondent argues in her closing submissions is simply contrary to the evidence.
259. The Panel does not accept the Respondent's suggestion that her conduct is not problematic because she initiated discussions about renting her property with Inmate A while he was on parole as opposed to when he was incarcerated. Similarly,

the Panel does not find the Respondent's testimony that "if [Inmate A] had attempted to initiate any kind of – any kind of relationship that was not professional while he was under my care or under the care of corrections, there's no way that I would have proceeded with -- with anything" to be credible. This is inconsistent with the Respondent's other evidence. The Respondent's dealings regarding Inmate A renting her property extended over several months and culminated in the tenancy documents being sent to him while he was re-incarcerated at [the Correctional Facility] and under her care again. Not only was he clearly an inmate again by that time, but the Respondent also had the benefit of months to carefully consider her actions. If anything, the fact that the dealings were initiated months prior to the tenancy documents being sent to Inmate A in prison reflects a more serious breach.

260. Moreover, the Panel accepts the College's argument that many of the College standards applied while Inmate A was on parole. This includes the Boundaries Standard which explicitly applies to relationships between nurses and former clients.

261. The Panel agrees with the reasoning in *Re McLellan* that "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." In this case, the Panel finds that there were many circumstances which placed the Respondent in a position of power and Inmate A in a continuing position of vulnerability, including:

- a. The Respondent's nurse-client relationship with Inmate A arose in the prison context. A patient who is incarcerated is in one of the most vulnerable positions a patient can be in, vis a vis a health professional.
- b. The Respondent provided a variety of nursing care services to Inmate A over a lengthy period. She was privy to confidential and sensitive information about Inmate A because of her position.
- c. Inmate A's vulnerability did not disappear when he was released on parole in the community. The fact that Inmate A was on parole meant that he remained vulnerable due to his conditional release and the

possibility of re-incarceration at the institution where the Respondent continued to be employed as a Registered Nurse.

- d. The length of time that had passed before the Respondent engaged in a personal relationship with Inmate A was relatively short. The Respondent argues in her closing submissions that she was contacted by Inmate A "months" after their nurse-client relationship concluded, suggesting this was a lengthy period. The Respondent's evidence on this was vague. The Panel finds it unlikely that the Respondent would not recall with more precision when the contact was initiated and how many times she and Inmate A met in the community. However, Inmate A was released on parole in [material date] and the Respondent testified that she was contacted by Inmate A in "[material date]." That may have been as short as a matter of weeks. Even if the period stretched later into that Spring, given the underlying prison and parole contexts, the Panel finds a period of "months" to be a relatively brief period of time in the circumstances of this case.
- e. Inmate A was vulnerable by virtue of the nature of the health care provided by the Respondent to him. The Respondent attended to many different aspects of his health, including particularly sensitive matters involving sexual health and infectious diseases.
- f. The Respondent herself testified that Inmate A had special personal circumstances and that her knowledge of those circumstances was gained from her nurse/client relationship with Inmate A:

Q Right. So from your point of view, based on your experience, it was important to not abruptly terminate the nurse/client relationship when the inmate was in the community?

A I didn't feel that I was in a nurse/patient relationship anymore. But just with him as a person, I felt like I couldn't do that, given -- given his background, without getting into personal details of -- of the individual for confidentiality reasons. I didn't feel that it was a good idea to just cut --

Q Right.

A -- cut it off completely.

Q Because that was based on your knowledge that arose from the nurse/client relationship; isn't that right?

A Yes. And the information that he gave me at that time.

262. In her closing submissions, the Respondent argues that she took steps to resume a professional nurse-client relationship on Inmate A's re-incarceration by hiring a property management company to deal with her rental property so that she would not need to directly interact with Inmate A about the prospective landlord-tenant relationship. The Panel is not persuaded by this argument. It is inconsistent with the Respondent's evidence that she did not want her personal identifying information on the tenancy agreement because she would get in trouble with her employer because renting a property to an inmate was evidence of a personal relationship. In addition, the Respondent terminated the relationship with [the Property Management Company] less than two weeks after engaging them.
263. Moreover, the fact remains that the Respondent agreed to rent Inmate A her property. That a property manager also participated in the business arrangement does not change the underlying nature of the Respondent's personal and business relationship with Inmate A, or the Respondent's professional obligations. The Respondent identified the tenant who would be leasing the space, established the rental price, completed the tenancy documents, and provided specific directions to [the Property Management Company] on implementing the arrangement, including delivery of the tenancy documents to [the Correctional Facility].
264. The Panel does not accept the Respondent's argument that if an individual contacts a prospective landlord and meets with them to discuss renting their property, it cannot be said that they have a personal relationship. That is not what occurred in this case. The Respondent's communications and planning spanned months, involved hiring a property management company, and drawing up legal documents. The Respondent formalized an agency agreement with [the Property Management Company] and a tenancy agreement with Inmate A whereby she agreed to rent her property to a person who was incarcerated at the prison where she worked and to

whom she provided direct nursing services, and whose lease would commence immediately upon his release from prison.

265. The Panel does not accept the Respondent's argument in her closing submissions that the College's boundaries are ambiguous because they require a nurse to use professional judgment. The Panel agrees with the reasoning in *Re McLellan* that professional nursing standards do not always set a bright line for conduct in terms of relationships with clients. The variety of circumstances that could arise may make that impossible. The Panel finds that the Respondent's conduct in this case does not involve a situation where there is ambiguity in the standards or where reasonable members of the profession would disagree about whether the Respondent should have engaged in a personal relationship with Inmate A. Indeed, the Respondent herself appears to have been clear about at least some of the boundaries she crossed. She concealed her personal relationship with Inmate A and admitted in her testimony that she concealed it because she knew it was wrong. Accordingly, even if there were ambiguities in the written or unwritten standards, which there are not, those would not assist the Respondent on the facts of this case.
266. The Panel does not accept the Respondent's submission that by agreeing to enter into a rental agreement with Inmate A, or by failing to report the contact she had with him by phone and while he was living in the community, that she simply breached her employer's rules and not the College's Practice and Professional Standards. As the College correctly points out, the Respondent's submission in this regard reveals a fundamental misunderstanding of the role, duties, and scope of practice of a Registered Nurse. The Scope of Practice Standard for RNs clearly sets out that there are multiple controls on a Registered Nurse's practice, including employer policies.
267. The suggestion that CSC's Code of Discipline is divorced from the College's regulatory framework is not correct. The scope of practice for a registered nurse reflects the reality of their nursing practice. The Panel finds that complying with these employer policies is part of the scope of practice of nurses in the prison setting. The reality of working as a Registered Nurse in the prison setting required the

Respondent to maintain the strictest of personal and professional boundaries in practice.

268. In addition to the Code of Discipline, the evidence before the Panel clearly established that strict professional boundary maintenance between CSC staff and inmates is critical for the safe functioning of [the Correctional Facility] as a prison. The maintenance and fostering of strict boundaries builds trust between the inmates and staff and contributes to CSC's broad mandate to rehabilitate inmates. As the CSC witnesses testified, a compromised staff member can have a negative impact on public safety.
269. The Panel does not accept the Respondent's submission that the Citation does not specifically allege that the situation between her and Inmate A was a breach of CSC's Code of Discipline, and it would therefore be procedurally unfair for her to be disciplined for conduct not specifically alleged in the Citation, since she has a right to know the case she must meet. The Citation expressly alleged that the Respondent's conduct was contrary to the College's standards. Those standards import employer policies to which a nurse is subject.
270. In any event, in discipline proceedings, reasonable notice of the case to meet is accomplished in a variety of ways, including through the allegations in the Citation; by timely disclosure of the evidence the College intends to rely on during the discipline hearing; through pre-hearing conferences and other preliminary processes that identify the issues between the parties; through pre-hearing motions; through the exchange of pleadings, such as requests for particulars and responses thereto; through the exchange of summaries of anticipated witness evidence before the hearing; through the College witnesses' testimony during the discipline hearing, and through submissions made by the College during the proceeding.
271. The allegations contained in a citation are important because the purpose of a citation is to advise a registrant with reasonable precision of the allegations they are facing. However, the failure to include specific details of alleged misconduct in a citation can be cured by disclosure of evidence and witness testimony prior to and during the discipline hearing, as well as through the College's submissions. As

noted, the Panel is not restricted to considering only the facts alleged in a citation in assessing whether there has been unprofessional conduct or professional misconduct but should make its decision considering all the evidence and facts adduced at the discipline hearing.

272. A citation is simply an outline of the alleged facts. As accepted in *Spiegel*, deviations between the facts alleged and those ultimately proven by the professional regulator during the hearing will not preclude a finding of professional misconduct, unless the registrant has been prejudiced in her ability to respond. In this case, the Respondent was not prejudiced by the fact that the Citation did not specifically reference the CSC Code of Discipline.
273. The Respondent is presumed to know the contents of the College's Scope of Practice Standard and that her employer's policies inform her professional practice standards and obligations. During the discipline hearing, the College led oral evidence about the Code of Discipline and professional and personal boundaries between nurses and inmates. The College questioned the Respondent regarding her knowledge of and breach of the Code of Discipline, including whether she understood that agreeing to rent the [the Street Name] property to Inmate A and not reporting this and the contact she had with him, breached the Code of Discipline. The Respondent testified that she was aware of the Code of Discipline; that she understood the importance of strict boundaries; that she agreed that all of the College's Professional and Practice Standards for Registered Nurses applied to her; and that the College and members of the public could expect a new RN, on their first day of practice, to meet all standards since those standards set out the minimal benchmarks and expectations for practice. The Respondent had the opportunity to test this evidence on cross-examination, lead responsive evidence and make full submissions.

Professional Misconduct

274. The Panel finds that the Respondent engaged in professional misconduct through her personal interactions with Inmate A on the phone, Facebook and in person, and

by her failure to have reported those to CSC; and by agreeing to rent the [the Street Name] property to Inmate A and concealing that personal business from CSC.

275. The Respondent's conduct was in knowing violation of her employer's Code of Discipline, was contrary to the College's standards, and was unprofessional. There were multiple different instances of these violations over a period of many months. The Panel finds that the conduct was disgraceful, dishonorable, and unbecoming of a member of the profession. The Respondent demonstrated an element of deceit by knowingly violating the CSC's Code of Discipline and concealing that conduct from her employer and work colleagues. Her conduct shows a lack of respect and disregard for the vulnerability of Inmate A as an incarcerated person and a person on parole in the community, her colleagues' safety and well-being, and for CSC's overall goal of rehabilitation of inmates. The Panel finds that the Respondent's conduct presents a marked departure from the expected standard of a member of the profession in good standing.

276. As such, the Panel determines that the Respondent committed professional misconduct pursuant to section 39(1)(c) of the Act.

Romantic and/or Sexual Relationship

277. The College submits that the true nature and extent of the relationship between Respondent and Inmate A was revealed through the phone intercepts that were undertaken by the Security Intelligence Office at [the Correctional Facility].

278. As noted, the Respondent denies that she is the woman captured in these phone intercepts. She relies on her earlier written submissions with respect to the admissibility of the SIRs made by the SIOs and submits these SIRs are inadmissible hearsay. She also argues that due to the unreliability of these records and in particular the unreliability of the opinions and assumptions documented in them, including the belief that the Respondent is the individual speaking with Inmate A, she strongly urges the Panel to give little to no weight to this evidence.

279. The Panel does not accept the Respondent's submissions in this regard. The Panel denied the Respondent's application to exclude the SIRs. The Panel delivered oral

reasons during the discipline proceedings with respect to the Respondent's application. The Panel released its written reasons separately and will not reproduce those here. The Panel found that the SIRs were admissible evidence. The Panel has considered the parties' arguments with respect to the weight that ought to be attributed to this evidence.

280. One aspect of the SIRs relates to voice identification. The Panel notes that evidence of voice identification is simply one individual item of evidence that relates to the Respondent's identity. The reliability of voice identification evidence is similar to other forms of recognition evidence. It is fact-specific and is informed by aspects such as the previous acquaintanceship and the opportunity for observation. Greater weight can be given to voice identification evidence where the witness is previously familiar with the voice in question. The risk associated with voice identification is that the witness could be mistaken.
281. The Respondent cross-examined [SIO1] and made submissions regarding the absence of training on voice identification of the CSC witnesses. The Respondent has not pointed the Panel to any authority that requires witnesses (expert or otherwise) to have such training in order for the evidence to be admissible or given weight.
282. The Respondent argues that [SIO1] did not play enough of a role in the drafting of the SIRs to give first-hand evidence about the records. She says it was the College who chose not to call as a witness [SIO2], the SIO who signed the SIRs, despite [SIO1] giving evidence that it was [SIO2] who performed the analysis for the SIRs, and that [SIO1] could not be certain that every line in the reports was transcribed accurately as it was [SIO2] who wrote the reports.
283. The Panel finds that [SIO1] gave extensive evidence about the security intelligence procedures that led up to the request for the Warden to exercise her authority to permit telecommunication interceptions of Inmate A's telephone calls, as well as the steps that he and [SIO2] took once the intercepts had been authorized. [SIO1] also testified that the physical office in the institution was small, and that the SIOs work

closely together and in a collaborative manner on investigations, listening to recordings together to confirm important details and to analyze the findings.

284. The SIRs contain summaries of conversations that were captured on the intercepts, but the documents also contain telephone numbers of the callers, some placed by way of "conferencing" or "three-way" calls; an assessment of the officers' reliability of the information obtained; notations regarding collateral information obtained by the Security Intelligence Department to confirm information provided by the Informant; notes regarding the impressions the SIOs formed from the information contained in the telephone intercepts; and actions taken by the officers as a result of the intelligence.

285. The Panel agrees with the College that [SIO1] testified that he and [SIO2] reviewed all the intercepted calls, listened to them several times, and prepared their notes in a collaborative manner. [SIO1] also provided evidence, reflecting on what various portions of the documents meant, which was based directly on his recollection of the events. [SIO1]'s evidence was that although [SIO2] signed the reports, the documents were the joint creation of the security intelligence team.

286. In this regard, [SIO1] testified:

Q: [SIO1], just one or two final questions. Can you describe your level of overall involvement in the investigation of Ms. Filtness.

A: I was present for the intercepts and the development of that information as it came in on the day-to-day. The intercept, like I say, they are signed off 30 days. However, I believe this one was a lot shorter as we started getting information much quicker. So anything that came in, I had reviewed. We had listened to it. The calls, we had listened to. And it was my partner that wrote up full reports of it. But I was well aware of all the information that was contained in the reports and had - and had a say into what went into the report and what should be left out or any of those kind of housekeeping items; right?

Q: Okay. And again, by "we", you're referring to [SIO2] - [Name of SIO2]; correct?

A: That's correct. Yeah.

287. Throughout his testimony, [SIO1] frequently referred to "we" as being both of the officers in the Security Intelligence Office who were responsible for the collection and analysis of the information gathered from the incepts of Inmate A's telephone calls. The Panel finds that [SIO1]'s evidence relating to the creation of the SIRs was detailed and was not compromised during cross-examination.
288. The Panel finds the SIRs are relevant evidence with respect to the phone conversations that occurred between Inmate A and the Respondent, and also that the information recorded in the SIRs should be given significant weight.
289. The Panel does not accept the Respondent's arguments that the voice recognition and identification evidence relied upon by the College is not reliable or that there is a real risk that confirmation bias could have falsely inflated their confidence in identifying the speaker, as they listened to the recordings only after they were told that it was believed to be the Respondent.
290. The Panel finds that while [SIO1] and [the Warden] were not being called as voice recognition experts, they had working experience with the Respondent and had no vested interest in her being identified as the caller; rather, there was significant pressure to ensure that the female caller was correctly identified given the seriousness of the stakes involved – the security of the institution and the reputation and employment status of the caller. The Respondent's suggestion of a possible "honest mistake" or tunnel vision is speculative and the Panel finds it is not supported by the evidence in this case.
291. The Panel finds the evidence given by [SIO1] and [the Warden] about how and why they were able to recognize the Respondent's voice on the intercepts was both credible and reliable given their evidence with respect to the surrounding circumstances of the intercepts and their working interactions and relationships with the Respondent.
292. The Panel notes the College's submission that it had produced all the evidence that it was able to secure. The information before the Panel is that CSC did not provide the audio recordings to the College given the sensitivity of other information contained therein (as also reflected in the redacted portions of the SIRs). Neither

party in these proceedings sought to introduce that evidence. The CSC employees who testified, [SIO1] and [the Warden], both spoke to the process of how SIRs are authorized and created.

293. The Panel accepts the College's submissions that lay person voice recognition evidence is permissible and admitted in court, even in criminal cases where the stakes of liberty are at play and the burden of proof is "beyond a reasonable doubt". As the College pointed out, in *R. v Downey*, 2018 NSCA 33, the Nova Scotia Court of Appeal summarized the law regarding voice recognition in the context of the recognition and identity of a masked man who shot three persons in a home invasion. The Panel finds the following passages to be a useful summary of the applicable law in this area:

[52] Ordinarily, "identification evidence" is used to describe the kind of evidence offered by eyewitnesses who are strangers to an accused but who later testify that the person on trial is the individual they observed at the scene of the crime, and which eyewitness reporting is perhaps later confirmed after pointing out that same individual in a police photo line-up during the course of the investigation.

[53] That kind of eyewitness identification evidence offered by strangers is to be distinguished from voice or visual identification evidence offered by witnesses who are "familiar" with the accused. Such evidence is properly characterized as "recognition evidence" because the witness is able to verify their identification of the accused from *recognizing* the voice and/or appearance of the accused based on their familiarity and interaction one with the other.

[54] A helpful explanation of this distinction can be found in the decision of the British Columbia Court of Appeal in *R. v. Bob*, [material date] BCCA 485 where Neilson, J.A., writing for a unanimous court said:

[13] ... this was a case of recognition, rather than identification. There is a significant difference between cases in which a witness is asked to identify a stranger never seen by him before the offence, and cases in which a witness recognizes a person previously known to her. While caution must still be taken to ensure that the evidence is sufficient to prove identity, recognition evidence is generally considered to be more reliable and to carry more weight than identification evidence: *R. v. Aburto*, [material date] BCCA 78; *R. v. Bardales* (1995), 1995 CanLII 2518 (BC CA), 101 C.C.C. (3d) 289 (B.C.C.A.), aff'd 1996 CanLII 213 (SCC), [1996] 2 S.C.R 461, 107 C.C.C. (3d) 194.

[Underlining by NSCA]

[55] Recent observations by the Ontario Court of Appeal, per curiam, in *R. v. Campbell*, 2017 ONCA 65, are equally apt:

[10] This court has confirmed that "recognition evidence is merely a form of identification evidence" and, as such, "[t]he same concerns apply and the same caution must be taken in considering its reliability as in dealing with any other identification evidence": *R. v. Olliffe*, 2015 ONCA 242, 322 C.C.C. (3d) 501, at para. 39. This court also noted in that paragraph, however, that "[t]he level of familiarity between the accused and the witness may serve to enhance the reliability of the evidence." Unlike cases involving the identification of a stranger, the reliability of recognition evidence depends heavily on the extent of the previous acquaintanceship and the opportunity for observation during the incident: *R. v. Miaponoose* (1996), 1996 CanLII 1268 (ON CA), 30 O.R. (3d) 419 (C.A.), at p. 424, citing *R. v. Smierciak* (1946), 1946 CanLII 331 (ON CA), 87 C.C.C. 175, at p. 177. Recently, in *R. v. Charles*, 2016 ONCA 892, at paras. 50-51, this court noted the "critical difference" between recognition cases and cases involving identification by a witness of a complete stranger, and referred to the relevance of the "timeline of the identification narrative". See also *R. v. Peterpaul* (2001), 2001 CanLII 24119 (ON CA), 52 O.R. (3d) 631 (C.A.), at p. 638.

...

[67] ... Again, the observations of Justice Paciocco in *Ambrose*, *supra* are instructive:

[29] Moreover, while courts should not accept an assertion that the accused is the suspect where that assertion is bald, or unsupported by any characteristics, courts have to be realistic in the degree of description that can be supplied. The reason lay witnesses are permitted to provide a conclusion about identification is that the human capacity for recognition, while imperfect, outstrips the human ability to describe what has been observed. Not only is language inadequate to articulate and communicate ordinary facial observations in a discriminating way, the human memory can capture details unconsciously that can appropriately inform conclusions, including about identification: *R. v. Graat* 1982 CanLII 33 (SCC), [1982] 2 S.C.R. 819. I can faithfully recognize my wife, but I would be incompetent to describe her with sufficient precision to enable someone who does not know her, to picture her well enough to identify her on a random citing. I am not suggesting that a court's confidence in a particular identification should not be more guarded in the absence of a detailed facial description, but I am

explaining why identification evidence is not defeated by incomplete or imprecise facial descriptions alone.

...

[32] While none of this is sufficient alone to give confidence in Ms. Antoine's identification, particularly not in the face of her abridged opportunity to observe, her uncertainty about the glasses and hat, and the suggestive influence she was subjected to, it does provide a platform that can enable a finding that Mr. Ambrose is the suspect, provided that identification is sufficiently supported by other evidence. Indeed, as a matter of law even with no "reference to characteristics which can be described by the witness" to support an identification, identification evidence should not be dismissed out of hand as "little more than speculative opinion or unsubstantiated conjecture" unless that identification is "unsupported and alone": *R. v. Smith* (1952), 1952 CanLII 116 (ON CA), 103 C.C.C. 58 (Ont.C.A.). It is to be evaluated, in context, for its sufficiency.

[Underlining by NSCA]

[68] So too the comments of Blair, J.A., writing for a unanimous court in *R. v. Berhe*, 2012 ONCA 716. While his remarks at ¶22 were made in the context of threshold admissibility, I accept them as equally pertinent when considering ultimate reliability:

[22] In my view, however, it is going beyond what is necessary for threshold admissibility to add another layer to the test requiring the recognition evidence witness to show that he or she can point to some unique identifiable feature or idiosyncrasy of the person to be identified. Such concerns are better resolved in determining the ultimate reliability of the evidence. There are many ordinary people who do not have any particular identifiable features or idiosyncrasies differentiating them from the normal crowd; people familiar with them may well be able to identify their photograph, however. In that respect, I think the following comment by Holmes J. in *R. v. Panghali*, 2010 BCSC 1710, [2010] B.C.J. No. 2729, at para. 42, is apt:

Common experience teaches that people have vastly different abilities to identify and articulate the particular features of the people in their lives that they know, recognize, and distinguish on a regular basis. Where a witness has but little acquaintanceship with the accused, his or her recognition evidence may be of little value unless the witness can explain its basis in some considerable detail. But at the other end of the spectrum, the bare conclusory recognition evidence of a person long and closely familiar with the accused may have substantial value, even where

the witness does not articulate the particular features or idiosyncrasies that underlie the recognition.

[Underlining by NSCA]

- [69] To summarize then, the importance of articulating identifiable features or idiosyncrasies will vary depending upon the level of familiarity the witness has with the person to be identified. In some cases a witness may be sufficiently familiar with the person, so as to render the identification by the witness of any unique identifiable feature unnecessary, in order for a court to properly assign substantial value to that evidence. Common sense and one's life experience reminds us that people have vastly different abilities when it comes to identifying or expressing the particular features of people they know and recognize, through their contact with one another. Where contact is fleeting, a person's recognition evidence may be of little value unless the witness can explain its basis in some detail. On the other hand, a simple conclusory recognition without additional elaboration of any points of distinctiveness, may still be highly probative in the case of a person who is closely familiar with the accused. See for example *R. v. Panghali*, 2010 BCSC 1710 (CanLII), [2010] B.C.J. No. 2729; *R. v. Benson*, 2015 ONCA 827; and *R. v. M.B.*, 2017 ONCA 653.

294. The Court of Appeal in *Downey* also noted the frailties of eyewitness testimony and the cautious approach which must be undertaken as a consequence. The Panel finds that the principles enunciated in *Downey* are relevant considerations. The Panel notes that the considerations listed in *Downey* are not a closed list and the facts and circumstances will vary in each case. The context and timing of the intercepts, and events that took place before and after the conversations that are consistent with the speaker being the Respondent are also relevant considerations in this case.

295. [SIO1] listened to all of the intercepts. The conversations involving the speaker identified as the Respondent ranged in length up to 10 to 15 minutes. Some portions were shorter. The Warden listened to portions of the intercepts that she estimated were one to two minutes long. While briefer, the Panel does not consider that the Warden had a fleeting contact.

296. [SIO1] testified that he was able to identify the Respondent's voice because:

My partner and I have both worked with Julia. We both know her. We've been in meetings with her. We do know what her voice sounds like.

297. The Panel asked the Warden how she was able to identify the Respondent in the intercepts. She testified that the Respondent's voice was recognizable, that the Warden had previously interacted with the Respondent, that she is experienced at noticing particular characteristics due to her institutional work, and that the speaker "absolutely sounded" to her like the Respondent:

A Well, it was -- part was the words that were being said, and then the other part was her voice. And I had, as a warden, I had interacted with Ms. Filtness when I'm in the healthcare area, and in particular we had a one-on-one meeting where she was proposing a, kind of a more focused substance abuse prevention approach with offenders. And so we had actually met in my office at some point prior to this, I can't quite timeline it for you. So I mean I had spoken, and I think probably one of the things that you become attuned to, working in institutions is, you know, always being, noticing various characteristics about areas. I do it innately, not with intent. And you know, like I said, I'm not an expert in that, but it absolutely sounded like her to me.

298. The Panel finds that both [the Warden] and [SIO1] worked with the Respondent at [the Correctional Facility]. [the Warden] and [SIO1] both gave evidence as to their prior interactions with the Respondent that aided in their recognition that it was her voice on the intercepts they listened to. [SIO1] worked with the Respondent and attended meetings with her. [the Warden]'s evidence was that she met with the Respondent to discuss a project regarding substance misuse disorders, that she sat at a table that was next to the Respondent at a holiday event, and that she would have met her during visits to [the Correctional Facility] Institution.

299. While the Respondent initially denied attending any meetings with the Warden, her evidence was inconsistent. Later in her testimony, the Respondent acknowledged it was possible she had attended meetings with [the Warden]. In addition, the Respondent chose not to cross examine [the Warden] on her recognition of the Respondent's voice or the circumstances that [the Warden] described with respect to her prior interactions with the Respondent that allowed [the Warden] to recognize the voice on the intercepts. The Panel prefers the testimony of the Warden where it differs from the Respondent's testimony; [the Warden] was clear, consistent, and specific with respect to knowing the Respondent and their interactions.

300. [the Respondent's Manager] and [SIO2] reached similar conclusions, however there was less information as to their interactions with the Respondent and how they identified the Respondent. The Panel accords less weight to those identifications.

301. The Panel finds it was the Respondent who was the female speaking with Inmate A on the calls set out in the SIRs. The identity of the Respondent as the female caller on the intercepts does not rest on only the voice recognition by the CSC witnesses. The context and timing of the conversations, and the events prior to and following the conversations, are consistent with the caller being the Respondent. This includes:

- a. The Informant advised the Security Intelligence Department that Inmate A was involved with a staff member and described characteristics of the staff member's family members, was involved in real estate, and lived in [the City]. The evidence before the Panel demonstrates this to be an accurate description of the Respondent.
- b. The Respondent requested a day off work for [] which was the same day that Inmate A was scheduled to be released. The Respondent submitted her request for a day off within days after the [Phone intercept date] intercepted phone call in which Inmate A suggested that the female caller take sick leave. Inmate A also stated "you still go into work three days a week" which was the number of the days that the Respondent worked at CSC.
- c. The information with respect to the purchase and rental of the [the Street Name] property to Inmate A is consistent with the intercepts and what was later discovered in the College's investigation documents about the Respondent's property. This includes the description of the [the Street Name] property given to Inmate A by the female caller on the intercept that the space was "all open", the female caller was the owner of the property, the female caller stated that the amount of rent for the condo was \$1000, which aligns with the terms of the lease filled out and signed by the Respondent.
- d. The intercepts also contained discussion of when the lease for the [the

Street Name] property would be mailed to [the Correctional Facility] for Inmate A, which is consistent with [the Broker]'s evidence and the Respondent's evidence about her decision to rent the [the Street Name] property to Inmate A and the steps she took to retain [the Property Management Company] to keep her identify on the tenancy agreement and deliver the lease agreement to Inmate A at [the Correctional Facility].

- e. The timing of [the Property Management Company]'s involvement in the rental of the [the Street Name] property aligns with the Respondent's impending release from [the Correctional Facility] and his planned property rental from the female caller.
- f. The timing of [the Property Management Company]'s involvement in the rental of the [the Street Name] property aligns with the timing of the Respondent's termination of [the Property Management Company] aligns with the dates on which the Respondent was advised there was going to be a workplace investigation into her inappropriate relationship with an inmate.
- g. The [Phone intercept date] intercept described the female caller as "freaking out", that "she is not going to work on Monday and they are going to let her know why." Once the female caller is conferenced into the phone call, she states,

[Inmate A] asks her about sending the lease ...

J "of course I sent it to you. Have you talked to anyone? You know I just prob lost my job cause of you"

J "you have any idea of what's going on right now"

[Inmate A] "No I don't, why don't you fill me in"

J "I'm not coming back. I'm not coming back, that's all I know is that I'm not coming back."

[Inmate A] "I love you and would never betray you"

J- "I know that. I know you wouldn't but this is whats happening right now"

...

[Inmate A] - "The only thing could be a phone call"

J- "Its obviously the phone call stuff too. How many times did I tell you everything is recorded. Everything otherwise I wouldn't be out like that, and I'm not coming back"

302. This aligns with events the Respondent was experiencing at work at that time, including her testimony that on approximately [material date] or [material date] she received a call from [the Regional Director for Health Services] and was told not to come to work.
303. In relation to the Respondent's submission that there was a reference to "another woman" in the SIRs, [SIO1]'s evidence was that they were not able to identify whether that was a reference to the Respondent or to another woman. The College acknowledged that it was unable to establish who was behind the email address indicated or the [] phone number. The College submits that its position does not require that such a positive linkage be made. It says it is the content of the discussions that establishes that it is the Respondent speaking to Inmate A by way of a three-way call. The Panel agrees. The Panel is not persuaded that "the other woman" referenced in the SIRs is the female caller. The overwhelming evidence is that the female caller is the Respondent. The reference to another woman in the SIRs does not undermine the Panel's finding that the Respondent was the female caller.
304. The Respondent submits that Inmate A's medical records support the theory that he was in a relationship with a woman who was not the Respondent, and that this is the woman associated with the '[]' phone number. Upon his reincarceration in [material date], as part of an ongoing assessment for bloodborne and sexually transmitted infections, he indicated "Yes" to "Unprotected sex with casual partners, multiple lifetime partners, or sex with a sex trade worker". The Respondent says this contradicts the theory that he was in a romantic and/or sexual relationship with the Registrant at the time and supports the theory that he was involved in a relationship with a woman who was *not* the Registrant, given the reference to multiple partners.
305. The Panel is not persuaded by this argument. The timing and details of those interactions are not disclosed, and irrespective, whether Inmate A had other partners

does not preclude the Respondent from also having engaged in a relationship with him.

306. The Respondent further denies that the intercepted calls were made to her and that there is no evidence linking her to the '[]' Number. Accordingly, the SIRs should not be given any weight. During questioning the Respondent was asked if she was connected to the "[]" number:

Q: So this [] number -- []-[] you're saying that number had nothing to do with you?

A: That's correct.

307. Although the Respondent denied that she is connected to the "[]" number, the Panel does not find the Respondent's evidence to be credible. The content of the phone calls in the SIRs is consistent with the Respondent being the female caller. There is overwhelming evidence, from multiple witnesses and documents, including from admissions by the Respondent herself, that demonstrate that she was in a relationship with the Respondent during the material times. Whether the [] number belongs to the Respondent is not determinative of whether she was the female caller. The Panel finds it more likely, plausible and consistent with the totality of the evidence, that the female caller speaking with Inmate A in the intercepts was the Respondent.

Conduct of a Sexual Nature

308. The College's evidence regarding the presence of a "romantic and/or sexual relationship" is primarily that the Respondent engaged in conduct of a sexual nature with Inmate A.
309. The [material date] SIR records that on [material date] the Security Intelligence Department received information from the Informant that the Respondent and Inmate A "are in a romantic/ physical relationship and have met in a hotel the last time [Inmate A's] release."

310. The SIR detailing the telephone call intercepted on [Phone intercept date] at 17:34:15 shows that on that date the Respondent and Inmate A had the following telephone discussion (“G” referring to the Respondent):

G- I just miss you.

[Inmate A]- Are you going to help me get my fuck on.

Yeah but I'm scared.

[Inmate A]- Why are you scared?

G- You know why ... because it would be the first time i would jail fuck.

[Inmate A]- You shouldn't be scared. I thought that's what you want.

G- Yeah I know.

311. The Respondent argues that she was “never at any time in a romantic or sexual relationship with Inmate A...” The Respondent also argues that the College did not put the question to her, “did you, Ms. Filtness, have a romantic or sexual relationship with Inmate A?”

312. The College submits that while it did not ask the Respondent whether she was in a romantic and/or sexual relationship with Inmate A, there were many instances in which the College suggested to the Respondent that her relationship with Inmate A was much more than the mere friendship to which she was willing to admit, including the following:

- a. Questions about the Respondent meeting Inmate A in a hotel;
- b. Questions about the relationship “going beyond friendship”;
- c. Suggesting to the Respondent that she arranged housing for Inmate A because she was in a personal, romantic, intimate relationship;
- d. Questions about the way the Respondent distinguished between a “friendship” and a “romantic or sexual relationship”; and
- e. The intercepts relating to the “jail fuck” were put directly to the Respondent.

313. The Panel finds that the rule of *Browne v. Dunn* was not offended in this case. As the BC Court of Appeal has articulated in *Hamman and Insurance Corporation of British Columbia*, 2020 BCCA 170:

[76] The rule in *Browne v. Dunn* seeks to preserve trial fairness and fairness to witnesses. It generally requires that if counsel is going to challenge the credibility of a witness by calling contradictory evidence, the witness must be given the chance to address the contradictory evidence in cross-examination while he or she is in the witness box:.

[77] Whether the rule in *Browne v. Dunn* applies is a question of law, reviewable on a standard of correctness: But deference is owed to the factual findings underpinning the trial judge's conclusion on whether or not the rule is engaged:

[78] The rule is intended, among other things, to avoid the "ambush" of a witness ...A number of authorities make clear that surprise remains a key element of when the rule might be engaged:

[79] The rule does not apply where it should be obvious that the cross-examiner intends to impeach the witness's testimony. In *Browne v. Dunn*, Lord Herschell wrote at 71:

Of course I do not deny for a moment that there are cases in which that notice has been so distinctly and unmistakably given, and the point upon which he is impeached, and is to be impeached, is so manifest, that it is not necessary to waste time in putting questions to him upon it.

(Citations omitted)

314. The rule in *Browne v. Dunn* is essentially a rule dealing with fairness. The Panel finds that the College put to the Respondent, on multiple occasions and in different manners, that her relationship with Inmate A went beyond the personal business relationship she admitted. The Panel finds that the Respondent has had notice of the case against her. The Panel is not satisfied that she was "ambushed" or "surprised" by evidence that was led by the College to support the allegations contained in the Citation.

315. The Panel agrees with the Respondent's submission that the evidence does not establish that the Respondent had sexual relations with Inmate A. In relation to the

hotel stay, there is insufficient information about the date this is said to have occurred, the hotel name or place, how it was ascertained that the Respondent and Inmate A were both at the hotel, or how it was ascertained that they engaged in sexual relations while at the hotel. In relation to the intercept quoted above, the speakers are discussing having sexual relations in the future. There is no indication from that passage that such activity had already taken place.

316. However, the Panel is satisfied that the exchange in the intercept clearly establishes that the Respondent engaged in conduct of a sexual nature with Inmate A when she made remarks that she would “help” Inmate A “get his jail fuck on” and stated that “it would be the first time I would jail fuck.”
317. The Respondent also tells the Respondent “I just miss you.” Similarly, in the [Phone intercept date] intercept, in reply to Inmate A saying “I love you. I would never betray you”, the Respondent said, “I know that. I know you wouldn’t.”
318. These exchanges go well beyond a personal or business relationship. The Panel finds that the Respondent engaged in a sexual relationship with Inmate A that involved remarks, behaviour and intended future conduct of a sexual nature.
319. The Panel also finds that the comments were not isolated remarks but interactions that must be seen in the broader context of established evidence involving the Respondent’s personal interactions with Inmate A at that time. She had provided Inmate A with her phone number, interacted with Inmate A on social media, met Inmate A in person in the community for coffee and a walk, and agreed to rent Inmate A her property to live.
320. The Respondent submits that the context and her circumstances should not be overlooked by the Panel. The Respondent submits that the fact that she was being harassed by an individual that [SIO1] described as verbally abusive to staff members and known for being difficult and who they considered for transfer to a maximum-security prison, is relevant for the Panel’s consideration. The Respondent’s closing submissions describe some circumstances that were not adduced as evidence at the hearing. The Respondent did testify that she received harassing phone calls from Inmate A. When asked by the Panel about what made those particular phone

calls harassing, she answered “As I said, quite often, I wouldn't answer. And then when I did, he would be angry that I hadn't answered earlier. He would pressure me about the rental.”

321. The testimony regarding the harassing phone calls must also be considered in light of the Respondent's other testimony explaining her conduct which were focused on avoiding workplace consequences and extending empathy to Inmate A. The Respondent testified that she thought she could maintain a solely professional relationship with Inmate A until he was released because he would only be incarcerated for a short period. The Respondent said that she and Inmate A might both “be worse off” if she reported the contact. She testified that she “didn't want to let [Inmate A] down” as she “kind of already made this promise to him if I were able to get a place. And so, you know, that's what he – that's what he was expecting.”
322. The Panel has considered all the circumstances, as well as the general information that was adduced about Inmate A and does not find that it affects the Panel's analysis regarding the Respondent's proven conduct. Boundaries are critical to establish and maintain in precisely the range of circumstances that the Respondent has described: harassment, fear of professional disciplinary consequences, and empathy. The boundaries and standards that exist for nurses in relation to patients, and particularly patients who are vulnerable because they are incarcerated, are even more important to ensuring that challenging people and challenging circumstances can be managed safely and professionally.

Sexual Misconduct

323. The College says that the sexualized nature of the dialogue between Inmate A and the Respondent constitutes sexual misconduct and falls on the serious end of the spectrum of professional misconduct. It says in developing a personal, romantic, sexual relationship with Inmate A, the Respondent has committed sexual misconduct. The College argues that she breached the College's Boundaries in the Nurse-Client Relationship Practice Standard (the “College's Boundaries Standard”).

324. The Respondent denies that she had a romantic or sexual relationship with Inmate A or that she has committed sexual misconduct or that she has breached the College's Boundaries Standard.
325. As noted, section 26 of the *Health Professions Act* provides that professional misconduct includes sexual misconduct.
326. The College's Boundaries Standard establishes as principles that "Nurses do not enter into a friendship or a romantic relationship with clients" and "Nurses do not enter into sexual relations with clients."
327. Footnote 5 of the College's Boundaries Standard further clarifies the principle that "Nurses do not enter into sexual relations with clients" as follows:

The *Health Professions Act*, Section 26 states that professional misconduct includes sexual misconduct, unethical conduct, infamous conduct and conduct unbecoming a member of a health profession. **BCCNM Bylaws define sexual misconduct as professional misconduct involving sexual intercourse or other forms of physical sexual relations between a registrant and a patient, touching, of a sexual nature, of a patient by a registrant, or behaviour or remarks of a sexual nature by a registrant towards a patient;** but does not include touching, behaviour and remarks by a registrant towards a patient that are of a clinical nature appropriate to the service being provided.

(Bolding added)

328. The Panel is satisfied that the evidence establishes that the Respondent engaged in "behaviour" and made "remarks of a sexual nature towards a patient" contrary to the College's Boundaries Standard and finds that in doing so the Respondent committed sexual misconduct for purposes of section 26 of the Act. The Respondent's remarks, behaviour and intended future conduct are at the serious end of the spectrum.

F. ORDER

329. The Panel finds that the College has proved allegation 1 of the Citation to the requisite standard.
330. Pursuant to section 39(1) of the HPA, the Panel has determined that the Respondent has committed professional misconduct including sexual misconduct.

Submissions on Penalty and Costs

331. The Panel directs that the parties provide written submissions regarding the appropriate penalty and costs, in accordance with the following schedule, or as otherwise directed by the Panel:

- a. Penalty submissions must be delivered by counsel for the College the Respondent and the Panel by September 20, 2024;
- b. Responding submissions, if any, must be delivered by the Respondent to counsel for the College and the Panel by October 11, 2024; and
- c. Reply submissions may be delivered by counsel for the College to the Respondent and the Panel by October 18, 2024.

332. Submissions for the Panel's consideration should be delivered electronically by email to counsel for the Panel.

Delivery and Public Notification

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

334. Pursuant to section 39.3(1)(d) of the Act the Panel directs the Registrar notify the public of the determination made herein.

335. The Panel directs that pursuant to section 38(4.2) and 39.3(3)(a) of the Act, the Registrar withhold part of the information otherwise required to be included in the public notification under this section, as the Panel considers it necessary to protect the interests of the complainants as well as other persons affected by the matter. The names and all related identifying information of the Complainants, the Informant, the Inmate, and the correctional facility, and any other witnesses' names and identifying information that could identify the Informant, Inmate or correctional facility, be withheld from the public notification. The Panel directs that the Respondent's dates of employment be redacted as well as all references to her family members. All telephone numbers, and street names and numbers must be redacted. The College may return to the Panel for further direction as to implementation of this order if required.

Notice of Right of Appeal

336. 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: August 29, 2024



Dr. Catharine Schiller, RN, Chair



Stephanie Buckingham, RN (non practising)



Dorothy Barkley