IN THE MATTER OF THE BRITISH COLUMBIA COLLEGE OF NURSES AND MIDWIVES

AND A CITATION ISSUED UNDER THE *HEALTH PROFESSIONS ACT*

R.S.B.C. 1996, c. 183

BETWEEN:

THE BRITISH COLUMBIA COLLEGE OF NURSES AND MIDWIVES

(the "**College**" or **BCCNM**")

and

AMY HAMM

(the "**Respondent**")

RESPONDENT'S SUBMISSIONS ON PENALTY AND COSTS

June 20, 2025

Lisa D.S. Bildy
Libertas Law
[redacted]

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PART I – INTRODUCTION & FACTS

1. A Panel of the British Columbia College of Nurses and Midwives (the "**Panel**"), in its decision released on March 13, 2025 (the "**Decision**"), found the Respondent, Amy Hamm, to have engaged in unprofessional conduct in relation to four separate publications where she identified herself as a nurse or nurse educator. This was a mixed result for the College for reasons described in this section.

2. The language of the College's Citation against Ms. Hamm directly linked the alleged "discriminatory and derogatory statements regarding transgender people" to her public identification as a nurse or nurse educator.

3. Of the approximately 330 pages of posts and publications originally identified by the College as supporting the Citation, only four of these items were ultimately found by the Panel to be both "discriminatory and/or derogatory" AND made while identifying as a nurse or nurse educator.

4. At the request of the Panel at the start of the hearing, the College was asked to provide an extract of the most problematic of these publications. Its so-called "Extract Document" contained 189 pages of social media posts and publications. On Day 2, the College was asked by the Panel to "drill down to the next level and identify within each of those tabs within that extract document exactly what are the phrases, words that you say cross the impermissible line…"[1] A further reduced document was produced, with the highlighted portions still numbering 156 pages.[2]

5. During the hearing, Ms. Findlay, external counsel for the BCCNM, advised that the Extract Document contained publications in which the respondent identified as a nurse: "So we have extracted from the Paladin documents certain documents which identify the respondent as a nurse and some of which we say are objectionable,

[1] Transcript, Day 2, page 171, Ms. Westmacott speaking for the Panel
[2] Exhibit 26

harmful, discriminatory. So we will be focussing in that narrow range, and in Dr. Bauer's substantive evidence, she will go through those documents."[3]

6. The clear implication from Ms. Findlay's statement was that **all** the items in the Extract Document identified the respondent as a nurse. The first item was a screenshot of the Respondent's biography, in which she identified herself as a nurse educator, taken from an article written for the Feminist Current.[4] The Respondent's bio from her Twitter account was **not produced** in the Extract Document. The positioning of the screenshot ahead of the Twitter posts (rather than with the Feminist Current articles produced toward the end of the document) appeared to have been designed to leave the impression that everything which followed was written under that bio.

7. The Respondent's Twitter bio *was* available in the more extensive materials. The sworn Affidavit of Aisha Ohene-Asante appended her investigation report, which included a screenshot of the Respondent's Twitter bio. It did **not** reference that she was a nurse or nurse educator,[5] and that screenshot did not make it into the Extract Document.

8. This appeared to be an attempt to mislead the Panel into thinking that the Respondent identified herself as a nurse or nurse educator in **all** the impugned publications (which the College was required to prove in accordance with the language of the Citation). The Respondent was forced to defend herself in relation to all the impugned statements, and much time during the hearing was devoted to this by both parties, including putting the extensive statements to the expert witnesses and the Respondent.

9. The Panel, as noted in its Decision beginning at paragraph 186, was not misled. It found that there was no evidence that the bio in the Extract Document was tied to the Twitter posts, and dismissed the College's case against the Respondent in

[3] Transcript, Day 3, page 23
[4] Exhibit 26, page 2
[5] Exhibit 2, page 9

relation to the vast majority of the posts and publications in the Extract Document, including all of those on Twitter:

> 186. The fundamental question for the Panel is whether the Respondent made statements which were discriminatory and/or derogatory to transgender persons. The College's investigation reports contained more than 300 pages of material downloaded from the Respondent's Twitter account and other online sources based on global searches of selected search terms. As some of the investigation material appeared to be of questionable relevance, the Panel asked the College to produce a list of the specific statements of concern which they did by producing the Extract. Counsel for the College confirmed that the Extract contains the statements which "most directly relate to the allegation in the Citation". Thus, the Panel focused on whether each of the statements in the Extract highlighted by the College are discriminatory and/or derogatory to transgender persons and, if so, whether the Respondent identified herself as a nurse or nurse educator in making them.
>
> …
>
> 188. The Respondent is identified as a nurse or nurse educator in some of the articles published online, as discussed below. It is not, however, apparent that the Respondent identified herself in that way in each of tweets contained in the Extract or in the media articles which include quotes from her. In relation to the tweets, the College initially sought to rely on a page included in the Extract as proof that the Respondent identified herself as a nurse educator which reads:
>
> > Vancouver Rape Relief and Shelter will surely (and maddeningly) face continued backlash from trans activists determined to infiltrate or destroy women-only spaces. The women of VRR however, are clearly up to the task.
> >
> > *Amy Eileen Hamm is a writer and registered nurse educator in New Westminster, BC. You can find her on Twitter @preta_6.*
> >
> > **2.1 k**
> >
> > SHARES ***f*** **Share Tweet**
>
> 189. However, the College subsequently acknowledged this page was not from the Respondent's Twitter account after she testified that it was the final page of an article she wrote after the City of Vancouver pulled funding from the Vancouver Women's Shelter. The Panel accepts this is the final page of an online article which is reproduced at Tab 30 of the Extract. If the information

on this page had been from the Respondent's Twitter account, it is reasonable to infer that it would not have included the address where she could be located on Twitter. This page therefore cannot be relied on to demonstrate that the Respondent identified herself as a nurse or nurse educator in each of the tweets. As a copy of the Respondent's Twitter profile/home page was not put into evidence, it is necessary to examine the tweets themselves and, where relevant, the immediate context in which they appear, to determine whether the Respondent identified herself as a nurse or nurse educator in each of them.

190. In some of the statements in the Extract, the Respondent is described as a "health-care worker" or references her nursing education. Where that occurred, the College urged the Panel to rely on the high-profile nature of the Respondent's publications and her frequent references to her status as a nursing professional to find the requisite nexus between those statements and the profession of nursing. At the same time, the College indicated that it was not seeking to stop the Respondent from engaging in public speech – only speech with a nexus to the nursing profession. The Panel is not prepared to rely on the high-profile nature of the Respondent's writings or her frequent references to her status as a nursing professional as to do so would effectively prevent her from making any public statements because they would automatically have a sufficient nexus to the profession of nursing.

10. As will be discussed further below, much unnecessary time was spent in the hearing on statements that did not satisfy the requirements of the Citation, which should be taken into account in determining costs payable.

11. The Respondent has filed an appeal of the Decision on Verdict with the BC Supreme Court.

PART II – LEGAL FRAMEWORK FOR ASSESSING PENALTY

12. The College correctly identifies in its submissions the legislative and common law factors to consider in determining an appropriate penalty. Briefly, the four overarching categories of factors or issues for consideration, as described in the case of *Law Society of BC v. Dent*,[6] are as follows:

[6] 2016 LSBC 5 (CanLII), 2016 LSBC 05, College's Book of Authorities, Tab 4, "*Dent*"

a) nature, gravity and consequences of conduct;
b) character and professional conduct record of the Respondent;
c) acknowledgement of the misconduct and remedial action; and,
d) public confidence in the profession, including public confidence in the disciplinary process.

13. These factors should assist the Panel in deciding an appropriate penalty under the *Health Professions Act*[7], with a view to several objectives including the following:

a) the need for specific deterrence of the respondent;
b) general deterrence of the other registrants who might otherwise offend;
c) educating registrants and the public about professional standards; and
d) promoting public confidence in the profession and its ability to self-regulate.

14. Penalty options under s. 39(2) of the *Act* are wide-ranging and include a reprimand, practice conditions, suspension, fines and cancellation of registration. Ultimately, a penalty must fall within a reasonable range of appropriate penalties, having regard to the circumstances of the misconduct and the evidence in mitigation.

PART III – SUBMISSIONS ON PENALTY

A. Nature, gravity and consequences of conduct

15. Pursuant to *Dent*, this category includes consideration of the impact on a victim, as well as the consequences already suffered by the respondent.

16. In this case, there was no direct victim. The complainants were Ms. Hamm's ideological opponents. No patient was involved, and no trans-identified people came forward to provide evidence of "harm" or impact. The finding was largely based on acceptance of the College's expert evidence on the likelihood that trans-identified people would find these statements discriminatory and/or derogatory.

[7] *Health Professions Act*, RSBC 1996, c 183, s 39(2) https://www.canlii.org/en/bc/laws/stat/rsbc-1996-c-183/latest/rsbc-1996-c-183.html#sec39subsec2_smooth

17. The Respondent suffered severe consequences herself—two weeks after the Decision, she was terminated from her employment with Vancouver Coastal Health, and, despite a 13-year successful employment tenure, received no severance.[8]

18. As a single mother of two young children who receives no child support,[9] this was a calamitous result. The College has asked that a suspension of three months be ordered against Ms. Hamm; however, she has already been unemployed as a nurse (she has some modest income from writing opinion pieces) for the last three months and this situation is continuing indefinitely. A further three-month period of suspension ordered by the Panel, on top of this *de facto* suspension, would be unduly punitive.

19. Furthermore, as Ms. Hamm testified during the hearing, she has experienced considerable mental health impacts from the protracted regulatory investigation and hearing (almost 5 years in total), requiring medical treatment and numerous leaves of absence from work.[10] To a significant degree, the process has already been the punishment.

B. Character and professional conduct record of the Respondent

20. Prior to this matter, the Respondent had no disciplinary history. There have been no patient complaints at all.

21. In assessing the character of the Respondent, the Panel should consider the sincerity of her beliefs and her intentions, which were to advocate for the sex-based rights of women and girls. The Panel acknowledged these intentions in its Decision, stating:

> Here, the Panel considered the Respondent's evidence that she was not seeking to discriminate against transgender persons but rather to advocate for the sex-based equality rights of cisgender women and girls. She presented her case as a "clash of rights". The Panel accepted the

[8] Affidavit of Carolyn McKeen Becker, sworn June 20, 2025, at para. 7
[9] *Ibid*, para. 8
[10] Transcript, Day 17, page 1230

> Respondent's evidence of her intentions but noted statements may be discriminatory and harmful in effect even if not intended to be so.[11]

22. As she expressed in her testimony, this has been a matter of belief and conscience for the Respondent, driving her to speak up in the face of what she views as a grave injustice to women and children, even if it counters the current accepted orthodoxy on gender. Respectfully, this should be reflected in the penalty.

C. Acknowledgement of the misconduct and remedial action

23. The Respondent has remediated the concern to the apparent satisfaction of the College by removing the reference to her professional designation from her bio in her published articles (it was already absent from her social media bios).

24. The key issue for the Panel appears to have been the nexus to the profession through the reference to being a nurse in her bio. The Panel did not make a finding of unprofessional conduct in relation to any other commentary or the billboard. Had the College simply asked the Respondent to remove the reference to her professional designation in her online commentary, the entire proceeding might have been avoided.

D. Public confidence in the profession and disciplinary process

25. There is no public safety issue here in any meaningful sense of the term.

26. It is respectfully submitted that the public's confidence in the profession will not be served by a significant penalty for advocating against controversial gender ideology; indeed, it could serve to increase the distrust that large segments of the population are already starting to have toward professional regulators.

27. As for general deterrence, a significant penalty would send the message to professionals that they should not speak up on matters of conscience where there is any sort of controversy. That is precisely the wrong message of "deterrence" that

[11] Decision on Verdict, paragraph 237

the medical and scientific community should receive, since society benefits from professionals sounding an alarm when they have concerns.

E. Relevant cases on penalty

28. It is respectfully submitted that a three-month suspension is unduly harsh, when viewed in the context of other relevant cases.

29. The College has cited *Kempling v. British Columbia College of Teachers*, where a teacher not only made public statements against homosexuality, but essentially offered to make "conversion therapy" available in his guidance office at school. [He wrote: "Sexual orientations can be changed and the success rate for those who seek help is high. My hope is that students who are confused over their sexual orientation will come to see me."[12]] For this, he received a **one-month suspension**, which also reflected his unblemished prior record.

30. The College also cited *Ontario College of Teachers v. LeBlanc*,[13] where a consent agreement resulted in a **one-month suspension** for generalized online activity.

31. The only case presented by the College to support its request of a **three-month suspension**, *Ontario College of Teachers v. Teal*,[14] was the result of a consent agreement and involved actual students while the respondent was on the job. Ms. Hamm's situation is more akin to *LeBlanc* than *Teal*, as it did not involve patients or workplace activity at all.

32. Other cases for the Panel's consideration include the following:

    In *Ontario College of Teachers v. McDonald*,[15] the member admitted to retweeting racist and otherwise discriminatory posts on the social media platform Twitter. Although they were on the teacher's private account, they were found by a parent who complained about them. The panel decided on a penalty that consisted of an

[12] College's Book of Authorities, Tab 2, page 56
[13] *Ibid*, Tab 6
[14] *Ibid*, Tab 7
[15] 2019 CanLII 145136 (ON OCT), https://canlii.ca/t/jc97f

oral reprimand, a course on appropriate communications and sensitivity, and a **10-day suspension**.

33. In *CPSO v. Wright*,[16] Dr. Wright used Facebook and various online messaging platforms to have sexualized conversations and online sexual relationships with several women who were not his patients, while identifying as a practicing psychiatrist. He did not immediately stop when asked. The Discipline Committee decided that a **one-month suspension** was appropriate given the seriousness of Dr. Wright's misconduct.

34. In *Holt v. Assn. of Registered Nurses (Alberta),*[17] a nurse created a climate of anxiety towards those involved with her such that they feared litigation if they opposed her and was acting outside parameters of a registered nurse when she gave a patient prescription medication without consulting his caregiver or a healthcare provider. For this, she received a **reprimand and $500 fine**.

35. In *Coffrey v. College of Licensed Practical Nurses (Manitoba),*[18] a nurse impugned the integrity of the College by circulating false information about staff salaries – the penalty was a **reprimand and costs**.

36. A lawyer who made threatening and discourteous remarks, telling a social worker that he should shoot her for taking away too many kids, had a previous citation and three conduct reviews. Nonetheless, he was ordered a **two-week suspension and costs** of $8840.[19]

37. A lawyer with a conflict of interest in which he received a personal gain received a **two-month suspension**, an order of restitution and a requirement to take an ethics course.[20]

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[16] 2018 ONCPSD 19 (CanLII), https://canlii.ca/t/hrm3b
[17] 2002 ABCA 308 (CanLII), https://canlii.ca/t/5ffh
[18] 2008, 291 D.L.R. (4th) 723 (Man. C.A.); leave to appeal to SCC denied, https://canlii.ca/t/1wffp
[19] *Foo v. Law Society of British Columbia*, 2017 BCCA 151 (CanLII), https://canlii.ca/t/h34sv
[20] *Abrametz v. the Law Society of Saskatchewan*, 2018 SKCA 37 (Sask. C.A.) https://canlii.ca/t/hs7tk

38. For additional context, an example of a recent case where a **three-month suspension** was ordered is *College of Physicians and Surgeons of Ontario v. Jha.*[21] While off-duty, Dr. Jha assaulted his fiancée and, in a separate incident, smashed her phone. He was found guilty of assault and mischief in separate criminal proceedings and given an absolute discharge. In his professional discipline proceedings, the Discipline Committee stated: "Strong denunciation of all acts of domestic violence is vital to adequate regulation of the profession, including maintaining the integrity of the profession and public confidence in the College's ability to regulate the profession in the public interest. It is also vitally important to send a message to other members of this profession that domestic violence will not be tolerated in the profession." The Committee found that a suspension of three months was warranted.

39. An example in the nursing profession of a **three-month suspension** was in *Carruthers v. College of Nurses (Ontario).*[22] There, a nurse kissed a physically restrained psychiatric patient.

F. Respondent's position on penalty

40. It is the Respondent's position that the College's request for a three-month suspension is excessive under all the circumstances described herein. Should Ms. Hamm's appeal of the verdict be unsuccessful, she submits that a reprimand and a shorter (10-day to two-week) suspension would be an appropriate penalty.

PART IV – SUBMISSIONS ON COSTS

41. The College made very little effort at the outset of the matter to focus the hearing. Only when asked by the Panel did it cull the list of impugned statements. It still kept some 186 pages of tweets and publications—alleging that every single comment about women's rights was discriminatory and derogatory. As noted above, it attempted to mislead the Panel, whether inadvertently or not, as to which

[21] 2021 ONCPSD 18 (CanLII), https://canlii.ca/t/jfc9
[22] 1996 CanLII 11803 (ON SC), (Div. Ct.) https://canlii.ca/t/g12xm

publications actually met the requirements of the Citation (being made while identifying as a nurse).

42. Given that only four publications out of hundreds were found to be subject to penalty, the College should not now have the benefit of cost recovery for the entire hearing, particularly given the amount of time dedicated to this content during the hearing.[23] Where the costs are driven up by the actions of the College, the entire burden of the additional length and complexity should not be put on the shoulders of the Respondent.

43. In *Jinnah v. Alberta Dental Association*,[24] the Alberta Court of Appeal considered the principles relevant to a costs award. The Court expressly rejected the jurisprudence that held that the regulated member should bear all or most of the costs of the discipline process. It was not appropriate to impose a significant proportion of the costs on the investigated member unless compelling reasons exist, such as "serious" unprofessional conduct, a "serial offender" or engaging in hearing misconduct that lengthens the hearing and increases costs.

44. According to *Jinnah*,[25] costs should not *de facto* be punitive in nature. Imposing a bill of over $163K on a single mother, now unemployed as a nurse, would be devastatingly punitive.

45. The Justice Centre for Constitutional Freedoms ("**JCCF**") assisted with legal bills (and counsel billed at a deeply discounted rate) to ensure that Ms. Hamm could have representation to defend herself. There is, however, no indemnity agreement for costs—she must pay these herself, although she may receive some assistance with fundraising in the form of publicity.[26] There is no guarantee that these efforts will produce the funds necessary to cover the costs award.

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[23] See *Fadelle v. NS College of Pharmacists*, 2013 NSCA 26, https://canlii.ca/t/fw6hb, where the Committee apportioned the costs based on the number of charges found to be proven, relative to the number pursued by the College.
[24] 2022 ABCA 336 (CanLII), https://canlii.ca/t/jsbt5
[25] *Ibid*, at para. 27
[26] Affidavit of Carolyn McKeen Becker, paragraph 6

46. A costs award should not be a deterrent to individuals to raise reasonable defences to allegations of unprofessional conduct, especially in novel circumstances involving freedom of expression and conscience issues not directly related to the practice of nursing.

47. Costs in the amount suggested by the College would serve as a deterrent to any professional to dispute an allegation of unprofessional conduct, which in turn would result in the College having the unchecked ability to regulate the personal lives and off-duty speech of its members.

48. With respect to disbursements for expert fees, this is also excessive. Here, the College had three expert reports (although only two experts testified), and the Respondent had to retain four experts to properly respond (three of whom were permitted to testify—the College had challenged the qualification of each of the Respondent's experts and lengthy written submissions and oral hearings had to be undertaken to ensure she could have an expert testify at all).

49. The fees charged by College's experts are unreasonably high. By comparison, two of the Respondent's experts charged nothing at all. JCCF spent $19,980 USD on Dr. Grossman and $14,800 CAD on Dr. Cantor. Given their comparative contributions, the fees for Dr. Bauer (at $63,663) and Dr. Scheim (at $33,600) are grossly excessive. A reasonable rate for Dr. Bauer would be $30,000 (still more than double that of Dr. Saewyc) and for Dr. Scheim, who did not testify, $10,000. With Dr. Saewyc's fee of $14,550, the total expert cost would be $54,550. Given the mixed result for the College, this should be further reduced by half to **$27,275**.

50. The tariff amount claimed by the College for legal fees was at the maximum rate in almost every category. The College claimed 427 units at $120 per unit. Given strategic decisions made by the College which increased the length and complexity of the proceedings, and the mixed result, this should be reduced to the bottom quarter of the range, namely 107 units at $120 per unit, for a total of **$12,840** for fees.

51. Under all of the circumstances herein, it is respectfully submitted that the total award for costs payable, if the Respondent's appeal is unsuccessful, should be **$40,115**, reflecting i) the degree of success by the College; ii) the delays, complexity and length caused by the College's decision to pursue all comments related to gender, whether they had a nexus to the profession or not, and to challenge all of the Respondent's expert witnesses (only one of four successfully); iii) the financial hardship to the Respondent; and iv) the punitive nature of the costs order sought by the College.

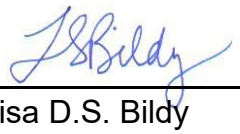
52. A two-year period to pay is appropriate, given the Respondent's financial and employment situation.

PART V – SUBMISSIONS ON PUBLICATION

53. The Respondent makes no submissions regarding exceptions to the general rule on publication of decisions under section 39.3 of the *Act*.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated this 20th day of June 2025.



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