Affidavit #1 of Graeme Keirstead
Sworn: June 26, 2026
Court File No. VLC-S-S-252688
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF A STATUTORY APPEAL

PURSUANT TO SECTION 40 OF
THE HEALTH PROFESSIONS ACT, R.S.B.C. 1996, C. 183

BETWEEN:

AMY HAMM

PETITIONER

AND:

BRITISH COLUMBIA COLLEGE OF NURSES AND MIDWIVES

RESPONDENT

AFFIDAVIT

I, Graeme Keirstead, KC of Suite 300 – 669 Howe Street, Vancouver, British Columbia, MAKE OATH AND SAY AS FOLLOWS:

1. I am a Deputy Registrar and Chief Legal Counsel of the College of Physicians and Surgeons of British Columbia ("the College") and, as such, have personal knowledge of the facts and matters hereinafter deposed to, save and except where such facts and matters are stated to be based on information and belief, and, where so stated, I do verily believe such facts and matters to be true.

2. Prior to April 1, 2026, the College was governed by the *Health Professions Act,* RSBC 1996, c 183 (the "*HPA*"), the *Medical Practitioners Regulation,* BC Reg. 416/2008 (the "Regulation"), and the College's bylaws (the "Bylaws") enacted pursuant to the *HPA*. Since April 1, 2026, the College has been governed by the *Health Professions and Occupations Act*, SBC 2022, c. 43 ("*HPOA*"), which replaced and repealed the *HPA*.

3. The *HPOA* now provides the regulatory framework for 26 health professions in British Columbia. Pursuant to the *HPOA*, various colleges are responsible for superintending the practice of one or more health professions in the public interest.

4. The *HPOA* aims to improve access to health care by increasing accountability, transparency and cultural safety measures in the provision of health care services in B.C. One of the major changes in the regulatory framework is the establishment of the Health Professions and Occupations Regulatory Oversight Office (the "HPOROO"), which oversees all health colleges in BC to ensure they act in the public interest. The *HPOA* has a central disciplinary body – the Health Professions Discipline Tribunal (the "Tribunal"), which is responsible for the discipline process of regulated health professionals. The Tribunal is led by an independent director of discipline (the "Director"), who is responsible for managing the Tribunal and appointing panel members to conduct and determine disciplinary proceedings.

The College

5. The College superintends the practice of medicine and podiatric medicine in British Columbia in accordance with the *HPOA*, the regulations thereunder, and the Bylaws. At present, there are over 17,000 licensees registered with the College, including family physicians, specialists of various certifications, podiatric surgeons and osteopaths.

6. The objective of the College's regulatory role is to protect the public from harm and to protect and promote the public interest: s.6(1)(b) of the *HPOA*. One of the primary ways in which this is done is to ensure that licensees meet expected standards of practice and conduct.

7. In addition, the College has a duty to adhere to the guiding principles of the *HPOA* set out under s.14 in exercising powers and performing duties in its regulatory capacity, which includes, *inter alia*, the need to "protect the public from harm and discrimination" (s.14(2)(a)) and "to take and promote anti-discrimination measures" (s.14(2)(c)).

Former regulatory framework under the *HPA*

8. Under the *HPA,* the College's main functions were to investigate and discipline registrants regarding complaints of professional misconduct, unprofessional conduct, incompetence, or fitness to practice. Towards this end, the Inquiry Committee of the College investigated complaints and initiated investigations on its own; and the Discipline Committee of the College was responsible for hearing and determining a matter set for hearing by citation under section 37 of the *HPA*.

9. Under the former framework, when a citation for hearing was issued by the Registrar under section 37 of the *HPA*, the Chair of the Discipline Committee would appoint a panel to hear the matter (unless the citation is cancelled, withdrawn or the matter disposed of by way of a consent order); and on completion of a hearing, the panel may dismiss the matter or determine that the respondent to the citation has, *inter alia*, committed professional misconduct or unprofessional conduct and impose an appropriate penalty upon the registrant: section 39 of the *HPA*.

Current regulatory framework under the *HPOA*

10. Under s.344(10(a) of the *HPOA,* regulatory colleges are empowered to govern health professions in the public interest. Pursuant to s. 384, regulatory colleges are authorized to make bylaws and rules which are necessary or desirable for carrying out any of its responsibilities under the *HPOA,* which includes, *inter alia*, setting accreditation standards, eligibility standards, ethics standards and practice standards.

11. In accordance with ss. 14(c) and 15 of the *HPOA*, regulatory colleges are to take and promote anti-discrimination measures in order to ensure that regulatory processes and the provision of health services are non-discriminatory.

12. With respect to regulatory processes, section 15(2)(c) specifically requires regulatory colleges "to engage regularly in processes to identify discriminatory practices, policies, programs, structures, values and attitudes that perpetuate discrimination or creat conditions in which discrimination may occur".

13. With respect to the provision of health services, s. 15(3) expressly states that anti-discrimination measures include:
    (a) treating patients respectfully;
    (b) fostering meaningful communication between patients and regulated health practitioners, including by promoting respectful, open and effective dialogue that encourages patients to participate in decisions that affect them; and
    (c) to meet the prescribed objectives under the *HPOA.*

14. In addition, *HPOA* makes clear that licensees hold a duty to practise their profession in an ethical manner and in accordance with all ethics standards, and that regulatory colleges are to make bylaws respecting ethical standards which includes, *inter alia*, anti-discrimination measures (s.70).

15. As mentioned above, under the new regulatory regime of the *HPOA*, the Director is responsible for managing the discipline process of regulated health professions, and independent discipline panels are appointed by the Director to determine disciplinary action for misconduct. In other words, regulatory colleges no longer conduct disciplinary hearings and determine disciplinary outcomes. As such, all discipline committees of regulatory colleges under the former *HPA* have been discontinued.

16. While the previous role of discipline committees under the *HPA* has now been ceded to the Tribunal in accordance with the *HPOA*, regulatory colleges still play a key role in assessing regulatory complaints, investigating fitness and misconduct concerns in the regulatory complaint and determining whether the regulatory complaint is to be referred to the Director to issue a citation (see provisions under Division 11 and 12 of the *HPOA*). Further, the College is responsible for enforcement of disciplinary orders decided by the discipline panel, including prosecution of these matters (s.197 of the *HPOA*).

17. In particular, s. 136 of the *HPOA* provides that, upon completion of an investigation, the investigation committee is to decide whether there are reasonable grounds to believe the regulated health professional lacks competence or has committed misconduct. If the investigation committee decides there are reasonable grounds, it may dispose of the complaint pursuant to ss.157 to 159 of the *HPOA*, or it may request the Director to issue a citation. After a citation is issued, the investigation committee is also authorized under s.139 to agree with a respondent licensee on what disciplinary orders are to be made with respect to the citation, which may then result in a cancellation of the citation upon the Director's approval.

18. Section 11 of the *HPOA* sets out what constitutes "an act of misconduct", which includes, *inter alia*, a failure to comply with an order or a contravention of a provision of a regulatory college's bylaw or rule (s.11(1)(a)), an act of sexual abuse or sexual misconduct (s.11(1)(b)), an act of discrimination (s.11(1)(c)) or an act of neglect or an act of physical abuse, emotional abuse or financial abuse of a patient or a prescribed class of persons (s.11(1)(d)).

19. The term "discrimination" is defined in section 9 of the *HPOA*, which takes the meaning of conduct prohibited under the *Human Rights Code,* unless the conduct is "undertaken for a prescribed purpose, in prescribed circumstances or in accordance with a prescribed process" (s.9(2)).

The College's Interest in the Petition

20. The Petition is a statutory appeal of a decision of the Disciplinary Committee of the British Columbia College of Nurses and Midwives ("BCCNM") made on March 13, 2025, finding that the Petitioner committed unprofessional conduct with respect to certain discriminatory and or derogatory online statements she made which were transphobic (the "Decision") and a related penalty decision issued on August 14, 2025 (the "Penalty Decision").

21. The Petition raises questions concerning what constitutes "unprofessional conduct" and how regulators are to assess the nexus between a licensee's off-duty conduct and the profession ("the issue of nexus"). The Petition also raises issues about the extent to which a licensee's constitutional rights under s.2(b) of the *Charter* may be attenuated to fulfil regulatory objectives and what those objectives may be.

22. Like the College, the BCCNM is governed by the *HPOA* (previously, the *HPA*) and shares the same regulatory objective of protecting the public from harm and protecting and promoting the public interest.

23. While the BCCNM and the College regulate distinct areas of the health profession, the Court's determination on many of the issues raised by the Petition will have direct ramifications on the College's regulation of conduct in the profession of medicine and podiatric medicine, not least because the BCCNM and the College are both regulators governed by the *HPOA*.

24. The Decision was made pursuant to section 39(1) of the former *HPA*, which provides a college's discipline committee with the power to determine that a registrant has committed unprofessional conduct.

25. As noted above, while the *HPOA* has transferred some of the disciplinary powers formerly held by regulatory colleges to the Director and the discipline panel of the Tribunal, the College still plays an important role in determining whether a licensee's conduct should be subject to regulatory action. This includes the College's role in:
    (a) Setting professional standards through enactment of bylaws, rules, practice standards, guidelines and code of conduct;
    (b) Determining whether conduct of a licensee warrants investigation and, upon investigation, whether the conduct warrants a citation so as to trigger a request under s.136 of the *HPOA* to the Director;
    (c) Deciding whether circumstances are appropriate for the matter to be disposed under ss.157 to 159 or by agreement under s.139, or by summary dismissal under s.158.

26. Inherent in the College's exercise of powers with respect to para. 25(a) to (c) above are considerations on the issue of nexus, regulatory objectives, and where the conduct involves rights under section 2(b) of the *Charter,* the balancing exercise which should be undertaken in the exercise of powers.

27. The College has a direct interest in the Petition as the determination of the issues in the Petition will likely impact the ability of the College (as well as other regulatory colleges of healthcare professions) to regulate acts of discrimination, including off-duty conduct which may be discriminatory. This is particularly pertinent given the College's anti-discrimination obligations under the *HPOA*, as the College must be able to identify conduct which may constitute discrimination, including any values and attitudes which perpetuates discrimination or creates conditions in which discrimination may occur, per s.15(2)(c).

28. Non-discrimination is a fundamental human right and a core value embedded in British Columbia's healthcare system. The College believes that everyone in B.C. should have respectful and fair access to medical services without discrimination and the College has specific practice standards regarding non-discriminatory access to medical care.

29. Under the College's practice standard respecting "Access to Medical Care Without Discrimination", licensees are expected to provide equitable care for all patients, which means providing patients with health care based on their specific circumstances and ensuring fair access to opportunities for improving health and well-being. The College also requires licensees to take reasonable steps to create and foster a safe, inclusive and accessible environment for patients, and to communicate with all patients in a sensitive, respectful and dignified manner.

30. Further, insofar as the issues in the Petition relate to the extent to which "the use of sarcasm, mockery, derision or other tone" in online communication may be conduct which may constitute professional misconduct, the College has a direct interest in the determination of such issues as it will likely affect the ability of regulatory colleges of healthcare professions

to regulate statements and expressions in contravention with ethics standards, practice standards and/or other regulatory objectives under the *HPOA*.

31. Healthcare regulators such as the College protect the public interest by, among other things, setting standards promoting professional and respectful communication to maintain public trust in healthcare professions. For instance, the College has established a Professional Guideline specifically regarding the use of social media, which requires licensees "to comply with all existing professional expectations, including those set out in relevant legislation, applicable health authority policies, codes of ethics and professionalism, and CPSBC standards" when using social media. The Guideline further requires licensees to "maintain professional and respectful communications" with colleagues, other members of the health-care team, and the public, and to "avoid derogatory, defamatory, or culturally insensitive statements and disengage from conversations that are disrespectful in tone and content". The Petition therefore raises issues which engages the College's interest as it directly affects how the College is to exercise its regulatory powers in ensuring licensees comply with professional standards with respect to communication.

The College's experience as intervener

32. The College has experience intervening before courts, including, for instance:

- *College of Midwives of British Columbia v. MaryMoon*, 2020 BCCA 224, involving the constitutional question whether a provision under the *HPA* constituted an infringement under s.2(b) of the *Charter*;
- *College of Chiropractors of British Columbia v Health Professions Review Board*, 2023 BCSC 529, concerning judicial review of a decision by the Health Professions Review Board ("HPRB") and specifically whether the HPRB exceeded its jurisdiction by reviewing complaint procedures adopted by the regulatory college in question.
- *Scott v. College of Massage Therapists of British Columbia*, 2016 BCCA 180, involving the exercise of powers by inquiry committees under the *HPA* to take action necessary to protect the public;
- *Beale v. Nagra*, 1998 CanLII 5078 (BC CA), involving disclosure issues with regard to documents which came into a physician's possession as part of the College's inquiry.

The College's unique assistance to the Court

33. As health regulator, the College is uniquely positioned to provide useful and distinctive submissions to assist the Court. For many years, the College has been serving the public by regulating physicians and surgeons under the *HPA* and it shall continue to do so with respect to the professions of medicine and podiatric medicine under the *HPOA*. The College intends to rely on its vast and accumulated years of experience in the regulation of health professions to provide helpful and distinct perspectives to the Court.

34. The College wishes to intervene in these proceedings to make focused submissions on the following:

(1) Non-discrimination is a core value of healthcare professions and an essential public interest to be protected.
(2) Assessing nexus between a licensee's off-duty conduct and the profession is a highly contextual exercise.
(3) A licensee's constitutional rights under s.2(b) of the Charter may be attenuated to fulfil regulatory objectives.
(4) Protecting the public interest includes promoting professional and respectful public expression of licensees.

35. The College does not intend to expand the issues to be addressed the Petition. Nor does it intend to file additional evidence or seek to expand the appeal record.

36. The College does not believe its intervention would affect the existing timetable, including the hearing dates already fixed for November 10, 12 and 13, 2026, nor would its participation in the proceedings unreasonably delay or lengthen the hearing of the appeal.

37. The College will not seek costs associated with its intervention.

38. The College will work with the parties and any other interveners to avoid duplicative submissions and will comply with any terms and conditions imposed.

SWORN BEFORE ME in the City of Vancouver, in the Province of British Columbia, this 26th day of June 2026.

A Commissioner for taking Affidavits for British Columbia

Graeme Keirstead, KC

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