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

NOTICE OF APPLICATION

Name of applicant: College of Physicians and Surgeons of British Columbia

To: Amy Hamm, Petitioner
c/o Libertas Law
341 Talbot Street
London, ON N6A 2R5
Attention: Lisa D.S. Bildy
Email: bildy@libertaslaw.ca

And to: British Columbia College of Nurses and Midwives, Respondent
c/o Brent Olthuis KC
Olthuis van Ert
1915 – 1030 West Georgia St
Vancouver BC
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Email: bolthuis@ovcounsel.com

TAKE NOTICE that an application will be made by the applicant to the presiding judge or master at the courthouse at 800 Smithe Street, Vancouver, B.C. on July 29, 2026 at ~~9:00~~ 10:00 a.m., for the order(s) set out in Part 1 below.

The applicant estimates that the application will take no longer than 30 minutes.

[ ] This matter is within the jurisdiction of an associate judge.
[x] This matter is not within the jurisdiction of an associate judge.

PART 1: ORDER(S) SOUGHT

1. The College of Physicians and Surgeons of British Columbia ("CPSBC") is granted intervener status in this petition proceeding.

2. The CPSBC may file written submissions not exceeding fifteen (15) pages.

3. The CPSBC may make oral submissions not exceeding fifteen (15) minutes at the hearing of the petition.

4. The CPSBC will not be liable for or entitled to costs, subject to the discretion of the justice hearing the Petition.

PART 2: FACTUAL BASIS

5. The Petitioner, Amy Hamm, was at all material times a nurse and registrant of the British Columbia College of Nurses and Midwives (the "BCCNM").

6. Between July 2018 and March 2021, the Petitioner made a number of online statements about transgender people, sometimes identifying herself as a as a nurse or nurse educator.

7. Following the receipt of two complaints respecting the Petitioner's statements, the BCCNM investigated and issued a citation, referring the matter for a disciplinary hearing before a hearing panel of the Discipline Committee of the BCCNM (the "Panel").

8. After 22 days of hearing between 2022 and early 2024, the Panel issued its reasons for decision on verdict (i.e. the Petitioner's conduct) on March 13, 2025, concluding that the Petitioner committed unprofessional conduct by making online statements that were discriminatory and or derogatory to transgender people between July 2018 and March 2021 while identifying herself as a nurse or nurse educator (the "Decision").

9. Among other things, in reaching the Decision, the Panel considered the Petitioner's *Charter* right to freedom of expression along with the BCCNM's statutory mandate to protect the public interest and concluded that a finding of unprofessional conduct would not unjustifiably infringe the Petitioner's freedom of expression.

10. This Petition was filed pursuant to section 40 of the *Health Professions Act* R.S.B.C. 1996 c. 183 (the "*HPA*"), providing for statutory appeal from a decision of college's discipline committee to this Court.

11. The Petition raises key issues concerning what constitutes professional misconduct or unprofessional conduct and how regulators of healthcare professions are to assess nexus between a licensee's off-duty conduct and the profession for the purposes of professional regulation. The Petition also raises questions concerning how a licensee's constitutional rights under s.2(b) of the *Charter* are to be balanced against statutory objectives of healthcare regulators.

12. These issues are of significant import to CPSBC which, like the BCCNM, is responsible for the regulation of a healthcare profession previously governed by the *HPA*, now the *Health Professions and Occupations Act,* SBC 2022, c. 43 ("*HPOA*") and associated regulations which came into effect on April 1, 2026.

13. The CPSBC accordingly applies for leave to intervene in the Petition to make arguments that it believes will be helpful to the Court in considering the issues raised by the parties.

PART 3: LEGAL BASIS

A. The Test for Intervener Status

14. An order granting leave to intervene is discretionary and may be made on any terms and conditions the Court considers appropriate: *Carter v. Canada (AG)*, 2012 BCCA 502, para. 11.

15. The B.C. Supreme Court has inherent jurisdiction to grant intervener status to non-parties. In doing so, the Court generally follows the framework for considering interventions set out by the Court of Appeal: *Gibraltar Mines Ltd. v. Harvey*, 2021 BCSC 927 ("*Gibraltar Mines*"), para. 9.

16. Intervener status may be granted where the applicant has either a direct interest in the outcome of the proceeding, or, on the basis of an indirect interest if the proceeding raises an issue of public law legitimately engaging the applicant's interest and the applicant can bring a different and useful perspective on those issues that will be of assistance to the Court (the "Public Interest Basis"): *Galloway v AB*, 2021 BCSC 646, at para. 18; *British Columbia v. Philip Morris International Inc.,* 2016 BCCA 203 ("*Philip Morris*") at para. 8, rev'd on other grounds 2016 BCCA 363; *Gibraltar Mines* at paras. 10-12.

17. An intervener's role "is not to support the position of one party or the other, but rather to make principled submissions on points of law pertinent to the [proceeding]. Such submissions may well tend to support one party's position, but that is not their purpose": *Friedmann v. MacGarvie*, 2012 BCCA 109 at para. 28. Interveners should not expand the scope of the litigation by raising new issues: *Philip Morris* at para. 10.

18. The CPSBC seeks leave to intervene in this proceeding on a Public Interest Basis.

B. The CPSBC Meets the Test for Intervener Status

The CPSBC's role as a professional regulator

19. The *HPA* is the former legislation which governed the regulation of health professions in British Columbia up until March 31, 2026. As of April 1, 2026, the *HPA* has been replaced by the *HPOA*.

20. Under the *HPA*, regulatory colleges, like the CPSBC, were responsible for superintending the practice of health professions in the public interest. These colleges have statutory duties

to serve and protect the public, and to exercise their powers and discharge their responsibilities under all enactments in the public interest: *HPA,* section 16(1).

21. Under the *HPOA,* the regulation of health professions remains necessary "to protect the public from harm" (s.6(1)(b)(i)) and "to protect or promote the public interest" (s.6(1)(b)(ii)). *HPOA* also requires regulatory colleges to act in accordance with the guiding principles outlined in s.14, one of which is "to protect the public from harm and discrimination": s.14(2).

22. Section 344(10(a)) of the *HPOA* empowers regulatory colleges to govern health professions in the public interest and to make bylaws and rules to carry out any of its responsibilities under the *HPOA* (s.384). This includes setting accreditation standards, eligibility standards, ethics standards and practice standards.

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

24. 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 create conditions in which discrimination may occur".

25. With respect to the provision of health services, s. 15(3) of the *HPOA* expressly states that anti-discrimination measures include, *inter alia,* treating patients respectfully and fostering meaningful communication between patients and regulated health practitioners.

26. Section 11(1)(c) of the *HPOA* defines an act of discrimination as constituting an act of misconduct. The term "discrimination" takes the meaning of conduct prohibited under the *Human Rights Code* (s.9).

27. In addition, the *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).

28. The *HPOA* is an umbrella statute concurrently governing regulatory colleges in healthcare professions and occupations captured under ss.342 and 415 of the *HPOA*.

29. The CPSBC and the BCCNM are both regulatory colleges established under the *HPA* and continued pursuant to s.342(2) of the *HPOA.* While the BCCNM and the CPSBC regulate distinct areas of the health profession, the two colleges share the same statutory mandate and exercise the same scope of regulatory powers under the former *HPA* and the current *HPOA.*

Affidavit #1 of Graeme Keirstead, paras. 22-23.

30. Under the former regulatory framework of the *HPA*, the essential functions of regulatory colleges were to investigate and discipline their registrants regarding complaints of professional misconduct, unprofessional conduct, incompetence, or fitness to practice, through the powers granted under the *HPA* to the regulatory college's inquiry committee and discipline committee.

Affidavit #1 of Graeme Keirstead, paras. 8-9.

31. Since April 1, 2026, discipline committees of colleges under the former *HPA* have been discontinued. Under the new regulatory regime of the *HPOA,* the Health Professions Discipline Tribunal (the "Tribunal") is the central disciplinary body responsible for discipline processes 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.

32. 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 colleges are responsible for enforcement of disciplinary orders decided by the discipline panel, including prosecution of these matters (s.197 of the *HPOA*).

Affidavit #1 of Graeme Keirstead, paras. 16-17

The CPSBC's interest

33. The CPSBC plays an important role in determining whether a licensee's conduct should be subject to regulatory action.

Affidavit #1 of Graeme Keirstead, para. 25

34. Non-discrimination is a fundamental human right and a core value embedded in British Columbia's healthcare system. As part of its duty to protect the public interest, the CPSBC has set practice standards to ensure non-discrimination in access to medical care.

Affidavit #1 of Graeme Keirstead, paras. 28-29

35. The Petition raises public law issues that legitimately engage the CPSBC's interests for the following reasons.

36. First, the Petition engages CPSBC's interest in the Petition as the determination of the issues will likely impact the ability of the CPSBC (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 CPSBC's anti-discrimination obligations under the *HPOA*, as the CPSBC 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).

Affidavit #1 of Graeme Keirstead, paras. 26-27

37. Further, the Petition will affect the ability of regulatory colleges of healthcare professions, like the CPSBC, to regulate statements and expressions in contravention with ethics standards, practice standards and/or other regulatory objectives under the *HPOA*. In particular, it may impact on CPSBC's regulatory powers with respect to its Professional Guideline regarding the use of social media.

Affidavit #1 of Graeme Keirstead, paras. 30-31

38. The CPSBC has experience intervening before the B.C. Court of Appeal and the B.C. Supreme Court. As a professional regulator with a long history of regulating health professionals and protecting the public interest, the CPSBC is uniquely positioned with the expertise and experience to provide useful and distinct perspectives to assist the Court.

Affidavit #1 of Graeme Keirstead, paras. 32-33

The CPSBC's proposed submissions

39. The CPSBC wishes to intervene in this proceeding to provide the Court with focused submissions on the following:

> **(1) Non-discrimination is a core value of healthcare professions and an essential public interest to be protected.**
>
> Healthcare is a fundamental human right[1]. Non-discriminatory access is necessary to the fulfilment of this fundamental right. Section 3 of the *Canada Health Act* provides that the objective of the Canadian healthcare system is "to protect, promote, and restore the physical and mental well-being of residents of Canada and to facilitate reasonable access to health services without financial or other barriers". Further, the Supreme Court of Canada has affirmed that healthcare must be provided in a non-discriminatory manner.[2] It is thus unsurprising that non-discrimination is a core value for regulated health professions and for health professionals[3] across the country.

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[1] United Nations Universal Declaration of Human Rights, Article 25; see also Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

[2] *Eldridge v. British Columbia (Attorney General)*, [1997] 3 SCR 624.

[3] See, for example, the College of Family Physicians of Canada's Family Medicine Professional Profile identifying the responsibility of physicians to provide a system of front-line health care that is "accessible, high-quality, comprehensive, and continuous" , to provide medical care to "all people, ages, life stages, and presentations" and to advocate for, among other things, access to culturally safe health care and social conditions that promote health; see also the Canadian Medical Association's Code of Ethics and Professionalism (requiring physicians to accept patients without discrimination), the Royal College of Physicians and Surgeons of Canada's CanMEDS Physician Competency Framework identifying society's expectations that physicians respect diversity.

In British Columbia, non-discriminatory access to healthcare is a cornerstone of the province's public health framework[4]. The importance of non-discrimination in healthcare is also reflected in practice and professional standards, such as the CPSBC's Practice Standard: Access to Medical Care Without Discrimination and the BCCNM's practice standard on the "Duty to Provide Care." Moreover, the new *HPOA* expressly provides that non-discrimination is a legal obligation for all regulated health professions and defines discrimination as professional misconduct[5].

Where healthcare professionals engage in conduct which has an adverse impact upon, or which perpetuates, historic disadvantage and inequality experienced by transgender communities, such conduct conflicts with the core values of the healthcare profession and can therefore constitute professional misconduct.

(2) Assessing nexus between a licensee's off-duty conduct and the profession is a highly contextual exercise.

A regulator may find sufficient nexus between a licensee's impugned conduct and the profession where there is a negative impact on the individual's ability to fulfill their professional obligations, or where conduct conflicts with core values of the profession.

Assessment of whether sufficient nexus exists between the impugned conduct and the profession is highly contextual. The nature of the profession, its core values, and the impact of the conduct on those core values and the public interest in upholding them should all factor heavily in the assessment. Express identification as a member of the profession may be a relevant factor to consider but is not determinative. Conduct of a healthcare professional is a "medium" perceived to uphold the values of the healthcare system and off-duty conduct impacting core values of the profession will usually constitute professional misconduct.[6]

The positions of trust and confidence that health professionals hold in society are integral to the assessment of nexus. Discriminatory comments made in a public forum harm the integrity of the profession and have the potential to impact patient perception and experience, and accordingly, fall within the regulatory ambit.[7]

(3) A licensee's constitutional rights under s.2(b) of the Charter may be attenuated to fulfil regulatory objectives.

Professional regulators have a duty to protect values of equality, non-discrimination and human rights in discharging their overarching obligation to serve the public

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[4] B.C.'s Population and Public Health Framework4 issued in September 2024, citing "health equity and anti-racism" as a foundational principle.

[5] Health Professions and Occupations Act, S.B.C. 2022 c. 43, s.11(1)(c).

[6] See, for example, *Klop v College of Naturopathic Physicians of British Columbia*, 2022 BCSC 2086, leave to appeal to BCCA refused, 2023 BCCA 125 ("*Klop*"), para. 110; *Strom v Saskatchewan Registered Nurses' Association*, 2020 SKCA 112 ("*Strom*"), paras. 89-90; *Ross v New Brunswick School District No. 15*, [1996] 1 SCR 825, paras. 44-46; *Kempling v. British Columbia College of Teachers*, 2005 BCCA 327, para. 43

[7] *Dr. Jha v. College of Physicians and Surgeons of Ontario,* 2022 ONSC 769, para. 119

interest.[8] Protecting the public interest includes ensuring the practice of healthcare and access to healthcare are free from discrimination in order to preserve this core value of the health professions. When a licensee's conduct threatens or has an adverse impact on the core values of the profession, the constitutionally protected rights of professionals may give way to a regulator's need to act in the public interest by bringing disciplinary proceedings.[9]

(4) Protecting the public interest includes promoting professional and respectful public expression of licensees.

In the regulation of healthcare professions, the tone and manner of a licensee's expression may engage a regulator's discretion to act in the public interest, regardless of whether the expressions were made in good faith.

Healthcare regulators protect the public interest by, among other things, setting standards promoting licensees' professional and respectful conduct and expression in public discourse so as to maintain public trust in healthcare professions.[10] Where communication is derogatory, defamatory, disrespectful or culturally insensitive, reasonable incursions on the free expression of regulated health professionals may be appropriate to protect the public interest[11].

40. If granted leave to intervene:

i. The CPSBC will ensure that its submissions are distinct from and do not duplicate those made by the parties and other interveners;

ii. The CPSBC will not expand the lis or create new issues;

iii. The CPSBC will not file additional evidence or add to the appeal record;

iv. The CPSBC will abide by existing timelines and will not unreasonably delay or lengthen the hearing;

v. The CPSBC will not seek costs associated with its intervention;

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[8] *Trinity Western University* v. *Law Society of Upper Canada*, 2018 SCC 33, paras. 37-41

9 Kempling v. British Columbia College of Teachers, 2005 BCCA 327; *Peterson v. College of Psychologists of Ontario*, 2023 ONSC 4685.

[10] CPSBC, for example, has set specific guidelines on the use of social media, requiring 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, as well as to disengage from conversations that are disrespectful in tone and content.

[11] *Zuk v. Alberta Dental Association and College*, 2018 ABCA 270, para. 117; *Lum, Konjarski v. Inquiries, Complaints and Reports Committee of the College of Physiotherapists of Ontario*, 2015 ONSC 7227, *Rathe v. College of Physicians and Surgeons of Ontario*, 2013 ONSC 821, para 24; *Complainant v. College of Physicians and Surgeons of British Columbia (No. 1)*, 2023 BCHPRB 60; Complainant v. British Columbia College of Nurses and Midwives, 2022 BCHPRB 57; *Complainant v. College of Registered Nurses of British Columbia*, 2010 BCHPRB 16, *Applicant v. British Columbia College of Nurses and Midwives (No. 1)*, 2024 BCHPRB 123

vi. The CPSBC will comply with any terms and conditions imposed by this Court.

PART 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Graeme Keirstead sworn on June 26, 2026;

2. Such other material as counsel may advise and this Honourable Court may permit.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

a) file an application response in Form 33,

b) file the original of every affidavit, and of every other document, that
   i. you intend to refer to at the hearing of this application, and
   ii. has not already been filed in the proceeding, and

c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
   i. a copy of the filed application response;
   ii. a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
   iii. if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7 (9).

Date: June 26, 2026

Lindsay A. Waddell and Amy Block
Counsel for the Applicant, College of Physicians and Surgeons of British Columbia

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To be completed by the court only:

Order made

[ ] in the terms requested in paragraphs _____ of Part 1 of this notice of application

[ ] with the following variations and additional terms:

_____

_____

_____

Date: _____

_____

Signature of [ ] judge [ ] Master

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

[ ] discovery: comply with demand for documents
[ ] discovery: production of additional documents
[ ] other matters concerning document discovery
[ ] extend oral discovery
[ ] other matter concerning oral discovery
[ ] amend pleadings
[ ] add/change parties
[ ] summary judgment
[ ] summary trial
[ ] service
[ ] mediation
[ ] adjournments
[ ] proceedings at trial
[ ] case plan orders: amend
[ ] case plan orders: other
[ ] experts
[X] none of the above