

**COLLEGE OF LICENSED PRACTICAL NURSES OF ALBERTA**

**IN THE MATTER OF  
A HEARING UNDER *THE HEALTH PROFESSIONS ACT*,**

**AND IN THE MATTER OF A HEARING REGARDING  
THE CONDUCT OF WANDA FITZNER**

**DECISION OF THE HEARING TRIBUNAL  
OF THE  
COLLEGE OF LICENSED PRACTICAL NURSES OF ALBERTA**

**IN THE MATTER OF A HEARING UNDER THE *HEALTH PROFESSIONS ACT* REGARDING THE  
CONDUCT OF WANDA FITZNER, LPN #22836, WHILE A MEMBER OF THE COLLEGE OF LICENSED  
PRACTICAL NURSES OF ALBERTA**

**DECISION OF THE HEARING TRIBUNAL**

**(1) Hearing**

The hearing was conducted at the offices of the College of Licensed Practical Nurses of Alberta (“CLPNA”) in Edmonton, Alberta on May 9, 2019 with the following individuals present:

**Hearing Tribunal:**

Kelly Annesty, LPN, Chairperson  
Koreen Balaban, LPN  
Johanne Chicoine, LPN  
Nancy Brook, Public Member

**Staff:**

Tessa Gregson, Legal Counsel for the Complaints Director, CLPNA  
Sandy Davis, Complaints Director, CLPNA (“Complaints Director”)  
Kevin Oudith, Complaints Consultant, CLPNA

**Investigated Member:**

Wanda Fitzner, LPN (“Ms. Fitzner” or “Investigated Member”)  
Carol Drennan, AUPE Representative for the member

**(2) Preliminary Matters**

The hearing was open to the public in accordance with the *Health Professions Act*, RSA 2000, c H-7 (“HPA”).

There were no objections to the members of the Hearing Tribunal hearing the matter, and no Hearing Tribunal member identified a conflict. There were no objections to the jurisdiction of the Hearing Tribunal.

The Hearing was conducted by way of an Agreed Statement of Facts, Acknowledgement of Unprofessional Conduct and a Partial Joint Submission on Penalty.

### **(3) Background**

Ms. Fitzner was a Licensed Practical Nurse (“LPN”) within the meaning of the *HPA* at all material times, and more particularly, was registered with the CLPNA as an LPN at the time of the complaint. Ms. Fitzner was initially licensed as an LPN in Alberta on July 31, 1992.

On June 6, 2018, the CLPNA received a complaint from Patricia Compton, Assistant Director of Care (the “Complainant”) at Extendicare, Michener Hill (“Facility”) in Red Deer, Alberta (the “Complaint”). The Complaint was sent pursuant to s. 57 of the *HPA* notifying that Ms. Fitzner, LPN had been terminated from her position with the Facility for resident abuse.

On June 8, 2018, the Complaints Director requested that Jeanne Weis, Executive Director for the CLPNA, impose an interim suspension of Ms. Fitzner’s practice permit pending the outcome of disciplinary proceedings pursuant to s. 65(1)(b) of the *HPA* due to the serious nature of the allegations of physical and verbal abuse.

In accordance with s. 55(2)(d) of the *HPA*, the Complaints Director appointed Kathryn Emter, Investigator for the CLPNA (the “Investigator”), to conduct an investigation into the Complaint. Ms. Fitzner received notice of the Complaint, investigation, appointment of the Investigator, and the Complaints Director’s request for an interim suspension by letter dated June 8, 2018.

By letter dated June 15, 2018, Ms. Weis denied the request for an interim suspension.

On October 18, 2018, the Investigator concluded the investigation into the Complaint and submitted the Investigation Report to the CLPNA.

Following receipt of the Investigation Report, the Complaints Director determined that the matters should be referred to the Hearings Director in accordance with s. 66(3)(a) of the *HPA*. Ms. Fitzner received notice that the Complaint was referred to a hearing as well as a copy of the Statement of Allegations under cover of letter dated February 15, 2019.

A Notice of Hearing, Notice to Attend, and Notice to Produce were served upon Ms. Fitzner under cover of letter dated March 25, 2019.

#### **(4) Allegations**

The Allegations in the Revised Statement of Allegations are:

“It is alleged that Wanda Fitzner, LPN, while practising as a Licensed Practical Nurse engaged in unprofessional conduct by:

1. On or about March 10, 2018, communicated inappropriately to resident LS by telling the resident to “shut up” or words to that effect.
2. On or about January 25, 2018 acted inappropriately towards resident LS by doing one or more of the following:
  - a. Roughly grabbing LS’s arm;
  - b. Pushing LS’s wheelchair away from the table; and
  - c. Saying to LS “go back to your room you little bitch” or words to that effect.
3. Further to allegations 1 and 2, it is alleged that the conduct in allegations 1 and 2 constituted abuse of resident LS.
4. On or about November 17, 2017 to March 14, 2018, breached confidentiality by disclosing information about resident LS to the family members of other residents.
5. On or about January 1, 2016 to February 11, 2016 directed Health Care Aide employees to administer medications to one or more residents.”

#### **(5) Admission of Unprofessional Conduct**

Section 70 of the *HPA* permits a member to make an admission of unprofessional conduct. An admission under s. 70 of the *HPA* must be acceptable in whole or in part to the Hearing Tribunal.

Ms. Fitzner acknowledged unprofessional conduct in all the Allegations as evidenced by her signature on the Agreed Statement of Facts and Acknowledgement of Unprofessional Conduct.

Legal Counsel for the Complaints Director argued, where there is an admission of unprofessional conduct, the Hearing Tribunal should accept the admission absent exceptional circumstances.

**(6) Exhibits**

The following exhibits were entered at the hearing:

- Exhibit #1: Statement of Allegations
- Exhibit #2: Agreed Statement of Facts and Acknowledgement of Unprofessional Conduct
- Exhibit #3: Partial Joint Submission on Penalty
- Exhibit #4: Wanda Fitzner Hearing Tribunal Decision dated May 21, 2011
- Exhibit #5: Additional Order Sought by Complaints Director Regarding Costs
- Exhibit #6: Estimated Hearing Cost

**(7) Evidence**

The evidence was adduced by way of Agreed Statement of Facts, and no witnesses were called to give *viva voce* testimony. The Hearing Tribunal accepts the evidence set out in the Agreed Statement of Facts which was admitted as Exhibit #2.

**(8) Decision of the Hearing Tribunal and Reasons**

The Hearing Tribunal is aware it is faced with a two part task in considering whether a regulated member is guilty of unprofessional conduct. First, the Hearing Tribunal must make factual findings as to whether the alleged conduct occurred. If the alleged conduct occurred, it must then proceed to determine whether that conduct rises to the threshold of unprofessional conduct in the circumstances.

The Hearing Tribunal has reviewed the documents included in Exhibit #2, and finds as facts the events as set out in the Agreed Statement of Facts.

The Hearing Tribunal also accepts Ms. Fitzner's admission of unprofessional conduct based on evidence as set out in the Agreed Statement of Facts as described above. Based on the evidence and submissions made before it, the Hearing Tribunal did not identify exceptional circumstances that would justify not accepting the admission of unprofessional conduct from Ms. Fitzner.

### Allegation 1

Ms. Fitzner admitted that on or about March 10, 2018, she communicated inappropriately to resident LS by telling the resident to “shut up” or words to that effect.

On March 10, 2018, Ms. Fitzner worked a day shift at the Facility from 0700 hours to 1515 hours. During this shift, Ms. Fitzner provided care to resident LS. Resident LS was not cognitively intact and prone to agitation and aggression including behaviors such as yelling.

Ms. Fitzner was sitting next to resident LS in the dining room at the Facility during breakfast at around 0900 hours on March 10, 2018. At this time, resident LS was yelling or speaking out very loudly. Ms. Fitzner then stood up from the table, turned around to resident LS and in a loud tone of voice told resident LS to “shut up”.

Ms. Fitzner’s conduct was observed by a Health Care Aide (“HCA”) and the Clinical Lead Recreation Therapist, who were in the dining area during breakfast on March 10, 2018.

LPNs must treat patients with dignity and respect; in this case, Ms. Fitzner did neither. The harsh words which Ms. Fitzner used towards this resident show a lack of judgment and were unprofessional. This behavior is not in accordance with the values and standards which the public would expect from a member of the College.

The Hearing Tribunal finds that the conduct admitted to amounts to unprofessional conduct as defined in s. 1(1)(pp) of the *HPA*, in particular, the Hearing Tribunal found the conduct meet the following definitions of unprofessional conduct:

- (i) Displaying a lack of knowledge of or lack of skill or judgment in the provision of professional services;...
- (xii) Conduct that harms the integrity of the regulated profession.

### Allegation 2

Wanda Fitzner admitted that on or about January 25, 2018, she acted inappropriately towards resident LS by doing one or more of the following:

- a. Roughly grabbing LS’s arm;
- b. Pushing LS’s wheelchair away from the table; and
- c. Saying to LS “go back to your room you little bitch” or words to that effect.

On January 25, 2018, during breakfast, Ms. Fitzner was sitting at a table feeding resident DP while Nicole Harlow, HCA (“NH, HCA”) was feeding resident LS. At this time, resident LS started calling out quite loudly. Ms. Fitzner told LS to be quiet but resident LS continued to call out.

At this time, Ms. Fitzner got up from the table, approached LS and roughly grabbed LS’s right arm. Ms. Fitzner then pushed LS’s wheelchair away from the dining room table, turned the wheelchair around and towards the hallway, and said to LS “go back to your room, you little bitch”.

LS then wheeled herself away from the dining room and back to her room. Ms. Fitzner sat back down at the table and continued feeding resident DP. NH, HCA, as well as, residents DP and JC witnessed the encounter.

Later that day, NH, HCA checked on LS and LS was upset and expressed that she felt no one wanted her in the dining room. NH, HCA then provided reassurance this was not the case.

Due to the actions outlined in allegations 1 and 2, Ms. Fitzner’s employment was terminated as being in violation of the Facility’s Standards of Conduct and Abuse policy. Ms. Fitzner’s termination letter was attached to Exhibit #2 at Tab 1.

Again, in this conduct Ms. Fitzner has shown a lack of respect for the resident and a disregard for the dignity of the resident. The result was that the resident was left with a negative view of herself and a lowered self-esteem. This conduct demonstrates a lack of judgment in interactions with a person under the care of Ms. Fitzner. It also undermines the profession and therefore harms the integrity of the profession.

The Hearing Tribunal finds that the conduct admitted to amounts to unprofessional conduct as defined in s. 1(1)(pp) of the *HPA*, in particular, the Hearing Tribunal found that the conduct met the following definitions of unprofessional conduct:

- (i) Displaying a lack of knowledge of or lack of skill or judgment in the provision of professional services;...
- (xii) Conduct that harms the integrity of the regulated profession.

### Allegation 3

Ms. Fitzner admitted further to allegations 1 and 2, that the conduct in allegations 1 and 2 constituted abuse of resident LS.

The Facility has a Zero Tolerance of Resident Abuse and Neglect Policy (the “Abuse Policy”), which states that “[the Facility] is committed to providing a safe and secure environment in which all residents are treated with dignity and respect and protected from all forms of abuse or neglect at all times”. The Abuse Policy sets out the following definition of abuse: “in relation to a resident, means physical, sexual, emotional verbal or financial abuse”. A copy of the Abuse Policy was attached to Exhibit #2 at Tab 7.

The Abuse Policy defines each type of abuse. The following definitions of physical abuse, verbal abuse and emotional abuse are relevant in this case:

- a. Physical abuse: the use of physical force by anyone other than a resident that causes physical injury or pain.

Examples: attacking, slapping, striking, hitting, pinching, pulling, rough handling, pushing, grabbing (in an attempt to control or destroy a part of one’s anatomy), misuse of restraints, forced confinement to room, beating, cutting, burning, striking with any object or weapon.

- b. Verbal abuse: any form of verbal communication of a threatening or intimidating nature or any form of verbal communication of a belittling or degrading nature which diminishes a resident’s sense of well-being, dignity or self-worth, that is made by anyone other than a resident.

Examples: inappropriate tone of voice, abusive language, yelling, swearing, rude, offensive or sexual comments or gestures.

- c. Emotional Abuse: Any threatening, insulting, intimidating or humiliating gestures, actions, behavior or remarks, including imposed social isolation, shunning, ignoring, lack of acknowledgement or infantilization, that are performed by anyone other than a resident.

Examples: humiliation, intimidation, infantilization, imposed or sudden isolation, sarcasm, mocking, ridiculing, name calling, scolding, any forms or acts of punishment, threats, instilling fear, withholding companionship or desired items, social isolation, withholding of critical information, denial of privacy, removal of the decision-making process, lack of acknowledgement or intentional ignoring.

LPNS are entrusted with the care of persons who are often vulnerable and in real need of care. To abuse, in any manner, a person in this position is an affront to the role of an LPN. Such abuse shows that Ms. Fitzner lacked judgment in that she did not act appropriately towards this

resident. Abusive conduct on the part of an LPN is conduct which harms the profession and calls into question the trust reposed in its members.

The Hearing Tribunal finds that the conduct admitted to amounts to unprofessional conduct as defined in s. 1(1)(pp) of the *HPA* in particular, the Hearing Tribunal found that the conduct met the following definitions of unprofessional conduct:

(i) Displaying a lack of knowledge of or lack of skill or judgment in the provision of professional services;...

(xii) Conduct that harms the integrity of the regulated profession.

#### Allegation 4

Ms. Fitzner admitted that on or about November 17, 2017 to March 14, 2018, she breached confidentiality by disclosing information about resident LS to the family members of other residents.

Resident LS was admitted to the Facility on November 17, 2017. During her time at the Facility, Ms. Fitzner provided care to LS. LS was not cognitively intact and prone to agitation and aggression, including difficult behaviors such as yelling.

LPNs are under the ethical duty to safeguard the personal information about a person that they have access to or that has been disclosed to them. Indeed, as stated in the CLPNA Practice Guideline on Confidentiality, “upholding clients’ privacy and keeping their information confidential is a foundational part of being a healthcare professional and is essential to maintain trust within a nurse-client relationship.” Client information is confidential and must remain so and should only be shared between those entitled to receive such information such as other healthcare providers involved in the provision of care for that client. Otherwise, generally, confidential information may only be shared with people outside a client’s healthcare team (including family and friends) after the client provides consent. A copy of the CLPNA Practice Guideline on Confidentiality was attached to Exhibit #2 at Tab 8.

Despite the confidentiality that must be maintained over a resident’s medical information, including their condition and behaviors, on several occasions Ms. Fitzner discussed resident LS’s behaviors with unrelated residents’ family members. Doing this breached LS’s confidentiality.

Ms. Fitzner continued to breach LS’s confidentiality in this respect until an investigation into her conduct was commenced on March 14, 2018.

Confidentiality is not only a client's right but also is integral to preserving the client's dignity. By breaching this client's confidentiality, Ms. Fitzner has diminished this client's dignity and shown a lack of judgment in performing her duties. Further, confidentiality is central to the role that LPNs play in administering care so when confidentiality is not maintained it harms the integrity of the profession.

The Hearing Tribunal finds that the conduct admitted to amounts to unprofessional conduct as defined in s. 1(1)(pp) of the *HPA*, in particular, the Hearing Tribunal found the conduct met the following definitions of unprofessional conduct:

- (i) Displaying a lack of knowledge of or lack of skill or judgment in the provision of professional services;...
  
- (xii) Conduct that harms the integrity of the regulated profession.

#### Allegation 5

Ms. Fitzner admitted that on or about January 1, 2016 to February 11, 2016, she directed HCA employees to administer medications to one or more residents.

HCA's are not permitted to administer medications at the Facility. The Facility's Medication Management Policy only permits nurses or nursing students to administer medications to residents. Further, medication administration is not listed in the job description of an HCA. Copies of the Medication Management Policy and Job Description for the Household Support Worker, which includes HCA's, were included with Exhibit #2 at Tab 9.

Regardless of this, Ms. Fitzner asked four different HCA's to administer medications to residents for her on at least seven different occasions.

- a. Ms. Fitzner asked Haycee Bermillo, HCA ("HB, HCA") to administer medications to resident RG on at least three occasions. Ms. Fitzner had prepared the medications but requested that HB, HCA administer them to RG. HB, HCA did comply with the requests.
  
- b. Ms. Fitzner asked Mr. Mark Uayan, HCA ("MU, HCA") to administer medication to the resident in room 3602 on at least one (1) occasion. Ms. Fitzner prepared the medication by crushing it into applesauce, but asked MU, HCA to administer it to the resident.
  
- c. Ms. Fitzner asked Ms. Joy Palapar, HCA ("JP, HCA") to administer medication to resident L on at least two occasions while JP, HCA was feeding L in her room. Ms. Fitzner prepared the medication by crushing it into applesauce and provided it to JP, HCA to

administer to L. Ms. Fitzner did not remain in the room while the medication was administered.

- d. Ms. Fitzner asked Ms. Bernadette Robles, HCA (“BR, HCA”) to administer medication to resident R on at least one occasion. BR, HCA refused to do so, and Ms. Fitzner administered the medication instead.

Due to this conduct, Ms. Fitzner was suspended for five days without pay in March of 2016 and was required to attend a mandatory education session on medication administration and a supervisory medication pass audit. A copy of the Counselling Memorandum from March 1, 2016 was included with Exhibit #2 at Tab 10.

LPNs are entrusted to administer medication because they are skilled professionals who are educated in the work that they do. In asking HCAs to take on the role of an LPN, Ms. Fitzner again demonstrated a lack of judgment especially given the repeated incidents of this conduct. Where a skilled professional such as an LPN inappropriately delegates or works in contravention of workplace policies this has the effect of harming the profession.

The Hearing Tribunal finds that the conduct admitted to amounts to unprofessional conduct as defined in s. 1(1)(pp) of the *HPA*, in particular, the Hearing Tribunal found that the conduct met the following definitions of unprofessional conduct:

- (i) Displaying a lack of knowledge of or lack of skill or judgment in the provision of professional services;...

- (xii) Conduct that harms the integrity of the regulated profession.

#### CLPNA Code of Ethics Breached

Ms. Fitzner acknowledges her conduct breached one or more of the following requirements in the Code of Ethics for Licensed Practical Nurses in Canada adopted by the CLPNA on June 3, 2013. The Hearing Tribunal finds that Ms. Fitzner’s conduct breached the following principles and standards set out in CLPNA’s Code of Ethics:

- a) Principle 1: Responsibility to the Public – LPNs, as self-regulating professionals, commit to provide safe, effective, compassionate and ethical care to members of the public. Principle 1 specifically provides that LPNs:
  - o 1.1 – Maintain standards of practice, professional competence and conduct.

- 1.3 – Demonstrate an understanding that community, society and the environment are important factors in the health of individual clients.
  - 1.4 – Respect the rights of all individuals regardless of their diverse values, beliefs and cultures.
  - 1.5 – Provide care directed to the health and well-being of the person, family, and community.
  - 1.6 – Collaborate with clients, their families (to the extent appropriate to the client’s right to confidentiality), and health care colleagues to promote the health and well-being of individuals, families and the public.
- b) Principle 2: Responsibility to Clients – LPNs have a commitment to provide safe and competent care for their clients. Principle 2 specifically provides that LPNs:
- 2.3 – Respect and protect client privacy and hold in confidence information disclosed except in certain narrowly defined exceptions.
  - 2.3.3 – Ensure that any discussion/communication (verbal, written or electronic) is respectful and does not identify the client unless appropriate.
  - 2.6 – Provide care to each client recognizing their individuality and their right to choice.
  - 2.8 – Use evidence and judgement to guide nursing decisions.
  - 2.9 – Identify and minimize risks to clients.
- c) Principle 3: Responsibility to the Profession – LPNs have a commitment to their profession and foster the respect and trust of their clients, health care colleagues and the public. Principle 3 specifically provides that LPNs:
- 3.1 – Maintain the standards of the profession and conduct themselves in a manner that upholds the integrity of the profession.
  - 3.3 – Practice in a manner that is consistent with the privilege and responsibility of self-regulation.
  - 3.4 – Promote workplace practices and policies that facilitate professional practice in accordance with the principles, standards, laws and regulations under which they are accountable.
- d) Principle 5: Responsibility to Self – LPNs recognize and function within their personal and professional competence and value systems. Principle 5 specifically provides that LPNs:

- 5.1 – Demonstrate honesty, integrity and trustworthiness in all interactions.
- 5.3 – Accept responsibility for knowing and acting consistently with the principles, practice standards, laws and regulations under which they are accountable.

### CLPNA Standards of Practice Breached

Ms. Fitzner acknowledges her conduct also breached one or more of the following Standards of Practice for Licensed Practical Nurses in Canada adopted by the CLPNA on June 3, 2013, and the Hearing Tribunal agrees she has breached one or more of the following Standards, which stat as follows:

- a) Standard 1: Professional Accountability and Responsibility – LPNs are accountable for their practice and responsible for ensuring that their practice and conduct meet both the standards of the profession and legislative requirements. Standard 1 specifically provides that LPNs:
  - 1.1 – Practice to their full range of competence within applicable legislation regulations, by-laws and employer policies.
  - 1.6 – Take action to avoid and/or minimize harm in situations in which client safety and well-being are compromised.
  - 1.7 – Incorporate established client safety principles and quality assurance/improvement activities into LPN practice.
  - 1.9 – Practice in a manner consistent with ethical values and obligations of the Code of Ethics for Licensed Practical Nurses.
  
- b) Standard 2: Knowledge-Based Practice – LPNs possess knowledge obtained through practical nurse preparation and continuous learning relevant to their professional LPN practice. Standard 2 specifically provides that LPNs:
  - 2.1 – Possess current knowledge to support critical thinking and professional judgement.
  - 2.2 – Apply knowledge from nursing theory and science, other disciplines, evidence to inform decision making and LPN practice.
  - 2.7 – Demonstrate understanding of their role and its interrelation with clients and other health care colleagues.
  - 2.9 – Provide holistic licensed practical nursing care considering the whole person, the environment and the concepts of health promotion, illness prevention, health maintenance, restoration and protection.

- c) Standard 3: Service to the Public and Self-Regulation – LPNs practice nursing in collaboration with clients and other members of the health care team to provide and improve health care services in the best interests of the public. Standard 3 specifically provides that LPNs:
- 3.3 – Support and contribute to an environment that promotes and supports safe, effective and ethical practice.
  - 3.4 – Promote a culture of safety by using established occupational health and safety practices, infection control, and other safety measures to protect clients, self and colleagues from illness and injury.
  - 3.6 – Demonstrate an understanding of self-regulation by following the standards of practice, the code of ethics and other regulatory requirements.
- d) Standard 4: Ethical Practice – LPNs uphold, promote and adhere to the values and beliefs as described in the Canadian Council for Practical Nurse Regulators (CCPNR) Code of Ethics. Standard 4 specifically provides that LPNs:
- 4.1 – Practice in a manner consistent with ethical values and obligations of the Code of Ethics for LPNs.
  - 4.7 – Communicate in a respectful, timely, open and honest manner.
  - 4.8 – Collaborate with colleagues to promote safe, competent and ethical practice.
  - 4.9 – Support and contribute to healthy and positive practice environments.
  - 4.10 – Practice with honesty and integrity to maintain the values and reputation of the profession.

Ms. Fitzner’s conduct breached the Code of Ethics and Standards of Practice. Although there was no evidence of physical harm, there was evidence of psychological harm in that resident LS was lead to believe, or concluded on the basis of Ms. Fitzner’s conduct, that she was not welcome in a shared space. Further, abuse which resident LS experienced from Ms. Fitzner has the potential for real and lasting harm even if the effects are not immediately apparent. Breaching confidentiality is a failure of responsibility to clients. Encouraging HCAs to administer medications is not in keeping with safe and ethical practice and it also places clients at risk. All of the conduct herein is contrary to the Code and its requirements and violates the Standards which LPNs must adhere to. These are serious breaches and they amount to unprofessional conduct.

**(9) Partial Joint Submission on Penalty**

The Complaints Director and Ms. Fitzner made a partial joint submission with respect to penalty, which was entered as Exhibit #3. The parties jointly submitted the following proposal to the Hearing Tribunal for consideration:

1. The Hearing Tribunal's written reasons for decision (“the Decision”) shall serve as a reprimand.
2. Ms. Fitzner shall read and reflect on the following CLPNA documents. These documents are available on CLPNA’s website <http://www.clpna.com> under the “Governance” tab and provide the Complaints Director with a written reflection paper, of 500 – 750 words (typed) on how the CLPNA documents impacts her professional practice and changes she plans on making to her practice moving forth within thirty (30) days of service of the Decision. This paper must be satisfactory to the Complaints Director.
  - a. Code of Ethics for Licensed Practical Nurses in Canada;
  - b. Standards of Practice for Licensed Practical Nurses in Canada;
  - c. CLPNA Practice Policy: Professional Responsibility & Accountability;
  - d. CLPNA Competency Profile D1: Effective Communication;
  - e. CLPNA Competency Profile D3: Therapeutic Nurse-Client Relationship;
  - f. CLPNA Competency Profile E1: Critical Thinking and Critical Inquiry;
  - g. CLPNA Competency Profile E2: Clinical Judgment and Decision Making; and
  - h. CLPNA Competency Profile W: Professionalism.

If such documents become unavailable, they may be substituted by equivalent documents approved in advance in writing by the Complaints Director.

3. In the event the reflective paper referred to in paragraph 2 is not satisfactory to the Complaints Director, Ms. Fitzner shall do the following:
  - a. Within two (2) weeks of being notified by the Complaints Director the reflective paper is not satisfactory, or such longer period as determined by the Complaints Director at her sole discretion, submit a revised paper that is acceptable to the Complaints Director.
4. Ms. Fitzner shall complete the LPN Ethics Course available online at <http://www.learninglpn.ca/index.php/courses>. Ms. Fitzner shall provide the Complaints

Director with a certificate confirming successful completion of the course within **30 days** of service of the Decision.

5. Ms. Fitzner shall complete, at her own cost, **Managing Patient Rage (15.1) quiz** offered by Learning Nurse at <https://www.learningnurse.org/index.php/assessment/quizzes>. Ms. Fitzner shall provide the Complaints Director with a copy of certification confirming successful completion, achieving 80% or better, of the quiz within **30 days** of service of the Decision.

If the quiz becomes unavailable, then Ms. Fitzner shall request in writing to be assigned an alternative quiz prior to the deadline. The Complaints Director shall, in her sole discretion, reassign a quiz. Ms. Fitzner will be notified by the Complaints Director, in writing, advising of the new quiz required.

6. Ms. Fitzner shall, within **six (6) months** of service of the Decision and at her own cost, complete the **Professionalism in Nursing** course, located at <http://www.jcollinsconsulting.com>. Ms. Fitzner shall provide the Complaints Director with documentation confirming successful completion of the course. If the Professionalism in Nursing course becomes unavailable an equivalent course may be substituted where approved in advance in writing by the Complaints Director.
7. Ms. Fitzner shall provide the CLPNA with her contact information, including her home mailing address, home and cellular telephone numbers, current e-mail address and his/her current employment information. Ms. Fitzner will keep her contact information current with the CLPNA on an ongoing basis.
8. Should Ms. Fitzner be unable to comply with any of the deadlines for completion of the penalty orders identified above, the deadlines may, upon written request, be extended for a reasonable period of time with the written consent of the Complaints Director.
9. Should Ms. Fitzner fail or be unable to comply with any of the above orders for penalty, or if any dispute arises regarding the implementation of these orders, the Complaints Director may do any or all of the following:
  - a. Refer the matter back to a Hearing Tribunal, which shall retain jurisdiction with respect to penalty; or
  - b. Treat Ms. Fitzner's non-compliance as information for a complaint under s. 56 of the Act.

Legal Counsel for the Complaints Director submitted the primary purpose of orders from the Hearing Tribunal is to protect the public.

The Hearing Tribunal is aware, while the parties agreed on a joint submission as to penalty, the Hearing Tribunal is not bound by that submission. Nonetheless, as the decision-maker, the Hearing Tribunal should defer to a joint submission unless the proposed sanction is unfit, unreasonable or contrary to public interest. Joint submissions make for a better process and engage the member in considering the outcome. A rejection of a carefully crafted agreement would undermine the goal of fostering cooperation through joint submissions, and may significantly impair the ability of the Complaints Director to enter into such agreements. If the Hearing Tribunal had concerns with the proposed sanctions, the proper process is to notify the parties, articulate the reasons for concern, and give the parties an opportunity to address the concerns.

**(10) Decision on Penalty and Conclusions of the Hearing Tribunal**

The Hearing Tribunal recognizes its orders with respect to penalty must be fair, reasonable and proportionate, taking into account the facts of this case.

The proposed penalties would protect the public from the type of conduct that Wanda Fitzner has engaged in. In making its decision on penalty, the Hearing Tribunal considered a number of factors identified in *Jaswal v Newfoundland Medical Board* [1986] NJ No 50 (NLSC-TD)(“*Jaswal*”), specifically the following:

- The nature and gravity of the proven Allegations
- The age and experience of the investigated member
- The previous character of the investigated member and in particular the presence or absence of any prior complaints or convictions
- The age and mental condition of the victim, if any
- The number of times the offending conduct was proven to have occurred
- The role of the investigated member in acknowledging what occurred
- Whether the investigated member has already suffered other serious financial or other penalties as a result of the Allegations having been made
- The impact of the incident(s) on the victim, and/or
- The presence or absence of any mitigating circumstances
- The need to promote specific and general deterrence and, thereby to protect the public and ensure the safe and proper practice
- The need to maintain the public’s confidence in the integrity of the profession
- The range of sentence in other similar cases

**The nature and gravity of the proven Allegations:** This was a significant factor regarding Ms. Fitzner. Ms. Fitzner has demonstrated a lack of skill, knowledge, and judgment in relation to core competencies of an LPN. These allegations against Ms. Fitzner are quite serious in nature in that they deal with abuse of a patient, breach of confidentiality, as well as, a failure to meet obligations of an LPN. The incidents relating to the abuse of a resident have also been reported to The Protection for Persons in Care Office by the Facility but no decision was being made in regard to that matter until the CLPNA had concluded their internal investigation.

**The age and experience of the investigated member:** Ms. Fitzner was initially registered with the CLPNA on July 31, 1992 and has been continually registered with the CLPNA since that time. At the time of the allegations Ms. Fitzner was an LPN for approximately 26 years.

**The previous character of the investigated member and the presence or absence of any prior complaints or convictions:** This was not the first time that Ms. Fitzner was before the Hearing Tribunal. Ms. Fitzner was involved in a hearing on April 28, 2011, at which time she admitted to Allegations of sexual advances towards a co-worker, chastising a resident who urinated on the floor, as well as, verbal abuse towards a resident, and breach of confidentiality of a resident. Some of these allegations were similar in nature to the allegations that the Hearing Tribunal heard today.

**The number of times the offending conduct was proven to have occurred:** The allegations occurred from November 2016 until March 2018. However, each allegation was isolated from the others and they were not in continuation of each other. There were a few months between when the allegations occurred.

**The role of the investigated member in acknowledging what occurred:** Ms. Fitzner did acknowledge her role in respect to these allegations and did provide the Hearing Tribunal with an Agreed Statement of Facts to which she worked with both the CLPNA as well as her Union representative.

**Whether the investigated member has already suffered other serious financial or other penalties because of the Allegations having been made:** Ms. Fitzner was terminated from her position with the Facility effective April 27, 2018 for reasons relating to the conduct which is now before this Hearing Tribunal. The Hearing Tribunal was also made aware that Ms. Fitzner has not been working to a full-time capacity since her termination. Ms. Fitzner works approximately four weeks a year doing clinical placement with HCAs and her only other source of income is a small social security pension. Further, her husband is currently out of work so her income is the sole income for her family.

**The impact of the incident(s) on the victim(s):** The Hearing Tribunal was made aware of the impact on at least one resident in that the resident expressed that she felt that no one wanted her in the dining room.

**The presence or absence of any mitigating circumstances:** This was not the first time that Ms. Fitzner appeared in front of a Hearing Tribunal. The Hearing Tribunal was presented with a decision that was dated April 28, 2011, for which Ms. Fitzner admitted to conduct similar to the conduct before this Hearing Tribunal. The allegations from 2011 also dealt with abuse of a resident, as well as, asking HCAs to administer medications to the residents.

**The need to promote specific and general deterrence and, thereby to protect the public and ensure the safe and proper practice:** Regarding specific deterrence, there is a need to impose sanctions on Ms. Fitzner as she should be aware that her behavior is not acceptable of what is expected of a LPN. Regarding general deterrence, there is a need to discourage other LPNs from engaging in similar conduct to that of Ms. Fitzner.

**The need to maintain the public's confidence in the integrity of the profession:** The CLPNA deals with the actions of its members when they conduct themselves in a way that is not becoming of the LPN profession. The CLPNA must deal with any breaches in the Health Professions Act, Code of Ethics and Standard of Practice in a manner that show the public that it takes these matters seriously and responds to such concerns in order to ensure an ethical and competent profession which acts in the public interest.

During the sanctioning phase, the Hearing Tribunal was provided a previous decision of the CLPNA regarding Ms. Fitzner. At that time it was determined Nancy Brook, a member of the current Hearing Tribunal, had been on the Hearing Tribunal which heard the earlier case. The Hearing Tribunal made this known in the hearing, and provided both the Complaints Director and Ms. Fitzner the opportunity to make submissions on this point as well as to voice any objection to having Ms. Brook continue on the Hearing Tribunal. Neither the Complaints Director nor Ms. Fitzner had any concerns and no objection was made to having Ms. Brook continue.

It is important to the profession of LPNs to maintain the Code of Ethics and Standards of Practice, and in doing so to promote specific and general deterrents and, thereby, to protect the public. The Tribunal has considered this in the deliberation of this matter, and again considered the seriousness of the member's actions. The penalties ordered in this case are intended, in part, to demonstrate to the profession that actions and unprofessional conduct

such as this is not tolerated and it is intended that these orders will, in part, act as a deterrent to others.

After considering the proposed orders for penalty, The Hearing Tribunal finds the joint submission on penalty is appropriate, reasonable and in the public interest and therefore accepts the parties' proposed penalties.

### **(11) Additional Orders sought by the Complaints Director**

The Complaints Director requested the Hearing Tribunal make the following additional order:

1. Ms. Fitzner shall pay 25% of the costs of the hearing to a maximum of \$3,500.00, subject to the following:
  - a. Costs will be paid in equal monthly installments over a period of 24 months, or over such other period of time as agreed to by the Complaints Director;
  - b. Ms. Fitzner shall pay \$500.00 to the CLPNA within three (3) months of service of the Decision; and
  - c. Must provide a payment plan to the Complaints Director within 30 days after receipt of the written decision of the Hearing Tribunal.

This order was opposed by Ms. Fitzner. Ms. Fitzner's representative advised the Hearing Tribunal that Ms. Fitzner was unable to afford to pay the costs of the Hearing due to being on a small pension and working full time approximately four weeks per year.

The requested order relates to the partial payment of costs. *Jaswal* offers guidance on sanctioning for costs at para 51:

It is necessary, therefore to determine the factors and appropriate to the proper exercise of the judicial discretion to make an order for payment or partial payment of expenses. In my view, based on the submission of counsel, the following is a non-exhaustive list of factors which ought to be considered in a given case before deciding to impose an order for payment of expense.

The two factors that pertain to the situation in this decision are as follows:

...

5. Whether the [member] cooperated with respect to the investigation and offered to facilitate proof by admission.

6. The financial circumstances of the [member] and the degree to which his financial position has already been affected by other aspects of any penalty that has been imposed.

The payment of costs is not be considered a penalty. It is intended to be a fair recovery of costs which the College has expended. It should not be expected that the College's membership bear the full burden of costs for hearings. It must also be fair to the member who is being sanctioned.

In this situation, Ms. Fitzner admitted to unprofessional conduct and worked with the CLPNA in coming up with an Agreed Statement of Facts thereby sparing the CLPNA unnecessary expense. Further, the Hearing Tribunal heard evidence that Ms. Fitzner was terminated from her employment with the Facility. This has resulted in significant financial hardship, as she has been unable to secure full-time permanent work since April 2018. She has been able to secure occasional work as an HCA but otherwise her only source of income is a small pension. Ms. Fitzner's husband is currently out of work and her income is the sole source of income in her household.

The Hearing Tribunal finds that the order as to costs which the Complaints Director has requested would represent a crushing financial blow to Ms. Fitzner at this time. For this reason, the Hearing Tribunal orders that Ms. Fitzner must repay 25% of the costs of the hearing to a maximum of \$3,500.00 which shall be repaid over a period of 24 months in equal installments. However, Ms. Fitzner's payment of such costs will not commence until the first month after she has secured full time employment, whether as an LPN or otherwise. Ms. Fitzner must advise the Complaints Director in writing when she secures full time employment. If Ms. Fitzner loses her employment she must advise the Complaints Director in writing.

#### **(12) Orders of the Hearing Tribunal**

The Hearing Tribunal is authorized under s. 82(1) of the *HPA* to make orders in response to findings of unprofessional conduct. The Hearing Tribunal makes the following orders pursuant to s. 82 of the *HPA*:

1. The Hearing Tribunal's written reasons for decision ("the Decision") shall serve as a reprimand.
2. Ms. Fitzner shall read and reflect on the following CLPNA documents. These documents are available on CLPNA's website <http://www.clpna.com> under the "Governance" tab

and provide the Complaints Director with a written reflection paper, of 500 – 750 words (typed) on how the CLPNA documents impacts her professional practice and changes she plans on making to her practice moving forth within thirty (30) days of service of the Decision. This paper must be satisfactory to the Complaints Director.

- a. Code of Ethics for Licensed Practical Nurses in Canada;
- b. Standards of Practice for Licensed Practical Nurses in Canada;
- c. CLPNA Practice Policy: Professional Responsibility & Accountability;
- d. CLPNA Competency Profile D1: Effective Communication;
- e. CLPNA Competency Profile D3: Therapeutic Nurse-Client Relationship;
- f. CLPNA Competency Profile E1: Critical Thinking and Critical Inquiry;
- g. CLPNA Competency Profile E2: Clinical Judgment and Decision Making; and
- h. CLPNA Competency Profile W: Professionalism.

If such documents become unavailable, they may be substituted by equivalent documents approved in advance in writing by the Complaints Director.

3. In the event the reflective paper referred to in paragraph 2 is not satisfactory to the Complaints Director, Ms. Fitzner shall do the following:
  - a. Within two (2) weeks of being notified by the Complaints Director the reflective paper is not satisfactory, or such longer period as determined by the Complaints Director at her sole discretion, submit a revised paper that is acceptable to the Complaints Director.
4. Ms. Fitzner shall complete the LPN Ethics Course available online at <http://www.learninglpn.ca/index.php/courses>. Ms. Fitzner shall provide the Complaints Director with a certificate confirming successful completion of the course within **30 days** of service of the Decision.
5. Ms. Fitzner shall complete, at her own cost, **Managing Patient Rage (15.1) quiz** offered by Learning Nurse at <https://www.learningnurse.org/index.php/assessment/quizzes>. Ms. Fitzner shall provide the Complaints Director with a copy of certification confirming successful completion, achieving 80% or better, of the quiz within **30 days** of service of the Decision.

If the quiz becomes unavailable, then Ms. Fitzner shall request in writing to be assigned an alternative quiz prior to the deadline. The Complaints Director shall, in her sole

discretion, reassign a quiz. Ms. Fitzner will be notified by the Complaints Director, in writing, advising of the new quiz required.

6. Ms. Fitzner shall, within **six (6) months** of service of the Decision and at her own cost, complete the **Professionalism in Nursing course**, located at <http://www.jcollinsconsulting.com>. Ms. Fitzner shall provide the Complaints Director with documentation confirming successful completion of the course. If the Professionalism in Nursing course becomes unavailable an equivalent course may be substituted where approved in advance in writing by the Complaints Director.
7. Ms. Fitzner shall provide the CLPNA with her contact information, including her home mailing address, home and cellular telephone numbers, current e-mail address and his/her current employment information. Ms. Fitzner will keep her contact information current with the CLPNA on an ongoing basis.
8. Ms. Fitzner must repay 25% of the costs of the hearing to a maximum of \$3,500.00 which shall be repaid over a period of 24 months in equal installments. However, Ms. Fitzner's payment of such costs will not commence until the first month after she has secured full time employment, whether as an LPN or otherwise.
9. Should Ms. Fitzner be unable to comply with any of the deadlines for completion of the penalty orders identified above, the deadlines may, upon written request, be extended for a reasonable period of time with the written consent of the Complaints Director.
10. Should Ms. Fitzner fail or be unable to comply with any of the above orders for penalty, or if any dispute arises regarding the implementation of these orders, the Complaints Director may do any or all of the following:
  - a. Refer the matter back to a Hearing Tribunal, which shall retain jurisdiction with respect to penalty; or
  - b. Treat Ms. Fitzner's non-compliance as information for a complaint under s. 56 of the Act.

The Hearing Tribunal believes these orders for penalty adequately balances the factors referred to in Section 11 above, and is consistent with the overarching mandate of the Hearing Tribunal, which is to ensure that the public is protected.

Under Part 4, sections 87(1)(a),(b) and 87(2) of the *HPA*, the Investigated Member has the right to appeal:

**“87(1)** An investigated person or the complaints director, on behalf of the college, may commence an appeal to the council of the decision of the hearing tribunal by a written notice of appeal that

- (a) identifies the appealed decision, and
- (b) states the reasons for the appeal.

**(2)** A notice of appeal must be given to the hearings director within 30 days after the date on which the decision of the hearing tribunal is given to the investigated person.”

**DATED THE 18<sup>th</sup> DAY OF JUNE, 2019 IN THE CITY OF EDMONTON, ALBERTA.**

**THE COLLEGE OF LICENSED PRACTICAL NURSES OF ALBERTA**



Kelly Annelly, LPN  
Chair, Hearing Tribunal