

**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 JASBIR RAI**

**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 JASBIR RAI, LPN #35171, WHILE A MEMBER OF THE COLLEGE OF LICENSED  
PRACTICAL NURSES OF ALBERTA (“CLPNA”)**

**DECISION OF THE HEARING TRIBUNAL**

**(1) Hearing**

The hearing was conducted at the offices of the College of Licensed Practical Nurses of Alberta in Edmonton, Alberta on November 27, 2019 with the following individuals present:

**Hearing Tribunal:**

Hugh Campell, Public Member, Chairperson  
Verna Ruskowsky, Licensed Practical Nurse (“LPN”)  
Patricia Riopel, LPN

**Staff:**

Tessa Gregson, Legal Counsel for the Complaints Consultant, CLPNA  
Susan Blatz, Complaints Consultant, CLPNA  
Sandy Davis, Complaints Director, CLPNA

**Investigated Member:**

Jasbir Rai, LPN (“Mr. Rai or “Investigated Member”)  
Mark Wells, Legal Counsel for the Investigated Member

**(2) Preliminary Matters**

The hearing was open to the public. Two members of the public observed the Hearing. They were given copies of the Rules of Conduct for observers.

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 and Acknowledgement of Unprofessional Conduct and a Partial Joint Submission on Penalty.

**(3) Background**

Mr. Rai was an LPN within the meaning of the Act at all material times, and more particularly, was registered with CLPNA as an LPN at the time of the complaint. Mr. Rai was initially licensed as an LPN in Alberta on June 26, 2012.

On February 26, 2019, the CLPNA received a complaint from Luilynne Yusi-Salazar, Registered Nurse (“RN”), Clinical Practice Lead at Excel Society-Balwin Villa in Edmonton, Alberta (the “Complaint”). The Complaint was sent pursuant to s. 57 of the *Health Professions Act* (the “Act”) notifying that Mr. Jasbir Rai, LPN was on administrative leave pending completion of an investigation of an abuse allegation against Mr. Rai.

On March 1, 2019, Ms. Sandy Davis, Complaints Director for the CLPNA (the "Complaints Director"), requested that Jeanne Weis, Executive Director for the CLPNA, impose an interim suspension of Mr. Rai’s practice permit pending the outcome of disciplinary proceedings pursuant to s. 65(1)(b) of the Act due to the serious nature of the allegations against Mr. Rai.

In accordance with s. 55(2)(d) of the Act, the Complaints Director appointed Kerry Palyga, Investigator for the CLPNA (the “Investigator”), to conduct an investigation into the Complaint. The Complaints Director further delegated her authority and powers under Part 4 of the Act to Susan Blatz, Complaints Consultant for the CLPNA (the “Complaints Consultant”), pursuant to s. 20 of the Act.

Mr. Rai received notice of the Complaint, investigation, appointment of the Investigator and the Complaints Director’s request for an interim suspension by letter dated March 1, 2019.

By letter dated March 7, 2019, Ms. Weis granted the request for an interim suspension effective the date of the letter.

On March 22, 2019 Mr. Rai wrote to Ms. Weis to request a reconsideration of her decision to impose an interim suspension effective March 7, 2019.

On March 27, 2019, Ms. Weis replied to Mr. Rai’s request for reconsideration of the interim suspension. Citing the “complex and sexual nature of the complaint, as well as, multiple breaches of the Code of Ethics and Standards of Practice”, Ms. Weis determined it was not in the best interest of public protection for Mr. Rai to continue practicing as an LPN pending the outcome of the discipline proceedings.

On April 28, 2019, the Investigator concluded the investigation into the Complaint and submitted the Investigation Report to the CLPNA.

Following receipt of the Investigation Report, the Complaints Consultant determined there was sufficient evidence that the matters should be referred to the Hearings Director in accordance with s. 66(3)(a) of the Act. Mr. Rai received notice that the Complaint was referred to a hearing as well as a copy of the Statement of Allegations and Investigation Report under cover of letter dated June 18, 2019.

A Notice of Hearing, Notice to Attend and Notice to Produce was served upon Mr. Rai under cover of letter dated September 26, 2019.

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

The Allegations in the Revised Statement of Allegations (the “Allegations”) are:

“It is alleged that Jasbir Rai, LPN, while practising as a Licensed Practice Nurse engaged in unprofessional conduct by:

1. On or about February 3, 2019 struck client MG on the back with his hand, which constitutes physical abuse.
2. On or about February 3, 2019 made inappropriate sexual gestures to client MG with his finger and hand to indicate sexual intercourse.
3. On or about February 3, 2019 roughly attempted to “pull” MG out of the chair by his right arm.”

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

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

Mr. Rai acknowledged unprofessional conduct to all the allegations as evidenced by his signature on the Agreed Statement of Facts and Acknowledgement of Unprofessional Conduct and verbally admitted unprofessional conduct to all the allegations set out in the Statement of Allegations during the hearing.

Legal Counsel for the Complaints Consultant submitted, 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: Additional Order Sought by the Complaints Consultant
- Exhibit #5: Anger Management Workshop Information
- Exhibit #6: Professionalism in Nursing – Module Outline
- Exhibit #7: Education completed by Mr. Rai

Exhibit #8: Financial documents provided by Mr. Rai

**(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 Mr. Rai's admission of unprofessional conduct as set out in the Agreed Statement of Facts as described above. Based on the evidence and submissions before it, the Hearing Tribunal did not identify exceptional circumstances that would justify not accepting the admission of unprofessional conduct from Mr. Rai.

**Allegation 1**

Jasbir Rai admitted on or about February 3, 2019, he struck client MG on the back with his hand, which constitutes physical abuse.

*Facts*

On February 3, 2019, Mr. Rai was scheduled to work on unit 1300 at Excel Society-Balwin Villa, a secure facility in Edmonton, Alberta ("Balwin") for the evening shift from 1500 to 2330 hours on February 3, 2019. He was asked to, and accepted, coming in early at 1100 hours. He, therefore, worked from 1100 hours to 2330 hours on February 3, 2019. The LPN scheduled to work on unit 3100 (client MG's unit) was Mr. Bhavneet Verma, LPN ("Mr. Verma").

The client in question, client MG, was a resident of unit 3100 of Balwin. Client MG was an 80 year old gentleman with dementia living on unit 3100 of Balwin. Client MG was designated as a high elopement risk as he had a history of exiting the facility and being unaware of his location and had been found wandering outside without his walker. Client MG was pleasant but tended to get confused at times.

At approximately 1840 hours on February 3, 2019, client MG exited unit 3100 and proceeded to exit the Balwin facility through the east exit doors. Client MG walked down the stairs towards the loading dock and remained in the loading area behind the unit. During the time in which client MG was outside, the temperature was -29 degrees Celsius with a wind chill value of between -37 and -38 degrees Celsius.

At approximately 1845 hours, Mr. Verma exited the LPN office on unit 3100 and saw that client MG was no longer in the sitting room. Mr. Verma called the other LPN on duty, Mr. Rai, to assist him in locating client MG. Mr. Verma continued to search unit 3100 and checked the east exit doors. Mr. Verma discovered client MG attempting to climb the stairs back to the facility. As Mr. Verma reached out towards the client to assist, client MG fell.

At approximately 1850 hours, Mr. Rai exited the facility towards the loading dock area, arrived and attended Mr. Verma and client MG. By this time, Mr. Verma had assisted client MG to a standing position; Mr. Rai then assisted Mr. Verma with transferring client MG back into the facility.

Mr. Rai, Mr. Verma and client MG entered back into the facility at approximately 1851 hours through the east exit doors and assisted client MG to a chair just inside the east exit doors.

As Mr. Verma and Mr. Rai assisted client MG into the chair, Mr. Rai struck client MG on the back with Mr. Rai's left hand.

Mr. Verma left the area to obtain client MG's walker from outside. The Hearing Tribunal had the CCTV footage available as evidence before it.

This action constitutes physical abuse of client MG. Balwin's policy on abuse defines physical abuse as: "Physical acts of assault that are not limited to but may include striking, punching, kicking, biting, throwing, burning or violent shaking, that causes or could cause physical injury."

### *Findings*

The Hearing Tribunal considered the facts included in the Agreed Statement of Facts and Mr. Rai's admission of unprofessional conduct. The Hearing Tribunal found that the facts and documents included in Exhibit #2 prove that the conduct for Allegation 1 did in fact occur.

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

- i. **Displaying a lack of knowledge of or lack of skill or judgment in the provision of professional services:** Mr. Rai's conduct, which was demonstrated in the evidence reviewed by the Hearing Tribunal and acknowledged by him in the Agreed Statement of Facts and Acknowledgement of Unprofessional Conduct, clearly

demonstrated a severe lack of judgment in the provision of his professional services in that he should never have physically abused a patient in care;

- ii. **Contravention of the Act, a code of ethics or standards of practice:** Mr. Rai did not abide by the CLPNA Code of Ethics or the CLPNA Standards of Practice, as acknowledged by him in the Agreed Statement of Facts and Acknowledgment of Unprofessional Conduct and set out in detail below. The Hearing Tribunal finds the conduct breached the CLPNA Code of Ethics and the CLPNA Standards of Practice as set out below and that such breaches are sufficiently serious to constitute unprofessional conduct; and
- iii. **Conduct that harms the integrity of the regulated profession:** The public has the right to expect respectful, safe and competent care when receiving care from an LPN. The Hearing Tribunal recognized that this was not the case in this matter and that conduct such as this damages the profession in the eyes of the public and constitutes Unprofessional Conduct as defined in the Act.

Mr. Rai acknowledged that his conduct breached one or more of the following requirements in the CLPNA's Code of Ethics ("CLPNA Code of Ethics"), which state as follows:

**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:

- 1.1 Maintain standards of practice, professional competence and conduct.
- 1.4 Respect the rights of all individuals regardless of their diverse values, beliefs and cultures; and
- 1.5 Provide care directed to the health and well-being of the person, family, and community.

**Principle 2: Responsibility to Clients** – LPNs have a commitment to provide safe and competent care for their clients. Principle 2 specifically provides that LPNs:

- 2.7 Develop trusting, therapeutic relationships, while maintaining professional boundaries;
- 2.8 Use evidence and judgement to guide nursing decisions; and
- 2.9 Identify and minimize risks to clients.

**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; and
- 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.

**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; and
- 5.3 Accept responsibility for knowing and acting consistently with the principles, practice standards, laws and regulations under which they are accountable.

Mr. Rai acknowledged that his conduct breached one or more of the following and CLPNA's Standards of Practice for Licensed Practical Nurses in Canada ("CLPNA Standards of Practice"), which state as follows:

**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;
- 1.2 Engage in ongoing self-assessment of their professional practice and competence, and seek opportunities for continuous learning;
- 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; and

- 1.10 Maintain documentation and reporting according to established legislation, regulations, laws, and employer policies.

**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; and
- 2.11. Use critical inquiry to assess, plan and evaluate the implications of interventions that impact client outcomes.

**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; and
- 3.6 Demonstrate an understanding of self-regulation by following the standards of practice, the code of ethics and other regulatory requirements.

**Standard 4: Ethical Practice** – LPNs uphold, promote and adhere to the values and beliefs as described in the Canadian Council for Practice 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;
- 4.4 Develop ethical decision-making capacity and take responsible action toward resolution;

- 4.6 Maintain professional boundaries in the nurse/client therapeutic relationship at all times;
- 4.7 Communicate in a respectful, timely, open and honest manner.

## Allegation 2

Jasbir Rai admitted on or about February 3, 2019 that he made inappropriate sexual gestures to client MG with his finger and hand to indicate sexual intercourse.

### *Facts*

Following the conduct described above regarding Allegation 1, Mr. Verma brought client MG's walker back into the facility then left to unit 3100 to obtain client MG's jacket from the client's room. Mr. Rai remained with client MG.

When Mr. Verma left the area, Mr. Rai proceeded to make a gesture towards client MG using the finger of his one hand and inserting it into a circle shape created by his other hand suggesting sexual intercourse. Mr. Rai made the gesture to client MG twice; once holding his hands by his chest then lowered his hands to his groin area and made the gesture a second time.

### *Findings*

The Hearing Tribunal considered the facts included in the Agreed Statement of Facts and Mr. Rai's admission of unprofessional conduct. The Hearing Tribunal found that the facts and documents included in Exhibit #2 prove that the conduct for Allegation 2 did in fact occur.

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

- i. **Displaying a lack of knowledge of or lack of skill or judgment in the provision of professional services:** Mr. Rai's conduct, which was demonstrated in the evidence reviewed by the Hearing Tribunal and acknowledged by him in the Agreed Statement of Facts and Acknowledgement of Unprofessional Conduct, clearly demonstrated a severe lack of judgment in the provision of his professional services in that he should never have made any type of sexual gesture to a patient;
- ii. **Contravention of the Act, a code of ethics or standards of practice:** Mr. Rai did not abide by the CLPNA Code of Ethics or the CLPNA Standards of Practice, as acknowledged by him in the Agreed Statement of Facts and Acknowledgment of Unprofessional Conduct and set out in detail above under Allegation 1. The Hearing

Tribunal finds the conduct breached the CLPNA Code of Ethics and the CLPNA Standards of Practice and that such breaches are sufficiently serious to constitute unprofessional conduct; and

- iii. **Conduct that harms the integrity of the regulated profession:** The conduct admitted has the potential to cause the LPN profession to fall into disrepute in the eyes of the public. The public must be confident in receiving care from an LPN that it will be delivered in a professional respectful and safe manner.

### Allegation 3

Jasbir Rai admitted on or about February 3, 2019 he roughly attempted to “pull” MG out of the chair by his right arm.

#### *Facts*

Following the conduct outlined above regarding Allegation 2, Mr. Rai remained with client MG. Mr. Rai moved client MG’s walker around and attempted to remove the snow or ice from the walker’s wheels.

Mr. Rai then brought the walker in front of client MG. Mr. Rai and client MG briefly spoke then Mr. Rai attempted to remove client MG from the chair he was sitting in. Mr. Rai did so by grabbing client MG’s right arm with both of Mr. Rai’s hands and roughly pulling on client MG’s arm.

Mr. Verma returned to the area where client MG was seated with client MG’s coat; at this time, Mr. Rai let go of client MG’s arm.

This is an incorrect method of assisting a client from a seated position.

Mr. Rai and Mr. Verma placed client MG’s jacket on the client and escorted client MG back into unit 3100.

Following Balwin’s investigation into the incident on February 3, 2019 involving client MG, Mr. Rai’s employment with Balwin was terminated effective June 26, 2019.

#### *Findings*

The Hearing Tribunal considered the facts included in the Agreed Statement of Facts and Mr. Rai’s admission of unprofessional conduct. The Hearing Tribunal found that the facts and documents included in Exhibit #2 prove that the conduct for Allegation 3 did in fact occur.

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

- i. **Displaying a lack of knowledge of or lack of skill or judgment in the provision of professional services:** The Hearing Tribunal agreed that the rough treatment provided by Mr. Rai to this patient clearly showed poor judgment and an inappropriate use of skills in dealing with the patient MG.
- ii. **Contravention of the Act, a code of ethics or standards of practice:** Mr. Rai did not abide by the CLPNA Code of Ethics or the CLPNA Standards of Practice, as acknowledged by him in the Agreed Statement of Facts and Acknowledgment of Unprofessional Conduct and set out in detail above under Allegation 1. The Hearing Tribunal finds the conduct breached the CLPNA Code of Ethics and the CLPNA Standards of Practice and that such breaches are sufficiently serious to constitute unprofessional conduct; and
- iii. **Conduct that harms the integrity of the regulated profession:** Belief by the public that conduct of this type was deemed to be the norm for the profession would lower the respect and confidence in the LPN profession and do great harm to the reputation of the profession.

### *Summary*

The Hearing Tribunal viewed the closed caption video tape and saw the taped actions of Mr. Rai related to client MG referred to in the allegations. The Hearing Tribunal found that the video evidence confirmed each of the three allegations. It was clearly shown that Mr. Rai did carry out the actions of hitting MG on the back, making the sexual gestures described in Allegation 2, and pulling the arm of MG. These were also all admitted to by Mr. Rai in the Agreed Statement of Facts.

In sum, the Hearing Tribunal considered the evidence put forth in Exhibit #2, and the documents and closed caption video included in Exhibit #2, and concluded that each of the Allegations against Mr. Rai were factually found. In addition, after considering the definition of unprofessional conduct found in section 1(1)(pp) of the Act, the CLPNA Code of Ethics and CLPNA Standards of Practice applicable to Mr. Rai as an LPN, the Hearing Tribunal found that for each allegation, unprofessional conduct had occurred.

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

The Complaints Consultant and Jasbir Rai 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. Mr. Rai shall pay 25% of the costs of the hearing to a maximum of \$3,500 to be paid over a period of **24 months** from service of the Decision.
3. Mr. Rai's practice permit will remain suspended until he complies with the following requirements:
  - a. Mr. Rai shall read and reflect on the following CLPNA documents. These documents are available on CLPNA's website <http://www.clpna.com/> under "Governance" and will be provided. Mr. Rai shall provide a signed written declaration to the Complaints Consultant, within **30 days** of service of the Decision, attesting he has reviewed CLPNA's documents:
    - i. Code of Ethics for Licensed Practical Nurses in Canada;
    - ii. Standards of Practice for Licensed Practical Nurses in Canada;
    - iii. CLPNA Practice Policy: Professional Responsibility & Accountability;
    - iv. CLPNA Competency Profile A1: Critical Thinking and Critical Inquiry;
    - v. CLPNA Competency Profile A2: Clinical Judgment and Decision Making;
    - vi. CLPNA Competency Profile P: Gerontology; and
    - vii. CLPNA Competency Profile C: Professionalism.

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

- b. Mr. Rai shall complete shall complete, as his own cost, the **Anger Management Workshop** offered by Cornerstone Counselling, #302, 10140 117 St. NW Edmonton, AB. Mr. Rai shall provide the Complaints Consultant with a certificate successful confirming completion of the Workshop.
4. Mr. Rai shall complete, at his own cost, the following course: **Professionalism in Nursing** located on website [www.jcollinsconsulting.com](http://www.jcollinsconsulting.com). Mr. Rai shall provide the Complaints Consultant, with a certificate confirming successful completion of the course within **90 days** of service of the Decision.

If such course becomes unavailable, an equivalent course may be substituted where approved in advance in writing by the Complaints Consultant.

5. Mr. Rai shall provide the CLPNA with his contact information, including his home mailing address, home and cellular telephone numbers, current e-mail address and his current employment information. Mr. Rai will keep his contact information current with the CLPNA on an ongoing basis.

6. Should Mr. Rai 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 Consultant.
7. Should Mr. Rai 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 Consultant 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;
  - b. Treat Mr. Rai's non-compliance as information for a complaint under s. 56 of the Act; or
  - c. In the case of non-payment of the costs described in paragraph 2 above, suspend Mr. Rai's practice permit until such costs are paid in full or the Complaints Consultant is satisfied that such costs are being paid in accordance with a schedule of payment agreed to by the Complaints Consultant.

Legal Counsel for the Complaints Consultant submitted the primary purpose of orders from the Hearing Tribunal is to protect the public. The Hearing Tribunal is aware that s. 82 of the Act sets out the available orders the Hearing Tribunal is able to make if unprofessional conduct is found.

The Hearing Tribunal is aware, while the parties have 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.

The Hearing Tribunal therefore carefully considered the Partial Joint Submission on Penalty proposed by Mr. Rai and the Complaints Consultant.

#### **(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 orders imposed by the Hearing Tribunal must protect the public from the type of conduct that Mr. Rai 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), 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:** The nature of the offences here: hitting a patient in care, making sexual gestures to a patient, and roughly pulling a patient out of a chair, are serious and beyond what is expected of an LPN. Patients have the right to expect professional treatment from an LPN. The behavior in all three allegations is unacceptable.

**The age and experience of the investigated member:** Mr. Rai is an experienced LPN and would know that the behavior in question would be unacceptable for an LPN.

**The previous character of the investigated member and in particular the presence or absence of any prior complaints or convictions:** There is no history of prior findings of unprofessional conduct.

**The age and mental condition of the victim, if any:** The patient is an elderly gentleman suffering from dementia, agitation and wandering behavior. It is critical that an LPN ensure that patients are cared for diligently and carefully in every case, but in this case the fragility and vulnerability of MG meant that Mr. Rai should have been additionally cautious in terms of treating him with extra care.

**The number of times the offending conduct was proven to have occurred:** All three acts took place on one shift and within minutes of each other as seen on the video of the incidents. No evidence was presented to indicate repeated similar behavior.

**The role of the investigated member in acknowledging what occurred:** The Investigated Member acknowledged his unprofessional conduct and assisted in arriving at an Agreed Statement of Facts which greatly simplified the Hearing and eliminated the need for witnesses. The Tribunal recognizes and appreciates this.

**Whether the investigated member has already suffered other serious financial or other penalties as a result of the allegations having been made:** The Investigated Member received an interim suspension from his employer and then had his employment terminated. The CLPNA also suspended his practice permit until the complaint was dealt with by the Hearing Tribunal. He is currently employed as a security guard and has earned far less in the past year than he would have as an LPN.

**The impact of the incident(s) on the victim:** No evidence of lasting harm to the patient was provided to the Hearing Tribunal; however, there was, of course, the potential for harm in this case as a patient was being struck by an LPN and handled roughly.

**The presence or absence of any mitigating circumstances:** No mitigating circumstances were seen as relevant to the Tribunal.

**The need to promote specific and general deterrence and, thereby to protect the public and ensure the safe and proper practice:** The CLPNA has the duty to deter behavior such as this in this member and the profession at large so that the public can have confidence in the care given by LPNs.

**The range of sentence in other similar cases:** Counsel for the CLPNA and Counsel for the Investigated Member discussed several cases with some similarity to this case and the Hearing Tribunal took them under consideration in deciding on the penalty for Mr. Rai.

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 deterrence and, thereby, to protect the public. The Hearing Tribunal has considered this in the deliberation of this matter, and again considered the seriousness of the Investigated Member's actions. The penalties ordered in this case are intended, in part, to demonstrate to the profession and the public 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 serves the public interest and therefore accepts the parties' proposed penalties.

#### **(11) Additional Orders Sought by the Complaints Consultant**

In addition to the Partial Joint Submission on Penalty, outlined above, the Complaints Consultant sought the following two orders:

1. Jasbir Rai's practice permit shall be suspended for a total of 12 months with credit being given to the time his practice permit has been under interim suspension pursuant to s. 65(1)(b) of the Act which was imposed on March 7, 2019.

2. Mr. Rai's practice permit will remain suspended until he serves the remaining term of the 12 month suspension referred to in paragraph 1 above and completes the educational requirements set out in paragraph 3 of the Partial Joint Submission on Penalty dated November 27, 2019.

The Hearing Tribunal also took into account this additional request by the Complaints Consultant. Counsel for Mr. Rai was provided with an opportunity to speak to this additional request and his response was to express his opinion that no additional order on penalty was reasonable in this case. Mr. Wells presented several cases that had some similarity to this matter but were not identical. He submitted that the additional orders asked for by the Complaints Consultant were not appropriate. He provided income statements (Exhibit #8) showing what Mr. Rai had been able to earn as a security guard and some information about his family needs and financial situation.

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

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

1. The Hearing Tribunal's written reasons for decision ("the Decision") shall serve as a reprimand.
2. Mr. Rai shall pay 25% of the costs of the hearing to a maximum of \$3,500 to be paid over a period of **24 months** from service of the Decision.
3. Mr. Rai's practice permit will remain suspended until he complies with the following requirements:
  - a. Mr. Rai shall read and reflect on the following CLPNA documents. These documents are available on CLPNA's website <http://www.clpna.com/> under "Governance" and will be provided. Mr. Rai shall provide a signed written declaration to the Complaints Consultant, within **30 days** of service of the Decision, attesting he has reviewed CLPNA's documents:
    - i. Code of Ethics for Licensed Practical Nurses in Canada;
    - ii. Standards of Practice for Licensed Practical Nurses in Canada;
    - iii. CLPNA Practice Policy: Professional Responsibility & Accountability;
    - iv. CLPNA Competency Profile A1: Critical Thinking and Critical Inquiry;
    - v. CLPNA Competency Profile A2: Clinical Judgment and Decision Making;
    - vi. CLPNA Competency Profile P: Gerontology; and

vii. CLPNA Competency Profile C: Professionalism.

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

b. Mr. Rai shall complete shall complete, as his own cost, the **Anger Management Workshop** offered by Cornerstone Counselling, #302, 10140 117 St. NW Edmonton, AB. Mr. Rai shall provide the Complaints Consultant with a certificate successful confirming completion of the Workshop.

4. Mr. Rai shall complete, at his own cost, the following course: **Professionalism in Nursing** located on website [www.jcollinsconsulting.com](http://www.jcollinsconsulting.com). Mr. Rai shall provide the Complaints Consultant, with a certificate confirming successful completion of the course within **90 days** of service of the Decision.

If such course becomes unavailable, an equivalent course may be substituted where approved in advance in writing by the Complaints Consultant.

5. Mr. Rai shall provide the CLPNA with his contact information, including his home mailing address, home and cellular telephone numbers, current e-mail address and his current employment information. Mr. Rai will keep his contact information current with the CLPNA on an ongoing basis.

6. Should Mr. Rai 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 Consultant.

7. Should Mr. Rai 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 Consultant 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;

b. Treat Mr. Rai's non-compliance as information for a complaint under s. 56 of the Act; or

c. In the case of non-payment of the costs described in paragraph 2 above, suspend Mr. Rai's practice permit until such costs are paid in full or the Complaints Consultant is satisfied that such costs are being paid in accordance with a schedule of payment agreed to by the Complaints Consultant.

8. Jasbir Rai's practice permit shall be suspended for a total of 12 months with credit being given to the time his practice permit has been under interim suspension pursuant to s. 65(1)(b) of the Act which was imposed on March 7, 2019.

9. Mr. Rai's practice permit will remain suspended until he serves the remaining term of the 12 month suspension referred to in paragraph 1 above and completes the educational requirements set out in paragraph 3 of the Partial Joint Submission on Penalty dated November 27, 2019.

In sum, the Hearing Tribunal accepts the Partial Joint Submission on Penalty and further agrees to accept the additional orders sought by the Complaints Director.

The Hearing Tribunal believes these orders adequately balances the factors referred to in Section 10 above, and are consistent with the overarching mandate of the Hearing Tribunal, which is to ensure that the public is protected.

The Hearing Tribunal reviewed section 80(2) of the Act and decided that no referral regarding criminal behavior in this case was warranted.

Under Part 4, s. 87(1)(a),(b) and 87(2) of the Act, 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 2nd Day of JANUARY, 2020 IN THE CITY of EDMONTON, ALBERTA.**

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



Hugh Campell, Public Member  
Chair, Hearing Tribunal