

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 REBECCA LEWANDOSKI**

**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 REBECCA LEWANDOSKI, LPN #42608, 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 September 27, 2019 with the following individuals present:

Hearing Tribunal:

Kimberley Chin, Licensed Practical Nurse (“LPN”) Chairperson
Christine Buck, LPN
Marg Hayne, Public Member

Staff:

Jason Kully, Legal Counsel for the Complaints Consultant, CLPNA
Susan Blatz, Complaints Consultant, CLPNA

Investigated Member:

Rebecca Lewandoski, LPN (“Ms. Lewandoski” or “Investigated Member”) (by phone)

(2) Preliminary Matters

The hearing was open to the public.

Ms. Lewandoski was unable to attend in person and the parties agreed to her participating by telephone.

When the hearing began, the Chairperson of the Hearing Tribunal advised the Investigated Member she had the right to legal counsel under section 72(1) of the Health Professions Act (“the Act”). The Investigated Member confirmed she wished to proceed with the hearing without legal counsel.

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 Joint Submission on Penalty.

(3) Background

Ms. Lewandoski 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. Ms. Lewandoski was initially licensed as an LPN in Alberta on July 11, 2016.

By letter dated February 12, 2018, the CLPNA received a complaint (the "Complaint") from Ms. Shelley Price, Site Manager of the Good Samaritan Society, West Highland Centre, pursuant to s. 57 of the Act. The Complaint stated Ms. Rebecca Lewandoski, LPN, had been terminated from her employment at the Good Samaritan Society (the "GSS") on February 8, 2018, following an investigation into alleged workplace harassment or disrespectful and bullying behavior, intentional isolation and restriction of a resident, and failure to complete nursing assessments while employed as an LPN at the GSS.

In accordance with s. 55(2)(d) of the Act, Ms. Sandy Davis, Complaints Director for the CLPNA (the "Complaints Director"), appointed Kerry Palyga, Investigator for the CLPNA (the "Investigator"), to conduct an investigation into the Complaint. Ms. Lewandoski received notice of the Complaint, investigation, and appointment of the Investigator by letter dated February 22, 2018.

On June 25, 2018, the Investigator concluded the investigation and submitted the Investigation Report to the CLPNA.

Subsequently, the Complaints Director 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.

Following receipt of the Investigation Report, the Complaints Consultant determined there was sufficient evidence that the matter should be referred to the Hearings Director in accordance with s. 66(3)(a) of the Act. Ms. Lewandoski received notice the matter was referred to a hearing, as well as a copy of the Investigation Report and Statement of Allegations, on January 3, 2019.

A Notice of Hearing, Notice to Attend and Notice to Produce was served upon Ms. Lewandoski under cover of letter dated May 1, 2019.

(4) Allegations

The Allegations in the Statement of Allegations (the "Allegations") are:

"It is alleged that **REBECCA LEWANDOSKI, LPN**, while practising as a Licensed Practical Nurse engaged in unprofessional conduct by:

1. On or about January 26, 2017 did one or more of the following with regards to resident EB:

- a. Failed to discontinue Acetaminophen 650 mg at 2100 on the Medication Administration Record as ordered;
 - b. Failed to initial the medication change on the MAR Update Communication Form as required.
2. On or about August 31, 2017, communicated in a rude and inappropriate manner with:
 - a. Co-worker RT; and
 - b. Withdrawn
3. On or about January 28, 2018 did one or more of the following with regards to resident HK:
 - a. Documented HK's behaviours using inappropriate language;
 - b. Withdrawn
 - c. Withdrawn
 - d. Spoke to HK in a humiliating manner."

(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.

Ms. Lewandoski acknowledged unprofessional conduct to all the allegations as evidenced by her 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: Joint Submission on Penalty

(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. Lewandoski'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 Ms. Lewandoski.

Allegation 1

Ms. Lewandoski admitted on or about January 26, 2017, she did one or more of the following with regards to resident EB:

- a. Failed to discontinue Acetaminophen 650 mg at 2100 on the Medication Administration Record as ordered;
- b. Failed to initial the medication change on the MAR Update Communication Form as required.

Ms. Lewandoski was working at the GSS on January 26, 2017 and during this time she provided care to resident EB. During her shift, Ms. Lewandoski received a MAR Update Communication Form that was sent from the Pharmacare Pharmacy which ordered the discontinuation of Acetaminophen for resident EB. This was received along with a new medication roll at 1818 hours on January 26, 2017 and Ms. Lewandoski noted on resident EB's Progress Notes that she received the order from pharmacy to stop the Acetaminophen at 1818 hours on January 26, 2017. A copy of the Progress Notes for resident EB dated January 26, 2017 is included as part of **Exhibit #2**.

The MAR Update Communication Form, which accompanied the new medication roll, requires the LPN processing the order to initial, date and write "processed" on the Communication Form to confirm that the included order has been recorded on the resident's Medication Administration Record ("MAR").

Ms. Lewandoski wrote “charted” but failed to date and initial the January 26, 2017 MAR Update Communication Form to confirm the included order had been recorded. Ms. Lewandoski subsequently initialed the MAR Update Communication Form on April 20, 2018 during the course of the Investigator’s investigation. A copy of the MAR Update Communication Form is included with **Exhibit #2**.

Ms. Lewandoski updated EB’s MAR to discontinue the administration of Acetaminophen at 0800, 1200 and 1700 hours. However, Ms. Lewandoski failed to record the discontinuance of Acetaminophen 650 mg at 2100 hours as ordered. A copy of resident EB’s Medication Administration Record of January 2017 is included as part of **Exhibit #2**.

She replaced the previous medication roll with the new medication roll she received. The new medication roll did not include Acetaminophen. Due to the transcription error, the MAR indicated resident EB was to incorrectly receive Acetaminophen 650 mg at 2100 hours on January 27 and 28, 2017. As the medication roll did not include Acetaminophen, the medication was charted as “Absent”. EB did not receive the discontinued Acetaminophen 650 mg on January 27 or January 28, 2017. A copy of resident EB’s Medication Administration Record of January 2017 is included as part of **Exhibit #2**.

Ms Lewandoski displayed a lack of knowledge skill and judgment when she neglected to follow her Site’s policies when receiving the MAR Update Communication Form from pharmacy for the discontinuation of a medication for resident EB. She also expressed a severe lack of judgment by putting her initials on the MAR Update Communication for patient EB while the investigation was going on. Her actions also contravened the code of ethics and standards of practice of the CLPNA for the reasons set out below. 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:

- a) Displaying a lack of knowledge of or lack of skill or judgment in the provision of professional services; and
- b) Contravention of the Act, a code of ethics or standards of practice.

Allegation 2

Ms. Lewandoski admitted on or about August 31, 2017, she communicated in a rude and inappropriate manner with:

- a. Co-worker RT; and
- b. Withdrawn

Ms. Lewandoski was working at the GSS on August 31, 2017, along with her co-worker RT, a Health Care Aide (“HCA”).

In the evening on August 31, 2017, RT took a break and arranged for another HCA to cover her patient care during her break period. RT did not communicate this arrangement to Ms. Lewandoski.

HCA's at GSS are required to report to the LPN on duty when going on breaks. Breaks are taken in the staff room or outside and only two individuals are allowed on breaks at a time.

Upon returning late from her break, RT was confronted by Ms. Lewandoski, who raised her voice with RT and pointed at her. In a raised voice, Ms. Lewandoski asked RT where she had been. After RT advised her that she was on break, Ms. Lewandoski told RT that RT could go on a break but that Ms. Lewandoski had to be informed when an HCA takes their break, as it is policy and a patient had required care and RT had not been available. RT advised her that she had told another HCA. In response, Ms. Lewandoski told RT that RT needed to tell her since she was RT's boss. Ms. Lewandoski also said she was angry and frustrated with RT for not informing her that she was going on break.

Multiple individuals witnessed Ms. Lewandoski's actions and heard her comments.

RT was embarrassed and felt humiliated by Ms. Lewandoski's conduct.

Ms. Lewandoski displayed a serious lack of judgment in regard to how she addressed RT. Such treatment was disrespectful and not conducive to a healthy workplace or to the overall goal of effective patient care. The Hearing Tribunal agrees that this conduct directly harms the integrity of the profession because Ms. Lewandoski is an ambassador, as a member of the CLPNA, and such treatment of a colleague reflects poorly on those who are members of the CLPNA. Her conduct was also a breach of the code of ethics and standards of practice of the CLPNA, for the reasons set out below.

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:

- a) Displaying a lack of knowledge of or lack of skill or judgment in the provision of professional services;
- b) Contravention of the Act, a code of ethics or standards of practice.
- c) Conduct that harms the integrity of the regulated profession.

Allegation 3

Ms. Lewandoski admitted on or about January 28, 2018, she did one or more of the following with regards to resident HK:

- a. Documented HK's behaviours using inappropriate language;
- b. Withdrawn
- c. Withdrawn
- d. Spoke to HK in a humiliating manner.

Ms. Lewandoski was working at the GSS on January 28, 2018 from 0700-2300 hours and provided care to resident HK. During Ms. Lewandoski's shift, resident HK was continuously calling out and disturbing other residents. At this time, Ms. Lewandoski told HK, in an angry voice, if HK did not stop acting like a child, then HK would not be returned to her room. Ms. Lewandoski also told HK to use her adult voice to ask kindly for things.

At 1423 hours on January 28, 2018, Ms. Lewandoski made an entry into resident HK's Progress Notes which read as follows:

"[T]his Resident has the very worst behaviours over the weekend. Even with the new PRN traza-done she still cc continues to yell in her room and press the call bell continually. Staff and I are at wits end. I finally brought her to the lpn office and she had to stay with me in the office so I could get some work done. I explained to her that when she could act like an adult and use her adult voice to ask kindly for the things she requires then I would take her back to her room but until then she would have to stay with me in the LPN office as people are walking by her room and thinking she is in real distress when all she wants is her pillow moved or a Kleenex. Family still has not come and message left to bring incontinent supplies has no response."

A copy of resident HK's Progress Notes is included as part of **Exhibit #2**.

During a workplace investigation into the incident, Ms Lewandoski acknowledged that it was not appropriate for her to make the verbal comments that she made. She also acknowledged her charting "was ridiculous" and that she did not know what she was thinking when documenting it.

The GSS Process Manual for "Resident/Client Abuse" requires LPNs to ensure they treat all residents and clients with dignity and respect. No employee shall abuse a resident. Emotional abuse of a resident is defined as inappropriate acts or commissions causing or with the potential to cause emotional harm, including but not limited to threatening, intimidating, humiliating, harassing behaviour, among other behaviours. A copy of the GSS's Process Manual for Resident/Client Abuse is included as part of **Exhibit #2**.

The GSS Process Manual for "Resident Rights and Responsibilities" provides that all residents have the right to be free from verbal or emotional abuse. A copy of the GSS's Process Manual for Resident Rights and Responsibilities is included as part of **Exhibit #2**.

The GSS Code of Conduct for Employees states that all employees are expected to perform their duties with honesty and integrity and in a manner that is helpful, respectful, and courteous and

is consistent with the GSS's policies and procedures. A copy of the GSS Code of Conduct is included as part of **Exhibit #2**.

Ms. Lewandoski's conduct displayed a lack of knowledge skill and judgment with her treatment of resident HK, and again with her further documentation of the incident and the family in the nursing notes. Residents should be treated with respect at all times; not doing so is degrading to them. This is a basic nursing skill and principle that all LPNs should be familiar and compliant with. As well, documentation regarding a patient is a legal document and should be treated as so with unbiased charting regarding patients. Ms. Lewandoski's conduct also contravened the code of ethics and standards of practice for the reasons set out below.

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:

- a) Displaying a lack of knowledge of or lack of skill or judgment in the provision of professional services;
- b) Contravention of the Act, a code of ethics or standards of practice.

Code of Ethics:

The Hearing Tribunal finds that Ms. Lewandoski's misconduct breached the following requirements in the Code of Ethics for Licensed Practical Nurses in Canada adopted by the CLPNA on June 3, 2013, which states as follows:

- a. PRINCIPLE 1: Responsibility to the Public - Licensed Practical Nurses, 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.
 - 1.5 Provide care directed toward the health and well-being of the person, family, and community.
- b. PRINCIPLE 2: Responsibility to Clients - Licensed Practical Nurses provide safe and competent care for their clients. Principle 2 specifically provides that LPNs:
 - 2.4 Act promptly and appropriately in response to harmful conditions and situations, including disclosing safety issues to appropriate authorities.
 - 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 - Licensed Practical Nurses 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 4: Responsibility to Colleagues - Licensed Practical Nurses develop and maintain positive, collaborative relationships with nursing colleagues and other health professionals. Principle 4 specifically provides that LPNs:
 - 4.2 Collaborate with colleagues in a cooperative, constructive and respectful manner with the primary goal of providing safe, competent, ethical, and appropriate care to individuals, families and communities.
 - 4.4 Acknowledge colleagues' roles and their unique contribution to the inter-professional team.
 - 4.5 Respect the expertise of colleagues and share own expertise and knowledge.
- e. PRINCIPLE 5: Responsibility to Self - Licensed Practical Nurses 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.

Ms. Lewandoski's behaviour breached these Principles of the Code of Ethics in that her actions had the potential to place patients at risk of harm by interfering with their care. Her actions also had the potential to humiliate and cause harm to patients. Her behaviours did not demonstrate compassionate care and professional competence. Further, her behaviour had the potential to diminish the profession in the eyes of the public and failed to demonstrate behaviours that reflect the integrity of the profession. Her actions were also harmful to a colleague and were inconsistent with the privilege of self-regulation. Her treatment of her colleague was disrespectful and did not acknowledge that colleague's contribution to the team.

Finally, Ms. Lewandoski's behaviours did not demonstrate honesty, integrity and trustworthiness in how she conducted herself, especially in regard to modifying a record during the investigation, and this has had the effect of undermining each of those.

Standards of Practice

The Hearing Tribunal finds that Ms. Lewandoski's misconduct breached the following Standards of Practice for Licenced Practical Nurses in Canada adopted by the CLPNA on June 3, 2013, which state 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.
 - 1.2. Engage in ongoing self-assessment of their professional practice and competence, and seek opportunities for continuous learning.
 - 1.4. Recognize their own practice limitations and consult as necessary.
 - 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.
 - 1.10. Maintain documentation and reporting according to established legislation, regulations, laws, and employer policies.
- 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.
 - 2.11. Use critical inquiry to assess, plan and evaluate the implications of interventions that impact client outcomes.
- 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.
 - 3.6. 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.

Ms. Lewandoski's actions breached the Standards of Practice in that she failed to ensure that her practice was conducted in accordance with the requirements binding on her. Her conduct was not consistent with ethical values and obligations for LPNs; it does not demonstrate recognition of her limits or minimizing harm.

Further, her actions had the potential to place patients in harm's way through errors relating to medication, as well as, treatment which has the potential to cause emotional or psychological harm. She failed to apply her knowledge and professional judgment as the basis for her practice.

Her treatment of her patient and her colleague was not in service to an environment of a safe, healthy, and ethical practice.

Overall, Ms. Lewandoski's actions diminished, not enhanced, the interests of her patients, the public and the profession and they did not demonstrate an understanding and appreciation of self-regulation.

(9) Joint Submission on Penalty

The Complaints Consultant and Ms. Lewandoski made a 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. Lewandoski shall pay the costs of the investigation and hearing in the amount of \$2,500.00, subject to the following:
 - (a) Costs will be paid in equal monthly installments over a period of 18 months, or over such other period of time as agreed to by the Complaints Consultant.
3. Ms. Lewandoski shall, within 30 days of service of the Decision, read and reflect on the following CLPNA documents located on the CLPNA website at <http://www.clpna.com> under the "Governance" tab, and provide the Complaints Consultant a written reflection of 500 – 750 words, satisfactory to the Complaints Consultant, on how the CLPNA documents will impact her professional practice:
 - (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 Practice Policy: Documentation;
 - (e) CLPNA Practice Statement: Accepting, Transcribing & Processing Physicians' Orders;
 - (f) CLPNA Competency Profile D1: Effective Communication;
 - (g) CLPNA Competency Profile E1: Critical Thinking and Critical Inquiry;
 - (h) CLPNA Competency Profile E2: Clinical Judgment and Decision Making;
 - (i) CLPNA Competency Profile O: Gerontology; and
 - (j) 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 Consultant.

In the event the reflective paper is not satisfactory to the Complaints Consultant, Ms. Lewandoski shall submit a revised paper that is acceptable to the Complaints Consultant, within 2 weeks of being notified the reflective paper was not satisfactory.

4. Ms. Lewandoski shall, within 30 days of service of the Decision, complete the **LPN Ethics Course** available online at <http://www.learninglpn.ca/index.php/courses>, and provide the Complaints Consultant with a certificate confirming successful completion of the course. If such course becomes unavailable, an equivalent course may be substituted where approved in advance in writing by the Complaints Consultant.
5. Ms. Lewandoski shall, within 30 days of service of the Decision, complete the following nursing quizzes located on the website <http://www.learningnurse.org/>, and provide the Complaints Consultant with documentation confirming successful completion of the quizzes (a mark of at least 80%):

(a) 14.2 Legal Risks; and

(b) 9.1 Person-Centered Care.

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

6. Ms. Lewandoski shall, within 60 days of service of the Decision, complete the **Relational Practice Course** available online at www.clpna.com under the “Education” tab, and provide the Complaints Consultant with a certificate confirming successful completion of the course. If such course becomes unavailable, an equivalent course may be substituted where approved in advance in writing by the Complaints Consultant.
7. Ms. Lewandoski shall, within 60 days of service of the Decision, complete the **Nursing of the Geriatric Patient Course** offered on-line at www.pedagogyeducation.com, and provide the Complaints Consultant with a certificate confirming successful completion of the course. If such course becomes unavailable, an equivalent course may be substituted where approved in advance in writing by the Complaints Consultant.
8. Ms. Lewandoski shall provide the CLPNA with her contact information, including her home mailing address, home and cellular telephone numbers, current e-mail address and her current employment information. Ms. Lewandoski will keep her contact information current with the CLPNA on an ongoing basis.
9. Should Ms. Lewandoski 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.
10. Should Ms. Lewandoski 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, one or more of the following steps may occur:

- (a) the Complaints Consultant may refer the matter back to a Hearing Tribunal, which shall retain jurisdiction with respect to penalty;
- (b) the Complaints Consultant may treat Ms. Manton's non-compliance as information under s. 56 of the *Health Professions Act*; and
- (c) the Complaints Consultant may, in the case of non-payment of the costs described in paragraph 2 above, suspend Ms. Lewandoski'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 Joint Submission on Penalty proposed by Ms. Lewandoski and the 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 Ms. Lewandoski 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

Even though the conduct by Ms. Lewandoski was controversial in nature, her errors were from her being careless with her conduct towards her patients and her documentation of the incidents afterwards.

The age and experience of the investigated member

Ms. Lewandoski is a relatively new member being registered in 2016.

The previous character of the investigated member and in particular the presence or absence of any prior complaints or convictions

Ms. Lewandoski had no prior complaints or convictions

The number of times the offending conduct was proven to have occurred

Even though there were three separate incidents, there was no pattern and the conduct was not ongoing; this makes this a neutral factor.

The role of the investigated member in acknowledging what occurred

The Hearing Tribunal would like to commend Ms. Lewandoski for acknowledging her conduct and cooperating with the College during the investigation.

However, Ms. Lewandoski during the investigation changed medical records. This is indicative of attempting to hide her mistakes, which is very unprofessional.

The impact of the incident(s) on the victim

Ms. Lewandoski humiliated a resident and a co-worker, this is degrading to both of these individuals and would have a negative impact on each of them.

The presence or absence of any mitigating circumstances

Ms. Lewandoski has a child with disabilities who requires care workers. This conflicted with her work schedule as the workers would only provide care over a 12-hour period. When Ms. Lewandoski was required to stay later for her shift this would directly affect her child as they would be left without care for the duration of time until she was able to come home. When Ms. Lewandoski was required to update the MAR Communication Record at the end of her shift this directly affected her ability to get home to her child.

The need to promote specific and general deterrence and, thereby to protect the public and ensure the safe and proper practice

In the case of Ms. Lewandoski, the sanctions will discourage others from engaging in the same conduct.

The need to maintain the public's confidence in the integrity of the profession

The proposed sanctions will demonstrate to the public that the profession is working to address concerns within its membership and work towards ensuring all members are highly skilled and practice ethically.

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) 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. Ms. Lewandoski shall pay the costs of the investigation and hearing in the amount of \$2,500.00, subject to the following:
 - a. Costs will be paid in equal monthly installments over a period of 18 months, or over such other period of time as agreed to by the Complaints Consultant.
3. Ms. Lewandoski shall, within 30 days of service of the Decision, read and reflect on the following CLPNA documents located on the CLPNA website at <http://www.clpna.com> under the "Governance" tab, and provide the Complaints Consultant a written reflection of 500 – 750 words, satisfactory to the Complaints Consultant, on how the CLPNA documents will impact her professional practice:
 - 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 Practice Policy: Documentation;
 - e. CLPNA Practice Statement: Accepting, Transcribing & Processing Physicians' Orders;
 - f. CLPNA Competency Profile D1: Effective Communication;
 - g. CLPNA Competency Profile E1: Critical Thinking and Critical Inquiry;
 - h. CLPNA Competency Profile E2: Clinical Judgment and Decision Making;
 - i. CLPNA Competency Profile O: Gerontology; and

j. 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 Consultant.

In the event the reflective paper is not satisfactory to the Complaints Consultant, Ms. Lewandoski shall submit a revised paper that is acceptable to the Complaints Consultant, within 2 weeks of being notified the reflective paper was not satisfactory.

4. Ms. Lewandoski shall, within 30 days of service of the Decision, complete the **LPN Ethics Course** available online at <http://www.learninglpn.ca/index.php/courses>, and provide the Complaints Consultant with a certificate confirming successful completion of the course. If such course becomes unavailable, an equivalent course may be substituted where approved in advance in writing by the Complaints Consultant.
5. Ms. Lewandoski shall, within 30 days of service of the Decision, complete the the following nursing quizzes located on the website <http://www.learningnurse.org/>, and provide the Complaints Consultant with documentation confirming successful completion of the quizzes (a mark of at least 80%):

a. **14.2 Legal Risks; and**

b. **9.1 Person-Centered Care.**

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

6. Ms. Lewandoski shall, within 60 days of service of the Decision, complete the **Relational Practice Course** available online at www.clpna.com under the “Education” tab, and provide the Complaints Consultant with a certificate confirming successful completion of the course. If such course becomes unavailable, an equivalent course may be substituted where approved in advance in writing by the Complaints Consultant.
7. Ms. Lewandoski shall, within 60 days of service of the Decision, complete the **Nursing of the Geriatric Patient Course** offered on-line at www.pedagogyeducation.com, and provide the Complaints Consultant with a certificate confirming successful completion of the course. If such course becomes unavailable, an equivalent course may be substituted where approved in advance in writing by the Complaints Consultant.
8. Ms. Lewandoski shall provide the CLPNA with her contact information, including her home mailing address, home and cellular telephone numbers, current e-mail address and her current employment information. Ms. Lewandoski will keep her contact information current with the CLPNA on an ongoing basis.

9. Should Ms. Lewandoski 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.
10. Should Ms. Lewandoski 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, one or more of the following steps may occur:
 - a. the Complaints Consultant may refer the matter back to a Hearing Tribunal, which shall retain jurisdiction with respect to penalty;
 - b. the Complaints Consultant may treat Ms. Manton's non-compliance as information under s. 56 of the *Health Professions Act*; and
 - c. the Complaints Consultant may, in the case of non-payment of the costs described in paragraph 2 above, suspend Ms. Lewandoski'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.

The Hearing Tribunal believes these orders adequately balance 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.

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 6th DAY OF JANUARY 2020 IN THE CITY OF EDMONTON, ALBERTA.

THE COLLEGE OF LICENSED PRACTICAL NURSES OF ALBERTA



Kimberley Chin, LPN
Chair, Hearing Tribunal