

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 TARA CARMICHAEL**

**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 TARA CARMICHAEL, LPN #38231, 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 26, 2019 with the following individuals present:

Hearing Tribunal:

Kelly Annesty, Licensed Practical Nurse (“LPN”) Chairperson
Marie Concepcion, LPN
Marg Hayne, Public Member

Staff:

Jason Kully, Legal Counsel for the Complaints Consultant, CLPNA
Kevin Oudith, Complaints Consultant, CLPNA
Sandy Davis, Complaints Director, CLPNA

Investigated Member:

Tara Carmichael, LPN (“Ms. Carmichael or “Investigated Member”)
Kathie Milne, AUPE Representative for the Investigated Member

(2) Preliminary Matters

The hearing was open to the public.

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. Carmichael 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. Carmichael was initially licensed as an LPN in Alberta on May 5, 2014.

By letter dated October 17, 2018, the CLPNA received a complaint (the "Complaint") from Laurie Loowell, Director, HR Business Partnerships with Alberta Health Services, pursuant to s. 57 of the *Health Professions Act* (the "Act"). The Complaint stated that Ms. Carmichael, LPN, had received a five day suspension of her employment at the Stollery Children's Hospital on October 3, 2018 due to drug diversion and dishonesty.

On October 26, 2018, Ms. Sandy Davis, Complaints Director for the CLPNA (the "Complaints Director"), requested that Teresa Bateman, Executive Officer for the CLPNA, impose an interim condition on Ms. Carmichael's practice permit that would limit her from accessing any narcotics or controlled substances pending the outcome of disciplinary proceedings pursuant to s. 65(1)(a) of the Act due to the serious nature of the allegations of the theft of medications, including a narcotic and a controlled substance, along with various medical supplies.

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. Ms. Carmichael received notice of the Complaint, investigation, appointment of the Investigator and Notice of the Complaints Director's request for the imposition of the interim condition by letter dated October 26, 2018.

By letter dated November 13, 2018, Ms. Bateman granted the request for an interim condition restricting Ms. Carmichael from practicing in an employment setting where she had access to narcotics and where narcotic administration was part of her role and notified Ms. Carmichael accordingly.

On December 4, 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 Kevin Oudith, 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. Carmichael received notice that the matter was referred to a hearing as well as a copy of the Statement of Allegations and Investigation Report under cover of letter dated August 15, 2019.

A Notice of Hearing, Notice to Attend and Notice to Produce was served upon Ms. Carmichael under cover of letter dated September 25, 2019.

(4) Allegations

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

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

1. On or between June 13, 2017 and September 6, 2018, did one or more of the following:
 - a) Removed three (3) ampules of Ketorolac 1 ml (30mg / ml) from the Pediatric Operating Room without authorization or justification; and
 - b) Removed medical supplies, including but not limited to needles, syringes, bandages, gauze, and saline, from the Pediatric Operating Room without authorization or justification.
2. On or between June 13, 2017 and September 6, 2018, did one or more of the following:
 - a) Removed one (1) ampule of Morphine LP Epidural 5 mg (1 mg/ 1 ml) from the Pediatric Operating Room without authorization or justification; and
 - b) Removed one (1) ampule of Rocuronium 5 ml (50 mg/ 5 ml) from the Pediatric Operating Room without authorization or justification.
3. On or between June 13, 2017 and September 6, 2018, failed to maintain professional boundaries with BV, an individual she was in a relationship with, by providing professional nursing services the particulars of which include one or more of the following:
 - a) Providing instruction on how to self-administer an intramuscular injection; and
 - b) Providing medication that was removed from the Pediatric Operating Room.
4. On or between June 13, 2017 and September 6, 2018, exceeded the Licensed Practical Nurse scope of practice by working in the Pediatric Operating Room without authorization to practice in the Perioperative Specialty.”

(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. Carmichael 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. Carmichael'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. Carmichael.

Allegation 1

Tara Carmichael admitted on or between June 13, 2017 and September 6, 2018, she did one or more of the following:

- a) Removed three (3) ampules of Ketorolac 1 ml (30mg/ml) from the Pediatric Operating Room without authorization or justification; and

- b) Removed medical supplies, including but not limited to needles, syringes, bandages, gauze, and saline, from the Pediatric Operating Room without authorization or justification.

On September 6, 2018, patient BV was seen by Amy Teshier, RPN who worked with the Addiction and Mental Health Team at the Royal Alexandra Hospital. BV presented voluntarily with an admitting diagnosis of “depression/suicidal/deliberate self-harm”.

Upon BV’s admittance, Ms. Teshier searched his bags as a safety precaution. In BV’s bag, Ms. Teshier discovered:

- a. Wound dressing supplies including bandages and gauze;
- b. Dermabond;
- c. Vials of saline;
- d. Needles and syringes;
- e. Three (3) ampules of Ketorolac 1mg (30mg/ml) – A photograph of this was included in Exhibit 2 at Tab 9;
- f. One (1) ampule of Morphine LP Epidural 5mg (1mg/1ml) – A photograph of this was included in Exhibit 2 at Tab 10; and
- g. One (1) ampule of Rocuronium 5ml (50mg/5ml) – A photograph of this was included in Exhibit 2 at Tab 11.

Ms. Teshier asked BV where he obtained the medications and medical supplies. BV stated they were given to him by his girlfriend, Ms. Carmichael, who was a nurse at the Stollery Children’s Hospital.

Ms. Teshier documented her interactions with BV on the Emergency Department Intake Assessment and Treatment form, dated September 6, 2018. A copy of the Emergency Department Intake Assessment and Treatment form was provided in Exhibit 2 at Tab 12. Ms. Teshier also documented on the Mental Health Assessment form dated September 6, 2018, which was provided in Exhibit 2 under Tab 13, and the Consultation Report which was provided in Exhibit 2 under Tab 14.

Ms. Carmichael worked as an Operating Room Technician in the Pediatric Operating Room at the Stollery Children’s Hospital between June 13, 2017 and September 6, 2018. Ms. Carmichael had access to the drugs, medical supplies, and medications that were found in BV’s possession.

Ketorolac is a commonly used medication in the Pediatric Operating Room and is readily available in the anesthesia cart.

On September 7, 2018, Jenny Wilson, RN, Manager of the Pediatric Operating Room at the Stollery Children’s Hospital was notified by members of the Addiction and Mental Health Team at the Royal Alexandra Hospital that patient BV had reported receiving drugs, medical supplies and medication from Ms. Carmichael.

On September 24, 2018, Ms. Wilson interviewed Ms. Carmichael and, during the interview, Ms. Carmichael stated:

- a. She had been in a relationship with BV for approximately six (6) years;
- b. She had taken the wound dressing supplies, syringes, and ampules of Ketorolac to help BV with his back injury; and
- c. BV self-administered the medications.

Ms. Carmichael was interviewed by the Investigator on November 20, 2018. During the interview, Ms. Carmichael stated:

- a. One of her duties in the Pediatric Operating Room was to restock the medication carts;
- b. She took syringes, needles, and the three (3) ampules of Ketorolac to help BV with his back injury;
- c. She took medical supplies, including band aids, gauze, steri strips, saline solution, tape, and Dermabond for BV to use if he was hurt while playing hockey; and
- d. She taught BV how to use and administer the medication to himself in the deltoid muscle.

The Hearing Tribunal considered the facts included in the Agreed Statement of Facts and Ms. Carmichael'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:** The conduct in this allegation shows a clear lack of knowledge and judgment on the part of Ms. Carmichael. Using her position in the Stollery Children's Hospital and her privileges as an LPN, Ms. Carmichael showed a severe lack of judgment when she deliberately removed medical items and medications from her work to provide them to her boyfriend BV. The CLPNA takes the removal of all medication, without proper authorization, seriously. Ms. Carmichael should have known that, both the removal of the items and medications, and the provision of these stolen items to her boyfriend was wrong, and this also demonstrated a lack of knowledge;
- ii. **Contravention of the Act, a code of ethics or standards of practice:** Ms. Carmichael did not abide by the CLPNA Code of Ethics or the CLPNA Standards of Practice, as acknowledged by her in the Agreed Statement of Facts and Acknowledgment of Unprofessional Conduct and set out in detail below. In each case such breaches were also found by the Hearing Tribunal;

- iii. **Conduct that harms the integrity of the regulated profession:** Ms. Carmichael harmed the integrity of the profession by practicing in a manner where she did not abide by her ethical requirements or meet the standard of care expected by the public of LPNs.

CLPNA Code of Ethics and CLPNA Standards of Practice

Ms. Carmichael acknowledged that her 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.
- 1.2 Provide only those functions for which they are qualified by education or experience.

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

- 2.4 Act promptly and appropriately in response to harmful conditions and situations, including disclosing safety issues to appropriate authorities.
- 2.7 Develop trusting, therapeutic relationships, while maintaining professional boundaries.
- 2.8 Use evidence and judgement to guide nursing decisions.

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.

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.

- 5.2 Recognize their capabilities and limitations and perform only the nursing functions that fall within their scope of practice and for which they possess the required knowledge, skills and judgement.
- 5.3 Accept responsibility for knowing and acting consistently with the principles, practice standards, laws and regulations under which they are accountable.
- 5.7 Accept or manage conflict of interest situations.

Ms. Carmichael acknowledged that her conduct breached one or more of the following Standards of Practice for Licensed Practical Nurses in Canada (“CLPNA Standards of Practice”), 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.
 - 1.4 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.
 - 1.9 Practice in a manner consistent with ethical values and obligations of the Code of Ethics for Licensed Practical Nurses.
- b. **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.
- c. **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.
- 4.6 Maintain professional boundaries in the nurse/client therapeutic relationship at all times.
- 4.9 Support and contribute to healthy and positive practice environments.

The Hearing Tribunal accepted Ms. Carmichael's admission of unprofessional conduct. As expressed above, the conduct underlying this allegation, which includes theft of medical supplies and potentially dangerous medication, is something that the CLPNA treats very seriously.

The Hearing Tribunal also finds the conduct breached the CLPNA Code of Ethics and the CLPNA Standards of Practice as set out above and that such breaches are sufficiently serious to constitute unprofessional conduct.

Allegation 2

Tara Carmichael admitted on or between June 13, 2017 and September 6, 2018, she did one or more of the following:

- a) Removed one (1) ampule of Morphine LP Epidural 5 mg (1 mg/ 1 ml) from the Pediatric Operating Room without authorization or justification; and
- b) Removed one (1) ampule of Rocuronium 5 ml (50 mg/ 5 ml) from the Pediatric Operating Room without authorization or justification.

On September 6, 2018, patient BV was seen by Amy Teshier, RPN who worked with the Addiction and Mental Health Team at the Royal Alexandra Hospital. BV presented voluntarily with an admitting diagnosis of "depression/suicidal/deliberate self-harm".

Upon BV's admittance, Ms. Teshier searched his bags as a safety precaution. In BV's bag, Ms. Teshier discovered:

- a. Wound dressing supplies including bandages and gauze;
- b. Dermabond;
- c. Vials of saline;
- d. Needles and syringes;
- e. Three (3) ampules of Ketorolac 1mg (30mg/ml) – A photograph of this was included in Exhibit 2 at Tab 9;
- f. One (1) ampule of Morphine LP Epidural 5mg (1mg/1ml) – A photograph of this was included in Exhibit 2 at Tab 10; and
- g. One (1) ampule of Rocuronium 5ml (50mg/5ml) – A photograph of this was included in Exhibit 2 at Tab 11.

Ms. Teshier asked BV where he obtained the medications and medical supplies. BV stated they were given to him by his girlfriend, Ms. Carmichael, who was a nurse at the Stollery Children's Hospital.

Ms. Teshier documented her interactions with BV on the Emergency Department Intake Assessment and Treatment form, dated September 6, 2018. A copy of the Emergency Department Intake Assessment and Treatment form was provided in Exhibit 2 at Tab 12. Ms. Teshier also documented on the Mental Health Assessment form dated September 6, 2018 which was provided in Exhibit 2 at Tab 13, and the Consultation Report which was provided in Exhibit 2 at Tab 14.

Ms. Carmichael worked as an Operating Room Technician in the Pediatric Operating Room at the Stollery Children's Hospital between June 13, 2017 and September 6, 2018. Ms. Carmichael had access to the drugs, medical supplies, and medications that were found in BV's possession.

Both Morphine LP Epidural and Rocuronium are medications specific to an Operating Room and would not be found anywhere else in a hospital. Only an anesthesiologist can administer these medications. Morphine LP Epidural should only be administered in settings where adequate patient monitoring is possible and resuscitative equipment should be readily available as there is a risk of respiratory depression, which can be fatal. Rocuronium is a non-depolarizing neuromuscular blocking agent (paralyzing medication). Rocuronium should only be administered in a facility where resuscitation and life support equipment is readily available.

On September 7, 2018, Jenny Wilson, RN, Manager of the Pediatric Operating Room at the Stollery Children's Hospital was notified by members of the Addiction and Mental Health Team at the Royal Alexandra Hospital that patient BV had reported receiving drugs, medical supplies and medication from Ms. Carmichael.

On September 24, 2018, Ms. Wilson interviewed Ms. Carmichael and during the interview Ms. Carmichael stated:

- a. She had been in a relationship with BV for approximately six (6) years;
- b. She had taken the wound dressing supplies, syringes, and ampules of Ketorolac to help BV with his back injury; and
- c. BV self-administered the medications.

Ms. Carmichael was interviewed by the Investigator on November 20, 2018. During the interview, Ms. Carmichael stated:

- a. One of her duties in the Pediatric Operating Room was to restock the medication carts;
- b. She took syringes, needles, and the three (3) ampules of Ketorolac to help BV with his back injury;
- c. She took medical supplies, including band aids, gauze, steri strips, saline solution, tape, and Dermabond for BV to use if he was hurt while playing hockey; and

- d. She taught BV how to use and administer the medication to himself in the deltoid muscle.

Ms. Carmichael admitted that she removed one (1) ampule of Morphine LP Epidural 5mg (1mg/1ml) and one (1) ampule of Rocuronium 5ml (50mg/5ml) from the Pediatric Operating Room for BV.

The Hearing Tribunal considered the facts included in the Agreed Statement of Facts and Ms. Carmichael'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:** The conduct in this allegation shows a clear lack of knowledge and judgment on the part of Ms. Carmichael. Using her position in the Stollery Children's Hospital and her privileges as an LPN, Ms. Carmichael showed a severe lack of judgment when she deliberately removed medical items and medications from her work to provide them to her boyfriend BV. In this allegation, two of the medications removed, Morphine LP Epidural and Rocuronium, must only be administered by an anesthesiologist. She removed items from an operating room which could have caused patients significant risk, and also could have caused significant harm to BV should the medications she provided to him be administered improperly or if he had a severe reaction. By removing these items from an operating room, Ms. Carmichael showed a serious lack of knowledge, skill and judgment;
- ii. **Contravention of the Act, a code of ethics or standards of practice:** Ms. Carmichael did not abide by the CLPNA Code of Ethics or the CLPNA Standards of Practice, as acknowledged by her in the Agreed Statement of Facts and Acknowledgment of Unprofessional Conduct and set out in detail above. In each case such breaches were also found by the Hearing Tribunal;
- iii. **Conduct that harms the integrity of the regulated profession:** Ms. Carmichael harmed the integrity of the profession by practicing in a manner where she did not abide by her ethical requirements or meet the standard of care expected by the public of LPNs.

The Hearing Tribunal accepted Ms. Carmichael's admission of unprofessional conduct. As expressed above, the conduct underlying this allegation, which includes the theft of two types of extremely dangerous medication, is something that the CLPNA treats very seriously.

The Hearing Tribunal also finds the conduct breached the CLPNA Code of Ethics and the CLPNA Standards of Practice as set out above and that such breaches are sufficiently serious to constitute unprofessional conduct.

Allegation 3

Tara Carmichael admitted on or between June 13, 2017 and September 6, 2018, she failed to maintain professional boundaries with BV, an individual she was in a relationship with, by providing professional nursing services the particulars of which include one or more of the following:

- a) Providing instruction on how to self-administer an intramuscular injection; and
- b) Providing medication that was removed from the Pediatric Operating Room.

The facts from Allegations 1 and 2 were repeated in Allegation 3.

It is important for LPNs to maintain their professional boundaries during the provision of nursing care because of their role as a healthcare provider. Ms. Carmichael's provision of medication to BV and instructions to him on how to self-administer the medication was a failure to maintain professional boundaries.

It is inappropriate for an LPN to provide nursing care to a partner unless one (1) of the following two (2) conditions are met:

- a. The nursing care is considered the type of personal care reasonably provided to family members; or
- b. The nursing care is provided in an emergency situation and there is no reasonable opportunity to transfer care to another qualified healthcare provider.

Neither of these conditions were met when Ms. Carmichael provided the medication to BV or when Ms. Carmichael instructed BV how to self-administer the medication.

The Hearing Tribunal considered the facts included in the Agreed Statement of Facts and Ms. Carmichael'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 conduct in this allegation shows a clear lack of knowledge and judgment on the part of Ms. Carmichael. Ms. Carmichael was in a relationship

- with BV. She should have had the knowledge and judgment to recognize that it was inappropriate for her to provide care to a family member unless in very specific circumstances. Neither of those conditions were met and as such, Ms. Carmichael demonstrated a lack of knowledge and judgment by providing nursing care to BV by providing him with guidance on an intramuscular injection or providing him with medications removed from an operating room;
- ii. **Contravention of the Act, a code of ethics or standards of practice:** Ms. Carmichael did not abide by the CLPNA Code of Ethics or the CLPNA Standards of Practice, as acknowledged by her in the Agreed Statement of Facts and Acknowledgment of Unprofessional Conduct and set out in detail above. In this instance, the Hearing Tribunal stresses Standard of Practice 4.6, which requires the LPNs “maintain professional boundaries in the nurse/client therapeutic relationship at all times”. In each case such breaches were also found by the Hearing Tribunal;
 - iii. **Conduct that harms the integrity of the regulated profession:** Ms. Carmichael harmed the integrity of the profession by practicing in a manner where she did not abide by her ethical requirements or meet the standard of care expected by the public of LPNs.

The Hearing Tribunal accepted Ms. Carmichael’s admission of unprofessional conduct. As expressed above, the conduct underlying this allegation, which relates to improper treatment of a family member, is something that the CLPNA treats very seriously.

The Hearing Tribunal also finds the conduct breached the CLPNA Code of Ethics and the CLPNA Standards of Practice as set out above and that such breaches are sufficiently serious to constitute unprofessional conduct.

Allegation 4

Tara Carmichael admitted on or between June 13, 2017 and September 6, 2018, she exceeded the Licensed Practical Nurse scope of practice by working in the Pediatric Operating Room without authorization to practice in the Perioperative Specialty.

There are certain areas of Licensed Practical Nursing that are “specialized practice” areas. There are additional requirements expected of an LPN if they wish to practice in one of the specialized practice areas.

There are five (5) recognized specialized practice areas: immunization, advanced foot care, perioperative, dialysis, and advanced orthopedic nursing. Perioperative refers to the time period of a patient’s surgical procedure. It includes ward admission, anesthesia, surgery, and recovery.

LPNs wishing to practice in one (1) of these areas must complete additional specialized practice education or advanced training approved by the CLPNA Council as the breadth and depth of the

competencies required to practice in these specialized areas are not taught in the base practical nursing education programs.

An LPN who completes a Council-approved advanced education or training program in a specialized practice area can apply to the Registrar for authorization to practice in this area. If approved, the authorization will be indicated on the member's practice permit.

A member of the CLPNA cannot practice in the specialized practice area without authorization from the Registrar.

Ms. Carmichael completed her perioperative training in Hamilton, Ontario in 2002 at Mohawk College.

Ms. Carmichael applied to the CLPNA on October 29, 2013 to have the perioperative specialty recorded on her license, which would have granted her authorization to work within an Operating Room. The CLPNA determined that Mohawk College's perioperative program was not approved by the CLPNA Council as an advanced education or training program.

On March 27, 2014, the CLPNA sent an email to Ms. Carmichael to the email address she provided to CLPNA to inform her that the CLPNA did not recognize the perioperative program that she took at Mohawk College.

Ms. Carmichael never received authorization from the Registrar to practice in the specialized practice area of perioperative.

Ms. Carmichael worked in the Pediatric Operating Room at the Stollery Children's Hospital between June 13, 2017 and September 6, 2018. During this time, she provided perioperative nursing services.

Ms. Carmichael did not have the authorization to practice in the perioperative specialty.

The Hearing Tribunal considered the facts included in the Agreed Statement of Facts and Ms. Carmichael's admission of unprofessional conduct. The Hearing Tribunal found that the facts and documents included in Exhibit #2 prove that the conduct for Allegation 4 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 or lack of skill or judgment in the provision of professional services:** The conduct in this allegation shows a clear lack of knowledge and judgment on the part of Ms. Carmichael. Ms. Carmichael should have been aware of the fact that she did not have authorization from the Registrar of the CLPNA to practice in the specialized area of perioperative. By practicing in that area without authorization, Ms. Carmichael demonstrated a lack of judgment;

- ii. **Contravention of the Act, a code of ethics or standards of practice:** Ms. Carmichael did not abide by the CLPNA Code of Ethics or the CLPNA Standards of Practice, as acknowledged by her in the Agreed Statement of Facts and Acknowledgment of Unprofessional Conduct and set out in detail above. In this instance, the Hearing Tribunal stresses CLPNA Code of Ethics provision 1.2, which requires that LPNs “Provide only those functions for which they are qualified by education or experience”. In each case such breaches were also found by the Hearing Tribunal;
- iii. **Conduct that harms the integrity of the regulated profession:** Ms. Carmichael harmed the integrity of the profession by practicing in a manner where she did not abide by her ethical requirements or meet the standard of care expected by the public of LPNs.

The Hearing Tribunal accepted Ms. Carmichael’s admission of unprofessional conduct. As expressed above, the conduct underlying this allegation, which relates to practicing in an area where she is not authorized to practice, is something that the CLPNA treats very seriously.

The Hearing Tribunal also finds the conduct breached the CLPNA Code of Ethics and the CLPNA Standards of Practice as set out above and that such breaches are sufficiently serious to constitute unprofessional conduct.

(9) Joint Submission on Penalty

The Complaints Consultant and Ms. Carmichael 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 decision (the “Decision”) shall serve as a reprimand.
2. Ms. Carmichael shall pay 25% of the costs of the investigation and hearing in equal monthly installments over a period of thirty-six (36) months from the date of service of the Decision, or over such other period of time as agreed to by the Complaints Consultant.
3. Ms. Carmichael shall read and reflect on how the following CLPNA documents, located on the CLPNA website at www.clpna.com under the “Governance” tab, will impact her nursing practice. Ms. Carmichael shall provide a written reflection paper of 500 – 750 words, satisfactory to the Complaints Consultant, on how the CLPNA documents will impact her professional practice within thirty (30) days of service of the Decision:
 - 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: Specialized Practice Areas;
- e. CLPNA Practice Guideline: Professional Boundaries;
- f. CLPNA Competency Profile E1: Critical Thinking and Critical Inquiry;
- g. CLPNA Competency Profile E2: Clinical Judgment and Decision Making;
- h. CLPNA Competency Profile W: Professionalism; and
- i. CLPNA Competency Profile Z1: Perioperative Specialty, Self-Regulation and Accountability.

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 written reflection is not satisfactory to the Complaints Consultant, Ms. Carmichael shall within two (2) weeks of being notified by the Complaints Consultant that the reflective paper is not satisfactory, or such longer period as determined by the Complaints Consultant at their sole discretion, submit a revised paper that is acceptable to the Complaints Consultant.

4. Ms. Carmichael shall complete the **LPN Ethics Course** available online at <http://www.learninglpn.ca/index.php/courses> and provide a certificate confirming its successful completion to the Complaints Consultant within sixty (60) days of service of the Decision.

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

5. Ms. Carmichael shall complete, at her own cost, **Professionalism in Nursing (NProf005)** available online at <https://www.icollinsconsulting.com> and provide a certificate confirming its successful completion to the Complaints Consultant within seven (7) months of service of the Decision.

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7. Should Ms. Carmichael 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.

8. Ms. Carmichael 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. Carmichael will keep her contact information current with the CLPNA on an ongoing basis.
9. Should Ms. Carmichael 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 Ms. Carmichael's non-compliance as information under s. 56 of the *Health Professions Act*; or
 - (c) In the case of non-payment of the costs described in paragraph 2 above, suspend Ms. Carmichael'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 Director/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 Tara Carmichael 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 Ms. Carmichael 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: This is a significant factor as the allegations that Ms. Carmichael has acknowledged deal with removing medications that are only supposed to be used by an anesthesiologist and could have had a tragic result when being used improperly. Ms. Carmichael also was employed within one of the specialty areas as an LPN that required Ms. Carmichael to have attended an education facility that was recognized by the CLPNA Council. Ms. Carmichael did not attend one of appropriate educators nor did she have the perioperative specialty condition on her LPN license, and this could have resulted in harm to patients in her care. As such, these allegations are significant breaches and the Hearing Tribunal considers them to be very serious.

The age and experience of the investigated member: Ms. Carmichael was initially registered with the CLPNA on May 5, 2014. Ms. Carmichael began working at the Stollery Children's Hospital on June 13, 2016, where she was employed as an LPN in the Pediatric Operating Room until September 6, 2018. Any LPN practicing, regardless of the amount of time, should have known that the conduct in the allegations was improper – the removal of medications from an operating room, providing dangerous and addictive medication to a family member for personal use, and practicing outside of her area of authorization. Ms. Carmichael was not a newly qualified LPN when these allegations occurred – she should have known better.

The role of the investigated member in acknowledging what occurred: Ms. Carmichael did acknowledge the allegations that were brought forward by her employer. Ms. Carmichael also did cooperate by taking part in an investigation by Jenny Wilson who was the Manager of the

Stollery Pediatric Operating Room, as well as working with both the CLPNA and AUPE by providing the Hearing Tribunal with an Agreed Statement of Facts and Acknowledgement of Unprofessional Conduct and a Joint Submission on Penalty.

Whether the investigated member has already suffered other serious financial or other penalties as a result of the Allegations having been made: Ms. Carmichael did receive a five (5) day suspension without pay of her employment at the Stollery Children's Hospital on October 3, 2018 due to drug diversion and dishonesty. Ms. Carmichael served her five (5) day suspension on September 28, October 1, 2, 3, and 4 inclusively. As a result of the complaint being filed with the CLPNA, Ms. Sandy Davis, Complaints Director for CLPNA requested that Teresa Bateman, Executive Director for the CLPNA, impose an interim condition on Ms. Carmichael's practice permit that would limit her from accessing any narcotics or controlled substances pending the outcome of the disciplinary proceedings pursuant to s.65(1)(a) of the Act due to the serious nature of the allegation of the theft of medications, including a narcotic and a controlled substance, along with various medical supplies. Ms. Bateman did grant the request, by letter dated November 13, 2018, for an interim condition restricting Ms. Carmichael from practicing in an employment setting where she had access to narcotics and where narcotic administration was a part of her role and notified Ms. Carmichael accordingly. The Hearing Tribunal heard that it is due to these restrictions, Ms. Carmichael's employer is presently unable to accommodate Ms. Carmichael's situation and Ms. Carmichael is presently in a no pay situation with her employer.

The impact of the incident(s) on the victim: The Hearing Tribunal did not receive evidence of actual patient harm in this case, however there was potential for serious harm with the types of medications that Ms. Carmichael took from her employer, as they are only supposed to be administered by an anesthesiologist in a setting where adequate patient monitoring is possible and resuscitative equipment is readily available as there is a risk of respiratory depression, which can be fatal. Therefore, there was certainly the potential for harm to victims both in the operating rooms where Ms. Carmichael was practicing without authorization and for BV who was being provided with narcotics without prescription and without proper monitoring.

The presence or absence of any mitigating circumstances: The Hearing Tribunal was made aware that BV was abusive towards Ms. Carmichael and that the relationship has since ended.

The need to promote specific and general deterrence and, thereby protect the public and ensure safe and proper practice: Regarding specific deterrence, there is a need to impose sanctions on Ms. Carmichael as she should be aware that her behavior is not acceptable and falls below the expectations of an LPN. Regarding general deterrence, the public should also be made aware that this type of behavior will not be tolerated by the CLPNA and such behavior will be dealt with in a serious manner. CLPNA does have a discipline process which helps to ensure that LPNs are competent and self-regulated professionals and the public needs to be reassured that this standard is upheld.

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 engage in unprofessional conduct. The CLPNA will deal with any breaches in the Act, the CLPNA Code of Ethics and the CLPNA Standards of Practice in a way that reflects the seriousness of the conduct and for the purpose of protecting the public.

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 decision (the “Decision”) shall serve as a reprimand.
2. Ms. Carmichael shall pay 25% of the costs of the investigation and hearing in equal monthly installments over a period of thirty-six (36) months from the date of service of the Decision, or over such other period of time as agreed to by the Complaints Consultant.
3. Ms. Carmichael shall read and reflect on how the following CLPNA documents, located on the CLPNA website at www.clpna.com under the “Governance” tab, will impact her nursing practice. Ms. Carmichael shall provide a written reflection paper of 500 – 750 words, satisfactory to the Complaints Consultant, on how the CLPNA documents will impact her professional practice within thirty (30) days of service of the Decision:
 - 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: Specialized Practice Areas;
 - e. CLPNA Practice Guideline: Professional Boundaries;

- f. CLPNA Competency Profile E1: Critical Thinking and Critical Inquiry;
- g. CLPNA Competency Profile E2: Clinical Judgment and Decision Making;
- h. CLPNA Competency Profile W: Professionalism; and
- i. CLPNA Competency Profile Z1: Perioperative Specialty, Self-Regulation and Accountability.

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 written reflection is not satisfactory to the Complaints Consultant, Ms. Carmichael shall within two (2) weeks of being notified by the Complaints Consultant that the reflective paper is not satisfactory, or such longer period as determined by the Complaints Consultant at their sole discretion, submit a revised paper that is acceptable to the Complaints Consultant.

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 - (b) Treat Ms. Carmichael's non-compliance as information under s. 56 of the *Health Professions Act*; or
 - (c) In the case of non-payment of the costs described in paragraph 2 above, suspend Ms. Carmichael'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 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.

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 31st of DECEMBER 2019 IN THE CITY OF EDMONTON, ALBERTA.

THE COLLEGE OF LICENSED PRACTICAL NURSES OF ALBERTA



Kelly Anesty, LPN
Chair, Hearing Tribunal