

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 CARLENE SMALL**

**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 CARLENE SMALL, LPN #37610, 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 CLPNA in Edmonton, Alberta on February 14, 2020 with the following individuals present:

Hearing Tribunal:

Nancy Brook, Public Member, Chairperson
Verna Ruskowsky, LPN, Licensed Practical Nurse (“LPN”)
Mohamed Beltaifa, LPN

Staff:

Gregory Sim, Legal Counsel for the Complaints Director, CLPNA
Sandy Davis, Complaints Director, CLPNA
Alisha Hurley, Legal Counsel for the Complaints Director, CLPNA

Investigated Member:

Carlene Small, LPN (“Ms. Small” or “Investigated Member”)
Chris Erickson, Legal Counsel 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. Small 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. Small was initially licensed as an LPN in Alberta on January 1, 2014.

By letter dated December 2, 2016, the CLPNA received a complaint (the "Complaint") from Mr. Paul Dhaliwal, Administrator at Wentworth Manor ("Wentworth") in Calgary, Alberta. Mr. Dhaliwal reported concerns with the professional conduct of Carlene Small, LPN ("Ms. Small") and notified CLPNA of the termination of her employment.

On December 2, 2016, Sandy Davis, Complaints Director for the CLPNA provided notice of the Complaint to Ms. Small and advised her of the following:

- a) as a result of the seriousness of the Complaint she was recommending Ms. Small's practice permit be immediately suspended, pursuant to s. 65(1) of the *Health Professions Act*, R.S.A. 2000, c. H-7 (the "Act");
- b) the person designated by Council of the CLPNA to make the determination of whether to suspend Ms. Small's license would be Teresa Bateman;
- c) The Complaints Director would be conducting a preliminary investigation into the matter pursuant to s. 55(2)(d) of the Act.

On December 2, 2016, the Complaints Director recommended to Ms. Bateman that an interim suspension of Ms. Small's practice permit be imposed. Also, on December 2, 2016, Ms. Bateman considered the recommendation from the Complaints Director and determined that Ms. Small's practice permit would be suspended pending the outcome of the investigation and any discipline proceedings. This interim suspension remains in place.

On December 20, 2016, pursuant to s. 20 of the Act, the Complaints Director appointed Phillip Northrup as Investigator (the "Investigator"). The Investigator conducted an investigation into the Complaint (the "Investigation").

On January 25, 2017, the Investigator was in contact with Constable Josh Turnbull of the Calgary Police Service ("CPS"). Cst. Turnbull advised that the CPS was in the midst of an investigation into Ms. Small's conduct and wanted to ensure that CLPNA did not interfere with the police investigation. The CPS investigation was concluded on March 7, 2017 with the CPS laying criminal charges against Ms. Small.

As a result of the criminal proceedings, the Investigation was put on hold by way of a Standstill Agreement dated April 4, 2017 (the "Standstill Agreement").

On November 30, 2018, the Complaints Director provided notice to counsel for Ms. Small that CLPNA was dissolving the Standstill Agreement.

The Investigator completed the Investigation on March 13, 2019 and provided an Investigation Report (the "Report").

By letter dated August 23, 2019 from the Complaints Director, Ms. Small received notice that this matter would be referred to a hearing pursuant to s. 66(3)(a) of the Act, along with a copy of the

Statement of Allegations and Investigation Report. A copy of the correspondence was sent to counsel for Ms. Small.

A Notice of Hearing, Notice to Attend, and Notice to Produce were served upon Ms. Small under cover of letter dated January 14, 2020.

(4) Allegations

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

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

1. On or about October 31, 2016, Small failed to maintain professional boundaries in the care of an elderly female client with cognitive impairment, or inappropriately touched the client in a sexual manner, or both, by doing one or both of the following:
 - a. Placing her hands on the client’s breasts, over the client’s clothes, and rubbing or jiggling the client’s breasts; and
 - b. Remarking upon whether the client liked it when a man did this to the client’s breasts.
2. On or about October 2016, Small failed to maintain professional boundaries in facilitated “coffee chat” conversations with a group of elderly clients participating in an Adult Day Program by doing one or more of the following:
 - a. In a conversation on the topic of love at first sight, Small turned the conversation to discuss young people and “friends with benefits”, and asked one or more clients whether they knew what “friends with benefits” meant;
 - b. In a conversation on the topic of what you do when you get up in the morning, Small made a comment about her son masturbating, or touching his penis, when he was little.
3. Withdrawn.
4. During the period between April 4, 2017 and January 31, 2019, or thereabouts, Small failed to keep CLPNA apprised of the status of criminal proceedings in which Small was the subject, contrary to a Standstill Agreement entered into by Small and CLPNA on April 4, 2017.”

(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. Small 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 Director 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. Small'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. Small.

Allegation 1

Ms. Small admitted on or about October 31, 2016, Small failed to maintain professional boundaries in the care of an elderly female client with cognitive impairment, or inappropriately touched the client in a sexual manner, or both, by doing one or both of the following:

- a. Placing her hands on the client's breasts, over the client's clothes, and rubbing or jiggling the client's breasts; and
- b. Remarking upon whether the client liked it when a man did this to the client's breasts.

On October 31, 2016, Ms. Small was facilitating a morning "coffee chat" discussion with clients, which was a component of the Adult Day Program. During the discussion, Ms. Small asked OD, a cognitively impaired client, about her recent trip to Banff. Ms. Small asked OD if she had gone to Banff with a man. Ms. Small then reached out and rubbed the breasts of OD, asking OD whether she liked when a man does that.

Ms. Small's actions were witnessed by an HCA and a practicum student.

The conduct that Ms. Small admitted to is far from the expected behavior of an LPN. An LPN is expected to treat their patients with respect. This sexual touching of a patient is completely unacceptable and not tolerated by the profession. Ms. Small should have known better.

Ms. Small's conduct shows an extreme lack of judgment, contravenes the Code of Ethics and Standards of Practice for LPNs for the reasons discussed below, and harms the integrity of the regulated profession by breaching her position of trust with the people under her care. This conduct harms the integrity and reputation of the profession, by violating her position of trust as an LPN.

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;
and
- c) Conduct that harms the integrity of the regulated profession.

Allegation 2

Ms. Small admitted on or about October 2016, Small failed to maintain professional boundaries in facilitated “coffee chat” conversations with a group of elderly clients participating in an Adult Day Program by doing one or more of the following:

- a. In a conversation on the topic of love at first sight, Small turned the conversation to discuss young people and “friends with benefits”, and asked one or more clients whether they knew what “friends with benefits” meant;
- b. In a conversation on the topic of what you do when you get up in the morning, Small made a comment about her son masturbating, or touching his penis, when he was little.

In October 2016, in another “coffee chat” session, Ms. Small asked the client participants what they did first thing in the morning. After receiving standard answers from the clients such as “brushing teeth” and “going to the washroom”, Ms. Small volunteered that when her son was young he would touch his penis.

The discussion was witnessed by an HCA, who ended the “coffee chat” session and moved the clients on to the next part of the ADP.

Ms. Small admitted to having the above conversations with her clients. The discussion about Ms. Small’s son touching his penis in the morning was not only offensive and improper; it was not a conversation she should, as an LPN, be engaged in with her clients in this setting.

With regard to part “a” of Allegation #2, the Hearing Tribunal was not given evidence about the conversation in which Ms. Small made the comment “friends with benefits”, therefore, none of the Hearing Tribunal’s findings relate to this alleged discussion between the residents and Ms. Small.

In this situation, Ms. Small demonstrated an exceptional lack of judgement. This conduct also contravened the Act, Code of Ethics and Standards of Practice for the reasons discussed below, and therefore the Hearing Tribunal finds Ms. Small’s conduct to be unprofessional. These sexual references made in this setting, reflect poorly on the profession and harm the trust and honor of the profession, and therefore harm the integrity of the profession.

The Hearing Tribunal finds that the conduct admitted to amounts to unprofessional conduct as defined in s. 1(1)(pp) of the 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;
- and
- c) Conduct that harms the integrity of the regulated profession.

Allegation 3

Withdrawn.

Allegation 4

Ms. Small admitted during the period between April 4, 2017 and January 31, 2019, or thereabouts, Small failed to keep CLPNA apprised of the status of criminal proceedings in which Small was the subject, contrary to a Standstill Agreement entered into by Small and CLPNA on April 4, 2017.

The Calgary Police investigated Ms. Small's conduct in relation to Allegation 1.

As a result of the ongoing criminal proceedings, Ms. Small entered into the Standstill Agreement on April 4, 2017. The Standstill Agreement required Ms. Small to keep the CLPNA apprised of the status of any criminal proceedings. A copy of the Standstill Agreement is attached in **Exhibit #2**.

On November 30, 2018, the Complaints Director wrote a letter to counsel for Ms. Small, copied by registered mail, advising of the dissolution of the Standstill Agreement.

On January 10, 2019, the Investigator was in contact with counsel for Ms. Small, who advised he was no longer representing Ms. Small.

On January 31, 2019, the Investigator was contacted by Ms. Small's new counsel. Ms. Small's new counsel provided the Investigator with a copy of the transcript of proceedings from Ms. Small's criminal hearing, which had taken place on December 20, 2017. At the time, Ms. Small pled guilty to the charge of Assault under s. 266 of the Criminal Code and was granted an absolute discharge by the Court. A copy of the transcript is attached at **Exhibit #2**.

Neither Ms. Small nor her counsel advised the CLPNA of the status of her criminal proceedings prior to January 31, 2019.

When Ms. Small entered into a Standstill Agreement with CLPNA, she agreed contractually to report to CLPNA, but as she has admitted, she failed to keep that contractual agreement. Being an LPN means that you occupy a position of trust, and as such, there is an expectation of honesty. Failing to report according to the Standstill Agreement, is a violation of the trust and honesty expected from an LPN. In this conduct, Ms. Small has shown a lack of judgment but also contravened the Code of Ethics and Standards of Practice for the reasons discussed below. The profession of nursing has to uphold its integrity of honesty and trust; Ms. Small's conduct, harms the integrity of the profession.

The Hearing Tribunal finds that the conduct admitted to amounts to unprofessional conduct as defined in s. 1(1)(pp) of the 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;
and
- c) Conduct that harms the integrity of the regulated profession.

The conduct breached the following principles and standards set out in CLPNA's Code of Ethics ("CLPNA Code of Ethics") and CLPNA's Standards of Practice for Licensed Practical Nurses in Canada ("CLPNA Standards of Practice").

Code of Ethics

In the above findings of unprofessional conduct the Hearing Tribunal finds that Ms. Small's conduct 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 – 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.
- b. Principle 2: Responsibility to Clients – LPNs have a commitment to provide safe and competent care for their clients. Principle 2 specifically provides that LPNs:
 - 2.7 Develop trusting, therapeutic relationships, while maintaining professional boundaries; and
 - 2.8 Use evidence and judgement to guide nursing decisions.
- c. Principle 3: Responsibility to the Profession – LPNs have a commitment to their profession and foster the respect and trust of their clients, health care colleagues and the public. Principle 3 specifically provides that LPNs:
 - 3.1 Maintain the standards of the profession and conduct themselves in a manner that upholds the integrity of the profession;
 - 3.3 Practise in a manner that is consistent with the privilege and responsibility of self-regulation; and
 - 3.4 Promote workplace practices and policies that facilitate professional practice in accordance with the principles, standards, laws and regulations under which they are accountable.
- d. Principle 5: Responsibility to Self – LPNs recognize and function within their personal and professional competence and value systems. Principle 5 specifically provides that LPNs:

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

A copy of the Code of Ethics for Licensed Practical Nurses in Canada adopted by the CLPNA on June 3, 2013 is in **Exhibit #2**.

As an LPN, Ms. Small is governed by the CLPNA Code of Ethics and is expected to provide a safe place for her clients; instead, her actions failed to nurture trusting relationships with clients and showed a lack of judgment guiding her work. She is also expected to follow the law and regulations regarding her job but she did not do this. Ms. Small is in a position of trust; she breached this trust and failed to maintain the high standards which maintain the integrity of the profession. Moreover, her actions demonstrated that she did not practice in a manner consistent with the responsibility of self-regulation. Ms. Small failed to provide a safe space or follow the regulations of the profession; this failure has violated her responsibilities under the Code. Finally, her failure in reporting to CLPNA as she was required to do under the Standstill Agreement, brings into question her honesty, integrity and trustworthiness.

Standards of Practice

The Hearing Tribunal finds that Ms. Small's conduct breached the following Standards of Practice for Licensed Practical Nurses in Canada adopted by the CLPNA on June 3, 2013, which state as follows:

Standard 1: Professional Accountability and Responsibility – LPNs are accountable for their practice and responsible for ensuring that their practice and conduct meet both the standards of the profession and legislative requirements. Standard 1 specifically provides that LPNs:

- 1.9 Practice in a manner consistent with ethical values and obligations of the Code of Ethics for Licensed Practical Nurses.

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

Standard 4: Ethical Practice – LPNs uphold, promote and adhere to the values and beliefs as described in the Canadian Council for 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;
- 4.5 Advocate for the protection and promotion of clients’ right to autonomy, respect, privacy, confidentiality, dignity and access to information;
- 4.6 Maintain professional boundaries in the nurse/client therapeutic relationship at all times; and
- 4.10 Practice with honesty and integrity to maintain the values and reputation of the profession.

A copy of the Standards of Practice for Licensed Practical Nurses in Canada is attached in **Exhibit #2**.

Ms. Small’s conduct violated the Standards of Practice by not adhering to the professional standards of the profession. Improper touching of her client and discussing her son’s morning routine of touching his penis do not demonstrate a practice which aligns with the values of the CLPNA. These actions also undermine a healthy workplace and environment for clients. Ms. Small’s actions show a lack of understanding of what it means to be a regulated professional and the obligations that go along with that privilege. LPNs are also in a position of trust and as such are expected to be honest. When Ms. Small failed to report on her criminal case as requested in the Standstill Agreement, her conduct displayed a serious lack of respect for the agreement with CLPNA, honesty, and trust.

(9) Joint Submission on Penalty

The Complaints Director and Ms. Small 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. Ms. Small shall receive a reprimand with the Hearing Tribunal's written reasons for decision (“the Decision”) to serve as the reprimand;
2. Ms. Small’s practice permit shall remain suspended for a further six months from the date of the hearing;
3. Ms. Small shall be required to complete, at her own cost where applicable, and provide satisfactory evidence of having successfully completed the following courses prior to reinstatement:

(a) Professional Boundaries in Nursing offered by John Collins Consulting Inc.; and

(b) The LPN Ethics Course available online at www.learninglpn.ca/index.php/courses.

If any such course or courses becomes unavailable, equivalent courses may be substituted where approved in advance in writing by the Complaints Director.

4. Ms. Small shall pay 75% of the costs of the investigation and hearing within 36 months of the date of the Hearing Tribunal's written decision.
5. Should Ms. Small fail or be unable to comply with any of the above orders, or if any dispute arises regarding the implementation of these orders, the Complaints Director may do any or all of the following:
 - (a) Refer the matter back to a Hearing Tribunal, which shall retain jurisdiction with respect to penalty;
 - (b) Treat Ms. Small's non-compliance as information for a complaint under s. 56 of the Act; or
 - (c) In the case of non-payment of the costs described in paragraph 4 above, suspend Ms. Small's practice permit until such costs are paid in full or the Complaints Director is satisfied that such costs are being paid in accordance with a schedule of payment agreed to by the Complaints Director.
6. Ms. Small shall provide the CLPNA with her current contact information, including her home mailing address, home and cellular phone numbers, current e-mail address and current employment information. Ms. Small will keep her contact information current with the CLPNA on a regular basis.

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

(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. Small 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 Hearing Tribunal considered the fairness and reasonableness in accordance with the factors laid out in *Jaswal*, and has determined the following findings:

1) The nature and gravity of the proven allegations: Ms. Small crossed professional boundaries with her unprofessional conduct, and this broke the bond of trust the profession expects from their members.

2) The age and experience of the investigated member: Ms. Small has been an LPN since 2011; she moved to Alberta and joined the CLPNA in July 2014. The conduct at issue in this hearing is well beyond what is expected of an LPN and LPNs of all levels of experience should know that such behaviours are unacceptable. Ms. Small has been an LPN long enough to know that her conduct was unacceptable.

3) The previous character of the investigated member and in particular the presence or absence of any prior complaints or convictions: Ms. Small has no prior complaints against her.

4) The age and mental condition of the victim, if any: The clients under Ms. Small's care are elderly and many have mental competency issues, which makes this a vulnerable population. They did not understand and could not defend themselves. Ms. Small was responsible for the safe and competent protection of these people.

5) The number of times the offending conduct was proven to have occurred: Ms. Small's conduct shows a pattern of sexual misconduct and unprofessional behavior.

6) The role of the investigated member in acknowledging what occurred: For the most part, Ms. Small has co-operated with CLPNA, in the preparation with this hearing and has worked with them in order to come to an agreement regarding her conduct. However, the Hearing Tribunal notes that Ms. Small did not uphold her responsibility to report under the Standstill Agreement she had with CLPNA.

7) Whether the investigated member has already suffered other serious financial or other penalties as a result of the allegations having been made: Ms. Small has suffered financial penalties as she was fired from her job, has been unable to work as an LPN for four years, and has been the subject of criminal proceedings in regard to the actions related to Allegation 1.

8) The impact of the incident(s) on the victim: There is no evidence of how these incidents have affected the clients under Ms. Small's care.

9) The presence or absence of any mitigating circumstances: the Hearing Tribunal is not aware of any relevant mitigating circumstances.

10) The need to promote specific and general deterrence and, thereby to protect the public and ensure the safe and proper practice: It is important to the profession of LPNs to maintain the Code of Ethics and Standards of Practice and uphold the Act, 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.

11) The need to maintain the public's confidence in the integrity of the profession: 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.

12) The range of sentence in other similar cases: the Hearing Tribunal was not made aware of any sentences in similar cases.

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. Ms. Small shall receive a reprimand with the Hearing Tribunal's written reasons for decision ("the Decision") to serve as the reprimand;
2. Ms. Small's practice permit shall remain suspended for a further six months from the date of the hearing;
3. Ms. Small shall be required to complete, at her own cost where applicable, and provide satisfactory evidence of having successfully completed the following courses prior to reinstatement:
 - (a) Professional Boundaries in Nursing offered by John Collins Consulting Inc.; and
 - (b) The LPN Ethics Course available online at www.learninglpn.ca/index.php/courses.

If any such course or courses becomes unavailable, equivalent courses may be substituted where approved in advance in writing by the Complaints Director.

4. Ms. Small shall pay 75% of the costs of the investigation and hearing within 36 months of the date of the Hearing Tribunal's written decision.
5. Should Ms. Small fail or be unable to comply with any of the above orders, or if any dispute arises regarding the implementation of these orders, the Complaints Director may do any or all of the following:
 - (d) Refer the matter back to a Hearing Tribunal, which shall retain jurisdiction with respect to penalty;
 - (e) Treat Ms. Small's non-compliance as information for a complaint under s. 56 of the Act; or
 - (f) In the case of non-payment of the costs described in paragraph 4 above, suspend Ms. Small's practice permit until such costs are paid in full or the Complaints Director is satisfied that such costs are being paid in accordance with a schedule of payment agreed to by the Complaints Director.

6. Ms. Small shall provide the CLPNA with her current contact information, including her home mailing address, home and cellular phone numbers, current e-mail address and current employment information. Ms. Small will keep her contact information current with the CLPNA on a regular basis.

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 6th DAY OF APRIL 2020 IN THE VILLAGE OF RYLEY, ALBERTA.

THE COLLEGE OF LICENSED PRACTICAL NURSES OF ALBERTA

A handwritten signature in blue ink that reads "N. Brook". The signature is written in a cursive, flowing style.

Nancy Brook, Public Member
Chair, Hearing Tribunal