

**IN THE MATTER OF A HEARING UNDER THE *HEALTH PROFESSIONS ACT* REGARDING THE
CONDUCT OF GOTAM SEVADA, LPN #36315, WHILE A MEMBER OF THE COLLEGE OF LICENSED
PRACTICAL NURSES OF ALBERTA**

DECISION OF THE HEARING TRIBUNAL

[1] Hearing

The Hearing was conducted at Aloft Calgary University Hotel in Calgary, Alberta on August 13, 2020 with the following individuals present:

Hearing Tribunal:

Michelle Stolz, Licensed Practical Nurse (“LPN”), Chairperson
Jan Schaller, LPN
Sheila Pratchler, LPN
Nancy Brook, Public Member

Independent Legal Counsel for the Hearing Tribunal:

Julie Gagnon

Staff:

Katrina Haymond, Legal Counsel for the Complaints Director
Sandy Davis, Complaints Director, College of Licensed Practical Nurses of Alberta (“CLPNA”)

Investigated Member:

Gotam Sevada, LPN
Carol Drennan, AUPE Representative for the member

[2] Preliminary Matters

The hearing was open to the public pursuant to section 78 of the Health Professions Act, RSA 2000, c. H-7 (the “HPA”).

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

[3] Background

Gotam Sevada was an LPN within the meaning of the HPA at all material times, and more particularly, was registered with CLPNA as an LPN at the time of the complaint. Mr. Sevada was initially licensed as an LPN in Alberta on April 22, 2013.

The complaint was received pursuant to s. 57 of the HPA. On February 6, 2020, the CLPNA received notification from the employer of Gotam Sevada, LPN that Mr. Sevada had received a three day unpaid suspension from Unit 71/72 at Foothills Medical Center “FMC”. The complaint stated that on or about December 8, 2019, Mr. Sevada allegedly placed a pillow near or over patient AS’ head or face while providing assistance with AS’ care.

In accordance with s. 55(2)(d) of the Act, Ms. Sandy Davis, Complaints Director for CLPNA (the “Complaints Director”) appointed Katie Emter, Investigator for CLPNA (the “Investigator”) to investigate the complaint. Mr. Sevada received notice of the complaint and the investigation by letter dated February 6, 2020.

On March 6, 2020, the Investigator concluded the investigation and submitted the investigation report to the Complaints Director.

After reviewing the Investigation Report, the Complaints Director determined there was sufficient evidence the matter should be referred to the Hearings Director in accordance with s. 66(3)(a) of the HPA.

Gotam Sevada received notice the matter was referred to a hearing, as well as a copy of the Investigation Report and Statement of Allegations under cover of letter dated April 24, 2020.

A Notice of Hearing Notice to Attend and Notice to Produce respecting the complaint were served upon Mr. Sevada under cover of letter dated July 9, 2020.

[4] Allegations

The Allegations in the Statement of Allegations are:

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

1. On or about December 8, 2019 placed a pillow near or over patient AS’ head or face while providing assistance with AS’ care.

It is further alleged that your conduct constitutes “unprofessional conduct” as defined in s. 1(1)(pp)(i)(ii)(xii) of the *Health Professions Act*, R.S.A. 2000, c. H-7, in particular:

1. Your conduct breaches one or [more] of the following *Standards of Practice for Licensed Practical Nurses in Canada*: Standard 1: Professional Accountability and Responsibility, Indicator 1.5, 1.6, Standard 2: Knowledge-Based Practice, Indicator 2.1, 2.11; Standard 3: Service to the Public and Self-Regulation, Indicator 3.3, 3.4;

2. Your conduct breaches one or more of the following sections of the *Code of Ethics for Licensed Practical Nurses in Canada*: Principle 2: Responsibility to Clients, Indicator 2.9, Principle 3: Responsibility to the Profession, Indicator 3.1, 3.3, 3.4.”

[5] Exhibits

The following exhibits were entered at the hearing:

Exhibit #1: Agreed Exhibit Book with Tabs 1 to 15

Exhibit #2: Hand drawn map of AS’ room as drawn by Rachel Parent, LPN

Exhibit #3: One-page summary titled “Phone Interview with Rachel Parent, LPN”

Exhibit #4: Handwritten note titled “CLPNA Statement of Investigations Page 7 of 7” dated February 27, 2020

Exhibit #5: Handwritten note “CLPNA Statement of Investigations Page 6 of 7” dated February 27, 2020

[6] Witnesses

The following individuals were called as witnesses in the hearing:

Margaret Lachance
Rachel Parent
Betty Du
Kamal Dhillon
Gotam Sevada

The Hearing Tribunal recognizes some of the evidence it may be asked to accept and consider in this matter may be hearsay evidence. The Hearing Tribunal concludes that hearsay evidence can be admissible when it is determined the central issues have been established or where there is additional evidence to support the Allegations. All issues of guilt or innocence are considered on a balance of probabilities. The onus is on CLPNA to establish on a balance of probabilities the facts as alleged in the Statement of Allegations occurred and that it rises to the level of unprofessional conduct as defined in the Act.

The following is a summary of the evidence given by each witness:

Margaret Lachance:

Margaret Lachance is the current manager of Unit 71/72 at FMC and has been in that role for four years. Unit 72 consists of 38 beds with a combination of types of patients, with the majority awaiting long-term care or alternate placement to the community. Ms. Lachance provided testimony stating that in the morning of December 20, 2019, Rachel Parent, LPN, approached her

in her office and asked if she could speak to her regarding an incident that had occurred on December 8, 2019. According to Ms. Lachance, Ms. Parent stated that she delayed reporting an incident as she needed time to think through what happened that night as it was so upsetting. However, after taking the time to think about the incident she could not live without bringing this concern forward. The patient in this case, AS, is known to be aggressive and had an extensive care plan that was posted on his door (the "Care Plan") as well as in SCM, an electronic health record, that listed strategies in dealing with him. AS' main trigger for his behavior was personal care. In the Care Plan it specifically stated that staff should "wear plastic face shield when changing pt" (Exhibit 1, Tab 9).

Ms. Parent reported that on December 8, 2019 during 0600 rounds, she was providing assistance for personal care on patient AS along with co-workers Gotam Sevada (LPN), Betty Du, Registered Nurse ("RN") who was the primary nurse for AS that shift, and Kamal Dhillon, Health Care Aide ("HCA"). Ms. Parent explained that she and Mr. Sevada were at the head of the bed and the RN and HCA were at the foot of the bed. While they were providing patient care to AS, the patient became volatile with his language and then spat in the face of Mr. Sevada. At that time, Mr. Sevada picked up a pillow and placed it on AS' face. The pillow was on the patient's face momentarily. Ms. Parent told Ms. Lachance she asked Mr. Sevada to stop and told everyone to leave the room. Ms. Parent stated she sat with the patient after.

Ms. Lachance asked Ms. Parent if she had spoken to anyone about it and she indicated she had not. Ms. Parent was very upset during this meeting and mentioned she had not been able to sleep and was thinking about it all the time. She told Ms. Lachance she felt torn about bringing the allegation forward, about her relationship with her colleagues but it was not something she could ignore. Ms. Lachance asked Ms. Parent to prepare an email about the incident, which was received by Ms. Lachance later that day (Exhibit 1, Tab 10).

Ms. Lachance then started an investigation into the alleged incident. She first contacted Human Resources and set up interviews with the other people that were in the room. She contacted Mr. Sevada on December 23, 2019 and informed him he was being put on a paid administrative leave based on a complaint of patient abuse she received regarding him. This leave would continue until Ms. Lachance had the chance to interview all the witnesses. She also contacted the Persons for Protections in Care ("PPC") and the patient's family and let them know of the allegation and that she was starting the investigation. As it was Christmas, she was unable to conduct interviews until after the holidays. She started interviews December 28, 2019. These interviews were conducted by herself, Monica Consul and Human Resources. The interviews that day were with Betty Du, Rachel Parent and Kamal Dhillon. Ms. Du confirmed AS was aggressive and that the target of his aggression appeared to be Mr. Sevada and that AS did, in fact, spit in the face of Mr. Sevada. Ms. Du stated she saw Mr. Sevada pick up a pillow in his hand but could not confirm if the pillow was over AS' face but said it was "very very close".

Ms. Lachance also interviewed Ms. Dhillon who made it very clear from the beginning she did not want to be involved. Ms. Dhillon had childcare issues so they could not do the interview in person but did it over the phone. Ms. Dhillon confirmed that she was at the foot of the bed and said Mr.

Sevada had a pillow but could not say what it was used for. She said it could have been used as a shield to protect himself from the spit but could not confirm where the pillow was in relation to the patient's face. Ms. Lachance also mentioned that, at a later date, CLPNA contacted her to say they were having difficulty getting in touch with Ms. Dhillon. Ms. Lachance asked Ms. Dhillon about this and Ms. Dhillon said that the CLPNA investigator told her it was not mandatory, but they would appreciate her getting in touch with them. Ms. Lachance's sense was that Ms. Dhillon felt she would get in trouble but was not sure in what context she felt that. Ms. Dhillon did tell her she would call them back, but Ms. Lachance was not sure if she ever did.

They then interviewed Rachel Parent as part of the formal investigation process. There was nothing different from the initial meeting and the answers she gave during the formal interview process. She really spoke about feeling as though it was her responsibility and that AS did not have a voice of his own to report and that it was her obligation.

On January 10, 2020, Ms. Lachance interviewed Gotam Sevada with Human Resources, AUPE representative and Monica Consul also present. She said Mr. Sevada denied remembering the incident occurred including being spit on or picking up the pillow. He did not remember if he used the pillow as a shield or for any other reason. He had no recollection. He did recall the patient was known to spit but could not recall this particular incident. He did recall being asked to help that night but no other aspects of the night. Mr. Sevada did say that AS had spit on him before and did not think it was a big deal, he just washed it off. But he could not recall AS spitting on him that particular night. He was asked directly if he had put the pillow on the patient's face and he said, "I don't remember" and said he did not believe he did. Ms. Lachance said she asked him if he would have picked up the pillow to protect himself, he could not confirm using a pillow. Although Ms. Lachance said it would not be appropriate to use a pillow as a shield as there was Personal Protective Equipment ("PPE") to use and that the patient was vulnerable, in bed, with four people around him. Using the pillow would be horrific for AS.

Ms. Lachance concluded her investigation as she felt she had sufficient evidence to find the incident did, in fact, occur based on a probability of facts. She said she had three eyewitnesses, one of whom was beside him and stated that he put a pillow on the face, one saw him pick up the pillow and another witness who stated the pillow as very, very close.

Mr. Sevada received a three-day unpaid suspension by way of letter written on January 15, 2020 (Exhibit 1 Tab 3). Ms. Lachance stated she did that because the patient was volatile. She had wanted more and took into account how traumatic it was for staff and the population they work with. The population can be difficult however she had an employee who was really distraught about the incident. As there was a three-day suspension issued, CLPNA was informed. She also informed PPC and the patient's family.

Ms. Lachance did say if, at any point in time during the initial interview he said he used the pillow as a shield, it would have made a difference. She said she even offered that as a possible reason to Mr. Sevada and he just said he did not use the pillow and that he could not remember the incident. She said if someone was spitting and used the pillow as a shield while backing away

that would have been one thing but that was not communicated to her. They could only go based on the evidence that they had for the outcome.

Mr. Sevada has grieved the discipline although it has not gone to grievance yet. Mr. Sevada went on extended sick leave after the suspension. He did return for a brief time during COVID, but he is off again, so there has not been an opportunity to proceed to grievance at this time.

Ms. Lachance testified in depth as to the Care Plan for AS, that it was on the door and in SCM and that there was a note on the whiteboard telling staff to refer to the Care Plan.

On cross-examination Ms. Lachance stated she does not know Mr. Sevada well as she works days and he works a straight night rotation. She confirmed that there had been no previous complaints about patient abuse regarding Mr. Sevada.

She also confirmed that only one of the people present in the room that night brought the complaint forward. Each person in the room that night did have a different vantage point and that was evident during the investigation.

Ms. Lachance stated that the face shields are readily available to staff, that they are outside on a cart and they were also in the storeroom. They are a part of the stock. The rooms in that hallway are private isolation rooms so PPE is always on the carts, whether the cart outside that room or another one very close. All equipment was 30 seconds away from that room.

Ms. Lachance said that during the initial interview with Mr. Sevada they tried to use examples of different things he could have actually done with the pillow to try to explore what might have happened. Examples they used were a “if it wasn’t on the face was it close to his body?” and “Could you have tried to shield yourself?” Mr. Sevada told them he did not recall. He could only remember going into the room and helping with AS’ care.

There was no re-direct from the Complaints Director and there were no questions from the Hearing Tribunal.

Rachel Parent

Rachel Parent has been registered as an LPN since 2014, she did her final practicum in school on Unit 71/72 at FMC where she was subsequently hired upon graduation. She is currently employed on the same units in a 0.6 full-time equivalent (“FTE”). She was in the same FTE at the time of the alleged incident.

Patient AS was known to be difficult, cognitively impaired and could be physically and verbally abusive. Ms. Parent could not remember his exact diagnosis, but he was severely cognitively impaired and had known behavioral issues. AS’ mood could fluctuate, and she said she could provide one-person care to him but at other times he would require four person assistance. He would use “very colorful language” which she described as racist and derogatory. He was known to kick, hit, pinch, try to dig his nails into people, and try to twist people’s fingers. She did not

recall ever hearing of AS spitting on people prior to December 8, 2019. He was not the only patient like this on the Unit.

Ms. Parent was asked to review AS' care plan (Exhibit 1, Tab 9). Ms. Parent stated she was aware that orders for AS were usually kept on SCM but could not say for sure if they were on a clipboard on the door of AS' room. She did admit that she did not feel it was common practice for staff to review the Care Plans even though they knew where to find them. Therefore, she was not familiar with AS' care plan suggesting staff wear a plastic face shield. Ms. Parent stated the face shields were in the clean utility room, although before COVID, she had never needed one or worn one.

Ms. Parent stated that on December 8, 2019, she was working the night shift. Betty Du was the primary nurse for AS. Ms. Parent was sitting at the nursing station and was asked to assist with AS' care at approximately 0600h in room 57. Ms. Parent explained how AS' room was laid out. The sink was on the left, then the bed, with the head of the bed being on the left. There was a bedside table on AS' right and there was a tray table, one that swings over the bed. Ms. Parent provided a drawing of the patient's room which was entered as Exhibit 2. She stated that AS was incontinent and needed to have his Attends and gown changed as they were soiled. Ms. Du, Ms. Dhillon and Ms. Parent were in the room and Mr. Sevada was in the hall. Ms. Parent said she called Mr. Sevada in to assist as the patient was starting to become more agitated. She said she had the patient's right arm, Mr. Sevada took the patient's left arm (he stood a little bit down from the bedside table), Ms. Du had the patient's right leg and Ms. Dhillon had the patient's left leg. There was constant communication with the patient, explaining what they were doing. AS was kicking, punching, swearing, and saying very derogatory things the whole time like "bitches", "Get this bastard away from me" and "dirty" which appeared to be directed to Mr. Sevada. Mr. Sevada did not react.

Patient AS then spat at Mr. Sevada, who looked shocked and appalled. Mr. Sevada then took the pillow from the bedside table, covered the entire patient's face for a moment, then took it off and dropped it or put it on the side of the bed. Ms. Parent stood to demonstrate what she observed. She took the pillow with two hands, held it down flat where the patient's face would have been for a couple of seconds and then took it off. Ms. Parent said she was staring at AS' face after the pillow was removed. Ms. Parent said she looked right at the patient's face after, she did not look at Ms. Du or Ms. Dhillon. She then told everyone to "Stop" and "Let go". She then told the patient they were done. Everyone left the room at the same time except for her. Ms. Parent stayed in the room after everyone had left to settle the patient, move the bedside table back within the patient's reach and lower the bed. She said the patient settled very quickly. He was quiet and just laying in the bed.

Ms. Parent said Mr. Sevada did not say anything throughout the whole ordeal. He did appear shocked, appalled, and angry when AS spit in his face. She is unsure if she saw him for the remainder of the shift. Ms. Parent said she has not had any conversations with Mr. Sevada, Ms. Du, Ms. Dhillon or any other coworkers about the incident.

Ms. Parent said she had never seen any staff member use a pillow in that manner before and that it was not an appropriate method of dealing with patients. She had also never seen anyone, including Mr. Sevada, use a pillow as a shield if the patient was spitting. She had worked in tandem with Mr. Sevada before.

She admitted to her delay in reporting the incident to management. However, as the days went by she was still emotional, shocked and appalled. She said she was having trouble sleeping because of it. She was also unsure how to proceed as it was her first time in reporting an incident.

On December 20, 2019 she did go to Margaret Lachance's office to report the incident.

Prior to the incident she had a very good working relationship with Mr. Sevada and had no concerns with his conduct.

Following the meeting in Ms. Lachance's office, Mr. Sevada did contact her to have a "general conversation" as he asked if she knew anything about what was going on with him. He asked her if management talked to her and she advised him to talk to management.

On cross-examination, Ms. Parent reiterated she had no problems with Mr. Sevada in the past and that he had no other allegations of patient abuse.

Ms. Parent said she did not know face shields were part of AS' Care Plan and was not aware of any readily available in the patient room or outside.

Ms. Parent said Mr. Sevada completely covered AS' face with the pillow, pressing down for a moment, then removed the pillow on his own. AS was just laying there. She was asked if she heard any muffled sounds while the pillow was on AS' face and she said she did not. She said she did not say anything at the time as it happened so fast. Ms. Parent could not say for sure where the pillow ended up as she was looking at AS' face. The only thing she could recall saying was "Stop" in general, not directed at anyone. She said she did not talk to Mr. Sevada after they were done.

Ms. Parent was asked if she remembers what she said to the CLPNA investigator (entered as Exhibit 3 at this point) and she could not recall. She was asked again why she did not report it right away, Ms. Parent said she was shocked and appalled and it took her some time to process what she had seen and how she was feeling about it. It was also difficult for her that nobody else mentioned it. She was the least senior person there and she did not know what to do. It was suggested to Ms. Parent that if it was so shocking, it would have been brought to the attention of the other people in the room. Despite that Ms. Parent did not second guess what she saw.

There was no debriefing in the hall after, there was no conversation with Mr. Sevada after either. Ms. Parent heard Mr. Sevada walk directly to the staff bathroom after.

On re-direct it was noted that Exhibit 3 was from the interview with the Investigator from CLPNA. The exhibit was the Investigator's summary of the interview. Despite the Investigator writing that Ms. Parent had instructed Mr. Sevada to leave when AS was angered, Ms. Parent said she did not remember saying anything specifically to Mr. Sevada, that it was a more general statement. When she said "Stop", everyone was still holding AS.

The Hearing Tribunal asked Ms. Parent to clarify if Mr. Sevada had one or two hands on the pillow. Ms. Parent said it was two hands and his body was restraining the arm of AS. She confirmed she saw Mr. Sevada use two hands to put the pillow over AS' face and that Mr. Sevada's body was over AS' loose arm.

Ms. Parent was holding AS' arm when the pillow was put on AS' face but could not recall if AS was struggling at that time as she was not looking at his body. He was agitated the whole time but remembers him settling after the pillow was removed from his face.

Ms. Parent was asked to clarify her reasoning for saying "Stop". Ms. Parent said it was several things that prompted her to say it. It was indicated as they were done, to help calm the patient, and to get everyone away from him.

Kamal Dhillon (HCA)

Kamal Dhillon has worked as an HCA at FMC since 2008. She has worked as an HCA on Unit 71/72 since 2015. She works part-time. Ms. Dhillon was working on December 8, 2019. She stated she does know AS and that he has some behavior issues. She said that when her manager called her about the night in question, she could remember a little bit. Ms. Haymond showed Ms. Dhillon a document she said was given to her prior to the hearing, but Ms. Dhillon did not remember receiving the document. She was reminded that she had affirmed to tell the truth. She was asked again if she remembered what happened the night of December 8, 2019. At that point she said she did not know where Ms. Parent was standing but that she was at the patient's feet. She could recall changing AS' incontinence pad. Ms. Dhillon said she could see Mr. Sevada holding a pillow in the distance, that he picked it up from the dresser and was using it as a wall as AS was spitting and Mr. Sevada was trying to protect himself. She then said that she was really confused and did not know much, that it had been a long time. Ms. Dhillon could not recall if Mr. Sevada held the pillow down onto the patient's face.

Ms. Dhillon said she did receive two calls from the CLPNA Investigator but admits to not calling back. She said she already told her manager everything. She was asked if she was hesitant to participate in the investigation and she said she did not know anything about what happened, so she had nothing to say.

Ms. Dhillon indicated she had worked with Mr. Sevada many times. She denied having any outside relationship with him.

Upon further questioning, Ms. Dhillon remembered Mr. Sevada was on the left side of AS by the window. She said it was just quick patient care but that the patient was yelling and spitting. Ms.

Dhillon said Mr. Sevada was just holding the pillow but her head was down, although at one point she looked and saw him with the pillow but does not know what he did with it.

On cross-examination, Ms. Dhillon said she has previously worked with Mr. Sevada and that he was very nice and helpful. She said he cares about the patients. She remembered that AS was not Mr. Sevada's patient that shift and was not his assignment. She also recalled AS was not her patient that night.

Ms. Dhillon said she would be able to see AS' face if she had turned her neck but she was just trying to hold his legs and feet. She did not hear any muffled sounds or AS trying to get his breath. She said it was not her doing the pericare but someone else did.

She did say that sometimes AS was calm and sometimes he spit and was combative. Ms. Dhillon said AS was spitting that night. She did not have a mask or face shield on. She also stated that she does not recall anyone saying anything. Ms. Dhillon did say if she saw somebody abusing a patient, she would report it.

On re-direct, Ms. Dhillon was asked how she could recall that Mr. Sevada was not the primary nurse for AS and she replied he was sitting in the other hallway. She then said maybe it was the same day or maybe it was another day.

Ms. Dhillon denied speaking to Mr. Sevada about the hearing.

Xiaoping "Betty" Du (RN)

Betty Du first became a Registered Nurse in 2011. She has worked at FMC since 2012, she has been on Unit 71/72 since September 2016. She currently works a 0.84 FTE and was in that line at the time the alleged incident occurred.

Ms. Du stated that the night shift on December 8, 2019 was "okay" but became much busier in the morning. She had a patient who was becoming sicker. She was the primary nurse for AS that shift. Patient AS was a brain injury patient who was unpredictable and could be verbally and physically abusive. Ms. Du said she was called by Ms. Dhillon to help change patient AS. She said she was holding the patient's right leg, Ms. Parent was holding the patient's right arm, Mr. Sevada was holding the patient's left arm and Ms. Dhillon was holding the patient's left leg. AS was becoming aggressive during pericare and was saying "I'm going to kill you." She admitted she was "sort of" familiar with AS' care plan. She was instructed to turn to Exhibit 1, Tab 9. Ms. Du had not seen AS spit before but that he did punch, hit and bite. She admitted to never wearing a face shield when providing care for AS.

Ms. Du said she was holding AS' leg and that he was fighting like usual, she was helping to clean the patient, and something caught her attention. She did see Mr. Sevada turn his face and wipe it. That was when she realized that the patient spit. She then saw Mr. Sevada grab a pillow. She demonstrated the patient was laying flat and the pillow was across AS' face. The pillow did block her view and she could not say if the pillow touched AS' face but that it was very close. Ms.

Haymond asked if it was about six inches away and Ms. Du said “No, like, close the patient’s face”. She could not really see if the pillow touched the patient’s face but said it was possible. She said she was focused on holding AS’ leg and cleaning him. She recalls Ms. Parent may have said something but cannot remember what was said. The charge nurse for the shift came to the door and asked Ms. Du if she did an assessment on her sick patient and Ms. Du left the room right away. She was the first one to leave the room.

Ms. Du denied ever using a pillow to stop a patient from spitting on her and said it would not be an acceptable method to deal with that type of situation. Ms. Du said she has never seen Mr. Sevada use the pillow for protection in the past.

Ms. Du said she has not spoken to Ms. Parent or Ms. Dhillon about the alleged incident except to ask Ms. Parent “this Monday” if she remembered the charge nurse coming to the door and talking to Ms. Du.

She said she did not report anything from that incident as her focus was on her sick patient.

On cross-examination, Ms. Du reiterated she was on the right side of the foot of the bed on December 8, 2019 in room 57. She could not recall hearing any muffled sounds and stated that the patient was moving. She said AS’ face was blocked by the pillow but could not say how far the pillow was away from his face. She had never seen AS spit prior to this. She had never seen any other staff pick up a pillow and hold it against themselves when a patient spit.

Ms. Du said she assumed Mr. Sevada must have only had one hand on the pillow as he had to hold the patient’s left arm. She did not recall hearing Ms. Parent say anything and that she was not sure if Ms. Parent said anything, but all the staff let go of the patient at the same time. Ms. Du said she would report it if she saw any kind of abuse.

On re-direct, Ms. Du said that all the staff did let go of AS at the same time, but she was not sure if it was because Ms. Parent said anything.

The Hearing Tribunal had no further questions of Ms. Du.

Gotam Sevada

Gotam Sevada had worked as an HCA with Alberta Health Services since January 4, 2011. Upon completion of the LPN course in 2013, he started working as an LPN. He works nights on Unit 71/72.

Mr. Sevada stated there was nothing unusual about the shift on December 8, 2019. Mr. Sevada recalled being on the “other side” and being called into AS’ room to help with his care. He said he has worked on Unit 71/72 for a long time and it was not the first time AS had spit on him. He had been spit on around five or six times before by AS and that is why it seemed like a normal night.

Mr. Sevada admitted to only putting on gloves and not putting on a face shield as the people in the room were struggling with AS. If he was not held, the patient would “kick you, bite you, scratch you and spit at you”. When he was spit on in the past by this patient he would feel bad. He usually did wear a face mask but that night he was in a hurry.

He said Ms. Du was at the foot of the bed with Ms. Dhillon. Ms. Parent was on the patient's right arm and he went to the left arm and held it with both of his hands as the patient is very strong.

On December 20, 2019, he said he received a call from Margaret Lachance around 3-4pm. She told him there was a serious allegation made against him and to not come in that night for his scheduled shift. Mr. Sevada said he asked Ms. Lachance what the allegations were, and she told him that she could not disclose that. He said he was completely unaware about what it could be, and she refused to give him any information. On December 23, 2019 he received an email describing there was an abuse allegation made against him. It was a very stressful moment for him, and he was not able to sleep properly. He went to his doctor and took a couple of days off.

On January 8, 2020, Mr. Sevada said he received a phone call from Ms. Lachance that he would be interviewed regarding the allegation. He said he asked her what happened, he said he found out at that time it was an allegation regarding AS. He admitted to calling Ms. Parent at that time to inquire about the allegation.

On January 10, 2020, Mr. Sevada had his interview with Ms. Lachance, Human Resources with his AUPE representative. During the interview, Mr. Sevada said the night was a typical night. He had no recollection of anything unusual therefore he did not report anything. He had been spit on before by AS so it was not unusual. Mr. Sevada said it happened 3-4-5 times before. Nobody had discussed this outside the room. Everybody just left and he went home. He continued working his shifts from the December 8 until December 20, 2019. He was completely unaware of the allegation.

Mr. Sevada said he was holding the arm of AS as they were changing him, and that AS was saying bad words. Right at the end of the care, AS spit in Mr. Sevada's face. He said he kept his right hand, which is his stronger hand, on the patient and picked up the pillow on the table just to shield himself, AS kept spitting. Mr. Sevada said he admits to holding the pillow near the patient's face to prevent AS from spitting on him. He said he did move it closer to AS' face and the patient continued to spit. Mr. Sevada stood up to demonstrate.

Mr. Sevada denies putting the pillow below AS' face and pressing it with his hands. He said if he did that AS “would spit. He will scratch me”. Mr. Sevada said he used one hand to hold up the pillow to shield his spit. He denies pushing the pillow down. He said AS is a patient and he is vulnerable, and he suffers from a mental illness. Mr. Sevada said it is his duty as a nurse to settle people, to look after them. “Why would I hurt him deliberately because he spit on me?” Mr. Sevada does not recall hearing anyone say anything. He stated again it was just a normal night.

On cross-examination, Ms. Haymond confirmed the timeline of events with Mr. Sevada. On December 20, 2019, he received a phone call from Ms. Lachance telling him he was put on paid

administrative leave pending an investigation. On December 23, 2019, he received an email saying there was a complaint regarding an incident from his shift December 8 regarding patient abuse. Then on January 10, 2020, the initial interview between management and Mr. Sevada where he was advised the allegation was he put a pillow over a patient's face. At the interview on January 10, 2020, Mr. Sevada stated he was unsure who was working with him, but they did tell him during the interview who his co-workers were.

He agreed that putting a pillow over a patient's face, like Ms. Parent described and pressing down, would be unacceptable. He also agreed if it happened it would constitute patient abuse. Mr. Sevada stated he would remember if he did something like that. He said that using the pillow as a shield was not a technique taught in school. He did say that it was his mistake that he went to help his colleagues without putting on a face shield as he knew the patient could spit on him. He could not recall if he had ever used a pillow as a shield before. Mr. Sevada once again said AS had previously spit on him, three, four or five times. He did not document each time it had occurred.

Mr. Sevada said it is his habit to wear a face mask when he went into AS' room but he did not have time on December 8, 2019. He did say he knows where to find the face shields, in the clean utility room. Mr. Sevada stated that to his recollection, December 8, 2019 was the first time he used a pillow as a shield.

He said that after his January 10, 2020 interview he thought about it a lot and was able to remember the incident clearly, better on the day of the hearing than on January 10. He said he was not angry when he was spit on but it was not pleasant as the spit went into his eye, lips, all over his face.

Ms. Haymond provided Mr. Sevada with a copy of Exhibit 2 (the map drawn by Ms. Parent). He pointed to where everyone was standing. He said the pillow was on the table to the right of him. He turned his head when AS spit on him and he pulled the pillow towards AS' face, then more towards his face. He was unable to say how close the patient's face was to the pillow. He again denied pushing the pillow into the patient's face.

Mr. Sevada said he did not recall what happened on December 8, 2019 during the January 10, 2020 interview. He said he was under a lot of stress, was on medication and was not sleeping properly. He admitted to not saying in the interview that he did not remember picking up the pillow while providing care to AS or holding it over his face or using it as a shield. He agrees with the testimony of Ms. Lachance regarding the January 10, 2020 interview. Mr. Sevada stated during a second interview he was able to recall events more clearly. He said the second interview was on or around January 15, 2020. The second interview was because he had called Ms. Parent. Mr. Sevada said during that interview he told them he used the pillow as a shield.

Ms. Haymond showed Mr. Sevada a CLPNA Statement of Investigations which was signed by Mr. Sevada and the Investigator. He did confirm it was his handwriting. In the statement he wrote "I do not remember picking a pillow and putting on patient's face; however, sometimes I use

pillow to make wall to avoid his spit". Mr. Sevada said he does not know why he wrote that because he has never done it. Further down he wrote "I often use a pillow as a wall, not on a patient's face, I had no reflection of this specific night". Mr. Sevada said that is when the Investigator asked him to write what he could remember at that time. He then said he only used the pillow as a shield because AS kept spitting on him. This CLPNA Statement of Investigations was entered as Exhibit 4.

Ms. Haymond showed Mr. Sevada another CLPNA Statement of Investigation which was again signed by Mr. Sevada and the Investigator. Mr. Sevada wrote "I'm not a hundred percent sure I did this" but stated he meant picking up the pillow not putting it on AS' face and pushing it down. This was entered as Exhibit 5.

Mr. Sevada admitted to not remembering what happened during his interview on January 10, 2020 with management then again on February 27, 2020 when interviewed by the CLPNA Investigator but that he remembers today.

Mr. Sevada stated he believed his lack of memory on January 10, 2020 was due to lack of sleep and stress. He has been on a "significant medical leave" since. He denied having issues with anyone, has no conflicts with co-workers. Mr. Sevada denied having any outside relationship with Ms. Dhillon.

On re-direct, Mr. Sevada admitted to not wearing a face shield although he usually does wear one when providing care to AS. He admitted that if he had worn his face shield as per the care plan, he would never have had to use the pillow as a face shield. He has no memory of ever using a pillow as a shield previously.

Rebuttal Evidence – Margaret Lachance

Ms. Haymond made an application to introduce rebuttal evidence on a narrow point and requested Margaret Lachance be re-called to ask about any subsequent meetings with Mr. Sevada. Ms. Drennan had no objection to the application. The Hearing Tribunal granted the application.

Margaret Lachance stated that the first interview on January 10, 2020 was to interview Mr. Sevada regarding the original complaint of patient abuse. After the interview it was brought to her attention that Mr. Sevada had contacted Rachel Parent despite being advised to speak to nobody about it in his suspension letter dated December 23, 2019. Ms. Lachance had been shown a text message that Ms. Parent received from Mr. Sevada. At that point Human Resources recommended a second investigation.

A second interview was held between management and Mr. Sevada on January 15, 2020 where it was evident that Mr. Sevada had not read the clause in the letter telling him to not contact anyone. Ms. Lachance said that at no point in time during the second interview was the first investigation mentioned. It was a formal interview regarding breach of confidentiality with formal questions regarding the same. No further discipline was issued, they just re-iterated

confidentiality. She said that the first time she heard of Mr. Sevada using the pillow as a shield was during his testimony at the hearing. She said during her initial interview with him she offered that as a possibility and he denied it at that point.

[7] Closing Submissions

Ms. Haymond briefly reviewed the witness evidence. She noted there were divergent versions in the evidence that the Hearing Tribunal would need to reconcile. Ms. Haymond reviewed the factors to consider in determining the credibility of a witness. Ms. Haymond submitted that the allegation had been proven and that the conduct constitutes unprofessional conduct, under section 1(1)(pp)(i), (ii) and (xii) of the HPA.

Ms. Drennan also reviewed the factors in assessing credibility and referred to the Court decision in *Faryna v Chorny*. She noted that Mr. Sevada admitted to picking up the pillow and using it as a shield. He had forgotten to grab his face covering. However, Mr. Sevada did not admit to placing the pillow on AS' face or pressing the pillow down. Ms. Drennan noted that the standard of proof as noted in *F.H. v McDougall*, is on a balance of probabilities and that the evidence must be sufficiently clear, convincing and cogent to satisfy the standard of proof.

[8] Decision of the Hearing Tribunal

The onus is on the Complaints Director to establish the facts as alleged in the Statement of Allegations occurred. The standard of proof in civil cases is the balance of probabilities.

The Hearing Tribunal has 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 the conduct rises to the threshold of unprofessional conduct in the circumstances.

The Hearing Tribunal has carefully considered the testimony of the witnesses and the exhibits. The Hearing Tribunal finds the particulars in Allegation 1 are proven and the conduct constitutes unprofessional conduct. The Hearing Tribunal's reasons are set out below.

[9] Hearing Tribunal Findings and Reasons

Allegation 1: It is alleged that Gotam Sevada, LPN, while practising as a Licensed Practical Nurse engaged in unprofessional conduct by on or about December 8, 2019 placed a pillow near or over patient AS' head or face while providing assistance with AS' care.

The Hearing Tribunal considered the evidence of each of the witnesses. The Hearing Tribunal found Margaret Lachance to be a credible witness. Despite not being an eyewitness to the events, she investigated the allegation and had very good knowledge of the incident. She had nothing to gain or benefit from in providing testimony. Her evidence was consistent and plausible. The Hearing Tribunal placed significant weight on Ms. Lachance's testimony. In

particular, the Hearing Tribunal accepted her evidence that she had tried, during her investigation into the incident, to give Mr. Sevada an option of saying he had used the pillow as a shield, but that he denied this. The Hearing Tribunal also accepted her evidence given as a rebuttal witness that the incident was not discussed during Mr. Sevada's second interview (regarding a different incident of breaching confidentiality).

The Hearing Tribunal found the testimony provided by Rachel Parent to be credible and plausible. Throughout her testimony, Ms. Parent was consistent in her recollection of events. There was no motivation to fabricate the event she reported and in fact she faced significant stress between the date the event occurred and the date she chose to report the incident to Ms. Lachance. Ms. Parent was the junior member of the team and, in fact, had more to lose in terms of relationships at work by reporting it. The Hearing Tribunal placed significant weight on Ms. Parent's testimony.

Kamal Dhillon stated multiple times that she did not remember the incident or even the night in question. She declined to return calls from the CLPNA investigator to participate in the investigation. She continually retracted statements she made during her testimony. The Hearing Tribunal found she was not a credible witness and put no weight on her testimony.

The Hearing Tribunal determined that Betty Du was a credible witness. She had nothing to gain from providing the testimony she did. However, she had limited information and did not add much to the case except that she recalled seeing Mr. Sevada holding a pillow very close to AS' head. She admits the pillow blocked her view. The Hearing Tribunal put some weight on her testimony.

The Hearing Tribunal found Mr. Sevada's testimony to be inconsistent. The evidence provided by Margaret Lachance as well as the previous information provided by Mr. Sevada during the CLPNA investigation (Exhibits 4 and 5) showed varying accounts of what happened by Mr. Sevada. When questioned by Ms. Haymond, Mr. Sevada stated his memory had improved over time. The Hearing Tribunal did not find this plausible. During the workplace investigation, Mr. Sevada did not remember patient AS spitting on him. Despite Ms. Lachance suggesting to him during the workplace investigation that he used the pillow as a shield, he denied it during the January 10, 2020 workplace investigation. His account was different during the CLPNA investigation (Exhibits 4 and 5). In the statement made during the CLPNA investigation, Mr. Sevada wrote on February 27, 2020: "I do not remember picking a pillow and putting on patient's face, however, some time I use pillow to make wall to avoid his spit." He also remembered that patient AS spit on his face. At the hearing, his account had changed again, and he claimed to have a recollection of the night in question and of using the pillow as a shield when AS spit on him. He also testified that he had not used a pillow as a shield with AS before or any other patient. The Hearing Tribunal does not accept that Mr. Sevada's memory improved over time. In addition, given the varying accounts by Mr. Sevada, the Hearing Tribunal did not find him to be credible in relation to the events of December 8, 2019.

For these reasons, the Hearing Tribunal preferred the testimony of Ms. Lachance and Ms. Parent over the testimony of Mr. Sevada. Ms. Lachance and Ms. Parent each had a clear and consistent recollection of the events testified to, whereas Mr. Sevada had varying accounts of the events. This variance negatively affected Mr. Sevada's credibility.

The Hearing Tribunal finds on December 8, 2019, Mr. Sevada, while providing care to AS, picked up a pillow, after being spit on by AS and placed the pillow near or over patient AS' head or face. The Hearing Tribunal accepts that this event occurred for only a couple of seconds before Mr. Sevada removed the pillow from AS' head or face. The allegation is proven on a balance of probabilities.

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

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

Mr. Sevada displayed a lack of knowledge, skill, or judgement by placing a pillow near or over the patient's head or face. Instead of wearing appropriate PPE/face shield as outlined in the Care Plan, Mr. Sevada held a pillow at or near AS' head/face. Even if the purpose were to prevent AS from spitting on Mr. Sevada, this is not an appropriate method of providing care or ensuring the protection of the LPN. Mr. Sevada's evidence was that he had been spat on by AS previously and that he was aware of the Care Plan. If Mr. Sevada had, in fact, been wearing a face shield as indicated in the Care Plan, there would have been no need to pick up the pillow.

The conduct breached the following principles and standards set out in CLPNA's Code of Ethics and Standards of Practical Nurses in Canada:

CLPNA Code of Ethics:

- 2.9 Identify and minimize risks to clients.
- 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.

- 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.

Mr. Sevada's testimony was that he was aware of the detailed Care Plan of the patient and failed to follow it. He also failed to identify the risks associated with holding the pillow near or over the face/head area of the patient. By holding the pillow near or over the face/head area of patient AS, Mr. Sevada failed to conduct himself in a manner that upholds the integrity of the profession. This act fails to abide by the standards of the profession as well.

Mr. Sevada failed to practice in a manner consistent with privilege and responsibility of self-regulation by using the pillow in the manner that he did. Mr. Sevada admitted that if he had put on a face shield as detailed clearly in the Care Plan that the act of placing the pillow at or near the face/head area would not have occurred as he would have been properly protected.

The Hearing Tribunal finds that Gotam Sevada failed to promote workplace practices and policies that facilitate professional practice by holding a pillow at or near the face/head area of a patient.

CLPNA Standards of Practice:

- 1.5 Identify and report any circumstances that potentially impede professional, ethical, or legal practice.
- 1.6: Take action to avoid and/or minimize harm in situations in which client safety and well being are being compromised.
- 2.1 Possess current knowledge to support critical thinking and professional judgement.
- 2.11 Use critical inquiry to assess, plan and evaluate the implications of interventions that impact client outcomes.
- 3.3 Support and contribute to an environment that promotes and supports safe, effective, and ethical practice.
- 3.4 Promote a culture of safety by using established occupational health and safety practices, infection control, and other safety measures to protect clients, self and colleagues from illness and injury.

Mr. Sevada failed to identify circumstances that potentially impeded his professional practice. The Hearing Tribunal found that the actions of Mr. Sevada could potentially increase the risk of harming the patient. The act of holding the pillow near or over the face/head area of a patient could have significant consequences to the patient's physical and mental well-being. Mr. Sevada did not demonstrate critical thinking or professional judgement.

Mr. Sevada failed to use critical inquiry in this incident as he felt it was “no different than any other night”. He failed to realize the significant impact the act of using the pillow in the manner that he did, could have on the patient.

The Hearing Tribunal found the actions of Mr. Sevada significantly compromised the culture of safety for himself, patient AS, and his colleagues. AS was known to be a difficult patient who was known to kick, punch, bite, spit and was verbally abusive. Holding the pillow over or near the face/neck area of a patient does not support safe, effective, and ethical practice.

The breaches of the Code of Ethics and Standards of Practice are serious and constitute unprofessional conduct.

Finally, the Hearing Tribunal found that the conduct harms the integrity of the profession. The public places its trust in the profession of licensed practical nursing to provide safe and compassionate care. This trust is undermined by an LPN holding a pillow over or near a patient’s head or face.

The Hearing Tribunal accepts that Gotam Sevada has suffered significant stress arising from the incident. The Hearing Tribunal does not find that Mr. Sevada committed the act of placing the pillow near or over AS’ head or face out of malice, but instead that he reacted out of shock and surprise in an inappropriate and unprofessional manner.

[10] Conclusion of the Hearing Tribunal

Allegation 1 is proven on a balance of probabilities. The Hearing Tribunal finds the conduct in Allegation 1 constitutes unprofessional conduct, for the reasons noted above.

The Hearing Tribunal will receive submissions from the parties on sanction. The Hearing Tribunal requests that the parties discuss the timing and method of providing submissions on penalty to the Hearing Tribunal. If the parties are unable to agree on a proposed procedure and timing, the Hearing Tribunal will make further directions as required.

DATED THE 16 DAY OF SEPTEMBER, 2020

THE COLLEGE OF LICENSED PRACTICAL NURSES OF ALBERTA

M. Stolz, LPN
Michelle Stolz, LPN
Chair, Hearing Tribunal