

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 JASMINE FENSKE**

**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 JASMINE FENSKE, LPN #46925, WHILE A MEMBER OF THE COLLEGE OF LICENSED
PRACTICAL NURSES OF ALBERTA (“CLPNA”)**

DECISION OF THE HEARING TRIBUNAL

(1) Hearing

The hearing was conducted via Videoconference using Zoom on November 5, 2020 with the following individuals present:

Hearing Tribunal:

Kelly Annelly, Licensed Practical Nurse (“LPN”) Chairperson
Patricia Riopel, LPN
James Lees, Public Member

Staff:

Evie Thorne, Legal Counsel for the Complaints Consultant, CLPNA
Susan Blatz, Complaints Consultant, CLPNA

Investigated Member:

Jasmine Fenske, LPN (“Ms. Fenske 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. Fenske was an LPN within the meaning of the *Health Professions Act* (the “Act”) at all material times, and more particularly, was registered with CLPNA as an LPN at the time of the complaint. Ms. Fenske was initially licensed as an LPN in Alberta on October 11, 2018.

By letter dated May 4, 2020, the CLPNA received a complaint (the “Complaint”) from Carrie Hewson, Stollery Relief Team Program Manager at Stollery Children’s Hospital in Edmonton, AB

pursuant to s. 57 of the Act. The Complaint stated that Ms. Fenske's, LPN, employment at Alberta Health Services was terminated, effective May 4, 2020, as a result of multiple privacy breaches.

In accordance with s. 55(2)(d) and s. 20(1) of the Act, Ms. Sandy Davis, Complaints Director for the CLPNA (the "Complaints Director") appointed Susan Blatz, Complaints Consultant for the CLPNA, (the "Complaints Consultant") to handle the Complaint and to conduct an investigation into the Complaint.

Ms. Fenske received notice of the Complaint and the investigation by letter dated May 11, 2020.

On August 18, 2020, the Complaints Consultant concluded the investigation.

Following the conclusion of the Investigation, 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. Fenske received notice that the matter was referred to a hearing as well as a copy of the Statement of Allegations and the Investigation Report under cover of letter dated September 22, 2020.

A Statement of Allegations, Notice of Hearing, Notice to Attend and Notice to Produce were served upon Ms. Fenske under cover of letter dated October 5, 2020.

(4) Allegations

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

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

1. On or between November 4, 2019 and February 26, 2020, accessed patients' personal health information on Connect Care without proper authority or justification on 68 occasions.
2. On or about February 26, 2020, accessed her own personal health information on Connect Care without proper authority or justification."

(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. Fenske 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. Fenske'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. Fenske.

Allegation 1

Jasmine Fenske admitted on or between November 4, 2019 and February 26, 2020, she accessed patients' personal health information on Connect Care without proper authority or justification on 68 occasions.

Between November 4, 2019 and February 26, 2020, Ms. Fenske was employed at the Stollery Children's Hospital located at the University of Alberta Hospital. Ms. Fenske normally worked on Units 5G4 and 4D.

During this period, Ms. Fenske opened and looked at patients' charts on the clinical information system, Connect Care, on 68 occasions. These patients were located on other units and/or were not under Ms. Fenske's care. Ms. Fenske had no authorization or justification to access these patients' personal health information.

Ms. Fenske had taken the AHS Collection, Use and Disclosure of Information module on three separate occasions over the last year. As a part of the module, Ms. Fenske signed a declaration agreeing to follow the rules and not to breach patient confidentiality.

A routine privacy audit was completed by the privacy office at the University of Alberta Hospital. The initial audit flagged the inappropriate access by Ms. Fenske of her own personal health information on February 26, 2020. As a result of Ms. Fenske accessing her own personal health information a formal investigation was initiated, and several meetings then took place with Ms. Fenske.

It was during these meetings that Ms. Fenske's unauthorized access of patients' personal health information on 68 occasions was disclosed.

The Hearing Tribunal considered the facts included in the Agreed Statement of Facts and Ms. Fenske'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;
- ii. Contravention of the Act, a code of ethics or standards of practice;
- iii. Contravention of another enactment that applies to the profession, and
- xii. Conduct that harms the integrity of the regulated profession.

Ms. Fenske displayed a lack of knowledge of or lack of skill or judgment by accessing patients' personal health information even though these patients were not patients that Ms. Fenske was responsible for providing care to. Ms. Fenske did this on 68 separate occasions over a four-month time period.

Ms. Fenske did not abide by the CLPNA Code of Ethics or the CLPNA Standards of Practice, as acknowledged by Ms. Fenske in the Agreed Statement of Facts and Acknowledgement of Unprofessional Conduct and set out in detail below. The Hearing Tribunal finds the conduct

breached the CLPNA Code of Ethics and the CLPNA Standards of Practice as set out below and that such breaches are sufficiently serious to constitute unprofessional conduct.

Ms. Fenske was in contravention of another enactment that applies to the profession in that she violated the *Health Information Act* by looking at patients' electronic charts that she did not require access to. Ms. Fenske did not safeguard health or personal information with respect to the patients whose electronic health records that she accessed and by doing this violated a policy of her employer: the Alberta Health Services "Privacy and Protection and Information Access Policy".

Ms. Fenske's conduct harmed the integrity of the regulated profession as she behaved in a manner that is not expected of an LPN in a similar situation. Patients in the hospital should be able to expect that LPNs are not looking up their personal information or gaining access to personal records when they are not providing care to that patient.

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"):

CLPNA Code of Ethics:

Ms. Fenske acknowledged that her conduct breached one or more of 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:

Principle 1: Responsibility to the Public - Licensed Practical Nurses, as self-regulating professionals, commit to provide safe, effective, compassionate and ethical care to members of the public. Principle 1 states that LPNs:

- 1.1 Maintain standards of practice, professional competence and conduct.
- 1.5 Provide care directed toward the health and well-being of the person, family, and community.

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

- 2.3 Respect and protect client privacy and hold in confidence information disclosed except in certain narrowly defined exceptions.
 - 2.3.1 Safeguard health and personal information by collecting, storing, using and disclosing it in compliance with relevant legislation and employer policies.

- 2.3.2 Report any situation where private or confidential information is accessed or disclosed without appropriate consent or legal authority, whether deliberately or through error.

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 states that LPNs:

- 3.1 Maintain the standards of the profession and conduct themselves in a manner that upholds the integrity of the profession.
- 3.3 Practice in a manner that is consistent with the privilege and responsibility of self-regulation.
- 3.4 Promote workplace practices and policies that facilitate professional practice in accordance with the principles, standards, laws and regulations under which they are accountable.

Principle 5: Responsibility to Self – LPNs recognize and function within their personal and professional competence and value systems. Principle 5 states that LPNs:

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

CLPNA Standards of Practice:

Ms. Fenske acknowledges that her conduct breached one or more of the following Standards of Practice for Licensed Practical Nurses in Canada adopted by the CLPNA on June 3, 2013, which states 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 states that LPNs:

- 1.1 Practice to their full range of competence within applicable legislation, regulations, by-laws and employer policies.
- 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 states 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.
- 3.8 Practice within the relevant laws governing privacy and confidentiality of personal health information.

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 states 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.

Allegation 2

Jasmine Fenske admitted on or about February 26, 2020, she accessed her own personal health information on Connect Care without proper authority or justification.

On February 26, 2020, Ms. Fenske was working on unit 5G4.

Ms. Fenske had recently been a patient in the hospital and wanted to know her ultrasound and lab results.

During her shift, at approximately 0544 hours, Ms. Fenske used Connect Care to access her own personal health information without proper authority or justification.

A routine privacy audit was completed by the privacy office at the University of Alberta Hospital.

The Hearing Tribunal considered the facts included in the Agreed Statement of Facts and Ms. Fenske’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;
- ii. Contravention of the Act, a code of ethics or standards of practice; and
- xii. Conduct that harms the integrity of the regulated profession.

Ms. Fenske displayed a lack of knowledge of or lack of skill or judgment by accessing her own personal health information. Ms. Fenske had successfully completed the Alberta Health Services' Collection, Use and Disclosure of Information module three (3) times over the last year. As a result of taking this course, Ms. Fenske signed a declaration agreeing to follow the rules and not to breach patient confidentiality. By failing to apply her knowledge about patient privacy and the use and access of patient information, Ms. Fenske displayed a lack of knowledge and judgment. In addition, she breached her declaration by not abiding by the rules, which also demonstrated a lack of knowledge and skill in the provision of professional services.

Ms. Fenske did not abide by the CLPNA Code of Ethics or the CLPNA Standards of Practice, as acknowledged by Ms. Fenske in the Agreed Statement of Facts and Acknowledgement of Unprofessional Conduct and set out in detail above. The Hearing Tribunal 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. The Hearing Tribunal finds the conduct breaches these provisions for the reasons outlined in Allegation 1, above.

Ms. Fenske's conduct harmed the integrity of the regulated profession as she behaved in a manner that is not expected of an LPN in a similar situation. LPNs should not be accessing their own personal health information under any circumstances. Ms. Fenske did not act in a manner of what another LPN would have done in a similar circumstance.

(9) Joint Submission on Penalty

The Complaints Consultant and Ms. Fenske jointly proposed to the Hearing Tribunal a Joint Submission on Penalty, which was entered as Exhibit #3. The Joint Submission on Penalty proposed the following sanctions to the Hearing Tribunal for consideration:

1. The Hearing Tribunal's written reasons for decision ("the Decision") shall serve as a reprimand.
2. Jasmine Fenske shall pay a fine of \$1,500.00 within **36 months** of service of the Decision.
3. Ms. Fenske shall pay 25% of the costs of the investigation and hearing to be paid over a period of **36 months** from service of letter advising of final costs.

- a) A letter advising of the final costs will be forwarded when final costs have been confirmed.
4. Jasmine Fenske 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. Jasmine Fenske shall provide a signed written declaration to Susan Blatz, Complaints Consultant, within **30 days** of service of the Agreement and Undertaking, attesting she has reviewed CLPNA’s documents:
- 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 Interpretive Document: Privacy Legislation in Alberta;
 - e. CLPNA Practice Guideline: Confidentiality;
 - f. CLPNA Competency Profile A1: Critical Thinking;
 - g. CLPNA Competency Profile A2: Clinical Judgment and Decision Making;
 - h. CLPNA Competency Profile C: Professionalism and Leadership.

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

5. Jasmine Fenske shall complete the **LPN Ethics Course** available online at <http://www.learninglpn.ca/index.php/courses> and provide Susan Blatz, Complaints Consultant, with a certificate confirming successful completion of the course within **60 days** of service of the Decision.

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

6. Jasmine Fenske shall, complete the **HIA Awareness Course** offered by Alberta Health Services, available online at <https://www.albertahealthservices.ca/info/Page3962.aspx> and provide Susan Blatz, Complaints Consultant with a certificate confirming successful completion within **60 days** of service of the Decision.

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

7. The sanctions set out above at paragraphs 2-6 will appear as conditions on Jasmine Fenske's practice permit and the Public Registry subject to the following:
 - a) The requirement to complete the remedial education and readings/reflection outlined at paragraphs 4-6 will appear as "CLPNA Monitoring Orders (Conduct)", on Jasmine Fenske's practice permit and the Public Registry until the below sanctions have been satisfactorily completed;
 - i. Readings/Reflection;
 - ii. LPN Ethics Course;
 - iii. HIA Awareness Course.
 - b) The requirement to pay fines and costs, will appear as "Conduct Cost/Fines" on Jasmine Fenske's practice permit and the Public Registry until all costs have been paid as set out above at paragraph 2 and 3.
8. The conditions on Jasmine Fenske's practice permit and on the Public Registry will be removed upon completion of each of the requirements set out above at paragraph 7.
9. Jasmine Fenske shall provide the CLPNA with her contact information, including home mailing address, home and cellular telephone numbers, current e-mail address and current employment information. Jasmine Fenske will keep her contact information current with the CLPNA on an ongoing basis.
10. Should Jasmine Fenske 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.
11. Should Jasmine Fenske 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 Jasmine Fenske's non-compliance as information for a complaint under s. 56 of the Act; or
 - c) In the case of non-payment of the costs described in paragraph 2 above, suspend Jasmine Fenske's practice permit until such costs are paid in full or the Complaints

Consultant is satisfied that such costs are being paid in accordance with a schedule of payment agreed to by the Complaints Consultant.

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

The Hearing Tribunal is aware, while the parties have agreed on a joint submission as to penalty, the Hearing Tribunal is not bound by that submission. Nonetheless, as the decision-maker, the Hearing Tribunal should defer to a joint submission unless the proposed sanction is unfit, unreasonable or contrary to public interest. Joint submissions make for a better process and engage the member in considering the outcome. A rejection of a carefully crafted agreement would undermine the goal of fostering cooperation through joint submissions and may significantly impair the ability of the Complaints Director to enter into such agreements. If the Hearing Tribunal had concerns with the proposed sanctions, the proper process is to notify the parties, articulate the reasons for concern, and give the parties an opportunity to address the concerns through further submissions to the Hearing Tribunal.

The Hearing Tribunal therefore carefully considered the Joint Submission on Penalty proposed by Ms. Fenske 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 Jasmine Fenske 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 was a significant factor as Ms. Fenske demonstrated a lack of skill, knowledge and judgement in relation to these two allegations. Allegation 1 deals with a breach in confidentiality and patients have an expectation of privacy when they are in the care of a healthcare provider. Ms. Fenske had taken Alberta Health Services' Collection, Use and Disclosure of Information module three (3) times over the last year and therefore, she should have been well aware of the importance of patient privacy.

The age and experience of the investigated member: Ms. Fenske has been registered with the CLPNA since October 11, 2018. Ms. Fenske then began working in the float pool at the Stollery Children's Hospital at the University of Alberta Hospital in September 2019. At the time of the allegations Ms. Fenske had been an LPN for approximately 11 months. Ms. Fenske should have had knowledge and been able to demonstrate proper compliance with the *Health Information Act* and Alberta Health Services' privacy policy, which LPNs should be aware of regardless of the stage of their career.

The previous character of the investigated member and in particular the presence or absence of any prior complaints or convictions: There was no evidence of any prior complaints or convictions with respect to Ms. Fenske.

The number of times the offending conduct was proven to have occurred: Ms. Fenske looked up patient electronic health records on 68 occasions without proper authority or justification between November 4, 2019 and February 26, 2020. In addition, on February 26, 2020 Ms. Fenske looked up her own electronic chart in the Connect Care system.

The role of the investigated member in acknowledging what occurred: Ms. Fenske did acknowledge the allegations that were brought forward to the CLPNA by her employer. Ms. Fenske did provide the Hearing Tribunal with an Agreed Statement of Facts, which demonstrates that she took responsibility for her actions. Ms. Fenske also admitted to the allegations in a meeting with her Employer when she disclosed that she accessed patients' health records who were not in her care at the time.

Whether the investigated member has already suffered other serious financial or other penalties as a result of the allegations having been made: Once the investigation took place, Ms. Fenske was terminated on May 4, 2020 as a result of multiple privacy breaches.

The impact of the incident(s) on the victim: Although no evidence of harm to the victims was provided to the Hearing Tribunal, patient privacy is extremely important and there could be a sense of violation when it is not maintained.

The presence or absence of any mitigating circumstances: The Hearing Tribunal was not made aware of any mitigating circumstances other than what was outlined in the Agreed Statement of Facts.

The need to promote specific and general deterrence and, thereby to protect the public and ensure the safe and proper practice: Specific deterrence is required to keep Ms. Fenske from repeating the same conduct in the future. General deterrence is required to ensure that other members in the LPN profession do not engage in this type of conduct and to make it known that this type of conduct will not be tolerated by the CLPNA. LPNs are recognized as independent and capable members of the healthcare team and are self-regulating 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 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 CLPNA Code of Ethics and the CLPNA Standards of Practice, and in doing so to promote specific and general deterrence and, thereby, to protect the public. The Hearing Tribunal has considered this in the deliberation of this matter, and again considered the seriousness of the Investigated Member's actions. The penalties ordered in this case are intended, in part, to demonstrate to the profession and the public that actions and unprofessional conduct such as this is not tolerated and it is intended that these orders will, in part, act as a deterrent to others.

After considering the proposed orders for penalty, the Hearing Tribunal finds the Joint Submission on Penalty is appropriate, reasonable and serves the public interest and therefore accepts the parties' proposed penalties.

(11) Orders of the Hearing Tribunal

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

1. The Hearing Tribunal's written reasons for decision ("the Decision") shall serve as a reprimand.
2. Jasmine Fenske shall pay a fine of \$1,500.00 within **36 months** of service of the Decision.
3. Ms. Fenske shall pay 25% of the costs of the investigation and hearing to be paid over a period of **36 months** from service of letter advising of final costs.

- a) A letter advising of the final costs will be forwarded when final costs have been confirmed.
4. Jasmine Fenske 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. Jasmine Fenske shall provide a signed written declaration to Susan Blatz, Complaints Consultant, within **30 days** of service of the Agreement and Undertaking, attesting she has reviewed CLPNA’s documents:
- 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 Interpretive Document: Privacy Legislation in Alberta;
 - e. CLPNA Practice Guideline: Confidentiality;
 - f. CLPNA Competency Profile A1: Critical Thinking;
 - g. CLPNA Competency Profile A2: Clinical Judgment and Decision Making;
 - h. CLPNA Competency Profile C: Professionalism and Leadership.

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

5. Jasmine Fenske shall complete the **LPN Ethics Course** available online at <http://www.learninglpn.ca/index.php/courses> and provide Susan Blatz, Complaints Consultant, with a certificate confirming successful completion of the course within **60 days** of service of the Decision.

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

6. Jasmine Fenske shall, complete the **HIA Awareness Course** offered by Alberta Health Services, available online at <https://www.albertahealthservices.ca/info/Page3962.aspx> and provide Susan Blatz, Complaints Consultant with a certificate confirming successful completion within **60 days** of service of the Decision.

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

7. The sanctions set out above at paragraphs 2-6 will appear as conditions on Jasmine Fenske's practice permit and the Public Registry subject to the following:
 - a) The requirement to complete the remedial education and readings/reflection outlined at paragraphs 4-6 will appear as "CLPNA Monitoring Orders (Conduct)", on Jasmine Fenske's practice permit and the Public Registry until the below sanctions have been satisfactorily completed;
 - i. Readings/Reflection;
 - ii. LPN Ethics Course;
 - iii. HIA Awareness Course.
 - b) The requirement to pay fines and costs, will appear as "Conduct Cost/Fines" on Jasmine Fenske's practice permit and the Public Registry until all costs have been paid as set out above at paragraph 2 and 3.
8. The conditions on Jasmine Fenske's practice permit and on the Public Registry will be removed upon completion of each of the requirements set out above at paragraph 7.
9. Jasmine Fenske shall provide the CLPNA with her contact information, including home mailing address, home and cellular telephone numbers, current e-mail address and current employment information. Jasmine Fenske will keep her contact information current with the CLPNA on an ongoing basis.
10. Should Jasmine Fenske 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.
11. Should Jasmine Fenske 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 Jasmine Fenske's non-compliance as information for a complaint under s. 56 of the Act; or

- c) In the case of non-payment of the costs described in paragraph 2 above, suspend Jasmine Fenske’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 24th DAY OF NOVEMBER 2020 IN THE CITY OF EDMONTON, ALBERTA.

THE COLLEGE OF LICENSED PRACTICAL NURSES OF ALBERTA



Kelly Anesty, LPN
Chair, Hearing Tribunal