

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 EDWARD REMESZ**

**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 EDWARD REMESZ, LPN #28706, 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 Chateau Nova in Edmonton, Alberta on October 8, 2020 with the following individuals present:

Hearing Tribunal:

Marg Hayne, Public Member, Chairperson
Patricia Riopel, LPN
Deanna Lang, LPN
Marie Concepcion, LPN
Heidi Besuijen, Legal Counsel for the Hearing Tribunal

Staff:

Ayla Akgungor, Legal Counsel for the Complaints Consultant, CLPNA
Susan Blatz, Complaints Consultant, CLPNA

Investigated Member:

Edward Remesz, LPN (“Mr. Remesz” or “Investigated Member”)
Nnam Okoye, 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.

At the outset of the Hearing, Mr. Remesz acknowledged one of the allegations made but the remainder were left to be proven by the Complaints Consultant. Following evidence from a number of people, the Complaints Consultant withdrew the balance of the allegations on the basis that the Complaints Consultant had not established sufficient evidence to discharge the burden of proving Mr. Remesz had engaged in the conduct alleged. Subsequent to this, the parties came to a Joint Agreement on Penalty which was presented to the Hearing Tribunal.

While the Hearing Tribunal heard evidence from a number of witnesses, the allegation which the evidence of this witnesses was to address had been withdrawn. As such, the Hearing Tribunal is

not asked to make any findings of fact in regard of that evidence and for this reason it is not addressed within this decision. The only testimony which the Hearing Tribunal has considered therefore, is the evidence of Mr. Remesz which was proffered to establish the factual basis for his admission to Allegation 1(b).

(3) Background

Mr. Remesz 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. Mr. Remesz was initially licensed as an LPN in Alberta on June 15, 2006.

On November 8, 2019, the CLPNA received a complaint from Darren Oskowsky, a patient care manager at the Royal Alexandra Hospital in Edmonton, Alberta where Mr. Remesz is employed as an LPN. An investigation followed the complaint and the matter was referred to a hearing.

(4) Allegations

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

“It is alleged that EDWARD REMESZ, LPN, while practising as a Licensed Practice Nurse engaged in unprofessional conduct by:

1. On or about September 2, 2019 acted inappropriately towards a patient’s personal property by doing one or more of the following:
 - a) Withdrawn
 - b) Placing the cell phone in the sharps contain.
2. Withdrawn.”

(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.

Mr. Remesz plead guilty to the allegation of on or about September 2, 2019, acting inappropriately towards a patient’s personal property by placing the patient’s cell phone in the sharps container.

(6) Exhibits

The following exhibits were entered at the hearing:

- Exhibit #1: Statement of Allegations
- Exhibit #2: Diagram of AH
- Exhibit #3: Email of KS
- Exhibit #4: Email of JR

(7) Evidence

As previously noted, a number of witnesses were called to give *viva voce* testimony; however, the Complaints Consultant subsequently withdrew the allegation to which their testimony related. As such, the Hearing Tribunal has considered only the *viva voce* evidence of Mr. Remesz in regard of Allegation 1(b).

(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 considered the admission of Mr. Remesz and his evidence in regard of the events in question and finds as facts the events as set out below.

The Hearing Tribunal also accepts Mr. Remesz's admission of unprofessional conduct. 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 Mr. Remesz.

Allegation 1

Mr. Remesz admitted on September 2, 2019, he acted inappropriately towards a patient's personal property by placing the patient's cell phone in a sharps container.

The Hearing Tribunal listened carefully while Mr. Remesz gave his evidence. Mr. Remesz was forthright in providing his testimony and the Hearing Tribunal was satisfied he was a trustworthy witness in that regard.

Mr. Remesz recounted how, on the day in question, he was walking a patient to an x-ray when he passed by T4 or T5 in the emergency area of the Royal Alexander Hospital. Mr. Remesz could

hear another patient yelling profanities, racial slurs and being abusive toward staff members. Mr. Remesz asked the patient he was bringing to get an x-ray to wait while he went to investigate.

Mr. Remesz entered the room in question and asked the patient to stop his behaviours, citing a zero-tolerance policy for abuse towards staff. Mr. Remesz then left the room and continued with bringing his patient to x-ray.

When Mr. Remesz returned from leaving his patient to get an x-ray, he could still hear the patient in T4/T5 yelling racial slurs, profanities, and being hostile towards staff. Mr. Remesz observed security personnel heading towards the room and he remarked to them that the patient needed to go because he was being abusive.

Mr. Remesz entered the room again and noted the patient was in restraints while 4 paramedics were standing in the room. Security was there telling the patient he would have to leave. The paramedics did not assist security but did remove the restraints from the patient. The patient grabbed his bag and, with his cellphone in his hand, sat down and refused to leave. The patient continued to yell obscenities during this time. Security intervened and escorted the patient from the hospital. Two of the paramedics left the room and two remained.

Next, Mr. Remesz observed one of the paramedics damage the patient's cellphone which had been left behind; it was cracked and covered in the patient's blood. Mr. Remesz took the cellphone and threw it in the sharps container in the room. Then Mr. Remesz left the room and carried on with his shift.

Mr. Remesz did not report the incident.

Again, the Hearing Tribunal found Mr. Remesz to be a forthright witness. He recounted events carefully and did not shy away from those parts of them which reflected poorly on him. The Hearing Tribunal is of the view Mr. Remesz is trustworthy as it would, in fact, be in his interest to change the events so as to portray himself in a better light.

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:

- ii) Contravention of the Act, a code of ethics or standards of practice;
- ...
- xii) Conduct that harms the integrity of the regulated profession.

By placing the patient's cellphone in the sharps container rather than reporting its damage and the events surrounding that, Mr. Remesz assisted in covering up its wrongful destruction. It is expected that a professional in his position would have reported the behaviour which was obvious intentional destruction instead of covering that up. A reasonable member of the public

aware of this conduct would have reason to question the integrity of LPNs as professionals. As such, Mr. Remesz engaged in conduct which harms the integrity of his profession.

The conduct also 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:

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.

- Maintain standards of practice, professional competence and conduct.

Principle 3: Responsibility to the Profession Licensed Practical Nurses have a commitment to their profession and foster the respect and trust of their clients, health care colleagues and the public.

- 3.1 Maintain the standards of the profession and conduct themselves in a manner the upholds the integrity of the profession.

Principle 5: Responsibility to Self Licensed Practical Nurses recognize and function within their personal and professional competence and value systems.

- 5.1 Demonstrate honesty, integrity and trustworthiness in all interactions.

CLPNA Standards of Practice:

Principle 1: Professional Accountability and Responsibility Licensed Practical Nurses are accountable for their practice and responsible for ensuring that their practice and conduct meet both the standards of the profession and legislative requirements.

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

Principle 3: Professional Accountability and Responsibility Licensed Practical Nurses 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.

- 3.3 Support and contribute to an environment that promotes and supports safe, effective and ethical practice.

Principle 4: Professional Accountability and Responsibility Licensed Practical Nurses uphold, promote and adhere to the values and beliefs as described in the Canadian Council for Practical Nurse Regulators (CCPNR) Code of Ethics.

- 4.1 Practice in a manner consistent with ethical values and obligations of the Code of Ethics for LPNs.
- 4.10 Practice with honesty and integrity to maintain the values and reputation of the profession.

Failing to report a concern is a form of dishonesty. In disposing of the patient's cellphone rather than reporting its damage, Mr. Remesz failed to uphold the integrity and values of his profession and acted in a manner which was not in keeping with his duty of honesty. His actions detracted from the commitment all LPNs must have to fostering public trust in their regulated profession.

(9) Joint Submission on Penalty

The Complaints Consultant and Mr. Remesz jointly proposed to the Hearing Tribunal a Joint Submission on Penalty. The Joint Submission on Penalty proposed the following sanctions to the Hearing Tribunal for consideration:

1. Edward Remesz shall read and reflect on how the following CLPNA documents will impact his nursing practice. These documents are available on CLPNA's website <http://www.clpna.com/> under "Governance" and will be provided. Edward Remesz shall provide a signed written declaration to the Complaints Consultant, within 30 days of service of the Hearing Tribunal's written decision, attesting he 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 Competency Profile A1: Critical Thinking;
 - e. CLPNA Competency Profile A2: Clinical Judgment and Decision Making; and
 - f. CLPNA Competency Profile C4: Professional Ethics.

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

2. Edward Remesz shall complete the course: LPN Ethics Course available online at <http://www.learninglpn.ca/index.php/courses>. Edward Remesz shall provide the Complaints Consultant with a certificate confirming successful completion of the course within 30 days of service of the Decision.

3. Edward Remesz shall complete the course: Do You Reflect a Positive Image of Nursing available online at <https://www.nurse.com/ce/do-you-reflect-a-positive-image-of-nursing>. Edward Remesz shall provide the Complaints Consultant with a certificate confirming successful completion of the course within 30 days of service of the Decision.
4. The sanctions set out above at paragraphs 1-3 will appear as conditions on Edward Remesz's practice permit and the Public Registry subject to the following:
 - a. The requirement to complete the remedial education and readings outlined at paragraphs 1-3 will appear as "CLPNA Monitoring Orders (Conduct)", on Edward Remesz's practice permit and the Public Registry until the below sanctions have been satisfactorily completed;
 - i. Readings;
 - ii. LPN Ethics Course;
 - iii. Do You Reflect a Positive Image of Nursing Course.
5. The conditions on Mr. Remesz's practice permit and on the Public Registry will be removed upon completion of each of the requirements set out above at paragraph 4.
6. Edward Remesz shall provide the CLPNA with his contact information, including home mailing address, home and cellular telephone numbers, current e-mail address and current employment information. Edward Remesz will keep his contact information current with the CLPNA on an ongoing basis.
7. Should Edward Remesz be unable to comply with any of the deadlines for completion of the penalty orders identified above, the deadlines may, upon written request, be extended for a reasonable period of time with the written consent of the Complaints Consultant.
8. Should Edward Remesz 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; or
 - b. Treat Edward Remesz's non-compliance as information for a complaint under s. 56 of the Act.

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 Mr. Remesz 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 Mr. Remesz 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

1. **The nature and gravity of the proven allegations:** This allegation is serious but also indicative of a lapse in judgment.

2. **The age and experience of the investigated member:** The Hearing Tribunal did not receive any specific information in regard of Mr. Remesz's age or experience which would impact the nature of any sanction.
3. **The previous character of the investigated member and in particular the presence or absence of any prior complaints or convictions:** The Hearing Tribunal was not made aware of any prior complaints relating to Mr. Remesz.
4. **The age and mental condition of the victim, if any:** The Hearing Tribunal did not receive any evidence with regard to the age and mental condition of the victim.
5. **The number of times the offending conduct was proven to have occurred:** The conduct occurred on a single occasion.
6. **The role of the investigated member in acknowledging what occurred:** Mr. Remesz acknowledged his behaviour and expressed regrets in his conduct.
7. **Whether the investigated member has already suffered other serious financial or other penalties as a result of the allegations having been made:** The Hearing Tribunal was not made aware of any other consequences which Mr. Remesz may have experienced in relation to this matter.
8. **The impact of the incident(s) on the victim, and/or:** The Hearing Tribunal was not made aware of the final impact of this incident on the victim.
9. **The presence or absence of any mitigating circumstances:** The Hearing Tribunal was not made aware of any specific 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 well below the standards of an LPN to work to aid in hiding the fact of the destruction of a patient's property. It is important that other LPNs are aware that such conduct is not acceptable and will be met with consequences.
11. **The need to maintain the public's confidence in the integrity of the profession:** It is important that the public maintains its confidence in LPNs as health care providers who act with honesty and integrity at all times.
12. **The range of sentence in other similar cases:** The Hearing Tribunal was not made aware of any sanctions in similar cases.

It is important to the profession of LPNs to maintain the Code of Ethics and Standards of Practice, and in doing so to promote specific and general deterrence and, thereby, to protect the public.

The Hearing Tribunal has considered this in the deliberation of this matter, and again considered the seriousness of the Investigated Member's actions. The penalties ordered in this case are intended, in part, to demonstrate to the profession and the public that actions and unprofessional conduct such as this is not tolerated and it is intended that these orders will, in part, act as a deterrent to others.

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

(11) Orders of the Hearing Tribunal

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

1. Edward Remesz shall read and reflect on how the following CLPNA documents will impact his nursing practice. These documents are available on CLPNA's website <http://www.clpna.com/> under "Governance" and will be provided. Edward Remesz shall provide a signed written declaration to the Complaints Consultant, within 30 days of service of the Hearing Tribunal's written decision, attesting he 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 Competency Profile A1: Critical Thinking;
 - e. CLPNA Competency Profile A2: Clinical Judgment and Decision Making; and
 - f. CLPNA Competency Profile C4: Professional Ethics.

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

2. Edward Remesz shall complete the course: LPN Ethics Course available online at <http://www.learninglpn.ca/index.php/courses>. Edward Remesz shall provide the Complaints Consultant with a certificate confirming successful completion of the course within 30 days of service of the Decision.
3. Edward Remesz shall complete the course: Do You Reflect a Positive Image of Nursing available online at <https://www.nurse.com/ce/do-you-reflect-a-positive-image-of-nursing>. Edward Remesz shall provide the Complaints Consultant with a certificate confirming successful completion of the course within 30 days of service of the Decision.

4. The sanctions set out above at paragraphs 1-3 will appear as conditions on Edward Remesz's practice permit and the Public Registry subject to the following:
 - a. The requirement to complete the remedial education and readings outlined at paragraphs 1-3 will appear as "CLPNA Monitoring Orders (Conduct)", on Edward Remesz's practice permit and the Public Registry until the below sanctions have been satisfactorily completed;
 - iv. Readings;
 - v. LPN Ethics Course;
 - vi. Do You Reflect a Positive Image of Nursing Course.
5. The conditions on Mr. Remesz's practice permit and on the Public Registry will be removed upon completion of each of the requirements set out above at paragraph 4.
6. Edward Remesz shall provide the CLPNA with his contact information, including home mailing address, home and cellular telephone numbers, current e-mail address and current employment information. Edward Remesz will keep his contact information current with the CLPNA on an ongoing basis.
7. Should Edward Remesz be unable to comply with any of the deadlines for completion of the penalty orders identified above, the deadlines may, upon written request, be extended for a reasonable period of time with the written consent of the Complaints Consultant.
8. Should Edward Remesz 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; or
 - b. Treat Edward Remesz's non-compliance as information for a complaint under s. 56 of the Act.

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 JANUARY 25, 2021 IN THE CITY OF EDMONTON, ALBERTA.

THE COLLEGE OF LICENSED PRACTICAL NURSES OF ALBERTA

A handwritten signature in black ink, appearing to read 'M. Hayne', written in a cursive style.

Marg Hayne
Chair, Hearing Tribunal