

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 BRIANA TOLLER**

**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 BRIANA TOLLER, LPN #40352, 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 teleconference on November 10, 2022 with the following individuals present:

Hearing Tribunal:

Michelle Stolz, Licensed Practical Nurse (“LPN”) Chairperson
Jessica Murphy, LPN
Sarita Dighe-Bramwell, Public Member
James Lees, Public Member

Staff:

Jason Kully, Legal Counsel for the Complaints Officer, CLPNA
Susan Blatz, Complaints Officer, CLPNA
Stephanie Karkutly, Complaints Officer, CLPNA

Investigated Member:

Briana Toller, LPN (“Ms. Toller” or “Investigated Member”)
Lee Watson, 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. Toller was an LPN within the meaning of the *Health Professions Act* (the “Act”) at all material times, and more particularly, was registered with the CLPNA as an LPN at the time of the complaint. Ms. Toller was initially licensed as an LPN in Alberta in 2015.

The CLPNA received a letter of complaint dated June 13, 2022 (the “Complaint”) from Karen Pelletier, Patient Care Manager, Intensive Care - NICU at the Stollery Children’s Hospital in Edmonton, Alberta, pursuant to s. 57 of the Act. The Complaint advised that Ms. Briana Toller, LPN, had been suspended from her employment at the Royal Alexandra Hospital (the “Royal Alex”) after it was determined she submitted false claims for reimbursement to Alberta Blue Cross.

By letter dated June 24, 2022, the Director of Professional Conduct/Complaints Director of the CLPNA, Sandy Davis (“Complaints Director”), provided Ms. Toller with notice of the Complaint and notified Ms. Toller that she was delegating her powers under Part 4 of the Act to Susan Blatz, Complaints Officer (the “Complaints Officer”) pursuant to s. 20 of the Act. In accordance with s. 55(2)(d) of the Act, the Complaints Director also notified Ms. Toller that she had appointed the Complaints Officer to conduct an investigation into the Complaint.

On July 28, 2022, the Complaints Officer concluded the investigation into the Complaint.

The Complaints Officer determined there was sufficient evidence that the issues raised in the Complaint should be referred to the Hearings Director in accordance with s. 66(3)(a) of the Act. Ms. Toller received notice the matters were referred to a hearing, as well as a copy of the Statement of Allegations and the Investigation Report, on August 2, 2022.

A Notice of Hearing, Notice to Attend and Notice to Produce was served upon Ms. Toller under cover of letter dated August 9, 2022.

(4) Allegations

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

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

1. Between October 8, 2016, and November 8, 2021, submitted 100 benefit claims to Alberta Blue Cross for services not received or for services that she was not billed for, resulting in an overpayment of \$5,325.80.”

(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. Toller 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 Officer 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. Toller'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. Toller.

Allegation 1

Ms. Toller admitted that between October 8, 2016, and November 8, 2021, she submitted 100 benefit claims to Alberta Blue Cross for services not received or for services that she was not billed for resulting in an overpayment of \$5,325.80.

Ms. Toller was receiving benefits from Alberta Blue Cross as part of her employment. Prior to January 3, 2022, Alberta Blue Cross requested receipts from Ms. Toller for certain services she had claimed.

Ms. Toller failed to provide the receipts requested and Alberta Blue Cross initiated an investigation. This investigation included contacting service providers to determine if Ms. Toller had in fact received services she had claimed. Initially their investigation spanned claims made between September 12, 2021 to November 8, 2021. After receiving all the responses from the service providers, it was determined that Ms. Toller had not received the services.

Alberta Blue Cross expanded their investigation to include all claims Ms. Toller had made dating back to March 1, 2016. At the conclusion of the investigation, it was determined that Ms. Toller had submitted 100 benefit claims where no services had been provided, or where services had been provided but she was not billed for those services. As a result of these claims, Ms. Toller received \$5,325.80 in overpayments.

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

Ms. Toller failed to adhere to the CLPNA Code of Ethics as well as the CLPNA Standards of Practice and this was acknowledged by Ms. Toller in the Agreed Statement of Facts. The Hearing Tribunal finds Ms. Toller's conduct constituted unprofessional conduct.

By submitting 100 false claims to Alberta Blue Cross, Ms. Toller's actions failed to demonstrate honesty, integrity and trustworthiness. Her behavior was not appropriate and failed to meet the expected behavior of an LPN.

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

CLPNA Code of Ethics:

- Principle 3: Responsibility to the Profession - LPNs have a commitment to their profession and foster the respect and trust of their clients, health care colleagues and the public. Principle 3 specifically provides that LPNs:
 - 3.1-Maintain the standards of the profession and conduct themselves in a manner that upholds the integrity of the profession.
- Principle 5: Responsibility to Self - LPNs recognize and function within their personal and professional competence and value systems. Principle 5 specifically provides that LPNs:
 - 5.1-Demonstrate honesty, integrity and trustworthiness in all interactions.

CLPNA Standards of Practice:

- Standard 3: Service to the Public and Self-Regulation - LPNs practice nursing in collaboration with clients and other members of the health care team to provide and improve health care services in the best interests of the public. Standard 3 specifically provides that LPNs:
 - 3.6-Demonstrate an understanding of self-regulation by following the Standards of Practice, the Code of Ethics and other regulatory requirements.

Ms. Toller's conduct breached the Code of Ethics in that she did not uphold the integrity of the profession in acting dishonestly by submitting false claims. She also breached the Standards of Practice in acting in a manner which is inconsistent with self-regulation. Self-regulation requires not only that the CLPNA ensures LPNs act in accordance with regulatory requirements but also that each LPN holds themselves to those requirements and the high standards the public expects from LPNs.

Ms. Toller's conduct harms the integrity of the profession by failing to act in a way that is expected of an LPN. LPNs are expected to be honest and demonstrate integrity and trustworthiness in all. Ms. Toller failed to meet this expectation by filing false benefit claims to both her employer and the benefit provider, Alberta Blue Cross.

(9) Joint Submission on Penalty

The Complaints Officer and Ms. Toller 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 decision (the "Decision") shall serve as a reprimand.
2. Ms. Toller shall pay a fine of \$500.00 within **12 months** of service of the Decision.
3. Ms. Toller shall pay 25% of the costs of the investigation and hearing to be paid over a period of **24 months** from service of the Decision.
 - a) A letter advising of the final costs will be forwarded when final costs have been confirmed.
4. Ms. Toller shall read and reflect on how the following CLPNA documents will impact her nursing practice. These documents are available on CLPNA's website <http://www.clpna.com/> under "Governance" and will be provided. Ms. Toller shall provide a signed written declaration to the Complaints Officer within 30 days of service of the Decision, attesting that she has reviewed the 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 Officer.

5. Ms. Toller shall complete the **LPN Ethics Course** available online at <http://www.learninglpn.ca/index.php/courses> and provide a certificate confirming its successful completion to the Complaints Officer within **30 days** of service of the Decision.

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

6. The sanctions set out above at paragraphs 2 - 5 will appear as conditions on Ms. Toller's practice permit and the Public Registry subject to the following:

- a) The requirement to complete the educational readings and LPN Ethics Course outlined at paragraphs 4 - 5 will appear as "CLPNA Monitoring Orders (Conduct)", on Ms. Toller's practice permit and the Public Registry until the below sanctions have been satisfactorily completed:

- i. Educational Readings; and
- ii. LPN Ethics Course.

- b. The requirement to pay the fine and costs, will appear as "Conduct Cost/Fines" on Toller's practice permit and the Public Registry until all fines and costs have been paid as set out above at paragraphs 2-3.

7. The conditions on Ms. Toller's practice permit and on the Public Registry will be removed upon completion of each of the requirements set out above at paragraphs 2 – 5.

8. Ms. Toller 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. Ms. Toller will keep her contact information current with the CLPNA on an ongoing basis.

9. Should Ms. Toller 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 Officer.

10. Should Ms. Toller 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 Officer may do any or all of the following:
- (a) Refer the matter back to a Hearing Tribunal, which shall retain jurisdiction with respect to penalty;
 - (b) Treat Ms. Toller's non-compliance as information under s. 56 of the *Health Professions Act*; or
 - (c) In the case of non-payment of the costs described in paragraph 3 above, suspend Ms. Toller's practice permit until such costs are paid in full or the Complaints Officer is satisfied that such costs are being paid in accordance with a schedule of payment agreed to by the Complaints Officer.

Legal Counsel for the Complaints Officer 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. Toller and the Complaints Officer.

(10) Decision on Penalty and Conclusions of the Hearing Tribunal

The Hearing Tribunal recognizes its orders with respect to penalty must be fair, reasonable and proportionate, taking into account the facts of this case.

The orders imposed by the Hearing Tribunal must protect the public from the type of conduct that Ms. Toller 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: Although the allegation does not relate to patient care, the proven conduct is still serious as it harms the integrity of the profession. The conduct demonstrates a lack of judgement and is unprofessional. Ms. Toller used her position and subsequent benefits as part of her employment for her financial gain through fraudulent means.

The age and experience of the investigated member: Ms. Toller was initially registered with the CLPNA in 2015. She worked at an adult renal clinic for approximately 3-4 months prior to obtaining a position at the Royal Alex. Prior to registering with the CLPNA, Ms. Toller worked as a Medical Office Assistant. The expectation is that despite how much experience a member has as an LPN, Ms. Toller should have known that filing the false claims was wrong and harmful to not only her own personal reputation but also that of the regulated profession.

The previous character of the investigated member and in particular the presence or absence of any prior complaints or convictions: Ms. Toller had not had any prior complaints or convictions.

The age and mental conditions of the victim: The proven allegations did not involve any patient nor patient care.

The number of times the offending conduct was proven to have occurred: Although there is only one proven allegation, the Hearing Tribunal noted that Ms. Toller filed 100 false claims over five years. She demonstrated a pattern of fraudulent behavior between October 8, 2016 and November 8, 2021.

The role of the investigated member in acknowledging what occurred: Ms. Toller was very cooperative with the investigation and acknowledged the allegation. The Hearing Tribunal found this to be a significant mitigating factor. Ms. Toller worked with the CLPNA to provide an Agreed

Statement of Facts, which demonstrates that she has taken accountability for her actions. Ms. Toller has also made arrangements on her own accord to repay the entire debt of \$5325.80.

Whether the investigated member has already suffered other serious financial or other penalties as a result of the allegations having been made: Ms. Toller was suspended for 10 days without pay. She has also made arrangements to repay the overpayment.

The impact of the incident(s) on the victim, and/or: The proven allegation did not involve any patient nor any patient care.

The need to promote specific and general deterrence and, thereby to protect the public and ensure the safe and proper practice: The CLPNA handles allegations of unprofessional conduct by its members seriously. The penalties imposed needs to ensure that both Ms. Toller is aware that the proven conduct will not be tolerated as well as ensuring the other members of the profession that conduct such as that in the proven allegation will be taken seriously.

The need to maintain the public's confidence in the integrity of the profession: The public needs to feel confident that the CLPNA takes unprofessional conduct of their members very seriously. The consequences of such breaches of the Standards of Practice as well as the Code of Ethics in a manner that reflects the seriousness of the conduct.

The range of sentences in other similar cases: The Complaints Director was able to provide the Hearing Tribunal with a similar case involving the CLPNA earlier this year. The range of sentence in the other case involved a larger overpayment, approximately double the overpayment in this case. The Hearing Tribunal in that case ordered a \$1000 fine.

It is important to the profession of LPNs to maintain the Code of Ethics and Standards of Practice, and in doing so to promote specific and general deterrence and, thereby, to protect the public. The Hearing Tribunal has considered this in the deliberation of this matter, and again considered the seriousness of the Investigated Member's actions. The penalties ordered in this case are intended, in part, to demonstrate to the profession and the public that actions and unprofessional conduct such as this is not tolerated and it is intended that these orders will, in part, act as a deterrent to others.

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

(11) Orders of the Hearing Tribunal

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

1. The Hearing Tribunal's written decision (the "Decision") shall serve as a reprimand.
2. Ms. Toller shall pay a fine of \$500.00 within **12 months** of service of the Decision.
3. Ms. Toller shall pay 25% of the costs of the investigation and hearing to be paid over a period of **24 months** from service of the Decision.
 - a) A letter advising of the final costs will be forwarded when final costs have been confirmed.
4. Ms. Toller shall read and reflect on how the following CLPNA documents will impact her nursing practice. These documents are available on CLPNA's website <http://www.clpna.com/> under "Governance" and will be provided. Ms. Toller shall provide a signed written declaration to the Complaints Officer within 30 days of service of the Decision, attesting that she has reviewed the 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 Officer.

5. Ms. Toller shall complete the **LPN Ethics Course** available online at <http://www.learninglpn.ca/index.php/courses> and provide a certificate confirming its successful completion to the Complaints Officer within **30 days** of service of the Decision.

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

6. The sanctions set out above at paragraphs 2 - 5 will appear as conditions on Ms. Toller's practice permit and the Public Registry subject to the following:
 - g) The requirement to complete the educational readings and LPN Ethics Course outlined at paragraphs 4 - 5 will appear as "CLPNA Monitoring Orders (Conduct)", on Ms. Toller's practice permit and the Public Registry until the below sanctions have been satisfactorily completed:
 - i. Educational Readings; and
 - ii. LPN Ethics Course.

- h) The requirement to pay the fine and costs, will appear as “Conduct Cost/Fines” on Toller’s practice permit and the Public Registry until all fines and costs have been paid as set out above at paragraphs 2-3.
7. The conditions on Ms. Toller’s practice permit and on the Public Registry will be removed upon completion of each of the requirements set out above at paragraph 2 – 5.
 8. Ms. Toller 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. Ms. Toller will keep her contact information current with the CLPNA on an ongoing basis.
 9. Should Ms. Toller 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 Officer.
 10. Should Ms. Toller 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 Officer may do any or all of the following:
 - (a) Refer the matter back to a Hearing Tribunal, which shall retain jurisdiction with respect to penalty;
 - (b) Treat Ms. Toller’s non-compliance as information under s. 56 of the *Health Professions Act*; or
 - (c) In the case of non-payment of the costs described in paragraph 3 above, suspend Ms. Toller’s practice permit until such costs are paid in full or the Complaints Officer is satisfied that such costs are being paid in accordance with a schedule of payment agreed to by the Complaints Officer.

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 28th DAY OF NOVEMBER 2022 IN THE CITY OF CALGARY, ALBERTA.

THE COLLEGE OF LICENSED PRACTICAL NURSES OF ALBERTA

M. Stolz

Michelle Stolz, LPN
Chair, Hearing Tribunal