

**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 NISHEIL KUMAR**

**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 NISHEIL KUMAR, LPN #43570, 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 February 28, 2023, with the following individuals present:

**Hearing Tribunal:**

Michelle Stolz, Licensed Practical Nurse (“LPN”) Chairperson  
Nicole Searle, LPN  
Sarah Gingrich, Public Member  
Naz Mellick, Public Member

**Staff:**

Evie Maldonado, Legal Counsel for the Complaints Officer, CLPNA  
Susan Blatz, Complaints Officer, CLPNA  
Sanah Sidhu, Complaints Director, CLPNA

**Investigated Member:**

Nisheil Kumar, LPN (“Ms. Kumar” or “Investigated Member”)

**(2) Preliminary Matters**

The hearing was open to the public.

When the hearing began, the Chairperson of the Hearing Tribunal advised the Investigated Member she had the right to legal counsel under section 72(1) of the *Health Professions Act* (“the Act”). The Investigated Member confirmed she wished to proceed with the hearing without legal counsel.

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. Kumar was an LPN within the meaning of the Act at all material times, and more particularly, was registered with the CLPNA as an LPN at the time of the complaint. Ms. Kumar was initially licensed as an LPN in Alberta on January 3, 2017.

On May 9, 2022, the College of Licensed Practical Nurses of Alberta (the “CLPNA”) received a complaint (the “First Complaint”) from Julie Wright, Director of the Alberta Business and Educational Services College (“ABES”), dated May 6, 2022, pursuant to s. 54 of the *Health Professions Act* (the “Act”). The Complaint stated that Ms. Nisheil Kumar, LPN, had, while working as a Health Care Aide (“HCA”) instructor, compromised the exam integrity for course four of the provincial HCA curriculum.

In accordance with s. 55(2)(d) of the Act, the Complaints Director appointed Judith Palyga, Investigator for the CLPNA (the “Investigator”), to conduct an investigation into the First Complaint. Ms. Kumar received notice of the First Complaint, investigation and appointment of the Investigator by letter dated May 11, 2022.

On May 16, 2022, the CLPNA received a second complaint (the “Second Complaint”) dated May 15, 2022, from Diane Valiquette, Associate Dean, Allied Health, at Bow Valley College (“BVC”). The Second Complaint stated BVC became aware that Ms. Kumar used review material from another institution that contained examination questions from the provincial HCA course four exam bank. Questions from the exam bank were used to create course reviews on ‘Kahoot’ and shown to students over Microsoft Teams.

In accordance with s. 55(2)(d) of the Act, by letter dated May 18, 2022, the Complaints Director appointed Judith Palyga, Investigator for the CLPNA (the “Investigator”), to conduct simultaneous investigations into both the First and Second Complaints. Ms. Kumar received notice of the Second Complaint, simultaneous investigations and appointment of the Investigator by letter dated May 18, 2022.

On September 2, 2022, the Investigator concluded the investigations and submitted the investigation reports for both the First and Second Complaints to the CLPNA.

Following receipt of the investigation reports, the Complaints Director determined that the matter should be referred to the Hearings Director in accordance with s. 66(3)(a) of the Act. Ms. Kumar received notice that the matters were referred to a hearing as well as a copy of the Investigation Reports and Statement of Allegations under cover of letter dated November 24, 2022.

A Notice of Hearing, Notice to Attend and Notice to Produce was served upon Ms. Kumar under cover of letter dated January 4, 2023.

#### **(4) Allegations**

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

“It is alleged that Nisheil Kumar, LPN, while practicing as a Licensed Practical Nurse engaged in unprofessional conduct by:

1. On or about November 2020 to April 2022, disclosed confidential exam materials from the provincial Health Care Aide curriculum, without authorization, by doing one or more of the following:
  - a) Placing exam materials on an online platform, Kahoot, while working at Alberta Business and Education Services and Bow Valley College;
  - b) Sharing exam materials via Microsoft Teams, while working at Bow Valley College.”

#### **(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. Kumar 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. Kumar'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. Kumar.

**Allegation 1**

Ms. Kumar admitted on or about November 2020 to April 2022, she disclosed confidential exam materials from the provincial Health Care Aide curriculum, without authorization, by doing one or more of the following:

- a) Placing exam materials on an online platform, Kahoot, while working at Alberta Business and Education Services and Bow Valley College;
- b) Sharing exam materials via Microsoft Teams, while working at Bow Valley College.

Ms. Kumar began working at the ABES as an instructor in November 2020. She was tasked with teaching courses one through nine of the Alberta Provincial HCA curriculum. Ms. Kumar started at BVC in December 2021 as an instructor for the Alberta Provincial HCA Program. She was initially teaching course four of the curriculum; however, in March 2022, she was asked to begin teaching course eight and a colleague took over the remainder of course four. Both ABES and BVC use Kahoot, a collaborative website that can be used as a teaching tool. Instructors can create materials for students to review virtually.

While at ABES, Ms. Kumar created a personal Kahoot account (“NKUMAR120107”) which was publicly available. She used this account while teaching the HCA students. This Kahoot was made

available to the students at ABES. Ms. Kumar used the Course 4 Examination Bank, HCA Provincial Curriculum exam bank questions to create materials and practice tests on Kahoot. This public Kahoot was available to HCA students at ABES.

While at BVC, Ms. Kumar provided her course four students with a link to the public Kahoot materials, which contained exam bank questions and materials for HCA students to review. Ms. Kumar provided her colleague with a link to her public Kahoot page, containing the Course 4 examination bank questions. The colleague noted similarities between the Kahoot questions and the HCA exam bank materials; she then reported Ms. Kumar's Kahoot to BVC. It was noted that Ms. Kumar had created three Kahoot reviews for the HCAs at BVC which showed the students the questions and materials from the Kahoot account, which contained exam bank questions and materials, in her online classes over Microsoft Teams. Upon investigation, the classes were recorded and saved to the course's Microsoft Teams classroom. They were available to view when students used the recorded lectures to study. This allowed them to review the material from the HCA exam bank.

On April 25, 2022, Ms. Julie Wright, Director of Programs at ABES, was informed by Alberta Health that Ms. Kumar, through Kahoot, shared the HCA materials to third parties while teaching at BVC. Ms. Wright informed Ms. Kumar she needed to take the Kahoot down. Ms. Kumar confirmed she had deleted the account. On April 27, 2022, Ms. Wright sent an email to Ms. Kumar requesting again that she delete the personal Kahoot account. Following that email, Ms. Kumar permanently deleted the account.

ABES is a private post-secondary institution primarily offering entry level health care programs. It offers the Government of Alberta Health Care Aide Program. BVC is a public, board governed public post-secondary institution which also offers the Health Care Aide program. The HCA curriculum is owned by the Government of Alberta. It is a standardized program based on the HCA Competency Profile (2018). Post-secondary institutions administer the HCA curriculum through a License Agreement with Government of Alberta. As part of that agreement, the Government of Alberta provides institutions with the curriculum and all course materials, including exam questions.

Section 4(d) of the License Agreement states: "The Post-secondary Institution may not alter, amend, adapt, revise, modify or create derivative works of the materials, in whole or in part, for any reason other than minor formatting changes as necessary to make the Materials available on the Post-secondary Institutions online learning platform.

Section 4(e) of the License Agreement states that "The Materials" include:

Health Care Aide Program: Includes program information for instructors who teach in the program.

Health Care Aide Course Examination Banks: Includes questions for each course to assess knowledge area in the program.

Answer-Key Blueprints: Includes answers for the course in the examination banks.

The HCA Program Standard 4.1.2. states that PSI's (Post-secondary Institutions) are responsible to ensure "instruction and evaluation methods (formative and summative) for the HCA program, including course exams and the Provincial HCA Examination, comply with the curriculum".

The exam materials from the Provincial HCA curriculum are confidential. The questions from the course exam bank must not be used outside of the course exams.

By placing the exam materials on Kahoot and sharing the exam materials via Microsoft Teams, Ms. Kumar compromised the integrity of the curriculum and jeopardized both ABES and BVC's ability to deliver the HCA program. She displayed a lack of judgement and failed to demonstrate her responsibility to both the public, herself, as well as to the LPN profession. Ms. Kumar's actions failed to demonstrate professional accountability and responsibility. She did not practice within applicable legislation thereby compromising the two post-secondary institute's ability to teach the Provincial HCA course.

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. Kumar's actions demonstrated a lack of judgement by posting confidential exam materials and questions on Kahoot and then sharing them on Microsoft teams. She compromised the integrity of the Provincial HCA course offered by ABES and BVC. Ms. Kumar was hired as an LPN instructor to teach the Provincial HCA course; therefore, she harmed the integrity of the profession of LPN's by disclosing confidential exams materials without authorization.

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:

- a. Principle 1: Responsibility to the Public - LPN's, as self-regulating professionals commit to provide safe, effective, compassionate and ethical care to members of the public.  
Principle 1 specifically provides that LPN's:
  - 1.1 Maintain standards of practice, professional competence and conduct; and
- b. Principle 3: Responsibility to the Profession - LPN's 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 LPN's:

- 3.1 Maintain the standards of the profession and conduct themselves in a manner that upholds the integrity of the profession; and
  - 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.
- c. Principle 5: Responsibility to Self - LPN's recognize and function within their personal and professional competence and value systems. Principle 5 specifically provides that LPN's:
- 5.1 Demonstrate honesty, integrity and trustworthiness in all interactions; and
  - 5.3 Accept responsibility for knowing and acting consistently with the principles, practice standards, laws and regulations under which they are accountable.

CLPNA Standards of Practice:

- a. Standard 1: Professional Accountability and Responsibility - LPNs are accountable and responsible for their practice and conduct to meet the standards of the profession and legislative requirements. Standard 1 specifically provides that LPN's:
- 1.1 Practice within applicable legislation, regulations, by-laws, and employer policies;
  - 1.8 Are accountable and responsible for their own practice, conduct, and ethical decision-making; and
- b. Standard 3: Service to the Public and Self-Regulation - LPNs collaborate with clients and other members of the healthcare team to provide safe care and improve health outcomes. Standard 3 specifically provides that LPNs:
- 3.5 Understand and accept the responsibility of self-regulation by following the standards of practice, the code of ethics, and other regulatory requirements;
- c. Standard 4: Professional and Ethical Practice - LPNs adhere to the ethical values and responsibilities described in the Canadian Council for Practical Nurse Regulators (CCPNR) Code of Ethics. Standard 4 specifically provides that LPNs:
- 4.6 Demonstrate practice that upholds the integrity of the profession.

The Hearing Tribunal finds the conduct of Ms. Kumar, as referenced in Allegation 1, breaches these provisions and constitutes unprofessional conduct. Ms. Kumar failed to demonstrate professional accountability and responsibility. She did not practice within the applicable legislation as the HCA curriculum is owned by the Government of Alberta. According to the License Agreement, the Government of Alberta provides the post-secondary institutions with the curriculum and all course materials, including exam questions. However, the post-secondary institutions may not "alter, amend, adapt, revise, modify or create derivative works of the materials, in whole or in part, for any reason". It is a standardized program based on the HCA Competency Profile (2018). By posting the exam material on Kahoot and sharing it on Microsoft Teams, she broke terms of the Licensing Agreement between the Government of Alberta and



both ABES and BVC. By breaking the terms of the License Agreement, Ms. Kumar did not demonstrate accountability or responsibility for her own practice, nor did she make ethical decisions in posting the material on a public forum.

**(9) Joint Submission on Penalty**

The Complaints Officer and Ms. Kumar 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. Ms. Kumar shall pay a fine in the amount of \$1500.00, to be paid in full on or before, **twelve (12) months** of service of the Decision.
3. Ms. Kumar shall read and reflect on how the following CLPNA documents will impact their nursing practice. These documents are available on the CLPNA's website <http://www.clpna.com/> under "Governance". Ms. Kumar shall provide a signed written declaration to the Complaints Officer, within **thirty (30) days** of service of the Decision, attesting they have reviewed the CLPNA's documents:
  - a) Code of Ethics for Licensed Practical Nurses in Canada;
  - b) Standards of Practice for Licensed Practical Nurses in Canada;
  - c) The CLPNA Policy: Professional Responsibility and Accountability;
  - d) The CLPNA Competency Profile A-1: Critical Thinking;
  - e) The CLPNA Competency Profile C-9: Informal Leadership;
  - f) The CLPNA Competency Profile C-13: Adult Learning Principles; and
  - g) The CLPNA Competency Profile C-14: Education Design and Delivery;

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

4. Ms. Kumar shall complete the following remedial education, at their own cost. If any of the required education becomes unavailable, Ms. Kumar shall make a written request to the Complaints Officer to be assigned alternative education. Upon receiving Ms. Kumar's written request, the Complaints Officer, in their sole discretion, may assign alternative education in which case Ms. Kumar will be notified in writing of the new education requirements. Ms. Kumar shall provide the Complaints Officer with certificates confirming successful completion within **six (6) months** from service of the Decision:

- a) **LPN Ethics Course** available online at <https://www.learningnurse.org/index.php/e-learning/lpn-code-of-ethics>
5. The sanctions set out above at paragraphs 2 - 4 will appear as conditions on Ms. Kumar's practice permit and the Public Registry subject to the following:
    - a) The requirement to complete the remedial education and readings outlined at paragraphs 3 - 4 will appear as "CLPNA Monitoring Orders (Conduct)", on Ms. Kumar's practice permit and the Public Registry until the below sanctions have been satisfactorily completed;
      - i. Readings; and
      - ii. Ethics Course.
    - b) The requirement to pay a fine, will appear as "Conduct Cost/Fines" on Ms. Kumar practice permit and the Public Registry until the fine has been paid as set out above at paragraph 2.
  6. The conditions on Ms. Kumar's practice permit and on the Public Registry will be removed upon completion of each of the requirements set out above at paragraph 5.
  7. Ms. Kumar shall provide the CLPNA with their contact information, including home mailing address, home and cellular telephone numbers, current e-mail address and current employment information. Ms. Kumar will keep their contact information current with the CLPNA on an ongoing basis.
  8. Should Ms. Kumar be unable to comply with any of the sanctions' deadlines identified above, Ms. Kumar may request an extension. The request for an extension must be submitted in writing to the Complaints Officer, prior to the deadline, state a valid reason for requesting the extension and state a reasonable timeframe for completion. The Complaints Officer shall, in their sole discretion, determine whether a time extension is accepted. Ms. Kumar will be notified by the Complaints Officer, in writing, if the extension has been granted.
  9. Should Ms. Kumar 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. Kumar 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 Ms. Kumar 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. Kumar 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. Kumar 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:** Privacy goes to the heart of the nursing profession. It is a core competency that is imperative in maintaining the integrity of the profession. Ms. Kumar failed to maintain the confidentiality of the exam material and questions by posting them on Kahoot and then sharing them on Microsoft Teams. Therefore, the nature of gravity of the proven allegation is significant.

**The age and experience of the investigated member:** Ms. Kumar has been registered with the CLPNA since January 3, 2017. Even though Ms. Kumar was fairly early in her career, her conduct cannot be excused as privacy is a core competency of any LPN regardless of age and experience.

**The previous character of the investigated member and in particular the presence or absence of any prior complaints or convictions:** Ms. Kumar did not have any prior complaints or convictions.

**The age and mental condition of the victim, if any:** There was no victim in this case.

**The number of times the offending conduct was proven to have occurred:** Ms. Kumar put exam materials and exam questions on the public forum Kahoot and then shared it on Microsoft Teams at two locations. As both Kahoot and Microsoft Teams are public it is unknown how many times the information was shared. The impact of her sharing the information is unknown as it is not known how many people were able to access that information.

**The role of the investigated member in acknowledging what occurred:** Ms. Kumar took responsibility for her actions and participated in the investigation fully. She was forthcoming and honest in her responses to both the investigators as well as the Hearing Tribunal.

**Whether the investigated member has already suffered other serious financial or other penalties as a result of the allegations having been made:** Ms. Kumar was terminated by ABES on April 25, 2022 as well as BVC on March 21, 2022. Therefore, she suffered a loss of wages and employment.

**The impact of the incident on the victim(s):** There was no victim in this case.

**The presence or absence of any mitigating circumstances:** Ms. Kumar stated during her testimony that she was a new teacher and was not given clear direction as to how to go about doing her job. She stated she was not provided with any Policies/Procedures manual or Standard Operation Procedure information. Ms. Kumar feels she was not given a proper orientation and was told to “go teach” but wasn’t given clear direction. Ms. Kumar mentioned the curriculum was fairly new and there was pressure to ensure the students passed. She said she was given “indecisive direction” on how to manage the new program. The Hearing Tribunal did clarify that Ms. Kumar did have a Program Coordinator as well as weekly program meetings where she could have asked questions about posting the information on Kahoot and sharing it on Microsoft Teams. Although Ms. Kumar admitted her actions were unprofessional, her actions were unintentional, and she stopped as soon as she found out what she had done was wrong. Ms. Kumar was very apologetic and told the Hearing Tribunal she will carry this with her throughout her career. The Hearing Tribunal found Ms. Kumar to be genuine in her apology and that she fully acknowledges that what she did was wrong.

**The need to promote specific and general deterrence and, thereby protect the public and ensure the safe and proper practice:** It is imperative that the penalty promotes specific and general deterrence. The penalty must ensure Ms. Kumar understands that what she did constitutes unprofessional conduct and needs to deter her from repeating her actions. The other members of the profession also need to be deterred from committing similar actions. The Hearing Tribunal feel the penalties sought in this case promote both specific and general deterrence.

**The need to maintain the public’s confidence in the integrity of the profession:** The public’s confidence in the profession is a factor that carries significant weight. The penalty must demonstrate that the CLPNA takes actions such as those carried out by Ms. Kumar will not be tolerated. The penalties that Ms. Kumar has agreed to in the Joint Submission on Penalty demonstrate the seriousness of her actions.

**The range of sentences in other similar cases:** The case of CLPNA vs Fenske was similar and the penalties awarded in that case were similar to the penalties being sought in this case. Ms. Fenske was fined \$1500 and was given remedial education. Due to the similarities in the cases, the Hearing Tribunal finds the penalties in Ms. Kumar’s case are appropriate. The Hearing Tribunal appreciated the Joint Submission on Penalties focused on remediation.

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 reasons for decision ("the Decision") shall serve as a reprimand.
2. Ms. Kumar shall pay a fine in the amount of \$1500.00, to be paid in full on or before, **twelve (12) months** of service of the Decision.
3. Ms. Kumar shall read and reflect on how the following CLPNA documents will impact their nursing practice. These documents are available on the CLPNA's website <http://www.clpna.com/> under "Governance". Ms. Kumar shall provide a signed written declaration to the Complaints Officer, within **thirty (30) days** of service of the Decision, attesting they have reviewed the CLPNA's documents:
  - a) Code of Ethics for Licensed Practical Nurses in Canada;
  - b) Standards of Practice for Licensed Practical Nurses in Canada;
  - c) The CLPNA Policy: Professional Responsibility and Accountability;
  - d) The CLPNA Competency Profile A-1: Critical Thinking;
  - e) The CLPNA Competency Profile C-9: Informal Leadership;
  - f) The CLPNA Competency Profile C-13: Adult Learning Principles; and
  - g) The CLPNA Competency Profile C-14: Education Design and Delivery;

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

4. Ms. Kumar shall complete the following remedial education, at their own cost. If any of the required education becomes unavailable, Ms. Kumar shall make a written request to the Complaints Officer to be assigned alternative education. Upon receiving Ms. Kumar's written request, the Complaints Officer, in their sole discretion, may assign alternative education in which case Ms. Kumar will be notified in writing of the new education requirements. Ms. Kumar shall provide the Complaints Officer with certificates confirming successful completion within **six (6) months** from service of the Decision:

- a) **LPN Ethics Course** available online at <https://www.learningnurse.org/index.php/e-learning/lpn-code-of-ethics>
5. The sanctions set out above at paragraphs 2 - 4 will appear as conditions on Ms. Kumar's practice permit and the Public Registry subject to the following:
    - a) The requirement to complete the remedial education and readings outlined at paragraphs 3 - 4 will appear as "CLPNA Monitoring Orders (Conduct)", on Ms. Kumar's practice permit and the Public Registry until the below sanctions have been satisfactorily completed;
      - i. Readings; and
      - ii. Ethics Course.
    - b) The requirement to pay a fine, will appear as "Conduct Cost/Fines" on Ms. Kumar practice permit and the Public Registry until the fine has been paid as set out above at paragraph 2.
  6. The conditions on Ms. Kumar's practice permit and on the Public Registry will be removed upon completion of each of the requirements set out above at paragraph 5.
  7. Ms. Kumar shall provide the CLPNA with their contact information, including home mailing address, home and cellular telephone numbers, current e-mail address and current employment information. Ms. Kumar will keep their contact information current with the CLPNA on an ongoing basis.
  8. Should Ms. Kumar be unable to comply with any of the sanctions' deadlines identified above, Ms. Kumar may request an extension. The request for an extension must be submitted in writing to the Complaints Officer, prior to the deadline, state a valid reason for requesting the extension and state a reasonable timeframe for completion. The Complaints Officer shall, in their sole discretion, determine whether a time extension is accepted. Ms. Kumar will be notified by the Complaints Officer, in writing, if the extension has been granted.
  9. Should Ms. Kumar 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:
    - (d) Refer the matter back to a Hearing Tribunal, which shall retain jurisdiction with respect to penalty;

- (e) Treat Ms. Kumar non-compliance as information for a complaint under s. 56 of the Act; or
- (f) In the case of non-payment of the costs described in paragraph 2 above, suspend Ms. Kumar 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 April 27, 2023 IN THE CITY OF CALGARY, ALBERTA.**

**THE COLLEGE OF LICENSED PRACTICAL NURSES OF ALBERTA**

*M. Stolz*

Michelle Stolz, LPN

Chair, Hearing Tribunal