

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 SHANIQUE THORPE**

**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 SHANIQUE THORPE, LPN #36901, WHILE A MEMBER OF THE COLLEGE OF
LICENSED PRACTICAL NURSES OF ALBERTA (“CLPNA”)**

DECISION OF THE HEARING TRIBUNAL

(1) Hearing

The hearing was conducted by video conference on November 15, 2022 with the following individuals present:

Hearing Tribunal:

Kirsty Byers, Licensed Practical Nurse (“LPN”)

Jan Schaller, LPN

James Lees, Public Member, Chairperson

Shelly Flint, Public Member

Matthew Woodley, Independent Legal Counsel for the Hearing Tribunal

Staff:

Kimberly Precht, Legal Counsel for the Complaints Director, CLPNA

Sandy Davis, Complaints Director, CLPNA

Stephanie Karkutly, Complaints Officer, CLPNA

Investigated Member:

Shanique Thorpe (also known as Shanique Swaby), LPN (“Ms. Thorpe” or “Investigated Member”)

Carol Drennan, 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 or independent legal counsel, 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 Partial Joint Submission on Penalty. The only contested issue was in relation to whether the Hearing Tribunal ought to order that the Investigated Member pay a portion of the costs of the investigation and hearing pursuant to section 82(1)(j) of the *Health Professions Act*, RSA 2000, c H-7 (“HPA”).

(3) Background

The Investigated Member was an LPN within the meaning of the HPA at all material times, and more particularly, was registered with the CLPNA as an LPN at the time of the complaint. The Investigated Member was initially licensed as an LPN in Alberta on June 28, 2013.

The CLPNA received a complaint dated April 29, 2022, from Laurie Loowell, HR Business Partnerships, Alberta Health Services (“AHS”), pursuant to s. 57 of the HPA (the “Complaint”). The Complaint advised that the Investigated Member had been suspended from her employment at AHS, Alberta Hospital, for three days without pay following a verbal altercation with a patient in which she swore at the patient.

By letter dated May 3, 2022, the Complaints Director of the CLPNA, Sandy Davis (“Complaints Director”), provided the Investigated Member with Notice of the Complaint. In accordance with s. 55(2)(d) of the HPA, the Complaints Director notified the Investigated Member she had appointed Judith Palyga, Investigator for the CLPNA (the “Investigator”), to conduct an investigation into the Complaint. As well, due to the serious nature of the alleged conduct, the Complaints Director notified the Investigated Member of the Complaints Director’s intention to recommend an interim suspension of Ms. Thorpe’s practice permit pursuant to s. 65(1)(b) of the HPA.

By letter dated May 3, 2022, the Complaints Director made a recommendation to the person designated by Council, Carrie Waggott (“Council Designee”) that the Investigated Member’s practice permit be suspended pursuant to s. 65(1)(b) of the HPA.

By letter dated May 18, 2022, the Council Designee informed the Investigated Member of her decision to suspend the Investigated Member’s practice permit pending the outcome of these proceedings. The interim suspension took effect on May 18, 2022. The Investigated Member’s practice permit has remained suspended since that time.

On May 31, 2022, the Investigator concluded the investigation of the Complaint.

The Complaints Director determined there was sufficient evidence that the issues raised in the Complaint should be referred to the Hearings Director in accordance with s. 63(3)(a) of the HPA. The Investigated Member received notice that matters were referred to a hearing, as well as a copy of the Statement of Allegations, Investigation Report, and Attachments on July 18, 2022.

A Notice of Hearing, Notice to Attend and Notice to Produce was served upon the Investigated Member under cover of letter dated October 18, 2022. An Amended Statement of Allegations was provided to the Investigated Member.

(4) Allegations

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

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

1. Withdrawn
2. On or about March 31, 2022, while employed at the Facility and working on a secured acute psychiatric ward, engaged with voluntary patient AC in an unprofessional manner, particulars of which include one or more of the following:
 - a. Responding to a racial epithet by AC by saying to AC, “F—k you, you fat bitch,” or words to that effect;
 - b. Failing to take appropriate steps to de-escalate the situation;
 - c. After AC indicated AC wanted to leave the Facility, responding to AC saying to you, “F—k you,” by saying to AC, “No, f—k you,” or words to that effect;
 - d. Failing to foster a respectful nurse-patient relationship with AC;
 - e. Contributing to an unsafe situation for those involved, including AC and coworkers;
 - f. Contributing to an unsafe situation for other patients who witnessed the events in issue.
3. On or about December 31, 2020, while employed at the Facility, threatened your co-worker PA, by stating one or more of the following to PA:
 - a. “Someone is going to get it” or, alternatively, “Someone is going to get hurt”;
 - b. “You’re the ringleader”;
 - c. “You’re going to get it” or, alternatively, “You’re going to get hurt.””

(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. Thorpe acknowledged unprofessional conduct to allegations 2 and 3 as evidenced by her signature on the Agreed Statement of Facts and Acknowledgement of Unprofessional Conduct; her representative confirms this admission during the hearing.

Legal Counsel for the Complaints Director submitted that 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
- Exhibit #4: Package of Financial Records from the Investigated Member
- Exhibit #5: Package of Records regarding Investigated Member's Business
- Exhibit #6: Complaints Director's position on Costs

(7) Evidence

The evidence was adduced by way of Agreed Statement of Facts. In addition, the Investigated Member was called to give evidence in relation to the issue of whether she should be required to pay a portion of the costs of the investigation and hearing.

The Hearing Tribunal accepts the evidence set out in the Agreed Statement of Facts which was admitted as Exhibit #2. The evidence in relation to the costs issue is analyzed below.

(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 the Investigated Member'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 the Investigated Member.

Allegation 2

Ms. Thorpe admitted on or about March 31, 2022, while employed at the Facility and working on a secured acute psychiatric ward, she engaged with voluntary patient AC in an unprofessional manner, particulars of which include one or more of the following:

- a. Responding to a racial epithet by AC by saying to AC, "F—k you, you fat bitch," or words to that effect;
- b. Failing to take appropriate steps to de-escalate the situation;
- c. After AC indicated AC wanted to leave the Facility, responding to AC saying to you, "F—k you," by saying to AC, "No, f—k you," or words to that effect;
- d. Failing to foster a respectful nurse-patient relationship with AC;
- e. Contributing to an unsafe situation for those involved, including AC and coworkers;
- f. Contributing to an unsafe situation for other patients who witnessed the events in issue

The Hearing Tribunal finds that the conduct admitted to amounts to unprofessional conduct as defined in s. 1(1)(pp) of the HPA, 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; and
- ii. contravention of the Act, a code of ethics or standards of practice; and
- iii. conduct that harms the integrity of the regulated profession.

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:

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

- 1.1 Maintain standards of practice, professional competence and conduct.

- 1.4 Respect the rights of all individuals regardless of their values, beliefs and cultures.
- 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 their clients. Principle 2 specifically provides that LPNs:

- 2.6 Provide care to each client recognizing their individuality and their right to choice.
- 2.7 Develop trusting, therapeutic relationships, while maintaining professional boundaries.
- 2.9 Identify and minimize risks to clients.

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:

- 3.3 Practise in a manner that is consistent with the privilege and responsibility of self-regulation.

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.
- 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:

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 provides that LPNs:

- 1.4 Recognize their own practice limitations and consult as necessary.
- 1.6 Take action to avoid and/or minimize harm in situations in which client safety and well-being are compromised.
- 1.9 Practice in a manner consistent with ethical values and obligations of the Code of Ethics for Licensed Practical Nurses.

Standard 2: Knowledge-Based Practice – LPNs possess knowledge obtained through practical nurse preparation and continuous learning relevant to their professional LPN practice. Standard 2 specifically provides that LPNs:

- 2.1 Possess current knowledge to support critical thinking and professional judgement.
- 2.2 Apply knowledge from nursing theory and science, other disciplines, evidence to inform decision-making and LPN practice.
- 2.7 Demonstrate understanding of their role and its interrelation with clients and other health care colleagues.
- 2.9 Provide holistic licensed practical nursing care considering the whole person, the environment and the concepts of health promotion, illness prevention, health maintenance, restoration and protection.
- 2.11 Use critical inquiry to assess, plan and evaluate the implications of interventions that impact client outcomes.

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:

- 3.3 Support and contribute to an environment that promotes and supports safe, effective and ethical practice.
- 3.4 Promote a culture of safety by using established occupational health and safety practices, infection control, and other safety measures to protect clients, self and colleagues from illness and injury.

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 provides that LPNs:

- 4.1 Practice in a manner consistent with ethical values and obligations of the Code of Ethics for LPNs.
- 4.2 Recognize the impact of their own values and beliefs on nursing practice and nurse-client therapeutic relationships.
- 4.4 Develop ethical decision-making capacity and take responsible action toward resolution.
- 4.5 Advocate for the protection and promotion of clients' right to autonomy, respect, privacy, confidentiality, dignity and access to information.
- 4.6 Maintain professional boundaries in the nurse/client therapeutic relationship at all times.
- 4.7 Communicate in a respectful, timely, open and honest manner.
- 4.8 Collaborate with colleagues to promote safe, competent and ethical practice.

- 4.9 Support and contribute to healthy and positive practice environments.
- 4.10 Practice with honesty and integrity to maintain the values and reputation of the profession.

Nurses have a positive obligation to ensure that their conduct is above reproach, particularly as it relates to patient care. Although it is clear that AC engaged in entirely inappropriate behavior in using an offensive racial epithet towards the Investigated Member, the Investigated Member's response was unprofessional and violated the principles noted above. Particularly given the setting, the vulnerability of other patients, and AC's mental state, it was ultimately incumbent on the Investigated Member to refrain from responding to AC in kind. This represents conduct that is inconsistent with the Investigated Member's obligations set out above.

Allegation 3

Ms. Thorpe admitted on or about December 31, 2020, while employed at the Facility, she threatened co-worker PA, by stating one or more of the following to PA:

- a. "Someone is going to get it" or, alternatively, "Someone is going to get hurt";
- b. "You're the ringleader";
- c. "You're going to get it" or, alternatively, "You're going to get hurt."

The Hearing Tribunal finds that the conduct admitted to amounts to unprofessional conduct as defined in s. 1(1)(pp) of the HPA based on the following:

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

The conduct breached the following principles and standards set out in CLPNA Code of Ethics and the CLPNA Standards of Practice:

CLPNA Code of Ethics:

Principle 4: Responsibility to Colleagues – LPNs develop and maintain positive, collaborative relationships with nursing colleagues and other health professionals. Principle 4 specifically provides that LPNS:

4.2 Collaborate with colleagues in a cooperative, constructive and respectful manner with the primary goal of providing safe, competent, ethical, and appropriate care to individuals, families and communities.

CLPNA Standards of Practice:

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 provides that LPNs:

4.1 Practice in a manner consistent with ethical values and obligations of the Code of Ethics for LPNs.

4.7 Communicate in a respectful, timely, open and honest manner.

4.8 Collaborate with colleagues to promote safe, competent and ethical practice.

4.9 Support and contribute to healthy and positive practice environments.

(9) Partial Joint Submission on Penalty

The Complaints Director and the Investigated Member jointly proposed to the Hearing Tribunal a Partial Joint Submission on Penalty, which was entered as Exhibit #3. Pursuant to an agreement between the parties, the only issue not addressed in the Partial Joint Submission on Penalty relates to whether the Hearing Tribunal should order that the Investigated Member pay some of the costs of the investigation and hearing. The parties agreed that they would argue that matter separately following imposition on penalty on other matters, and that the Hearing Tribunal would then make a decision on the costs issue separately.

The Partial 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. The Investigated Member will not be eligible to apply for registration or reinstatement until she has complied with the following
 - a) The Investigated Member 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. The Investigated Member shall provide a signed written declaration to Sandy Davis, Complaints Director, attesting that she has read the documents and has reflected on how they impact her practice:
 - i. Code of Ethics for Licensed Practical Nurses in Canada;
 - ii. Standards of Practice for Licensed Practical Nurses in Canada;
 - iii. CLPNA Practice Policy: Professional Responsibility & Accountability;
 - iv. CLPNA Practice Policy: Client & Co-Worker Abuse;

- v. CLPNA Competency Profile A1: Critical Thinking;
- vi. CLPNA Competency Profile A2: Clinical Judgment and Decision Making;
- vii. CLPNA Competency Profile A3: Time Management;
- viii. CLPNA Competency Profile C3: Professional Standards of Practice;
- ix. CLPNA Competency Profile C4: Professional Ethics;
- x. CLPNA Competency Profile C5: Accountability and Responsibility;
- xi. CLPNA Competency Profile D1: Communication and Collaborative Practice;
- xii. CLPNA Competency Profile D2: Therapeutic Nurse-Patient Relationship;
- xiii. CLPNA Competency Profile: D4: Conflict Mangement;
- xiv. CLPNA Competency Profile F3: Patient Safety;
- xv. CLPNA Competency Profile N1: Mental Health and Addiction Nursing and Interventions; and
- xvi. CLPNA Competency Profile N2: Managing Aggressive Responses.

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

- b) The Investigated Member shall complete, at her own cost: **LPN Ethics Course** offered by Learning Nurse, available online at www.learninglpn.ca/index.php/courses. Ms. Thorpe shall provide Sandy Davis, Complaints Director, with a certificate confirming successful completion of the course.
- c) The Investigated Member shall complete, at her own cost: **Managing Patient Rage** offered by Learning Nurse, available online at <https://www.learningnurse.org/quizzes/patientrage/>. Ms. Thorpe shall provide Sandy Davis, Complaints Director, with a certificate confirming successful completion of the course.
- d) The Investigated Member shall complete, at her own cost: **Staying Cool Under Fire** offered on-line at <https://www.nurse.com/ce/staying-cool-under-fire-how-well-do-you-communicate>. Ms. Thorpe shall provide Sandy Davis, Complaints Director, with a certificate confirming successful completion of the course.
- e) The Investigated Member shall complete, at her own cost: **Anger and Conflict Resolution in the Workplace** offered by John Collins Consulting, offered on-line at [https://www.jcollinsconsulting.com/images/Outlines/lpn/MODULE_OUTLINE - ANGER AND CONFLICT RESOLUTION IN THE WORKPLACE.pdf](https://www.jcollinsconsulting.com/images/Outlines/lpn/MODULE_OUTLINE_-_ANGER_AND_CONFLICT_RESOLUTION_IN_THE_WORKPLACE.pdf). Ms. Thorpe shall provide Sandy Davis, Complaints Director, with a certificate confirming successful completion of the course.

If any of the courses listed in paragraphs (b) through (e) becomes unavailable, an equivalent course may be substituted where approved in advance in writing by the Complaints Director.

3. The orders set out above at paragraph 2 will appear as conditions on the Investigated Member's practice permit and the Public Registry subject to the following:
 - (a) The requirement to complete the readings and courses outlined at paragraph 3 will appear as "CLPNA Monitoring Orders (Conduct)", on the Investigated Member's practice permit and the public register until the below orders have been satisfactorily completed:
 - i. Reading CLPNA documents;
 - ii. LPN Ethics Course;
 - iii. Managing Patient Rage course;
 - iv. Staying Cool Under Fire course; and
 - v. Anger and Conflict Resolution in the Workplace course.
4. The conditions on the Investigated Member's practice permit and on the public register will be removed upon completion of each of the requirements set out above at paragraph 3.
5. The Investigated Member shall provide CLPNA with current contact information, including home mailing address, home and cellular phone numbers, current e-mail address, and current employment information. The Investigated Member will keep contact information current with the CLPNA on an ongoing basis.
6. Should the Investigated Member 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 Director 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 the Investigated Member's non-compliance as information for a complaint under s. 56 of the Act.

Legal Counsel for the Complaints Director 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 HPA sets out the available orders the Hearing Tribunal is able to make if unprofessional conduct is found.

The Hearing Tribunal is aware that 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 the Investigated Member and the Complaints Director.

(10) Submissions on Penalty

Legal counsel for the Complaints Director and the representative for the Investigated Member both made submissions relating to the proposed penalty and why it serves the public interest including with respect to the principles of general and specific deterrence and rehabilitation.

(11) 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 the Investigated Member 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 Hearing Tribunal agrees with the submission of counsel for the Complaints Director that the proven allegations are serious and represent misconduct directly relating to the interactions between a nurse and a patient. Further, the Hearing Tribunal notes that the matter was serious enough to warrant an interim suspension, which was not challenged by the Investigated Member. This is an aggravating factor.
- **The age and experience of the investigated member.** The Hearing Tribunal finds that the Investigated Member is not a new or inexperienced member. She has been a member of the profession since 2013 and ought to have known that her conduct was unprofessional. This is a mildly aggravating factor.
- **The previous character of the investigated member and in particular the presence or absence of any prior complaints or convictions.** The Complaints Director noted that there are no other complaints or findings of unprofessional conduct, and that this is a mitigating factor to be considered. The Hearing Tribunal agrees.
- **The age and mental condition of the victim, if any.** The Hearing Tribunal notes that the patient in this matter was clearly vulnerable although the evidence in relation to this issue was sparse. The Hearing Tribunal finds that this is also a mildly aggravating factor.

- **The number of times the offending conduct was proven to have occurred.** The Hearing Tribunal agrees with the submissions of the Complaints Director that there are two separate instances of unprofessional conduct that have been proven. Both relate to inappropriate interactions with others in the workplace; this is an aggravating factor.
- **The role of the investigated member in acknowledging what occurred.** Both the Complaints Director and the representative for the Investigated Member recognized that the Investigated Member has acknowledged her conduct through an admission of unprofessional conduct. This alleviates the need for the Complaints Director to call witnesses and avoids the expense of a full hearing with oral evidence. This is a significant mitigating factor.
- **Whether the investigated member has already suffered other serious financial or other penalties as a result of the allegations having been made.** Both parties noted that the Investigated Member had been suspended from her employment as a result of the facts in Allegation 2. However, her inability to return to work following that suspension related to the interim suspension imposed by the College. The Hearings Tribunal recognizes that there have been some other financial consequences for the Investigated Member, which is a mitigating factor.
- **The impact of the incident(s) on the victim.** This is a significant aggravating factor. While the conduct of AC towards the Investigated Member is reprehensible, the agreed facts before the Hearing Tribunal do state that the Investigated Member's responses to AC were causally linked to AC's escalation and threat of self-harm. The facts therefore suggest that this is a significant aggravating factor in the circumstances.
- **The presence or absence of any mitigating circumstances.** The Hearing Tribunal believes that the mitigating circumstances have been canvassed above, although it does note that AC's behavior was egregious and is important context for the contents of Allegation 2.
- **The need to promote specific and general deterrence and thereby to protect the public and ensure the safe and proper practice.** 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.
- **The need to maintain the public's confidence in the integrity of the profession.** The Hearing Tribunal agrees with the submissions of legal counsel for the Complaints Director on this issue. Specifically, the proposed orders are meant to deal with the issues that gave

rise to the unprofessional conduct, and the remedial nature of the education requirements will ensure that the public is aware that sanctions imposed are meant to address the underlying issues which resulted in the findings of unprofessional conduct. This is likely to assist in building public confidence in the ability of the profession to govern its members.

- **The range of sentence in other similar cases.** Legal counsel for the Complaints Director referred to three cases with facts that she said were similar to those in this case. Those dealt with problematic interactions between regulated professionals and patients. The Investigated Member's representative noted that those cases included physical contact with patients, which was a significant difference with the facts here. In addition, she referred to other cases dealing with less serious outcomes for somewhat similar conduct. In response, legal counsel for the Complaints Director noted that several authorities referred to by the representative were not, in fact, impositions of sanctions following a hearing and were therefore not helpful to the Hearing Tribunal.

The Hearing Tribunal accepts that the cases referred to are not perfect comparators for the facts here, but that the proposed orders fall generally within the range of the cases reflecting the seriousness of the conduct at issue.

The Hearing Tribunal agreed with the Joint Submission on Penalty, and that its main objective was to ensure that the Investigated Member is rehabilitated in order to engage in practice in accordance with the HPA, the Code of Ethics and the Standards of Practice. The education and training requirements related directly to the conduct that gave rise to this matter, and the public will be protected by ensuring that the Investigated Member undertakes self-study to prevent a similar occurrence in the future. Further, the principles of deterrence are accounting for in the proposed sanction by ensuring that the Investigated Member knows that there are serious consequences for violations of her ethical duties, and the profession knows that similar sanctions would be applied for similar behavior.

In considering the proposed sanctions, the Hearing Tribunal questioned the parties with respect to whether the impact of the proposal was, in effect, to continue the interim suspension that had been imposed pursuant to section 65(1) of the HPA. The Hearing Tribunal noted that an interim suspension ends (at the latest) at the "completion of the proceedings" under Part 4 of the HPA, which the Hearing Tribunal understood to be the issuance of its decision (subject to any appeal). Following a brief adjournment, the parties mutually proposed an amendment to section 2 of the proposed sanctions to make it clear that the Hearing Tribunal is ordering a continuation of the suspension pursuant to its powers under section 82. The parties agreed with revised wording to accomplish this objective.

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

(12) Costs

Can Costs be Ordered?

The parties did not agree on the issue of whether the Hearing Tribunal should order that the Investigated Member pay a portion of the costs pursuant to section 82(1)(j) of the HPA. The disagreement relates primarily to the impact of a recent decision of the Alberta Court of Appeal, *Jinnah v Alberta Dental Association and College*, 2022 ABCA 336 (“*Jinnah*”). In *Jinnah*, the Court considered the law in relation to the practice of hearing tribunals ordering that costs in disciplinary proceedings be paid (in whole or in part) by a member found guilty of unprofessional conduct. Contrary to existing case law in relation to this issue in Alberta, the Court of Appeal created a presumption that in proceedings under the HPA, a “profession as a whole should bear the costs in most cases of unprofessional conduct” (paras 145-46). However, the Court identified four categories of “compelling reasons” for which a Hearing Tribunal may order that a member pay costs (paras 140-44).

Given the presumption created by the Court of Appeal in *Jinnah*, the Hearing Tribunal concludes that the onus is on the Complaints Director to convince the Hearing Tribunal that one of the four *Jinnah* exceptions applies in order to justify a costs award against the Investigated Member. Here, the Complaints Director relies on the “serious unprofessional conduct” and “serial offender” categories to justify a costs order. The Court of Appeal described the parameters of the compelling reasons exceptions as follows (footnotes omitted):

[141] First, a dentist who engages in serious unprofessional conduct – for example, a sexual assault on a patient, a fraud perpetrated on an insurer, the performance of a dental procedure while suspended or the performance of a dental procedure in a manner that is a marked departure from the ordinary standard of care – can justifiably be ordered to indemnify the College for a substantial portion or all of its expenses in prosecuting a complaint. A dentist guilty of breaches of this magnitude must have known that such behavior is completely unacceptable and constitutes unprofessional conduct. It is not unfair or unprincipled to require a dentist who knowingly commits serious unprofessional conduct to pay a substantial portion or all the costs the regulator incurs in prosecuting a complaint.

[142] Second, a dentist who is a serial offender engages in unprofessional conduct on two or more occasions may be ordered to pay some costs. If a dentist is guilty of two acts of unprofessional conduct and both of the findings of unprofessional conduct were serious breaches, a costs order indemnifying the College for a substantial portion or all of its expenses would be appropriate. If both breaches were not serious, a small amount of costs – something less than twenty-five percent – could be justified. If only the first breach was serious and the dentist had already been ordered in a previous proceeding to pay a substantial costs order on account of the serious offence, a small costs order for the second breach may be appropriate. If only the second breach was serious, a costs order indemnifying the College for a substantial portion or all of its costs would be appropriate. There is a big difference between a dentist who has been sanctioned once and a dentist who has been sanctioned two or more times. A dentist who has been sanctioned once

should be extra vigilant in how he or she practices dentistry. It seems to us, based on our review of the College's 2019, 2020 and 2021 annual reports and the decisions finding unprofessional conduct published on the College's website, that only a very small percentage of dentists engaged in active practice have ever been sanctioned. And of this group, we strongly suspect that an even smaller fraction are repeat offenders. It is not unfair to place on the shoulders of this small group of dentists a disproportionate share of the costs of implementing the discipline process.

In relation to the first category, the Complaints Director first noted that it was necessary to view the examples provided by the Court of Appeal through the lens of the nursing profession. That is, the nature of "serious" unprofessional conduct for one profession may not be the same for others. She submitted that the examples in *Jinnah* reflect a situation where the member "must have known" that the behavior was unacceptable, and that this is the case with the Investigated Member. That is, the Complaints Director suggests that the Investigated Member's statements to AC (despite the provocation) were clearly unacceptable, and that she must have known that this was the case. The Complaints Director also referred to evidence given by the Investigated Member relating to why she did not make submissions regarding the interim suspension. There, the Investigated Member stated that she did not believe there was any point to making those submissions because of how "serious" the allegations against her were.

In response, the representative for the Investigated Member pointed to the fact that the examples provided by the Court of Appeal which qualify for "serious unprofessional conduct" are truly serious, and involve physical assault, the perpetuation of fraud, practicing while suspended or a "marked departure" from expected standards of conduct. She noted that none of these examples apply in the facts of this case.

In relation to the second category, the Complaints Director submitted that the Investigated Member may be considered a "serial offender" given that she admitted to two separate instances of unprofessional conduct, both of which were accepted by the Hearing Tribunal. Although those instances were prosecuted in one hearing, they relate to events separated in time and deal with misconduct directed towards a patient in one instance and co-workers in another.

In response, the representative for the Investigated Member noted that both instances of unprofessional conduct were dealt with as a result of a single complaint and that in her submission the Investigated Member could not be classified as a "serial offender".

The Hearing Tribunal agrees with the Investigated Member that the Court's analysis in *Jinnah* does not permit the Hearing Tribunal to impose costs based on the Investigated Member being a "serial offender". Although it is clear that the Investigated Member engaged in unprofessional conduct on two separate occasions, the underlying rationale for the Court of Appeal's second "compelling reason" justifying a costs award is not present here. In justifying the "serial offender" category, the Court states: "There is a big difference between a dentist who has been sanctioned once and a dentist who has been sanctioned two or more times. A dentist who has been sanctioned once should be extra vigilant in how he or she practices dentistry: (para 142). This

rationale suggests that the “serial offender” contemplated by the Court had the experience of having been sanctioned for unprofessional conduct in order to learn from and avoid a similar circumstance in the future; where such a professional fails to do so, it is reasonable for him or her to pay costs associated with subsequent misconduct. That is not the situation here. Although the Investigated Member was subject to internal disciplinary action resulting from the 2020 incident, she was not subject to professional sanctions. She therefore did not have the opportunity to be “extra vigilant” in relation to unprofessional conduct prior to the 2022 incident.

However, for the reasons that follow, the Hearing Tribunal does find that the proven conduct here falls within the category of “serious unprofessional conduct”; therefore, the presumption that the College should bear the total costs of the investigation and hearing is rebutted. In relation to the 2020 incident, the Hearing Tribunal notes that the proven misconduct relates to a threat against a co-worker. Not only is this a clear breach of the standards noted above, but threats in the workplace are particularly serious. Employers are required to take steps to prevent harassment and violence in the workplace, and threats undermine other employees’ sense of safety at work. The proven facts here represent a marked departure from expectations of professionalism, collegiality and respect, particularly in a stressful work environment.

In relation to the 2022 incident, the Hearing Tribunal similarly concludes that the proven conduct is “serious unprofessional conduct”. First, the context for the statements made by the Investigated Member is important: the statements were made to a vulnerable person who was receiving psychiatric treatment. The Investigated Member must have known the potential impact of her words on AC, and in fact, the agreed facts here indicate that AC’s escalation up to a statement of intention to commit suicide were caused in part by the Investigated Member’s unprofessional conduct. This also represents a marked departure from expected standards of conduct. The Hearing Tribunal has no difficulty in finding that the Investigated Member “must have known that such behavior [was] completely unacceptable and constitute[d] unprofessional conduct”.

The Hearing Tribunal does not find that the Investigated Member’s statement that the seriousness of the allegations caused her not to challenge the interim suspension, or the existence of the interim suspension itself, assists in determining whether the conduct is “serious unprofessional conduct”.

For those reasons, the Hearing Tribunal concludes that *Jinnah* supports the Complaints Director’s submissions that the Investigated Member ought to pay some portion of the investigation and hearing costs.

What Costs Order is Reasonable and Proportionate?

The issue for the Hearing Tribunal is therefore whether it ought to impose costs, and what proportion of costs would be reasonable and appropriate in the circumstances. In doing so, the Hearing Tribunal is alive to the need for proportionality, the fact that costs are not meant to be punitive, and the need to avoid a “crushing financial blow” (see *KC v College of Physical Therapists*

of Alberta, 1999 ABCA 253 at para 94, cited in *Alsaadi v Alberta College of Pharmacy*, 2021 ABCA 313 at para 94).

The Hearing Tribunal concludes that a costs award against the Investigated Member is appropriate. The analysis set out above based on *Jinnah* confirms that where a member engages in “serious unprofessional conduct” it is generally appropriate for the member to bear some portion of the costs incurred by the regulator to enforce standards of professional conduct. It would not be appropriate for the profession as a whole to bear all of the costs here. The question is then what proportion of costs is appropriate in the circumstances here.

As noted above, the Investigated Member gave evidence in relation to the issue of costs. Specifically, her evidence was in relation to her ability to pay a costs award if one were to be imposed by the Hearing Tribunal. Her evidence was supplemented through the documents that were marked collectively as Exhibit 4 (by consent). Her evidence was that she had not been able to work since the suspension of her practice permit in May, and that she has been devoting her efforts to a baking business that she founded in 2020. Her evidence was that she had only incurred expenses in relation to that business. She indicated that the business operates as a sole proprietorship, but that she is currently attempting to register her business as a corporation.

In relation to the summary document comprising the first few pages of Exhibit 4, the Investigated Member did not provide evidence about the particular items set out in it. She did, however, speak to the balance of the records both in examination in chief and in cross-examination, despite the fact that she was not able to see the documents during her testimony.

The evidence relating to the Investigated Member’s financial situation was (with respect to the Investigated Member) confusing. While the Investigated Member stated repeatedly that particular issues (including payments from WCB, short-term disability and long-term disability) were “up in the air” or not resolved, including with respect to the possibility that she may be required to re-pay certain amounts received, the documentary evidence suggests that the Investigated Member has, in fact received payments from WCB and short-term disability arising from complications from COVID-19. The letter from the long-term disability provider suggests that the Investigated Member has been approved for benefits, although it appears that the first payment has not yet been received based on the date of the letter and the date of the hearing. That is, it appears to the Hearing Tribunal that the Investigated Member has had and will continue to have a source of income other than her nascent baking business.

The Investigated Member also gave evidence that she was bankrupt, but provided no documentation about that matter, and none of the records provided in Exhibit 4 confirmed her status. It was not clear to the Hearing Tribunal whether the Investigated Member had been discharged from bankruptcy given the passage of time (from 2015). While the Hearing Tribunal accepts the evidence of the Investigated Member that she had been bankrupt at some point in time, there was insufficient evidence to establish that this has a material impact on her ability to pay a costs award.

The Hearing Tribunal was also concerned about the evidence given by the Investigated Member in relation to the “gift letter” relating to Haventree Bank. The evidence from the Investigated Member was that the gift reflected in that letter, which was apparently used in order to obtain a mortgage on her home, was in fact a loan that she is required to repay. This evidence is inconsistent with the specific statement contained in the “gift letter”.

In any event, the Hearing Tribunal accepts that the Investigated Member has limited financial means, and that it must ensure that any costs award arising from this matter does not constitute a “final crushing blow”. The Hearing Tribunal also considers that the coursework requirement has some financial burden for the Investigated Member.

The Complaints Director suggests that a costs award of 25 percent is appropriate, payable in a flexible manner over the next two years. The Complaints Director submits that this request takes into consideration the Investigated Member’s financial circumstances and allows her to re-commence her practice to earn money prior to the amount being fully payable. The Complaints Director provided a summary of hearing costs but noted that the final amount would likely be higher given the full-day hearing and associated costs for legal counsel.

The Hearing Tribunal concludes that a costs award is appropriate as noted above. The Hearing Tribunal also finds that a costs award of 25 percent of the hearing costs is generally appropriate given the nature of the findings of unprofessional conduct, but wishes to ensure that there is certainty with respect to those costs. Therefore, the Hearing Tribunal finds that a costs award of 25 percent of the investigation and hearing costs, up to a maximum of \$6,000.00 is reasonable and proportionate. Given the Investigated Member’s ability to regain her practice permit in the next few months (assuming diligent effort on her behalf), the Hearing Tribunal is satisfied that this costs award does not represent a disproportionate consequence, nor does it represent a final crushing blow for the Investigated Member.

Finally, the Hearing Tribunal agrees with the proposed timeline for payment, including the discretion given to the Complaints Director to modify those timelines as appropriate.

(13) 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. Thorpe’s practice permit shall remain suspended and shall not be eligible to apply for registration or reinstatement until she has complied with the following:
 - a) Ms. Thorpe 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. Thorpe shall provide a signed written declaration to Sandy Davis, Complaints Director, attesting that she has read the documents and has reflected on how they impact her practice:

- i. Code of Ethics for Licensed Practical Nurses in Canada;
- ii. Standards of Practice for Licensed Practical Nurses in Canada;
- iii. CLPNA Practice Policy: Professional Responsibility & Accountability;
- iv. CLPNA Practice Policy: Client & Co-Worker Abuse;
- v. CLPNA Competency Profile A1: Critical Thinking;
- vi. CLPNA Competency Profile A2: Clinical Judgment and Decision Making;
- vii. CLPNA Competency Profile A3: Time Management;
- viii. CLPNA Competency Profile C3: Professional Standards of Practice;
- ix. CLPNA Competency Profile C4: Professional Ethics;
- x. CLPNA Competency Profile C5: Accountability and Responsibility;
- xi. CLPNA Competency Profile D1: Communication and Collaborative Practice;
- xii. CLPNA Competency Profile D2: Therapeutic Nurse-Patient Relationship;
- xiii. CLPNA Competency Profile: D4: Conflict Management;
- xiv. CLPNA Competency Profile F3: Patient Safety;
- xv. CLPNA Competency Profile N1: Mental Health and Addiction Nursing and Interventions; and
- xvi. CLPNA Competency Profile N2: Managing Aggressive Responses.

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

- b) Ms. Thorpe shall complete, at her own cost: **LPN Ethics Course** offered by Learning Nurse, available online at www.learninglpn.ca/index.php/courses. Ms. Thorpe shall provide Sandy Davis, Complaints Director, with a certificate confirming successful completion of the course.
- c) Ms. Thorpe shall complete, at her own cost: **Managing Patient Rage** offered by Learning Nurse, available online at <https://www.learningnurse.org/quizzes/patientrage/>. Ms. Thorpe shall provide Sandy Davis, Complaints Director, with a certificate confirming successful completion of the course.
- d) Ms. Thorpe shall complete, at her own cost: **Staying Cool Under Fire** offered on-line at <https://www.nurse.com/ce/staying-cool-under-fire-how-well-do-you-communicate>. Ms. Thorpe shall provide Sandy Davis, Complaints Director, with a certificate confirming successful completion of the course.
- e) Ms. Thorpe shall complete, at her own cost: **Anger and Conflict Resolution in the Workplace** offered by John Collins Consulting, offered on-line at

[https://www.jcollinsconsulting.com/images/Outlines/lpn/MODULE_OUTLINE -
ANGER AND CONFLICT RESOLUTION IN THE WORKPLACE.pdf](https://www.jcollinsconsulting.com/images/Outlines/lpn/MODULE_OUTLINE_-_ANGER_AND_CONFLICT_RESOLUTION_IN_THE_WORKPLACE.pdf).

Ms. Thorpe shall provide Sandy Davis, Complaints Director, with a certificate confirming successful completion of the course.

If any of the courses listed in paragraphs (b) through (e) becomes unavailable, an equivalent course may be substituted where approved in advance in writing by the Complaints Director.

3. The orders set out above at paragraph 2 will appear as conditions on Ms. Thorpe's practice permit and the Public Registry subject to the following:
 - (a) The requirement to complete the readings and courses outlined at paragraph 3 will appear as "CLPNA Monitoring Orders (Conduct)", on Ms. Thorpe's practice permit and the public register until the below orders have been satisfactorily completed:
 - i. Reading CLPNA documents;
 - ii. LPN Ethics Course;
 - iii. Managing Patient Rage course;
 - iv. Staying Cool Under Fire course; and
 - v. Anger and Conflict Resolution in the Workplace course.
4. The conditions on Ms. Thorpe's practice permit and on the public register will be removed upon completion of each of the requirements set out above at paragraph 3.
5. Ms. Thorpe shall provide CLPNA with current contact information, including home mailing address, home and cellular phone numbers, current e-mail address, and current employment information. Ms. Thorpe will keep contact information current with the CLPNA on an ongoing basis.
6. Should Ms. Thorpe 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 Director may do any or all of the following:
 - (c) Refer the matter back to a Hearing Tribunal, which shall retain jurisdiction with respect to penalty; or
 - (d) Treat Ms. Thorpe's non-compliance as information for a complaint under s. 56 of the Act.
7. Ms. Thorpe shall pay 25% of the costs of the investigation and hearing, to a maximum of \$6,000.00, to be paid in full within **24 months** of the date when Ms. Thorpe is provided with a letter advising her of the final hearing and investigation costs.

8. The requirement to pay the costs will appear as “Conduct Cost/Fines” on Ms. Thorpe’s practice permit and the Public Registry until all costs have been paid.
9. Should Ms. Thorpe be unable to comply with the deadline for payment of costs set out in paragraph 7, Ms. Thorpe may request an extension. The request for an extension must be submitted in writing to the Complaints Director, prior to the deadline, state a valid reason for requesting the extension and state a reasonable timeframe for completion. The Complaints Director shall, in their sole discretion, determine whether a time extension is accepted. Ms. Thorpe will be notified by the Complaints Director, in writing, if the extension has been granted.
10. Should Ms. Thorpe fail or be unable to comply with the costs order, the Complaints Director may suspend Ms. Thorpe’s practice permit until such costs are paid in full or the Complaints Director is satisfied that such costs are being paid in accordance with a schedule of payment agreed to by the Complaints Director.

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:

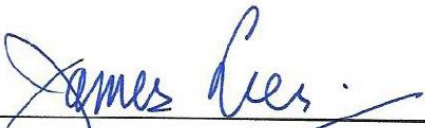
“87(1) An investigated person or the complaints director, on behalf of the college, may commence an appeal to the council of the decision of the hearing tribunal by a written notice of appeal that

- (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 1st DAY OF DECEMBER 2022 IN THE CITY OF EDMONTON, ALBERTA.

THE COLLEGE OF LICENSED PRACTICAL NURSES OF ALBERTA



James Lees
Chair, Hearing Tribunal