

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 TEMITOPE FAMUYISAN**

**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 TEMITOPE FAMUYISAN, LPN #39978, WHILE A MEMBER OF THE COLLEGE OF
LICENSED PRACTICAL NURSES OF ALBERTA**

DECISION OF THE HEARING TRIBUNAL

(1) Hearing

The Hearing was conducted at Aloft Calgary University Hotel in Calgary, Alberta on August 18 - 20, 2020 with the following individuals present:

Hearing Tribunal:

Michelle Stolz, Licensed Practical Nurse (“LPN”), Chairperson
Jan Schaller, LPN
Kelly Annelly, LPN
Marg Hayne, Public Member

Independent Legal Counsel for the Hearing Tribunal:

Julie Gagnon

Staff:

Jason Kully, Legal Counsel for the Complaints Director, CLPNA
Sandy Davis, Complaints Director, CLPNA

Investigated Member:

Temitope Famuyisan, LPN
Carol Drennan, AUPE Representative for the member

(2) Preliminary Matters

The hearing was open to the public.

There were no objections to the members of the Hearing Tribunal hearing the matter, and no Hearing Tribunal member identified a conflict. There were no objections to the jurisdiction of the Hearing Tribunal.

(3) Background

Ms. Famuyisan was an LPN within the meaning of the *Health Professions Act*, R.S.A. 2000, c. H-7 (the “Act” or “HPA”) at all material times, and more particularly, was registered with CLPNA as an LPN at the time of the complaint. Ms. Famuyisan was initially licensed as an LPN in Alberta on March 18, 2015.

By letter dated August 2, 2019, the College of Licensed Practical Nurses of Alberta (the “College” or “CLPNA”) received a complaint (the “First Complaint”) from Ms. Carol Anne Freisen, Client Service Manager, Alberta Health Services, Carewest Dr. Vernon Fanning Centre (“VFC”), pursuant to s. 57 of the HPA. The First Complaint stated Ms. Temitope Famuyisan, LPN, had

been terminated from her employment at the VFC on August 1, 2019 following an investigation into an alleged incident of striking a resident while employed as an LPN at the VFC.

Ms. Sandy Davis, Complaints Director for the CLPNA (the “Complaints Director”), appointed Katie Emter, Investigator for the CLPNA (the “Investigator”), to conduct an investigation into the First Complaint.

The Complaints Director informed Ms. Famuyisan that due to the nature of the alleged conduct, she was recommending to Jeanne Weis, Executive Officer for the CLPNA, that Ms. Famuyisan’s practice permit be immediately suspended under s. 65(1)(b) of the Act. The Complaints Director provided Ms. Weis’ contact information, and informed Ms. Famuyisan that she was able to submit a written submission if she did not feel a suspension was warranted in the circumstances. Ms. Famuyisan received notice of the Complaint and delegation of power, notice of investigation, appointment of the Investigator, and the recommendation for a suspension with the ability to respond by letter dated August 2, 2019.

The Complaints Director requested an immediate suspension of Ms. Famuyisan’s practice permit under s. 65(1)(b) of the Act to Ms. Weis by letter on August 2, 2019. Ms. Famuyisan received a copy of this letter and its corresponding attachments.

Ms. Famuyisan provided written submissions in reply, and on August 22, 2019, Ms. Weis sent a copy of her Decision on Suspension of Practice Permit to Ms. Famuyisan. Ms. Weis decided that a suspension was not justified in the circumstances, but did impose a condition on Ms. Famuyisan’s practice permit pursuant to s. 65(1)(b) of the Act that immediately required Ms. Famuyisan to practice in the presence of one or more regulated health care providers (the “Condition”). Ms. Weis also required Ms. Famuyisan to immediately advise the CLPNA of any employers she was currently employed with as an LPN.

On October 2, 2019, the Investigator concluded the investigation into the First Complaint and submitted the Investigation Report to the CLPNA.

Following receipt of the Investigation Report, the Complaints Director determined there was sufficient evidence that the matter should be referred to the Hearings Director in accordance with s. 66(3)(a) of the Act. Ms. Famuyisan received notice the matter was referred to a hearing, as well as a copy of the Statement of Allegations (the “First Statement of Allegations”) and Investigation Report on December 6, 2019.

Shortly thereafter, and prior to the scheduling of a hearing for the First Statement of Allegations, the CLPNA received a second complaint concerning Ms. Famuyisan dated February 5, 2020 (the “Second Complaint”) from Danielle Desmarais, AHS Human Resources Talent & Business Advisor, for the Peter Lougheed Centre (“PLC”) in Calgary, AB, pursuant to s. 57 of the Act. The Second Complaint stated Ms. Famuyisan had been suspended from her employment at the PLC for one day as a result of physical or verbal aggression toward a patient and for violating a previously imposed condition on her practice permit.

The Complaints Director appointed the Investigator to conduct an investigation into the Second Complaint.

The Complaints Director informed Ms. Famuyisan that due to the nature of the alleged Second Complaint, she was recommending to Ms. Weis that Ms. Famuyisan's practice permit be immediately suspended under s. 65(1)(b) of the Act. The Complaints Director provided Ms. Weis' contact information, and informed Ms. Famuyisan that she was able to submit a written submission if she did not feel a suspension was warranted in the circumstances.

On February 6, 2020, the Complaints Director requested that Ms. Weis impose an interim suspension of Ms. Famuyisan's practice permit pursuant to s. 65(1)(b) of the Act as this was the second complaint related to abusive treatment of a patient and because Ms. Famuyisan failed to comply with her condition for direct supervised practice.

Ms. Famuyisan's legal counsel provided submissions to Ms. Weis in response to the suspension request on February 12, 2020 and Ms. Famuyisan provided further submissions on February 14, 2020.

By letter dated February 18, 2020, Ms. Weis granted the request for an interim suspension of Ms. Famuyisan's practice permit and notified Ms. Famuyisan accordingly.

On March 20, 2020, the Investigator concluded the investigation into the Second Complaint and submitted an Investigation Report to the Complaints Director.

Following receipt of the Investigation Report, the Complaints Director determined there was sufficient evidence that the issues raised in the Second Complaint should be referred to the Hearings Director in accordance with s. 66(3)(a) of the Act. Ms. Famuyisan received notice the matter was referred to a hearing, as well as a copy of the Statement of Allegations (the "Second Statement of Allegations") and the Investigation Report on May 21, 2020.

The parties agreed that the issues relating to Ms. Famuyisan's conduct from the First Statement of Allegations and from the Second Statement of Allegations should be consolidated and heard in one proceeding.

A Notice of Hearing Notice to Attend and Notice to Produce was served upon Ms. Famuyisan under cover of letter dated July 17, 2020.

(4) Allegations

The Allegations in the Statement of Allegations are:

First Statement of Allegations (Exhibit 1):

"It is alleged that Temitope Famuyisan, LPN, while practicing as a Licensed Practical Nurse engaged in unprofessional conduct by:

1. On or about July 6, 2019, struck client DC.
2. On or between August 22, 2019 and October 3, 2019 failed to immediately disclose a list of current employers to the CLPNA as required by the order of Jeanne Weis,

Executive Officer for the CLPNA, dated August 22, 2019 issued under section 65 of the Health Professions Act.

3. On or between August 22, 2019 and October 10, 2019 failed to practice in the presence of one or more regulated health care providers, in violation of a condition placed on her practice permit requiring supervised practice as set out in the order of Jeanne Weis, Executive Officer for the CLPNA, dated August 22, 2019 issued under section 65 of the Health Professions Act.”

Second Statement of Allegations (Exhibit 2):

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

1. [Withdrawn]
2. On or about June 15, 2019, did one or more of the following with regards to patient AH:
 - a. Left medications unattended on patient’s bedside table;
 - b. Failed to ensure the medications were consumed by patient AH.
3. On or about June 15, 2019, did one or more of the following with regards to patient DA;
 - a. Left medications unattended on the patient’s bedside table;
 - b. Failed to ensure the medications were consumed by patient DA.
4. On or about December 22, 2019 did one or more of the following with regards to patient GW:
 - a. Communicated in an inappropriate manner that was aggressive, intimidating, or threatening;
 - b. Failed to follow the proper procedure for searching a patient;
 - c. Entered GW’s room to provide care to GW without the presence of one or more regulated health care providers in violation of a condition placed on her practice permit requiring supervised practice as set out in the order of Jeanne Weis, Executive Officer of the CLPNA, dated August 22, 2019 issued under section 65 of the Health Professions Act.

Ms. Famuyisan admitted to unprofessional conduct for Allegations 2 and 3 in the First Statement of Allegations and for Allegations 2 and 3 in the Second Statement of Allegations. Allegation 1 in the First Statement of Allegations and Allegation 4 in the Second Statement of Allegations were contested. Allegation 1 in the Second Statement of Allegations was withdrawn in advance of the hearing.

(5) Exhibits

The following exhibits were entered at the hearing:

- Exhibit #1: First Statement of Allegations (dated December 6, 2019)
- Exhibit #2: Second Statement of Allegations (dated May 21, 2020)
- Exhibit #3: Agreed Statement of Facts and Acknowledgement of Unprofessional Conduct with Tabs 1 to 19
- Exhibit #4: Agreed Exhibit Book with Tabs 1 to 10 (“Agreed Exhibit Book”)
- Exhibit #5: Condition on Practice Permit of Temitope Famuyisan
- Exhibit #6: Employer’s Investigation Notes
- Exhibit #7: Complaints Director’s Requested Orders and Sanctions
- Exhibit #8: John Collins Consulting Module Outline -Anger and Conflict Resolution in the Workplace
- Exhibit #9: Estimated Hearing Costs

(6) Witnesses

The following individuals were called as witnesses in the hearing:

Betlehem Tefera, HCA
Sydney Paulson, RN
Napinder Pal Sidhu, LPN
Gurveer Gill, RN

Melissa Wedemire, RN
Temitope Famuyisan, LPN

The following is a summary of the evidence given by each witness in relation to the contested allegations (Allegation 1 in the First Statement of Allegations and Allegation 4 in the Second Statement of Allegations).

Betlehem Tefera, HCA

Betlehem Tefera has worked at VFC on Unit 3 East as a Health Care Aide for eight years. She worked with Ms. Famuyisan, who was a casual LPN, for five years on that unit. The unit consists of Chronic Care patients such as Renal patients, as well as long term care patients. She had no previous conflicts with Ms. Famuyisan.

On July 6, 2019, Ms. Tefera and Ms. Famuyisan were working together on the day shift (0700-1515). Ms. Tefera was portering patients to the dining room around 0900, only a few residents were in there at that time. The entrance to the dining room was quite narrow before opening into the dining area. Ms. Tefera testified that Ms. Famuyisan was facing the one wall with her medication cart in front of her. There was a pillar in the middle just in front of the entrance, the bibs were hanging from the pillar.

Patient DC drove her motorized wheelchair with her right hand as her left hand did not work well. Because of this, she had to angle her wheelchair to be able to grab a bib, she then had to reverse a bit to back away from the pillar to then go into the dining room. While she was backing up, Ms. Tefera warned Ms. Famuyisan by saying “Temi, Temi, move, move”. Ms. Famuyisan moved slightly to the right and the handle of DC’s chair touched her left elbow with the power

chair handle. She then started jumping up and down yelling “Jesus, Jesus, Jesus”. The resident was panicked. Ms. Famuyisan then hit DC on her left arm, “she beat her”. Ms. Tefera then said she heard DC quietly say, “I’m really sorry”. Ms. Famuyisan went to the nurse’s station after the incident.

Ms. Tefera clarified she was facing Ms. Famuyisan, she was approximately six feet apart and had an unobstructed view. Ms. Tefera testified she was 100% sure she saw Ms. Famuyisan “beat” DC on the arm. She said it was not a touch or trying to stop her, it was an open-handed hit nor was it a “clap”. Ms. Tefera testified it was not accidental or emotional, Ms. Famuyisan was “jumping and screaming” then came back and “beat” DC. It was a few moments after DC hit her with the wheelchair that Ms. Famuyisan came back over and hit DC. Ms. Tefera testified that she was shocked at what happened. She said Ms. Famuyisan was upset and angry and she based this on Ms. Famuyisan screaming and yelling.

Ms. Tefera was directed to the Agreed Exhibit Book to Tab 3, she confirmed she drew the picture of the dining room and that it was an accurate picture of the dining room when the incident occurred. She also confirmed the photos under Tab 4 of the Agreed Exhibit Book were also accurate. Ms. Tefera pointed out that Ms. Famuyisan was standing to the left with her medication cart, the bib pillar was in the middle of the room, and she was standing approximately six feet away from Ms. Famuyisan with an unobstructed view.

After the incident, Ms. Tefera called the RN that was on shift (Sydney Paulson) and asked if she could talk to her in private. They went into an empty patient room alone. Ms. Tefera told Ms. Paulson that DC came to grab a bib, reversed a little bit and her chair touched Ms. Famuyisan’s elbow. Ms. Famuyisan then “beat” DC and that Ms. Paulson “should talk to her”. A little while later Ms. Paulson came back to Ms. Tefera and told her Ms. Famuyisan admitted it. Ms. Tefera asked Ms. Paulson if she would help her write up the incident report (Agreed Exhibit Book, Tab 1). Ms. Tefera confirmed the incident report contains her exact words written out by Ms. Paulson.

Around noon that day, Ms. Famuyisan approached Ms. Tefera and asked her to talk to her. They went to the dining room where Ms. Tefera told her that she had made a “big mistake”. Ms. Famuyisan said, “Yes of course” and was waving around what appeared to be a WCB handbook. Ms. Tefera said Ms. Famuyisan seemed angry and upset during the conversation. She was wiggling the paper in her hand then walked right past Ms. Tefera and she then left the dining room.

On cross-examination, Ms. Tefera confirmed DC can be hard to understand. At times she mumbles and has a very low voice. If someone does not know her, she can be hard to understand but Ms. Tefera is able to understand her. Ms. Tefera reiterated she was standing to the left side by a table and that DC was backing up. She confirmed she yelled for Ms. Famuyisan to move and that she moved slightly to the right. Ms. Tefera stood up and demonstrated what she saw the day in question. She then said that DC looked panicked and scared after Ms. Famuyisan “beat” her. DC did not have the ability to rub her arm or call out after she was hit. The only thing she asked DC is if she was ok. She did raise the issue with the RN as soon as possible.

Ms. Drennan said that Ms. Famuyisan would say during her testimony that Ms. Tefera told her she needed to report the wheelchair incident and that Ms. Famuyisan did not hit DC but she was clapping her hands to say stop to another resident coming into the dining room. Ms. Tefera said that neither statement is true.

Ms. Tefera asked DC if she was ok and DC confirmed she was ok.

There were no further questions in redirect. The Hearing Tribunal asked if she did any assessment on DC and she said she believed either the RN or LPN did an assessment.

Sydney Paulson, RN

Sydney Paulson has been a Registered Nurse since December 2014. She has been a floor/desk nurse at VFC since May 2015 on Unit 3East. The unit was a Chronic complex care unit (ie: peritoneal dialysis, and Trachs), frail older adults and long-term care patients. She worked with Ms. Famuyisan quite frequently. There were no personal issues between them, she found Ms. Famuyisan easy to interact with and considered her a friendly co-worker.

Ms. Paulson was working on December 6, 2019 on the day shift (0700-1515). She was the desk nurse on "Red Pod" which meant she responded to issues on the floor, doctor's calls, paperwork. She worked that role quite frequently.

During her shift she became aware that an incident had occurred when she was coming out of another pod and could hear Ms. Famuyisan and another LPN, Angela, talking loudly and Ms. Famuyisan seemed upset. Ms. Famuyisan had been struck on the elbow by a wheelchair and was quite upset that she had almost been injured. The three of them went to the nursing desk to have a follow up conversation. During that conversation she found out that Ms. Famuyisan was standing with her medication cart by the entrance way of the dining room and had been struck on the right elbow by DC's wheelchair. Ms. Famuyisan did say Ms. Tefera did try to warn her to move. Ms. Famuyisan specifically told Ms. Paulson that she was not hurt but that she could have been. She was worried about her body and being able to provide for her children.

DC was known to ram staff when she would get upset, therefore there was a protocol in place to disengage her wheelchair. Ms. Paulson went to the dining room to ensure "Angela" did disengage DC's wheelchair as per her care plan. She then proceeded to go back and continue her conversation with Ms. Famuyisan. Ms. Paulson encouraged Ms. Famuyisan to prepare an incident report and offered her WCB forms; however, she said she wasn't hurt but could have been and that since she was casual, she wouldn't get WCB coverage.

Following this, Ms. Paulson then left the desk to check on DC and to ensure her wheelchair had been disengaged. She then went back to check on Ms. Famuyisan who was still quite upset about what happened but confirmed again that she was not really hurt. She was a bit more relaxed and focused her comments on her body and how she had to provide for her children.

Between 10:00-10:30am, Ms. Paulson was called away from the desk and, on her way down the hall, Ms. Tefera grabbed her arm and whisked her into a patient's room which was empty. She was quite upset and was on the verge of tears and said she could not let her heart rest without telling Ms. Paulson what happened. She told her that DC was getting a bib and was backing up. Ms. Tefera yelled for Ms. Famuyisan to move. Ms. Famuyisan only moved slightly and ended up getting hit by DC's wheelchair. Ms. Famuyisan then "disciplined" DC by tapping her on the arm; the open hand smacked her on the upper arm. Ms. Paulson made Ms. Tefera repeat her account of the events three times to ensure it was accurate. The two of them went to the dining

room so Ms. Tefera could show her what happened. Ms. Paulson said there was a kitchen lady there, she does not know her name, that would corroborate Ms. Tefera's story, but she would not come forward. Ms. Paulson agreed to help Ms. Tefera fill out an incident report as Ms. Tefera was not confident with her spelling. She was directed to the Agreed Exhibit Book, Tab 1, which was the incident report that she filled out for Ms. Tefera and she confirmed it was her writing, but the words were Ms. Tefera's.

Ms. Paulson went to speak with DC, who was with Angela (LPN) and another HCA. DC was a little agitated as Ms. Paulson was interrupting her being toileted. DC can answer very simple questions. At first DC was getting mad as she felt she was being accused of doing something wrong. DC insisted it was an accident and was trying to apologize. Ms. Paulson asked if she was hurt and DC said yes and pointed to her upper arm. She also answered that she had been scared and that she tried to apologize to Ms. Famuyisan. This was unusual for DC as she was known to ram people with her wheelchair when angry and not apologize when she did that. Ms. Paulson asked DC if the nurse hit her and DC said yes, she had been hurt but was not hurt anymore.

DC is known to have some mild cognitive disorders, but they were more reaction and behavioral issues. Ms. Paulson believed DC had been hit after interviewing her.

Ms. Paulson went back to the desk where Ms. Famuyisan was charting and sat beside her. Angela was also present. Ms. Famuyisan still seemed upset. Ms. Paulson told Ms. Famuyisan that a staff member reported that she struck DC during the altercation. She asked Ms. Famuyisan if it were true, Ms. Famuyisan stood up from her chair, and said, "Of course I did, you would have too if you had been in my situation. It's my body, I need to protect it." Ms. Paulson said she clarified it with Ms. Famuyisan and tried asking if it had been an accident. Ms. Famuyisan admitted it again and said, "You would have too". Ms. Paulson then said, "No I wouldn't, so you did hit her?" Ms. Famuyisan got very upset and said, "Yes" and walked away. There was no way to misinterpret what was said according to Ms. Paulson due to the reaction and because it was now the fourth person to confirm it.

Ms. Paulson then went to 3West as the Most Responsible Person ("MRP"), Rachel Giron, was there. Ms. Paulson felt that Ms. Famuyisan should be sent home. However, Ms. Giron told her to fill out an incident report, send an email to her manager, call DC's family, and let them know what happened. Ms. Paulson had called DC's family prior to finding out Ms. Famuyisan had struck DC to tell them she had taken DC's wheelchair away and wasn't sure when she would get it back because it was an accident. She then headed back to her unit to call the family back and Ms. Giron was going to call the administrator on call. On her way back from 4West she passed the report room and could hear Ms. Famuyisan speaking loudly in another language. Angela confirmed with Ms. Paulson that Ms. Famuyisan was not on break.

Ms. Paulson testified she then called the family again to let them know what she had found out and spoke with Samaya (DC's twin sister). The family was very upset and wanted more information, like if the staff member involved had been sent home. The family told her it was "unacceptable" that the staff member was still at work. Ms. Paulson then called Ms. Giron to let her know that the family was very upset. Ms. Paulson believes that Ms. Giron then went to speak with Ms. Famuyisan.

Mr. Kully directed Ms. Paulson to Agreed Exhibit Book, Tab 2 which was an email she sent to her managers as she was directed to by Ms. Giron. She confirmed it was an accurate reflection of the

events of the day. Ms. Paulson confirmed the Total Team Record regarding the incident in Agreed Exhibit Book, Tab 5 were written by her and were an accurate account of the events that day.

Ms. Paulson stated that the conduct demonstrated by Ms. Famuyisan that day was unacceptable as they provide care to residents, they are vulnerable, and staff are supposed to protect them. It is never ok to strike a resident, even if they strike the nurse first. She has had no interaction with Ms. Famuyisan since the incident.

On cross-examination, Ms. Paulson confirmed that she was told by Ms. Tefera that Ms. Famuyisan was tapping on DC's arms and then one last open-handed over the shoulder smack. She also confirmed that DC said she was "really scared" and was very quiet when Ms. Paulson talked to her. This was unusual as DC would usually get really mad. DC looked really scared and really upset. DC did say, "Yeah, I'm okay now" when Ms. Paulson asked if she was okay. The staff that was present reassured her that she was safe.

Ms. Paulson said Ms. Famuyisan was very upset that she could have been more seriously hurt. Ms. Drennan asked Ms. Paulson to clarify the conversation she had with Ms. Famuyisan regarding the incident. She testified she asked her if maybe she accidentally struck DC and Ms. Famuyisan stood up, stood over top of Ms. Paulson, and said, "Of course I did". Ms. Paulson then reiterated that Ms. Famuyisan told her, "You would have too".

Ms. Paulson stated she did demonstrate the tapping and the slap for Ms. Famuyisan and asked her if "she went like this" to which she again admitted it. At that point is when Ms. Famuyisan left the desk.

The Hearing Tribunal asked Ms. Paulson to clarify the wording she used when she asked Ms. Famuyisan if she hit DC. Ms. Paulson replied that she rolled her chair over to Ms. Famuyisan and that she had an awkward question. She had received a report that Ms. Famuyisan might have accidentally hit DC, "Could you have hit her during that accidentally?". She testified she did not want to blame her while she was asking Ms. Famuyisan about the incident.

Following the question by the Hearing Tribunal, Ms. Drennan asked Ms. Paulson what the kitchen staff she mentioned told her. She said the kitchen staff saw DC backing up, Ms. Tefera yelling to get away, and Ms. Famuyisan jump aside. She denied seeing anything else. Ms. Paulson stated she could tell the kitchen staff was lying and she told her that she needed to know if she saw anything else. The kitchen staff was asked if she would fill out an incident report and she declined. Ms. Tefera told the kitchen staff "I know you saw it" and "tell her the truth". To which she replied, "Yes. I did see her hit, like the patient too." She said she was not comfortable writing it down as she didn't want to get in trouble. The kitchen staff was standing in the kitchen serving area with a clear view. Ms. Drennan asked if there was a pillar in between but Ms. Paulson stated the pillar was only so big.

Ms. Drennan asked Ms. Paulson to indicate what kind of nurse Ms. Famuyisan was. Ms. Paulson stated she had seen two sides of Ms. Famuyisan. She is a very compassionate person with great energy. Patients respond quite well to her and she was always helpful. But she did see sides of her when she got upset, where she was quite temperamental. She stated Ms. Famuyisan was a fantastic nurse but that she does have a temper and that it came out at patients a number of times. She has no problem raising her voice at them.

Mr. Kully had nothing in reply.

Napinder Sidhu, LPN

Napinder Sidhu has worked as an LPN since November 2014. She is currently employed at PLC as an LPN on Units 42, 43, 44 as a casual float. She also had a temporary line on Unit 32. Since starting at PLC she has worked with Ms. Famuyisan. They have worked together five or six times. There was no animosity between the two of them.

On December 22, 2019, Ms. Sidhu and Ms. Famuyisan were working the evening shift (1500-2300h). They were working in the same hub, which usually consists of two nurses and one HCA. That night Melissa Wedemire, LPN, was also in the hub as Ms. Famuyisan's partner. On that night at or about 10:00 pm, Ms. Sidhu and Gurveer Gill, RN, were at the front desk charting. Ms. Famuyisan was sitting outside room 20 on a computer. Patient GW was going into another patient's room. Patient GW came out of the room a few minutes later. She then saw Ms. Famuyisan asking the patient what he had in his hand. She could not see Ms. Famuyisan clearly as there was a computer and the desk in her way. Ms. Sidhu could not hear what had occurred in the patient's room that GW went into; she noticed when GW left the room Ms. Famuyisan was following him. She could hear Ms. Famuyisan ask GW what was in his hands. They were both walking at a fast pace, Ms. Famuyisan was following GW, and she was alone. Ms. Sidhu could hear screaming and yelling; she ran down to GW's room. As she approached GW's room, Ms. Sidhu saw Ms. Famuyisan standing in the doorway of GW's room (he was room 2 bed 2). GW was in the bathroom and Ms. Sidhu heard a flush. Ms. Famuyisan was screaming that GW had hit her twice. Ms. Sidhu clarified that she was GW's primary nurse, but they practice collaborative care.

The bathroom was to the left inside GW's room. Ms. Famuyisan was standing in the doorway to the room. GW left the bathroom and moved towards his bed which was by the window. Ms. Sidhu was checking Ms. Famuyisan's injuries. She then said Ms. Famuyisan rushed towards the patient. She appeared angry and was loudly stating, "I will sue you." She said it twice and was aggressive and loud. Ms. Famuyisan was pointing her finger and leaning towards GW. He was sitting on his bed with his hands closed and was looking at Ms. Famuyisan during the encounter. Ms. Sidhu said she was quite close to the patient. Ms. Famuyisan was so loud she could be heard in the hallway.

Ms. Famuyisan left the room and Ms. Sidhu asked GW what had happened and if he hit Ms. Famuyisan. At first GW denied hitting her but when he was asked again, he said he had to pee, and she was trying to put her foot in the door of the bathroom, and he hit her. Ms. Gill was there and was asking GW questions as well. Ms. Sidhu was not sure when she entered the room. Ms. Sidhu then left GW's room and she saw Ms. Famuyisan being attended to by another LPN. She later saw her with an ice pack on the left side of her head.

At that point, the night shift was starting to come on. Ms. Sidhu checked on GW one last time; he was in his room and he was calm. He was sitting on his bed quietly. It was close to 11:00 pm. She came back to the desk to chart and give report.

Ms. Famuyisan was following GW to his room and she was repeatedly asking him what he had in his hands. Ms. Sidhu did not hear Ms. Famuyisan call for security. She said GW is known to be

aggressive and can be difficult to manage. He has cognitive impairment and ADHD and therefore he has a very detailed care plan. His behaviour was known to Ms. Sidhu, but she could not confirm if Ms. Famuyisan was aware of his behaviour but that there was a detailed care plan in place.

Ms. Sidhu was directed to the Agreed Exhibit Book, Tab 6 which was the Nursing detailed report. It had GW's health issues and the care plan in there. She said it is important to follow a care plan, especially if a patient is aggressive and difficult to manage. These plans really help provide care to the patient. In accordance with the care plan, patient GW is aggressive, has behavioural issues and is difficult to manage and the care plan indicates to re-approach him when he is calm and to approach the patient in a calm manner.

Ms. Sidhu did see security, but she was not sure who called them. She noticed Ms. Famuyisan talking to security and that security then went to GW's room when Ms. Sidhu was leaving after 11:00 pm. Ms. Sidhu did document in the MPR and then per the manager's request she prepared a statement. She wrote it December 30, 2019. The statement she wrote is under Tab 10 of the Agreed Exhibit Book. She identified the patient in room 5122 as "Jason". Ms. Sidhu said the email is an accurate reflection of what she saw that day, that Ms. Famuyisan's conduct was loud and aggressive.

Ms. Famuyisan was in the doorway by herself. Ms. Sidhu did not hear her ask for someone to come with her. When Ms. Famuyisan was following GW, she was angry and aggressive and Ms. Sidhu did not know why; she was not aware if GW had done anything to her. Ms. Sidhu did not see any interactions between Ms. Famuyisan and GW prior to the incident.

Shortly after the report was done (at approximately 11:00pm), Ms. Sidhu saw security. She was not sure who called them. They were talking to Ms. Famuyisan and then they went into GW's room. When Ms. Sidhu left after her shift, Ms. Famuyisan was still there. On December 30, she was asked to email her manager the details of the incident, this email was under Tab 10 of the Agreed Exhibit Book. Ms. Sidhu stated the email was an accurate reflection of what occurred the day in question.

Ms. Sidhu stated the normal procedure if a patient is suspected of having something is to first read the care plan. GW was aggressive and had behavioral issues. Staff should approach the patient calmly. If a patient is to be searched, they need to be a formal patient, then staff would call security. GW was not formal at that point. The primary nurse needs to assess the patient calmly then ask the patient questions. If they are ok to answer, then you proceed. If they are not or if they are acting aggressively then you just leave them and approach them later. Ms. Sidhu stated she would not approach them in their room if they were aggressive. She also testified that a nurse should not be aggressive as well. Ms. Famuyisan's approach to GW's room was aggressive and loud and that it was not the proper way to approach GW.

On cross-examination Ms. Sidhu said she was Ms. Famuyisan's buddy nurse on December 22, 2019. She confirmed she was at the nurse's station when she saw Ms. Famuyisan heading down the hallway and that she did not hear her call for security. Ms. Sidhu testified she did not see GW hit Ms. Famuyisan. When she arrived at GW's room, Ms. Famuyisan was in the doorway, she could not say if any other health care providers were in the room at that time.

Ms. Sidhu was trying to calm Ms. Famuyisan down and GW was in the bathroom. He then went to the bed. Ms. Famuyisan then re-approached GW and was aggressively talking to the patient.

Prior to Ms. Sidhu getting to the room she heard Ms. Famuyisan loudly ask GW what he had in his hand. Ms. Famuyisan was following him very fast; GW was walking fast as well. She clarified that when GW came out of the bathroom and went to his bed, Ms. Famuyisan approached his bed and said, "I will sue you" and she said it twice. That was the only statement she could clearly remember. She could not say for certain if Ms. Famuyisan asked GW "Why did you hit me? Do you know I could charge you? Do you know that I could sue you for what you did? Why did you hit me?" as indicated by Ms. Drennan.

Once Ms. Famuyisan left the room the last time Ms. Sidhu stayed in the room and was asking GW if he really hit her. At some point she noticed Ms. Gill was present. Ms. Sidhu left the room as Ms. Gill wanted to talk to GW. Ms. Sidhu noticed Ms. Famuyisan was in the report room at that time.

Ms. Sidhu explained the process to call security would be as per the care plan and that you can call security to stand by for assistance. If there was a safety issue, staff would call security. It would be a nurse's assessment to determine if security would need to be called. Anyone can call security. If a patient looked like they were concealing something a staff member could approach them but not in an aggressive manner. If that doesn't work, then staff can call security.

On redirect, Mr. Kully clarified that Ms. Sidhu was GW's primary nurse. That when she saw GW coming out of Jason's room, she was not concerned at that point. The care plan for the patient that GW went to see in the room was when someone is in his room his door cannot be closed. GW came out of Jason's room and was going back to his room. Ms. Sidhu did not see anything in GW's hands.

Ms. Sidhu confirmed she was Ms. Famuyisan's buddy nurse but Melissa Wedemire, LPN. was also working with Ms. Famuyisan. Ms. Sidhu was not aware of any conditions on Ms. Famuyisan's practice permit.

Ms. Drennan asked for clarification about the nursing assignment, Ms. Sidhu said it was herself, Ms. Wedemire and Ms. Famuyisan all in the same care hub and one HCA. Ms. Wedemire was doing medication rounds when the incident happened, and Ms. Sidhu did not see her.

There were no further questions from the Hearing Tribunal.

Gurveer Gill, RN

Gurveer Gill has been a Registered Nurse for five years. She is currently employed at the PLC, with her primary line being on Unit 51. She has worked at PLC for five years. Ms. Gill worked with Ms. Famuyisan since approximately the time Ms. Sidhu started. Ms. Famuyisan was an HCA and then became an LPN. They worked together when she was an HCA, then some shifts when she became an LPN. They did not work much together, maybe two or three shifts a month. They were colleagues and she did not have any animosity towards Ms. Famuyisan.

Ms. Gill was working on December 22, 2019 on Unit 51 during the evening shift from 3:00 pm to 11:15pm and was the charge nurse that day. Therefore, she did not have a patient assignment, but was doing the discharges and paperwork. Unit 51 was a subacute unit that was composed of

transitional patients that were mainly waiting for placement. Some patients are on the unit for quite a long time.

Ms. Gill testified Ms. Famuyisan was working with Ms. Wedemire, she was told that Ms. Famuyisan was on supervised practice and someone was supposed to be working with her.

During the shift, Ms. Gill stated one of the formal patients came back from an extended pass. He was late getting back from pass and went back to his room. She saw GW enter that patient's room (Room 22), a few minutes later he came back and had his hands folded in front of him. He was walking quickly to his room. Ms. Famuyisan was sitting a few feet away from Room 22 and saw GW leave the room. She asked him to stop and show her what was in his hands. He continued on to his room and Ms. Famuyisan stood up abruptly and loudly told him to stop and show what was in his hands, he did not stop. GW proceeded to his room and Ms. Famuyisan followed him. She was very loud and seemed to be rushing towards GW, Ms. Gill stated it was like a run. After about a minute Ms. Famuyisan came out of GW's room. Ms. Gill saw Ms. Famuyisan by the Christmas tree. Ms. Famuyisan was screaming that GW hit her in the forehead or face. Ms. Gill was talking to another patient; Ms. Sidhu left the desk immediately when Ms. Famuyisan started screaming. After finishing up the conversation she was having with the other patient, Ms. Gill went to GW's room.

When she approached the room, she saw Ms. Sidhu and Ms. Famuyisan were standing by the door and GW was sort of laying down/sitting down on his bed. She entered the room. Ms. Famuyisan then went back into GW's room and said in a loud threatening manner, "You punched me in the face, and you see what I can, what I'm going to do to you and I will sue you". She said it two or three times while pointing in his face. Ms. Gill was standing by the curtain near the head of GW's bed and attempted to tell Ms. Famuyisan three or four times to leave the area. Ms. Gill said she clearly heard what Ms. Famuyisan said to GW. She could not recall anybody else in the room at the time except for Ms. Sidhu being somewhere near the door area.

Ms. Gill testified that what Ms. Famuyisan did was not appropriate as Ms. Famuyisan had already left the area. The patient was known to have some cognitive issues and aggressive episodes and to go back to him and do what she did was not appropriate. GW was a bit scared; he had his hands folded on his chest; he did not say anything. After Ms. Famuyisan left the room, Ms. Gill asked GW what had happened. At first GW denied hitting Ms. Famuyisan. He kept blaming Ms. Famuyisan and his doctor for the incident.

Ms. Gill left the room and went to the desk and saw Ms. Famuyisan in the report room and someone else was assessing her. Ms. Gill found out that Ms. Famuyisan had a scratch under her left eye and then a bit of a hematoma on her left forehead. She asked her to go get herself checked but Ms. Famuyisan declined but did say she would put some ice on it. Ms. Gill returned to GW's room and that was when he admitted he punched Ms. Famuyisan in the face and said it was because she placed her foot in the bathroom door. He again blamed his doctor for not giving him enough medication for his aggression. He said he really needed to pee, and she was in the way, so he punched her.

Ms. Gill stated Ms. Famuyisan was not GW's primary nurse but was in the hub so the nurses work together. She confirmed GW had a specific care plan and had some cognitive issues and ADHD. He was known to seek attention and would need to be redirected to his primary nurse. GW was also known to be aggressive and the staff were to just leave him alone when he was like this and

re-approach later. She confirmed the document under Tab 6 in the Agreed Exhibit Book was GW's care plan. Ms. Gill documented the events and her MPR was under Tab 7 of the Agreed Exhibit Book. She was asked to read it out for the Hearing Tribunal and confirmed it was an accurate reflection of the incident.

Ms. Gill stated that Ms. Famuyisan did not ask anyone to call for security. She testified she heard everything else Ms. Famuyisan said so she would have heard if she called for security. Ms. Gill also did not ask for any assistance.

Ms. Gill testified that the actions of Ms. Famuyisan during the incident were not appropriate. As GW was a voluntary patient you can only ask him to show what was in his hands. If he didn't show what he had that was fine. It would have been more appropriate to refer him to his primary nurse.

Mr. Kully directed Ms. Gill to Tab 9 of the Agreed Exhibit Book, and she confirmed it was an email she wrote to her manager Raymond on December 26. She wrote it after speaking with another nurse who was Charge on another day. That other nurse asked her why she didn't call security. Ms. Gill told her she was never asked to call. The other nurse mentioned that Ms. Famuyisan documented that she had asked for security to be called. Ms. Gill felt the documentation was wrong and therefore wrote the email to her manager. After reading out the email to the Hearing Tribunal, Ms. Gill confirmed it was an accurate reflection of what occurred.

Ms. Gill again reiterated that Ms. Famuyisan's actions were not appropriate as she was loud and that she had left the immediate area and then went back in and threatened him that she would sue him and he should see what she can do to him now. Ms. Gill said it was wrong to go back into the immediate area after he had already punched her. Ms. Gill also said again Ms. Famuyisan never asked for her to call security and that it had been documented wrong.

Mr. Kully asked if she was aware of any conditions on Ms. Famuyisan's practice permit, which she wasn't. She stated there was no communication from the manager. She had heard from others that she was on supervised practice but there was nothing "concrete". Ms. Gill testified if Ms. Famuyisan was on supervised practice that she should not have entered GW's room alone, that she needed to do it under the supervision of whoever she was working with. She also stated that any supervision would extend to searching a patient.

On cross-examination Ms. Drennan asked for clarification on where everyone was standing during the incident. Ms. Gill confirmed she was at the nurse's desk and Ms. Sidhu was beside her on another computer. She stated Ms. Famuyisan was sitting at a computer on wheels that was parked by Room 20 or 19 in the hallway. When Ms. Famuyisan stood up to follow GW she was walking towards the front of the unit. Ms. Gill testified she would have heard Ms. Famuyisan call for security. In general, Ms. Gill stated Ms. Famuyisan was not soft spoken and that she could hear her clearly. However, if Ms. Famuyisan would have requested security, Ms. Gill would have asked her why as GW was not a formal patient and security will not help search a patient if they are not formal.

Ms. Gill stated she could not recall if the other patient in GW's room was in the room. She then stated Ms. Famuyisan left the "immediate area" and then quickly went back into GW's bedside. Ms. Famuyisan said to GW, "You hit me in the face, now you will see what I will do to you. I will sue you" and was pointing her finger at him. Ms. Drennan stated Ms. Famuyisan will

say she was questioning GW and Ms. Gill stated it wasn't questioning, Ms. Famuyisan was telling GW "you hit me in the face, and now you will see what I will do and I will sue you." She said "I will sue you" multiple times.

Ms. Gill could not recall if Ms. Sidhu was in the room when she was questioning GW. After she left GW's room, Ms. Gill saw Ms. Famuyisan in the report room. She asked her if she was ok and noticed she had a scratch under her eye and swelling to her forehead. She advised Ms. Famuyisan to go to emergency and be assessed because it was the head area, but Ms. Famuyisan refused to go. Ms. Gill told her they needed to fill out an incident report on Insite. One of the night shift staff advised Ms. Gill she should call security as Ms. Famuyisan had not called. Ms. Gill called them around 11:00pm, they asked her if there was an active situation and she said there wasn't. They agreed to come up to the unit and check.

There was no redirect, and the Hearing Tribunal had no questions. The witness was excused.

Melissa Wedemire, RN

Melissa Wedemire has been a Registered Nurse for approximately one year and two months and is currently employed at the PLC. She works in the medical relief pool and works on six or seven units. She has worked in the float pool since September 2019. Ms. Wedemire has worked with Ms. Famuyisan a total of three times. The first time she worked with her was on December 22, 2019. She had never met her prior to that.

On December 22, 2019 Ms. Wedemire worked on Unit 51 on the evening shift (3:00pm to 11:15pm) which was the same shift as Ms. Famuyisan. Ms. Wedemire was told she would be her buddy that shift. She had never been a buddy nurse before and went off what Ms. Famuyisan told her that day. Ms. Famuyisan told her it meant she had to go into any room with her when she was providing care to a patient which included changing them, helping them, giving medication etc. Ms. Wedemire confirmed that would include searching a patient.

At approximately 10:00pm, Ms. Wedemire stated she was helping a different patient and heard something in the hallway. She heard something about a patient coming back late and when he returned "one of his buddies" on the unit went to his room and there was some exchange. Ms. Wedemire heard running and she turned around and saw Ms. Famuyisan standing outside of the GW's washroom which was near the entrance to his room. Ms. Wedemire closed the curtain to the room she was in as her patient had voiced that she was scared of being on the unit and she wanted to provide the best care for her. Ms. Wedemire did not see anyone else with Ms. Famuyisan. She also stated that it was fine for Ms. Famuyisan to be at the doorway of a patient as long as she didn't enter the room as Ms. Wedemire was to be with her for all patient care. She stated she assumed that would also be the same if Ms. Famuyisan had to search a patient but she had never had to search a patient. She testified that security normally does any search, or they were present if a search was done.

Ms. Wedemire testified she heard Ms. Famuyisan say she had been hit approximately one minute after she heard the running in the hallway. She saw Ms. Famuyisan last standing outside of GW's room near the entrance. During the investigation of the incident, Ms. Wedemire sent an email to her manager on December 22, 2019. She confirmed the email under Tab 8 in the Agreed Exhibit Book was the email she sent and that it was an accurate reflection of what had occurred.

According to Ms. Wedemire, GW was known to have a history of outbursts and that he had a care plan put in place.

On cross-examination, Ms. Wedemire confirmed she had worked with Ms. Famuyisan a total of three times and that while working together things went smoothly. She had no issues while Ms. Famuyisan shadowed her and Ms. Famuyisan was easy to get along with and work with.

Ms. Wedemire could not recall hearing anyone call for security when she heard the running down the hall, however she did hear it at some point after. She did say if she were ever in a position that there was a safety issue, she would call for security and would let them take the lead on the situation.

She stated she heard a toilet flush while she was in her patient's room which was across the hall, she had her back turned to the door, but the toilet was loud. Ms. Wedemire could not recall if she heard anything after the toilet flushed. After the incident she did check in with Ms. Famuyisan to see if she was ok and if she needed anything. Ms. Famuyisan asked Ms. Wedemire at that time to administer medication to another patient, which she did.

There were no questions on redirect and the Hearing Tribunal had no questions.

Temitope Famuyisan, LPN

Temitope Famuyisan stated she has been an LPN since 2015. She had started at VFC in 2013 as an HCA and then became an LPN in 2015. She was then hired as a casual nurse. She had worked with Ms. Tefera since she started with VFC. Ms. Famuyisan testified they never had any issues except that she felt there may have been some "attitude" from Ms. Tefera when Ms. Famuyisan became an LPN and had to do some of the assigning.

Ms. Famuyisan also worked with Ms. Paulson for quite a while. She stated Ms. Paulson was a "wonderful nurse" and that they worked well together and there were no issues between them.

The only incident Ms. Famuyisan can recall having at VFC during her time there, prior to the incident, was during the springtime. The incident was regarding assignment to a particular pod. Ms. Famuyisan was to be assigned to "Yellow Pod" but stated she wanted to stay on "Red Pod" during the shift as she had been for two or three shifts. She refused to go to "Yellow Pod". During a conversation with her Team Lead she apologized but explained her rationale and felt it would have been accepting unsafe work to go to "Red Pod" that day. She also spoke to her manager, there were no repercussions but was told she should have followed the direction of the Team Lead.

On July 6, 2019 she was on 3 East at VFC working the day shift, although she was not assigned to patient DC. She was working in "Red Pod" but all the patients from all three pods go to the same dining room. She has previously dealt with patient DC, who is "kind of aphasic" but could still communicate. DC also had something like an iPad on her wheelchair that helped her communicate. On the day of the incident, Ms. Famuyisan didn't have any interactions with DC prior to the incident.

At approximately 8:45am, Ms. Famuyisan had her Medication Cart in the dining room facing the wall. She was trying to pour thickening fluid inside a cup to prepare medication when she heard a voice from the kitchen area yelling “move, move, move”. She thought something was going on in the kitchen, so she turned her neck to see. At that moment, she felt DC’s electric wheelchair hit her left side. Ms. Famuyisan said she was “so scared” and in a moment of “fight or flight” she raised her hand forward because the patient was driving backwards, and she jumped out of the way. She jumped to the right side. Other residents were starting to come into the dining room, Ms. Famuyisan screamed “Jesus” because she was scared. She felt there was a potential risk to both herself and the residents coming into the dining room. Ms. Famuyisan stated she then jumped around and clapped her hands to catch her attention. When she jumped around, she was close to the side and front of DC’s wheelchair. DC continued driving backwards but eventually stopped.

Ms. Famuyisan stated she then asked DC, “Are you okay?” because the patient doesn’t behave that way unless she is upset with something or if her needs are not met. Ms. Famuyisan then said “Oh my god. I got hurt.” DC leaned forward and tried to rub Ms. Famuyisan’s back and said, “Oh, sorry”.

Ms. Famuyisan then said that Ms. Tefera came over, seemed visibly upset and asked if she was ok then advised her to “go report her. I don’t know what is wrong with this management. They won’t do anything.” Ms. Famuyisan then went to check on DC to make sure she was okay and to ensure she hadn’t been hurt. She also wanted to ask her if there was a need that was not met and maybe that was why she was driving so recklessly. DC said, “No”.

Ms. Famuyisan then went to the nursing station where she met Angela, one of the other nurses. She told Angela, “Do you believe what happened just now? God really saved me.” She told her DC hit her from the back. Angela told her, “This has to stop; we have to retrieve the wheelchair from her.” Ms. Famuyisan said “No. She did it unpurposefully. She even apologized.” Angela told her there was a memo saying it was an ongoing issue with DC. Ms. Paulson then became aware of the situation and told Ms. Famuyisan to just “document everything”.

Ms. Famuyisan denied drumming on DC’s arm or striking DC. She did ask DC if she was hurt and DC just shook her head. Ms. Famuyisan testified that she does not have any history of abusing any clients or residents, including when she was an HCA. Therefore, she was surprised to hear the allegations Ms. Tefera made.

At approximately 10:00am to 10:30am Ms. Paulson approached Ms. Famuyisan and said, “Oh Temi, why did you hit DC?” She said she was confused and said, “Of course not. DC hit me.” Ms. Paulson told her that somebody had witnessed it and Ms. Famuyisan denied it and walked away to take a deep breath. After that she went on break. While she was on break the MRP on duty came to her and said, “Oh, I’m sorry. I heard what happened. It’s such an unfortunate incident.” She then suggested to Ms. Famuyisan, when her manager came back from vacation, that she should ask her for the Crisis Intervention Course. Ms. Famuyisan stated, at that time, she was thinking of taking the refreshment intervention course as she was casual and hadn’t taken the course with VFC. The MRP then told her to go to the doctor and get checked.

Ms. Famuyisan left and went to see a doctor at a nearby walk-in clinic who told her it was a soft tissue muscle injury. She was prescribed Tylenol and Voltaren. She filled out the WCB form as she was requested to by the MRP.

According to Ms. Famuyisan, Ms. Tefera did not ask why she hit DC or anything like that. Prior to leaving to go see the doctor at approximately 1:00pm, Ms. Famuyisan went to talk to Ms. Tefera in the kitchen area. She told Ms. Tefera, "What you said was wrong" and told her she heard a voice, jumped to the right, saw another resident coming in and screamed, "Jesus", turned around and clapped my hand. Ms. Tefera then told her, "No, no, no I saw you". Ms. Famuyisan denied every telling her that she "beat" DC. In order to avoid further confrontation Ms. Famuyisan walked away.

At the time of the incident, Ms. Famuyisan stated the kitchen staff was in the kitchen area. She did say that the pillar was in the way and that she would not have been able to see the incident because of that. Ms. Drennan asked if, at any time, did Ms. Famuyisan tell anyone, "You would have done the same thing". Ms. Famuyisan denied ever saying that.

Ms. Drennan directed Ms. Famuyisan to Exhibit 6 which was the interview that was conducted during the investigation of the incident. She confirmed it was an accurate reflection of the conversation in the meeting. During the interview she also mentioned that Angela mentioned the memo regarding DC's wheelchair, Ms. Famuyisan had not previously seen the memo prior to the day of the incident. She also was not aware of any communication about where the medication cart should be while in the dining room. In the interview she told the MRP and Ms. Paulson that she only raised her hand and did not hit the resident.

Ms. Drennan asked Ms. Famuyisan what she had learned from being accused of patient abuse. Ms. Famuyisan stated it has helped her understand her strengths and weaknesses and feels she will be walking away from the incident a better person. It has allowed her the opportunity to debrief herself and what she should have done better and was a good learning opportunity.

Prior to proceeding to the incident at PLC, Ms. Famuyisan told the Hearing Tribunal that she understands her voice is loud. It doesn't mean she is upset or mad or yelling at anyone. She is working on it. She feels people tend to misjudge her and perceive her as being aggressive. Ms. Famuyisan stated she is a passionate person and wanted the Hearing Tribunal to take that into account.

Ms. Famuyisan started at PLC in November 2012 as an HCA and switched her role when she became an LPN. She was initially hired as a casual LPN, then got hired into a temporary position for a year. After the temporary position she returned to a casual line before accepting a 0.84 line on the unit she was on. A permanent 0.5 position was posted, and she was the successful candidate.

On December 22, 2019, she was working an evening shift on Unit 51 and was working with a buddy nurse. She was assigned to a formal patient who had returned late from his pass. Ms. Famuyisan stated she was sitting at her medication cart which was parked very close to Room 22 which was the room of her formal patient. It was very close to the nursing station. She observed GW enter Room 22 and that the two patients exchanged something. It appeared to be a black bottle; GW then rushed out of Room 22. Ms. Famuyisan stated she quickly alerted the Charge Nurse to "Call security, I saw them exchanging something". She started to immediately

follow GW to his room and was standing at the door waiting for security. While waiting she observed GW walk towards her, she moved to the left which is where the bathroom door was. She thought he was going to walk out of the room and that is why she moved to the left. The door to the bathroom was open a little bit and she didn't want the door to hit her leg, so she had her leg in the door a little bit. GW then changed direction and moved towards Ms. Famuyisan. She stated he grabbed her, pulled her towards him and punched her on the left temporal side twice. She testified she was afraid and started yelling for help, "Call security, call security". Ms. Famuyisan stated she started crying because it really hurt. GW had entered the bathroom at this point. Other staff came to see what had occurred and she informed them that he had punched her in the face. While she was speaking with the other staff, GW came out of the bathroom and walked past them. Ms. Famuyisan testified she asked him, "What have I done? I don't deserve to be hit. What did I do wrong? You know I could charge you for what you did. I could sue you for what you did." GW told her it wasn't his fault, that his doctor wouldn't increase his medication. Another LPN came and took her to the report room. She was given an ice pack and some water. After the incident, Ms. Famuyisan recalled Ms. Sidhu was in the doorway of GW's room, she could not say for sure if Ms. Gill was there.

Ms. Famuyisan had previously provided care to GW; she had no issues regarding his aggression. She felt they had a good rapport. She was aware of his care plan regarding his aggressive behaviour. GW was not assigned to her on this particular shift, however Ms. Famuyisan stated that with Patient Collaborative Care all staff work together and GW was in her hub that shift.

Regarding the testimony from others, Ms. Famuyisan denied yelling at GW. She stated she has a loud voice and that it is just her personality. She did say she was upset; it was not the first time that staff has been kicked, scratched, and hit. She felt it was an intentional act and that was why she was so upset and was asking him why. Ms. Famuyisan said she did not point her finger at him and just asked him "Why, what did I do?". She was shocked that it happened. Her vision was blurry. She had no further interaction with GW that shift.

Ms. Famuyisan said she debriefed with herself after the incident to ask herself what she could have done better and felt she should have just walked away.

On cross-examination, Mr. Kully confirmed Ms. Famuyisan worked as an LPN at PLC from 2015 to 2019 as an LPN and prior to that she worked as an HCA from 2012-2015. She agreed she has quite a bit of experience and is accustomed to dealing with challenging patients. Her experience helped her know how to respond to aggressive patients and she stated that people have told her she is a good nurse.

In regard to the incident at VFC, Ms. Famuyisan stated she heard someone yelling "Move, move, move" from the kitchen area, not from behind her or near the pillar. It wasn't the kitchen staff but just from that area. She was directed to Tab 4 in the Agreed Exhibit Book and confirmed the yelling was from behind the wall. When she was hit by DC, she was unable to say how fast DC was going. She stated her elbow was hit by the chair hard enough that she had swelling to the area. After she was hit by the chair, Ms. Famuyisan testified she said, "Stop" and clapped her hands as DC was still backing up.

When she was directed back to Tab 4, she confirmed she was facing the wall when DC backed into her elbow. Mr. Kully pointed out that if DC was still backing up, she may have hit the wall or

the medication cart that Ms. Famuyisan was standing at. Ms. Famuyisan testified she jumped to the right of the medication cart, she saw another resident coming and jumped around towards the left side and clapped her hands. At that point she was on DC's left side and that she was "probably" still facing the wall. Ms. Famuyisan wanted to clarify the incident further. She stated she stood by the cart, she then got hit and jumped to the right side of the medication cart, at that time she observed another patient and screamed, "Jesus". She then jumped around and clapped her hands. At that point she was on the left side. She said the reason she jumped to the opposite side of DC was to catch her attention.

Ms. Famuyisan stated she was scared when she got hit but wasn't upset as it was an accident. She did not take it personally. However, she was concerned DC might hurt someone. Prior to the incident Ms. Famuyisan was not aware of other incidents DC had with her wheelchair.

Ms. Famuyisan denied reacting negatively to the accident and said she felt bad for DC as she was going to have her wheelchair taken from her. She said she did not yell at DC or strike her on the arm and didn't reprimand DC for striking her on the arm.

Mr. Kully suggested to Ms. Famuyisan that she didn't actually clap her hands and that she did strike DC on the arm. She said she did clap her hands and did not strike DC. Ms. Famuyisan said that DC apologized, that she was difficult to understand but she understood her saying, "Sorry".

After the incident Ms. Famuyisan spoke with Ms. Paulson and she told her what happened, that DC hit her and that was it. She was aware that Ms. Paulson would need to report the incident. She denied admitting to Ms. Paulson and Ms. Tefera that she hit DC.

Ms. Famuyisan was sent home, according to her, because she was injured and needed to get herself checked and not because she had struck a patient. She did not feel she needed to go home and was worried about her team working short if she left. She insisted she was sent home due to her injury and not because she hit a patient. She was subsequently terminated from her position.

On December 22, 2019, she was working with Ms. Wedemire who was her buddy nurse. Ms. Famuyisan was aware of the condition on her practice permit that she needed to practice in the presence of another nurse. During that shift she had nine patients assigned to her and GW was not one of them. She was familiar with him and his care plan regarding leaving him alone when agitated and re-approaching later, as well as, redirecting him to his primary nurse. She stated she followed GW but stayed outside of his room. She had followed him at a fast pace as she was worried. Ms. Famuyisan did not talk to the patient in Room 22 regarding the exchange she saw. She was concerned that what was exchanged was probably drugs but she did not actually see what he had in his hands.

When Ms. Famuyisan asked GW to show her what he had in his hands, he did not say anything. She was following him as she wanted to see what he had, and she went by herself. She stated she did ask the charge nurse to call for security; she did not call them herself. She also did not ask any other nurse to accompany her. Ms. Famuyisan testified she was waiting for security while standing at the entrance of GW's room. She did not wait for GW to calm down and then re-approach although she said that he did not look upset to her or aggressive. Ms. Famuyisan did not feel she was providing patient care and was just watching from afar. She did put her foot in

the doorway of GW's bathroom door which is inside the room. She had seen GW coming out towards her and she stepped aside to the left which is where the bathroom door was and had her leg there so the slightly open door didn't hit her. She denied trying to get in his way. At that time GW pulled her and punched her in the face with no warning. He then went into the bathroom.

She again stated she was quite upset and was crying and yelling and saying, "Why do we have to be abused by patient's all the time". At that point, she said GW was standing in the hallway and wasn't on his bed. That was when she started asking him the questions. Ms. Famuyisan said she was upset and emotional. She said she asked him, "You know I can sue you for what you did?", she denies threatening him that she could sue him. She denies entering GW's room.

There was no redirect, but the Hearing Tribunal asked Ms. Famuyisan how many shifts she would work in a month at each place of employment. Ms. Famuyisan said it was about five eight hour shifts at each place. The Hearing Tribunal asked for clarification as to where the bathroom was positioned in relation to the hallway. Ms. Famuyisan said it was close to the entrance of the room on the left side. The room door swings to the right and the bathroom in on the left. The beds were on the left side of the room as well.

Ms. Famuyisan clarified that when GW first went in the room he went to lie down on his bed (which was Bed B). He was laying there, and she was moving about and standing waiting for security to come. He then stood up and was trying to walk out again to come outside and she stepped to the left. The door to the bathroom was open a little bit and she moved her foot into the bathroom door.

(6) Hearing Tribunal Decisions and Reasons

The Hearing Tribunal is aware that 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, the Hearing Tribunal must then proceed to determine whether that conduct rises to the threshold of unprofessional conduct in the circumstances.

The Hearing Tribunal recognizes some of the evidence it may be asked to accept and consider in this matter may be hearsay evidence. The Hearing Tribunal concludes that hearsay evidence can be admissible when it is determined the central issues have been established or where there is additional evidence to support the Allegations. All issues of guilt or innocence are considered on a balance of probabilities. The onus is on the Complaints Director to establish on a balance of probabilities the facts as alleged in the Statement of Allegations occurred and that it rises to the level of unprofessional conduct as defined in the HPA.

First Statement of Allegations

Allegation 1 On or about July 6, 2019, struck client DC (contested)

The Hearing Tribunal reviewed the testimony of the witnesses and carefully weighed the evidence provided.

Ms. Tefera testified that on July 6, 2019 she witnessed Ms. Famuyisan strike patient DC after DC accidentally hit Ms. Famuyisan with her motorized wheelchair. Ms. Tefera stated she yelled a warning to Ms. Famuyisan who only moved slightly out of the way. She then witnessed Ms. Famuyisan yell and jump backwards prior to striking DC on the upper arm with an open hand.

Throughout her testimony, Ms. Tefera was composed and consistent. She had a clear recollection of the events that occurred on July 6, 2019. Her evidence was clear with respect to the events that occurred and where people were located in the dining room. Her evidence was that Ms. Famuyisan jumped after being struck by DC's wheelchair. Ms. Tefera then saw Ms. Famuyisan strike patient DC on DC's arm and then go to the nurse's station. Ms. Tefera testified that the strike to patient DC by Ms. Famuyisan was not accidental. After seeing Ms. Famuyisan strike patient DC, Ms. Tefera reported the incident. She asked for assistance from Ms. Paulson to write a statement immediately. The Hearing Tribunal found that Ms. Tefera felt very strongly about the incident and acted quickly to notify those in charge. Ms. Tefera also confronted Ms. Famuyisan shortly after the incident to tell her what she did was wrong. Ms. Tefera answered all questions directly and had unequivocal answers. The evidence of Ms. Tefera was both internally and externally consistent. Ms. Tefera had nothing to gain by fabricating the event. For the reasons listed, the Hearing Tribunal placed significant weight on Ms. Tefera's testimony.

Ms. Paulson provided clear consistent evidence. She did not witness the incident, but spoke to individuals involved on the day of the incident. She asked Ms. Tefera three times to explain what she saw. Ms. Paulson also verified the incident with patient DC who reported that she had been hit by Ms. Famuyisan. Ms. Paulson asked Ms. Famuyisan if she had hit patient DC and was surprised when Ms. Famuyisan confirmed she had. Ms. Paulson suggested to Ms. Famuyisan that it may have been an accident, but Ms. Famuyisan made it clear it was not and said that Ms. Paulson would have done the same thing. Ms. Paulson reported the incident to the MRP, recorded it in the Total Team Record and emailed her manager.

Ms. Paulson stated she had a good working relationship with Ms. Famuyisan. Ms. Paulson would not benefit from fabricating the events. Her testimony was both internally and externally consistent. She provided clear and concise answers to all questions during her testimony. The Hearing Tribunal placed a high weight on the testimony of Ms. Paulson.

Ms. Famuyisan's testimony began with an account of an incident that happened prior to the one in question. It was regarding a refusal of an assignment. The Hearing Tribunal felt the testimony was confusing and demonstrated that Ms. Famuyisan had a previous incident of not following direction. The incident also suggested that Ms. Famuyisan may not be willing to work with more difficult patients.

During her testimony of the events on July 6, 2019, Ms. Famuyisan stated she heard a voice from the kitchen area yelling "move, move, move". She stated she turned her head to the kitchen area and at that moment felt DC's electric wheelchair hit her left side. She stated she jumped in a moment of fight or flight. Ms. Famuyisan's evidence was that she felt there was a potential risk to herself and to patients coming into the dining room and she clapped her hands to catch DC's attention. She denied striking patient DC. Her testimony was not clear, and it was difficult to determine where she jumped to, where she was in relation to patient DC or the medication cart when she jumped and how many times she jumped. Ms. Famuyisan's account of the events differed significantly from the other testimony provided. The Hearing Tribunal found that Ms. Famuyisan's account about the movement of DC's wheelchair was not plausible. If DC were

continuing to back her motorized wheelchair up, she would have hit the medication cart or the wall. The Hearing Tribunal did not find Ms. Famuyisan's account of the events to be plausible.

Ms. Famuyisan's account of the conversations she had with Ms. Paulson and Ms. Tefera after the incident differs from the testimony of both Ms. Paulson and Ms. Tefera. The Hearing Tribunal found the testimony of Ms. Paulson and Ms. Tefera to be more credible and plausible than the testimony of Ms. Famuyisan. The Hearing Tribunal found the evidence they each presented was consistent with each other's evidence.

Based on the evidence, the Hearing Tribunal finds that the allegation is proven on a balance of probabilities.

The Hearing Tribunal finds that the conduct amounts to unprofessional conduct as defined in s. 1(1)(pp) of the *HPA*, in particular, the Hearing Tribunal finds the following definitions of unprofessional conduct applicable:

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

The conduct of Ms. Famuyisan shows a lack of knowledge of or lack of skill or judgment in the provision of professional services. It is never acceptable to hit a patient even in the circumstances where the Licensed Practical Nurse is injured by a patient, or in this case, a wheelchair. Ms. Famuyisan would be expected to know to position her medication cart in a place where it will be safe to prepare and administer medication. Ms. Famuyisan would also be expected to demonstrate the appropriate response and have the skills and competencies to deal with patients, even difficult patients.

The conduct of striking a client also clearly harms the integrity of the profession. Client DC was a vulnerable patient. Licensed Practical Nurses are entrusted to care for vulnerable patients and must always practice in the patient's best interest.

The conduct also breached the following principles and standards set out in CLPNA's Code of Ethics and Standards of Practical Nurses in Canada:

CLPNA Code of Ethics:

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

1.5 Provide care directed toward the health and well-being of the person, family, and community.

2.7 Develop trusting, therapeutic relationships, while maintaining professional boundaries.

2.8 Use evidence and judgement to guide nursing decisions.

2.9 Identify and minimize risks to clients.

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

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:

1.1 Practice to their full range of competence within applicable legislation, regulations, by-laws, and employer policies.

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 Licenced Practical Nurses.

2.1 Possess current knowledge to support critical thinking and professional judgement.

2.7 Demonstrate understanding of their role and its interrelation with clients and other health care colleagues.

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

3.6 Demonstrate and understanding of self-regulation by following the standards of practice, the code of ethics and other regulatory requirements.

4.1 Practice in a manner consistent with ethical values and obligations of the Code of Ethics for LPN's

4.6 Maintain professional boundaries in the nurse/client therapeutic relationship at all times.

4.10 Practice with honesty and integrity to maintain the values and reputation of the profession.

Ms. Famuyisan's conduct did not take into account the well-being of client DC or develop a trusting relationship with the client. She did not demonstrate critical thinking and professional judgment in how she reacted to the incident. Her conduct did not promote safe, effective, and ethical practice. Her conduct failed to maintain the values and reputation of the profession. The breaches of the Code of Ethics and Standards of Practice are serious and constitute unprofessional conduct.

Allegations 2 and 3

Allegation 2

On or between August 22, 2019 and October 3, 2019 failed to immediately disclose a list of current employers to the CLPNA as required by the order of Jeanne Weis, Executive Officer for the CLPNA, dated August 22, 2019 issued under section 65 of the Health Professions Act (admitted)

By way of an Agreed Statement of Facts and Acknowledgement of Unprofessional Conduct (Exhibit 3), Ms. Famuyisan admitted to engaging in unprofessional conduct on or between August 22, 2019 to October 3, 2019 by failing to disclose a list of current employers to the CLPNA as required by the order of Jeanne Weis, Executive Officer of the CLPNA, dated August 22, 2019 issued under section 65 of the HPA.

Upon receiving the order by Jeanne Weis, Ms. Famuyisan did not immediately disclose her list of current employers. On October 3, 2019, Ms. Famuyisan was interviewed by the CLPNA investigator and provided the investigator with her list of employers. At that time, it was determined she was employed by both SkyPointe AgeCare and the PLC. Prior to this interview, Ms. Famuyisan did not disclose that she was employed by either one of these employers.

The Hearing Tribunal finds that the conduct is proven on a balance of probabilities. The basis for finding that the conduct is unprofessional conduct is addressed following Allegation 3 under the Second Statement of Allegations.

Allegation 3

On or between August 22, 2019 and October 10, 2019 failed to practice in the presence of one or more regulated health care providers, in violation of a condition placed on her practice permit requiring supervised practice as set out in the order of Jeanne Weis, Executive Officer for the CLPNA, dated August 22, 2019 issued under section 65 of the Health Professions Act. (admitted)

By way of an Agreed Statement of Facts and Acknowledgement of Unprofessional Conduct (Exhibit 3), Ms. Famuyisan admitted to failing to practice in the presence of one or more regulated health care providers, in violation of a condition placed on her practice permit requiring supervised practice as set out in the order of Jeanne Weis dated August 22, 2019 under section 65 of the HPA.

Following the disclosure of Ms. Famuyisan's current employers on October 3, 2019, the CLPNA contacted those employers. It was determined that she had worked without direct supervision in the presence of one or more regulated health care providers.

Both employers provided multiple dates between August 22, 2019 and October 3, 2019 in which Ms. Famuyisan worked without direct supervision. She worked without direct supervision for 13 shifts at PLC and for 24 shifts at AgeCare SkyPointe. Neither employer was aware of the condition on Ms. Famuyisan's practice permit nor the obligation that she only practice while supervised.

The Hearing Tribunal finds that the conduct is proven on a balance of probabilities. The basis for finding that the conduct is unprofessional conduct is addressed following Allegation 3 under the Second Statement of Allegations.

Second Statement of Allegations

Allegation 1

Withdrawn

Allegation 2

On or about June 15, 2019, Ms. Famuyisan did one or more of the following with regards to patient AH:

- a. Left medication unattended on the patient's bedside table;
- b. Failed to ensure the medications were consumed by patient AH.
(admitted)

By way of an Agreed Statements of Facts and Acknowledgement of Unprofessional Conduct (Exhibit 3), Ms. Famuyisan confirmed she worked an evening shift (1500 hours to 2315 hours) on June 15, 2019 on Unit 51 at the PLC. She was responsible for patient AH. She admitted to leaving a tablet of Tylenol 1gram on patient AH's bedside table. She failed to ensure it was consumed by patient AH as ordered.

Shortly after the incident occurred, Ms. Famuyisan confirmed to Raymund Leano, RN, Unit 51 Manager at PLC, that she had placed the medication on the bedside table and left without waiting to confirm that AH consumed the medication.

The Hearing Tribunal finds that the conduct is proven on a balance of probabilities. The basis for finding that the conduct is unprofessional conduct is addressed following Allegation 3 under the Second Statement of Allegations.

Allegation 3

On or about June 15, 2019, Ms. Famuyisan did one or more of the following with regards to patient DA:

- a. Left medications unattended on the patient's bedside table;
- b. Failed to ensure the medications were consumed by patient DA.
(admitted)

By way of an Agreed Statement of Facts and Acknowledgement of Unprofessional Conduct (Exhibit 3), Ms. Famuyisan confirmed she was working an evening shift (1500hours-2315hours) on Unit 51 at the PLC on June 15, 2019. She was responsible for patient DA. She admitted to

leaving one tablet of Metformin on patient DA's bedside table and failed to ensure it was consumed by patient DA.

Shortly after the incident occurred, Ms. Famuyisan confirmed to Raymund Leano, RN, Unit 51 Manager at PLC, that she had placed the medication on the bedside table and left without waiting to confirm that DA consumed the medication.

The Hearing Tribunal finds that the conduct is proven on a balance of probabilities.

In terms of the Allegations 2 and 3 in the First Statement of Allegations and Allegations 2 and 3 in the Second Statements of Allegations, 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 finds the following definitions of unprofessional conduct applicable:

- a. Displaying a lack of knowledge of or lack of skill or judgment in the provision of professional services;
- b. Contravention of the Act, a code of ethics or standards of practice;
- c. Contravention of an order under Part 4, conditions imposed on a practice permit or a direction under section 118(4); and
- d. Conduct that harms the integrity of the regulated profession.

Ms. Famuyisan's conduct displayed a lack of knowledge of or a lack of skill or judgment in the provision of professional services. Ms. Famuyisan continued to provide professional services without direct supervision although she was required to do so. Her employers were unaware of the condition on her practice permit and she had not disclosed her currently employers to CLPNA. This shows a serious lack of knowledge or judgment on the part of Ms. Famuyisan with respect to her responsibilities as a professional. In addition, leaving medication unattended without a patient and failing to ensure the patient has consumed the medication also shows a lack of knowledge of or a lack of skill or judgment in the provision of professional services. Medication administration is a basic skill expected of all Licensed Practical Nurses. This conduct constitutes unprofessional conduct.

Ms. Famuyisan also contravened the orders made by Jeanne Weis under section 65 of the *HPA*. This is a serious charge. Licensed Practical Nurses are expected to demonstrate integrity and professionalism and abide by any conditions, orders, or requirements of the College. The ability of the College to regulate its members is dependent on members abiding by such conditions, orders, and requirements of the College. Such conduct also harms the integrity of the profession, as the College must not only be able to regulate its members, but the public must trust that members will be regulated by their College.

The conduct breached the following principles and standards set out in CLPNA's Code of Ethics and Standards of Practical Nurses in Canada:

CLPNA Code of Ethics:

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

- 1.5 Provide care directed to the health and well-being of the person, family, and community.
- 1.6 Collaborate with clients, their families (to the extent appropriate to the client's right to confidentiality) and health care colleagues to promote the health and well-being of individuals, families, and the public.
- 2.8 Use the evidence and judgement to guide nursing decisions.
- 2.9 Identify and minimize risks to clients.
- 3.1 Maintain the standards of the profession and conduct themselves in a manner that upholds the integrity of the profession.
- 3.3 Practice in a manner that is consistent with the privilege and responsibility of self-regulation.
- 3.4 Promote workplace practices and policies that facilitate professional practice in accordance with the principles, standards, laws, and regulations under which they are accountable.
- 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:

- 1.1 Practice to their full range of competence within applicable legislation, regulations, by-laws, and employer policies.
- 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 Licenced Practical Nurses.
- 1.10 Maintain documentation and reporting according to established legislation, regulations, laws, and employer policies.
- 3.6 Demonstrate an understanding of self-regulation by following the standards of practice, the code of ethics and other regulatory requirements.
- 4.1 Practice in a manner consistent with ethical values and obligations of the Code of Ethics for LPN's.
- 4.8 Collaborate with colleagues to promote safe, competent, and ethical practice.
- 4.10 Practice with honesty and integrity to maintain the values and reputation of the profession.

Ms. Famuyisan's conduct was a clear breach of the Code of Ethics and Standards of Practice. She failed to practice in a manner that was consistent with the privilege and responsibility of self-regulation and did not demonstrate integrity in maintaining the values and reputation of the profession. In addition, the failure to confirm a patient has taken their medication is serious and does not minimize the potential for harm to a patient. The breaches of the Code of Ethics and Standards of Practice are serious and constitute unprofessional conduct.

Allegation 4

On or about December 22, 2019, did one or more of the following with regards to patient GW:

- a. Communicated in an inappropriate manner that was aggressive, intimidating or threatening;
- b. Failed to follow the proper procedure for searching a patient; and
- c. Entered GW's room to provide care to GW without the presence of one or more regulated health care providers in violation of conditions placed on her practice permit requiring supervised practice as set out in the order of Jeanne Weis, Executive Officer of the CLPNA, dated August 22, 2019, issued under Section 65 of the HPA.
 1. (contested)

The Hearing Tribunal reviewed the testimony of the witnesses and carefully weighed the evidence provided.

The Hearing Tribunal found Ms. Sidhu to be very knowledgeable about GW's care plan and the policies and procedures. Her answers were clear, concise and she did not waiver on her answers. Ms. Sidhu indicated that, in accordance with the care plan, patient GW is aggressive, has behavioural issues and is difficult to manage and the care plan indicates to re-approach him when he is calm and to approach the patient in a calm manner. Ms. Sidhu was clear that she heard Ms. Famuyisan asking patient GW what he had in his hands after GW left another patient's room. Ms. Sidhu did not hear Ms. Famuyisan ask for someone to call for security. Ms. Sidhu saw them walking at a fast pace and saw Ms. Famuyisan following GW. Ms. Sidhu went to patient GW's room and saw Ms. Famuyisan standing in the doorway of GW's room. GW was in the bathroom. Ms. Famuyisan told her patient GW had hit her. Patient GW came out of the bathroom and went to his bed. Ms. Sidhu saw Ms. Famuyisan rush towards the patient. Ms. Famuyisan appeared angry and was loudly stating, "I will sue you." Ms. Famuyisan was pointing her finger, leaning towards GW and speaking in an aggressive manner. GW was sitting on his bed with his hands closed and was looking at Ms. Famuyisan during the encounter. Ms. Sidhu's evidence was that if a patient is to be searched, they need to be a formal patient then staff would call security. GW was not formal at that point.

Ms. Sidhu was consistent in her testimony and had a clear recollection of events. The evidence provided by Ms. Sidhu was found to be very consistent both internally and externally. Ms. Sidhu had a good working relationship with Ms. Famuyisan prior to the incident and had nothing to gain from testifying against her. For these reasons, the Hearing Tribunal placed significant weight on her testimony.

Ms. Gill provided very detailed credible testimony. She saw GW enter another patient's room and come out a few minutes later with his hands folded in front of him. Ms. Famuyisan asked him to stop and show her what was in his hands. GW did not stop, and Ms. Famuyisan followed him to his room. She was rushing towards GW. Ms. Gill did not hear Ms. Famuyisan ask for someone to call for security. Shortly after, Ms. Famuyisan came out of the room and was screaming that GW had hit her in the face. Ms. Gill had been talking to another patient and went to GW's room. GW was sitting on his bed. Ms. Famuyisan re-entered the room, approached GW and said, "I will sue you". Ms. Famuyisan was pointing a finger to his face and speaking in a threatening manner. Ms. Gill told Ms. Famuyisan to leave the room three or four times and then she did.

Ms. Gill was very knowledgeable about the protocol regarding patient searches and when to call for security. She indicated that GW was not a formal patient and security will not help search a patient if they are not formal. Ms. Gill also stated that any supervision condition on a practice permit would extend to searching a patient. Ms. Gill confirmed GW had a specific care plan and had some cognitive issues and ADHD. Ms. Gill indicated that GW was known to seek attention and would need to be redirected to his primary nurse. GW was also known to be aggressive and the staff were to just leave him alone when he was like this and re-approach later in accordance with his care plan.

Ms. Gill had a clear recollection of the events and of what she saw and heard Ms. Famuyisan say and do. She described where GW was sitting, where Ms. Famuyisan was standing before she re-entered the room, and once she did re-enter the room. She was both internally and externally consistent and had nothing to benefit from by testifying. Ms. Gill's evidence was very consistent with the evidence of Ms. Sidhu. The Hearing Tribunal found the evidence Ms. Gill provided to be both plausible and credible and therefore placed significant weight on her testimony.

Ms. Wedemire's testimony, while it was clear and concise, did not provide any new information about the incident in this allegation. She was aware that she was to be Ms. Famuyisan's buddy nurse and did confirm that she was not with Ms. Famuyisan when Ms. Famuyisan entered GW's room. Ms. Wedemire confirmed there was a care plan for GW. She was consistent with the testimony of Ms. Gill and Ms. Sidhu regarding Ms. Famuyisan following GW hastily. She had no motivation in providing testimony. For these reasons, the Hearing Tribunal placed moderate weight on her testimony.

The testimony given by Ms. Famuyisan did not appear to be plausible. She stated that she was following the patient asking what was in his hands and asked for security to be called. However, none of the other witnesses heard Ms. Famuyisan ask for security to be called at this time. The testimony Ms. Famuyisan provided regarding not being in GW's room and waiting in the hall did not seem probable as she was struck inside the patient's room by the bathroom. Her own description of GW's room was that the patient's bathroom was inside the room. Ms. Famuyisan stated she then asked the patient questions but denied threatening him. The Hearing Tribunal placed little weight on the testimony provided by Ms. Famuyisan based on the inconsistencies throughout her testimony regarding this incident and the inconsistencies with the evidence of the other witnesses.

The Hearing Tribunal finds that the conduct is proven on a balance of probabilities. The Hearing Tribunal finds that Ms. Famuyisan communicated in an inappropriate and aggressive manner by threatening to sue the patient. She also failed to follow the proper protocol regarding patient searches. GW was not a formal patient. In addition, by entering the room, she was providing

patient care and should have been supervised in accordance with the condition on her practice permit.

The Hearing Tribunal finds that the conduct amounts to unprofessional conduct as defined in s. 1(1)(pp) of the *HPA*, in particular, the Hearing Tribunal finds the following definitions of unprofessional conduct are applicable:

- a. Displaying a lack of knowledge of or lack of skill or judgment in the provision of professional services;
- b. Contravention of the Act, a code of ethics or standards of practice;
- c. Contravention of an order under Part 4, conditions imposed on a practice permit or a direction under section 118(4); and
- d. Conduct that harms the integrity of the regulated profession.

Ms. Famuyisan displayed a lack of knowledge, skill, or judgment in failing to follow the care plan that was in place for the patient. She also displayed a lack of judgment in following the patient and asking what he had in his hands. She escalated the situation with the patient prior to being hit and then again by threatening to sue the patient. A Licensed Practical Nurse would be expected to have the competencies, skills, and judgment to understand the need to follow a care plan, patient search protocols, and how to de-escalate a situation with a patient.

Ms. Famuyisan's conduct was also a contravention of the condition on her practice permit that she practice under direct supervision. By searching or attempting to search a patient and by entering the patient's room, she was providing or attempting to provide professional services or care and was in breach of the condition on her practice permit.

The Hearing Tribunal also finds that the threat of suing a patient and the contravention of a condition on her practice permit harm the integrity of the profession.

The conduct breached the following principles and standards set out in CLPNA's Code of Ethics and Standards of Practical Nurses in Canada:

CLPNA Code of Ethics:

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

1.5 Provide care directed toward the health and well-being of the person, family and community.

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.

2.8 Use evidence and judgement to guide nursing decisions.

2.9 Identify and minimize risks to clients.

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

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

5.1 Demonstrate honesty, integrity and trustworthiness in all interactions.

5.2 Recognize their capabilities and limitations and perform only the nursing functions that fall within their scope of practice and for which they possess the required knowledge, skills and judgement.

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:

1.1 Practice to their full range of competence within applicable legislation, regulations, by-laws and employer policies.

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 Licenced Practical Nurses.

2.1 Possess current knowledge to support critical thinking and professional judgement.

2.7 Demonstrate understanding of their role and its interrelation with clients and other health care colleagues.

3.1 Engage clients in a therapeutic nurse-client relationship as active partners for mutual planning of and decisions about their care.

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

3.6 Demonstrate and understanding of self-regulation by following the standards of practice, the code of ethics and other regulatory requirements.

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

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.

4.9 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.

Ms. Famuyisan's conduct did not develop a trusting relationship with the patient. She did not demonstrate critical thinking and professional judgment in how she attempted to initiate a search and how she reacted to the incident. Her conduct did not promote safe, effective and ethical practice. Her conduct failed to maintain the values and reputation of the profession. The breaches of the Code of Ethics and Standards of Practice are serious and constitute unprofessional conduct.

(7) Submissions on Orders for Penalty by Legal Counsel for CLPNA

At the conclusion of the evidence and closing submissions, the Hearing Tribunal asked the parties whether they wished to address sanction as part of this stage of the hearing, given that the possibility had been raised during opening submissions and an extra day remained in the time that had been scheduled for the hearing. Mr. Kully confirmed that the Complaints Director was prepared to proceed with submissions on sanction. After being given time to consult with Ms. Famuyisan, Ms. Drennan confirmed that Ms. Famuyisan also wished to proceed with submissions on sanction as part of this phase of the hearing. The Hearing Tribunal adjourned after the second day of proceedings to deliberate and advised the parties it was making a finding of unprofessional conduct on each of the allegations. The hearing resumed on the third day and the parties made submissions on sanction.

Mr. Kully handed out the Orders Requested by Complaints Director which was entered as Exhibit 7. These orders included:

1. Ms. Famuyisan shall receive a reprimand with the Hearing Tribunal's written reasons for decision (the "Decision") to serve as a reprimand.
2. Ms. Famuyisan shall pay 40% of the costs of the investigation and hearing within 36 months of the date of receipt of the Decision.
3. Ms. Famuyisan's practice permit shall remain suspended until she complies with the following requirements:
 - a. Ms. Famuyisan shall read and reflect on the following CLPNA documents:
 - i) Code of Ethics for Licenced Practical Nurses in Canada
 - ii) Standards for Practice for Licenced Practical Nurses in Canada
 - iii) CLPNA Practice Policy: Professional Responsibility & Accountability
 - iv) CLPNA Practice Policy: Client & Co-Worker abuse
 - v) CLPNA Competency Profile C-A1: Critical Thinking
 - vi) CLPNA Competency Profile C-A2: Clinical Judgement and Decision Making
 - vii) CLPNA Competency Profile C-4: Professional Ethics

- viii) CLPNA Competency Profile C-5: Accountability and Responsibility
- ix) CLPNA Competency Profile D-2: Therapeutic Nurse-Patient Relationship
- x) CLPNA Competency Profile D-4: Conflict Management
- xi) CLPNA Competency Profile E2: Clinical Judgement and Decision Making
- xii) CLPNA Competency Profile N-1: Mental Health and Addiction
- xiii) CLPNA Competency Profile N-2: Managing Aggressive Responses

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

- b. Ms. Famuyisan shall complete, at her own where applicable cost, the following remedial education and provide the Complaints Director with satisfactory documentation confirming successful completion of all remedial education:

- i) Anger and Conflict Resolution in the Workplace (LPNA/CONF008) offered online by: John Collins Consulting Inc at:

https://jcollinsconsulting.com/images/Outlines/lpn/MODULE_OUTLINE_-_ANGER_AND_CONFLICT_RESOLUTION_IN_THE_WORKPLACE.pdf

- ii) LPN Ethics Course offered online by Learning Nurse at:

<http://www.learninglpn.ca/index.php/courses>

- iii) Elder Abuse Self-Study Course offered online by CLPNA at:

<https://studywithclpna.com/elderabuse>

- iv) 15.1 Managing Patient Rage Quiz offered online by Learning Nurse at:

<https://www.learningnurse.org/quizzes/patientrage/>

If any such course becomes unavailable, equivalent courses may be substituted where approved in advance in writing by the Complaints Director.

- 4. The requirement to complete the remedial education and readings will appear as a "CLPNA Monitoring Order (Conduct)" condition on Ms. Famuyisan's practice permit and the Public Registry until the education has been satisfactorily completed.
- 5. The Requirement to pay costs will appear as "Conduct Cost/Fines" condition on Ms. Famuyisan's practice permit and the Public Registry until all costs have been paid.
- 6. The conditions on Ms. Famuyisan's practice permit and on the Public Registry will be removed upon completion of each of the requirements.

7. Ms. Famuyisan shall provide the CLPNA with her contact information, including home mailing address, home and cellular telephone numbers, current email address and current employment information. Ms. Famuyisan will keep her contact information current with the CLPNA on an ongoing basis.
8. Should Ms. Famuyisan be unable to comply with any of the deadlines for completion of the penalty orders identified above, she may request an extension, in writing, stating a valid reason and a realizable time frame to complete. The Complaints Director will notify Ms. Famuyisan if the extension is granted.
9. Should Ms. Famuyisan 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;
 - b. Treat Ms. Famuyisan's non-compliance as information for a complaint under s.56 of the HPA;or
 - c. In the case of non-payment of the costs, suspend Ms. Famuyisan'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.

Mr. Kully informed the Hearing Tribunal that the only remedial course with any cost is the John Collins course which has an estimated cost of \$700. He provided the John Collins Consulting Inc Course Outline and it was entered as Exhibit 8.

Mr. Kully stated the primary purpose of sentencing in the professional regulatory context is to ensure the public is protected from unprofessional conduct in the future. This is achieved by ensuring the public is not at risk of harm as a result of continuing conduct from the same member and ensuring the public has confidence in the profession. It should also send an appropriate message to the other members of the profession that the conduct is unacceptable.

The case of *Jaswal v. Newfoundland Medical Board* has set out a number of factors to be considered when determining how to protect the public against unprofessional conduct. One of the first factors is the nature and gravity of the proven allegations. In this case, the proven allegations involve both inappropriate actions and abuse of care. The Complaints Director would submit Ms. Famuyisan's conduct is on the more serious end of the spectrum. By striking a patient and threatening another, Ms. Famuyisan failed in her obligations to provide safe and competent care.

As set out in the Agreed Statement of Facts and Admission of Unprofessional Conduct, Ms. Famuyisan also failed to follow the conditions placed on her practice permit. The failure to follow the conditions is also serious as she failed to comply with orders from her regulating body. Medication administration is a fundamental skill that is expected of LPNs and Ms. Famuyisan failed in that regard. The inappropriate search of the patient raised questions regarding Ms. Famuyisan's judgment and skill.

Ms. Famuyisan has been an LPN since 2015 and was an HCA prior to that. She agreed that she has experience as a health care provider through her experience in each of these roles. Although

she has not practiced for an extensive amount of time, but it is long enough to know how to interact with clients and what would be expected of an LPN. The Complaints Director submitted that a member with Ms. Famuyisan's experience should have the competency and judgement necessary to respond appropriately. This includes complying with the conditions on her practice permit and medication administration and search procedures.

Ms. Famuyisan has no history of any prior complaints or convictions.

Regarding the age and mental conditions of the affected patients, the Hearing Tribunal did not hear specific evidence as to the diagnosis or condition, however all the witnesses stated DC had cognitive issues and was in a power wheelchair and unable to use her left hand. In regard to GW, he was a patient with significant cognitive issues, including ADHD and other related concerns. Both patients were vulnerable and reliant on their health care providers.

There were numerous errors in Ms. Famuyisan's practice with different patients at two different employers. There were also different types of conduct. Mr. Kully submitted that they were concerning as it was not just a single situation. Ms. Famuyisan struck a patient and then threatened another one, therefore demonstrating a pattern of conduct that is inappropriate.

Ms. Famuyisan did agree to some of the allegations. By doing so, she demonstrated accountability and a willingness to proceed on some of the allegations. However, she did not acknowledge the more serious conduct. She does have the right to contest the allegations.

In regard to financial consequences or other penalties that Ms. Famuyisan has suffered, her practice permit has been suspended since February 8, 2020. She was terminated from VFC and received a one-day suspension from PLC.

Regarding the impact on the patients in this case, DC initially said that it hurt when Ms. Famuyisan struck her on the arm. However, there was no continuing harm or lasting impact from the strike. GW appeared fearful when Ms. Famuyisan was threatening him, but there was no evidence of lasting impact.

Deterrence needs to be both specific and general. Specific deterrence means there is a need to impose a sanction that deters Ms. Famuyisan from repeating this type of conduct. General deterrence is a concurrent need to send a message to deter other members of the profession from engaging in similar behaviour. Continuing suspension is necessary to send a message to Ms. Famuyisan and to the profession. It is important to say that she needs remedial steps before going back to work. An appropriate response is necessary to send a message to the public to ensure they have confidence that inappropriate behaviour from an LPN will be addressed appropriately.

Mr. Kully provided two cases. The first was in the decision made regarding Angela Foong. The allegations in that case were physical in nature and it was also a contested hearing. The member in that case was imposed a two-year suspension and education prior to reinstatement. The costs awarded against the member was 50% of the costs. The second case was that of Jasbir Rai, the allegations were physical and sexual in nature. That particular case was preceded by joint submission and a partial joint submission on penalty. The member also had a suspended licence pending remedial education and an anger management workshop. The financial penalty was 25% of the hearing costs awarded against the member.

The orders sought reflect a proper consideration of the Jaswal factors and are appropriate in the circumstances. The reprimand is appropriate to indicate that conduct is completely unacceptable. The recommended courses are remedial in nature to ensure Ms. Famuyisan has comprehensive learning prior to returning to practice. They also ensure the public is protected.

With respect to costs, Mr. Kully presented a document "Estimated Statement of Costs" and hearing costs are estimated at almost \$82,000. This was entered as Exhibit 9. The Complaints Director was seeking an order of 40% of the Estimated Hearing costs - approximately \$35,000.

Mr. Kully provided examples of cases to consider when imposing a costs order. The first case was *Lysons v Alberta Land Surveyors' Association* from the Alberta Court of Appeal. While it involved a different profession, it was still dealing with a regulated profession. The Court of Appeal commented on the inclusion of costs in professional disciplinary sanctions. The second case was in respect to *K.(C.) v College of Physical Therapists of Alberta*. The Court of Appeal in that case engaged in a general discussion on costs and stated that costs are discretionary and should be exercised reasonably.

Mr. Kully also referred to *Jaswal v Newfoundland Medical Board*, at paragraph 50 where the court provided a non-exhaustive list of factors that are relevant in determining whether to exercise the discretion or payment of all or part of the costs of a hearing.

The Complaints Director's rationale for seeking 40% of the total hearing costs is based on a review of these factors:

- 1) Seriousness of the charges: The proven allegations are serious and demonstrate a significant departure from conduct expected of members of the nursing profession. They are not a situation involving a grey area but involved conduct that is clearly wrong.
- 2) Member's Degree of success in resisting the charges: The Complaints Director successfully established all of the allegations, with the exception of the allegation withdrawn at the beginning of the hearing. The key allegations were striking of DC and the verbal abuse of GW were successfully proven.
- 3) Necessity to call witnesses: All five witnesses called by the Complaints Director were necessary and the hearing would not have been able to proceed without their testimony. No unnecessary witnesses were called and there were efforts to reduce the number of witnesses to ensure the hearing was efficient.
- 4) Costs incurred associated with the Hearing include the Legal counsel for the Complaints Director, Independent Legal counsel for the Hearing Tribunal, the court reporter, hotel costs and other costs for the Hearing Tribunal. There are no additional expenses that are outside of the normal range.
- 5) Ms. Famuyisan did cooperate with respect to the investigation and offered to facilitate the proof of admissions. She assisted by streamlining the hearing by working with the Complaints Director to put together the Agreed Statement of Facts and Admission of Unprofessional Conduct. These efforts are reflected in certain reduced hearing costs. Ms. Famuyisan is entitled to contest the remaining allegations; however, the quantum of costs is increased when it is a contested hearing.
- 6) Ms. Famuyisan's financial circumstances should be considered. Her practice permit continues to be suspended as it has been for over 7 months. The Complaints Director

is seeking sanctions that would require Ms. Famuyisan's practice permit to continue to be suspended until the recommended education is completed. These are significant reasons as to why the Complaints Director is seeking less than 50% of the costs.

In conclusion, the position of the Complaints Director is consistent with the cases referred to on costs. Ms. Famuyisan's unprofessional conduct was serious, and the conduct falls well below the expected degree of conduct expected from an LPN. She was not successful in resisting any of the charges against her. The factual underpinnings of the allegations required the witnesses involved to be called to testify. Ms. Famuyisan's inability to practice and earn a living must be considered. However, it is appropriate that the guilty member bear a portion of the costs incurred. Otherwise, all other members bear onus of paying for another member's unprofessional conduct.

(8) Submissions on Orders for Penalty by Representative for the Member

Ms. Drennan provided the decision regarding Lawrence Crosthwaite (January 2020). She stated that the allegations indicate a lack of judgment rather than lack of nursing skills, with the exception of the medication errors. There was a lack of judgment, by not complying with conditions of practice permit and not advising of employers, however Ms. Famuyisan believed it was on the registrar's listing.

In regard to the allegations of striking a patient and threatening another one, Ms. Drennan referred to the decision in Crosthwaite which she said was similar to this hearing. The individual had four complaints. The first two complaints were regarding rude, disrespectful, and abrupt manner to some patients and/or their family members. He also ignored repeated requests regarding being more careful with catheter care, he also hit a patient's hand and said, "stop driving the bus" as well as some medication errors. This individual received suspension without pay, and then after the fourth complaint was received, he was terminated. His license was suspended for 5 months. The hearing was uncontested and there was a reprimand, a penalty totaling 25% of the hearing costs to a maximum of \$3,500 over 36 months as well as multiple courses. Ms. Drennan stated the Crosthwaite hearing is a little closer to the one before the Hearing Tribunal, because there was a strike to a patient and some threats which are deemed a serious nature.

Ms. Drennan then referred to the hearing regarding Ms. Foong who received a four-year suspension. She stated this was a case where the member was being choked and attacked and had to bite to get out of choke hold. Ms. Foong had to also complete courses and the penalty on costs were 50% which equated to \$38,000.

In regard to the hearing with Mr. Jasbir Rai, Ms. Drennan stated he struck someone in the back of the hand, did sexual gestures and was very rough with a client. The strike was similar to the one in this case but there are no other similarities. In this case there are no sexual gestures or grabbing someone out of a chair. Mr. Rai had an additional suspension and some remedial education as well as 25% of the hearing costs.

Ms. Drennan referred to *Jaswal v Newfoundland Medical Board*, paragraph 51, which states factors in determining sanctions on costs. Two factors pertain to this case, the first is whether the member cooperated with respect to the investigation and offered to facilitate proof by admission. In this case the member cooperated and admitted to all the allegations except two. The other factor is in regard to the financial circumstances and the degree to which her financial position

has already been impacted or affected by other aspects of any penalty that has been imposed. Ms. Famuyisan was terminated from her position at VFC last August. Her practice permit was suspended in February 2020. It has been very difficult on her family financially due to the loss of income as it was the only income they had. Her husband is an engineer, due to the recession, he is unemployed.

Ms. Drennan stated that Ms. Famuyisan and her family have suffered through this. She has been punished already and punishing her further by making an unreasonable order of 40% of the hearing costs which equates to approximately \$916 per month over 36 months is unreasonable.

Ms. Famuyisan indicated in her testimony that she worked a 0.5 and was picking up jobs where she could prior to Covid. Her monthly income was around \$600. Ms. Drennan stated to make Ms. Famuyisan pay over \$900 per month to have her day in court and to have her story told is excessive. Ms. Drennan does not believe in bankrupting the family.

Ms. Drennan felt the Crosthwaite case is a lot closer to the case before the tribunal. In that case, the member was penalized \$3,500 in hearing costs. The Foong case was not as close to this case and the cost awarded against the member was \$38,000. She finds the suggested \$33,000 is excessive and could financially bankrupt the family.

Ms. Drennan and Ms. Famuyisan did not have a rebuttal on hearing costs by way of an actual cost or percentage. Ms. Drennan did state that Ms. Famuyisan is currently struggling to keep her house afloat and therefore she would not be able to start making any payments.

Ms. Famuyisan had told Ms. Drennan that she was very overwhelmed with the recommendations by the Complaints Director and that the amount proposed by the Complaints Director was hard to fathom.

Ms. Famuyisan agreed to the courses proposed by the Complaints Director.

On rebuttal, Mr. Kully referred to the Crosthwaite decision and clarified that it was an eight-month suspension. He also felt that the factual circumstance when the member slapped the patient's hand to prevent the patient from touching an IV. That decision went by joint submission on all of the allegations. In this hearing there was no joint submission, no negotiated position. The CLPNA does have a cap on costs when there is a joint submission. When there is no joint submission there is no cap on costs.

Mr. Kully clarified that in regard to the Foong decision, it was the member's position that she bit the patient because she was placed in a choke hold. That was not accepted by the Hearing Tribunal.

Under the recommended penalties being sought by the Complaints Director, Mr. Kully stated the Complaints Director recognizes that the costs being requested are significant and that Ms. Famuyisan can request an extension.

There were no further questions from the Hearing Tribunal regarding the submissions on penalty.

(9) Hearing Tribunal Findings and Reasons for Orders for Penalty

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 sanction imposed should protect the public from the type of conduct that Ms. Famuyisan has engaged in. In making its decision on penalty, the Hearing Tribunal considered a number of factors identified in *Jaswal v Newfoundland Medical Board*, specifically the following:

- The nature and gravity of the proven Allegations: The Hearing Tribunal felt the actions contested in this hearing were on the serious side. This was given significant weight in the decision of the Hearing Tribunal.
- The age and experience of the investigated member: Ms. Famuyisan has years of experience as a healthcare provider as both an HCA and as an LPN. This experience was also given significant weight in the decision of the Hearing Tribunal.
- The previous character of the investigated member and in particular the presence or absence of any prior complaints or convictions: Ms. Famuyisan had no previous complaints or convictions prior to this hearing. This is a factor in favour of Ms. Famuyisan.
- The age and mental condition of the victim: The Hearing Tribunal was not given any information regarding the clients involved in the allegations submitted by way of an Agreed Statement of Facts. Therefore, we were not able to assess this factor for those clients. However, the two clients in the contested allegations were vulnerable and reliant on the healthcare providers. DC was in a wheelchair, had some cognition deficits and had limited use of one arm. GW also had cognition issues, ADHD and had a complex care plan due to his behavioural issues. The Hearing Tribunal placed significant weight on the vulnerability of these patients.
- The number of times the offending conduct was proven to have occurred: There are two contested incidents that occurred with two different clients and at two different places of employment. There were also incidents that were submitted by the Agreed Statement of Facts. The Hearing Tribunal found that the number of incidents and different types of unprofessional conduct to be concerning and placed a great deal of weight on this.
- The role of the investigated member in acknowledging what occurred: Ms. Famuyisan did cooperate and assisted in reaching an agreement on certain allegations (Exhibit 3) and on entering documents through an Agreed Exhibit Book (Exhibit 4). She also admitted to many of the allegations except for two. The Hearing Tribunal took this into account and placed a moderate amount of weight on her cooperation.
- Whether the investigated member has already suffered other serious financial or other penalties as a result of the Allegations having been made, Ms. Famuyisan was terminated by one employer and subsequently had her licence suspended. It was noted during her submission on penalty that her husband has been unemployed for many months. The penalty on hearing costs could potentially bankrupt the family. The Hearing Tribunal placed a very significant amount of weight on this.

- The impact of the incident(s) on the victim: There was no lasting impact on any of the victims.
- The presence or absence of any mitigating circumstances: Neither Mr. Kully nor Ms. Drennan mentioned mitigating factors other than those already mentioned above which include that Ms. Famuyisan admitted to certain allegations, the financial circumstances of Ms. Famuyisan and the financial penalties already suffered by Ms. Famuyisan. These have been addressed above.
- The need to promote specific and general deterrence and, thereby to protect the public and ensure the safe and proper practice: The Hearing Tribunal placed significant weight on the need to promote both a specific and a general deterrence. The public needs to have confidence in the profession and they must be protected. It is imperative to ensure a safe and proper practice. The penalties incurred must ensure specific deterrence for Ms. Famuyisan and a general deterrence for all members of the profession.
- The range of sentences in other similar cases: The Hearing Tribunal ensured we reviewed the similar cases presented during the submission on penalty. We believe the below decision on penalty for Ms. Famuyisan is keeping within range on these cases presented to them.

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 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 Hearing Tribunal believes these orders for penalty adequately balances the factors referred to above and is consistent with the overarching mandate of the Hearing Tribunal, which is to ensure that the public is protected.

(10) Orders of the Hearing Tribunal

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

1. Ms. Famuyisan shall receive a reprimand with the Hearing Tribunal's written reasons for decision (the "Decision") to serve as a reprimand.
2. Ms. Famuyisan shall pay 30% of the costs of the investigation and hearing to a maximum of \$25,000. Monthly payments are to be started, upon return to work as an LPN or 6 months from date of receipt of this Decision, whichever is earlier and

to be paid in equal monthly installments over a period of 48 months, or on such arrangement as is acceptable to the Complaints Director within a period of 48 months.

3. Ms. Famuyisan's practice permit shall remain suspended until she complies with the following requirements:
 - a. Ms. Famuyisan shall read and reflect on the following CLPNA documents:
 - i) Code of Ethics for Licenced Practical Nurses in Canada
 - ii) Standards for Practice for Licenced Practical Nurses in Canada
 - iii) CLPNA Practice Policy: Professional Responsibility & Accountability
 - iv) CLPNA Practice Policy: Client & Co-Worker abuse
 - v) CLPNA Competency Profile C-A1: Critical Thinking
 - vi) CLPNA Competency Profile C-A2: Clinical Judgement and Decision Making
 - vii) CLPNA Competency Profile C-4: Professional Ethics
 - viii) CLPNA Competency Profile C-5: Accountability and Responsibility
 - ix) CLPNA Competency Profile D-2: Therapeutic Nurse-Patient Relationship
 - x) CLPNA Competency Profile D-4: Conflict Management
 - xi) CLPNA Competency Profile E2: Clinical Judgement and Decision Making
 - xii) CLPNA Competency Profile N-1: Mental Health and Addiction
 - xiii) CLPNA Competency Profile N-2: Managing Aggressive Responses

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

- b. Ms. Famuyisan shall complete, as her own where applicable cost, the following remedial education and provide the Complaints Director with satisfactory documentation confirming successful completion of all remedial education:
 - i) Anger and Conflict Resolution in the Workplace (LPNA/CONF008) offered online by: John Collins Consulting Inc at:

https://jcollinsconsulting.com/images/Outlines/lpn/MODULE_OUTLINE_-_ANGER_AND_CONFLICT_RESOLUTION_IN_THE_WORKPLACE.pdf

ii) LPN Ethics Course offered online by Learning Nurse at:

<http://www.learninglpn.ca/index.php/courses>

iii) Elder Abuse Self-Study Course offered online by CLPNA at:

<https://studywithclpna.com/elderabuse>

iv) 15.1 Managing Patient Rage Quiz offered online by Learning Nurse at:

<https://www.learningnurse.org/quizzes/patientrage/>

If any such course becomes unavailable, equivalent courses may be substituted where approved in advance in writing by the Complaints Director.

4. The requirement to complete the remedial education and readings will appear as a “CLPNA Monitoring Order (Conduct)” condition on Ms. Famuyisan’s practice permit and the Public Registry until the education has been satisfactorily completed.
5. The Requirement to pay costs will appear as “Conduct Cost/Fines” condition on Ms. Famuyisan’s practice permit and the Public Registry until all costs have been paid.
6. Any and all conditions, including those arising from the interim conditions (i.e. supervision, etc. under s. 65 will be removed) on Ms. Famuyisan’s practice permit and on the Public Registry will be removed upon completion of each of the requirements.
7. Ms. Famuyisan shall provide the CLPNA with her contact information, including home mailing address, home and cellular telephone numbers, current e-mail address and current employment information. Ms. Famuyisan will keep her contact information current with the CLPNA on an ongoing basis.
8. Should Ms. Famuyisan be unable to comply with any of the deadlines for completion of the penalty orders identified above, she may request an extension, in writing, stating a valid reason and a realizable time frame to complete. The Complaints Director will notify Ms. Famuyisan if the extension is granted.
9. Should Ms. Famuyisan 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;
 - b. Treat Ms. Famuyisan’s non-compliance as information for a complaint under s.56 of the HPA; or
 - c. In the case of non-payment of the costs, suspend Ms. Famuyisan’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.

Under Part 4, sections 87(1)(a),(b) and 87(2) of the HPA, 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 17th DAY OF NOVEMBER 2020 IN THE CITY OF EDMONTON, ALBERTA

THE COLLEGE OF LICENSED PRACTICAL NURSES OF ALBERTA

M. Stolz LPN

Michelle Stolz, LPN
Chair, Hearing Tribunal