

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 MELVIC MICHELLE TAN**

**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 MELVIC MICHELLE TAN, LPN #52659, WHILE A MEMBER OF THE COLLEGE OF
LICENSED PRACTICAL NURSES OF ALBERTA (“CLPNA”)**

DECISION OF THE HEARING TRIBUNAL

(1) Hearing

The hearing was conducted via teleconference on February 22, 2024, with the following individuals present:

Hearing Tribunal:

Kelly Annesty, Licensed Practical Nurse (“LPN”) Chairperson
Allan Castillo, LPN
Dianna Jossa, Public Member
Emeka Ezike-Dennis, Public Member

Staff:

Kimberly Precht, Legal Counsel for the Complaints Officer, CLPNA
Stephanie Karkutly, Complaints Officer, CLPNA
Sanah Sidhu, Complaints Director, CLPNA

Investigated Member:

Melvic Michelle Tan, LPN (“Ms. Tan” or “Investigated Member”)
Lee Watson, AUPE Representative for the Investigated Member

(2) Preliminary Matters

The hearing was open to the public.

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

The Hearing was conducted by way of an Agreed Statement of Facts and Acknowledgement of Unprofessional Conduct and a Joint Submission on Penalty.

(3) Background

Ms. Tan was an LPN within the meaning of the Act at all material times, and more particularly, was registered with CLPNA as an LPN at the time of the complaint. Ms. Tan was initially licensed as an LPN in Alberta on April 16, 2021.

The CLPNA received a complaint dated April 14, 2023 (the “Complaint”), from Terina Harden, Inpatient Manager at Leduc Community Hospital (“the Facility”) in Leduc, Alberta, pursuant to s. 57 of the *Health Professions Act* (the “Act”). The complaint alleged privacy and confidentiality breaches by Ms. Tan, for which she had received a three-day suspension.

By letter dated April 25, 2023, the Complaints Director of the CLPNA, Sanah Sidhu (the “Complaints Director”), provided Ms. Tan with notice of the Complaint. In accordance with s. 20(1) of the Act, the Complaints Director notified Ms. Tan she was delegating her authority to Stephanie Karkutly, Complaints Officer (the “Complaints Officer”) to handle the Complaint.

By letter dated May 29, 2023, the Complaints Officer informed Ms. Tan that she had completed her preliminary investigation and that she had appointed Mr. David Burke (the “Investigator”) to investigate the matter further.

On July 10, 2023, the Investigator concluded the investigation.

The Complaints Officer 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. Tan received notice that the matter was referred to a hearing as well as a copy of the Statement of Allegations and the Investigation Report on November 17, 2023.

A Notice of Hearing, Notice to Attend and Notice to Produce was served on Ms. Tan under cover of letter dated January 8, 2024.

(4) Allegations

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

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

1. On or about January 8, 2023, failing to safeguard patient personal and health information by leaving your workstation unattended with your Connect Care account logged in, leading to unauthorized access to the personal and health information of a co-worker.
2. On or about February 26 and 27, 2023, accessing the personal information of up to seventy-three (73) individuals on Connect Care, including their addresses, without proper authorization or justification, including:
 - a) Ten (10) individuals who were either co-workers or had the same name as co-workers;
 - b) Sixty-three (63) individuals who were not your patients, including several of your family members.

3. On or about February 26, 2023, accessing your own personal information on Connect Care without proper authority or justification.”

(5) Admission of Unprofessional Conduct

Section 70 of the Act permits an investigated member to make an admission of unprofessional conduct. An admission under s. 70 of the Act must be acceptable in whole or in part to the Hearing Tribunal.

Ms. Tan acknowledged unprofessional conduct to all the allegations as evidenced by her signature on the Agreed Statement of Facts and Acknowledgement of Unprofessional Conduct and verbally admitted unprofessional conduct to all the allegations set out in the Statement of Allegations during the hearing.

Legal Counsel for the Complaints Officer submitted, where there is an admission of unprofessional conduct, the Hearing Tribunal should accept the admission absent exceptional circumstances.

(6) Exhibits

The following exhibits were entered at the hearing:

- Exhibit #1: Statement of Allegations
- Exhibit #2: Agreed Statement of Facts and Acknowledgement of Unprofessional Conduct
- Exhibit #3: Joint Submission on Penalty

(7) Evidence

The evidence was adduced by way of Agreed Statement of Facts, and no witnesses were called to give *viva voce* testimony. The Hearing Tribunal accepts the evidence set out in the Agreed Statement of Facts which was admitted as Exhibit #2.

(8) Decision of the Hearing Tribunal and Reasons

The Hearing Tribunal is aware it is faced with a two-part task in considering whether a regulated member is guilty of unprofessional conduct. First, the Hearing Tribunal must make factual findings as to whether the alleged conduct occurred. If the alleged conduct occurred, it must then proceed to determine whether that conduct rises to the threshold of unprofessional conduct in the circumstances.

The Hearing Tribunal has reviewed the documents included in Exhibit #2 and finds as facts the events as set out in the Agreed Statement of Facts.

The Hearing Tribunal also accepts Ms. Tan's admission of unprofessional conduct as set out in the Agreed Statement of Facts as described above. Based on the evidence and submissions before it, the Hearing Tribunal did not identify exceptional circumstances that would justify not accepting the admission of unprofessional conduct from Ms. Tan.

Allegation 1

Ms. Tan admitted that on or about January 8, 2023, she failed to safeguard patient personal and health information by leaving her workstation unattended with her Connect Care account logged in, leading to unauthorized access to the personal and health information of a co-worker.

On January 8, 2023, Ms. Tan worked a day shift on the Acute Care inpatient unit at the Facility. The Audit Report showed that Ms. Tan had accessed the records of a co-worker, including some of the co-worker's lab work, which constitutes patient health information.

Ms. Tan denies having made that access herself and believes that it was another staff member who accessed the co-worker's information through Ms. Tan's account.

Ms. Tan admits that at some point she walked away from her terminal, leaving her Connect Care account open, and her monitor unlocked. It was then that the staff member would have accessed Ms. Tan's co-worker's information.

Although Ms. Tan did not make the access herself, Ms. Tan should have known not to leave her Connect Care account open and unattended. By doing so, Ms. Tan failed to safeguard patient personal and health information.

The Hearing Tribunal finds that the conduct admitted to amounts to unprofessional conduct as defined in s. 1(1)(pp) of the Act, in particular, the Hearing Tribunal found the following definitions of unprofessional conduct have been met:

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

Ms. Tan displayed a lack of knowledge or lack of skill or judgment by walking away from her workstation and not logging out of Connect Care or securing the workstation. This then allowed for a privacy breach to occur as one of Ms. Tan's co-workers' health information was accessed under Ms. Tan's Connect Care login.

This conduct harms the integrity of the LPN profession as it is an expectation that an LPN will prevent others from accessing private information. By not securing her workstation, Ms. Tan allowed for the privacy breach in Connect Care.

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

CLPNA Code of Ethics:

Principle 2: Responsibility to Clients – LPNs have a commitment to provide safe and competent care for their clients. Principle 2 specifically provides that LPNs:

- 2.3 Respect and protect client privacy and hold in confidence information disclosed except in certain narrowly defined exceptions.
 - 2.3.1 Safeguard health and personal information by collecting, storing, using, and disclosing it in compliance with relevant legislation and employer policies.
 - 2.3.2 Report any situation where private or confidential information is accessed or disclosed without appropriate consent or legal authority, whether deliberately or through [...].

Principle 3: Responsibility to the Profession – LPNs have a commitment to their profession and foster the respect and trust of their clients, health care colleagues and the public. Principle 3 specifically provides that the LPNs:

- 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.

CLPNA Standards of Practice:

Standard 1: Professional Accountability and Responsibility – LPNs are accountable for their practice and responsible for ensuring their practice and conduct meet both the standards of the profession and legislative requirements. Standard 1 specifically provides that LPNs:

- 1.1 Practice within applicable legislation, regulations, by-laws, and employer policies.
- 1.8 Are accountable and responsible for their own practice, conduct, and ethical decision-making.

Standard 3: Service to the Public and Self-Regulation – LPNs practice nursing in collaboration with clients and other members of the health care team to provide and improve health care services in the best interests of the public. Standard 3 specifically provides that LPNs:

- 3.3 Lead and contribute to a practice culture that promotes safe, inclusive, and ethical care.

- 3.5 Understand and accept the responsibility of self-regulation by following the standards of practice, the code of ethics, and other regulatory requirements.

Standard 4: Professional and Ethical Practice – Licensed Practical Nurses adhere to the ethical values and responsibilities described in the Canadian Council for Practical Nurses Regulators (CCPNR) Code of Ethics.

- 4.3 Advocate for the protection and promotion of clients’ right to autonomy, confidentiality, dignity, privacy, respect, and access to care and personal health information.

Ms. Tan displayed a lack of knowledge by not protecting personal health information within Connect Care. Ms. Tan left her workstation unlocked while the workstation was not attended. Ms. Tan did not safeguard health or personal information with respect to the patients whose electronic health records that she accessed. By doing this Ms. Tan violated an AHS policy: the Alberta Health Services “Privacy and Protection and Information Access Policy”.

Ms. Tan acknowledges that her conducted breached section 27 of the *Health Information Act* which reads as follows:

Use of individually identifying health information

27(1) A custodian may use individually identifying health information in its custody or under its control for the following purposes:

- (a) providing health services;

- (b) determining or verifying the eligibility of an individual to receive a health service;

- (c) conducting investigations, discipline proceedings, practice visits or inspections relating to the members of a health profession or health discipline;

- (d) conducting research or performing data matching or other services to facilitate another person’s research
 - (i) if the custodian or researcher has submitted a proposed research protocol to a research ethics board in accordance with section 49,

- (ii) if the research ethics board is satisfied as to the matters referred to in section 50(1)(b),
 - (iii) if the custodian or researcher has complied with or undertaken to comply with the conditions, if any, suggested by the research ethics board, and
 - (iv) where the research ethics board recommends that consents should be obtained from the individuals who are the subjects of the health information to be used in the research, if those consents have been obtained;
- (e) providing for health services provider education;
- (f) carrying out any purpose authorized by an enactment of Alberta or Canada;
- (g) for internal management purposes, including planning, resource allocation, policy development, quality improvement, monitoring, audit, evaluation, reporting, obtaining or processing payment for health services and human resource management.

Ms. Tan was only permitted to use health information for the purposes set out in section 27 of the Health Information Act, which includes, among other things:

- To provide health services; and
- To determine or verify the eligibility of an individual to receive a health service.

Neither of these purposes was being met at the time the information was used and, accordingly, Ms. Tan was in contravention of another enactment that applied to the profession in that she violated the *Health Information Act*. Ms. Tan did not safeguard health or personal information with respect to the patients whose electronic health records could have been accessed by failing to secure her workstation.

Ms. Tan's conduct also harms the integrity of the profession. Health information is deeply private and can reveal the intimate details of a person's life. The public rightly expects that this information will be treated with care but instead Ms. Tan's actions in leaving her workstation unlocked was careless. Such actions can cause the public to question the LPN profession overall.

Allegation 2

Ms. Tan admitted that on or about February 26 and 27, 2023, she accessed the personal information of up to seventy-three (73) individuals on Connect Care, including their addresses, without proper authorization or justification, including:

- a) Ten (10) individuals who were either co-workers or had the same name as co-workers;
- b) Sixty-three (63) individuals who were not your patients, including several of your family members.

Ms. Tan worked the nightshift at the Facility on February 26, 2023, which meant her shift ended on the morning of February 27, 2023.

During her shift, Ms. Tan accessed the personal information of numerous individuals in Connect Care who were not her patients, and for whom Ms. Tan had no valid reason to access their information.

This included members of Ms. Tan's family, including her brother, MT. This also included ten individuals who were co-workers or had the same name as co-workers, including co-workers from Ms. Tan's second employment as an instructor at Norquest College. Although Ms. Tan only intended to search for her co-workers by name, Connect Care also displayed the results for individuals with the same or similar names as her co-workers.

Ms. Tan also accessed the personal information of other individuals who were neither family members nor co-workers.

In total Ms. Tan accessed the personal information of 73 individuals on Connect Care on February 26-27, 2023, without proper authorization or justification. Ms. Tan was neither providing care to the individuals whose information Ms. Tan accessed, nor in the process of assessing their eligibility to receive health services. Ms. Tan's primary reason for accessing these individuals' personal health information on Connect Care was to obtain their addresses so Ms. Tan could invite them to a get together. Ms. Tan's actions were the result of poor judgment combined with curiosity.

The Hearing Tribunal finds that the conduct admitted to amounts to unprofessional conduct as defined in s. 1(1)(pp) of the Act, in particular, the Hearing Tribunal found the following definitions of unprofessional conduct have been met:

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

Ms. Tan displayed a lack of knowledge or lack of skill or judgment in that she accessed 73 individuals' health information to obtain their addresses. This is not behavior that is expected of an LPN. None of these 73 individuals were patients in Ms. Tan's care and this was a significant lack of judgement on the part of Ms. Tan that she looked up this information based on her own personal use and curiosity.

Ms. Tan did not abide by the CLPNA Code of Ethics, CLPNA Standards of Practice, or section 27 of the *Health Information Act*, being another enactment that applies to the LPN profession, as acknowledged by Ms. Tan in the Agreed Statement of Facts and Acknowledgement of Unprofessional Conduct. Ms. Tan's primary reason for accessing these individuals' personal information on Connect Care was to obtain their addresses so that Ms. Tan could invite them to a get together. Ms. Tan's actions were the result of poor judgement combined with curiosity.

The Hearing Tribunal finds the conduct breached the CLPNA Code of Ethics, CLPNA Standards of Practice, and section 27 of the *Health Information Act* and that such breaches are sufficiently serious to constitute unprofessional conduct, as set out in more detail under Allegation 1.

LPNs are entrusted with access to health information to be able to serve their patients as well as to provide care to their patients. This is a significant breach of trust to access patients' information for their own personal purposes.

Ms. Tan's conduct harmed the integrity of the regulated profession as Ms. Tan behaved in a manner that is not expected of an LPN in a similar situation. Individuals should be able to expect that their personal information is not accessed when they are not receiving medical care.

Allegation 3

Ms. Tan admitted that on or about February 26, 2023, she accessed her own personal information on Connect Care without proper authority or justification.

While Ms. Tan was working nightshift on February 26, 2023, Ms. Tan used Connect Care to access her own personal information without proper authorization or justification.

The Hearing Tribunal finds that the conduct admitted to amounts to unprofessional conduct as defined in s. 1(1)(pp) of the Act, in particular, the Hearing Tribunal found the following definitions of unprofessional conduct have been met:

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

Ms. Tan displayed a lack of judgment by accessing her own personal health information. Ms. Tan did this without proper authorization or justification. This lack of judgment to access one's own personal health care information in Connect Care was not appropriate and Ms. Tan should have gone through the proper channels. LPNs should not be looking up their own personal information in the health care setting and this is a breach of AHS policy.

Ms. Tan did not abide by the CLPNA Code of Ethics, CLPNA Standards of Practice, the *Health Information Act*, being an enactment applicable to LPNs, as acknowledged by Ms. Tan in the Agreed Statement of Facts and Acknowledgement of Unprofessional Conduct. The Hearing

Tribunal finds the conduct breached the CLPNA Code of Ethics, CLPNA Standards of Practice, and section 27 of the *Health Information Act* and that such breaches are sufficiently serious to constitute unprofessional conduct.

(9) Joint Submission on Penalty

The Complaints Officer and Ms. Tan jointly proposed to the Hearing Tribunal a Joint Submission on Penalty, which was entered as Exhibit #3. The Joint Submission on Penalty proposed the following sanctions to the Hearing Tribunal for consideration:

1. The Hearing Tribunal's written reasons for decision (the "Decision") shall serve as a reprimand.
2. Ms. Tan shall pay a fine of \$1,500.00 within **36 months of service** of the Decision.
3. Ms. Tan shall pay 25% of the costs of the investigation and hearing to a maximum of \$5,000, to be paid in full **within 36 months of service** of the Decision. A letter advising Ms. Tan of the final costs will be provided once the final costs are confirmed.
4. Ms. Tan shall read and reflect on how the following CLPNA documents will impact her nursing practice. These documents are available on the CLPNA's website <http://www.clpna.com/> under "Governance". Ms. Tan shall provide to the CLPNA, a signed written declaration **within 30 days of service** of the Decision, attesting she has reviewed the following CLPNA documents:
 - (a) Code of Ethics for Licensed Practical Nurses in Canada;
 - (b) Standards of Practice for Licensed Practical Nurses in Canada;
 - (c) CLPNA Practice Policy: Professional Responsibility and Accountability;
 - (d) CLPNA Interpretive Document: Privacy Legislation in Alberta;
 - (e) CLPNA Practice Guideline: Confidentiality;
 - (f) CLPNA Competency Profile A1: Critical Thinking;
 - (g) CLPNA Competency Profile A2: Clinical Judgment and Decision Making;
 - (h) CLPNA Competency Profile C: Professionalism and Leadership.

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

5. Ms. Tan shall complete the following remedial education, at her own cost. If any of the required education becomes unavailable, Ms. Tan shall make a written request to the Complaints Officer to be assigned alternative education. Upon receiving Ms. Tan's written request, the Complaints Officer, in their sole discretion, may assign alternative education in which case Ms. Tan will be notified in writing of the new education requirements. Ms. Tan shall provide the Complaints Officer with certificates confirming successful completion **within 60 days** from service of the Decision.
 - a) **LPN Code of Ethics Learning Module** available online at www.learningnurse.org
 - b) **Privacy Legislation Micro-Module** – CLPNA course available online at <https://www.clpna.com/lpn-knowledge-hub/privacy-legislation-micro-module/>
6. The sanctions set out above at paragraphs 2-5 will appear as conditions on Ms. Tan's practice permit and the Public Registry subject to the following:
 - a) The requirement to complete the remedial education and readings outlined at paragraphs 4-5 will appear as "CLPNA Monitoring Orders (Conduct)" on Ms. Tan's practice permit and the Public Registry until the below sanctions have been satisfactorily completed:
 - i. Readings/Reflection;
 - ii. LPN Ethics Course;
 - iii. Privacy Legislation Micro-Module.
 - b) The requirement to pay costs and fines will appear as "Conduct Cost/Fines" on Ms. Tan's practice permit and the Public Registry until all costs and fines have been paid as set out above at paragraphs 2-3.
7. The conditions on Ms. Tan's practice permit and on the Public Registry will be removed upon completion of each of the requirements set out in paragraph 6.
8. Ms. Tan 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. Tan will keep her contact information current with the CLPNA on an ongoing basis.
9. Should Ms. Tan be unable to comply with any of the sanctions' deadlines identified above, Ms. Tan may request an extension. The request for an extension must be submitted in writing to the Complaints Director prior to the deadline, and must state a valid reason for requesting the extension and a reasonable timeframe for completion. The Complaints Director shall, in their sole discretion, determine whether a time extension is accepted. Ms. Tan will be notified by the Complaints Director, in writing, if the extension has been granted.

10. Should Ms. Tan fail or be unable to comply with any of the above orders, 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. Tan's non-compliance as information for a complaint under s. 56 of the Act; or
- c) In the case of non-payment of the fines or costs described in paragraphs 2-3 above, suspend Ms. Tan'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.

Legal Counsel for the Complaints Officer submitted the primary purpose of orders from the Hearing Tribunal is to protect the public. The Hearing Tribunal is aware that s. 82 of the Act sets out the available orders the Hearing Tribunal is able to make if unprofessional conduct is found.

The Hearing Tribunal is aware, while the parties have agreed on a joint submission as to penalty, the Hearing Tribunal is not bound by that submission. Nonetheless, as the decision-maker, the Hearing Tribunal should defer to a joint submission unless the proposed sanction is unfit, unreasonable or contrary to public interest. Joint submissions make for a better process and engage the member in considering the outcome. A rejection of a carefully crafted agreement would undermine the goal of fostering cooperation through joint submissions and may significantly impair the ability of the Complaints Director to enter into such agreements. If the Hearing Tribunal had concerns with the proposed sanctions, the proper process is to notify the parties, articulate the reasons for concern, and give the parties an opportunity to address the concerns through further submissions to the Hearing Tribunal.

The Hearing Tribunal therefore carefully considered the Joint Submission on Penalty proposed by Ms. Tan and the Complaints Officer.

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

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

The orders imposed by the Hearing Tribunal must protect the public from the type of conduct that Ms. Tan has engaged in. In making its decision on penalty, the Hearing Tribunal considered a number of factors identified in *Jaswal v Newfoundland Medical Board* [1986] NJ No 50 (NLSC-TD), specifically the following:

- The nature and gravity of the proven allegations
- The age and experience of the investigated member
- The previous character of the investigated member and in particular the presence or absence of any prior complaints or convictions
- The age and mental condition of the victim, if any
- The number of times the offending conduct was proven to have occurred
- The role of the investigated member in acknowledging what occurred
- Whether the investigated member has already suffered other serious financial or other penalties as a result of the allegations having been made
- The impact of the incident(s) on the victim, and/or
- The presence or absence of any mitigating circumstances
- The need to promote specific and general deterrence and, thereby to protect the public and ensure the safe and proper practice
- The need to maintain the public's confidence in the integrity of the profession
- The range of sentence in other similar cases

The nature and gravity of the proven allegations: Confidentiality of patients' personal information and health information is a serious matter. Anyone receiving healthcare services should be able to trust that their personal information will only be accessed for valid purposes. Ms. Tan's conduct reflects an intention to use patient information for personal use and reflects poor judgement in respect of privacy rules in the workplace and for healthcare providers such as LPNs.

The age and experience of the investigated member: At the time of the allegations Ms. Tan had been a Licensed Practical Nurse for almost two years.

The previous character of the investigated member and in particular the presence or absence of any prior complaints or convictions: The Hearing Tribunal was not made aware of any prior complaints or convictions with respect to Ms. Tan.

The age and mental condition of the victim, if any: The Hearing Tribunal did not hear anything in respect to this.

The number of times the offending conduct was proven to have occurred: There was one instance of Ms. Tan not locking her workstation on January 8, 2023. Then there were seventy-three (73) instances of Ms. Tan accessing the personal information of individuals on Connect Care throughout her shift on February 26 and 27, 2023. This includes that Ms. Tan looked up her own personal health information on the same shift.

The role of the investigated member in acknowledging what occurred: Ms. Tan has acknowledged that she displayed a lack of knowledge or lack of skill or judgement and that her conduct breached the Code of Ethics as well as the Standards to which LPNs are held to.

Ms. Tan has acknowledged the unprofessional conduct, and she has taken responsibility for her actions.

Whether the investigated member has already suffered other serious financial or other penalties as a result of the allegations having been made: Ms. Tan had received a three-day suspension from work which was served on April 15, 21, and 27, 2023, and Ms. Tan was not paid for these shifts.

The impact of the incident(s) on the victim, and/or: The Hearing Tribunal was not made aware of any impact on the victim.

The presence or absence of any mitigating circumstances: The Hearing Tribunal was not made aware of any mitigating circumstances.

The need to promote specific and general deterrence and, thereby to protect the public and ensure the safe and proper practice: There is a need to impose a sanction that deters Ms. Tan from repeating this conduct in the future as well as a sanction that would deter other LPNs from engaging in similar conduct. The sanctions that are ordered should send a message to both Ms. Tan as well as other LPNs to state that this type of conduct will not be tolerated by the CLPNA. The CLPNA deals with the actions of its members when the members engage in unprofessional conduct. The CLPNA will deal with any breaches in the CLPNA Code of Ethics, CLPNA Standards of Practice and the *Health Information Act* in a way that reflects the seriousness of the conduct and for the purpose of public protection.

The need to maintain the public's confidence in the integrity of the profession: The CLPNA deals with the actions of its members when they engage in unprofessional conduct. The CLPNA will deal with any breaches of the CLPNA Code of Ethics, CLPNA Standards of Practice, or the *Health Information Act* in a way that reflects the seriousness of the conduct and for the purpose of protecting the public.

The range of sentence in other similar cases: The Hearing Tribunal was provided with CLPNA decisions in *Fenske* and *Guydash* which also had allegations in respect to accessing Connect Care documentation without proper authorization or justification.

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

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

(11) Orders of the Hearing Tribunal

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

1. The Hearing Tribunal's written reasons for decision (the "Decision") shall serve as a reprimand.
2. Ms. Tan shall pay a fine of \$1,500.00 within **36 months of service** of the Decision.
3. Ms. Tan shall pay 25% of the costs of the investigation and hearing to a maximum of \$5,000, to be paid in full **within 36 months of service** of the Decision. A letter advising Ms. Tan of the final costs will be provided once the final costs are confirmed.
4. Ms. Tan shall read and reflect on how the following CLPNA documents will impact her nursing practice. These documents are available on the CLPNA's website <http://www.clpna.com/> under "Governance". Ms. Tan shall provide to the CLPNA, a signed written declaration **within 30 days of service** of the Decision, attesting she has reviewed the following CLPNA documents:
 - (a) Code of Ethics for Licensed Practical Nurses in Canada;
 - (b) Standards of Practice for Licensed Practical Nurses in Canada;
 - (c) CLPNA Practice Policy: Professional Responsibility and Accountability;
 - (d) CLPNA Interpretive Document: Privacy Legislation in Alberta;
 - (e) CLPNA Practice Guideline: Confidentiality;
 - (f) CLPNA Competency Profile A1: Critical Thinking;
 - (g) CLPNA Competency Profile A2: Clinical Judgment and Decision Making;
 - (h) CLPNA Competency Profile C: Professionalism and Leadership.

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

5. Ms. Tan shall complete the following remedial education, at her own cost. If any of the required education becomes unavailable, Ms. Tan shall make a written request to the Complaints Officer to be assigned alternative education. Upon receiving Ms. Tan's written request, the Complaints Officer, in their sole discretion, may assign alternative education in which case Ms. Tan will be notified in writing of the new education requirements. Ms. Tan shall provide the Complaints Officer with certificates confirming successful completion **within 60 days** from service of the Decision.
 - a) **LPN Code of Ethics Learning Module** available online at www.learningnurse.org
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6. The sanctions set out above at paragraphs 2-5 will appear as conditions on Ms. Tan's practice permit and the Public Registry subject to the following:
 - a) The requirement to complete the remedial education and readings outlined at paragraphs 4-5 will appear as "CLPNA Monitoring Orders (Conduct)" on Ms. Tan's practice permit and the Public Registry until the below sanctions have been satisfactorily completed:
 - i. Readings/Reflection;
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 - iii. Privacy Legislation Micro-Module.
 - b) The requirement to pay costs and fines will appear as "Conduct Cost/Fines" on Ms. Tan's practice permit and the Public Registry until all costs and fines have been paid as set out above at paragraphs 2-3.
7. The conditions on Ms. Tan's practice permit and on the Public Registry will be removed upon completion of each of the requirements set out in paragraph 6.
8. Ms. Tan 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. Tan will keep her contact information current with the CLPNA on an ongoing basis.
9. Should Ms. Tan be unable to comply with any of the sanctions' deadlines identified above, Ms. Tan may request an extension. The request for an extension must be submitted in writing to the Complaints Director prior to the deadline, and must state a valid reason for requesting the extension and a reasonable timeframe for completion. The Complaints Director shall, in their sole discretion, determine whether a time extension is accepted. Ms. Tan will be notified by the Complaints Director, in writing, if the extension has been granted.

10. Should Ms. Tan fail or be unable to comply with any of the above orders, 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. Tan's non-compliance as information for a complaint under s. 56 of the Act; or
- c) In the case of non-payment of the fines or costs described in paragraphs 2-3 above, suspend Ms. Tan's practice permit until such costs are paid in full or the Complaints Director is satisfied that such costs are being paid in accordance with a schedule of payment agreed to by the Complaints Director.

The Hearing Tribunal believes these orders adequately balances the factors referred to in Section 10 above and are consistent with the overarching mandate of the Hearing Tribunal, which is to ensure that the public is protected.

Under Part 4, s. 87(1)(a),(b) and 87(2) of the Act, the Investigated Member has the right to appeal:

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

- (a) identifies the appealed decision, and
- (b) states the reasons for the appeal.

(2) A notice of appeal must be given to the hearings director within 30 days after the date on which the decision of the hearing tribunal is given to the investigated person."

DATED THE 4th DAY OF MARCH 2024 IN THE CITY OF EDMONTON, ALBERTA.

THE COLLEGE OF LICENSED PRACTICAL NURSES OF ALBERTA



Kelly Anesty, LPN
Chair, Hearing Tribunal