

IN THE MATTER OF *THE LICENSED PRACTICAL NURSES ACT, 2000* AND BYLAWS
AND A FORMAL COMPLAINT DATED APRIL 15, 2012 AGAINST FLORENCE CEASER
LPN, OF YORKTON, SASKATCHEWAN

DECISION OF:

**SASKATCHEWAN ASSOCIATION OF LICENSED PRACTICAL NURSES
DISCIPLINE COMMITTEE**

INTRODUCTION:

The hearing by the Discipline Committee into the complaints against Florence Ceaser was convened in the Ascot Room of the Travelodge Hotel in Regina, Saskatchewan, on May 17, 2012 at 9:00 a.m., being the date and time set out in the Notice of Hearing sent to Florence Ceaser. Ms. Ceaser participated in the hearing by way of teleconferencing. Present at the hearing was Merrilee Rasmussen, Q.C., legal counsel for the Counselling and Investigation Committee of the Saskatchewan Association of Licensed Practical Nurses (referred to as the "Investigation Committee"). The Member, Ms. Ceaser, participated in the hearing by way of teleconferencing.

The complaint against Ms. Ceaser that is the subject of this hearing involves an allegation of professional misconduct and/or professional incompetence on the basis that Ms. Ceaser struck a resident at a nursing home at which she was employed, after being struck by that resident.

EVIDENCE:

At the outset of the hearing, the following Agreed Statement of Facts and Documents was filed with the Discipline Committee [the information referenced in the "Tabs" is not included]:

Both the Counselling & Investigation Committee of the Saskatchewan Association of Licensed Practical Nurses and Florence Ceaser hereby agree to the following facts and documents to be received in evidence by the Discipline Committee of the Saskatchewan Association of Licensed Practical Nurses in relation to the hearing of the formal complaint described above:

1. *Ms. Ceaser is a member of the Saskatchewan Association of Licensed Practical Nurses ("SALPN"), registration number 4276. She has been a member of SALPN since December 11, 1973.*
2. *Membership in SALPN, and the conduct of members, is governed by The Licensed Practical Nurses Act, 2000 (the "Act"), the SALPN bylaws, and the Code of Ethics.*

3. *As a self-regulating profession, SALPN is authorized by the Act to discipline its members for failure to adhere to the requirements of the Act, the bylaws, or the Code of Ethics.*
4. *Pursuant to s. 26 the Act, the Counselling and Investigation Committee (the "Investigation Committee") is required to investigate allegations of professional misconduct, and on completion of its investigation, to make a written report to the Discipline Committee recommending that either that the subject matter of the complaint be referred for a discipline hearing or that no further action be taken.*

The report of termination

5. *Ms. Ceaser was hired to work at the Yorkton and District Nursing Home in 1985.*
6. *██████████ the manager of staff relations for the Sunrise Health Region, sent a letter dated August 5, 2011 advising SALPN that Ms. Ceaser's employment at the Yorkton and District Nursing Home had been terminated "due to a substantiated incident of client abuse". SALPN received the letter on August 10, 2011. A copy of the letter is provided at Tab A.*
7. *This letter was sent pursuant to s. 43 of the Act, which requires employers to notify SALPN if an LPN's employment has been terminated where the employer reasonably believes the cause is professional incompetence or professional misconduct. The matter was referred to the Investigation Committee for review and investigation pursuant to s. 26(1) of the Act.*

Previous discipline

8. *On February 25, 2008, Ms. Ceaser's employment at the Yorkton and District Nursing Home was terminated because she allegedly slapped a resident under her care on February 10, 2008.*
9. *On March 12, 2008, ██████████ Manager, Yorkton and District Nursing Home, reported to SALPN the termination for causes that the employer reasonably believed were related to professional incompetence and/or professional misconduct, in accordance with s. 43(1) of the Act.*
10. *Ms. Ceaser grieved her dismissal. In a decision dated February 11, 2009, an arbitration board found that Ms. Ceaser did "slap" the resident as a reflexive response to his pinching her breast, and that she at least partially "checked" herself when she realized what she was doing so that the effect of the slap was minimized. There were no marks or bruises on the resident's cheek as a result. Ms. Ceaser acknowledged that such conduct is inappropriate and constitutes professional misconduct as the term is defined in s. 24 of the Act.*
11. *The decision reinstated Ms. Ceaser to her position but without any compensation or accumulation of seniority. As a result, the period of almost one year from the date of the termination until the date of the reinstatement was an unpaid disciplinary suspension.*
12. *On March 12, 2009, the Investigation Committee recommended to the Discipline Committee that a discipline hearing be held in relation to the events of February 10, 2008. An Agreed Statement of Facts was submitted, and the Investigation Committee and Ms. Ceaser made a joint submission recommending that she be formally reprimanded and successfully complete a PART course. The Discipline Committee made an order in accordance with the joint recommendation. Ms. Ceaser has since successfully completed the PART course.*

The incident according to the witnesses

13. *On Sunday, July 24, 2011 at approximately 8:15 am, Ms. Ceaser was in the Skinner Place dining room giving medication to a resident, Ms. X, while other residents were in the room eating breakfast. The dining room is small and contains about 9 or 10 tables.*
14. *All three of the witnesses state that Ms. X is known to have mental health issues and to sometimes become aggressive.*

15. ██████ who was a newly-hired care aide at the time and is now a graduate LPN, states that Ms. Ceaser and Ms. X were at a table that was beside a wall. Mr. ██████ was feeding a resident at the next table, also beside the wall. Mr. ██████ was very close to Ms. Ceaser and felt that he saw things clearly. Mr. ██████ states that he heard Ms. X refusing her medication and looked up in time to see Ms. X strike Ms. Ceaser in the face and knock her glasses off. Mr. ██████ states that he did not particularly see Ms. Ceaser strike Ms. X, but he heard two “thwaps”. Ms. X then grabbed at Ms. Ceaser and there was a brief struggle. Mr. ██████ heard Ms. Ceaser say something to Ms. X to the effect that “you have to behave”. Ms. Ceaser then left, and Ms. X went back to eating like normal.
16. Mr. ██████ states that one must speak gently to Ms. X, be nice to her, and try to persuade her to take her medication.
17. ██████, a care aide, states that only Mr. ██████ table was between Ms. Ceaser’s and her own, where Ms. ██████ was feeding a resident. Ms. ██████ felt that she had a clear view of what happened. She states that she heard yelling and when she looked up she saw Ms. Ceaser strike Ms. X once on the back of the head, hard enough that Ms. X’s head “bounce” forward. Ms. Ceaser said, “How does that make you feel?” Ms. X appeared upset and tried to fight back, and the two of them were slapping at each other. Ms. Ceaser “threatened” to give her a needle to calm her down. Ms. ██████ states that Ms. Ceaser suddenly appeared to “snap out of it”, then walked away and acted as though nothing had happened, while Ms. X finished her breakfast.
18. Ms. ██████ states that the proper way to handle Ms. X is to ask her if she wants her medication, and if she refuses, just walk away and try again later.
19. Lidia Flores trained as a registered nurse in her country of origin, but has been working in Saskatchewan as a care aid for about 27 years. Ms. Flores was feeding a resident at a table beside Mr. ██████ (but not against the wall) and close to Ms. Ceaser’s. Ms. Flores heard raised voices and looked up. She could hear that Ms. X was excited and upset. Ms. Flores saw Ms. X strike Ms. Ceaser, and she saw Ms. Ceaser strike back at Ms. X once and heard Ms. Ceaser say, “How do you like that?” Ms. X appeared startled. Ms. Flores was very upset and looked down until the incident was over. Ms. Ceaser then went to give medications to other residents.
20. Ms. Flores states that everyone knows that Ms. X can be difficult; when she starts acting up, you must back off.

Background to the incident, in Ms. Ceaser’s words

21. “I have been abused regularly by this particular resident. I had the responsibility of making sure she took her medication twice a day, every day that I worked. Quite often I was physically or verbally abused. I’ve walked away from her with parts of my body bleeding, I’ve been hit and kicked, I’ve been shoved, I’ve had glasses full of liquid poured over me or thrown at me, and I’ve endured verbal abuse from her. I realize that the mixture of residents that I was dealing with can be difficult, but this was getting to be quite a regular occurrence with [Ms. X]. My employer was not doing anything to help protect my wellbeing. Being in the middle of this abusive situation, I was not fully aware of how badly I was being affected by it.
22. “I documented her violence in the nursing notes. Although there were times I didn’t because it was getting redundant to keep repeating the same thing almost every day. I also filled out incident reports for violence and for emotional abuse on her. At one point I had spoken to Sherry Lee Duncan, Care Coordinator. I asked her if she could think of something that I could do differently with [Ms. X] because I was tired of coming to work and being abused every day. She suggested that I try giving her the medication when she was busy eating. It helped for a while, but her violence toward me was escalating. She began attacking me even though she was busy eating. Sometimes she swung out at me just because I was walking by her and was close enough for her to try to strike me.”

The incident, in Ms. Ceaser's words

“On July 25, 2011, as I was giving [Ms. X] her insulin, she stated ‘You want me to die.’ I replied, ‘Oh no [Ms. X]. I don’t want that!’ She suddenly struck me with her right hand in a downward motion, hitting me in the face. My eye glasses were bent out of alignment. Without intention, I tapped [Ms. X] on the back of the head and said, ‘How do you like that [Ms. X]?’ She immediately looked down at her lap. Then she started striking me with both hands. I tried to take hold of her wrists to stop her and calm her down. I said, ‘Stop [Ms. X], you know better and you know what I’ll have to do if you don’t behave.’ This meaning I would be forced to give her a Haldol injection to control her abusive behaviour. She continued to try to hit me. I then realized that I was not being effective in handling the situation and backed away. I was upset and struggled to hold back my tears. I did my best to carry on with my job, as I felt it was my duty to do so.”

At the hearing, Ms. Ceaser provided some information in addition to that contained in the Agreed Statement of Facts. Although we do not ordinarily consider unsworn evidence, legal counsel for the Investigation Committee did not object. Also, given the contradictions between the evidence provided by the witnesses to the incident, as well as that of the Member, we find it acceptable to consider this additional information. Ms. Ceaser stated that the evidence given by Mr. [REDACTED] and Ms. [REDACTED] both new employees and neither of which have been trained in giving medications, is exaggerated. Ms. Ceaser denied hitting the resident hard enough to make a “thwap” sound. She said it was more like a “tap,” and that it was unintentional. She recognized that it was not an appropriate action and she described it is more of a “heat of the moment” reaction. Ms. Ceaser indicated that other employees have had problems with this resident as well.

Ms. Ceaser stated that she has not always worked at the nursing home. Her prior position in the Health Region had been deleted and she bumped into the nursing home position. She said she has been aware for some time that she needs a change of work; she’d become “burnt out” as a result of continually caring for patients with Alzheimer’s and cognitive behavioural issues. She had recently accepted a position in a hemodialysis unit but later learned she lacked a necessary qualification to work in that position. More recently, she had been taking classes in finance and applying for finance/administration positions in the Health Region.

SUBMISSIONS OF PARTIES:

Legal Counsel for the Counselling and Investigation Committee submitted that the Discipline Committee should accept the facts set out in the Agreed Statement of Facts and Documents. Those facts include the statements of three witnesses, each of whom stated that the Member struck the resident, and the Member’s acknowledgement of a “slap” or “hit” to the back of the resident’s head, an action which she agreed was inappropriate. It was recognized by everyone that it was difficult to administer medications to this resident.

Counsel pointed out that the primary objective of this process is not to punish LPNs but to ensure they act appropriately and meet the standards of the profession. In this case, counsel submitted, there can be no doubt that striking a patient is professional misconduct, whether it is a violation of the Bylaws (ie – a

breach of the Code of Ethics) or otherwise falls within the definition of professional misconduct in the *Act*, that is, it is harmful to the best interests of the public or the members, or it tends to harm the standing of the profession. Counsel submitted that the Member's actions are harmful to both the public being served by the profession (patients) and the greater public interest. The conduct also tends to harm the standing of the profession because such conduct results in diminished respect for the profession if that type of behaviour is not adequately addressed and deterred.

In terms of an appropriate penalty for the Member's misconduct, legal counsel referenced a prior incident, similar in nature, having occurred some three years earlier (as noted in the Agreed Statement of Facts), and for which the Discipline Committee issued orders against the Member, including a formal reprimand and a requirement to complete the PART course. Counsel noted that the Investigation Committee did not seek an order for the suspension of the Member's license on that occasion because, by the time the complaint was dealt with by the Discipline Committee, the Member had effectively been suspended for a one-year period through workplace disciplinary proceedings. Counsel submitted that given the serious consequences that resulted from the first incident where the Member struck a patient, as well as the Member having taken the PART course, the Member should have been more aware and more sensitive to the reoccurrence of such a situation, but she was not.

Counsel submitted that, given the seriousness of the offence, the fact that this is the second such incident during a period of less than five years (one year during which she was not employed as an LPN), the Member's license should be removed. Counsel noted that the Member has not renewed her license to practise for the 2012 calendar year, has not been working as an LPN since her termination, and is training in another field of employment. Counsel pointed out that LPNs regularly care for patients with these problems and that if a Member cannot handle such situations, she should not be working as an LPN.

As an alternative to the cancellation/removal of the Member's license, if the Discipline Committee does not accept that as an appropriate penalty, Counsel submitted that a lengthy suspension could be appropriate. It would have to be sufficiently long to emphasize how serious the misconduct was in this case. In the event that the Discipline Committee determines that a suspension is appropriate, counsel also suggested that it should be accompanied by either an order to pay costs or a fine, in the minimum amount of \$1500.00, if the Discipline Committee determines that costs are appropriate or that a monetary penalty is an effective means of effecting a change in behaviour.

In response to the submissions of the Counselling and Investigation Committee, the Member expressed her hope that we would not expel her from the Association, thereby ending her career in a "nasty way." When asked if she had considered voluntarily resigning her license, Ms. Ceaser said she had not wished to do so, indicating that the disciplinary process has been mentally traumatizing for her. Ms. Ceaser did indicate, however, that if the Discipline Committee was considering removing her license to practice as an LPN, she would like to have an opportunity to resign.

In reply to the Member's submissions, legal counsel for the Counselling and Investigation Committee expressed the view that the Committee had no concerns about allowing the Member to resign her license should the Discipline Committee decide that expulsion is an appropriate penalty, indicating that at least one Court decision in Saskatchewan has suggested that providing such an opportunity is appropriate if the Member wishes to do so.

DECISION:

Counsel for the Investigation Committee did not make any submissions concerning the characterization of the Member's conduct as professional incompetence. We do not view her conduct as professional incompetence and will therefore dismiss that aspect of the formal complaint.

The primary issues before the Discipline Committee are:

- i. Whether the conduct of Ms. Ceaser is "professional misconduct" within the meaning of s. 24 of the *Act*; and
- ii. If so, what penalties under s. 30 of the *Act* are appropriate in the circumstances.

The relevant sections of the *Act* are sections 24 and 30 which read as follows:

24. *Professional misconduct is a question of fact, but any matter, conduct or thing, whether or not disgraceful or dishonourable, is professional misconduct within the meaning of this Act if:*

- (a) it is harmful to the best interests of the public or the members;*
- (b) it tends to harm the standing of the profession;*
- (c) it is a breach of this Act or the bylaws; or*
- (d) it is a failure to comply with an order of the counselling and investigation committee, the discipline committee or the council.*

...

30(1) *Where the discipline committee finds a member guilty of professional misconduct or professional incompetence, it may make one or more of the following orders:*

- (a) an order that the member be expelled from the association and that the member's name be struck from the register;***
- (b) an order that the member's licence be suspended for a specified period;*
- (c) an order that the member's licence be suspended pending the satisfaction and completion of any conditions specified in the order;*
- (d) an order that the member may continue to practise, but only under conditions specified in the order, which may include, but are not restricted to, an order that the member:*
 - (i) not do specified types of work;*
 - (ii) successfully complete specified classes or courses of instruction;*
 - (iii) obtain medical or other treatment or counseling or both;*

(e) *an order reprimanding the member;*

(f) *any other order that the discipline committee considers just.*

(2) *In addition to any order made pursuant to subsection (1), the discipline committee may order;*

(a) *that the member pay to the association, within a fixed period:*

(i) *a fine in a specified amount not exceeding \$5,000; and*

(ii) *the costs of the investigation and hearing into the member's conduct and related costs, including the expenses of the counseling and investigation committee and the discipline committee and costs of legal services and witnesses; and*

(b) *where a member fails to make payment in accordance with an order pursuant to clause (a), that the member's licence be suspended.*

(3) *The executive director shall send a copy of an order made pursuant to this section to the member whose conduct is the subject of the order and to the person, if any, who made the complaint.*

(4) *Where a member is expelled from the association or a member's licence is suspended, the registrar shall strike the name of the member from the register or indicate the suspension on the register, as the case may be.*

(5) *The discipline committee may inform a member's employer of the order made against that member where that member has been found guilty of professional misconduct or professional incompetence.*

[emphasis added]

As stated previously, the first issue for our determination is whether Ms. Ceaser's conduct is "professional misconduct" within the meaning of s. 24 of the *Act*. "Professional misconduct" covers a broad range of conduct by a member, including conduct both within and outside the workplace. Whether an LPN is guilty of professional misconduct is a question of fact.

For the most part, the facts of this case are not in dispute. Although the witnesses' statements, as set out in the Agreed Statement of Facts, vary in some respects, it is apparent that two of the witnesses saw and one witness heard Ms. Ceaser strike a resident in response to apparently aggressive behaviour by a resident that is known to be difficult. Based on the Agreed Statement of Facts, it would appear that while Ms. Ceaser agreed that that is the evidence that would be given by those witnesses, her statements about what had occurred and the surrounding circumstances were different in some respects from that of the other witnesses. Based on her representations at the hearing though, it is clear that she acknowledged striking the resident and agreed that this conduct is inappropriate, even though the resident struck her first and caused damage to her eye glasses. In the Discipline Committee's view, Ms. Ceaser has appeared to minimize her actions to some extent. However, we accept that she clearly expressed responsibility for her actions in striking the resident.

Even if we completely accept Ms. Ceaser's version of what occurred, her conduct is clearly professional misconduct under the *Act*. Striking a resident, even in response to a resident's aggressive and abusive behaviour, and even if it did not cause the resident any significant physical pain, is unacceptable. Such conduct is harmful to the best interests of the public; not only to the resident who was struck but to all residents of the care facility served by the Member. It is harmful to the best interests of the members because such conduct reflects poorly on other LPNs and those who are performing acceptably and sensitively in response to the needs of these residents, some of whom may be difficult, but all deserving of respect and dignity. The Member's conduct also tends to harm the standing of the profession. Such a display of conduct by an LPN reflects poorly on the whole profession as a whole, charged with the responsibility of caring for diverse patients, including those with Alzheimer's and cognitive behavioural issues, and many as difficult to care for as the resident was in this case. It is unfortunate that the Member felt she did not receive appropriate support in the workplace, however, her behaviour reflects very poorly on the profession as a whole. It is clearly professional misconduct within the meaning of s. 24(a) and (b) of the *Act*.

Lastly, the Discipline Committee views the Member's conduct as a breach of the Code of Ethics. A breach of the Code of Ethics is a breach of the Bylaws and constitutes "professional misconduct" under s. 24(c) of the *Act*. In the Notice of Hearing, mention is specifically made of an alleged breach of statement 4 of the Code of Ethics; however, we find Ms. Ceaser's conduct to be a breach of not only statement 4 but also statements 1, 5, 8 and 9. Statements 1, 4, 5, 8, 9 read as follows:

CODE OF ETHICS

As a member of the Saskatchewan Association of Licensed Practical Nurses:

I will fulfil my obligations to society in a professional, competent manner.

...

I will strive for the promotion of health and I will show empathy and compassion towards the alleviation of suffering and the treatment of disease.

I will respect, promote and protect the physical, mental, emotional and spiritual health of the patients and their families and friends.

...

I will recognize my professional limitations and draw upon the expertise of other disciplines in the provision of high quality nursing care.

I will, as a Licensed Practical Nurse, continually strive to uphold and maintain high standards.

The Discipline Committee finds, on the basis of the evidence and after considering the parties' submissions, that Ms. Ceaser is guilty of professional misconduct under s. 24(a), (b) and (c) of the *Act*.

PENALTY:

Having concluded that Ms. Ceaser's conduct amounts to professional misconduct under s. 24 of the *Act*, it is necessary for us to determine an appropriate penalty pursuant to s. 30 of the *Act*.

Having considered the evidence at the parties' submissions, it is the Discipline Committee's view that expulsion from the Association (under section 30(1)(a) of the *Act*) is an appropriate penalty for Ms. Ceaser's professional misconduct. We recognize that expulsion must be reserved for the most serious incidents of professional misconduct or incompetence. In this case, we find that any lesser penalty is inappropriate and inadequate to address public safety and to meet the goals of general and specific deterrence. Our reasons for reaching this conclusion include the following:

- Physically striking a resident in one's care is a very serious act of professional misconduct;
- The striking of the resident was accompanied by verbal abuse and what might be viewed as a threatening remark;
- This is the second time that the Member has struck a patient within a period of approximately 3 1/2 years (one year during which she was not practicing as an LPN); and
- Even though the Member faced serious consequences in response to the first incident of striking a patient, including what effectively amounted to a one-year suspension (through workplace discipline proceedings) as well as Orders by this Discipline Committee that she be formally reprimanded and complete the PART course, this has not been effective in preventing a repeat occurrence of the behaviour.

Patients exhibiting aggressive or abusive behaviours (whether due to Alzheimer's, cognitive behavioural impairment, delirium, intoxication, etc.) do not present only in long-term care or nursing homes; an LPN may encounter such behaviour in any type of facility and therefore a restriction on the types of work the Member may do is inadequate to protect the public.

At the hearing, the Member submitted that if the Discipline Committee is considering an Order that she be expelled from the Association, she would like an opportunity to resign from the Association rather than be expelled. The Member indicated that she has no intentions of returning to the practice of an LPN. Legal counsel for the Investigation Committee indicated that the Committee has no concerns about the Member being permitted to resign.

There are few mitigating factors present that warrant consideration of resignation as an option here, including: (i) that prior to the 2008 incident, the Member had a long and unblemished record of practice as an LPN; (ii) that the Member has recognized that she was not coping well with patient demands and had begun to take steps to secure alternate employment (as evidenced by her attempt to work in a hemodialysis unit and her having begun to take classes in finance); and (iii) that the Member demonstrated cooperation in the disciplinary process, including with the Investigation Committee and at the discipline hearing.

In principle, the Discipline Committee is not opposed to providing the Member with an opportunity to resign from the Association rather than be expelled. However, the difficulty with permitting the Member's resignation is that it does not prevent the Member from making an application for membership at any time, a course of action that could effectively result in there having been no disciplinary action taken against the Member for the present act of professional misconduct. Upon a new application for membership, it is doubtful whether such an application could be prevented or opposed on the basis of the findings of professional misconduct we have made in this decision.

In light of this concern, the Discipline Committee has attempted to arrive at orders that would have the same effect as an order of expulsion, yet permit the Member to voluntarily resign her membership. It is important to note that an order of expulsion from the Association does not necessarily prohibit an individual from ever working again as an LPN. Section 39 of the *Act* allows an expelled member the ability to make an application to SALPN Council for reinstatement as a member of the Association. It sets out the process to be followed by a member seeking reinstatement and it includes rights of appeal of Council's decision concerning the application for reinstatement. Section 39 states as follows:

- 39(1) A person who has been expelled as a member may apply to the council for reinstatement.*
- (2) Subject to the bylaws, on receipt of an application pursuant to subsection (1), the council shall:*
 - (a) review the application; and*
 - (b) investigate the application by taking any steps it considers necessary.*
- (3) On completion of its investigation, the council may:*
 - (a) where it is satisfied that the person's subsequent conduct and any other facts warrant reinstatement, order that the person be reinstated as a member on any terms and conditions that the council considers appropriate; or*
 - (b) by order, refuse to reinstate the person.*
- (4) Where, on an application pursuant to subsection (1), the council refuses to reinstate the person as a member, the person, within 30 days after the date of the order, may appeal the order of the council to a judge of the court and the judge may allow or disallow the appeal.*
- (5) On an appeal pursuant to subsection (4), the judge shall consider:*
 - (a) the proceedings before the council on the application for reinstatement;*
 - (b) the past record of the appellant as shown by the books and records of the association; and*
 - (c) the evidence taken before the council and any committee that dealt with the expulsion and application for reinstatement and the report of that committee.*
- (6) A person whose application for reinstatement is refused or whose appeal of a refusal is dismissed may make another application for reinstatement, based on new information, at any time.*

The Discipline Committee views the process set out in section 39 as a suitable process to incorporate in an order that permits the Member to resign from the Association rather than be expelled upon a finding of professional misconduct. In addition to incorporating a process, we also find it appropriate to specify when such an application may first be made by the Member to Council. Considering the reasons that formed the basis of our conclusion that expulsion was an appropriate penalty (set out above), as well as the mitigating factors we considered (also set out above), we find it appropriate to prohibit application for membership for a period of five years from the date of the incident that gave rise to our findings of professional misconduct. In reaching that decision we are mindful of the fact that this may have an impact on the Member's ability to obtain an annual license under the requirements of section 11(c) of the Regulatory Bylaws, should she be reinstated by Council. Section 11(c) states that in order to obtain an annual license to practice, an LPN must successfully complete a Council-designated re-entry course if the LPN has not worked at least 1250 registered working hours in licensed practical nurse activities approved by Council, during the prior five-year period or such longer period that the Registrar may approve. We are not specifically incorporating this as a requirement in our orders. We mention it only to convey the fact that we have not failed to consider the effect this provision may have on the Member's ability to obtain a license should Council grant her application for membership after the expiry of the five-year period. To be clear, should the Member be granted membership at some future point in time, she will be subject to whatever licensing requirements are in place at that time.

In reaching this decision, we have also considered the terms of section 9 of the Regulatory Bylaws. This clause, titled "Resignation on medical or other grounds" permits Council, upon the recommendation of the Registrar, to accept the resignation of membership of an LPN, "for medical or other reasons acceptable to the Council." If Council accepts the member's resignation, a notation of the resignation is made on the register and the notation should include the reasons for resignation, which reasons may be shared with anyone who inquires about the former member's membership status. Also under section 9, the member may apply for reinstatement of membership but must "demonstrate to the satisfaction of Council that the reasons that resulted in his or her resignation from the Association no longer exist." What is significant about section 9 of the Bylaws is that such a resignation (and any subsequent reinstatement) can only be obtained through acceptance by Council, essentially making resignation a recognized form of membership status. Although we are not bound by the terms of section 9 of the Bylaws, it would seem appropriate for us to consider the spirit and intent of those terms when arriving at the terms of our Orders. That is somewhat difficult to do here because section 9 seems to contemplate a condition or "reason" that might be temporary in nature, given that reinstatement is based, in part, on that condition or reason no longer existing. Here, we are permitting the Member to resign instead of being expelled in circumstances where the Discipline Committee has determined that expulsion is appropriate. In such circumstances, the reason for resignation cannot be said to no longer exist at some future time. In our view, this provision would also seem to support there being a time restriction on when the Member may apply for reinstatement.

The circumstances here also give rise to the question of how the Member's membership status should be recorded in the register. Under section 30 (4) of the *Act*, if a member is expelled from the Association,

the Registrar must strike the member's name from the register. If the member's license to practice is suspended, the Registrar must indicate the suspension on the register. Under section 9 of the Regulatory Bylaws, if a member's resignation is accepted by Council, the Registrar must place a notation of the reasons for resignation in the register, further providing that the notation may be shared with any person who inquires as to the former member's membership status. These are important provisions because the member's status affects her eligibility for licensing to practice as an LPN in Saskatchewan. The member's membership status in Saskatchewan could also affect licensing in other provinces whose associations might rely on the LPN's status in Saskatchewan to determine whether the LPN is eligible for membership in that province. In the present case, if Ms. Ceaser chooses to resign under the conditions we have identified, her membership status should be reflected in the register as "Resigned" and include a notation to the effect that the resignation was accepted pursuant to a decision of the Discipline Committee. If Ms. Ceaser does not choose to resign pursuant to the terms identified in our Orders, her expulsion will be in effect and the Registrar shall strike her name from the register.

In summary, an order that permits voluntary resignation but on certain conditions regarding a new application for membership, effectively balances the parties' interests while ensuring public safety and the imposition of a penalty that meets the goals of general and specific deterrence.

On a final note, the Discipline Committee has determined that no orders will be issued directing a fine or costs be paid by Ms. Ceaser. Given that the order of expulsion is the most serious form of penalty that could be imposed; there is nothing to be gained by requiring Ms. Ceaser to pay a fine. In our view, a fine, which is viewed as punitive in nature, would not be an effective method of inducing a change in behaviour. Furthermore, the ordering of a fine would impose a significant financial hardship on the Member at a time when she could no longer work as an LPN because of the order of expulsion. These considerations remain even if Ms. Ceaser chooses to resign.

The Discipline Committee has also determined that it will not issue an order to pay all or part of the costs associated with the investigation and the discipline hearing. In many cases, the Discipline Committee has decided not to order the payment of costs or has ordered payment of only a small portion of the overall costs, in circumstances where the member has cooperated with the Investigation Committee's investigation and has participated in the discipline hearing. Here, Ms. Ceaser did cooperate with the investigation, was agreeable to entering into an Agreed Statement of Facts and Documents (thereby lessening the time and effort that would have been required had it been necessary to call witnesses to testify), and she participated in the discipline hearing, acknowledging responsibility for her actions. The Discipline Committee always appreciates the presence of the member at hearings to be able to answer questions and provide further explanations, which Ms. Ceaser did do. While some time and cost may have been saved if Ms. Ceaser had taken steps to resign her membership before the hearing (if she was even aware of such an option or the fact that her expulsion was being sought), the Discipline Committee accepts that the discipline process has been very difficult for her and likely overwhelming. In all of these circumstances and including the financial impact of an order to pay costs, we have decided that such an order is not appropriate in the circumstances.

Therefore, pursuant to s. 30 of the *Act*, the Discipline Committee makes the following orders:

1. That the Member, Florence Ceaser, be expelled from the Association and her name be struck from the Register;
2. That the order of expulsion in paragraph 1 not take effect for a period of 30 days from the date of these Orders to allow Florence Ceaser an opportunity to voluntarily tender resignation of her membership in the Association, in the following manner and subject to the following conditions:
 - (a) That Ms. Ceaser submit a written notice of resignation of her membership to the Registrar of SALPN, within 30 days of the date of these Orders;
 - (b) That upon receipt of the written notice of resignation, the Registrar of SALPN will make a notation in the Register indicating that Ms. Ceaser has “Resigned” and that her resignation of membership was accepted pursuant to a decision of the Discipline Committee dated July 17, 2012;
 - (c) That Ms. Ceaser is prohibited from applying for reinstatement of membership in the Association for a period of five years from the date of the conduct giving rise to the within finding of professional misconduct, that is, five years from July 24, 2011;
 - (d) That in the event Ms. Ceaser wishes to apply for reinstatement of her membership in the Association following the expiry of the five-year period in paragraph 2 (c), the following process must be followed:
 - (i) Ms. Ceaser must make the application in writing to Council;
 - (ii) Upon receipt of the application, Council shall review the application and investigate the application by taking any steps it considers necessary;
 - (iii) Upon Council's completion of its investigation, Council may, subject to any applicable provisions of the *Act* and Bylaws regarding membership generally:
 - Reinstatement the Member on any terms and conditions it considers appropriate, if Council is satisfied that Ms. Ceaser's subsequent conduct and any other facts warrant reinstatement; or
 - Make an order refusing reinstatement;
 - (iv) If Council refuses to make an order reinstating Ms. Ceaser's membership, Ms. Ceaser has the right to appeal that decision in accordance with the provisions in s. 39(4) and (5) of the *Act*. However, if such access to an appeal is not legally available to her, she may appeal Council's decision through an application to be Court on any legal basis available to her to challenge that decision and in so doing, she is permitted to make reference to her past record and any information contained in the Association's records that relates to this hearing, the evidence before the Discipline Committee and the Discipline Committee's within decision and orders, evidence taken before Council on the application for reinstatement, the proceedings before Council on the application for reinstatement, and Council's report or order in response to the application for reinstatement;

(v) If Ms. Ceaser's application for reinstatement is refused by Council and/or the appeal to the Court is unavailable or not successful, Ms. Ceaser may make further applications to Council for reinstatement, based on new information, at any time;

(vi) Any provisions in the *Act* and Bylaws pertaining to eligibility for membership and the granting of an annual license continue to apply, except to the extent those provisions are modified by these Orders or any subsequent decisions made by Council on an application for reinstatement.

We wish to thank Ms. Ceaser for her cooperation in these proceedings.

DATED at Regina, Saskatchewan, this 17th day of July, 2012.

**SASKATCHEWAN ASSOCIATION OF LICENSED
PRACTICAL NURSES, DISCIPLINE
COMMITTEE**



Angela Zborosky, Chairperson

Marjorie Molsbery, LPN, Member

Terry Chretien, LPN, Member

Brenda Ballagh, LPN Member

Bonnie Hartman, Public Representative, Member