

IN THE MATTER OF *THE LICENSED PRACTICAL NURSES ACT, 2000* AND BYLAWS
AND IN THE MATTER OF A COMPLAINT AGAINST CHRIS HEBERT OF SWIFT
CURRENT, SASKATCHEWAN

DECISION OF:

SASKATCHEWAN ASSOCIATION OF LICENSED PRACTICAL NURSES
DISCIPLINE COMMITTEE

INTRODUCTION:

The hearing by the Discipline Committee into the complaints against Chris Hebert was convened in the Coach Room of the Travelodge Hotel in Regina, Saskatchewan, on January 19, 2010 being the location and the date agreed upon with the consent of the member, Chris Hebert, and his legal counsel, Karl Bazin, Q.C. It was indicated in the Agreed Statement of Facts and Documents and Joint Submission provided to the Discipline Committee at the hearing and was confirmed orally at the hearing, that the parties acknowledge that a formal Notice of Hearing (pursuant to s. 29(1) of *The Licensed Practical Nurses Act, 2000*) had not been served on Mr. Hebert, but that the parties agree the Discipline Committee is properly constituted and has jurisdiction to hear and determine the complaint.

Mr. Hebert was present at the hearing with a support person, while his legal counsel, Mr. Bazin, participated in the hearing by way of teleconferencing. Also participating in the hearing by teleconference was Colin Rasmussen (legal counsel for the Counselling and Investigation Committee of the Saskatchewan Association of Licensed Practical Nurses ("SALPN")). On behalf of SALPN, Della Bartzen (investigator with SALPN) and Sheri Biemans (chairperson of the Counselling and Investigation Committee of SALPN) were also personally present at the hearing.

EVIDENCE:

At the outset of the hearing, the following Agreed Statement of Facts and Documents and Joint Submission were filed with the Discipline Committee:

IN THE MATTER OF THE LICENSED PRACTICAL NURSES ACT, 2000 AND BYLAWS AND A FORMAL COMPLAINT DATED JANUARY 19, 2009 AGAINST CHRIS HEBERT, LPN, OF SWIFT CURRENT, SASKATCHEWAN

Agreed Statement of Facts and Documents and Joint Submission

Both the Counselling & Investigation Committee of the Saskatchewan Association of Licensed Practical Nurses and Chris Hebert hereby acknowledge and agree to the following facts and documents being 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. *Chris Hebert is a member of the Saskatchewan Association of Licensed Practical Nurses ("SALPN"). He graduated as a Licensed Practice Nurse (LPN) and became a member of SALPN in 2000.*
2. *Membership in the Association, and the conduct of members, is governed by The Licensed Practical Nurses Act, 2000 (the "Act"), the bylaws of the Association and the Association's 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 is required to investigate allegations of professional misconduct and/or professional incompetence, 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.*
5. *On January 19, 2009, a complaint was filed by Renee Hovestad, Health Services Manager, Palliser Regional Care Centre regarding the conduct of Mr. Hebert. The complaint was referred to the Counselling and Investigation Committee for review and investigation pursuant to ss. 26(1) of the Act. A copy of the complaint is attached as Appendix A.*
6. *The complaint alleged that Mr. Hebert had, over the period from about July 2007 to January 2009, stolen approximately thirty (30) does of Ativan from the Palliser Regional Care Centre.*
7. *Mr. Hebert acknowledged that he had committed the actions complained of.*
8. *Mr. Hebert suffers from alcoholism as well as chronic depression and anxiety, as outlined in a letter from his family physician, dated May 27, 2009, a copy of which is attached as Appendix B.*
9. *Mr. Hebert was charged under the Criminal Code with theft under \$5,000, pleaded guilty and received a six month conditional sentence with electronic monitoring for three months, followed by one year's probation.*

10. *A formal complaint was referred by the Counselling and Investigation Committee to the Discipline Committee in its report dated December 18, 2009, a copy of which is attached as Appendix C.*
11. *Mr. Hebert accepts responsibility with respect to the allegations contained in the formal complaint and agrees to the following disciplinary actions:*
 - a) *On or before June 30, 2010, or such later date as may be agreed to in writing by the Counselling and Investigation Committee, to provide confirmation of attendance at and completion of a de-tox program acceptable to the Counselling and Investigation Committee;*
 - b) *To attend AA meetings and counselling and to provide confirmation of regular attendance to the Counselling and Investigation Committee on a quarterly basis, commencing on April 1, 2010 and ending on January 1, 2012;*
 - c) *To submit to random drug testing or nursing practice audits, or both, as requested by the Counselling and Investigation Committee, at any time during the period commencing on the date of the Discipline Committee's order and ending on January 1, 2012;*
 - d) *On or before June 30, 2010, or such later date as may be agreed to in writing by the Counselling and Investigation Committee, and at his own cost, to successfully complete the course titled "Roles, Responsibilities and Ethics for LPNs" from SIAST, and to provide the Counselling and Investigation Committee with proof of having done so;*
 - e) *To notify any employer during the period commencing on the date of the Discipline Committee's order and ending on December 31, 2011 that he is subject to a discipline order and to provide the employer with a copy of the order;*
 - f) *To report any suspension or termination from his employment as an LPN to the Counselling and Investigation Committee;*
 - g) *To notify the SALPN Registrar within seven (7) days of any change in his address, telephone number, or employment; and*
 - h) *To pay a portion of the costs of the investigation and hearing into the member's conduct and related costs, in the amount of \$1,000, on or before June 30, 2010.*
12. *The parties acknowledge that a formal Notice of Hearing as contemplated by ss. 29(1) of the Act has not been served on Mr. Hebert, but they nevertheless agree that the Discipline Committee is properly constituted and has jurisdiction to hear and determine this complaint.*

In light of the information provided in the Agreed Statement of Facts and Documents and Joint Submission, including Mr. Hebert's acceptance of responsibility in relation to the complaint, it is unnecessary for us to set out the formal complaint (referenced in paragraph 10 as Appendix C) or the complaint made by Mr. Hebert's former employer (referenced in paragraph 5 as Appendix A). We do note, however, that the formal complaint cites breaches of s. 23 (professional

incompetence) and s. 24 (professional misconduct) of the *Act*, and a contravention of the first and ninth provisions of the *Code of Ethics*.

SUBMISSIONS OF PARTIES:

At the hearing, legal counsel for the member, Mr. Hebert, submitted that the conduct to which the member has admitted, that is, the theft of Ativan (or, lorazepam) from his former employer, constituted only professional misconduct, not professional incompetence. Counsel urged the Discipline Committee to make a finding only of professional misconduct and to stay the charge of professional incompetence. Legal counsel for the Counselling and Investigation Committee agreed that this was appropriate. Aside from this issue, both legal counsel urged the Discipline Committee to accept the Agreed Statement of Facts and Documents and Joint Submission, including the joint submission as to penalties.

Following the submissions of legal counsel, Mr. Hebert took the opportunity to offer a sincere apology to his peers and colleagues and to the profession of nursing, for his conduct.

Following the parties' submissions, the Discipline Committee took a short recess to consider the material filed and the proposed penalties. Upon returning to the hearing room, the Discipline Committee explained its concern with respect to the proposed penalty set out in paragraph 11(b) of the Agreed Statement of Facts and Documents and Joint Submission, specifically, a lack of clarity in the requirement of "regular attendance" at AA meetings and counselling. Both legal counsel agreed that "regular attendance" meant the attendance expected in the program or what is typical or recommended in the program. They suggested that the proposed penalty set out in 11(b) could be amended to say that written confirmation would be provided of "regular attendance, including the schedule of meetings or sessions,..."

DECISION:

The Discipline Committee finds, on the basis of the evidence presented to it in the Agreed Statement of Facts and Documents and Joint Submission as set out above and presented at the hearing held on January 19, 2010, that Mr. Hebert is guilty of professional misconduct within the meaning of section 24 of *The Licensed Practical Nurses Act, 2000*, which includes a breach of the *Code of Ethics*. More specifically, we find that Mr. Hebert is guilty of:

- (a) professional misconduct contrary to section 24 of *The Licensed Practical Nurses Act, 2000* by engaging in conduct that is harmful to the best interests of the public or its members, tends to harm the standing of the profession, or is a breach of the *Act* or the bylaws; and

(b) a breach of the *Code of Ethics* of the SALPN, the specific sections of which include:

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

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

The Discipline Committee agrees with both legal counsel that the conduct complained of and admitted to by Mr. Hebert does not constitute professional incompetence within the meaning of s. 23 of the *Act* and the Discipline Committee therefore dismisses the complaint of professional incompetence. The Discipline Committee accepts the parties' joint submission concerning the appropriate discipline for Mr. Hebert's professional misconduct and breach of the *Code of Ethics*, with one slight modification. As previously indicated, the Discipline Committee had concerns about the lack of clarity in relation to the requirement of "reasonable attendance" at AA meetings and counselling, set out in paragraph 11(b) of the Agreed Statement of Facts and Documents and Joint Submission. For the purposes of achieving greater clarity in our order, the Discipline Committee accepts the amendment suggested by the member's legal counsel and we will incorporate it into our order.

Therefore, in accordance with s. 30 of *The Licensed Practical Nurses Act, 2000*, the Discipline Committee makes the following orders:

1. That Chris Hebert be permitted to continue to practice as a Licensed Practical Nurse only on the following conditions:
 - (a) That Mr. Hebert provide confirmation of attendance at and completion of a de-tox program acceptable to the Counselling and Investigation Committee, on or before June 30, 2010, or such later date as may be agreed to in writing by the Counselling and Investigation Committee;
 - (b) That Mr. Hebert attend AA meetings and counselling and provide written confirmation of regular attendance, including the schedule of meetings or sessions, to the Counselling and Investigation Committee, on a quarterly basis, commencing on April 1, 2010 and ending on January 1, 2012;
 - (c) That Mr. Hebert submit to random drug testing and nursing practice audits, as requested by the Counselling and Investigation Committee, at any time during the period commencing on the date of this order and ending on January 1, 2012;

- (d) That Mr. Hebert successfully complete the course titled "*Roles, Responsibilities and Ethics for LPNs*," available through SIAST, at his own expense, on or before June 30, 2010, or such later date as may be agreed to in writing by the Counselling and Investigation Committee, and to provide the Counselling and Investigation Committee with proof of successful completion;
 - (e) That during the period commencing on the date of this order and ending on December 31, 2011, Mr. Hebert notify every employer that he is subject to a discipline order and provide the employer(s) with a copy of this order;
 - (f) That Mr. Hebert report any suspension or termination from his employment as an LPN to the Counselling and Investigation Committee; and
 - (g) That Mr. Hebert notify the SALPN Registrar of any change in his address, telephone number, or employment, within seven (7) days of that change.
2. That Mr. Hebert shall pay to SALPN a portion of the costs of the investigation and hearing into his conduct and related costs, in the amount of \$1,000, to be paid in full on or before June 30, 2010.
3. Should Mr. Hebert fail to comply with any of the conditions set out in paragraphs 1(a) through (g) of this order, or fail to comply with the order to pay costs set out in paragraph 2, Mr. Hebert's license shall be suspended until the date on which the failure is remedied.

DATED at Regina, Saskatchewan, this 19th day of February, 2010.

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

Angela Zborosky, Chairperson

Marjorie Molsbery, LPN, Member
Kathy Ogle, LPN, Member
Andrea Reynolds, LPN, Member
Tony Linner, Public Representative, Member