

IN THE MATTER OF *THE LICENSED PRACTICAL NURSES ACT, 2000* AND  
BYLAWS AND IN THE MATTER OF A COMPLAINT AGAINST IRMA  
WHYTE OF TORONTO, ONTARIO

**DECISION OF:**

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

**INTRODUCTION:**

The hearing by the Discipline Committee into the complaints against Irma Whyte was convened in the Maple Room of the Park Town Hotel in Saskatoon, Saskatchewan, on May 11, 2010, at 10:00 a.m., being the location, date and time set out in the Notice of Hearing sent to Irma Whyte.

Ms. Whyte was not present at the hearing at 10:00 am, being the hour designated in the Notice of Hearing for the commencement of the hearing. The Discipline Committee delayed commencement of the hearing until 10:15; however, the member had not appeared by that time, nor did she appear during the hearing. Present at the hearing were 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") and Della Bartzen (investigator for SALPN).

Ms. Rasmussen, legal counsel for the Investigation Committee, requested that the Discipline Committee proceed with the hearing in the absence of the member. Counsel submitted the *Act* provides the Discipline Committee with the right to proceed with a hearing in the absence of the member upon proof of service of the Notice of Hearing on the member. The following provisions of the *Act* are relevant to this issue:

*s.29(1) Where a report of the counselling and investigation committee recommends that the discipline committee hear and determine a formal complaint, the executive director shall, at least 14 days before the date the discipline committee is to sit:*

- (a) send a copy of the formal complaint to the member whose conduct is the subject of the hearing; and*
- (b) serve notice on the member whose conduct is the subject of the hearing of the date, time and place of the hearing.*

*s.29(11) Where the member whose conduct is the subject of the hearing fails to attend the hearing, the discipline committee, on proof of service of the notice mentioned in subsection (1), may proceed with the hearing in his or her absence.*

*s.50 (1) Unless otherwise provided for in this Act or the bylaws, any notice or other document that is required to be served pursuant to this Act may be served by:*

*(a) personal service made:*

*(i) in the case of an individual, on that individual;*

*(ii) in the case of a partnership, on any partner; or*

*(iii) in the case of a corporation, on any officer or director; or*

*(b) registered mail addressed to the last business or residential address of the person to be served known to the registrar.*

*(2) A notice or document sent by registered mail is deemed to have been served on the seventh day following the date of its mailing, unless the person to whom it was mailed establishes that, through no fault of that person, the person did not receive the notice or document or received it at a later date.*

*(3) If it is for any reason impractical to effect service of any documents in the manner provided for in subsection (1), the court may, on application that may be made ex parte, make an order for substituted service.*

*(4) A document served in accordance with the terms of an order mentioned in subsection (3) is deemed to have been properly served.*

Legal counsel for the Investigation Committee also entered into evidence the affidavit of Sherry Husband, sworn on May 10, 2010, which confirms the service of the Notice of Hearing dated April 6, 2010, by registered mail on Ms. Whyte, sent to her last known address in Toronto, Ontario. Also attached to Ms. Husband's affidavit is a copy of the Canada Post acknowledgement and signature, which Ms. Husband obtained from the Canada Post website. The Canada Post document shows that the item (being the Notice of Hearing) was successfully delivered on April 9, 2010. The Canada Post document also verifies that the item was signed by "Irma Whyte". In addition, the document contains a copy of a signature, ostensibly that of "Irma Whyte".

The only response Ms. Rasmussen and SALPN received from Irma Whyte in response to the delivery of the Notice of Hearing was a registered letter from Ms. Whyte, which states as follows:

RE: Notice of Hearing dated April 6, 2010

There are several legal ramification errors that I must bring them to your attention.

Firstly, I did not renew my non-practicing membership No.11089 with SALPN December 2008. Hence, my membership with SALPN is non-existent. Your claim that I am a member on the date of notice is a contravening claim and it further provides evidence – your notice information indicate a professional incompetence in your part.

Secondly, your accusation that I am in breach to agreement made on October 1, 2007 is also not true. I have not retained employment as a Licensed Practical Nurse since September 2007. I have proof to this that which include duration my residency in Regina and Toronto - since relocating March 10, 2009 to today April 9, 2010.

I have however: actively pursuing a Teaching/Training Adults certification program beginning March 21, 2010; working as private care giver – that took me to an out of Canada – Caribbean Cruise with a prominent elderly couple of Toronto; and working as a volunteer with immigrants assisting English as a Second Language Agency.

Finally, your letter of notice – just do not threaten me. I am not afraid anymore that SALPN will trash my professional reputation. In fact, SALPN's threats have done me a tremendous favour. I am happy that it took unscrupulous behaviours from SALPN with its connection to 'White Supremacy,' by way with Howard Leeson, to get me to leave out of Saskatchewan. Having said that and to add, I have also connected a woman of colour who was also another one of Leeson's victim. Stay tuned, class-case in the works.

I have moved on with my life without the constant harassment & intimidation and I continue to write my autobiography that which will be a tell-all testimony. I have with me all correspondences and interactions with SALPN and University of Regina.

Go ahead and hold your kangaroo court without me since I am an Ontario resident. It will only further legitimize to my claim to SK, SALPN and KKK connection. Come anywhere near me in Ontario and I will not be as polite.

The one unfortunate thing is however since you Colin, as the stake executioner, to a witch-hunt will be the shame as a 2-bit puppet slave; while the likes of Howard Leeson, Tammy Herman and Beverly Cox will always be – your whip masters. Pity!

***Irma Whyte BA; APN***

*CC: Merrilee Rasmussen, Q.C."*

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**"Hi colin:**

**Enclosed are airline tickets to and from Florida via Caribbean Cruise as a private caregiver, that which would not have happened if I working as a LPN.**

**While you will be legitimizing my claim to SALPN & U of R 'white supremacy' connection on May 11<sup>th</sup>, I will be touring Italy and France."**

We note that attached to Ms. Whyte's letter are a copy of a cheque payable to Ms. Whyte by a numbered corporation registered in Ontario as well as copies of boarding passes for flights Ms. Whyte took from Toronto to Fort Lauderdale, USA and return, for the period December 30, 2009 to January 11, 2010.

The Discipline Committee finds that Ms. Whyte was properly served with the Notice of Hearing dated April 6, 2010. The *Report of the Counselling and Investigation Committee to the Discipline Committee* dated March 10, 2010 recommended that the Discipline Committee hear and determine a formal complaint against Irma Whyte. In accordance with s. 29(1) of the *Act*, the executive director of SALPN served the Notice of Hearing (setting out the date, time and place of the hearing and the formal complaint) on Ms. Whyte at least 14 days prior to the hearing date of May 11, 2010. Service was properly carried out in accordance with s. 50(1)(b) of the *Act*, by sending the document by registered mail to the last address of Ms. Whyte known to the Registrar of SALPN and as shown in SALPN's Register. Although a notice or document is deemed to have been served on the seventh day following its mailing (which would have been April 13, 2010), the evidence before us indicates that the item (the Notice of Hearing) was successfully delivered on April 9, 2010 to Irma Whyte, who appears to have identified herself to Canada Post and signed for the item. Service was therefore made on April 9, 2010, which is more than 14 days prior to the hearing date of May 11, 2010.

While this evidence would be sufficient to establish proper proof of service of the Notice of Hearing to allow the Discipline Committee to proceed with the hearing in Ms. Whyte's absence, we note that Ms. Whyte did provide a written response to the executive director of SALPN and legal counsel for the Investigation Committee which essentially acknowledges her receipt of the Notice of Hearing. The date of her letter is April 9, 2010 (same day as she was served with the Notice of Hearing) and it was received by legal counsel for the Investigation Committee on April 16, 2010. Ms. Whyte's response also indicates that she would not be attending the hearing.

Therefore, in accordance with s. 29(11) of the *Act*, the Discipline Committee concludes that it is proper to proceed with the discipline hearing in the absence of Ms. Whyte, given that she was properly served with the Notice of Hearing.

#### **EVIDENCE:**

At the hearing, the Investigation Committee led evidence through the sworn Affidavit of Merrilee Rasmussen, Q.C. and through the testimony of SALPN's investigator, Della Bartzén. Given Ms. Whyte's absence, no evidence was introduced on her behalf. We do have a copy of her letter in response to the Notice of Hearing but because the document is not sworn and deals with disputed facts, we cannot consider it as evidence. However, some of the comments may be considered as her submissions. Before summarizing the evidence, it is helpful to set out the content of the Notice of Hearing that was served on Ms. Whyte. It reads as follows:

**NOTICE OF HEARING**

**TAKE NOTICE THAT** the Counselling and Investigation Committee of the Saskatchewan Association of Licensed Practical Nurses, (SALPN) has issued a report to the Discipline Committee of the Association recommending that the Discipline Committee conduct a hearing into the complaints against you as follows:

That Irma Whyte, a member of the Saskatchewan Association of Licensed Practical Nurses (SALPN), is guilty of:

(a) professional incompetence, contrary to section 23 of The Licensed Practical Nurses Act, 2000 by displaying a lack of knowledge, skill or judgment or disregarding the welfare of a member of the public to an extent that demonstrates she is unfit to continue in the practice of nursing or to provide one or more services ordinarily provided as part of the practice of the profession; and/or

(b) 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 that Act or the bylaws made pursuant to that Act;

as a consequence of:

1. Failing to adhere to her undertaking made on October 1, 2007 to the Discipline Committee in the course of a discipline hearing against her, in order to secure an adjournment of that proceeding, not to seek or maintain employment as a Licensed Practical Nurse until such time as that discipline proceeding was resumed; and/or
2. Contravening an order of the SALPN Discipline Committee not to seek or maintain employment as a Licensed Practical Nurse until such time as the discipline proceeding referred to in paragraph 1 was resumed.

**TAKE FURTHER NOTICE THAT** the Discipline Committee of the Saskatchewan Association of Licensed Practical Nurses has established the following time, date and place to conduct a hearing into the aforesaid complaints, namely:

**DATE:** May 11, 2010  
**TIME:** 10:00 a.m.  
**PLACE:** Park Town Hotel – Maple Room  
924 Spadina Cr. East  
Saskatoon, SK

**Phone: (306) 244-5564**

**TAKE FURTHER NOTICE THAT** under the provisions of the Act you are entitled to be personally present and to be represented by legal counsel or agent.

**AND, TAKE FURTHER NOTICE THAT** if you do not attend at the hearing, then the Discipline Committee may proceed in your absence.

You are entitled to disclosure of the evidence against you. You or your legal counsel or agent or agent representatives may contact the solicitor appointed for the Counseling and Investigation Committee of the Saskatchewan Licensed Practical Nurses in this matter, namely:

**Merrilee Rasmussen, Q.C.**

Also by way of background, it is helpful to set out that portion of the *Report of the Counselling and Investigation Committee to the Discipline Committee* dated March 10, 2010 (in which the Counselling and Investigation Committee recommends that the Discipline Committee hear and determine a complaint against Ms. Whyte for professional misconduct), that deals with the complaint that was made against Ms. Whyte and the basis for the complaint. That Report states, in part:

*A complaint was received by the Counselling & Investigation Committee about this Member's practice [Irma Whyte] on November 5, 2009. The Complainant, Cara Brewster, Registrar for SALPN, stated that on or about February 11, 2009, the member applied for membership with the College of Nurses of Ontario, in contravention of an Order of the Discipline Committee, dated April 16, 2008, relating to an undertaking by the Member to the Discipline Committee in a previous discipline proceeding on October 1, 2007, not to seek or maintain employment as a Licensed Practical Nurse until the discipline proceeding adjourned sine die on April 16, 2008 was resumed.*

*Upon receipt of this complaint, and pursuant to subsection 26(1) of The Licensed Practical Nurses Act, 2000 (the "Act") and section 15 of the SALPN Regulatory Bylaws, the Counselling and Investigation Committee investigated the complaint by obtaining and reviewing a Verification of Registration form from the College of Nurses of Ontario received by SALPN on November 5, 2009. The Committee further confirmed that the adjourned proceedings had not been resumed.*

*In the course of its investigation the Committee determined that the events alleged did occur, and that the member had, on or about February 11, 2009, applied for licensure as an LPN in Ontario.*

Evidence was led at the hearing by way of the sworn affidavit of Merrilee Rasmussen, Q.C. The evidence in the Affidavit is uncontroverted and the Affidavit was provided for the primary purpose of introducing documents. Attached to the Affidavit as exhibits were a portion of the transcript for the Discipline Committee hearing involving Irma Whyte held on October 1, 2007, and a copy of an Order of the Discipline Committee dated April 16, 2008. Both documents are relevant to the complaint before us. The excerpt of the hearing transcript states as follows:

**CHAIRPERSON:** *Are we ready to reconvene?*

**MS. COX:** *Thank you, Mr. Chair. In speaking with my client and if I -- I think we're fairly close. If we can get agreement from Ms. Whyte that she's willing to give a recorded undertaking not to practise any activities as an LPN until this matter is resolved and as I understand that from Mr. Blythe, it's going to be a number of months potentially that she may be off in any event. Additionally, if we could get her agreement as I believe she's indicated that she's not planning to renew her licence until such time or seek to renew her licence until such time as she is able to return according to her doctor's certificate. That's a bit of an issue for us at this point in time only because the renewal, the 2008 renewal forms go out in the next few weeks, and so we would not intend then to send out her renewal form to her if she was not seeking to renew; rather we would be awaiting her confirmation that she's now seeking to renew, I guess. And as well, if she would agree not to seek employment anywhere else as an LPN during this period, then I think we would accept the recorded undertaking that she would give in that respect and we would not feel compelled to apply to the Court at this point in time.*

**CHAIRPERSON:** *Ms. Whyte, you've heard the position of SALPN. Is that satisfactory to you?*

**MS. WHYTE:** *Thank you, Honourable chair. As far as I'm concerned, my career as a licensed practical nurse, I believe I'm getting the message I'm not fitting in, so that's okay with me, that's okay. Yes, I'm agreeing with it.*

**CHAIRPERSON:** *So just to be clear that you are giving the undertaking as outlined by Ms. Cox just a minute ago?*

**MS. WHYTE:** *Yes.*

Ms. Rasmussen's affidavit evidence also indicates that following Ms. Whyte's discipline hearing on October 1, 2007, the Discipline Committee made an order essentially confirming the undertaking Ms. Whyte gave at the hearing. The Order is dated April 16, 2008 and states as follows:

**ORDER**

***UPON THE APPLICATION*** of the member, Irma Whyte and upon hearing Dean Blythe appearing as agent for the member, and B. Cox, counsel appearing on behalf of the Counselling Investigation Committee of the Saskatchewan Association of Licensed Practical Nurses, all by teleconference:

***IT IS HEREBY ORDERED*** that the within proceedings be, and are hereby adjourned *sine die* but may be reconvened upon either the member or the Counselling and Investigation Committee of the Saskatchewan Association of Licensed Practical Nurses giving at least 21 days written notice to the other of their intention to recommence the hearing of these matters.

***AND IT IS HEREBY FURTHER ORDERED THAT*** the adjournment of the hearing of this matter as set forth in the previous paragraph hereof is made upon the confirmation of the member's undertaking given to this committee on October 1, 2007 not to seek or maintain employment as a Licensed Practical Nurse until the resumption of these proceedings.

Lastly, Ms. Rasmussen's affidavit includes the written reply of Ms. Whyte to her and SALPN's executive director, dated April 9, 2010. This written reply was reproduced earlier in this decision.

As mentioned, Della Bartzen, the investigator for SALPN, gave testimony at the hearing. Ms. Bartzen had investigated the complaint of the SALPN Registrar concerning Ms. Whyte's application for membership/licensure with the College of Nurses of Ontario and the allegation that this violated Ms. Whyte's undertaking given at a prior discipline hearing (given so that she could receive an adjournment of that hearing) and an Order of the Discipline Committee confirming that undertaking. Ms. Bartzen provided a copy of a College of Nurses of Ontario form, titled "Verification of Registration". This form was completed by Ms. Whyte in 2009<sup>1</sup> and then sent to SALPN to verify, for the College of Nurses of Ontario, her education and registration in Saskatchewan. On that form, Ms. Whyte indicates she was registered in Saskatchewan on March 20, 2006.

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<sup>1</sup> The form itself shows a date of "02/11/09" and the form asks for a date in the form of "dd/mm/yy." This would suggest that Ms. Whyte was dating the document as November 2, 2009. However, in their Report of March 10, 2010, the Counselling and Investigation Committee indicates that Ms. Whyte applied for licensure/membership on or about February 11, 2009 (apparently considering the "02" in the date as the month of February and "11" as the day of the month). We do not know whether the Investigation Committee had other evidence on which to base its conclusion that the form was dated February 11, 2009, although we note that the document had stamped on it the date of "November 5, 2009," which would appear to be the date it was received in SALPN's office. Although we cannot conclusively determine whether it was Ms. Whyte or the Investigation Committee that transposed the first two sets of numbers on the date of the form, for our purposes, we do know that it was done some time in 2009 and nothing turns on whether it was done in February or November.



Ms. Bartzen testified that the purpose of a Verification of Registration is to allow a registrar in another jurisdiction to verify the nurse's registration in another province, ensuring there are no problems with the registration, no outstanding complaints, or any reason why the nurse should not be registered in another province. Ms. Bartzen stated that in this case, it is apparent that Ms. Whyte was seeking registration and licensure in Ontario and this was confirmed in the investigation. As part of her investigation, Ms. Bartzen discovered that Ms. Whyte had obtained an adjournment of a disciplinary hearing on other charges in October 2007 on the basis of her having given an undertaking not to seek or maintain employment as a Licensed Practical Nurse until those discipline proceedings resumed.

The discipline proceedings in question (from October 2007) have not resumed and the charges remain outstanding. Ms. Whyte held a non-practicing license with SALPN, however, presently she has not renewed any form of license with SALPN.

#### **SUBMISSIONS OF PARTIES:**

Counsel for the Investigation Committee submitted that in seeking written verification of registration with SALPN as a Licensed Practical Nurse, using the Verification of Registration form of the College of Nurses of Ontario, Ms. Whyte was attempting to become registered and licensed as an LPN in Ontario. The only purpose in doing so, it was argued, would be to obtain employment there as an LPN. It is the responsibility of an employer to ensure, prior to hiring someone as an LPN, that the person is properly registered and licensed as an LPN in that province.

Legal counsel submitted that Ms. Whyte's conduct amounts to professional misconduct within the meaning of s. 24 of the *Act*, whether because it is conduct that is harmful to the best interests of the public or members, it tends to harm the standing of the profession, or because it is a failure to comply with an order of the Discipline Committee. Specifically, Ms. Whyte's conduct was contrary to the undertaking she made at a disciplinary hearing on October 1, 2007. At that hearing, Ms. Whyte sought an adjournment of those proceedings due to her experiencing medical problems. In order to be given the adjournment, Ms. Whyte gave an undertaking not to seek or maintain employment as an LPN until those disciplinary proceedings resumed. Since that time, Ms. Whyte left Saskatchewan and did not renew her license with SALPN. Those October 2007 disciplinary proceedings never did resume. Legal counsel for the Investigation Committee submitted that giving such an undertaking is a very serious matter and breaching that undertaking by attempting to be licensed in another province, for the purpose of seeking employment there as an LPN, is professional misconduct, within the meaning of s. 24(a) and (b). It is harmful to the best interests of the public and harms the standing of the profession.

Furthermore, legal counsel for the Investigation Committee argued that Ms. Whyte's conduct is also "professional misconduct" within the meaning of s. 24(d) of the *Act* because she has failed to comply with an Order of the Discipline Committee. The Discipline Committee's Order made April 16, 2008, and is essentially the same as Ms. Whyte's undertaking of October 1, 2007. The Order grants Ms. Whyte's request for an adjournment with certain conditions: (i) that the hearing may be reconvened by either Ms. Whyte or the Investigation Committee on 21 days' notice; and (ii) that the adjournment was granted upon Ms. Whyte's confirmation of her undertaking not to seek or maintain employment as an LPN. Ms.

Rasmussen asserted that Ms. Whyte failed to comply with this Order by taking steps to become registered and licensed as an LPN in Ontario and that the only reason for doing so would be to seek employment as an LPN.

In Ms. Whyte's April 9, 2010 letter in response to receiving the Notice of Hearing, she denies that she is a "member" of SALPN, as stated in the Notice of Hearing, because she did not renew her "non-practising membership No. 11089 with SALPN December 2008." Ms. Whyte appears to be suggesting that since she is not a "member", the Notice of Hearing or charges against her are improper. At the hearing, legal counsel for the Investigation Committee responded to this point, asserting that Ms. Whyte is still a "member", even though she had a non-practicing license for some period of time after October 1, 2007 and at some later point,<sup>2</sup> she did not renew any form of license with SALPN.

Ms. Whyte also indicated in her April 9, 2010 letter that she has not retained employment as an LPN since September 2007. Although it is not appropriate for us to accept this statement as proof of that fact (because it was not properly sworn evidence brought at the hearing), the Investigation Committee has no evidence that Ms. Whyte has actually worked as an LPN; its allegations are based on Ms. Whyte seeking such employment. Ms. Rasmussen also submitted that while Ms. Whyte suggests she has not worked as an LPN but only as a private care-giver, she fails to explain why she was seeking verification of her registration with SALPN for her application for registration with the College of Nurses of Ontario.

Legal counsel for the Investigation Committee submitted that if the Discipline Committee finds Ms. Whyte guilty of professional misconduct, the appropriate penalty is to expel her from membership in the Association. Ms. Whyte no longer resides in Saskatchewan and her response appears to indicate she likely won't return, nor will she practice as an LPN. It was argued that aspects of Ms. Whyte's written response were inappropriate and provide further justification for her expulsion. Legal counsel also explained that an expulsion order would appear on SALPN's Register (which is a public document) and would allow SALPN to report this fact to other jurisdictions should an inquiry be made about Ms. Whyte's registration status. Such inquiries are usually only made when a person is seeking registration in another jurisdiction. As it stands, faced with a request for Verification of Registration from the College of Nurses of Ontario, SALPN would have to disclose that Ms. Whyte is a member. This concern, along with a concern about labour mobility legislation that would allow for easier registration in other provincial jurisdictions if a person is already registered elsewhere, heavily weigh in favour of an order of expulsion.

## **DECISION:**

The primary issues before the Discipline Committee are whether Ms. Whyte's conduct is a breach of her October 1, 2007 undertaking to the Discipline Committee and/or a breach of the April 16, 2008 Order of the Discipline Committee. If so, we must then determine whether the breach or breaches are

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<sup>2</sup>The evidence was not entirely clear on the time period during which Ms. Whyte held a non-practicing license – either to the end of 2007 or 2008.

“professional misconduct” as defined in s. 24 of the *Act*. Lastly, if the Discipline Committee finds Ms. Whyte guilty of professional misconduct, we must decide on an appropriate penalty under s. 30 of the *Act*.

Before examining that issue, a side issue was identified by the Discipline Committee following the hearing. Although it does not affect the result, it is necessary to comment upon it briefly.

In the *Report of the Counselling and Investigation Committee to the Discipline Committee* made pursuant to s. 26 of the *Act*, dated March 10, 2010, the Counselling and Investigation Committee made a unanimous recommendation that the Discipline Committee hear and determine the formal complaint against Ms. Whyte. The formal complaint is attached to that Report as an appendix and asserts that Ms. Whyte is guilty of professional misconduct contrary to s. 24 of the *Act*, by engaging in conduct that is: (a) harmful to the best interests of the public or its members; (b) tends to harm the standing of the profession; (c) a breach of the *Act* or the bylaws; and (d) a failure to comply with an order of the Counselling and Investigation Committee, the Discipline Committee or SALPN council. The grounds for those assertions are, in summary, a failure to comply with her October 1, 2007 undertaking not to seek or maintain employment as an LPN and/or a Discipline Committee Order to that effect.

What is of concern is that the Notice of Hearing dated April 6, 2010, which was properly served on Ms. Whyte and sets out the hearing date on which the Discipline Committee heard this matter, refers not only to the specific recommendations set out in the s. 26 *Report of the Counselling and Investigation Committee* (as referred to above), but also states that the Counselling and Investigation Committee recommended a hearing on the charge of professional incompetence contrary to s. 23 of the *Act*. This is clearly in error because the s. 26 Report makes no recommendation that the Discipline Committee hear and determine a complaint of professional incompetence by reason of Ms. Whyte’s failure to comply with her undertaking and a Discipline Committee Order. In the view of the Discipline Committee, it appears that the inclusion of a charge of professional incompetence in the Notice of Hearing was an oversight or typographical error. There were no submissions made at the hearing concerning the issue of professional incompetence; all submissions related to the issue of professional misconduct and the definition in s. 24 of the *Act*. It would appear that the Discipline Committee is without jurisdiction to hear and determine a complaint of professional incompetence, in this case, it not being included in the s. 26 Report. Based on all of these circumstances, the Discipline Committee dismisses the charge of professional incompetence and will proceed to consider the case as one alleging only professional misconduct. There is no prejudice to Ms. Whyte as a result of the mistaken inclusion of a charge of professional incompetence in relation to the same conduct that forms the grounds for a finding of professional misconduct – she received notice of the hearing outlining the allegations, and she chose not to attend the hearing. In any event, our dismissal of the incompetence charge ensures there is no question at all of any possible prejudice to Ms. Whyte and no question about the jurisdiction of the Discipline Committee to proceed with the hearing.

Prior to examining the issue of professional misconduct, we find it prudent to address what may be a preliminary issue that was raised in Ms. Whyte’s written reply of April 9, 2010. Ms. Whyte stated, with reference to the Notice of Hearing, that because she did not renew her non-practicing membership with SALPN in December 2008, her “membership with SALPN is non-existent”. She stated that SALPN’s claim (in the Notice of Hearing) that she is a member of SALPN on the date of the Notice is not correct and that this shows incompetence by the executive director of SALPN who signed the Notice of Hearing.

Ms. Whyte's assertion raises the issue of whether she was, in fact, a "member" of SALPN on the date of the Notice of Hearing. The Notice of Hearing does refer to Ms. Whyte as a member of SALPN and various provisions of the *Act* dealing with the investigation of complaints and disciplinary proceedings refer to the LPN, whose conduct is at issue, as a "member".

This issue was previously dealt with by the Discipline Committee in the decision, *In the Matter of a Complaint Against William Whatcott*, dated September 2004. In that case, the member faced allegations of professional misconduct for demonstrating/picketing the offices of Planned Parenthood in Regina, Saskatchewan and making incorrect statements about Planned Parenthood; shouting at, calling names and taking photos of patients and potential patients; and intimidating staff and patients. One of the arguments made by the member in that case was that because he had not paid his licensing fees for the current year, he was not a "member in good standing" under the *Act* and was therefore not subject to discipline by SALPN. The Discipline Committee in that case disposed of this issue by finding that the member charged was a "member" under the *Act*, even though he had not paid his license fees, and he is subject to disciplinary proceedings under the *Act*. Although lengthy, it is useful to set out the reasoning of the Discipline Committee in that case as it provides a complete answer to the same issue that has arisen in this case. At pages 8 to 11, the Discipline Committee stated:

*Member in Good Standing*

*The Act defines "member" as follows:*

*(g) "member" means a member of the association who is in good standing;*

*The discipline provisions of the Act allow the Counselling and Investigation Committee to investigate complaints about the conduct or competence of "members" only. This point was established by the Supreme Court of Canada in Maurice v. Priedl [[1989]1 S.C.R. 1023]. Nevertheless, the courts have established that a person cannot evade discipline through the simple expedient of failing to pay the fees.*

*In Samuels v. College of Physicians and Surgeons [[1996] S.J. No. 124] a medical doctor who was in the course of discipline proceedings applied for and obtained membership in Montana and then did not pay his annual practice fee for the next year. The Medical Profession Act stated that a member's name was struck from the register if the annual fee was not paid as required. When the hearing on his discipline charge was resumed, he argued that he was not subject to discipline because he was no longer a member. The Court of Queen's Bench rejected this argument:*

*This submission is unsound and certainly unpalatable, having regard to the fact that Dr. Samuels himself asked for an adjournment of the proceedings until February 14<sup>th</sup> at a time when he knew that his fees for 1966 were not paid and that he had no intention of paying them. He was, at the time the charge was laid and also when he participated in the hearing in November, a member on the register and as such, subject to the disciplinary powers of the College and answerable to its discipline committee for any misconduct which might be*

*proved to have been committed by him while he was such a member. He cannot prevent the final determination of the charge by the simple device of having his name struck from the register by his deliberate failure to pay his fee. There is nothing in the Act prohibiting the discipline committee from completing proceedings commenced while a doctor is a member of the College, at a time after he has ceased to be a member; nor is there anything to require a member to maintain his name on the register until such time as proceedings against him are completed. While, of course, the facts are distinguishable, in R. vs. General Medical Council, Kynaston, Ex parte, supra, Kynaston was not allowed to evade disciplinary proceedings by applying to have his name removed from the register. The fact that the applicant told the Registrar that he did not intend to continue to practise in Saskatchewan is no reason why the discipline committee should not proceed to hear and determine whether the applicant was guilty of misconduct. This objection to jurisdiction therefore fails. [at paragraph 86 of [1996]S.J. No. 124]*

*The reasoning in the Samuels case was applied more recently by the Court of Queen's Bench in a case involving the disciplining of a student of the University of Saskatchewan. In Kochar v. University of Saskatchewan, Mr. Justice Barclay stated:*

*Applying the Samuels' decision to the case at bar I am of the view that the Council has jurisdiction to conduct an inquiry into allegations of academic dishonesty even if the person being disciplined is no longer a student at the time of the hearing. Section 61(1)(h) clearly focuses on the time of the alleged misconduct. Considering the Act as a whole and its purposes, s. 61 does not contemplate a statutory halt to an inquiry into a student's misconduct because the person ceases to be a student at the university otherwise the provisions of the Act could be frustrated by tactical maneuvers such as resigning from the university prior to the hearing. Accordingly the council does not lose jurisdiction to conduct an inquiry into academic dishonesty solely because the person is no longer a student enrolled at the university.*

*The Discipline Committee is also of the opinion that The Licensed Practical Nurses Act, 2000 in any event provides a distinction between membership in the Association, or registration, and the annual licence to practice, with the result that the mere non-payment of an annual licence fee will result in a member being suspended from practice but remaining a member.*

*Section 17 of the Act provides for the registration of persons as members of the Association and for the licensing of members as two separate and distinct actions. Subsection 14(2) of the Act provides the authority for the making of regulatory bylaws relating to "registration" of persons in categories of membership to be established and, in addition, for the "licensing" of persons in those categories. Three classes of membership have been established in the Regulatory Bylaws, including "licensed practical nurse", "graduate practical nurse" and "honourary life member". Specific requirements for registration in each of these categories of membership must be met. Section 10 of the Regulatory Bylaws requires that a person who is registered in the category of membership known as "licensed practical nurse" must obtain "an*

annual, conditional or non-practising licence". Section 11 sets out the requirements to obtain an annual licence to practice.

Subsection 44(1) of the Administrative Bylaws requires that a person pay their annual licence by December 1 in each year and states that a person who fails to do so "ceases to be a licensed practising member as of that date". While this wording might not be as clear as one would wish, the purpose of section 44 is to establish a requirement that annual licence fees must be paid in a timely manner and the failure to do so will result in a member losing the privilege of carrying on the practice of the profession. It does not result in their ceasing to be a member because there is no authority to make administrative bylaws that would affect a person's membership. The authority granted by the Act in relation to admission to membership is governed by the regulatory bylaws, which require the approval of the Minister of Health and publication in the Saskatchewan Gazette in order to be effective.

For all these reasons, the Discipline Committee determines that Mr. Whatcott is still a member of the Association whether or not he has paid his annual licence fee. In the alternative, the Discipline Committee determines that even if Mr. Whatcott was not a member at the time of the hearing of this matter, he was a member at the time of the occurrence of the conduct giving rise to these proceedings. The Committee notes, as set out above, that the term "member" is defined as meaning a "member in good standing". Without making any determination of what "good standing" entails, the Committee determines that the mere non-payment of fees does not make a member not in "good standing" so as to enable the member to avoid discipline proceedings.

We adopt the reasoning of the Discipline Committee in the above-noted case and find that Ms. Whyte is a "member" within the meaning of the *Act*, even though she has not paid her annual practice fees, and is subject to this disciplinary proceeding.

We now turn to the primary issues before us, that is, whether Ms. Whyte failed to comply with her October 1, 2007 undertaking not to seek or maintain employment as an LPN and/or failed to comply with a Discipline Committee Order to that effect and, if so, whether she is guilty of professional misconduct. To do so, it is necessary to consider the definition of "professional misconduct" in s. 24 of the *Act*. This section reads as follows:

***Professional misconduct***

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.

As previously mentioned, the Investigation Committee urged the Discipline Committee to find Ms. Whyte guilty of professional misconduct on either or both the following grounds: (i) that her conduct is contrary to the undertaking she gave at the October 1, 2007 discipline hearing and as such, is harmful to the interests of the public and/or members and/or it is harmful to the standing of the profession, contrary to sections 24(a) and (b) of the *Act*; and (ii) that her conduct is contrary to the Order of the Discipline Committee dated April 16, 2008 and as such, is contrary to s. 24(d) of the *Act*.

The first issue we must determine is whether the Investigation Committee has proven that Ms. Whyte's conduct is indeed "professional misconduct". This brings us to consider first whether Ms. Whyte did in fact breach her undertaking and/or fail to comply with an order of the Discipline Committee. Ms. Whyte's undertaking at the October 1, 2007 discipline hearing, made so that she could receive an adjournment of those proceedings for an indeterminate period of time, was made in words to the effect that she would not renew her license or seek employment as a Licensed Practical Nurse until such time as that discipline proceeding was resumed. Even if we accept as a fact that Ms. Whyte has not actually worked as an LPN since giving that undertaking,<sup>3</sup> the evidence shows that she was seeking verification of her registration with SALPN. We conclude that Ms. Whyte was seeking to be registered and licensed with the College of Nurses of Ontario which, in our view, could only mean that she was doing so for the purposes of seeking employment as an LPN in Ontario. We note that in her written response, Ms. Whyte did not deny that this was her motivation for seeking verification of her registration with SALPN for the College of Nurses of Ontario, nor did she attend this hearing to offer an explanation. Based on these facts, the Discipline Committee finds that Ms. Whyte was attempting to obtain a license and seek employment as a Licensed Practical Nurse in Ontario in 2009. The discipline hearing that began on October 1, 2007 was adjourned *sine die* (i.e. adjourned for an indefinite period of time) and neither party has given the other the required 21 days' notice necessary to resume the proceeding. Therefore, we find that Ms. Whyte did in fact act in contravention of the undertaking she gave at the October 1, 2007 hearing.

We also find, for the same reasons outlined in the preceding paragraph, that Ms. Whyte did in fact fail to comply with the April 16, 2008 Order of the Discipline Committee. The Order was essentially the same as Ms. Whyte's undertaking – that she would "not seek or maintain employment as a Licensed Practical Nurse" until that discipline proceeding resumed. Ms. Whyte's conduct of seeking verification of registration in SALPN for the College of Nurses of Ontario and seeking licensing there could only mean that she intended to be registered and licensed to work there as an LPN. Therefore, it is reasonable to conclude, absent an explanation by Ms. Whyte, that she was indeed seeking employment as an LPN in contravention of the Order.

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<sup>3</sup> As previously mentioned, it is not proper for us to consider the content of Ms. Whyte's written response, as it is not sworn testimony and she was not subject to cross-examination. We have considered this statement because the Investigation Committee did not assert that Ms. Whyte had worked as an LPN.

Having concluded that Ms. Whyte has in fact breached her October 1, 2007 undertaking and failed to comply with the Discipline Committee's Order of April 16, 2008, we turn to the issue of whether Ms. Whyte's breach of her undertaking and/or her failure to comply with the Discipline Committee's Order is "professional misconduct" within the meaning of s. 24 of the *Act*.

For the reasons that follow, we find Ms. Whyte guilty of professional misconduct on both of the grounds advanced, however, we must address a possible jurisdictional issue concerning a finding of professional misconduct under s. 24(d) of the *Act*. This issue arises due to a discrepancy between the formal complaint (issued by the Counselling and Investigation Committee and attached to its s. 26 Report to the Discipline Committee) and the manner in which the allegation of professional misconduct is set out in the Notice of Hearing. Although the description of Ms. Whyte's conduct is the same in the formal complaint as in the Notice of Hearing, the formal complaint sets out all four aspects of the definition of professional misconduct (defined in s. 24 of the *Act*), specifically including the "*failure to comply with an order of the Counselling and Investigation Committee, the Discipline Committee or the Council of SALPN*" which is how professional misconduct is defined in s. 24(d), but the Notice of Hearing (which is the document served on the member) does not. The Notice of Hearing sets out only the first three aspects of the definition of professional misconduct, that is, s. 24(a) through (c). Having said this, it is still clear, on the face of the Notice of Hearing, that the Counselling and Investigation Committee took the position that Ms. Whyte's contravention of the April 16, 2008 Order of the Discipline Committee is professional misconduct. The member, therefore, has notice of this allegation, even without specific reference to s. 24(d) of the *Act*. In these circumstances, and because there is no prejudice to Ms. Whyte and no objection by her on this point, the Discipline Committee finds it appropriate to assess professional misconduct on the basis of the definition in s. 24(d) in addition to s. 24(a) and (b). In the alternative, even if it is improper or unreasonable for us to consider professional misconduct as it is defined under s. 24(d), it is clearly open to us to consider Ms. Whyte's contravention of the Discipline Committee's April 16, 2008 Order as professional misconduct under s. 24(a) and/or (b), that is, contravention of an Order of the Discipline Committee is harmful to the interests of the public and/or members and/or because it tends to harm the standing of the profession. We reach this conclusion on the basis that both s. 24(a) and (b) are specifically referenced in the Notice of Hearing, as are the details of Ms. Whyte's conduct in contravening the Discipline Committee's Order.

We have raised the above jurisdictional issue if only to make it abundantly clear that even if we are wrong in our conclusions (i.e. that we are able to consider and apply the definition of professional misconduct in s. 24(d) or, alternatively, we can consider the contravention of a Discipline Committee order as conduct within s. 24(a) and/or (b)), the Discipline Committee can and does make an independent finding of professional misconduct within the meaning of s. 24(a) and/or (b) on the grounds that Ms. Whyte breached the undertaking she gave at her October 1, 2007 discipline hearing, all of which is contained in the Notice of Hearing that was served on Ms. Whyte and is before us at this hearing.

Ms. Whyte's breach of her undertaking and her failure to comply with the Order is clearly defiant behaviour and conduct that frustrates the disciplinary process mandated by the legislation. Each of the breach of the undertaking and the failure to comply with the Order tends to harm the standing of the



profession. It was on the basis of Ms. Whyte's promise not to renew her license or to seek or maintain employment as an LPN (and the subsequent Order to the same effect) that Ms. Whyte was able to get an adjournment of the disciplinary proceedings. In fact, it appears from a reading of the transcript of the October 1, 2007 hearing, that in return for Ms. Whyte's undertaking, the Investigation Committee was agreeing not to apply to the Court for an order of suspension or prohibition of practice against Ms. Whyte (as it may do under s. 27 of the *Act*). For Ms. Whyte to allow those proceedings to remain on hold while she sought registration (for the purposes of seeking employment) in another provincial jurisdiction calls into question the profession's ability to govern itself, as it is required to do under the *Act*, including through the use of investigative and disciplinary powers that ensure LPN's are practicing competently and without misconduct. Clearly Ms. Whyte attempted to avoid the effect of the discipline proceedings in Saskatchewan by adjourning those proceedings, then ignoring her undertaking and the Discipline Committee's Order, while moving out of Saskatchewan to seek registration and employment elsewhere. The avoidance of the disciplinary proceedings and their effect is not in line with Ms. Whyte's obligations to the profession. It undermines the entire disciplinary process.

Ms. Whyte's breach of her undertaking as well as her failure to comply with the Discipline Committee's Order also amounts to conduct that harms the best interests of the public or its members. Although we were not provided with any details concerning the charge(s) against Ms. Whyte that led to the October 1, 2007 disciplinary proceedings, there were obviously some concerns related to incompetence and/or misconduct. We can also surmise that Ms. Whyte's undertaking to not renew her license and not seek or maintain employment as an LPN, as a condition of her receiving an adjournment, was given for the purposes of protecting the public until the disciplinary proceedings could resume. There can be no question that Ms. Whyte's conduct is not in the best interests of the public. Furthermore, Ms. Whyte's conduct is harmful to the best interests of the members. If SALPN and the Discipline Committee cannot rely on a member's compliance with an undertaking and with a Discipline Committee Order, the Discipline Committee would, in the future, be reluctant to accept such promises in exchange for an adjournment or a delay in a hearing, thereby affecting other members' ability to make these commitments for their own benefit.

In addition, although not necessary to our conclusion that Ms. Whyte is guilty of professional misconduct, the Discipline Committee also finds that Ms. Whyte's failure to comply with an Order of the Discipline Committee falls squarely within the meaning of professional misconduct in s. 24(d) of the *Act*.

#### **PENALTY:**

The Discipline Committee, having found Ms. Whyte guilty of professional misconduct, must consider an appropriate penalty under s. 30 of the *Act* for that misconduct. The Investigation Committee urged us to expel Ms. Whyte from the Association.

An order expelling a member from the Association is the most serious form of discipline, and such an order should be carefully considered before it is made.

The Discipline Committee finds this to be an appropriate case for expulsion. On any set of facts, a breach of a member's undertaking and/or a member's failure to comply with a Discipline Committee Order is a serious matter. While this does not mean that expulsion is the automatic result, the type of undertaking and Order breached in this case, as well as the conduct of Ms. Whyte, are extremely serious. The undertaking by Ms. Whyte (and the corresponding Order) was her promise not to renew her license or seek or maintain employment as an LPN until the 2007 discipline proceedings resumed. Ms. Whyte benefited from that promise by having those discipline proceedings adjourned. Given SALPN's mandate to regulate the profession and ensure patient safety, the Discipline Committee's concession and Ms. Whyte's promise could not have been made lightly and without careful consideration. Ms. Whyte's subsequent conduct was a deliberate and willful act; she broke an important promise and she decided to ignore the Discipline Committee's Order. These actions have damaged the professional relationship between Ms. Whyte and SALPN. The actions also illustrate why an order short of expulsion would be ineffective against Ms. Whyte – nothing about Ms. Whyte's conduct provides any assurance that she will abide by an order of the Discipline Committee. Ms. Whyte's written response of April 9, 2010, much of which is in itself highly inappropriate and malicious, compounds the effect of her conduct. It shows her complete disdain for SALPN and its disciplinary processes. Also, in her written response, Ms. Whyte appears to be saying that she has no intention of returning to Saskatchewan and practicing as an LPN. Her actions in not renewing her annual practice license confirm this intention. While this alone would be insufficient to support an order of expulsion, it does demonstrate that Ms. Whyte has no interest in continuing in the profession.

In making an order for Ms. Whyte's expulsion, we have also considered the effect of our not making such an order. In the circumstances that revealed Ms. Whyte's misconduct, that is, SALPN's receipt of the Verification of Registration for the College of Nurses of Ontario, SALPN would ordinarily need to confirm that Ms. Whyte is a member of SALPN, unless she were expelled. In addition, with recent changes to the Agreement on Internal Trade which increases labour mobility across provinces, members of regulated professions in one province would be granted certification in that profession in another province, upon application, without additional training, experience or exams. While these factors alone would not provide a basis for an order of expulsion, they support our conclusion that expulsion is appropriate in this case.

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

1. *That Irma Whyte be expelled from the Saskatchewan Association of Licensed Practical Nurses and her name struck from the register.*

DATED at Regina, Saskatchewan, this \_\_\_ day of October, 2010.

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

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Angela Zborosky, Chairperson

Marjorie Molsbery, LPN, Member

Andrea Reynolds, LPN, Member

Tony Linner, Public Representative, Member