

IN THE MATTER OF THE LICENSED PRACTICAL NURSES ACT, 2000
AND BYLAWS AND IN THE MATTER OF A COMPLAINT AGAINST
NICOLE CYR OF FORT QU'APPELLE, SASKATCHEWAN

DECISION OF:

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

INTRODUCTION:

The hearing by the Discipline Committee into the complaint against Nicole Cyr was convened at the Quality Inn in Regina, Saskatchewan, on October 18, 2011 being the location and date set out in the Notice of Hearing sent to Ms. Cyr. Ms. Cyr contacted the hotel just prior to the intended start time of 9:00 a.m., to advise that she had been delayed but would arrive shortly. The Discipline Committee waited for Ms. Cyr and upon her arrival, commenced the hearing.

Present at the hearing were Merrilee Rasmussen, Q.C., legal counsel for the Counselling and Investigation Committee (the "Investigation Committee") of the Saskatchewan Association of Licensed Practical Nurses ("SALPN"), Zena Charowsky, assisting legal counsel for the Investigation Committee, and Della Bartzen, investigator for SALPN.

The complaint against Ms. Cyr that is the subject of this hearing involves an allegation of professional misconduct on the basis that Ms. Cyr violated the terms of an Alternate Dispute Resolution ("ADR") agreement she entered into with the Investigation Committee in 2010. Specifically, she failed to successfully complete the "Roles, Responsibilities and Ethics for LPNs" course and the HIPA ("Health Information Protection Act") course by the agreed upon time.

EVIDENCE:

Della Bartzen, an investigator employed by SALPN, testified on behalf of the Investigation Committee. She testified concerning her involvement with the complaint against Ms. Cyr. An initial complaint regarding Ms. Cyr's nursing practice was made in November 2009. Following an investigation of the complaint, the Investigation Committee decided that the complaint had merit and that it would be appropriate to offer Ms. Cyr the option of resolving the complaint through an ADR agreement. Ms. Cyr agreed to the terms of the ADR agreement and while there was some delay in having agreement signed, it was ultimately signed on October 13, 2010. The provisions of the ADR agreement at issue in this complaint are paragraphs 4 and 5, which read as follows:

4. The Member shall, at her own cost, arrange for and successfully complete the course titled "Roles, Responsibilities and Ethics for LPN's" from the Saskatchewan Institute of Applied Science and Technology (SIASST) by December 31, 2010 and provide proof of having done so to the Counselling & Investigation Committee on or before that date.

5. The Member shall, at her own cost, arrange for and successfully complete the HIPA Course no later than December 31, 2010 and provide proof of having done so to the Counselling & Investigation Committee on or before that date.

Ms. Bartzen testified that she had some communications with Ms. Cyr and SIAST in November 2010. It was her understanding that Ms. Cyr had been making inquiries of SIAST regarding the availability of a HIPA course. Ms. Bartzen testified that she told Ms. Cyr that the ADR agreement did not require her to take the HIPA course through SIAST and that she should take the course through the Health Region or through her employer.

Ms. Bartzen testified that the Investigation Committee did not receive Ms. Cyr's confirmation of completion of the Roles, Responsibilities and Ethics or HIPA courses by the December 31, 2010 deadline set out in the ADR agreement. Ms. Bartzen said she tried to contact Ms. Cyr several times in February 2011, mostly without success, so she then sent a letter to Ms. Cyr on February 22, 2011 asking that Ms. Cyr provide confirmation of completion of the HIPA course and her enrolment in the Roles, Responsibilities and Ethics course, by March 15, 2011. No response was received. In April, Ms. Bartzen tried again, unsuccessfully, to reach Ms. Cyr. Ms. Bartzen advised the Investigation Committee that Ms. Cyr was in breach of the ADR agreement. While this new complaint was being investigated, the Investigation Committee instructed Ms. Bartzen to send one final letter to Ms. Cyr asking for her confirmation of completion of the courses. Ms. Bartzen sent such a letter on April 17, 2011. Shortly after doing so and likely before Ms. Cyr received the letter, Ms. Cyr contacted Ms. Bartzen and indicated she would soon be taking the courses. Ms. Bartzen told Ms. Cyr she needed to send her something in writing confirming her intentions and requesting an extension of time for completion of the courses so that Ms. Bartzen could take the information to the Investigation Committee. Ms. Bartzen said that Ms. Cyr did not do so. Ms. Bartzen testified about her additional attempts to reach Ms. Cyr by phone in May 2011. In June 2011, Ms. Bartzen learned through SIAST that Ms. Cyr had enrolled in the Roles, Responsibilities and Ethics Course but that she had not completed it by March 24, 2011, which was the deadline imposed by SIAST (SIAST requires that this course be completed within 12 weeks of enrollment).

Ms. Bartzen said that in later June 2011, she and Ms. Cyr exchanged email messages. Ms. Cyr apologized and indicated that she could not re-register for the Roles, Responsibilities and Ethics course at that time because SIAST doesn't offer the course through the summer. She said she would have to register to begin the course in September. Ms. Cyr also indicated in her email message that she had been unable to find out where she could take a HIPA course. She also expressed concerns about her ability to pay for the courses.

The Investigation Committee issued its Report to the Discipline Committee on August 8, 2011 (pursuant to s. 26 of the *Act*) recommending that the Discipline Committee hear and determine a formal complaint against Ms. Cyr for her failure to complete the two courses in question.

The formal complaint is set out in Schedule A to the s. 26 report. The allegations in Schedule A are those that appear in the Notice of Hearing, and include an allegation of professional misconduct within the meaning of section 24 of the *Act*, based on Ms. Cyr's failure to provide proof to the SALPN Counselling and Investigation Committee that she successfully completed the Roles, Responsibilities and Ethics for

LPNs course and the HIPA course through SIAST by December 31, 2010, contrary clauses 4 and 5 of her Alternative Dispute Resolution (ADR) agreement, dated October 13, 2010.

Ms. Bartzten testified that on August 29, 2011, she received an email message from SIAST indicating that Ms. Cyr was again trying to register there for a HIPA course. Ms. Bartzten said she advised SIAST that Ms. Cyr had previously been made aware that such a course is not available through SIAST.

Ms. Bartzten testified that at no time did Ms. Cyr contact her or the Investigation Committee with a written request to extend the time limits set out in the ADR agreement.

Ms. Cyr testified at the hearing in response to the evidence of Ms. Bartzten. Ms. Cyr said that she registered with SIAST for the Roles, Responsibilities and Ethics course in December 2010 and received the course materials and assignments. Unfortunately, her cheque for payment of the course was not put through by SIAST for two weeks and at that point, Ms. Cyr had insufficient funds in her bank account to cover the cheque. Ms. Cyr testified that she had completed all of the assignments for the course (Ms. Cyr had these papers with her at the hearing) but had been advised by SIAST that she could not submit assignments until she had paid for the course. Ms. Cyr testified about her financial difficulties - she is a single parent with three children and there was a period of time during which she was not assigned to work the overtime hours she had long been accustomed to working in order to make ends meet. To add to her difficulties, Ms. Cyr experienced a workplace injury a couple weeks prior to the hearing and her return to work date is currently uncertain. Ms. Cyr said she has been attempting (and will continue to attempt) to obtain third party assistance for the cost of the course (which we understand to be \$575.00).

Ms. Cyr testified that since entering into the ADR agreement, she has made numerous inquiries of various sources about the availability of a HIPA course. She testified that Ms. Bartzten initially told her that a HIPA course was available through SIAST and Ms. Cyr believes that this information was also contained in a document she received from SALPN. When Ms. Cyr made inquiries of SIAST, she was told that others had inquired in the past about taking a HIPA course, but other than HIPA being one subject that is covered in a much larger program, SIAST does not offer such a course.

Ms. Cyr testified that upon receiving this information from SIAST, she contacted Ms. Bartzten again. Ms. Bartzten confirmed that the course was not available through SIAST and told Ms. Cyr she should take the course through the Health Region. Ms. Cyr said she then spoke to her manager, unit coordinator and two educators with the Health Region, but no one seemed to know what she was talking about. The only information Ms. Cyr could obtain was that the topic of HIPA is covered only during employee orientation (which Ms. Cyr had previously received in 2006 or 2007, when she began her employment). Ms. Cyr also looked on the Health Region's "intranet" where it lists available courses, such as CPR, but a course about "HIPA" was not listed. Having not been able to find a HIPA course, Ms. Cyr printed a copy of HIPA off the internet and read through it. At this point, Ms. Cyr feels she is at a standstill about taking such a course.

Ms. Cyr hopes to get funding from her Band for the cost of the Roles, Responsibilities and Ethics course. She is currently working through some procedural issues for obtaining the funds and getting registered. She said that the Band has been funding the classes she is taking toward her RN degree through Athabasca University so she is hopeful that they will fund this course as well.

With respect to the issue of Ms. Cyr failing to ask the Investigation Committee for an extension of the time limits in her ADR agreement, Ms. Cyr responded that as she had always just dealt with Ms. Bartz; she thought Ms. Bartz passed her information on to the Investigation Committee and that she didn't have to contact the Investigation Committee directly.

At the hearing, Ms. Cyr apologized for not completing the terms of the ADR agreement. She indicated that immediately following this hearing she was attending at SIAST to get the necessary paperwork to take to her Band to support her request for funding of the Roles, Responsibilities and Ethics course.

SUBMISSIONS:

Legal counsel for the Investigation Committee pointed out that in clause 7 of the ADR agreement, Ms. Cyr agreed that a breach of any of the terms of the agreement constitutes professional misconduct and will be referred to the Investigation Committee for investigation as a new complaint. In this case, the Member has acknowledged that she has breached the terms of the ADR agreement. Counsel also submitted that Ms. Cyr's conduct in violating the terms of her ADR agreement, amounts to "professional misconduct" within the meaning of s. 24 of the *Act* because it is harmful to the best interests of the public or its members and it tends to harm the standing of the profession. While acknowledging Ms. Cyr's apologies and recognizing that her attendance at this hearing demonstrates some respect for the disciplinary process, Ms. Cyr's conduct undermines the disciplinary process and the ability of the Investigation Committee and members to resolve complaints through an ADR process. The disciplinary process focuses on safe practice by an LPN and when a member fails to comply with the agreement, the ADR mechanism becomes worthless; it no longer makes sense to enter into ADR agreements as a method of resolving complaints instead of proceeding to a discipline hearing. The Investigation Committee pointed out that having to proceed to a discipline hearing causes an increase in the cost of the disciplinary process, a cost which is borne by all members. Furthermore, the public needs to be assured that the profession is taking appropriate steps to ensure LPNs practice safely - a breach of an ADR agreement raises questions about the profession's ability to do that.

With respect to appropriate penalties for Ms. Cyr's professional misconduct, legal counsel for the Investigation Committee submitted that while it is appropriate for the Discipline Committee to consider Ms. Cyr's apology and her explanation for her misconduct, the Discipline Committee needs to send a signal that the misconduct in question is still serious. Legal counsel pointed out that in other cases where a member breaches an ADR agreement, the Investigation Committee ordinarily requests orders that the member not only comply with the terms of the ADR agreement (which, in this case, would be orders that Ms. Cyr complete the two courses she agreed to take), but also that the member's license to practice be suspended until the member complies with those terms of the ADR agreement. In this case, however, given Ms. Cyr's explanations and her attempts to complete the courses, the Investigation Committee is not pressing for a suspension of her license until she complies with those terms. Counsel also acknowledged the difficulties Ms. Cyr had in finding a HIPA course to complete. Without knowing what training in HIPA is currently available, the Investigation Committee asked that the Discipline Committee consider making an order that Ms. Cyr complete a course about HIPA that is "identified by" or "acceptable to" the Investigation Committee, and include a flexible timeframe for completing the course,

such as “within 90 days of identifying” an acceptable course. A further alternative, if such a course is not available, might be to have Ms. Cyr demonstrate comprehension and understanding of HIPA through an order that she provide a written explanation about how HIPA applies to LPNs.

In addition to these penalties, legal counsel for the Investigation Committee submitted that there needs to be additional consequences beyond requiring Ms. Cyr to do what she had already agreed to do under the ADR agreement. Counsel pointed out that an order requiring a member to pay a fine is commonly sought in order to bring home the significance of a member’s conduct in ignoring her or his professional obligations. This is particularly important where the member has not only breached the terms of an ADR agreement but has also failed to have any contact with the Investigation Committee or to attend the discipline hearing. Legal counsel submitted that the Investigation Committee wishes to leave the question of a fine with the Discipline Committee for their consideration, but notes that because Ms. Cyr has maintained contact with the Investigation Committee and has attended this hearing and offered an apology, a fine may not be necessary.

Lastly, legal counsel urged the Discipline Committee to make an order that Ms. Cyr pay \$1,000.00 to partially cover the costs of this discipline hearing noting that the actual costs of holding a discipline hearing are much greater than \$1,000.00. Counsel suggested that had Ms. Cyr provided her explanations to the Investigation Committee in advance of the hearing, instead of at the hearing, it may well have been possible to resolve the issues without a full, formal hearing. While the Investigation Committee recognizes that members have a right to challenge the charges made against them, in this case, Ms. Cyr acknowledged her failure to complete the courses. Requiring partial payment of the costs is an attempt to strike a balance between the portion to be borne by all members and the portion of costs for which a member should be responsible, having put SALPN to expenses that could have been avoided had the member complied with her agreement. The Investigation Committee submitted that the amount of costs proposed takes into account her personal financial difficulties.

In response to the Investigation Committee’s submissions, Ms. Cyr indicated that she accepts responsibility for her actions but she also explained her current financial difficulties, most of which centered around her obligations as a single parent and the costs that would be associated with any orders made by the Discipline Committee. As indicated in her evidence, she is currently in receipt of workers’ compensation benefits, having recently suffered a workplace injury. She knows she will be unable to work until at least the end of November 2011 at which time she will be able to see a specialist. Ms. Cyr also noted that licensing fees of approximately \$400.00 will be due soon and, if the Discipline Committee orders that she complete the Roles, Responsibilities and Ethics course, she would be responsible for an additional \$575.00 in costs. While indicating she would prefer to pay a fine than have her license suspended (which would result in her losing her only source of income), she noted that an order to pay an additional \$1,000.00 in a fine and/or costs will be very difficult for her when combined with the requirements to pay her licensing fee and the costs of the SIAST course.

In reply, legal counsel for the Investigation Committee submitted that if the Discipline Committee issues orders that have a financial impact on Ms. Cyr, the Discipline Committee should consider giving Ms. Cyr additional time to make payment.

DECISION:

The issue before the Discipline Committee is whether the Member's conduct — having violated the terms of the alternative dispute resolution (ADR) agreement she entered into with the Investigation Committee, dated October 13, 2010 — is professional misconduct as defined by section 24 of the *Act*. If so, then the Discipline Committee must determine the appropriate penalties for the misconduct under section 30 of the *Act*.

Sections 24 and 30 of the *Act* 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.*

On the basis of the evidence and the submissions of legal counsel for the Investigation Committee and Ms. Cyr, presented at the hearing held on October 18, 2011, the Discipline Committee finds that Ms. Cyr committed an act of "professional misconduct" within the meaning of clauses 24(a) and (b) of the *Act*, for having breached the ADR agreement she entered into with the Investigation Committee. Ms. Cyr breached the terms of that agreement by failing to provide proof of having successfully completed the SIAST Roles, Responsibilities and Ethics course by the deadline of December 31, 2010 or at any time since that date.

Beyond the fact that paragraph 7 of the ADR agreement provides that any breach of the agreement constitutes "professional misconduct," the Discipline Committee is of the view that a breach of that agreement would constitute "professional misconduct" even if the agreement had not so provided, a conclusion reached by the Discipline Committee in other complaints it has heard and determined in the past.¹ The Discipline Committee has previously held that breach of an ADR agreement amounts to

¹ Many decisions have addressed this issue, but in particular see the Discipline Committee's decision in "*In the Matter of a Complaint Against Gladys Shewchuk of MacNutt, Saskatchewan*" where the Discipline Committee dealt with an LPN's breach of the terms of an ADR agreement and explained, at length, why such conduct is "professional misconduct" under the *Act* (at pages 7 to 8).

conduct that “harms the best interests of the public” because the public should be able to rely on the disciplinary process of a self-regulating profession, such as SALPN, to ensure that the profession’s members are practising in a safe and competent manner, according to the rules and regulations that apply to them.

The Discipline Committee has also held that such conduct is “harmful to the best interests of its members” because if SALPN cannot rely on a member’s compliance with the terms of an ADR agreement that she voluntarily entered into, the Investigation Committee may become reluctant to enter into such agreements in the future, thereby affecting the ability of other members to enter into such agreements for their own benefit, while potentially driving up membership costs in order to pay for discipline hearings for every complaint that appears to have merit.

Finally, the Discipline Committee has previously held that a breach of an ADR agreement amounts to professional misconduct because it “tends to harm the standing of the profession” by calling into question the profession’s ability to govern itself as it is required to do under the *Act*, which includes the use of investigative and disciplinary powers that ensure that LPNs are practising competently and without misconduct. When a member fails to meet her obligations under an ADR agreement, that failure has the effect of undermining the disciplinary process, resulting in harm to the standing of the profession.

In reaching these conclusions, we are mindful of the explanations given by Ms. Cyr at the hearing concerning her difficulties in complying with the terms of the ADR agreement. We note that she had enrolled in the Roles, Responsibilities and Ethics course at SIAST but that through her inadvertence, she failed to have sufficient funds in her bank account to cover the cheque she paid with following a delay by SIAST in processing the payment. While the blame cannot be shifted to SIAST for this unfortunate occurrence, to Ms. Cyr’s credit, she used the course materials and continued to work on the course assignments, presumably with the expectation that she would be able to quickly complete the course as soon as she could afford to pay for it.

We also note that Ms. Cyr took steps toward compliance with the requirement that she complete a HIPA course. We accept her evidence that she made several attempts to locate such a course, including through SIAST, the Health Region, her manager and unit coordinator, and educators employed with the Health Region, but it appears there is no such course available to be taken. Based on the information before us, it appears that the only available training about HIPA is through an employee’s initial orientation (which Ms. Cyr completed in 2006-07), or as a topic covered by a more comprehensive training program through SIAST. In our view, the latter option was not a practical or reasonable one as a means of meeting this requirement. Following her unsuccessful attempts to locate a HIPA course, and the lack of guidance/suggestions by the Investigation Committee on this point, Ms. Cyr undertook to educate herself about HIPA by studying a copy of the *Act*.

Ms. Cyr’s explanations concerning her attempts at completion of the terms of the ADR agreement do not provide a complete answer or defense to the complaints, at least in terms of the requirement to have successfully completed the Roles, Responsibilities and Ethics course by December 31, 2010 (or even by the extended deadline of April 30, 2011). While Ms. Cyr took steps toward completion of that requirement, her failure to pay for the course in order to complete and be evaluated on the course is

critical. Although she explained the financial difficulties that led to her inability to pay, and the efforts she is making to obtain third-party funding, we note that nearly 10 months have passed between the date of her failure to pay for the course and this hearing date. While these factors may have an impact on the penalties we order, her failure to complete that course by the deadline (or the extended deadline) amounts to professional misconduct under the *Act*.

We find that the same cannot be said concerning the allegation that Ms. Cyr breached the ADR agreement by failing to complete a course on HIPA. Even though this requirement was agreed to by Ms. Cyr and the Investigation Committee, and it would appear to have been a reasonable requirement, in our view, on the basis of the evidence before us it is not a requirement capable of being met. Although the parties' intentions about where Ms. Cyr would take such a course appear unclear,² it was clear at the hearing that the Investigation Committee was not suggesting that Ms. Cyr should have taken the more comprehensive program through SIAST that has, as one topic, information about HIPA. In addition, there was no evidence led at the hearing to contradict Ms. Cyr's testimony concerning her efforts to find a HIPA course, nor was there evidence that such a course exists. In these circumstances, we conclude that because this requirement (in paragraph 5 of the ADR agreement) was incapable of completion, there was no breach of this term of the ADR agreement. Given the role and position of the Investigation Committee, including its experience in developing ADR agreements, it is critical that the Investigation Committee ensure that the terms agreed to in an ADR agreement are clear and reasonably capable of completion by the member – this term of the ADR agreement was not. In reaching this conclusion, we have taken into account the suggestion that Ms. Cyr might have more clearly brought these difficulties to the attention of the Investigation Committee or asked the Investigation Committee to revise or amend this term of the ADR agreement. While this failure to communicate might support a finding of professional misconduct, this was not one of the charges made by the Investigation Committee and regardless, the evidence led at the hearing was not sufficient to reach such a conclusion. In any event, we are satisfied that Ms. Cyr raised the issue with Ms. Bartzen and that it was a fair assumption on Ms. Cyr's part that Ms. Bartzen was acting on behalf of the Investigation Committee and that their communications would be shared with the Investigation Committee.

In summary, for the above noted reasons, we find that Ms. Cyr's failure to successfully complete the Roles, Responsibilities and Ethics course, as required by her ADR agreement, constitutes professional misconduct within the meaning of s. 24 of the *Act*. However, we dismiss the aspect of the complaint that

² At the hearing, Ms. Bartzen testified that she never suggested that such a course was available through SIAST and says she passed this information on to Ms. Cyr, along with the suggestion that she take the training through the Health Region. To the contrary, Ms. Cyr believes she was told to inquire about a HIPA course with SIAST, having been certain that she read something about that in documents she received from SALPN. This conflicting testimony aside, we note that in both the Investigation Committee's s. 26 Report to the Discipline Committee and in the Notice of Hearing, it states that Ms. Cyr failed to successfully complete "*the Roles, Responsibilities and Ethics for LPNs course and the HIPA course through SIAST...*" While it is not clear whether either of these documents is the one to which Ms. Cyr refers, the wording used in these documents suggests that the parties intended that both courses were to be taken through SIAST or, at a minimum, it demonstrates that there was confusion on this point.

Ms. Cyr failed to complete the HIPA course because we found that it is not a breach of the ADR agreement and not professional misconduct under the *Act*.

PENALTY:

Having found the Member guilty of professional misconduct, the Discipline Committee must consider which penalty or penalties provided in section 30 of the *Act* are appropriate in relation to that misconduct.

In many of the complaints that come before the Discipline Committee involving an alleged breach of an ADR agreement, the member also fails to respond to inquiries of the Investigation Committee and fails to attend the discipline hearing, both of which demonstrate a complete disregard for her or his professional obligations. Although there was evidence of some breakdown in communications between Ms. Cyr and Ms. Bartzén, acting on behalf of the Investigation Committee, we find that Ms. Cyr's communications and her attendance at and participation in the discipline hearing, demonstrate her concern for the consequences of her actions. This is an important factor in our determination of the appropriate penalties. Having said this, we are also mindful of the need to ensure that Ms. Cyr understands the seriousness of her professional obligations and her failure to comply with the ADR agreement. The penalties must be sufficiently significant to deter the repeat of such misconduct.

The types of penalties that legal counsel for the Investigation Committee requested are generally appropriate for us to consider in circumstances where a member has breached an ADR agreement.³ Although not specifically requested by the Investigation Committee, this is the type of complaint in which issuing a formal reprimand is appropriate because it represents a formal acknowledgment of the member's professional misconduct and the Discipline Committee's disapproval of the member's conduct.

We also find it appropriate to require the Member to complete the terms of the ADR agreement that she failed to comply with, that is, she complete the Roles, Responsibilities and Ethics course through SIAST. With respect to the HIPA course, the Investigation Committee asked that we make an order that essentially modifies the requirement in the ADR agreement: that Ms. Cyr take a HIPA course that is "acceptable to the Investigation Committee" or is "determined by the Investigation Committee." An alternate suggestion made by the Investigation Committee was to order a "self-study" of HIPA with a requirement that Ms. Cyr write a summary about its applicability to LPNs. We are not prepared to make any orders to this effect. For reasons stated earlier, we found that Ms. Cyr's failure to complete a HIPA course was not a breach of the ADR agreement and, as such, we will not make an order requiring her to take such a course. However, even if we had found that Ms. Cyr failed to comply with this term of the ADR agreement and that this failure constituted professional misconduct, on the evidence available to us, we are not satisfied that a HIPA course exists. In addition, we find that Ms. Cyr's evidence of the "self-

³ Most of the penalties sought in this case were discussed at length in the Discipline Committee's decision in "*In the Matter of a Complaint against Nola Bastian of Saskatoon, Saskatchewan*," dated March 14, 2011. In that decision, the Discipline Committee made orders of a formal reprimand, a requirement to complete a course, a fine, costs, and the notification of her employer, in circumstances where the member was found guilty of professional misconduct for failing to renew her license on time and working without a license.

study” she engaged in was a reasonably acceptable alternative to that now proposed by the Investigation Committee.

The Investigation Committee submitted that in the circumstances, an order suspending Ms. Cyr’s license to practice as an LPN until Ms. Cyr has complied with any other orders made by the Discipline Committee, is not necessary. We agree with that position. The penalty of a suspension is quite common in cases where a finding of professional misconduct is made as a result of a breach of an ADR agreement, particularly where an order is made that a member carry out that which she or he failed to do under the terms of an ADR agreement. A suspension is often necessary and appropriate to ensure the member now follows through with what she or he had voluntarily agreed to do while they were permitted to continue to practice. We are satisfied that a license suspension until completion of the course is not necessary because: Ms. Cyr had made some attempts to comply with the requirement that she complete the Roles, Responsibilities and Ethics course; she participated in the hearing, recognizing her responsibilities and apologizing; and because it would pose financial hardship for her to comply with the terms of our orders without a license to practice. We note, however, that if Ms. Cyr fails to comply with our Order to complete this course by the stated deadline in our Order, her license will be automatically suspended until she completes the course.

The Investigation Committee left it to our discretion whether to impose a fine. Even though Ms. Cyr's misconduct is sufficiently serious to warrant the imposition of a fine with the objective of deterrence and punishment, we are not ordering Ms. Cyr to pay a fine. It is our view that the orders we are making are sufficiently significant and have a substantial financial impact on Ms. Cyr, considering that her license renewal fees are soon due and she will also have to bear the cost of registering for the Roles, Responsibilities and Ethics course she is required to take.

The issue of an order concerning costs raises different considerations. Clearly, Ms. Cyr's professional misconduct has put the Association to significant costs in investigating her failure to comply with the ADR agreement and in holding this discipline hearing. In similar cases, we have estimated these costs to be in excess of \$5,000.00. The Investigation Committee requested that Ms. Cyr be required to pay a portion of those costs in the amount of \$1,000.00. Given the degree of cooperation shown by Ms. Cyr and having considered the overall financial impact of our orders, we find that an order to pay costs in the amount of \$500.00 is appropriate. To lessen her immediate financial burden, those costs may be paid by way of monthly payments of \$100.00 on the last date of each month, commencing on January 31, 2012. As with our order requiring Ms. Cyr to take the course she had agreed to, if Ms. Cyr fails to make any one of these payments on time, her license will be suspended until she complies with the order to pay costs. In this regard, we strongly emphasize to Ms. Cyr the need to ensure her payments arrive in SALPN’s office on the date they are due, and no later.

The Discipline Committee therefore makes the following orders pursuant to section 30 of *The Licensed Practical Nurses Act, 2000*:

1. Ms. Cyr is hereby formally reprimanded.

2. Ms. Cyr may continue to practice as an LPN, on the following conditions:

- (a) she provides proof to the Registrar of SALPN that she has successfully completed the course entitled “Roles, Responsibility and Ethics for LPNs” through the Saskatchewan Institute of Applied Science and Technology (SIAST) by May 31, 2012;
- (b) she pays costs to SALPN in the amount of \$500.00, payable as follows:
 - \$100.00 on or before January 31, 2012;
 - \$100.00 on or before February 28, 2012;
 - \$100.00 on or before March 31, 2012;
 - \$100.00 on or before April 30, 2012;
 - \$100.00 on or before May 31, 2012;

3. If Ms. Cyr fails to comply with any of the conditions set out in Order 2(a) and 2(b), her license to practice as an LPN will be automatically suspended and will only be reinstated upon providing proof of compliance or payment to the Registrar of SALPN.

The Discipline Committee wishes to thank Ms. Cyr for attending and participating in this hearing. As mentioned, Ms. Cyr’s participation demonstrates that she understands the significance of her acts of professional misconduct and has a desire to conform with the expectations and rules of her profession. It is apparent that Ms. Cyr enjoys the practice of nursing and in furthering her education in the health care field. It is for these reasons that the Discipline Committee has decided to be lenient in terms of the penalties we have ordered. However, it is necessary that Ms. Cyr now follow through with the obligations imposed by this Order as the failure to do so will result in very serious consequences for her.

DATED at Regina, Saskatchewan, this 24th day of November, 2011.

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

Angela Zborosky, Chairperson
Brenda Ballagh, LPN, Member
Marjorie Molsbery, LPN, Member
Terry Chretien, LPN, Member
Tony Linner, Public Representative, Member