

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

DECISION OF:

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

INTRODUCTION:

The hearing by the Discipline Committee into the complaints against Crystal LaSwisse was convened in the Coach Room of the Travelodge South Hotel in Regina, Saskatchewan, on October 20, 2010 at 10:00 a.m., being the date and time set out in the Notice of Hearing sent to Crystal LaSwisse. While the Notice of Hearing listed the Travelodge South Hotel as the location for the hearing, the Notice stated that the hearing would be held in the Hampton Room. Just before the hearing date, the hotel relocated this hearing to the Coach Room instead of the Hampton Room.

The Discipline Committee waited approximately 15 minutes before commencing the hearing but the Member did not attend the hearing, nor did she do so at any time during the course of the hearing. The Saskatchewan Association of Licensed Practical Nurses ("SALPN") posted notices throughout the hotel regarding this change and of course, the hotel staff were aware of the change and instructed to direct Ms. LaSwisse had she appeared. 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, SALPN Investigator.

The complaints against Ms. LaSwisse that are the subject of this hearing involve allegations of professional misconduct on the basis that Ms. LaSwisse practised as a Licensed Practical Nurse without a current license and that she contravened the *Code of Ethics* by failing to respond to communications from the Investigation Committee.

PRELIMINARY ISSUE:

Given the Member's failure to attend the hearing at the designated time, date and place set out in the Notice of Hearing,¹ it became necessary for us to determine that the Member was properly served with the Notice of Hearing.

In an affidavit sworn on October 10, 2010, by Sherry Husband, office manager of SALPN, Ms. Husband states that she served Ms. LaSwisse with the Formal Complaint and with a Notice of Hearing dated

¹ This is subject to our earlier comments regarding the change of hearing room at the Travelodge South Hotel.

September 13, 2010, by sending it on September 24, 2010 by registered mail to Ms. LaSwisse's last address known to the Registrar of SALPN, as shown in the SALPN Register. Attached to Ms. Husband's affidavit is a copy of the Canada Post customer receipt, a document that also provides information for tracking the item sent by registered mail. In her affidavit Ms. Husband indicates that Ms. LaSwisse did not pick up the registered mail sent by SALPN.

Section 29(11) of *The Licensed Practical Nurses Act, 2000* (the "Act") allows the Discipline Committee to proceed with a hearing in the absence of the member charged. It states:

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.

Section 29(11) refers to a notice mentioned in s. 29(1). This subsection reads as follows:

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.

Therefore, on the basis of s. 29(1) and (11) of the *Act*, the Discipline Committee may proceed with this hearing without Ms. LaSwisse in attendance provided there is adequate proof that the Notice of Hearing dated September 13, 2010, setting out the date, time and place of the hearing, was served on Ms. LaSwisse at least 14 days before the date of the hearing.

Section 50 of the *Act* sets out the rules governing the service of notices under the *Act*, including a Notice of Hearing provided for in s. 29(1). Section 50 states:

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.

Based on the evidence presented to us, the Discipline Committee made a finding at the hearing that proper service of the Notice of Hearing on Ms. LaSwise was made such that it was proper to proceed with the discipline hearing in her absence. The Notice of Hearing was sent on September 24, 2010 by registered mail to Ms. LaSwise at her last known address according to the Registrar of SALPN. Given that Ms. LaSwise did not accept, pick up or sign for the registered mail that contained the Formal Complaint and Notice of Hearing, this is an appropriate case in which to apply the deeming provision in s. 50(2) of the *Act*. Section 50(2) provides that the Notice of Hearing is deemed to have been served seven days after it is sent by registered mail. The deemed service date in this case would be October 1, 2010, which is well in excess of the 14 days' notice of hearing required by s. 29(1) of the *Act*.

Although s. 50(2) contains a rebuttable presumption to service being deemed to have occurred on the seventh day following the mailing, there was no evidence before us that Ms. LaSwise did not receive the Notice of Hearing and Formal Complaint through no fault of her own, or that she received it on a later date than the deemed service date of October 1, 2010. Based on all the circumstances, the Discipline Committee found it appropriate to proceed with the hearing in Ms. LaSwise's absence. To find otherwise would be to ignore the provisions of the *Act* cited above and permit members whose conduct is the subject of a hearing to avoid the disciplinary process and any possible consequences for a finding of professional incompetence and/or professional misconduct.

EVIDENCE:

SALPN Investigator, Della Bartzen, testified on behalf of the Investigation Committee. Ms. Bartzen has been employed by SALPN for approximately two years. As the Investigator, it is her responsibility to investigate complaints that are made against LPNs who are members of SALPN. In the present case, Ms. Bartzen stated that she was notified by Cara Brewster, Registrar of SALPN, that Ms. LaSwise had not renewed her license to practice as an LPN until January 25, 2010. Ms. Brewster asked Ms. Bartzen to

investigate whether or not Ms. LaSwisse worked during the period January 1 to 25, 2010 because if she had, she would have been practicing without a license in contravention of the *Act* and the Bylaws.

LPNs must renew their licenses on an annual basis. The license is effective for one calendar year – January 1 to December 31. However, LPNs must renew their licenses by December 1st of the preceding year. In this case that would mean that Ms. LaSwisse was required to renew her license for the 2010 calendar year by December 1, 2009. If an LPN does not renew by the December 1st deadline, the LPN is required, by the bylaws, to pay an administrative penalty for late payment, even though the LPN's current license remains in effect until December 31st.

Ms. Bartzen conducted an investigation of the complaint made by Ms. Brewster, first by conducting a telephone interview with Ms. LaSwisse (in which Ms. LaSwisse acknowledged she had worked as an LPN between January 1 and January 25, 2010) and next, by contacting a staff member with Payroll and Benefits with the Regina-Qu'Appelle Health Region (Ms. LaSwisse's employer) to determine if and when Ms. LaSwisse worked as an LPN between January 1 and January 25, 2010.

Ms. Bartzen was provided with a spreadsheet from Ms. LaSwisse's employer that sets out the dates and times Ms. LaSwisse worked and/or was paid for in January 2010. According to this record, Ms. LaSwisse appears to have worked on January 2, 5, 6, 8, 12, 14, 15, 18, 19 and 21, 2010 (almost all of these shifts were at least 12 hours in length). It also appears that Ms. LaSwisse was paid sick leave for an 8-hour shift on January 22, 2010.

Ms. Bartzen testified that when she initially interviewed Ms. LaSwisse, Ms. LaSwisse failed to offer any explanation as to why she had not renewed her license before it expired. Ms. Bartzen stated that when she completed her investigation, she brought the results to the Investigation Committee. The Committee decided to offer Ms. LaSwisse an opportunity to enter into an ADR Agreement rather than proceed to a disciplinary hearing. Ms. Bartzen spoke to Ms. LaSwisse a second time to advise her that an ADR Agreement was on its way to her.

An ADR Agreement was sent to Ms. LaSwisse, along with a request that she respond to it within 15 days. Despite Ms. Bartzen's repeated attempts to contact Ms. LaSwisse both before and after the deadline for a response, through her home phone (which had been disconnected) and her cell phone (which always went unanswered), Ms. Bartzen was unable to reach Ms. LaSwisse. Ms. Bartzen stated that at no time did Ms. LaSwisse contact her or respond to the proposed ADR Agreement. Ms. Bartzen also stated that others at the SALPN office also attempted to contact Ms. LaSwisse, but without success.

Legal counsel for the Investigation Committee introduced in evidence a document titled "Certificate of Registration and/or Licensure" which was prepared and signed by SALPN's Registrar, Cara Brewster, pursuant to the authority granted to her under s. 18(3) of the *Act*. In that document, Ms. Brewster certifies that Ms. LaSwisse:

- (a) was initially registered as a member of the Saskatchewan Association of Licensed Practical Nurses on April 16, 2007 and is a member as of October 20, 2010; and
- (b) did not renew her licence to practise until January 27, 2010 and was thus not licensed during the period from January 1, 2010 until January 27, 2010.

SUBMISSIONS:

Legal counsel for the Investigation Committee submitted that Ms. LaSuisse's conduct, that is, her having practiced as an LPN in January 2010 without a license to do so (in contravention of s. 22(1) of the *Act*), 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, it tends to harm the standing of the profession, and/or it is a breach of the *Act* or the bylaws made pursuant to the *Act*. It was also submitted that Ms. LaSuisse contravened the sixth provision of the SALPN *Code of Ethics* (contained in the Bylaws) by failing to respond to the communications of the Investigation Committee.

Legal counsel pointed out that s. 14(2)(b) of the *Act* allows the Association to make regulatory by-laws concerning the procedures for issuing licenses and the terms and conditions of licenses. Sections 10 and 11 of the Regulatory Bylaws deal with licensing and, specific to this case, require an LPN to submit a licensing renewal form and the annual practicing license fee by December 1st. If a license is not renewed, the LPN ceases to be licensed and is not entitled to practice or work as an LPN as at January 1st. Legal counsel also made reference to s. 44(1) of the Administrative Bylaws, which states that if the annual license fee is not paid prior to December 31st of the preceding year, the LPN ceases to be a licensed practicing member as of that date. Legal counsel submitted that on the basis of these provisions, Ms. LaSuisse's failure to renew her license and pay the annual licensing fee by December 31, 2009 resulted in her ceasing to be a licensed practicing member as of that date and not being entitled to work as an LPN. The fact that Ms. LaSuisse worked several shifts as an LPN in January 2010 before renewing her license on January 27, 2010 means she contravened s. 22(1) of the *Act* which states that "*No person shall practise as a licensed practical nurse unless that person is a practising member.*"²

In making this argument, legal counsel noted that while s. 22(1) might apply more broadly in the sense that it could be used to prevent any person (and not just LPNs) from practicing as an LPN without a license, the fact that this complaint has been made against a member of SALPN allows the complaint to proceed under the disciplinary processes prescribed by the *Act*. It was argued that this is made clear in s. 24 of the *Act*, which defines "professional misconduct" as including, in subsection (c), a breach of the *Act* or the bylaws.

As for proof of Ms. LaSuisse's dates of registration and licensure with SALPN, legal counsel for the Investigation Committee referred to the "Certificate of Registration and/or Licensure" entered into evidence. Legal counsel submitted that according to s. 18(3) of the *Act*, this document, which is purportedly signed by the Registrar, is admissible in evidence as proof of its contents, in the absence of evidence to the contrary (of which there was none in this case). Legal counsel submitted that this evidence, along with the evidence of Ms. Bartzen concerning the shifts that Ms. LaSuisse worked in January 2010, demonstrates that Ms. LaSuisse clearly worked as an LPN without a license for most of January 2010.

² A "practising member" is defined by the *Act* as "a member to whom a current licence to practise has been issued pursuant to section 19." Section 19 of the *Act* deals with the registration of persons as members of SALPN.

With respect to appropriate penalties for Ms. LaSuisse's professional misconduct, legal counsel for the Investigation Committee urged the Discipline Committee to consider the imposition of a formal reprimand and a fine, as well as an order to pay the costs of the investigative and disciplinary processes. It was noted that the Investigation Committee has been dealing with numerous complaints of this nature in relation to the 2010 licensing year. While many of these complaints were resolved by way of alternate dispute resolution agreements, four of these complaints, including this one, came before the Discipline Committee for decisions. The same arguments were made in all cases. The Investigation Committee argued that it is therefore necessary to make it clear to this Member and other members that this is a very serious matter and not just a technical breach of the law. It is not simply a matter of SALPN seeking additional money from its members. It is quite possible that an LPN who practices without a license is not insured, causing a serious risk to the public should something happen and the LPN is not insured. Legal counsel also pointed out that in this particular case, the Member gave no reason for her failure to renew on time and for having worked without a license. Also, during the investigation process, the Member refused to further communicate with the Investigation Committee. Legal counsel submitted that the Member's conduct demonstrates a cavalier disregard for the process and this, in itself, could also constitute an additional act of professional misconduct.

In response to questions of the Discipline Committee concerning the second charge in the Notice of Hearing, specifically, that the Member contravened the *Code of Ethics* by reason of her failure to respond to communications of the Investigation Committee, legal counsel advised that it wasn't necessary for the Discipline Committee to make an additional finding of professional misconduct on that ground. However, legal counsel urged the Discipline Committee to consider the evidence on that issue in determining the appropriate penalties to impose on Ms. LaSuisse for her professional misconduct of having worked without a license.

Legal counsel urged the Discipline Committee to make the following orders under s. 30 of the *Act*:

- (i) Issuing a formal reprimand under s. 30(1)(e) of the *Act*;
- (ii) Ordering that the Member pay a fine, in an amount up to \$5000.00, under s. 30(2)(a)(i) of the *Act*;
- (iii) Ordering, under s. 30(2)(a)(ii) of the *Act*, that the Member pay the entire costs related to the hearing of this complaint, including the legal fees incurred by each of the Investigation Committee and the Discipline Committee, the expenses of members of the Discipline Committee, and other costs such as the rental fee for hotel meeting rooms for the hearing, court reporter fees, etc.; and
- (iv) Ordering that the Member's employer be informed of the orders made against the Member for her professional misconduct.

Following the conclusion of the present hearing, additional hearings were held in relation to complaints made against other members who had also worked without a current license to practice in January of 2010. During those other hearings, legal counsel for the Investigation Committee requested the same

types of orders as were requested in the present matter, with one additional order: that the member be required to take the course “Roles, Responsibilities and Ethics of LPNs” through SIAST. At that point, legal counsel advised that the Investigation Committee had also intended to seek the same additional order against Ms. LaSuisse as well, not only because it is appropriate but also for the purposes of maintaining consistent orders for similar findings of professional misconduct.

With respect to the proposed order requiring the member to pay a fine, legal counsel stated that the seriousness of the misconduct in this case warrants more than just a formal reprimand. Counsel acknowledged that it is difficult to determine an appropriate amount for the fine and did recognize that the professional misconduct in this case was not so serious as to warrant a fine of \$5,000.00, the maximum amount permitted by the *Act*. Counsel suggested that it would be appropriate to order a fine in an amount less than the order for costs. Also, in terms of the seriousness of Ms. LaSuisse’s conduct, legal counsel pointed out that her conduct (in failing to renew her license on time and working without a license) was deliberate and that she would have known of the requirement to renew, it being an annual requirement she has complied with in the past. In addition, legal counsel argued that Ms. LaSuisse’s failure to communicate with the Investigation Committee suggests that she has not taken this matter seriously and has ignored SALPN for no apparent reason. Counsel also noted that even though Ms. LaSuisse would have been required to pay SALPN a late fee at the time of renewal (because she paid her renewal fee after the December 1st deadline), the fine being proposed here is something different than an administrative penalty for late payment. The fine requested is a penalty or sanction for having practiced without a license.

With respect to the request for an order for costs, legal counsel suggested that this hearing would not have been necessary had Ms. LaSuisse signed the ADR Agreement that the Investigation Committee offered. Instead, the Member ignored all communications of the Investigation Committee, including the offer of the ADR Agreement and the Notice of Hearing sent to her by registered mail. Legal counsel acknowledged that not all of the costs could be identified/quantified until some time following the date of the hearing, but the types of costs the Discipline Committee could order to be paid could be easily identified and described in an order.

With respect to the order that the Member’s employer be advised of the Discipline Committee’s findings and orders, legal counsel suggested this was very important because employers have an obligation under s. 43(2) of the *Act* to ensure that the LPN is a practicing member and remains a practicing member (meaning one who has a current license to practice) throughout the period of the LPN’s employment.

DECISION:

The primary issue before the Discipline Committee is whether the conduct of Ms. LaSuisse, specifically, her having worked as an LPN in January 2010 without a current license, is “professional misconduct” as defined in s. 24 of the *Act*. If it is, the Discipline Committee must decide on appropriate penalties for the misconduct under s. 30 of the *Act*.

In order to make a finding that Ms. LaSwise is guilty of professional misconduct warranting the imposition of discipline, her conduct must fall within one or more of the definitions of “professional misconduct” in s. 24 of the *Act*. Section 24 reads 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.*

Although the Notice of Hearing asserts that Ms. LaSwise is guilty of professional misconduct according to each of the three definitions set out in ss. 24(a), 24(b) and 24(c), much of the Investigation Committee’s argument focused on the definition in s. 24(c). That is, it was argued that Ms. LaSwise’s conduct of working as an LPN in January 2010 without having a current license to practice “is a breach of this *Act* or the bylaws,” and specifically, it is a breach of s. 22(1) of the *Act*. We will consider this submission first, followed by a brief analysis of the applicability of ss. 24 (a) and (b).

Legal counsel for the Investigation Committee took us through a number of provisions of the *Act* and the Bylaws to establish that Ms. LaSwise’s conduct breached the *Act* and was therefore “professional misconduct” within the meaning of s. 24(c). For the reasons that follow, we find Ms. LaSwise guilty of professional misconduct on the basis that she practiced or worked as an LPN without a current license, conduct which amounts to a breach of both the *Act* and the Bylaws.

Firstly, we accept that s. 14(2)(b) of the *Act* does authorize the Association to make regulatory by-laws concerning the procedures it will use for issuing licenses.³ Section 14(2)(b) of the *Act* reads as follows:

14(2) Subject to this Act, regulatory bylaws may be made pursuant to section 13 for the following purposes:

...

- (b) prescribing:*
 - (i) the procedures governing registration of persons or any category of persons as members;*

³ It may be noted that the *Act* allows the Council or Association to make two types of by-laws: (i) “Administrative Bylaws” for the purposes set out in s. 14(1) of the *Act*; and (ii) “Regulatory Bylaws” for the purposes set out in s. 14(2) of the *Act*. Of these two types of bylaws, only the Regulatory Bylaws require Ministerial approval.

- (ii) *the procedures governing the issuing of licences; and*
- (iii) *the terms and conditions of licences;*

Pursuant to that authority, Regulatory Bylaws were enacted. Sections 10 and 11 of the Regulatory Bylaws deal with licensing. These bylaws read as follows:

Licenses required

- 10(1) *A licensed practical nurse may obtain an annual, conditional or non-practising licence, as the case may be, by submitting the required application form, provided by the Association, together with the prescribed fee, prior to December 31 in each year.*
- (1.1) *A graduate practical nurse may obtain a conditional licence by submitting the required application form, provided by the Association, together with the prescribed fee, on or before December 1 in each year.*
- (2) *A licensed practical nurse or graduate practical nurse who does not obtain or renew a licence ceases to be licensed, and is not entitled to practise or work as a licensed practical nurse or graduate practical nurse, as the case may be, as at January 1 of the year for which the licence is required.*

Annual licence

- 11 *In order to obtain an annual licence to practise, a licensed practical nurse shall:*
 - (a) *pay the prescribed fee;*
 - (b) *comply in all particulars with any order of the Discipline Committee or of the Court respecting the licensed practical nurse or his or her practice; and*
 - (c) *work at least 1250 registered working hours in licensed practical nurse activities approved by the Council during the previous five years, or such longer period that the Registrar may approve, or successfully complete a re-entry course that is designated by the Council.*
 - (d) *complete the continuing education inventory and submit it with the licensing renewal form and the annual practising licence fee to the registrar on or before December 1;*
 - (e) *complete courses or challenge programs, approved by the Council, in health assessment and administration of medications;*
 - (f) *as of December 1, 2012, complete or challenge the health assessment program or basic program equivalent; and*
 - (g) *as of December 1, 2010, complete the medications administration program or basic program equivalent.*

Most significant to the issue before us are s. 10(2) and s. 11(d) of the Regulatory Bylaws noted above. Section 11(d) requires an LPN to submit an education inventory, license renewal form, and the annual license fee by December 1st of the year immediately preceding the licensing period. Section 10(2) then sets out the consequences for an LPN who fails to renew a license: the LPN ceases to be licensed and is not entitled to practice or work as an LPN as at January 1st of the year for which the license is required.

A provision in the Administrative Bylaws appears to have the same effect as sections 10 and 11 of the Regulatory Bylaws. Section 44(1) of the Administrative Bylaws states as follows:

44(1) All annual fees are payable on or before December 31 of the year prior to the year to which they relate, and a person who fails to pay the required fees by that date ceases to be a licensed practicing member as of that date.

In any event, when read together, these provisions require an LPN to file a renewal form with payment of the annual license fee on or before December 1st of the year preceding the calendar year in which the renewed license will be effective. While we are given to understand that licensing fees paid after the December 1st deadline are subject to a small administrative penalty in the form of a “late payment fee,” we accept that an LPN’s failure to file a renewal form and pay the annual license fee has no consequences on the LPN’s license to practice until January 1st; that is, the renewal must be completed on December 31st, otherwise the LPN ceases to be licensed effective January 1st and can no longer work or practice as an LPN. When applied to the facts of this case, this means that Ms. LaSwise, who did not file her renewal form and pay her annual license fee until January 27, 2010, ceased to be licensed to practice as an LPN on January 1, 2010 and should not have worked as an LPN between January 1 and January 27, 2010. The evidence presented at the hearing indicates that Ms. LaSwise did indeed work for her employer as an LPN during the period she had ceased to have a license. We accept the evidence that she worked 10 shifts as an LPN between January 2 and 21, 2010, almost all of which were 12-hour shifts. It is our view that Ms. LaSwise has clearly violated s. 10(2) of the Regulatory Bylaws as well as s. 22(1) of the *Act*, which reads as follows:

22(1) No person shall practise as a licensed practical nurse unless that person is a practising member.

The *Act* defines both the phrases “*practise as a licensed practical nurse*” and “*practising member*” as follows:

2 In this Act:

...

(i) “practise as a licensed practical nurse” means to provide services, within the education and training of licensed practical nurses, for the purposes of providing care, promoting health and preventing illness;

(j) “*practising member*” means a member to whom a current license to practise has been issued pursuant to section 19;

...

Having found that Ms. LaSwisse breached s. 10(2) of the Regulatory Bylaws and s. 22(1) of the *Act*, we find that she is guilty of professional misconduct within the meaning of s. 24(c).

Although it is not necessary for us to making a finding of professional misconduct on the basis of the other definitions of that term in s. 24 of the *Act*, the significance of this issue to the Association and the seriousness of Ms. LaSwisse’s conduct compels us to comment briefly on these additional provisions of the *Act*.

The failure to renew one’s annual practice license on a timely basis is serious matter. As a self-regulating profession, SALPN is charged with the responsibility of administering the *Act*, much of which is concerned with ensuring that LPNs maintain certain standards in terms of their education, competencies and conduct. SALPN’s ability to do this effectively depends on the co-operation of its members and their willingness to follow the rules set out in the legislation. An important part of self-regulation is maintaining and enforcing high standards within the profession. That a person must first qualify to become a member of SALPN and then meet certain annual requirements in order to be licensed to practice as an LPN, protects the standing of the profession and its members, as well as ensures public safety. Becoming and remaining licensed to practice as an LPN in this province is not like joining a club and paying a voluntary membership fee. Membership and licensure with SALPN are not optional if you wish to practice as an LPN in the province. A licensed practical nurse must comply with all membership and licensing requirements in order to legally practice as a licensed practical nurse.

With these considerations in mind, it is our view that Ms. LaSwisse’s conduct in working as an LPN without a license is harmful to the best interests of the public (“professional misconduct” defined in s. 24(a)) because the public must be confident of SALPN’s ability to ensure that its members are following the licensing requirements and that patient safety is not put at risk. We also find that Ms. LaSwisse’s conduct also tends to harm the standing of the profession (“professional misconduct” within the meaning of s. 24(b)) in that if members do not take seriously their obligations of registration and licensure with SALPN, the status of all members of the profession declines, as does public confidence in SALPN to properly regulate the profession. This is particularly so in a licensing scheme such as this one, where SALPN may only become aware that an LPN has practiced without a license, after it occurs. In this case, as with other cases currently being dealt with by SALPN and this Discipline Committee, the issue of whether an LPN practiced without a license only surfaced when the Member filed a renewal form after January 1st. It was only at that point that a “red flag” was raised with SALPN’s Registrar that an LPN might possibly have worked without a license prior to the date in January that she renewed her license. Having been alerted to this possibility, the Registrar requested that an investigation take place to determine whether the LPN had worked without a license.

Having said this, it should also be noted that in some circumstances where a licensed practical nurse has worked without a license, the Registrar might not be alerted to the problem at all if that LPN does not file a renewal form and pay the renewal fee. Although that is not what occurred in this case, this possibility

confirms the importance of members' voluntary compliance with the requirements of license renewal. This possibility also supports a very firm position being taken by the Discipline Committee if a member is found to have worked without a license, particularly when that LPN has deliberately chosen to practice without a current license. In this case we find that Ms. LaSwise's conduct was deliberate and her failure to communicate with the Investigation Committee about the issue suggests there is a lack of understanding of the seriousness this misconduct.

As previously mentioned, the Notice of Hearing contained a second allegation of professional misconduct – that Ms. LaSwise violated the *Code of Ethics* by failing to respond to communications of the Investigation Committee. Although this could provide a basis for a separate finding of professional misconduct, legal counsel for the Investigation Committee suggested that Ms. LaSwise's failure to communicate could be taken into consideration when the Discipline Committee assesses the appropriate penalties for the finding of professional misconduct resulting from Ms. LaSwise having practiced without a license. We agree that this is appropriate. Therefore, we decline to make a finding of misconduct on this charge and we will discuss below, under the heading "PENALTY," the issue of Ms. LaSwise's failure to communicate with the investigator and the Investigation Committee.

PENALTY:

Having found Ms. LaSwise guilty of professional misconduct pursuant to sections 24(a), 24(b) and 24(c), it is necessary for the Discipline Committee to determine appropriate penalties for the misconduct and make orders under s. 30 of the *Act* to that effect. Section 30 states as follows:

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 counselling 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.*

As previously indicated, legal counsel for the Investigation Committee requested that a number of orders be made against Ms. LaSwisse in response to the finding of professional misconduct for her having worked as an LPN without a current license, including a formal reprimand, an order to pay costs, an order directing her to take the "Roles, Responsibilities and Ethics" course, and an order that her employer be notified of the Discipline Committee's decision and orders made against Ms. LaSwisse. We will consider each of these orders in turn. Before doing so, we note that the week the Discipline Committee convened to hear and determine several complaints of professional misconduct, four complaints, including the present one, dealt with the allegation that an LPN worked without a current license. Of those four complaints, one was presented to the Discipline Committee as an Agreed Statement of Facts and Documents with certain proposed penalties that were agreed to by the Investigation Committee and the member. The Discipline Committee accepted the facts set out in that agreement and determined that the proposed penalties were appropriate.⁴ Those penalties included: a formal reprimand; a direction to complete the SIAST course, "Roles, Responsibilities and Ethics by June 30, 2011; and an order to pay SALPN \$1,000.00 as partial payment of the costs associated with the investigation and hearing process.

⁴ See the Discipline Committee's decision in "*In the Matter of The Licensed Practical Nurses Act, 2000 and Bylaws and in the Matter of a Complaint Against Janice Taylor,*" dated March 14, 2011.

More will be said about that decision as we consider the penalties proposed and ordered in the present case.

Formal Reprimand:

A formal reprimand represents a formal acknowledgement of the professional misconduct by the Member and expresses both the Discipline Committee's disapproval of the Member's conduct and acts as a warning that the conduct in question is not acceptable to the profession and it may warrant a more serious response, such as a suspension, should the conduct reoccur. The Discipline Committee finds it appropriate to issue a formal reprimand against Ms. LaSwisse for her professional misconduct.

Course:

Legal counsel for the Investigation Committee indicated that the Discipline Committee should also make an order that Ms. LaSwisse take the course, "Roles, Responsibilities and Ethics" through SIAST, at her own cost. This request was made shortly after the end of this hearing, but before the conclusion of the other discipline hearings involving LPNs who had worked without a license. Legal counsel pointed out that it is preferable that there be consistency between the orders in this case and other similar cases heard at the same time.

In our view, it makes the most sense to treat similar cases alike. While the Discipline Committee is not bound by precedent in the manner that a court is (meaning that we are not legally required to strictly follow past decisions made by the Discipline Committee), the Discipline Committee should strive for consistency in terms of its interpretation of the *Act* and bylaws, the principles it follows, and the penalties it imposes. Doing so will provide some predictability for the Investigation Committee and the members and allow them to make better informed decisions, including decisions about how a complaint made against a member might be resolved without the need for a discipline hearing.

The Discipline Committee finds it acceptable to consider the submission made by legal counsel for the Investigation Committee that Ms. LaSwisse should be ordered to take the "Roles, Responsibilities and Ethics" course, even though that request was made shortly after the submissions on this case were complete. The failure to request the order during submissions was, in our view, a mere oversight. No issues of procedural fairness arise because Ms. LaSwisse did not participate in the hearing and did not oppose the complaint. Furthermore, there was nothing before us to suggest that she had any knowledge as to what penalties might be requested by the Investigation Committee at a hearing.

In the alternative, even if we chose to disregard this request by legal counsel because it was made after the hearing, it is always open to the Discipline Committee to make any orders it finds appropriate to make under s. 30 of the *Act*, regardless of the submissions of the parties. In other words, the Discipline Committee is not restricted to making only those orders requested by the party or parties. It is the Discipline Committee's responsibility to determine what penalties are appropriate for any proven professional misconduct or incompetence. While it is best practice for the Discipline Committee to alert

the parties if it is considering some type of penalty other than that proposed by the parties in order that the parties are afforded an opportunity make submissions on the issue, Ms. LaSwisse's lack of participation in the hearing makes that unnecessary. Given our concerns about consistency and predictability, we find it appropriate to consider this penalty in this case.

Therefore, the question to be decided is whether an order directing Ms. LaSwisse to take the SIAST course, "Roles, Responsibilities and Ethics" is appropriate and should be made by the Discipline Committee. Based upon our knowledge of the course, we find that it is appropriate to require Ms. LaSwisse to take the course in response to the finding of professional misconduct. Among other topics, the course provides information concerning the role of SALPN and the rights and responsibilities of membership in SALPN. Given our conclusion that Ms. LaSwisse did not seem to understand the significance of her failing to renew and working without a license, as well as her failure to communicate with the investigator and the Investigation Committee, suggests that Ms. LaSwisse may have a serious lack of knowledge or concern about her professional obligations as an LPN and a member of SALPN. This course should assist in remedying that.

The Discipline Committee will therefore order that Ms. LaSwisse take the SIAST course, "Roles, Responsibilities and Ethics," at her own cost, by June 30, 2011.

Fine:

The Investigation Committee requested that Ms. LaSwisse be ordered to pay a fine in an amount less than the \$5000.00 maximum permitted by the *Act*.

A fine is a monetary penalty often imposed for improper conduct. Its usual purpose is to punish and to deter similar conduct in the future. In our view, a fine is an appropriate penalty to impose on Ms. LaSwisse for her professional misconduct. Given the seriousness of her misconduct, the fact that she deliberately worked without a license and had no explanation for having done so, along with the fact that she ignored the Investigation Committee, all weigh in favour of imposing a fine in addition to the issuance of a formal reprimand.

It is a difficult task to determine what amount of fine would be appropriate in the circumstances. We agree that while serious, the professional misconduct is not so serious as to warrant a fine of \$5,000.00, the maximum permitted by the *Act*. We note that in the *Taylor* decision, no fine was agreed to or imposed by the Discipline Committee. This Discipline Committee has often stated in past decisions that it will give great weight to agreed-upon facts and penalties jointly proposed by the Investigation Committee and a member, unless there is a very good reason not to do so. While these agreements will often generally reflect the parties' expectations about what the Discipline Committee might order should the complaint proceed to a full discipline hearing, these agreements may represent a compromise between the parties to avoid the costs and risks of a full discipline hearing as well as reflect the fact that the member is co-operating in the resolution of the complaint. While the Discipline Committee will certainly consider the orders it made in such decisions when deliberating on a similar case, but is certainly not bound by the results of those cases.

While it would be speculation on our part to determine why the parties did not agree to jointly propose the order of a fine in the *Taylor* case, we do note that the agreed statement of facts in that case included mention that Ms. Taylor's employer disciplined her (for having worked without a license) by suspending her for the same number of shifts she had worked without a license. In addition, it is apparent that Ms. Taylor eventually cooperated with the Investigation Committee, arriving at an Agreed Statement of Facts and agreed-upon penalties. Ms. Taylor also participated in the discipline hearing.

In two other decisions rendered concurrently with this decision,⁵ one LPN who worked 5 shifts without a license was fined \$1,000.00 while another who worked 8 shifts was fined \$1,600.00.

In concluding that Ms. LaSwise's misconduct warrants the imposition of a fine, we are also relying on the principle that one should not "profit" from their illegal/improper behavior. In this case that means that Ms. LaSwise should not benefit or profit from her illegal/improper behavior of working without a license. This principle also supports the purpose of deterrence. In the present case, considering that Ms. LaSwise worked at least 10 shifts in January 2010 without a license, we find that an appropriate fine is \$2,000.00.

We wish to make one final comment in relation to the order to pay a fine. In the present case, we have no information about whether Ms. LaSwise's employer did or did not discipline her for having worked without a license. Ms. LaSwise did not cooperate with the investigation process and did not attend the discipline hearing to give evidence or take a position with respect the possible penalties that could be imposed. In any event, disciplinary action by an employer and the professional disciplinary process governed by the *Act* are two separate and independent processes, and it is not uncommon for an LPN to be both disciplined by an employer and have disciplinary orders made against them by the Discipline Committee of SALPN in relation to the same conduct. Despite our speculation about the possible reasons for the lack of a fine in the *Taylor* case, we wish to make it clear that whether or not Ms. LaSwise faces discipline by her employer for the same conduct, either before or after the issuance of this decision, it would not change the results of this decision, including the order to pay a fine to SALPN in the amount of \$2,000.00.

Costs:

The Investigation Committee asked that the Discipline Committee order Ms. LaSwise to pay to SALPN the full actual costs associated with the formal part of these disciplinary proceedings, that is, the legal costs of the Investigation Committee and Discipline Committee in relation to the hearing, as well as the costs associated with the attendance of the Discipline Committee members, hearing room rental and court reporter fees.

⁵ See the Discipline Committee's decisions in: "*In the Matter of The Licensed Practical Nurses Act, 2000 and Bylaws and in the Matter of a Complaint Against Darla Tedford*" and "*In the Matter of The Licensed Practical Nurses Act, 2000 and Bylaws and in the Matter of a Complaint Against Nola Bastian*," both dated March 14, 2011.

We accept that the Discipline Committee has the authority to order a member to pay 100% of the actual costs of the hearing process and that we do not need to know, at the time of writing the decision, the exact dollar amount of those costs as the type of costs included could be adequately described in an order. We also agree that it is acceptable to impose an order to pay costs even though a fine is imposed as well. An order of costs serves a different purpose. Rather than having a focus of punishment or the deterrence of certain conduct, an order to pay costs is intended to compensate SALPN for the expenses associated with a hearing under the *Act*, in circumstances where an LPN is found guilty of professional misconduct or incompetence, and in some cases, where such costs could have been avoided.

Even though Ms. LaSwise has completely failed to cooperate with the investigation process, the Discipline Committee has decided to order that she pay only part of the actual costs of the hearing process. Although we do not know the exact costs in this case, a very rough estimate would put the costs here in excess of \$5,000.00. Given the finding of professional misconduct against Ms. LaSwise and her lack of cooperation with the investigation and hearing process that necessitated a full disciplinary hearing and its associated costs, the Discipline Committee orders that Ms. LaSwise pay partial costs in the amount of \$1,500.00. This is consistent with the amounts the members were ordered to pay in *Re: Tedford* and *Re: Bastian*. We have ordered a partial payment of costs rather than full costs by taking into account the following considerations:

- This is the first occasion in which this type of complaint or misconduct has been pursued to a hearing by the Investigation Committee and considered by the Discipline Committee;
- The Discipline Committee accepted the agreed-upon penalty of \$1,000.00 for costs in the *Taylor* decision, where, unlike in the present case, there was some degree of cooperation by the member in the hearing process resulting in a more efficient hearing and decision-making process; and
- The order to pay costs is only one of three orders imposed on Ms. LaSwise that have a financial impact on her, and while all three orders are certainly appropriate for Ms. LaSwise's misconduct, we are taking into account their overall financial impact of those three orders on Ms. LaSwise.

Notification of Employer:

We agree that it is appropriate to make an order that Ms. LaSwise's employer be provided with a copy of this decision. Section 30(5) of the *Act* indicates that the Discipline Committee may inform a member's employer of any orders made against a member where there is a finding of professional misconduct or incompetence. In addition to advising the employer of the outcome of this matter, notification to the employer also serves the purpose of highlighting or reinforcing the obligations employers have concerning the licensure of the LPNs they employ. Section 43(2) of the *Act* indicates that an employer who hires a person to practice as an LPN must ensure that the person is a "*practising member*" and that he or she "*maintains his or her status as a practising member throughout the period of employment.*" While we do not wish to minimize the responsibility of Ms. LaSwise to ensure she renews her license in a

timely manner, clearly, Ms. LaSwise's employer failed to meet these obligations under the *Act*. Although the Discipline Committee is not empowered to address this failure by the employer, the Discipline Committee suggests that the employer should implement a process to ensure the LPNs they employ have a current license to practice prior to being assigned shifts of work. Such a process would not seem to be onerous on an employer because all LPNs have a license expiry date of December 31st in each year and there is some "lead time" built into the renewal process, given that LPNs are required to renew their licenses by December 1st, but their current licenses do not expire until December 31st. It is our understanding that in some workplaces, employers require LPNs to produce photocopies of their renewal. It is also our understanding that an employer has access to the licensing status of LPNs through SALPN's website. We note that an employer is responsible for the assignment of work to employees and is therefore in the unique position of being able to be proactive and ensure an LPN has a current license to practice before the LPN works without a license. For all of these reasons, the Discipline Committee will order that Ms. LaSwise's employer be provided with a copy of this decision, including the orders made against Ms. LaSwise.

In closing, the Discipline Committee wishes to highlight that this is the first occasion on which it has had to consider and make a ruling on a complaint that an LPN practiced without a license, due to her failure to renew it in a timely manner. As previously mentioned, SALPN discovered that this was the case for a large number of LPNs in relation to the 2010 licensing year. Fortunately, most of these complaints were resolved through ADR agreements between the Investigation Committee and the members, leaving only four to be dealt with through disciplinary hearings. Unfortunately, in only one of those four was the Discipline Committee provided with an Agreed Statement of Facts and an agreement about penalties, while the remaining three were dealt with through full discipline hearings in the absence of the members charged. These latter three matters also included a second allegation of professional misconduct for the members' failure or refusal to cooperate with the investigation. The seriousness of this professional misconduct must be made clear to Ms. LaSwise and to all members. Even though the Discipline Committee did not accept the Investigation Committee's submission that the members be ordered to pay 100% of the total costs and even though the fine imposed in this case is only 40% of the maximum permitted by the *Act*, we do not wish to send the message that this type of professional misconduct is not of the utmost seriousness. The Discipline Committee believes it has been somewhat lenient with respect to these penalties, taking into account that this is the first licensing year that the Discipline Committee has dealt with this type of misconduct. It is our hope that these penalties act as a warning or deterrent to Ms. LaSwise and to all members. Should this misconduct continue to be a significant problem for SALPN, the Discipline Committee may consider making orders that require higher fines and costs be paid.

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

1. That Crystal LaSwise be formally reprimanded;

2. That the Discipline Committee will inform Crystal LaSwise's employer of this finding of professional misconduct and the Orders made against Ms. LaSwise, by sending her employer a copy of this decision; and
3. That Crystal LaSwise be permitted to continue to practice as a Licensed Practical Nurse only on the following conditions:
 - (a) That Ms. LaSwise successfully complete the course titled "Roles, Responsibilities and Ethics for LPNs," available through SIAST, at her own expense, on or before June 30, 2011, and to provide Cara Brewster, Registrar of SALPN, with proof of successful completion prior to June 30, 2011;
 - (b) That Ms. LaSwise pay to SALPN a fine in the amount of \$2,000.00 in accordance with the payment schedule in 3(d) below;
 - (c) That Ms. LaSwise pay to SALPN the sum of \$1,500.00, representing partial payment of the costs of the discipline process, in accordance with the payment schedule in 3(d) below;
 - (d) That Ms. LaSwise make payment of the fine ordered in 3(b) above and the costs ordered in 3(c) above, totaling \$3,500.00, in the following amounts and by the following dates:
 - \$400.00 by April 1, 2011
 - \$400.00 by May 1, 2011
 - \$400.00 by June 1, 2011
 - \$400.00 by July 1, 2011
 - \$400.00 by August 1, 2011
 - \$400.00 by September 1, 2011
 - \$400.00 by October 1, 2011
 - \$400.00 by November 1, 2011
 - \$300.00 by December 1, 2011

If any of the above payments are not paid to SALPN on or before their respective due dates, the remaining balance becomes immediately due and payable; and

4. Should Ms. LaSwise fail to comply with any of the conditions set out in paragraphs 3(a) (b) (c) and (d) of this order, Ms. LaSwise's license shall be suspended until the date on which the failure is remedied.

DATED at Regina, Saskatchewan, this 14th day of March, 2011.

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

Angela Zborosky, Chairperson

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