

IN THE MATTER OF THE LICENSED PRACTICAL NURSES ACT, 2000
AND BYLAWS AND IN THE MATTER OF A COMPLAINT AGAINST
JANICE TAYLOR OF MAIDSTONE, SASKATCHEWAN

DECISION OF:

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

INTRODUCTION:

The hearing by the Discipline Committee into the complaints against Janice Taylor was convened in the Coach Room of the Travelodge South Hotel in Regina, Saskatchewan, on October 20, 2010 at 2:00 p.m., being the date and time set out in the Notice of Hearing sent to Janice Taylor. 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, the hotel relocated this hearing to the Coach Room instead of the Hampton Room.

Ms. Taylor participated in the hearing by way of teleconferencing. 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. Taylor that are the subject of this hearing involve allegations of professional misconduct on the basis that Ms. Taylor practiced 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.

EVIDENCE:

At the outset of the hearing, the following Agreed Statement of Facts was filed with the Discipline Committee:

Agreed Statement of Facts

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

1. *Janice Taylor is a member of the Saskatchewan Association of Licensed Practical Nurses ("SALPN"). She has been a member of the SALPN since 1993.*

2. *Membership in SALPN, and the conduct of its members, is governed by The Licensed Practical Nurses Act, 2000 (the “Act:”), the SALPN bylaws and the Code of Ethics. As a self-regulating profession, SALPN is authorized by the Act to discipline its members for failure to adhere to the requirements of the Act, the bylaws, or the Code of Ethics.*
3. *Pursuant to s. 26 the Act, the Counselling and Investigation Committee (the “Investigation Committee”) is required to investigate allegations of professional misconduct, and on completion of its investigation, to make a written report to the Discipline Committee recommending either that the subject matter of the complaint be referred for a discipline hearing or that no further action be taken.*
4. *A complaint regarding the nursing practice of Ms Taylor was received from the SALPN Registrar in January 2010. In the complaint, Cara Brewster, SALPN Registrar, stated that Ms Taylor failed to renew her licence to practise as an LPN prior to January 1, 2010 and as a result was not licensed to practise as of that date. The Certificate of the SALPN Registrar indicates that she was not licensed for the period from January 1 to January 26, 2010, both dates inclusive. A copy of the Certificate is attached at Tab A.*
5. *Ms Taylor worked seven shifts while she was not licensed to practise at the Lloydminster Hospital, where she has worked as an LPN for 12 years. A list of the shifts she worked while not licensed is attached at Tab B. She was penalized by her employer by being suspended for seven subsequent shifts and she was lectured for her actions by her employer.*
6. *After completing its review and investigation of the complaint, it was the unanimous recommendation of the Investigation Committee that the Discipline Committee should hear and determine the formal complaint against Ms Taylor for working as an LPN when she was not licensed to do so. The Investigation Committee’s written report containing the formal complaint against Ms Taylor was submitted to the Discipline Committee on September 2, 2010. A copy of the written report and formal complaint is attached at Tab C.*
7. *Ms Taylor acknowledges that a Notice of Hearing and Formal Complaint was served on her by registered mail in accordance with the requirements of the Act and that the Discipline Committee has jurisdiction to hear and determine the Formal Complaint herein. A copy of the Notice of Hearing and Formal Complaint is attached at Tab D.*
8. *Ms Taylor accepts responsibility for the following actions:*
 - a. *She failed to renew her licence to practice as an LPN until January 26, 2010 and was thus not licensed to practice for the period from January 1 to 25, 2010, both dates inclusive; and*
 - b. *She worked seven shifts during the period of time that she was not licensed to practice, contrary to The Licensed Practical Nurses Act, 2000 and the regulatory bylaws made pursuant to that Act.*

9. *Ms Taylor acknowledges that her failing to renew her licence prior to January 1, 2010 and working as an LPN while she was not licensed to do so is professional misconduct as that term is defined in section 24 of the Act*
10. *Accordingly, Ms Taylor agrees to the following disciplinary actions:*
 - a. *She will accept a formal reprimand;*
 - b. *She will, at her own cost, successfully complete the course entitled “Roles, Responsibilities and Ethics for LPNs” from the Saskatchewan Institute of Applied Science and Technology (SIASST), prior to June 30, 2011, failing which her licence to practise as an LPN will be suspended until she does so; and*
 - c. *She will pay \$1,000 in partial payment of the costs of the investigation and discipline process by paying \$200 by each of January 31, 2011, February 28, March 31, April 30 and May 31, 2011 and, if any payment is not paid by the due date the balance then remaining to be paid shall immediately become payable and her licence to practise as an LPN will be suspended until payment of the said amount of \$1,000 is made in full.*

The Agreed Statement of Facts references a number of documents that are attached as appendices. While it is unnecessary to reproduce the contents of all of these documents, we note the following additional information as relevant:

- The shifts Ms. Taylor worked without a license were 12-hour shifts on January 4, 5, 14, 15, 22, 23 and 24, 2010;
- The Report of the Investigation Committee to the Discipline Committee, was dated June 15, 2010, and indicated that Ms. Taylor was given an opportunity to resolve the complaint through an Alternative Dispute Resolution Agreement but Ms. Taylor failed to respond to the offer and to the Committee’s communications in general;
- The Formal Complaint includes an allegation of professional misconduct on the basis of: (i) practicing as an LPN without a current license; and (ii) contravening the sixth provision of the *Code of Ethics* for her failure to respond to communications from the Investigation Committee between March 1 and June 1, 2010.

Counsel for the Investigation Committee advised the Discipline Committee that it was withdrawing the charge of professional misconduct for Ms. Taylor’s failure to communicate with the Investigation Committee.

SUBMISSIONS:

Legal counsel for the Investigation Committee submitted that Ms. Taylor’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*.

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 bases of these provisions, Ms. Taylor'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. Taylor worked several shifts as an LPN in January 2010 before renewing her license on January 26, 2010 means she contravened s. 22(1) of the *Act* which states that "No person shall practice as a licensed practical nurse unless that person is a practising member."¹

With respect to appropriate penalties for Ms. Taylor's professional misconduct, legal counsel for the Investigation Committee and Ms. Taylor indicated their agreement to the following penalties: the imposition of a formal reprimand, an order directing Ms. Taylor to take the "Roles, Responsibilities and Ethics for LPNs" course through SIAST, as well as an order to pay part of the costs of the investigative and disciplinary processes in the amount of \$1000.00 payable by \$200.00 per month from January 31, 2011 to May 31, 2011 inclusive.

We note that during the week that this complaint was heard by the Discipline Committee, 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 similar types of orders as were referred to in the present matter. However, in those other cases, the Investigation Committee also sought the imposition of a fine against the member and a direction that the member's employer be notified of the findings and orders made against the LPN by the Discipline Committee. Also, it may be noted that in those other cases, the Investigation Committee was seeking an order that the member pay 100% of the actual costs associated with the discipline hearing.

With respect to the request for an order for costs in this case, legal counsel suggested that a partial payment of costs is appropriate even though the Member initially ignored communications of the Investigation Committee, including the offer of the ADR Agreement. Ms. Taylor eventually responded and co-operated by entering into an Agreed Statement of Facts and jointly proposed appropriate penalties. It is also for these reasons that the Investigation Committee withdrew the failure to communicate charge against Ms. Taylor.

¹ A "practicing member" is defined by the *Act* as "a member to whom a current license has been issued pursuant to section 19." Section 19 of the *Act* deals with the registration of persons as members of SALPN.

DECISION:

The primary issue before the Discipline Committee is whether the conduct of Ms. Taylor, 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*.

Even though Ms. Taylor has acknowledged in the Agreed Statement of Facts that her conduct (working without a license) was professional misconduct, in order to make a finding that Ms. Taylor 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:

Professional misconduct

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

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

Much of the Investigation Committee’s argument focused on the definition in s. 24(c). That is, it was argued that Ms. Taylor’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).

In this and the other similar cases heard the same week by the Discipline Committee, legal counsel for the Investigation Committee took us through a number of provisions of the *Act* and the Bylaws to establish that Ms. Taylor’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. Taylor 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 agree 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.² Section 14(2)(b) of the *Act* reads as follows:

² 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.

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;*
 - (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 is 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. Taylor, who did not file her renewal form and pay her annual license fee until January 26, 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 26, 2010. The evidence presented at the hearing indicates that Ms. Taylor 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 7 shifts as an LPN between January 4 and 24, 2010, all of which were 12-hour shifts. It is our view that Ms. Taylor 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 “*practicing 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;

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

Having found that Ms. Taylor 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. Taylor’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 a 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 LPN’s 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. Taylor’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. Taylor’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 is 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.

PENALTY:

Having found Ms. Taylor 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:

Disciplinary powers

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 mentioned, there were three other similar complaints heard by the Discipline Committee the same week as this complaint,³ although in those three complaints, the members did not participate in the investigation or disciplinary processes. In all three cases, the Discipline Committee ordered that the member be reprimanded, ordered to pay costs of \$1500.00, ordered to pay a fine (variable and dependent on the number of shifts the member worked without a license), an order that the member take the course "Roles, Responsibilities and Ethics for Licensed Practical Nurses" through SIAST at the member's own cost, and an order that the member's employer be provided with a copy of the decision and orders made against the member.

We have carefully considered the proposed, jointly-agreed penalties for Ms. Taylor's professional misconduct and have decided that they are appropriate in this case, even though they are somewhat more lenient than those the Discipline Committee made against the members of the other three similar complaints heard the same week. In the present case there is no need to make an order directing that a copy of the decision be sent to Ms. Taylor's employer. Ms. Taylor's employer is aware that Ms. Taylor worked as an LPN without a license and did in fact discipline her for this conduct. The order for costs in the amount of \$1000.00, while slightly less than that which we ordered in the other three cases, is appropriate given Ms. Taylor's degree of co-operation and participation in the hearing process.

Lastly, we have chosen not to issue an order requiring Ms. Taylor to pay a fine. The case law supports the proposition that a discipline committee of a self-regulating professional association should carefully consider any joint submission on penalty and only decline to accept it if there are clear and compelling reasons for doing so. For this reason, as well as the fact that Ms. Taylor has co-operated with this process and she has suffered a monetary penalty by way of a suspension by her employer, we have decided there is no clear and compelling reason to deviate from the agreed-upon penalties.

³ The Discipline Committee's decisions in this case and the other three cases are being released on the same date.

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

1. That Janice Taylor be formally reprimanded;
2. That Janice Taylor be permitted to continue to practice as a Licensed Practical Nurse only on the following conditions:
 - (a) That Ms. Taylor 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. Taylor pay to SALPN the sum of \$1000.00, representing partial payment of the costs of the discipline process, in accordance with the following payment schedule:
 - \$200.00 by April 1, 2011
 - \$200.00 by May 1, 2011
 - \$200.00 by June 1, 2011
 - \$200.00 by July 1, 2011
 - \$200.00 by August 1, 2011
3. Should Ms. Taylor fail to comply with any of the conditions set out in paragraphs 2(a) or (b) of this order, Ms. Taylor’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