

IN THE MATTER OF THE LICENSED PRACTICAL NURSES ACT, 2000
AND BYLAWS AND IN THE MATTER OF A COMPLAINT AGAINST
GEORGE McKNIGHT OF PRINCE ALBERT, SASKATCHEWAN

DECISION OF:

SASKATCHEWAN ASSOCIATION OF LICENSED PRACTICAL NURSES

DISCIPLINE COMMITTEE

INTRODUCTION:

The hearing by the Discipline Committee into the complaints against George McKnight was convened in the Board Room of the Ramada Hotel in Prince Albert, Saskatchewan, on May 12, 2011 at 9:00 a.m.

The original dates for the hearing, set out in a Notice of Hearing dated December 13, 2010 (served on Mr. McKnight by registered mail on December 15, 2010), were January 25 and 26, 2011, at 9:30 a.m. The hearing was at that time set to be held at the Travelodge in Prince Albert, Saskatchewan. However, on Friday, January 21, 2011, the member, Mr. McKnight requested and was granted an adjournment of the proceedings, by the Discipline Committee, a matter which will be discussed further below. At that time, the Discipline Committee directed that the hearing would proceed during the week of May 10, 2011, the next regular sitting of the Discipline Committee. On April 29, 2011, legal counsel for the Counselling and Investigation Committee of the Saskatchewan Association of Licensed Practical Nurses (referred to as the "Investigation Committee") sent a letter to Mr. McKnight, by registered mail, notifying of the date, time and location of the hearing, that is, May 12, 2011 at 9:00 a.m. at the Ramada Hotel in Prince Albert, Saskatchewan.

On May 12, 2011, the Discipline Committee waited approximately 15 minutes before commencing the hearing but the Member did not attend the hearing, nor did he do so at any time during the course of the hearing. Present at the hearing were Merrilee Rasmussen, Q.C., legal counsel for the Investigation Committee and Della Bartzen, SALPN Investigator.

The complaints against Mr. McKnight that are the subject of this hearing involve allegations of professional misconduct and professional incompetence on the basis that Mr. McKnight falsified a physician's order for prescription drugs at his place of employment.

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, it became necessary for us to determine that the Member was properly served with the Notice of Hearing, in order that the hearing could properly proceed in his absence.

In an affidavit sworn on January 28, 2011, by Ciara Sebastian, she states that she served Mr. McKnight with the Formal Complaint and with a Notice of Hearing dated December 13, 2010, by sending it on

December 14, 2010 by registered mail to Mr. McKnight's last address known to the Registrar of SALPN, as shown in the SALPN Register. This address was 3033 Dunne Drive, Prince Albert, Saskatchewan S6V 6Y5. Attached to Ms. Sebastian'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. The Canada Post tracking information shows that the item was successfully delivered to that address on December 15, 2010 and that the item was signed for by "C. GALE."

As previously indicated, Mr. McKnight sought an adjournment of the hearing set for January 25 and 26, 2011. This request came to the Discipline Committee through Merrilee Rasmussen, Q. C., legal counsel for the Counselling and Investigation Committee ("Investigation Committee") of SALPN, who communicated with the Chairperson of the Discipline Committee by way of email on January 21, 2011. Mr. McKnight had wanted further disclosure from the Investigation Committee, specifically, a transcript of the interviews the Investigation Committee's investigator conducted during the course of the investigation. The Investigation Committee had disclosed to Mr. McKnight only the investigator's notes of her interviews and while audio tapes of the interviews existed, no transcripts had been prepared. Furthermore, the audio tapes could not be produced because SALPN was in the midst of an office move and thus the tapes were not readily available.

The Investigation Committee opposed Mr. McKnight's request for an adjournment on the basis that the investigator's notes amounted to adequate disclosure and that Mr. McKnight's request for an adjournment was not timely. Significant expense had been incurred to date and further costs would be incurred as a result of an adjournment. Counsel for the Investigation Committee pointed out that the parties had been working toward a resolution of the complaint in the weeks prior to this request.

The Discipline Committee decided to grant Mr. McKnight's request for an adjournment and communicated this decision to him and to the Investigation Committee's legal counsel, by email, on January 21, 2011. However, the adjournment was granted on the basis that it proceed during the week of May 9 to 13, 2011, which was when the Discipline Committee next planned to meet for hearings. The Discipline Committee also explained its reasons for granting the adjournment: the allegations against Mr. McKnight were serious and therefore as full disclosure as possible was warranted; full disclosure includes disclosure of the transcripts of the interviews; and because the transcripts were not immediately available, an adjournment was appropriate so that they could be provided. The Discipline Committee also noted that in granting the Member's request, it took into account the fact that the Member had not renewed his license to practice as an LPN for 2011 and therefore, granting the adjournment presented no public safety concerns. The Discipline Committee also noted that SALPN would likely incur unrecoverable costs as a result of an adjournment at this late date but that factor would be taken into account when the matter comes before the Discipline Committee for hearing.

On April 29, 2011, the Investigation Committee sent a letter by registered mail to the Member at the address last known to the Registrar (which was the same address to which the Notice of Hearing had been sent). The letter indicates that the hearing is set to proceed on May 12, 2011 at 9:00 a.m. at the Ramada Hotel in Prince Albert, Saskatchewan. In the letter and at the hearing on May 12, 2011, it was noted that legal counsel had tried to reach the Member by phone and by email without response. At the hearing, legal counsel for the Investigation Committee also indicated that the transcripts had been prepared and

delivered to the Member. Legal counsel had also not received any communications from the Member since sending the April 29, 2011 letter.

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 Mr. McKnight in attendance provided there is adequate proof that the Notice of Hearing dated December 13, 2010, setting out the date, time and place of the hearing, was served on Mr. McKnight 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 Mr. McKnight was made such that it was proper to proceed with the discipline hearing in his absence. The Notice of Hearing was sent on December 14, 2010 by registered mail to Mr. McKnight at his last known address according to the Registrar of SALPN. Whether or not Mr. McKnight accepted, picked up or signed for the registered mail that contained the Formal Complaint and Notice of Hearing on December 15, 2010, 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 December 21, 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 Mr. McKnight did not receive the Notice of Hearing and Formal Complaint through no fault of his own, or that he received it on a later date than the deemed service date of December 21, 2010. In fact, there is ample evidence that Mr. McKnight did receive the Notice of Hearing. Mr. McKnight was obviously aware of the January 2011 hearing dates through the exchange of several email messages with him, legal counsel for the Investigation Committee and the Chairperson of the Discipline Committee on January 21, 2011, concerning his request for an adjournment. Based on all the circumstances, the Discipline Committee found it appropriate to proceed with the hearing in Mr. McKnight's absence.

The fact that the hearing was adjourned and later set for May 12, 2011 does not affect our finding. Through email messages, Mr. McKnight was aware that the hearing would proceed the week of May 9, 2011. Upon being unable to make contact with Mr. McKnight, the Investigation Committee set the date as May 12, 2011. While it is noted that the Investigation Committee sent this letter by registered mail as well (to the same address to which the Notice of Hearing had been sent¹), we find it unnecessary for the Committee to have done so. However, the evidence clearly shows the efforts to which the Investigation Committee went to ensure Mr. McKnight had actual notice of his hearing date. In the circumstances, it is only necessary that the Notice of Hearing be proven to be properly served according to the *Act*, and we find that it has. To find otherwise would be to ignore the provisions of the *Act* cited above and permit

¹ We also note that subsequent to the hearing, Mr. McKnight advised the Chairperson of the Discipline Committee of his current address, which remains the same address to which these documents were sent.

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.

THE COMPLAINT:

The Notice of Hearing contains the following complaint:

That **George McKnight**, a member of the Saskatchewan Association of Licensed Practical Nurses (SALPN), is charged with:

- (a) professional incompetence, contrary to section 23 of *The Licensed Practical Nurses Act, 2000*, by displaying a lack of knowledge, skill or judgment or disregarding the welfare of a member of the public to an extent that demonstrates he is unfit to continue in the practice of nursing or to provide one or more services ordinarily provided as part of the practice of the profession; and/or
- (b) professional misconduct, contrary to section 24 of *The Licensed Practical Nurses Act, 2000*, by engaging in conduct that is harmful to the best interests of the public or its members, tends to harm the standing of the profession, or is a breach of that Act or the bylaws made pursuant to that Act;

in that he did, on or about July 7, 2010 falsify a physician's order for prescription drugs from the Acute and Social Detox Center in Prince Albert where he was employed, and forward the falsified prescription the next day to a pharmacy for the prescription to be filled, in contravention of section 23 and/or section 24 of *The Licensed Practical Nurses Act, 2000* and/or of the first, sixth and ninth provisions of the SALPN Code of Ethics, contrary to section 14 of *The Saskatchewan Association of Licensed Practice Nurses Regulatory Bylaws, 2000*.

EVIDENCE:

██████████ manager of Detox Services of the Prince Albert Parkland Health Region, was called as a witness by the Investigation Committee to give evidence about the Member's actions giving rise to the complaint against him.

Mr. ██████████ works in the Acute and Social Detox Centre and has held this position since August 2009. The facility opened in October 2009 after the development of policies and the hiring and intensive training of staff. Mr. ██████████ has an educational and working background in addictions programming and managing in-patient treatment programs.

The Centre has two units: a "detox unit" and a "social detox unit." In the social detox unit, staff use medications to assist patients' detox. In addition to Mr. ██████████ the Centre employs addictions counsellors and LPN's. At the time of the hearing, there were four full-time, one part-time and 3-4 casual LPNs employed. One doctor provides certain services to the Centre on a regular basis, but is available, on-call, 24-7. The Centre is staffed 24 hours per day, usually with one LPN and one counsellor on the night shift and one LPN and two counsellors on the day shift.

The staff at the Centre uses several “Standard Operating Procedures” (SOPs) in carrying out their work, including how LPN’s are permitted to administer certain medications according to protocols of the doctor. Certain protocols had been put in place so that the patients’ detox can be supported with certain medications, administered by LPNs. For some of the medication protocols, there are doctor’s order forms for the pharmacy that are pre-printed with the necessary medications and the doctor’s signature. Others might be pre-printed with the medications but require the doctor’s original signature before the order is faxed to the pharmacy, while other protocols do not use pre-printed forms at all. For the two latter types, the order forms would be prepared by an LPN and kept in a file for the doctor’s signature when he visits the Centre on Mondays, Wednesdays and Fridays.

Upon a patient’s admittance to the unit, the patient may be started on a medication protocol appropriate to the type of withdrawal he or she is experiencing: opioid, opioid (for a pregnant female), alcohol, or stimulants. The LPN administers medications according to the protocol, first using “Ward Stock” (medications that the Centre keeps on hand) until the medication orders can be filled by the pharmacy. The LPN’s complete the medication order forms according to Standard Operating Procedures and the completed order forms get faxed to the pharmacy. On the orders, the LPN indicates how many of each medication has been administered from Ward Stock (which should then be replenished when the order is delivered to the Centre) and how many the pharmacy should put in a blister pack for the patient.

The standard Operating Procedure concerning “Standard Orders” for “Opioid Withdrawal, Opioid Withdrawal for Pregnant Female, Alcohol Withdrawal, Stimulant Withdrawal, PRN, Nicotine Replacement Therapy, Doctor’s Orders” reads as follows:

- 4.1 Approved and signed Standing Orders are:
 - 4.1.1 Opioid Withdrawal
 - 4.1.2 Opioid Withdrawal for Pregnant Females
 - 4.1.3 Pregnancy Test
 - 4.1.4 Alcohol Withdrawal
 - 4.1.5 Stimulant Withdrawal
 - 4.1.6 PRN
 - 4.1.7 Nicotine Replacement Therapy.
- 4.2 Detox uses 3 Dr. Order Forms
 - 4.2.1 Opioid Withdrawal Medication
 - 4.2.2 Alcohol Withdrawal Medication
 - 4.2.3 Blank form used for Kadian prescription to assist with Opioid Withdrawal for Pregnant Females, other Dr.’s Orders, and PRNs.
- 4.3 Opioid & Alcohol Dr.’s Orders are pre-filled and pre-signed as per Opioid Withdrawal Standing Order and Alcohol Withdrawal Standing Order.
- 4.4 All orders **must** comply with the following procedures.
- 4.5 Enter client name, personal health number, date of birth, treaty # if applicable, and address at the top right of order form.
- 4.6 Enter the date in the left hand column under Date.
- 4.7 Enter amount of pills to be blister packed and sent to Detox under Blister Pack column.
- 4.8 Enter amount of pills given to client prior to delivery of order from pharmacy under Dossette column. This identifies the number of pills used from Detox Ward Stock to be replaced.

- 4.9 Enter *“As per Opioid (or) Alcohol (or) Opioid Withdrawal for Pregnant Female (or) PRN Standing Order Dr. Lanoie/LPN signature”*.
- 4.10 Verbal Orders can be taken over the phone by the LPN on shift from the Detox physician and faxed to pharmacy. Place the order form in the **“To Be Signed”** folder in the mail cabinet – these are to be signed by the physician on next Dr. Visit and is the responsibility of the LPN on shift when the Dr. attends Detox.
- 4.11 Corrections/changes/additions are **only** made due to a verbal Dr.’s order.
 - 4.11.1 Corrections/changes require a one-line strike-through **only** with LPN signature – **do not white-out or scribble out**
 - 4.11.2 All corrections/changes/additions to a Dr.’s Order can be faxed immediately to ensure the client receives their medication, but **must** also be signed by the Detox physician on next Dr.’s Visit.
- 4.12 Kadian orders are **not** pre-filled or pre-signed by the Detox physician.
 - 4.12.1 These are used primarily for pregnant females withdrawing from opioids and must be hand written after a verbal order by the Detox physician then signed by the LPN (placed in **“To Be Signed”** folder and signed by Detox physician on next Dr. Visit), or hand written and signed by the physician.
- 4.13 PRN orders are handwritten and must comply with the PRN Standing Order and with all the above requirements. These can be faxed without physician signature but must be signed on next Dr.’s Visit.
- 4.14 Detox physicians shall give telephone or verbal orders to an LPN with medication administration. The nurse shall:
 - 4.14.1 Write the order as stated, indicating date and time;
 - 4.14.2 Read the order back to the physician;
 - 4.14.3 Label as verbal or telephone order;
 - 4.14.4 Sign the order.
- 4.15 The Detox physician will countersign the order on the next Dr.’s Visit.
- 4.16 When closing a client file all original MARS, Nurses’ Notes, Dr.’s Orders and Mental Health Nurse’s Notes shall be placed on the left side of client file folder.

Mr. ██████ testified that in the early evening of July 9, 2010, he got a phone call at home from a very experienced casual/relief LPN, indicating she had found a copy of a Kadian medication order on the photocopier machine that appeared to have been tampered with. She recognized the order form as the original order she had written out two days’ prior (on July 7, 2010) that was awaiting the doctor’s signature. However, the form she found had another piece of paper, with the Dr.’s signature on it, cut and fit on top of the original Kadian order form so that it appeared to be a Kadian medication order signed by the doctor.

Mr. ██████ investigated the matter. He discovered that during the afternoon of July 7, 2010, a pregnant female was admitted to detox and the LPN on duty administered the protocol for Kadian. It appeared that the LPN properly filled out a blank form according to the standing order and placed it in the file folder **“To Be Signed”** which contained all medication orders the Dr. would need to sign when he next attended the Centre (which would have been Friday, July 9, 2010). Mr. ██████ contacted the pharmacy and they indicated that they received the order for Kadian and had filled it. When Mr. ██████ viewed the document the pharmacy received by fax, it was clearly a copy of the original Kadian order form with the

additional portion of the form that contained the Dr.'s signature, as found in the Centre's photocopier. Copies of all of these documents were provided at the hearing and it was obvious that the document received by the pharmacy was comprised of the two order forms put together, as found on the photocopier.

Mr. ██████ determined that Mr. McKnight was the only LPN on duty at the time that the Kadian order was faxed to the pharmacy (July 8th day shift), which was the day before the LPN discovered the tampered with document on the photocopier. Mr. ██████ was of the view that not only had Mr. McKnight failed to follow Protocol, but that the document received by the pharmacy was an illegal one. It should have had the doctor's original signature on it before it was faxed to the pharmacy.

Mr. ██████ and human resources personnel met with Mr. McKnight and a union representative. When confronted with the information, Mr. McKnight acknowledged that he had added the doctor's signature to the Kadian order, but suggested he was not really responsible for the problem, blaming Mr. ██████ for there being a lot of confusion in the workplace. Mr. ██████ said that the employer immediately gave Mr. McKnight a four week suspension with pay.

Mr. ██████ testified that the Member, George McKnight, was hired on November 24, 2009 and worked his first orientation shift November 25, 2009. He had two 12-hour shifts of orientation; one day shift (on a day the doctor visits) and one night shift. He indicated that Mr. McKnight was guaranteed two night shifts per week and he was on the casual/relief list to be contacted to work day or night shifts. Between the end of November 2009 and early July 2010 when the incident in question occurred, Mr. McKnight worked 55 of 75 shifts offered, not including the time period he was off work in receipt of Workers' Compensation benefits (May 4 to June 2, 2010).

Mr. ██████ reviewed Mr. McKnight's attendance at the various staff meetings held and the memos circulated among staff for which Mr. McKnight needed to indicate he had reviewed. Although Mr. McKnight was absent during the first mandatory staff meeting in December 2009, and did not sign the minutes for over one month, he did attend a protocol in-service. Mr. McKnight's compliance with signing off on memos distributed in the workplace (concerning new or revised procedures) was a bit sporadic although he did sign off on the majority.

Mr. ██████ also testified that upon returning from leave due to a workplace injury, beginning on June 2, 2010, Mr. McKnight followed a gradual return to work program of shifts of four hours, 6 hours and 8 hours, shadowing an LPN on duty, before working a full 12-hour shift on July 6, 2010. Mr. ██████ noted the dates that Mr. McKnight has worked with a pregnant female client on the Kadian Protocol: three night shifts in February 2010, two day shifts in March 2010, one day shift in April 2010, one night shift in June 2010 and on July 6 and 8, 2010. Mr. ██████ stated that even though Mr. McKnight had not filled out any Kadian medication orders during this time, he had taken care of such patients and administered medications according to the protocol and therefore would have known the protocol.

Mr. ██████ testified that there really appeared to be no reason for Mr. McKnight doing what he did. There were no consequences to his actions (aside from them being illegal), and there were no problems with their medication count. His actions did not help a patient.

SALPN Investigator, Della Bartzen, testified on behalf of the Investigation Committee. Ms. Bartzen had 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 during her investigation, she spoke to the Vice President of Primary Care of the Health Region and with the Member. She said that during her interview with the Member, he admitted that he had tampered with the doctor's order by attaching the doctor's signature to the order and faxing it to the pharmacy. He said he had been very busy on that day and was aware that orders should be sent to the pharmacy as soon as possible. He acknowledged that he hadn't filled out the original order form, but during what was an overwhelming day, his desk was messy, and he noticed this order sitting on the desk. His immediate thought was that he needed to fax the order in as soon as possible because management always wanted the ward stock replenished as soon as possible. He stated that he cut out the doctor's signature from a similar order form and placed it on the original completed form and photocopied it, using the copy to fax to the pharmacy.

Ms. Bartzen also testified that the Member expressed the view that he hadn't done anything wrong; that he wasn't trying to get drugs illegally or use the doctor's signature improperly. Ms. Bartzen stated that the Member indicated that now that he's had time to think about it, he realizes that what he'd done "doesn't look good."

A copy of the transcript of Ms. Bartzen's interview with the Member was filed at the hearing. It is 18 pages in length. In summary, it is clear that the Member admits to the conduct in question. The Member indicated that he was aware that any doctor's orders for Kadian cannot be sent to the pharmacy without the doctor's original signature; this protocol is not the same as some others they follow where copies of pre-printed blank forms with the doctor's signature already on it are sent to the pharmacy. The Member was also aware that the doctor attended the Centre for an hour on Mondays, Wednesdays and Fridays and that the completed forms for Kadian are to be kept aside to be signed by the doctor on those days. He also acknowledged that the original order form had been filled out by a different LPN the day before.

The Member's reasons for doing what he did (as indicated at that interview) are less clear. At one point, he indicated that at the time, he "didn't really think about it;" stating that he may have done it because if the patient leaves the Centre before the order has been filled and she's been given the drugs from the Centre, the Centre loses money. He said that it was a busy day in the Centre (he'd been dealing with an unusual situation and it was taking up a lot of his time), the papers on the desk were all messed up, and he discovered this form and just thought "it should have been signed and gone." He said that there were times where people grabbed the wrong form (one without a doctor's signature rather than one with) for the protocol they were following. He didn't really look at the document and handled it the "fastest way" he could. He said he was in a hurry, so much so that he left the document he'd tampered with in the photocopier. He realized, after the fact, that what he did was wrong. However, at one point, he suggested that if the drug in question was not a narcotic, perhaps it wasn't "falsifying," although he went on to agree that he doesn't have a right to put a doctor's signature on any document he chooses to fill out. He said he now understands that if there's no signature on an order, "you don't touch it or just leave it." The Member went on to suggest that part of the problem is that with one LPN working, there is no one to go to to ask questions; that the manager is not a nurse and does not know about the drugs used in the

protocols. He stated that if a doctor was at the Centre, he could ask the doctor questions. The Member denied that he was attempting to steal drugs – that if he wanted to do that, the drugs are just sitting in the cupboard.

SUBMISSIONS:

Legal counsel for the Investigation Committee submitted that Mr. McKnight's conduct, that is, falsifying a physician's order, 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 (including the Code of Ethics) made pursuant to the *Act*.

Legal counsel noted that the Member first became licensed as an LPN in April 2009, but that it is startling that he would believe there was nothing wrong with using someone's signature, especially a doctor's signature on a prescription. Counsel submitted that even though the Member's conduct might be considered professional incompetence, it is clearly professional misconduct in that it is harmful to the best interests of the members and the public, and that respect for SALPN would be lessened if nothing was done about Mr. McKnight's conduct. Counsel also suggested that the Member's conduct was also likely in contravention of the legislation regarding narcotics. In this case, there appeared to be no urgency to getting the medications in question and Mr. McKnight has worked in the Centre long enough to know the protocols and procedures. Mr. McKnight's conduct raises concerns about what he might do if he encountered an urgent situation. If he could get away with this type of conduct, what else might he do? At worst, his conduct could be viewed as deliberate in nature, which would be very disturbing. At best, his conduct demonstrates extremely bad judgment.

With respect to appropriate penalties for Mr. McKnight's professional misconduct, legal counsel for the Investigation Committee suggested that it will depend on how the Discipline Committee views Mr. McKnight's conduct. Legal counsel submitted that if the Discipline Committee views the Member's conduct as deliberate in nature, an appropriate penalty for his professional misconduct is expulsion. On the other hand, if the Discipline Committee views the conduct as simply an exercise in poor judgment, the Investigation Committee urged the Discipline Committee to consider an order that he work under supervision, a requirement that he submit performance appraisals to SALPN, and an order to pay the full costs of the investigative and disciplinary processes, including that incurred as a result of Mr. McKnight's late request for an adjournment.

Counsel submitted that the Member's serious lack of judgment demonstrates that he should not work alone. For at least some period of time, the Member should be required to work under the supervision of an LPN. In addition, periodic assessments of the Member's work should be done to ensure he demonstrates maturity in decision-making. Counsel also submitted that an order that the Member pay the full costs of the proceedings is appropriate, particularly in light of the fact that much expense was incurred by SALPN that was unnecessary. It was suggested that at a minimum, any costs incurred since the date of Mr. McKnight's request for an adjournment (January 21, 2011) should be included in the order. Costs were thrown away as a result of the Member's late request for an adjournment in circumstances where he requested transcripts of interviews be prepared and then he does not attend his hearing on the adjourned date and refuses all communication with the Investigation Committee during the

time in between. Counsel noted that prior to January 21, 2011, the Member had been involved in discussions with legal counsel with a view to resolving the complaint through an agreed statement of facts to present to the Discipline Committee. The order should include the costs of the hearing, including travel of all committee members, as well as the legal costs of the Investigation Committee and the Discipline Committee. While those costs were unknown at the time of the hearing, counsel suggested that the Discipline Committee's order could require the payment of specified costs as certified by the Executive Director within 30 days of the Discipline Committee's order.

DECISION:

The primary issues before the Discipline Committee are whether Mr. McKnight did falsify a physician's order and if so, whether his conduct 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*. We have decided not to consider whether his conduct might also amount to "professional incompetence" as defined in s. 23 of the *Act* as it is unnecessary to do so in this case and the conduct, if proven, would appear more in the nature of professional misconduct.

In order to make a finding that Mr. McKnight is guilty of professional misconduct warranting the imposition of discipline, his 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.*

The Discipline Committee finds that Mr. McKnight did in fact falsify or at least tamper with, a physician's order, specifically, a doctor's prescription for the drug, Kadian. His conduct was in violation of the very strict protocols in place at the Centre for handling narcotic and non-narcotic medications for which a doctor's order is required. His conduct, in using a copy of a doctor's signature to secure an order from the pharmacy that, according to the protocols, must have the doctor's original signature, was clearly inappropriate. Mr. McKnight admitted to this conduct and agreed it was wrong and in violation of protocol. In the circumstances, the Discipline Committee finds the Member's conduct to be "professional misconduct" as defined by the *Act*. This is so whether his conduct is viewed as deliberate or as an exercise in poor judgment. We are not suggesting that the Member's conduct was criminal in nature, as may be suggested by use of the word "falsifying." It is not within our mandate to make such a determination. In our view, Mr. McKnight's conduct is harmful to the best interests of the public and the members because it is critical that LPNs precisely follow any medication protocols developed by their

facility. Protocols generally represent an exception to the rules and in this case, where the Centre is using narcotic medications (in addition to non-narcotics) in the treatment of serious addictions, the need for LPNs to follow protocol, including administrative procedures, is absolutely critical. Public and patient safety depends on it. Furthermore, Mr. McKnight's conduct tends to harm the standing of the profession. LPNs have recently been entrusted with the administration of medications. Mr. McKnight's conduct could be seen to demonstrate the inability of LPNs, as a profession, to handle this task. Mr. McKnight's misconduct reflects poorly on the reputation and standing of all members of the profession.

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. An important part of self-regulation is maintaining and enforcing high standards within the profession. With these considerations in mind, it is our view that Mr. McKnight's conduct 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 standards of medication administration and that patient safety is not put at risk. We also find that Mr. McKnight'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, the status of all members of the profession declines, as does public confidence in SALPN to properly regulate the profession.

PENALTY:

Having found Mr. McKnight guilty of professional misconduct pursuant to sections 24(a) and 24(b), 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 Mr. McKnight in response to the finding of professional misconduct. We have concluded that Mr. McKnight's conduct was an exercise of extremely poor judgment, particularly given his education. Based on his work experience in the Centre, including with patients on the Kadian protocol, the Member should have understood his responsibilities. There is simply no valid excuse for his conduct – it was more than a mere oversight given the steps he would have taken to create the order form he sent to the pharmacy. The “fastest way” to deal with the document would have been to leave it alone, or to look at it more carefully and realize it needed to go back into the file folder of forms to be signed by the doctor. While the evidence did not appear to suggest that his conduct was deliberate in the sense that he created the document to obtain drugs improperly (for himself or otherwise), it is our view that the Member exercised extremely poor judgment and engaged in very serious misconduct. While we have not decided to expel Mr. McKnight, it is for these reasons that we have considered additional orders directed to what we see as the root problem of his actions.

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 expulsion, should the conduct reoccur. Although not requested by the Investigation Committee, the Discipline Committee finds it appropriate to issue a formal reprimand against Mr. McKnight for his professional misconduct.

Courses:

Legal counsel for the Investigation Committee did not request that the Discipline Committee order that Mr. McKnight take any courses, however, because the Member's conduct appear to stem from inadequate education or inadequate understanding of the education he received, we find it appropriate to make orders directing Mr. McKnight to take two SIAST courses: "Roles, Responsibilities and Ethics" and "Medication Administration." Based upon our knowledge of the first course, we find that it is appropriate to require Mr. McKnight 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. We also find it appropriate that Mr. McKnight be ordered to take the Administration of Medications course as it will provide Mr. McKnight with a comprehensive review of the necessary rules and procedures. Given his initial lack of insight into the significance of his misconduct as well as some of the reasons he gave for doing what he did, we find that such a review is important. Mr. McKnight needs to clearly understand and appreciate the rules so that there is a greater likelihood that he will exercise better judgment in the future.

It is also the Discipline Committee's view that these courses need to be completed prior to Mr. McKnight's renewing his license to practice. We are aware that he had not renewed his license as of the date of the hearing in 2011 but because we do not have evidence of his current licensing status, we will order the suspension of his license until these courses are completed.

The Discipline Committee will therefore order that Mr. McKnight's license be suspended until he completes the SIAST courses, "Roles, Responsibilities and Ethics" and "Administration of Medications" at his own cost.

Supervision and Performance Appraisals:

The Investigation Committee asked that we consider ordering that the Member not be permitted to practice without the supervision of an LPN for a period of time and that it be required that his employer submit performance appraisals for a period of time. We agree with an order of supervision, however, we find it appropriate that the supervision be by an RN and not an LPN, given that LPNs do not ordinarily supervise other LPNs and because of the seriousness of the Member's conduct. We do not find it appropriate to require the Member's employer to file performance appraisals because this is a very difficult order to enforce – we cannot direct an employer to comply with such an order. However, we will direct that that Mr. McKnight notify any employer he has of the orders made by this Discipline Committee. Both conditions will be in effect for a period of 12 months.

Costs:

The Investigation Committee asked that the Discipline Committee order Mr. McKnight to pay to SALPN the full actual costs associated with 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.

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. 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 Mr. McKnight failed to cooperate with the disciplinary process following his request for an adjournment, the Discipline Committee has decided to order that he 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 well in excess of \$5,000.00. Given the finding of professional misconduct against Mr. McKnight and his lack of cooperation with the hearing process that necessitated a full disciplinary hearing and its associated costs, as well as the costs associated with the adjournment (because he failed to participate following that request), the Discipline Committee orders that Mr. McKnight pay partial costs in the amount of \$2,000.00. We have ordered a partial payment of costs rather than full costs by taking into account the fact that Mr. McKnight will have a financial impact on him as a result of our other orders.

Notification of Employer:

We agree that it is appropriate to make an order that Mr. McKnight'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. We wish to make it clear that we are not ordering the notification to the Employer for any reasons other than they are entitled to notification of the outcome of this complaint, as the Member's current employer. Proceedings against a member under the *Act* are entirely separate from any an Employer might choose to take against an employee in relation to the same conduct giving rise to the complaint to SALPN.

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

1. That George McKnight be formally reprimanded;
2. That SALPN will inform Mr. McKnight's employer of this finding of professional misconduct and the Orders made against Mr. McKnight, by sending his employer a copy of this decision; and
3. That George McKnight not be permitted to renew his license to practice as a Licensed Practical Nurse or, if he is currently licensed, that his license to practice be suspended, until completion of the following conditions:

- (a) That George McKnight successfully complete the course titled “Roles, Responsibilities and Ethics for LPNs,” available through SIAST, at his own expense and to provide Cara Brewster, Registrar of SALPN, with proof of successful completion;
 - (b) That George McKnight successfully complete the course titled “Medication Administration” available through SIAST, at his own expense and to provide Cara Brewster, Registrar of SALPN, with proof of successful completion;
 - (c) That Mr. McKnight pay to SALPN the sum of \$2,000.00, representing partial payment of the costs of the discipline process;
4. That upon completion of the requirements in paragraph 3 and the renewal or reinstatement of his license, Mr. McKnight will be subject to the following conditions for the first 12 month of his employment as an LPN:
 - (a) That he advise any employer of all of the terms of these orders made by the Discipline Committee; and
 - (b) That he work under the supervision of a Registered Nurse;
5. Should Mr. McKnight fail to comply with any of the conditions set out in paragraphs 4(a) and (b) of this order, Mr. McKnight’s license shall be immediately suspended until the date on which the failure is remedied.

DATED at Regina, Saskatchewan, this 4th day of April, 2012.

**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