

IN THE MATTER OF *THE LICENSED PRACTICAL NURSES ACT, 2000* AND
BYLAWS AND IN THE MATTER OF A COMPLAINT AGAINST LICENSED
PRACTICAL NURSE, ANDREA MOLLEKEN, OF REGINA,
SASKATCHEWAN

DECISION OF:

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

INTRODUCTION:

The hearing by the Discipline Committee into the complaints against Andrea Molleken (referred to as “the Member”) was convened in the Cedar Room of the Ramada Hotel in Regina, Saskatchewan, on September 4, 2013 being the location and the date set out in a Notice of Hearing dated July 29, 2013.

Ms. Molleken was present at the hearing. Also present at the hearing was Darcia Schirr, Q.C., legal counsel for the Counselling and Investigation Committee of the Saskatchewan Association of Licensed Practical Nurses (referred to as “the Investigation Committee”).

The complaint against Ms. Molleken that is the subject of this hearing involves an allegation of professional misconduct on the basis that Ms. Molleken was convicted of a criminal offence for having stolen money belonging to seniors living at a personal care home at which Ms. Molleken worked.

At the outset of the hearing, legal counsel for the Investigation Committee entered into evidence a copy of the Affidavit of Personal Service (Exhibit P-1) which proves that the Notice of Hearing was served on the Member on August 5, 2013.

Also at the outset of the hearing, legal counsel sought an amendment of the formal complaint to add clarity to the basis upon which *The Licensed Practical Nurses Act, 2000* and *Bylaws* are alleged to have been breached as a result of the Member’s *Criminal Code* conviction. In the original formal complaint (attached as Appendix A to the Notice of Hearing), the provisions allegedly breached include s. 24 of the *Act*, the *Code of Ethics* in the *Regulatory Bylaws* and certain principles in the *Code of Ethics for Licensed Practical Nurses in Canada*. The proposed amendment to the formal complaint is the addition of s. 32 of the *Act* which sets out the circumstances in which a criminal conviction may amount to professional misconduct. Legal

counsel for the Investigation Committee indicated that it was an oversight to have failed to include reference to s. 32 in the formal complaint and that the Member was not opposed to the proposed amendment. The Member confirmed that she had no objection and the Discipline Committee accepted the amendment to the formal complaint. The amended formal complaint (Exhibit A to the Notice of Hearing) was entered as Exhibit P-2.

EVIDENCE:

Following the preliminary matters at the hearing, an Agreed Statement of Facts was filed with the Discipline Committee. The documents referred to in the Agreed Statement of Facts were provided to the Discipline Committee but are not all reproduced in this Decision. The Agreed Statement of Facts states:

1. *Andrea Molleken of the City of Regina, in the Province of Saskatchewan is a licensed practical nurse and a member of the Saskatchewan Association of Licensed Practical Nurses (the "Association").*
2. *Ms. Molleken first registered with the Association in November, 1992. She did not renew her membership for the years 1993 through 1995 inclusive. In July, 1996, Ms. Molleken renewed her license but she did not renew it for the 1997 year. On April 24, 1998, Ms. Molleken renewed her membership as a practising nurse and she has remained a practising member on a continuous basis since then.*
3. *On January 9, 2013, the Association received a complaint letter from Jackie Hickie at the Pasqua Hospital, Regina Qu'Appelle Health Region. Attached at Tab A is the complaint letter.*
4. *Upon receipt of this letter, the Counselling and Investigation Committee began an investigation as required under section 26 of the Licensed Practical Nurses Act, 2000 (the "Act"). Documents were gathered and both Ms. Molleken and the complainant were interviewed.*
5. *On February 8, 2013, Ms. Molleken began employment on a casual basis at William Albert House in Emerald Park outside Regina. William Albert House is a personal care home.*
6. *On June 11, 2013, a newspaper article appeared in the Regina Leader Post with the caption "Former Care Home Nurse Sentenced for Theft". The nurse referred to in the article was Andrea Molleken. Attached at Tab B is the newspaper article.*
7. *Ms. Molleken appeared before His Honour Judge Lang in Regina Provincial Court on June 10, 2013 and entered a guilty plea to the theft charge. The court ordered that Ms. Molleken be imprisoned for a term of six months which she could serve in the community subject to certain conditions. Further the court ordered that restitution in the amount of \$3,900.00 be paid to William Albert House. Attached is the following:*

- (a) *Tab C – Information No. 24493861 sworn May 31, 2013, court endorsement for June 10, 2013 and Ms. Molleken’s criminal record;*
 - (b) *Tab D – Conditional Sentence Order;*
 - (c) *Tab E – Restitution Order;*
 - (d) *Tab F – Transcript of the sentencing proceedings held June 10, 2013.*
- 8. *The Counselling and Investigation Committee was not aware that Ms. Molleken had commenced employment at William Albert House nor was the Committee aware that she had been charged and convicted of theft until the newspaper article was published.*
- 9. *Ms. Molleken’s ceased employment at William Albert House on February 23, 2013. In March, 2013, Ms. Molleken began employment at the Pasqua Hospital, Emergency Department. She is now on a leave of absence with accommodation.*
- 10. *Ms. Molleken has executed an agreement in which she has voluntarily ceased to practice pending the outcome of this discipline hearing. Attached at Tab G is the Agreement dated June 26, 2013.*
- 11. *The Conditional Sentence Order provides, inter alia, that Ms. Molleken must participate in an assessment and complete programming related to gambling addiction. Ms. Molleken has been attending at Addiction Services through the Regina Qu’Appelle Health Region. Attached at Tab H is letter dated August 27, 2013 from Andrea Rines, Problem Gambling Program, Addiction Services.*
- 12. *Ms. Molleken’s conviction under section 334(b) of the Criminal Code raises section 32 of the Act which is as follows:*
 - 32 The discipline committee may make any order pursuant to section 30, where:*
 - (a) *the member has been convicted of an offence pursuant to the Criminal Code, the Narcotic Control Act (Canada), the Controlled Substances Act (Canada) or the Food and Drug Act (Canada);*
 - (b) *a report of the counselling and investigation committee is made to the discipline committee respecting the conviction mentioned in clause (a);*
 - (c) *the discipline committee has given the member mentioned in clause (a) an opportunity to be heard; and*
 - (d) *the discipline committee finds that the conduct of the member giving rise to the conviction is professional misconduct*
- 13. *Attached at Tab I is the report of the Counselling and Investigation Committee to the Discipline Committee which is made pursuant to section 32(b) of the Act.*

14. *On August 5, 2013, M. Molleken was served with a Notice of Discipline Hearing. Andrea Molleken admits that her theft conviction and the facts underlying that conviction amount to professional misconduct as that term is defined in section 24 of the Act and amount to a breach of the Code of Ethics provisions particularized in Amended Appendix A.*

As indicated above, not all of the documents referenced in the Agreed Statement of Facts have been reproduced in this decision, however, because some of the information in those documents is particularly relevant and requires an understanding beyond that which is set out in the Agreed Statement of Facts, it is necessary to include excerpts from those documents in this decision.

The initial complaint letter received by SALPN on January 9, 2013 from Jackie Hickie at the Pasqua Hospital, Regina Qu'Appelle Health Region (referenced as Tab A) states as follows:

Ms. Molleken has been employed, by the Regina Qu'Appelle Health Region, in an LPN position on the Alternate Level of Care Unit (Unit 4B, Pasqua Hospital). I am submitting a formal complaint about this LPN.

On November 15, 2012, Ms. Molleken was placed on a Thirty (30) Day Unpaid Suspension for the following reasons:

- *It was determined that, on at least three (3) different occasions, Ms. Molleken was responsible for theft of property and money from patients and family members. The specific dates are August 8, 2012, September 25, 2012 and September 26, 2012.*
- *It was determined that Ms. Molleken failed to follow proper agency procedures in reporting the thefts.*
- *It was determined that Ms. Molleken was less than truthful during the course of the investigations.*

While these are serious offences, they are considered especially egregious because patients on the Alternate Level of Care Unit are vulnerable by virtue of age, frailty and/or cognitive impairments.

Ms. Molleken has been advised that upon her return to work, that the employer is restricting the areas where she can work, to exclude those with especially vulnerable patients.

The theft charge referred to in paragraphs 6 through 8 relate to thefts committed by the Member while she was employed at the personal care home, William Albert House (i.e. they do not relate to the initial theft allegations that occurred in 2012 at the Pasqua Hospital and provided the basis for a complaint to SALPN by Ms. Hickie of the RQHR). On June 10, 2013, when the Member entered a guilty plea in Provincial Court to the theft charge, a sentencing hearing was held. The

following is an excerpt of the transcript of those court proceedings (as referenced at Tab F of the Agreed Statement of Facts):

CROWN PROSECUTOR: *The situation, Your Honour, between the dates indicated, February 8th and 22nd, RCMP received a complaint from the William Albert House, which is a home for seniors in Emerald Park, Saskatchewan. The money had been taken by a member of the nursing staff, who is Ms. Molleken. Money was in a comfort fund for residence for their personal care; haircuts and things of the like.*

The money was kept in a cabinet of the main office of the nursing home. Only the nurses had the keys for the main office, however, there's some extra keys hidden that some employees knew about. An internal investigation was completed by the RCMP. They noted that Ms. Molleken was hired as a nurse just prior to the money going missing, and since was terminated for other reasons.

In interviewing her, she admitted to the theft of the money. She said she took some money in the middle of the month, the rest about a week before, which was consistent with the complaints the RCMP received. She admitted she took the money and went straight to Casino Regina. She said she's been struggling with a gambling addiction. The loss they - - they're claiming is just shy of \$4,000. She admitted she guessed the total to be between 3,800 and 4,000, so I'd ask there be restitution, stand alone restitution order as part of the sentence for \$3,900 to the William Albert House in Emerald Park.

Now, Ms. Molleker has - - or Molleken, I'm sorry, has two teenage children, the younger of the children is 17 and special needs. He was diagnosed and treated for brain cancer when he was seven, and his treatment left him with an acquired brain injury, which he would always need care. The police report notes that Ms. Molleker [sic] has been going through heavy stress and has had to take ownership of a gambling addiction in the past few months, when she was confronted with her parents.

She's bound [barred] herself at the casino, taking a problem gambling course, and visits her family doctor. She was emotional in her statement and numerous times she said she felt good that she had someone to talk to this about. She said her problem started about five years ago, when she received a large lump sum of back payment money from the disability tax credit for her son's disability. She has had grief, loss, difficult issues dealing with her son's illness and his disability. She's currently going through a separation from her husband, has moved to a new home in the past few weeks.

It's a situation where she does not have a - - I believe she has a dated criminal record from 1989, Your Honour. I'll just find that. The record is acknowledged, Your Honour.

She had indicated she wished to be, I would suggest, recommended for Alt Measures. The Crown, on these kind of files, does not send them to Alt Measures. It's normally a situation, Your Honour, there's a breach of trust factor here. For the absolute minimum the Crown will be asking the Court to consider a conditional sentence. We're dealing with a senior's home, very vulnerable victims.

Having said that, there are extenuating circumstances here that - - she's willing to pay restitution and she's had some extreme hardships, and she has an addiction she has to take care of. The Crown's of the view that a community sentence would be appropriate for her. I would suggest the

terms of the disposition to keep the peace and be of good behaviour, to attend court, report to Probation Services, follow their direction. With respect to programming with respect to gambling addictions, any other personal counselling that Probation Services may deem appropriate. And finally, a standalone restitution order in the amount of \$3,900 payable to the William Albert House in Emerald Park, Saskatchewan.

...

THE COURT: *Okay. Ma'am, this is a -- this is a fairly significant case, and the reason for it is because, you know, you -- you were basically in a position of trust with respect to these people, and -- and you took their money. So it sort of elevates it to something a whole lot different than even, you know, going into a store and stealing a chocolate bar or something like that. It's much more significant than that.*

The prosecutor, and I think rightfully so, is -- is -- really what he's asking for is a -- is a term of imprisonment, but allow you to serve it in the community. But that shows you how significant this is. I mean, we could easily, for an offence like this, you could easily be -- be imprisoned for -- for an offence like this.

What I'm going to do, I'm going to -- I am going to order you to six months in prison, however, I'm going to allow you to serve it in the community under the conditions that you keep the peace and be of good behaviour, that you appear before the Court when required to do so by the Court. That you report to your supervisor within two working days after today's date, and then when required thereafter. That you remain in the jurisdiction of the court unless written permission to go outside that jurisdiction is obtained from your court supervisor. That you notify your Court -- sorry, your supervisor in advance of any changes of name or address, and promptly notify the supervisor of any change of employment or -- sorry, any employment or occupation.

Also, I'm going to order that you participate in any assessment and complete programming for addictions, and specifically including gambling, and that you participate in assessments and complete programming for any personal counselling that you may need.

I'm also going to order that you make restitution by paying to the Provincial Court of Regina, Saskatchewan, the sum of \$3,900 in trust for Albert -- sorry, William Albert House at Emerald Park. And I will allow you the full six months to make that -- that payment. So you -- you could do it in installments or you can do it in one lump sum, but make sure it gets done, otherwise it'll -- it'll be a breach.

Paragraph 11 of the Agreed Statement of Facts refers to the Court's Conditional Sentence Order that the Member participate in an assessment and complete programming related to gambling addictions. It also references a letter dated August 27, 2013 from a representative of the Problem Gambling Program, Addiction Services, RQHR (referenced as Tab H). This letter, obtained at the request of Ms. Schirr on behalf of the Investigation Committee, outlines the services provided to the Member. The letter notes that the Member has been involved in the program since 2012, which was after the alleged thefts at the Pasqua Hospital, but prior to the Member's

employment at William Albert House, where the Member committed the thefts for which she was criminally charged. The letter outlines both the treatment the Member received prior to the criminal charge and conviction as well as the treatment plan developed in response to the Conditional Order of the Court. The letter states:

*As per your request and Release of Information document, this letter is written as a summary of the services provided to the above mentioned client. Please note that **Andrea Molleken** has been involved with the Problem Gambling Program at Regina Qu'Appelle Health Region since 2012.*

Initial services were provided to Andrea beginning December 19, 2012 at which time, she was seen for intake and screening. It was found that Andrea met the criteria for probably pathological gambling. Please note that this conclusion is "probable" based on my clinical opinion and assessment. Should a formal diagnosis be required, it can only be obtained from a registered psychiatrist or a registered psychologist.

To date, Andrea has attended ten individual counselling appointments. She attended Phase I of the Problem Gambling Day Treatment Program for the week of January 7th to 11th, 2013 and Phase II of the program for the week of June 17th to 21st, 2013. Andrea has also regularly attended the weekly RQHR Problem Gambling Women's Support Group.

Further recommendations have been made to Andrea in accordance to the court ordered conditional sentence conditions. The treatment plan includes continued clinical services in the form of regular attendance to individual counselling appointments as well as continued regular attendance to weekly support group meetings at RQHR and/or Gambler's Anonymous meetings.

It has been found that Andrea has been quite compliant and has participated willingly in the above programming. She appears to have remorse for her actions and to have insight into her situation. Please also note that Andrea has increased the time frame from one year to the maximum of a five year term, in an Agreement of voluntary self-exclusion from all Provincial Casinos.

...

In paragraph 10 of the Agreed Statement of Facts, reference is made to a cease practice agreement signed by the Member on June 26, 2013 (referred to as Tab G in the Agreed Statement of Facts but inadvertently placed at Tab I of the Agreed Statement of Facts). This agreement, in which the Member voluntarily agreed to cease practice pending the outcome of the discipline hearing, refers to the alleged thefts at the Pasqua Hospital, acknowledges the thefts at William Albert House and the sentence imposed by the Court, and includes the Member's agreement to obtain counselling/treatment for her gambling addiction. The agreement states as follows:

I, ANDREA MOLLEKEN, do acknowledge and agree to the following:

1. *On November 5, 2012, I received a 30 day unpaid suspension from my employer the Regina Qu'Appelle Health Region after the Health Region alleged that I was responsible for the theft of property and money from patients and family members on the ALC Unit where I worked.*
2. *In early February, 2013, I began employment as a licensed practical nurse at the William Albert House in Emerald Park which is a personal care home. On May 31, 2013, I was charged with stealing cash from William Albert House contrary to section 334(b) of the Criminal Code. I entered a guilty plea on June 10 2013 and the court ordered that I make restitution of \$3,900.00 and that I be subject to a six month Conditional Sentence Order which included a condition that I complete a gambling addictions program.*
3. *Effective immediately, I will voluntary cease to practice as a licensed practical nurse in Saskatchewan pending the outcome of a discipline hearing by the Discipline Committee under the Licensed Practical Nurses Act, 2000.*
4. *I will not apply for registration or membership with any other licensed practical nursing regulatory body in Canada.*
5. *I will immediately undertake and complete counselling and treatment for my gambling addiction and follow any and all recommendations of the gambling addictions counsellor. I will not discharge myself from the gambling addictions program. I will also provide a Release directed to Greg Wagner, Chair of the Counselling and Investigation Committee so that the Committee may receive a report or information from my gambling addictions counsellor.*
6. *A breach of this Undertaking constitutes professional misconduct contrary to section 24 of the Act.*

In answer to questions posed by the Discipline Committee, legal counsel for the Investigation Committee clarified that the information in paragraphs 3 and 4 of the Agreed Statement of Facts dealing with the initial complaint against the Member filed by the RQHR is provided as background information only. While the Investigation Committee began its investigation into that complaint, once the Member's criminal conviction came to light (concerning the thefts at William Albert House), the Investigation Committee decided to focus on the criminal conviction and the conduct underlying the conviction as a basis for an allegation of professional misconduct. As such, there was no report made to the Discipline Committee recommending it hear and determine a formal complaint with respect to the initial complaint received from the RQHR.

Following the presentation of the Agreed Statement of Facts by legal counsel for the Investigation Committee, the Member submitted two documents for the Discipline Committee's consideration. The first document includes a first page titled "Problem Gambling Progression" and shows the progression of a gambling problem through the stages of Casual Social gambling, Serious Social Gambling, Problem Gambling and Pathological Gambling, and the features of each stage. The second page of that document

explains the “Gambling Action Cycle.” The second document submitted by the Member was an excerpt from the DSM-5 psychiatric classification and diagnostic tool dealing with “Non-Substance Related Disorders – Gambling Disorder” [312.31 (F63.0)]. Both documents were accepted as evidence and identified as M-1 and M-2 respectively.

SUBMISSIONS OF PARTIES:

Counsel for the Investigation Committee submitted that the Discipline Committee should accept the facts as set out in the Agreed Statement of Facts, noting that the Member agreed that the theft conviction and the facts underlying that conviction amount to professional misconduct, as defined by s. 24 of the Act, as well as amount to a breach of the Code of Ethics. Counsel highlighted the seriousness of the conduct underlying the conviction, noting the seriousness with which the Court viewed the conduct when it imposed a sentence of “a six-month jail term, to be served in the community.” Counsel provided the Discipline Committee with a set of proposed penalties for the professional misconduct which Counsel acknowledged are significant but in keeping with the serious nature of the conduct. These proposed penalties include: a suspension of the Member’s license for a period of 3 months; that upon the expiry of the suspension certain practice conditions be imposed including, continuing addictions treatment and for a period of 24 months, not working in a capacity where she has responsibility over finances, notification of any changes to her employment, and providing her employers with copy of the Discipline Committee’s decision; the payment of costs of \$5,000.00; and a direction that SALPN shall publish this decision in its newsletter with the Member’s name identified.

In terms of the proposed penalties, the Counsel submitted that they meet the purposes of orders made by a discipline committee in the context of professional discipline, including specific deterrence, general deterrence, improved competence or rehabilitation and maintaining public confidence in the profession and its ability to regulate itself. With respect to the proposed 3-month suspension, Counsel referenced decisions of other discipline committees in the nursing profession involving thefts, noting that in all cases, the nurse was suspended or her license was revoked. Counsel submitted that the range of suspensions in those decisions was two to nine months. In this case, Counsel submitted that a three month suspension, from the date of the hearing, would be appropriate, noting that the Member will have effectively served a five month suspension if dated from her agreement to cease practice.

With respect to the proposed practice restrictions, Counsel submitted that it is necessary to continue to monitor the Member’s practice, given SALPN’s mandate of the protection of the public. Counsel submitted that it was necessary to impose a condition requiring that the Member continue counselling for her gambling addiction. Counsel indicated that she had asked the counsellor to comment on the need for on-going counselling but the counsellor failed to include this information in the letter that was provided, however, Counsel noted that the Member herself has acknowledged a lifetime need for counselling and support for her addiction. For those reasons, Counsel submitted that this condition on the Member’s practice be open-ended in the sense that she continue counselling for so long as recommended by her addictions counselor. Counsel also proposed that the Registrar of SALPN be permitted to obtain periodic updates from the addictions counsellor.

Counsel submitted that it is also appropriate to impose three other conditions on the Member’s practice for a period of 24 months. Counsel suggested that it was important to put a restriction on the type of

position the Member is employed in, in that she not be permitted to work in any capacity where she may have direct control or responsibility over the finances or financial affairs of her employer or her clients. Counsel believes this to be an important condition given that the thefts that are the subject of these proceedings occurred while the Investigation Committee was investigating the RQHR complaint about the thefts from their facility a few months previously. (In this regard, Counsel made it abundantly clear that the alleged thefts at the RQHR do not form part of the charge before the Discipline Committee; that information was provided only as background, in particular, how the Member's conviction came to the attention of SALPN and how this charge came before the Discipline Committee). Counsel submitted that the additional proposed practice conditions requiring the Member to notify SALPN of any changes to her employment and requiring the Member to provide her employer(s) with a copy of the Discipline Committee's decision are commonplace ones in the circumstances before us.

Counsel also submitted that the Discipline Committee should make an order requiring the Member to pay costs in the amount of \$5,000.00. Counsel submitted an estimate of the costs of investigation and a discipline hearing, noting that these costs exceed \$10,000.00. Counsel suggested that the order may permit that the payment of costs be made over a certain time period, as specified by the Discipline Committee after hearing submissions by the Member. Counsel recognized that the Member has significant financial obligations which include paying a restitution order made by the Court, and that she is currently on disability leave from her employment.

Lastly, Counsel submitted that the Discipline Committee should make an order that SALPN publish this decision in its newsletter and include the identity of the Member in that publication. Counsel noted that it is SALPN's usual practice to publish decisions or at least a digest in its newsletter and that it is appropriate in the circumstances to publish the Member's name. Counsel submitted that the inclusion of a member's identity is the usual practice and acts to enhance public confidence in the system. The publication of decisions generally meets the purposes of specific and general deterrence and has the effect of educating the members. Counsel noted that this Discipline Committee has made one decision in which it directed that the Member's identity be masked. Counsel distinguished that case from the present one by noting that that case involved very private and personal information about the Member.

In response to the submissions of legal counsel for the Investigation Committee, the Member spoke on her own behalf. The Member stated that she agreed with the facts that the Investigation Committee presented to the Discipline Committee and that she agrees to accept the Investigation Committee's proposed orders. The Discipline Committee questioned the Member about her financial situation in order to determine an appropriate time period in which to require the payment of costs, should the Discipline Committee order the payment of costs of \$5,000.00. The Member indicated that she was currently on short term disability and was uncertain about her return to work date, noting that it is possible she will go on long term disability once her short term disability expires. The Member remains employed by the RQHR and she expects to return to a position she successfully bid on in the emergency department. The Member noted that she remains under an employment restriction in that she is prohibited from working in areas of vulnerable patients and she understands that this restriction will remain in place for a five year period. The Member indicated that the restitution order made by the Court requires her to make payment of \$3,900.00 by December 10, 2013 and that she has been making payments into the trust account with

the Court, expecting to make full payment by the due date. The Member indicated that she is solely responsible for the care of two children.

DECISION:

As indicated earlier in this decision, the formal complaint against the Member and brought before the Discipline Committee for hearing included an allegation of professional misconduct under s. 24 of the *Act*, however, at the hearing, the Investigation Committee sought to amend the formal complaint to include an allegation of a violation of s. 32 of the *Act*, a provision that permits the consideration of a member's criminal conviction as a basis for a finding of professional misconduct. Sections 24 and 32 of the *Act* state as follows:

24. *Professional misconduct is a question of fact, but any matter, conduct or thing, whether or not disgraceful or dishonourable, is a 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.*

32 *The discipline committee may make any order pursuant to section 30, where:*

- (a) the member has been convicted of an offence pursuant to the Criminal Code, the Narcotic Control Act (Canada), the Controlled Substances Act (Canada) or the Food and Drug Act (Canada)*
- (b) a report of the counselling and investigation committee is made to the discipline committee respecting the conviction mentioned in clause (a);*
- (c) the discipline committee has given the member mentioned in clause (a) an opportunity to be heard; and*
- (d) the discipline committee finds that the conduct of the member giving rise to the conviction is professional misconduct.*

Based on the wording of these provisions, it matters not whether the Discipline Committee considers s. 24 alone or s. 32 as a basis for determining whether the Member has engaged in professional misconduct that warrants the imposition of penalties under the *Act*. This is because in order to make a finding of professional misconduct under s. 32, the Discipline Committee must be satisfied that the conduct underlying the Member's criminal conviction is "professional misconduct," as that term is defined by s. 24 of the *Act*. In this case, the Investigation Committee specifically referred to the Member's criminal conviction in the formal complaint and it was only an oversight to have not cited s. 32 of the *Act* as the basis for a finding of professional misconduct. Therefore, the initial issue the Discipline Committee will consider is whether the requirements of s. 32 of the *Act* have been met so as to establish the right of the Discipline Committee to make orders against the Member under section 30 of the *Act*. Although the Member has agreed that the conduct underlying her theft conviction is professional misconduct, it is necessary that the Discipline Committee determine whether the requirements of s. 32 have been met.

The evidence demonstrated that the Member was convicted of an offence under the Criminal Code and therefore s. 32(a) has been met. With respect to s. 32(b), a report of the counselling and investigation committee made to the discipline committee respecting the Member's conviction was entered into evidence at the hearing and as such, this requirement was also met. Section 32(c) of the Act was also met by virtue of the discipline hearing held in this matter. The final point for the Discipline Committee to determine is whether "the conduct of the member giving rise to the conviction is "professional misconduct" as required by s. 32(d). In this regard, we must consider whether the Member's conduct, that is, the theft of money from clients under her care at William Albert House constitutes "professional misconduct," as defined in s. 24 of the *Act*.

Professional misconduct covers a broader range of conduct by a member, whether it occurs in the workplace or not. Whether an LPN is guilty of professional misconduct is a question of fact. Based on the definitions sets out in s. 24, professional misconduct is conduct that is harmful to the best interests of the public or the members, tends to harm the standing of the profession, or is a breach of the *Act* or the Bylaws. We note that a breach of the Bylaws includes a breach of the *Code of Ethics* of the profession and that certain provisions of the *Code of Ethics* were set out in the formal complaint as being a basis on which the Investigation Committee asserted that the conduct underlying the Member's conviction gave rise to a breach of the Bylaws. While we note that the formal complaint refers to s. 14 of the Regulatory Bylaws and two of the statements included in the *Code of Ethics* appended to the Regulatory Bylaws, it appears that the Regulatory Bylaws had been amended some months prior to the issuance of the formal complaint. As such, it is the amended Bylaw that should apply in this case. Although the amended Bylaw is not specifically set out in the formal complaint, we find it is open to the Discipline Committee to consider the amended Bylaw in the application of the law to the facts of this case. The amended Bylaw is s. 20 and it reads as follows:

20 All members shall conduct themselves in an honourable and ethical manner, upholding the values of truth, honesty and trustworthiness, and shall observe the standards of conduct set out in the Code of Ethics for Licensed Practical Nurses in Canada approved and adopted by Canadian regulatory agencies as of April 1, 2013.

Although this Bylaw is not set out in the formal complaint, certain references are made in the formal complaint to the *Code of Ethics for Licensed Practical Nurses in Canada*. They are as follows:

PRINCIPLE 3: Responsibility to the Profession

Licensed Practical Nurses have a commitment to their profession and foster the respect and trust of their clients, health care colleagues and the public.

Ethical Responsibilities:

3.1 Maintain the standards of the profession and conduct themselves in a manner that upholds the integrity of the profession.

3.3 Practise in a manner that is consistent with the privilege and responsibility of self-regulation.

PRINCIPLE 5: Responsibility to Self

Licensed Practical Nurses recognize and function within their personal and professional competence and value systems.

Ethical Responsibilities:

5.1 Demonstrate honesty, integrity and trustworthiness in all interactions.

The Discipline Committee finds, on the basis of the evidence presented to it in the Agreed Statement of Facts set out above, additional information provided at the hearing, the submissions of legal counsel for the Investigation Committee, and the member's acknowledgment of professional misconduct, that the conduct giving rise to Andrea Molleken's conviction is professional misconduct within the meaning of section 24 of *The Licensed Practical Nurses Act*.

We find that Ms. Molleken's theft of money belonging to the patients under her care is harmful to the best interests of the public. The licensed practical nurses in the profession are trusted by the members of the public who become their patients or clients, not only to provide care within their scope of practice but to at all times treat them with respect, including the respect of their personal items. Also, Ms. Molleken's conduct clearly harms the standing of the profession. LPNs are in a position of trust and Ms. Molleken's conduct was a breach of that trust, and this reflects poorly on the profession as a whole.

In addition to our finding of professional misconduct under s. 24(a) and (b) of the *Act*, the Discipline Committee also finds that Ms. Molleken's conduct amounts to a breach of the cited provisions from the *Code of Ethics for Licensed Practical Nurses in Canada*. Clearly Ms. Molleken's theft of patients' money is contrary to the requirement to foster the respect and trust of patients and it damages the integrity of the profession. It demonstrate the opposite of honesty, integrity and trustworthiness. For these reasons, we also find that Ms. Molleken's conduct is professional misconduct within the meaning of s. 24(c) of the *Act*.

In conclusion, the Discipline Committee finds that the requirements of s. 32 of the *Act* have been met and the Discipline Committee may therefore make orders under s. 30 of the *Act*.

PENALTY:

After a careful review of the penalties proposed by Counsel for the Investigation Committee and agreed to by the Member, the Discipline Committee finds that, for the most part, the substance of the proposed penalties are appropriate for what we have determined to be professional misconduct by the member. In reaching this conclusion, we accept that 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 very clear and compelling reasons for doing so. Having said this, the Discipline Committee wishes to make some comment about each of the orders it intends to impose.

Firstly, we find that a suspension of the member's license is appropriate in this case. We agree that Ms. Molleken's conduct is very serious and warrants a suspension. In deciding upon a suspension, we have not take into account any facts underlying the initial complaint made by the RQHR. Although it was unclear whether or not the Investigation Committee has issued a report to the Discipline Committee indicating the disposition of that complaint,¹ Counsel for the Investigation Committee clearly indicated that it was not pursuing that complaint and the information underlying that complaint was provided only for background purposes in terms of how the formal complaint before us came to be pursued to a hearing. Counsel proposed the imposition of a three month suspension (from the date of hearing), noting that the Member has effectively served a two month suspension, having signed the cease practice agreement about two months prior to the hearing. The Member is to be commended for voluntarily agreeing to cease practice while the investigation and discipline processes continued. We have taken this factor into consideration, as well as the Member's agreement to the suspension and we order that the Member be suspended for a period of three months from the date of the hearing.

While the Discipline Committee finds that a short period of suspension is appropriate given the seriousness of the Member's misconduct, the Discipline Committee finds it especially important that Ms. Molleken continue with her treatment for her gambling problem/addiction as that appears to have been the cause of the professional misconduct she has engaged in. We agree with a proposed order that the Member continue with treatment as recommended by the addictions counselor she was seeing at the time of the hearing. We also find it appropriate that the Registrar of SALPN be in a position to monitor compliance with the recommended treatment

¹ We note that the Investigation Committee is required by s. 26 of the *Act* to either recommend that the Discipline Committee hear a formal complaint or it must recommend no further action be taken with respect to the complaint.

and as such, have allowed for the ability of the Registrar to receive such information from the counsellor.

The Discipline Committee also finds it appropriate to impose orders directed toward ensuring Ms. Molleken's safe nursing practicing for a period of time following her return to work, and the ability of SALPN to monitor her practice. These are common orders to make, particularly where there is a risk of repeat conduct. As such, we will include orders that the Member report all changes of employment to the Registrar of SALPN for the first 24 months of her return to practice as an LPN and that the Member provide all of her employer(s) during that 24 month period with a copy of this discipline decision. To be clear, the 24 month requirement is not intended to mean a two-year period dated from her return to work but rather the first 24 months of her active employment as an LPN.

With respect to the issue of costs, we agree that an order to pay roughly half the costs associated with the investigation process and discipline hearing is appropriate in the circumstances. While the Discipline Committee does not typically order a Member to pay such a large share of costs, particularly in circumstances where the Member has fully cooperated in the process (as the Member has here), in this case the Member did agree to pay \$5,000.00 in costs. Although not explained at the hearing, it appears that the agreement on facts and proposed penalties was not arrived at until shortly before the hearing, by which point many of the costs had been incurred. In addition, it may not have been open to the parties to enter into an Alternate Dispute Resolution Agreement including the agreed-to penalties (and avoid a hearing) given that the cease practice agreement indicates that the Member agreed not to practice as an LPN pending the outcome of the discipline hearing. Therefore the only issue to decide concerning the payment by costs of the Member is the time period in which the payment must be made. In reaching its decision, the Discipline Committee has taken into account the current financial obligations of the Member, the fact that at the time of the hearing she was on short term disability, and the fact that while the Member had an employment position to return to following her disability, it was uncertain whether she would have access to long term disability benefits before her return. On the basis of these factors, the Discipline Committee has decided to give the Member approximately one year from the conclusion of her three-month suspension in which to pay the costs of \$5,000.00. The Discipline Committee will therefore order that the Member pay the sum of \$5,000.00 on or before January 1, 2015.

With respect to the suggested order requiring SALPN to publish this decision with the Member's name identified, the Discipline Committee notes that in many cases where health issues, including addictions, are at the root of the conduct in question, the identity of the Member is masked. The Discipline Committee asked Counsel whether there was such a justification for masking the identity of the Member in this case. In response, Counsel indicated that the Member has a "gambling problem" not an addiction given that there is no evidence before us that a diagnosis of addiction has been made. Counsel added that in this case, there was also no

disclosure of deeply personal information. In our view, the question of whether it is appropriate to mask the identity of a Member in the publication of discipline decisions involves a balancing between the protection of privacy rights and the goals of sentencing (or the imposition of penalties) including general and specific deterrence as well as public confidence in the system of professional discipline. While we acknowledge that there is no evidence of an official diagnosis of an “addiction,” certainly the evidence before us suggests the Member likely suffers such an addiction but even if we are not in a position to draw such a conclusion, it is very apparent that the Member has a very serious gambling problem. To have not reached such a conclusion would make an order requiring her continued treatment unnecessary. In any event, on balance we find it appropriate to permit publication of the Member’s name, finding that specific deterrence is very important in this case. The Member was not personally deterred from this behaviour by SALPN’s investigation of the alleged thefts during her employment with the RQHR and therefore some higher measure of deterrence is necessary. In addition, the protection of the public is best served by identifying the Member’s name, given her repeated behaviour and the risk of reoccurrence in the future, given that her gambling problem (or addiction) presents an on-going risk about which the public should be aware. Furthermore, an important factor in our decision is the fact that the Member’s theft and her gambling problem/addiction has already been made public in the sense that the matter came before an open Court and subsequent to her conviction and sentencing for the theft, these facts were published in the newspaper, identifying the Member by name. For these reasons, we find it inappropriate to place any restrictions on the identification of the Member should SALPN choose to publish this decision or otherwise make reference to it in any publication. Having said this, we find it unnecessary for the Discipline Committee to make the order requested, that is, that SALPN shall publish the decision in its newsletter and identify the Member in that publication. It is inappropriate for the Discipline Committee to make an order directing SALPN to take or not take any particular action. It is SALPN’s decision whether and how it chooses to publish decisions of the Discipline Committee. While the Discipline Committee may make certain suggestions about publication, the Discipline Committee cannot make an order imposing obligations on the Association. We are therefore limited to indicating that we do not find this an appropriate case in which to mask the identity of the Member should SALPN choose to publish this decision. It is also for these reasons that we have not masked the identity of the Member in this decision.

ORDERS:

Therefore, in accordance with s. 30 of the *Act*, the Discipline Committee makes the following orders:

1. That Andrea Molleken’s license to practice shall be suspended for a period of three months from the date of the hearing.

2. That, upon Ms. Molleken's return to practice following the completion of the suspension referred to in paragraph 1 of this order, she may be permitted to continue to practice as an LPN only on the following conditions:
 - a. That she continue to attend and participate in addictions counselling of the type recommended by and for so long as may be recommended by the addictions counsellor at Addiction Services.
 - b. That she permit her addictions counsellor to communicate with the Registrar of the Saskatchewan Association of Licensed Practical Nurses on a periodic basis concerning her compliance with treatment recommended by the addictions counsellor.
 - c. That for a period of 24 months of active practice as an LPN following her return to work, she shall not work in any capacity where she has any direct control and/or responsibility over the finances and/or financial affairs of her employer or her clients.
 - d. That for a period of 24 months of active practice as an LPN following her return to work, that Ms. Molleken will, within 14 days of resuming or commencing new employment in any nursing position, notify the Registrar of the name, address and telephone number of her nursing employer.
 - e. That for a period of 24 months of active practice as an LPN following her return to work, she shall provide her nursing employer(s) with a copy of the Discipline Committee's decision and provide verification to the Registrar that she has done so.
3. That Ms. Molleken shall pay a portion of the costs of the investigation and hearing in the amount of \$5,000.00. The costs shall be paid on or before January 1, 2015. Failing payment, Ms. Molleken's license shall be suspended pursuant to section 30(2)(b) of the Act.

In closing, the Discipline Committee thanks both parties for their cooperation at the hearing and in their achieving an Agreed Statement of Facts and an agreement on the proposed penalties. The Discipline Committee recognizes the seriousness with which the Member has approached this matter and thanks her for her participation.

DATED at Regina, Saskatchewan, this 9th day of February, 2014

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



Angela Zborosky, Chairperson

Brenda Ballagh LPN, Member

Don Robinson, Public Representative, Member