

**IN THE MATTER OF *THE LICENSED PRACTICAL NURSES ACT, 2000* AND BYLAWS
AND IN THE MATTER OF A COMPLAINT AGAINST BARBARA MC CORMAC OF
SASKATOON, SASKATCHEWAN**

DECISION OF:

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

INTRODUCTION:

The hearing by the Discipline Committee into the complaints against Barbara McCormac was convened in the Shakespeare Room of the Radisson Hotel in Saskatoon, Saskatchewan, on December 1, 2009 being the location and the date agreed upon at the request of member, Barbara McCormac, and her legal counsel, Andrew Mason, following the delivery of a Notice of Hearing sent to Ms. McCormac.

Ms. McCormac was present at the hearing accompanied by her legal counsel, Mr. Mason. Also present at the hearing were Merrilee Rasmussen, Q.C. (legal counsel for the Counselling and Investigation Committee of the Saskatchewan Association of Licensed Practical Nurses ("SALPN")), Della Bartzzen (investigator with SALPN), and Sheri Biemans (chairperson of the Counselling and Investigation Committee of SALPN).

EVIDENCE:

At the outset of the hearing, the following Agreed Statement of Facts and Documents were filed with the Discipline Committee:

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

1. *Barbara McCormac is a member of the Saskatchewan Association of Licensed Practical Nurses ("SALPN"). Ms McCormac graduated as a Licensed Practice Nurse (LPN) in June 1982, and has been working as an LPN since 1983. She has been a member of SALPN since that date.*
2. *Membership in SALPN, and the conduct of members, is governed by The Licensed Practical Nurses Act, 2000 (the "Act"), the SALPN bylaws and the Code of Ethics.*
3. *As a self-regulating profession, SALPN is authorized by the Act and in accordance with its provisions to discipline its members for failure to adhere to the requirements of the Act, or the bylaws, including the Code of Ethics.*
4. *Pursuant to s. 26 the Act, the Counselling and Investigation Committee is required to investigate allegations of professional misconduct and/or professional incompetence, and on completion of its investigation, to make a written report to the Discipline Committee recommending that either that the subject matter of the complaint be referred for a discipline hearing or that no further action be taken.*
5. *On November 9, 2006, a written complaint was received by SALPN from Wendy Stefiuk, Manager of Nursing, Postpartum Health & Home, Breastfeeding Centre, Ms McCormac's then employer, regarding the nursing practice of Ms McCormac.*
6. *This complaint was referred to the Counselling & Investigation Committee for review and investigation pursuant to ss. 26(1) of the Act.*
7. *In the course of its investigation, the Counselling & Investigation Committee determined that Ms McCormac was deficient in assessment techniques, breast feeding practices, and general nursing competencies.*
8. *Following the investigation, and with the agreement of Ms McCormac and her employer at the time, it was determined that Ms McCormac would submit to an Alternative Dispute Resolution ("ADR") process. A formal ADR agreement was executed by the parties. A copy of the ADR agreement dated February 7, 2007, is attached at Tab A.*
9. *[Omitted]*
10. *By letter dated March 17, 2008, Ms McCormac was notified by her employer, the Saskatoon Health Region Home Care, that she was being terminated for cause, effective immediately. The letter, a copy of which is attached at Tab B, set out the reasons for dismissal, as follows:*
 - a. *A lack of knowledge in core areas of nursing practice;*
 - b. *lack of judgment and insight; and*
 - c. *poor decision making and problem solving abilities.*
11. *By copy of the termination letter dated March 17, 2008, Dawn Guenther (formerly Fong) advised SALPN, pursuant to an employer's obligation under ss. 43(1) of the Act, of the termination.*

12. *As a result of her termination, the terms of paragraph 4 of the ADR agreement were not completed which required her employer to provide the Counselling & Investigation Committee with a performance appraisal every four (4) months until December 31, 2008.*
13. *After completing its review and investigation of the 2008 Complaint, it was the unanimous recommendation of the Counselling & Investigation Committee that the Discipline Committee should hear and determine the formal complaint against Ms McCormac. The Counselling & Investigation Committee's written report containing the formal complaint against Ms McCormac was submitted to the Discipline Committee on December 11, 2008. A copy of the written report and formal complaint is attached at Tab C.*
14. *Ms McCormac accepts responsibility with respect to the allegations contained in the formal complaint as paragraphs 1(f)i. to iv., (g), (h)i., and (i) and 2(c) and (f).*
15. *Ms McCormac agrees to the following disciplinary actions:*
 - a. *She agrees not to perform any duties related to tracheostomy care until she arranges to take and completes a refresher course in relation to tracheostomy care, at her own expense, and demonstrates competence in the provision of such care to the satisfaction of the Counselling & Investigation Committee;*
 - b. *She agrees not perform any duties related to catheterization until she arranges to take and completes a refresher course in relation to catheterization procedures, at her own expense, and demonstrates competence in the performance of such procedures to the satisfaction of the Counselling & Investigation Committee;*
 - c. *She agrees not to perform any duties related to wound packing until she arranges to take and completes a refresher course in relation to wound packing, at her own expense, and she demonstrates competence in the performance of such procedures to the satisfaction of the Counselling & Investigation Committee;*
 - d. *She agrees to consult a registered psychologist to obtain psychological counselling for the purpose of developing skills for coping with stress, shall follow the treatment recommendations of the registered psychologist, and shall arrange for that psychologist to report directly to the Counselling & Investigation Committee on a quarterly basis for a period of one year with respect to her progress;*
 - e. *She will arrange for her employer to conduct performance appraisals and to provide a report of her performance to the Counselling & Investigation Committee on each of April 30, 2010, August 31, 2010 and December 31, 2010; and*
 - f. *She agrees that failure to comply with any of the provisions of the Discipline Committee's Order will result in a suspension of her licence until the failure is remedied.*

Paragraph 14 of the Agreed Statement of Facts and Documents, as set out above, indicates that Ms. McCormac agrees with and accepts responsibility for certain allegations set out in the formal complaint contained in the Counselling and Investigation Committee's written report to the Discipline Committee. The relevant portions of the formal complaint (listed as the "grounds" for allegations of professional misconduct, professional incompetence and breaches of the *Code of Ethics*) read as follows:

1. ...

(f) *while attending to a pediatric respiratory patient in his home during the period from April to September 2007;*

- i. was unfamiliar with the patient's tracheostomy device and how to configure it to enable feeding of the patient;*
- ii. was unable to properly unblock the tracheostomy device once it had become blocked;*
- iii. enlisted the assistance of the patient's siblings in providing care with respect to tube feeding procedure;*
- iv. failed to respond to an occurrence of blockage of the patient's tracheostomy tube; ...*

...

(g) *while performing a catheter change on an adult patient in his home, during April 2007, failed to properly insert the catheter ultimately resulting in hospitalization of the patient;*

(h) *while packing a wound on a patient, in her home, on April 18, 2007;*

- i. failed to review the patient chart with respect to the amount of wound packing to be used and as a result used significantly more packing into the wound than was appropriate, causing disruption to the healing process, resulting in the wound becoming red and raw, and further resulting in significant pain to the patient; ...*

...

(i) *while performing wound care on a patient in their home in September 2007;*

- i. failed to ensure proper equipment was available prior to performing a dressing change;*
- ii. failed to observe proper sterile technique in that she failed to wear gloves or to use sterile instruments in lieu of gloves during the dressing change; and/or*
- iii. showed poor decision-making in performing a procedure without proper supplies being available, specifically performing a dressing change without*

washing hands, and without using sterile gloves or sterile instruments in lieu of sterile gloves; . . .

...

2.

...

(c) failing to inform Saskatoon Home Care that she was under investigation when applying for employment;

...

(f) failing to fulfill her obligations pursuant to the ADR Agreement as a result of the termination of her employment by Saskatoon Home Care on March 17, 2008.

At the hearing, Mr. Mason, on behalf of the member, Ms. McCormac, introduced several letters in the nature of character references as well as containing comments about Ms. McCormac's nursing practice. These letters were from former patients, registered nurses with whom Ms. McCormac had worked, and the office coordinator of her current employer, Dolan's Support Care Services. All of the letters contained positive reports of Ms. McCormac's professional abilities and her caring and compassionate nature.

SUBMISSIONS OF PARTIES:

Counsel for the Counselling and Investigation Committee submitted that the Discipline Committee should accept the contents of the Agreed Statement of Facts and Documents as well as the joint submission, as agreed to between the Counselling and Investigation Committee and the member and her legal counsel. Counsel submitted that the proposed disciplinary actions relate directly to the issues raised in the formal complaint, noting that the requirements to take certain refresher courses in relation to certain duties of a licensed practical nurse before performing those duties essentially represent restrictions on Ms. McCormac's license.

In addition, the requirement to have the member's employer conduct and submit performance appraisals for a one year period accords with the time that had been remaining in relation to a similar condition under the ADR Agreement previously entered into by the member.

Counsel for the member also urged the Discipline Committee to accept the Agreed Statement of Facts and Documents, including the joint submission as to penalties, stating that Ms. McCormac recognizes that her errors were serious and that she will take the necessary steps to improve her

practice. He noted that Ms. McCormac has been practicing as an LPN since 1983 and there have been no practice concerns until 2006. He states that these problems arose during a personally difficult period of time for her and she had had trouble coping. Ms. McCormac is currently under the care of a psychologist and the matters related to her personal difficulties have resolved. She has been working in a dietary position in a nursing home and providing footcare services as an LPN through Dolan's Support Care Services. Mr. Mason stated that the agreement was reached after protracted discussions, it recognizes the seriousness of the practice issues, but represents a fair and reasonable resolution that allows Ms. McCormac to continue to perform some of the duties of an LPN.

Following the parties' submissions, the Discipline Committee took a short recess to consider the material filed. Upon returning to the hearing room, the Discipline Committee explained its concern that the facts set out in paragraph 1(i) of the formal complaint (facts which Ms. McCormac accepts as true) deal with a failure to use sterile technique during wound care, a task that would be required in the course of Ms. McCormac's duties with her current employer. Ms. McCormac and her legal counsel addressed the concern, indicating that Ms. McCormac would be agreeable, in addition to the other proposed penalties, to taking a wound care course through SIAST at her own expense. She believed she could complete such a course by the end of March, 2010.

DECISION:

The Discipline Committee finds, on the basis of the evidence presented to it in the Agreed Statement of Facts and Documents set out above and other evidence presented at the hearing held on December 1, 2009, that Ms. McCormac is guilty of professional incompetence and/or professional misconduct within the meaning of sections 23 and 24 of *The Licensed Practical Nurses Act, 2000*, and has breached the *Code of Ethics*. More specifically, we find that in relation to the conduct set out in paragraphs 1(f)i. to iv., (g), (h)i., and (i) of the Agreed Statement of Facts (as set out on pages 4 and 5 of this decision), Ms. McCormac is guilty of:

- (a) professional incompetence contrary to section 23 of *The Licensed Practical Nurses Act, 2000* by displaying a lack of knowledge, skill or judgment or by disregarding the welfare of a member of the public to an extent that demonstrates that the member 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 the *Act* or the bylaws; and/or
- (c) a breach of the *Code of Ethics* of the SALPN, the specific sections of which include:

I will fulfill my obligations to society in a professional, competent manner;

I will strive for the promotion of health and I will show empathy and compassion towards the alleviation of suffering and the treatment of disease;

I will respect, promote and protect the physical, mental, emotional and spiritual health of the patients and their families and friends;

I will work cooperatively and collaboratively with my colleagues, other health care professionals, and others associated with the health care system;

It is my professional responsibility to ensure my knowledge and skills are maintained, and that my professional association maintains high standards in response to current and technological changes to provide quality health care;

I will recognize my professional limitations and draw upon the expertise of other disciplines in the provision of high quality nursing care;

I will, as a Licensed Practical Nurse, continuously strive to uphold and maintain high standards.

In addition, we find that in relation to the conduct set out in paragraphs 2(c) and (f) of the Agreed Statement of Facts (as set out on page 5 of this decision), Ms. McCormac is guilty of:

(d) professional misconduct contrary to section 24 of the *Act* 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 the *Act* or the bylaws; and or

(e) a breach of the *Code of Ethics* of the SALPN, the specific sections of which include:

i. *I will fulfill my obligations to society in a professional, competent manner;*

ii. *I will work cooperatively and collaboratively with my colleagues, other health care professionals, and others associated with the health care system;*

iii. *I will as a Licensed Practical Nurse, continuously strive to uphold and maintain high standards.*

The Discipline Committee accepts the parties' joint submission concerning the appropriate discipline for the professional incompetence and professional misconduct, with one additional

condition. As previously indicated, the Discipline Committee had concerns that the conduct described in paragraph 1(i) of the formal complaint was not addressed by the terms of the proposed penalties. While the parties had agreed that Ms. McCormac would not perform any duties related to "wound packing" until she has taken a refresher course and demonstrates competence in the performance of that procedure, (a condition which addresses an incident involving the packing of a wound of a patient), paragraph 1(i) of the formal complaint involved an incident of professional incompetence where Ms. McCormac showed poor decision-making skills in performing wound care, failing to ensure she had proper equipment available to perform a dressing change and failing to use proper sterile technique in so doing. In light of the fact that Ms. McCormac performs footcare for the patients of her current employer and that this treatment would involve wound care, the Discipline Committee finds it appropriate and necessary, in the interests of patient safety, to include an order that Ms. McCormac also complete a refresher course in wound care. Given Ms. McCormac's agreement at the hearing to take such a refresher course through SIAST, at her own expense, we will make an order to this effect.

Therefore, in accordance with s. 29 of *The Licensed Practical Nurses Act, 2000*, the Discipline Committee makes the following orders:

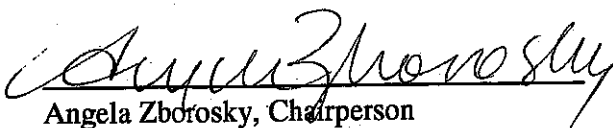
1. That Barbara McCormac be permitted to continue to practice as a Licensed Practical Nurse only on the following conditions:
 - (a) That Ms. McCormac provides confirmation that she has completed a refresher course in wound care acceptable to the Counselling and Investigation Committee, prior to April 30, 2010, at her own expense;
 - (b) That Ms. McCormac not perform any duties related to tracheostomy care until she arranges to take and completes a refresher course in relation to tracheostomy care, at her own expense, and demonstrates competence in the provision of such care to the satisfaction of the Counselling and Investigation Committee;
 - (c) That Ms. McCormac not perform any duties related to catheterization until she arranges to take and completes a refresher course in relation to catheterization procedures, at her own expense, and demonstrates competence in the performance of such procedures to the satisfaction of the Counselling and Investigation Committee;
 - (d) That Ms. McCormac not perform any duties related to wound packing until she arranges to take and completes a refresher course in relation to wound packing, at

her own expense, and she demonstrates competence in the performance of such procedures to the satisfaction of the Counselling and Investigation Committee;

- (e) That Ms. McCormac agrees to consult a registered psychologist to obtain psychological counselling for the purpose of developing skills for coping with stress, shall follow the treatment recommendations of the registered psychologist, and shall arrange for that psychologist to report directly to the Counselling and Investigation Committee on a quarterly basis for a period of one year with respect to her progress; that is, on or before the following dates: March 31, 2010; June 30, 2010; September 30, 2010; and December 31, 2010; and
 - (f) That Ms. McCormac will arrange for her employer to conduct performance appraisals and to provide a report of her performance to the Counselling and Investigation Committee on each of April 30, 2010; August 31, 2010 and December 31, 2010.
2. That Ms. McCormac's failure to comply with any of the conditions in numbers 1(a) through (f) of this Order shall result in Ms. McCormac's license being suspended until the date on which the failure is remedied.

DATED at Regina, Saskatchewan, this 29 day of January, 2010.

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


Angela Zborosky, Chairperson

Marjorie Molsbery, LPN, Member
Kathy Ogle, LPN, Member