

IN THE MATTER OF A DISCIPLINE HEARING BY A DISCIPLINE COMMITTEE, ESTABLISHED PURSUANT TO *THE LICENSED PRACTICAL NURSES ACT, 2000* AND BYLAWS TO INQUIRE INTO THE CONDUCT OF LICENSED PRACTICAL NURSE MERCEDES KITZ

REASONS FOR DECISION BY:

SASKATCHEWAN ASSOCIATION OF LICENSED PRACTICAL NURSES

DISCIPLINE COMMITTEE

INTRODUCTION:

On January 4, 2017, the Discipline Committee of the Saskatchewan Association of Licensed Practical Nurses ("SALPN") held a hearing concerning allegations of professional misconduct and professional incompetence against Licensed Practical Nurse Mercedes Kitz ("Ms. Kitz" or the "Member").

At the hearing Connor Clyde appeared as legal counsel for the Counselling and Investigation Committee (the "Investigation Committee") of SALPN. Ms. Kitz, did not appear at the hearing. Ms. Kitz' mother, Natasha Kitz, was present for the hearing.

Legal counsel for the Investigation Committee filed an Affidavit of Service of a process server who affirmed that Ms. Kitz was personally served on December 9, 2016, with a copy of the Notice of Discipline Hearing. The Discipline Committee was satisfied that Ms. Kitz was properly served with a copy of the Notice of Discipline Hearing as required by *The Licensed Practical Nurses Act, 2000* (the "Act"), and pursuant to section 29(11) of the Act, proceeded with the hearing in the absence of the Member.

The allegation of professional misconduct and professional incompetence related to Ms. Kitz's criminal conviction which stemmed from criminal charges for impaired driving and possession of narcotics. The events that led to the conviction occurred on the same date that the Member displayed concerning behaviour in the workplace and was sent home. Appendix A to the Notice of Hearing dated November 30, 2016, set out the particulars of the allegation as follows:

1. On November 18, 2014, you were working a night shift on Unit 3E of the Regina General Hospital. During this shift you appeared to be sleeping multiple times. Further, your notations and charting on a patient's record were indecipherable.
2. On that same date you were stopped by the police on the suspicion of impaired driving. The police discovered Methylenedioxymethamphetamine (Ecstasy) and Amphetamine in your possession. On or about November 19, 2014, you were charged with unlawful possession of Methylenedioxymethamphetamine (Ecstasy) and Amphetamine. You were sentenced for these offenses on April 29, 2015.

3. On or about October 11, 2015, you were charged with unlawful possession of methamphetamine for the purposes of trafficking. You were sentenced for this offense on May 11, 2016.
4. On or about November 11, 2015, you were charged with unlawful possession of crystal meth. You were sentenced for this offence on April 28, 2016.

Ms. Kitz was personally served with notice of this Discipline Hearing on December 9, 2016. Appendix A of the Notice of Hearing also cites ss. 24, 32 and 49 of *The Licensed Practical Nurses Act, 2000*, ss. 19 and 20 of the *Regulatory Bylaws*, Principles 1, 3 and 5 of the *Code of Ethics for Licensed Practical Nurses in Canada*, and Standards 1, 3, and 4 of the *Standards of Practice*, as all apply to the formal complaint against the Member.

As Ms. Kitz was not present at the hearing, a plea of not guilty was entered on her behalf for the record.

EVIDENCE OF THE INVESTIGATION COMMITTEE:

At the hearing, the Investigation Committee introduced affidavit evidence to support the charge of professional misconduct against Ms. Kitz. In his sworn affidavit, Joel Gritzfeld, Regulatory Services Coordinator for SALPN stated that an investigation was conducted following receipt of an anonymous complaint on June 22, 2014 which alleged that Ms. Kitz was taking methamphetamine and had been attending at work under the influence of drugs. On January 22, 2015, the Association received another complaint regarding Ms. Kitz's alleged behaviour while on shift, which included but is not limited to sleeping while on shift and making indecipherable notations and drawings on patient records (collectively the "Complaints"). The Association conducted an investigation into the Complaints.

Mr. Gritzfeld's evidence continued that during the course of the Association's investigation into the Complaints it was discovered that Ms. Kitz:

- a.) On November 19, 2014, had been charged with and pled guilty to unlawful possession of ecstasy and amphetamine, contrary to section 4(1) of the *Controlled Drugs and Substances Act*. She was sentenced and required to pay a small fine for each offence.
- b.) On October 11, 2015, had been charged with unlawful possession of methamphetamine for the purposes of trafficking contrary to section 5(2) of the *Controlled Drugs and Substances Act*. She was sentenced and received a conditional term of imprisonment of four months.
- c.) On or about November 11, 2015, she was charged with unlawful possession of a controlled substance (crystal meth), contrary to section 4 (1) of the *Controlled Drugs and Substances Act* relating to an event on October 14, 2015. She pled guilty to this

and other charges. Ms. Kitz was sentenced to imprisonment for 21 days, time served, and an 18 month probation order.

At the hearing, the Investigation Committee also introduced the affidavit of Della Bartzen, Investigator – Director of Regulatory Services. In her sworn affidavit, Ms. Bartzen stated that she was involved in the investigation into the Complaints. Specifically, on April 23, 2015, Ms. Bartzen interviewed Ms. Kitz' manager, LaVonne Colb, regarding her behaviour during her shift on November 18, 2014. Ms. Bartzen's summary of the information received from Ms. Colb noted a phone call from a Registered Nurse indicating that Ms. Kitz was exhibiting bizarre behaviour, had taken a two hour break and, when she returned, feel asleep at her desk. It was also noted that Ms. Kitz's charting notes were irregular. It is Ms. Bartzen's evidence that she then followed up with Ms. Moore who noted to Ms. Bartzen that she observed Ms. Kitz walk into a nursing station and pass out during her shift and that when attempting to wake her that her body was twitching and her eyes were "stagnant".

Neither Ms. Moore nor Ms. Colb testified at the hearing nor did they provide affidavit evidence.

It is Ms. Bartzen's evidence that, on June 29, 2015, she interviewed Ms. Kitz. It was in that interview that Ms. Kitz disclosed to Ms. Barzten that she has a drug addiction issue but had no treatment planned at that time. At that same meeting, Ms. Kitz executed a voluntary undertaking and agreement of non-practice effective June 29, 2015. Ms. Kitz had become an LPN in October of 2013.

There was no other evidence led at the hearing. Although, Ms. Kitz's mother, Natasha Kitz, did provide some off the record personal comments regarding Ms. Kitz's personal circumstances. The Discipline Committee heard these comments and is appreciative of her time in attending the hearing.

DECISION:

The primary issue before the Discipline Committee is whether the conduct of Ms. Kitz in terms of her convictions noted above and her alleged behaviour in the work place constitutes "professional misconduct" as defined in the *Act*. If so, then the Discipline Committee must determine the appropriate penalty for misconduct under sections 30 and 32 of the *Act*.

Sections 24, 30 and 32 of the *Act* read 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.

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 counselling 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.

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.

The Discipline Committee is satisfied that the conduct of Ms. Kitz's that gave rise to the convictions pursuant to the *Controlled Substances Act* is "professional misconduct" as defined in section 24 of the *Act*.

The Discipline Committee's finding that the underlying conduct for Ms. Kitz's convictions is professional misconduct is based on a careful consideration of the term contained in section 24 (a) and (b) of the *Act*. Ms. Kitz's behavior exhibited in the workplace within hours of being charged with possession of an unlawful drug, as well as the various convictions for possession and trafficking of unlawful drugs, is clearly conduct that is harmful to the best interests of the public and tends to harm the standing of the profession. Further, the penalty proposed is necessary not only for general deterrence that committing a criminal offence (in this case repeatedly) related to drug use is not acceptable to the profession as a whole. It is also necessary for specific deterrence as Ms. Kitz has engaged in conduct that is not acceptable.

The Investigations Committee made submissions estimating the actual and anticipated costs of the Discipline Hearing (Exhibit P-4) and proposed penalty order (Exhibit P-5). The Discipline

Committee has reviewed and considered the Investigations Committee's submissions in this regard.

The Discipline Committee upon review of the proposed penalty order has determined that given the Ms. Kitz's repeated offences, the nature of the offences and the Complaints over an extended period of time, that the potential for endangering the public, while reflecting poorly on the profession requires an increased order of costs (for the investigation and hearing) to \$7,000.00. The Discipline Committee accepts the balance of the Investigations Committee's submissions as to proposed penalty as reasonable and as serving the purpose of general for the profession as a whole and specific deterrence to Ms. Kitz.

It should also be noted that Ms. Natasha Kitz did ask this Discipline Committee to consider a redaction of the Member's name from the final decision. The Discipline Committee seriously considered this request but have determined that this request must be declined as it does not believe that this request for privacy outweighs the public's right to access this information.

ORDERS:

Upon consideration of the evidence and the submissions of the Investigation Committee, the Discipline Committee issues the following Orders in accordance with section 30 of the *Act*, for the professional misconduct committed by Ms. Kitz:

1. That, pursuant to section 30(1)(c) of *The Licensed Practical Nurses Act, 2000* (the "*Act*"), Mercedes Kitz shall be suspended and remain suspended for a minimum period of one year and until such time as the following conditions are met:
 - a. That within two months of her intended return to practice, Ms. Kitz shall obtain and submit a written report to the Registrar from a recognized addictions counsellor providing confirmation that she has adhered to her plan for treatment, the details of which will be set out in the report.
 - b. Ms. Kitz shall submit to the Registrar drug screen test results on both a monthly basis, as well as on a random basis as may be determined by the Registrar, which demonstrate negative results for a period of 12 consecutive months. The costs of any testing and reporting shall be borne by Ms. Kitz.
2. During the period of the suspension set out in paragraph one, and until Ms. Kitz' license is reinstated, Ms. Kitz shall also comply with the following conditions:
 - a. Ms. Kitz shall abstain from the use of any illegal substances. Further, Ms. Kitz shall abstain from the use of any narcotics and/or other controlled substances unless they have been prescribed by a physician. In the event Ms. Kitz has a valid prescription for any narcotic and/or other controlled substances, she shall only take such prescriptions as directed by her medical caregiver. Ms. Kitz shall immediately provide to the Registrar a list of the prescription medication she is

taking. Should Ms. Kitz' prescription medications change at any time, she will immediately notice the Registrar of the same.

3. That, in the event all the conditions are met in paragraphs one and two and Ms. Kitz's license is reinstated, Ms. Kitz may continue to practice under the following conditions, pursuant to section 30(1)(d) of the *Act*:
 - a. For so long as Ms. Kitz continues to hold a practicing license with the Association following her reinstatement, Ms. Kitz shall continue to provide random drug screen results to the Registrar upon the Registrar's request. Should any drug screen indicate a positive result for a substance which Ms. Kitz does not have a valid prescription, Ms. Kitz may be immediately suspended and remain suspended at the discretion of the SALPN Counselling and Investigation Committee.
 - b. For a period of two years, Ms. Kitz shall, if requested by the Registrar, provide reports from whomever her treating addictions counsellor may be at the time regarding her conditions, treatment, treatment compliance and ability to safely practice nursing. The costs of such reports shall be borne by Ms. Kitz.
 - c. For a period of two years, Ms. Kitz shall work in nursing environments where she has no access, directly or indirectly, to narcotics and other controlled substances.
 - d. For as long as Ms. Kitz continues to hold a practicing license with the Association, she shall immediately advise the Registrar if she is the subject of any disciplinary sanctions taken by her nursing employer.
 - e. For a period of two years, in the event that Ms. Kitz changes her nursing employer, she shall advise the Registrar of that within seven days of the change.
 - f. For a period of two years, Ms. Kitz shall provide a copy of the Discipline Committee decision to her nursing employers.
4. That pursuant to section 30(2)(a)(ii) of the *Act*, Ms. Kitz shall pay costs of the investigation and hearing in the amount of \$7,000.00. Such costs shall be paid on or before January 1, 2019. In the event that Ms. Kitz is a Member in good standing as of January 1, 2019, and Ms. Kitz fails to make payment of the costs as ordered, her license shall be immediately suspended until such payment is made, pursuant to section 30(2)(b) of the *Act*.

DATED at Regina, Saskatchewan, this 28th day of April, 2017.



D. Robinson, Chairperson, Discipline Committee of the Saskatchewan Association of Practical Nurses on Behalf of the Discipline Committee consisting of B. Lindsay and A. Patron.