

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, NICOLE CYR

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, Nicole Cyr.

The Member, Ms. Cyr, was present at the hearing. Also present at the hearing was Connor Clyde, legal counsel for the Counselling and Investigation Committee (the "Investigation Committee") of SALPN.

The allegation of professional misconduct related to Ms. Cyr's failure to respond to and participate in a practice hours audit for the 2015 licensure year. Appendix A to the Notice of Hearing dated October 30, 2016, set out the particulars of the allegation as follows:

1. You were the subject of a practice hours audit for the 2015 licensure year. You were sent at least four emails by the Association directing your completion of the necessary information for the practice hours audit. You failed to appropriately respond to these emails.
2. By Discipline Offence Notice dated April 11, 2016, the Association advised you that there were reasonable grounds to believe you had committed a discipline offence. The notice provided for two options and a requirement that you respond to that notice within 30 days. You did not respond as provided in the Discipline Offence Notice within 30 days.
3. You have failed to provide your practice hours audit documentation as required by the practice hours audit or at all.
4. Further, you have failed to cooperate with the Association in investigating this matter.

Ms. Cyr was personally served with notice of this Discipline Hearing on December 7, 2016. Appendix A of the Notice of Hearing also cites ss. 24 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 applying to the formal complaint against the Member.

At the hearing Ms. Cyr plead not guilty to all allegations contained in the Notice of Hearing.

EVIDENCE OF THE INVESTIGATION COMMITTEE:

SALPN Associate Registrar, Noelle Odegard testified at the hearing. Ms. Odegard has been employed by SALPN for three years. As the Associate Registrar her duties include, but are not limited to licensure renewals and audits on behalf of SALPN.

Licensed Practical Nurses must renew their licenses on an annual basis. Every year approximately twenty percent of LPN's who apply to renew their licenses are randomly selected for an audit. SALPN audits in three different areas: practice hours, criminal records and for continuing education hours. The purpose of the audit is to ensure compliance with license requirements.

In order for an LPN to remain eligible for their license the member must work 1,250 practice hours in the last five consecutive years. Member LPN's are responsible at the time of renewal to self-declare their practice hours worked. When a member LPN is selected for an audit they are sent a letter and form to be completed by their manager and/or payroll department. In the usual course the form is then returned to SALPN for verification. This verification is completed by Ms. Odegard. Once verification has occurred a letter is sent to the member confirming that they have successfully complied with the audit.

Ms. Odegard is responsible for both mailing and e-mailing out audit letters to those randomly selected members.

At the hearing, the Investigation Committee introduced evidence of communications between SALPN and Ms. Cyr (Exhibit P-2). Those communications included a letter from Ms. Odegard (sent via mail and e-mail) dated January 11, 2016 requesting Ms. Cyr's participation in the SALPN Practice Hours Audit for the 2015 licensure year. This letter was accompanied by the SALPN Practice Hours Licensure Audit form and stated that Ms. Cyr was to provide her audit no later than Friday, February 26, 2016. The letter also noted that once the information had been assessed and the audit was complete, the Member would receive written confirmation that the audit is deemed complete. Ms. Odegard also sent Ms. Cyr reminder emails on January 25, 2016, February 8, 2016, February 16, 2016 and February 22, 2016.

At the hearing, Ms. Odegard confirmed that she personally sent the above communications to Ms. Cyr and that none of those communications were returned undeliverable. On February 25, 2016, Ms. Odegard also attempted to reach Ms. Cyr by the telephone number on file, but it was no longer in service. Ms. Odegard also attempted to reach Ms. Cyr at the General Hospital, her

listed place of employment but was unsuccessful in that attempt. Ms. Odegard testified that she did not at any time receive the Ms. Cyr's audit form.

On April 11, 2016 SALPN mailed Ms. Cyr an audit non-compliance ticket for her failure to respond to the SALPN Registrar when required to do so, contrary to clause 24(a) and/or (b) of the Act. The ticket description stated that Ms Cyr:

Failed to comply with practical hours audit. Member was mailed and emailed initial notice of audit on January 11, 2016. Reminder emails were sent January 25, 2016, February 8, 2016 and February 22, 2016. On February 26, a phone call would have been attempted to member's residence or cell phone, however, there was not a home phone or cell phone number for Nicole. A phone was made to 3F at Regina General Hospital and Noelle Odegard was advised she no longer works there. Also called Regina General Hospital ER and she was not working and her name was no on the board to be working.

The ticket required Ms. Cyr to respond by either pleading guilty or not guilty on the applicable form within 30 days.

At the hearing, the Investigation Committee also introduced the affidavit of Joel Gritzfeld, Regulatory Services Coordinator for SALPN. On April 22, 2016, Mr. Gritzfeld e-mailed Ms. Cyr regarding the audit non-compliance ticket that was sent to her on April 11, 2016. Ms. Cyr replied on April 22, 2016 and indicated that she had previously completed the audit and had looked for a copy. On May 5, 2016, Mr. Gritzfeld emailed Ms. Cyr indicating that SALPN had not received anything from her regarding her practice hours audit. He asked her to respond to the ticket she received. Mr. Gritzfeld's affidavit states that as of January 2, 2017, SALPN had not received the completed ticket or any other documentation from Ms. Cyr.

EVIDENCE OF MS. CYR:

Ms. Cyr testified at the hearing. Ms. Cyr's evidence was that she had completed her audit before the initial February 26, 2016 deadline and submitted the same to SALPN. Ms. Cyr's evidence was that she had completed the audit and mailed it through Express Post with the option to sign. Ms. Cyr did not retain the tracking number and she did not confirm delivery with Canada Post. Ms. Cyr confirmed that the e-mail address SALPN had on file was accurate and that she was in receipt of the initial audit request and Ms. Odegard first follow-up e-mail. She stated that her phone is on 24/7 and that her number has not changed.

Ms. Cyr testified that she was surprised to receive the Notice of the Discipline Hearing. In cross-examination, Ms. Cyr confirmed that she did not, after receiving the Notice of the Discipline Hearing, contact SALPN to question why she had received the same despite her assertion that she had sent in her audit response.

Ms. Cyr also testified that she had only retained one additional copy of her audit form and that she mailed that copy in to Mr. Gritzfeld after receiving his April 22, 2016 e-mail. She stated she

did not make any other copies of her Practice Hours Licensure Audit form and that both copies had been sent to SALPN. Ms. Cyr again did not offer a tracking number or any other way to substantiate that her audit had been sent.

Ms. Cyr confirmed that she had not brought any documentation to the discipline hearing and had no further evidence to provide to the Discipline Committee for review.

DECISION:

On the balance of the evidence tendered the Discipline Committee was not satisfied that Ms. Cyr submitted her audit practice hours form as she stated. The evidence before the Committee demonstrated that Ms. Cyr failed to participate in the SALPN Practice Hours Audit for the 2015 licensure year and failed to respond to the audit non-compliance ticket that resulted from her failure to participate in the 2015 practical hours audit. Ms. Cyr was provided ample opportunities to correct any confusion over the submission of her practical audit hours and failed to do so.

The Discipline Committee is satisfied that Ms. Cyr's conduct is "professional misconduct" as defined in s. 24 of the *Act* which provides that:

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.

Ms. Cyr breached s. 24(c) of the *Act* by failing to respond and participate in the practice hours audit as requested. Combined with her further failure to respond to the audit non-compliance ticket this lack of co-operation on Ms. Cyr's part violates the ethical responsibilities outlined in the *Code of Ethics for Licensed Practical Nurses and Ethics* and adopted by the SALPN in s. 19 of its Bylaws.

Self-regulating professions such as nursing are founded on members' co-operation with their regulator. Lack of co-operation harms the standing of the profession. In addition, Ms. Cyr's failure to co-operate is harmful to the public within the meaning of s. 24(a) as the practice hours audit process ensures the accuracy and validity of the hour requirement of the renewal process.

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.

ORDERS:

Upon consideration of the evidence and the submissions of the parties as to appropriate penalties, the Discipline Committee issues the following Orders in accordance with s. 30 of the *Act*, for the professional misconduct committed by Ms. Cyr:

1. That Nicole Cyr be reprimanded pursuant to s. 30(1)(d) of the *Act*;
2. That Nicole Cyr shall pay a portion of the costs of the investigation and hearing, which costs shall be fixed in the amount of \$5,000.00 and shall be payable on or before January 1, 2018 pursuant to s. 30(2)(a)(ii) of the *Act*;
3. That Nicole Cyr shall pay a fine of \$1,000.00 on or before July 1, 2017, pursuant to s. 30(2)(a)(i); and
4. In the event that Nicole Cyr fails to pay the costs or fine as ordered, her license shall be immediately suspended, pursuant to s. 30(2)(b) of the *Act*, until such payment is made.

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. Howse-Lalond, B. Lindsay and A. Patron.