

IN THE MATTER OF *THE LICENSED PRACTICAL NURSES ACT, 2000* AND BYLAWS AND IN THE MATTER OF FORMAL COMPLAINTS DATED APRIL 11, 2011 AND MAY 11, 2011, AGAINST [REDACTED] (FORMERLY [REDACTED]) OF RUSSELL, MANITOBA

DECISION OF:

SASKATCHEWAN ASSOCIATION OF LICENSED PRACTICAL NURSES

DISCIPLINE COMMITTEE

INTRODUCTION:

The hearing by the Discipline Committee into the complaints against [REDACTED] (formerly [REDACTED]) was convened by way of a teleconferencing call on June 8, 2011 at 10:00 a.m., being the date and time set out in the second Notice of Hearing dated May 16, 2011, sent to Ms. [REDACTED]

A first Notice of Hearing, dated April 11, 2011, was served on Ms. [REDACTED] and indicated May 10 and 11, 2011 as the hearing dates. That Notice of Hearing relates to complaints of professional incompetence and/or misconduct arising out of an incident that occurred while Ms. [REDACTED] was employed with the Eaglestone Lodge Personal Care Home. The second Notice of Hearing relates to complaints of professional incompetence and/or misconduct arising out of an incident that occurred while Ms. [REDACTED] was employed with the Canora Hospital.

It was agreed that the complaints in relation to both Notices of Hearing would be dealt with at one hearing.

Present on the conference call for the hearing were Merrilee Rasmussen, Q.C., legal counsel for the Counselling and Investigation Committee (referred to as the "Investigation Committee") of the Saskatchewan Association of Licensed Practical Nurses (referred to as "SALPN"), and the Member, [REDACTED].

EVIDENCE:

At the outset of the hearing, the following Agreed Statement of Facts and Documents was filed with the Discipline Committee [the information referenced in the "Tabs" is not included]:

Both the Counselling & Investigation Committee of the Saskatchewan Association of Licensed Practical Nurses and ██████████ 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. Ms. ██████████ is a member of the Saskatchewan Association of Licensed Practical Nurses ("SALPN"), registration number ██████████. She has been a member of SALPN since ██████████ ██████████
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 to discipline its members for failure to adhere to the requirements of the Act, the bylaws, or the Code of Ethics.
4. Pursuant to s. 26 the Act, the Counselling and Investigation Committee (the "Investigation Committee") is required to investigate allegations of professional misconduct, 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.

The first complaint, file #23-10

5. A complaint dated February 25, 2010 regarding the nursing practice of Ms. ██████████ was received by SALPN on March 10, 2010 from Darlene Brown, the manager of Eaglestone Lodge Personal Care Home Inc., the facility where Ms. ██████████ had worked at the time. A copy of the complaint is provided at Tab A.
6. In that complaint, Ms. Brown advised that Ms. ██████████ employment had been terminated because the employer had concluded that Ms. ██████████ had taken medications from resident bubble packs.
7. This complaint was referred to the Investigation Committee for review and investigation pursuant to s. 26(1) of the Act.
8. As part of its investigation, the Investigation Committee interviewed the complainant, Ms. ██████████ During that interview, Ms. ██████████ advised that an internal investigation concluded that Ms. ██████████ took approximately three Imovane (zopiclone) tablets from a resident's bubble pack.
9. The Investigation Committee also interviewed Ms. ██████████ During that interview, Ms. ██████████ denied taking the zopiclone. She advised that this investigation was not very important to her compared to the difficult personal problems she was dealing with at the time.

10. Ms. [REDACTED] states that at the time of the complaint, she had been nursing for 13 or 14 years and had never had a complaint against her in that time.
11. Ms. [REDACTED] states that the workplace was a private personal care home with a small staff. The medicines were kept in a small room or closet that was accessed through the nursing room, to which all staff had access. The medicine room was generally kept unlocked during the day, although everyone probably knew that it should have been locked. The room was locked at night, but many staff members had keys.
12. Ms. [REDACTED] states that there was no counting system for any medications when Ms. [REDACTED] began working at the facility; she found that unusual and advised her supervisor that she thought there should be a counting system for narcotics. Staff began counting when it was thought that medications might have been going missing.
13. In early 2010, the charge nurse at the facility gave notice that she was leaving her position, creating a vacancy and leaving Ms. [REDACTED] and one other person (both part-time) as the only nursing staff. Around the same time, Ms. [REDACTED] had been offered a position in Yorkton that paid better than her position at the facility. Ms. [REDACTED] advised her supervisor at the facility that she wanted a promotion to the charge nurse position, along with full-time hours and a raise. If she did not get the promotion, she advised that it was her intention to take the Yorkton position.
14. Ms. [REDACTED] was advised that she would not get the charge nurse position because the supervisor wanted an RN in that role. Ms. [REDACTED] advised that she intended to take the Yorkton position. After her shift, Ms. [REDACTED] got calls from coworkers asking what she had said to the supervisor, who appeared to be very upset with her.
15. The next day, sleeping pills had apparently gone missing. Ms. [REDACTED] was blamed. She denies responsibility and notes that if she wanted sleeping pills, she could easily buy them and there would be no motivation to steal them. Ms. [REDACTED] employment was terminated in February 2010.
16. Ms. [REDACTED] told her common law partner, [REDACTED] about the accusations that she had stolen medication. She would come to regret confiding in him.

The second complaint, file #02-11

17. A complaint dated January 3, 2011 regarding the nursing practice of Ms. [REDACTED] was received by SALPN from Paula Mayer, Health Services Manager of Canora Hospital, the facility where Ms. [REDACTED] worked at the time. A copy of the complaint is provided at Tab B.
18. The complaint advised that after an internal investigation and RCMP investigation, Ms. [REDACTED] admitted to RCMP and to the SALPN Investigator that she had taken medication from the Canora Hospital pharmacy in April 2010. She pled guilty to a criminal charge of

theft of 5 Librium pills and 2 Ativan pills. She was given a conditional discharge. A certified copy of the Information, Final Endorsement, and Probation Order are provided at Tab C.

19. Ms. ██████ accepts responsibility for taking the medication. She knows that it was wrong, acknowledges that it was unprofessional and deeply regrets that it occurred. Ms. ██████ pleads that there were mitigating circumstances at play around the time of the infraction and requests that the SALPN Discipline Committee consider these circumstances when determining what discipline should be imposed on her in this case.

Mitigating circumstances

20. From August 2008 to late April 2010, Ms. ██████ was involved in an abusive common law relationship with ██████. During the course of their relationship, there were about three short break-ups. Ms. ██████ has two children from a previous relationship, a son now 18, and a daughter now 15. Ms. ██████ children lived with her and Mr. ██████ during the course of the relationship.
21. Mr. ██████ abused Ms. ██████ by controlling and manipulating her, using primarily anger and threats of violence to her and her children. He controlled her activities and kept her from her friends. Some examples will demonstrate the nature of the abuse. On one occasion, Mr. ██████ had a fit of jealousy after he decided that a male clerk at a store was flirting with Ms. ██████. He blamed her, and drove recklessly to frighten her, reaching speeds of up to 180 kph while driving along the highway and in and out of the ditch. He put a gun to her head on one occasion. He has told her that he knew many remote locations where he could bury her and no one would ever find her.
22. Mr. ██████ worked on oil rigs in Alberta. Ms. ██████ discovered that, while in Alberta, Mr. ██████ consumed alcohol and drugs, specifically marijuana and crack cocaine. Upon returning from a stint of work, he often exhibited symptoms of withdrawal. In about 2006, Mr. ██████ spent 90 days in a rehab centre in Winnipeg.
23. In April 2010, Mr. ██████ had returned from Alberta and was experiencing bad withdrawal symptoms. It was a Friday; Ms. ██████ contacted the hospital and was informed that there would be no doctor on call at emergency until Monday. There was no way for him to get a prescription for medication to ease his withdrawal symptoms. Mr. ██████ asked Ms. ██████ to get medication for him from the hospital. On prior occasions, Mr. ██████ would “really lose it” on her when going through withdrawal. Ms. ██████ feared for the safety of herself and her children and decided to take the medication as he requested.
24. Ms. ██████ worked a night shift at the hospital that day. She knew what Mr. ██████ prescription was likely to be, so she took the appropriate type and quantity of pills for his

- use. She intended that he would see a doctor on Monday, get a prescription and have it filled, then give the pills to her so she could replace what she had taken.*
25. *When Ms. ██████ returned with the pills, she gave them to Mr. ██████ and he put them in his pocket. She asked whether he was going to take them. He didn't answer, and went out to his truck. When he returned, he told her that he was going to save the pills: if she ever left him, he would inform the authorities about the pills she had taken. He said that she had been accused of stealing once, and now everyone would know it was true, and that she would lose her house, her kids, everything.*
 26. *In April 2010, about a week after this incident, Ms. ██████ was working night shifts. She went home after her fifth night shift in a row and received a call from the nurse in charge. Someone working the day shift had observed her acting strangely, and there was a concern as to whether Ms. ██████ was fit to work, so she was directed not to come in for her next shift. Ms. ██████ has not worked at the ██████ Hospital since this time.*
 27. *Ms. ██████ had been put on prescription pain medication (Tylenol 3 and Flexeril) in relation to an injury sustained in a serious car accident in late February 2010. Ms. ██████ admits that she might have been acting oddly as a result of having worked five night shifts and being on prescription medication.*
 28. *About a week and a half after, Ms. ██████ attended a meeting with the employer and union. She was advised that she shouldn't be working while on this medication and was suspended. Ms. ██████ was asked whether she was having any other difficulties in her life. She advised the meeting attendees about the bad relationship she was in and the threats that she had received, that she was under a lot of stress and that she wasn't sleeping or eating. Ms. ██████ had hoped that she might be offered some help in dealing with or leaving the relationship, but no assistance was forthcoming. The supervisor indicated that she would have to discuss the matter with Human Resources. To date, Ms. ██████ has not had a response about the status of her employment.*
 29. *By the end of April 2010, Ms. ██████ and Mr. ██████ had broken up. He had been at work in Alberta and she hadn't had contact with him for a couple of weeks. On the day in question, he walked into the house and began an argument with her. Her children were away that night. Mr. ██████ began taking items of value out of the house. She advised that she was going to call the police. He threw the phone and smashed it to pieces. Mr. ██████ begged Ms. ██████ to take him back and told her that he needed her. She advised that she was going to leave the house and go to the police. She spent about three hours trying to leave, but he repeatedly blocked the door. Mr. ██████ threatened to kill himself in front of her. He threatened that if she left the house, he would kill himself while she was gone, and then she or her children would find him, and it would all be her fault. He threatened that if she ever dated anyone else, he would kill the man in front of her and bury her alive with his body.*

30. Ms. [REDACTED] feared for her life. She was somehow able to escape the house. She drove to the local RCMP detachment, but no one was there, so she drove to a friend's in Yorkton. Mr. [REDACTED] followed her at first, then returned to the house and began to drink and take the four bottles of pills that were in the home. The RCMP were called to the house in the middle of the night; they searched the house and Mr. [REDACTED] vehicle, and arrested Mr. [REDACTED]. The pills that Ms. [REDACTED] had taken from the hospital were seized during this process. Mr. [REDACTED] was charged with assault, unlawful confinement, break and enter, theft, and destruction of property. The trial has not yet taken place.
31. After this incident, Ms. [REDACTED] went on disability (stress leave) for three months. She is now on Employment Insurance and works as a personal caregiver from time to time.
32. Ms. [REDACTED] has been out of this toxic relationship for about 13 months. There was some concern that she may have had an addiction to her prescription painkillers, so on the advice of her union, she went to an addictions counsellor. She was not found to have an addiction, although she received useful counselling in relation to Mr. [REDACTED] addictions. She also began seeing a psychiatrist, and a counsellor who has been helping her deal with spousal abuse issues, among other things. She no longer sees the psychiatrist but continues to find the assistance of the two counsellors, both of Yorkton Mental Health, very helpful. She sees the addictions counsellor once a month and a general counsellor twice a month.
33. Ms. [REDACTED] deeply regrets having taken the pills. Ms. [REDACTED] believes that even though her odd behaviour was not a result of taking the pills, the employer believes that this was the case. As a result, having taken the pills has caused Ms. [REDACTED] a great deal of difficulty. At the time she felt that she had no option, but the consequences have been so bad that Ms. [REDACTED] now wishes that she had refused to take the pills for Mr. [REDACTED] and just took what was coming from him. She has been unable to work for some time and was therefore unable to keep up on her house and car payments. Her daughter no longer felt safe in the house, fearing that Mr. [REDACTED] would return, and so she has gone to live with her father.
34. At this point, Ms. [REDACTED] receives EI benefits and works casually as a 24-hour personal caregiver. She enjoys the health care field and would in future very much like to practise as a nurse, as this is what she was trained for. Ms. [REDACTED] is willing to comply with whatever discipline the Discipline Committee may feel is appropriate.
35. Ms. [REDACTED] accepts responsibility for the following actions:
- (a) taking prescription medication from the Canora Hospital pharmacy.

36. Accordingly, Ms. [REDACTED] agrees to the following disciplinary actions:

- (a) Ms. [REDACTED] will continue to take individual counselling from the two counsellors she is currently seeing on a regular basis for as long as her counsellors recommend that she do so;
- (b) Ms. [REDACTED] will follow all of her counsellors' recommendations;
- (c) Ms. [REDACTED] will authorize her counsellors to advise SALPN whether she has attended her counselling sessions as recommended by her counsellors, and whether she is, to the best of the counsellors' knowledge, following the counsellors' recommendations; and
- (d) Ms. [REDACTED] is willing to submit to random drug screens.

During the presentation of the Agreed Statement of Facts and Documents, and in response to questions by the Discipline Committee, it was clarified that Ms. [REDACTED] does not currently hold a license to practice as an LPN.

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 and Documents, including the agreement of the Member that her actions in taking prescription medication from the pharmacy of the Canora Hospital where she is employed was unprofessional. Counsel for the Investigation Committee submitted that the Member's actions and her conviction for theft of the medication constitutes "professional misconduct" under the Act. Counsel for the Investigation Committee urged the Discipline Committee to accept the Investigation Committee's and Member's joint recommendation concerning the disciplinary consequences for the Member's professional misconduct, as set out in paragraph 36 of the Agreed Statement of Facts and Documents.

Counsel for the Investigation Committee indicated that in light of the information contained in the Agreed Statement of Facts and Documents and, on the basis that the Member has acknowledged responsibility only for the second formal complaint, dated May 16, 2011, the Investigation Committee formally withdraws the first complaint dated April 11, 2011.

In response to questions of the Discipline Committee, counsel also clarified that the agreed-upon penalties are intended to be conditions on the Member's right to continue to practise as

an LPN.

In terms of the specific conditions on her right to continue to practise, counsel advised that the requirement in paragraph 36(c), that the Member authorize the release of certain information by her counsellors to SALPN, could be accomplished through the signing of a release given to Yorkton Mental Health. Also, Counsel pointed out that paragraph 36(d), which requires the Member to submit to random drug screens, was a condition of practise the Member offered to include. While the Investigation Committee does not consider this to be a situation where the Member took drugs from her employer because she had an addition problem, the Investigation Committee included this agreed-to condition as a sign of good faith and honesty on the part of the Member.

Counsel for the Investigation Committee also noted the similarities between this complaint and one dealt with by the Discipline Committee at the end of May 2011 and suggested that the Discipline Committee make a similar order concerning the confidentiality of the Discipline Committee's decision. Specifically, it was suggested that the Discipline Committee make an order that SALPN not publish this decision and order in whole or in part, without first masking the identity of the Member subject to the order. Counsel also added that a similar order should apply to the Member's employer, the Canora Hospital, given that a copy of the Discipline Committee's decision will be shared with that employer, it being the complainant in relation to the second complaint against the Member.

The Member acknowledged her responsibility for the misconduct involved in the formal complaint dated May 11, 2011. She expressed what appeared to be some disbelief about her conduct now that she looks back on it. She indicated how hopeless her situation seemed at that time and she expressed remorse over her actions.

In response to questions by the Discipline Committee, the Member indicated that the two counsellors she intends to see are with Yorkton Mental Health and that she will not have any problem with continuing to see those counsellors even though she is currently living in Russell, Manitoba.

DECISION:

The primary issues before the Discipline Committee are whether the conduct of Ms. [REDACTED] and the fact of her criminal conviction for theft, as summarized in paragraphs 17-19 of the Agreed Statement of Facts and Documents, is "professional misconduct" within the meaning of s. 24 of the Act and, if so, whether the proposed agreed-upon penalties are appropriate under

s. 30 of the Act.

The sections of the Act that are relevant to our inquiry are sections 24, 30 and 32. Section 24 defines “professional misconduct” while s. 32 deals with the circumstances in which a Member’s criminal conviction may constitute professional misconduct under s. 24 of the Act. Lastly, s. 30 sets out the orders the Discipline Committee may make upon a finding of professional misconduct or incompetence. These sections 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 counseling or both;*

(e) an order reprimanding the member;

(f) any other order that the discipline committee considers just.

(2) In addition to any order made pursuant to subsection (1), the discipline committee may order;

(a) that the member pay to the association, within a fixed period:

(i) a fine in a specified amount not exceeding \$5,000; and

(ii) the costs of the investigation and hearing into the member's conduct and related costs, including the expenses of the counseling 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.*

As stated previously, the first issue for our determination is whether Ms. ██████ conduct, in taking medications in April, 2010 from the pharmacy of the Canora Hospital where she was employed, and in being convicted of theft for that conduct, amounts to “professional misconduct” within the meaning of s. 24 of the *Act*.

The Discipline Committee finds, on the basis of the evidence presented to it in the Agreed Statement of Facts and Documents set out above, the submissions of counsel at the hearing held on June 8, 2011, and the Member’s acknowledgement of her unprofessional conduct, that ██████ did commit acts of “professional misconduct” within the meaning of section 24 of *The Licensed Practical Nurses Act, 2000*. There are several bases upon which we make this finding.

Firstly, we find that Ms. ██████ taking of this prescription medication from her employer amounts to professional misconduct within the meaning of sections 24(a), (b) and (c) of the *Act*, that is, it is conduct that is **harmful to the best interests of the public or the members, it tends to harm the standing of the profession, and it is a breach of the bylaws**. While the Discipline Committee could simply accept the agreements of the parties that the taking of prescription medication from her employer is “professional misconduct” (as stated in the Agreed Statement of Facts and Documents), the Discipline Committee believes it is important to make a finding of professional misconduct within the meaning of the *Act*, as well as explain the reasons for such a finding.

By way of explanation, we find that Ms. ██████ taking of prescription medication from her employer, without the authority to do so, amounts to conduct that “harms the best interests of the public or its members” and it “tends to harm the standing of the profession.” Setting aside for a moment the fact that Ms. ██████ was convicted of theft under the *Criminal Code* for her actions, clearly her conduct would be characterized as a theft of medications. Theft by an employee from her employer is a very serious matter and an obvious breach of the trust in an employee-employer relationship. The theft of medication is even more significant in these circumstances where the employee is a member of a health care profession, the employee has access to and is entrusted with the safe and secure care of medication, and in some cases, the administration of that medication. To breach that trust damages the standing of the profession

of licensed practical nurses as a whole and reflects poorly on other members. It is irrelevant that the medications she took were not for her own use/abuse or were medications her common-law spouse was usually prescribed for withdrawal symptoms. If anything, this is an aggravating factor in that she was essentially prescribing medication for someone. Ms. ██████ conduct violates the trust of her patients, as members of the public, and the confidence patients should have in their health care providers. Her conduct calls into question the ability of LPN's to responsibly handle prescription medication.

Ms. ██████ conduct may also be considered professional misconduct under s. 24(c) of the *Act*, that is, it is a breach of the bylaws. The Regulatory Bylaws for the *Act* include a *Code of Ethics*. We find that Ms. ██████ conduct contravenes the first and ninth statements in the *Code of Ethics*, which read as follows:

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

...

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

Although this was not canvassed in detail at the hearing, Ms. ██████ Criminal Code conviction for theft for her actions in taking prescription medication from her employer, could also be a separate basis for a finding of professional misconduct under s. 24, through consideration of the requirements in s. 32. Section 32 of the *Act* allows a *Criminal Code* conviction to act as proof of the conduct in question and provides the Discipline Committee with the power to decide whether the conduct underlying that conviction is professional misconduct under the *Act*. In support of our finding of professional misconduct, the Discipline Committee is of the view that all four criteria in s. 32 have been met in this case:

- (a) Ms. ██████ was convicted of an offence under s. 334(b) of the *Criminal Code* (a guilty plea results in her having a conviction);
- (b) the Counselling and Investigation Committee made a report to the Discipline Committee (pursuant to s. 26 of the *Act*) regarding Ms. ██████ criminal conviction for theft of medication from her employer;
- (c) the Discipline Committee has given Ms. ██████ the opportunity to be heard at the hearing held on June 8, 2011, as set out in the Notice of Hearing dated May 16, 2011, which Notice was properly served on Ms. ██████ and
- (d) the Discipline Committee finds that the conduct of Ms. ██████ that gave rise to the criminal conviction is professional misconduct.

Our finding in (d) above that the underlying conduct for Ms. ██████ conviction is professional misconduct is based on our consideration of the definitions of that term contained in s. 24(a) and (b) of the Act. For reasons previously stated, Ms. ██████ theft of prescription medication from her employer is clearly conduct that is harmful to the best interests of the public and tends to harm the standing of the profession. In our view, there is a substantial connection between Ms. ██████ unlawful conduct and her professional duties, so as to warrant a finding of professional misconduct under s. 32.

Lastly, we note that the charge against the Member, as set out in the second Notice of Hearing, alleges that the Member is also guilty of professional incompetence under s. 23 of the Act. Counsel for the Investigation Committee did not make submissions on this allegation and while the inclusion of this allegation may have been inadvertent, the Discipline Committee has determined that there is no basis for this charge and this allegation is therefore dismissed.

PENALTIES:

The Discipline Committee, having found Ms. ██████ guilty of professional misconduct, must consider appropriate penalties under s. 30 of the Act for that misconduct.

After a careful review of the proposed penalties outlined in the Agreed Statement of Facts and Documents and the submissions of legal counsel and the Member at the hearing, the Discipline Committee finds that the proposed, agreed-upon penalties are generally appropriate for what we have determined to be professional misconduct by the Member. We have made some additions and slight changes to the proposed penalties for the purposes of clarification and to take into account certain practicalities that were discussed at the hearing.

As previously mentioned, the Member did not have a license to practise as an LPN as at the date of this hearing. Once this decision is issued, the Member may take steps to become licensed, although her license will be subject to certain conditions as discussed below and included in the Order.

There are mitigating factors set out in the Agreed Statement of Facts and Documents. While those factors are not relevant to the issue of guilt, they may be taken into account when determining appropriate penalties. The Discipline Committee finds that the Member's commitment to personal counselling, demonstrated by her agreement to the proposed penalties, addresses the issues she identified as having contributed to the professional misconduct in which she engaged. The mitigating circumstances that the Member shared with the Discipline Committee (as set out in the Agreed Statement of Facts and Documents) clearly illustrated the impact the Member's abusive relationship had on her and the decisions she made, including her decision to take medication from her employer. At the same time, we do

not see Ms. [REDACTED] as attempting to shift the blame onto her abusive former partner or the abusive relationship. She has taken accountability for her conduct and regrets her actions. Furthermore, by leaving the abusive relationship, Ms. [REDACTED] has taken an important first step toward removing herself from a situation that has had a very negative impact on her life, including conduct that resulted in a criminal conviction and an impact on her obligations to her profession. While the personal counselling she proposes to take will likely benefit her in many areas of her life, we expect it will have a positive effect on her future working life and on her ability to meet her professional obligations as an LPN and member of SALPN. Although the Member denied having an addiction to drugs, she indicated she has been seeing an addictions counsellor and has found it helpful in understanding her former partner's problems. She is agreeable to continuing to see this counsellor. In this regard, the proposed penalties of individual general and addictions counselling for so long and as often as recommended by the counsellors are appropriate and the Discipline Committee considers it "just" to include these requirements in an order against the Member.

With respect to the Member's authorization directed to her counsellors with the Yorkton Mental Health to release information to SALPN, it is likely that Yorkton Mental Health has a form it uses for that purpose. The Member's authorization must cover the release of information about: (i) her dates of attendance; and (ii) whether, to the best of the counsellors' knowledge, the Member is following the counsellors' recommendations. The authorization need not cover the release of information about the details of the counselling. If a counsellor indicates that the Member is not following all recommendations, SALPN would treat that as an allegation of a breach of an Order of the Discipline Committee. We direct the Member to sign the authorization form and provide an original copy to both Yorkton Mental Health and SALPN. It will be at the discretion of SALPN whether and when to seek information from Yorkton Mental Health concerning the Member's compliance with this aspect of the Discipline Committee's Order.

In addition to the attendance for counselling, the Member offered to submit to random drug testing by SALPN. Counsel for the Investigation Committee acknowledged that this complaint does not involve a situation where the Member took prescription medication from her employer because of a drug addiction, but indicated it shows a measure of good faith by the Member. We agree it shows good faith and a desire by the Member to bring some closure to the issue, given that the issue of her use of pain medication while working (medication that we understand was properly prescribed to her) was raised by her employer at the time of the investigation into the theft. In light of these considerations and the agreement of the Investigation Committee and the Member, the Discipline Committee will include in the Order a requirement that the Member submit to random drug testing by SALPN. Neither of the parties

made a suggestion about the length of time this condition should apply. We believe it is important to stipulate an end date. As it is unknown how long the Member will require counselling, we have decided that a reasonable period of time for the Member to be subject to random drug testing is one year from the date of the hearing.

In order to facilitate the meeting of the above listed conditions on Ms. [REDACTED] ability to continuing practising as an LPN, the Discipline Committee is also including in its Order, a requirement that the Member keep SALPN advised of any changes to her address, telephone number, or employment, within 7 days of any change.

In addition to the jointly proposed penalties, the Discipline Committee has determined that, due to the very personal nature of the information disclosed by Ms. [REDACTED] this case warrants the inclusion of a direction to SALPN to not publish or distribute this decision or order, or portions of this decision and order, without first masking the identity of the Member. Many professional associations do publish discipline decisions in order to educate their members as well as for the purposes of general and specific deterrence. While SALPN currently publishes its decisions in a limited manner (by including in its newsletter summaries of Discipline Committee decisions and orders, along with the names of the members involved), it may well expand the scope of publication in the future to include full decisions being published on the website or included in other print or internet-based sources, practices that are common among other professional associations. In the present case, Ms. [REDACTED] has shared some very private personal information and even if SALPN limits its publication of this decision to a summary in its newsletter, a summary, including the penalties or Order made herein, still contains a significant amount of private information. The Discipline Committee does not issue a direction concerning non-publication lightly. In the present case, we believe a greater interest is served in issuing this direction. The identification of Ms. [REDACTED] as the member who was subject to this Order would serve only an interest in "specific deterrence" (meaning that the publication of her name would specifically deter her from repeat conduct). Given the cooperation of the Member, her display of regret over her actions, and her commitment to counselling as a disciplinary consequence, we are confident that any further specific deterrence that might result through the publication of her name is outweighed by the possible negative effects that could be caused if publication is unrestricted. We find that the publication of this decision with Ms. [REDACTED] identity masked meets the interests of general deterrence and education of the members.

We recognize that it is highly unusual for the Discipline Committee to issue an Order directed to a person (or organization) other than the Member. The Discipline Committee has done so on only one other occasion. It was in a strikingly similar situation as that before us now. While the Discipline Committee would propose to make this order pursuant to s. 30(1)(f) of the *Act* (where it states that the Discipline Committee may make "*any other order that the discipline*

committee considers just," it is at least arguable that the Discipline Committee is without jurisdiction to make any other "just" order directed to SALPN. In the unique circumstances of this case, the Discipline Committee respectfully requests that SALPN abide by this direction in any event. The Discipline Committee considered other alternatives, including the masking of Ms. ██████ identity throughout this entire decision. The Discipline Committee found that to be a less desirable alternative because SALPN should have a copy of the decision that includes the identity of the Member (for its general administrative purposes) and specifically for the purposes of tracking compliance with the conditions on Ms. ██████ ability to practice as an LPN. Another alternative rejected by the Discipline Committee was to exclude from the decision the entire portion of the Agreed Statement of Facts and Documents that speaks to the mitigating circumstances put forward by Ms. ██████. The Discipline Committee found this to be unsatisfactory because Ms. ██████ personal information concerning the abuse she endured is referenced elsewhere in the decision. For these reasons, the Discipline Committee has chosen what it views as the most practical approach, that is, to make an Order directing SALPN to mask the identity of Ms. ██████ should it choose to publish this decision in part or in its entirety. This may be done through the use of the Member's initials, a practice commonly used by the courts and by other administrative tribunals when rendering decisions involving sensitive personal information or where it serves to protect other important interests.

For similar reasons, the Discipline Committee is also including in its order a direction to the Member's employer not to publish or distribute this decision and Order (in whole or in part) without first masking the identity of the Member. The *Act* requires that a copy of the Discipline Committee's decision be provided to the person who made the complaint about a member. In this case it was the Member's employer, the Canora Hospital, which made the complaint. Of course, we appreciate that the employer may be aware of many of the facts of this case through other means, including its own investigation of the theft as well as the details of the court proceedings. The Discipline Committee does not intend for its direction to affect the employer's use or publication of information that is available to it through these other sources.

Therefore, in accordance with s.30 of *The Licensed Practical Nurses Act, 2000*, the Discipline Committee makes the following orders:

1. That Ms. ██████ be permitted to continue to practise as a Licensed Practical Nurse only on the following conditions:
 - (a) That Ms. ██████ continue to attend for individual counselling with the two counsellors employed with Yorkton Mental Health (one of whom is an addictions counsellor and the other a general counsellor), the frequency and duration of such counselling to be determined by each of

the counsellors;

- (b) That Ms. ██████ follow all of the recommendations made by each of the counsellors with Yorkton Mental Health;
- (c) That Ms. ██████ provide a signed authorization to Yorkton Mental Health to permit her counsellors to disclose, upon request by SALPN, information about whether Ms. ██████ has attended her counselling sessions with such regularity as is being recommended by each counsellor, and whether Ms. ██████ is, to the best of the counsellors' knowledge, following their recommendations;
- (d) That Ms. ██████ submit to random drug testing upon request by SALPN, at any time during the period commencing on the date of this Order and ending on June 8, 2012; and
- (e) That Ms. ██████ notify the SALPN Registrar of any change to her address, telephone number, or employment, within seven (7) days of that change.

2. Should Ms. ██████ fail to comply with any of the conditions set out in paragraph 1 of this Order or should she fail a drug test, Ms. ██████ license to practice (if she holds a license) shall be suspended until the date on which the failure is remedied.

3. That the Saskatchewan Association of Licensed Practical Nurses and the Member's employer, the Canora Hospital (and the Health Region) not publish this decision or any portion of this decision, including this Order, without first masking Ms. ██████ identity as the Member subject to this decision and Order.

In closing, the Discipline Committee would like to thank the legal counsel for the Investigation Committee as well as the Member for their cooperation in reaching the Agreed Statement of Facts and Documents presented to the Discipline Committee at the hearing. The Discipline Committee accepts that Ms. ██████ recognizes the seriousness of her misconduct and is committed to addressing the difficulties in her personal life that have impacted her professional obligations. While it seems that she looks back on her actions with regret, she has also begun to develop some insight into the circumstances that led to her unprofessional conduct. We had some concerns about the statements made in paragraph 33 of the Agreed Statement of Facts and Documents, specifically, that *"At the time she felt she had no option but the consequences have been so bad that Ms. ██████ now wishes that she had refused to take the pills for Mr. ██████ and just took what was coming from him."* That statement is somewhat troubling as it

seems to suggest that her regret over her conduct stems primarily from the severe consequences of getting caught, and that even now, she believes she had only two options: to steal the medication (to try to avoid Mr. [REDACTED] abuse) or to just accept Mr. [REDACTED] abusive behaviour. However, we are aware of the cycle of domestic abuse and that it often takes a very serious event or series of events to motivate change. For these reasons, we believe that the Member's agreement to counselling is critical to her success and we sincerely hope that through her counselling, she comes to recognize the additional options available to her.

It is on the basis of the Member's insight and her commitment to counselling that the Discipline Committee has accepted the proposed agreed-to penalties, even though Ms. [REDACTED] professional misconduct is very serious and, without the compelling mitigating factors presented to us, would have warranted more severe penalties. The Discipline Committee recognizes that Ms. [REDACTED] has practised as an LPN for over 13 years and during that time, has not been subject to disciplinary proceedings under the *Act*. We sincerely hope that she is able to make a successful return to the practise of an LPN and to meet and complete the terms of this Order.

DATED at Regina, Saskatchewan, this 14th day of July, 2011.

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



Angela Zborosky, Chairperson

Kathy Ogle, LPN, Member
Marjorie Molsbery, LPN, Member
Andrea Zavislak, LPN, Member
Tony Linner, Public Representative, Member