

IN THE MATTER OF *THE LICENSED PRACTICAL NURSES ACT, 2000* AND BYLAWS  
AND IN THE MATTER OF A COMPLAINT DATED APRIL 11, 2011 AGAINST ██████████  
██████████ OF REGINA, SASKATCHEWAN

**DECISION OF:**

**SASKATCHEWAN ASSOCIATION OF LICENSED PRACTICAL NURSES**

**DISCIPLINE COMMITTEE**

**INTRODUCTION:**

The hearing by the Discipline Committee into the complaint against ██████████ was convened in the Cedar Room of the Best Western Seven Oakes Hotel in Regina, Saskatchewan, on May 10, 2011 at 9:00 a.m., being the location and date set out in the Notice of Hearing sent to Ms. ██████████.

Present at 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 Della Bartzen, investigator for SALPN. Also present at the hearing was the Member, ██████████ and her legal counsel, Alison Mitchell.

**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. ██████████ is a member of the Saskatchewan Association of Licensed Practical Nurses (“SALPN”), registration number ██████████. She has been a member of the 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.

#### **Resolution of complaint re working without a licence**

5. In or about January 2010, a written complaint was made to SALPN that Ms. [REDACTED] had not renewed her licence to practice for 2010 prior to December 1, 2009, as she was required to do pursuant to ss. 10(1) of the SALPN Administrative Bylaws. As a result, her licence expired on December 31, 2009 and she worked one shift as an LPN when she was not licensed.
6. Following a review and investigation into this matter pursuant to ss. 26(1) of the Act, the SALPN Counselling and Investigation Committee (the "Committee") determined that Ms. [REDACTED] would likely be found guilty of professional misconduct based on the fact that she worked as an LPN after her licence has lapsed, due to her failure to renew on time. However, the Committee found that no further action was required with respect to these events on the basis of the terms. of the Alternative Dispute Resolution Agreement dated on or about August 26, 2010 by which the complaint was resolved ("Agreement 1"). A copy of Agreement 1 is attached at Tab A.
7. The terms. of Agreement 1 were, inter alia, as follows:
  - a) she agreed to accept a formal reprimand for her contravention;
  - b) she undertook to obtain renewal of her licence prior to December 1 in all subsequent years during which she continued to practice as an LPN;
  - c) she agreed to pay \$200 to SALPN within 30 days following execution of Agreement 1 to cover a portion of SALPNs costs of conducting the aforementioned investigation, failing which, her licence was to be suspended until this amount was paid in full; and
  - d) she agreed that a breach of any of the terms. of Agreement 1 constituted professional misconduct, which would be referred to the Committee for investigation as a new complaint.
8. Ms. [REDACTED] failed to pay SALPN the amount of \$200 in accordance with Agreement 1.

### **Resolution of complaint re failing to respond the Registrar**

9. In or about May 2010, a written complaint was made to SALPN that Ms. [REDACTED] did not comply with the SALPN Registrar's request for information in regard to the conduct of an audit of her licence renewal application for 2010.
10. Following a review and investigation into this matter pursuant to ss. 26(1) of the Act, the Committee determined that Ms. [REDACTED] would likely be found guilty of professional misconduct based on the fact that she did not reply to the Registrar's request to provide information verifying her eligibility for renewal of her licence. However, the Committee found that no further action was required with respect to these events on the basis of the terms of the Alternative Dispute Resolution Agreement dated on or about August 25, 2010 by which the complaint was resolved ("Agreement 2"). A copy of Agreement 2 is attached at Tab B.
11. The terms of Agreement 2 were, inter alia, as follows:
  - a) she acknowledged that the failure to provide the audit information was a breach of the SALPN Code of Ethics and, as such, constituted a breach of the Regulatory Bylaws;
  - b) she agreed to accept a formal reprimand for her breach of the Bylaws;
  - c) she undertook to provide information to the Registrar whenever requested for so long as she continues to practice as an LPN;
  - d) she agreed to pay the amount of \$200 to SALPN within 30 days following execution of Agreement 2 to cover a portion of SALPN's costs of conducting the second investigation, failing which, her licence was to be suspended until this amount was paid in full; and
  - e) she agreed that a breach of any of the terms of Agreement 2, constituted professional misconduct, which would be referred to the Committee for investigation as a new complaint.
12. Ms. [REDACTED] failed to pay SALPN the amount of \$200 in accordance with Agreement 2.

### **Complaint of breaching Agreements 1 and 2**

13. In or about April 2011, Ms. [REDACTED] received a Notice of Hearing from SALPN, indicating that the Committee of SALPN had recommended to the Discipline Committee of SALPN that a hearing be conducted into two complaints against Ms. [REDACTED]. These additional complaints were made against her due to the failure to pay the discipline costs in the amount of \$200, pursuant to the terms of Agreement 1, and for failing to pay the discipline costs in the

amount of \$200 pursuant to the terms. of Agreement 2. A copy of the Notice of Hearing is attached at Tab C.

14. Ms. [REDACTED] acknowledges her failure to pay the aforementioned costs in the total amount of \$400, and she wishes to submit this payment immediately. She further acknowledges that this was unprofessional, and she sincerely regrets that it has occurred. Ms. [REDACTED] pleads that there were mitigating circumstances at play in and around the time that the aforementioned infractions were committed, and she requests that the Discipline Committee of SALPN consider these circumstances in determining what discipline consequence should be imposed on her in this case.

#### **Mitigating circumstances of breaches**

15. Over the past approximately four years, up until November 2010, Ms. [REDACTED] has been involved in an abusive relationship with an individual named J [REDACTED]. The relationship began in approximately April 2006. Ms. [REDACTED] had three children when she met J [REDACTED], who will be referred to as "J", "A", and "L", and who were aged 8, 4 and 4 months. The eldest two children were from Ms. [REDACTED] first marriage, and the youngest child came from a relationship following that marriage.
16. Ms. [REDACTED] initially thought she had made a good choice in becoming involved with J [REDACTED]; he was charming, witty, polite, financially secure based on appearances, and he appeared to have some affection for her children almost immediately. However, during the ensuing four years, Ms. [REDACTED] and J [REDACTED] would separate and reconcile on approximately four occasions, usually for a few months each time, before separating for the final time in November 2010.
17. J [REDACTED] abused Ms. [REDACTED] in two main ways;
- (1) He controlled and manipulated her, using primarily anger and threats of insecurity; and financial
  - (2) He attempted to interfere with her relationships with her children, and to alienate children from her. her
18. With respect to the first form of abuse listed above, there are several ways in which J [REDACTED] exerted his control over Ms. [REDACTED]. For example, J [REDACTED] isolated Ms. [REDACTED] from her friends and family. He forbid her from going out anywhere without his permission. He forbid her from having any contact with her family on the basis that contact with them caused discord in the relationship between J [REDACTED] and Ms. [REDACTED] and they had fewer arguments

when she did not see her family.

19. J. [REDACTED] further advised Ms. [REDACTED] that he did not want her to work outside the home; that he wanted her at home looking after the children and the house; and that he would support her. He told her there was no need for her to work, as he could afford to support the family on his income.
20. J. [REDACTED] ensured that Ms. [REDACTED] divested herself of everything she owned when she was in a relationship with him, and he did this on more than one occasion. J. [REDACTED] would tell Ms. [REDACTED] that she did not need her own vehicle, furniture, or any other belongings because he would provide her with these possessions and they would be of better quality. J. [REDACTED] indicated that if Ms. [REDACTED] continued to retain this property, he understood that to be a sign that she planned on leaving the relationship, and that she was keeping these things in order to facilitate her "plan." On each occasion, Ms. [REDACTED] agreed to divest herself of her belongings, hoping that it would demonstrate to J. [REDACTED] her commitment to the relationship, and that things would get better between them. In this regard, Ms. [REDACTED] was mistaken. All it did was leave her without a vehicle and without furniture or personal items of her own every time that they separated. When J. [REDACTED] would become overwhelmed with parenting and tell Ms. [REDACTED] he wanted to separate, he would arrange for her to live in one of his rental properties. Because she had no employment, no money and no assets, she had little choice but to move where he sent her. If Ms. [REDACTED] acquired furniture or other personal property during their separations, J. [REDACTED] would ensure she sold or gave those items away when they reconciled.
21. While the above-mentioned facts are by no means exhaustive, they serve to illustrate the first form of abuse mentioned in paragraph 17. For Ms. [REDACTED] these facts pale in comparison to those surrounding the second form of abuse: J. [REDACTED]'s interference in her relationships with her children, and his attempts to alienate her children from her.
22. Each of the four separations that occurred during the parties relationship was caused by J. [REDACTED] becoming overwhelmed, in one respect or another, with parenting the children, or attempting to parent the children. It should be noted that J. [REDACTED] had two biological children from a previous relationship who resided with the couple approximately 50% of the time. J. [REDACTED]'s practice was to hire nannies to help care for the children. Although this somewhat relieved Ms. [REDACTED] childcare responsibilities, she felt for the most part like a single parent. J. [REDACTED] was not a partner with her in parenting, in that, he refused to participate in the work involved and he was completely emotionally unavailable to both Ms. [REDACTED] and the children.
23. At first J. [REDACTED] suggested to Ms. [REDACTED] that she send her eldest son, J, to live with his biological father, who at that time was living in Calgary. This pressure went on for several months but when he was not having any success with this idea, he moved on to the middle

child, A, and suggested to Ms. [REDACTED] that she send A to go and live with that same father.

24. Throughout the relationship, J [REDACTED] had difficulties disciplining the youngest child, who was an infant and a toddler during the relationship, and generally controlling L's behavior. J [REDACTED] expressed his wish for L to go and live with his biological father, who had not really spent any substantial time with L since L was born. As a result, the two did not really know one another, and Ms. [REDACTED] was hesitant to even send L for a visit with his biological father, who also lived in Calgary. While Ms. [REDACTED] did make contact with L's biological father and arranged for L to have a short visit with him, she would not consent to L going to live with his father.
25. By the third year of the relationship, J [REDACTED] was exerting constant and extreme pressure on Ms. [REDACTED] to send her children to go and live with their respective fathers. He told her that they did better as a "couple" without the children. He told her that his mother left when he was five years old and his father raised him; that his mother would take him to a movie once in awhile; that he had never really needed his mother; and that he turned out "just fine". In approximately April 2010, Ms. [REDACTED] filed a police report with the Regina City Police following an episode where J [REDACTED] had confined L to his bedroom, removed all toys and the crib from the bedroom and placed a mattress on the floor, placed a potty in the corner of the room, made L eat all meals in his room, and removed both door handles so the child was unable to get out of the room. This went on for a day-and-a-half. The first day, Ms. [REDACTED] stayed in the room with L. The next morning, as soon as J [REDACTED] had left the house, she made preparations to leave with her children. She went to her parent's home.
26. Ms. [REDACTED] formally ended the relationship in approximately November 2010, and she has been out of it for approximately six months. She has been in counselling and is making arrangements to obtain some more counselling. She is feeling stronger every day. She is in the process of healing herself and her relationships with her children. She is arranging for her children to attend counselling, as well.
27. When the first incident happened in December 2009, wherein Ms. [REDACTED] failed to renew her licence, she was going through a separation with J [REDACTED]. She was trying to earn some money as she needed it to support herself and her children, and in her stressed state of her mind, it never occurred to her that her licence had lapsed until she saw a memo reminding some staff to bring their renewed registration into the office. She then remembered that she had to renew herself, but by the time she had worked one shift while unlicensed. She went the very next day but she was unable to charge more than \$500 on her debit card and the fee was just over \$600. She inquired if she could pay the \$500 and return the next morning to pay the remainder in order to show that she had been into attend to this matter. It was indicated to her that she could not. She cancelled the night shift she was scheduled to work that evening.

28. When the second complaint was made in May 2010, Ms. [REDACTED] and J. [REDACTED] were going through another separation. It should be noted that J. [REDACTED] was not giving Ms. [REDACTED] any of the mail that came to their home addressed to her. She believes she did not receive correspondence from SALPN pertaining to these matters because of this fact. Every time she had to move, she would lose more of her personal items and documentation, including documentation related to SALPN.
29. Following execution of the Agreements with SALPN in August 2010, Ms. [REDACTED] was still in the abusive relationship. She had no money and could not obtain any money to pay the costs. While J. [REDACTED] was aware of the situation, he did not want her to work (as an LPN or in any capacity whatsoever) and he refused to give her the monies to pay. At this point Ms. [REDACTED] felt like she was fighting for her life and the lives of her children. It was all she could do to get through the day and try to be a proper parent to her children. She simply did not feel she had any type of resources to assist her in dealing with these disciplinary matters. Ms. [REDACTED] sincerely and deeply regrets that these contraventions occurred, and it is her intention if she is allowed to renew her licence and practice as an LPN, to never allow anything like this to ever happen again.
30. Accordingly, Ms. [REDACTED] agrees to the following disciplinary actions:
- (a) On a weekly basis Ms. [REDACTED] will attend group counselling for women dealing with abusive relationships, which counselling is currently offered by Family Services every Wednesday evening at 6:30 p.m., and she will continue to attend until the week immediately prior to the week on which she begins individual counselling;
  - (b) Ms. [REDACTED] will attend individual counselling as soon as she is able to book an appointment with a counsellor at the Regina Women's Community Centre, for which she is currently on an approximate one-month wait list;
  - (c) Ms. [REDACTED] will authorize Family Services and/or its appropriate agent to advise SALPN whether she has attended the weekly group counselling session until such time as she has ceased group counselling and begun individual counselling in accordance with clauses 30(a) and 30(b) above;
  - (d) Ms. [REDACTED] will follow all of her individual counsellor's recommendations;
  - (e) Ms. [REDACTED] will authorize her individual counsellor at the Regina Women's Community Centre, and/or the Regina Women's Community Centre's appropriate agent, as the case may be, to advise SALPN whether she has attended her counselling sessions with such regularity as is being recommended by her counsellor, and whether Ms. [REDACTED] is, to the best of the counsellor's knowledge, following the counsellor's recommendations; and
  - (f) Ms. [REDACTED] will attend counselling at the Regina Women's Community Centre for a

minimum time period of one year.

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. Legal counsel for Ms. [REDACTED] also indicated that Ms. [REDACTED] intended to fulfill the undertakings she made in the two ADR agreements by paying costs to SALPN totaling \$400.00. Counsel advised that Ms. [REDACTED] would provide a cheque for this amount to legal counsel for the Investigation Committee at the conclusion of this hearing.

### **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 violating the terms of both of the ADR Agreements constitute “professional misconduct” within the meaning of 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 30 of the Agreed Statement of Facts and Documents.

The Discipline Committee took a brief recess to review the Agreed Statement of Facts and Documents. Upon returning, the Discipline Committee sought clarification about the jointly proposed penalties set out in paragraphs 30(c) and 30(e), specifically, the scope or extent of Ms. [REDACTED] responsibilities in complying with those requirements. Legal counsel for the Investigation Committee indicated that it would be Ms. [REDACTED] responsibility to sign and provide consent forms to Family Services and to the Regina Women’s Community Centre allowing the release of information to SALPN regarding her attendance for counselling and whether, in relation to the Regina Women’s Community Centre, Ms. [REDACTED] is following her counsellor’s recommendations. These signed consent forms will permit SALPN to request this information directly from the agencies as needed. Counsel for the Investigation Committee also advised that SALPN would not expect to be provided with any other details about the counselling Ms. [REDACTED] receives.

Legal counsel for the Member added that the Family Services counsellors are accustomed to providing verification of an individual’s attendances for group counselling sessions. The Member’s legal counsel advised that she could provide blank forms to Ms. [REDACTED] to take with her to each group counselling session. After each session, Ms. [REDACTED] could have the counsellor indicate the date of her attendance and sign the form. Ms. [REDACTED] could then fax the signed form to SALPN.

With respect to the counselling sessions with the Regina Women’s Community Centre, legal counsel for the Member indicated that Ms. [REDACTED] could sign an authorization or consent to release information to SALPN, upon SALPN’s request, concerning the dates of Ms. [REDACTED] attendance for counselling and whether she is complying with her counsellor’s recommendations.

**DECISION:**

The primary issues before the Discipline Committee are whether the conduct of Ms. [REDACTED] as summarized in paragraphs 5-14 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*. Sections 24 and 30 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 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.*

Before examining what we have identified as the primary issues, one preliminary issue was identified by the Discipline Committee following the hearing. Although it does not affect the result, we will comment upon it briefly.

Under s.26 of the *Act*, the Investigation Committee must send to the Discipline Committee a "Report of the Counselling and Investigation Committee" setting out the complaint, the results of its investigation, whether the facts likely establish professional incompetence or misconduct, and a recommendation as to whether the Discipline Committee should hear and determine the complaint. In the Report issued in this case, the Investigation Committee recommended that the Discipline Committee hear and determine the "Formal Complaint" attached to the Report. While the Report itself mentions the Investigation Committee's opinion that the facts of this case are likely sufficient to establish the Member's guilt of professional incompetence and/or professional misconduct (under sections 23 and 24 of the *Act*), the Formal Complaint (from which the Discipline Committee derives jurisdiction) refers only to a charge of professional misconduct under s. 24 of the *Act*, while also noting that the ADR Agreements state that a failure to pay costs constitutes "professional misconduct."

Lastly, we note that the Notice of Hearing outlining the charge refers to the Investigation Committee's recommendation that the Discipline Committee hear complaints of professional misconduct (s. 23) and/or professional misconduct (s. 24).

Despite these discrepancies between the Report, the Formal Complaint and the Notice of Hearing, the Discipline Committee intends to consider the complaint before us as an allegation only of “professional misconduct” under s. 24 of the *Act* and not as an allegation of “professional incompetence”. We do so for the following reasons:

- (i) The Formal Complaint is the document that outlines the charge that the Investigation Committee recommends the Discipline Committee hear and determine and it contains only an allegation of professional misconduct;
- (ii) The ADR Agreements indicate that a failure to pay the costs agreed to amounts to professional misconduct; and
- (iii) In the Agreed Statement of Facts and Documents the Member agrees that her conduct, as detailed in that document, is “unprofessional.”

We now turn to the first primary issue before us, that is, whether Ms. ██████████ conduct, in violating the terms of the two ADR Agreements she entered into in August 2010 (by failing to pay costs in the amount of \$200 under each of the two ADR agreements, within 30 days of signing those agreements), 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 legal counsel at the hearing held on May 10, 2011, and the Member’s acknowledgement of professional misconduct, that ██████████ did commit acts of “professional misconduct” within the meaning of section 24 of *The Licensed Practical Nurses Act, 2000*.

Specifically, we find that Ms. ██████████ breach of both ADR Agreements entered into in August 2010, through her failure to pay costs of \$200 in relation to each of those ADR Agreements within one month of signing the Agreements, amounts to professional misconduct within the meaning of sections 24(a) and (b) of the *Act*, that is, it is conduct that is **harmful to the best interests of the public or the members**, and that it is conduct that **tends to harm the standing of the profession**. While it may have been possible for the Discipline Committee to simply accept the agreements of the parties that the failure to pay costs is “professional misconduct” (as stated in the ADR Agreements and 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.

ADR Agreements are widely used in the professional disciplinary process as a way to resolve complaints made against members, without the necessity of a disciplinary hearing. They are a valuable tool, saving the Association the significant costs associated with convening and conducting a disciplinary hearing for every complaint (a saving that is passed on to the members) and helping a member avoid some of the costs and stress associated with a discipline hearing. The use of an ADR Agreement also provides an opportunity for a more amicable or positive resolution of the complaint as well as allowing flexible and creative solutions suited to the unique circumstances of each case. However, in order to maintain the efficacy of ADR Agreements, it is critical that members comply with all of the terms of such Agreements and, if a member fails to do so, the Association must be able to take action to address the breach or

breaches of the Agreement in a timely and effective manner.

We find that Ms. [REDACTED] breach of her ADR Agreement amounts to conduct that “**harms the best interests of the public or its members.**” The public should be able to rely on the disciplinary processes of a self-regulating profession (such as SALPN) to ensure that the profession’s members (in this case, LPNs) are practicing in a safe and competent manner and according to the rules and regulations that apply to them. Ms. [REDACTED] agreed to pay the costs in question, presumably because all parties to the ADR Agreements thought it was an appropriate consequence for her having practiced without a license in circumstances where licensing is a requirement of the *Act* and the Bylaws and integral to a self-regulating profession which ensures public safety. Ms. [REDACTED] failure to comply with the terms of the Agreements by not paying costs is harmful to the best interests of the public. Furthermore, Ms. [REDACTED] conduct is harmful to the best interests of the members. If SALPN cannot rely on a member’s compliance with the terms of an ADR Agreement she voluntarily entered into, the Investigation Committee could become reluctant to enter into such agreements in the future, thereby affecting the ability of other members to enter into such agreements for their own benefit, while potentially driving up membership costs in order to pay for discipline hearings for every complaint that appears to have merit.

In addition, we find that Ms. [REDACTED] breach of her ADR Agreement amounts to professional misconduct because it “**tends to harm the standing of the profession**” by calling into question the profession’s ability to govern itself, as it is required to do under the *Act*, including through the use of investigative and disciplinary powers that ensure LPNs are practicing competently and without misconduct. At the hearing we were provided with background information concerning the two original complaints, as well as extensive information that mitigates Ms. [REDACTED] conduct. In light of this information, we do not view Ms. [REDACTED] failure to comply with the ADR Agreements (by failing to pay the two sets of costs) as defiant behavior or conduct designed to flaunt the disciplinary process. However, her failure to meet her obligations under the ADR Agreements has the effect of undermining disciplinary process, resulting in harm to the standing of the profession.

#### **PENALTIES:**

The Discipline Committee, having found Ms. [REDACTED] 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 both legal counsel 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 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 had indicated at the hearing that she intended to give a cheque to SALPN for \$400.00 representing payment of the costs she had agreed to pay pursuant to the two ADR Agreements she had entered into. The Discipline Committee views this as a commendable effort by the

Member to comply with her legal obligations and it demonstrates her commitment to the process and her desire to return to practice in a professional manner. Upon payment of the \$400.00, the Member may renew her license to practice.

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 impeded her ability to conduct herself in a professional manner as a member of SALPN. The mitigating circumstances that the Member shared with the Discipline Committee (as set out in the Agreed Statement of Facts and Documents) clearly had a significant impact on the Member's ability to meet her professional obligations as an LPN, including her having failed to renew her license in a timely manner and having worked one shift without a license, as well as her failure to pay the \$400.00 in costs, within the time period required by the two ADR Agreements. 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. Clearly, she has taken accountability for her conduct. Furthermore, by leaving the abusive relationship, Ms. [REDACTED] has taken the first step toward removing herself from a situation that has had a very negative impact on her life, including 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 would 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. In this regard, the proposed penalties of group and individual counselling are appropriate and the Discipline Committee considers it "just" to include these requirements in an order against the Member.

The Discipline Committee also considers it just and reasonable to order that the Member attend for weekly group counselling with Family Services until such time as individual counselling through the Regina Women's Community Centre is available to her. It is expected that Ms. [REDACTED] will have to wait approximately one month until individual counselling with the Regina Women's Community Centre is available to her. In light of the uncertainty of the wait time as well as the fact that Ms. [REDACTED] has no control over the programming available through Family Services, we have qualified the proposed order in paragraph 30(a) to take into account the possibility that the weekly group sessions through Family Services may not be available right up to the date individual counselling becomes available to Ms. [REDACTED]. Also, at the request of Ms. [REDACTED] legal counsel (made following the hearing) and with the agreement of legal counsel for the Investigation Committee, we have further qualified the Order to permit Ms. [REDACTED] to be absent from those sessions for reasons of illness, emergency, or a necessary work commitment, provided that Ms. [REDACTED] provides documentary proof of the reasons for such an absence to the Investigator for SALPN.

With respect to the proposed order that Ms. [REDACTED] authorize Family Services and the Regina Women's Community Centre to advise SALPN about her attendance at group and individual counselling sessions and whether she is following the recommendations of her individual counsellor, the Discipline Committee finds it necessary to make a few changes to the order for the purposes of clarity and to take into account certain practical realities.

With respect to verification of Ms. [REDACTED] attendance at the weekly group sessions through Family Services, we approve of the suggestion made by the Member's legal counsel to have a counsellor there sign a form verifying Ms. [REDACTED] attendance at each session and the Member sending each signed

form to SALPN by fax. We will therefore incorporate this process in our Order. The Member's legal counsel offered to provide the Member with a set of blank forms for this purpose. Whether the forms are prepared by legal counsel or by the Member herself, the Discipline Committee suggests the use of a simple form such as:

"I, \_\_\_\_\_, [counsellor's name] verify that I am a counsellor with Family Services and confirm that [REDACTED] attended for a group counselling session on \_\_\_\_\_, 2011."

\_\_\_\_\_  
[counsellor's signature]

After each session, the Member must fax a completed and signed copy of the form to Della Bartzen, the Investigator for SALPN. For any sessions missed due to illness, emergency or a necessary work commitment, the Member must fax documentary proof of the reason for the absence to the Investigator.

With respect to the Member's authorization directed to her individual counsellor with the Regina Women's Community Centre to release information to SALPN, it is likely that the Centre 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 counsellor's knowledge, the Member is following the Counsellor's recommendations. The authorization need not cover the release of information about the details of the counselling. If the 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. The Member must sign the authorization form and provide an original copy to both the Centre and SALPN. Unlike the Member's on-going reporting requirements regarding her attendance at the sessions with Family Services, it will be at the discretion of SALPN whether and when to seek information from the Centre concerning the Member's compliance with this aspect of the Discipline Committee's Order.

In relation to the proposed penalty in paragraph 30(f) that Ms. [REDACTED] attend individual counselling at the Regina Women's Community Centre for a minimum period of one year, the Discipline Committee has decided to make a modification to this proposed penalty to take into account the practical reality that the Centre may not be willing to offer Ms. [REDACTED] counselling for the entire one year period. Our Order will be modified to take this possibility into account. We assume that the Centre will provide Ms. [REDACTED] with counselling for so long as her individual counsellor recommends it. Also, it is apparent through the information contained in the Agreed Statement of Facts and Documents that Ms. [REDACTED] has experienced financial hardship. Given her cooperation in this process and her commitment to turn things around, the Discipline Committee does not wish to add to her financial burden by imposing a requirement that she seek out other counselling should counselling no longer be available to her through the Centre (as such other counselling would likely be available to her only if she paid for it). As a final point on this issue, the Discipline Committee has decided to add a further condition to the Order that the terms of the Order it makes herein will expire one year from the date of the hearing, that is, May 10, 2012. We are doing so in order to bring some finality to this matter.

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. ██████████ this case warrants the inclusion of a direction to SALPN to not publish this decision, or portions of this decision, 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. ██████████ has shared some very private personal information and even if SALPN limits its publication of this decision to a summary in its newsletter, the 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. ██████████ 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 remorse 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 to her from publication of this information. We find that the publication of this decision with Ms. ██████████ identity masked meets the interests of general deterrence and education of the members.

We recognize that it is highly unusual, and perhaps even precedent-setting, for the Discipline Committee to issue an Order directed to a person (or organization) other than the Member. 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 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. Even the Order (which SALPN usually publishes in its newsletter) references the abusive relationship and the need for a significant amount of counselling. 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.

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

1. That Ms. ██████ pay to SALPN the sum of \$400.00 representing payment of the amounts of costs she agreed to pay pursuant to the two ADR Agreements she entered into in August 2010.
2. That, following compliance with paragraph 1 of this Order, Ms. ██████ be eligible to obtain a license to practice as an LPN and that she may be permitted to practice as an LPN only on the following conditions:
  - (a) That Ms. ██████ attend group counselling for women dealing with abusive relationships, on a weekly basis through Family Services (currently offered every Wednesday evening at 6:30 p.m.) unless she must be absent due to illness, emergency or a necessary work commitment, and, provided the group counselling sessions remain available, she will continue to attend until the week immediately prior to the week in which she begins individual counselling through the Regina Women's Community Centre;
  - (b) That Ms. ██████ attend individual counselling as soon as she is able to obtain an appointment with a counsellor at the Regina Women's Community Centre, for which she is currently on an approximate one-month wait list;
  - (c) That Ms. ██████ obtain written verification of her attendance at each weekly group counselling session through Family Services and send the written verification to the Investigator for SALPN, until such time as she has ceased group counselling and begun individual counselling in accordance with paragraphs 2(a) and (b) of this Order. In the event that Ms. ██████ must absent herself from such a session for reasons of illness, emergency, or a necessary work commitment, she shall send documentary proof of the reason for the absence to the Investigator for SALPN;
  - (d) That Ms. ██████ follow all of the recommendations made by her individual counsellor with the Regina Women's Community Centre;
  - (e) That Ms. ██████ provide a signed authorization to her individual counsellor at the Regina Women's Community Centre, and/or the Regina Women's Community Centre's appropriate agent, to advise, upon request by SALPN, whether Ms. ██████ has attended her counselling sessions with such regularity as is being recommended by her counsellor, and whether Ms. ██████ is, to the best of the counsellor's knowledge, following the counsellor's recommendations;
  - (f) That Ms. ██████ attend individual counselling at the Regina Women's Community Centre for a period of one year from the date of this hearing, or such shorter period of time if recommended by her counsellor. In the event that the Regina Women's Community Centre is unwilling or unable to provide Ms. ██████ with counselling until May 10, 2012, or her counsellor recommends discontinuation of

counselling prior to May 10, 2012, Ms. [REDACTED] must notify the investigator for SALPN of this fact. However, in the event that the Regina Women's Community Centre is unable or unwilling to provide Ms. [REDACTED] with individual counselling at any time within six months following the date of this hearing (November 10, 2011), the parties shall attempt to agree on an alternate source for individual counselling to complete the terms of this Order and if the parties fail to reach an agreement, the issue must be returned to this Discipline Committee for a decision. To that extent, the Discipline Committee remains seized with this matter and retains jurisdiction to make an amendment to this Order; and

(g) That the terms of paragraph 2 of this Order expire one year from the date of the hearing, that is, on May 10, 2012; and

3. Should Ms. [REDACTED] fail to comply with any of the conditions set out in paragraphs 1 and 2 of this Order, Ms. [REDACTED] license to practice (if she holds a license) shall be suspended until the date on which the failure is remedied.

4. That the Saskatchewan Association of Licensed Practical Nurses not publish this decision or any portion of this decision, including this Order, without first masking Ms. [REDACTED] 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 and her legal counsel, for their cooperation in reaching the Agreed Statement of Facts and Documents presented to the Discipline Committee at the hearing. Ms. [REDACTED] has demonstrated courage by sharing this information at the hearing. The Discipline Committee commends Ms. [REDACTED] for her efforts to address the difficulties in her personal life that have impacted her professional obligations. The Discipline Committee sincerely hopes that Ms. [REDACTED] is able to return to the practise of an LPN and to meet and complete the terms of this Order. We wish her every success.

DATED at Regina, Saskatchewan, this 31<sup>st</sup> day of May, 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