

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

**REASONS FOR DECISION BY:**

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

**Discipline Committee:**

Randy dos Santos (Chair), Marcie Halyk, Christine Okonkwo, Mary Ellen Wellsch, K.C.

**Member:**

Cecilia Valera

**Counsel:**

Darcia Schirr, K.C., for the Counselling and Investigation Committee

Sharon Au for the Discipline Committee

**INTRODUCTION:**

- [1] On August 15, 2023, the Saskatchewan Association of Licensed Practical Nurses (“**SALPN**”) discipline committee (the “**Discipline Committee**”) held a hearing concerning allegations of professional misconduct against licensed practical nurse (“**LPN**”), Ms. Cecilia Valera, with respect to the provision of LPN services at Allegro Seniors Home Incorporated (“**Allegro**”) as an independent practitioner without the requisite professional negligence insurance.
- [2] At the hearing, Ms. Darcia Schirr appeared as legal counsel for the SALPN counselling and investigation committee (the “**Investigation Committee**”). Ms. Valera participated in the hearing by video conference using Zoom. Ms. Valera was self-represented.
- [3] The Chair of the Discipline Committee, Mr. Randy dos Santos (the “**Chair**”), explained how the hearing would proceed to Ms. Valera and asked whether she had any questions regarding the hearing process. The Chair confirmed that Ms. Valera understood that she had a right to legal representation and asked Ms. Valera whether she intended to obtain legal counsel. Ms. Valera confirmed that she would not be seeking legal counsel. The Chair asked Ms. Schirr and Ms. Valera whether they had any other preliminary matters to address. No preliminary matters were raised.

[4] At the outset of the hearing, it was confirmed that the Discipline Committee was properly constituted to hear the matter.

[5] A copy of an affidavit of service was filed by Ms. Schirr (**Exhibit P-1**), confirming that Ms. Valera was personally served on June 26, 2023, with a copy of the Notice of Discipline Hearing dated June 21, 2023. Appendix A to the Notice of Discipline Hearing set out the particulars of the allegations against Ms. Valera as follows:

1. In 2021, you provided licensed practical nurse services as an independent practitioner at Allegro Seniors Home Inc. Contrary to the Bylaws, you failed to obtain and provide to the Registrar proof of insurance against liability for professional negligence.
2. In 2022, you provided licensed practical nurse services as an independent practitioner at Allegro Seniors Home Inc. Contrary to the Bylaws, you failed to obtain and provided to the Registrar proof of insurance against liability for professional negligence.
3. You completed the online renewal form for the 2021 practice year verifying that you had insurance coverage in the amount of \$5 million which was inaccurate and incorrect.
4. You completed the online renewal form for the 2022 practice year verifying that you had insurance coverage in the amount \$5 million which was inaccurate and incorrect.

[6] As outlined in Appendix A to the Notice of Discipline Hearing, the allegations of professional misconduct were said to constitute contraventions by Ms. Valera of various provisions of *The Licensed Practical Nurses Act, 2000* (the “**Act**”), the SALPN Regulatory Bylaws 2021 (the “**Bylaws**”), and the 2020 Standards of Practice for Licensed Practical Nurses in Canada.

[7] At the hearing, the Chair read out the four allegations of professional misconduct in Appendix A to the Notice of Discipline Hearing to confirm that Ms. Valera was informed as to the charges against her. The Chair asked Ms. Valera how she was pleading to the allegations. Ms. Valera pleaded guilty to all four allegations contained in Appendix A to the Notice of Discipline Hearing.

#### **EVIDENCE:**

[8] Ms. Schirr had two witnesses testify on behalf of the Investigation Committee. Ms. Schirr filed an exhibit book with the Discipline Committee (**Exhibit P-2**) to be introduced through these witnesses.

[9] Ms. Sabrina Warner, SALPN Complaints Investigator, was not available to be called to testify. As a result, Ms. Schirr put into evidence Ms. Warner’s testimony by way of affidavit dated August 11, 2023 (**Exhibit P-3**).

[10] After Ms. Schirr questioned the Investigation Committee's witnesses, Ms. Valera was given the opportunity to cross-examine. Ms. Valera was also asked whether she wanted to dispute the affidavit evidence of Ms. Warner.

[11] Ms. Valera indicated that she did not wish to cross-examine the Investigation Committee's witnesses, that she would not dispute Ms. Warner's affidavit evidence, and that she would not testify on her own behalf or offer any other evidence. Ms. Valera submitted that the failure to obtain the professional negligence insurance for her independent practice required by the Bylaws (the "**IP Insurance**") was a mistake and she demonstrated remorse for that mistake. Ms. Valera stated that she will ensure that she obtains all mandatory insurance in the future.

### *Testimony*

[12] The Investigation Committee's first witness, Ms. Cara Brewster, provided the following evidence during her direct examination by Ms. Schirr:

- Ms. Brewster has been the SALPN Registrar since 2009.
- Ms. Valera registered with SALPN as an LPN in February of 2013, and has been a practicing member in good standing since then.
- The Allegro business is a home health care services provider (Tab 1 of Exhibit P-2). Ms. Valera is the sole director and officer of Allegro, and is responsible for its operations.
- SALPN has special regulations for LPNs who are self-employed or engaged in independent practice. SALPN's "Independent Practice (Self-employed) Practice Guideline," which specifies requirements for independent practitioners (the "**Practice Guideline**" and Tab 2 of Exhibit P-2), and the SALPN publication "Register Your Independent Practice" (Tab 3 of Exhibit P-2) are available on SALPN's website.
- SALPN provides basic insurance to all registered LPNs. Independent practitioners are required to obtain additional liability insurance (i.e. the IP Insurance) as they are considered to be an additional risk to the public because an independent practice is not subject to regular supervision or oversight.
- Page 4 of the Practice Guideline states that, effective August, 2019, section 21.4 of the Bylaws requires mandatory reporting to SALPN by LPNs engaged in independent practice, including proof of the IP Insurance. Ms. Brewster stated that section 21.4 of the Bylaws has been replaced with section 21, but the requirements for independent practice remain the same. Those requirements of section 21.4 (and now section 21) of the Bylaws were first put into effect in March, 2020.

- Notice was sent to registered LPNs regarding the requirements to register their independent practices, if any, and to complete an online Independent Practice Form, including whether the individual had secured the required IP Insurance for their independent practice. 31 LPNs registered independent practices in 2020. There are now 34 registered independent practitioners.
- The operation of Allegro and the provision of LPN services through Allegro was considered an independent practice by SALPN.
- Ms. Valera completed the online Independent Practice Form for Allegro on March 4, 2020 (Tab 4 of Exhibit P-2). On the Independent Practice Form for Allegro, Ms. Valera answered “No” to the question of whether she had secured the IP Insurance for Allegro.
- As the requirement to provide proof of the IP Insurance was a new requirement for independent practitioners and the COVID-19 pandemic was ongoing, SALPN extended the deadline to provide proof of the additional insurance until June 30, 2020. The deadline extension was communicated by email to those LPNs who had registered an independent practice using the online Independent Practice Form.
- Ms. Valera failed to provide proof of the IP Insurance by June 30, and, on July 2, 2020, Ms. Valera was contacted by Kari Pruden, Professional Practice Standards and Ethics Consultant at SALPN, notifying Ms. Valera of her failure to comply with the insurance requirements of the Bylaws (Tab 5 of Exhibit P-2). In July, 2020, Ms. Valera obtained the IP Insurance for Allegro, effective January 1, 2020, to January 1, 2021 (Tab 11 of Exhibit P-2).
- In 2021 and 2022, Ms. Valera completed the annual online Independent Practice Renewal Form (Tabs 6 and 7 of Exhibit P-2). The Independent Practice Renewal Form required Ms. Valera to declare that the IP Insurance had been obtained for Allegro, but did not require that she provide proof of insurance. Using the Independent Practice Renewal Forms, Ms. Valera confirmed that she had obtained the IP Insurance for Allegro for 2021 and 2022 and completed the forms using the same insurance policy number as for 2020. Ms. Brewster confirmed that it is her understanding that the insurance policy number is not changed by an insurance provider year-to-year as insurance is renewed.
- Independent practitioners would only be required to provide proof of insurance when they were audited by SALPN. The 2021 audit was not performed by Ms. Brewster.
- On December 5, 2022, Ms. Valera contacted SALPN by phone to disclose that she had not renewed the IP Insurance for Allegro for 2022.
- On December 7, 2022, Ms. Brewster contacted Ms. Valera and Ms. Valera confirmed that she had not had the IP Insurance in place for Allegro for 2022. Ms. Valera did not mention that she did not have the required insurance for Allegro for 2021.

- On December 7, 2022, Ms. Brewster filed a complaint with the Investigation Committee against Ms. Valera regarding her failure to obtain the IP Insurance for Allegro in 2022 in breach of the Bylaws (Tab 8 of Exhibit P-2).
- Ms. Valera obtained the required IP Insurance for Allegro for the remainder of December 2022.
- Ms. Brewster stated that, if Ms. Valera did not self-report that she did not obtain the IP Insurance for Allegro for 2022, SALPN would have detected her failure to do so during an audit of independent practitioners in early 2023.

[13] The Investigation Committee’s second witness, Ms. Kari Pruden, SALPN Complaints, Investigations, and Discipline Manager, provided the following evidence during her direct examination by Ms. Schirr:

- Ms. Pruden is an LPN. She has been employed by SALPN since September, 2019. Ms. Pruden began with SALPN as a Professional Practice Standards and Ethics Consultant, and in May, 2022, became the Complaints, Investigations, and Discipline Manager.
- Many independent practitioners did not initially provide proof of the IP Insurance for their independent practices in March, 2020. The deadline for obtaining the IP Insurance was extended until June 30, 2020. On July 2, 2020, which was the first business day after the June 30 deadline, Ms. Pruden emailed those independent practitioners who had not provided proof of IP Insurance, including Ms. Valera (Tab 5 of Exhibit P-2). The email was sent to Ms. Valera’s email address and was intended for Ms. Valera, despite being mistakenly addressed to “Jacqueline.”
- Ms. Valera responded to Ms. Pruden’s email on July 3, 2020. Ms. Valera provided a certificate of IP Insurance for Allegro on July 8, 2020 (Tab 11 of Exhibit P-2).
- SALPN performed an audit of all independent practitioners in March, 2021, during which proof of the IP Insurance required for independent practice for 2021 was requested.
- For the 2021 audit, Ms. Valera completed a 2021 audit notice (**Exhibit P-4**) stating that she had the insurance required for independent practice for 2021 and Ms. Valera provided the out-of-date 2020 certificate of IP Insurance. Ms. Pruden reviewed Ms. Valera’s submissions and did not catch that Ms. Valera had included proof of IP Insurance for 2020, not 2021. Ms. Pruden approved Ms. Valera’s audit submissions.
- Ms. Pruden confirmed that page 3 of Tab 8 of Exhibit P-2 is the complaint submitted by Ms. Brewster against Ms. Valera.
- When the Investigation Committee receives a complaint regarding a member LPN, the Investigation Committee e-mails the LPN to provide them with a copy of the complaint, describe the complaint process, and offer them an opportunity to respond. Ms. Valera was e-mailed with

respect to Ms. Brewster's complaint against her on December 8, 2022 (Tab 8 of Exhibit P-2) (the "E-mail Notice").

- Ms. Valera responded to the E-mail Notice on December 14, 2022, to notify SALPN that she would obtain IP Insurance for the remainder of 2022 (page 1 of Tab 9 of Exhibit P-2). On January 4, 2023, Ms. Valera emailed Ms. Pruden (page 6 of Tab 9 of Exhibit P-2) and attached proof of the IP Insurance, effective December 5, 2022, for the remainder of 2022 (Tab 10 of Exhibit P-2).
- In response to Ms. Brewster's complaint, the Investigation Committee looked further into Ms. Valera's file to verify whether she had the insurance required by SALPN in past years. There was no proof of insurance for 2021 on file and, on December 21, 2022, Ms. Pruden emailed Ms. Valera to request proof of IP Insurance for 2021 (page 2 Tab 9 of Exhibit P-2). On December 21, 2022, Ms. Valera responded and resent Allegro's certificate of IP Insurance for 2020 (page 3 of Tab 9 of Exhibit P-2). Ms. Pruden made a second email request for proof of IP Insurance for 2021 (page 3 of Tab 9 of Exhibit P-2). Ms. Valera then responded that she had just realized that she did not have the required IP Insurance for Allegro for 2022 or 2021 (page 4 of Tab 9 of Exhibit P-2).
- Ms. Pruden asked whether Ms. Valera may have any insurance that may have met the requirements of the Bylaws. Ms. Valera shared a major accounts insurance policy for Allegro, effective from December 11, 2020, to December 11, 2021 (Tab 13 of Exhibit P-2). Ms. Pruden stated that this insurance did not meet the IP Insurance requirements of the Bylaws.
- Ms. Valera provided a certificate of IP Insurance for Allegro for January 1, 2023, to January 1, 2024 (Tab 12 of Exhibit P-2).

## **POSITIONS OF THE PARTIES ON PROFESSIONAL MISCONDUCT:**

### ***Submissions of the Investigation Committee***

[14] Referring to the Saskatchewan Court of Appeal's decision, *Anthony Merchant v Law Society of Saskatchewan*, 2009 SKCA 33 ("*Merchant*"), Ms. Schirr submitted that the failure of an LPN to acquire the proper insurance coverage for an independent practice is properly classified as a regulatory and strict liability offence. A strict liability offence will be found once the conduct underlying the offence has been proven to have occurred. Ms. Schirr submitted that, as set out in *Merchant*, at minimum, the requisite fault element, which amounts to negligence, must be established. Once these components have been met, the offence will be found unless the member can show that they took all reasonable and diligent steps to avoid the misconduct.

[15] Ms. Schirr submitted that the facts established that Ms. Valera operated an independent practice without the IP Insurance for 23 months, and the onus then shifted to Ms. Valera to establish that she had taken all reasonable and diligent steps to avoid contravening the Bylaws. Ms. Schirr submitted that, while Ms. Valera was not deceitful or dishonest, she was careless and did not pay attention to the details of her business. This is enough to establish the strict liability offence.

[16] While it was acknowledged that Ms. Valera self-reported her misconduct, Ms. Schirr stated that this fact and the fact that the misconduct was not caught during an audit does not absolve Ms. Valera. The obligation was on Ms. Valera to act in compliance with the Bylaws and obtain the IP Insurance. The requirement that independent practitioners have the appropriate insurance is a key element of the Bylaws because independent practitioners are largely unsupervised. In any event, the misconduct would have been detected during a 2023 audit.

[17] Ms. Schirr submitted that the lengthy duration with which Ms. Valera operated Allegro for without IP Insurance is a significant factor.

[18] Ms. Schirr submitted that Ms. Valera's guilty pleas are appropriate and urged the Discipline Committee to accept those pleas.

### ***Submissions of Ms. Valera***

[19] Ms. Valera did not dispute that she failed to obtain the insurance required for Allegro or that she was negligent in failing to do so.

[20] Ms. Valera did not make excuses and took accountability for her misconduct. She stated that she will learn from this process to avoid similar issues in the future and will take steps to ensure that she renews Allegro's IP Insurance annually. Ms. Valera noted that she has connected with an insurance broker for annual reminders to renew the IP Insurance.

### **FINDING OF PROFESSIONAL MISCONDUCT:**

[21] Upon reviewing and considering the evidence submitted by the parties, the Discipline Committee finds that Ms. Valera did not have the IP Insurance required by the Bylaws for her independent practice for approximately 23 months and the requisite fault element for a strict liability offence was met.

[22] The Discipline Committee accepts Ms. Valera's pleas with respect to the four charges against her and finds Ms. Valera guilty of professional misconduct as defined in the Act.

## SANCTION

[23] Having accepted that Ms. Valera was guilty of professional misconduct, consideration then turned to an assessment of the appropriate sanction in the circumstances.

### *Submissions of the Investigation Committee*

[24] Ms. Schirr noted that section 30 of the Act permits the Discipline Committee to make a range of disciplinary orders for professional misconduct. To establish the range of reasonable penalties, Ms. Schirr referred to four professional regulation decisions of the Ontario College of Pharmacists that concerned the failure to comply with a new requirement to obtain mandatory professional liability insurance. For context, before the requirement came into force, the Ontario College of Pharmacists engaged in an education campaign and sent out reminders to ensure all pharmacists had the required insurance. Ms. Schirr separated the decisions into two categories, with one critical distinction: those where the members without insurance did not practice direct patient care, and those where the members without insurance did provide patient care.

[25] In *Ontario (College of Pharmacists) v Metellus*, 2009 ONCPDC 13 (“*Metellus*”), the member failed to comply with the new requirement to obtain personal professional liability insurance for one year but had continued to practice. The member stated that he did not receive mail outs regarding the insurance requirement as he had moved residences and failed to comply with an obligation to update his address with his college. The discipline committee accepted a joint submission as to sanction and reprimanded the member, suspended him for one month, and ordered costs of \$1,000. Ms. Schirr submitted that the suspension is the significant penalty in this case.

[26] In three decisions where members of the Ontario College of Pharmacists did not comply with the insurance requirement but did not practice (*Ontario (College of Pharmacists) v Tayfour*, 2009 ONCPDC 14; *Ontario (College of Pharmacists) v Chan*, 2009 ONCPDC 15; and *Ontario (College of Pharmacists) v Agemian Jr.*, 2009 ONCPDC 18), the discipline committee accepted joint submissions for a reprimand and payment of costs in the amount of \$1,000.

[27] In this case, Ms. Valera did not have the requisite insurance and continued to provide patient care, as in *Metellus*. However, Ms. Schirr stated that the Investigation Committee is not seeking a suspension of Ms. Valera’s licence, which it has made clear to Ms. Valera from the beginning, as this was a significant concern for her. What the Investigation Committee did recommend is a significant fine.



Ms. Schirr submitted a proposed Sanction Order (**Exhibit P-5**), which consists of a reprimand, a fine in the amount of \$5,000, and costs to be determined.

- [28] In support of the Sanction Order put forward by the Investigation Committee, Ms. Schirr noted the seriousness of practicing without insurance at any time and emphasized that Ms. Valera did not have the proper insurance in place for Allegro for 23 months, which was much longer than in the Ontario College of Pharmacists decisions mentioned above. Ms. Schirr submitted that the sanction against Ms. Valera must be significant enough to meet the goal of general deterrence, showing SALPN's membership that insurance is crucial.
- [29] Ms. Schirr noted that it is a privilege for an LPN to be approved for independent practice, and, accepting that privilege, independent practitioners must comply with certain requirements, including ensuring that the proper insurance is in place.
- [30] Ms. Schirr submitted that the fact that Ms. Valera self-reported, and that Ms. Valera was going through personal challenges in 2021, are mitigating factors, but they do not excuse Ms. Valera from her responsibility to obtain the appropriate insurance. Further, Ms. Valera did secure the IP Insurance for 2020 so she should have been aware of the process, which is not complicated or unclear. A \$5,000 fine and a reprimand are sufficient to demonstrate the seriousness of the misconduct and deter future misconduct while taking into account the mitigating factors.
- [31] With respect to costs, Ms. Schirr referred to *Abrametz v The Law Society of Saskatchewan*, 2018 SKCA 37 ("**Abrametz**"), for the burden of membership principle. She explained that it is a privilege to be a member of a self-regulating profession and the collective membership should not have to bear all of the costs associated with the discipline of an individual member. Instead, a disciplined member should bear some reasonable portion of the costs of a disciplinary hearing.
- [32] Ms. Schirr listed certain factors set out in the *Abrametz* decision that are relevant to determining the appropriate costs order in the circumstances, including Ms. Valera's financial status, the other sanctions imposed, that the costs award ought not to be punitive, and whether the costs would deter a member from raising a defence. Ms. Schirr submitted that Ms. Valera's financial and personal situation suggest that a lower costs award than may be awarded in other decisions is appropriate.
- [33] Ms. Schirr submitted a breakdown of the Actual and Anticipated Costs of this disciplinary hearing (**Exhibit P-6**) and submitted that Ms. Valera should bear 40% of the total Actual and Anticipated Costs, which amounts to \$5,400. That amount is not trivial and functions as a general deterrent.

[34] With respect to the deadline to pay a fine and costs, Ms. Schirr noted that the submitted Sanction Order does not propose any dates but other decisions have given two years to pay. The Investigation Committee would not be opposed to a deadline to pay that is around two years from the date of an order against Ms. Valera.

### *Submissions of Ms. Valera*

[35] Ms. Valera acknowledged the Sanction Order proposed by the Investigation Committee and requested any amount of relief with respect to the any fine and costs ordered against her. Ms. Valera submitted that her financial circumstances are such that any reduction of the fine or costs would make a significant difference to her. Ms. Valera is a single parent and her Allegro business is still new.

[36] Ms. Valera requested three years to make payment of any fine or costs levied against her.

[37] Following Ms. Valera's submissions, the Chair of the Discipline Committee asked Ms. Valera what monetary sanction she can reasonably afford. Ms. Valera responded that she can afford \$5,000 and other costs.

### *Decision*

[38] The Discipline Committee has considered the nature of Ms. Valera's misconduct and the context in which this disciplinary hearing arose. The Discipline Committee accepts that a suspension is not necessary in the circumstances, but recognizes that the sanction must be significant to condemn Ms. Valera's misconduct and to demonstrate to SALPN's membership that it is critical that all members obtain the requisite insurance.

[39] The Discipline Committee finds that a reprimand, a \$4,600 fine and costs in the amount of \$5,400 is reasonable in all of the circumstances.

[40] The Discipline Committee accepts that Ms. Valera is in a difficult financial position, that she is remorseful, and that she has taken steps to avoid making the same mistake in the future. Further, self-reporting is a mitigating factor. Accordingly, the Discipline Committee finds that a slightly reduced fine compared to the Investigation Committee's proposal and giving Ms. Valera three years to pay her fine and costs is appropriate, while still meeting the goal of general deterrence. With respect to the amount of the fine, the Discipline Committee also takes into account that Ms. Valera avoided paying insurance premiums for 2021 and 2022.

[41] The Discipline Committee finds that a costs order of 40% of the actual and anticipated costs is reasonable. It was noted that this disciplinary hearing could have proceeded by way of agreed statement of facts and joint submission, but, instead, the Investigation Committee needed to call witnesses.

**ORDER:**

[42] Upon consideration of the evidence and the submissions of Ms. Schirr and Ms. Valera, the Discipline Committee issues the following Order on August 15<sup>th</sup>, 2023:

1. Pursuant to section 30(1)(e) of *The Licensed Practical Nurses Act, 2000* (the “**Act**”), Cecilia Valera shall be reprimanded.
2. Pursuant to section 30(2)(a)(i) of the Act, Cecilia Valera shall pay a fine in the amount of \$4,600.00. The fine shall be paid on or before August 15, 2026. Failing payment, Cecilia Valera’s licence shall be suspended until payment is made pursuant to section 30(2)(b) of the Act.
3. Pursuant to section 30(2)(a)(ii) of the Act, Cecilia Valera shall pay costs of the investigation and hearing which shall be fixed in the amount of \$5,400.00. The fine shall be paid on or before August 15, 2026. Failing payment, Cecilia Valera’s licence shall be suspended until payment is made pursuant to section 30(2)(b) of the Act.

Dated at Regina, Saskatchewan, this 6<sup>th</sup> day of October, 2023.



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R. dos Santos, Chairperson, Discipline Committee of the Saskatchewan Association of Licensed Practical Nurses on behalf of the Discipline Committee consisting of M. Halyk, C. Okonkwo and M.E. Wellsch, K.C..