

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 ANIA KLONOWSKI

Discipline Committee:

Don Robinson (Chair) Kate Devries, Erica Cherney, Jaime Carlson and Kathy Bradford.

Counsel:

Patrick McDougall for Ms. Ania Klonowski

Connor Clyde for the Counselling and Investigation Committee

Lynsey Gaudin for the Discipline Committee

WRITTEN REASONS

INTRODUCTION:

On January 28, 2019, the Discipline Committee of the Saskatchewan Association of Licensed Practical Nurses ("SALPN") held a hearing concerning allegations of professional misconduct against former Licensed Practical Nurse, Ania Klonowski.

Ms. Klonowski was registered with SALPN from February 11, 2011 to January 1, 2018. She has not practised in Saskatchewan since that time. At the hearing it was alleged that Ms. Klonowski is guilty of professional misconduct, the particulars of which were outlined in paragraph 1- 3 of Appendix A to the Notice of Hearing, filed in these proceedings as Exhibit P-1, as follows:

1. By Information No. 991011137 sworn May 4, 2017, you were charged with unlawfully having in your possession a controlled substance to wit: Cocaine, contrary to section 4(1) of the *Controlled Drugs and Substances Act*. On June 26, 2018, you were convicted and sentenced in Saskatoon Provincial Court.
2. By Information No. 991013695 sworn May 30, 2017, you were charged stealing merchandise the property of Sears Canada Inc., at 201 1st Avenue South, of a value not exceeding five thousand dollars, contrary to section 334(b) of the *Criminal Code*. On August 3, 2017, you plead guilty and were sentenced in Saskatoon Provincial Court.
3. By Information No. 991013698 sworn May 30, 2017, you were charged with being at large on your recognizance entered into before a Justice or a Judge failed to comply with one or more conditions thereof, to wit: keep the peace and be of good behaviour, contrary to section 145(3) of the *Criminal Code*. On August 3, 2017, you plead guilty and were sentenced in Saskatoon Provincial Court.

Such conduct, it was alleged, constituted a breach by Ms. Klonowski of sections 24 and 32 of *The Licensed Practical Nurses Act, 2000*, sections 19 and 20 of the SALPN Regulatory Bylaws, the Code of Ethics and Standards of Practice and the Standards of Licensed Practical Nurses in Canada, particularly Standards 1 and 4.

At the outset of the hearing, it was confirmed that the Discipline Committee was properly constituted. Ms. Klonowski through her legal counsel entered a plea of guilty to the allegations as set out in Appendix A to the Notice of Hearing.

Counsel further indicated that an Agreed Statement of Facts was to be filed as well as a joint submission regarding penalty and costs.

EVIDENCE:

At the outset of the hearing, the following Agreed Statement of Facts and Documents was filed as Exhibit P-2 with the Discipline Committee [the information referenced in the "Tabs" is not included]:

1. Ania Klonowski was a registered Licensed Practical Nurse and a member of the Saskatchewan Association of Licensed Practical Nurses ("SALPN") in good standing until January 1, 2018. Her license was not renewed for the 2018 licensure year and has not been renewed since that date.
2. Ms. Klonowski first registered with SALPN in February 11, 2011. She has been a practicing member since that date until January 1, 2018.

First Involvement

3. Ms. Klonowski first came to the attention of the SALPN Counselling and Investigation Committee in October 2015 when a complaint was received alleging that Ms. Klonowski had a methamphetamine addiction. The complaint was investigated, including confirming there were no concerns by Ms. Klonowski's employer. Additionally, Ms. Klonowski voluntarily provided a number of drug screens which were clear other than for substances which Ms. Klonowski had a prescription for. As such, no further action was taken with respect to that complaint.

Controlled Drugs and Substances Act Offence

4. On October 16, 2017, Lynsay Nair, Executive Director of SALPN, received a telephone call from Constable Dallon Holstrom, Saskatoon Police Services Organized Crime Unit. Constable Holstrom advised Ms. Nair that Ms. Klonowski was charged on May 3, 2017, with possession and trafficking cocaine.
5. The SALPN Counselling and Investigation Committee proceeded to obtain copies of Informations in relation to the situation referred to in paragraph 4 of this Agreed Statement of Facts. These materials indicated that Ms. Klonowski was charged with an offence under the *Controlled Drugs and Substances Act*.

Attached at **Tab A** is Information No. 991011137 sworn May 4, 2017 setting out the charge. Attached at **Tab B** is the endorsement dated June 26, 2018, which shows the Crown elected to proceed by indictment.

6. On June 26, 2018, Ms. Klonowski appeared in the Provincial Court of Saskatchewan in Saskatoon and entered a guilty plea to the charge contained on Information No. 991011137.
7. Ms. Klonowski was sentenced to a 15 month term of imprisonment to be served in the community subject to conditions. Attached is the following from the June 26, 2018, proceedings in the Provincial Court of Saskatchewan in Saskatoon:
 - (a) Transcript of proceedings – **Tab C**; and,
 - (b) Conditional Sentence Order – **Tab D**.

Theft and Failure to Comply with Conditions

8. During SALPN's investigation into this matter it was discovered that Ms. Klonowski had also been charged with:
 - (a) On or about May 12, 2017, stealing merchandise the property of Sears Canada Inc., at 201 1st Avenue South, of a value not exceeding five thousand dollars, contrary to section 334(b) of the *Criminal Code*, as described in Information No. 991013695 sworn May 30, 2017, which is attached at **Tab E**.
 - (b) On or about May 12, 2017, being at large on her recognizance entered into before a Justice or a Judge failed to comply with one or more conditions thereof, to wit: keep the peace and be of good behaviour, contrary to section 145(3) of the *Criminal Code*, as described in Information No. 991013698, sworn May 30, 2017, which is attached at **Tab F**.
9. Attached at **Tab G** are the final endorsements dated August 3, 2017, for Informations No. 991013695 and 991013698 which indicate Ms. Klonowski plead guilty to these charges. On that same date, Ms. Klonowski received a six-month probation Order, a copy of which is attached at **Tab H**.

Professional Misconduct

Attached at **Tab I** is a copy of Ms. Klonowski's criminal record as of September 18, 2018. The only criminal matters indicated on it are the above-mentioned theft under \$5,000, failure to comply with recognizance, and possession of a scheduled substance.

10. Ms. Klonowski's convictions on August 3, 2017 and June 26, 2018 have resulted in a referral by the Counselling and Investigation Committee under section 26(2)(a) of *The Licensed Practical Nurses Act* ("the Act").

11. These proceedings arise under section 32 of the *Act*:

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 Cannabis Act (Canada), the Controlled Drugs and Substances Act (Canada) or the Food and Drugs 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.

12. Ms. Klonowski admits that her conduct giving rise to the convictions on August 3, 2017 and June 26, 2018, constitute professional misconduct as that term is defined in section 24 of the *Act*.

13. Ms. Klonowski has not been previously disciplined by SALPN.

Finding of Professional Misconduct

Upon reviewing and considering the evidence submitted, in particular Ms. Klonowski's criminal conviction pursuant to the *Criminal Code* and the *Controlled Drugs and Substances Act (Canada)*, the Discipline Committee accepted Ms. Klonowski's plea and finds her guilty of professional misconduct as defined in the *Act* and the SALPN Regulatory Bylaws, the Code of Ethics and Standards of Practice and the Standards of Licensed Practical Nurses in Canada.

Consideration of Joint Submission

Having accepted that Ms. Klonowski was guilty of professional misconduct, consideration then turned to an assessment of the penalty appropriate in the circumstances. Both Mr. Clyde and Mr. McDougall confirmed that Exhibit P-3 represented their joint submission regarding actual and anticipated costs of the hearing. Regarding penalty, the Joint Submission as to Penalty (Exhibit P-4) sought the following:

1. Pursuant to s. 30(1)(f) of *The Licensed Practical Nurses Act, 2000* (the "Act"), Ania Klonowski shall not be entitled to reapply for admission with the Saskatchewan

Association of Licensed Practical Nurses ("SALPN") until such time as the following conditions are met:

- (a) Ania Klonowski shall submit to the Registrar drug screen test results on a monthly basis which demonstrate negative results for a period of three consecutive months. The costs of any testing and reporting shall be borne by Ania Klonowski.
- (b) Ania Klonowski shall obtain and submit a written report to the Registrar from an addictions counsellor approved by SALPN or a physician confirming that she is fit to return to the practice of nursing and that she is adhering to a treatment plan, the details of which will be set out in the report. The costs of any reporting shall be borne by Ania Klonowski.

2. In the event all the conditions are met in paragraph one and Ania Klonowski's license is reinstated, Ania Klonowski may continue to practice under the following conditions, pursuant to s. 30(1)(d) of the *Act*:

- (a) Ania Klonowski shall submit to the Registrar drug screen test results as follows:
 - (i) Once per month for the first six months;
 - (ii) After the first six months, once every two months for the next six months; and,
 - (iii) During the second year of this Order, once every three months.

Should any drug screen indicate a positive, or non-negative result, for a substance which Ania Klonowski does not have a valid prescription, Ania Klonowski may be immediately suspended and remain suspended at the discretion of the SALPN Counselling and Investigation Committee.

- (b) For so long as Ania Klonowski continues to hold a practicing license with the Association, she shall immediately advise the Registrar if she is the subject of any criminal charges or disciplinary sanctions related to drug use taken by her nursing employer.
- (c) For a period of two years, Ania Klonowski shall be required to provide a written copy of the decision of the Discipline Committee to future nursing employers for two years from the date of this Order. Ms. Klonowski shall ensure that each employer provides written confirmation to the Registrar that the decision of the Discipline Committee has been received.

3. Pursuant to s. 30(2)(a)(ii) of the *Act*, Ania Klonowski shall pay costs of the investigation and hearing in the amount of \$6,000.00. Such costs shall be paid on or before January 28, 2020. In the event that Ania Klonowski is a Member in good standing as of January 28, 2020, and Ania Klonowski fails to make payment of the costs as ordered, her license shall be immediately suspended until such payment is made, pursuant to section 30(2)(b) of the *Act*.

Mr. Clyde provided the Discipline Committee with the following set of cases involving nursing professionals: *College of Nurses of Ontario v Gail Hiekkila*, 2005 CanLII 79622 (ON CNO) and *Saskatchewan Registered Nurses Association v Lorrie Dodwell* (March 6, 2009, unreported). These cases involve similar conduct, specifically being found to have a drug addiction that has

resulted in adverse consequences for those individuals, either through a criminal conviction or at their places of employment. These cases were submitted to support the C & I Committee's position that the proposed submission as to penalty, including the requirement of drug testing, is consistent and within the range of prior decisions of other discipline committees/panels addressing similar misconduct.

Mr. Clyde, in addition to the authorities, submitted that the proposed Order met all of the goals of an Order of this nature, namely the protection of the public and the profession, consideration of the mitigating and aggravating circumstances of Ms. Klonowski, the need for general and specific deterrence and the opportunity for rehabilitation.

On the matter of costs, Mr. Clyde submitted in support of the principle of having members pay some costs: *Saskatchewan Association of Licensed Practical Nurses v Savannah Hodgson* (December 28, 2016, unreported). It was submitted that the actual and anticipated costs of the hearing were \$15,796.00 and it was proposed that Ms. Klonowski bear 40% of that amount. The reduced costs being reflective of Ms. Klonowski's personal circumstances and cooperation with the investigation and hearing process. Her cooperation undoubtedly prevented what would have otherwise been a more lengthy hearing.

Mr. McDougall submitted on behalf of his client details about Ms. Klonowski's including her difficult personal and financial circumstances, her remorse for her actions, lack of prior disciplinary record and the anticipated impact of a life-long stigma of a her criminal charges as well as any decision of the Discipline Committee.

As noted above, this matter comes before the Discipline Committee as a joint submission. As such, the Discipline Committee is mindful of the decision of the Saskatchewan Court of Appeal in *Rault v Law Society of Saskatchewan*, 2009 SKCA 81 when considered the joint submission and that the same should not be disregarded unless there are good or cogent reasons for doing so. This concept was recently reaffirmed by the Court of Appeal in *R v Bear*, 2018 SKCA 22, in the criminal law context. In *Bear*, Chief Justice Richards, at paragraph 23 quoted Justice Moldaver in *R v Anthony-Cook*, 2016 SCC 43:

Rejection (of a joint submission) denotes a submission so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down. This is an undeniably high threshold.....

This principle was recently affirmed in the disciplinary hearing decision *Law Society of Saskatchewan, Law Society of Saskatchewan v Blenner-Hassett*, 2018 SKLSS 6.

The Discipline Committee accepts the submissions by both Mr. Clyde and Mr. McDougall as to the mitigating and aggravating circumstances applicable to Ms. Klonowski. The restrictions placed on Ms. Klonowski's ability to practice along with the requirement to provide this decision to future employers will serve as protection of the public, as well as a specific deterrent and a general deterrent to other members of the profession. The requirement of drug and alcohol testing along with addictions counseling will serve as an opportunity for rehabilitation.

In accepting the joint submission as to penalty, including costs, the Discipline Committee has taken into account and considered Ms. Klonowski's cooperation with the investigation, the fact that she did not delay matters and voluntarily gave up her licence pending the outcome of these proceedings. As such, this Discipline Committee sees no reason to deviate from that proposed.

Upon consideration of the evidence and the submissions of both Counsel, the Discipline Committee issued the following Order on February 5, 2019:

1. Pursuant to section 30(1)(f) of the *Act*, Ania Klonowski shall not be entitled to reapply for admission with the Saskatchewan Association of Licensed Practical Nurses ("SALPN") until such time as the following conditions are met:
 - a. Ania Klonowski shall on a monthly basis submit to the Registrar, via a company, agency and/or physician approved by the Registrar, drug screen test results which demonstrate negative test results for a period of 3 consecutive months. The costs of any testing shall be borne by Ania Klonowski.
 - b. Ania Klonowski shall obtain and submit a written report to the Registrar from a physician or an addictions counsellor approved by SALPN that confirms she is fit to return to the practice of nursing and she is adhering to a treatment plan, the details of which will be set out in the report. The costs of any reporting shall be borne by Ania Klonowski.
2. In the event all of the conditions are met in paragraph 1 and Ania Klonowski's licence is reinstated, Ania Klonowski may continue to practise under the following conditions, pursuant to section 30(1)(d) of the *Act*:
 - a. Ania Klonowski shall, via a company, agency and/or physician approved by the Registrar, submit to the Registrar drug screen test results as follows:
 - i. Once per month for the first 6 months;
 - ii. After the first 6 months, once every two months for the next 6 months; and
 - iii. During the second year of this Order, once every 3 months.

Should any drug screen indicate a positive or non-negative result, for a substance which Ania Klonowski does not have a valid prescription, Ania Klonowski may be immediately suspended and may remain suspended at the discretion of the SALPN Counselling and Investigation Committee.

- b. For so long as Ania Klonowski continues to hold a practicing licence with SALPN, she shall immediately advise the Registrar if she is the subject of any criminal charges or disciplinary sanctions related to drug use taken imposed by her nursing employer.

- c. For a period of 2 years from the date of this Order, Ania Klonowski shall be required to provide a written copy of this Order and the written decision of the Discipline Committee to future nursing employers. Ms. Klonowski shall ensure that each employer provides written confirmation to the Registrar that this Order and the written decision of the Discipline Committee have been received.
3. Pursuant to s. 30(2)(a)(ii) of the *Act*, Ania Klonowski shall pay costs of the investigation and hearing in the amount of \$6,000.00. Such costs shall be paid on or before January 28, 2020. In the event that Ania Klonowski is a Member of SALPN in good standing as of January 28, 2020, and Ania Klonowski fails to make payment of the costs as ordered, her licence shall be immediately suspended until such payment is made, pursuant to section 30(2)(b) of the *Act*.
4. A copy of this Order and written reasons shall be published on the Saskatchewan Association of Licensed Practical Nurses website.

DATED at Regina, Saskatchewan, this 14th day of March ^{Mar-14-2019} , 2019.



D. Robinson, Chairperson of the Discipline Committee
of the Saskatchewan Association of Licensed Practical
Nurses on behalf of the Discipline Committee
consisting of K. Devries, E. Cherney, J. Carlson and K.
Bradford.