

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 LEE
STIEB

REASONS FOR DECISION BY:

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

Discipline Committee:

D. Robinson (Chair), K. De Vries, K. Huckabay; M. Halyk; K. Bradford.

Legal Counsel:

Jay Watson (Solicitor for the Respondent)

Darcia Schirr, Q.C. (Counselling and Investigation Committee)

Matthew Klinger (Discipline Committee)

INTRODUCTION:

This matter was heard by a panel of the Discipline Committee (the "**Discipline Committee**") of the Saskatchewan Association of Licensed Practical Nurses ("**SALPN**") on October 26, 2020 in Regina, Saskatchewan. The Respondent, Licensed Practical Nurse Lee Stieb, has been charged with professional misconduct within the meaning of s. 24 of *The Licensed Practical Nurses Act, 2000* (the "**Act**"). The formal charges, as outlined in the Appendix A to the Notice of Hearing, stated that:

1. You crossed appropriate professional boundaries with O.J. by, *inter alia*:
 - (a) Developing a friendship and social relationship with O.J. which began in 2012 when O.J. was a patient at Victoria Hospital in Prince Albert and you were one of his nurses.
 - (b) In 2014, you became O.J.'s Power of Attorney and his Executor under his Last Will and Testament.
 - (c) In the fall of 2017 and at O.J.'s request, you contacted a lawyer and transported O.J. to meet with the lawyer. O.J. executed a Last Will and Testament on November 14, 2017 which named your father, Leo Stieb, as Executor and provided that the rest and residue of O.J.'s estate would be provided to certain named relatives of O.J. and to you and your father, Leo Stieb.

- (d) O.J. was hospitalized at the Victoria Hospital from September 24, 2017 to November 23, 2017. You provided nursing care to O.J. for at least one shift. You attended a family meeting with health care professionals on October 3, 2017, not in your capacity as a licensed practical nurse but instead, as O.J.'s "friend".
- (e) In December 2017, O.J. gave you his car as a gift which you accepted.

The formal charge alleged that such conduct constituted a breach of ss. 24 and 49 of the Act, s. 20 of the *SALPN Regulatory Bylaws*, the *Code of Ethics for Licensed Practical Nurses in Canada* and the *Standards of Practice for Licensed Practical Nurses in Canada*.

Ms. Darcia Schirr, Q.C., appeared by telephone as legal counsel for the Investigation Committee of the SALPN (the "**Investigation Committee**"). Mr. Jay Watson appeared by telephone as legal counsel for Mr. Stieb.

At the outset of the hearing, Mr. Stieb, entered a plea of guilty to the allegations as set out in Appendix A to the Notice of Hearing. The hearing proceeded by way of an Agreed Statement of Facts as well as a joint submission regarding penalty and costs.

On the hearing of this matter, the Discipline Committee concluded that Mr. Stieb was guilty of the offence as charged and accepted the joint submission on penalty and costs. Brief oral reasons were given with written reasons to follow. These are those reasons.

FACTS:

This matter proceeded pursuant to an Agreed Statement of Facts, which is summarized below.

Mr. Stieb is a licensed practical nurse. He first became a registered member of the SALPN on November 27, 2008, and shortly thereafter commenced working at Victoria Hospital in Prince Albert, Saskatchewan, where he has spent his entire nursing career. Mr. Stieb has not been the subject of past complaints or discipline proceedings by SALPN.

The circumstances of the complaint at issue involve Mr. Stieb's relationship with O.J., who Mr. Stieb first met when O.J. became a patient at Victoria Hospital in the winter of 2012. Mr. Stieb and O.J. remained in close contact until O.J. passed away on September 17, 2018. Throughout the years, they developed a friendship and close social relationship that crossed the boundaries of a professional relationship,

When O.J. was first admitted in 2012, he was 85 years old and lived alone on his farm. Throughout his initial stay at Victoria Hospital, Mr. Stieb and O.J. engaged in numerous conversations. During one of these conversations, O.J. had invited Mr. Stieb to his farm. After O.J. was discharged, he phoned Mr. Stieb and repeated his offer. Mr. Stieb accepted the invitation and visited O.J.'s farm approximately a week later. At the end of his visit, Mr. Stieb asked if he could bring his father to O.J.'s farm. O.J. agreed.

In the following months, Mr. Stieb and his father frequently visited O.J.'s farm. During a visit in 2014, O.J. asked Mr. Stieb to serve as his executor and power of attorney. A few weeks later, after another request by O.J., Mr. Stieb accepted.

In 2017, O.J.'s niece visited her uncle and observed that he was having memory problems and seemed confused. In the fall of that year, O.J. was hospitalized twice at Victoria Hospital, in part due to his confusion. After his second admission to hospital O.J. was discharged to a long-term care facility.

On both occasions in 2017 in which O.J. was admitted to the hospital, Mr. Stieb provided nursing care to O.J. despite the personal relationship which had developed. O.J.'s medical chart for his second hospitalization contains several notes on his confusion, as well as multiple references to Mr. Stieb as a "friend", "family friend", and "nurse friend".

In the fall of 2017, O.J. began to talk to Mr. Stieb about changing his will. O.J. mentioned that his family had suggested O.J.'s nephew serve as executor and power of attorney. At O.J.'s request, Mr. Stieb set up an appointment with a lawyer. Mr. Stieb attended the lawyer's office with O.J., although O.J. and the lawyer spoke privately without Mr. Stieb.

At some point, Mr. Stieb introduced O.J. to an accountant that assisted O.J. with some accounting advice. Mr. Stieb suggested to O.J. that the accountant serve as O.J.'s power of attorney, and the accountant agreed to do so.

O.J. executed a will on November 14, 2017. In the will, O.J. appointed Mr. Stieb as his executor. The will contains a provision which added Mr. Stieb and his father as beneficiaries to the residue of O.J.'s estate. Mr. Stieb is unaware of why that notation was added to the Will.

In December 2017, Mr. Stieb asked O.J. if O.J. would be willing to sell his car to Mr. Stieb. O.J. offered to gift the car to Mr. Stieb. Mr. Stieb said that he wanted to pay for the car and suggested \$2,500.00. O.J. refused, and Mr. Stieb allowed O.J. to gift him the car.

After O.J. passed away, Mr. Stieb disclaimed any interest in O.J.'s estate and obtained no financial benefit. There is no evidence that Mr. Stieb deliberately sought to obtain financial benefits through his position as a nurse who had cared for O.J. Once SALPN commenced an investigation Mr. Stieb co-operated with the investigation process.

DECISION:

There are two issues before the Discipline Committee: first, whether the conduct of Mr. Stieb was professional misconduct as defined within s. 24 of the Act; and, second, if so, whether the proposed agreed-upon penalties are appropriate under s. 30 of the Act.

Professional Misconduct Decision

Licensed Practical Nurses have a duty to uphold the standards of the profession and conduct themselves in a manner that reflects well on the profession and maintains the trust of the public. The *Code of Ethics for Licensed Practical Nurses in Canada* calls on nurses to provide safe and

competent care for their patients through developing trusting, therapeutic relationships while also maintaining professional boundaries. Maintaining appropriate boundaries with patients is essential to upholding the trust of the public.

It is the responsibility of every Licensed Practical Nurse to maintain professional boundaries with their patients. This ensures that the nurse is not misusing their power in the relationship to meet their own personal needs rather than the needs of the patient. It is especially important for nurses to uphold this duty when those in their care may be particularly vulnerable. Although intentionally misusing a nurse's relationship with a patient would constitute severe professional misconduct, carelessness in crossing professional boundaries may constitute professional misconduct.

Licensed Practical Nurses must take care to place client care as a central focus of their care, and should be alert to the risks imposed when professional relationships progress into personal relationships. This risks are particularly significant in the case of patients whose circumstances, such as age and mental status may make them vulnerable to being influenced by caregivers. As counsel for the Investigation Committee noted, Licensed Practical Nurses must have a heightened radar where patients are elderly for the risk that bedside socialization may progress from an appropriate therapeutic relationship to an inappropriate personal relationship. Licensed Practical Nurses should take care to avoid the appearance that their professional caregiver relationship is being utilized to influence the affairs of a patient.

Upon reviewing and considering the evidence submitted by way of the Agreed Statement of Facts, the Discipline Committee accepts Mr. Stieb's guilty plea and finds him guilty of professional misconduct as defined in the Act. As a nurse, Mr. Stieb is accountable to the public and responsible for ensuring that his conduct meets the standards of the profession, particularly in respect to his conduct towards those under his care. In this circumstance, Mr. Stieb's conduct fell below the standard expected for those in the profession.

Penalty Decision

As this matter comes before the Discipline Committee as a joint submission, the decision of *Rault v Law Society of Saskatchewan*, 2009 SKCA 81 [*Rault*], is relevant. In *Rault* at para 28, the Saskatchewan Court of Appeal affirmed that in the context of a disciplinary proceeding, a joint submission should not be disregarded unless there are good or cogent reasons for doing so. To that end, a joint submission should be accepted unless it is not within the range of appropriate penalties, unfit or unreasonable, or contrary to the public interest.

In considering whether the joint submission proposes a penalty that is unfit, unreasonable or contrary to the public interest, the Discipline Committee notes the decision of *Camgoz v College of Physicians and Surgeons (Sask)* (1993), 114 Sask R 161 (QB), in which the Court of Queen's Bench set out a number of factors which may be relevant in evaluating an appropriate sanction in professional discipline proceedings regarding medical professionals. The Court held:

[49] In my respectful view, in determining an appropriate sentence to be imposed on a member of the medical profession found guilty of unbecoming, improper, unprofessional and discreditable conduct, the factors which the respondent ought to take into account include:

1. The nature and gravity of the proven allegations;

2. The age of the offending physician;
3. The age of the offended patient;
4. Evidence of the frequency of the commission of the particular acts of misconduct within particularly, and without generally, the Province;
5. The presence or absence of mitigating circumstances, if any.
6. Specific deterrence;
7. General deterrence;
8. Previous record, if any, for the same, or similar, misconduct; the length of time that has elapsed between the date of any previous misconduct and conviction thereon; and, the member's (properly considered) conduct since that time;
9. Ensuring that the penalty imposed will, as mandated by s. 69.1 of the Act, protect the public and ensure the safe and proper practice of medicine;
10. The need to maintain the public's confidence in the integrity of the respondent's ability to properly supervise the professional conduct of its members;
11. Ensuring that the penalty imposed is not disparate with penalties previously imposed in this jurisdiction, particularly, and in other jurisdictions in general, for the same, or similar acts of misconduct.

[50] The above factors are not to be considered as being an exhaustive list of the factors to be considered by the respondent in its future considerations of like matters. Nor are the factors identified by me listed in order of their importance. The noted factors identified by me are those which I consider to be generally applicable to the consideration of a proper penalty to be imposed following conviction of a member for unbecoming, improper, unprofessional and discreditable conduct. The factors to be considered in a particular case will of course vary, as will their particular relevance, in each case under consideration.

The joint submission as to penalty proposed an order that Mr. Stieb pay costs of \$10,000 (payable by May 1, 2021), as well as to pass an educational course, "PROBE Ethics and Boundaries", which will cost \$1850 USD. Counsel for the Investigation Committee indicated that this online course focuses on avoiding conflicts of interest and inappropriate patient relationships for health care professionals (including nurses).

In evaluating the joint submission as to penalty, including costs, the Discipline Committee has taken into account the scale of the conduct, the ongoing nature of the conduct and the seriousness of the conduct. In considering specific deterrence, the Discipline Committee notes that Mr. Stieb has accepted responsibility for his actions and acknowledged that his actions constituted professional misconduct. He had renounced any interest in O.J.'s estate, and derived no financial benefit from his conduct. Additionally, Mr. Stieb does not have a prior record of complaints or disciplinary sanctions, and has been cooperative throughout the investigation and discipline process. The educational component of the joint submission will reinforce to Mr. Stieb the importance of maintaining appropriate professional boundaries, and serves the purpose of protection of the public.

The Discipline Committee has also taken into consideration the need for general deterrence and the need to maintain the public's confidence in the profession and the regulatory body. The penalty set out in the joint submission, including a relatively significant order to pay costs will serve as important to signal to other Licensed Practical Nurses that it is vital the care they provide care to those under their care meets professional standards, which includes taking care to ensure they maintain professional boundaries with patients, even patients who appear to be willing to enter into a more personal relationship.

The joint submission was put forward with the consent of both the counsel for the Investigation Committee and the counsel of Mr. Stieb. There are no good or cogent reasons for departing from the submission; further, the joint submission is neither unfit, unreasonable or contrary to the public interest. Applying the test from *Rault*, the Discipline Committee has no reason nor any justification for departing from what was put forward.

For the above noted reasons, the Discipline Committee accepts the joint submission as to penalty.

CONCLUSION:

For the foregoing reasons, the Discipline Committee confirms its oral decision of October 26, 2020, in respect of the professional misconduct of Mr. Stieb and orders that:

1. Pursuant to section 30(1)(e) of *The Licensed Practical Nurses Act, 2000*, Mr. Lee Stieb is hereby reprimanded.
2. Pursuant to section 30(1)(d) of the Act, Mr. Stieb may continue to practice on the condition that on or before April 1, 2021, Mr. Stieb shall successfully complete (as demonstrated by an unconditional pass) the CPEP course entitled "PROBE Ethics and Boundaries" and provide confirmation of successful completion to the Registrar. Mr. Stieb shall bear all costs associated with that course.
3. Pursuant to section 30(2)(a)(ii), Mr. Stieb shall pay the costs of the investigation and hearing which costs shall be fixed in the amount of \$10,000. The costs shall be paid on or before May 1, 2021, failing which Mr. Stieb's license shall be suspended until payment is made pursuant to section 30(2)(b) of the Act.
4. Pursuant to section 30(3) of the Act, a copy of the Discipline Committee order and decision shall be provided to the complainant.
5. Pursuant to section 30(1)(f) of the Act and for a period of two years from the date of the Discipline Committee order, Mr. Stieb shall be required to provide a copy of the Discipline Committee decision and order to his nursing employer. Further, Mr. Stieb shall ensure that

each nursing employer will provide written confirmation to the Registrar that the decision and order has been received.

6. A copy of the Discipline Committee order and decision shall be published on SALPN's website.

DATED at Regina, Saskatchewan, this 6th day of January, 2021.



D. Robinson, Chairperson, Discipline Committee of the Saskatchewan Association of Licensed Practical Nurses on behalf of the Discipline Committee consisting of K. De Vries; K. Huckabay; M. Halyk; and K. Bradford.