

COLLEGE OF LICENSED PRACTICAL NURSES OF ALBERTA

**IN THE MATTER OF
A HEARING UNDER *THE HEALTH PROFESSIONS ACT*,
AND IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF KAYLA O'BRIEN**

**DECISION OF THE HEARING TRIBUNAL
OF THE
COLLEGE OF LICENSED PRACTICAL NURSES OF ALBERTA**

**IN THE MATTER OF A HEARING UNDER THE *HEALTH PROFESSIONS ACT* REGARDING THE
CONDUCT OF KAYLA O'BRIEN, LPN #48577, WHILE A MEMBER OF THE COLLEGE OF LICENSED
PRACTICAL NURSES OF ALBERTA**

DECISION OF THE HEARING TRIBUNAL

(1) Hearing

The Hearing was conducted via teleconference on December 4 and 5, 2024 and June 9, 2025, with the following individuals present:

Hearing Tribunal:

Jeff Bell, LPN, Chairperson
Sarah Kawaleski, LPN
Emeka Ezike-Dennis, Public Member
Glen Buick, Public Member

Independent Legal Counsel for the Hearing Tribunal: Heidi Besuijen

Staff:

Vita Wensel, Legal Counsel for the Complaints Director, CLPNA
Gregory Sim, Legal Counsel for the Complaints Director, CLPNA
Susan Blatz, Complaints Director, CLPNA
Sanah Sidhu, Director of Professional Conduct, CLPNA

Investigated Member:

Kayla O'Brien, LPN ("Investigated Member" or "Ms. O'Brien")
Jennifer Davis, Legal Counsel for the member

(2) Preliminary Matters

The hearing was open to the public.

There were no objections to the members of the Hearing Tribunal hearing the matter, and no Hearing Tribunal member identified a conflict. There were no objections to the jurisdiction of the Hearing Tribunal.

In consideration of the nature of the allegations in this matter and the high degree of personal information involved, the Complaints Director's counsel, with the agreement of counsel for the Investigated Member, proposed that the Complainant be referred to by his initials only. The

Hearing Tribunal accepted this proposal and, accordingly, for the purposes of this decision, the Complainant is referred to only as MF. Similarly, the parties agreed, and the Hearing Tribunal accepted, that to the extent certain information (i.e. phone number, home address) of the Investigated Member would be referred to as “KO phone number” or “KO address”.

(3) Background

Ms. O’Brien was an LPN within the meaning of the *Health Professions Act* (“Act”) at all material times, and more particularly, was registered with the CLPNA as an LPN at the time of the complaint. Ms. O’Brien, Licensed Practical Nurse (“LPN”), obtained her nursing education from Norquest College in Edmonton, Alberta. Ms. O’Brien became a regulated member of the College of Licensed Practical Nurses of Alberta (the “College”) at the end of 2019.

Between January 2020 – September 2020, Ms. O’Brien worked as a Licensed Practical Nurse (“LPN”) on a casual basis at CBI Home Health. She started working at the Radius Community Health and Healing Centre, previously known as the Boyle McCauley Health Centre (the “Facility”) in September of 2020, before commencing full-time employment with Radius in January of 2022. She remained employed full-time at the Facility until she was terminated in June of 2023.

Mr. MF (referred to hereafter as “MF”) made a complaint (the “Complaint #1”) to the College about Ms. O’Brien on June 7, 2023.

Additionally, a second complaint (the “Complaint #2”) was received from the Clinic Manager of the Facility on June 19, 2023, pursuant to section 57 of the *Act* as Ms. O’Brien had been terminated from the Facility for what the Clinic Manager believed to be unprofessional conduct.

By way of letters dated June 9 and June 22, 2023, the Complaints Director notified Ms. O’Brien of both Complaint #1 and Complaint #2 (collectively the “Complaints”) and confirmed that they had delegated their authority to the Complaints Officer. Ms. O’Brien was also notified that in accordance with section 55(2)(d) of the *Act* the Complaints would be investigated by an assigned investigator, Mr. Neal York.

MF and the Clinic Manager also received notice that their respective complaints were being investigated, in accordance with section 55(2)(d) of the *Act*. Copies of the letters dated June 9 and June 22, 2023, are attached as TAB 4 of the Book of Agreed Exhibits.

The Complaints were investigated, and Mr. York submitted his investigation report to the Complaints Officer on November 3, 2023.

By way of letter dated November 27, 2023, and received on December 06, 2023, Ms. O'Brien was notified that the Complaints had been referred to a hearing and was provided with a copy of the Statement of Allegations.

On January 31, 2024, Ms. O'Brien received a copy of the Notice of Hearing, Notice to Attend and Notice to Produce.

Similarly, on January 31, 2024, MF and the Clinic Manager received Notices of Hearing, Notices to Attend and Notices to Produce.

(4) Allegations

The Allegations in the amended Statement of Allegations are:

1. Between August 2022 and June 2023, entered into a sexual relationship with Patient MF, including having sexual intercourse with Patient MF on at least one occasion.

2. **[AMENDED]**

Between June 2022 and June 2023, entered into a close relationship with Patient MF that included doing one or more of the following:

- a. Visited and ate meals with Patient MF in her vehicle;
- b. Visited with Patient MF inside either, or both, of their homes;
- c. Communicated with Patient MF through Facebook messenger, text messages, video calls and/or phone calls;
- d. Went on an overnight trip to Jasper with Patient MF, including sleeping in the same hotel room together;
- e. Went on an overnight trip to Red Deer with Patient MF, including sleeping in the same hotel room together;
- f. Went on day trips to Calgary with Patient MF;
- g. Purchased Patient MF a computer desk for his home;
- h. Communicated to Patient MF that she wanted to snuggle, or words to that effect;
- i. Communicated to Patient MF that she was sad that he did not want to sleep with her, or words to that effect;

j. Called Patient MF “baby” on at least one occasion.

3. **[AMENDED]**

On June 6, 2023, failed to demonstrate professionalism when she went to Patient MF’s home to confront Patient MF about his allegations that they had been in a sexual relationship to a coworker at her place of employment as an LPN.

It is further alleged that this conduct constitutes “unprofessional conduct” as defined in s.1(1)(pp)(i), (ii) and (xi) of the Act, and in particular:

1. Your conduct in Allegation 1 constitutes “sexual abuse” as defined in s. 1(1) (nn.1) of the HPA;
2. Your conduct in Allegations 2(h), 2(i), and 2(j) constitutes “sexual misconduct” as defined in s.1(1)(nn.2) of the HPA;
3. Further, or in the alternative, your conduct breaches one or more of the following:
 - a) *Standards of Practice for Licensed Practical Nurses on Boundary Violations (2023)*: Standards 1, 8;
 - b) *Standards of Practice for Licensed Practical Nurses on Boundary Violations: Protecting Patients from Sexual Abuse and Sexual Misconduct (2019)*: Standards 1, 2, 8;
 - c) *Standards of Practice for Licensed Practical Nurses in Canada (2020)*: Standards 1.1, 1.8, 2.1, 3.1, 3.5, 4.4, 4.6;
 - d) *Code of Ethics for Licensed Practical Nurses in Canada (2013)*: Responsibilities 2.7, 2.9, 3.1, 3.3, 5.1, 5.7.

(5) Exhibits

The following exhibits were entered at the hearing:

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|-------------|--|
| Exhibit #1: | Partial Agreed Statement of Fact |
| Exhibit #2: | Exhibits to Partial Agreed Statement of Fact |
| Exhibit #3: | Amended Statement of Allegations |
| Exhibit #4: | Province of Alberta Information, File No, 121050082P1, Pertaining to MF |
| Exhibit #5: | Province of Alberta Information, File No, 131311516P1, Pertaining to MF |
| Exhibit #6: | Profiles and Reviews of Vita Wensel from the Clearway Law website |
| Exhibit #7: | Confirmation of Service of Hearing Continuation |
| Exhibit #8: | January and February 2025 Emails from Randy Duroude with Hearing Recording |
| Exhibit #9: | Emails and Texts from Mr. MF |

(6) Agreed Facts Relating to the Allegations

The Facility provides care to vulnerable populations and underserved communities in downtown Edmonton. For example, the Facility provides health services to individuals facing barriers to accessing health services such as ethnicity, poverty, homelessness, addiction, mental health, literacy, education levels, social isolation, lack of social support or no Alberta Health Care coverage.

MF began attending the Facility as a patient in or around September of 2021. At the time of first attending the Facility, MF did not have permanent housing. MF moved into his own apartment in August of 2022.

Ms. O'Brien began providing nursing care to MF as a patient of the Facility, in her role as an LPN, in or around May of 2022. Ms. O'Brien was on Team A until mid-July 2022 and then was switched to Team B, which was comprised of 5 support staff, including 4 nurses and 1 medical office assistant. MF's doctor was part of Team B.

Ms. O'Brien's interactions with MF included nursing care and coordination of care. Ms. O'Brien's involvement with nursing care for MF at the Facility is summarized as follows:

- a. May 4-5, 2022, relating to requesting a note for massage therapy coverage.
- b. July 23, 2022, relating to treatment of a scrape;
- c. October 7, 2022, requesting a food hamper;
- d. November 7 and 14, 2022, relating to cancelling an appointment for MF;
- e. January 26 and 30, 2023, relating to assisting MF with his landlord and potential eviction by visiting his home;
- f. April 17, 2023, requesting a food hamper;
- g. May 2, 2023, relating to early release of medication;
- h. May 9, 2023, requesting a food hamper.

On June 2, 2023, Facility leadership determined that Ms. O'Brien would no longer have contact with MF based on his up to 50 calls a day for the preceding months with MF requesting to speak with only Ms. O'Brien. MF's care at the Facility was terminated on June 7, 2023, based on his behavior and risk to the Facility staff.

Ms. O'Brien's nursing relationship with MF as a patient at the Facility began in May 2022 and ended in June 2023 when the Facility determined she would no longer provide nursing care to, or have contact with, MF in her role as an LPN.

(7) Witnesses

The following individuals were called as witnesses in the hearing:

Mr. MF
Ms. O'Brien

The Hearing Tribunal recognizes some of the evidence it may be asked to accept and consider in this matter may be hearsay evidence. The Hearing Tribunal concludes that hearsay evidence can be admissible when it is determined the central issues have been established or where there is additional evidence to support the Allegations. All issues of guilt or innocence are considered on a balance of probabilities. The onus is on the CLPNA to establish on a balance of probabilities the facts as alleged in the Statement of Allegations occurred and this conduct rises to the level of unprofessional conduct as defined in the Act.

The following is a summary of the evidence given by the witness:

Mr. MF

Evidence in Chief

MF met Ms. O'Brien at Facility; MF received mental health services including medication from the Facility. He received services from several health professionals; Ms. O'Brien was a member of the team providing care to him.

MF and Ms. O'Brien met soon after MF became a patient of the Facility, approximately two years prior to the hearing date. MF was 28 at the time he met Ms. O'Brien.

MF described how initially the interactions with Ms. O'Brien were related to mental health services, Ms. O'Brien would advocate for him. This means that when he had needs arise, Ms. O'Brien's role included bringing MF's requests to Facility physicians.

MF indicated that he and Ms. O'Brien developed a personal relationship outside of the Facility. This began when he sent her a message on Facebook using the name "Rebecca Smith". Ms. O'Brien initially did not accept the message, or respond, but when MF told her it had been he who messaged, she later messaged back to the profile.

MF explained that he had used the name Rebecca Smith because he does a lot of fraud and so he uses fake Facebook profiles. Another profile he used was under the name Dawn Phillips.

Many of the messages between MF and Ms. O'Brien were not recorded because they used a feature on Facebook which causes messages to disappear after a period.

MF stated that he and Ms. O'Brien messaged frequently throughout the day and night. He said that a lot of the time he was trying to scheme to get more medication from the doctors at the

Facility. They also discussed their lives. The two also exchanged text messages, spoke on the phone and, more frequently, had video calls.

Eventually the two went for lunch outside of the Facility. They met at lunchtime and sat parked in Ms. O'Brien's car. At first, they met two to three times a week, usually after Ms. O'Brien's shift ended at 5:00 pm.

MF stated that he and Ms. O'Brien first kissed in her car and that it was initiated by both equally. Eventually they progressed beyond kissing. MF indicated he had touched Ms. O'Brien's breasts, buttocks, and genitals and that she had also touched him in those areas. The two also had oral sex. Further, that this had occurred during occasions when they were in Ms. O'Brien's car but not until later into the relationship. Overall, MF indicated that the sexual activities between the two occurred for a period of about a year beginning in or around June 2022 and ending in or around June 2023. During this period Ms. O'Brien continued to provide care to MF at the Facility. On two occasions they kissed at the Facility.

MF related that Ms. O'Brien would become anxious because she knew she should not have been engaging with him in that way, and she didn't want to get caught.

MF described a trip the two took to Jasper. Ms. O'Brien picked him up at the Hope Mission where he was staying at the time, and they drove to Jasper. Ms. O'Brien had already planned the trip to Jasper, and he asked if he could join.

In Jasper they went to lakes, ate ice cream and stayed in a hotel overnight. They also used a kayak, he noted that they had to register their names, and Ms. O'Brien used a fake name, but he used his actual name. The two stayed in the same hotel room, MF was unsure of how many beds were in the room but indicated that they slept in the same bed. He also stated that they had sexual intercourse in Jasper.

MF did not recall whether he had told the CLPNA Investigator that they had sex in Jasper.

Later in the summer, the two went to Red Deer where they stayed in a hotel with a Boston Pizza restaurant in it. Again, MF indicated the two slept in the same hotel room and that they had sexual intercourse there.

No other overnight trips occurred but MF indicated the two had gone to Calgary a few times as a day trip and went to a few stores, but he was unable to recall many details about those trips.

MF stated that the two also engaged in sexual activities in each of their apartments, the hotels as mentioned, and in Ms. O'Brien's car.

In terms of attending at Ms. O'Brien's apartment, MF indicated that he first went there after her roommate moved out. He was not sure when he first went there but stated it was not long after

the Jasper trip. Ms. O'Brien didn't want MF to meet her roommate because her roommate worked at a "Covid Hotel" the Facility operated and would know MF from that.

MF identified a screenshot he had taken from Google Maps to send to the Facility management to demonstrate that he knew Ms. O'Brien's home address. He further identified a hand-drawn floorplan of Ms. O'Brien's apartment which he had drawn at the request of the CLPNA Investigator. MF also described the layout of the apartment as one would experience it walking through it.

He identified photos he had provided to the CLPNA Investigator including a photo of Ms. O'Brien's dog, Theo. He was unsure whether he had taken the photo or Ms. O'Brien had sent it to him. In another photo, he identified that Ms. O'Brien was shown to be giving a treat to Theo. In a third photo, which Mr. MF stated he took, he described how it was taken in the area between the kitchen and the living room, and that Theo could be seen lying on the ground. MF identified a fourth photo which he said showed his laptop and some food and that he had taken it at Ms. O'Brien's dining table.

On August 1, 2022, MF secured an apartment in downtown Edmonton. Ms. O'Brien assisted him in moving in, finding the apartment, paying the key deposit, arranging his furniture. Ms. O'Brien also bought him a computer desk and a bed. As she had ordered the items from Amazon, he assumed she had used her own money to purchase them rather than funds secured through the Facility for that purpose.

MF stated that Ms. O'Brien would visit him 3-4 times a week at his apartment which was in addition to the parking lots visits they would have. MF advised that he and Ms. O'Brien had also engaged in sexual activities in his apartment. He estimated that they had sexual intercourse a total of 50 times including penetrative sex and oral sex. He indicated that they also masturbated each other and in one another's presence.

MF indicated that Ms. O'Brien did visit his apartment on one occasion for work purposes. He was facing eviction for having Ms. O'Brien's dog in the apartment which was not permitted. Ms. O'Brien attended along with another nurse.

MF identified further images. One was a photo he had taken on his phone. It showed a dog bed in his apartment. Ms. O'Brien had brought it over when she got a new one at her apartment. Another photo, MF was unsure whether he had taken it, showed a t-shirt of Ms. O'Brien's which she had left at his apartment.

MF stated that eventually Ms. O'Brien became too concerned about being caught and she attempted to shift the relationship to be over the phone or by Facebook only. This occurred around or close to June 6, 2023. MF advised that it made him feel insulted because he could see what was happening, it wasn't necessary to do it slowly. Around that time MF was still receiving services from Ms. O'Brien at the Facility until the Facility tried to assign a different primary nurse.

MF advised that the last time he communicated with Ms. O'Brien was when she came to his apartment after he made a complaint about her to Facility management that they had had a sexual interactions. At first Ms. O'Brien called MF and asked him to come down but when he refused, she gained access to the building and attended at his door. MF told Ms. O'Brien he did not want to talk with her; she was having a panic attack or something similar and rushed into the door when he opened it.

MF related that he was no longer a patient of the Facility, he had been banned shortly after he made the complaint to management. He said he was banned for making up allegations about Ms. O'Brien.

He described how when the relationship with Ms. O'Brien ended his life went "to shit". After he was banned from the Facility, he had been unable to access medication and had difficult accessing medical care.

MF reviewed a series of screenshots of messages which he indicated were between him and Ms. O'Brien on Facebook. In one message Ms. O'Brien asked "Baby, can you switch to reb". MF indicated that meant the Rebecca profile because the messages on that profile were set up to disappear.

Further photos were also reviewed, MF described that the photos depicted various parts of Ms. O'Brien's apartment but was unsure whether he was present when the photos were taken.

Evidence under Cross Examination

MF confirmed that an alternate name he sometimes used was Randy Duroude.

He confirmed that the first occasion when he and Ms. O'Brien had intercourse was in Jasper and that he had been to her apartment for the first time in June or July of 2022.

MF was asked whether he recalled that when he spoke with the CLPNA Investigator, he indicated that he and Ms. O'Brien did not have sex in Jasper. MF said he did not recall that and did not believe that was what he said. He did not agree with the statement in the Agreed Statement of facts that each of he and Ms. O'Brien told the CLPNA Investigator that they did not have sex in Jasper.

MF confirmed that his evidence had been that he does a lot of fraud. MF confirmed that in 2013 he had been convicted of extortion for contacting a woman who had lost a cat and telling her he had the cat so she would give him money. That he had told her the cat was in a slow cooker so that she would give him money. He confirmed that he had lied to get what he wanted. An official record of the conviction was entered as Exhibit #5 to the Hearing. MF also confirmed he had been convicted of fraud within the last 5 years but was unable to be more specific as to when.

MF confirmed that one of the reasons he first reached out to Ms. O'Brien was to have better access at the Facility.

With respect to the video calls with Ms. O'Brien, MF indicated that there were hundreds of them. Some lasted a few minutes, and some went on for hours at a time. The calls never occurred while Ms. O'Brien was at work, some occurred when she was driving home, some in the parkade at her apartment building and others while she was in her apartment or walking around in it. He agreed that there were hundreds of calls that occurred while Ms. O'Brien was walking around her apartment, cooking dinner, playing with her dog, etc.

In terms of when the communications between MF and Ms. O'Brien began to decrease, he advised that about two months before the end of everything they had begun to decrease.

MF confirmed that when Ms. O'Brien purchased the computer desk that she delivered it to him in the box it shipped in. He was unable to confirm whether the shipping label was on the box.

MF stated that when he and Ms. O'Brien went to Jasper they did not stay in the hotel the entire trip, they had spent most of the day outside doing activities although in secluded areas.

In respect of the Red Deer trip, he did not recall going to the beach at Sylvan Lake. He said they had gone to a few shops, had dinner in the restaurant attached to the hotel and otherwise had stayed in the hotel room most of the time.

When asked about day trips to Calgary, MF was unable to recall details such as when they left Edmonton or returned, whether they stopped on the way or had lunch.

MF was asked whether he had requested a medication named Nabilone which was a cannabis medication. MF stated he probably made the request but couldn't recall. He stated he had no idea about whether he had contacted the Facility numerous times to request the medication.

MF confirmed he was angry when he was banned from the Facility, he said he was angry because he was banned for a reason that was inaccurate. He confirmed he was angry at Ms. O'Brien and that he had started messaging her. He confirmed that he told the Facility that he had had a sexual relationship with Ms. O'Brien but indicated that was done before he was banned.

He stated that he made the complaint because it happened and it needed to be reported. He said he did not report it earlier because it did not need to be reported earlier. He confirmed he had messaged Ms. O'Brien to ask for 10 minutes to talk and that he probably had said he would ruin her life because he was angry about being banned from the Facility.

When asked to identify a text message asking Ms. O'Brien to take time out of her schedule to talk and whenever that time was would determine how much damage was done – he was unable to

identify that text message. He confirmed sending a message that told Ms. O'Brien that he would ruin her life. He did not confirm his intent in making the complaint was to ruin her career, only that it needed to be reported. He said that he was asking Ms. O'Brien to talk to him because she ruined his life and he wanted to tell her that. He confirmed he has sent a text message telling Ms. O'Brien that if she would talk to him that he would drop all the complaints. He also admitted to sending a text message asking Ms. O'Brien how it would feel losing her career.

When asked whether he had filed the complaint to make Ms. O'Brien lose her career he said because that was the consequences. He agreed that had Ms. O'Brien given him ten minutes to talk that he would have retracted the allegations of sexual abuse.

MF confirmed he had posted a falsified online review of one of the counsel for the Complaints Director. He denied posting other reviews to the same website.

Ms. O'Brien

Evidence in Chief

Ms. O'Brien gave evidence that she had been unable to work in a health-related role for much of time since the allegations culminating in this Hearing were made. She described how she had been fired from the Facility. She obtained work at another health care provider but an anonymous email was submitted alleging she had a relationship with a client and she was unable to continue in that role. She did not pursue further work in the area as she was afraid a similar email would be sent to any new employer.

Ms. O'Brien described how MF had initiated contact with her outside of the Facility. She described how she had initially told him that all communications should be at the Facility because of boundaries.

Ms. O'Brien confirmed she had spent "most of her evenings" speaking with MF in 2022. She indicated that decreased in 2023.

In 2022, she had begun to see MF outside of the Facility, at times more than once a week but normally approximately once in a week.

She confirmed that the two frequently messaged on Facebook. They talked about their personal lives and played an online game.

Ms. O'Brien confirmed that she and MF had gone to Jasper and to Red Deer together.

Ms. O'Brien denied any intimate or sexual moments with MF.

She stated that beginning in January 2023, she and MF had no in person meetings other than the incident on June 6, 2023, when she confronted him at his apartment. She said she had reflected on the friendship she was building with MF and began to distance herself from him.

Again, she denied any sexual contact or intimacy between them, she said they had discussed that they were just friends.

Ms. O'Brien described how she had decided to begin to distance herself from MF beginning in

September 2022 and increasingly over time. She said that in the early winter of 2023 when MF received a complaint about a dog in his apartment that he told her she would have to help him or he would say that they were communicating and it was her dog which she denied.

Ms. O'Brien denied having MF at her apartment. She said that in Jasper, he told her he knew her address because he had seen her ID and he repeated the address to her. The address on her ID was her parent's address and not her home address. She was not sure how MF got her address but recalled that the box in which the computer desk she gave him was delivered with her address on it.

She confirmed that in addition to buying MF a computer desk that she had purchased him meals including meals to eat in her vehicle and meals in restaurants.

She confirmed that the drawing MF had made of her apartment was fairly accurate but said that he would have known the layout of it from the hours of Facetime calls they had had when she was home.

Ms. O'Brien had lived in her apartment with a roommate until the roommate moved out at the end of September of 2022.

Ms. O'Brien had originally planned to go to Jasper with her roommate but her roommate cancelled. She asked MF to come with her; she didn't have anyone else to ask. She considered him a friend and didn't want to go alone.

In Jasper they went to different lakes and went kayaking. They only slept in the hotel. The room had two beds and they each slept in their own. She denied any sexual contact or that there was intimate touching of any kind.

She indicated that the Red Deer trip was to spend the day at Sylvan Lake. They stayed in a hotel in Red Deer but spent most of their time out.

When asked why she would have taken a patient from her workplace on two overnight trips she said she considered him a friend and overlooked the boundaries issue with that. She was not comfortable having him in her home because it was her own space.

When asked about certain of the messages between them, she agreed she had used the word "baby" to talk to him and that she had said she wanted to snuggle. She said she knew the messages were inappropriate but that she was only joking in that context.

Ms. O'Brien described how in May 2023, MF had asked for medication and she sent that request to the doctor and appointment with the doctor followed. The doctor specified he would have to look and see if the requested medication was indicated. She explained that MF was calling every day but the doctor had not had an opportunity to review it. Eventually the doctor told Ms. O'Brien to inform MF that the medication requested was not indicated for him.

Ms. O'Brien related that MF was unhappy with that and began calling the Facility multiple times a day and asking to talk to her. He was making demands such as to talk to the doctor or to have the medication. She said that eventually her supervisors made the decision that she would no longer speak with MF. Later it became that no one would speak with him because he was calling and hanging up. The Facility was taking steps to remove MF as a patient because he was calling

incessantly – hundreds of times a day – over a period of a week and a half. He was advised that he was at risk of being banned.

Following this escalation, MF made the allegations to a colleague named “Donna”. Donna told Ms. O’Brien that MF had alleged she was in a relationship with him and that they had been sexually intimate.

Ms. O’Brien admitted that she reacted very poorly, she said she was in shock since the two had only been friends and he was alleging a sexual relationship. When she asked him why he would allege that, he told her that if she was going to ruin his life (referring to his lack of access to the clinic), he was going to ruin hers. She confirmed she went to MF’s apartment and that she had denied doing so when speaking with management at the Facility. She also denied seeing MF outside of work at all.

During a later Zoom meeting, Ms. O’Brien admitted she had been to MF’s apartment when she was shown video footage showing her entering his building.

Since that time Ms. O’Brien did not respond to MF but he had messaged and called her daily, at all hours of the day, for months. This carried on for several months. Eventually she transferred her calls to EPS.

Ms. O’Brien said the messages were along the lines of MF asking for ten minutes of her time and threatening her. He also threatened to come to her home; she eventually moved as she was very scared.

Evidence in Cross-Examination

Under cross examination, Ms. O’Brien confirmed that the building MF lived in was a large apartment building downtown.

She agreed that when she went to the apartment to assist MF as part of her work duties that had occurred months prior in January. When confronted that it would be implausible for her to know where MF’s apartment was if she had only been there once, Ms. O’Brien said she was able to remember where to go in the building. She denied knowing where to go because she had been there many times.

Ms. O’Brien confirmed that neither she nor MF had many people in their lives to connect with.

When asked about her dog, Theo, Ms. O’Brien said her parents would have him two, three, four times a week. She confirmed she had brought Theo to both Jasper and Red Deer but she denied bringing Theo to MF’s home.

Ms. O’Brien denied that she had ensured the disappearing messages were used on Facebook, she indicated instead that it was a feature of Facebook. She explained that in the text exchange where she had asked MF to use the Rebecca Smith profile, she had asked him to do that because the messages from the other profile were going to spam.

When describing how the messaging between the two had developed, Ms. O'Brien discussed how initially she had not recognized who was messaging her and even after MF told her it was him, she avoided replying. Eventually she began to engage in ongoing texting notwithstanding the concerns she had about boundaries.

When asked the reason the overnight trips stopped after August 2022, she indicated it was because MF had obtained an apartment. She agreed she bought him a computer desk in October but stated that MF had received most of his furniture on the first day at the apartment.

When asked about the text message referring to MF coming over, Ms. O'Brien was insistent that MF never came to her home and that she has changed her mind and never had him over. She agreed she was comfortable talking with him for extended periods, having him in her vehicle and spending time in a hotel with him.

When shown the photos MF stated were of her clothing items in his apartment, she denied that was the case.

Ms. O'Brien confirmed that most of the messages between her and MF were deleted. She agreed that MF commonly messaged Ms. O'Brien to the effect that "I love you" and "baby". She also agreed she responded positively to MF saying he loved her by putting a heart emoji in reaction to that.

She maintained that she was teasing when she told MF she wanted to snuggle. She agreed the messages were inappropriate. She reiterated multiple times that she considered MF a friend but that she did not see him romantically or that they had been intimate physically.

Further Evidence

Following the close of evidence but before the receipt of all closing submissions, the Hearing Tribunal was made aware that Ms. O'Brien had received messages regarding the hearing including a portion of a recording of it. The Hearing Tribunal directed a further date, June 9, 2025, at which MF would attend to address the messages which appeared to be from him.

On June 9, 2025, the parties reconvened before the Hearing Tribunal. Despite waiting for a period beyond the appointed start time, MF did not attend.

The parties entered further exhibits for the Hearing Tribunal's consideration.

First, Exhibit #7, a series of emails between counsel for the Complaint's Director and MF in which he was given notice that he was required to attend to a further date before the Hearing Tribunal. Included in the emails were statements apparently from MF demanding a copy of the Hearing Tribunal's decision in this matter and stating that he had recorded the hearing. His

correspondence with counsel for the Complaints Director also made clear that he did not intend to attend on June 9, 2025.

Second, Exhibit #8, which was an excerpt from an email Ms. O'Brien received which was from the Randy Duroude email that MF had confirmed using in the hearing and which was used by counsel for the Complaints Director in Exhibit #7. The email invited Ms. O'Brien to make a deal and shared that a recording of the hearing had been made.

Third, Exhibit #9, included text messages that referred to the hearing and asked Ms. O'Brien to speak to MF. It also included an excerpt from an email which MF indicated was from a civil lawyer preparing a Statement of Claim for him.

(8) Hearing Tribunal Decisions and Reasons

The Hearing Tribunal is aware that it is faced with a two-part task in considering whether a regulated member is guilty of unprofessional conduct. First, the Hearing Tribunal must make factual findings as to whether the alleged conduct occurred. If the alleged conduct occurred, it must then proceed to determine whether that conduct rises to the threshold of unprofessional conduct in the circumstances.

Before turning to the evidence as it applies to the allegations, the Hearing Tribunal offers certain comments in respect of the issue of credibility.

The Hearing Tribunal notes the careful submissions of each of the parties including with respect to assessing credibility and the factors impacting the same: demeanor of the witness, ability to perceive, ability to recall, motivation, probability or plausibility, internal consistency, external consistency, and further, in respect of MF's criminal record.

Ultimately, demeanor did not factor largely in the Hearing Tribunal's assessment of the evidence. Demeanor is a difficult factor to base such an assessment on since different people will appear differently in this context. Neither witness expressed a demeanor that allowed the Hearing Tribunal to draw significant conclusions.

MF's criminal record was considered but afforded limited weight considering the distance of any proven criminal offences no matter the nature of them.

To the extent of motivation, Ms. O'Brien faces significant consequences in the face of certain findings by the Hearing Tribunal but also that MF had repeatedly told Ms. O'Brien that he would retract allegations to have a conversation with her.

Both witnesses appeared to have a similar ability to perceive what had occurred between them and an ability to recall the key facts as they presented them.

The Hearing Tribunal found the factors of probability or plausibility, internal and external consistency, to be the most helpful in proceeding with its decisions in which evidence to accept or which evidence not to accept. In reviewing the various pieces of evidence available to it on any given point, the Hearing Tribunal considered the evidence of each witness as well as evidence available in the documents in order to assess inconsistencies between each version of events, within each version of events, and to assess those as against the documentary evidence available tempered in the light of the overall plausibility of any part of the evidence. The Hearing Tribunal has offered its comments in that regard, where appropriate, in response to each of the various allegations in its decision below.

At all times the Hearing Tribunal made its decisions as to whether an allegation or particular was proven based on whether it was convinced on a balance of probabilities that the alleged conduct had occurred.

Allegation 1

It is alleged that:

Between August 2022 and June 2023, entered into a sexual relationship with Patient MF, including having sexual intercourse with Patient MF on at least one occasion.

Based on the evidence available, the Hearing Tribunal was not convinced that Ms. O'Brien and MF engaged in any sexual activities while in Jasper. In particular, the parties have agreed that both Ms. O'Brien and MF told the investigator that they did not have intercourse in Jasper. While MF stated otherwise in his testimony, the Hearing Tribunal prefers the earlier information from him which occurred closer to the date in question.

Further, based on the available evidence, the Hearing Tribunal is not convinced that Ms. O'Brien and MF engaged in sexual activities during an overnight trip to Red Deer. MF gave very limited evidence in respect of what happened in Red Deer including the nature of any sexual activities between himself and Ms. O'Brien. MF could not remember whether he and Ms. O'Brien had gone to Sylvan Lake but indicated they went to some shops in Red Deer. Both Ms. O'Brien and MF recalled having dinner at the restaurant attached to the hotel they were staying at.

The Hearing Tribunal does accept that MF and Ms. O'Brien engaged in sexual behaviours in Ms. O'Brien's vehicle including oral sex, touching one another's genitals and masturbating one another and masturbating in one another's presence. The text messages between Ms. O'Brien and MF support MF's version of events even if the Hearing Tribunal was unable to accept there has been sexual behaviours between him and Ms. O'Brien earlier on. In particular, the Hearing Tribunal did not accept Ms. O'Brien's explanation with respect to what the text message which referred to MF "sleeping with" her meant.

The Hearing Tribunal finds that the proven conduct amounts to unprofessional conduct as defined in s. 1(1)(pp) of the Act. In particular, the Hearing Tribunal considered the following definitions of unprofessional conduct:

- a) Displaying a lack of knowledge of or lack of skill or judgment in the provision of professional services;
- b) Contravention of the Act, a code of ethics or standards of practice;
- c) Conduct that harms the integrity of the regulated profession.

Further, that the conduct in question meets the definition of sexual abuse

(nn.1) “sexual abuse” means the threatened, attempted or actual conduct of a regulated member towards a patient that is of a sexual nature and includes any of the following conduct:

- (i) sexual intercourse between a regulated member and a patient of that regulated member;
- (ii) genital to genital, genital to anal, oral to genital, or oral to anal contact between a regulated member and a patient of that regulated member;
- (iii) masturbation of a regulated member by, or in the presence of, a patient of that regulated member;
- (iv) masturbation of a regulated member’s patient by that regulated member;
- (v) encouraging a regulated member’s patient to masturbate in the presence of that regulated member;
- (vi) touching of a sexual nature of a patient’s genitals, anus, breasts or buttocks by a regulated member;

Ms. O’Brien showed a serious lack of judgment in pursuing a relationship of this nature with MF. While the Hearing Tribunal was not convinced of any incident of penetrative sexual intercourse had occurred, it accepts that there was conduct between MF and Ms. O’Brien that met other parts of the definition of sexual abuse under the HPA. For example, the Hearing Tribunal accepted that each of MF and Ms. O’Brien engaged in oral to genital touching of one another, masturbated in one another’s presence, and engaged in sexual touching of one another’s genitals, breasts and buttocks.

This conduct demonstrates a serious lack of judgment on Ms. O’Brien’s part. Maintaining boundaries is an essential aspect of an LPN’s role and it is for the LPN to protect them. Sexual conduct of this nature is the most serious kind of boundary violation. Further, this conduct calls into question the integrity of the LPN profession. It would be reasonable for a member of the public to think less of LPNs considering Ms. O’Brien’s conduct. Ms. O’Brien held a position of power with respect to MF; these behaviours are a breach of trust as a result.

The conduct breached the following principles and standards set out in the CLPNA’s Code of Ethics and Standards of Practice for Licensed Practical Nurses in Canada.

The CLPNA Code of Ethics

Principle 2: Responsibility to Clients

2.7 Develop trusting, therapeutic relationships, while maintaining professional boundaries.

2.9 Identify and minimize risks to clients.

Principle 3: Responsibility to the Profession

3.1 Maintain the standards of the profession and conduct themselves in a manner that upholds the integrity of the profession.

3.3 Practice in a manner that is consistent with the privilege and responsibility of self-regulation.

Principle 5: Responsibility to Self

5.1 Demonstrate honesty, integrity and trustworthiness in all interactions.

5.7 Prevent or manage conflict of interest situations.

The CLPNA Standards of Practice

Standards of Practice for Licensed Practical Nurses on Boundary Violations (2023)

Standard 1: The LPN-Patient Relationship

An LPN–patient relationship comes into existence when:

An individual is considered a patient when the LPN provides a professional nursing service, or when

- the LPN has issued billings or received payment in connection with a healthcare service provided to that patient,
- the LPN has contributed to a patient record or file for that patient, or
- the patient has consented to receive a professional nursing service to be provided by the LPN.

Sexual Abuse

An LPN must not engage in behaviour towards a patient that can be considered sexual abuse. A sexual relationship between an LPN and a patient is considered sexual abuse.

Sexual intercourse or sexual touching as described in the definition of sexual abuse is considered sexual abuse.

Standard 8: Other types of LPN Boundary Violations.

In addition to Standards 1 to 7, which focus on sexual abuse and sexual misconduct, the CLPNA requires that all types of boundary violations be avoided. For example, entering into a close personal relationship with a patient can be a boundary violation. All boundary violations may give rise to allegations and findings of unprofessional conduct.

Standards of Practice for Licensed Practical Nurses on Boundary Violations: Protecting Patients from Sexual Abuse and Sexual Misconduct (2019)

Standard 1: The LPN-Patient Relationship

An LPN–patient relationship comes into existence when:

An individual is considered a patient when the LPN provides a professional nursing service, or when

- the LPN has issued billings or received payment in connection with a healthcare service provided to that patient,
- the LPN has contributed to a patient record or file for that patient, or
- the patient has consented to receive a professional nursing service to be provided by the LPN.

Sexual abuse:

1.1 An LPN must not engage in behaviour towards a patient that can be considered sexual abuse.

A sexual relationship between an LPN and a patient is considered sexual abuse. Sexual intercourse or sexual touching as described in the definition of sexual abuse is considered sexual abuse.

Standard 2: Prohibited Sexual Conduct

Sexual abuse:

2.1 An LPN must not threaten, attempt or engage, in any of the following conduct with a patient:

- sexual intercourse;

- genital to genital, genital to anal, oral to genital, or oral to anal contact between an LPN and a patient of that LPN;
- masturbation of an LPN by, or in the presence of, a patient of that LPN;
- masturbation of an LPN's patient by that LPN;
- encouraging an LPN's patient to masturbate in the presence of that LPN; or
- touching of a sexual nature of a patient's genitals, anus, breasts or buttocks.

Standard 8: Other types of Boundary Violations

8.1 An LPN must maintain professional boundaries in the LPN-patient relationship at all times. Boundary violations:

- can be related to behaviours between an LPN and a patient in areas such as cultural insensitivity, gift giving or receiving, emotional or financial abuse, and
- may occur physically and verbally.

Standards of Practice for Licensed Practical Nurses in Canada (2020)

Standard 1: Professional Accountability and Responsibility

1.1. Practice within applicable legislation, regulations, by-laws, and employer policies.

1.8. Are accountable and responsible for their own practice, conduct, and ethical decision-making.

Standard 2: Evidence-informed Practice

2.1. Attain and maintain evidence-informed knowledge to support critical thinking and professional judgement.

Standard 3: Protection of the Public through self-regulation

3.1. Establish, maintain, and appropriately end the professional therapeutic relationship with the client and their families.

3.5. Understand and accept the responsibility of self-regulation by following the standards of practice, the code of ethics, and other regulatory requirements.

Standard 4: Professional and Ethical Practice

4.4. Maintain professional boundaries in the nurse/client therapeutic relationship.

4.6. Demonstrate practice that upholds the integrity of the profession.

Boundaries are fundamental to an LPN's practice, and it is the LPN's obligation to ensure relationships with clients maintain appropriate boundaries. Ms. O'Brien's conduct meets the definition of sexual abuse found in the HPA but also in the Standards noted above, the most serious type of boundary violation. This conduct did not reflect care for professional boundaries, for minimizing risk to MF as a client, generally shows a lack of integrity and a disregard for the privilege of self-regulation.

In all regards, Ms. O'Brien's conduct in respect of Allegation #1 was unprofessional conduct and is deserving of sanction.

Allegation 2

It is alleged that:

Between June 2022 and June 2023, entered into a close relationship with Patient MF that included doing one or more of the following:

- a. Visited and ate meals with Patient MF in her vehicle;
- b. Visited with Patient MF inside either, or both, of their homes;
- c. Communicated with Patient MF through Facebook messenger, text messages, video calls and/or phone calls;
- d. Went on an overnight trip to Jasper with Patient MF, including sleeping in the same hotel room together;
- e. Went on an overnight trip to Red Deer with Patient MF, including sleeping in the same hotel room together;
- f. Went on day trips to Calgary with Patient MF;
- g. Purchased Patient MF a computer desk for his home;
- h. Communicated to Patient MF that she wanted to snuggle, or words to that effect;
- i. Communicated to Patient MF that she was sad that he did not want to sleep with her, or words to that effect;
- j. Called Patient MF "baby" on at least one occasion.

Ms. O'Brien admitted, and gave evidence, as did MF, that established that the two visited and ate meals in her vehicle.

Ms. O'Brien did not admit to visiting MF in his home or having MF visit in her home. In respect of the evidence available, the Hearing Tribunal was not convinced on a balance of probabilities that MF was in Ms. O'Brien's home. While MF provided a layout of Ms. O'Brien's apartment which he drew from memory, the Hearing Tribunal is not convinced to the degree required that MF's

knowledge came from visits in the apartment rather than from video calls. Further, the Hearing Tribunal was not convinced that any photos taken in Ms. O'Brien's apartment were taken by MF rather than Ms. O'Brien.

The Hearing Tribunal was, however, convinced on a balance of probabilities that Ms. O'Brien had visited MF at his home. The Hearing Tribunal finds it is not plausible that Ms. O'Brien would have been able to find MF's apartment in June 2023 when she attended to confront him about making allegations unless she had been there multiple times. Further, there is evidence that MF was nearly evicted for having a dog at his apartment which is not permitted. No explanation was provided for the dog except that it was Ms. O'Brien's dog. Further, MF had photos taken from his apartment which showed clothing Ms. O'Brien had left in his apartment as well as a dog bed for her dog.

Ms. O'Brien admitted that she had messaged with MF through Facebook messenger, text messages, video and phone calls. Both witnesses also gave evidence to this effect and there are several documents in the Exhibits which demonstrate this.

Ms. O'Brien admitted that she had taken an overnight trip with MF and that they slept in the same hotel room, but she denied that the two were intimate or slept in the same bed. As noted above, the Hearing Tribunal accepts that the Jasper trip occurred but was not convinced on a balance of probabilities that MF and Ms. O'Brien were intimate in Jasper.

Similarly, Ms. O'Brien admitted to taking an overnight trip to Red Deer with MF but denies being intimate or sleeping in the same bed as MF. As indicated above, the Hearing Tribunal was not convinced on a balance of probabilities that MF and Ms. O'Brien were intimate in Red Deer but there was more than sufficient evidence to establish that the trip had occurred.

Ms. O'Brien also denied taking day trips with MF to Calgary. The Hearing Tribunal was not convinced on a balance of probabilities that any day trips to Calgary had occurred. MF had very little detail with respect to such trips and Ms. O'Brien denied they had occurred.

Ms. O'Brien admitted to purchasing a computer desk for MF at his home. The evidence presented during the hearing supported this and the Hearing Tribunal accepts that it happened.

Ms. O'Brien admitted that she communicated to MF that she wanted to snuggle or words to that effect. These communications were before the Hearing Tribunal, and it accepts that this occurred.

Ms. O'Brien admitted that she communicated to MF that she was sad he did not want to sleep with her, or words to that effect. Again, these communications were before the Hearing Tribunal, and it accepts that this did occur.

Ms. O'Brien called MF "baby" on at least one occasion, she admitted to this. Further, the evidence before the Hearing Tribunal included this communication.

The Hearing Tribunal finds that the conduct admitted to and the conduct otherwise proven amounts to unprofessional conduct as defined in s. 1(1)(pp) of the *Act*, in particular, the Hearing Tribunal considered the following definitions of unprofessional conduct:

- a) Displaying a lack of knowledge of or lack of skill or judgment in the provision of professional services;
- b) Contravention of the *Act*, a code of ethics or standards of practice;
- c) Conduct that harms the integrity of the regulated profession.

Ms. O'Brien showed a lack of judgment in respect of the various instances of conduct identified and admitted or proven at Allegation #2. All this conduct shows neglect of the duty to maintain appropriate boundaries with a client. It is never appropriate to maintain a close relationship with client: taking overnight trips together, messaging and calling frequently, meeting for meals, buying gifts and expressing words of affection and desire.

Similarly, this conduct harms the integrity of the profession as it does not reflect what is expected of an LPN and is a clear departure from those expectations. Boundaries are essential to protecting the wellbeing of a client and where an LPN who is charged with protecting the boundaries fails to do so, they have placed their client in a position to experience harm.

The conduct found to have occurred at Allegation #2 also breached the CLPNA's Code of Ethics and Standards of Practice for Licensed Practical Nurses in Canada as set out above (with exception to those relating to sexual abuse). As noted, Ms. O'Brien failed to maintain appropriate boundaries with MF. This was inconsistent with the privilege and responsibility of being a member of a regulated profession. As an LPN, O'Brien held power over MF, and where boundaries are not maintained that power is misused. She showed poor judgment and a lack of integrity in pursuing or proceeding with a relationship with MF of the nature proven.

Allegation 3

It is alleged that:

On June 6, 2023, failed to demonstrate professionalism when she went to Patient MF's home to confront Patient MF about his allegations that they had been in a sexual relationship to a coworker at her place of employment as an LPN.

Ms. O'Brien admitted Allegation #3, the following facts are the facts admitted to and agreed between the parties.

On June 2, 2023, the Facility determined that MF was no longer permitted to contact Ms. O'Brien.

On June 6, 2023, MF attended the Facility and alleged that he was in a sexual relationship with Ms. O'Brien to Ms. O'Brien's colleague.

After hearing about MF's allegations, Ms. O'Brien went to MF's apartment over her lunch break to confront him about his allegations.

Ms. O'Brien arrived at MF's apartment at approximately 1:03 PM on June 6, 2023, and was captured on surveillance photos.

MF advised the Facility that Ms. O'Brien attended his apartment to confront him. When questioned by the Facility's management on her attendance at MF's apartment that day, Ms. O'Brien initially lied about attending MF's apartment to confront him. In a later zoom call with HR, Ms. O'Brien confirmed that she was dishonest and had attended MF's apartment to confront him about the allegations.

The Hearing Tribunal finds that the conduct admitted to amounts to unprofessional conduct as defined in s. 1(1)(pp) of the *HPA*, in particular, the Hearing Tribunal considered the following definitions of unprofessional conduct:

- a) Displaying a lack of knowledge of or lack of skill or judgment in the provision of professional services;
- b) Contravention of the Act, a code of ethics or standards of practice;
- c) Conduct that harms the integrity of the regulated profession.

Ms. O'Brien displayed a lack of judgment both in attending at MF's home to confront him in regard of the complaint he made but also in being untruthful with Facility management when asked about her actions. While Ms. O'Brien recanted her untruthful statements, they were still made and reflect a lack of personal responsibility.

Regulated professionals must be prepared to face complaints with respect to their conduct and cannot confront complainants when that happens. This conduct also harms the integrity of the profession; a reasonably informed member of the public would be justified in questioning the professionalism of LPNs considering Ms. O'Brien's confrontation of MF and false statements to the Facility.

This conduct also breached the same provisions of the CLPNA Code of Ethics and the CLPNA Standards of Practice identified with respect to Allegation #2. As a result of the inappropriate boundary Ms. O'Brien maintained with MF, she attended at his home to confront him in respect of the complaint. This conduct could have had significant negative impact on MF and was an abuse of the relationship between them which never should have existed in that way. She showed a lack of professionalism and integrity both in attending and later when she was initially untruthful about the fact she had done that.

This conduct does not reflect personal accountability as the professional in a position of power in the relationship. Ms. O'Brien's conduct was self-oriented, not client-oriented which shows part of the concerns related to boundary violations. She failed to show leadership and commitment to her professional obligations when she confronted MF and when she was untruthful with Facility management about her actions.

The Hearing Tribunal will receive submissions from each of the parties in respect of the appropriate sanction.

DATED THE July 24, 2025 IN THE CITY OF LETHBRIDGE, ALBERTA.

THE COLLEGE OF LICENSED PRACTICAL NURSES OF ALBERTA

A handwritten signature in blue ink, appearing to read "Jeffrey Bell", is written over a horizontal line.

Jeffrey Bell, LPN
Chair, Hearing Tribunal

COLLEGE OF LICENSED PRACTICAL NURSES OF ALBERTA

**IN THE MATTER OF
A HEARING UNDER *THE HEALTH PROFESSIONS ACT*,
AND IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF KAYLA O'BRIEN**

**ADDENDUM TO THE DECISION OF THE HEARING TRIBUNAL
OF THE COLLEGE OF LICENSED PRACTICAL NURSES OF ALBERTA**

The Hearing Tribunal hereby issues an addendum to its decision dated July 24, 2025 as follows:

1. In its decision dated July 24, 2025, the Hearing Tribunal found that the conduct in Allegations 2 and 3 constitute unprofessional conduct as follows:
 - a. Displaying a lack of knowledge of or lack of skill or judgment in the provision of professional services;
 - b. Contravention of the Act, a code of ethics or standards of practice;
 - c. Conduct that harms the integrity of the regulated profession.
2. The Hearing Tribunal confirms that, based on the admissions by Ms. O'Brien at paragraph 43 of the Partial Agreed Statement of Facts and Acknowledgement of Unprofessional Conduct (Exhibit 1), which was accepted by the Hearing Tribunal at the hearing, the conduct in Allegation 2(h), (i) and (j) constitutes sexual misconduct as defined in 1(1)(nn.2) of the *Health Professions Act*.
3. The Hearing Tribunal confirms that, as acknowledged by Ms. O'Brien at paragraph 42 of Exhibit 1, which was accepted by the Hearing Tribunal at the hearing, for Allegations 2 and 3, Ms. O'Brien's conduct contravened the following standards of practice and code of ethics requirements (s. 1(1)(pp)(ii)):
 - i. *Standards of Practice for Licensed Practical Nurses on Boundary Violations (2023)*: Standards 1 (specifically relating to Allegation 2(h), (2)(i) and 2(j)), and 8 (for Allegation 2(a), (c), (d), (e), (g), (h), (i), (j) and Allegation 3);
 - ii. *Standards of Practice for Licensed Practical Nurses on Boundary Violations: Protecting Patients from Sexual Abuse and Sexual Misconduct (2019)*: Standards 1 (specifically relating to Allegation 2(h), (2)(i) and 2(j)), 2 (specifically relating to Allegation 2(h), (2)(i) and 2(j)), and 8 (for Allegation 2(a), (c), (d), (e), (g), (h), (i), (j) and Allegation 3);
 - iii. *Standards of Practice for Licensed Practical Nurses in Canada (2020)*: Standards 1.1, 1.8, 3.1, 3.5, 4.4, 4.6;
 - iv. *Code of Ethics for Licensed Practical Nurses in Canada (2013)*: Responsibilities 2.7, 3.1, 3.3, 5.1.
4. With respect to Allegation 1, given the finding of sexual abuse, Ms. O'Brien's practice permit is suspended as required by section 81.1(1) of the *Health Professions Act* until an order is made under section 82 of the *Health Professions Act*.

Signed on behalf of the Hearing Tribunal this 22, day of August, 2025



Jeffrey Bell, LPN, Chair

COLLEGE OF LICENSED PRACTICAL NURSES OF ALBERTA

**IN THE MATTER OF
A HEARING UNDER *THE HEALTH PROFESSIONS ACT*,
AND IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF KAYLA O'BRIEN**

**DECISION ON SANCTION OF THE HEARING TRIBUNAL
OF THE
COLLEGE OF LICENSED PRACTICAL NURSES OF ALBERTA**

**IN THE MATTER OF A HEARING UNDER THE *HEALTH PROFESSIONS ACT* REGARDING THE
CONDUCT OF KAYLA O'BRIEN, LPN #48577, WHILE A MEMBER OF THE COLLEGE OF LICENSED
PRACTICAL NURSES OF ALBERTA**

DECISION OF THE HEARING TRIBUNAL

(1) Hearing

The Hearing on sanction was conducted via teleconference on September 23, 2025, with the following individuals present:

Hearing Tribunal:

Jeff Bell, LPN, Chairperson
Sarah Kawaleski, LPN
Emeka Ezike-Dennis, Public Member
Glen Buick, Public Member

Independent Legal Counsel for the Hearing Tribunal: Heidi Besuijen

Staff:

Vita Wensel, Legal Counsel for the Complaints Director, CLPNA
Gregory Sim, Legal Counsel for the Complaints Director, CLPNA
Susan Blatz, Complaints Director, CLPNA
Sanah Sidhu, Director of Professional Conduct, CLPNA

Investigated Member:

Kayla O'Brien, LPN ("Investigated Member" or "Ms. O'Brien")
Jennnifer Davis, Legal Counsel for the member
Samuel Bodner, Legal Counsel for the member

The Hearing was convened to address the issue of sanction of Ms. O'Brien in respect of admitted conduct as well as conduct the Hearing Tribunal found in its written decision (the "Decision") dated July 24, 2025, and the addendum to it.

(2) Preliminary Matters

Counsel for Ms. O'Brien made an application to the Hearing Tribunal seeking a closed Hearing pursuant to section 78(1)(a) of the *Health Professions Act*, RSA 2000, c H-7 ("Act"). In particular, the Application contemplated that MF would be permitted to attend the Hearing for the

purposes of providing an oral statement pursuant to section 81.1(2) of the Act but otherwise be excluded from the Hearing pursuant to section 78(1)(3)(b) of the Act.

In support of the Application, counsel submitted that prior conduct of MF towards various participants in the hearing process raised concerns regarding safety. Further, that as Ms. O'Brien's personal financial records would be evidence and the subject of discussion in the Hearing that not disclosing such information outweighed the desirability of having the hearing open to the public in the circumstances.

Further, that it was open to the Hearing Tribunal to close a hearing for reasons satisfactory to it pursuant to section 78(1)(v) which offers wide discretion to the Hearing Tribunal. Counsel for Ms. O'Brien suggested that this discretion should be exercised considering statements MF made in emails that he had recorded the hearing dates in this matter in December 2024.

In support of the application, counsel provided the Hearing Tribunal with cases for consideration.

In a decision of the College and Association of Registered Nurses of Alberta in respect of Holly Conners, the Hearing Tribunal exercised its discretion to close the hearing in light of concerns in respect of safety and the potential that inappropriate and unauthorized recordings of the hearing may be made if the hearing was not closed.

Two other cases were provided in which hearing tribunals had granted applications to close a hearing finding that the concern for not disclosing confidential information outweighed the desirability of a hearing open to the public.

Counsel for the Complaints Director did not take a position with respect to the Application but did note that any order would need to contemplate limits on MF's participation in a hearing, if intended, given that section 78(3)(b) permits a complainant to attend a closed hearing unless the hearing tribunal directs otherwise.

The Hearing Tribunal adjourned to discuss the application considering the submissions of counsel, the relevant cases, and the facts of this matter. The Hearing Tribunal determined that it was appropriate to close the Hearing in light of the concerns for safety raised, the interest in maintaining Ms. O'Brien's personal financial information confidential, and the prior history of a recording having been made in this matter which raised real concerns that a further unauthorized recording may be made. The Hearing Tribunal directed that MF would be permitted to attend the Hearing for the purposes of providing a statement pursuant to section 81.1(2) of the Act but would otherwise be excluded from it.

(3) Exhibits

The following exhibits were entered:

- Exhibit #11: Email Thread #1
- Exhibit #12: Email Thread #2
- Exhibit #13: Email from MF (with Impact Statement)
- Exhibit #14: Confirmation of Service on MF
- Exhibit #15: Joint Submission on Penalty – Primary Proposed Sanction
- Exhibit #16: Joint Submission on Penalty – Alternative Proposed Sanction
- Exhibit #17: Statement of Anticipated Costs
- Exhibit #18: Financial Statements of Ms. O'Brien

(4) Statement of MF

As the conduct in this matter relates to sexual abuse and sexual misconduct, section 81.1(2) of the Act requires that MF have an opportunity to present any written or oral statement describing the impact the sexual abuse or sexual misconduct has had on them.

A written impact statement from MF was entered as an exhibit (Exhibit #13).

MF did not attend the Hearing. Counsel for the Complaints Director entered a further exhibit (Exhibit #14) being an email showing that MF was provided with the scheduling and attendance details for the Hearing on August 26, 2025.

The Complaints Director suggested that based on Exhibit #14 it had been demonstrated that MF was provided with the opportunity to give an oral statement as required. Counsel for Ms. O'Brien agreed that this was the case. The Hearing Tribunal confirmed that the requirements of the Act were met and that MF had been provided with the opportunity as required.

The Hearing Tribunal reviewed MF's written impact statement. The statement does not address the impacts of the conduct on MF but instead constitutes a statement by MF recanting the evidence he had given during the Hearing. MF indicates that he fabricated evidence to allow him to pursue a civil claim resulting in a monetary settlement.

(5) Joint Submission on Sanction

In light of MF's statements recanting his evidence in respect of Ms. O'Brien's conduct, the parties submitted two forms of joint submission on sanction for the Hearing Tribunal's consideration.

The Primary Proposed Sanction relates to the conduct Ms. O'Brien admitted occurred as well as the conduct found to have occurred following the Hearing. The parties suggest that this Primary Proposed Sanction would have immediate effect.

The Alternative Proposed Sanction was presented and relates to only the conduct Ms. O'Brien admitted to and would only be imposed if an appeal panel of the CLPNA quashes the Hearing Tribunal's findings.

The parties acknowledged that this was an unusual approach to sanction arising from a unique situation. The Complaints Director's counsel submitted that the Hearing Tribunal had the ability to consider and confirm the two joint submissions on sanction considering the broad discretionary powers afforded to under section 82 of the Act which is flexible in nature.

The Hearing Tribunal considered this matter and agreed that it can accept the Primary Joint Submission on Sanctions and Alternative Joint Submission on Sanction under the powers afforded to it by section 82 of the Act.

As both submissions on sanction were presented by agreement, counsel for the Complaints Director reviewed the authorities informing the Hearing Tribunal's consideration in whether to accept such a joint submission on sanction. First is the decision of the Supreme Court of Canada in *R v Anthony-Cook*, 2016 SCC 43 ("*Anthony-Cook*") which enunciated the principles in the criminal context. Second is *Bradley v Ontario College of Teachers*, 2021 ONSC 2303 which accepted and confirmed the application of *Anthony-Cook* in the criminal context.

In essence the Hearing Tribunal should accept a joint submission unless doing so would bring the administration of justice into disrepute or would be contrary to the public interest. Rejecting joint submissions otherwise would undermine the public interest in timely and efficient resolutions through agreements as well as the certainty those offer to the parties putting them forward.

Turning now to the content of each joint submission on sanction, as noted above, the parties have brought both submissions forward in light of the unique circumstances in this case arising from MF's statements recanting his evidence against Ms. O'Brien.

Primary Joint Submission on Penalty

This proposed penalty includes the following in contemplation of the full range of conduct (both admitted and found to have occurred in the Hearing):

1. Ms. O'Brien's practice permit and registration with the CLPNA shall be cancelled indefinitely, effective immediately, in light of the circumstances and the Decision and section 82(1.1)(a) of the Act.

2. The cancellation of Ms. O'Brien's practice permit and registration shall be reflected on her practice permit and on the public register.
3. Ms. O'Brien shall pay \$25,000 of the costs of the investigation and hearing, to be paid within thirty-six (36) months of receiving the Decision and in accordance with a reasonable payment plan set by the Complaints Directors, with consideration to Ms. O'Brien's financial circumstances and noting that any deadline may be extended at the discretion of the Complaints Director as set out below.
 - a. The costs must be paid to the CLPNA, whether or not Ms. O'Brien holds an active practice permit with the CLPNA.
 - b. The costs are an action of debt owed to the CLPNA and if not paid by the deadline ordered, they may be recovered by the CLPNA as an action of debt.
4. Should Ms. O'Brien be unable to comply with any of the deadlines identified above, Ms. O'Brien may request an extension. The request for an extension must be submitted in writing to the Complaints Director, prior to the deadline, state a valid reason for requesting the extension and state a reasonable timeframe for completion. The Complaints Director shall, in their sole discretion, determine whether a time extension is accepted. Ms. O'Brien will be notified by the Complaints Director, in writing, if the extension has been granted.
5. Should Ms. O'Brien fail to comply with any of the orders issued by the Hearing Tribunal, the Complaints Director may do any or all of the following:
 - a. Treat Ms. O'Brien's non-compliance as information for a complaint under s. 56 of the Act;
 - b. Refer the matter back to a Hearing Tribunal of the CLPNA for further direction;
 - c. In the case of unpaid costs, the CLPNA may take action as permitted by the Act;
 - d. In the case of working or practicing in any capacity as a licensed practical nurse while cancelled, the CLPNA may take action as permitted by the Act.

Alternative Joint Submission on Penalty

This alternative proposed joint submission on penalty would only be imposed in the event that an appeal panel of the CLPNA quashes the findings to Allegation 1 and 2(b) in the Decision (and the sanctions ordered), confirms the findings of sexual misconduct and unprofessional conduct to Allegations 2(a), 2(c), 2(d), 2(e), 2(g), 2(h), 2(i), 2(j), and 3 and confirms the proposed orders in this alternative joint submission on penalty. If that occurs, the proposed orders will commence

seven (7) business days following the issuance of a written decision from an appeal panel (“Prospective Appeal Decision”) or as below.

This alternative proposed joint submission on penalty contemplates the Decision relating to the admissions of unprofessional conduct made by Ms. O’Brien.

1. In light of the circumstances and the Decision and section 82(1.1)(b) of the Act, requiring the Hearing Tribunal to order a suspension of Ms. O’Brien’s practice permit based on a finding of sexual misconduct:
 - a. Ms. O’Brien’s practice permit with the CLPNA shall be suspended for a period of six (6) months, commencing seven (7) business days following the issuance of the Prospective Appeal Decision.
 - b. Ms. O’Brien shall complete, at her own cost, the following remedial education and provide documents of successful completion to the Complaints Director within ninety (90) days of re-registering as a Licensed Practical Nurse with the CLPNA and obtaining a practice permit:
 - i. PBI Course – PBI Navigating Professional Boundaries in Health Care (DR-2) available at PBI Navigating Professional Boundaries in Health Care ·DR-2· PBI Education;
 - ii. ICRS Course – Righting a Wrong: Ethics and Professionalism in Nursing available at Righting a Wrong: Ethics and Professionalism in Nursing – Nurse CEs.

Should any of the above courses become unavailable, then Ms. O’Brien shall request, in writing, to be assigned an alternative course prior to the deadline. The Complaints Director shall, in her sole discretion, reassign a course. Ms. O’Brien will be notified in writing by the Complaints Director of the new course required.

- c. For a period of twenty-four (24) months from the date of re-registering as a Licensed Practical Nurse with the CLPNA and obtaining a practice permit, the Regulated Member shall provide any employer where they work in the capacity of a Licensed Practical Nurse a copy of the Decision (and the Prospective Appeal Decision, if applicable) and provide confirmation to the Complaints Director that the employer has read the Decision and Prospective Appeal Decision, if applicable. The Regulated Member must also provide the Complaints Director the name, contact details, and professional designation (if applicable) of the supervisor, anticipated supervisor or another manager.

2. Ms. O'Brien shall pay \$10,000 of the costs of the investigation and hearing, to be paid within twenty-four (24) months of receiving the Prospective Appeal Decision and in accordance with a reasonable payment plan set by the Complaints Director, in consideration to Ms. O'Brien's financial circumstances and noting that any deadline may be extended at the discretion of the Complaints Director found below.
 - a. The costs must be paid to the CLPNA, whether or not Ms. O'Brien holds an active practice permit with the CLPNA.
 - b. The costs are an action of debt owed to the CLPNA and if not paid by the deadline ordered, they may be recovered by the CLPNA as an action of debt.
3. The Orders set out above shall appear on Ms. O'Brien's practice permit and the public registry until she has successfully completed the requirements as outlined above, and shall state the following:
 - a. CLPNA Monitoring Orders
 - b. Conduct - Employer Notification
 - c. Conduct Costs/Fines
4. Ms. O'Brien shall provide the CLPNA with her contact information, including home mailing address, home and cellular telephone numbers, current e-mail address and current employment information. Ms. O'Brien will keep her contact information current with the LCPNA on an ongoing basis.
5. Should Ms. O'Brien be unable to comply with any of the deadlines identified above, Ms. O'Brien may request an extension. The request for an extension must be submitted in writing to the Complaints Director, prior to the deadline, state a valid reason for requesting the extension and state a reasonable timeframe for completion. The Complaints Director shall, in their sole discretion, determine whether a time extension is accepted. Ms. O'Brien will be notified by the Complaints Director, in writing, if the extension has been granted.
6. Should Ms. O'Brien fail to comply with any of the orders issued by the Hearing Tribunal, the Complaints Director may do any or all of the following:
 - a. Treat Ms. O'Brien's non-compliance as information for a complaint under s. 56 of the Act;

- b. Refer the matter back to a Hearing Tribunal, which shall retain jurisdiction with respect to penalty;
- c. In the case of unpaid costs, the CLPNA may take action as permitted by the Act.

(6) Decision on Penalty and Conclusions of the Hearing Tribunal

The Hearing Tribunal recognizes its orders with respect to penalty must be fair, reasonable and proportionate, taking into account the facts of this case. The Hearing Tribunal will provide its determination with respect to the costs portion of the joint submissions on sanction following its consideration of the portions responsive to the findings of unprofessional conduct.

Ms. O'Brien's permit is currently suspended pursuant to the Decision.

The orders imposed by the Hearing Tribunal must protect the public from the type of conduct that Ms. O'Brien has engaged in. In making its decision on penalty, the Hearing Tribunal considered the factors identified in *Jaswal v Newfoundland Medical Board* [1986] NJ No 50 (NLSC-TD), specifically the following:

- The nature and gravity of the proven allegations
- The age and experience of the Regulated Member
- The previous character of the Regulated Member and in particular the presence or absence of any prior complaints or convictions
- The age and mental condition of the victim, if any
- The number of times the offending conduct was proven to have occurred
- The role of the Regulated Member in acknowledging what occurred
- Whether the Regulated Member has already suffered other serious financial or other penalties as a result of the allegations having been made
- The impact of the incident(s) on the victim, and/or
- The presence or absence of any mitigating circumstances
- The need to promote specific and general deterrence and, thereby to protect the public and ensure the safe and proper practice
- The need to maintain the public's confidence in the integrity of the profession
- The range of sentence in other similar cases

1. The nature and gravity of the proven allegations

Maintaining appropriate professional boundaries are central to an LPN's ability to perform their duties as an LPN. It is a serious matter to develop a personal relationship with a client as Ms. O'Brien did. The admitted conduct includes conduct comprising sexual

misconduct under the Act which adds a further layer of concern relating to the erosion of the professional boundaries which were Ms. O'Brien's to maintain. In the event the Prospective Appeal Decision upholds the findings amounting to sexual abuse under the Act, this conduct is of the highest order of seriousness.

2. The age and experience of the investigated member

Ms. O'Brien is relatively young and, at the time of the conduct in question, was a relatively new member of the LPN profession.

3. The previous character of the investigated member and in particular the presence or absence of any prior complaints or convictions

Ms. O'Brien did not face any prior complaints or convictions relating to her professional status as an LPN.

4. The number of times the offending conduct was proven to have occurred

Several incidents were proven and, notably, the inappropriate relationship with MF occurred over an extended period.

5. Age and mental condition of the victim

MF was 28 at the time he met Ms. O'Brien. The Hearing Tribunal is aware that MF was attending at the Radius Community Health and Healing Centre ("Radius") for reasons relating to mental health but is not aware of the nature of any mental health concerns.

6. The role of the investigated member in acknowledging what occurred

Ms. O'Brien admitted some of the allegations which did have the effect of taking responsibility for that conduct and preventing the need for a hearing requiring proof of the full range of allegations. This is a mitigating factor. The failure to admit any allegations, however, is not an aggravating factor in considering sanction.

7. Whether the investigated member has already suffered other serious financial or other penalties as a result of the allegations having been made

Ms. O'Brien has not worked as an LPN since her termination from Radius in June 2023.

8. The impact of the incident(s) on the victim

As noted above, MF submitted a written statement but the statement he provided did not address any aspect of impact of the conduct on him. MF was also provided the opportunity to make an oral statement at the Hearing but did not attend for that purpose.

Given that MF was a vulnerable individual seeking health care services specifically relating to his mental health, the Hearing Tribunal draws the conclusion that there was a negative impact to MF in respect of the proven conduct.

9. The presence or absence of any mitigating circumstances

The Hearing Tribunal is not aware of any specific mitigating circumstances affecting its consideration.

10. The need to promote specific and general deterrence and, thereby to protect the public and ensure the safe and proper practice

General deterrence is required to ensure that other members in the LPN profession do not engage in this type of conduct, and to make it known that this type of conduct will not be tolerated by the CLPNA. LPNs are recognized as independent and capable members of the healthcare team and are self-regulating. The sanctions imposed will demonstrate to other members of the profession that the CLPNA takes this conduct, and a violation of LPN-Patient relationship, very seriously. Sexual misconduct and sexual abuse are the most severe offenses and will not be tolerated by CLPNA.

11. The need to maintain the public's confidence in the integrity of the profession

The public must know that where an LPN engages in such serious conduct as sexual misconduct and sexual abuse, that the CLPNA will respond accordingly and in reflection of the seriousness of such conduct. Self-regulated professions depend on the public's confidence that professionals offering services are doing so in the best interest of those receiving services and where this does not happen, a commensurate response is the only means that a profession must maintain this public confidence.

12. The range of sentence in other similar cases

In respect of cancellation or suspension, in the event a Prospective Appeal Decision quashes the findings amounting to sexual abuse, those orders are mandatory pursuant to the Act.

In respect of the length of suspension under the alternative joint submission, the Hearing Tribunal was presented with the decision of the College of Registered Nurses of Alberta

in respect of R.N. Registration # 111,918. That case involved an RN's inappropriate relationship with aspects of sexual misconduct with similarities to the present matter although it occurred over a shorter period and did not involve the full range of concerns here. In that case the RN was bound by an agreement not to practice prior to the hearing and following it received a 4-month suspension of which they were required to serve 2 months.

Counsel for the Complaints Director noted the comments of the Hearing Tribunal for the College of Physicians and Surgeons of Alberta in the decision relating to the conduct of Dr. Bradley Stewart. The Hearing Tribunal stated the following at paragraph 39:

Patient trust is vital to the correct, everyday functioning of the medical system. In voluntary physician-patient interactions, patients must have absolute certainty that a physician's actions and conduct must always be for their (the patient's) benefit. The physician is required to first consider the well-being of the patient. By sexualizing his interactions with the Complainant, Dr. Stewart failed to do this.

It is important to the profession of LPNs to maintain the Code of Ethics and Standards of Practice, and in doing so to promote specific and general deterrence and, thereby, to protect the public. The Hearing Tribunal has considered this in the deliberation of this matter and again considered the seriousness of the Regulated Member's actions. The penalties ordered in this case are intended, in part, to demonstrate to the profession and the public that actions and unprofessional conduct such as these are not tolerated and it is intended that these orders will, in part, act as a deterrent to others. The proposals of the parties will do this.

In respect of the issue of costs, the Alberta Court of Appeal recently released *Charkhandeh v College of Dental Surgeons of Alberta*, 2025 ABCA 258 ("*Charkhandeh*") in which it revisited prior jurisprudence in respect of costs in professional disciplinary matters and offered fresh direction as to the principles that are to be considered in such cases.

The Court confirmed that costs arising from professional disciplinary processes are discretionary. In the context of health professions in Alberta, the Act does not offer guidance on how or when the power to award costs is to be exercised. Finding no language presuming an award of costs in the Act, the Court stated that it would be an error to assume that costs should be awarded. The consideration for any decision maker is, instead, whether costs are warranted and, if so, the amount of such costs.

The Court identified several factors relevant to awarding costs:

1. The number of allegations and overall success in proving them. This is not a mathematical calculation but takes into account that a member who successfully defends some of the charges against them should not be overburdened by costs or if a member is substantially successful in defending themselves should not expect to pay costs.

2. Costs are not a form of sanction. At the point of considering costs, a Hearing Tribunal should already have imposed the appropriate sanction. Costs are not another level of punishment but instead intended to allocate the costs of the proceedings. Costs are related to the process of the hearing and not to the substance of the charges. There is no place for moral indignation in the consideration of the award of costs.
3. Whether the costs of the process have been increased because of unreasonable or inefficient litigation (examples include unnecessary applications, unnecessary or irrelevant evidence, overcharging by a college, delays in proceedings, refusing to admit uncontested facts, failing to meet reasonable deadlines).
4. The above considerations are not exhaustive, and other factors can be considered as may be relevant to a particular case. The Court provided some limit on what those factors might be in stating that they must be relevant to the costs issue itself and the balance of allocating costs between the regulator and the professional.

The Court also addressed the degree of costs awards.

Costs must be reasonable and proportionate including consideration of the following:

- a. The expenses must be reasonable incurred having regard to the nature of the investigation the allegations and the hearing process.
- b. The amount paid by the regulator must be fair and reasonable.
- c. It must be reasonable that the regulator incurred the costs but also to transfer the burden of those costs to the professional. The question is one of “whether the quantum represents an amount that the losing party in the litigation should reasonably be expected to pay to the winning party”.
- d. The costs must be proportionate to the issues involved, the circumstances of the member, and the over burden it places on them.

Full indemnity of the costs is not the starting point. The approach of determining the total expenses of a regulator and ordering a percentage of that has resulted in an unreasonable escalation of costs awards. The focus cannot be on the total amount of costs without consideration of the components of those costs. No percentage award of costs should be made where a tribunal does not have a clear picture of what that includes. This does not require accounting for every dollar spent but providing a picture for the tribunal of the types of expenses incurred allowing for an assessment of the reasonableness of them.

The ultimate award cannot be unduly onerous or a crushing burden on the professional. Regulated professionals must be afforded the opportunity to make a full answer and defence. Justification that costs awards were only incurred because of a professional's misconduct cannot extend to the point that regulated professionals are prevented from defending allegations. Also, a costs award that a professional would have no chance of repaying should not be made but the ability to pay a costs award is not a signal that it is reasonable.

Costs that cannot be fairly imposed on a member include costs that are an inherent component of self-regulation and properly fall on the regulator such as the expense related to the infrastructure of a hearing (i.e., travel expenses and daily allowances for tribunal members).

In respect of legal fees, the costs of independent counsel will not generally be reasonable to charge to a member including the costs of having such counsel sit through an entire hearing to draft the reasons for the decision. Tribunals are entitled to have this assistance and make use of counsel as they see fit but this expense is generally to be borne by the regulator and cannot be passed on to the member.

There is no presumption that the costs of prosecuting counsel for the regulator will be passed on to the member. Further, except for the most complex cases, it would be unreasonable to transfer to a member the costs of more than one lawyer of mid-level seniority at appropriate rates. Costs are to be calculated as if the work was done by a lawyer of appropriate seniority and the costs of the attendance of multiple counsel for a hearing cannot be reasonable charged to a member, even though such attendance may be justified.

The Hearing Tribunal has considered the costs proposed by the parties in light of the direction of the Court of Appeal in *Charkhandeh*. It was presented with a Statement of Anticipated Costs which included the costs of the investigation, the costs of counsel billed at a nationally determined average rate for a mid-level associate, for the attendance costs of one counsel only, and without the inclusion of work done and steps taken for reasons unrelated to Ms. O'Brien or otherwise outside of her control. None of the costs presented relate to the infrastructure of the hearing in accordance with the Court's direction.

The Hearing Tribunal is mindful that there is no presumption of a costs award and that costs cannot be punitive in nature. The difference in the degree of costs between the two reflects the relative success of the Complaints Director in each scenario and the additional expense required to prove those allegations. These amounts also account for Ms. O'Brien's financial position and the fact that she has incurred costs for her own legal counsel. In consideration of what is fair, reasonable and appropriate in this case including the legal costs presented as part of the consideration for the Hearing Tribunal and the concern for undue burden on Ms. O'Brien, the Hearing Tribunal is satisfied that the costs awards in each of the Primary Joint Submission on Penalty and Alternative Joint Submission on Penalty are appropriate.

After considering the proposed orders for penalty, and on costs, the Hearing Tribunal finds the Primary Joint Submission on Penalty and the Alternative Joint Submission on Penalty are appropriate, reasonable and serves the public interest and therefore accepts the parties' proposed penalties.

(7) Hearing Tribunal Orders

The Hearing Tribunal is authorized under s. 82(1) of the Act to make orders in response to findings of unprofessional conduct. The Hearing Tribunal makes the following orders pursuant to s. 82 of the Act.

1. Ms. O'Brien's practice permit and registration with the CLPNA shall be cancelled indefinitely, effective immediately, in light of the circumstances and the Decision and section 82(1.1)(a) of the Act.
2. The cancellation of Ms. O'Brien's practice permit and registration shall be reflected on her practice permit and on the public register.
3. Ms. O'Brien shall pay \$25,000 of the costs of the investigation and hearing, to be paid within thirty-six (36) months of receiving the Decision and in accordance with a reasonable payment plan set by the Complaints Directors, with consideration to Ms. O'Brien's financial circumstances and nothing that any deadline may be extended at the discretion of the Complaints Director as set out below.
 - a. The costs must be paid to the CLPNA, whether or not Ms. O'Brien holds an active practice permit with the CLPNA.
 - b. The costs are an action of debt owed to the CLPNA and if not paid by the deadline ordered, they may be recovered by the CLPNA as an action of debt.
4. Should Ms. O'Brien be unable to comply with any of the deadlines identified above, Ms. O'Brien may request an extension. The request for an extension must be submitted in writing to the Complaints Director, prior to the deadline, state a valid reason for requesting the extension and state a reasonable timeframe for completion. The Complaints Director shall, in their sole discretion, determine whether a time extension is accepted. Ms. O'Brien will be notified by the Complaints Director, in writing, if the extension has been granted.
5. Should Ms. O'Brien fail to comply with any of the orders issued by the Hearing Tribunal, the Complaints Director may do any or all of the following:

- a. Treat Ms. O'Brien's non-compliance as information for a complaint under s. 56 of the Act;
- b. Refer the matter back to a Hearing Tribunal of the CLPNA for further direction;
- c. In the case of unpaid costs, the CLPNA may take action as permitted by the Act;
- d. In the case of working or practicing in any capacity as a licensed practical nurse while cancelled, the CLPNA may take action as permitted by the Act.

Notwithstanding the above, in the event that an appeal panel of the CLPNA quashes the findings to Allegation 1 and 2(b) in the Decision (and the sanctions ordered), confirms the findings of sexual misconduct and unprofessional conduct to Allegations 2(a), 2(c), 2(d), 2(e), 2(g), 2(h), 2(i), 2(j), and 3 and confirms the following orders, the following orders will commence seven (7) business days following the issuance of a Prospective Appeal Decision or as below.

1. In light of the circumstances and the Decision and section 82(1.1)(b) of the Act, requiring the Hearing Tribunal to order a suspension of Ms. O'Brien's practice permit based on a finding of sexual misconduct:
 - a. Ms. O'Brien's practice permit with the CLPNA shall be suspended for a period of six (6) months, commencing seven (7) business days following the issuance of the Prospective Appeal Decision.
 - b. Ms. O'Brien shall complete, at her own cost, the following remedial education and provide documents of successful completion to the Complaints Director within ninety (90) days of re-registering as a Licensed Practical Nurse with the CLPNA and obtaining a practice permit:
 - i. PBI Course – PBI Navigating Professional Boundaries in Health Care (DR-2) available at PBI Navigating Professional Boundaries in Health Care -DR-2- PBI Education;
 - ii. ICRS Course – Righting a Wrong: Ethics and Professionalism in Nursing available at Righting a Wrong: Ethics and Professionalism in Nursing – Nurse CEs.

Should any of the above courses become unavailable, then Ms. O'Brien shall request, in writing, to be assigned an alternative course prior to the deadline. The Complaints Director shall, in her sole discretion, reassign a course. Ms. O'Brien will be notified in writing by the Complaints Director of the new course required.

- c. For a period of twenty-four (24) months from the date of re-registering as a Licensed Practical Nurse with the CLPNA and obtaining a practice permit, the Regulated Member shall provide any employer where they work in the capacity of a Licensed Practical Nurse a copy of the Decision (and the Prospective Appeal Decision, if applicable) and provide confirmation to the Complaints Director that the employer has read the Decision and Prospective Appeal Decision, if applicable. The Regulated Member must also provide the Complaints Director the name, contact details, and professional designation (if applicable) of the supervisor, anticipated supervisor or another manager.
2. Ms. O'Brien shall pay \$10,000 of the costs of the investigation and hearing, to be paid within twenty-four (24) months of receiving the Prospective Appeal Decision and in accordance with a reasonable payment plan set by the Complaints Director, in consideration to Ms. O'Brien's financial circumstances, and noting that any deadline may be extended at the discretion of the Complaints Director found below.
 - a. The costs must be paid to the CLPNA, whether or not Ms. O'Brien holds an active practice permit with the CLPNA.
 - b. The costs are an action of debt owed to the CLPNA and if not paid by the deadline ordered, they may be recovered by the CLPNA as an action of debt.
3. The Orders set out above shall appear on Ms. O'Brien's practice permit and the public registry until she has successfully completed the requirements as outlined above, and shall state the following:
 - a. CLPNA Monitoring Orders
 - b. Conduct - Employer Notification
 - c. Conduct Costs/Fines
4. Ms. O'Brien shall provide the CLPNA with her contact information, including home mailing address, home and cellular telephone numbers, current e-mail address and current employment information. Ms. O'Brien will keep her contact information current with the CLPNA on an ongoing basis.
5. Should Ms. O'Brien be unable to comply with any of the deadlines identified above, Ms. O'Brien may request an extension. The request for an extension must be submitted in writing to the Complaints Director, prior to the deadline, state a valid reason for requesting the extension and state a reasonable timeframe for completion. The

Complaints Director shall, in their sole discretion, determine whether a time extension is accepted. Ms. O'Brien will be notified by the Complaints Director, in writing, if the extension has been granted.

6. Should Ms. O'Brien fail to comply with any of the orders issued by the Hearing Tribunal, the Complaints Director may do any or all of the following:
 - a. Treat Ms. O'Brien's non-compliance as information for a complaint under s. 56 of the Act;
 - b. Refer the matter back to a Hearing Tribunal, which shall retain jurisdiction with respect to penalty;
 - c. In the case of unpaid costs, the CLPNA may take action as permitted by the Act.

The CLPNA shall provide notices under s. 119 of the Act regarding the cancellation of the Regulated Member's practice permit, which includes providing the information to governing bodies of any similar profession in other provinces or territories.

The Hearing Tribunal believes these orders adequately balances the factors referred to in Section 6 above and are consistent with the overarching mandate of the Hearing Tribunal, which is to ensure that the public is protected.

Under Part 4, s. 87(1)(a),(b) and 87(2) of the Act, the Regulated Member has the right to appeal:

"87(1) An investigated person or the complaints director, on behalf of the college, may commence an appeal to the council of the decision of the hearing tribunal by a written notice of appeal that

- (a) identifies the appealed decision, and
- (b) states the reasons for the appeal.

(2) A notice of appeal must be given to the hearings director within 30 days after the date on which the decision of the hearing tribunal is given to the investigated person."

DATED THE 6th DAY OF OCTOBER 2025 IN THE CITY OF LETHBRIDGE, ALBERTA.

THE COLLEGE OF LICENSED PRACTICAL NURSES OF ALBERTA



Jeffrey Bell, LPN
Chair, Hearing Tribunal