COLLEGE OF LICENSED PRACTICAL NURSES AND HEALTH CARE AIDES OF ALBERTA

IN THE MATTER OF
A HEARING UNDER *THE HEALTH PROFESSIONS ACT,*

AND IN THE MATTER OF A HEARING REGARDING THE CONDUCT OF TANYA MALATA

DECISION OF THE HEARING TRIBUNAL OF THE COLLEGE OF LICENSED PRACTICAL NURSES AND HEALTH CARE AIDES OF ALBERTA

IN THE MATTER OF A HEARING UNDER THE *HEALTH PROFESSIONS ACT* REGARDING THE CONDUCT OF TANYA RACHELLE MALATA, LPN #37931, WHILE A MEMBER OF THE COLLEGE OF LICENSED PRACTICAL NURSES AND HEALTH CARE AIDES OF ALBERTA ("CLHA")

DECISION OF THE HEARING TRIBUNAL

(1) Hearing

The hearing was conducted via Videoconference on April 30, 2026 with the following individuals present:

Hearing Tribunal:
Don Wilson, Public Member, Chairperson
Sarah Kawaleski, LPN
Jennifer Vloerbergh, LPN
Glen Buick, Public Member

Staff:
Allie Quigley, Legal Counsel for the Complaints Officer, CLHA
Sanah Sidhu, Director of Professional Conduct, CLHA
Bonnie Scabar, Complaints Officer, CLHA

Regulated Member:
Tanya Rachelle Malata, LPN ("Ms. Malata" or "Investigated Member" or "Regulated Member")
Kent West, Legal Counsel for the Regulated 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.

The Hearing was conducted by way of an Agreed Statement of Facts and Acknowledgement of Unprofessional Conduct and a Joint Submission on Penalty.

(3) Background

The Regulated Member has been registered as a Licensed Practical Nurse ("LPN") with the CLHA since February 21, 2014, and was registered at all times material to the allegations.

On November 18, 2025, the CLHA received a complaint from Francis Malata, Member of the Public (the "Complainant"), about the Regulated Member while she was employed at Genuine Home & Health Services Inc. in Calgary, Alberta (the "Employer").

The Complaints Director for the CLHA delegated their powers and duties under the HPA to Bonnie Scabar, Complaints Officer and appointed Neal York, Investigator to conduct an investigation into the complaint.

Due to the serious nature of the allegations, the Regulated Member's practice permit is currently suspended and has been since December 8, 2025, through a Voluntary Suspension Agreement with the Complaints Officer.

Following the receipt and review of the Investigation Report, the Complaints Officer determined there was sufficient evidence of unprofessional conduct by the Regulated Member to refer the matter to a hearing in accordance with s. 66(3)(a) of the HPA. The Regulated Member received notice that the matter was referred to a hearing, as well as a copy of the Statement of Allegations dated February 19, 2026.

A Notice of Hearing was served upon the Regulated Member under cover letter dated March 9, 2026.

(4) Allegations

The Allegations in the Statement of Allegations (the "Allegations") are:

> It is alleged that **TANYA MALATA, LPN**, while practising as a Licensed Practical Nurse engaged in unprofessional conduct by:
>
> 1. Between December 2023 and December 2024, engaged in a sexual relationship with Client DH, with such conduct constituting "sexual abuse" as defined in s. 1(1)(nn.1) of the *Health Professions Act,* R.S.A. 2000, c. H-7.
>
> 2. Between November 2023 and December 2024, engaged in "sexual misconduct" as defined in s. 1(1)(nn.2) of the *Health Professions Act*, R.S.A. 2000, c. H-7 towards Client DH, by doing one or more of the following:
>   a. kissing Client DH; and
>   b. exchanging sexually inappropriate or explicit text messages.

It is further alleged that this conduct constitutes "unprofessional conduct" as defined in s. 1(1)(pp)(ii) and (xii) of the *Health Professions Act*, RSA 2000, c H-7, and in particular that this conduct breaches one or more of the following:

1. *Standards of Practice for Licensed Practical Nurses on Boundary Violations (2023)*, Standard 1: The LPN-Patient Relationship, Indicators 1.1, 1.2, and 1.4;
2. *Standards of Practice for Licensed Practical Nurses on Boundary Violations (2023)*, Standard 2: Prohibited Sexual Conduct and Female Genital Mutilation, Indicators 2.1, 2.2, and 2.5;
3. *Standards of Practice for Licensed Practical Nurses on Boundary Violations (2023)*, Standard 8: Other Types of Boundary Violations, Indicator 8.1;
4. *Standards of Practice for Licensed Practical Nurses in Canada (2020)*, Standard 1: Professional Accountability and Responsibility, Indicators 1.1 and 1.8;
5. *Standards of Practice for Licensed Practical Nurses in Canada (2020)*, Standard 3: Protection of the Public Through Self-Regulation, Indicators 3.1, 3.3, and 3.5;
6. *Standards of Practice for Licensed Practical Nurses in Canada (2020)*, Standard 4: Professional and Ethical Practice, Indicators 4.2, 4.4, 4.5, and 4.6;
7. *Code of Ethics for Licensed Practical Nurses in Canada (2013)*, Principal 1: Responsibility to the Public, Indicators 1.1;
8. *Code of Ethics for Licensed Practical Nurses in Canada (2013)*, Principal 2: Responsibility to Clients, Indicators 2.3.4, and 2.7;
9. *Code of Ethics for Licensed Practical Nurses in Canada (2013)*, Principal 3: Responsibility to the Profession, Indicators 3.1, and 3.3; and
10. *Code of Ethics for Licensed Practical Nurses in Canada (2013)*, Principal 5: Responsibility to Self, Indicators 5.1, 5.3, 5.5, and 5.7.

(5) Admission of Unprofessional Conduct

Section 70 of the Act permits a Regulated Member to make an admission of unprofessional conduct. An admission under s. 70 of the Act must be acceptable in whole or in part to the Hearing Tribunal.

Ms. Malata acknowledged unprofessional conduct to all the allegations as evidenced by her signature on the Agreed Statement of Facts and Acknowledgement of Unprofessional Conduct and verbally admitted unprofessional conduct to all the allegations set out in the Statement of Allegations during the hearing.

Legal Counsel for the Complaints Officer submitted that where there is an admission of unprofessional conduct, the Hearing Tribunal should accept the admission absent exceptional circumstances.

(6) Exhibits

The following exhibits were entered at the hearing:

Exhibit #1: Agreed Statement of Facts and Acknowledgement of Unprofessional Conduct

Exhibit #2: Joint Submission on Penalty

Exhibit #3: Victim Impact Statement

(7) Evidence

The evidence was adduced by way of Agreed Statement of Facts, and no witnesses were called to give *viva voce* testimony. The Hearing Tribunal accepts the evidence set out in the Agreed Statement of Facts which was admitted as Exhibit #1.

In addition, the Hearing Tribunal received a "Patient Impact Statement" from Client DH prior to the hearing, which was reviewed by the Hearing Tribunal.

(8) Decision of the Hearing Tribunal and Reasons

The Hearing Tribunal is aware 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.

The Hearing Tribunal has reviewed the documents included in Exhibit #1 and finds as facts the events as set out in the Agreed Statement of Facts.

The Hearing Tribunal also accepts Ms. Malata's admission of unprofessional conduct as set out in the Agreed Statement of Facts as described above. Based on the evidence and submissions before it, the Hearing Tribunal did not identify exceptional circumstances that would justify not accepting the admission of unprofessional conduct from Ms. Malata.

Allegation 1

Ms. Malata admitted that between December 2023 and December 2024, she engaged in a sexual relationship with Client DH, with such conduct constituting "sexual abuse" as defined in s. 1(1)(nn.1) of the *Health Professions Act,* R.S.A. 2000, c. H-7.

The Regulated Member was hired by the Employer on May 17, 2023 as an LPN. The Employer facilitates home care services to its clients.

Patient DH was a client of the Employer, who required 24-hour home care services related to an injury from the workplace. Patient DH resided in a hotel at the time of the conduct.

The Regulated Member was assigned to and provided professional nursing services to Patient DH from May 18, 2023 to June 2, 2024. Additionally, the Regulated Member contributed to Patient DH's patient record by authoring care notes. Accordingly, an LPN-patient relationship existed between the Regulated Member and Patient DH in accordance with the CLPNA's Standards of Practice for LPNs on Boundary Violations ("the Boundary Violations SOP"), Standard 1.

The Regulated Member and Patient DH entered into a consensual sexual relationship from approximately November 2023 to January 2025.

The Regulated Member provided home care to Patient DH for the first time on May 18, 2023. The Regulated Member's shifts varied from day, evening, and overnight shifts and during shifts she was often alone with Patient DH.

On or about August 2023, Patient DH requested the Regulated Member's personal cell phone number for the purpose of buying nicotine products for Patient DH, for which he then would reimburse her. The Regulated Member shared her personal phone number with Patient DH.

By November 2023, the Regulated Member and Patient DH began exchanging personal text messages, including expressing feelings for one another.

On or about December 2023, the Regulated Member and Patient DH engaged in sexual intercourse for the first time during one of the Regulated Member's shifts providing care to Patient DH.

From December 2023 to June 2024, the Regulated Member engaged in the following acts with Patient DH while on shift providing care to Patient DH and during personal time:

a. sexual intercourse;

b. genital to genital and oral to genital contact;

c. masturbation of each other; and

d. sexual touching of Patient DH's genitals.

The Regulated Member resigned from the Employer on June 19, 2024, with their last shift providing care to Patient DH occurring on June 2, 2024. However, according to Standard 1.3 of the Boundary Violations SOP, LPNs must ensure a minimum of one year from the last day of providing professional nursing services has occurred before engaging in a sexual relationship with a former patient.

The Regulated Member and Patient DH continued a sexual relationship from June 2024 to December 2024, specifically engaging in the acts outlined [above].

Additionally, the Regulated Member was privately engaged by Patient DH to accompany him to Texas from September 26 to December 24, 2024, as a paid caregiver to provide 24-hour nursing support while he attended physiotherapy treatment. Accordingly, the LPN-patient relationship not only continued to exist following the Regulated Member's resignation from the Employer, but was reengaged by the private nursing arrangement the Regulated Member entered into with Patient DH.

The relationship between the Regulated Member and Patient DH ended on or about January 2025.

The Hearing Tribunal considered the facts included in the Agreed Statement of Facts, set out above, and Ms. Malata's admission of unprofessional conduct. The Hearing Tribunal found that the facts and documents included in Exhibit #1 prove that the conduct for Allegation 1 did in fact occur.

The Hearing Tribunal finds that the conduct admitted to amounts to unprofessional conduct as defined in s. 1(1)(pp) of the Act. In particular, the Hearing Tribunal found the following definitions of unprofessional conduct have been met:

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

Consideration of this matter includes, to some extent, the need to follow the Act through the definitions of "sexual abuse" and "patient" as well as the CLHA's Standards of Practice on Boundary Violations: Protecting Patients from Sexual Abuse and Sexual Misconduct.

Section 1(1)(nn.1) of the Act sets out the following definition of sexual abuse:

> "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; …

Section 1(1)(x.1) of the Act sets out that the definition of a "patient" as it relates to sexual abuse is determined by each College in its Standards of Practice.

The CLHA Standards of Practice on Boundary Violations: Protecting Patients from Sexual Abuse and Sexual Misconduct ("Standards of Practice on Boundary Violations") sets out the definition of "patient" as it relates to sexual abuse.

This document states that the term "patient" is defined as "an individual to whom the nurse provides a professional nursing service." "Professional nursing service" is further defined as "a service that comes within the practice of a regulated profession" and for LPNs includes "the application of nursing knowledge, skills and judgment to assess patients' needs and the provision of nursing care for patients and families."

There is no doubt that DH was under Ms. Malata's care and that she was providing professional nursing services to him at the time the two had a sexual relationship. During this same period of time, the two engaged in consensual sexual intercourse. Accordingly, Ms. Malata's conduct contravened the Act and a CLHA Standard of Practice.

In addition, the conduct demonstrated lack of judgement based on the lack of recognition of Ms. Malata's position of power in this patient/client-nurse relationship, and under such conditions consent to any activities would be questionable at best. When a therapeutic relationship is developed, it can create feelings in a patient of psychological and emotional closeness that can be confusing to the patient and as a professional, and regulated members need to recognize that under the applicable professional standards, they are to maintain a purely professional relationship, so as not to take advantage of this situation. This conduct also harms the integrity of the profession as it creates mistrust and others in the public, causing concerns for personal safety in these situations.

The conduct breached the following principles and standards:

1. *Code of Ethics for Licensed Practical Nurses in Canada adopted by the CLHA on June 3, 2013 ("CLPNA Code of Ethics"):*

    a. **Principle 1**: Responsibility to the Public – LPNs, as self-regulating professionals, commit to provide safe, effective, compassionate, and ethical care to members of the public. Principle 1 specifically provides that LPNs:
        i. 1.1 Maintain standards of practice, professional competence, and conduct.

b. **Principle 2:** Responsibility to Clients – LPNs provide safe and competent care for their clients. Principle 2 specifically provides that LPNs:
   i. 2.7 Develop trusting, therapeutic relationships, while maintaining professional boundaries.

c. **Principle 3:** Responsibility to the Profession – LPNs have a commitment to their profession and foster the respect and trust of their clients, health care colleagues and the public. Principle 3 specifically provides that LPNs:
   i. 3.1 Maintain the standards of the profession and conduct themselves in a manner that upholds the integrity of the profession.
   ii. 3.3 Practice in a manner that is consistent with the privilege and responsibility of self-regulation.

d. **Principle 5**: Responsibility to Self, Ethical Responsibilities – LPNs recognize and function within their personal and professional competence and value systems. Principle 5 specifically provides that LPNs:
   i. 5.3 Accept responsibility for knowing and acting consistently with the principles, practice standards, laws, and regulations under which they are accountable.

It is obvious this conduct did not reflect an appropriate professional boundary. Regulated professionals are called to hold themselves to a high standard and in a manner which reflects the undertaking of the responsibility of self-regulation. By engaging in a sexual relationship with someone under her care, Ms. Malata failed to meet the high standard required and conducted herself in a manner inconsistent with the privilege of self-regulation.

2. *Standards of Practice for Licensed Practical Nurses on Boundary Violations: Protecting Patients from Sexual Abuse and Sexual Misconduct, which was approved by the Council and came into force on March 19, 2019 ("CLPNA Standards on Boundary Violations*):

   a. **Standard 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.

   b. **Standard: 2.1**: An LPN must not threaten, attempt or engage, in any of the following conduct with a patient: … Sexual intercourse

Again, there is no doubt Ms. Malata engaged in sexual intercourse with a patient and thereby breached the clear prohibition against this in the Standards of Practice for Licensed Practical Nurses on Boundary Violations: Protecting Patients from Sexual Abuse and Sexual Misconduct.

3. *Standards of Practice for Licensed Practical Nurses in Canada adopted by the CLHA on June 3, 2013 ("2013 Standards of Practice"):*

    a. **Standard 1**: Professional Accountability and Responsibility – LPNs are accountable and responsible for their practice and conduct to meet the standards of the profession and legislative requirements. Standard 1 specifically provides that LPNs:
        i. 1.1 Practice within applicable legislation, regulations, by-laws, and employer policies.
        ii. 1.9 Practice in a manner consistent with ethical values and obligations of the Code of Ethics for Licensed Practical Nurses.

    b. **Standard 3**: Service to the Public and Self-Regulation – LPNs practice nursing in collaboration with clients and other members of the health care team to provide and improve health care services in the best interests of the public. Standard 3 specifically provides that LPNs:
        i. 3.6 Demonstrate an understanding of self-regulation by following the standards of practice, the code of ethics and other regulatory requirements.

    c. **Standard 4**: Ethical Practice – LPNs uphold, promote and adhere to the values and beliefs as described in the Canadian Council for Practical Nurse Regulators (CCPNR) Code of Ethics. Standard 4 specifically provides that LPNs:
        i. 4.1 Practice in a manner consistent with ethical values and obligations of the Code of Ethics for LPNs.
        ii. 4.6 Maintain professional boundaries in the nurse/client therapeutic relationship at all times
        iii. 4.10 Practice with honesty and integrity to maintain the values and reputation of the profession.

Ms. Malata's conduct also breached these further Standards for many of the same reasons articulated above. In addition to those reasons previously provided, the Hearing Tribunal would note that engaging in a sexual relationship with one's patient presents the possibility of significant harm to the patient and undermines the therapeutic relationship, which is not in the best interests of the patient.

4. *Standards of Practice for Licensed Practical Nurses on Boundary Violations adopted by the CLHA on March 19, 2019 ("Boundary Standards of Practice"):*

    a. **Standard 1**: The LPN-Patient Relationship: An individual is considered to be an LPN's patient for the purposes of the sexual abuse and sexual misconduct provisions in the HPA while receiving a professional nursing service provided by the LPN and for a minimum of one year from the last day professional nursing services were provided.
        i. 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.

ii. 1.3 It is the LPN's responsibility to ensure that termination of the LPN-patient relationship is communicated to the patient; that the termination is documented at the time of discharge from care in the patient's record; and that a minimum of one year from the last day of providing professional nursing services has occurred before engaging in a sexual relationship with a former patient.
iii. 1.4. If the LPN has a sexual relationship with the patient before the one year is over, this behaviour will be considered sexual abuse and the LPN's registration, and practice permit will be subject to cancellation.

b. **Standard 2**: Prohibited Sexual Conduct:
   i. 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.

c. **Standard 3**: Sexual Relations with Former Patients - Sexual relations between LPNs and former patients raise concerns about breach of trust and power imbalance. As provided in Standard 1, an individual is considered to be an LPN's patient for the purposes of the sexual abuse and sexual misconduct provisions in the HPA for a minimum of one year from the last day professional nursing services were provided. However, there are circumstances when it is never appropriate for the LPN to engage in a sexual relationship with a former patient.
   i. 3.2 Where the LPN provided nursing interventions to a patient that are not considered psychotherapeutic treatment, such as giving information and providing advice to enhance personal development, providing emotional support or guidance on lifestyle choices, one year may still not be sufficient time for a sexual relationship with a former patient to be considered appropriate.

Again, for the reasons provided above, Ms. Malata's conduct also breached these Standards. There is no doubt the conduct constitutes unprofessional conduct as discussed.

Further, the Hearing Tribunal is cognizant of the imbalance between those seeking and receiving medical treatment and those administering it. While the relationship between Ms. Malata and DH was consensual, its existence undermines the integrity of the profession by reason of the nurse-patient relationship.

Allegation 2

Ms. Malata admitted that between November 2023 and December 2024, she engaged in "sexual misconduct" as defined in s. 1(1)(nn.2) of the *Health Professions Act*, R.S.A. 2000, c. H-7 towards Client DH, by doing one or more of the following:

a. kissing Client DH; and
b. exchanging sexually inappropriate or explicit text messages.

Between December 2023 to December 2024, the Regulated Member engaged in repeated incidents of objectionable conduct and remarks of a sexual nature by sending sexually inappropriate or explicit text messages to Patient DH, contrary to the Boundary Violations SOP, including but not limited to:

a. "Aww do u want a bj tonight lol" on or about January 12, 2024;
b. "it was amazeballs I wish u could feel more.. ur cock was so hard this morning" on or about January 19, 2024;
c. "do u like it when I lick and such ur finger with my juices on it" on or about March 3, 2024;
d. "I like it when u lock my head in ur arm while I kiss u" on or about March 6, 2024; and
e. "I really believe its my feels for u its just too intense and way u look at me just makes my panties drop lol" on or about March 7, 2024.

The Hearing Tribunal considered the facts included in the Agreed Statement of Facts, set out above, and Ms. Malata's admission of unprofessional conduct. The Hearing Tribunal found that the facts and documents included in Exhibit #1 prove that the conduct for Allegation 2 did in fact occur.

The Hearing Tribunal finds that the conduct admitted to amounts to unprofessional conduct as defined in s. 1(1)(pp) of the Act, in particular, the Hearing Tribunal found the following definitions of unprofessional conduct have been met:

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

The conduct in regard of Allegation #2 involved repeated occasions of Ms. Malata contacting DH to relay messages of a sexual nature. It is obvious this conduct did not reflect an appropriate professional boundary. This conduct is clearly a demonstration of a lack of judgment on the part of Ms. Malata.

Ms. Malata did not abide by the principles and standards set out in CLPNA Code of Ethics, the CLPNA Standards of Practice and the CLPNA Boundary Standards of Practice, as set out above

under Allegation 1, and the same reasoning expressed there applies to Allegation 2 as well. Such breaches are sufficiently serious to constitute unprofessional conduct.

Ms. Malata's conduct harms the integrity of the profession as this is not expected behavior of an LPN. LPNs are accountable for maintaining appropriate boundaries and meeting the health care needs of their patients. It is exploitative for a nurse to use this relationship to meet their own social, emotional, or relationship needs. Crossing boundaries puts the nurse-patient relationship at risk, breaches patient trust and can cause severe harm.

(9) Joint Submission on Penalty

The Complaints Officer and Ms. Malata jointly proposed to the Hearing Tribunal a Joint Submission on Penalty, which was entered as Exhibit #2. The Joint Submission on Penalty proposed the following sanctions to the Hearing Tribunal for consideration:

1. The Hearing Tribunal's written decision (the "Decision") shall serve as a reprimand.

2. The Regulated Member's practice permit and registration with the CLHA shall be cancelled, as of the date of the hearing, as required by s. 82(1.1)(a) of the HPA.

3. The Regulated Member shall pay a portion of the costs of the investigation and hearing, in the amount of $2,000.00, to be paid over a period of **36 months** from the date of the hearing.
    a. The costs must be paid to the CLHA, whether or not the Regulated Member holds an active practice permit with the CLHA. Any outstanding costs are a debt owed to the CLHA and if not paid by the deadline indicated, may be recovered as an action in debt.
4. The CLHA will provide the required notices in accordance with s. 119 of the HPA, including to the College of Registered Nurses of Alberta.

5. Should the Regulated Member be unable to comply with any of the deadlines for completion of the orders identified above, the Regulated Member may request an extension. The request for an extension must be submitted in writing to the Complaints Officer, prior to the deadline, state a valid reason for requesting the extension, and state a reasonable timeframe for completion. The Complaints Officer shall, in their sole discretion, determine whether a time extension is granted. The Regulated Member will be notified, in writing, if the extension has been granted.

6. Should the Regulated Member fail or be unable to comply with any of the above orders, or if any dispute arises regarding the implementation of these orders, the Complaints Officer may do any or all of the following:

a. Refer the matter back to a Hearing Tribunal, which shall retain jurisdiction with respect to penalty; or
b. Treat the Regulated Member's non-compliance as information for a complaint under s. 56 of the *Health Professions Act*.

Legal Counsel for the Complaints Officer submitted the primary purpose of orders from the Hearing Tribunal is to protect the public. The Hearing Tribunal is aware that s. 82 of the Act sets out the available orders the Hearing Tribunal is able to make if unprofessional conduct is found.

The Hearing Tribunal is aware, while the parties have agreed on a joint submission as to penalty, the Hearing Tribunal is not bound by that submission. Nonetheless, as the decision-maker, the Hearing Tribunal should give deference to a joint submission unless the proposed sanction is unfit, unreasonable or contrary to public interest. Joint submissions make for a better process and engage the member in considering the outcome. A rejection of a carefully crafted agreement would undermine the goal of fostering cooperation through joint submissions and may significantly impair the ability of the Complaints Director to enter into such agreements. If the Hearing Tribunal had concerns with the proposed sanctions, the proper process is to notify the parties, articulate the reasons for concern, and give the parties an opportunity to address the concerns through further submissions to the Hearing Tribunal.

The Hearing Tribunal therefore carefully considered the Joint Submission on Penalty proposed by Ms. Malata and the Complaints Officer.

(10) 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 orders imposed by the Hearing Tribunal must protect the public from the type of conduct that Ms. Malata has engaged in. In making its decision on penalty, the Hearing Tribunal considered a number of 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:** This is a significant factor as the admission involves sexual abuse. It involves patient harm, breach of trust, and a power imbalance. Because of the LPN's inherent position of power and influence over patients, it is part of their professional responsibility to uphold professional matters, particularly so because nursing is such a compassionate profession. The physical, psychosocial, and social elements of providing nursing care can inherently create feelings of closeness between an LPN and patient. The patient was vulnerable, and there was very clearly a significant and continuing power imbalance between the patient and Ms. Malata. Given the conduct was sexual in nature, it did blur the lines

between a professional and personal relationship. It was a breach of trust, and it risked causing a power imbalance and emotional distress. This is also serious as Ms. Malata failed to adhere to the core competencies of an LPN and failed to meet the minimum obligations of maintaining professional boundaries with the patient. This is an aggravating factor.

- **The age and experience of the Regulated Member:** Ms. Malata was initially registered in February 2014 and was 40 years old at the time of the conduct. She was old enough and had been in the profession for long enough that she should have known that this conduct is inappropriate. It would not be difficult to know that the acts or remarks of a sexual nature are not appropriate in an LPN patient relationship. This breach took place many years into Ms. Malata's practice as an LPN. Ms. Malata also obtained her RN designation in January 2024. As such, these errors were not the result of inexperience or lack of training. This is not a case of a new LPN in a difficult situation, not knowing how to conduct themselves or not knowing about the concerns of developing a personal relationship with a patient. These allegations before the tribunal also constitute knowledge of which all LPNs should have, especially given the emphasis that the Alberta government and professional regulators have placed on inappropriate relationships with patients. Notably, the CLPNA Boundary Standards of Practice did come into force in May 2023, and so it was expected that all regulated members would be aware of them and review them. This is an aggravating factor.

- **The previous character of the Regulated Member and in particular the presence or absence of any prior complaints or convictions:** Ms. Malata has no previous complaints or convictions. This is a mitigating factor.

- **The age and mental condition of the victim, if any:** The Hearing Tribunal did not receive specific details in respect of this factor.

- **The number of times the offending conduct was proven to have occurred:** Ms. Malata and the patient did engage in a sexual relationship throughout December 2023 to 2024. The repetitive nature of this conduct over the course of a year is an aggravating factor.

- **The role of the Regulated Member in acknowledging what occurred:** Ms. Malata has pled guilty and admits the conduct. In doing so, she demonstrates accountability and willingness to take responsibility. Ms. Malata has acknowledged each of the allegations and has been cooperative throughout the investigation. She also entered into a voluntary Interim Suspension Agreement and so her participation has streamlined the overall process, minimizing the time, effort, and expense by proceeding by consent. This is a mitigating factor.

- **Whether the Regulated Member has already suffered other serious financial or other penalties as a result of the allegations having been made**: Ms. Malata lost her employment as a result of the conduct.

- **The impact of the incident(s) on the victim:** Client DH, the patient, was a vulnerable homecare client. The patient required transfer lifts, a wheelchair, and around-the-clock nursing care. The patient lived in a hotel away from family support and specialized treatment. As such, the patient was very vulnerable. The Hearing Tribunal does however note that the patient was given the opportunity to provide a Patient Impact Statement and the content of that statement is expressed above. In it, the patient speaks to positive experiences with Ms. Malata, but while the patient may not recognize the harm that was caused by this conduct, regulated members of the CLHA have a public duty to protect the public as a whole from this kind of conduct, which is why the law has recognized the need for regulation of this kind of conduct.

- **The need to promote specific and general deterrence and, thereby to protect the public and ensure the safe and proper practice:** In terms of the specific deterrence, in this case, there is a need to impose a sanction that deters Ms. Malata from ever engaging in this behavior in the future. There's also a need for general deterrence to prevent other LPNs from engaging in similar behavior and make it known that the CLHA cannot and will not tolerate this behavior. The need to maintain the public's confidence in the integrity of the profession: protection of the public is the main concern when considering a proper sanction for Ms. Malata, but the sanctions imposed also send a message to Ms. Malata and others about how seriously this conduct is taken and to ensure that the public's confidence and the integrity of the profession is preserved.

- **The range of sentence in other similar cases:** The Hearing Tribunal was not provided with any similar cases.

The Hearing Tribunal is aware of the requirement in the HPA that Ms. Malata's practice permit and registration be cancelled, in light of the fact that the proven conduct related to sexual abuse of a patient. Even if this were not the mandatory sanction in the HPA, the Hearing Tribunal would have imposed this same sanction, as this conduct is extremely serious and requires a high measure of general deterrence to ensure that the profession as a whole never undertakes this conduct, or similar conduct, with a patient.

It is important to the profession of LPNs to maintain the CLPNA Code of Ethics, the CLPNA Standards of Practice and the critical CLPNA Boundary 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 Investigated 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 this are not tolerated and it is intended that these orders will, in part, act as a deterrent to others.

After considering the proposed orders for penalty, the Hearing Tribunal finds the proposed penalty is appropriate, reasonable and serves the public interest and therefore accepts the proposed penalties.

(11) Orders of the Hearing Tribunal

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. The Hearing Tribunal's written decision (the "Decision") shall serve as a reprimand.

2. The Regulated Member's practice permit and registration with the CLHA shall be cancelled, as of the date of the hearing, as required by s. 82(1.1)(a) of the HPA.

3. The Regulated Member shall pay a portion of the costs of the investigation and hearing, in the amount of $2,000.00, to be paid over a period of **36 months** from the date of the hearing.
    a. The costs must be paid to the CLHA, whether or not the Regulated Member holds an active practice permit with the CLHA. Any outstanding costs are a debt owed to the CLHA and if not paid by the deadline indicated, may be recovered as an action in debt.

4. The CLHA will provide the required notices in accordance with s. 119 of the HPA, including to the College of Registered Nurses of Alberta.

5. Should the Regulated Member be unable to comply with any of the deadlines for completion of the orders identified above, the Regulated Member may request an extension. The request for an extension must be submitted in writing to the Complaints
   Officer, prior to the deadline, state a valid reason for requesting the extension, and state a reasonable timeframe for completion. The Complaints Officer shall, in their sole discretion, determine whether a time extension is granted. The Regulated Member will be notified, in writing, if the extension has been granted.

6. Should the Regulated Member fail or be unable to comply with any of the above orders, or if any dispute arises regarding the implementation of these orders, the Complaints Officer may do any or all of the following:
    a. Refer the matter back to a Hearing Tribunal, which shall retain jurisdiction with respect to penalty; or
    b. Treat the Regulated Member's non-compliance as information for a complaint under s. 56 of the *Health Professions Act*.

The Hearing Tribunal believes these orders adequately balance the factors referred to in Section 10 above and are consistent with the overarching mandate of the Hearing Tribunal, which is to ensure that the public is protected.

Under Parts 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 10th DAY OF JULY 2026 IN THE CITY OF EDMONTON, ALBERTA.

THE COLLEGE OF LICENSED PRACTICAL NURSES AND HEALTH CARE AIDES OF ALBERTA

Don Wilson, Public Member
Chair, Hearing Tribunal