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# NLAPPE v Central Regional Health Authority, 2025 CanLII 150639 (NL LA)

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**ARBITRATION AWARD**

BETWEEN:

NEWFOUNDLAND AND LABRADOR ASSOCIATION
OF PUBLIC AND PRIVATE EMPLOYEES
(hereinafter called the "Union")

AND:

CENTRAL REGIONAL HEALTH AUTHORITY
(hereinafter called the "Employer")

GRIEVOR: Trina Noble

COUNSEL: For the Union

Robby D. Ash

For the Employer

Jillian A. Hewitt

ARBITRATOR: James C. Oakley, K.C.

1 The arbitration hearing was held at Baie Verte on October 3, 4, 5 and 6, 2023, at Grand Falls-Windsor on October 17 and 18, 2023 and at Grand Falls-Windsor on August 25, 26 and 27, 2025. The parties agreed as follows:

- The Arbitrator was acceptable.
- The Arbitrator had jurisdiction to hear the grievance.
- The grievance procedure was properly followed or any requirements waived.
- The Arbitrator would remain seized of the matter, following publication of the Award, in the event of an issue of interpretation or compensation arising from the Award.
- The names of residents or patients would be anonymized in the Award.
- Witnesses were excluded from the hearing.

2 The parties also attended on a hearing by videoconference on November 22, 2023, on a Union application for disclosure of briefing notes. By Preliminary Arbitration Award, dated December 14, 2023, the application for disclosure was denied. The Arbitrator also issued a Production Order, on June 17, 2025, by consent of the parties, for production of an expert report.

3 The following exhibits were entered at the hearing:

Consent 1 - Collective Agreement between Her Majesty the Queen in Right of Newfoundland and Labrador (represented by Treasury Board) and The Newfoundland and Labrador Association of Public and Private Employees (Hospital Support Staff), Expires March 31, 2022 (extended)

Consent 2 - Grievance Form, NAPE file # C-HSS-259-22, dated September 15, 2022

Consent 3 - Letter dated September 15, 2022, from Carolyn Greenham, Manager of Site Operations, Baie Verte Peninsula Health Care Centre (BVPHCC), Central Health, to Trina Noble

Consent 4 - Statement of Corinn McLean, recorded by Amanda Jennings, September 12, 2022

Consent 5 - Statement of Shirley Thomas, recorded by Amanda Jennings, September 12, 2022

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| Consent 6 - | Statement of Trina Noble, recorded by Amanda Jennings, September 12, 2022 |
| Consent 7 - | Statement of Rachel Drover, recorded by Amanda Jennings, September 14, 2022 |
| Consent 8 - | Statement of Marina Bryan, recorded by Amanda Jennings, September 14, 2022 |
| Consent 9 - | Statement of Kelsey Foster, recorded by Amanda Jennings, September 12, 2022 |
| Consent 10 - | Interview Kelsey Foster, December 29, 2022, by Interviewer for LPN College Complaints Authorization Committee |
| Consent 11 - | Interview Corinn McLean, March 3, 2023, by Interviewer for LPN College Complaints Authorization Committee |
| Consent 12 - | Statement of Trina Noble, recorded by Kristal Rice, September 13, 2022 |
| Consent 13 - | Statement of Trina Noble, recorded by Kristal Rice, September 15, 2022 |
| JM - 1 | Screenshot from iPhone |
| JM - 2 | Screenshot from iPhone with photograph and text messages |
| JM - 3 | Statement of Shirley Thomas, recorded by Jennifer Manuel, September 12, 2022 |
| JM - 4 | Statement of Rachel Drover, recorded by Jennifer Manuel, September 14, 2022 |
| JM - 5 | Statement of Melissa Critch, recorded by Jennifer Manuel, September 12, 2022 |
| JM - 6 | Statement of Corinn McLean, recorded by Jennifer Manuel, September 12, 2022 |
| JM - 7 | Statement of Kelsey Foster, recorded by Jennifer Manuel, September 13, 2022 |
| JM - 8 | Statement of Trina Noble, recorded by Jennifer Manuel, September 13, 2022 |
| JM - 9 | Personal Mobile Device Use in the Workplace Policy, Central Health, Approval Date: January 5, 2021 |
| JM - 10 | Duty to Report/Warn Policy, Central Health, Approval Date: July 19, 2019 |
| JM - 11 | Confidentiality Policy, Central Health, Approval Date: October 26, 2021 |
| JM - 12 | Trina Noble, Record of Achievement, training for *Personal Health Information Act*, August 6, 2011 |
| JM - 13 | Pledge of Confidentiality, September 15, 2003, Central West Health Board |

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| JM - 14 | Oath/Affirmation of Confidentiality, March 30, 2021 |
| JM - 15 | List of courses completed, Trina Noble |
| JM - 16 | Oath/Affirmation of Confidentiality, October 7, 2016 |
| JM - 17 | Statement of Marina Bryan, recorded by Jennifer Manuel, September 14, 2022, |
| JM - 18 | Central West Health Corporation Reference Verification, September 4, 2003 |
| JM - 19 | Central West Health Corporation Reference Verification, September 5, 2003 |
| BP - 1 | Notes of Brenda Lee Philpott |
| CG - 1 | Notes of Carolyn Greenham |
| CG - 2 | RN Schedule and LPN Schedule, October, 2021 |
| CG - 3 | LPN Schedule and PCA Schedule, October, 2021 |
| CG - 4 | CBC online new stories, October, 2022 and December, 2022 and Telegram online news story |
| MC - 1 | Screenshot - Facebook messages, May 27 |
| AJ - 1 | Letter dated September 16, 2022, from Amanda Jennings, Regional Professional Practice Consultant, Central Health, to Wanda Wadman, Executive Director/Registrar College of Licensed Practical Nurses of Newfoundland and Labrador ("LPN College") |
| AJ - 2 | Letter dated September 16, 2022, from Wanda Wadman, Executive Director/Registrar College of Licensed Practical Nurses of Newfoundland and Labrador to Trina Noble |
| AJ - 3 | Letter dated October 21, 2022, from Wanda Wadman, Executive Director/Registrar College of Licensed Practical Nurses of Newfoundland and Labrador to Amanda Jennings |
| AJ - 4 | Letter dated October 24, 2022, from Wanda Wadman, Executive Director/Registrar College of Licensed Practical Nurses of Newfoundland and Labrador to Trina Noble |
| KL - 1 | Resume of Kevin Lo, Senior Director MT>3 Forensics |

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TH - 1 Report of Tyler Hatch, DFI Forensics, re: Analysis of iPhone 12 Pro, April 24, 2024

TH - 2 Letter from Tyler Hatch, dated December 24, 2024

TN - 1 Good Catch Award Safety Star, December, 2014, Trina Noble

TN - 2 Photographs of exit door, exterior walkway and stairs at BVPHCC

TN - 3 Job Posting, LPN

TN - 4 Letter dated September 30, 2022, from Trina Noble to Wanda Wadman, Executive Director/Registrar College of Licensed Practical Nurses of Newfoundland and Labrador

TN - 5 Transcript of LPN College Complaints Authorization Committee, appearance of Trina Noble, June 5, 2023

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**Nature of the Grievance**

4 The Grievor, Trina Noble, was discharged from her employment as a Licensed Practical Nurse with Central Health by letter dated September 15, 2022. The Union grieves that the Employer did not have just cause for discharge and requests reinstatement in employment. The Employer submits that it had just cause for discharge and requests that the grievance be denied.

**Collective Agreement**

5 The Collective Agreement between the Newfoundland and Labrador Association of Public and Private Employees and Her Majesty the Queen in right of Newfoundland and Labrador, states, in part, as follows:

> Article 13 - Probation, Discharge, Suspension and Discipline
> . . .
> 13.03 Unjust Suspension or Discharge
>
> Should it be found upon investigation that an employee has been unjustly suspended or discharged the employee shall be immediately reinstated in his/her former position, without loss of seniority and shall be compensated for all time lost in an amount equal to his/her normal earnings during the

> pay period next preceding such discharge or suspension or by any other arrangement as to compensation which is just and equitable in the opinion of the parties or in the opinion of a Board of Arbitration if the matter is referred to such a Board.
>
> . . .
>
> 13.10 Justice and Dignity Provision
>
> If, upon investigation, the Employer feels that disciplinary action is necessary, such action shall be taken based on the collective agreement. In situations where the Employer is unable to investigate the matter to its satisfaction, but feels the employee should be removed from his/her place of employment, it shall be with pay.

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**Evidence**

6 The witnesses called by the Employer were Jennifer Manuel, HR Strategic Business Partner; Brenda Lee Philpott, Manager, Client Care Services; Carolyn Greenham, Manager of Site Operations, Baie Verte Peninsula Health Care Centre (BVPHCC); Shirley Thomas, Personal Care Attendant; Kelsey Foster, Licensed Practical Nurse; Corinn McLean, Licensed Practical Nurse; Rachel Drover, Personal Care Assistant; Melissa Critch, Licensed Practical Nurse; Amanda Jennings, Senior Director Professional Practice and Kevin Lo, Digital Forensics Expert. The witnesses called by the Union were Tyler Hatch, Digital Forensics Expert and the Grievor, Trina Noble, Licensed Practical Nurse. In situations where a witness has changed her name, the Award uses the name in effect at the relevant time.

7 The Grievor was discharged from employment by letter, dated September 15, 2022, from Carolyn Greenham, Manager of Site Operations, Baie Verte Peninsula Health Care Centre. The letter stated as follows:

> Dear Ms. Noble;
>
> This letter is confirmation of the meeting held today on September 15, 2022 attended by you, Jennifer Manuel (Strategic Business Partner), NAPE Representative, and the undersigned.

On September 6th, 2022, the employer received reports that you have taken and shared inappropriate photos, audio recordings, and text comments pertaining to clients.

During the course of this investigation, it was determined that you took a photo using your personal cell phone of a naked, cognitively unwell client while he was sitting in a wheelchair and shared this picture with a coworker via text on October 16, 2021. During our meeting on September 13, 2022, you admitted that you did take the photo and that you sent it to a coworker. The photo was followed by inappropriate text comments as evidenced by the screenshot of the picture and comments presented to you during our meeting. Your text comments in regard to the client were as follows:

- "This AO was a piece of work tonight!"
- "Clean pamper tore off and thrown out in hallway"
- The individual that you sent the picture to replied, "That Shithead needs a 1 way trip to the Waterford and to fall out of the ambulance otw", and your response was "Lol, he sure do!!"

You admitted that you do make audio recordings at work whereby client voices may be captured in the background because of the proximity to the space where you are making such audio recordings. You were also witnessed playing an audio recording to your coworkers of a cognitively unwell client while he was in a manic state.

Multiple concerns have been brought forward concerning your professional conduct, alleging conduct that is against best practice and standards, including frequent inappropriate behavior and language towards clients as follows:

- It was witnessed that while changing a resident who did not turn over on his own, you said, "You got no trouble to take your dick out in your hand and pee around, but you can't turn over" and then proceeded to say "Fuck, what's wrong".

- During another incident witnessed involving a client, you asked the client if she was going to get washed this morning and when the client replied "No", you said "I don't have time for this bullshit" and left.

These behaviours are unacceptable. In addition to being violations of Central Health's Personal Mobile Device Use In The Workplace policy (Policy Number: PCD-0003) and Confidentiality policy (Policy Number: BRD-0002), this conduct is in violation of long term care standards and represents a significant threat to the safety and well-being of Central Health clients. Based on witness accounts and other evidence, the employer is satisfied on a balance of probabilities that these events have occurred.

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Adult Protection is conducting an independent investigation on this matter pursuant to the *Adult Protection Act*, SNL 2011, c A-4.01, which remains ongoing.

Central Health will be filing a report with the RCMP and the College of Licensed Practical Nurses of Newfoundland and Labrador with regards to the findings of its investigation.

Through our investigation, it was determined that the incidents noted above amount to patient abuse and a clear breach of confidentiality. You failed to provide appropriate and safe care to clients, for which Central Health has zero tolerance. Your behaviour is inappropriate, disrespectful, unprofessional, and unethical. As a Licensed Practical Nurse working with a vulnerable population, there is an obligation to provide quality service to the residents and families that is in line with the philosophy of care and the values of Central Health as well as a duty to protect their privacy. There is a high public trust placed on healthcare workers with added expectations given the vulnerable patient population being served. You have not met the standard required of you.

Having considered this matter, Central Health is satisfied that the employment relationship is irrevocably damaged and that just cause exists to terminate your employment as a Licensed Practical Nurse (LPN) effective immediately.

Please contact Mr. Darren Downey, Pensions and Compensation Consultant, at 292-2173 for information regarding your pension and benefits.

I would like to advise you that our EFAP program is available to you for a short period of time following the end of the employment relationship and you can avail of this service by contacting Homewood Health at 1-800-663-1142.

Sincerely,

Carolyn Greenham
Manager of Site Operations
cc: Personnel File

8 The Employer operates the Baie Verte Peninsula Health Care Centre ("BVPHCC") in Baie Verte, Newfoundland and Labrador, providing health care services including Long Term Care ("LTC") and Acute Care. The Grievor was employed as a Licensed Practical Nurse

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("LPN") in LTC at the date of termination of her employment. She worked a 12 hour shift, either a day shift starting at 8:00 a.m., or a night shift starting at 8:00 p.m.

9 Carolyn Greenham was employed as Manager of Site Operations, the highest management position on site at BVPHCC. She reported to the Vice President of Programs for Central Health. She was responsible for the overall management of the facility. Brenda Lee Philpott was a Registered Nurse employed as Manager of Client Care Services on site at BVPHCC. She reported to Ms. Greenham. Ms. Philpott was the Manager responsible for the Nursing Department. She previously held the position of Nurse Facilitator/Educator at BVPHCC from 1994 to 2020. Ms. Greenham and Ms. Philpott both testified about reports of inappropriate conduct by the Grievor and about their participation in the subsequent investigation and Employer decision to discharge the Grievor.

10 With respect to the investigation and the Employer's decision to discharge the Grievor, the Employer also called Jennifer Manuel and Amanda Jennings. Ms. Manuel was Human Resources Strategic Business Partner for Central Health, with responsibilities that included investigation of discipline cases. Amanda Jennings held the position of Professional Practice Consultant from 2016 to 2023, at which time she was appointed to the position of Senior Director of Professional Practice for Central Health. Ms. Jennings is a Registered Nurse and holds Degrees of Bachelor of Nursing and Master of Public Administration. She testified that her role is to provide guidance to Managers and Educators on best practices. She was familiar with the professional standards and disciplinary procedures of the licensing boards in the province for Registered Nurses, Nurse Practitioners and Licensed Practical Nurses.

11 Ms. Manuel testified about Employer policies relevant to the decision to discharge the Grievor. The Central Health Personal Mobile Device Use in the Workplace Policy, approval date January 5, 2021, states, in part, as follows:

PURPOSE

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The purpose of this policy is to outline the use of personal mobile devices in the workplace in a manner that aligns with Central Health's values of safety, accountability and Central Health's philosophy of person and family-centred care.

SCOPE

This policy applies to the use of personal mobile devices by Central Health employees, managers, physicians, students and volunteers.

. . .

POLICY STATEMENT(S)

Non-Approved Use

Employee (including all Central Health employees, managers, physicians, or other affiliated individuals, hereinafter referred to as "Employees",) use of personal mobile devices for non-work-related purposes during working hours is not permitted. Employees must not use personal devices to create a record of Central Health business or an identifiable clinic record.

Employees may use personal mobile devices during break periods in locations that are removed from client care or public areas.

12 The Central Health Duty to Report/Warn Policy, dated July 19, 2019, states, in part, as follows:

PURPOSE

To provide direction in situations where there is a legal duty to report as deemed mandatory according to applicable provincial legislation.

To provide direction in clinical situations where there is an assessed ethical duty to warn for the protection of an individual or the public.

. . .

DUTY TO REPORT

There is a mandatory duty to report in the following situations:

- Suspected need for protective intervention - children and youth;

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- Suspected need for protective intervention - adults who lack capacity;

. . .

Suspected Adult Neglect/Abuse

As per section 12(1) of the *Adult Protection Act*, any person who reasonably believes that an adult is or may be in need of protective intervention shall immediately report that information to a Community Support Services Director or social worker at Central Health or a peace officer. Refer to the *Adult Protection Act* for additional information and the definition of an adult in need of protective intervention.

13 The Central Health Confidentiality Policy, approval date October 26, 2021, states, in part, as follows:

PURPOSE

The purpose of this policy is to increase awareness of an individual's right to privacy and outline the legal and ethical requirements for secure management of confidential information obtained through affiliation with Central Health, including:

- personal;
- personal health; and
- business records

of Central Health, [herein referred to as Information] not otherwise available publicly.

The purpose of this policy is to provide a consistent framework in the administering of an Oath/Affirmation of Confidentiality within Central Health.

. . .

POLICY STATEMENT(S)

. . .

All Central Health employees and affiliated individuals must keep confidential all matters relating to the business and operations of the Central Regional Health Authority, including but not limited to those matters dealing with personal or personal health information of Central Health client; employees; and all affiliated individuals, except where disclosure or publication is permitted or authorized:

. . .

Policy Non-Compliance

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> Failure to comply with the requirements in this policy may lead to suspension of clinical access for any employee/affiliated individual who are outstanding for the mandatory privacy requirements within the designated time period.
>
> Any unauthorized access, use, disclosure, or failure to safeguard Information is subject to disciplinary action, up to and including termination of employment or affiliation with Central Health; legal prosecution; civil action; and/or notification of a health care professional's regulatory body through the complaints review process and/or Medical Services By-Laws, as applicable.

14 Ms. Manuel testified that employees are not permitted to use personal cell phones for non-work related activity in the workplace during working hours, according to the Personal Mobile Device Use Policy. She testified that the Confidentiality Policy secures the management of confidential patient information and provides for employees to sign an oath of confidentiality. Ms. Manuel referred to an Oath/Affirmation that was signed by the Grievor in 2021 but not witnessed, and an Oath/Affirmation that was signed by the Grievor in 2016 and witnessed.

15 Ms. Manuel testified that the Grievor had no prior discipline on her record, and there were no issues with the Grievor's performance reviews.

16 The allegations that led to the disciplinary investigation of the Grievor were brought to the attention of the Employer on September 6, 2022. Ms. Philpott testified about the events that led up to the reporting of the allegations. She testified that, on August 30, 2022, staff members complained to her that a group of three employees, the Grievor, Ms. Regular and Ms. Mitchell, would chat and drink coffee at the start of their shift, which delayed the start of medication distribution, and subsequent feeding and personal care of residents. The complaint was that this delay placed stress on staff to get their tasks completed. Ms. Philpott testified that, on August 30th, she spoke to the Grievor, Ms. Regular and Ms. Mitchell, and gave them a friendly reminder about distributing medication early in their shift, so the work of resident care did not get behind. She said that Ms. Regular stated in response, "we have a narc here".

17 Ms. Philpott testified that, on September 6, 2021, Ms. Bryan and Ms. Lewis reported to her that there had been a confrontation on the previous Saturday between Ms. Thomas, on one

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side, and the Grievor and Ms. Regular on the other side. They asked Ms. Philpott to speak to Ms. Thomas about it. Ms. Philpott then spoke to Ms. Thomas in the presence of other employees, Ms. McLean, Ms. Bryan and Ms. Lewis. Ms. Thomas was upset and told her she had been accused of being a "narc" by Ms. Regular. Ms. Thomas also told her she had concerns about residents. She told Ms. Philpott that a photograph taken of resident R, sitting in a wheelchair and not wearing his attends, had been sent to Ms. Foster. Ms. Thomas also told Ms. Philpott that there were videos of residents that had been shared on a messenger group.

18 Amanda Jennings testified that, on September 6, 2022, Ms. Philpott called her about the incidents reported to her. She advised Ms. Philpott to contact the Human Resources Business Partner, and that, if the resident was cognitively unwell, then she should refer the matter to Adult Protection. Ms. Jennings testified that she participated in the subsequent Employer investigation of the allegations against the Grievor.

19 Other witnesses testified about the events that led to the reporting to the Employer of the allegations against the Grievor. Ms. Thomas testified that she is a Personal Care Attendant (PCA) in LTC at BVPHCC. She knew the Grievor from work. She testified that, in late August, 2022, she reported her concern to management that the Grievor, Ms. Regular and another employee were late starting work on her shift. Ms. Thomas was later told by employee Ms. Hewlitt that the Grievor, and Ms. Regular were saying that she had "ratted" on them. Ms. Thomas testified that, on the following weekend, she confronted Ms. Regular and told her she did not appreciate what she was saying about her. At that time, the Grievor then stepped in and exchanged words with Ms. Thomas.

20 Ms. Thomas testified that, on the weekday following her weekend confrontation with the Grievor and Ms. Regular, when she was describing the confrontation to a group of employees, she mentioned that she had seen photos of residents. Ms. Foster then showed her a photo of resident R on her phone, and told her that the Grievor has sent the photo to her. Ms. Thomas testified that the photo on Ms. Foster's phone showed resident R sitting naked in his wheelchair. She said that resident R was always taking off his clothes.

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21 Ms. Thomas testified that Ms. Critch had approached her about two weeks before her confrontation with the Grievor and Ms. Regular, and told her she had seen a photo of a resident taken by Ms. Regular. Ms. Critch testified that Ms. Regular had shown her a photo of a resident prior to the report by employees to management. She testified that she told another employee about the photo. She was not certain who she told. Ms. Critch also testified that Ms. Foster told her that a photo of resident R had been sent to her. Ms. Critch confirmed that the handwritten note added to her statement to the Employer, to this effect, was correct.

22 Ms. Thomas testified that, on the same day that Ms. Foster showed her the photo on her phone, she reported to Ms. Philpott what she knew about the photos of residents.

23 Ms. McLean testified that she is employed as an LPN at BVPHCC. Ms. McLean and the Grievor had worked shifts together in LTC. She testified that she reported information to Ms. Philpott on the same day as her co-workers, Ms. Thomas, Ms. Bryan and Ms. Lewis, in September, 2022. When she arrived at work that day, other employees asked her if she had heard about the confrontation on the weekend between Ms. Thomas and the Grievor and Ms. Regular. Ms. Thomas told her that she had been accused of "ratting out" the Grievor and Ms. Regular, and that, during the confrontation, Ms. Thomas had told the Grievor, "at least I am not taking photos and videos of residents". Ms. McLean testified that, at that time, she told Ms. Thomas that she had witnessed a voice recording, and she offered to go with Ms. Thomas to report to management. Ms. McLean testified that Ms. Foster then showed her a photograph on her phone of a resident in a wheelchair who appeared to be naked. Ms. Foster told her that the Grievor sent the photograph to her. Ms. McLean did not remember if Ms. Foster said she got the photo from a Facebook chat group. Ms. Foster told her that she was briefly a member in a chat group that had included the Grievor and Ms. Regular. Ms. McLean testified that she was shocked to see the photograph of the resident on Ms. Foster's phone.

24 Ms. Foster testified that she has been employed as an LPN at BVPHCC since 2018. She testified that the Grievor is her cousin, and she has known her all her life. She testified that, in August, 2022, Ms. Thomas told her that other employees had photos of residents that were being shared around. She remembered that she had a photograph of a resident on her phone. She

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showed Ms. Thomas the photograph and text messages on her phone. Ms. Foster testified that the photograph was sent to her by the Grievor, in October, 2021, at a time when Ms. Foster was not at the workplace. Ms. Thomas told Ms. Foster that she was going to report the photo to management, but Ms. Foster said she did not want to be involved. Ms. Foster said she was later called to a meeting with management, and she had to show the photo. She said she did not report the photo earlier, because she forgot about it until she heard the employee discussion about other photos. She had also been off work for a period of about six months, ending in May, 2022, because she did not want to take the COVID vaccine that was required by the Employer. She returned to work after she took the vaccine. The Employer lifted its COVID vaccine mandate a short time later.

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25 Ms. Greenham testified that she returned to work from vacation on September 12, 2021. At that time, Ms. Philpott told her about reports from employees the previous week regarding inappropriate photos. Ms. Greenham spoke to her Manager and to Ms. Jennings in Professional Practice. She called the Grievor to her office and told her that she was being sent home with pay, and that the Employer would do an investigation and contact her. On the same date, the Employer also sent two other employees, Ms. Regular and Ms. Mitchell, home with pay pending investigation. Ms. Greenham testified that the Employer started to interview employees that day.

26 Ms. Foster testified that the photograph of resident R was sent to her by text, together with text messages, by the Grievor on October 16, 2021. She was not at work at the time. She testified that the Employer asked her about the photograph at her interview on September 13, 2022. Ms. Foster testified that, at the interview, she scrolled through the messages on her phone to find the photo, and then showed the photo to everyone at the meeting. She sent a screenshot of the photo and text messages to Ms. Jennings. She said that the photo and text messages on Exhibit JM-2 showed the screenshot that she sent to Ms. Jennings. At the top of the screenshot page was the name “Trina” with a cartoon image or avatar.

27 Ms. Foster testified that, after the interview, Ms. Jennings asked her to click on the name of the sender of the photo and text message, and view her contact listing. Ms. Foster clicked on

the name and brought up a display of a contact entry with the name "Trina Noble" and the telephone number 1-709-xxx-xxxx [number omitted]. Ms. Foster testified that the Employer gave her a disciplinary suspension of two weeks without pay for her failure to report the photograph at the time she received it, and for making inappropriate comments in the text messages she sent to the Grievor.

28 Ms. Foster testified that, when she attended the meeting with the Employer, she knew what the meeting was about, because Ms. Thomas told her that she had reported the photograph to management. She testified that, after she showed the photograph on her phone and sent a screenshot to the Employer, she deleted the photograph from the phone because she did not want to keep it. She said that her mother was now using the phone.

29 Ms. Foster testified that she knew that the Grievor sent the photograph to her because it was sent from the Grievor's phone number, and that number was listed under the Grievor's name in her contact list. Ms. Foster denied that she had changed the name in her contact list. She denied that she had done anything to help Ms. Hewlitt get a job or to prevent the Grievor from getting the same job in a job competition.

30 Ms. Foster testified about her interview with the LPN College. She had told the Employer that she believed resident R was naked, but she acknowledged in the interview that she could not say for certain that he was naked because the wheelchair covered part of his body. She acknowledged that the reference in her statement to the College to photographs sent in June or July, 2022 had used an incorrect date, because the photo was sent in October, 2021.

31 With respect to the Employer's interview of Ms. Foster, Ms. Greenham testified that Ms. Foster was asked if she was in receipt of a photo of a resident. Ms. Foster said the photo was still on her phone. She showed Ms. Greenham the photo and text comments on her phone. Ms. Greenham testified that Exhibit JM-2 was a screenshot of what Ms. Foster showed her at the meeting. Ms. Foster told them the photo was sent to her from the Grievor's phone number. Ms. Greenham testified that there was no evidence that resident R knew that the Grievor had taken or sent the photograph. Ms. Philpott testified that, during the interview, at first Ms. Foster did not

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want to say she had a photograph, but then she showed them the photo and sent the screenshot to Ms. Jennings.

32 Ms. Jennings testified that the Employer asked Ms. Foster at the interview if she had any photographs and she replied that she had a photograph of a resident with a text message. Ms. Foster then showed them the photo on her phone. Ms. Jennings said Ms. Foster appeared reluctant to talk or give them a copy of the photograph. They discussed with Ms. Foster an employee's duty to report any conduct they witness that is deserving of sanction. Ms. Jennings testified that the screenshot in Exhibit JM-2 depicted the photograph that Ms. Foster showed her at the interview. During the interview Ms. Foster sent her the screenshot. She said she asked Ms. Foster for confirmation of the phone number attached to the text. Ms. Foster looked at the contact list on her phone and said that the "Trina" on the text message was Trina Noble. Ms. Foster sent Ms. Jennings a screenshot of the contact listing, entered as Exhibit JM-1.

33 Ms. Manuel testified that, initially, during her interview, Ms. Foster appeared hesitant. At first she denied any knowledge of a photograph. She then said she had a photograph on her phone that the Grievor had sent her by text message. She sent a screenshot from her phone to Ms. Jennings. Ms. Manuel testified that Exhibit JM-1 was the entry in the contact list on Ms. Foster's phone, with the name "Trina Noble" and the phone number, as shown to her at the interview by Ms. Foster. She said that the Employer did not ask Ms. Foster to give them her phone for examination, because they had the screenshots.

34 Ms. Thomas testified about incidents that she witnessed concerning the Grievor's conduct. She said that, on one occasion, when they went to change resident T, she was on one side of the bed and the Grievor was on the other side. She observed that the Grievor asked the resident to turn over, but he did not respond. The Grievor said "I don't get it, you can take your dick out and pee around, but not turn over, what the fuck". Ms. Thomas described this incident when interviewed by the Employer. Ms. Thomas testified about another occasion when she observed the Grievor going to change a resident. The Grievor asked if the resident was getting washed, and when the resident replied no, the Grievor said "I don't have time for this bullshit",

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and left. Ms. Thomas testified about other incidents. However, the evidence of incidents that were not listed as grounds for discharge in the letter of discharge, will be disregarded. Ms. Thomas said she did not report any of the incidents to the Employer, prior to September, 2022, because she did not want conflict with the Grievor.

35 Ms. McLean testified about an incident she observed. She said that, in the late spring of 2022, at the nursing station, she observed the Grievor play from her phone a five to ten second audio recording in which resident B could be heard yelling out. Ms. McLean testified that the Grievor played the voice recording for her and Ms. Regular. The Grievor did not state the name of the resident. However, Ms. McLean believed it was the voice of resident B, because he was a resident who had dementia, suffered from manic episodes, was known to yell out inappropriately, and it sounded like his voice. Ms. McLean did not believe there was any work related purpose for the Grievor to play the audio recording. She considered reporting the incident to the Employer, but did not report it at the time. She reported it in September, 2022. Ms. Greenham testified that the Employer could not determine if resident B knew that his voice had been recorded.

36 Ms. Manuel testified that the Employer interviewed the Grievor on September 13, 2022. They showed the Grievor the screenshot of the photo of resident R in the wheelchair. The Grievor did not deny sending the photo to a co-worker, but said she did not recall to whom she had sent it. Ms. Manuel testified that the Grievor confirmed that the photo was sent from her phone, because her phone number was identified as the phone sending the text. Ms. Manuel said it was possible that the Employer showed the Grievor the photograph but not the text messages. At the interview, the Grievor denied playing an audio recording of a resident's voice to co-workers. The Grievor admitted that, when in the workplace, she sometimes made audio recordings of messages to send to members of her family, and that the voice of a resident might be heard in the background of these recordings. Ms. Manuel said the use of a cell phone in the workplace to record a voice message for a family member was a breach of Employer policy. Ms. Manuel testified that, during the interview, they asked the Grievor if she had told a resident that she "did not have time for this bullshit". At that time, Ms. Philpott interjected and said that she

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had never heard the Grievor use that kind of language in the workplace. Ms. Manuel could not say why she had not recorded this comment by Ms. Philpott in her notes of the Grievor's interview.

37 Ms. Jennings testified that, at the Grievor's interview, the Employer asked her if she had any knowledge of photos, videos or audio recordings. Initially, the Grievor denied any knowledge. They talked to the Grievor about her duty to report, and told her she had an opportunity to be open and honest. They asked the Grievor for her cell phone number. They showed the Grievor the screenshot of the photograph. Ms. Jennings did not recall showing the Grievor the text messages at the interview. The Grievor stated that obviously she must have taken the photo and shared it. They asked the Grievor if it was a breach of the privacy of the resident to share the photo. The Grievor responded that the resident went around like that all the time anyway. Ms. Jennings said that the Grievor admitted making audio recordings at work but did not admit to recording any residents.

38 Ms. Greenham testified that, at the Grievor's interview, she initially denied taking any photographs of residents. When shown the screenshot of the photograph of resident R, she said she did not remember taking or sending the photo. The Grievor agreed that the number in the recipient's contact list was her phone number. She said if the photo was sent from her phone number, then she must have sent it. She did not remember to whom she sent it.

39 Ms. Greenham referred to documents showing the work schedules for staff for October 16, 2021. The schedule showed that the Grievor worked a 12 hour shift in LTC starting at 7:45 p.m. on October 16, 2021.

40 Ms. Philpott testified that, during the Employer's interview of the Grievor, she spoke out to say that she had worked alongside the Grievor as a RN, and that she had never heard the Grievor swear. She made this statement regarding questions about whether the Grievor had sworn at a resident.

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41 Ms. Jennings testified that the Employer concluded that the Grievor had committed the incidents alleged, based on the investigation and multiple consistent statements from witnesses. With respect to the evidence that the Grievor had taken and shared the photograph, Ms. Jennings testified that the content of the text messages indicated that the photo was taken the night it was sent. There were reasonable grounds to believe that the person who sent the photo had taken it. She said all the incidents were serious. Residents were at the centre of everything the Employer did. She said the photograph was deeply concerning and raised issues of trust. The incidents demonstrated breach of the Employer's policies with respect to standards of practice, ethical principles and privacy. She said the incidents raised concerns about patient neglect, verbal abuse, disrespectful behaviour, unethical behaviour and breach of standards. Ms. Jennings did not feel this was a case for remediation of the employee, given the amount of disrespect demonstrated. The Grievor had not applied the gentle persuasive approach with residents, which is an approach that defuses the situation without causing aggravation. Ms. Jennings said it did not serve any clinical purpose to take or send a photo of a resident or to record or share an audio recording of a resident. There was a breach of policy regarding use of cell phones and social media. She said a briefing note was sent to senior management and the Employer decided to terminate the Grievor's employment.

42 Ms. Manuel testified that, following the investigation, the Employer concluded, on the balance of probabilities, that the incidents had occurred. She referred to the screenshots and statements of multiple witnesses. She said the most serious offences concerned the photo and the audio recording of residents. She said that taking and sending the photo by itself was serious enough to justify termination of employment. There was a compounding effect when there were several incidents, as reported by multiple witnesses. The actions were disrespectful, unethical, demonstrated patient abuse and did not align with the Employer's values, policies, standards of practice and philosophy of care. Ms. Manuel said the actions caused the community to lose trust in Central Health. She said the residents had a right to dignity and were a vulnerable population. She said the employment relationship was irrevocably damaged. She said the evidence that the Grievor had taken the photo included the screenshot of the photo, the Grievor's phone number in

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the contact list, the statement of the witness, Ms. Foster, that the Grievor sent her the photo, and the Grievor's admission that she sent the photo to an LPN who worked at the facility.

43 Ms. Greenham referred to news media stories that showed damage to the reputation of Central Health (Exhibit CG-4). She said that publicity about the incidents caused the families of residents to question whether the residents were receiving proper care. Ms. Philpott testified that the media coverage had a significant impact on the workplace. The public lost trust in the staff. The Employer was working to rebuild trust with the community. Ms. Greenham said that the Employer met with the families of the residents affected by the incidents. She said the families were upset and emotional. She said that the Employer made a referral under the *Adult Protection Act* and, as a result, she had a discussion with Social Workers. She did not know the result of any investigation in that regard. Ms. Greenham said that she and Ms. Philpott gave a statement to the RCMP with respect to the photo and voice recording. She said that no criminal charges were laid against the Grievor to her knowledge.

44 Ms. Greenham testified that the decision to terminate employment was made by senior management. She read and approved the letter of termination. She signed the letter and gave it to the Grievor at a meeting on September 15, 2022.

45 Ms. Jennings testified that she sent a letter of allegation to the LPN College on September 16, 2022. The letter referred to the same incidents that were in the letter of discharge as well as two other incidents.

46 The Grievor sent a letter to the LPN College, dated September 30, 2022, in response to the allegations reported by Ms. Jennings to the College. The Grievor's letter stated, in part, as follows:

> Prior to the revealing of residents' picture at meeting on September 14th, 2022, I was already questioned about other allegations. I was beyond overwhelmed, shocked and in disarray of all the false accusations. My integrity and character was being taken away and my heart was torn. The meeting proceeded with a presentation of a picture display from a text message. The picture was of a resident sitting in a wheelchair sideways whereby the exposure of the resident was upper body (head to chest) and legs from knee

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> down. In the employers correspondence there is reference of the resident being naked however this is not verified in the photo. The resident wore attends with a pullup and usually covered with jogger shorts. He would remove undergarments at times and keep shorts on and very rarely wore a shirt. Disclosure was made that I sent this picture via text to another coworker on October 16, 2022. It's nearly a year and unfortunately I do not have recollection of taking pic and sending text. The context of the text attached was not displayed to me at the meeting, only the picture. I do however remember this period of time when we were in the middle of the pandemic and the struggle with the challenges we faced from it. We had a community outbreak within that time and limited staff due to mass swabbing and immunization clinics requiring staff to be pulled and staff off due to contact with covid and then on top of it all denial of leave and evidence of burnout. There were multiple stressors for all staff and caring for residents with particularly challenging behaviors made working conditions unbearable. In sending the picture of the resident my intent was never to harm the resident and I did not clearly think through the risk of breaching his privacy when I felt entrusted to a coworker who was in the circle of care. Due to very limited cell phone contacts I have through work, I do believe this was a colleague that worked the same unit on a cross shift. I do regret making this mistake and apologize for my wrong doings. There is no excuse or justification for these actions and using my personal cell phone for taking pictures of residents is not a practice I engage in. I am open to completing education and refreshment of the importance and standards of privacy. In addition, I would like to advise that this resident created fear and anxiety within the workplace due to very aggressive behaviors which at times putting staff at risk and injuries. I had feared the resident myself and felt intimidated, especially during night shift, in particular it was just my own self left to be responsible for 18 residents from 24-08 hrs. It took courage but I never failed to provide the best care when it was possible for this particular high risk resident I had to put my feelings aside and offer a duty to care. In review of this situation, I do wonder if reaching out to my entrusted coworker was a coping mechanism.

47 The LPN College sent a letter to the Grievor, dated October 24, 2022, stating that the College's Complaints Authorization Committee had decided to initiate an investigation.

48 The minutes of the meeting of the LPN College's Complaints Authorization Committee (Exhibit TN-5), include questions by the LPN College's legal counsel, Mr. Coxworthy, and the Grievor's answers. The minutes state, in part, as follows:

> 1:2:1.690 --> 1:2:14.640
> Paul Coxworthy
> Uh, we're essentially you are in the letter I admitting that you took the photo and explained why you did and why you're so worried and all of that sort of thing.
> Could you provide the committee, possibly with some explanation about why it

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was they said this and whether or not this is true.

1:2:26.40 --> 1:2:42.580
Trina Noble
OK, so the explanation given in my response letter to Miss Wadman was guided by again my Union representative, who basically said in her words that you're just as well to admit now and send your letter and let things move forward.
I had no legal representation at that time.

1:2:51.930 -->1:2:55.260
Paul Coxworthy
OK, So what you wrote in this letter?
Was it true to the best of your knowledge, information and belief?

1:2:59.340 --> 1:3:2.200
Trina Noble
No, because I'm still at a point of not having a recollection.

1:3:5.930 --> 1:3:10.680
Paul Coxworthy
I guess I have just a follow-up question, if I made, who is the Union representative?

1:3:10.980 --> 1:3:13.590
Trina Noble
Who said that? Crystal Rice?

1:3:18.0 --> 1:3:22.630
Paul Coxworthy
And is that the only part of the letter that's not true or accurate?
Or are there other parts of your response to the registrar that are not accurate?

1:3:28.210 --> 1:3:33.930
Trina Noble
No, that's the only part that any and advice was given to me to respond
Yep.

49 The Grievor, Trina Noble, testified that she resides with her husband and two sons. She was employed as an LPN at BVPHCC for 19 years from 2003 to 2022. She testified that she had no prior discipline, she had received a safety award from the Employer for reporting an error in medication labelling, and she had served as a preceptor for nursing students.

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50 The Grievor testified that there was conflict in the workplace during the COVID pandemic, related to the Employer's policy that required employees to be vaccinated. The Grievor said that she was vaccinated and that she was outspoken about the benefit of vaccination. She testified that Ms. Foster was against vaccination. As a result of Ms. Foster's refusal to be vaccinated, she was placed on unpaid leave. The Grievor said there was some staff backlash against the unvaccinated employees, because their absence on leave placed an extra workload on the employees who had been vaccinated. The Grievor said there was animosity between her and Ms. Foster about vaccination. The Grievor said that Ms. Foster delisted her from Facebook Messenger. She deleted Ms. Foster as a contact on her phone. The Grievor testified that an employee, Ms. Hewlitt, collected money and cards at the workplace and delivered them to Ms. Foster when she was absent on unpaid leave. The Grievor believed that Ms. Foster and Ms. Hewlitt made a bond at that time.

51 The Grievor testified that she applied for a Community Health Nurse job posting with a closing date of September 1, 2022. She was interested in the job because she preferred the nature of the work, and the job had a schedule of daytime hours from Monday to Friday. She said Ms. Foster and Ms. Thomas asked her if she applied. She was not eligible for the position after her employment was terminated. She said that Ms. Hewlitt was awarded the position. The Grievor believed that false allegations were made against her so that she would not get the position. She testified that the employees who gave a false statement included Ms. Thomas, Ms. Foster, Ms. McLean and Ms. Critch. She said Ms. Foster targeted her because they had the dispute about vaccination. She did not know why the other employees would target her. She could not explain why Ms. Foster would still have animosity towards her about vaccination in September, 2022, when the Employer had dropped its vaccination requirement in June, 2022 and Ms. Foster had returned to work.

52 The Grievor denied the allegations made against her in the letter of discharge. She denied that she took the photo of resident R or sent the photo with the text messages to Ms. Foster. She denied that she made an audio recording of resident B. She testified that, when at work, she makes audio recordings or voice to text messages, to send to her children. It was

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possible that a resident's voice could have been recorded in the background of one of those audio recordings. She denied playing an audio recording of a resident in a manic state to co-workers at the nursing station. She denied the allegation that she told a resident he could pee anywhere but not turn over, and she denied that she swore at the resident. She said it was not in her character to use foul language. She denied that she asked a resident if she was going to get washed and then swore at the resident when she did not reply. She said that on that occasion she asked the resident three times about getting washed, and left time in between each request, and that she did not use the foul language alleged.

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53 The Grievor denied making any admission to the Employer. She testified that, on September 12, 2022, she met with Ms. Greenham in the office, with Ms. Manuel attending by videoconference. They told her that she was under investigation, and was being sent home on paid leave. They did not tell her the reason for the investigation. She was not offered Union representation at that meeting. She later spoke with a Union representative, who told her there was an allegation related to a group chat and sharing photos. The Union representative told her he had a conflict of interest. She was then assigned to Kristal Rice as Union representative.

54 The Grievor testified that she attended a meeting with the Employer on September 13, 2022. The meeting was held at the BVPHCC with Ms. Greenham and Ms. Philpott attending in person and Ms. Jennings, Ms. Manuel and Ms. Rice attending by videoconference. She agreed that the Employer gave her an opportunity to speak at the meeting. She said that Ms. Manuel told her they were informed that she had photos and videos and they believed it to be true. The Grievor testified that she thought they had their minds made up before the interview. She said she was shown a screenshot of a photograph at the meeting. She was not shown any text messages with the photograph. She was not told when the photo was taken or to whom it had been sent. She said it was the first time she had seen the photo. The photo showed resident R sitting in a wheelchair from the side with no sign he was wearing clothing. She said it was not out of the ordinary to see resident R in that state, and that sometimes resident R was a danger to staff. She noticed above the photo, on the screenshot page, the name "Trina", and she wondered how that was possible when she had no recollection of taking or sending the photo. She knew

that the resident had passed away. She felt that she was being interrogated and ambushed at the meeting. She felt that management did not believe she had no recollection of the photo. She had previously worked as a colleague of Ms. Philpott. During the meeting, Ms. Philpott said she never heard the Grievor use foul language. The Grievor said she may have told the Employer at the meeting possible reasons to take the photograph. At that time, she did not know anything about the reliability of screenshots. She denied making any admission about the photo at the meeting.

55 The Grievor testified that, upon her later review of the text messages, she observed that it was not the type of conversation she would have or the way she would present something. She testified that the photo showed that the lights in the corridor were on. The resident appeared to be outside his room. She said the lights are usually off in that area after medication is administered, which usually occurs between 8:00 p.m. and 9:00 p.m. She disputed that the photograph could have been taken on the night shift of October 16, 2021.

56 The Grievor testified that she attended a meeting on September 15, 2022, at BVPHCC with Ms. Greenham, Ms. Philpott and Ms. Manuel. They gave her a letter and told her that her employment was terminated. When she asked why, they said the reasons were in the letter. She had no opportunity to respond. She said she was escorted to exit the building from the fire exit door onto a wooden walkway on the roof, from which she had to walk down a metal stairway outside the building to ground level on the opposite side of the building from the main entrance. She was not allowed to take her personal belongings at that time. She said the termination of her employment left her in shock. She felt she was being judged by the community.

57 The Grievor testified that she was never questioned or charged by the RCMP. She met with two Social Workers with respect to an adult protection investigation, but did not hear anything further about that investigation.

58 The Grievor said that she sent the iPhone that she used in October, 2021 for digital analysis. She said she did not delete any photograph or text message, or take any action to

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prevent data recovery, before sending the phone for analysis. She said she had no knowledge of a backup restoration on the phone in September, 2022.

59 The Grievor testified that seven allegations were filed with the LPN College. Of those allegations, six have been dismissed. The allegation still active is related to the photograph of resident R. With respect to her letter of reply to the College dated September 30, 2022, the Grievor testified that she had only three days to respond, and she was mentally unstable at the time. She had received advice from her Union representative, but had not received advice from legal counsel, before sending the letter. She said the statements about the photo made in her letter to the College were not true, but that she had made admissions based on advice from her Union representative.

60 The Grievor testified that she always followed the Employer's policies. She acknowledged that the cell phone number on the screenshot of the contact listing in Ms. Foster's phone (Exhibit JM-1), was her phone number. When she told the Employer at her interview that she may have taken the photo, she made the statement at a time when she was not thinking clearly. She did not know until April, 2023 that Ms. Foster was the employee to whom the Employer alleged that she sent the photograph.

61 The Union and the Employer each called one witness who was qualified as an expert in digital forensics. The witness called by the Union was Tyler Hatch, of DFI Forensics, Langley, British Columbia. The witness called by the Employer was Kevin Lo of MT>3 Forensics, Toronto, Ontario. Both witnesses testified by videoconference.

62 Mr. Hatch testified that he received the iPhone 12 Pro device provided by the Grievor on April 4, 2024. He was asked to analyze the phone. Mr. Hatch provided his written Report dated April 24, 2024. He noted that there was an error in the Report in that it referred to the receipt of the phone in 2023, but, in fact, he received the phone in 2024. The Report referred to the screenshot of the photo and text messages (Exhibit JM-2) as Schedule B. The Report stated, in part, as follows:

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ANALYSIS

The data extracted from the iPhone was processed and parsed using Cellebrite Inseyets Physical Analyzer v. 10.1.101.64. The iPhone is named "Trinas iPhone", the phone number associated with it is +17095728036 and it is running iOS version 17.3.1

. . .

Image

. . .

The DCIM folders were examined to locate the files that would possibly contain image or video files captured on the iPhone on October 16, 2021. No image or video files were located in the DCIM folder for any file dated October 16, 2021.

The processed cell phone data was then examined on the "timeline" window of the forensic software. This window shows all device artifacts by category in sequential order. The timeline was viewed for the day of October 16, 2021, and no image or video file was observed for that day. However, there was an artifact or a trace record of an image file.

. . .

FINDINGS AND OPINION

. . .

However, the image depicted in Schedule B is different. If the image shown in that document was captured by Ms. Noble on the iPhone 12, I would expect to find evidence of its existence on the device even if the original image file was deleted by the user.

I would expect that there would be a thumbnail file in the iPhone's file system, even if the original image file was deleted, and there is not. I would also expect that there is a significant chance of there being a record of that image file in the photos.sqlite database, even if the original image file was deleted, and there is not.

Given the above factors, it is my professional opinion as a digital forensics examiner that it is very unlikely that the image depicted in Schedule B was captured on the iPhone examined in this case.

While I cannot determine if the text message conversation depicted in Schedule B occurred on the iPhone examined in this case, it is my professional opinion as a digital forensics examiner that great caution ought to be exercised in accepting Schedule B as evidence of the conversation that it purports to show.

63 Mr. Hatch testified that he was requested to give his opinion as to whether there was any evidence on the Grievor's cell phone of a text message exchange or the photo shown on the

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screenshot entered as Exhibit JM-2. He did not find the text conversation or any artifacts related to it. With respect to the photograph, he testified that if the photograph was deleted there could still be artifacts stored in several locations on the phone, including a thumbnail that may be stored in the photo folder. He did not find any evidence of the photograph in the camera image folder, the data base, or the thumbnails. He found an image of a photograph, on the date of October 16, 2021, of a piece of pie on a plate. Mr. Hatch submitted a Supplementary Report, dated December 3, 2024, in which he provided further information with respect to the image file, and reproduced the photo of the pie. His report stated that the metadata displayed for the photo showed the capture time of October 16, 2021 at 5:49:34 p.m. Mr. Hatch testified that he did not believe that a photo of the resident, if it was captured on the Grievor's iPhone, could have been overwritten. He did not believe that the photo of the resident ever existed on the phone. He said it was possible that an update of the iOS operating system could purge or override artifacts, but he said it would not necessarily do so. He said he would want to know if there had been a factory reset, because it would obliterate all artifacts and affect his analysis. He said he did not find a contact file on the phone for Ms. Foster. The contact file had either been deleted or never existed. He said the user could do a factory reset and then restore from the backup on iCloud. He said he did not view any iCloud backups associated with the phone. He was not sure what the impact would be of a backup restoration done on the phone on September 21, 2022. In conclusion, he said it was highly likely that the photograph never existed on the phone, but he could not be 100% certain.

64 Kevin Lo testified that he was familiar with iPhone digital analysis. He gave his opinion with respect to the screenshots on Exhibits JM-1 and JM-2. He observed that JM-2 was a message between two persons shown on the screenshot. The avatar at the top of JM-2 was associated with someone named "Trina". The message was between the other person named "Trina" and Ms. Foster, the owner of the phone. He said the phone draws information from the contact list and projects it in the text message exchange. JM-1 was a screenshot of the contact list entry for the person named "Trina" associated with the phone number. The same avatar was in both JM-1 and JM-2. He said it was theoretically possible to change the name associated

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with a phone number and a contact list. However, the text message would still be associated with the same phone number.

65 Mr. Lo testified that he reviewed the report of Mr. Hatch. He noted that there was a considerable passage of time between when the photo was reportedly taken, on October 16, 2021, and when the analysis was done, in April, 2024. He took issue with the statement by Mr. Hatch that if the photo was on the phone and then deleted, that there would be a trace of the photo in the phone. Mr. Lo said the trace could be deleted or overwritten with the passage of time. He said an iPhone is usually associated with an iCloud account, and when the storage reaches capacity or reaches the amount in the phone's setting, then the information on the phone would be uploaded to iCloud. He said Mr. Hatch did not examine the iCloud account. Mr. Lo said if he was conducting the same analysis he would have requested that he access the iCloud account. He said if the photo had been deleted, the data or artifacts could be overwritten or deleted, in the period of over two years since the photo was taken. He said that there had been updates to the iPhone's operating system. The iOS operating system when the iPhone 12 Pro was released in 2021 was iOS 14. Version iOS 17.3.1 came out in 2024. When the operating system was updated, then the artifacts could be deleted or overwritten. Mr. Lo said that the phone could be wiped by doing a factory reset. He was concerned with the passage of time and the possible loss of data. He said that if he was doing the analysis, he would have checked the iPhone owner's other devices, such as a watch or iPad, because a trace could be on the other devices. In Mr. Lo's opinion, it was not possible to conclude, from the examination of the phone, that the photo and the text messages had never been on the phone, and therefore the analysis was inconclusive.

**Employer Submission**

66 The Employer submitted that the Grievor engaged in the conduct alleged and that it had just cause for termination of employment. The Employer agreed that it had to meet the civil standard of proof, meaning that it was more likely than not that the events occurred. The Employer agreed that it was confined to the grounds for discipline stated in the termination letter issued to the Grievor.

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67 The Employer submitted that it had proven the allegations against the Grievor. The employees who testified at the arbitration hearing were credible and reliable witnesses. They had consistent recollection and no self-interest. The statements made to the Employer by the witness Ms. Foster, were against her own interest. As a result of the investigation, Ms. Foster was issued a two week disciplinary suspension for failing to report the photo to the Employer and for her inappropriate language in the text messages.

68 The Grievor's claim that she was being targeted by other employees was false. There was no evidence that Ms. Thomas attempted to target her. The theory advanced by the Grievor, that another employee, Ms. Hewlitt, took the photo and sent it to Ms. Foster, with the intention to deprive the Grievor of a job opportunity that Ms. Hewlitt obtained, was not believable. There was no evidence that Ms. Hewlitt and Ms. Foster planned such actions. The evidence does not establish that the Grievor would have obtained the position or that Ms. Hewlitt obtained the position. Ms. Foster would have no reason to risk the termination of her employment by fabricating a statement to the Employer. There was no evidence that Ms. Foster had the ability or interest to fabricate a screenshot using the Grievor's phone number. The Union did not call any other witness in support of this theory. Ms. Foster denied any such plan or conduct, and her testimony was credible.

69 The Employer referred to the evidence about how the incidents were reported to the Employer. Employees reported to Ms. Philpott that the Grievor, Ms. Regular and another employee were late starting their daily tasks. Ms. Philpott reminded them about starting work. Ms. Regular called Ms. Thomas a "narc" and there was a confrontation. There was a discussion among the employees who had made the complaint. They discussed among themselves that there were photos, videos and audio messages recorded by the Grievor and others. This information was then reported to management and the Employer initiated an investigation. The Grievor was attempting to blame her co-workers, but they were following their duty to report inappropriate conduct. The attempt by the Grievor to blame her co-workers was an aggravating factor and indicated that the trust relationship with the Employer was broken.

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70 The Employer submitted that there was at least one independent witness for each of the four incidents described in the termination letter. It was more likely than not that the Grievor had engaged in all conduct alleged.

71 With respect to the audio recording that the Grievor played for other employees at the nursing station, Ms. McLean gave clear evidence that she heard the audio recording of resident B calling out in a manic state, and that the voice was consistent with the behaviour of the resident at that time. There was no evidence of any ill will or malice by Ms. McLean towards the Grievor. The recording was played by the Grievor for other employees for the purpose of mocking the resident.

72 With respect to the photograph and the text messages, the Employer submitted that Ms. Foster was a credible witness. She was forthright in her testimony that the Grievor sent her the photo and text. She had nothing to gain from her testimony. After the Grievor's employment had been terminated, Ms. Foster approached her with a gift. Ms. Foster did not initiate the complaint against the Grievor. Ms. Jennings and Ms. Manuel testified that, at first, Ms. Foster had been hesitant to speak when interviewed. There was no basis for the allegation by the Grievor that there was animosity between her and Ms. Foster, in September, 2022, about COVID vaccination. Ms. Foster had taken the vaccine and returned to work in May, 2022, several months earlier. The screenshot of the photo was reliable. The Grievor worked the night shift on October 16, 2021, the date the photograph was taken and sent. Ms. Foster gave consistent statements that the Grievor sent her the photograph and text message. At the interview, Ms. Foster showed her phone to Employer representatives, and then sent the screenshot to Ms. Jennings. Later that day, when requested, she sent a screenshot of her contact listing showing the Grievor's name associated with the phone number from which the photo and text message were sent. The only reasonable inference from the evidence was that the Grievor took the photo and sent it to Ms. Foster.

73 The Employer did not accept the Union's expert report that stated the photograph had never been on the Grievor's iPhone. The expert analysis was done 2 ½ years after the photo was

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sent. There are manual and automatic functions that can alter the data on the phone. The Union's expert witness, Mr. Hatch, did not know what the impact would be of a backup restoration that had been done on September 21, 2022. He was not 100% certain that the photo had never existed on the Grievor's phone. The Employer's expert witness, Mr. Lo, listed the reasons that the Union's expert witness report did not provide conclusive evidence that the photograph was never on the Grievor's phone. Mr. Lo said the screenshot provided direct evidence that the Grievor had sent the photo and the text messages. Mr. Lo said it was theoretically possible to change the name associated with a phone number on a contact list. However, the text message would still be associated with the same phone number.

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74 The Employer submitted that the Grievor's testimony was not credible. The Grievor had a self interest in the outcome of the arbitration related to her employment and her reputation in the community. The Grievor's statements were not consistent. She made admissions in the Employer's interview and in her letter to the LPN College. In her testimony to the LPN College's Complaints Authorization Committee, the Grievor said she did not recall taking the photograph and that she had made a false statement in her letter to the College. At best, the Grievor's evidence was unreliable. At worst, her evidence was an attempt to conceal the truth and blame her co-workers. The Grievor's suggestion to the Employer, in her interview, that the photo did not harm resident R, because he had dementia, was against the Employer's principles of compassion and dignity. The resident was entitled to privacy, even though he might not know the photo was taken and sent. Whether or not a resident is shown dressed or naked in a photo, it was a breach of confidentiality to take and send a photo of a resident. The Grievor was aware of the Employer's policies with respect to confidentiality, duty to report and cell phone usage in the workplace. The Grievor had breached these policies.

75 With respect to the penalty of discharge, the Employer referred to the seriousness of the Grievor's conduct. As a result of the conduct, the Employer made reports to Adult Protection and to the RCMP. The Employer was required to inform the families of the residents about the incidents. There was a public outcry as indicated by the news media reports. There was damage to the Employer's reputation. Ms. Greenham testified with respect to the news media coverage.

She said that families questioned the care provided to residents at the facility. The Grievor's actions put the Employer's reputation at risk. The Employer's Professional Practice Consultant, Ms. Jennings, testified that the Grievor's conduct was well outside the standard for an LPN. The Employer had sent a complaint to the LPN College and the complaint with respect to the photograph was still outstanding. The Grievor failed in her duty to protect vulnerable residents from harm and abuse, and to respect privacy and dignity. The Employer had a fiduciary obligation to the residents. The Grievor worked unsupervised and held a position of public trust. The Grievor failed to recognize her responsibility for her actions, showed no remorse, did not apologize and had fabricated a story. The aggravating factors included the high standard of care required, the Grievor's knowledge of the standard of care, the fact that there were several incidents and not a single isolated incident, and that the actions to mock and degrade the residents were intentional.

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76 The Employer referred to arbitral authorities with respect to abuse of vulnerable residents in long term care. In *Campbellton Nursing Home Inc. and CUPE, Local 2354 (Roy)* (2016) 271 L.A.C. (4th) 26 (Doucet), termination of employment was upheld, in a case where there was a high standard of conduct expected with respect to vulnerable patients, and there was no explanation or apology.

77 The Employer referred to *Forest Grove Care Centre Ltd. v. A.U.P.E.* (2010) 197 L.A.C. (4th) 50 (Tettensor) where the grievor was not truthful in her testimony, made a partial apology and the discharge was upheld. With respect to cases of patient abuse, the Employer also referred to *Kennedy Lodge Nursing Home v. S.E.I.U., Local 204* (1991) 18 L.A.C. (4th) 38 (Davis); *Oxford (County) and Unifor, Local 636 (Malcolm)* (2018) 298 L.A.C. (4th) 163 (White); *Newfoundland and Labrador Nurses' Union and Central Regional Integrated Health Authority (Hynes)*, July 20, 2012 (Thistle); and *Newfoundland and Labrador Association of Public and Private Employees and Eastern Health (Noseworthy)*, 2019 CanLII 41716 (NL LA) (Oakley).

78 The Employer submitted there were significant aggravating factors that outweighed any mitigating factors. The Employer submitted that, on the balance of probabilities, the Grievor had

engaged in the actions alleged and there was just cause to terminate employment. The Employer requested that the grievance be denied.

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**Union Submission**

79 The Union submitted that the Grievor had not committed the acts alleged by the Employer. The Employer had not proven the four incidents set out in the termination letter. The burden of proof remains on the Employer throughout the hearing. The Union submitted, in the alternative, that if any of the incidents were proven, the penalty of discharge was excessive, and a lesser penalty should be substituted.

80 The Grievor was employed as an LPN for 19 years with the Employer. She had no discipline on her record. The Employer had given her a safety award. She had served as a preceptor to nursing students.

81 The Union submitted that the Grievor had been implicated by co-workers who worked in a toxic workplace. In the fall of 2022, a scandal was going public and the Grievor was dragged into it by Ms. Foster, Ms. Thomas and other employees. There were multiple allegations against other employees in addition to the Grievor. The Employer wanted to hold someone accountable, and relied on a screenshot on the phone of Ms. Foster. The screenshot was unreliable. Ms. Foster had deleted the photo and her phone was never examined. There was a gap in time between when Ms. Foster sent the screenshot of the photograph to the Employer and when she sent a screenshot from her contact list to the Employer. The Employer's investigation was influenced by tunnel vision and an attempt to build a case against the Grievor. One version of the Grievor's statement recorded by the Employer had left out comments by Ms. Philpott that the Grievor did not use foul language. At the Employer's first meeting with the Grievor, on September 12, 2022, they told her she was under investigation, but did not tell her why. She did not have a Union representative present at that meeting. She did not know, at that time, that a group of employees had gotten together on September 6, 2022 and reported to the Employer an allegation that she took a photo and sent it to Ms. Foster with a text message.

82 The Union submitted that the Grievor had been ambushed at the meeting on September 13, 2022. The Employer pressured the Grievor to admit that she had taken and sent the photograph. The Grievor denied taking any photograph of residents. The Employer showed her a partial screenshot of the photograph, but did not include the text messages. The Grievor started to think that if the Employer said she took the photograph, then maybe she did take it. However, the Grievor did not admit taking the photograph. The Union did not have the burden of proof. The Employer had the burden to prove that the Grievor took and sent the photograph.

83 The Union submitted that the Employer's witnesses were not credible or reliable. There were several inconsistencies in the statements of the witnesses. The Employer's witnesses, including Ms. Foster, were saying different things to different people. The Employer had ignored the discrepancies. Ms. Thomas told the Employer that Ms. Foster had shown the photograph to Ms. Bryan. However, Ms. Bryan said in her statement that she did not see any photograph. Ms. Foster had initially denied she knew anything about a photograph. Ms. Foster told Ms. Critch that she had not seen a photo, according to Ms. Critch, but Ms. Foster then told the Employer she had a photo, which amounted to an inconsistency. Ms. McLean stated that Ms. Foster showed her a photo of resident R on September 6, 2022, and that Ms. Foster also told her the Grievor had taken a photo of a resident who had a bowel movement. However, that was not what Ms. Foster told the Employer. There was inconsistency about whether there was both an audio recording, and a video recording. Ms. Thomas had referred to both an audio and a video recording, including a video of resident B. Ms. McLean said that she had never witnessed the Grievor taking a photograph or making a video or audio recording. Ms. McLean said that the photograph shown to her did not have a text message, and it did not look the same as the photo and text in the screenshot in Exhibit JM-2. Ms. McLean had been working with the Grievor on the night shift on October 16, 2021.

84 Ms. Foster said that the Grievor sent her a text message on October 16, 2021. However, she also said she had forgotten she had the message until September, 2022, when she heard Ms. Thomas talking about photographs of residents with a group of employees. Ms. McLean said that

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Ms. Foster told her she obtained a photograph from a Facebook chat group, not that it was sent directly to her by the Grievor, and that Ms. Foster, Ms. Regular and the Grievor were members of the chat group. However, there was no evidence of any such group.

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85 The Union submitted that the Grievor sent her iPhone for digital analysis to show that the photo of the resident was never on her phone, and she did not take the photo. The digital forensic expert, Mr. Hatch, said he would not expect to find the text message. He said if a photograph was taken and deleted, he would expect to see a thumbnail or other trace of the photo. He did not find any trace of the photo of the resident on the phone. He did not give any weight to screenshots. Based on the expert evidence, it was unlikely the Grievor took the photograph. If the Grievor did not take and send the photo from her phone, the only explanation was that someone else had taken it. The digital forensic analysis indicated it was more likely than not that the Grievor never had the photograph on her phone. An expert witness could not be expected to give an opinion with 100% certainty. The Grievor did not have the technical knowledge to do a backup restoration. The backup restoration was likely a coincidence. Mr. Hatch said the backup restoration would not likely impact his ability to recover artifacts. He had observed data for another photograph, of a piece of pie, taken on October 16, 2021. The Grievor had kept her phone for digital analysis, however, the Employer did not obtain a digital analysis of Ms. Foster's phone.

86 The words used in the text associated with the photograph suggest that the photograph was taken at the end of the day shift and not during the night shift. The lights were on in the photograph, although the lights are out on the unit at around 9:00 p.m. or 10:00 p.m. The reference in the text message to getting a rest was more consistent with the end of a shift than the start of a shift. The language in the text referring to "today" and not "tonight" was not consistent with a night shift. The person who sent the photograph would be someone expected to get rest sooner rather than later. If the photograph was sent on the day shift it could not have been sent by the Grievor. The Employer presented no evidence of the time the photo was sent. The Employer had not asked Ms. Foster, in her interview, what time she received the photo. The

photo was more likely sent near the end of the day shift on October 16, 2021. The shift schedules showed that Ms. Hewlitt was at work on the day shift.

87 The Union submitted that the Grievor was a credible witness. Her testimony was forthright and honest. Self interest was not a factor because the Grievor could be expected to want to mitigate the damage to her reputation. Her testimony was supported by the digital forensic analysis. The Grievor had sent her letter to the LPN College without the benefit of legal advice. She recognized later that the comments, in the nature of concessions, in the letter, were not correct. With respect to the testimony of other witnesses, the Union submitted that the absence of a motive to fabricate cannot be relied upon to find that the testimony is truthful (*R.* v. *T.A.* 2024 ONSC 528 CanLII).

88 The Union submitted that the Employer's case authorities were distinguishable based on more serious allegations and different personal circumstances, such as a prior disciplinary record.

89 The Union acknowledged the Employer's policies. However, the Confidentiality Policy entered as an exhibit was stated to be approved on October 26, 2021, meaning that it was not in force at the time of the incident related to the photo. Therefore, the Employer had not proven that the Confidentiality Policy was violated.

90 The Union submitted that the manner of the Grievor's termination was disrespectful to the Grievor. On September 15, 2022 the Grievor was told she was terminated but not given a reason. She was not allowed to go to her locker and obtain her personal effects. She was pushed out through an exit door onto the roof, and she had to walk down an outside metal stairway to the ground level.

91 The Union requested that the grievance be allowed and the Grievor reinstated in employment. In the alternative, the Union submitted that if there was just cause for any disciplinary penalty, then a lesser penalty of no more than a one month suspension should be substituted.

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**Considerations**

92 The Employer discharged the Grievor from employment by letter dated September 15, 2022. There are four allegations against the Grievor set out in the letter. The allegations concern the Grievor's conduct as a Licensed Practical Nurse in long term care at Baie Verte Peninsula Health Care Centre. The Grievor has denied the conduct alleged.

93 The issues before the Arbitrator include: (1) what are the findings of fact with respect to each of the allegations against the Grievor in the letter of discharge; (2) was the Grievor's conduct inappropriate, disrespectful, unprofessional, abusive and unethical, or in breach of Employer policies; (3) did the Employer have just cause to discipline the Grievor; and (4) in the event the Employer had just cause for discipline, did the Employer have just cause to discharge the Grievor from employment.

94 The Employer is required to prove the allegations in the letter of discharge on the civil standard of balance of probabilities. The civil standard means proof that it is more likely than not that the conduct occurred.

95 When making findings of fact with respect to the alleged conduct, it is necessary to consider the credibility of witnesses. With respect to credibility, I refer to *Faryna v. Chorny* [1952] 2 D.L.R. 354 (BCCA), as follows:

> The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must be to reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

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96 The issue of assessing credibility is discussed in Brown & Beatty, *Canadian Labour Arbitration*, 5th edition, paragraph 3:85, as follows:

> Another arbitrator has said that demeanour is not necessarily a good indicator of credibility. Rather, he opined that the "clarity, consistency and plausibility of the testimony as tested in cross-examination in the context of the evidence as a whole, and the apparent ability of witnesses to resist self-justification or the influence of self-interest are far more significant indicators".

97 The Grievor denied each of the allegations against her. She testified that other employees targeted her, gave false statements to the Employer and gave false testimony. I will consider the Grievor's testimony about the Employer's witnesses when assessing their credibility, including whether they were motivated by self-interest or ill will towards the Grievor. I will consider the context of the statements made by employees to the Employer and the Employer's subsequent investigation of the Grievor.

98 The letter of discharge makes the following allegations against the Grievor:

- Inappropriate behaviour and language towards a resident when changing the resident who did not turn over on his own, and the Grievor saying to the resident when he did not respond that he had "no trouble to take your dick out and pee around but you cannot turn over, fuck what's wrong";
- Inappropriate behaviour and language towards a resident when asking the resident if she was going to get washed, the resident replied "no" and the Grievor said "I don't have time for this bullshit" and then left;
- Making an audio recording of a cognitively unwell resident calling out, when in a manic state, and then playing the recording to other staff at the nursing station; and
- Taking a photograph, using her personal cell phone, of a naked cognitively unwell resident sitting in a wheelchair, and sending the photo to a co-worker with inappropriate text messages, on October 16, 2021.

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99 The Employer submitted that the incident of taking and sending the photograph of the resident with the text messages, by itself, was a serious incident that would justify discharge from employment. The Employer also submitted that all incidents, when viewed together, were serious and justified discharge from employment.

100 I have considered the circumstances related to the reporting of the incidents to the Employer. Employees in LTC complained that a group of three employees, the Grievor, Ms. Regular and another employee, were spending excessive time talking at the nursing station, at the start of the shift, and were late starting their task of distributing medication. The complaint was that the delayed start put pressure on the other employees to complete their work tasks on time. Ms. Thomas testified that she brought the complaint to Ms. Philpott, Manager of Client Care Services, in late August, 2022. Ms. Philpott then spoke to the Grievor, Ms. Regular and the other employee, and reminded them about starting work on time.

101 Ms. Thomas testified that, on a Saturday in early September, 2022, after she heard that the employees spoken to by Ms. Philpott had accused her of being a "narc", she had a confrontation with the Grievor and Ms. Regular about calling her a "narc". Ms. Thomas testified that, about two weeks prior to this confrontation, another employee, Ms. Critch, told her that she had seen an inappropriate photo of a resident taken by Ms. Regular. On the next weekday, after the weekend confrontation, Ms. Thomas discussed the confrontation with other employees. Ms. Thomas made the comment to the employees that at least she had not taken photos or videos of residents. Ms. Foster, who was present at the discussion, then showed Ms. Thomas a photo on her phone of resident R that the Grievor had sent to her. Ms. Thomas testified that this was the first time she heard about the photograph sent to Ms. Foster.

102 On September 6, 2022, Ms. Thomas and other employees reported to Ms. Philpott that inappropriate photos or videos had been taken of residents by employees. The Employer then commenced an investigation, including an investigation of the Grievor, of inappropriate photos or videos. The Employer started to interview witnesses on September 12, 2022, upon the return from vacation of Ms. Greenham, Manager of Site Operations.

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103 The context of the reporting of the photos to the Employer was a conflict between employees about a delay in starting work at the start of a shift. The conflict led to a discussion among a group of employees about photos or videos, and a decision by the employees to report to management. In this context, the reporting of the incidents arose from a discussion among employees of inappropriate photos or videos that they had seen. The context of the sequence of events is not consistent with employees having an intention or an opportunity to fabricate a story. The context is consistent with employees having a discussion among themselves and then recognizing their duty to report inappropriate conduct to management.

104 The evidence with respect to the photograph of the resident and the text messages includes the testimony of Ms. Foster, the screenshots from Ms. Foster's cell phone showing the photo and text messages and contact listing, and the evidence of statements made by Ms. Foster to the Employer and to other employees.

105 I have considered the credibility and reliability of Ms. Foster's testimony. The Grievor testified that Ms. Foster had ill will towards her for various reasons. One of the reasons alleged by the Grievor was related to the Employer's vaccination policy during the COVID pandemic. The Employer required employees to be vaccinated to continue to work. Ms. Foster did not want to be vaccinated, and, as a result, she was absent from work without pay for several months. The Grievor testified that she was vaccinated and that she was vocal in support of vaccination. There was allegedly some resentment by the employees who were vaccinated, against the employees who were not vaccinated, because the absence of unvaccinated employees caused staff shortages, and increased the workload of the vaccinated employees. However, Ms. Foster was vaccinated in May, 2022 and returned to work. The Employer lifted its vaccination requirement in June, 2022. It does not reasonably follow that there was ill will between the Grievor and Ms. Foster in September, 2022, with respect to vaccination, having regard to the passage of time since May, 2022 when Ms. Foster returned to work. I would also note that Ms. Foster and the Grievor are cousins and co-workers, and that the Grievor was a preceptor of Ms. Foster when she was a student.

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106 The Grievor also alleged that a group of employees had fabricated a story in order to prevent her from obtaining a job as a Community Health Nurse. She alleged that the job was awarded to Ms. Hewlitt, and that, because she had more seniority than Ms. Hewlitt, she would have been awarded the job if her employment had not been terminated. The Grievor also alleged that Ms. Hewlitt had been supportive of Ms. Foster when she was absent from work due to the vaccination policy, and therefore Ms. Foster would likely support Ms. Hewlitt in her application for the job. Ms. Foster emphatically denied this allegation in her testimony. I find that the Grievor's allegations are speculative and not supported by evidence. There was no evidence about the job competition, other that a job posting, or evidence that the Grievor would have been awarded the job, other than the Grievor's assertion. The evidence does not establish that Ms. Foster, or other employees, fabricated testimony for the purpose of causing the Grievor to be unsuccessful in a job application, or to cause Ms. Hewlitt to be awarded the job. The Union speculated, but did not submit evidence, that Ms. Hewlitt sent the photo to Ms. Foster, and then Ms. Foster changed the name in her contact list to the Grievor's name. However, this suggestion does not explain how the text received by Ms. Foster was sent from the Grievor's phone number.

107 The allegation that Ms. Foster fabricated her statement to the Employer, and fabricated her testimony at the hearing, is not supported by the circumstances of the Employer's investigation. When the Employer interviewed Ms. Foster, she was reluctant at first to make any statement about the photograph or the text message. Also, the photograph was taken on October 16, 2021, almost one year prior to the report to the Employer in September, 2022. Ms. Foster did not come forward to report to the Employer at any prior time. I also note that Ms. Foster's statement in her interview and her testimony was against her self-interest. Ms. Foster admitted that she had not reported the photograph at the time she received it, and that she had made inappropriate text comments in the text exchange with the Grievor. Ms. Foster was disciplined by the Employer with a two week unpaid suspension. I do not find that Ms. Foster's credibility was affected by ill will towards the Grievor or self-interest. I make the same finding with respect to the other employees who testified about the allegations against the Grievor. However, although I do not find the witnesses had ill will towards the Grievor, it is still necessary to assess their testimony for its credibility and reliability on other grounds.

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108 The Union submits that Employer witnesses did not give credible testimony because they made inconsistent statements, and that the Employer ignored these inconsistencies when conducting its investigation. I have considered the Union's submission in this regard.

109 The Union submits that Ms. Critch stated that Ms. Foster told her she had not seen photos, which was inconsistent with what Ms. Foster told the Employer. However, the statement of Ms. Critch to the Employer includes a handwritten note added to state that she recalled Ms. Foster telling her that a photo of resident R had been sent to her. I do not find any inconsistency on this point. The Union submits that Ms. Thomas told the Employer that Ms. Foster showed a photo to Ms. Bryan, but that Ms. Bryan's statement does not refer to a photo. However, Ms. Bryan was not a witness at the hearing, and her statement, as recorded by Ms. Manuel, states that Ms. Thomas brought it up that Ms. Foster confided in her regarding a photo. There is an inconsistency between the statements by Ms. Thomas and Ms. Bryan, but I find it is not significant and does not affect the credibility of Ms. Thomas. The Union submits that Ms. McLean stated that Ms. Foster told her the Grievor had taken a photo of a resident who had a bowel movement, but that is inconsistent with Ms. Foster's statement to the Employer. However, there was evidence of other photos or videos relevant to the Employer's investigation of other employees, but not relevant to the investigation of the Grievor. Whether Ms. Foster gave inconsistent statements with respect to other investigations is not a significant issue.

110 The Union submits that Ms. McLean said that Ms. Foster told her she obtained the photo from a Facebook chat group, and that this is inconsistent with Ms. Foster's testimony that the Grievor sent her the photo with the text message. I do not find a significant inconsistency, having reviewed the testimony of Ms. McLean and the notes of her statements to the Employer. She testified that Ms. Foster told her that the Grievor sent the photo to her, and told her that she and other employees were in the chat group. Ms. McLean's statement to the Employer was that Ms. Foster showed her the photo on her phone and told her the Grievor sent it to her. In her testimony, Ms. McLean did not remember if Ms. Foster told her the photo of the resident was shared by the chat group. There is no clear inconsistency established by the evidence in this regard. The Union submits that Ms. Foster gave a prior inconsistent statement when she told the

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LPN College that the photo was sent to her in June or July, 2022. Ms. Foster acknowledged that she had been mistaken when she gave an incorrect date to the LPN College, and that the photo had been sent in October, 2021. However, while recognizing an inconsistent statement regarding a date, this is not a significant issue, and, in most respects, the evidence of Ms. Foster is consistent with other evidence.

111 I find that, with respect to the Union's submission regarding inconsistencies, that the inconsistencies are not established by the evidence, or where established, the inconsistencies are related to minor points and not related to central issues of such significance as to affect my findings regarding the credibility of Ms. Foster, Ms. Thomas, Ms. McLean or other Employer witnesses.

112 The evidence does not establish any bias or ill will by management against the Grievor. There were no issues raised with respect to the managers at the site, Ms. Greenham and Ms. Philpott. Ms. Philpott spoke up during the Grievor's interview in support of the Grievor to say that the Grievor did not use foul language, in her experience. The Union submitted that the Employer's investigation was based on "tunnel vision", and that the Employer had concluded the Grievor had sent the photo and text before interviewing the Grievor. The Union refers to the questions management asked the Grievor at the interview on September 13, 2022, such as "It has come to our attention that you have photos and videos of residents and on the balance of probabilities we believe this to be true, can you speak on this?" and management reminding the Grievor to be honest (Exhibits C-6, C-12 and JM-8). However, at that time, the Employer had information to support its belief, in particular, the interview of Ms. Foster in which she stated that the Grievor sent her the photo and text, the screenshot of the contact list entry in Ms. Foster's phone with the Grievor's name and the phone number for the phone that was used to send the photo and text, and statements of other employees that Ms. Foster had told them about the photo sent to her by the Grievor and showed them the photo on her phone. The Employer's questions to the Grievor were based on a reasonably held belief. The Employer had no information at that time to suggest that someone else sent the photo and text message to Ms. Foster or that the contact list was incorrect.

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113 The Union also submitted that the Employer attempted to ambush the Grievor to obtain admissions from her at the interview. However, the Grievor had a Union representative present at the interview when she was questioned by the Employer and shown the photo. The testimony of Employer witnesses, and the interview notes, indicate that the Grievor had an opportunity to respond to the allegations. I am satisfied that the Employer proceeded in good faith based on its investigation and that its conclusions were based on its findings of fact in the investigation.

114 With respect to the incidents concerning inappropriate conduct with residents, Ms. Thomas testified that she was present when the Grievor went to change a resident. Ms. Thomas testified that when she was standing on the other side of the bed from the Grievor, the Grievor asked the resident to turn over, and when the resident did not respond, the Grievor made the comment set out in the letter of discharge and used foul language. Ms. Thomas was in a position to observe the conduct. Her evidence was clear and consistent with her prior statement. She did not report the incident at the time. She acknowledged that she should have reported it, but she did not want to have conflict with the Grievor. The Grievor denied the incident. However, her denial is based on self-interest. I am satisfied, based on the testimony of Ms. Thomas, which I find to be credible and reliable, that the Employer has proven this incident on the balance of probabilities. Ms. Thomas also testified about the incident concerning the resident who refused to get washed and the Grievor's use of foul language. I am satisfied that Ms. Thomas was in a position to observe the incident, and her testimony in this regard was clear and consistent. I find the testimony of Ms. Thomas to be credible and reliable. The Grievor has denied the incident. However, the denial is based on self-interest. I find that the Employer has also proven this incident on the balance of probabilities.

115 Ms. McLean testified that, in the late spring of 2022, she observed the Grievor playing an audio recording at the nursing station in the presence of other employees. The recording was about five to ten seconds in length and recorded the voice of resident B yelling in a manic state. Ms. McLean testified that resident B was cognitively unwell, had manic episodes and would yell a lot of the time. She testified that when the Grievor played the recording she did not give the

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resident's name. However, Ms. McLean testified that the voice sounded like resident B. Ms. McLean considered reporting the incident, but did not report it to the Employer at the time. Ms. McLean had no self-interest in her testimony. Her recollection was clear, detailed and consistent. Her testimony is credible and reliable. The Grievor denied recording the resident or playing the recording. However, the Grievor did admit that she made audio recordings on her cell phone at work, during working hours, for the purpose of sending messages to her family members. She testified that it was possible that the voice of a resident could be heard in the background when she made one of these recordings. However, the allegation against the Grievor is that she recorded and played the audio recording at the nursing station for other staff members to hear, when there was no professional purpose for playing the recording. It was in her self-interest to deny playing the recording. I find that the Grievor played the recording as stated in the testimony of Ms. McLean. The Employer has proven this incident.

116 The first two incidents, with respect to inappropriate conduct and the use of foul language with residents, and the audio recording incident, demonstrate inappropriate, disrespectful, unprofessional, abusive and unethical conduct. With respect to the audio recording, there was no professional purpose to play the recording for other staff. With respect to the appropriate professional standard of care, I have considered the testimony of Ms. Jennings, the Employer's professional practice consultant. She testified that care for residents is at the centre of long term care, and the Grievor's actions demonstrate resident neglect, resident abuse, breach of ethics and disrespect for residents.

117 The Grievor's actions, with respect to the audio recording, were also a breach of Employer policies. The Personal Mobile Device Use in the Workplace Policy states that the use of personal mobile devices for non-work-related purposes during working hours is not permitted. The Grievor used her cell phone for a non-work-related purpose during working hours. The Confidentiality Policy requires that all matters related to personal or personal health information of clients must be kept confidential. The audio recording and playing of the recording at the nursing station was a failure to keep the resident's personal information confidential, and was a breach of the Confidentiality Policy. There was a Confidentiality Policy in effect on the relevant date, although the version entered as an exhibit is dated after the incident. In addition, the

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Grievor signed an Oath of Confidentiality, as required under the Confidentiality Policy, in which she agreed not to use personal or personal health information except as necessary to perform her duties. To play an audio recording of a resident with the effect of mocking the resident was not necessary to perform her duties, and was in breach of her Oath of Confidentiality.

118 The Employer alleged that the Grievor took a photograph of a resident and sent the photograph with text messages to Ms. Foster, on October 16, 2021. On that date, the staff schedule shows that the Grievor worked a 12 hour shift starting at about 8:00 p.m. on the resident's unit. The Grievor therefore had the opportunity to take and send the photograph on that shift. There was evidence with respect to the time of "lights out" on the unit. However, the photograph could have been taken between the start of the shift at about 8:00 p.m. and "lights out" at about 9:00 p.m. to 10:00 p.m. Ms. Foster was a work colleague and cousin of the Grievor, who was not at work at that time. Ms. Foster testified that she had an entry for the Grievor in her contact list in her phone, under the name "Trina". The listing included a cell phone number. There is no dispute that the cell phone number in the listing was the Grievor's phone number. Ms. Foster testified that the Grievor sent her the photograph with the text messages, as shown on the screenshot in Exhibit JM-2. Ms. Foster testified that she replied with a text message to the Grievor and the Grievor answered with another text message. These messages appear on the screenshot. Ms. Foster was disciplined with a two week unpaid suspension for inappropriate text messages and for failing to report the incident. Ms. Foster testified that she knew the Grievor had sent the photograph to her because it was sent from the cell phone number that was entered under the name "Trina" in her contact list, which was her listing for the Grievor.

119 When the Employer interviewed Ms. Foster, she showed her cell phone to the Employer's representatives. Employer witnesses present at the interview testified that they observed the photograph and the text messages on Ms. Foster's phone. Ms. Foster subsequently sent a screenshot of the photograph and text messages to Ms. Jennings, one of the management employees in attendance at the interview. The screenshot (Exhibit JM-2) was identified by management witnesses as the image on the phone shown by Ms. Foster at the interview and described in the testimony of Ms. Foster.

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120 The screenshot on Ms. Foster's phone (Exhibit JM-2) includes a photo of a resident sitting in a wheelchair in a corridor. The resident appears to be naked. However, the view of the part of the resident's body, from his chest to his upper thigh, is obscured by the side of the wheelchair. The photo shows an Attends on the floor on the opposite side of the corridor. Ms. Foster and other witnesses testified that the resident was cognitively unwell, and would often remove his Attends and sit naked in his wheelchair. Exhibit JM-2 also shows the text messages exchanged between Ms. Foster and the Grievor, according to Ms. Foster. These text comments are disrespectful of the resident. The text comments, as described in the letter of discharge addressed to the Grievor, state as follows:

> "This AO was a piece of work tonight!"
> "Clean pamper tore off and thrown out in hallway"
> The individual that you sent the picture to replied, "That Shithead needs a 1 way trip to the Waterford and to fall out of the ambulance otw", and your response was "Lol, he sure do!!"

121 The Union submitted that the content of the text messages indicated that the photo and messages were not likely sent at the start of the night shift, but were more likely sent at the end of the day shift. It follows, in the Union's submission, that the photo and text messages were sent by someone other that the Grievor. However, the first message refers to the resident as "a piece of work tonight!", which is consistent with a night shift, and not necessarily the end of a shift. The response, referring to "lots of rest" and "trip to the Waterford" is consistent with a reference to getting rest after the transfer of the resident to another facility, and not necessarily getting rest at the end of a day shift. Therefore, the content of the text messages is consistent with the photo and text messages being sent on the shift when the Grievor was at work, on the night shift of October 16, 2021, as alleged by the Employer.

122 Ms. Foster testified that she showed her phone with the photograph and text messages to Ms. Thomas and other employees prior to reporting the photo to the Employer. She told other employees that the photograph was sent to her by the Grievor. This was consistent with the testimony of Ms. Thomas and Ms. McLean.

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123 Ms. Foster was clear and consistent in her testimony that the Grievor sent her the photo and text messages. She was not motivated by self-interest in her statement to the Employer or her testimony. Her testimony is consistent with the screenshot, and consistent with statements she made to other witnesses. I find that any prior inconsistencies, as discussed, are minor, and do not affect my finding of credibility. I find that Ms. Foster did not fabricate her testimony, and that her testimony is credible and reliable.

124 Mr. Lo, the Employer's Digital Forensics expert, testified that the photograph and text message on the screenshot (Exhibit JM-2) appeared to have been sent from the telephone number of the cell phone appearing in the contact list, based on the information from Ms. Foster and the screenshots.

125 The Union referred to testimony of its Digital Forensics expert, Mr. Hatch, that he found no evidence of any artifacts, thumbnails or other trace of the photo of the resident on the Grievor's iPhone, when he examined the phone in 2024. Mr. Hatch testified that, if the photograph had been deleted or uploaded to iCloud, there would likely remain some trace on the phone. However, the Employer's expert, Mr. Lo, testified that he would not conclude that the photograph was never on the Grievor's cell phone for several reasons, including the passage of time of over two years between when the photograph was reported to be taken in 2021 and when the phone was examined in 2024, the possibility of removal of artifacts over time, the effect of operating system upgrades, and the effect of a system restoration or reset. In Mr. Lo's opinion, the examination of the iPhone was inconclusive. I find that, for the reasons given by Mr. Lo, and the acceptance by Mr. Hatch that it was possible the photograph could have existed on the phone, that the expert evidence does not establish that the photograph never existed on the Grievor's cell phone.

126 The Grievor testified that she did not take or send the photograph or text messages to Ms. Foster. The Employer submits that the Grievor made prior statements admitting that she took and sent the photo to Ms. Foster. The Employer refers to the Grievor's interview with the Employer, when she responded to statements put to her by the Employer that implied they knew

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she had taken and sent the photograph, and it would be better for her to admit it. The Union disputes that the Grievor made prior admissions.

127 I will consider the dispute of fact about whether the Grievor made prior admissions with respect to the photo and text messages. The Grievor denied making any admission at the interview on October 13, 2022, except to acknowledge that, if the Employer had proof that she sent the photo, then it might be true. The testimony of Employer witnesses who were present at the interview, and their written notes, address this issue. Ms. Manuel testified that the Grievor did not deny sending the photo and that the Grievor confirmed, if it was sent from her phone number, then it was sent from her phone. According to Ms. Manuel's notes, the Grievor stated, "I acted by taking the photo, but I honestly can't remember. I obviously sent this to a co-worker." Ms. Jennings testified that the Grievor stated she obviously must have taken the photo. Her notes include the Grievor's statement, "whatever the scenario was at the time, I reacted by taking a photo. I obviously took a pic and sent it to a coworker." The reference to "scenario" and "reacted" is consistent with evidence that staff had difficulty and could become frustrated when caring for the resident due to his cognitive state. The testimony of Employer witnesses and their written notes of the interview are consistent. I find that the Employer witnesses gave credible testimony about the Grievor's statements at the interview. Even if the Grievor's statements to the Employer are considered to be concessions, to the extent that the Grievor only admitted that, if she had done anything wrong, she regretted that she had acted in the heat of the moment, such statements are in contrast to her clear denial with respect to the other allegations against her.

128 The Grievor made an admission in the letter dated September 30, 2022, that she sent to the LPN College. Her letter stated, in part, "in sending the picture of the resident my intent was never to harm the resident, and I did not clearly think through the risk of breaching his privacy." The Grievor stated that she had advice from her Union representative before she sent her letter to the LPN College. Although the Grievor later stated that her admission to the LPN College was false, and made without legal advice, I note that the letter was sent about two weeks after her discharge from employment. I consider the letter to the LPN College to be an admission against the Grievor's interest.

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129 I find that the testimony of Ms. Foster is credible and reliable, having regard to its internal consistency and its consistency with other evidence, in particular, the screenshots, the testimony of employees who observed the photo on Ms. Foster's cell phone before she reported it to the Employer, her statements to other witnesses, the testimony of management witnesses who observed the photo at Ms. Foster's interview, and the expert testimony of Mr. Lo with respect to the operation of the cell phone. I find that the Grievor's testimony was not credible because it was motivated by self-interest and was inconsistent with her prior admissions. I find that the Grievor took and sent the photograph and the text messages to Ms. Foster as alleged.

130 I find that the Employer has proven the allegations in the letter of discharge on the balance of probabilities.

131 The proven incidents demonstrate that the Grievor's conduct was inappropriate, disrespectful, unprofessional, abusive and unethical. I have accepted the testimony of Ms. Jennings, the Employer's professional practice consultant, with respect to standards of professional conduct. The Grievor's conduct was also in breach of the Employer's policies for mobile device usage in the workplace and confidentiality, and in breach of her signed Oath of Confidentiality. The Employer had just cause to discipline the Grievor for the grounds set out in the letter of discharge.

132 With respect to whether the Employer had just cause to discharge the Grievor, I have considered the seriousness of the conduct, the mitigating factors and the aggravating factors. The seriousness of employee conduct toward residents in long term care is described in *Cambellton Nursing Home Inc. and CUPE, Local 2354 (Roy)* (2015) 271 L.A.C. (4th) 26 (Doucet), where the arbitrator stated as follows:

> 67 The Employer has therefore established that it had just cause to impose disciplinary sanction on the grievor for the incident of August 22nd. The evidence clearly establishes that the grievor has violated the standard of conduct that is expected of an employee working in a nursing home. The nature of the abusive language used by the grievor and his aggressiveness are unacceptable. The language used was demeaning and it violated the nursing home's values and

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mission.

68 The public trust demanding a high degree of tolerance from health care employees is particularly apt in a setting like the one at the Campbellton Nursing Home. As it is stated in *Bethany Care Society and AUPE (Solodky), Re*, at para 69:

> On the one hand, some of these residents are prone to behaviour that would tax the patience and self-control of the most considerate caregiver. On the other hand, they are very often completely and humiliatingly vulnerable. They are often unable to speak in defence of their own interests or otherwise fend for themselves in any meaningful way. They cannot easily tell caregivers that they have been abused, and if they can they may not be readily believed because of their cognitive impairments. It is therefore necessary to demand of employees a level of self-control that not all persons are capable of maintaining. If an employee has given reasonable cause to believe that he or she is not capable of maintaining appropriate levels of self-control and exhibiting proper conduct toward residents, the public interest weighs in the direction of treating the misconduct as just cause for dismissal.

133 I have also considered mitigating factors as discussed in *Wm. Scott & Co.* [1976] B.C.L.R.B.D. No. 98 (P.C. Weiler), as follows:

> In evaluating the immediate discharge of an individual employee, the arbitrator would take account of "the employee's length of service and any other factors respecting his employment record with the Company in deciding whether to sustain or interfere with the Company's action" (at p. 117). The following is an oft-quoted, but still not exhaustive, canvass of the factors which may legitimately be considered:
>
> 1. The previous good record of the grievor.
>
> 2. The long service of the grievor.
>
> 3. Whether or not the offence was an isolated incident in the employment history of the grievor.
>
> 4. Provocation.
>
> 5. Whether the offence was committed on the spur of the moment as a result of a momentary aberration, due to strong emotional impulses, or whether the offence was premeditated.

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> 6. Whether the penalty imposed has created a special economic hardship for the grievor in the light of his particular circumstances.
>
> 7. Evidence that the company rules of conduct, either unwritten or posted, have not been uniformly enforced, thus constituting a form of discrimination.
>
> 8. Circumstances negativing intent, e.g. likelihood that the grievor misunderstood the nature or intent of an order given to him, and as a result disobeyed it.
>
> 9. The seriousness of the offence in terms of company policy and company obligations.
>
> 10. Any other circumstances which the board should properly take into consideration, e.g., (a) failure of the grievor to apologize and settle the matter after being given an opportunity to do so; (b) where a grievor was discharged for improper driving of company equipment and the company, for the first time, issued rules governing the conduct of drivers after the discharge, this was held to be a mitigating circumstance; (c) failure of the company to permit the grievor to explain or deny the alleged offence.
>
> The board does not wish it to be understood that the above catalogue of circumstances which it believes the board should take into consideration in determining whether disciplinary action taken by the company should be mitigated and varied, is either exhaustive or conclusive. Every case must be determined on its own merits and every case is different, bringing to light in its evidence differing considerations which a board of arbitration must consider.
>
> *Steel Equipment Co. Ltd.* (1964) 14 LAC 356, at pp 40-41.

134 I have considered the seriousness of the Grievor's conduct. There were two incidents that demonstrated verbal abuse of a vulnerable resident, lack of respect and inconsistency with the expected standard of care. These incidents concerned use of foul language and disrespect when the resident did not comply with a request from the Grievor to turn over or to get washed. While demonstrating failure to uphold the expected standard of care, these incidents are less serious than the audio recording and photograph incidents. The Grievor's audio recording of a cognitively unwell resident calling out in a manic state, and playing the audio recording for other staff at the nursing station, is more serious. There was no professional reason to play the audio recording for the other staff. The recording was played with the effect of mocking or degrading

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the resident. This incident showed breach of confidentiality and unprofessional conduct that was disrespectful of a vulnerable resident in long term care.

135 The most serious incident concerns taking the photo of the resident and sending the photo, together with disrespectful text messages, to a co-worker. The photo shows the resident seated in a wheelchair in the corridor. The resident appears to be naked, although part of his body is obscured by the wheelchair. There was an Attends on the floor on the opposite side of the corridor, the resident was known to take off his clothes and sit in his wheelchair, and the parts of his body that are not obscured by the wheelchair show that he was not wearing clothes at the time. There was no professional reason to take and share the photo or to make the disrespectful comments in the text messages. The Grievor's conduct in the photograph incident was extremely serious. The seriousness of the four incidents combined support a finding that the Employer has reasonably lost trust in the Grievor, and that the employment relationship is irreparably damaged.

136 I have considered arbitral authorities concerned with discipline in similar fact situations. In *Oxford (County) and Unifor, Local 636 (Malcolm)* (2018) 298 L.A.C. (4th) 163 (White), an employee took and showed a video of a resident to other staff members. The Arbitrator upheld discharge from employment. Although the personal circumstances concerning the grievor in that case are distinguishable from the present case, the arbitrator's comments with respect to the expected standard of conduct is applicable. The arbitrator stated at paragraph 70, in part, as follows:

> Residents in long-term care facilities are generally very dependent on the staff working there and are particularly vulnerable members of society. Long-term care facilities are the residents' home, usually for the rest of their lives, and the Bill of Rights is clear that their dignity must be respected and their protection from abuse is of paramount concern. The Resident in this case is an example of the type of individual who is at greatest risk in society and, therefore, in greatest need of protection. While a video of the Resident exhibiting the behaviour in which she regularly engages, shown only to other staff members of the Home, might seem to be an action that does not cause great harm, the principles of confidentiality, personal privacy and respect for dignity create a high standard that must be met.

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137 With respect to mitigating and aggravating factors, the mitigating factors include the long service of the Grievor and the absence of discipline on the Grievor's record. It is an aggravating factor that there were four separate incidents, and that each incident demonstrates disrespect for residents and failure to meet the expected professional standard of conduct. There were two extremely serious incidents, concerning the photograph of a resident and the audio recording of a resident. The Grievor was aware of the standards expected. There was no evidence of a momentary aberration. In her testimony, the Grievor denied the incidents and failed to offer any explanation. It is an aggravating factor that the Grievor denied the incidents, did not accept any responsibility and did not apologize. The Grievor alleged that other employees targeted her and fabricated allegations against her. I have found that the Grievor's allegation that she was targeted is not established. The public reaction to the incidents is an aggravating factor. There were media reports with respect to the conduct of employees and abuse of residents. Employer witnesses testified that the public were concerned about the well being of the family members they had entrusted to the care of the Employer. The Grievor's actions were a breach of the trust placed in her by the Employer to care for vulnerable residents, and were a significant departure from the standard of professional conduct expected of an LPN. The Employer reasonably concluded that it had lost trust in the Grievor and that the employment relationship could not be restored.

138 I find that, having considered the seriousness of the incidents, the breach of Employer policies, the mitigating and aggravating factors, and the arbitral authorities, that the Employer had just cause to discharge the Grievor. As a result, the grievance will be denied.

**Decision**

139 The grievance is denied for the reasons stated in the Award.

**Dated** this 15th day of October, 2025.

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James C. Oakley, K.C.
Arbitrator

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