

**IN THE MATTER OF *THE PSYCHOLOGISTS ACT, 1997* AND BYLAWS AND IN THE
MATTER OF A COMPLAINT AGAINST DR. RICHARD LEBELL, A MEMBER OF THE
COLLEGE**

DECISION

Saskatchewan College of Psychologists

DISCIPLINE COMMITTEE

Discipline Committee Members:

Regan Hart, Registered Doctoral Psychologist, Chair
Christel Gee, Public Representative, Member
Gabriela Pitariu, Registered Doctoral Psychologist, Member

Karen Prisciak, Q.C., appearing on behalf of the Professional Conduct Committee
Amanda Quayle, Q.C., and Matthew Schmeling, appearing on behalf of the Member
Merrilee Rasmussen, Q.C., legal counsel for the Discipline Committee

INTRODUCTION

[1] A discipline hearing was held on May 21, 2020, to hear and determine the formal complaint concerning the Member, dated February 26, 2019. The formal complaint consisted of two charges. The Member pled guilty to the first charge and not guilty to the second charge. On June 18, 2020, the Discipline Committee released its decision in relation to the second charge in the formal complaint, finding the Member guilty.

[2] A penalty hearing was convened on September 4, 2020 by teleconference. The Discipline Committee received written and oral submissions from legal counsel for the Professional Conduct Committee (PCC) and for the Member.

THE FORMAL COMPLAINT

[3] The charges contained in the Formal Complaint alleged that Dr. Richard Lebell was guilty of professional misconduct and/or professional incompetence contrary to the provisions of sections 25 and 26 of *The Psychologists Act, 1997*, S.S. 1997, c. P-36.01, and/or Regulatory Bylaw #20 in that he:

Charge 1: Contravened the Discipline Order dated March 16, 2018 by continuing to diagnose patients referred from the Workers' Compensation Board when he did not have an Authorized Practice Endorsement contrary to Professional Practice Guidelines 7.1 and 7.5; contrary to *The Psychologists Act, 1997*, section 23; and, contrary to Regulatory Bylaw 13.

Charge 2: Misrepresented to the Workers' Compensation Board that he had arrangements in place to have a registered psychologist cosign his reports when such arrangements were not in place in violation of *Canadian Code of Ethics for Psychologists*, 3rd ed., 2000, and more specifically Principle III.

[4] As mentioned, Dr. Lebell entered a plea of guilty to Charge 1.

[5] The Discipline Committee also found that Dr. Lebell misrepresented to the Workers' Compensation Board that he had arrangements in place to have a registered psychologist cosign his reports when those arrangements were not in fact in place and was thus guilty of Charge 2.

LEGISLATION

[6] The Act provides the Discipline Committee with the following disciplinary authority:

32(1) Where the discipline committee finds a member guilty of professional incompetence or professional misconduct, it may make one or more of the following orders:

- (a) an order that the member be expelled from the college and that the member's name be struck from the register;
- (b) an order that the member be suspended from the college for a specified period;
- (c) an order that the member be suspended from the college pending the satisfaction and completion of any conditions specified in the order;
- (d) an order that the member may continue to practise only under conditions specified in the order, which may include, but are not restricted to, an order that the member:
 - (i) not do specified types of work;
 - (ii) successfully complete specified classes or courses of instruction;
 - (iii) obtain treatment, counselling or both;
- (e) an order that reprimands the member; or
- (f) any other order that to it seems just.

(2) In addition to any order made pursuant to subsection (1), the discipline committee may order:

- (a) that the member pay to the college within a fixed period:
 - (i) a fine in a specified amount not to exceed \$5,000; and
 - (ii) the costs of the investigation and hearing into the member's conduct and related costs, including the expenses of the professional conduct committee and the discipline committee and the costs of legal services and witnesses; and

(b) where a member fails to make payment in accordance with an order pursuant to clause (a), that the member be suspended from the college.

POSITIONS OF THE PARTIES

[7] The PCC submits that Dr. Lebell's licence to practise should be suspended until he submits a satisfactory Supervision Agreement and Plan focused on diagnostics and that he thereafter practise under supervision for the authorized practice endorsement (APE) until he successfully completes the APE oral examination and provide monthly supervision reports to the College, and if he does not do so within one year he would be effectively expelled. In addition, the PCC submits that Dr. Lebell should be reprimanded, ordered to complete an approved course on ethics, pay a fine of \$5,000, and pay the total costs incurred by the College in the investigation and prosecution of the formal complaint in the amount of \$40,986.01 and that he be suspended if he fails to pay that amount within six months. Finally, the PCC submits that Dr. Lebell should be ordered to publish in newspapers circulating in Regina and Saskatoon advertisements that he has never held an APE and that his licence is suspended, and that the Discipline Committee's decision be published on the College's website.

[8] Counsel for Dr. Lebell submits that an appropriate penalty would include a reprimand, a two-week suspension of his licence and until payment of a fine in the amount of \$3,000, an undertaking that he would not communicate a diagnosis contrary to section 23 of the Act, publication of the decision on the College's website, and 50% of the costs incurred by the College to be paid within two years.

ANALYSIS AND DECISION

Factors to be considered in general

[9] Counsel have provided a number of principles relating to sentencing as have been articulated in various court decisions in Saskatchewan and elsewhere and as described in *The Law of Professional Regulation*.¹ Discipline committees of the College of Psychologists have usually referred to the factors set out in *Camgoz v College of Physicians and Surgeons*² when there has not been agreement between the parties with respect to penalty. This Committee notes that the *Camgoz* factors are not an exhaustive list, but that they generally include all of the factors that counsel have mentioned in their submissions and are thus a useful, and consistent, analysis to be

¹ Salte, B (Markham, Lexis Nexis, 2015), at pp. 234-5.

² 1991 CanLII 8952 (SK QB). The *Camgoz* factors were referred to by the Saskatchewan Court of Appeal in *Peet v Law Society of Saskatchewan*, 2019 SKCA 49, in relation to their application by the lower court with respect to a specific factor. The Court of Appeal's approval of the non-exhaustive list of factors to be considered in sentencing in a professional discipline context is implicit.

followed. However, the Committee has listed the relevant *Camgoz* factors below in order of their gravity and significance in this case.

Protection of the Public and Public Confidence in the adequacy of Regulation

[10] It is clear that the primary function of a self-regulating profession is to establish standards of conduct and competence and to enforce them with the objective of protecting the public. In recent years, professions legislation in Saskatchewan has excluded explicit statements to the effect that the object of the Act is to assure the public of the knowledge, skill and judgment of its members and that the duty of the profession is to serve and protect the public interest and not the interests of the members of the profession.³ In the specific context of *The Psychologists Act, 1997*, the Saskatchewan Court of Appeal stated “there is no dispute that the object of the Act and Bylaws is the protection of the public.”⁴

[11] Section 23 of the Act prohibits any “person” (not just any “member”) from communicating a diagnosis as defined in that section unless the person is a member and has an authorized practice endorsement, or is a duly qualified medical practitioner. In order to obtain an APE, a member must possess certain qualifications in addition to those required for general membership and must successfully complete an oral examination. The purpose of these requirements is to ensure that anyone who does communicate a diagnosis in relation to a patient has the knowledge, skill and judgment to do that appropriately. The reason why these requirements are in place is because the type of a diagnosis described in section 23 of the Act is one that can have a significant impact on the future of the patient to whom it relates. This is evident in the context of the work done by a psychologist for WCB, because the diagnosis, or lack thereof, will affect the decisions WCB makes about the payment of benefits and provision of treatment to the individual.

[12] The fact that no complaint was made by a member of the public affected by Dr. Lebell’s communication of a diagnosis or the lack of evidence of any specific harm occurring to a member of the public as a result does not mean that the protection of the public for which the Act is in place has not been compromised.

The nature and gravity of the proven allegation

[13] In this case, Dr. Lebell has been found guilty of contravening an order of the discipline committee that directed him to cease communicating diagnoses, contrary to section 23 of the Act. Dr. Lebell does not have and never has had an authorized practice endorsement, which would allow him to perform the authorized practice of communicating a diagnosis in accordance with section 23 of the Act. He nevertheless continued, even after the Discipline Committee ordered him not to.

[14] Dr. Lebell also failed to advise the Workers’ Compensation Board (WCB) that he did not have arrangements in place for a member with an APE to cosign his reports and

³ See, for example, section 3.1 of *The Midwifery Act*.

⁴ *Sydiah v Saskatchewan College of Psychologists*, 2015 SKCA 113, at para. 11.

continued to submit reports that were not cosigned, when he knew or ought to have known that WCB would rely on him to act with the integrity expected of a member of the profession.

General and Specific Deterrence and Previous Record

[15] The Discipline Committee notes that there have been several discipline matters involving members of the College and contraventions of section 23 of the Act. This suggests that there is a need to fashion a penalty that will have the effect of providing general deterrence to other members of the profession. There is also an apparent need for specific deterrence in that Dr. Lebell continued to contravene section 23 even after being ordered to cease doing so by the order of the Discipline Committee on March 16, 2018. The Committee understands that Dr. Lebell says that he didn't intend to contravene that order, but nevertheless he did. The Committee concludes that a more significant penalty than the one previously ordered would be appropriate in this case.

The Age of the Member

[16] Dr. Lebell is 73 years old and has been a practising member of the College for 27 years. His age and experience would tend to lead to the expectation that he would be aware of the requirements of the Act in relation to communicating a diagnosis and with the ethical requirements of his profession.

Consistency with Penalties for Similar Offences by Others

[17] Counsel for Dr. Lebell submits that this situation is similar to the May 29, 2020 decision of the Discipline Committee in the Flahr case. Flahr was found guilty of communicating a diagnosis without the APE in a decision dated October 2018 relating to a complaint made in October 2017. A second complaint was received by the College in January 2018 relating to reports that were made in 2013 and 2014 and contained diagnoses. Clearly the situation was not one where the member continued to carry on with the same conduct after being disciplined for it, since the second complaint related to events that occurred before the first complaint. Counsel submits that the Lebell case is similar. The Discipline Committee disagrees.

[18] Dr. Lebell communicated the diagnoses that are the basis of this current case after having been disciplined for doing so. He says he did not "intend" to breach the March 2018 order (although intention is not a required component of the offence in any event), but he knew that he was not authorized to communicate diagnoses and he also allowed WCB to believe that he was having his reports cosigned as they required, when he was not, while he continued to communicate diagnoses. The Discipline Committee is of the view that it is not credible that Dr. Lebell believed he was "onside" the March 2018 order when he sought no advice about what the order required him to do and he did not immediately correct the WCB assumption that his reports were being properly cosigned.

Mitigating Factors

[19] Counsel for Dr. Lebell submits that his lack of intention to contravene the March 2018 order, the fact that the reports in question were made to the WCB and not to the individuals to whom they related, the fact that there is no evidence of harm to any clients resulting from the diagnoses in the reports, and the fact that no client made a complaint are all mitigating factors relevant to Charge 1 and there is limited risk of his repeating this conduct. With respect to Charge 2, he only failed to take steps to correct a misunderstanding in a timely way rather than actively misrepresenting the situation.

[20] The Discipline Committee agrees that Dr. Lebell's actions in relation to Charge 2 are not as serious as if he had actively told an untruth but does not agree that the factors mentioned in relation to Charge 1 are mitigating. It could be arguable that the individuals about whom the reports were made could not make a complaint because they didn't know what had happened. Nor can it be assumed that no harm has occurred to anyone.

Conclusion re Penalty

[21] In general, the Discipline Committee notes that the penalty consequences should be tailored to address the conduct that is the subject of the charges on which a member is found guilty. For that reason, the Committee is of the view that a reprimand, an ethics course, and a fine are appropriate. In addition, and in the interests of public protection, the Committee believes that an advertisement in the Regina and Saskatoon newspapers as proposed by the PCC is also appropriate. As well, the decisions should be published on the College's website, as is the usual practice in all cases.

[22] The fine associated with the March 2018 order was \$4,000 and it would be appropriate that a higher fine be imposed as this is a subsequent offence occurring shortly thereafter. The maximum fine that the Act permits is \$5,000 and the Committee concludes that a fine in this amount is appropriate in these circumstances.

[23] The PCC in effect argues that Dr. Lebell should be required to obtain an APE and sets out a number of conditions in that regard. The Discipline Committee is of the view that since obtaining an APE is not required of every member and since Dr. Lebell, at the age of 73 is nearing the end of his working career, the imposition of an order of this kind would in practical terms require him to cease his practice entirely. It is understood that the underlying concern is to fashion a remedy that will prevent him from contravening section 23 ever again. However, since he is no longer doing any work for WCB the risk of that occurring is reduced. Dr. Lebell has given his undertaking as a member of the profession that he will not contravene section 23 in the future. However, the Committee believes that if he does choose to obtain an APE, conditions to his doing so should be attached, as set out below.

Costs

[24] As the Saskatchewan Court of Appeal stated in its decision in *Abrametz v Law Society of Saskatchewan*,⁵ the purpose of costs in a professional discipline context is

⁵ 2018 SKCA 37, at para. 44.

“not to indemnify the opposing party but for the sanctioned member to bear the costs of disciplinary proceedings as an aspect of the burden of being a member . . . and not to visit those expenses on the collective membership”. However, the Court of Appeal also stated that this does not necessarily mean full indemnification. Costs should not be so high that they become punitive or that they prevent members from defending themselves. The Court referred with approval to the factors stated by the Nova Scotia Court of Appeal in *Hills v Nova Scotia (Provincial Dental Board)*⁶ as follows:

1. the balance between the effect of the cost award on the member and the profession’s ability to effectively administer the disciplinary process;
2. the respective degrees of success of the parties;
3. cost awards should not be punitive;
4. the other sanctions imposed and the costs associated with them;
5. the relative time and expense of the investigation and hearing with each of the charges on which a finding of guilt is made.

[25] The Professional Conduct Committee has asked for an award of costs that is a full indemnification of all expenses incurred in relation to the investigation and hearing of this case. The Discipline Committee is of the view that a full indemnification is not warranted, because of the costs that would relate to an adjournment that was necessitated at the last minute for medical reasons, the increased cost to the College by virtue of the fact that legal counsel for the PCC is based in Saskatoon, and the increased hearing costs resulting from the COVID-19 strictures in place when the hearing was held on May 21, 2020. In addition, there are costs associated with the other elements of the penalty to be ordered. The Discipline Committee is also mindful of Dr. Lebell’s reduced income and other financial circumstances. The Discipline Committee agrees that a reduction is appropriate and would set the amount of costs at 75% of the actual costs identified by the PCC.

ORDER

[26] For all of the reasons set out above, the Discipline Committee of the Saskatchewan College of Psychologists, pursuant to section 32 of *The Psychologists Act, 1997* orders that:

1. Dr. Lebell is hereby reprimanded;
2. Dr. Lebell shall, within one month after the date of this Order, publish an advertisement in a newspaper in each of Regina and Saskatoon, including the online version of those publications, in a form that is acceptable to the College,

⁶ 2009 NSCA 13.

stating that he has never held an APE and has been disciplined for failing to comply with the March 16, 2018 decision of the Discipline Committee and stating that the decisions of the Discipline Committee and information about the APE can be found on the website of the College;

3. Dr. Lebell is prohibited from communicating a diagnosis within the meaning of section 23 of *The Psychologists Act, 1997* unless he chooses to obtain an authorized practice endorsement, and in that case he shall:

(a) submit a Supervision Agreement and Plan focused on diagnostics to the College for approval; and

(b) practise under supervision for the authorized practice endorsement (APE) from the date on which the Supervision Agreement and Plan described in paragraph (a) are approved by the College until the date on which he successfully completes the APE oral examination, and during that period of time shall submit monthly supervision reports to the College for its approval;

4. Dr. Lebell shall satisfactorily complete an ethics course approved by the Professional Conduct Committee within one year of the date of this Order;

5. Dr. Lebell shall pay to the College, within one year of the date of this Order:

(a) a fine of \$5,000; and

(b) costs in the amount of \$30,740;

6. If Dr. Lebell fails to comply with any of the provisions of paragraphs 2 to 5 of this Order his licence shall thereupon be suspended until he does so; and

7. The Discipline Committee's decision and Order shall be published on the website of the College.

Dated at Regina, Saskatchewan this 21st day of October 2020.

SASKATCHEWAN COLLEGE OF
PSYCHOLOGISTS, DISCIPLINE COMMITTEE

Regan Hart,
Registered Doctoral Psychologist, Chair
On behalf of:
Christel Gee, Public Representative, Member
Gabriela Pitariu, Registered Doctoral Psychologist,
Member

that the decisions of the Discipline Committee and information about the APE can be found on the website of the College;

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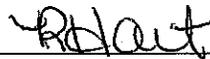
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Dated at Regina, Saskatchewan this 21st day of October 2020.

SASKATCHEWAN COLLEGE OF
PSYCHOLOGISTS, DISCIPLINE COMMITTEE



Regan Hart,

Registered Doctoral Psychologist, Chair

On behalf of:

Christel Gee, Public Representative, Member

Gabriela Pitariu, Registered Doctoral Psychologist,
Member