

IN THE MATTER OF *THE PSYCHOLOGISTS ACT, 1997* AND BYLAWS
AND IN THE MATTER OF A FORMAL COMPLAINT DATED APRIL 23, 2015
AND IN THE MATTER OF A FORMAL COMPLAINT DATED MAY 2, 2016
AGAINST RICHARD LEBELL, REGISTERED DOCTORAL PSYCHOLOGIST, OF
REGINA, SASKATCHEWAN

DECISION
Saskatchewan College of Psychologists
DISCIPLINE COMMITTEE

Discipline Committee Members:

Kendra Nesbitt, Registered Psychologist, Chair
Daniel Ash, Public Representative
Doris Schnell, Registered Psychologist, Member

Karen Prisciak, Q.C., appearing on behalf of the Professional Conduct Committee
Michelle Ouellette, Q.C., appearing on behalf of the Member, Richard Lebell
Merrilee Rasmussen, Q.C., legal counsel for the Discipline Committee

INTRODUCTION

[1] The Discipline Committee convened on Wednesday, January 10, 2017, at the offices of the Saskatchewan College of Psychologists to hear and determine, in accordance with *The Psychologists Act, 1997* (“the Act”), two formal complaints concerning the Member’s practice, dated April 23, 2015 and May 2, 2016. The Member and his counsel appeared by teleconference.

[2] As acknowledged in the Agreed Statement of Facts and Admissions filed by legal counsel for the Member and legal counsel for the Professional Conduct Committee, at all times material to the complaints against him, Dr. Lebell was a member of the Saskatchewan College of Psychologists, licensed to practise in the Province of Saskatchewan subject to the Act, the regulatory bylaws of the College, and the *Canadian Code of Ethics for Psychologists* (“the Code”) and related Saskatchewan College of Psychologists Practice Guidelines (“the Guidelines”).

THE FORMAL COMPLAINTS

[3] The Formal Complaints are as follows:

1. A complaint was made against Dr. Richard Lebell leading to a formal complaint by the Saskatchewan College of Psychologists (hereinafter referred to as “the College”) dated April 23, 2015, alleging Dr. Richard Lebell (the “**First Complaint**”):

Without holding an Authorized Practice Endorsement (APE), examined a client on or about March 20, 2014 for Veteran Affairs Canada and completed a medical questionnaire indicating a medical diagnosis(es) as follows:

Axis I: Post Traumatic Stress Disorder (PTSD)
Axis II: No diagnosis
Axis III: Permanent disability to knee. Ongoing back and ankle pain.
Axis IV: Workplace issues (assessment of psychosocial environmental problems)
Axis V: GAF (current) 60 (Global Assessment of Functioning score – current year)
n/a (Global Assessment of Functioning score – past year)

contrary to the Canadian Code of Ethics for Psychologists, 3rd ed., 2000, (hereinafter referred to as “the Code”) and more specifically Sections III.1 and III.2 and Section 23 of *The Psychologists Act, 1997*, SS 1997, c. P-36.01; and

2. A complaint was made against Dr. Richard Lebell leading to a formal complaint by the College dated May 2, 2016, alleging Dr. Richard Lebell (the “**Second Complaint**”):

Without holding an Authorized Practice Endorsement (APE) he provided a client with a diagnosis of Post Traumatic Stress Disorder contrary to Section 23 of *The Psychologists Act, 1997*, S.S. 1997, c P-36.01, Section 12 of the *Regulatory Bylaws*, Principles III.36 and IV.17 of the *Canadian Code of Ethics for Psychologists* and Sections 1.1, 2.1, 3.11, 18.1 and 18.2 of the *Professional Practice Guidelines of the Saskatchewan College of Psychologists*.

He testified under oath at a court proceeding in a misleading fashion regarding his APE status in that he testified that he had the qualifications necessary to diagnose clients and his lack of an APE was a “system error” of the College of Psychologists contrary to Principles I.23, II.3, III.2 of the *Canadian Code of Ethics for Psychologists* and Sections 4.3, 10.1, 10.16 and 11.31 of the *Professional Practice Guidelines of the Saskatchewan College of Psychologists*.

FACTS

[4] As noted above, the parties submitted an Agreed Statement of Facts and Admissions to the Discipline Committee, the relevant text of which (excluding headings and repetition of the charges and noting the documents that were attached) is set out below with respect to each of the charges contained in the formal complaints:

Jurisdiction

3. Dr. Lebell is, and has been at all times material to this proceeding, registered with the College of Psychologists in Saskatchewan (hereinafter referred to as the “College”), and accordingly, is subject to *The Psychologists Act, 1997*, SS 1997, c. P-36.01 and the *Canadian Code of Ethics for Psychologists*, 3rd ed., 2000 (hereinafter referred to as the “Code”) and the *Professional Practice Guidelines of the Saskatchewan College of Psychologists* (hereinafter referred to as the “Guidelines”). [*A copy of the Certificate of the Registrar of the College confirming Dr. Lebell’s practicing status was attached as Tab A*].

4. Dr. Lebell is the subject of two formal complaints which are comprised of the allegations noted above. The First Complaint was served on Dr. Lebell on April 23, 2015. . . . The Second Complaint was served on Dr. Lebell on May 2, 2016. [*Copies of the formal complaints were attached at Tabs B and C, with proof of service.*]

Background

5. Pursuant to Section 23 of the *Act*, a psychologist can only communicate a diagnosis if he/she has an Authorized Practice Endorsement (APE) on their license. The APE permits a psychologist to communicate a diagnosis identifying, as the cause of a person’s symptoms, a neuropsychological disorder or a psychologically-based psychotic, neurotic or personality disorder.

Authorized practices

23(1) An authorized practice is the communication of a diagnosis identifying, as the cause of a person’s symptoms, a neuropsychological disorder or a psychologically-based psychotic, neurotic or personality disorder.

(2) No person shall perform an authorized practice described in subsection (1) in the course of providing services to an individual unless the person is a practicing member authorized by council pursuant to his or her licence or the bylaws to perform that authorized practice.

(3) Prior to authorizing a member to perform an authorized practice, the council may require that member to successfully complete any examinations as may be prescribed in the bylaws.

(4) This section does not apply to a duly qualified medical practitioner.

6. The Saskatchewan College of Psychologists was established in 2002. Psychologists who were not previously licensed with the Saskatchewan Psychological Association but worked in settings recognized by the College or in private practice could be admitted to the College. This is often referred to as the “grandparenting provision”.

7. The second grandparenting policy specifically referred to the APE. A member grandparented into the College with Full Practice status prior to March 1, 2004 could apply for grandparenting of the APE within three (3) years of their registration date.

8. The APE grandparenting policy stated as follows:

1. A former member of SPA, in good standing, is eligible for an APE upon completion of the appropriate application form and attesting that he/she was performing an APE prior to March 1, 2002.
2. A registered member of SCP who has a “full-practice” license, who was not a former member of SPA but who has practice experience, under a job title, “psychologist”, in a setting exempt under the former “Registered Psychologist Act”, affirmed by a current or former supervisor in the same exempt setting, is eligible for an APE upon completion of the appropriate application form, signed by the applicant and appropriate same current or former supervisor (see Section C, below).
3. An applicant who is not eligible for APE application, under B.1 or B.2, may apply for an APE after becoming a registered member of SCP with a “full-practicing” license, subject to meeting the required supervision, and examining committee, endorsement that the applicant meets all requirements to perform an APE. [*The APE Policy was attached as Tab D.*]
9. Dr. Lebell was not previously licensed with the Saskatchewan Psychological Association; he worked in private practice and, on that basis, was admitted to the College with a Full Practice Doctoral member without an APE on March 1, 2002.
10. Dr. Lebell was not a former member of the Saskatchewan Psychological Association and therefore would have been required to article #3 of the APE grandparenting policy (as referred to in Paragraph 8 herein) within three years of March 1, 2002, being March 1, 2005 [*sic*].
11. Although Dr. Lebell was eligible to apply to obtain an APE through article #3 of the grandparenting policy, he did not do so within three years of his registration or at anytime thereafter.
12. After March 1, 2005 Dr. Lebell was no longer eligible to apply for the APE under the grandparenting policy.
13. Dr. Lebell has never held an APE with his license and therefore was not authorized to communicate a diagnosis with respect to a patient.
14. On August 14, 2003 the College forwarded correspondence to all members, [*a copy of which was attached at Tab E*], notifying them of certain changes made by the Council of the Saskatchewan College of Psychologists at its meeting on July 12, 2003. Included were a policy for “grandparent” applicants who had achieved full practice membership after September 1, 2002 but before March 1, 2004 and a new application form for those who wished to apply for the APE and who fit that status category.
15. The College’s spring 2005 annual report was sent to all members and described changes to APE procedures, including the fact that grandparent applicants could apply for the APE credential during a period of three years from the date of full practice registration. [*A copy of the 2005 annual report was attached as Tab F.*]
16. In November, 2007 Dr. Lebell completed a voluntary disclosure of information form [*which was attached as Tab G*] for the College’s regional directory. In paragraph 3 of this document he acknowledged that he did not have an APE.

17. On July 27, 2009 the College's Registrar, Karen Messer-Engel, spoke by telephone with Dr. Lebell. He acknowledged he did not have the APE credential, was advised as to the process of acquiring it and told that, in the absence of an APE, he is not permitted to convey diagnoses in his practice. [*Ms. Messer-Engel's contact note of July 27, 2009 was attached at Tab H.*]

18. This communication was followed on August 13, 2009 by a letter from the Assistant to the Registrar, Wendy Petrisor, to Dr. Lebell enclosing the documentation required for his application for the APE. [*A copy of this correspondence was attached at Tab I.*]

19. Dr. Lebell then requested a meeting with the College's Registrar, Karen Messer-Engel, which occurred on September 23, 2009. During this meeting, Dr. Lebell and Ms. Messer-Engel again discussed the APE, his lack of same, and the process required to obtain it, as well as Dr. Lebell's confusion about the APE. [*Ms. Messer-Engel's contact notes of this conversation were attached at Tab J.*]

Dr. Lebell's Education and Background

20. Dr. Lebell is a Doctoral Psychologist who received his PhD from Fielding Graduate University in Santa Barbara, California, in 1993. Dr. Lebell's PhD program had an emphasis on Clinical Psychology; the program included intensive clinic training, an internship, a practicum, residency hours, and a clinical case conference, as well as other substantive classes relevant to clinical psychology and the provision of diagnoses. Fielding is a full distance program with intensive on-site weekends. [*A copy of Dr. Lebell's transcript from Fielding Graduate University was attached at Tab K.*]

21. Dr. Lebell was admitted to the Neuropsychology Certificate Program in 2001, where he successfully completed each of the required courses while continuing to practice psychology full time. Dr. Lebell successfully completed all written exams and term papers and oral presentations during the two year training term, but did not successfully complete the oral-examination required at the end of the program. Due to time constraints, he did not take the oral examination again, and so did not obtain his post-doctoral diploma.

22. Dr. Lebell has practiced psychology since 1993. The First Complaint dated April 23, 2015, is the first formal complaint Dr. Lebell has received relating to his practice, aside from a previous complaint that was never pursued.

The First Complaint

23. The subject of the first complaint is a report Dr. Lebell signed on June 2, 2014 and submitted to Veteran's Affairs Canada. In the report, [*a copy of which was attached at Tab L*], a medical diagnosis (Post Traumatic Stress Disorder) is communicated by Dr. Lebell.

24. The First Complaint relates to the fact that a diagnosis was made and conveyed by Dr. Lebell when he did not hold an APE (contrary to Section 23 of *The Psychologists Act, 1997*). As such, he was not authorized to make the diagnosis nor had he demonstrated to the College that he was competent to diagnose Post Traumatic Stress.

The Second Complaint

25. The subject of the second complaint is a diagnosis of Post-Traumatic Stress Disorder (PTSD) made by Dr. Lebell and communicated to a client. Dr. Lebell was not authorized to make the diagnosis nor had he demonstrated to the College that he was competent to make the diagnosis of Post Traumatic Stress.

26. Subsequently, Dr. Lebell testified in the Court of Queen's Bench on November 20, 2014. In that testimony, Dr. Lebell discussed the diagnosis of PTSD that he had previously made. *[Relevant excerpts of the transcript of those Court proceedings was attached at Tab M.]*

27. More specifically, Dr. Lebell said the following from the Court transcript:

(page T41)

Q. Okay. You told my friend – or you agreed with my friend that you did not have an APE endorsement, correct?

A. Correct.

Q. That is a requirement of your College?

A. Correct.

Q. And have you been doing PTSD diagnosis?

A. Yes, I do most of that type of work with worker's – Worker's Compensation, and that's one of – one of my main clients, with Worker's Compensation. They refer people form – to me to do mental health assessments and neuro-psychological assessments. It's all assessment stuff. They be – they approve me to do that.

Q. Okay.

A. And the College, then, doesn't interfere with – with the fact that WCB has the authorization to do that.

(p. T42)

Q. How many PTSD diagnosis do you think you've done in that period of time?

A. 20. They're done as part of the – what they call the mental health assessment.

28. The transcripts indicate Dr. Lebell stated that he "recently" found out that he did not have the APE designation and this was a "system" error with the College. This statement was incorrect.

29. More specifically, Dr. Lebell said the following from the Court transcript:

(p. T15)

Q. So that is a designation that you do not have, correct?

A. I do not have that on paper, per se, but I do have the qualifications to be doing diagnosis because there was an error made in the system.

(p. T28)

Q. So where are your clinical notes? Like I – you say he he'd been diagnosed. It's not on the website. When did you first become aware that your APE wasn't on the website? Would that be yesterday?

A. No.

Q. Or the day before?

A. No, it would be about two weeks or three weeks ago when I – when I received the complaint by a fellow member that – saying that I did an assessment, and I didn't have an APE, and wasn't qualified to do so.

30. The transcripts also indicate that the presiding judge allowed Dr. Lebell to continue with his testimony despite this clarification.

Conclusion

31. Dr. Lebell, through his counsel, acknowledges that he does not, and has not in the past, carried the APE designation as required by Section 23 of *The Psychologists Act, 1997*. He pleads guilty to the charges set out in the formal complaint.

LEGISLATION

[5] The Act defines both professional misconduct and professional incompetence for the purposes of the discipline process. In this case, it is the definition of professional misconduct that is relevant, and the Act defines it as follows:

Professional misconduct

25 Professional misconduct is a question of fact, but any matter, conduct or thing, whether or not disgraceful or dishonourable, that:

- (a) is harmful to the best interests of the public or the members of the college;
- (b) tends to harm the standing of the profession;
- (c) is a breach of this Act or the bylaws; or
- (d) is a failure to comply with an order of the professional conduct committee, the discipline committee or the council;

is professional misconduct within the meaning of this Act.

[6] Where a member is found to be guilty of professional misconduct, the Discipline Committee is authorized to make orders directed at improving the conduct. Section 32 of the Act provides the Discipline Committee with the following authority:

Disciplinary powers

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.

ANALYSIS AND DECISION

[7] The Discipline Committee accepts the guilty pleas provided by Dr. Lebell in the Agreed Statement of Facts in relation to the charges contained in the Formal Complaints. He has acknowledged that the conduct occurred and that the conduct constitutes a contravention of s. 23 of the Act. A breach of the Act is professional misconduct, as set out in clause 25(c) of the Act. The Discipline Committee finds that Dr. Lebell is guilty of professional misconduct as a result of the guilty plea contained in the Agreed Statement of Facts and Admissions.

[8] The Discipline Committee must therefore determine the appropriate consequence to follow as a result of its findings. Section 32 of the Act, as quoted above, sets out the powers of the Discipline Committee where it finds a member guilty of professional misconduct. The range of powers available to the Discipline Committee runs from reprimand to expulsion. The list appears to be designed to give the Discipline Committee as broad a discretion as possible to tailor its order to the needs of the situation, so as to ensure that the disposition of the complaint will accomplish the goal of protecting the public while respecting the interests of members. The

list concludes with a broad power to make any order that the Discipline Committee thinks is “just”.

[9] While the parties have not also presented the Discipline Committee with a joint submission as to penalty, there is nevertheless considerable agreement between them. Counsel for the Professional Conduct Committee requests the Discipline Committee to impose the following penalties:

- a) a reprimand;
- b) a fine of \$4,000 with one year to pay;
- c) an order that the Member cease to communicate diagnoses without an authorized practice endorsement;
- d) an order that the Member notify all patients in respect of whom he has communicated a diagnosis since 2009 [at which time the Registrar advised him personally that he could not communicate a diagnosis without having an APE] that he was not qualified to do so, and that the form of the notice be approved by the Professional Conduct Committee;
- e) an order that the Member also notify all third-party payers in relation to the patients described above, and that the form of the notice be approved by the Professional Conduct Committee;
- f) that the decision and order of the Discipline Committee be published on the College’s website;
- g) actual costs in the amount of \$14,495.59 with one year to pay; and
- h) that the Member be removed from the College register if he fails to comply with any of the terms of the order.

[10] Counsel for the member agrees that a reprimand is appropriate as well as an order that the Member cease to communicate diagnoses without an authorized practice endorsement. She also agrees that the decision and order should be published on the College’s website. She argues that a fine of \$2,000 is more in keeping with previous discipline decisions of the College. Similarly,

she argues that a costs order of \$10,000 is more in keeping with previous decisions. She argues that notifying clients or third-party payers is not appropriate. She asserts that notifying patients could result in a great deal of harm, especially given the involvement of the Workers' Compensation Board (WCB). She says the WCB takes the position that it has jurisdiction in relation to its clients and will not consent to a mass notification. She argues that the potential for harm far outweighs the benefits that would be obtained. With respect to notifying third-party payers, she submits that these bodies have been advised and are aware of this issue and there is no practical benefit to be achieved by an order requiring the Member to do something that will result in further legal difficulty since the WCB has made it clear it will contest such an order.

[11] The Discipline Committee agrees that a reprimand and an order that the Member cease to communicate diagnoses without an authorized practice endorsement are appropriate, as is publication on the College's website.

[12] With respect to the fine, the Committee notes that there are two formal complaints, and thus the maximum fine that can be awarded is \$5,000 with respect to each of them. A fine of \$4,000, or \$2,000 with respect to each complaint, is not out of line with previous discipline decisions. In the case of Vesper Adams, for example, penalty decision dated October 3, 2006, a fine of \$3,000 was imposed for an offence of communicating a diagnosis without having an authorized practice endorsement. In addition, the member was suspended for 30 days. More than a decade later a total fine of \$4,000 for two similar offences is not out of line.

[13] With respect to the costs, the Committee sees no reason why the actual costs incurred by the College in this process should not be awarded. While it is true that the Member cooperated with the development of an agreed statement of facts and admissions thus saving the additional costs to the College of what could otherwise have been a lengthy hearing, nevertheless, the Member persisted in communicating diagnoses over a period of several years, when he was not authorized to do so, and after he had been advised by the College specifically and explicitly that his conduct in this regard was unacceptable. As a result of his persisting in conduct which he knew to be unacceptable, the College ultimately received two complaints. The Act requires the College to investigate those complaints and to hold a discipline hearing if they cannot be

resolved by consent. All of the costs incurred by the College in this case are the direct result of the Member's deliberate decision to ignore the provisions of the Act with respect to communicating diagnoses.

[14] The Committee does agree with counsel for the Member with respect to the issue of time to pay and is prepared to allow a period of 18 months within which to pay both the fine and the costs.

[15] The notification issue is more complicated. Counsel for the Member says the WCB has "jurisdiction" over its clients and won't agree to their being notified of the Member's lack of the APE qualification. However, the Committee has no evidence before it to this effect. The Committee does understand that the WCB has exclusive jurisdiction to determine the issues described in *The Workers' Compensation Act, 2013* and to make determinations with respect to workplace injuries. The Committee also acknowledges that the WCB is at liberty to take advice from whomever it wishes in coming to decisions under *The Workers' Compensation Act, 2013* over which it has jurisdiction. However, the issue that this Committee must address is the conduct of one of the members of the College. The WCB has no jurisdiction to excuse the conduct of a member of the College that is in breach of *The Psychologists Act, 1997*. The Committee is surprised at the suggestion that a public agency such as the WCB would not want to ensure that the psychologists it engages to provide it with advice are in compliance with the legislation under which they are licensed and regulated and authorized to do the work that the WCB engages them to do.

[16] It is to be noted also that the contravention at issue here is a contravention of the Act itself. It is the Legislature of Saskatchewan that has said that no person is entitled to communicate a diagnosis unless that person is either a physician or a member of the Saskatchewan College of Psychologists with an authorized practice endorsement. Neither the WCB nor the College can ignore the requirement that the Legislature has set. The Member has acknowledged this by virtue of the guilty plea he has entered to the formal complaints against him.

[17] The nub of the question concerning notification is whether the individuals who have received professional services from the Member that he was not qualified to provide when he did so, and the WCB and other third-party payers who engaged his services to provide the services in question, are entitled to know that fact. Each benefits decision will have been based on its own individual merits, but an individual whose entitlement to benefits may have been negatively affected by the report provided to the WCB or other third-party payer by the Member may have a case to request a review, or the third-party payer may want to re-examine its decision.

[18] In *Camgoz v College of Physicians and Surgeons of Saskatchewan*¹, the Saskatchewan Court of Queen's Bench listed a number of factors that should be taken into account when assessing the penalty to be imposed as a result of a finding of guilt with respect to a discipline offence, as follows:

1. The nature and gravity of the proven allegations;
2. The age of the offending member;
3. The age of the offended client or patient;
4. Evidence of the frequency of the commission of the particular acts of misconduct;
5. The presence or absence of mitigating circumstances, if any.
6. Specific deterrence;
7. General deterrence;
8. Previous record, if any, for the same, or similar, misconduct; the length of time that has elapsed between the date of any previous misconduct and conviction thereon; and, the member's (properly considered) conduct since that time;
9. Ensuring that the penalty imposed will, as mandated by the Act, protect the public and ensure the safe and proper practice of psychology;
10. The need to maintain the public's confidence in the integrity of the College's ability to properly supervise the professional conduct of its members;
11. Ensuring that the penalty imposed is not disparate with penalties previously imposed in this jurisdiction, particularly, and in other jurisdictions in general, for the same, or similar acts of misconduct.

¹ 1993 CanLII 8952 (SK QB).

The Committee believes that all of these factors have been appropriately addressed in this decision, apart from the factors relating to protection of the public and maintaining public confidence in the profession's ability to properly supervise the conduct of its members.

[19] *Camgoz* was decided in 1993, but the *Camgoz* factors have been taken into account in subsequent judicial decisions and applied, most recently in the case of *College of Physicians and Surgeons of Saskatchewan v Ali*.² In *Camgoz*, Justice Grotzky emphasized that the list of factors was not exhaustive and they were not enumerated in any particular order of importance. He also said that because a particular sentence should be tailored to the specific factual circumstances, the relevance of these factors will vary in application. This approach was confirmed by the Saskatchewan Court of Queen's Bench in *Ali*. That case also addresses the primacy of public protection, given s. 69.1 of *The Medical Profession Act, 1981*, which dictates that public protection takes precedence over concerns such as rehabilitation, treatment and welfare of the member.

[20] *The Psychologists Act, 1997* is based on a somewhat different statutory framework than is *The Medical Profession Act, 1981*. It does not contain a provision like s. 69.1, but public protection is still the over-arching objective. The core mandate of the College as a self-regulating profession is public protection. The Saskatchewan Court of Appeal made this very clear in its decision in *Sydiah v Saskatchewan College of Psychologists*, where it said:

As an initial observation, **there is no dispute that the object of the Act and Bylaws is the protection of the public** and the statute and Bylaws must be interpreted in that context.³ [*emphasis added*]

[21] In this case, there is no conflict with considerations involving the Member's rehabilitation or welfare if former patients are notified that he was not qualified to communicate a diagnosis about them. The Committee can appreciate that having to provide such a notice may well be embarrassing for the Member but does not see that as a consideration to be taken into account against what the Committee views as the patient's right to know. In addition, the

² 2016 SKQB 42.

³ 2015 SKCA 113, at para. 11.

Committee is of the view that the integrity of the psychology profession is undermined if one of its members is allowed to keep it quiet that for almost 10 years he persisted in performing a professional service that he was not authorized to perform when he was aware that he was not authorized to perform it.

[22] With this direction in mind, and considering the authority granted to the Discipline Committee under s. 32 of the Act to make orders, the Committee concludes that it must make an order that includes all of the actions reasonably necessary to achieve the objectives indicated in *Camgoz* and in particular to ensure, to the extent it is reasonably possible, public protection and the integrity of the profession. For all these reasons, the Committee agrees that the Member should be required to notify patients that he was not qualified to communicate a diagnosis concerning them at the time that he did. The Committee also agrees that third-party payers should be notified. If they already know, as has been submitted, this is not a practical concern.

ORDER

[23] For all of the reasons set out above, the Discipline Committee of the Saskatchewan College of Psychologists therefore finds Dr. Richard Lebell guilty of professional misconduct and, pursuant to section 32 of *The Psychologists Act, 1997*, orders that:

1. Dr. Lebell is hereby reprimanded;
2. Dr. Lebell shall:
 - a) pay a fine of \$4,000.00 within 18 months of the date of this Order;
 - b) cease communicating diagnoses contrary to section 23 of *The Psychologists Act, 1997*;
 - c) within three months of the date of this Order, send a written notice to all patients in respect of whom he has provided a diagnosis contrary to s. 23 of *The Psychologists Act, 1997* since July 2009 that he did not have an authorized practice endorsement and was therefore not qualified to communicate that diagnosis, and shall obtain the prior approval of the Professional Conduct Committee to the form of the written notice to be provided before sending it;
 - d) within three months of the date of this Order, send a written notice to all third party payers relating to patients in respect of whom he has provided a diagnosis

contrary to s. 23 of *The Psychologists Act, 1997* since July 2009 that he did not have an authorized practice endorsement and was therefore not qualified to communicate that diagnosis, and shall obtain the prior approval of the Professional Conduct Committee to the form of the written notice to be provided before sending it; and

e) pay the costs incurred by the College in this discipline proceeding to the College in the amount of \$14,495.59 representing the costs of the Professional Conduct Committee and Discipline Committee within 18 months of the date of this Order,

3. If Dr. Lebell fails to comply with any of the provisions of paragraph 2 his licence to practice shall be suspended until he does so.

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

Dated at Regina, Saskatchewan this 16th day of March 2018.

SASKATCHEWAN COLLEGE OF PSYCHOLOGISTS,
DISCIPLINE COMMITTEE



Kendra Nesbitt,
Registered Psychologist, Chair