

**IN THE MATTER OF  
THE PARAMEDICS ACT AND IN THE MATTER OF A COMPLAINT AGAINST  
JAMIE SWAN, A MEMBER OF THE SASKATCHEWAN COLLEGE OF  
PARAMEDICS**

**DECISION  
Saskatchewan College of Paramedics  
DISCIPLINE COMMITTEE**

Discipline Committee Members:

Olumide Adetunji, LL.B, LL.M, Public Representative, Chair  
Donna Morris, PCP  
Chad McCord, ICP

Karen Prisciak, Q.C., Legal Counsel to the Discipline Committee,  
Merrilee Rasmussen, Q.C., Legal Counsel to the Professional Conduct Committee,  
Chris Boychuk, Q.C., Legal Counsel for Jamie Swan.

**A. INTRODUCTION**

1. On or around September 28, 2016, the Saskatchewan College of Paramedics (the “**College**”) received a complaint from AP (the “**Complainant**”) regarding the conduct of Ms. Jamie Swan, a member of the College (the “**Member**”) while the Member was employed as a primary care paramedic with WPD Ambulance. As contemplated under section 27(1) of *The Paramedics Act* (the “**Act**”), the Professional Conduct Committee (“**PCC**”) conducted an investigation, and this culminated in the PCC issuing a written report dated March 30, 2017 (the “**Report**”) to the Discipline Committee of the College (“**Discipline Committee**”) recommending that the Discipline Committee hear and determine the formal complaint against the Member set out in the written report.
2. A Notice of Discipline Hearing dated November 22, 2017 (the “**Notice**”) was issued to the Member by the Executive Director of the College advising that the Discipline Committee will hear and determine the formal complaint against the Member set out in Schedule A of the Notice (the “**Formal Complaint**”) on December 8, 2017. The Formal Complaint alleges that:

- a. The Member is guilty of professional misconduct contrary to subsections 25(a),(b) and (c) of *The Paramedics Act, 2007*, in that she did breach the privacy of a patient by taking a picture of the patient without the patient's consent.
3. The Discipline Committee convened on December 8, 2017 *via* phone conference, as agreed by the Member and PCC (the "**Parties**"), to hear and determine the Formal Complaint against the Member (the "**Hearing**"). At the Hearing, both the legal counsel for the Member and the legal counsel to the PCC acknowledged that the Discipline Committee was properly constituted and had jurisdiction to conduct the Hearing.

## **B. FACTS**

4. At the Hearing, the Parties formally submitted to the Discipline Committee an Agreed Statement of Facts and Documents dated November 21, 2017 ("**Agreed Facts Document**") and advised that the Member was pleading guilty to the Formal Complaint. The relevant parts of the Agreed Facts Documents are noted below:
  - a. Jamie Swan has been a Member of the College since January 28, 2014. She continues to work as a paramedic with WPD Ambulance. She has no discipline history with the College
  - b. On August 10, 2016, at approximately 14:02 hours, WPD received a call to respond to the [REDACTED] in Lloydminster regarding a female patient, later known to be the Complainant, with an amputated finger. The Member and another WPD paramedic were dispatched and arrived at approximately 14:09 hours
  - c. Upon arrival, medical staff on site advised that the Complainant had caught her hand in a piece of machinery, resulting in partial amputation. The on-site medical staff had already controlled the bleeding and bandaged the Complainant's hand. After initial assessment and treatment by the Member and other attending paramedics, the Complainant was placed into an ambulance for transport to Lloydminster Hospital for further treatment. Upon arrival at Lloydminster Hospital at approximately 14:37 hours, the Complainant's care was transferred to the hospital nursing staff
  - d. At 18:23 hours the same day, WPD received notice that the Complainant was to be transferred to Edmonton via Medevac. The Member and her partner attended at Lloydminster Hospital at 18:24 hours to transport the Complainant to the airport.
  - e. While preparing to transport the Complainant, the Member accompanied the attending orthopedic surgeon into the Complainant's hospital room. A friend of the Complainant, [REDACTED] was also present in the room. The surgeon removed the bandaging and exposed the injury to perform an assessment. At that time, the surgeon explained to the Complainant that he would be taking a picture of her injury,



and that the picture would be sent to the physicians in Edmonton so they could be prepared to care for injury upon her arrival.

- f. This was the first time the Member had seen the injury, as the Complainant's hand had already been bandaged by medical staff prior to her arrival at the [REDACTED]. At that time, the Member had not had any previous experience with any similar injury.
- g. While the Complainant's bandages were removed and her hand exposed, the Member took a photograph of the injury with her personal phone (the "Photograph"), surreptitiously, without the Complainant's knowledge or consent.
- h. The Photograph captured the injury and a portion of the Complainant's arm. The Photograph did not capture the Complainant's face or any other identifying features or objects.
- i. Five other employees of WPD were shown the Photograph by the Member directly from the screen of her cell phone the day it was taken, August 10, 2016. Three of those employees were other on-duty paramedics who were covering calls for the City of Lloydminster that day. Other than these five employees, no one else was shown the Photograph. None of these employees, or anyone else, were forwarded a copy of the Photograph.
- j. On August 11, 2016, [REDACTED] attended at WPD and made a formal complaint about the Member's actions. The Member was on leave from August 11 to 14, but immediately upon her return to work on August 15, 2016, her supervisor met with her to notify her of the Complaint and to investigate the events surrounding the production of the Photograph. At this meeting, the Member deleted the Photograph from her cell phone.
- k. The Member's reason for taking the Photograph was that she intended to use it for educational purposes. As the injury was unlike any she had seen before, she thought it would be useful as a tool to discuss and educate her fellow paramedics on how best to treat such an injury.
- l. The Member admits to taking the Photograph without the Complainant's consent.
- m. The Member has advised the College that there are no other copies of the Photograph.
- n. The same complaint made to the Alberta College was considered and a decision rendered on August 14, 2017 by that College's Hearing Tribunal.
- o. The Member has fully complied with the Alberta order. She sent the letter of apology to the Complainant as required. She has completed the required on-line privacy course and has paid the fine to the Alberta College as ordered.

- p. The Member agrees that her conduct in taking the Photograph as described above constitutes professional misconduct, contrary to clause 25(c) of *The Paramedics Act*, in that it is a breach of item 5 of the paramedic's responsibilities to the patient as set out in the Code of Professional Conduct and thus a breach of the College's bylaws.
- q. The Member enters a plea of guilty to the Formal Complaint.

5. In light of the Member's admission and plea set out above, the Discipline Committee did not deem it necessary to request the Parties to call evidence at the Hearing.

### **C. ISSUES FOR DETERMINATION**

6. The Discipline Committee has identified the following issues for determination:
- a. Whether, in light of the facts and circumstances of this case, the Discipline Committee finds the Member guilty of professional misconduct as alleged in the Formal Complaint?
  - b. If the answer to the above is in the affirmative, whether the Discipline Committee accepts the joint penalty proposed by the Parties in the Agreed Facts Document as appropriate in the circumstances?

### **D. LEGISLATION AND BYLAW**

7. The Formal Complaint alleges that the Member is guilty of professional misconduct in that she did breach the privacy of a patient by taking a picture of the patient without the patient's consent. Section 25 of the Act provides that professional misconduct "is a question of fact, but any matter, conduct or thing, whether or not disgraceful or dishonourable, is professional misconduct within the meaning of this Act if:
- a. it is harmful to the best interests of the public or the members;
  - b. it tends to harm the standing of the profession;
  - c. it is a breach of this Act or the bylaws;
  - d. it is a failure to comply with an order of the professional conduct committee, the discipline committee or the council."
8. Further, section 10(1) of the *Saskatchewan College of Paramedics – Regulatory Bylaws* provides that "Every member shall comply with the Code of Professional Conduct attached as appendix A". The Code of Professional Conduct contains provisions relating to professional standards for members of the College. It is divided into three broad headings namely: (a) "*Principles of Ethical Behavior (sic) for All Members*", (b) *Responsibilities to the Patient*, and (c) *Responsibilities to the Profession*. Item 5 of the provisions under the heading



*“Responsibilities to the Patient”* provides that all members shall “protect and maintain the patient’s safety, dignity and privacy.”

9. It should be noted that section 49 of the Act also imposes a direct obligation on members to comply with the Act and the bylaws. It provides that *“Every member shall comply with this Act and the bylaws.”* By this, it is clear that all members of the College, including the Member, are bound by the provisions of not just the Act but also the Code of Professional Conduct, which is part of the bylaws of the College.
10. Section 30(1) of the Act empowers the Discipline Committee to hear formal complaints against members and to “determine whether or not the member is guilty of professional misconduct or professional incompetence.” Further, section 31(1) of the Act provides that:
  - 31(1) Where the discipline committee finds a member guilty of professional misconduct or professional incompetence, 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’s licence be suspended for a specified period;
    - (c) an order that the member’s licence be suspended pending the satisfaction and completion of any conditions specified in the order;
    - (d) an order that the member may continue to practice, but 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 medical or other treatment or counselling or both
    - (e) an order reprimanding the member;
    - (f) any other order that the discipline committee considers just.
11. Section 31(2)(a)(ii) of the Act further provides that, in addition to any of the orders above, the Discipline Committee may order that the member “pay to the college, within a fixed period, 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 costs of legal services and witnesses.”

## **E. ANALYSIS AND DECISION**

Issue 1: *Whether, in light of the facts and circumstances of this case, the Discipline Committee finds the Member guilty of professional misconduct as alleged in the Formal Complaint?*

12. The Act and the bylaws, among other things, set up a regulatory scheme whereby persons intending to become members of the College and work as paramedics in Saskatchewan can apply for appropriate licences to enable them carry on the activities authorized by such licences within the framework of the Act and the bylaws. In furtherance of that objective,

section 4(2)(a) of the Act provides that part of the objects of the College is to “regulate the practice of the profession and govern the members in accordance with this Act and the bylaws.”

13. The making of an application for membership of the College is a voluntary act by a person who chooses to engage in a profession that requires adherence to professional standards of conduct and involves regulation. Once a person becomes a member of the College, such person, apart from now being vested with all the rights and privileges associated with membership, becomes subject to all the duties, obligations and standards applicable to members of the College, including an acceptance that the College may hold him or her accountable for any departures from the requirements of the Act and the bylaws. As noted by Wagner J in the Supreme Court decision of *La Souveraine, Compagnie d'assurance générale v. Autorité des marchés financiers*, [2013] 3 SCR 756 at para. 49, (“*La Souveraine*”) “[t]hose who engage in regulated activities agree in advance to adhere to strict standards, and they accept that they will be rigorously held to those standards, which are typical of such spheres of activity.”
14. While *La Souveraine* was decided in the context of a regulatory scheme different from the one that governs paramedics in Saskatchewan, the comment by Wagner J, noted above, is particularly instructive in this matter. As already highlighted in the provisions of the Act and bylaws noted above, paramedics in Saskatchewan are subject to professional standards of conduct in the practice of their profession, including in their dealings with patients. This is for good reason. Paramedics’ interactions with patients, in many instances, are typically in the context of tragic or traumatic incidents, where the patient is considered particularly vulnerable. In these situations, patients put their trust in the medical team – which includes the attending paramedics – that they would be receiving the undivided attention of these professionals in the course of providing care. The College expects no less. The Code of Professional Conduct makes it clear that members “shall protect and maintain the patient’s safety, dignity and privacy”.
15. In the Agreed Facts Document, as quoted in paragraph 4(g) above, the Member admits to surreptitiously taking the Photograph “without the Complainant’s knowledge or consent.” This is the gravamen of the charge against the Member as set out in the Formal Complaint. Also, in paragraph 4(p) above, the Member admits that her conduct in taking the Photograph constitutes professional misconduct, contrary to clause 25(c) of the Act, in that it is a breach of item 5 of the paramedic’s responsibilities to the patient as set out in the Code of Professional Conduct and thus a breach of the College’s bylaws. The said item 5, as previously noted, provides that all members shall “protect and maintain the patient’s safety, dignity and privacy.”
16. The Discipline Committee agrees with and accepts the Member’s admission that her conduct in taking the Photograph without the Complainant’s consent or knowledge is a violation of item 5 of the Code of Professional Conduct set out in Appendix A of the bylaws. A paramedic attending to a patient is required to “protect and maintain the patient’s safety, dignity and privacy.” The Member’s conduct, therefore, in surreptitiously taking the



Photograph is a violation of the Complainant's privacy and amounts to a departure from the standards of conduct the College expects of its members as set forth in its bylaws.

17. The Discipline Committee further notes that in surreptitiously taking the Photograph in the course of providing patient care, the Member's conduct would seem to indicate that she was not giving full and undivided attention to the Complainant's care, thereby potentially putting the Complainant's safety at risk. As noted above, members of the public trust that paramedics providing patient care would give undivided and full attention to such patients. Conduct which undermines or erodes this trust is harmful to the best interest of the public and tends to harm the standing of the profession
18. The Discipline Committee, therefore, accepts the Member's guilty plea to the Formal Complaint. By virtue of subsection 25(c) of the Act, a breach of the Act or the bylaws is professional misconduct. Accordingly, the Discipline Committee finds the Member guilty of professional misconduct by reason of her violation of the bylaws, viz item 5 of the Code of Professional Conduct.
19. In light of the finding of professional misconduct against the Member, the next issue is the determination of the appropriate penalty.

**Issue 2:** *If the answer to the above is in the affirmative, whether the Discipline Committee accepts the joint penalty proposed by the Parties in the Agreed Facts Document as appropriate in the circumstances?*

20. Section 31(1) of the Act, as highlighted above, sets out the different orders that the Discipline Committee can make where it finds a member guilty of professional misconduct. Section 31(1)(f) of the Act contains an omnibus clause that allows the Discipline Committee to make "any other order that the discipline committee considers just."
21. The Member and PCC made the following joint submission to the Discipline Committee as regards the penalty or orders to be imposed:
  - a. The Member complete the SCoP HIPA Bootcamp course provided by the Executive Director of the College, at her own cost, within six months of the date of the Discipline Committee's Order;
  - b. The Member prepare an essay discussing the issue of confidentiality and what it means to the paramedic profession, both in direct patient contact and otherwise, which essay is to contain a minimum of 1,000 words and contain at least three formal references to authorities, and provide that essay to the Chair of the Professional Conduct Committee within two months of the date of the Discipline Committee's Order;

- c. The Member shall pay the sum of \$500.00 to the College as a contribution towards the cost of investigating the complaint against her, to be paid within 30 days of the date of the Discipline Committee's Order; and,
  - d. if the Member fails to comply with any of the provisions of the Discipline Committee's Order within the time provided, that her licence shall be suspended on and from that date and until the provision of the Order is complied with.
22. At the Hearing, the Discipline Committee sought clarification on the purport of the recommended order in paragraph 21(b) requiring the Member to prepare an essay for submission to the Chair of the PCC. In particular, the Discipline Committee wanted to know if the Chair of the PCC was expected to assess or grade the essay in any way. Legal counsel to the PCC advised that the purport of that order was to provide a learning opportunity for the Member to become more familiar with privacy and confidentiality requirements as it pertains to paramedics.
23. Also, legal counsel to the PCC confirmed that the Chair of the PCC was not required to grade, assess or do anything with the essay upon receiving it from the Member. Legal counsel for the Member concurred with the explanations provided by the legal counsel to the PCC on this and had nothing to add. Both legal counsel were agreeable to the Discipline Committee revising paragraph 21(b) above to reflect the explanations, in the event that the Discipline Committee accepts the proposed joint submission as to disposition. Additionally, both legal counsel were open to the idea of the Discipline Committee requiring the Member to submit the completed essay at a specified time after completing the course mentioned in paragraph 21(a).
24. In *Rault v. Law Society of Saskatchewan* 2009 SKCA 81, the Saskatchewan Court of Appeal held that a discipline committee must consider joint submissions on penalty unless it can be demonstrated that they are unfit, inappropriate, unreasonable and/or contrary to the public interest. See also, *Pankiw v. Chiropractors' Association of Saskatchewan* 2009 SKQB 268.
25. The Discipline Committee has carefully considered the joint submissions of the Parties as to disposition and is of the view that the recommended sanctions are reasonable and appropriate in the circumstances. While the conduct of the Member clearly fell short of the standards required by the College, the Discipline Committee notes that the proposed sanctions serve to protect the public interest in that they demonstrate to members of the College and the public that such conduct will not be condoned. Further, the sanctions serve as a general deterrent to dissuade other members from acting in a similar way.
26. Also, in requiring the Member to take the course referenced in 21(a), the recommended order aims to provide a learning opportunity to the Member to guide future conduct as it pertains to privacy and confidential matters. The Discipline Committee notes that the Member was also sanctioned in Alberta for unprofessional conduct as a result the same incident, and the Member indicated in the Agreed Facts Document that she had fully complied with the Alberta order.



27. In light of the above, and for the reasons highlighted, the Discipline Committee does not see any reason to depart from the joint submissions on penalty.

**F. ORDER**

28. As a result of the finding of professional misconduct against the Member, the Discipline Committee, in exercise of its powers under subsections 31(1) and (2) of the Act, hereby orders as follows:

- a. The Member shall complete *The Health Information Protection Act* (“**HIPA**”) Bootcamp course (“**HIPA Bootcamp Course**”) provided by the Executive Director of the College, at the Member’s own cost, within six months of the date of this Order;
- b. Not later than two months after completing the HIPA Bootcamp Course, the Member shall prepare an essay discussing the issue of confidentiality and what it means to the paramedic profession, both in direct patient contact and otherwise, which essay is to contain a minimum of 1,000 words and contain at least three formal references to authorities. The Member shall provide the completed essay to the Chair of the Professional Conduct Committee who shall merely receive the essay and is not to assess, review, evaluate or in any way grade the essay. The Chair of the PCC shall shred the essay within three (3) business days of its receipt from the Member.
- c. The Member shall pay the sum of \$500.00 to the College as a contribution towards the cost of investigating the Complaint against her. This amount is to be paid within 30 days of the date of this Order; and,
- d. If the Member fails to comply with any of the provisions of the aforementioned Orders within the respective times provided, her licence shall be suspended on and from the applicable compliance date for the relevant Order and until the provision of such Order is complied with.

Dated at the City of Regina in the Province of Saskatchewan this 7<sup>th</sup> day of February 2018



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**Olumide Adetunji, LL.B, LL.M**  
Chair of the Discipline Committee