

Saskatchewan College of Paramedics and Vidreiro
Discipline Committee Decision

IN THE MATTER OF *THE PARAMEDICS ACT AND BYLAWS* AND IN THE MATTER OF
A COMPLAINT AGAINST CARLOS VIDREIRO

DECISION

Discipline Committee of the Saskatchewan College of Paramedics

Discipline Committee Members:

Jamie Struthers, Q.C., Public Representative, Chair
Donna Morris, PCP, Member
Braden White, ACP, Member

Legal Counsel for the Discipline Committee: Merrilee Rasmussen Q.C.
Legal Counsel for the Professional Conduct Committee: Roger Lepage

INTRODUCTION:

[1] The hearing by the Discipline Committee of the Saskatchewan College of Paramedics (the "College") into the complaints against Carlos Vidreiro, a Member of the College, was convened in the Travelodge, Regina, Saskatchewan, at 9:30 a.m. on October 20, 2014, being the location, time and date set out in the Notice of Formal Complaint, dated August 7, 2014.

[2] The Member was not present at the hearing, nor was he represented. The Notice of Formal Complaint was sent to the Member by email on August 12, 2014. It was also sent to the Member by registered mail on the same date to the address of the Member as contained in the College's Register. The registered letter was returned by the post office marked "refused" and a handwritten note on the envelope said "no Carlos at Holm St" (the letter was addressed to an address on Holm Street).

[3] Subsection 30(1) of *The Paramedics Act* authorizes the Discipline Committee to proceed with a hearing in the absence of the member to whom the complaint relates on proof of service of the formal complaint and the date, time and place of the hearing. Section 50 of the Act provides for service of documents. It states that service can be effected by personal service or by registered mail. Subsection 50(3) deems a notice sent by registered mail to the last business or residential address known to the Executive Director to be served on the seventh day following its mailing, unless the person to whom it was mailed establishes that he or she did not receive it or received it at a later date.

[4] Although Counsel for the Professional Conduct Committee stated that the College viewed service by email to be sufficient, the Discipline Committee does not agree. Section 50 of the Act does not permit service to be by email, unless ordered by a court on an application for

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substituted service. However, even though the envelope containing the formal complaint and the notice of the hearing was returned, it is nevertheless deemed to have been served by virtue of subsection 50(3). The purpose of this provision is to prevent a member from stonewalling a discipline proceeding by refusing to accept receipt of registered mail. The Discipline Committee accepts that the formal complaint and notice of hearing were properly served on the Member as required by subsection 30(1) of *The Paramedics Act* and that it may therefore proceed with the hearing in the absence of the Member.

[5] The Discipline Committee heard testimony from Dale Backlin, who is the Investigation and Research Coordinator and Deputy Registrar of the College. During the course of the hearing the Discipline Committee received a binder of documents in evidence, which included the following:

- Tab 1: Notice of Formal Complaint, including the notice of the date, time and place of the hearing, dated August 7, 2014
- Tab 2: Affidavit of Service of Notice of Formal Complaint, dated September 10, 2014
- Tab 3: Affidavit of Service of copies of documents to be filed as exhibits, dated October 1, 2014
- Tab 4: Extract from College Register showing Member's address as reported by him
- Tab 5: Written complaint provided to College re Member, dated July 24, 2013
- Tab 6: Cypress Health Region Policy re Controlled Substances
- Tab 7: Cypress Health Region Occurrence Report dated July 12, 2013
- Tab 8: Email from Complainant to manager dated July 13, 2013
- Tab 9: Email from manager to Member dated July 13, 2014
- Tab 10: Doctor's note re Complainant
- Tab 11: Doctor's note re Complainant
- Tab 12: Report on Findings by manager dated July 15, 2013
- Tab 13: Statement by Member to manager date stamped received July 17, 2013
- Tab 14: Dale Backlin's notes of telephone conversation with pharmacy manager on July 24, 2013
- Tab 15: Email from pharmacy manager to Dale Backlin dated August 12, 2013
- Tab 16: Letter from Dale Backlin to Member dated October 4, 2014
- Tab 17: Letter from Dale Backlin to Tom Pickering re Member dated October 4, 2013
- Tab 18: Letter from Dale Backlin to Greg Dunn re Member dated October 4, 2013
- Tab 19: Envelope to Member returned by post office
- Tab 20: Email exchange with Member by College official re updating address dated October 25, 2013
- Tab 21: Cypress Health Region Narcotic Control Sheet dated July 2013
- Tab 22: Letter from Dale Backlin to Member dated December 6, 2013
- Tab 23: Dale Backlin's notes of telephone conversation with Tom Pickering on January 21, 2014

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- Tab 24: Dale Backlin's notes of telephone conversation with Member on February 12, 2014
- Tab 25: Letter from Dale Backlin to Member dated March 31, 2014
- Tab 26: Authorization form addressed to Christian Wishnousky
- Tab 27: Authorization form addressed to Ross Bale
- Tab 28: Authorization form addressed to Peter Dundas
- Tab 29: Dale Backlin's notes of telephone conversation with Jeff Sawchuk on April 1, 2014
- Tab 30: Dale Backlin's notes of telephone conversation with Ross Bale on April 1, 2014
- Tab 31: Dale Backlin's notes of telephone conversation with Christian Wishnousky on April 1, 2014
- Tab 32: receipt for registered mail to Tom Pickering
- Tab 33: receipt for registered mail to Greg Dunn
- Tab 34: receipt for registered mail to Member
- Tab 35: receipt for registered mail to Member
- Tab 36: Envelope to Member returned by post office
- Tab 37: Letter from Dale Backlin to Member dated May 14, 2014
- Tab 38: Dale Backlin's notes of telephone conversation with Member on May 15, 2014
- Tab 39: Dale Backlin's notes of telephone conversation with Joy Pritchard, Ontario Ministry of Health on May 29, 2014
- Tab 40: Dale Backlin's notes of telephone conversation with Alberta College of Paramedics on May 29, 2014
- Tab 41: Dale Backlin's file notes on May 30, 2014

THE FORMAL COMPLAINT:

- [6] The Notice of Formal Complaint served on the Member contained the following charges:

Charge Number 1

You, Vidreiro, are alleged to be guilty of professional misconduct contrary to section 25 of *The Paramedics Act, 2007*, c. P-0.1, in that between March 31, 2014 and May 30, 2014, you refused to sign three Authorization for Release of Information forms sent to you by the SCoP as part of its investigation of a complaint against you for professional incompetence and misconduct. Despite an initial letter sent to you on March 31, 2014, a second letter sent to you on May 14, 2014, and a telephone conversation of May 15, 2014 requesting the return of the signed authorization forms, you have failed to provide true and complete information to the SCoP regarding reports required by it.

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Charge Number 2

You, Vidreiro, are alleged to be guilty of professional misconduct contrary to section 25 of *The Paramedics Act, 2007*, c. P-0.1, in that between October 4, 2013 and May 30, 2014, you failed to inform the SCoP of your most current address for purposes of communication between you and the SCoP.

Alternatively, if you did provide the SCoP with your most current address for purposes of communication between you and the SCoP, you failed to accept the registered letters sent to you by the SCoP on October 4, 2013, on March 31, 2014, and on May 14, 2014.

[7] The Notice of Formal Complaint also contained section 25 of the Act being the definition of professional misconduct, section 50 of the Act relating to service of documents, clause 8(1)(g) of the regulatory bylaws relating to the Professional Conduct's Committee ability to request information, section 10 of the regulatory bylaws requiring members to comply with the Code of Professional Conduct contained in the Appendix to those bylaws, ad provisions of the Code relating to a member's responsibilities to the profession. In addition, the Notice of Formal Complaint contained information described as particulars of the professional misconduct alleged.

FACTS:

[8] The College received a written complaint from a colleague of the Member alleging professional misconduct on July 24, 2013.¹ The written complaint related to an incident that had occurred on July 12, 2013. The complainant also filed an occurrence report with their employer on July 12, 2013.² As a result of receiving the written complaint, the Professional Conduct Committee (PCC) initiated an investigation into it, as required by the Act. Dale Backlin conducted that investigation on behalf of the PCC by interviewing witnesses and obtaining documentation from the employer.

[9] Mr. Backlin sent a letter to the Member dated October 4, 2013, advising the Member of the written complaint the College had received and asking the Member to provide his response.³ This letter was sent to the Member by email and by registered mail. On December 6, 2013, the Member provided his response by letter, which indicated a return address that was different from the address that had been previously contained in the College's records and to which the October 4, 2013 letter had been sent.⁴ The Member's address was changed in the College Register on December 3, 2013.⁵ These events indicate that the Member received the October 4, 2013 letter to

¹ Tab 5.

² Tab 7.

³ Tab 16.

⁴ Tab 22.

⁵ Tab 4. The computer change log indicates that the address was changed on this date by someone using the member's unique login number.

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him from the College since he responded to it, and that he changed his address with the College some three days prior to sending his reply to the College, which contained the new address.⁶

[10] Mr. Backlin spoke to the Member by telephone on February 12, 2014 and advised the Member that the Employer had indicated to Mr. Backlin that the matter of the incident that gave rise to the written complaint was still considered to be "open" because the Member was not responding to the Employer about the matter. The Member was of the view that the matter had been resolved and indicated that he would look into this.⁷

[11] Mr. Backlin continued the investigation on behalf of the PCC by contacting three of the Member's previous employers, who were located in Manitoba and Ontario. They required the Member's consent to the release of information about his employment with them. Mr. Backlin sent authorization forms to the Member for his signature under cover of a letter dated March 31, 2014.⁸ This letter was sent to the Member's new address but was nevertheless returned to the College marked "unclaimed" by the post office. Another letter was sent by the College to the Member dated May 14, 2014 again asking him to sign the authorization forms.⁹ Both the March 31 and May 14 letters were also sent to the member via email.

[12] Mr. Backlin reached the Member by telephone on May 14, 2014. The Member told him he would not sign the authorization forms, he referred to privacy legislation and said that he had consulted a lawyer.¹⁰

THE LEGISLATION:

[13] Section 25 of *The Paramedics Act* defines the term "professional misconduct" as follows:

25 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; or

⁶ There was also an email exchange between the Member and an employee of the College on October 25, 2013 about his changing his address because at that time correspondence sent to the Member at the address on the Register had been returned.

⁷ Tab 24.

⁸ Tabs 25 to 28.

⁹ Tab 37.

¹⁰ Tab 38.

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(d) it is a failure to comply with an order of the professional conduct committee, the discipline committee or the council.

[14] Section 10 of the Regulatory Bylaws of the College requires that each member comply with the Code of Professional Conduct, which is attached to those Bylaws as Appendix A. The Code sets out principles of ethical behaviour and responsibilities to the profession. A breach of the Code is therefore a breach of the Regulatory Bylaws and thus constitutes professional misconduct as defined in the Act. In addition, any conduct that can be objectively described as being harmful to the best interests of the public or the members or that brings the standing of the profession into disrepute is also professional misconduct as defined.

SUBMISSIONS OF THE PCC:

[15] Counsel for the PCC submits that the Member has failed to co-operate with the PCC in its investigation, which a member is obliged to do. He referred to several cases for the proposition that a person who is a member of the College is required to co-operate with an investigation into his or her conduct. These cases are discussed below.

[16] In respect of charge 1, counsel submits that it was appropriate for the PCC to obtain information from previous employers outside Saskatchewan to determine if there was a "pattern of behaviour" and that the Member was required to "respond in some fashion" to the request to sign. Counsel argued that the Member could not just refuse to sign, he had to provide a proper legal argument as to why he would not sign.

[17] In respect of charge 2, counsel argues either that the Member did not keep the College informed of his current address or, alternatively, that he refused to accept registered mail that was sent to him.

ANALYSIS:

[18] The Discipline Committee is not persuaded that there is a general obligation on a member of the College to co-operate with an investigation into the member's conduct. Most of the cases to which the Committee was referred by counsel for the PCC do not deal with a general obligation to co-operate, absent a specific statutory requirement to that effect:

- *Scheerer v. Waldbillig*¹¹ – This is an Ontario case involving a challenge to a decision to decertify a paramedic and does not discuss or address the issue of a failure to co-operate;
- *Kaburda v. College of Dental Surgeons of B.C.*¹² – Although there is a comment in the decision about the member taking a long time to respond to College in

¹¹ 265 D.L.R. (4th) 749; 2006 CLB 765; 146 A.C.W.S. (3d) 5; 208 O.A.C. 29 (Ont. S. Ct.).

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relation to complaints made against him, there was no charge and therefore no finding that failure to respond was professional misconduct;

- *Macdonald v. Institute of Chartered Accountants of British Columbia*¹³ – This case related to a member's failure to comply with a formal agreement that he had entered into with the College to provide certain information and his failure to do so was thus a breach of that agreement. It also appears that this may have been a breach of a specific requirement of the BC legislation;
- *James v. Alberta Real Estate Council*¹⁴ – In this case the member was found to be in breach of ss. 32(4) of the Alberta *Real Estate Act*, which specifically requires members to co-operate with an investigation¹⁵;
- *Basu v. College of Physicians and Surgeons (Sask.) (No. 3)*¹⁶ – This was a case where the member applied for registration in Alberta and provided false information on the registration application. When this was discovered, her licence was suspended in Alberta and discipline proceedings were commenced in Saskatchewan. The Saskatchewan court found that she had deliberately provided false information to the Alberta College and therefore she was guilty of professional misconduct;
- *Lambert v. College of Physicians and Surgeons of Saskatchewan*¹⁷ – This is a Saskatchewan case of a physician who failed to provide patient files to the College in breach of specific provisions in *The Medical Profession Act* and does not support a conclusion that there is a general duty to co-operate.

¹² 2000 BCSC 481 (CanLII).

¹³ 2010 BCCA 492.

¹⁴ 136 A.C.W.S. (3d) 400; 2004 CLB 7452; [2004] A.J. No. 1374; 2004 ABQB; 370 A.R. 247 (AB QB).

¹⁵ The provision is as follows:

(4) A person who is required under subsection (2) to answer the questions of a person conducting an investigation

- (a) shall co-operate with the investigator and promptly respond to the questions, and
- (b) shall not be excused from answering any question on the ground that the answer might tend to
 - (i) incriminate the person,
 - (ii) subject that person to punishment under this Act, or
 - (iii) establish that person's liability to a civil proceeding at the instance of the Crown or of any other person, or to prosecution under any Act,

but if the answer so given tends to incriminate that person, subject the person to punishment or establish the person's liability, it may not be used or received against the person in any civil proceedings, in a prosecution of an offence under this Act or in any proceedings under any other Act, except in a prosecution for or proceedings in respect of a contravention of this section.

¹⁶ 1985 CanLII 2745 (SK QB).

¹⁷ 25 A.C.W.S. (3d) 965; 1991 CLB 6649; 89 Sask. R. 203 (SK QB).

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[19] *Artinian v. College of Physicians & Surgeons of Ontario*¹⁸ contains a one-line statement that every professional has a duty to co-operate¹⁹, but provides no authority for that statement. That case involved a situation where a physician sent records to a computer company when he knew that they were to be the subject of a formal investigation and didn't tell the investigator where the records were, thus thwarting the investigation in large measure. The applicable legislation gave the investigator powers of a commission under *The Public Inquiries Act* (which would include the power to compel the production of documents) and also made it an offence to obstruct an investigation or to conceal or destroy any books or records that were the subject of an investigation. The court addressed the reasonableness of the decision of the discipline committee in these circumstances.

[20] The Discipline Committee therefore concludes that in the absence of a specific legislated requirement to co-operate with an investigation, there is no general duty to do so. This conclusion is consistent with the concept that persons cannot be compelled to incriminate themselves and is supported by other provisions of *The Paramedics Act* (and the other Acts in Saskatchewan similar to it) such as subsection 30(8) which authorizes the PCC or the Discipline Committee to obtain subpoenas from the Court to compel persons to testify and to produce documents, or subsection 30(1) which allows the Discipline Committee to proceed with a hearing in the absence of the member. The Discipline Committee notes that members who fail to co-operate with an investigation run many risks of a practical nature: conduct that might have otherwise been explained may be referred for a hearing, mitigating factors may not be revealed, and costs to the member will ultimately be greatly increased. The risks that the member will bear by failing to co-operate do not transform that failure into disciplinable conduct *per se*.

[21] However, although the Discipline Committee was provided with these submissions, in fact the Member in this case has not been charged with failing to co-operate in a general sense. He has been charged with two very specific types of failing to co-operate. He is charged, firstly, that he "failed to provide true and complete information to the SCoP regarding reports required by it", by failing to sign the authorization forms for previous employers, and, secondly, that he "failed to inform the SCoP of [his] most current address for purposes of communication between [him] and the SCoP" or alternatively if he did supply his most current address, that he "failed to accept the registered letters sent to [him] by the SCoP on October 4, 2013, on March 31, 2014, and on May 14, 2014".

[22] With respect to charge 1, the authorization forms the PCC wanted the Member to sign were not "reports required by it" and therefore the Member could not have failed to provide true and complete information in that regard. The Member indicated in a telephone conversation with Mr. Backlin on May 15, 2014 that he would not sign the authorization forms because of the *Privacy Act* and indicated that he had consulted a lawyer. Thus, even if counsel for the PCC is correct that he was required to provide a response to the PCC and not just refuse to sign, the Member did that. If whatever information the previous employers may have had that was considered relevant by the PCC to its investigation for which the authorizations were sought was necessary, the PCC's appropriate course of action was to apply to a court for a subpoena to

¹⁸21 A.C.W.S. (3d) 1078; 1990 CLB 3057; 40 O.A.C. 51; 73 O.R. (2d) 704 (Ont. Div. Ct.)

¹⁹*Ibid*, at para. 9.

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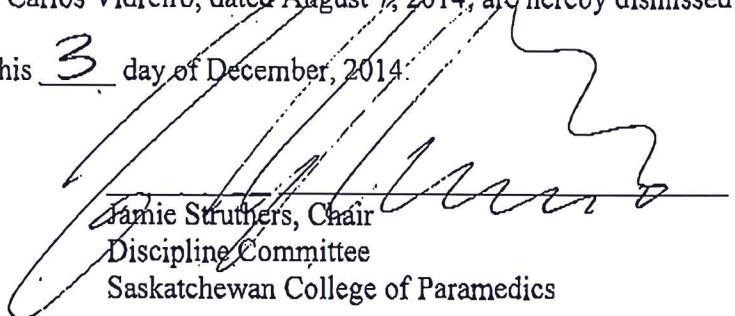
obtain the information despite the Member's failure to provide consent, not to charge him with a discipline offence. That is the framework provided by the legislation where necessary information cannot be otherwise obtained. Charge 1 is therefore dismissed.

[23] With respect to charge 2, the Discipline Committee has no evidence that the address provided by the Member to the College is not his current address for purposes of communication with the College. Indeed, the fact that the Member changed the address on the Register on December 3, 2013 and sent a letter to the College on December 6, 2013 showing that same address as his return address is evidence that the address on the College Register is the Member's current address. There is also no evidence that the Member failed to accept the registered letters sent to him on October 4, 2013, March 31, 2014 and May 14, 2014. It is possible that the Member was away at the time the letters arrived and they were returned by the post office after 15 days, as is the norm, or that the letters were returned by persons other than the Member. In addition, the evidence provided to the Discipline Committee does not establish that the May 14, 2014 letter was not accepted. The Committee also notes that the May 14, 2014 letter refers to an email from the Member on April 23, 2014, indicating that there was communication with the Member in any event.

ORDER:

[24] On the basis of its reasons, as outlined above, the Discipline Committee of the Saskatchewan College of Paramedics hereby Orders that charge 1 and charge 2, as set out in the Notice of Formal Complaint against Carlos Vidreiro, dated August 7, 2014, are hereby dismissed

DATED at Regina, Saskatchewan, this 3 day of December, 2014.


Jamie Struthers, Chair
Discipline Committee
Saskatchewan College of Paramedics