

**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] The Discipline Committee convened on May 21, 2021, as agreed by the parties, to hear and determine the formal complaint concerning the Member, dated February 26, 2019, as required by *The Psychologists Act, 1997* ["the Act"].

[2] At all times material to the complaints made against him, Dr. Richard 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"], related Saskatchewan College of Psychologists Practice Guidelines ["the Guidelines"] and the Order of the Discipline Committee against him that is referred to below.

THE FORMAL COMPLAINT

[3] The Formal Complaint contains the following charges alleging that Dr. Richard Lebell is 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] The Member entered a plea of guilty to Charge 1 and a plea of not guilty to Charge 2. The parties submitted a Joint Exhibit Book containing the following exhibits:

- Tab 1: Affidavit of Karen Messer-Engel dated September 17, 2019 (which contained the formal complaint)
- Tab 2: March 16, 2018 Discipline Decision
- Tab 3: Psychological Treatment Plan Report to WCB dated June 23, 2018 – diagnosed a patient with Adjustment Disorder
- Tab 4: Psychological Treatment Plan Report to WCB dated August 8, 2018 – diagnosed a patient with PTSD (Provisional)
- Tab 5: Psychological Treatment Plan Report to WCB dated October 6, 2018 – diagnosed a patient with MDD, PTSD and Panic Disorder
- Tab 6: October 1, 2018 letter from WCB to Dr. Lebell
- Tab 7: October 4, 2018 note from Dr. Lebell to [REDACTED]
- Tab 8: October 18, 2018 note from [REDACTED] to Dr. Lebell
- Tab 9: October 23, 2018 letter from solicitors for the PCC to the solicitors for Dr. Lebell
- Tab 10: October 26, 2018 letter from Dr. Lebell to the PCC
- Tab 11: October 11, 2018 letter from Dr. Lebell to WCB

[5] The Professional Conduct Committee called [REDACTED] as a witness. The Member called [REDACTED] Workers' Compensation Board, as a witness and also testified on his own behalf.

FACTS

Charge 1

[6] Dr. Lebell entered a plea of guilty to Charge 1. Dr. Lebell was previously charged with and pleaded guilty to communicating a diagnosis, contrary to section 23 of the Act and to the Code of Ethics for Psychologists, as a result of which the Discipline Committee, in its decision of March 16, 2018, ordered, among other things, that he cease communicating diagnoses contrary to section 23, which provides as follows:

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 practising 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.

[7] 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. He nevertheless continued, even after the Discipline Committee's decision and order, to communicate diagnoses, contrary to section 23 and the Code of Ethics, and contrary to the Discipline Committee's order, as is evident in the three Reports to the Workers' Compensation Board that were provided in evidence to the Discipline Committee¹.

Charge 2

[8] Dr. Lebell entered a plea of not guilty to Charge 2 and the Discipline Committee heard testimony from the following witnesses in that regard.

Testimony of [REDACTED]

[9] [REDACTED] worked as an associate with Dr. Lebell from 2000 to 2019. [REDACTED] had a conversation with him in relation to the first complaint of his breach of section 23, which led to the 2018 discipline order. [REDACTED] recalled telling him prior to that hearing that [REDACTED] could supervise him so that he could obtain the required authorized practice endorsement (APE) and then he would be able to continue to diagnose. However, that did not happen.

[10] On October 8 or 9, 2018 [REDACTED] found a handwritten note on [REDACTED] desk from Dr. Lebell dated October 4, 2018². His note read as follows:

As you may know I had some conflict with the College over APE as they will not retroactively grant me the ability to do assessments. WCB has certified me to do clinical and assessment work but the College over-ruled them. I have a request related to my ability to do work for WCB. They are asking that you co-sign reports

¹ These reports are the ones included at Tabs 3, 4 and 5 of the Joint Exhibit Book.

² Tab 7 of the Joint Exhibit Book.

that they received from me. That dos not refer to clinical notes that take [sic] when seeing clients regularly.

I will be happy to pay you for the time it takes to quickly review and sign off. I am guessing a couple of hours per month. I'm still wanting to continue to do work for WCB and therefore need your help to address their demands,

Thanks Rick

PS: we should also look at increasing out fees for the next year.

[11] [REDACTED] was uncomfortable with this request. [REDACTED] felt it was not in the client's best interests for [REDACTED] to cosign reports about them when [REDACTED] hadn't met them, and [REDACTED] was concerned that, if there was a complaint, [REDACTED] would be responsible. [REDACTED] contacted the College to discuss what would be required of [REDACTED] and [REDACTED] concerns were confirmed. [REDACTED] had a conversation with Dr. Lebell after discussing the matter with the College and told him [REDACTED] would not be able to cosign reports unless [REDACTED] was actually supervising him. This would require that [REDACTED] be present when he met with the client and would have to actually make the diagnosis. This would result in it not being financially viable for Dr. Lebell to take on the WCB work, nor did [REDACTED] have the time available in [REDACTED] busy practice to do this.

[12] On October 18, 2018 [REDACTED] advised Dr. Lebell in writing that [REDACTED] could not cosign for him³.

Testimony of Dr. Richard Lebell

[13] Dr. Lebell testified that after the Discipline Committee's March 16, 2018 decision, WCB informed him that he required a cosigner for his reports. He said this didn't mean that he needed to obtain the APE because his education and training met the criteria for certification by WCB. He said when [REDACTED] told him of the College's view of [REDACTED] cosigning for him and what that would entail, he told [REDACTED] that was not his understanding of what WCB wanted from him.

[14] Dr. Lebell received a letter from WCB dated October 1, 2018, stating that WCB had arranged for him to continue to provide his services to WCB clients "as long as your reports are signed by a doctoral level psychologist who has achieved that designation". The letter goes on to state:

Though you notified WCB tha [REDACTED] would sign off on your reports, an audit of reports from your office and from [REDACTED] confirmed that [REDACTED] has not been cosigning reports.

³ Tab 8 of the Joint Exhibit Book.

Please arrange for [REDACTED] to cosign future reports immediately so that WCB can continue to use your services. To ensure compliance with the SCP requirements, WCB will need to review for compliance in the next few weeks and. Lacking a cosigner, WCB will, regretfully, be unable to continue to use your services.

[15] In cross-examination Dr. Lebell said that the October 1, 2018 letter was the first time WCB “officially” requested that he have a doctoral psychologist with an APE cosign his reports. Dr. Lebell denied that he “notified” WCB that [REDACTED] would cosign for him. He said he told WCB he would ask [REDACTED] to do this, not that [REDACTED] had agreed to do it. He acknowledged that the first time he asked [REDACTED] to cosign his reports was on October 4, 2018 when he left the handwritten note on [REDACTED] desk.

[16] Dr. Lebell also testified that he did not provide WCB with a copy of the Discipline Committee’s March 16, 2018 decision, or that he was “not aware” that he did, or that he “didn’t think” that he did, or that he didn’t “recall” having provided WCB with a copy of the decision. He did, however, recall that he discussed the decision with [REDACTED] shortly after the decision was released, in March or April 2018. He said that [REDACTED] was not concerned because [REDACTED] felt that he was still qualified to do the work. He acknowledged that he did not check with the College to see if he could continue to do this work for WCB without obtaining an APE. He acknowledged that [REDACTED] was also a personal friend as well as the person at WCB with whom he dealt.

[17] Dr. Lebell acknowledged that he continued to provide services to WCB between March 16 and October 1, 2018 and that those services included the reports submitted in evidence at Tabs 3 to 5 of the Joint Exhibit Book, which reports contain diagnoses. He said that his WCB work constituted about 40% of his income in 2017. He is doing no WCB work now.

Testimony of [REDACTED]

[18] [REDACTED] at WCB, a position [REDACTED] held since [REDACTED] also acknowledged [REDACTED] personal friendship with Dr. Lebell over a period of [REDACTED] years.

[19] [REDACTED] testified that [REDACTED] had not been contacted by the PCC or anyone from the College in relation to this matter. [REDACTED] was aware of the March 16, 2018 Discipline Committee decision because Dr. Lebell told [REDACTED] about it within a week or two and provided [REDACTED] with a copy of the decision. One aspect of the decision was an order that Dr. Lebell notify those injured workers whose assessments he had completed without and APE and he called [REDACTED] to make [REDACTED] aware that letters would be sent to them and their WCB case workers should be apprised.

[20] [REDACTED] said that prior to the Discipline Committee’s decision, WCB honestly believed that Dr. Lebell could be grandparented in, that is because he had previously

been certified to do assessments for WCB he could continue to do so even after the enactment of section 23 of *The Psychologists Act, 1997*⁴. However, once [REDACTED] received the Discipline Committee's March 2018 decision the requirement to cosign was put in place immediately. [REDACTED] also acknowledged that the number of injured workers with psychological injury has increased since the 2016 amendment to add section 28.1 to *The Workers' Compensation Act, 2013*, which creates a presumption that a worker who is exposed to a traumatic event and is diagnosed with a psychological injury, including PTSD, has sustained that injury in the course of their employment and the injury is then compensable.

[21] [REDACTED] said that [REDACTED] asked [REDACTED] assistant to pull files on which Dr. Lebell had worked after March 16, 2018 to see if any of his reports were cosigned. They were not. This audit would have occurred at some time in the latter part of September 2018, as it led to the sending of the October 1, 2018 letter to Dr. Lebell. [REDACTED] either dictated the letter or would have outlined its content for [REDACTED] assistant to prepare and send. [REDACTED] did not review it before it was sent. [REDACTED] said that when [REDACTED] had previously discussed this issue with Dr. Lebell he told [REDACTED] that he would ask [REDACTED] to cosign or that he "would arrange for [REDACTED] to do that". [REDACTED] testified that the letter's reference to WCB being "notified" that [REDACTED] would cosign was inaccurate, but [REDACTED] could not say when [REDACTED] became aware of that inaccuracy.

[22] [REDACTED] said that Dr. Lebell had not been contracted by WCB to conduct a mental health assessment since the March 16, 2018 decision.

LEGISLATION

[23] The Act defines professional misconduct 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.

ANALYSIS AND DECISION

Charge 1

[24] Clause 25(d) of the Act defines professional misconduct to include a failure to comply with an order of the discipline committee. As noted above, Dr. Lebell entered a

⁴ The Act was not proclaimed in force until March 1, 2002.

plea of guilty to Charge 1 and the Discipline Committee accepts that plea. Dr. Lebell has failed to comply with the Discipline Committee's March 16, 2018 Order and is therefore guilty of professional misconduct.

Charge 2

[25] Counsel for the Professional Conduct Committee submits that Dr. Lebell is not a credible witness. In 2014 he testified in a Queen's Bench trial that his failure to have an APE was an error of the College when he knew this to be incorrect and had had extensive correspondence from the College in relation to the APE issue since 2009⁵. He said he did not give a copy of the March 16, 2018 decision to [REDACTED] but [REDACTED] testified clearly that he did. He said he was first advised by WCB of the need for a cosigner on October 1, 2018, but [REDACTED] testified that the requirement for a cosigner was put in place "immediately" after the decision. He didn't even ask [REDACTED] to cosign until October 4, 2018. [REDACTED] testimony that the October 1, 2018 letter is inaccurate when it refers to Dr. Lebell having "notified" WCB that [REDACTED] would cosign is coloured by their personal friendship. Why would there have been an audit of Dr. Lebell's files if WCB had not been notified?

[26] Counsel for Dr. Lebell urges the Discipline Committee to focus on the formal complaint [REDACTED] acknowledges that if in fact there was a "misrepresentation" to WCB that would constitute a contravention of Principle III of the Code of Ethics. [REDACTED] indicated that the reports contained at Tabs 3 to 5 of the Joint Exhibit Book are in support of Charge 1 (to which Dr. Lebell has pled guilty), with the implication that they cannot be taken into account in relation to Charge 2. [REDACTED] has testified that there was no misrepresentation and that the October 1, 2018 letter was inaccurate.

[27] The Discipline Committee does have concerns relating to Dr. Lebell's credibility. His testimony was internally inconsistent, in particular in relation to the issue of if and when he provided [REDACTED] a copy of the March 16, 2018 decision. He said he "wasn't aware" that he had, which the Committee finds to be an odd response to the question asked, and then went on to say he didn't think so and he didn't recall. Since this was the first time in all his years of practice that he had been charged with a discipline offence, and was convicted of the charge, it is difficult to understand why he would not be aware of or remember providing a copy of the decision to [REDACTED]. Not only was this the first time Dr. Lebell had been disciplined, but the Discipline Committee's order had a significant impact on the WCB and injured workers who were assessed by him for WCB. This was a significant part of his work as a psychologist. He was required by the terms of the order to notify the WCB and other third party payers, as well as the injured workers that he assessed, that since July 2009 he did not have an APE and was not qualified to communicate a diagnosis. These notifications were

⁵ This was the substance of the second charge to which the March 16, 2018 decision related and is outlined in the Agreed Statement of Facts filed with the Discipline Committee in that hearing and included in the decision at p.6.

required to be made within three months of the date of the order. It is simply not plausible that he did not provide [REDACTED] with the decision in the face of that order. [REDACTED] was certainly clear that he did provide [REDACTED] with a copy of the decision, and that he did so shortly after the decision was issued and had a conversation with [REDACTED] about the decision and its impact on his ability to do the assessment work he had been doing for the WCB.

[28] The Committee is also concerned with respect to the reliability of [REDACTED] testimony in relation to the October 1, 2018 letter. Whether [REDACTED] dictated the letter to [REDACTED] assistant or described to [REDACTED] assistant what the content of the letter should be, it simply does not make sense that the letter would refer to Dr. Lebell having notified WCB that [REDACTED] would cosign his reports if Dr. Lebell had not actually said that [REDACTED] would. [REDACTED] apparently had assumed that his reports were being cosigned because [REDACTED] ordered an audit to check. [REDACTED] also testified that the cosigning requirement was implemented immediately after the March 16, 2018 decision.

[29] Charge 2 states that Dr. Lebell “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”. There is no dispute that Dr. Lebell had no arrangements in place to have his WCB reports cosigned. Dr. Lebell acknowledged that he had asked as many as 10 colleagues to do so and no one agreed. The reports that he submitted to WCB after March 16, 2018 were not in fact cosigned, as the audit [REDACTED] ordered revealed.

[30] According to the dictionary definition, a misrepresentation is “an assertion or manifestation by words or conduct that is not in accord with the facts”⁶. Misrepresentation can occur not just in a situation where untrue information is specifically provided, but also in a situation where others have assumed facts that are not correct, and the correct information is not provided to correct that assumption. That is, misrepresentation can be an act of commission or an act of omission.

[31] In this case, the October 1, 2018 letter from WCB to Dr. Lebell itself indicates that WCB was misled into believing he had arrangements in place for a cosigner for his reports, whether or not he “notified” WCB that [REDACTED] would act as the cosigner. The first paragraph of that letter contains this sentence:

WCB arranged for you to provide services to WCB clients as long as your reports are signed by a doctoral level psychologist who has achieved that designation [APE].

If the audit had revealed that some other doctoral psychologist with an APE had cosigned the reports, there would have been no problem. Not only did Dr. Lebell allow WCB to believe he was in compliance with the March 16, 2018 decision, he continued to act in contravention of the decision and s. 23 of the Act, as he has acknowledged by

⁶ <https://legal-dictionary.thefreedictionary.com/misrepresentation>

his plea of guilty to Charge 1. It is clear that WCB thought arrangements were in place for a cosigner immediately after the March 16, 2018 decision, and Dr. Lebell knew or ought to have known that WCB was relying on him to act with the integrity expected of a member of the psychology profession. By failing to do so, he misrepresented to WCB that he had arrangements in place to have his reports properly cosigned.

[32] This misrepresentation is a breach of Principle III of the Code of Ethics. Compliance with the Code is required by section 20 of the College's Regulatory Bylaws. Thus, a breach of the Code is a breach of the bylaws and is professional misconduct within the meaning of clause 25(c) of the Act.

ORDER

[33] For all of the reasons set out above, the Discipline Committee of the Saskatchewan College of Psychologists therefore finds Dr. Richard Lebell guilty of Charge 2.

[34] A hearing to determine penalty with respect to both Charge 1 and Charge 2 will be convened at a time and place set by the Chair of the Discipline Committee in consultation with legal counsel for the Professional Conduct Committee and Dr. Lebell.

Dated at Regina, Saskatchewan this 18 day of June 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