



# Decision of the Hearings Tribunal

## ACMDTT Member #7090



**IN THE MATTER OF A HEARING into the conduct of [REDACTED]  
pursuant to the *Health Professions Act*, R.S.A. 2000, c. H-7 (the “HPA”)**

**DECISION OF THE HEARING TRIBUNAL**

A hearing of the Hearing Tribunal was held on September 12, 2017 at the offices of the Alberta College of Medical Diagnostic & Therapeutic Technologists (the “College” or the “ACMDTT”) at Suite #800, 4445 Calgary Trail, Edmonton, Alberta.

Present were:

Christy McIntyre, MRT (NM), panel chair and regulated member  
Marlene Chambers, MRT (R), panel member and regulated member  
James Lees, public member

Blair Maxston, independent legal counsel for the Hearing Tribunal

Karen Stone, Complaints Director  
Ayla Akgungor, Legal Counsel for the Complaints Director

[REDACTED] MRT(T), investigated member or the “Member”

**I. Preliminary Matters**

- [1] Ms. [REDACTED] confirmed at the hearing that she understood her right to obtain legal counsel. She confirmed at the hearing that she was waiving this right. Ms. [REDACTED] confirmed that she had received the Notice of Hearing (Exhibit 1) and raised no issues regarding the Notice.
- [2] There were no objections to the jurisdiction of the Hearing Tribunal.

**II. Allegations**

- [3] The Allegations in the Notice of Hearing are:
  - 1. You failed to comply in a timely manner with the requirements of the ACMDTT Continuing Competence Program for the period from September 1, 2015 to August 31, 2016.
  - 2. On or about December 1, 2016, you declared, as part of your practice permit renewal application, that you had fully complied with the requirements of the ACMDTT Continuing Competence Program for the period from September 1, 2015 to August 31, 2016, when, in fact, you had not fully complied with the requirements of the ACMDTT Continuing Competence Program for the period from September 1, 2015 to August 31, 2016 as of November 30, 2016.

3. You failed to meaningfully comply and/or cooperate with requests of the Complaints Director in a timely manner or at all, made on or about April 21, 2017 and again on or about May 10, 2017 and on or about June 2, 2017 as part of an investigation into this matter, to provide information with respect to your non-compliance with the ACMDTT Continuing Competence Program and/or your non-cooperation with the requests of the Complaints Director.

### **III. Exhibits**

[4] The following were entered as Exhibits at the hearing with the consent of both parties:

1. Notice of Hearing dated June 13, 2017;
2. Agreed Statement of Facts with the following Tabs:
  - Tab 1 Letter from Karen Stone to [REDACTED] [REDACTED] dated 21 April, 2017;
  - Tab 2 E-mail from Karen Stone to [REDACTED] [REDACTED] dated 2 June, 2017;
  - Tab 3 Registered Letter from Michelle Wolf to [REDACTED] [REDACTED] dated 13 June, 2017;
  - Tab 4 Newsletter excerpts, E-blasts and Social Media posts dated from September 2014 to March 2017;
  - Tab 5 Newsletter excerpt with handwritten date March 2017;
  - Tab 6 My CCP analytics report for [REDACTED] [REDACTED] dated March 2017;
  - Tab 7 E-mail exchange between Dacia Richmond and [REDACTED] [REDACTED] dated March 13, 2017 to March 27, 2017 re: ACMDTT Audit of online usage of My CCP platform – potential issue with your non-compliance;
  - Tab 8 E-mail from Dacia Richmond dated March 29, 2017 re: ACMDTT Non-Compliance – Not Resolved;
  - Tab 9 E-mail from Dacia Richmond dated April 1, 2017 re: ACMDTT CCP – Not complete as of today;
  - Tab 10 E-mail from Dacia Richmond dated April 13, 2017 re: ACMDTT Audit of online usage of My CCP platform – potential issue with your non-compliance;
  - Tab 11 Copies of Declarations made by ACMDTT Members at registration renewal;
  - Tab 12 ACMDTT User Login Report for [REDACTED] [REDACTED] from My CCP Analytics for 2015/2016 cycle

Tab 13 E-mail exchange between [REDACTED] [REDACTED] and Karen Stone dated May 8, 2017 to May 9, 2017 re: Non-compliance Letter – [REDACTED] [REDACTED] MRT(T) #7090

Tab 14 Letter from Karen Stone to [REDACTED] [REDACTED] dated May 10, 2017 re: Non-compliance with the ACMDTT CCP requirements for 2015/16 cycle; and submission of a false declaration of compliance at 2017 registration renewal.

Tab 15 E-mail from [REDACTED] [REDACTED] dated April 28, 2017 re: ACMDTT: CCP Audit;

Tab 15 E-mails from [REDACTED] [REDACTED] to Karen Stone dated June 9, 2017 re: UPDATE – Re: Conduct issue - ACMDTT

Tab 16 Health Professions Act current as of 1 January, 2017;

Tab 17 ACMDTT Code of Ethics adopted 16 April, 2015;

Tab 18 ACMDTT Standards of Practice dated 5 July, 2014;

3. Complaints Director's recommendations for sanctions;
4. Medical letter on behalf of [REDACTED] [REDACTED] from [REDACTED] dated September 10, 2017;
5. Medical letter on behalf of [REDACTED] [REDACTED] from [REDACTED] dated September 10, 2017;

#### **IV. Evidence**

##### **Evidence from Agreed Statement of Facts**

- [5] The Agreed Statement of Facts contains background information on Ms. [REDACTED]'s ACMDTT membership and the conduct being considered by the Hearing Tribunal and a summary of the ACMDTT Continuing Competence Program ("CCP") program history and requirements.
- [6] The Agreed Statement of Facts contains facts relating to the specific allegations including:

##### **Allegation 1**

- [7] As a member of the ACMDTT, Ms. [REDACTED] was required to comply with the ACMDTT's CCP for the period from September 1, 2015 to August 31, 2016 CCP term. However, Ms. [REDACTED] was only required to complete 10 CCP hours of learning owing to the fact that she had only returned to the workforce with a full practice permit on April 25, 2016.

- [8] Ms. [REDACTED] completed her CCP requirement of a minimum of 10 hours of learning between April 25 and August 31, 2016.
- [9] However, Ms. [REDACTED] failed to complete her CCP requirements through the My CCP online platform, including failure to complete the reflective practice review, which includes a self-assessment, learning plan and reflective learning, on or before August 31, 2016.
- [10] A copy of the audit report for Ms. [REDACTED] showing that she had not made any entries in the My CCP Platform for any of the self-reflection, learning plan or learning activities as of March 13, 2017 is attached at **TAB 6**.
- [11] An email was sent to Ms. [REDACTED] by Ms. Richmond on March 13, 2017, advising her that she was not in compliance with the CCP as she had not accessed the My CCP platform since its inception in 2015 and advising her that she had declared compliance with the CCP at registration renewal but that this was not accurate in light of the audit results which demonstrated that she had not, in fact, accessed the My CCP platform at all. The email outlined the seriousness of the issue, indicated that Ms. [REDACTED] had until March 27, 2017 to remediate her deficient CCP, and indicated that a failure to remediate could result in action from the Complaints Director as the issue would be flagged for possible unprofessional conduct. The e-mail invited Ms. [REDACTED] to contact Ms. Richmond with any questions and stated "The ACMDDT is open and willing to assist you in remediating this issue within the time period specified above. We want to avoid this becoming a conduct issue and will work with you, within the specified time period, to resolve this." A copy of the email sent to Ms. [REDACTED] by Ms. Richmond on March 13, 2017 is attached at **TAB 7**.
- [12] On March 27, 2017 at 5:50 a.m., Ms. [REDACTED] responded to Ms. Richmond's email. Ms. [REDACTED] acknowledged that she could not deny that she had not accessed the online platform but indicated she completed the required continuing competency work. Ms. [REDACTED] indicated the new platform was implemented while she was away on medical leave and that she was "out of touch with matters". She indicated that her medical diagnosis results in [REDACTED]. She also indicated that she required additional time beyond March 27, 2017 deadline to complete the CCP requirements and that she could provide support from her physicians if necessary. A copy of Ms. [REDACTED]'s email is attached at **TAB 7**.
- [13] Ms. Richmond responded to Ms. [REDACTED]'s email at 10:45 a.m. on March 27, 2017. Ms. Richmond advised that Ms. [REDACTED] had already been given a functional 7-month extension and the best she could do was to allow Ms. [REDACTED] to have until the end of the week, being March 31, 2017, to comply with the CCP requirements. Ms. Richmond advised that Ms. [REDACTED] was required to complete the CCP requirements on the My CCP platform in order to be in compliance. A copy of Ms. Richmond's email is attached at **TAB 7**.
- [14] Ms. [REDACTED] did not comply with the CCP requirements by March 31, 2017.

- [15] Another email was sent to Ms. [REDACTED] on March 29, 2017 which included a notice that Ms. [REDACTED] had not remediated her deficiencies with the CCP, a final request for compliance by Ms. [REDACTED] by April 5, 2017, and an offer of assistance in meeting the requirements. A copy of the email sent to Ms. [REDACTED] on March 29, 2017 is attached at **TAB 8**.
- [16] Ms. [REDACTED] did not perceive April 5 as another deadline being offered and understood from this letter that she should be expecting a phone call from the ACMDTT to attempt to remedy the situation and discuss existing barriers to her compliance. No phone call was forthcoming until April 18, 2017 when a voice message was left on her home phone during a work day. However, the March 29, 2017 e-mail also clearly invited Ms. [REDACTED] to contact the College for assistance in resolving CCP matters.
- [17] A further reminder email advising Ms. [REDACTED] that her CCP was still incomplete for the 2015/16 CCP cycle because she had not entered one or more of the three CCP components was sent to Ms. [REDACTED] on April 1, 2017. The e-mail stated "If you would like more information about what is still missing, please call or email the College and we will be more than happy to help." A copy of the email sent to Ms. [REDACTED] on April 1, 2017 is attached at **TAB 9**.
- [18] As of April 1, 2017, Ms. [REDACTED] had not logged into the My CCP platform at all and had not entered data into each of the three CCP components for the 2015/16 CCP cycle, despite the initial deadline for compliance for the 2015/16 CCP cycle having passed on August 31, 2016.
- [19] Ms. [REDACTED] did not comply with the CCP requirements by the extended April 5, 2017 deadline.
- [20] On April 13, 2017, Ms. Richmond sent an email to Ms. [REDACTED] advising her that she had passed her extension deadline for her CCP. Ms. Richmond asked Ms. [REDACTED] to advise if she would like assistance in completing her CCP. A copy of the April 13, 2017 e-mail is attached at **TAB 10**.
- [21] Ms. [REDACTED] did not reply to the April 13, 2017 email.
- [22] Ms. [REDACTED] did not complete the CCP requirements for the 2015/16 CCP cycle until September 2017.

### **Allegation 2**

- [23] ACMDTT members are required to complete a declaration of compliance with their regulatory requirements, including the CCP, in order to renew their registration to practice for the next year.
- [24] The ACMDTT registration year is January 1 to December 31. Online registration renewal for the upcoming year is available beginning October 1 and must be completed by November 30.

- [25] On or about December 1, 2016, Ms. [REDACTED] completed her practice permit renewal application for the coming 2017 year.
- [26] As part of the application, Ms. [REDACTED] had to make a CCP Declaration. The Declaration advised Ms. [REDACTED] that, as an ACMDTT member, she was required to complete a self-assessment of practice, a personal learning plan, and records of CCP activities. The Declaration also advised Ms. [REDACTED] that documents for the CCP were subject to audit and that a false or misleading statement regarding CCP documents would be grounds for referral to the Complaints Director for further investigation. A copy of the CCP Declaration is attached at **TAB 11**.
- [27] Ms. [REDACTED] declared she had fully complied with the requirements of the ACMDTT CCP for the period between September 1, 2015 and August 31, 2016. A copy of the ACMDTT's records indicating that Ms. [REDACTED] declared she was compliant with the CCP when she submitted her registration renewal on December 1, 2016 is attached at **TAB 12**.
- [28] As of December 1, 2016, Ms. [REDACTED] had not logged into the My CCP online platform during the 2015/16 CCP cycle.
- [29] As of December 1, 2016, Ms. [REDACTED] had not entered the data required to complete her CCP requirements, including the self-assessment, learning plan, and learning activities, for the 2015/16 CCP cycle.
- [30] As of December 1, 2016, Ms. [REDACTED] had not fully complied with the requirements of the CCP for the period from September 1, 2015 to August 31, 2016.
- [31] In an email sent by Ms. [REDACTED] to the Complaints Director on May 9, 2017 at 4:35 p.m., (the "[REDACTED] May 9 Email"), Ms. [REDACTED] provided the following explanation regarding her declaration: "Ms. [REDACTED] advised that her failure to comply with the CCP requirements was not in her nature but that extenuating circumstances in her personal life resulted in her inability to stay on top of things. Ms. [REDACTED] advised she [REDACTED] in 2009 and that she was on medical leave between August 14, 2014 and April 25, 2016 as a result. [REDACTED] Ms. [REDACTED] stated that while she did not access the online platform, she did obtain the required hours. She indicated she used a piece of paper to record CCP information with the intention of entering it online and that, when she made the declaration on renewal, she felt this was a best compromise." A copy of the May 9, 2017 email is attached at **TAB 13**.

### **Allegation 3**

- [32] The facts from Allegations 1 and 2 were repeated.

- [33] By letter dated April 21, 2017 and received by Ms. [REDACTED] on April 27, the Complaints Director advised Ms. [REDACTED] that the Complaints Director was treating her non-compliance with the CCP requirements and the Registration Committee's Decision as a complaint under the Act and that the Complaints Director would be investigating the matter. As part of the investigation, the Complaints Director directed Ms. [REDACTED] to provide, by May 5, 2017, a sufficiently detailed description of the reasons for her failure to comply with her regulatory responsibility, a detailed description of the intentionality behind her false declaration of compliance at renewal, and any mitigating reasons that would be important for the ACMDTT to know and understand. A copy of the Complaints Director's April 21, 2017 letter is attached at **TAB 1**.
- [34] Ms. [REDACTED] responded to the Complaints Director by email dated May 8, 2017 at 5:41 a.m. Ms. [REDACTED] indicated she had not received the notice in her mail until April 26, 2017, that she immediately picked up the Complaints Director's letter on April 27, 2017 and that she did not have enough time to reply by May 5, 2017. Ms. [REDACTED] advised she was finishing her response and that she would send it in the "next day or so". A copy of Ms. [REDACTED]'s May 8, 2017 email is attached at **TAB 13**.
- [35] The Complaints Director responded to Ms. [REDACTED] by email dated May 8, 2017 at 12:19 p.m. The Complaints Director advised that Ms. [REDACTED]'s email appeared to request an extension of the May 5, 2017 deadline. The Complaints Director indicated that since this involved a significant regulatory matter and since the request for the extension was received after the May 5, 2017 deadline, the Complaints Director required the responses as requested in the April 21, 2017 letter by 4:00 p.m. on May 9, 2017, as well as detailed reasons for Ms. [REDACTED]'s inability to comply within the previously provided time frame. A copy of the Complaints Director's May 8, 2017 email is attached at **TAB 13**.
- [36] Ms. [REDACTED] responded to the Complaints Director by way of the [REDACTED] May 9 Email. In addition to the description of the contents of this email, Ms. [REDACTED] also requested additional time to complete the online platform requirements without disciplinary action. A copy of Ms. [REDACTED]'s May 9, 2017 email is attached at **TAB 13**.
- [37] The Complaints Director wrote to Ms. [REDACTED] on May 10, 2017 after receiving Ms. [REDACTED]'s May 9, 2017 email. The Complaints Director acknowledged that Ms. [REDACTED] had provided a letter outlining her non-compliance, assuming responsibility for it, taking a position of positive learning and demonstrating there was no intentionality behind the false declaration of compliance. Accordingly, the Complaints Director advised Ms. [REDACTED] that the ACMDTT required the following to conclude the matter without proceeding to a hearing:
- a. A statement of understanding from Ms. [REDACTED] that her conduct was unprofessional conduct;
  - b. Written confirmation that Ms. [REDACTED] had reviewed and understood the ACMDTT's Code of Ethics and Standards of Practice and that Ms. [REDACTED] had completed the ACMDTT's Regulation Education Module;



- c. The completion of Ms. [REDACTED]'s CCP requirements for 2015/16 by May 31, 2017; and the Complaints Director would recommend that Ms. [REDACTED] be placed under directed CCP audit for the 2016/17 CCP Cycle.
- d. Ms. [REDACTED] was asked to meet the requirements and to agree to the conclusion of the matter by May 31, 2017.

[38] A copy of the Complaints Director's May 10, 2017 letter is attached at **TAB 14**.

[39] Ms. [REDACTED] did not reply to the Complaints Director's May 10, 2017 letter and Ms. [REDACTED] did not meet the requirements by May 31, 2017.

[40] By letter dated June 2, 2017, the Complaints Director advised Ms. [REDACTED] that she had failed to comply with the requirements of the May 10, 2017 letter. Accordingly, the Complaints Director advised Ms. [REDACTED] that the scope of the Complaints Director's investigation into the Complaint was being expanded to include concerns that Ms. [REDACTED] had failed to comply with a request of or to cooperate with an investigator. The Complaints Director directed Ms. [REDACTED] to provide her with a written response to a number of allegations which would be considered as part of her investigation. A response from Ms. [REDACTED] was required by 4:30 p.m. on June 8, 2017. A copy of the Complaint Director's letter of June 2, 2017 is attached at **TAB 2**.

[41] Ms. [REDACTED] did not provide her written response to the allegations by June 8, 2017 as required.

[42] Ms. [REDACTED] responded to the Complaints Director by email on June 9, 2017. Ms. [REDACTED]'s response indicated she hoped to complete the required steps as set out by the Complaints Director but that she had failed to do so. She advised she had managed to work through much of it including reviewing the Code of Ethics, Standards of Practice, working on self-assessment & learning plan and completing most of the Regulation Education Module. She advised that she had full intentions of adhering to all that was required of her but that she needed additional time to do so. A copy of Ms. [REDACTED]'s June 9, 2017 email is attached at **TAB 15**.

## **V. Submissions of the Parties**

### **Submissions of the Complaints Director**

[43] The Complaints Director submits that the Agreed Statement of Facts is a joint submission.

[44] The Hearings Tribunal needs to accept the Agreed Statement of Facts by reviewing the documents and then determine if they amount to unprofessional conduct.

[45] The Complaints Director submits that there is sufficient evidence in the Agreed Statement of Facts to find Ms. [REDACTED]'s actions did constitute unprofessional conduct.

- [46] The Hearings Tribunal should accept the Agreed Statement of Facts unless they find it to be unfair or unreasonable.

**Submissions of [REDACTED]**

- [47] Ms. [REDACTED] acknowledges her behaviour as unprofessional conduct in the Agreed Statement of Facts.
- [48] In terms of Allegation 3, although completing the requests may not have been done in a timely manner, Ms. [REDACTED] reminds the Hearing Tribunal that she did ultimately complete all requests made by the Complaints Director.

**VI. Decision and Findings**

- [49] The Hearings Tribunal accepts the Agreed Statement of Facts and finds that the allegations have been factually proven and that the conduct constitutes unprofessional conduct.

**Allegation 1**

- [50] The Hearings Tribunal finds that the first allegation is proven. The Hearing Tribunal carefully considered the exhibits, and the submissions from both parties in making its finding.

- [51] The Hearing Tribunal accepts the acknowledgement of Ms. [REDACTED] in the Agreed Statement of Facts paragraph 57:

She failed to comply in a timely manner with the requirements of the ACMDTT Continuing Competence Program for the period from September 1, 2015 to August 31, 2016.

- [52] Ms. [REDACTED] indicated that there were substantial health issues that impacted her ability to comply with requests in a timely manner. The Hearing Tribunal accepts that, however, Ms. [REDACTED] as a regulated member has an obligation to comply to the CCP, and her misunderstanding regarding deadlines does not excuse her lack of compliance.

**Allegation 2**

- [53] The Hearings Tribunal finds that the second allegation is proven. The Hearing Tribunal carefully considered the exhibits, and the submissions from both parties in making its finding.

- [54] Ms. [REDACTED] acknowledges her unprofessional conduct in paragraph 57 of the Agreed Statement of Facts when she states:

On or about December 1, 2016, she declared, as part of her practice permit renewal application, that she had fully complied with the requirements of the ACMDTT Continuing Competence Program for the period from September 1, 2015 to August 31, 2016, when, in fact, she had not fully complied with the requirements of the ACMDTT Continuing Competence Program for the period from September 1, 2015 to August 31, 2016 as of December 1, 2016.

- [55] Ms. [REDACTED] explained [REDACTED] her health issues [REDACTED]. The Hearing Tribunal accepts that; however, Ms. [REDACTED] has a responsibility to be aware of and to comply with the current CCP, and her CCP declaration was inaccurate.

### **Allegation 3**

- [56] The Hearing Tribunal finds that the third allegation is proven. The Hearing Tribunal carefully considered the exhibits, and the submissions from both parties in making its finding.

- [57] The Hearing Tribunal accepted the evidence submitted by Ms. [REDACTED] in Paragraph 57 of the Agreed Statement of Facts:

She failed to meaningfully comply and/or cooperate with requests of the Complaints Director in a timely manner or at all, made on or about on or about April 21, 2017 and/or on or about May 10, 2017 and/or on or about June 2, 2017, as part of an investigation into this matter, to provide information with respect to her non-compliance with the ACMDTT Continuing Competence Program and/or her non-cooperation with the requests of the Complaints Director.

- [58] The Hearing Tribunal accepts Ms. [REDACTED]'s evidence that her health issues again played a role in her inability to comply with the investigation and that although her responses were not provided in a timely manner they were eventually supplied. That does not however excuse her failure to respond fully and promptly to requests from the Complaints Director.

### **Unprofessional Conduct: Additional Comments**

- [59] For the reasons outlined above the Hearing Tribunal finds that Allegations 1 through 3 are factually proven on the balance of probabilities.

- [60] The Hearing Tribunal also considered whether Ms. [REDACTED]'s conduct constitutes "unprofessional conduct" as defined in Section 1(1)(pp) of the HPA as follows:

- (ii) contravention of this Act, a code of ethics or standards of practice;

- (vi)(a) failure or refusal to comply with the requirements of the continuing competence program;
- (xii) conduct that harms the integrity of the regulated profession.

[61] The ACMDTT has established a Continuing Competence Program in accordance with the requirements of the HPA. Participation in the CCP is a mandatory duty of regulated members of the ACMDTT. The evidence established that Ms. [REDACTED] failed to comply with her duty to complete the CCP requirements.

[62] Further Ms. [REDACTED]'s actions contravene the ACMDTT Standards of Practice:

Standard 2.1 Legislation, Standards and Ethics – A regulated member of the Alberta College of Medical Diagnostic and Therapeutic Technologists adheres to the legislative requirements governing the practice of the member's specialty, the College's Code of Ethics, Standards of Practice, Position Statements and Practice Standards.

Standard 2.6 Communication – A regulated member of the Alberta College of Medical Diagnostic and Therapeutic Technologists communicates effectively to ensure quality service delivery.

[63] Ms. [REDACTED]'s actions also breached the ACMDTT Code of Ethics:

Principle 2: Responsibility to the profession

- h. Legislative requirements – A regulated member recognizes that the self-regulation of the profession is a privilege and abides by the legislated parameters and obligations of being a member of the College.
- i. Professional communication – A regulated member adheres to principles of professionalism in communication (i.e., verbal, written, social media).

Principle 3: Responsibility to oneself

- a. Personal conduct – A regulated member maintains a level of personal conduct that upholds the integrity of the profession and the trust of the public.
- b. Accountability – A regulated member takes responsibility and is accountable for his/her professional activities.

[64] The Hearing Tribunal considered the mitigating factors submitted by Ms. [REDACTED] leading to her inability to comply. Her health issues play a major role [REDACTED]. The Hearing Tribunal concluded that those mitigating factors did not excuse Ms. [REDACTED]'s conduct but were relevant in terms of sanctions.

- [65] Section 1(1)(vii)(b) of the HPA defines “unprofessional conduct” as failure or refusal to comply with a request of or co-operate with an investigator. Ms. [REDACTED] failed to respond in a timely manner to several requests from the Complaints Director.
- [66] The ACMDTT is a self-regulating college. The Code of Ethics principle 2(h) states that a regulated member recognizes that the self-regulation of the profession is a privilege and abides by the legislated parameters and obligations of being a member of the College. Ms. [REDACTED]’s conduct undermined the ACMDTT’s ability to engage in self-regulation.

## VII. Sanctions

- [67] The decision of the Hearing Tribunal and findings of unprofessional conduct were provided orally to those in attendance. Both the Complaints Director and Ms. [REDACTED] then presented verbal submissions on sanctions at the hearing.

### Complaint’s Director Submissions

- [68] The ACMDTT has a responsibility to protect the public and sanctions are a means to ensure that this mandate is achieved.
- [69] Based on the *Jaswal* case, the following factors are relevant for consideration when determining sanctions:
- The nature and gravity of the proven allegation: Although the conduct is serious in nature in terms of to public safety the Complaints Director submits that there was no intent to deceive.
  - Age and Experience: These are not a factor in this hearing.
  - Previous character of the technologist and any prior complaints or convictions: The Complaints Director submits there are no previous complaints or discipline findings concerning Ms. [REDACTED].
  - Affected patient: The Complaints Director submits there were no affected patients to consider.
  - Number of times the offence was proven to have occurred: Although there are only three allegations, the Complaints Director and College submits there are situations where Ms. [REDACTED] failed to comply to requests made by the College.
  - Role of the technologist in acknowledging the conduct occurred: The Complaints Director submits that Ms. [REDACTED]’s acknowledgment of her actions carries significant weight in this case.
  - Previous serious financial or other penalties: These are not a factor in this hearing.

- Impact on affected patient: This is not a factor in this hearing.
- Presence or absence of any mitigating circumstances: The Complaints Director submits there are significant mitigating circumstances in this case in relation to Ms. [REDACTED]'s medical health. The Complaints Director also accepts these factors.
- Need to promote specific and general deterrence, and thereby, to protect the public and ensure the safe and proper practice: The Complaints Director submits Ms. [REDACTED] understands her role as a member of the College however there still needs to be deterrents demonstrating that failure to comply with the CCP will result in consequences.
- The need to maintain the public's confidence and integrity of the profession: This is achieved by sanctions that are responsive to the circumstances, and these sanctions must be safe and effective.
- Degree to which the offensive conduct that was found to have occurred clearly regarded, by consensus, as being the type of conduct that would fall outside the range of permitted conduct: The Complaints Director submits that Ms. [REDACTED]'s conduct did in fact fall outside the permitted range of conduct.
- Range of sentence in other similar cases: The Complaints Director submits that the type of medical evidence presented by Ms. [REDACTED] has not been present in previous similar Hearing Tribunal cases. Also, no other member has acknowledged their conduct to the same degree as Ms. [REDACTED]. The Complaints director submitted Findings against Member #11032 for review as there are a few similar circumstances.

[70] The Complaints Director provided a written summary of the penalty orders she was seeking and it was marked as Exhibit 3. The summary of those order requests are as follows:

1. Within fourteen (14) days of being given a copy of the Hearing Tribunal's decision, [REDACTED] [REDACTED] "the Member" will complete all of her CCP requirements including the self-assessment, the learning plan, the learning activities. This was withdrawn as it was already completed.
2. The Member will within thirty (30) days of being given a copy of the Hearing Tribunal's written decision, submit an essay in a form that is satisfactory to the Hearings Director of approximately two pages in length outlining her responsibilities as a member of the ACMDTT and confirming the importance of complying with her regulatory responsibilities, including:
  - a. Compliance with the CCP; and
  - b. Cooperating with investigations conducted under the HPA and responding to correspondence received from the ACMDTT in a timely manner.

This was withdrawn as it was addressed in the hearing.

3. A copy of the Hearing Tribunal's decision will be provided to the Director of Education, and the Member will be subject to a mandatory CCP audit for the next 2 CCP cycles (i.e. 2016/2017 and 2017/2018).
4. Subject to paragraph 5 below the Member is hereby ordered to pay 100% of costs of the investigation and the hearing, to a maximum of \$5,000.00.
5. The Member must advise the Hearings Director within 30 days of being provided with a copy of the Hearing Tribunal's decision whether she wishes to pay the costs in a lump sum or whether she wishes to pay in instalments;
  - a. If the Member elects to pay costs in a lump sum:
    - i. The costs will be due and owing 60 days after the Member is provided with a copy of the Hearing Tribunal's written decision
  - b. If the Member elects to pay the costs in instalments:
    - i. The costs shall be paid equal monthly instalments over a period of 36 months;
    - ii. The Member must provide the Hearings Director with 36 post-dated cheques made out to the ACMDTT for each monthly instalment; and
    - iii. The first instalment must be paid within 60 days after the Hearing Tribunal's decision is provided to the Member and the remaining post-dated cheques must be provided at that time.
6. The deadlines referred to in paragraphs 5 may be extended for a reasonable period of time, in the sole discretion of the Hearings Director. If the Member is seeking an extension, the Member must contact the Hearings Director to request an extension in advance of the deadline, must indicate why the Member cannot comply, and must confirm the date of the newly proposed deadline.
7. In the event that the Member fails to successfully comply with paragraphs 3 and 5 by the deadlines set out above or by such other date as agreed to by the Hearings Director, her permit to practice will be automatically suspended pending compliance.

[71] The Complaints Director further submitted that a portion of the costs of the discipline process should be borne by Ms. [REDACTED] as it would be inappropriate and unfair for all other regulated members to bear the cost of a hearing.

- [72] The Complaints Director advised that Ms. [REDACTED] accepts the sanctions however feels that the costs being asked for are too severe given her part-time employment and other financial obligations

**[REDACTED]'s Submission**

- [73] Ms. [REDACTED] entered two [REDACTED] letters into evidence [REDACTED] (Exhibits 4 and 5).

- [74] Ms. [REDACTED] explained that [REDACTED]  
[REDACTED] letters submitted support Ms. [REDACTED]'s testimony [REDACTED]  
[REDACTED].

- [75] Ms. [REDACTED]'s [REDACTED]. She was approved for work place accommodations but her employer couldn't meet the requirements so she was placed on medical leave.

- [76] Eventually Ms. [REDACTED] returned to work in a 0.6 position but again had to go on medical leave.

- [77] Facing non-culpable termination and in an attempt to salvage her position, Ms. [REDACTED] returned to a permanent reduced 0.5 position with temporary accommodations.

- [78] The task of complying with the CCP is not difficult by itself but when compounded with other factors it became unmanageable for her.

- [79] [REDACTED].

- [80] [REDACTED].

- [81] Ms. [REDACTED] explained that her return to work has been gradual; it was scheduled over 8 weeks instead of the usual 2 weeks. As well, many changes occurred in the department during her absence.

- [82] In efforts to catch-up with the changes Ms. [REDACTED] completed 76 hours of learning activities.

- [83] Unfortunately, accessing My CCP, completing the assessment, defining objectives and entering learning activities fell to the bottom of her list and she was not physically able to meet the deadlines given her.



- [84] Ms. [REDACTED] admitted she did not understand what a hearing involved or the serious nature of going to a hearing.
- [85] The 0.5 position Ms. [REDACTED] currently holds is not by choice [REDACTED]. She has not been able to work full-time since 2010 and [REDACTED].
- [86] [REDACTED].
- [87] [REDACTED].
- [88] Ms. [REDACTED] recognizes that it is not fair for the other ACMDTT regulated members to bear the costs of her actions, and if she was able to pay she would be happy to comply. [REDACTED].
- [89] In summary Ms. [REDACTED] stated she entered her training program at 19 and has no previous complaints regarding her behaviour. She had the best of intentions in March 2017 to comply with the CCP requirements but was unable to due to her medical conditions.
- [90] Ms. [REDACTED] expressed that she is ashamed, embarrassed and disappointed with herself for letting this issue go as far as it has. She also reaffirms that there was no malicious intent to her behaviour.
- [91] [REDACTED].

#### **Complaints Director Response**

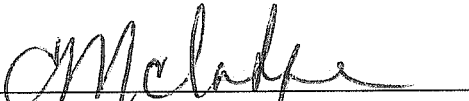
- [92] After hearing Ms. [REDACTED]'s submissions concerning her personal and health circumstances, the Complaints Director has decided to reduce the costs asked for to \$1,800.00 which would mean \$50.00 per month for Ms. [REDACTED]. This decision was made because costs should not amount to a crushing financial blow and Ms. [REDACTED]'s mitigating circumstances are significant.
- [93] When asked by the Hearing Tribunal why Ms. [REDACTED] didn't speak out about her medical conditions earlier her response was that she kept thinking she could meet the CCP requirements and the Complaints Director's requests. She now realizes that that was an unreasonable expectation she was placing on herself.

### VIII. Orders

- [94] The Hearing Tribunal carefully considered the submissions from both the Complaints Director and Ms. [REDACTED] and made the decision to impose the penalties submitted by the Complaints Director.
- [95] Bearing in mind the applicable *Jaswal* factors, the Hearing Tribunal concluded that as regulated member of the College it was Ms. [REDACTED]'s clear responsibility to comply with the CCP requirements (including the on-line components which she had received prior notification of on numerous occasions). Compliance with the CCP is fundamentally important to the life-long learning responsibilities of a professional to ensure the provision of safe and competent care.
- [96] The Hearing Tribunal found Ms. [REDACTED]'s submissions concerning her personal circumstances ([REDACTED]) to be compelling mitigating circumstances. The Hearing Tribunal also concluded that in her testimony Ms. [REDACTED] showed sincere and credible insight and awareness concerning the College's role as a regulatory body and the importance of the CCP. Accordingly, the Hearing Tribunal accepts the change to the requested penalties lowering the costs of \$5,000.00 to \$1,800.00. This change lessens the financial burdens Ms. [REDACTED] already bears and removes the risk of a potential financial crushing blow yet still provides a general deterrence thereby ensuring public safety.
- [97] In light of the foregoing, the Hearing Tribunal hereby made the following orders pursuant to section 82 of the HPA:
1. A copy of the Hearing Tribunal's decision will be provided to the Director of Education, and Ms. [REDACTED] will be subject to a mandatory CCP audit for the next two CCP cycles (2016/2017 and 2017/2018).
  2. Subject to order 3, Ms. [REDACTED] is hereby ordered to pay costs of the investigation and the hearing of \$1,800.00.
  3. Ms. [REDACTED] must advise the Hearings Director within 30 days of being provided with a copy of the Hearing Tribunal's decision whether she wishes to pay the costs in a lump sum or whether she wishes to pay in installments:
    - a. If Ms. [REDACTED] elects to pay costs in a lump sum, then the costs will be due and owing 60 days after Ms. [REDACTED] is provided with a copy of the Hearing Tribunal's written decision.
    - b. If Ms. [REDACTED] elects to pay the costs in installments:
      - i. The costs shall be paid equal monthly installments over a period of 36 months;

- ii. Ms. [REDACTED] must provide the Hearings Director with 36 post-dated cheques made out to the ACMDTT for each monthly installment; and
  - iii. The first installment must be paid within 60 days after the Hearing Tribunal's decision is provided to Ms. [REDACTED] and the remaining post-dated cheques must be provided at that time.
4. The deadlines referred to in order 3 may be extended for a reasonable period of time, in the sole discretion of the Hearings Director. If Ms. [REDACTED] is seeking an extension, Ms. [REDACTED] must contact the Hearings Director to request an extension in advance of the deadline, must indicate why Ms. [REDACTED] cannot comply, and must confirm the date of the newly proposed deadline.
5. In the event that Ms. [REDACTED] fails to successfully comply with order 3 by the deadlines set out above or by such other date as agreed to by the Hearings Director, her permit to practice will be automatically suspended pending compliance.

Signed on behalf of the Hearing Tribunal this 27 day of October, 2017.

  
Christy McIntyre, Chair