



# Finding of ACMDTT Member #9945



**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 July 13, 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(R), investigated member or the "Member"

**I. Preliminary Matters**

- [1] Mr. [REDACTED], confirmed at the hearing that he understood his right to obtain legal counsel. He confirmed at the hearing that he was waiving this right. Mr. [REDACTED] confirmed that he had received the Notice of Hearing 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 (Exhibit 1) are:
  1. You failed and/or refused 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 20, 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 and/or refused, 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 16, 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 8, 2017;

2. Binder containing;

Tab 1 Newsletters excerpts and E-blast dated from September 2014 to March 2017;

Tab 2 E-mail consent provided by [REDACTED];

Tab 3 ACMDTT Facebook and twitter posts – November 27, 2015 and August 31, 2016;

Tab 4 E-mail from Dacia Richmond dated March 13, 2017 re: Audit of online usage of My CCP Platform – potential issue with your non-compliance;

Tab 5 Continuing Competence Declaration by [REDACTED];

Tab 6 ACMDTT User Login Report for [REDACTED] from My CCP Analytics for 2015/2016 cycle;

Tab 7 E-mail from Dacia Richmond dated March 29, 2017 re: ACMDTT Non-Compliance – Not Resolved;

Tab 8 Phone call log;

Tab 9 E-mail from Dacia Richmond dated April 1, 2017 re: ACMDTT CCP – Not complete as of today;

Tab 10 E-mails between Dacia Richmond and [REDACTED] dating from April 1, 2017 to April 13, 2017;

Tab 11 ACMDTT members referred to Complaints Director by Director of Education

Tab 12 Letter from Karen Stone to [REDACTED] dated April 21, 2017 and Canada Post confirmation of delivery;

Tab 13 Letter from Karen Stone to [REDACTED] dated May 16, 2017 and Canada Post confirmation of delivery;

Tab 14 ACMDTT Registration history for [REDACTED].

3. Chart summary of total non-compliant members at each remediation attempt.

4. ACMDTT Penalty recommendations.
5. Email exchange between Michelle Wolf, [REDACTED], and Karen Stone from June 16, 2017 to July 10, 2017.

#### **IV. Evidence**

- [5] The following individuals were called as witnesses by the Complaints Director:
1. Dacia Richmond
  2. Karen Stone
- [6] [REDACTED] gave evidence on his own behalf. Mr. [REDACTED] did not call any other witnesses on his behalf.

#### **Evidence from Dacia Richmond**

- [7] Ms. Richmond is the Director of Education for the ACMDTT which includes the duties of, but not limited to administering the Continuing Competency Program (CCP), assisting with accreditation process, resource for members education and CCP, fielding practice questions from members, functioning in a member services role, assisting branches with meetings and communication to members, and serving on the Awards Committee.
- [8] Ms. Richmond submits stated that CCP is mandated under the HPA and compliance in the CCP is mandatory. It is one of her roles ensure compliance of members.
- [9] Previously Ms. Richmond was employed as a Nuclear Medicine Technologist in Saskatchewan and most recently at the Cross Cancer Institute. She confirms that she is a regulated member and as such is required to be compliant to the CCP.
- [10] Ms. Richmond went on to explain that the CCP consists of three areas: Self-Assessment, Learning Plan and Reflection.
- [11] Ms. Richmond testified that in 2014 the CCP Committee (the "Committee") voted to institute minor changes to the program thus making it more applicable to all regulated members. These changes would be effective March 1, 2015 and would affect three areas:
1. The Self-Assessment which was initially based on educational competencies for each discipline. This meant that if you were registered in two different disciplines then you were required to complete a self-assessment for each registered discipline. The Committee recognized that this was an unnecessary duplication. Also, the Committee concluded that when technologists graduate their focus changes as do their competencies. Therefore the CCP Committee moved to a Self-Assessment based on the Standards of Practice. This meant that all registered members regardless of their registered discipline(s) completed the same Self-Assessment form, making the process more streamlined across all disciplines;

2. A reflection section was added giving regulated members more opportunity to re-evaluate the learning objectives completed during the year;
  3. The CCP would now be managed through a mandatory online platform called My CCP. This platform would be available starting in 2014 and became mandatory for 2015/2016 cycle.
- [12] Ms. Richmond testified that the CCP program requires each regulated member to identify a minimum of two learning objectives, one of which must be met by a learning activity. The regulated member must enter each learning activity, and provide reflection on how that learning activity met the objective originally identified.
- [13] Each regulated member must complete a minimum of 24 hours in an annual cycle from September 1 to August 31 of the given years. These dates are off set from the registration dates to allow declaration of CCP compliance at the time of registration.
- [14] Monitoring of the CCP happens two ways:
1. Random Audit which is completed the fall of each year;
  2. Data Entry Analytics – the ACMDTT does not have access (without regulated member permission) to the detailed entries by regulated members but it does have the ability to review the analytics for each regulated member. This allows the ACMDTT to review login, logout dates and times as well as if any data had been entered in each of three areas: Self-Assessment, Learning Plan, and Learning Activities.
- [15] Participation in the CCP became mandatory in 2009.
- [16] Ms. Richmond confirmed that the Newsletters excerpts and E-blast (Tab 1) were authored by her except the article titled unprofessional conduct. And that they were sent via E-mail to each regulated member to the E-mail address the regulated members are required to supply to the College. She also confirmed that she was not aware of any failure to deliver E-mail, but if there was the registration committee would have followed up. Newsletters are also available on the ACMDTT website.
- [17] If necessary members can update their contact information two ways:
1. Through the ACMDTT members section on the ACMDTT website.
  2. Call the office and staff can update the members' registration information.
- [18] The “✓” on the email consent from Mr. [REDACTED] (Tab 2) indicated he consented to receive all E-mail communication to the E-mail address that he provided.
- [19] Social media posts to Facebook and Twitter were also made by Ms. Richmond (Tab 3), and she confirmed there is no way to determine who viewed these posts.
- [20] Going back to the 2<sup>nd</sup> document in Tab 1 dated March 2015 it states, “The College will make every effort to accommodate individuals unable to complete the CCP as designed.”

Ms. Richmond confirmed she did not receive any questions, and only received two requests by members to submit their audit in paper form. This request was reviewed by the CCP Committee and the requests were denied. Specifically, she received no questions or concerns from Mr. [REDACTED].

- [21] An E-mail by Ms. Richmond (Tab 4) dated March 17, 2017 was sent to 997 regulated members; which constituted approximately 44% of the College's 2323 regulated members who were non-compliant on My CCP as of March 13, 2017. She confirmed that Mr. [REDACTED] was sent this E-mail and did not respond or ask any questions regarding the new My CCP platform. This E-mail had a deadline to become compliant by March 27, 2017.
- [22] On the second page of March 13, 2017 E-mail (Tab 4) it states, "At renewal, you attested to compliance with the CCP requirement in a declaration which states "I declare that I fully complied with the requirements of the ACMDTT Continuing Competence Program from September 1, 2015 to August 31, 2016"". Because Mr. [REDACTED] had a practice permit he therefore declared online compliance to the CCP.
- [23] At the time of renewal there are several declarations made (Tab 5) and on the last page Ms. Richmond confirmed that the "1" under Competence Declaration column for the second row verified that Mr. [REDACTED] declared compliance with the CCP.
- [24] Referring back to the 2<sup>nd</sup> page on the March 13, 2017 E-mail (Tab 4), factual evidence confirming the statement "It has been noted that you have not accessed the My CCP platform since its inception in 2015" can be found on the User Login Report (Tab 6) by the lack of login/logoff information.
- [25] Ms. Richmond confirmed that she received no response from Mr. [REDACTED] concerning the E-mail dated March 13, 2017 (Tab 4) despite the warning in the E-mail "In light of this evidence, the College will allow you until March 27, 2017 to correct your perceived deficiency. At that time, the College will monitor further compliance with the mandated requirement. Failure to comply with registration requirements may result in action from the Complaints Director of the ACMDTT as this matter will be flagged for unprofessional conduct".
- [26] As of March 27, 2017, approximately 50% of the 997 non-compliant regulated members remediated their compliance. A second E-mail dated March 29, 2017 was sent to the remaining non-compliant regulated members (Tab 7).
- [27] The follow up phone calls (Tab 8) were made to Mr. [REDACTED] on March 31, 2017 by Michelle Wolf and on April 18, 2017 by Ms. Richmond. Both times messages were left and there was no reply made by Mr. [REDACTED].
- [28] Ms. Richmond also sent a reminder E-mail Dated April 1, 2017 (Tab 9) to the remaining non-compliant regulated members. Mr. [REDACTED] was sent this email and Ms. Richmond did not receive any failure to deliver notifications for this mail out.
- [29] On April 8, 2017 Mr. [REDACTED] contacted Ms. Richmond via email (Tab 10) stating [REDACTED] and could contact Ms. Richmond when he had finished his CCP requirements. Ms. Richmond responded and offered her assistance. An attempt was made by

Ms. Richmond to communicate by telephone but no conversation ever resulted from this E-mail request.

- [30] After Mr. ██████ received the Notice of Hearing (Exhibit 1) he contacted Ms. Richmond by phone and Ms. Richmond instructed him to attend the hearing and as was nothing else she could do for him in her capacity as Director of Education.
- [31] Ms. Richmond broke down the numbers of who were non-compliant with a flow chart (Exhibit 3). Originally 997 members were non-compliant. Following the March 27, 2017 (Tab 4) deadline approximately 499 still required remediation. After the April 5, 2017 (Tab 7) deadline 51 members still required remediation. Of these 51 members 8 were sent to the Complaints Director for complete non-compliance. Mr. ██████ was one of them (Tab 11). Ten members were in partial compliance and their names were sent to the CCP committee for decision. 33 members were reviewed by the Registration Committee as they became compliant after the April 5, 2017 deadline.
- [32] Following investigations by the respective committees 5 members were referred to hearing for complete or incomplete non-compliance. Mr. ██████ was one of these 5 members.
- [33] As of the day before this hearing Mr. ██████ was still not compliant with the mandatory CCP for the 2015/2016 cycle.
- [34] On Cross Examination Ms. Richmond confirmed that for years 2009 to 2014 all CCP audits were done by submitted hard copies and members were required to keep their hard copies for 5 years. For the 2015/2016 year no audit was done for Mr. ██████.
- [35] Mr. ██████ asked for clarification as to the change in the online system. Previously members only submitted their CCP if requested in an audit. Now members are required to submit their CCP information before the completion of the current CCP cycle.
- [36] Ms. Richmond explained that the My CCP platform and all data entered by members is stored on an independent server outside of the ACMDTT and is managed by a third party called Skillsure. The ACMDTT does not have access to any data entered by members unless the member grants access, as would happen with an audit situation. She clarified that by entering data into My CCP a member is not submitting anything to the College since My CCP is simply a record keeping system. The ACMDTT only has access to the Analytics as previously described and this is necessary for the ACMDTT to ensure compliance by members with the mandatory CCP as mandated by the HPA.
- [37] Mr. ██████ then enquired about methods of contact used by the ACMDTT. Ms. Richmond responded that most communication between the ACMDTT and its individual members is of a sensitive nature and the ACMDTT respects the privacy of its members. As a result, it does not routinely contact members in their work place but uses the home or cell number provided by the member.
- [38] Ms. Richmond advised that mass communications such as the newsletter happen through E-mail and that Canada Post is expensive and delayed whereas e-mail is inexpensive and timely. Therefor newsletters and registration renewals have been sent via E-mail for 5 years. This way the ACMDTT is doing its due diligence within its funding.

[39] On re-examination Ms. Richmond confirmed that members cannot opt out of receiving E-mails regarding regulatory matters and this includes newsletters. These are sent to the email provided by the member.

**Evidence from Karen Stone**

[40] Ms. Stone has three responsibilities with the ACMDTT including: Chief Executive Officer, Registrar, and Complaints Director.

[41] In her role as Complaints Director she receives and reviews complaints from the public, ACMDTT committees and employers.

[42] It is her responsibility to determine if a complaint requires further investigation, and the best method to resolve any concerns of unprofessional conduct while maintaining public safety.

[43] It was brought to her attention via the table (Tab 11) that following the April 5, 2017 deadline 8 regulated members were non-compliant with the CCP. Mr. [REDACTED] one of those regulated members.

[44] Ms. Stone then sent a registered letter dated April 21, 2017 requesting further information from Mr. [REDACTED] before May 5, 2017 (Tab 12). Ms. Stone confirmed there was no reply to this letter.

[45] A second registered letter was sent by Ms. Stone to Mr. [REDACTED], dated May 16, 2017 (Tab 13) again requesting the same additional information by May 25, 2017 as well other information that affected Mr. [REDACTED]'s ability to comply. Ms. Stone confirmed that no reply was received by the deadline.

[46] Ms. Stone confirmed that as of the date of this hearing she had received no direct communication from Mr. [REDACTED].

[47] Mr. [REDACTED]'s history of registration with the ACMDTT is found in Tab 14.

[48] On cross examination Mr. [REDACTED] asked if the two signing signatures were the same for the registered letters (Tab 12 and 13). Ms. Stone confirmed that they appeared to be different.

**Evidence from [REDACTED]**

[49] Mr. [REDACTED] submitted that this situation was a chain of miscommunication events. He admitted that he doesn't always read all the ACMDTT emails. He acknowledged that coworkers had mentioned the email regarding changes to the CCP and he was aware that changes were coming.

[50] He went on to state that he has a great interest in continuing learning (he was an instructor at NAIT) and has purchased textbooks pertaining to his profession for personal use.

[51] Once he was aware of his non-compliance to the CCP he attempted to remediate the situation. He logged in and entered information but didn't realize the My CCP platform



defaulted to the current year and not the previous year he was attempting to remediate. As a result, he completed the self-assessment and learning plan (but did not enter any learning activities) for the wrong CCP cycle.

[52] It wasn't until he received the second E-mail from Ms. Richmond (Tab 7) that he became aware of his mistake. Mr. [REDACTED] was confused about how to enter data for the previous year and he tried to work with Ms. Richmond via E-mail but did not phone her.

[53] Mr. [REDACTED] also explained that due to [REDACTED]

[REDACTED]

[54] He received the Notice of Hearing (Exhibit 1) at his workplace

[55] Mr. [REDACTED] expressed concern that the methods of communication used by the ACMDTT in this matter weren't the best and that the ACMDTT did not practice best due diligence because they didn't not use every method of communication available to them. For example, they didn't not telephone him at his place of work.

[56] Regarding the three allegations:

1. Mr. [REDACTED] feels he met the requirements of the CCP as he had completed the hard copy and didn't believe he was required to enter it in to My CCP until he was audited.
2. Mr. [REDACTED] believed he was in compliance when he made the declaration.
3. He explained that there isn't a lot of mail sent from the ACMDTT and he had moved so he believed the correspondence was junk mail therefore he didn't read it or respond.

[57] On Cross examination Mr. [REDACTED] confirmed that a regulated member has a responsibility to update his contact information, and that the email address he provided to the ACMDTT was his correct email for 2014, 2015, 2016, and up to April 13, 2017.

[58] Mr. [REDACTED] also agreed that members have a responsibility to read all E-mails sent by the ACMDTT

[59] Regarding the information provided in the newsletter which says (Tab 1) "The first full cycle of the new CCP will be from September 1, 2015 to August 31, 2016. At this time, the use of the online platform will be mandatory for all members" Mr. [REDACTED] believed this was only mandatory if the member was audited and then they would submit their CCP online.

[60] Mr. [REDACTED] confirmed that had he read the first registered letter (Tab 12) he would have responded.

[61] Although the ACMDTT made multiple attempts to contact Mr. [REDACTED] believed that the College didn't use the best method which is to contact him at work. He acknowledged that the ACMDTT did in fact send the E-mails and registered letters. However, he did not receive any telephone calls so he could not confirm they were made.

[62] Mr. [REDACTED] apologised for being difficult to reach but didn't believe his actions constituted unprofessional conduct and that being difficult to contact should not mar his record.

## V. Submissions of the Parties

### Submissions of the Complaints Director

[63] The Complaints Director submitted that the facts supporting the allegations against Mr. [REDACTED] have been proven.

[64] The evidence given by Ms. Richmond outlined the efforts made by the ACMDTT to assist regulated members transition to the new mandatory My CCP platform and the changes to the CCP. This included communication in the form of Newsletters and E-blasts from September 2014 to March 2017. These communications included frequently asked questions to clarify any misunderstandings.

[65] Also, opportunities for remediation were given to non-compliment regulated members through E-mails dated March 13, 2017 (Tab 4) and March 29, 2017 (Tab 7). Additionally, a reminder E-mail was sent April 1, 2017 (Tab 9). Following these efforts all but 51 of the 997 members remediated. Of those 51 members only 8 were referred to the Complaints Director, of which Mr. [REDACTED] was one, and he was contacted further by registered letter by Ms. Stone and there was no response by Mr. [REDACTED].

[66] Further, the Complaints Director submitted that these proven actions constituted unprofessional conduct based on the following:

### Allegation 1

1. Health Professions Act Section 1(pp)(vi)(a): "unprofessional conduct" failure or refusal to comply with the requirements of the continuing competence program.
2. Standards of Practice 2.1(g)-Adhere to legal obligations required by the College (e.g., protected titles, mandatory registration requirements.
3. Standards of Practice 2.2(f)-Participate in the College's Continuing Competence Program.
4. Code of Ethics2(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.

### Allegation 2

- [67] Although there was no intent to deceive, failure to understand the CCP requirements resulted in a false declaration and Code of Ethics-2(b) Honesty states that a regulated member demonstrates honesty and truthfulness in his/her professional relationships with colleagues, patients and patient representatives.
- [68] Mr. [REDACTED] needs to be aware of his obligations as a regulated member.

### Allegation 3

1. Health Professions Act 1(pp)(vii)(b) “unprofessional conduct” failure or refusal to comply with a request of or co-operate with an investigator.

### Submissions of [REDACTED]

- [69] Mr. [REDACTED] stated that he has been a member of the ACMDTT since 2007 and was an instructor at NAIT from 2007 – 2009. He enjoys learning activities and tried his best to complete the CCP.
- [70] He argued that allegation 1 does not clarify what is meant by “online” and that is supported by the fact that 44% of members were non-compliant. This demonstrates poor communication from the ACMDTT.
- [71] Mr. [REDACTED] did not believe he was making a false declaration because he had completed his CCP by previously accepted hard copy.
- [72] He also submitted that due to an unfortunate personal situation he was difficult to contact for several weeks. His physical address and email address both changed at that time. This resulted in not receiving the registered letters (Tab 12 and Tab 13) and him therefore not responding.
- [73] Mr. [REDACTED] argued that unprofessional conduct was a very serious action like harming a patient. He feels he had no malicious intent and doesn't not feel that his actions constitute unprofessional conduct and he should not have his licence taken away.
- [74] He indicated his willingness to sit down with Ms. Richmond to remediate his non-compliance.

### Complaint Director Response

- [75] Three methods of communication were used to try and contact Mr. [REDACTED] and this was above and beyond the ACMDTT's mandate as they should only need to use one method of communication.
- [76] Also, the Complaints Director does not seek to cancel Mr. [REDACTED]'s licence.
- [77] The Complaints Director emphasized that Mr. [REDACTED] admitted that he doesn't always read his E-mails from the ACMDTT.

## **VI. Decision and Findings**

[78] The Hearing Tribunal finds that all the allegations have been proven and that the conduct constitutes unprofessional conduct.

### **Allegation 1**

[79] The Hearing Tribunal finds that the first allegation is proven. The Hearing Tribunal carefully considered the exhibits, the witnesses and Member testimony and the submissions from both parties in making its finding.

[80] The Hearing Tribunal accepted the position of the Complaints Director that there was no attempt to access the My CCP platform by Mr. [REDACTED] prior to March 2017 when the first mediation opportunities were offered to all regulated members not in compliance. The Hearing Tribunal concluded that the communications from the ACMDTT from September 2014 to March 2017 were clear in their intent. They accurately describe the online My CCP platform as becoming mandatory for the 2015/2016 CCP cycle.

[81] Mr. [REDACTED]'s mistaken belief that the online platform was only used during an audit process and that keeping hard copy records constituted compliance does not excuse his conduct as the ACMDTT provided extensive communications about the CCP new online requirements and it was his responsibility to be aware of and meet those requirements.

### **Allegation 2**

[82] The Hearing Tribunal finds that the second allegation is proven. The Hearing Tribunal carefully considered the exhibits, the witness and Member testimony and the submissions from both parties in making its finding.

[83] The Complaints Director presented compelling evidence through the exhibits and Ms. Richmond's testimony establishing that Mr. [REDACTED] indicated that he was compliant with the required CCP (Tab 5) and evidence that Mr. [REDACTED] had made no attempt to access the mandatory online My CCP platform (Tab 6).

[84] Mr. [REDACTED]'s explanation that he had been complying with the previous accepted CCP and completed the paper forms was not accepted by the Hearing Tribunal since he had a responsibility to be aware of and to comply with the current CCP. In any event, his CCP declaration was false.

[85] Mr. [REDACTED] did not dispute the evidence presented that he had never attempted to access the My CCP platform.

### **Allegation 3**

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

- [87] The Hearing Tribunal accepted the evidence submitted by the Complaint's Director including the registered letter and proof of delivery dated April 21, 2017 (Tab 12) and the registered letter and proof of delivery dated May 16, 2017 (Tab 13) and that there was no response by Mr. [REDACTED]
- [88] Mr. [REDACTED] described an unfortunate personal situation that resulted in a change of residence and email address for a short time. He also did not recognize the importance of the first registered letter (Tab 12) and he did not receive the second registered letter (Tab 13) [REDACTED]. For these reasons, he argued that he was unable to respond to the requests for information.

**Unprofessional Conduct: Additional Comments**

- [89] For the reasons outlined above the Hearing Tribunal finds that Allegations 1 through 3 are factually proven on the balance of probabilities.
- [90] The Hearing Tribunal also considered whether Mr. [REDACTED]'s conduct constitutes "unprofessional conduct" as defined in Section 1(1)(pp) of the *Health Professions Act* as follows:
- (vi)(a) failure or refusal to comply with the requirements of the continuing competence program;
  - (vii)(b) failure or refusal to comply with a request of or co-operate with an investigator;
- [91] The ACMDTT has established a Continuing Competence Program in accordance with the requirements of the HPA. Participation in the program is a mandatory duty of regulated members of the ACMDTT. The evidence established that Mr. [REDACTED] failed to comply with his duty to complete the CCP requirements. The Hearing Tribunal found the testimony of Ms. Richmond and Ms. Stone to be clear, credible and supported by the exhibits.
- [92] Further standards of Practice section 2.1(g) requires regulated members to adhere to legal obligations required by the College and section 2.2(f) requires regulated members to participate in the College's Continuing Competency Program. Mr. [REDACTED] did not comply with the mandatory CCP participation by the College's deadline and extensions. His conduct clearly breached these Standards of Practice.
- [93] The Code of Ethics principle 2(b) requires honesty and truthfulness in a regulated member's professional relationships with colleagues. The Hearing Tribunal agrees with the Complaints Director that "colleagues" includes the College. Mr. [REDACTED]'s false declaration on his 2017 renewal contravened this principle.
- [94] The Hearing Tribunal considered the mitigating factors submitted by Mr. [REDACTED] leading to his false declaration. Specifically, he believed that his declaration was not false as he participated in the previously approved CCP. However, he does admit that he was aware of upcoming changes to the CCP but believed that My CCP participation was only required for audits. Again, it was Mr. [REDACTED]'s responsibility to be aware of and comply with current CCP requirements.

- [95] 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. Mr. █████ failed to respond to numerous requests from the Complaints Director.
- [96] The Hearing Tribunal also considered the alleged personal mitigating factors submitted by Mr. █████ explaining his lack of response, including moving and changing his email address. The Hearing Tribunal concluded that these circumstances do not affect the finding of unprofessional conduct. At all times, Mr. █████ was responsible for advising the ACMDTT of any changes to his address and contact information (including e-mails). He failed to do that.
- [97] As well, the Hearing Tribunal rejected Mr. █████’s argument that the ACMDTT failed to exercise due diligence by not pursuing other means of communicating with him. The College was entitled to rely on the contact information provided to it by Mr. █████ and used three methods of communicating with Mr. █████. The ACMDTT’s efforts were more than fair and reasonable.
- [98] Mr. █████ ignored communications or, in the case of the registered mail letters, failed to distinguish between “other” registered mail and ACMDTT registered mail.
- [99] Mr. █████’s repeated failures were his and his alone and were inconsistent with his obligations as a regulated member of this profession.
- [100] 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. Mr. █████’s conduct undermined the ACMDTT’s ability to engage in self-regulation.

## VII. Sanctions

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

### Complaints Director Submissions

- [102] The ACMDTT has a responsibility to protect the public and sanctions are a means to ensure that this mandate is achieved.
- [103] 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 the Complaints Director submits that there was no intent to deceive.
  - Age and Experience are not a factor.
  - Previous character of the technologist and any prior complaints or convictions: The Complaints Director submits there are no previous concerns to consider.

- 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 made numerous attempts to contact Mr. [REDACTED]
- Role of the technologist in acknowledging the conduct occurred: The Complaints Director submits there was no malicious intent, however Mr. [REDACTED] believed he was compliant, and members need to demonstrate a deeper understanding of the importance of communication than Mr. [REDACTED] has demonstrated.
- Previous serious financial or other penalties are not a factor.
- Impact on affected patient is not a factor.
- Presence or absence of any mitigating circumstances: The Complaints Director submits although Mr. [REDACTED] moved and changed his email he has an obligation to update his contact information with the ACMDTT. Therefore these mitigating factors do not carry any weight.
- Need to promote specific and general deterrence, and thereby, to protect the public and ensure the safe and proper practice. The Complaint's Director submits there was a 44% non-compliance and therefore a need to let the regulated members know that penalties for non-compliance will occur.
- The ACMDTT is a self-regulating organization and Mr. [REDACTED]'s lack of compliance, false declaration and failure to comply with an investigation undermine the efforts of the College to ensure public safety.
- 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 Mr. [REDACTED]'s conduct did in fact fall outside the permitted range of conduct.
- Range of sentence in other similar cases: The Complaints Director submits there three other cases to consider from the Alberta College of Pharmacists (Momtaz Ebied and Cyril Bright) and from the College of Physical Therapists of Alberta (Hala Ghobrial). These cases were provided to the Tribunal for review.

[104] The Complaints Director provided a written summary of the penalty orders she was seeking and it was marked as exhibit 4. The summary of those order requests are as follows:

1. [REDACTED] (the "Member") will be suspended until he successfully fulfills all requirements of his 2015/2016 CCP program or for a period of fourteen (14) days, whichever period is longer. The period of suspension will commence seven (7) days after the Hearing Tribunal's decision is provided to him.

2. The Member will, within 30 days of being given a copy of the Hearings Tribunal's decision, submit an essay in a form that is satisfactory to the Hearings Director of approximately two pages in length outlining his responsibilities as a member of the ACMDTT and confirming the importance of complying with his regulatory responsibilities, including:
  - a. Compliance with the CCP program; and
  - b. Being candid, forthright and honest in all dealings with the ACMDTT and its staff; and
  - c. Cooperating with investigations conducted under the HPA and responding to correspondence received from the ACMDTT in a timely manner.
3. The Member is directed to provide written confirmation to the Hearings Director, within 30 days of being given a copy of the Hearing Tribunal's written decision, that he has completed the ACMDTT's regulation education module.
4. 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).
5. The Member is hereby ordered to pay 100% of costs of the investigation and the hearing, to a maximum of \$15,000.00, subject to the following:
  - a. The Member must advise the Hearings Director within 30 days of being provided with a copy of the Hearing Tribunal's decision whether he wishes to pay the costs in a lump sum or whether he wishes to pay in instalments;
  - b. 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
  - c. If the Member elects to pay the costs in instalments:
    - i. The costs shall be paid equal monthly instalments over a period of 18 months;
    - ii. The Member must provide the Hearings Director with 18 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 2, 3 and 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 2, 3 and 5 by the deadlines set out above, or by such other date as agreed to by the Hearings Director, his permit to practise will be automatically suspended pending compliance.

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

[106] The Complaints Director also provided a copy of an E-mail exchange between Ms. Michelle Wolf, Hearings Director, Mr. [REDACTED] and Ms. Karen Stone, Complaints Director (Exhibit 5) to demonstrate Mr. [REDACTED]'s lack of understanding of the ACMDTT regulations and his obligations as a member.

[REDACTED]

[107] Mr. [REDACTED] felt that sanctions 1 and 4 are reasonable, and he expressed regret for any bad attitude that was presented during the hearing.

[108] He stated that any monetary penalties are significant and \$15,000.00 is a "scary" amount. He also preferred that no suspension be ordered.

## VII. Orders

[109] The Hearing Tribunal carefully considered the Submissions from both the Complaints Director and Mr. [REDACTED] and made the decision to impose the penalties submitted by the Complaints Director with one change to order number 1.

[110] Bearing in mind the applicable *Jaswal* factors, the Hearing Tribunal concluded that as regulated member of the College it was Mr. [REDACTED]'s clear responsibility to comply with the CCP requirements (including the on-line components which he 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.

[111] The Hearing Tribunal found Mr. [REDACTED]'s testimony concerning his personal circumstances, his change of address and e-mail and his reasons for failing to check and respond to numerous e-mails and registered letters to be entirely inconsistent with the responsibilities of a professional. The Hearing Tribunal was very concerned that Mr. [REDACTED]'s conduct displayed, at best, a casual attitude towards the College's role and importance as a regulatory body.

[112] In light of the foregoing, the Hearing Tribunal hereby made the following orders pursuant to section 82 of the HPA:

1. The Member will be suspended until he successfully fulfills all requirements of his 2015/2016 CCP program or for a period of for a period of 14 days, whichever period

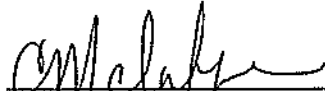
is longer. The period of suspension will commence 14 days after the Hearing Tribunal's decision is provided to him.

2. The Member will, within 30 days of being given a copy of the Hearing Tribunal's decision, submit an essay in a form that is satisfactory to the Hearings Director of approximately two pages in length outlining his responsibilities as a member of the ACMDTT and confirming the importance of complying with his regulatory responsibilities, including:
  - a. Compliance with the CCP Program; and
  - b. Being candid, forthright and honest in all dealings with the ACMDTT and its staff; and
  - c. Cooperating with investigations conducted under the HPA and responding to correspondence received from the ACMDTT in a timely manner.
3. The Member is directed to provide written confirmation to the Hearings Director, within 30 days of being given a copy of the Hearing Tribunal's written decision, that he has completed the ACMDTT's Regulation Education module.
4. 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. 2017/2018 and 2018/2019).
5. The Member is hereby ordered to pay 100% of the costs of the investigation and the hearing, to a maximum of \$15,000.00, subject to the following:
  - a. The Member must advise the Hearings Director within 30 days of being provided with a copy of the Hearing Tribunal's decision whether he wishes to pay the costs in a lump sum or whether he wishes to pay in installments;
  - b. If the Member elects to pay the 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.
  - c. If the Member elects to pay the costs in installments:
    - i. the costs shall be paid in equal monthly installments over a period of 18 months;
    - ii. the Member must provide the Hearings Director with 18 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 the Member and the remaining post-dated cheques must be provided at that time.

6. The deadlines referred to in paragraphs 2, 3 and 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 to successfully comply with paragraphs #2, #3 and #5 by the deadlines set out above, or by such other date as agreed to by the Hearings Director, his permit to practice will be automatically suspended pending compliance.

[113] The change to order 1 in terms of the commencement of the suspension being 14 (and not 7) days after the provision of the decision to Mr. [REDACTED] was deemed appropriate by the Hearing Tribunal to allow Mr. [REDACTED]'s employer sufficient time to change work schedules to maintain patient care and to consider other employees' shift changes.

Signed on behalf of the Hearing Tribunal this 4 day of August, 2017.

  
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Christy McIntyre, Chair