

**In the matter of *The Respiratory Therapists Act*, SS 2009, c R-22.0002 and Bylaws
and in the Matter of a Written Complaint dated August 20, 2018
against Darren Martsinkiw of Yorkton, Saskatchewan**

**DECISION
of Saskatchewan College of Respiratory Therapists
DISCIPLINE COMMITTEE**

Discipline Committee Members:

Scott McCrae, Registered Respiratory Therapist, Chair
Candi Thompson, Registered Respiratory Therapist,
Bob Friedrich, Public Member
Karla Zimmer, Registered Respiratory Therapist

Karen Prisciak, Q.C., Legal Counsel for the Discipline Committee
Merrilee Rasmussen, Q.C., Legal Counsel for the Professional Conduct Committee
Amanda Quayle and Matthew Schmeling, Legal Counsel for Darren Martsinkiw

A. INTRODUCTION

1. The Discipline Committee convened the hearing via conference call on April 24, 2019, in accordance with the Notice of Hearing. An Agreed Statement of Facts and Documents was presented to the Discipline Committee signed by both Counsel.

2. The complaint against Mr. Martsinkiw alleges professional misconduct arising from correspondence between Mr. Martsinkiw and Dr. C Meyer wherein Mr. Martsinkiw signed the correspondence with the designation “Respiratory Therapist”. A complaint from a member of the Saskatchewan College of Respiratory Therapists (SCRT) was made to the SCRT because Mr. Martsinkiw is not licensed by the College.

3. Mr. Martsinkiw was charged with professional misconduct under Section 24 of *The Respiratory Therapists Act*, SS 2009, c R-22.0002 (hereinafter “the Act”) and Regulatory Bylaw 14.

B. FACTS

4. The essence of the facts agreed are as follows:

a. Darren Martsinkiw forwarded a fax dated May 23, 2018 to Dr. C. Meyer on the letterhead of “Prairie First Aid & CPAP Services Ltd”. A copy of the first page of the fax

was attached to the written complaint received by the College. It is the only page of the fax that was attached to the written complaint.

b. The fax is signed:

Darren Martsinkiw FCSRT, PSGT
Respiratory Therapist

c. A search of the Corporations Registry indicates that Prairie First Aid and CPAP Services Ltd. was incorporated on September 14, 2013 and Darren Martsinkiw is the sole shareholder of the corporation. The corporation's business as set out in its Profile Report is "Safety Training (first aid, CPR, AED, WHMIS, TDG, ETC...) and consulting. Sleep apnea testing and screening, and CPAP supplies".

d. Darren Martsinkiw entered into an Alternative Dispute Resolution Agreement with the Professional Conduct Committee on July 29, 2012. Among the undertakings set out in the Alternative Dispute Resolution Agreement, Mr. Martsinkiw agreed as follows:

The Member acknowledges that he is not entitled to use the RRT designation unless he is currently licensed with the College at the time of using it and undertakes to conduct himself in accordance with the Respiratory Therapists Act and the bylaws made under that Act at all times.

e. Darren Martsinkiw is a member of the Canadian Society of Respiratory Therapists, a voluntary national organization whose objective is to advocate for respiratory therapists.

5. As a result of the Alternative Dispute Resolution Agreement (hereinafter referred to as "the Agreement"), no further action was taken against the Member. The complaint was resolved by consent.

6. The Formal Charge states as follows:

You, Darren Martsinkiw, a member of the Saskatchewan College of Respiratory Therapists (SCRT), are alleged to be guilty of professional misconduct, contrary to section 24 of *The Respiratory Therapists Act*, by engaging in conduct that is harmful to the best interests of the public or its members, tends to harm the standing of the profession, and/or is a breach of that Act or the bylaws made pursuant to that Act, in the following circumstances:

1. On or about May 23, 2018, you sent a report to Dr. C. Meyer relating to polysomnography test results which you signed as a "respiratory therapist" without indicating that you do not have a current license to practice from the Saskatchewan College of Respiratory Therapists, contrary to section 14 of *The Respiratory Therapists Regulatory Bylaws* and the undertakings you assumed pursuant to the Alternative Dispute Resolution Agreement entered into with the SCRT dated July 29, 2012.

7. In this instance the Member referred to himself as a “Respiratory Therapist” not a “**Registered** Respiratory Therapist” as he did in 2012.

8. Under Section 22 of the *Act* only a member shall use the title “**Registered** Respiratory Therapist” but there is no reference to the use of “Respiratory Therapist” in the *Act*:

Protection of title

22 No person other than a member shall use the title “Registered Respiratory Therapist”, the abbreviation “RRT” or any word, title or designation, abbreviated or otherwise, to imply that the person is a member.

9. It is undisputed that the Member was a member of the College in 2018 but was not licensed to practice as a Respiratory Therapist.

C. ARGUMENT

10. Counsel for the Professional Conduct Committee acknowledges that Section 22 of the *Act* precludes the use of the title “Registered Respiratory Therapist”. However, given that the Member was not licensed to practice, he could only be considered a non-practicing member under Section 11 of the Bylaws which compels him to identify his status as a “Registered Respiratory Therapist (non-practicing)” or “RRT(NP)”. Given that the Member did not state he was non-practicing, he is guilty of professional misconduct as defined in the *Act*.

11. Counsel for the Member submits he is not in violation of the *Act* or the Agreement because he did not describe himself as “Registered” when describing himself as a “Respiratory Therapist”. The Member was not in violation of the bylaws because there is no restriction on the Member’s use of the title “Respiratory Therapist”. Section 11 of the Bylaws does not specifically prohibit the use of “Respiratory Therapist” for a non-practicing member. Furthermore, the Member was not in violation of the Code of Ethics given that referring to himself as a respiratory therapist was an accurate reflection of his qualifications, education, experience and competence. Counsel argues the report signed by the Member was for a review of the physician and not a member of the public and therefore was not misleading.

12. In summary, counsel for the Professional Conduct Committee requests the Discipline Committee broadly interpret the legislation to protect the public from any misunderstanding associated with the use of the title “Respiratory Therapist” Counsel for the Member requests the

Discipline Committee literally interpret the legislation which does not expressly prohibit the member from using the title “Respiratory Therapist”.

D. LEGISLATION

13. *The Respiratory Therapists Act*, SS 2009, c R-22.0002 defines professional misconduct as follows:

Professional misconduct

24 Professional misconduct is a question of fact, but any matter, conduct or thing, whether or not disgraceful or dishonourable, is professional misconduct within the meaning of this Act if:

- (a) it is harmful to the best interests of the public or the members;
- (b) it tends to harm the standing of the profession;
- (c) it is a breach of this Act or the bylaws; or
- (d) it is a failure to comply with an order of the professional conduct committee, the discipline committee or the council.

14. The authority of the College to define categories of membership is set out in Section 15(2)(g) of the *Act*:

15(2) Subject to this Act, regulatory bylaws may be made pursuant to section 14 for the following purposes:

- (g) establishing categories of membership in the college and prescribing the rights and privileges of each category;

15. The categories of membership are set out in Section 6 of the *Respiratory Therapists Regulatory Bylaws*:

Categories of membership

6 Membership in the college consists of the following categories:

- (a) full practising membership;
- (b) graduate practising membership;
- (c) temporary membership;
- (d) non-practising membership;
- (e) honorary membership.

16. Non-practicing membership is referred to in Section 11 of *Regulatory Bylaws*:

Non-practising membership

11(1) Non-practising membership in the college is available to a person who:

(a) is registered, or is eligible for registration, as a full practising member or graduate practising member; and

(b) wishes to cease practice.

(2) A non-practising membership entitles a person to the following privileges:

(a) to use the title “Registered Respiratory Therapist (non-practising)” or the initials “RRT (np)”;

(b) to have a voice, but no vote, at the meetings of the college;

(c) to be appointed to committees of the college;

(d) to receive copies of the college’s documents appropriate for distribution; and

(e) to receive the publications of the college.

17. Section 14 of the Regulatory Bylaws sets out the licensing requirements:

Licence required

14 Every practising member shall submit an application for a full practising licence or graduate practising licence to the college in accordance with these bylaws, together with the licence fee required pursuant to *The Respiratory Therapists Administrative Bylaws*.

E. ANALYSIS

18. As of March 31, 2011 the Member had not renewed his license to practice. Accordingly, as of the date of the hearing he was an unlicensed member of the SCRT. It is also uncontroverted that in the May 23, 2018 report the Member referred to himself as a “Respiratory Therapist” and did not disclose that he did not have a license to practice as a Respiratory Therapist.

19. The Discipline Committee recognizes that Section 22 precludes the use of “Registered Respiratory Therapist” other than by a member but does not preclude use of the designation “Respiratory Therapist”. On a reading of the *Act* without reference to the Regulatory Bylaws, the Member would appear not to be in violation of the legislative provisions of title protection.

20. The Respiratory Therapists Regulatory Bylaws (hereinafter referred to as “the Bylaws”) refer to five categories of membership. Section 8 defines full practicing membership and Section 11 refers to the requirements and entitlements of non-practicing memberships. The Bylaws are enacted by the College under Section 15(2)(g) of the *Act* which authorizes the College to “establish categories of membership” and prescribes the rights and privileges of each category.

21. Section 11 of the Bylaws allows non-practicing members to identify themselves as “non-practicing” when referring to themselves as a “Registered Respiratory Therapist”:

Non-practising membership

11(1) Non-practising membership in the college is available to a person who:

(a) is registered, or is eligible for registration, as a full practising member or graduate practising member; and

(b) wishes to cease practice.

(2) A non-practising membership entitles a person to the following privileges:

(a) to use the title “Registered Respiratory Therapist (non-practising)” or the initials “RRT (np)”;

(b) to have a voice, but no vote, at the meetings of the college;

(c) to be appointed to committees of the college;

(d) to receive copies of the college’s documents appropriate for distribution; and

(e) to receive the publications of the college.

22. Neither the *Act*, Bylaws nor the Code of Ethics specifically address the Member’s use of the title “Respiratory Therapist”.

23. Both Counsel for the Professional Conduct Committee and the Member referred to the *Sydiaha v. Saskatchewan College of Psychologists* decisions (2014 SKQB 112 and 2014 SKCA 116) in their submissions. Dr. Sydiaha was a non-practicing member of the Saskatchewan College of Psychologists but identified himself as a “psychologist” without indicating he was non-practicing as required under the Bylaws. The Discipline Committee found him guilty of professional misconduct because referring to himself as a psychologist was misleading to the public. Dr. Sydiaha’s argument that he was not in breach of the bylaws given that he did not use the word “registered” was not accepted by the Discipline Committee. Dr. Sydiaha’s appeals to the Saskatchewan Court of Queen’s Bench and the Saskatchewan Court of Appeal were dismissed.

24. Both Courts reinforced that the primary focus of professional regulation is protection of the public. Mr. Justice G. Currie commented that members of the public would not discern between a “registered psychologist” and a “psychologist”. He stated that reasonable members of the public “may think that both are entitled to practice psychology”.

25. Similarly Mr. Justice R. Ottenbreit of the Saskatchewan Court of Appeal reinforced that the interpretation of legislation governing self-regulated professionals is protection of the public. He referred to the overall scheme of the *Act* as disclosing a privilege and right to use the word “psychologist” within certain parameters. Upon consideration of the *Act* and bylaws he found that the condition of use of the title “psychologist” by non-practicing members required them to designate “non-practicing” status.

26. Counsel for the Professional Conduct Committee submits *Sydiaha* is analogous; Counsel for the Member disagrees.

27. Counsel for the Member distinguishes *Sydiaha* on numerous grounds. First, the Court of Appeal decision was reviewing the Queen’s Bench decision to determine if the Queen’s Bench Court applied the proper standard of review not whether the Discipline Committee was correct. Second, the facts are distinguishable. The College of Psychologists warned Dr. Sydiaha about referring to himself as a psychologist yet he continued to advertise in the Yellow Pages. Third, the *Act* and Bylaws under consideration are different from the Respiratory Therapists’ *Act* and Bylaws.

28. The Discipline Committee disagrees that the principles discussed in both the Queen’s Bench Court and Court of Appeal are not binding. It will always look to the guidance of the Courts especially when considering analogous circumstances – in this case – title protection. In fact, the *Psychologists Act, 1997*, SS 1997, c P-36.01 title protection Section 24(1) in *Sydiaha* is almost exactly the same as that in the *Respiratory Therapists Act* Section 22:

Protected title

24(1) Subject to subsection (3), no person other than a member shall use the title “psychologist” or any word, title or designation, abbreviated or otherwise, to imply that the person is a member.

29. As Counsel submitted, the Agreed Statement of Facts and documents do not refer to the Member being “warned”. The Discipline Committee notes the legislation does not require the College to do so. However, the Member was aware that the College regulates the use of the professional designation given his involvement in the 2012 Agreement on the same issue. Although this was not a warning, the process clearly alerted the Member to the requirements of use of the title.

30. The Discipline Committee was invited to consider that Dr. Meyer (who received the Member’s report) was aware the Member was unlicensed. This suggestion is not supported by the

Agreed Statement of Facts and Documents. It is the complainant who knew the Member was unlicensed not the physician who received the correspondence.

31. Counsel for the Member further submits the public was not misled because the report went to a healthcare professional – a physician. A physician however is a member of the public. More importantly, the Member and the physician were communicating about the needs of a patient. Both patients and healthcare professionals are members of the public entitled to the protection required by the *Act*. It is reasonable that healthcare professionals communicating amongst themselves on issues regarding patients' health would assume that a professional designation reflects proper training and licensure by that professional. It is reasonable that the Member's use of the title "Respiratory Therapist" provided additional credence to any statement made by him about the patient in the report.

32. As in *Sydiaha*, the Member here did not designate his status as non-practicing. The Discipline Committee finds that without the non-practicing reference, members of the public – be they healthcare professionals or patients – would reasonably believe the Member was a Respiratory Therapist whose conduct was governed by the College. The fine distinction of whether the Member was registered (and therefore licensed by the College) or not, would be lost upon members of the public.

33. The Discipline Committee is mindful of its obligation to protect the public as set out in Section 4 of the *Act*. It acknowledges that regulation of respiratory therapists is a privilege delegated by the Legislative Assembly for Saskatchewan and it must ensure that through regulation of its members it continues to assure the public of the "knowledge, skill, proficiency and competency of members in the practice of respiratory therapy".

34. The Discipline Committee concludes it was necessary for the Member to identify his status as non-practicing. This is an indication to the public that he is not making any statements as a respiratory therapist. Although he is a member he must act in accordance with the privileges associated with his particular status. In these circumstances his membership was that of a non-practicing member even though he had not registered as such.

35. With the primary purpose of public protection in mind the Discipline Committee agrees the distinction between "Registered Respiratory Therapist" and "Respiratory Therapist" would be difficult for members of the public to comprehend. It is reasonable that the professional designation

of respiratory therapists, whether registered or not, would lead the public to infer that a person with this title is an active practicing respiratory therapist.

36. The Discipline Committee is mindful that the Member had previous issues regarding his use of the term “Registered Respiratory Therapist”. Given his previous involvement with the College regarding use of title, it would have been prudent for him to return to the College for further direction and guidance if he was uncertain or unclear as to the proper designation. He did undertake to conduct himself in accordance with the *Act* and Bylaws in the Agreement and the Code of Ethics.

37. The rights of membership are clearly prescribed in the Regulatory Bylaws. As a non-practicing member, the Member was compelled to indicate his non-practicing status to members of the public. Similar to the situation in *Sydiaha*, this language was not mandatory but the Courts agreed that non-practicing status must be disclosed.

38. The Discipline Committee concludes the Member is prohibited from using the title “Respiratory Therapist” without disclosing he is “non-practicing”. Section 22 of the *Act* precludes the use of the title “Registered Respiratory Therapist” and Section 11(2) of the Bylaws provides further guidance when the Member is non-practicing.

39. Counsel for the Professional Conduct Committee submits the Member is also in violation of Section 14 of the Regulatory Bylaws because he had not obtained a license to practice. Counsel for the Member disagrees. The Member was not charged with practicing without a license.

40. In these circumstances the Discipline Committee agrees the Member was not in breach of Section 14 of the Regulatory Bylaws. Neither the Formal Charge nor the Agreed Statement of Facts and Documents allege he was practicing as a respiratory therapist.

41. The Discipline Committee finds the Member, Darren Martsinkiw, guilty of professional misconduct in failing to identify himself as non-practicing. This conduct is harmful to the best interests of the public and harms the standing of the profession pursuant to Section 24(a) and (b) of the *Act*. His conduct is in breach of the undertaking in the Agreement in that he has not conducted himself in accordance with the *Act* or Bylaws. As his conduct violates Bylaw 11(2), he is also in violation of Section 24(c) of the *Act*.

42. The Discipline Committee is mindful that the formal charge does not refer to a breach of Regulatory Bylaw 11. It does specifically refer to Regulatory Bylaw 14. However, the charge in general does refer to a breach of the *Act* and the Bylaws which incorporates by reference all the provisions of the *Act* and Regulatory Bylaws.

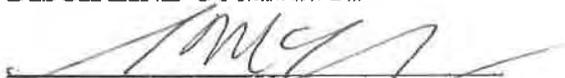
43. The Discipline Committee also finds the Member, Darren Martsinkiw, in violation of the Code, Section 2.2 which compels him to ensure that “spoken and written communications are true, accurate and clear in representing qualifications/certifications, education, experience and competence”. Mr. Martsinkiw’s failure to refer to himself as non-practicing was an inaccurate communication. The Code of Ethics are incorporated by reference under Section 15(2)(d) of the *Act*.

C. **ORDER**

44. For all the reasons set out above, the Discipline Committee therefore finds Mr. Martsinkiw is guilty of professional misconduct. A hearing will be convened at a place and time determined by the Chair of the Discipline Committee in consultation with counsel for the Professional Conduct Committee and the Member to set a hearing date to determine penalty.

Dated at Saskatoon, Saskatchewan, this 13th day of September, 2019.

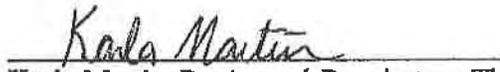
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RESPIRATORY THERAPISTS
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Chair of the Discipline Committee

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