

**IN THE MATTER OF *The Medical Radiation Act, 2006* AND BYLAWS AND IN
THE MATTER OF A FORMAL COMPLAINT DATED OCTOBER 28, 2015
AGAINST ANTHONY FERNANDES**

**Decision
Discipline Committee of the Saskatchewan Association of Medical
Radiation Technologists**

Discipline Committee Members:

Darin Humphreys, ACR, Chair
Maria McLaren, RTR, Member
Bonnie Caven, CIP, ERM Public Representative, Member
Arlene Binner, RTNM, Member

Karen Prisciak, Q.C., legal counsel for the Discipline Committee
Anthony Fernandes, appearing via teleconference
Merrilee Rasmussen, Q.C., appearing on behalf of the Professional Conduct Committee via teleconference

INTRODUCTION

1. The Discipline Committee convened on March 1, 2016 at the SAMRT office at 202-1900 Albert Street Regina, Saskatchewan. The Member, Anthony Fernandes, was served with the Notice of Hearing dated January 26, 2016 as required by *The Medical Radiation Technologists Act, 2006*, along with the Formal Complaint. The Notice of Hearing alleged Mr. Fernandes was guilty of professional misconduct, within the meaning of the Act.

COMPLAINT:

2. The formal complaint alleges: Anthony Fernandes, you are guilty of professional misconduct, pursuant to section 23 of *The Medical Radiation Technologists Act, 2006* (the "Act") in that, on or about May 30, 2015, you altered a letter you had received from the Canadian Association of Medical Radiation Technologists that stated you had successfully completed a CT imaging 1 course so it would say that you had completed the CT imaging 2 course, when you had not in fact completed that course, in order to be qualified for a position with the Saskatoon Health Region.

FACTS:

3. The parties submitted an Agreed Statement of Facts to the Discipline Committee, the relevant text of which (excluding headings and repetition of the charges) is as follows:
1. The posting for the PET/CT position at the hospital where the Member was working came up in May 2015. The requirements for the position included CT1, CT2, and other CT experience including the CTIC certificate. To obtain the CTIC certificate a nuclear medicine technologist requires CT1, CT2, CT3 and clinical experience with a SPECT/CT camera or general CT camera. At the time the Member had completed the CAMRT CT1 Course and was in the process of completing the CAMRT PET/CT course and the BCIT Radiation Safety Officer Course. He should have enrolled in the CAMRT CT2 Course instead of the CAMRT PET/CT course, as this would have made him eligible for the PET/CT position. However he did not enroll in that course as the CAMRT website stated that the CTIC certificate was being discontinued for Nuclear Medicine Technologists. He explained the situation in an email to the Chair

of the Professional Conduct Committee on December 7, 2015.

2. The Member believed at this time that he would obtain the posted PET/CT position due to his seniority in the workplace, even though he did not have the CT2 course. However, when it was made clear to him that completion of the course was essential to obtaining the position, he falsely stated that had taken the CT2 course.
3. When his managers asked him to provide proof of completion of the CT2 course, he again provided false information by altering a letter he had previously received from CAMRT advising him that he had successfully completed the CT imaging 1 course. The Member deliberately altered this letter by changing the date and changing it so that it stated he had completed the imaging 2 course.
4. The Member was awarded the position for which the CT imaging course 2 was required and worked in it from mid-August to November 6, 2015, at which time he was dismissed from his employment when these facts came to light. He registered and paid to challenge the CT imaging exam on July 13, 2015 and successfully did so after he was dismissed. This has been confirmed by SAMRT on inquiry to CAMRT.

LEGISLATION:

4. The Act defines professional incompetence in Section 23:
23 Professional incompetence is a question of fact, but the display by a member of a lack of knowledge, skill or judgment or a disregard for the welfare of a member of the public served by the profession of a nature or to an extent that demonstrates that the member is unfit to:
 - (a) continue in the practice of the profession; or
 - (b) provide one or more services ordinarily provided as a part of the practice of the profession; is professional incompetence within the meaning of this Act.
5. Professional misconduct is defined in Section 24:
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.
6. Section 19 of the Regulatory Bylaws requires members to comply with the Code of Professional Conduct which contains further guidance as to what constitutes professional conduct.
7. Once the Discipline Committee finds professional misconduct or incompetence, it then decides the appropriate penalty in accordance with Section 30 of the Act:
30 (1) Where the discipline committee finds a member guilty of professional misconduct or professional incompetence, it may make one or more of the following orders:
 - (a) an order that the member be expelled from the association and that the member's name be struck from the register;
 - (b) an order that the member's licence be suspended for a specified period;
 - (c) an order that the member's licence be suspended pending the satisfaction and completion of any conditions specified in the order;
 - (d) an order that the member may continue to practise, but only under conditions specified in the order, which may include, but are not restricted to, an order that the member:

- (i) not do specified types of work;
 - (ii) successfully complete specified classes or courses of instruction;
 - (iii) obtain medical or other treatment or counselling or both;
 - (e) an order reprimanding the member;
 - (f) any other order that the discipline committee considers just.
- (2) In addition to any order made pursuant to subsection (1), the discipline committee may order:
- (a) that the member pay to the association, within a fixed period:
 - (i) a fine in a specified amount not exceeding \$5,000; and
 - (ii) the costs of the investigation and hearing into the member's conduct and related costs, including the expenses of the professional conduct committee and the discipline committee and costs of legal services and witnesses; and
 - (b) where a member fails to make payment in accordance with an order pursuant to clause (a), that the member's licence be suspended.

ANALYSIS AND DECISION:

8. The Discipline Committee notes the Formal Charge refers to both Section 23 (professional incompetence) and Section 24 (professional misconduct). The general narrative of the Charge cites Section 23 whereas the specifics of the Charge allege the Member's conduct is contrary to the best interests of the profession, tends to harm the standing of the profession and is in breach of the Code of Conduct, which is the language of Section 24. Accordingly, the Discipline Committee assumes the Member pled guilty to professional misconduct

9. The Discipline Committee therefore finds Mr. Fernandes guilty of professional misconduct as a result of the guilty plea contained in the Agreed Statement of Facts.

10. The Discipline Committee must also determine the appropriate consequences as a result of this finding.

11. Counsel for the Professional Conduct Committee and the Member agreed the Member would pay costs of \$2500. However, there was no agreement on other components of the penalty.

12. Counsel for the Professional Conduct Committee emphasized the penalty must reflect a concern for public safety and public trust in the regulation of medical radiation technologists. Furthermore, the penalty must meet the joint purpose of specific deterrence to the Member and general deterrence to the profession. She recommended the Member be expelled, or, in the alternative, receive a long-term suspension and be required to complete an Ethics Course.

13. Counsel for the Professional Conduct Committee focused on the nature and gravity of the Member's conduct. His deliberate act in fabricating a document was for the purpose of securing a position for which he was not qualified. The public was put at risk because they were not receiving the services of a properly qualified technologist. The risk was that someone could have received an overdose of radiation.

14. On the other hand, Counsel for the Professional Conduct Committee acknowledged that the Member accepted responsibility for his conduct and was cooperative during the process of preparing an Agreed Statement of Facts. The Member has no previous discipline record.

15. Among other cases, Counsel for the Professional Conduct Committee referenced the *Soles* decision of the Saskatchewan College of Paramedics (2010) wherein a paramedic was found guilty of presenting documents he knew or ought to have known were false and that the college would rely on to issue his license. The Discipline Committee found the evidence did not

support a finding the paramedic had forged the document which would support an expulsion from the Association. The paramedic was found guilty on two charges, was reprimanded and suspended until he paid a fine and costs.

16. The Member also made representations regarding penalty. He apologized for his conduct and acknowledged it was the "biggest mistake of my life". He felt he let down his manager and his colleagues. He was terminated from his employment. The discipline process has left him anxious and uncertain. He did not want to be perceived as evil or malicious and explained he merely wanted the experience of the posted position. He knew his method to secure the position was unethical.

17. The Member did not feel he directly harmed any patients. He subsequently successfully completed the level 2 CT Imaging Course. He is currently living in Ontario and reported this outstanding discipline matter to the governing body.

18. The Member indicated he was open to being suspended on whatever terms the Discipline Committee deemed was reasonable. He presented website addresses for 31 cases predominately addressing nurses who were suspended after altering documents. He specifically referred to the *Maree* and *Nagai* decisions involving the professional discipline of physicians.

19. In *Maree* (2014), a Saskatchewan physician presented a prescription in the name of a patient to a pharmacist and represented she was the wife of the patient. Dr. Maree presented a registration form from a hockey camp to the investigation committee to support her denial of being in town on the date and time the prescription was presented. The registration form was prepared by Dr. Maree and was not a true document. Dr. Maree agreed to be suspended for 2 months, pay costs and attend an Ethics course.

20. In *Nagai* (2009), a physician presented a false document purportedly supporting her assertion that she previously obtained a Fellowship in Orthopedic Surgery and, on this basis, was accepted into a residency program in Saskatchewan. At the investigation stage, she continued to assert the truth of the false document despite having failed the Fellowship examinations four times. The Discipline Committee reluctantly approved the joint sentencing submission requesting a one month suspension, even though the circumstances would ordinarily warrant a 3 month suspension.

21. In its review of the decisions presented by the Member, the Discipline Committee does not view the *Maree* decision as being helpful in their deliberations. Firstly, Dr. Maree agreed to her penalty and, unlike the Member, she did not profess to have credentials she did not possess. The *Nagai* decision is factually more similar to the Member's circumstances in that the physician presented qualifications she did not possess. However, it appears she never began the residency program due to health problems and therefore did not put patients at risk. The committee notes both decisions resulted in a suspension of the physician.

22. The Discipline Committee acknowledges that protection of the public is its primary function in sentencing. It is mindful of the various sentencing principles enumerated in the *Law Society v. Johnson* 2013 LSBC 4, and has taken these principles into account in its decision:

1. The nature and gravity of the conduct proven;
2. The age and experience of the respondent;
3. The previous character of the respondent, including details of prior discipline;
4. The impact upon the victim;
5. The advantage gained, or to be gained by the respondent;
6. The number of times the offending conduct occurred;

7. Whether the respondent has acknowledged the misconduct and taken steps to disclose and redress the wrong and the presence or absence of other mitigating factors;
8. The possibility of remediating or rehabilitating the respondent;
9. The impact on the respondent of criminal or other sanctions or penalties;
10. The impact of the proposed penalty on the respondent;
11. The need for specific and general deterrence;
12. The need to ensure the public's confidence in the integrity of the profession;
13. The range of penalties imposed in similar cases.

23. The Discipline Committee considers the Member's deliberate conduct as quite serious. He falsified his credentials for his own benefit and in doing so he potentially put patients at risk. It was apparent the Member was remorseful and understood the gravity of his conduct. Although he acknowledged he let his manager and colleagues down, he did not seem to fully appreciate the risk to his patients. His comments revealed he was more concerned about the effect on his career than the potential harm to his patients and the potential liability of his employer.

24. The falsification of credentials is a serious matter especially when patients and physicians are relying on medical radiation technologists to administer treatment. In this case, the Member worked for almost 3 months without the necessary credentials. It is unknown how many patients received treatment under his care during this time.

25. To the Member's credit, he accepted responsibility for his conduct and did not continue to maintain a false state of affairs during the investigation, unlike Drs. Maree and Nagai. This is a single incident rather than an ongoing pattern of deception. He does not have a discipline record and has been cooperative in resolving the dispute by an Agreed Statement of Facts. He was terminated from his job and has been forthright about this discipline process to his current employer.

26. The Discipline Committee reviewed the *Soles* decision. Unlike Mr. Soles, the Member has taken full responsibility for his conduct, was remorseful and signed an Agreed Statement of Facts. It is difficult to speculate whether Mr. Soles' regulating body would have taken a different view of his conduct had he appeared at the hearing and spoke to his learning from the discipline process. In this case, the Discipline Committee heard the Member's representations and considers his comments to be genuine.

27. Although expulsion can be an appropriate remedy in similar circumstances, the Discipline Committee views suspension as equally appropriate. A period of suspension sends a message to the public, the SAMRT members and to this particular Member that conduct of this nature will not be condoned and will lead to significant consequences.

28. A suspension has the effect of precluding the Member from earning his livelihood, which, it is hoped, will have the effect of further reflection on his conduct. A suspension coupled with a requirement of an Ethics course will further ensure that the consequences of unethical conduct will be brought home to the Member. When the Member returns to his profession, the public will have confidence in knowing he had the opportunity to be remediated by successful completion of an Ethics course.

29. Accordingly, the Discipline Committee imposes a suspension of 60 days along with the requirement of an Ethics course and costs will provide the public with assurance that circumstances such as these are taken seriously and ensures the integrity of the profession in regulating its members will be maintained.

ORDER:

30. The Discipline Committee of the Saskatchewan Association of Medical Radiation Technologists finds Anthony Fernandes guilty of professional misconduct and pursuant to Section 30 of *The Medical Radiation Technologists Act, 2006*, and section 19 of *The Medical Radiation Technologists Regulatory Bylaws* and orders that:

1. The Member is reprimanded and suspended for 60 days. The suspension shall run continuously so long as the Member maintains a current registration. In the event that the Member fails to maintain a current registration, any portion of the suspension which has not yet been served, shall be served commencing on the day that the registration is renewed;
2. The Member shall pay costs to SAMRT in the amount of \$2500.00 within 90 days of this order;
3. For a period of 24 months from the date of this order, if the Member obtains an active certificate of registration, the Member will notify his employers of this decision;
4. The Member shall attend and complete a graduate level Ethics class within 6 months of the date of this Order, at his cost, such course to be approved by SAMRT in advance. Once the class has been successfully completed the Member must ensure the SAMRT receives a certificate or letter of completion from the Ethics Instructor within 9 months of the date of the Order.

Dated at Saskatoon, Saskatchewan this 4th day of May, 2016

SASKATCHEWAN ASSOCIATION
OF MEDICAL RADIATION TECHNOLOGISTS
DISCIPLINE COMMITTEE


DARIN HUMPHREYS
MEDICAL RADIATION TECHNOLOGIST, CHAIR