

Manitoba Psychologist

THE PSYCHOLOGICAL ASSOCIATION OF MANITOBA /
L'ASSOCIATION DES PSYCHOLOGUES DU MANITOBA

PAM is legally constituted by the Psychologists Registration Act (R.S.M. 1987) as the regulatory body for the practice of all branches of Psychology in Manitoba.

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Draft Code of Conduct: Please Review by February 15, 2013

On December 7, 2012, P.A.M. Registrar, Dr. Alan Slusky, sent the following announcement to Members:

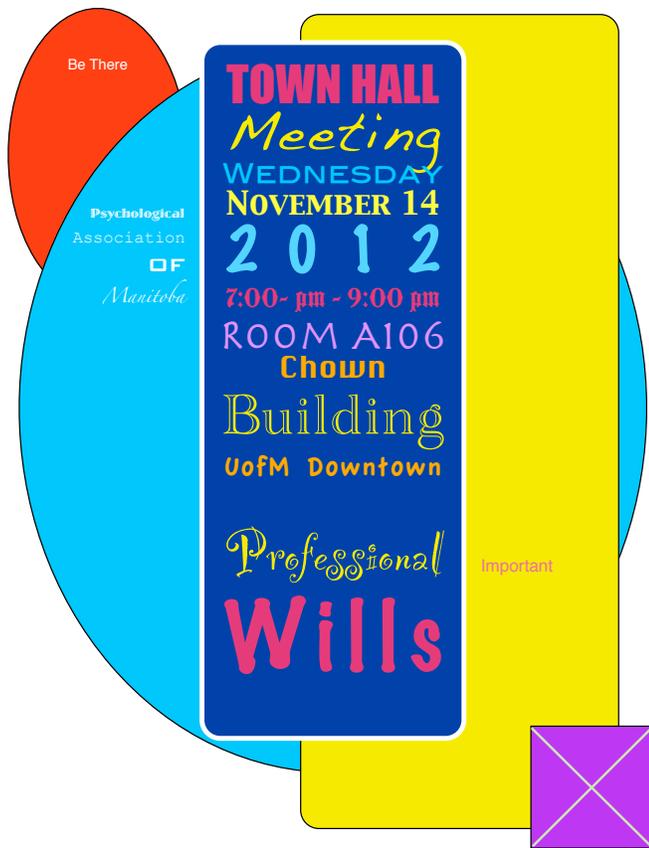
I am pleased to announce that the PAM Draft Code of Conduct is now ready for your review and feedback. As you know, for the past 2 years, the Code of Conduct sub-committee, Complaints Committee, and Executive Council have been involved in the preparation and review of this Code of Conduct. It is being offered as both a guide to professional practice and a means by which the more aspirational statements of a Code of Ethics can be translated into practical practice directives. More than aspirational however, a Code of Conduct lays out clear expectations for the ethical professional conduct of every PAM registrant, and is therefore binding upon them.

The final step in the preparation of this Code is your review and input. In order to facilitate this, we are inviting feedback from PAM registrants from now until Feb. 15, 2013. Over this 9 week period of time you are invited to review the proposed Code (click link below) and email the PAM office with any comments, concerns, or suggestions you may have. After Feb. 15th the comments received will be reviewed and final changes made to the Code, in anticipation of officially adopting it by next Spring's Annual General Meeting of the membership.

We look forward to your feedback.

Alan Slusky, Ph.D., C. Psych., Registrar

The email included the full draft of the Code of Conduct as an attachment.



Somewhere around 60 Members showed up to P.A.M.'s Town Hall Meeting November 14, 2012 to discuss the importance of the Professional Will for Psychologists, especially as Psychology comes under the Regulated Health Professions Act. Dr. Alan Slusky, P.A.M. Registrar presented "The 5 Ws of Professional Wills"—an overview of what a professional will is, who needs one and why, and what should be in a professional will. Turning to the question of *When* Members should begin to develop a professional will, his advice was clear: "Do it now" (See this issue of *Manitoba Psychologist*, beginning page 4, and <http://www.cpmc.ca/practiceResources.php?c=1>).

Apart from talk about wills, the Town Hall heard an update on P.A.M.'s Registration Information Management System (RIMS), which has made registration renewal time so much less labour-intensive, allowed for better tracking of applicants' movement through the registration process, and allowed P.A.M. to demonstrate compliance with Fairness Commission guidelines. Conversation also touched on Telepsychology, for which practice guidelines continue to evolve. Most importantly, the evening gave Members time to chat with colleagues over coffee and maybe put faces to names.



Ψ

Guidelines for Preparing Your Professional Will

Courtesy of the B.C. College of Psychologists

INTRODUCTION

The incapacitation or death of a registrant is an event with profound ramifications for families, friends and clients. There are many legal, ethical, clinical and personal issues for the practicing registrant to consider. When there is advance warning of disability or death, planning ahead for the benefit of clients may help them get through this with as little trauma as possible and even, in the best case scenario, with further growth. In some cases, however, there will be no advance notice. The unexpected incapacitation or death of a registrant can be the ultimate abandonment.

Getting past denial and accepting that this is a real possibility means not waiting until retirement age before beginning to think about it. The completion of a Professional Will is a good way to ensure that at least the most important bases are covered. In addition to meeting the requirement for naming a Professional Executor, the completion of a Professional Will also includes naming the lawyer, specifying record location(s) and anything necessary for access, a list of clients to be contacted and their phone numbers. Completion of this document will smooth transition of care where necessary, as much as that is possible. It

will allow access into voice mail, specify your insurance carrier, and address other logistical issues around the closing of your practice. It will communicate anything you want communicated to your clients after you are gone. Completing this document will make it much easier and less stressful for both family and executor to take care of what will need to be done in relation to your practice. The act of completing a Professional Will communicates to your clients that you really do care about their welfare.

SUGGESTED GUIDELINES

1. What a Professional Will is not: This document, even though it is called a "will," is not a substitute for a Personal Last Will and Testament. It is intended to

give authority and instructions to your Professional Executor regarding your psychology practice, in the event of your incapacitation or death. In addition, this is not intended as legal advice regarding what you need to do. Consult a lawyer and anyone providing you with estate planning advice to see if this meets your needs and is consistent with any other documents you may already have in place.

2. This is not the only way to do it: This version of a Professional Will is only one of many possible ways of planning for what you want done in the event of your incapacitation or death. These guidelines are designed to assist you in the process of thinking through the nature of your professional practice and to suggest a number of possible options and issues



for you to consider in providing instructions for your Professional Executor.

3. **Professional Executor:** Your designation of a Professional Executor may be the single most important function of this document. This will facilitate the process of what will need to be done in the event of your incapacitation or untimely death. Your Professional Executor should be a registrant you respect and trust. Meet with this person as part of the process of writing your Professional Will in order to familiarize him/her with your practice and discuss what you would like done. Your Professional Will is most likely to be carried out effectively if your Professional Executor is involved in the planning process. Selecting a Professional Executor involves a dialogue where mutual responsibilities, expectations, questions, etc. can be resolved to the satisfaction of both parties. If the Professional Executor is not familiar with your office, arrange a meeting there and schedule a "walk through" so the Professional Executor can gain some familiarity with your office and the location of its contents.

4. **Backup Professional Executor:** If, for any reason, your designated Professional Executor is unavailable or unable to perform this function, it is wise to have at least one backup. This registrant may also be the best person to assist the Professional Executor in the likely event he/she will need assistance.

5. **Authority for Professional Executor:** In order for your Professional Executor to be able to act on your behalf, you need to give him/her the authority to take appropriate action with your records, and you also want him/her to be able to delegate activities to others so that no single person becomes overwhelmed by the magnitude of the task.

6. **Legal Advice:** You may want to discuss your needs with a knowledgeable lawyer and use his/her expertise in determining the details of how your professional affairs will be handled. A final copy of your Professional Will should be filed with your lawyer. Specifying who your lawyer is and how to get hold of him/her will expedite your Professional

Executor's task. It should be noted however, that a Professional Will can be completed without involving an lawyer.

7. **Executor of Personal Will:** Having completed a Personal Will is extremely important and valuable in its own right. The presence and availability of a Personal Will also strengthens the effectiveness of a Professional Will. Assuming that you have a Personal Will, the name of its executor and how to contact him/her will allow your Professional Executor to reach this person quickly. There will be a number of things that the two of them will need to discuss and coordinate on your behalf.

8. **Client Records:** Specify the location(s) of your current and past client records. And if you have not already done so, sort them into these two groups and arrange them alphabetically. Specifying the date first seen and when the case was closed on the outside of the file will also be helpful to your Professional Executor. In addition to the Code requirement, Legibility of the records is a huge plus and ensure that at least the face sheet, with the client's

name, phone number and address is easily legible.

9. **Test Materials:** The Professional Executor should strive to assure that all psychological test materials are maintained in a confidential and secure manner.

10. **Billing and Financial Records:** Specify the location of your billing and financial records. This will allow your Professional Executor to facilitate the completion of any outstanding billing and financial transactions related to your practice in an orderly manner. Your estate will thank you.

11. **Appointment Book and Client Phone Numbers:** This will be one of the first things your Professional Executor will need. Ready access to this information will allow clients with whom you have appointments scheduled to be contacted personally prior to their arriving at your office and finding you not there.

12. **E-Mail Address Password and Voice Mail Access Code:** Having this information readily available will allow your

Meeting Ethical Obligations

The Canadian Code of Ethics for Psychologists requires that Psychologists, "(c)ollect, store, handle, and transfer all private information, whether written or unwritten (e.g., communication during service provision, written records, e-mail or fax communication, computer files, video-tapes), in a way that attends to the needs for privacy and security. *This would include having adequate plans for records in circumstances of one's own serious illness, termination of employment, or death.*" (I.41).

voice mail message to be changed to indicate what has happened and/or who to contact and will facilitate response to any voice mail or e-mail messages in a timely fashion. If you prefer, your passwords and access codes can be referenced in this document and kept with the copy of your Professional Will in your professional liability insurance file along with your list of client names.

13. Your Keys: Your Professional Executor should be easily able to locate the keys to the various things he/she will need to access, such as your office, filing cabinets, storage facility, etc. Having them labeled and telling your Professional Executor where they are will obviously facilitate this.

14. Further Assistance in Locating/Accessing Records:

List any other people who might be helpful in locating or accessing your client, billing and financial records, your appointment book, phone numbers, etc. (e.g. a spouse or relative, a secretary, a billing person, a friend, an office mate, etc.).

15. Location of Copies of Professional Will:

It is suggested that the original be filed with your personal will and copies be given to your lawyer and Professional Executor. In addition, it is recommended, more as a reminder to yourself to check and update it annually, to file a copy with your malpractice insurance. policy. This is a way of ensuring you will at least see it annually and consider whether any changes need to be made and ensure accuracy of the information.

16. Notification of Current and Past Clients: A list of current and selected past clients you wish to have notified about your death and any planned memorial services along with their phone numbers will allow this to be done relatively easily. This will be an efficient way of deciding who to call if you want to have clients at your memorial services or if you want special memorial services for clients only. There are a variety of options regarding memorial services. You can leave this up to the discretion of your Professional Executor or you can specify your wishes. The general notification of your death to your clients can be done in a number of ways. For example, it can be done by phone, in writing, and/or through a notice in the newspaper. This can be left up to the discretion of your Professional Executor or specified by you. Similarly, you can be specific regarding which clients should be offered face-to-

face meetings in the short term vs. being given referrals. Also, you can decide to whom you want referrals made. Or you can leave these decisions up to your Professional Executor. It's up to you.

17. Professional Liability Insurance: Your malpractice carrier should be notified of your death as soon as possible. This will allow arrangements for any additional coverage to be made right away. Major carriers may provide additional coverage if they are notified in writing by your authorized representative within 60 days. This will require proof of your death.

18. Client Records: The Professional Executor will need to make arrangements for copies of your records to be sent to your clients' new therapists and for storing, releasing and disposing of your records as per the Code of Conduct and Practice Advisories. The Professional Executor is responsible to ensure compliance with the Code of Conduct with regard to the confidentiality and security of psychological test materials.

Meeting Legal Obligations

Under the Regulated Health Professions Act, Members must ensure that records are not abandoned (218.3 (1)). A member must make arrangements and put plans in place to ensure that the health care records or laboratory specimens are not abandoned or at risk of being abandoned.

19. Reimbursement of Your Professional Executor: Your Professional Executor will be spending a lot of time implementing your wishes. It is important that the amount allocated and conditions under which it will be paid, be clearly delineated in the registrant's Personal Will. These matters should be discussed in advance with your Professional Executor and to agree upon a sum in advance to avoid putting him or her in an awkward position later. The actual amount would depend on the size and complexity of your practice and should be commensurate with the scope of the task to be completed. Additionally, whatever financial arrangements are set forth in the Personal Will, all payment to the Professional Executor needs to be finalized in a circumscribed period of time, e.g. one or two months, as a Personal Will cannot pass through probate with outstanding debts.

20. For Further Information: For immediate assistance, consultation with fellow registrants knowledgeable about Professional Wills and the role of the Professional Executor or put your question to the PAM Registrar.



Some Responsibilities of the Trustee in a Professional Will

John L. Arnett, Ph.D., C.Psych.
P.A.M. President

Psychologists recognize the value and importance of a good personal history in the provision of high quality clinical services to people. Therefore, it is important that the personal health information gathered by a psychologist about individuals in their care be available when it is needed by other health care professionals who may concurrently be providing care to those individuals as well as to appropriate professionals who will provide care to the individuals in the future. Indeed, one of the main purposes of Manitoba's *Personal Health Information Act (PHIA)*, which governs matters related to personal health information, is to establish rules regarding the collection, use, disclosure, access to as well as the retention, and eventual destruction of personal health information. Thus, establishing a professional will that will help to guarantee future access to personal health information is a professional responsibility of psychologists.

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Psychologists eventually leave clinical practice for a wide range of reasons. In some instances, unfortunate unexpected circumstances may force their departure from practice earlier than they had anticipated. Without future planning and the creation of a professional will it may be difficult, if not impossible, for the personal health information collected on individuals to be accessible in the future. This is particularly, although not exclusively, the case for psychologists working in private practice. For psychologists working in institutional settings the personal health information they gather in the course of their work is typically, although not always, maintained by an institutional records department which assumes trusteeship of the information and responsibility for appropriate future access to the information. However, for psychologists who work in private practice or those whose practices include a mixture of institutional and private practice, they are typically themselves the trustees of some or all of the personal health information they gather that must be available beyond the time that they stop practicing. In the creation of a professional will, psychologists may delegate to other psychologists the responsibility of being trustees of their records. This article is intended to outline some of the requirements under *PHIA* that are placed on trustees of personal health information and/or their delegates with respect to personal health information under their guardianship.

Under *PHIA*, individuals have a right, with limited exceptions, to examine and receive a copy of personal health information about themselves' that is maintained in records held by a trustee. They also have a right to request corrections to the personal health information about themselves. Psychologists, when acting as trustees, must respond promptly to such requests, typically within 30 days of the request. In addition,

the trustee must make “every reasonable effort” to assist an individual who makes a request for information and/or for corrections of the file information about them.

A trustee may charge a “reasonable fee” for permitting examination of personal health information and providing a copy of the information.

A trustee may refuse an individual the right to examine or copy his or her personal health information if:

- Knowledge of the information could “reasonably be expected” to endanger the health or safety of the individual or another individual;
- Disclosure of the information would reveal personal health information about another person who has not consented to the disclosure;
- Disclosure of the information could identify a third party who supplied the information in confidence under circumstances in which confidentiality was reasonably expected;
- The information was compiled and to be used solely for:
 - Peer review by health professionals
 - Review by a Standards Committee
 - Use by the body with statutory responsibility for discipline (P.A.M.)
 - Risk management assessment;
- The information was compiled principally in anticipation of, or for use in, a civil, criminal, or quasi-judicial proceeding.

A trustee may respond to an individual’s request to correct personal health information as follows:

- Make the requested correction by adding the correcting information to the record in a manner that it will be read with and form part of the individual’s health record;
- Inform the individual that the personal health information no longer exists or cannot be found;
- Inform the individual that that the trustee does not maintain the personal health information and assist the individual to find the trustee who does maintain it;
- Inform the individual, in writing, of the trustee’s decision to refuse the correction of the record, the reasons for the refusal, and the individual’s right to add a statement of disagreement to the record, and to make a complaint about the refusal to the Ombudsman

· When a trustee refuses to make a correction to the record, the trustee shall permit the individual to file a concise statement of disagreement stating the correction requested and the reason for the correction; and, add the statement of disagreement to the record in a manner that it will be read with and form part of the record

Notifying others of a correction or statement of disagreement to the personal health information record:

· A trustee shall, when practical, notify any other trustee or person to whom the health information has been disclosed during the year before the correction was requested about the correction or statement of disagreement (thus an accurate temporal record of the individual’s request must be recorded to comply with this provision of *PHIA*).

A trustee is not permitted to charge a fee in connection with a request for correction.

Trustee’s responsibility to ensure the security of personal health information

- A trustee must protect personal health information by adopting reasonable administrative, technical, and physical safeguards that ensure the confidentiality, security, accuracy, and integrity of the information;
- The trustee must implement controls that limit the persons who may use the personal health information under his/her control, verify the identity of the person seeking to use the information, ensure that the proposed use is authorized under *PHIA*, implement controls to ensure that electronic information is not intercepted by unauthorized persons during transmission, and ensure that requests for personal health information contain sufficient detail to uniquely identify the individual the information is about.

Normally the consent of the person who the personal health information is about, is required for the information to be released to others. In addition, there are a number of specific restrictions in *PHIA* regarding consent and the specific information and amount of information that may be released that are beyond the scope of this brief article. Referring to *PHIA* directly is required in order to better understand these various circumstances. However, there are some particularly important circumstances in which personal health information may be released without consent that will be outlined below.

Disclosure without an individual’s consent (the below list of circumstances is not exhaustive; for complete information please refer to Section 22 of *PHIA*): Normally, a trustee may use personal health information only for the purpose it was collected or received, and shall not use it for any other purpose UNLESS:

- The trustee reasonably believes that disclosure is necessary to lessen or prevent a serious and immediate threat to:
 - The health or safety of the individual the information is about or another individual
 - Public health or public safety
- The information is to be released to an individual who is or will be providing health care to the individual the information is about, unless the individual has instructed the trustee not to make the disclosure
- The information is required for:
 - Peer review by health professionals
 - Review by a Standards Committee

- The purpose of a body with statutory responsibility for the discipline (PAM)
- The purpose of risk management assessment.

This article is not intended to articulate all of the obligations of psychologists as health care professionals under the *Personal Health Information Act* but rather to outline some of the major requirements of psychologists when serving as trustees of personal health information.

The preparation of a Professional Will is viewed as an important step towards complying with our professional obligations under this Act.



Develop a Professional Will and Help P.A.M. to Meet its Legal Obligations

Under the Regulated Health Professions Act (218.4 (1)), when a College or Association has reason to believe that a Member's health care records are abandoned, or at risk of being abandoned, it becomes responsible for ensuring that those records are promptly secured and protected.



Should a Member become incapacitated or die without a Professional Will in place, the College (here, P.A.M. or a future College of Manitoba Psychologists) would be obliged to take custody of the records. Depending upon the situation, the College would need to appoint a P.A.M. Member to take charge of abandoned records, apply to the court for appointment of a custodian (under section 218.5), or take possession of the records itself. The potential administrative and financial challenges should be obvious.

How much better to prevent all of this, and put a Professional Will in place now?

PROFESSIONAL WILL (Sample)

[enter your name here], (C.Psych or P.A. (IP))

I, [enter your name here], (C.Psych or P.A. (IP)) a resident of [enter name of city here], Province of Manitoba, being of sound and disposing mind and memory, do hereby declare this to be my Professional Will. This supersedes all prior Professional Wills, in the event there are any. This is not a substitute for a Personal Last Will and Testament. It is intended to give authority and instructions to my Professional Executor regarding my psychology practice in the event of my incapacitation or death.

1. Registrant Name

I am a [registered psychologist or registered psychological associate (IP)], PAM Registration #_ _ __. My office address is:

[enter office address here]

I also maintain a [second, home, alternate] office at:

[enter additional office addresses here]

2. Appointment of Professional Executor

In the event of my death or incapacitation, I hereby appoint [enter name of registrant], PAM Registration # _ _ _ _ whose phone number is:

[enter phone number here]

and whose office is located at:

[enter office address here]

as my Professional Executor.

In the event that [enter name of above registrant here] is unavailable or unable to perform this function, or requires assistance, I hereby appoint [enter name of alternate professional executor] PAM Registration # _ _ _ _ whose phone number is: [enter phone number here] and whose office is located at:

[enter office address here] as a back-up Professional Executor.

3. Authority of Professional Executor

I hereby grant my Professional Executor full authority to:

a. Act on my behalf in making decisions about storing, releasing and/or disposing of my professional records.

- b. Carry out any activities deemed necessary to properly administer this Professional Will.
- c. Delegate and authorize other persons determined by them to assist and carry out any activities deemed necessary to properly administer this Professional Will.

4. Name of Legal Counsel and Personal Will Executor

- A. My lawyer for my Personal Will is [enter name of your lawyer here]
whose phone number is: [enter phone number here] and whose offices are located at:
[enter office address here].
- B. The executor of my current personal will is [enter name of executor of personal will], whose phone number is: [enter phone number here] and who is located at:
[enter address here]

5. Essential Professional Practice Information

- A. My current client records are located at my office:
[enter office address here]
- B. My past client records are located at:
[enter address(es) here]
- C. My Psychological Test materials are located [enter location here].
- D. Billing and financial records related to my psychology practice are located here:
[enter address here].
- E. Some or all of my client, billing and financial records are on a computer, located at
[enter address here] and my password (s) are as follows: [enter any passwords here].
- F. My appointment book is located [enter location here], and client phone numbers are located [enter location(s) here] in my appointment book.
- G. My e-mail address is [enter e-mail address here], and the password is:
[enter password here]
- H. My office voice mail number is: [enter office voicemail here]
and the voice mail access code is: [enter voice mail access code here]
- I. Any necessary keys you will need for access to my office are [enter location of keys]. Keys for the filing cabinet are located [enter location here].
- J. For assistance in locating/ accessing my records you may contact [enter contact name here] [enter contact phone number(s) and address here].

K. In addition, the following person(s) may be helpful in locating / accessing my records: [enter any additional names, addresses and phone numbers here].

6. Specific instructions for my Professional Executor are:

A. First of all, I would like to express my deep appreciation for your willingness to serve as the Professional Executor for this will.

B. There are four copies of this Professional Will. They are located as follows:

[enter locations of all copies of the will, for example:

a. One is in your possession.

b. One is in the possession of my lawyer.

c. One is with my personal will.

d. One is with my professional liability insurance policy, filed under Insurance in my home office filing cabinet.]

C. The files, telephone numbers and addresses of current and selected past clients who can be notified about my death are located [here] in my office [enter office address here].

a. Please use your clinical judgment and discretion in deciding how you want to notify current and (if necessary) past clients and whether or not to publish a notice in the newspaper notifying clients of my death and who to contact for further information.

b. If clinically indicated, you may wish to offer a face-to-face meeting with some clients. You may also wish to provide three referral sources, which can, of course, include yourself.

D. My professional liability insurance is currently provided by:

[enter name of insurance provider and address and phone number here]

My policy # is: [enter number of insurance policy here]

Please notify my professional liability carrier in writing of my death as expeditiously as possible and arrange for any additional coverage that may be appropriate. The professional liability carrier may require a copy of my death certificate or other proof of my death. Please also notify the Psychological Association of Manitoba.

E. Please arrange for copies of referred clients' records to go to their new therapists. All remaining records should be maintained according to the PAM Code of Conduct.

F. For immediate assistance, it is recommended that you contact a fellow registrant knowledgeable about Professional Wills and the role of the Professional Executor, or the PAM Registrar.

G. Arrangements have been delineated in my Personal Will so that you may bill my estate for your time and any other expenses you may incur in executing these instructions.

I declare that the foregoing is true and correct.

Executed at _____
(location) (Date)

(Signature of Registrant) (Date)

I agree to serve as Executor for this Professional Will:

(Printed Name of Professional Executor) (Signature of Professional Executor) (Date)

I agree to serve as Back-up Executor for this Professional Will:

Name of Back-up Executor) (Signature of Back-up Executor) (Date) (Printed

WITNESS:

_____ of _____
(Printed Name of Witness) (Residing at)

(Signature of Witness) (Date)

Regulating Technology

By Richard Steinecke

Originally published in *Grey Areas, 151*: November/December 2010

A Newsletter of Steinecke Maciura LeBlanc Barristers & Solicitors, Toronto

We like to say that technology does not affect one's professional responsibilities. Most of the time that is correct. A record made on paper needs to contain the same information as electronic records. They need to be retained for the same period of time. They need to be edited in the same way (i.e., original entry is not destroyed, the change is clearly dated and identified as such). They need to be kept in a secure and confidential manner.

But there are ways in which electronic records are materially different from paper ones. The recent WikiLeaks disclosure demonstrates this point. The potential for a massive privacy breach is much greater for electronic records. For that reason the Information and Privacy Commissioner of Ontario has declared that all electronic health information on portable devices must be encrypted, while this is not required for paper records removed from the office.

The challenge for regulators is to identify the areas where the maxim "the same principles apply" does not

apply. The following are some examples where this might be the case.

Record Keeping and Communications

As noted above, there are some aspects of electronic records that are materially different from their paper counterparts. In addition, electronic technology

(T)here are ways in which electronic records are materially different from paper ones. The recent WikiLeaks disclosure demonstrates this point.

permits the easy introduction of measures that are impractical for paper records including an audit trail, differing levels of access by others in the organization, wholesale encryption and remote access. Regulators need to consider whether special rules are needed for these functions.

Another challenge with technology is that the ease of use fosters different

practices. The most obvious example is email. Many practitioners (lawyers, perhaps, being worst example) and their clients are unwilling to forego the convenience of unencrypted email. This is despite the fact that such an email is little different from a postcard, where the practitioner would never dream of recording sensitive information.

Telepractice

Perhaps one of the first electronic issues, there is still no clear consensus among regulators about individuals who use technology to cross borders. (Without technology one conjures up the image of two people yelling across a provincial boundary). Surprisingly few court cases have come to grips with this issue. Many regulators take the position that the practitioner is practising in both the jurisdiction in which the practitioner is located and the jurisdiction in which the client is located. Obviously there are unusual circumstances that are difficult to peg, such as where an Ontario practitioner in Ontario is giving urgent advice to an Ontario client who just happens to be on a trip to Florida at the time.

However, the main issue here is enforceability. It is almost impossible for the regulator to address practitioners who are outside of the jurisdiction offering goods or services to persons within the regulator's jurisdiction. Unless the regulator in the practitioner's jurisdiction is prepared to take action, the regulator in the client's jurisdiction can rarely do anything. This scenario provides another good reason for regulators to form strong links with their equivalent bodies in other jurisdictions. Note the recent discussions about regulating the securities industry in Canada.

Professional / Personal Distinctions

The barrier between a practitioner's personal life (which rarely attracted regulatory scrutiny) and a practitioner's professional life is blurred by technology. Previously the biggest issue is whether the

practitioner's website was more analogous to a bulletin board in the practitioner's office (in which thank you notes and other testimonials and subjective information was tolerated) or to an advertisement in the media (where the strict advertising rules applied). The issue was complicated by issues of client consent for the disclosure and one's view as to the passive nature of a website.

However, far more complex issues are raised by the proliferation of social media, such as Facebook. Social media raise concerns not only about endorsements and testimonials (which are often not solicited by the practitioner), but also about expression of personal opinions (e.g., about issues outside of the practitioner's professional expertise or that may be inaccurate, offensive or disturbing to their clients), self-disclosure (e.g., which

removes the professional distance required by some, particularly health practitioners) and personal morality (e.g., substance abuse by teachers).

In addition, technology like Google Places permits the posting of subjective opinions and testimonials with minimal or even no participation by the practitioner. At least a letter to the editor was screened by people with a commitment to considering the suitability of the information.

When it comes to technology, the challenge for regulators might be captured in the words found in the following proverb: "Grant me the serenity to accept the things I cannot change, the courage to change the things I can, and the wisdom to know the difference."



Decision, Reasons, and Order of the Inquiry Committee:

Psychological Association of Manitoba vs Dr. Cynthia Jordan, C.Psych.

In accordance with PAM By-Law #1 Sec 44(1), the following disciplinary action is published in order to fulfill PAM's mandate of public protection and to engage in ongoing education of registrants around expectations for professional conduct. Reprimands are reported to the disciplinary data bank of the Association of State and Provincial Psychology Boards (ASPPB). ASPPB will make this information available to other licensing boards or regulatory colleges upon request if the particular psychologist applies for admission to another jurisdiction.

IN THE MATTER OF: *The Psychologists Registration Act, C.C.S.M., c. P190*

AND IN THE MATTER OF: Dr. Cynthia Jordan, C. Psych.

AND IN THE MATTER OF: a hearing of allegations of professional misconduct before the Inquiry Committee of the Psychological Association of Manitoba held on December 12 - 16, 2011 and December 19, 2011

Reasons for Decision

Review of the Charge

On January 19, 2010, The Complaints Committee of the Psychological Association of Manitoba (the "Association") pursuant to *The Psychologists Registration Act* of Manitoba, and the By-laws of the Association, issued a charge of professional misconduct against Dr. Cynthia Jordan. The particulars of the charge against Dr. Jordan are as follows:

1. In September, 2008, after becoming aware of a complaint of professional misconduct against her, consisting of a letter dated July 17, 2008 from The Complainant to the Association, and other material sent by the complainant and received by

the Association on September 4, 2008 (collectively referred to as the "Complaint"), Dr. Jordan telephoned The Complainant and stated to him that:

- (i) If he continued with the Complaint, she would be required to disclose certain of The Complainant's personal information which he would not want to be disclosed;
- (ii) The complaint process would be lengthy and protracted and could last for up to 8 years;
- (iii) She had already reviewed aspects of his complaint with an "ethics group," suggesting that his Complaint had already been determined by this group to be without merit.

Dr. Jordan thereby attempted to interfere with the right of the complainant to pursue his Complaint with the Association.

As a result of Dr. Jordan's statements to The Complainant, he withdrew his Complaint by letter to the Association dated October 16, 2008 in which he stated: "Please be advised that I have been blackmailed into a decision to not pursue any action at this time."

Facts not in dispute

There were a number of points of evidence regarding the course of events that occurred in this matter that were not disputed by the member or the prosecution that are relevant for this decision and include:

1. That Dr. Jordan, upon being made aware of the Complaint filed against her by The Complainant, contacted The Complainant by telephone. During that telephone conversation, Dr. Jordan discussed with The Complainant the complaint that he filed against her, specifically:

- a. That the complaints process is likely to be protracted

b. That, if the Complaint proceeded, she (Dr. Jordan) would have to disclose confidential and potentially damaging information about The Complainant. In this discussion, The Complainant contemplated whether he "had anything to hide" to which Dr. Jordan responded "oh yes, you do."

c. That she (Dr. Jordan) had consulted a third party to discuss the ethics related to the subject of The Complainant's Complaint and that she had no concerns about her actions in that matter. (The Complainant testified that Dr. Jordan stated she had spoken to an "ethics committee").

2. That Dr. Jordan suggested that she and The Complainant meet to review Dr. Jordan's documentation, that The Complainant failed to attend the scheduled meeting, and that Dr. Jordan telephoned The Complainant again (on September 26, 2008) after he failed to attend the scheduled meeting at which time The Complainant indicated that he was not going to pursue the Complaint.

3. That, following the telephone call of September 26, 2008, Dr. Jordan contacted the Association by letter on September 29, 2008 to indicate that The Complainant was withdrawing his Complaint.

The Evidence

The Complainant

The Complainant testified that he, along with his then wife were clients of Dr. Jordan's for couples counselling during 2 periods, specifically June 1998 to November 1999 and February 2003 to summer 2003. Towards the end of the second period, Dr. Jordan recommended that The Complainant seek individual counselling with another psychologist (Dr. Lilian Esses) while Dr. Jordan continued with individual counselling with his wife. The Complainant indicated that he filed a Complaint with the Association against Dr. Jordan on July 17, 2008 upon learning that she had provided an affidavit in support of his wife to be submitted as evidence in the divorce proceedings between The Complainant and his wife, which he believed was a conflict of interest.

The Complainant testified that Dr. Jordan contacted him by telephone on the 23rd or 24th of September, 2008 at which time Dr. Jordan requested that she and The Complainant meet at her office on September 26, 2008 to discuss his Complaint. The Complainant agreed to meet. The Complainant subsequently decided to not go to the scheduled meeting, and after not showing up, received a few telephone messages from Dr. Jordan inquiring about his absence from their meeting. On the afternoon of September 26, 2008, The Complainant received a telephone call from Dr. Jordan and

during that conversation, Dr. Jordan indicated that she had been through the complaint process before and that it took eight years to resolve and indicated that the time frame to resolve his Complaint could take this long. The Complainant further testified that Dr. Jordan indicated that he would be losing his confidentiality and that when he said he didn't think he had anything to hide, Dr. Jordan responded with "Oh yes, you do" which he interpreted as threatening. He further testified that Dr. Jordan indicated that she had talked to an ethics committee, which he, The Complainant, assumed was the Association, and that Dr. Jordan had received prior authorization to provide the affidavit, and there was no basis for his Complaint.

The Complainant indicated that upon receiving this information from Dr. Jordan, he believed that pursuing the Complaint would be a waste of time, that he would end up disclosing a lot of personal information, and that he would lose because he did not have a valid argument. The Complainant further testified that he was under the impression that Dr. Jordan was acting on behalf of the Association, and consequently decided that, in view of this, he would withdraw his Complaint. The Complainant testified that at no time during any phone conversations did Dr. Jordan mention that she was in a conflict of interest by contacting him about the Complaint.

Upon cross examination, The Complainant indicated that he was involved in court proceedings initiated by his wife and children, the subject of which included divorce from his wife and financial matters related to his wife and his children. The Complainant further acknowledged that it was Dr. Jordan's preparation of an affidavit to be used in these proceedings that initiated his Complaint against her.

Dr. Jaye Miles

Dr. Miles was not called as an expert witness. She testified as to the complaints process followed by the Association and outlined the typical response of the Complaints Committee. She stated that there is no anticipation or expectation that a member would contact a complainant to discuss the Complaint.

Further, Dr. Miles stated that in her experience of processing between 200 and 300 complaints she had never known of an occasion wherein a member contacted a complainant directly. Dr. Miles also testified the typical timeframe taken by the Complaints Committee is purposefully lengthy to allow the member time to prepare a response. Further testimony on her part spoke specifically to the Complaints Committee's response to both The Complainant and Dr. Jordan being timed to allow Dr. Jordan to prepare her response. That specific response, in keeping with the standard practice of the committee, does not support the need for an immediate

response to The Complainant as evidenced by Dr. Jordan's call to him the same day she received notice of the Complaint.

Dr. Cynthia Jordan

Dr. Cynthia Jordan is and has been a registered psychologist in Manitoba for over 30 years, currently working in private practice, recipient of past awards and a past member of the executive council and Complaints Committee of the Association.

With respect to the charge against her, Dr. Jordan testified that:

- She did not call The Complainant to discuss his Complaint with the intent or motive to interfere with the complaints process, although she acknowledged in cross examination that her actions could look this way to others. She testified that she did not believe The Complainant felt threatened by the content of the phone call, and indicated that it would be unreasonable for him to feel threatened by her.
- Her actions in contacting The Complainant upon learning of the Complaint were in the service of protecting his best interest. She testified that because of his multiple psychological problems, he was unaware and could not fully appreciate the implication of his filing the Complaint and making confidential and potentially damaging information publicly available. She further testified that because of The Complainant's multiple psychological problems, it was not possible to provide this information to him in any way other than a face-to-face meeting.
- She believed that under *The Personal Health Information Act*, ("PHIA") she would be obligated to provide the Complainant's wife access to the couples file if she made the file available to the Complaints Committee of the Association as part of their investigation of The Complainant's Complaint. It was because of this obligation to disclose file content to his wife (and presumably her lawyers) that Dr. Jordan wanted The Complainant to be aware of the file content, suspecting that there was content in the file that The Complainant would not want his wife (and her lawyers) to see. However, upon cross-examination, Dr. Jordan was unable to identify any specific provision within PHIA that explicitly mandated her to disclose information to the Complainant's wife under these circumstances. She further acknowledged that section 23 (3) of PHIA, which states that "a trustee shall not disclose personal health information if the trustee has reason to believe that the disclosure might lead to harm to the individual the

information is about", may have been applicable in this situation.

- In consideration of the Canadian Code of Ethics for Psychologists (the "Code"), Dr. Jordan testified that she felt obligated to The Complainant to uphold Principles I (respect for the dignity of persons) and II (responsible caring) in the Code. Specifically, she called The Complainant to ensure that he was making the decision to pursue the Complaint with full informed consent and to ensure that she was promoting his welfare. She testified that in resolving this situation, she relied on her own personal conscience. She also testified that Principle III (integrity in relationships) never occurred to her as she did not see herself in a conflict of interest in contacting The Complainant about his Complaint against her.

On cross examination, Dr. Jordan stated that:

- She made the first phone call to The Complainant within a few hours of receiving the letter from the Association of his Complaint against her.
- She did not contact the Association to express her concerns regarding the potential damage her disclosure of personal information may have, nor did she consult with anyone in the Association about the advisability of calling The Complainant.
- She was aware of the timeframe outlined in the literature and website of the Association. As well she acknowledged previous experience with the complaints process, as a member of the Association's governing body and through her own experience as the subject of previous complaints.

Expert Witness Testimony

Evidence was heard from Dr. Don Stewart, called by the prosecution, and Dr. Valerie Holms, called by the defence. Both Dr. Stewart and Dr. Holms were accepted as experts, and are both members in good standing with the Association.

Both experts commented on Dr. Jordan's conduct in contacting The Complainant after receiving notification of his formal Complaint against her. A summary of the convergent points of testimony include:

- While there is no explicit prohibition in the Code indicating that a psychologist should not contact a client who has filed a complaint against the psychologist, both experts indicated that, as a general rule, such contact ought to be avoided.
- Both experts indicated that a psychologist contacting a client who has filed a complaint against the psychologist might be viewed by others, including the complainant, as an attempt to interfere with the complaints process.

- The experts both indicated that a potential conflict of interest may be created when a psychologist contacts a client who has filed a complaint against the psychologist and, in this situation, the psychologist has a responsibility to declare the potential conflict of interest and to ensure that the client's best interests are safeguarded.

- Both experts agreed that in situations where ethical principles are in conflict, generally principles I and II are given higher weighting that principle III after carefully weighing all three principles.

- Dr. Stewart testified, however, that in such situations a psychologist would be expected to consult with a colleague or colleagues to find a resolution to such conflicts.

Dr. Stewart testified that psychologists should recognize that there is an inherent power imbalance within the therapeutic relationship, which endures even after the termination of the therapeutic relationship, and, by virtue of this, former clients are vulnerable to having that relationship exploited if the psychologist is entering into a conflict of interest relationship with that person. Dr. Stewart further testified that a practicing psychologist should be aware that once a formal complaint has been made, any contact with a complainant about the complaint is inappropriate due to the potential conflict of interest it creates, along with the potential interference such contact might have on the rights of the client to pursue the complaint.

Dr. Stewart also testified that in a situation such as the one Dr. Jordan was in, a reasonable solution might have been for the psychologist to communicate her concerns about the impact of disclosure of information in her file to the complainant through some indirect method, for example in writing or through a third party such as the Complaints Committee.

Dr. Holms testified that Dr. Jordan's contacting The Complainant after learning that he filed a complaint against him may not have been unethical if she was attempting to provide information. However, under cross examination, she did agree that if that information had the potential effect of intimidating or threatening a complainant in some way, such conduct would be unethical.

Professional Misconduct

Counsel for the Association and counsel for Dr. Jordan referred to the case of *Law Society of Manitoba v. Savino* [1983] M.J. No. 206 (CA) at paragraph 17, as authority for the following definition of professional misconduct:

"Professional Misconduct is a wide and general term. It is conduct which would be reasonably regarded as disgraceful, dishonourable, or unbecoming of a member of the profession by his well respected brethren in the group - persons of integrity and good reputation amongst the membership."

Counsel for Dr. Jordan also referred to the following case law:

1. *Sonntag v. Sonntag* (1979) CarswellOnt 418 (Ont S.C.), at paragraph 16:

"Professional misconduct for which a solicitor may be held personally responsible in costs to an opposite party need not be criminal and need not involve dishonesty. A mere mistake or error of judgment is not generally sufficient."

2. *Fan v. Law Society (British Columbia)* 1977 CarswellBC 127 (BCCA) as authority for the proposition that you must look to the Code as a guideline;

3. *Sussman v. College of Psychologists (Alberta)* 2010 CarswellAlta 2013 (ABCA) specifically paragraph 54 thereof which states:

"We are unable to accept that all departures from the script of rules developed by the Appeal Panel out of language of the standards should automatically be called unprofessional conduct. The conduct may be unintentional, non-negligent and harmless. Or, the departure might otherwise be justified by policies consistent with those underlying the Code, the standards or the objectives of the College and Council, or by the therapeutic aims of the profession itself. An automatic finding of unprofessional conduct would not be consistent with the reasonable interpretation of the guideline on which the Appeal Panel relied." Counsel for the Association referred to paragraph 53 for the statement that "Psychologists cannot avoid the effect of reasonable and foreseeable extensions or elaborations by not informing themselves or by treating them as irrelevant merely because they are not written into the Standards expressly. Nonetheless, it is also reasonable to assume that, by not inserting such language directly into the Standards, the authors of the Standards contemplated that (a) the degree of departure and (b) whether that degree of departure was enough to constitute unprofessional conduct would be factual and policy questions for specific Hearing Tribunals and Appeal Panels to consider in a given case."

Findings of the Panel

Upon review of the evidence, the case law, and consideration of the arguments presented, the Inquiry Committee concluded that Dr. Jordan is guilty of professional misconduct in her actions in response to being made aware of the Complaint filed against her by The Complainant. This finding is based on the following:

1. Dr. Jordan's actions in response to learning of The Complainant's Complaint were intentional and directed at compelling The Complainant to withdraw his complaint. Dr. Jordan's actions in (a) telling The Complainant "Oh yes, you do" when he speculated about whether he had anything to hide, (b) warning The Complainant that the complaints process would be protracted, and (c) informing The Complainant that she had consulted about the ethics of her providing an affidavit on behalf of his wife and had no concerns about her actions, all suggest that she was attempting to dissuade The Complainant from pursuing his Complaint against her. Indeed, Dr. Jordan acknowledged in her testimony upon cross-examination that ultimately her purpose in calling The Complainant was for him to withdraw the Complaint.

2. Dr. Jordan's knowledge of the time frames associated with the complaints process, as informed by her past experience with complaints against her and as a past member of Council for the Association, does not support her very quick reaction to receipt of the notice of Complaint, nor does it support her equally prompt notice to the Complaints Committee that The Complainant had withdrawn his Complaint. The promptness of these actions suggests that Dr. Jordan felt a sense of urgency to quash the Complaint against her.

3. The Complainant's decision to withdraw his Complaint against Dr. Jordan was a direct result of the telephone conversation that Dr. Jordan initiated. The Complainant testified that during the conversation he felt threatened by Dr. Jordan's comments and that there was little point in pursuing the complaint given the information provided to him by Dr. Jordan. While The Complainant and Dr. Jordan's evidence respecting the dates and timing of the conversations are not congruent, there is no dispute that the telephone conversations took place. While evidence was presented which reflected upon The Complainant's credibility in his divorce proceedings, no compelling evidence was given to challenge his credibility in the matter at hand, i.e., that he believed Dr. Jordan wanted him to abandon the Complaint. Beyond this, the Inquiry Committee believe that, under these circumstances (i.e., contact from a

previous therapist warning of potential dangers of pursuing a complaint) a reasonable person would have felt intimidated. Dr. Stewart, the expert witness, spoke to this point in his testimony by stating "a client might very well perceive contact by their former therapist to be intimidating, to be putting some sort of pressure on them, or to otherwise be interfering with their right to pursue a complaint."

4. The defence's argument that The Complainant wrote the "blackmail" letter in an attempt to exact revenge on Dr. Jordan for her affidavit and testimony in the divorce proceeding is not believable. By his testimony on cross examination, The Complainant indicated that he wrote the letter to express his frustration with his perceived lack of support from the Association for his Complaint (arising from his interpretation that Dr. Jordan was speaking on behalf of the Association during their telephone conversation). The Inquiry Committee found this testimony from The Complainant to be believable.

5. Dr. Jordan's testimony was that she called The Complainant to provide information about the complaints process so that he could make the decision to pursue the Complaint with informed consent. Specifically, Dr. Jordan testified that she wanted to make The Complainant aware that if he were to pursue the Complaint, then confidential information about him would be available to others and that this may be harmful to his interests. Dr. Jordan claims her actions were to protect the interests of The Complainant. However:

- a. No compelling evidence was presented to show that there was harmful information that would have not have been otherwise available to the Complainant's wife's lawyer and the court;
- b. No compelling evidence was presented to show that the private correspondence sent from The Complainant to Dr. Jordan in 1999 could not be kept confidential if the Complaint against Dr. Jordan proceeded. Under cross examination Dr. Jordan acknowledged she could have asked that part of the hearing to be heard in private to protect The Complainant's confidentiality;
- c. Due to her past involvement in complaints, both as a past member of the Association Council, and as a member against whom a complaint had been made, Dr. Jordan would have been aware at the time of her phone call that The Complainant had waived confidentiality by virtue of the fact he had made a complaint to the Association.

6. Dr. Jordan testified that she was the only person who could have shared sensitive information with The Complainant so that he would have complete informed consent in pursuing his Complaint, and therefore, she was compelled to meet with him and review the file. She further stated that she knew The Complainant well, and knew that he would not be able to act in his own best interest without her involvement. This was not accepted by the Panel because:

- a. By Dr. Jordan's evidence, The Complainant was no longer her client and had not been so for several years. By her testimony, Dr. Jordan had no clinical interaction with him in that time. It is reasonable to conclude she would not have up-to-date information about his mental state and hence his ability to deal with potentially harmful information;
- b. However, for several years, The Complainant had been in therapy with Dr. Esses, a clinician recommended and referred by Dr. Jordan. Dr. Jordan could have consulted with Dr. Esses regarding The Complainant's ability to deal with troubling information before calling The Complainant herself;
- c. Further, because of the professional relationship between Dr. Jordan and Dr. Esses, it is reasonable to assume Dr. Jordan could have consulted with Dr. Esses around the issue in question, or; could have asked her to participate in a meeting with The Complainant as a support or advocate.
- d. In cross examination Dr. Jordan acknowledged that she could have invited another person to attend the September 26, 2008 meeting with The Complainant.

7. Dr. Jordan testified she was following PHIA by not separating information in her files relating to The Complainant from that of his wife. Further, she testified that if she disclosed any information to the Complaints Committee, she was compelled under PHIA to inform his wife and disclose her entire file contents to her. On cross examination she was unable to find that stipulation or provision in the PHIA. She also acknowledged that section 23 (3) of the PHIA, which prevents disclosure of harmful personal health information, may have been applicable in this particular situation.

8. Dr. Jordan testified that she was acting in accordance with the Code specifically, Principles I and II. However, upon review of the evidence, the Inquiry Committee concluded that Dr. Jordan failed to follow the prescribed

process for dealing with ethically complex situations as per the Code, specifically:

- a. Dr. Jordan did not seek consultation with colleagues around the most ethical course of action before acting;
- b. Dr. Jordan did not follow the steps outlined in the Code for resolving difficult or complex issues;
- c. Dr. Jordan did not disclose to The Complainant that she was in a conflict of interest in contacting him about the Complaint;
- d. Dr. Jordan did not establish safeguards to protect The Complainant's interests in a conflict of interest situation;
- e. Dr. Jordan was not sensitive to the power differential existent in their relationship.

9. Dr. Jordan claims that she made every reasonable effort to resolve the conflict in ethical principles without success, and thus, had to depend on her own personal conscience. The Code is explicit in the expectations it holds for psychologists when needing to rely on personal conscience to resolve ethical dilemmas:

"In some cases, resolution [of an ethical dilemma] might be a matter of personal conscience. However, decisions of personal conscience are also expected to be the result of a decision-making process that is based on a reasonably coherent set of ethical principles and that can bear public scrutiny." (Code, pg. 2)

The Code further instructs psychologists involved in an ethical decision making process, thusly:

"Psychologists engaged in time-consuming deliberation are encouraged and expected to consult with parties affected by the ethical problem, when appropriate, and with colleagues and/or advisory bodies when such persons can add knowledge or objectivity to the decision-making process." (Code, pg. 3)

The Panel does not accept that Dr. Jordan made every reasonable effort to resolve this conflict. Specifically:

- a. There was no compelling evidence that Dr. Jordan followed the prescribed set of basic steps specified in the Code as typify the ethical decision making process as outlined on page 3 of the Code. By her evidence, Dr. Jordan testified that she responded within a matter of hours by phoning The

Complainant following notification of the Complaint that he filed against her. In view of this, it is not credible that Dr. Jordan took the necessary time to fully and carefully consider (a) the ethically relevant issues and practices, including the interests, rights, and any relevant characteristics of the individuals and groups involved and of the system or circumstances in which the ethical problem arose, (b) how her personal biases, stresses, or self-interest might influence the development of or choices between courses of action, (c) alternative courses of action, or (d) the likely short-term, on-going, and long-term risks and benefits of each course of action on the individuals/groups involved or likely to be affected, as specified by the Code.

- b. By her testimony, Dr. Jordan acknowledged that she did not consult with any colleagues or advisory bodies in her ethical decision making process. Dr. Jordan testified that she did not consult with others because doing so would violate The Complainant's confidentiality. The Inquiry Committee does not find this explanation credible and instead believe that Dr. Jordan could have, and should have, consulted with other psychologists in her attempts to resolve this complex situation. The Inquiry Committee believe that methods of accessing consultation while maintaining confidentiality are an integral part of psychological training and practice, and that a reasonable person would expect an established and experienced psychologist to be aware of alternatives to breaking confidentiality when consulting colleagues.

Given that Dr. Jordan did not appear to have followed the prescribed ethical decision making process outlined in the Code or to have consulted with others to assist her in evaluating the appropriateness of her chosen course of action, the Inquiry Committee does not accept that the decision making process engaged in by Dr. Jordan was either based on a reasonably coherent set of principles or was explicit enough to bear public scrutiny.

10. The Inquiry Committee concluded that Dr. Jordan's actions in contacting The Complainant reflects conduct that falls well short of what would be expected of a professional psychologist, particularly one with Dr. Jordan's years of experience and knowledge of the Code. In his report, Dr. Stewart wrote:

"In a situation where a former client has made a complaint against a psychologist, there is an

inherent conflict between the best interests of the parties to the complaint." Because of this 'inherent conflict' it "would be seen as inconsistent with the Code, and therefore not appropriate, for a practicing psychologist to contact or meet with a former patient who has a complaint against the psychologist"

When asked about the conflict of interest, Dr. Jordan said that she "never thought about it." Oblivious of the conflict of interest, Dr. Jordan felt no obligation to alert The Complainant to the issue nor did she consider following the procedures prescribed by the Code for dealing with unusual and complex situations. Dr. Jordan's failure to recognize the conflict of interest inherent in her contacting The Complainant about his complaint indicates in the opinion of the Panel, a serious lack of judgment incongruent with what would be expected of a registered psychologist who has practiced for many years, supervised psychologists-in-training, and sat as a member of the Association Council.

11. Dr. Jordan's responses during cross-examination suggest that she did not feel constrained by the Code. When asked about her thoughts about the withdrawal of Complaint against her, she replied that she had no opinion. The prosecutor followed with "You had no opinion? This was a Complaint of misconduct to your Association against you and you are asking the Panel to accept your evidence that you had no opinion on the outcome of the Complaint?" Dr. Jordan responded that she had been in practice for many years and "so I would get a reprimand? So bloody what? I didn't think about the Complaint one way or another. And I had to do what was right for my own conscience about him. Now, if they believe me, fine. If they didn't, fine. It doesn't matter. I'm well past impression management. What other people think is something way, way down the list of values for me. I'm 65 years old, it doesn't matter." The Inquiry Committee believe that this attitude towards the Code is cavalier and could represent a potential risk to members of the public.

12. The Inquiry Committee believed that, Dr. Jordan, through her actions in this situation, has jeopardized the public's faith in psychologists and in the due process for pursuing complaints against psychologists. The Complainant testified that this was indeed the case for him. Dr. Stewart highlighted the importance of a psychologist's concern with how the profession is viewed by society in his testimony when he stated, "Psychology is a self-regulating profession and as such it has a social contract to ensure that its members act in the best interests of members of society, both individually and

collectively." Later, Dr. Stewart noted that the Code "talks about the obligations of psychologists to be mindful of the social contract and to not do anything that would disadvantage the discipline as a whole."

13. In the circumstances, Dr. Jordan's conduct was disgraceful, and unbecoming of a member of the Association.

Decision

The Inquiry Committee has determined that Dr. Cynthia Jordan is guilty of professional misconduct in accordance with the charge, and pursuant to Section 40 of By-law No. 1 of the Association. By agreement between counsel for the Association and counsel for Dr. Cynthia Jordan, the hearing was bifurcated to first determine whether Dr. Jordan was guilty of professional misconduct in accordance with the charge. Therefore, disposition was not spoken to or addressed. In light of the Inquiry Committee's decision, the hearing will be reconvened to hear submissions on the issue of disposition.

Dr. Jordan and her Counsel have filed an Appeal of these Reasons for Decision.

IN THE MATTER OF: *The Psychologists Registration Act*, C.C.S.M., c. P190

AND IN THE MATTER OF: Dr. Cynthia Jordan, C. Psych.

AND IN THE MATTER OF: An order and reasons for decision relating to disposition, following the continuation of the hearing held on May 28, 2012 before the panel of the Inquiry Committee of the Psychological Association of Manitoba consisting of Dr. R. Martin, Dr. J. Ediger and Mr. I. Hughes.

Order and Reasons for Decision - Disposition

Review

A hearing of allegations of professional misconduct was held before a panel of the Inquiry Committee ("the Inquiry Committee") of the Psychological Association of Manitoba on December 12 - 16, 2011 and December 19, 2011. By agreement between counsel for the Association and counsel for Dr. Cynthia Jordan, the hearing was bifurcated to first determine whether Dr. Jordan was guilty of professional misconduct in accordance with the Charge. Reasons for decision respecting the Charge were delivered on March 15, 2012. The Inquiry Committee determined that Dr. Cynthia Jordan was guilty of

professional misconduct in accordance with the Charge, and pursuant to Section 40 of By-law No. 1 of the Association.

Having found Dr. Cynthia Jordan guilty of professional misconduct, the hearing was continued on May 28, 2012 to address the appropriate order pursuant to By-law No. 1 of the Association. Following are the Inquiry Committee's order and its reasons for decision respecting disposition.

Order

The Inquiry Committee orders that, pursuant to Sections 41 (1), 42 and 44 of By-law No. 1 of the Association:

1. Dr. Cynthia Jordan shall be issued a reprimand.
2. The circumstances relevant to the findings and the order of the Inquiry Committee, including Dr. Cynthia Jordan's name, shall be published by the Psychological Association of Manitoba.
3. Dr. Cynthia Jordan shall pay a fine in the amount of \$2,000.00, payable within 30 days of the date of this order.
4. Dr. Cynthia Jordan shall pay costs to the Psychological Association of Manitoba in the amount of \$20,000.00, as a contribution towards the costs associated with the investigation, prosecution and hearing of this matter, said costs to be payable within 90 days of the date of this order.

In addition, the Inquiry Committee recommends that Dr. Cynthia Jordan make a formal apology to the Complainant.

Reasons

The Inquiry Committee is mindful that the one of fundamental purposes of the Association is to ensure that the public is protected from acts of professional misconduct. The Inquiry Committee considered the protection of the public and many other factors in determining the appropriate penalty, including specific deterrence for Dr. Cynthia Jordan, general deterrence to other members of the profession, rehabilitation, punishment and denunciation of Dr. Cynthia Jordan's conduct, the public confidence in the integrity of the profession, and consistency between penalties imposed in other cases.

The Inquiry Committee determined that Dr. Cynthia Jordan's actions constituted conduct that falls well short of what would be expected of a professional psychologist, particularly one with Dr. Cynthia Jordan's years of experience and knowledge of the Code. Dr. Cynthia Jordan's failure to identify the inherent conflict of interest, her serious lack of judgment, her disregard for the complaints process, her cavalier attitude toward the Code, and her lack of insight into the power imbalance with the Complainant, are all factors that contribute to the gravity of the professional misconduct.

Dr. Cynthia Jordan had one previous charge of professional misconduct dated June 29, 2001, for which she received a reprimand. The previous charge related to an issue of conflict of interest.

The Inquiry Committee considered that Dr. Cynthia Jordan did not admit guilt and accept responsibility for her actions. However, Dr. Cynthia Jordan is entitled to have the case against her proven and to make full answer in defence without fear of the threat of an increased penalty.

The Inquiry Committee considered the case law presented by the Association and counsel for Dr. Cynthia Jordan, but did not find any of the case law to be directly on point. The Inquiry Committee also considered Dr. Cynthia Jordan's over 30 years' experience as a psychologist, her valuable contributions to the psychological community, and the numerous reference letters filed in her support, speaking of her good character.

The Inquiry Committee has determined that a reprimand, and the publication of Dr. Cynthia Jordan's name to the profession and the public will serve as a specific deterrent to Dr. Cynthia Jordan, and as a general deterrent to other members of the profession that conduct such as Dr. Jordan's in this case will not be condoned.

The Inquiry Committee also took into account that the maximum fine under Section 42(1) of the By-law No. 1 of the Association is \$10,000.00. A fine of \$2,000.00 is appropriate, based on the severity of the professional misconduct, and based on penalties imposed in other cases.

With respect to the issue of costs, counsel for the Association argued that the hearing could have been shortened by an agreed statement of facts, or by not calling the Complainant to testify. Counsel for Dr. Cynthia Jordan argued the Association's case could have been shortened by not calling Dr. Miles to testify. The Inquiry Committee considered those

arguments, but found on balance that the conduct of the hearing by both counsel for the Association and counsel for Dr. Cynthia Jordan was reasonable in the circumstances. However, as the Inquiry Committee found this to be professional misconduct, the Inquiry Committee believes it is appropriate that Dr. Cynthia Jordan contribute to the costs of the prosecution, investigation, and hearing of this matter. The sum of \$20,000.00 is a substantial contribution to the costs, and will have a financial impact on Dr. Cynthia Jordan, while at the same time compensating the Association for a portion of its costs.

While the finding of professional misconduct against Dr. Cynthia Jordan is a serious one, taking into account the vulnerability of the Complainant and Dr. Jordan's disregard for the complaints process of the Psychological Association of Manitoba, the cases provided by counsel for the Association to support a penalty of an interim suspension dealt with conduct more severe in nature. The Inquiry Committee does not believe, based on Dr. Cynthia Jordan's complaints history and her long years of service to the profession and the community, that an interim suspension is warranted to denounce her conduct or to protect the public.

The imposition of a reprimand, publication of Dr. Cynthia Jordan's identity, a fine, and a substantial contribution to costs maintains the public's confidence in the integrity of the profession, and properly takes into account all relevant factors in considering the appropriate penalty.

Dated this 2nd day of August, 2012

Dr. Jordan and her Counsel have filed an appeal of this Order and reasons for Decision.



Send your feedback about any piece in this issue, as well as your suggestions about issues you'd like to see addressed in a future issue of *Manitoba Psychologist* to the Editor:

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Draft Code of Conduct: PAM Registrant Database Search Tool

On December 29, 2012, P.A.M. Registrar, Dr. Alan Slusky, sent the following announcement to Members:

Dear Registrant,

I am pleased to announce that the PAM website now features a PAM Registrant Search tool. The creation of this tool was announced in an earlier email message to you and this search feature will now replace the membership lists that have up until now, indicated a PAM member's registration status.

Please take a moment to search your name to be sure the correct contact information is displayed, along with accurate descriptions of your area(s) of competence, and populations served. As the data for this search tool comes directly from RIMS, you can correct inaccuracies by logging into RIMS and making the necessary changes. In the next few days, changes will also be made to the PAM website home page to enable members of the public to more easily distinguish between the two search tools now available there.

In accordance with PAM ByLaw #2 Sec. 2(3), the above information (along with the outcomes of any publishable disciplinary actions) is to be made available to members of the public. As the RHPA also requires regulatory bodies to display this information on their websites (in the form of a Practitioner Profile), the creation of this tool is viewed as one more step towards bringing PAM into compliance with this newly proclaimed Act.

Thank you for your attention to this and on behalf of myself and PAM Council I wish you all a Happy and Healthy New Year.

Alan

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