

**IN THE MATTER OF A SECTION 86 OF *THE MEDICAL PROFESSION ACT, 1981* (The Act)**

**IN THE MATTER OF AN APPLICATION BY DR. CARLOS HUERTO FOR REINSTATEMENT  
TO THE COLLEGE OF PHYSICIANS AND SURGEONS OF SASKATCHEWAN AND  
RESTORATION OF A LICENCE TO PRACTICE MEDICINE IN SASKATCHEWAN**

**J. Phillips and M. Mulholland  
appearing for Dr. Carlos Huerto**

**Ms. Alma Wiebe Q.C. appearing for the Registrar of The  
College of Physicians and Surgeons of Saskatchewan**

**REASONS FOR DECISION**

**A. INTRODUCTION AND BACKGROUND**

1. The Hearing of this matter took place before the Council of the College of Physicians and Surgeons of Saskatchewan on the 27<sup>th</sup> day of March, 2015. This Hearing represents the third licence restoration application by Dr. Huerto following a revocation of his licence in 2003 for, *inter alia*, sexual misconduct. Council in its 2011 decision outlined the previous history of the regulatory proceedings involving Dr. Huerto which are accepted by this Council, and which read in part as follows:

[1] Dr. Carlos Huerto has had a long and difficult history with the College of Physicians and Surgeons of Saskatchewan (the “College”). Originally the College granted Dr. Huerto a licence to practice medicine in 1984. However, since then Dr. Huerto’s unorthodox professional conduct compelled the College to intervene on a number of occasions and he was found guilty of professional misconduct in 1988 and again in 2000. On November 14, 2003, following yet another finding of professional misconduct, the Council of the College (“Council”) took the extraordinary measure of striking Dr. Huerto’s name from the College’s register. Subsequent appeals from the Council’s Order to both the Saskatchewan Court of Queen’s Bench and the Saskatchewan Court of Appeal proved unsuccessful.

[2] In September 2006, Dr. Huerto applied for reinstatement and the restoration of his licence to practice medicine pursuant to section 86 of *The Medical Profession Act, 1981*. S.A.1980-81, c.M-10.1 (the “Act”). Following a hearing and due deliberation,

Council rejected Dr. Huerto's application and issued written reasons for its decision in November, 2006. No appeal was taken from this decision.

[3] Compounding his professional difficulties, Dr. Huerto was also charged with two counts of fraud over \$5,000 contrary to section 380(1)(a) of the *Criminal Code of Canada*. Ultimately, however, on September 4, 2009, the Honourable Mr. Justice Kovach of the Saskatchewan Court of Queen's Bench acquitted Dr. Huerto on these charges. The Crown did not appeal from these acquittals. As Dr. Huerto has now been exonerated of these charges, these matters formed no part of Council's deliberations on his application for the restoration of his licence to practice medicine in Saskatchewan.

[4] In 2011, Dr. Huerto again applied under section 86 of the *Act* for the restoration of his licence. On June 24, 2011, Council conducted a hearing on the merits of this application.

2. In addition to these hearings before previous Councils there are the records of previous regulatory hearings in other jurisdictions namely:
  - a. 1984 decision of the Manitoba College of Physicians and Surgeons finding Dr. Huerto guilty of unprofessional conduct.
  - b. 1988 decision of the State Medical Board of Ohio denying Dr. Huerto a licence and subsequent Court decision upholding the denial.
  - c. Decision of the State Medical Board of Washington State revoking Dr. Huerto's licence.

## **B. APPLICABLE LAW**

### **ONUS OF PROOF**

3. There was no disagreement amongst Counsel or this Council that the onus of proof lay on the applicant to establish to the civil standard of the balance of probabilities that Section 86 of **The Medical Profession Act, 1981** requires in an application for a

restoration of the licence “that the interest of the public has been adequately protected”.

4. There was no dispute that the original misconduct leading to licence removal had occurred and there was agreement that this was not an appeal of Council’s 2011 hearing and its findings. Counsel for Dr. Huerto urged Council to listen “with fresh ears”. Several changes in the make-up of Council since 2011 assured there were” fresh ears “present and that message was in the deliberations of Council throughout.

### **RELEVANT FACTORS**

5. Section 86 does not provide any principles, guidelines or specific factors that establish the criteria on which such a decision shall be made. The wide discretion given has been subject of numerous judicial and professional tribunal decisions which have guided the Council and others in similar cases. In **Re Seidman 2013 OCPSD**, a decision of The Discipline Committee of the College of Physicians and Surgeons of Ontario in a re-instatement application at page 5 looked at two general issues, being the risk of further misconduct and whether the applicant is suitable to practice “in terms of protection of the public and the confidence of the public in the profession’s ability to govern itself.”
6. Factors identified in that restoration application, accepted in other jurisdictions and applicable in Saskatchewan are:
  - a. The nature and circumstances of the misconduct that led to the revocation (sexual abuse);
  - b. Other past behaviour of concern that is relevant to the practise of medicine;
  - c. Character, including personal driving forces, honesty and integrity and vulnerabilities;
  - d. Whether the applicant has demonstrated insight, understanding and appreciation for the impact of his actions on the victim;
  - e. Changes in behaviour since revocation;
  - f. Current health;
  - g. Proposed plan for reinstatement;
  - h. Competency to practise; and

- i. The effect of reinstatement on the public and profession.
- 7. The non-exemptible Standards for a certificate of registration under the Ontario Regulations and the Saskatchewan College bylaws, Section 2.3(a) are accepted as necessary for a restoration application and are “that the applicant’s past and present conduct afford reasonable grounds for the belief that the applicant is:
  - i. mentally competent to practice medicine
  - ii. will practise with decency, integrity, honesty and in accordance with the law
  - iii. has sufficient knowledge, skill and judgement to engage in the kind of medical practise authorized in the certificate; and
  - iv. can communicate effectively and will display an appropriately professional attitude”
- 8. The burden then, on the applicant is to establish the experience, character and attitudes that are on the balance of probabilities capable of convincing the Council in a clear, cogent and convincing manner that the public interest is protected if the applicant is restored to the College’s register. It is possible to meet the burden upon an applicant for restoration under Section 86 of The Act even in the face of the substantial past history of discipline matters such as those involving the applicant. However, the past record is still important in establishing the relevant matters that have to be clearly shown to have been rectified so that the Council can take such action with confidence that the public interest is secure.

### **C. SUBMISSION OF COUNSEL**

- 9. Counsel for Dr. Huerto set out to establish this by the presentations of four witnesses. Counsel said that they would establish that Dr. Huerto was not a risk to public safety, that he understood Council’s concerns, that he would comply with the requirements of the College, that he understood the requirements to avoid boundary crossing issues, that he has a plan for proper record keeping, and that two experts would establish that he was not a risk to offend by any sexual offence and further that any questions of competence would be settled by the Registrar’s ability to request training or assessment under Bylaw 4.1.

10. Counsel for the Registrar stated that Council was not sitting on an appeal of the previous decisions of Council and that Dr. Huerto had to satisfy the onus under Section 86 by showing what changes he had made subsequent to the previous decisions of 2003, 2006 and 2011. The question to decide is 'was it enough to satisfy Council that the "public is adequately protected from this doctor; is he able to practice safely and ethically"'.

#### **D. EVIDENCE OF WITNESSES**

11. The first witness, Dr. Thomas Gutheil, of Brookline, Mass., Forensic Psychiatrist, appeared via Skype. His appearance was objected to by Counsel for the Registrar on the grounds that his interview with Dr. Huerto was not based on a sufficient foundation. He was accepted when Counsel for the applicant advised that Dr. Gutheil had all the documents that the Registrar had said should be sent to him. Dr. Gutheil outlined his qualifications relating to boundary issues, appearing as an expert witness in over 250 cases. He confirmed that he had reviewed the documents before and during his personal interview with Dr. Huerto. He advanced his conclusion that the original offence leading to Dr. Huerto's removal as a result of ongoing sexual relations with K.T., an employee and patient, did not fit the profile of sexual abuse of a patient as he outlined in his report of June 3, 2014. In his opinion, given what Dr. Huerto has gone through, he is a low risk, rehabilitation was not required and there were no psychiatric problems. He had reviewed a previous report of probable narcissistic traits which he considered to be at a level common to most doctors. He expressed his opinion that boundary issues were understood by Dr. Huerto and that he was not a danger.
12. On questioning from Counsel for the Registrar Dr. Gutheil re-stated that his opinion that Dr. Huerto was not a danger and did not require rehabilitation, conclusions based on both document review and the interview with Dr. Huerto. Members of Council questioned why Dr. Gutheil concluded that Dr. Huerto's relationship with K.T. did not fit the profile of sexual abuse. Dr. Gutheil's response was that there was no evidence of undue influence on the patient. A further question dealt with paragraph 8 of the 2004 report that Dr. Colleen Clements' thought the relationship ethical and Dr. Gutheil was asked if Dr. Huerto thought the relationship ethical. Dr. Gutheil answered "yes".

13. James Penna a retired philosophy professor stated that he knew Dr. Huerto from an ecumenical prayer group they were in together. He stated that he believes Dr. Huerto understands why he lost his licence. Mr. Penna had no concerns regarding sexual impropriety, honesty, or about Dr. Huerto practising medicine. In cross examination, Mr. Penna acknowledged that Dr. Huerto was never in a position of authority at the meetings they attended.
14. Dr. Huerto testified. He stated four concerns that he felt Council would have over restoring his licence: competency, patient safety from unethical behaviour, patient documentation and his debt to the College. He then described his approach to the concerns. Patient documentation would be in electronic form to which the College would have access. Unethical behaviour would not occur. He understood that boundaries violations would not be accepted and were wrong. He planned to pay the College for costs levied in previous matters when he gets back to work. Meanwhile the debt is secured against his son's house. Finally, he discussed the extensive courses he has taken in cardiology and internal medicine in recent years. He was questioned by his legal counsel as to his retaining Drs. Gutheil and Bradford as follows:

***Q – Mr. Mulholland*** - *And I just wanted to understand if this is your understanding of why this College wanted you to have an assessment. So at bullet point number 1, it says:*

*There has not been an appropriate assessment of your client's propensity to engage in future unprofessional conduct that involves not only the question of his propensity to engage in sexual abuse of patients, but also his willingness to abide by the accepted medical standards of the medical profession, and his honesty, and integrity.*

*Is that your understanding of why the College wanted you to have an assessment done?*

***A- Dr. C. Huerto*** - *Yes, yes, sir.*

15. Dr. Huerto was questioned about his practice under Court ordered conditions between 2003 and 2005 where he complied with the conditions imposed not to examine female patients alone. He concluded his direct evidence with assurances that boundary issues would not happen again, that he would take exams and demonstrate his expertise, keep electronic records and pay his debt.
16. Cross examination included questions of concern to Council as to the insight of Dr. Huerto into the causes of the sexual abuse previously found by Council and his acknowledgement of it is shown on Page 122 of the transcript. Dr. Huerto referred to the former abuse as "the finding". Rather than acknowledge it directly, he stated "and I have said again and again that I am very concerned because the College was concerned." It is clear from Dr. Huerto's testimony on Pages 137 and 138 that his view is that in the forensic examinations, there has been no evidence of psychopathology and therefore nothing need be done as far as rehabilitation for crossing of professional boundaries/sexual improprieties. When Dr. Huerto was asked specifically what rehabilitative efforts he had undertaken since 2011, he indicated that he had nothing to rehabilitate. This perception is borne out by the evidence of Drs. Gutheil and Bradford.
17. However, this interpretation of the relationship event with K.T., and its resulting damage, appears to Council as disturbing; one of avoiding responsibility by re-characterization; that is he is simply concerned because Council is concerned, and not because he truly acknowledges that he did something wrong. When Dr. Huerto was asked specifically when he had come to the understanding that it was wrong to have a relationship with a patient, he could not state when he had come to that realization. He did under questioning later (page 185) state it was when he attended a boundaries course at Vanderbilt. The non-response to the first question may be indicative of the unreliability of the second answer or that there is still no genuine recognition that the relationship was wrong. At other times Dr. Huerto states that boundaries violations are wrong and that he did breach the boundaries or he stated that Council previously found that he practiced sub standard medicine but never that he did something wrong. This to Council is a clear sign of refusal to recognise the facts. The questioning on cross examination of Dr. Bradford support Council's concerns:

**Q- Ms. A. Wiebe** - Having assessed Dr. Huerto and gone through the material that you were provided, did you form an opinion on whether Dr. Huerto was at risk in practicing medicine?

**A - Dr. Bradford** - Yeah, I didn't think he's at risk. I didn't think that. I mean, I -- I mean, there are some credibility issues, which, you know, quite honestly, I couldn't sort out, and I -- I think they're complicated, but putting that aside for the moment, it was clear that he had a -- it's clear that he had a sexual relationship with, I'm going to say KH because it's refers -- it's easier for me to refer to it. I think the story about how that happened, when it happened, and some timeframes, I'm not sure about. I think that's a matter of credibility and fact finding, so I accept what the -- what the College came up with.

18. Dr. Huerto was cross examined on the issues of competence and honesty:

**A - Dr. Huerto** - You -- you have to remember that, like, even if you don't know medicine, that with all those procedures that I did, with all the kind of acute cardiology that I did, there has been not a single death in the clinic ever, not in 30 years. (the word debt appears in the transcript but council clearly heard "death")

**Q - Ms. Wiebe** - And your practice was found on many, many levels by Dr. Smith, Dr. Fenton, and Dr. Sommerville to be, to put it mildly, substandard; is that correct?

**A - Dr. Huerto** - That's what they put in their report.

**Q- Ms. Wiebe** - And they're wrong? And are they right or wrong?

**A- Dr. Huerto** - I accept their report. I mean, that's what they say. That's what it says.

**Q- Ms. Wiebe** - Okay. So tell us then, in all the volumes of documents that you've filed, where we can find -- where this council can find something that will help them, not with your knowledge -- your academic knowledge, you've showed



*us that -- that will help them to say: yes, this doctor can now practice safely when he couldn't in 2005.*

**A- Dr. Huerto** - *Well, Ms. Wiebe, if you define, "safely", the fact that you hurt people or not hurt people, in my clinic, nobody has been hurt. And secondly, nobody had died in 35 years. Not even the major clinic can say that. Not UCLA, not Mount Sinai.*

**Q- Ms. Wiebe** - *So are you saying that in order to be found to have practiced substandard medicine, which you have been found to, that someone has to die?*

**A - Dr. Huerto** - *Well --*

**Q- Ms. Wiebe** - *Is that the benchmark?*

**A- Dr. Huerto** - *Yes. Outcome -- in medicine today for everybody, outcome is the measure of goodness. Outcome.*

19. Council will comment on this later in its reasons for decision.

20. The cross examination also delved into the issue of honesty. One exchange was as follows:-

**Q - Ms Wiebe** - *And that's a concern because you have a history of lying. You have a history of lying to the court. You have a history of not telling the truth under oath in this body, and, particularly, in the Discipline Committee process. When you're being disciplined, you don't tell the truth.*

**A- Dr. Huerto** - *I --*

**Q- Ms. Wiebe** - *Is that correct?*

**A- Dr. Huerto** - *Well, I -- I gave my evidence. The Committee did not accept that evidence. They found me guilty that I was lying, and that is a fact, and I respect that. The council have to understand that I wasn't lying. It is the way I saw it. I gave the best evidence. Just like doing medicine. That's how I gave my evidence in my claim. The point is, I gave the evidence that I believe was right.*

**Q- Ms. Wiebe** - And so --

**A- Dr. Huerto** - I wasn't lying, Ms. Wiebe --

21. Dr. John McDonald Watson Bradford, of Brockville, Ontario was sworn as a witness and accepted as an expert forensic psychiatrist. Dr. Bradford stated that he had provided a report of an assessment of Dr. Huerto in 2014 (272 – 15 in the applicant's documents). He further stated he had been supplied with documents listed in the report and that they were sufficient for the report. He described his process of taking a history, reviewing documents, doing an abbreviated sexual assessment, and getting help for a psychology report. Dr. Bradford's examination resulted in his opinion that Dr. Huerto gave him some credibility issues he could not sort out, but that he had no problems over the relationship with K.T. Dr. Huerto did not deny the relationship was wrong when K.T. was a patient. Dr. Bradford's further opinion was that if the College had a concern they could require Dr. Huerto to take another boundaries course and require a practice monitor.

22. Dr. Bradford's comments on the issues of insight into Dr. Huerto's past conduct were described in part:

**Q- Ms. Wiebe** - And, I guess, as a psychiatrist -- and I want to leave this area of sexual problems immediately -- but just as a psychiatrist, would you say -- and, again, you've read the material that says this council clearly -- and the Discipline Committee clearly found that he had a sexual relationship with a patient that was clearly inappropriate for that reason, if no other, that you're not sure based on your conversation with him whether that was the case, wasn't the case. Would you say that he has gained insight into his behaviour in this regard?

**A- Dr. Bradford** - Yeah. I think it's a little bit more difficult. I think what -- I think there are two -- there are two issues there: one is the issue which he believes that he has been unfairly dealt with at a certain level, you know, with this College, and I think

*he truly believes that. So I think it's something that -- I mean, I'm not going to get into debate whether it's true or not. That's not -- that's a critical other issue I'm not getting into, but I think in his mind, at least in part, he believes that's the case. And as long as he believes that, that's going to affect at least some of his insight. So if you engage him in that kind of conversation, you'll end up going down that pathway. I think if you -- if I, sort of, try to engage him clinically about the boundary violation, in other words, a different pathway, having sex with patients is not appropriate, having -- doing other boundary violation is not appropriate, yes, he would agree, and I think he's insightful. But I think those two things get a little bit muddled at times because I think he definitely believes he's been badly done by*

23. These “credibility issues” or the “muddled” descriptions to Council display an attitude that is not conducive to following the medical standards of the profession or the authority of the College where it differs from Dr. Huerto’s own assumptions. It is of further concern that the result of one report on the Paulhaus Deception Scale led to the following question and answer:

**Q – Ms. Wiebe** - *And right at the bottom, the conclusion is that Dr. Huerto presents as:*

*Overall the profile reveals an individual who's generally well, socializes, but who lacks insight to deal with his problem. Individuals of such profiles can appear sanctimonious, can have a tendency for self-enhancement, and can be influenced by situational demands, responding in a socially acceptable manner.*

*Is that correct? That was the conclusion you reached --*

**A- Dr. Bradford** - *Yes.*

## **E. PREVIOUS FINDINGS**

24. In its careful consideration of the evidence and submissions, Council, as mentioned previously was cognisant of the precedents that a restoration of licence required compliance with the bylaw 2.3a non exemptible provisions applicable to any licence. There are two concerns in those requirements that were raised by Counsel for the Registrar referred to in document Info 79\_15 setting out her argument. They involve the good character, quality of honesty and whether Dr. Huerto is an unsafe practitioner. Examples of lack of both qualities are described in the findings of a number of hearings.
25. The 2003 hearing resulted in a finding that there was a sexual unprofessional relationship with an employee patient, K.T., that also included prescribing drugs that were not for her use for which Dr. Huerto received payment from the Saskatchewan Medical Plan; that he swore an affidavit containing false and/or misleading information about his financial affairs; in 2000 he was found guilty of unprofessional conduct in charging a 16 year old patient Ms. B., for administration of injections that were not provided, and falsified his clinic notes. With regard to a Mr. R., this also involved a similar act of prescribing drugs that were not for his use. In 1988 the State of Ohio denied Dr. Huerto the right to practice based on, among other things, not truthfully answering questions on his licence application.
26. There is, in addition then, the question of Dr. Huerto's capacity to practice medicine in accordance with the standards of the medical profession. The B. and R. instances referred to also involved injections increasing the risk to the patient so that the 2000 hearing resulted in a prohibition from providing isotropic or thrombolytic therapy. In 1988 Dr. Huerto was found guilty of unprofessional conduct in performing a clumsy and below standard pelvic examination. In 1977 the College of Physicians and Surgeons of Manitoba found Dr. Huerto guilty of "gross professional misconduct" for performing surgery in circumstances that endangered the life of the patient where there was no indication to do so. After revocation he was restored on the basis that he limit his practice to internal medicine and then later was charged for practising surgery and was then allowed to resign after paying the costs of the inquiry. Two separate reviews were carried out of Dr. Huerto's practice and the reviewers found many examples of diagnoses with little evidence to support the diagnoses and examples of failing to follow up on abnormal test results. One reviewer found "a high evidence of polypharmacy resulting in incidence of iatrogenic/physician caused complications."

## **F. REASONS for DECISION**

27. Council is not satisfied that Dr. Huerto has met his obligation under Section 86 of **The Medical Profession Act, 1981**. Council arrives at this conclusion for a number of reasons, some of them stated above. Before stating them further, Council wishes to make it clear that in its considering the past record of proceedings outlined in the 2011 decision of Council, it is not in any way considering the criminal charges against Dr. Huerto, given that they were dismissed.
28. The previous decisions of Council back to and including 2003 dealt with the serious unprofessional conduct involving the relationship with a patient K.T. Council is of the opinion that given the evidence of Dr. Gutheil and Dr. Bradford as well as Dr. Huerto and considering his age and what he has experienced, the likelihood of such an event happening again is not reasonably foreseeable. In addition the debt owing to the College for costs in previous hearings, while considerable (approximately \$120,000) is to some degree secured. In any event, Council's concern is the public interest and not in debt recovery.
29. However, while repetition of a sexual boundary violation is not foreseen it is not a reason to conclude that the fundamental character flaws underlying such violations have disappeared. Instead, the testimony regarding this issue indicates to Council that there is a fundamental character flaw shown by a lack of insight into the wrongdoing caused and its characterization as a boundaries issue that is only wrong because Council found it wrong. Dr. Bradford finds "credibility issues" and a "muddled" response because Dr. Huerto still feels "he's been badly done by". It is not clear to Council that as long as this state of mind exists the public will not suffer in some other way.
30. In a previous hearing Council had found that Dr. Huerto had a relationship with a patient. Dr. Huerto reported to Dr. Bradford that this relationship occurred as a result of the initiative of the patient, which he described as a seduction. Council concludes that the following exchange indicates Dr. Huerto's inability to take responsibility for the inappropriateness of his part in the relationship. He remains firm that what occurred does not constitute sexual abuse or misconduct in spite of the previous Council ruling..

***The Chairperson:** So just to clarify what you just said there a few sentences back, you have never been involved in a sexual abuse; is that correct?*

**Dr. Huerto:** *Never. Well, not in a sexual abuse, no. But—,you see, here is the trouble, that because it is a boundary violation, because it is wrong to have that, it is indeed—I am—so I—having—I can't tell the story that—but when somebody say you are, you know, a perverted or a sexual abuser, the reality is that an—once a relationship is established, it becomes a problem in itself, and I do my---I'm sorry".*

31. To Council nothing has fundamentally changed from Dr. Huerto's re-instatement application in 2011. In observing Dr. Huerto and his responses, Council finds that he was simply trying to tell Council what he thought they would like to hear, leading Council to think he did not truly believe what he was saying and that therefore he was not credible.
32. In addition the medical reports on Dr. Huerto all mentioned a narcissistic personality. Only one, the PAS report referred to it as a narcissistic personality disorder. The other reports referred to it as a narcissistic trait, which is found in varying degrees in most professionals. To Council, the fact that it may not be a disorder does not detract from its concern that the presence of these traits coupled with a lack of insight suggests the distinct possibility of continuing difficulties with the public.
33. The instances of dishonest, untruthful and incompetent conduct outlined were not quoted to the full extent of the disciplinary record filed. They cannot be overlooked as factors contributing to the clear potential of harm to the public merely because of promises not to repeat the offenses. They are a manifestation of significant character flaws that cannot be overcome by Mr. Penna's testimony of his experience with Dr. Huerto in religious and philosophical settings. These personality traits/character flaws, particularly on the part of one who does not acknowledge them, do not lend themselves to being remedied by additional training, therapy nor licence supervision under Bylaw Section 2.3(a). Council cannot expose the public to a real risk of repetition in a medical practice.
34. Council does not accept the reasoning of Counsel for Dr. Huerto as outlined in his summation:-

**Mr. Phillips** - *Number 2 is his practice standards, and I want to merge that with the discussion of dishonesty. Dr. Huerto has trouble saying that what I did didn't meet practice standards. This council -- and he knows it, this council said that he violated*

*standards. Putting aside that disagreement, what he has told you in the most candid way possible, moving forward, is that he wants to provide an assurance to anyone who will look, that when he sees a patient, there will be a complete chart, proper data collection to ensure that the diagnosis, the tests, the prescriptions, and the treatment are all viewable, transparent, reproducible, and backed up. Going forward. that takes care -- in my submission and which Dr. Huerto asked you to accept, takes care of the issue of dishonesty, takes care of the issue of standards of practice, at least for the purpose of this reinstatement process. He tells you that, and he says it will not happen again, and only you can decide whether he's believable or not.*

35. Council's significant concerns with respect to both practice standards and dishonesty cannot be met merely by assurances of good conduct. Considering his Counsel's choice put to us, Council has decided that Dr. Huerto's testimony is not believable because Dr. Huerto has had ample occasions in the past to correct his conduct and practice. He still feels that there have been professional disagreements over standards and thus does not accept the weight of the knowledge of the several examiners. The evidence points to much more than disagreements. Dr. Huerto's assertions simply do not overcome the weight of the actual evidence – his self assessment amounts to a fundamental lack of genuine willingness to accept the governance and authority of the standards of the College; incidents of unprofessional conduct relating to character and competence as provided in the document Info 79\_15 are seen as a deliberate course of conduct.
36. Similarly, in Council's opinion, the serious practice problems are not overcome by the extensive training courses taken by Dr. Huerto while he has been banned from practice. Nor is it reasonable to presume that it would be rectified by any measures prescribed by the Registrar that would be required under the by-laws due to an absence from practice. Dr. Huerto has shown that he is quite proficient at doing capable work when he went through assessment in Alberta for a week. Dr. Huerto clearly has the intellectual capacity to practice medicine. However, knowing what to do when watched is one thing, but engrained habits of neglect or deliberate over-treatment for gain and the altering of records are not eliminated necessarily after such assessments are over. At this hearing, Council heard directly from Dr. Huerto twice in his cross examination on various matters of poor practice, that there has never been a single death in the clinic. This response is most unsettling to Council. In a profession whose basic first principle taught from the very beginning in every medical school is to "do no harm"; it

is not sufficient to justify one's practice on the basis of not having killed a patient in one's career. Whether Dr. Huerto's mistakes were the products of workload pressures, a desire to increase revenue by any means or simple oversights in his practice, it is highly unlikely to improve in the future if one has absolved oneself from responsibility by setting such a low standard.

37. Council is not convinced that the offer of Dr. Huerto to keep electronic records is in itself a satisfactory means of ensuring a higher standard of practice. Given the number of observations in previous hearings of inadequate charting by misstatement or omission, this can equally occur when using electronic records.

#### **G. DECISION**

38. The Council of the College of Physicians and Surgeons of Saskatchewan, for the above reasons, finds that Dr. Huerto has failed on the balance of probabilities to satisfy the onus placed on him under Section 86 of **The Medical Profession Act, 1981** that "the interest of the public has been adequately protected" and there is no risk to public safety if he is restored to the register of the College to practice medicine. Council finds that it is not in the public interest to accept unsupported assurances of ethical, honest and competent practice when there is a significant record of repetitive conduct to the contrary. Council cannot allow further opportunities to see such conduct continued.
39. Council hereby denies this request for reinstatement and restoration to the Register of the College of Physicians and Surgeons of Saskatchewan.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 2015

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Chair