

**Council Decision:**

Council imposed the following penalty:

- 1) A suspension of two weeks to be served prior to 31 March, 2015
- 2) A reprimand
- 3) Costs of \$1,800.00
- 4) Dr. Spies was required to participate in an ethics course approved by the Registrar unless, after reviewing the ethics course which Dr. Spies had already taken, the Registrar concludes that the course was appropriate.

**IN THE MATTER OF A SECTION 47.6 OF THE MEDICAL PROFESSION ACT, 1981  
PENALTY HEARING FOR DR. CORNELIUS SPIES**

Ms. Christine Glazer, Q.C. appearing for Dr. Cornelius Spies  
Mr. Bryan Salte, Q.C. for the College of Physicians and Surgeons of Saskatchewan

**REASONS FOR DECISION**

**OVERVIEW**

1. The Hearing involved a charge of unprofessional conduct pursuant to *The Medical Profession Act, 1981* and was heard by the Council of the College of Physicians and Surgeons of Saskatchewan on November 21, 2014. Council decided in two phases. The first dealt with a change to the charge that had previously been laid against Dr. Spies by Council. The second phase would be a penalty hearing based on an admission by Dr. Spies based on the proposed amended charge if the charge was indeed amended by Council. In the event that Council did not accept the amended charge then a hearing would be requested on the original charge without any admission.
2. Counsel for the College Mr. Bryan Salte and Ms. Christine Glazer on behalf of Dr. Spies spoke on the nature of the request to amend the charge. The original charge as set out on page 2 of the Council document Info 313\_14 reads as follows:

*You Dr. Cornelius Spies are guilty of unbecoming, improper, unprofessional, or discreditable conduct contrary to the provisions of section 46(o) and/or 46(p) of **The Medical Profession Act, 1981** s.s. 1980-81 c. M-10.10 and/or bylaw 7.1(c) and paragraph 31 and/or paragraph 52 of bylaw 7.1(g).*

*The evidence that will be led in support of this charge will include the following:*

- a) On or about the 31st of March, 2013 you sent a text message to a physician.*
- b) The text message sent on or about March 31, 2013 stated "does your wife know you are fooling around with a married woman at work? fool around with your own kind!! You are a marked man for the rest of your life. watch your back. it is going to catch up with you before you know it- you are in the wrong crowd. you will never know when or where it will happen- you have been warned- leave town" or used words of similar meaning.*

- c) *On or about the 1st of April, 2013 you sent a second text message to the physician.*
- d) *The text message sent on or about April 1, 2013 stated "did you find anybody else to harass with your PERVERTED SEXUAL suggestions at work? Your wife and family will appreciate this and the CPSS I am sure."*
- e) *You did not identify yourself as the sender of the text messages.*
- f) *The text messages were reasonably interpreted by the physician as racist.*
- g) *The text messages were reasonably interpreted by the physician as threatening.*
- h) *The text messages were reasonably interpreted by the physician's spouse as threatening.*

3. The changes that were proposed by both Counsel were to points f, g, and h and would read as follows:

- f) *The text messages could reasonably have been interpreted by the physician as racist.*
- g) *The text messages could reasonably have been interpreted by the physician as threatening.*
- h) *The text messages could reasonably have been interpreted by the physician's spouse as threatening.*

4. Both Counsel pointed out that the difference between the two charges was that the first involved an admission as to the actual reaction by the recipient of the message as being reasonable while the amended charge would involve an admission only that the messages could reasonably have been interpreted as racist or threatening.
5. The Council then met 'in camera' to consider the amendment. Council accepted the proposed amendment to the original charge after considering the possible effect of the change. Council found the proposal to be acceptable as the original charge required the element of proof of a knowledge of the actual state of mind of the recipient. It further considered that the change would not affect the likely range of penalties that could be applied to an admission of the charge.
6. The hearing then reconvened as an open hearing with Dr. Spies and both counsel present.
7. Counsel for the College Mr. Salte reviewed the factors to be determined in deciding upon a penalty which did not materially differ from those submitted by Dr. Spies' counsel Ms.

Glazer. He went on to outline the factual background, Dr. Spies' personal situation, relevant mitigating factors, and aggravating factors, and discussed some of the penalties levied in previous similar cases. However, the Registrar's Office considered that the lack of previous similar decisions left it in a position of not being able to recommend a penalty but rather gave a range of possible suitable penalties, namely:

1. A reprimand,
  2. A suspension from practice
  3. A requirement to take an ethics course acceptable to the Registrar's Office
  4. A fine
  5. Costs
8. Counsel for Dr. Spies proposed a penalty of a reprimand and costs and cautioned that "a more severe penalty would be a departure from the penalties levied in similar or more severe cases in the past." (submission of November 17, 2014 – Page 9 – Council document Info 306\_14).
9. Council considered the nature of the actual admitted offence as set out in Council document Info 313\_14, the personal circumstances of Dr. Spies at the time relevant as a mitigating factor to the commission of the offence, the effect of the messages sent on the recipient as aggravating factors as stated in the victim impact statement (Page 13 of Council document Info 313\_14) and previous penalties for offences considered similar by both counsel.
10. The two anonymously sent text messages by Dr. Spies threatened a physician as being "a marked man" for "fooling round with a married woman at work" and stating "fool around with your own kind" and "that you are in the wrong crowd". The second message sent early the next morning stated "did you find anybody else to harass with your perverted sexual suggestions at work? Your wife and family will appreciate this and the CPSS I am sure".
11. These messages were dealt with under the "alternative measures/Extra Judicial Sanctions (EJS) Program after the recipient reported the messages to the RCMP. Two weeks after

sending the messages the complainant was advised who sent them and the mediation proceedings were settled later with an apology.

12. The College became aware of the proceedings and carried out its own investigation and received Dr. Spies' explanation that the messages were sent "as a female friend had led him to believe that the recipient had made inappropriate comments to her" and were sent anonymously "in an effort to protect his friend and stop what he understood to be unwanted conduct." (Page 5 – Council document Info 313\_14). "He denied any racist intent."
13. Council in consideration of this matter determined that this was no ordinary dispute between two physicians. The racist and threatening nature of the remarks is admitted. The belief of Dr. Spies was that it was necessary to intervene in a matter involving a friend when it was not his position to do so, to solve a matter that would be properly dealt with by the appropriate authorities does not absolve him from responsibility and is a further incident of unprofessional conduct. Even in his depressed state he would reasonably be expected to realise that what he sent by way of text messages were messages that could only be interpreted as being willfully intended to force the end of conduct by the recipient by inducing fear. The messages being sent anonymously could easily be expected to enhance a fear-filled reaction.
14. Council concluded that the admitted conduct reviewed certainly met all the requirements of the charge in that it was more than "unbecoming", "improper" and most definitely "unprofessional" and "discreditable". The public nature of the criminal proceedings even though settled would have discredited the profession and was not conduct to be expected from a professional in settling a dispute with a fellow member of the profession.
15. Before Council concluded its deliberations on a suitable penalty it considered the mitigating factors advanced by counsel for Dr. Spies. The primary factor was his mental state at the time. This state was outlined in letters from a registered psychiatric nurse (attachment 3 of Council document Info 306\_14) and a family physician (attachment 4 of Council document

Info 306\_14). Both made reference to the depressed state of Dr. Spies resulting from professional burnout and stress in his personal life from the death of relatives and the illness of his mother in South Africa. Further factors included his immediate acknowledgement of responsibility to the Police and to the College. In the case of the College the result of the Police investigation would have forced him to cooperate. Further factors considered as pointed out by Dr. Spies' counsel was his remorse and shame which he also expressed to Council. Ms. Glazer also referred to his not having any previous record of criminal activity or professional misconduct. She also referred to the "extreme embarrassment amongst his colleagues and the wider Yorkton community as a result of media exposure and that his behaviour is unlikely to be repeated.". Finally Ms. Glazer stated that Dr. Spies is a valuable member of the healthcare team in Yorkton and "has recommitted himself to his work in a more sustainable manner so that he may better serve his community."

16. The question as to a suitable penalty then arises. For this Dr. Spies' counsel referred to the cases of Dr. Young, Dr. Rostoker, and Dr. Jansen. Counsel for the College referred to the cases of Dr. Lok, Dr. Young, Dr. Jansen, Dr. Freeman and Dr. Kadiri.
17. Dr. Young discussed "blowing away" Dr. Moolla in a conversation with another doctor. He was reprimanded and ordered to pay costs.
18. Dr. Rostoker deliberately scratched another doctor's car as a result of personal conflict and was also reprimanded and ordered to pay costs.
19. Dr. Jansen threatened another physician with a knife. He agreed to abstain from alcohol and illicit drugs and take treatment. The criminal charges were conditionally discharged and Council imposed a reprimand and costs.
20. Mr. Salte referred to the Saskatchewan College decision of Dr. Lok. Whilst this matter involved racist threats it also involved property damage and an attempted cover-up which made the penalty imposed more serious resulting in a reprimand and a 4 month suspension.

Ms. Glazer in her verbal presentation pointed out these factors as being too dissimilar to be considered. However, Mr. Salte stated that a criminal court in imposing the sentence in this matter stated “although there was no physical harm, the terror or fear that would have been inflicted would have been significant.”. Mr. Salte further stated that in both cases the messages were sent anonymously thus making the situation more frightening as neither knew whether there was a danger or what the source of the danger might be.

21. In the Dr. Young case Mr. Salte felt that it was less serious than the current matter as the statements “were made to a third party, not anonymously, and did not have the same dramatic effect” on the recipient as on Dr. Spies’ recipient.
22. The Dr. Jansen matter was distinguished by Mr. Salte on the grounds of it involving one incident and under the effect of drugs and did not place the physician whom he threatened in ongoing fear for his safety (as contained on page 9 of Council document Info 313\_14).
23. The Dr. Freeman and Dr. Kadiri cases from Ontario referred to by Mr. Salte were for a road rage assault and a shouting match with another doctor. Both resulted in reprimands and costs with Dr. Kadiri having the further condition of taking a communications course.
24. In addition to consideration of precedent sentences one must consider a number of other matters that have as their purpose the use of the penalty in such a way as to advance the public good.
25. Mr. Salte listed a number of factors on page 4 of Council document Info 313\_14. Also Ms. Glazer referred Council to the case of Pottie –v- Nova Scotia Real Estate Commission, 2005 NSSC 177 paragraphs 60 to 64. Paragraph 62 of the Pottie case states that in consideration of precedents a “cookie cutter” approach is “prohibited in the criminal law” but that “consideration of precedent is one factor that promotes fairness, certainty and consistency”. However, the Court added in paragraph 63 “it is relevant for the committee to consider not only the seriousness of the offence itself ..... but also the factors related to the appellant himself. If he is a first time offender? Is he a person with a long record of good

behaviour who can provide a logical and credible explanation for this glitch in his behaviour? These may constitute mitigating factors. On the other hand, if the offender has extensive business experience, does not have a long record of good behaviour, and has no credible excuse (such as some unusual personal crisis that is unlikely to be repeated, these may constitute aggravating factors.” The Court then adds in paragraph 64 “With regards to the offence itself, offences of the nature that adversely affect the public, or are deliberate (as opposed to negligent or careless) might be aggravating factors. Certainly the seriousness of the offence is an aggravating factor.”.

26. Council in consideration of the factors related in precedents and the principles of sentencing outlined concluded that a reprimand and the payment of the negligible costs occurring in this matter would not serve the public purpose of general deterrence. This conclusion is based on two distinctions from the precedents reviewed. One is the hurtful effect of the overt racism used to instill fear. Whether the extent of that fear and the reaction to it was intended or not it was admitted as reasonably inferred and was acted upon. Whilst the Dr. Lok case involved racist comments and also involved damage it involved an attempted cover up. That matter alone justified the four month suspension given. This was not a factor in the present matter. However, its absence does not support a penalty of a reprimand only. The second distinction is shown in the victim impact statement referred to. It shows considerable damage caused emotionally and financially in the resulting separation -of the physician’s wife and the costs of maintaining separate residences and moving his practice from Yorkton.
27. It is necessary to stress to the profession that disputes with other members must not be settled arbitrarily by themselves. It is more urgent now as the case of the internet communication with its seemingly anonymous delivery leads to instantaneous, poorly constituted venting of grievances. A more carefully considered response is required, taking advantage of advice from the College or the Saskatchewan Medical Association or hospital authorities or legal counsel. Had that happened in this case Dr. Spies would have seen the potential harm that his actions could cause. That harm was such that the mitigating factors mentioned previously including the depressed state when acting, do not constitute a

sufficient justification for a course of conduct that would be predictable in its results even to an educated professional in that state.

28. Council though considered the precedents and the mitigating factors sufficient to reduce what it would have considered the aggravating factor that the damage caused merited, and imposed a suspension of 2 weeks. Given the serious nature of the offence some degree of suspension is necessary in order to send a message of general deterrence to the profession as well as to adequately penalize the offence.
29. Council also ordered that Dr. Spies take an ethics course acceptable to the Registrar. When courses of instruction or treatment or examination of some condition is required as part of a penalty, the usual requirement is that it be determined by the Registrar. In this case Council was advised that Dr. Spies had already completed an ethics course but had no information as to when and what format it took. It could well be that it was suitable but in order to ensure that Council considers it necessary for the Registrar to review the matter to her satisfaction.
30. Council therefore finds for the preceding reasons that Dr. Cornelius Spies is guilty of unbecoming, improper, unprofessional and discreditable conduct as set out in the charge and is hereby:

1. Reprimanded,
2. Required to take or have taken an ethics course approved by the Registrar,
3. Suspended from practice for a period of two weeks to be completed between 21 November, 2014 and 31 March, 2015,
4. Ordered to pay costs in this matter to the sum of \$1,800.00

Dated at Saskatoon this \_\_\_\_\_ day of \_\_\_\_\_

Signed: \_\_\_\_\_

President