



Dr. Tshala TSHIYOMBO

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## Discipline Hearing Committee Decision

<b>Date Charge(s) Laid:</b>	September 14, 2019
<b>Date of Discipline Hearing:</b>	November 23, 2020
<b>Date of Penalty Hearing:</b>	January 22, 2021

This matter proceeded to hearing before the Discipline Hearing Committee. The decision of that committee is attached. The matter will now proceed to penalty hearing before the CPSS Council at an upcoming meeting.

Once Council has made a decision, results of the penalty hearing are posted on the CPSS website under *Summary of Discipline Cases – Completed Cases*.

IN THE MATTER OF **The Medical Profession Act, 1981**, S.S. 1980-81 C. M-10.1 and Dr.  
Tshala Tshiyombo, Medical Practitioner

BETWEEN:

THE COLLEGE OF PHYSICIANS AND SURGEONS OF SASKATCHEWAN

-and-

DR. TSHALA TSHIYOMBO

**DECISION OF THE DISCIPLINARY HEARING COMMITTEE OF  
THE COLLEGE OF PHYSICIANS  
AND SURGEONS OF SASKATCHEWAN**

Hearing: November 23, 2020  
Saskatoon, Saskatchewan

Panel:

Robert Gibbings, Q.C., Chair

Dr. Louis Coertze

Dr. Brady Bouchard

**I. INTRODUCTION**

[1] The following six charges were brought by the College of Physicians and Surgeons of Saskatchewan (CPSS) against Dr. Tshala Tshiyombo, who was a medical practitioner in Saskatoon, Saskatchewan.

[2] The six charges are:

### Charge #1

The Council of the College of Physicians and Surgeons directs that, pursuant to section 47.6 of **The Medical Profession Act, 1981**, the Discipline Committee hear the following charge against Dr. Tshala Tshiyombo, namely:

You Dr. Tshiyombo are guilty of unbecoming, improper, unprofessional, or discreditable conduct contrary to the provisions of Section 46(o) and/or section 46(p) of **The Medical Profession Act, 1981** S.S. 1980-81 c. M-10.1 and/or bylaw 7.1 and paragraph 19 and/or paragraph 37 of the *Code of Ethics* contained in bylaw 7.1 and/or bylaw 8.1(b)(ix) and/or bylaw 8.1(b)(xi), and/or bylaw 8.1(b)(xii) and/or bylaw 23.1(g).

The evidence that will be led in support of this charge will include some or all of the following:

- a) You formerly practised in a medical clinic in Saskatoon, Saskatchewan (hereafter called "the clinic");
- b) You closed the clinic and ceased practising in Saskatchewan on or about the 31<sup>st</sup> of May, 2019;
- c) You failed to provide appropriate notice to your patients that you intended to close the clinic and cease practising in Saskatoon;
- d) You failed to make appropriate arrangements to allow your patients to seek medical care from another health care provider;
- e) You failed to provide continuity of care for patients for whom you had provided care at the clinic;
- f) You failed to make appropriate arrangements for access to your patient records;
- g) You failed to make appropriate arrangements for the transfer of your patient records;
- h) You failed to respond to one or more inquiries from third parties related to your patient's health information.

### Charge #2

The Council of the College of Physicians and Surgeons directs that, pursuant to section 47.6 of **The Medical Profession Act, 1981**, the Discipline Committee hear the following charge against Dr. Tshala Tshiyombo, namely:

You Dr. Tshiyombo are guilty of unbecoming, improper, unprofessional, or discreditable conduct contrary to the provisions of Section 46(o) of **The Medical Profession Act, 1981** S.S. 1980-81 c. M-10.1.

The evidence that will be led in support of this charge will include some or all of the following:

- a) On or about May 8, 2019 you advised an employee of the College of Physicians and Surgeons that you would not be closing your medical practice;
- b) That statement was false or misleading;

- c) On or about May 8, 2019 you advised an employee of the College of Physicians and Surgeons that the College would be informed if and when you closed your practice;
- d) That statement was false or misleading;
- e) You did not advise the College that your practice had been closed;
- f) On or about May 8, 2019 you spoke to an employee of the College of Physicians and Surgeons and advised the employee that, if you closed your medical practice, you would follow the appropriate protocols to do so;
- g) You did not follow the appropriate protocols to close your medical practice.

### **Charge #3**

The Council of the College of Physicians and Surgeons directs that, pursuant to section 47.6 of **The Medical Profession Act, 1981**, the Discipline Committee hear the following charge against Dr. Tshala Tshiyombo, namely:

You Dr. Tshiyombo are guilty of unbecoming, improper, unprofessional, or discreditable conduct contrary to the provisions of Section 46(o), section 46(h) and/or section 47(5) of **The Medical Profession Act, 1981** S.S. 1980-81 c. M-10.1.

The evidence that will be led in support of this charge will include some or all of the following:

- a) Your legal counsel accepted service on your behalf of a subpoena which required you to appear on June 3, 2019 before the preliminary inquiry committee that was investigating your conduct;
- b) You appeared before the preliminary inquiry committee on June 3, 2019;
- c) You did not cooperate with the investigation by the preliminary inquiry committee into your conduct;
- d) You refused to provide information to the preliminary inquiry committee related to its investigation.

### **Charge #4**

The Council of the College of Physicians and Surgeons directs that, pursuant to section 47.5 of **The Medical Profession Act, 1981**, the Discipline Committee hear the following charge against Dr. Tshala Tshiyombo, namely:

You Dr. Tshala Tshiyombo are guilty of unbecoming, improper, unprofessional, or discreditable conduct contrary to the provisions of Section 46(o) and/or section 46(p) of **The Medical Profession Act, 1981** S.S. 1980-81 c. M-10.1 and/or paragraphs 1 and/or 2 and/or 7 and/or 13 and/or 52 and/or 54 of the *Code of Ethics* contained in bylaw 7.1 of the Regulatory bylaws of the College of Physicians and Surgeons of Saskatchewan, particulars whereof are that in the course of your professional practice in Saskatoon, you engaged in a pattern of rude, disrespectful and abusive communication with staff members and patients.

The evidence that will be led in support of this charge will include some or all of the following:

- a) You formerly practised in a medical clinic in Saskatoon, Saskatchewan (hereafter called "the clinic");
- b) With respect to a former staff member in the clinic referred to in this charge as Employee 1, you told her that she was lucky to have a job as she was a poor worker and too old to get another job;
- c) With respect to a former staff member in the clinic referred to in this charge as Employee 2, you spoke to her very loudly at the reception desk;
- d) You told Employee 2 that she was stupid and incompetent, and this was done in front of other staff and patients;
- e) When Employee 2 gave you her letter of resignation, you threw it back at her and refused to accept it;
- f) With respect to Employee 1 and Employee 2 and other former employees in the clinic, you were very abrupt with them and would yell at them;
- g) You expressed frustration at patients if they did not speak English well.

#### **Charge #5**

The Council of the College of Physicians and Surgeons directs that, pursuant to section 47.5 of **The Medical Profession Act, 1981**, the Discipline Committee hear the following charge against Dr. Tshala Tshiyombo, namely:

You Dr. Tshiyombo are guilty of unbecoming, improper, unprofessional, or discreditable conduct contrary to the provisions of Section 46(o) and/or section 46(p) of **The Medical Profession Act, 1981** S.S. 1980-81 c. M-10.1. and/or paragraphs 1 and/or 2 and/or 7 and/or 13 of the *Code of Ethics* contained in bylaw 7.1 of the Regulatory bylaws of the College of Physicians and Surgeons of Saskatchewan and/or bylaw 8.1(b)(ii) and/or bylaw 8.1(b)(vi) and/or bylaw 8.1(b)(xi) of the Regulatory bylaws of the College of Physicians and Surgeons of Saskatchewan, particulars whereof are that in the course of your professional practice in Saskatoon, you directed staff not to conduct certain testing, to falsify records, and to conduct tasks that they were not qualified to perform.

The evidence that will be led in support of this charge will include some or all of the following:

- a) You formerly practised in a medical clinic in Saskatoon, Saskatchewan (hereafter called "the clinic");
- b) You encouraged staff members of the clinic to schedule as many immigration medical examinations as possible;
- c) You advised staff members to dump out urine samples without conducting any testing on those samples;
- d) You advised staff members to record the urine testing as "normal" despite not being tested;
- e) You advised staff members to not conduct formal vision testing on patients attending for the purpose of immigration medical examinations;

- f) You advised staff members to record the vision testing as “normal” despite not being tested;
- g) You advised staff members to complete the online physicians’ “grading” portion of the immigration medical examinations despite the fact they were not licenced physicians and were not qualified to do so.

### **Charge #6**

The Council of the College of Physicians and Surgeons directs that, pursuant to section 47.5 of **The Medical Profession Act, 1981**, the Discipline Committee hear the following charge against Dr. Tshala Tshiyombo, namely:

You Dr. Tshiyombo are guilty of unbecoming, improper, unprofessional, or discreditable conduct contrary to the provisions of Section 46(o) and/or section 46(p) of **The Medical Profession Act, 1981** S.S. 1980-81 c. M-10.1. and/or paragraphs 7 and/or 48 and/or 52 of the *Code of Ethics* contained in bylaw 7.1 of the Regulatory bylaws of the College of Physicians and Surgeons of Saskatchewan, particulars whereof are that in the course of your professional practice in Saskatoon, you forged or falsified a document submitted in relation to an employee’s complaint to the Government of Saskatchewan – Labour Relations and Workplace Safety - Employment Standards.

The evidence that will be led in support of this charge will include some or all of the following:

- a) You formerly practised in a medical clinic in Saskatoon, Saskatchewan (hereafter called “the clinic”);
- b) A former staff member in the clinic, referred to in this charge as Employee 1, submitted a complaint to the Government of Saskatchewan - Labour Relations and Workplace Safety - Employment Standards prior to the termination of her employment in the Clinic;
- c) You directed another former staff member, referred to in this charge as Employee 2, to prepare a letter to Employment Standards in response;
- d) After the letter dated March 7, 2018 had been prepared by Employee 2, you altered the letter and/or falsified Employee 2’s signature prior to having the letter submitted to Employment Standards.

[3] Ms. Sheila Torrance represented CPSS. Dr. Tshiyombo was not represented and did not attend the hearing.

[4] Pursuant to Section 57(5) of *The Medical Profession Act, 1981* (the “MPA”), Ms. Torrance filed an Affidavit of Service pursuant to a Court of Queen’s

Bench Order for substitutional service. She asked for an order from the Committee that the hearing proceed in Dr. Tshiyombo's absence, pursuant to Section 58 of the Act. That order was granted and the hearing proceeded.

[5] Based on the evidence described below, and for the reasons which follow in respect of each charge, the Committee finds that Dr. Tshiyombo is guilty of each of the charges, and in respect of each of the charges the evidence establishes unbecoming, improper, unprofessional or discreditable conduct under the CPSS Regulatory Bylaws.

## II. THE RELEVANT LAW AND REGULATORY BACKGROUND

[6] The relevant provisions of the MPA and CPSS Regulatory Bylaws (as they existed in 2019) as included in the charges are as follow:

*The Medical Profession Act, 1981 S.S. 1980-81 c. M-10.1*

46 Without restricting the generality of "unbecoming, improper, unprofessional or discreditable conduct", a person whose name is entered on a register is guilty of unbecoming, improper, unprofessional or discreditable conduct, if he or she:

(h) fails, after being served with a notice pursuant to the Act, to appear before the council, the discipline hearing committee, a preliminary inquiry committee, a competency committee, a competency hearing committee or a special committee appointed by the council for the purpose of interviewing him;

(o) does or fails to do any act or thing where the discipline hearing committee considers that action or failure to be unbecoming, improper, unprofessional or discreditable;

(p) does or fails to do any act or thing where the council has, by bylaw, defined that act or failure to be unbecoming, improper, unprofessional or discreditable.

47 (5) No person shall obstruct the preliminary inquiry committee or a member of it making an investigation under this section or withhold from it or the member or conceal, alter or destroy any books, records, documents or things relevant to the matter being investigated

[7] Section 6(2)(m) of the MPA authorizes Council to enact bylaws that define professional misconduct. Under the authority of that provision, Council has adopted a Code of Ethics (bylaw 7.1) and bylaws addressing unprofessional conduct (8.1), as well as bylaws applicable to medical records (bylaw 23.1). The CPSS Regulatory Bylaws in force between 2017 and 2019 that are relevant to these charges follow:

7.1 The Code of Ethics

- (c) Contravention of or failure to comply with the Code of Ethics is unbecoming, improper, unprofessional or discreditable conduct for the purpose of the Act.
- (g) The Code of Ethics adopted by the College of Physicians and Surgeons is as follows:
  - 1. Consider first the well-being of the patient.
  - 2. Treat all patients with respect; do not exploit them for personal advantage.
  - 7. Resist any influence or interference that could undermine your professional integrity.
  - 13. Do not exploit patients for personal advantage.
  - 19. Having accepted professional responsibility for a patient, continue to provide services until they are no longer required or wanted, until another suitable physician has assumed responsibility for the patient, or until the patient has been given adequate notice that you intend to terminate the relationship.
  - 37. Upon a patient's request, provide the patient or a third party with a copy of his or her medical record, unless there is a compelling reason to believe that information contained in the record will result in substantial harm to the patient or others.
  - 48. Avoid impugning the reputation of colleagues for personal motives;...
  - 52. Collaborate with other physicians and health professionals in the care of patients and the functioning and improvement of health services. Treat your colleagues with dignity and as persons worthy of respect. [underlining added]
  - 54. Protect and enhance your own health and wellbeing by identifying those stress factors in your professional and personal lives that can be managed by developing and practicing appropriate coping strategies.

55. 8.1 Bylaws Defining Unbecoming, Improper, Unprofessional or Discreditable Conduct

56. (b) The following acts or failures are defined to be unbecoming, improper, unprofessional or discreditable conduct for the purpose of Section 46(p) of the Act. The enumeration of this conduct does not limit the ability of Discipline Hearing Committees to determine that conduct of a physician is unbecoming, improper, unprofessional or discreditable pursuant to Section 46(o):
57. (ii) Permitting, counseling or assisting any person who is not the holder of a licence or permit issued under the Act to engage in the practice of medicine, except as provided for in the Act or the bylaws;
58. (vi) Falsifying a record in respect of the examination or treatment of a patient;
59. (ix) Failing to maintain the standard of practice of the profession;
60. (xi) Failing to continue to provide professional services to a patient until the services are no longer required or until the patient has had a reasonable opportunity to arrange for the services of another physician;
61. (xii) Failing to provide within a reasonable time any report or certificate requested by a patient or a patient's authorized agent in respect of an examination or treatment provided by a physician;
62. 23.1 Medical Records
63. (g) A member who ceases to practise shall:
64. (i) transfer the records to a member with the same address and telephone number; or
65. (ii) transfer the records to:
66. 1. another member practicing in the locality; or
67. 2. a medical records department of a health care facility; or
68. 3. a secure storage area with a person designated to allow physicians and patients reasonable access to the records,
69. after publication of a newspaper advertisement indicating when the transfer will take place.

[8] In assessing the evidence, the Committee has been mindful that the CPSS has the burden of proof. The burden is on the balance of probability test as confirmed in *F.H. v. McDougall*, 2008 SCC 53

### III. THE EVIDENCE AND FINDINGS

#### Charge #1

The Council of the College of Physicians and Surgeons directs that, pursuant to section 47.6 of **The Medical Profession Act, 1981**, the Discipline Committee hear the following charge against Dr. Tshala Tshiyombo, namely:

You Dr. Tshiyombo are guilty of unbecoming, improper, unprofessional, or discreditable conduct contrary to the provisions of Section 46(o) and/or section 46(p) of **The Medical Profession Act, 1981** S.S. 1980-81 c. M-10.1 and/or bylaw 7.1 and paragraph 19 and/or paragraph 37 of the *Code of Ethics* contained in bylaw 7.1 and/or bylaw 8.1(b)(ix) and/or bylaw 8.1(b)(xi), and/or bylaw 8.1(b)(xii) and/or bylaw 23.1(g).

The evidence that will be led in support of this charge will include some or all of the following:

- a) You formerly practised in a medical clinic in Saskatoon, Saskatchewan (hereafter called "the clinic");
- b) You closed the clinic and ceased practising in Saskatchewan on or about the 31<sup>st</sup> of May, 2019;
- c) You failed to provide appropriate notice to your patients that you intended to close the clinic and cease practising in Saskatoon;
- d) You failed to make appropriate arrangements to allow your patients to seek medical care from another health care provider;
- e) You failed to provide continuity of care for patients for whom you had provided care at the clinic;
- f) You failed to make appropriate arrangements for access to your patient records;
- g) You failed to make appropriate arrangements for the transfer of your patient records;
- h) You failed to respond to one or more inquiries from third parties related to your patient's health information.

[9] Ms. Lesley Frey is a Regulatory Services Advisor with CPSS. Her role includes taking calls from patients about doctors. She reviews CPSS files maintained with respect to individual doctors for advice to the Quality of Care Committee. She fields calls from staff and doctors as well. She provides general assistance to doctors to attempt to ensure that they meet their regulatory obligations.

[10] Ms. Frey testified to a series of contacts made to CPSS by patients regarding the closure of Dr. Tshiyombo's practice. CPSS maintains a detailed record of contacts made and responses that follow, and that record was filed as Exhibit C-8. Ms. Frey testified as to her own involvement, and Exhibit C-8 was also filed and received as a business record.

[11] Ms. Frey testified that on May 8, 2019, she received a call from a patient who told Ms. Frey that Dr. Tshiyombo was closing her practice at the end of May, 2019. In response to this, Ms. Frey phoned Dr. Tshiyombo's office and spoke to a Sandra who advised that she could not answer whether Dr. Tshiyombo was closing the office or leaving and that Ms. Frey would have to talk to Dr. Tshiyombo directly.

[12] The same day Ms. Frey emailed to Dr. Tshiyombo a copy of the CPSS Policy on 'Physicians/Surgeons Leaving Practice' (Exhibit C-5). The email stated that a written response was required **"as to the arrangements made for follow up of outstanding results and continuity of care prior to your closure, as well as trusteeship of the medical records and access once you have closed your practice."** (bold in the original)

[13] [Through Ms. Frey was also exhibited, as Exhibit C-6, the CPSS "Guideline on Patient-Physician Relationships".]

[14] Ms. Frey testified that later that day, May 8, Dr. Tshiyombo phoned her extremely upset, and refused to listen to Ms. Frey's explanations of the required process. Dr. Tshiyombo was upset about the email she had received, and stated that she was not closing her practice, that her office had not called any patients about their files, and that the CPSS would be informed if and when she closed her practice and she would follow the appropriate process.

[15] On May 15, two patients called CPSS to say that Dr. Tshiyombo was closing her practice and moving out of the country. On May 17 and May 22 two other patients called with the same information. Each patient was concerned about access to their files.

[16] On June 3, 2019, Ms. Frey emailed Dr. Tshiyombo saying that CPSS had been contacted by Dyna Care, a third-party requestor of medical information on behalf of insurance companies. Dyna Care advised that they sent a fax request to Dr. T on May 23 requesting patient information. On May 24 they received a written response that the office was closing the next week. A representative of Dyna Care called numerous times on May 28 and 29 and then left a voice message on the 29<sup>th</sup>. She tried again on May 31. She tried again on June 3 and there was no answer to the telephone and no ability to leave a voicemail message.

[17] In her email to Dr. Tshiyombo Ms. Frey said that she herself had tried to call that day and there was no answer and no ability to leave a message. Ms. Frey reiterated that CPSS required a written response as outlined in bold in her previous email.

[18] There was no response to Ms. Frey's email of June 3.

[19] Following this email again on June 3 two more calls were received from patients saying the office had closed, that the patients had not been advised of the closing, and that they needed their medical records. Ms. Frey emailed Dr. Tshiyombo again, and no response was received.

[20] On June 5 a patient called saying she had attempted to make a follow-up appointment by phone and the Dr. Tshiyombo's office number was disconnected. She went to the clinic in Confederation Mall and found the doors locked, lights out, and Dr.

Tshiyombo's name blacked out on the door. She said this was a shock to her and she knew nothing about it.

[21] On June 6, a representative of Acadian Medical called CPSS saying that they had wanted a chart transfer from Dr. Tshiyombo's office and that the phone number was disconnected.

[22] The same day another patient called CPSS saying that she had been advised on May 13 that the office was closing and that to obtain the files of herself and her three children she would have to pay \$200.00. She did not have those funds and asked to pay at the end of May. She was told that was unacceptable. She called Dr. Tshiyombo's office on May 30 intending to make the payment and obtain her files. There was no answer.

[23] On June 10, CPSS emailed Dr. Tshiyombo again regarding the latest patient call. There was no response.

[24] There then followed a long series of calls and emails to CPSS from patients and third parties about the closure of Dr. T's clinic, and unsuccessful attempts by patients and medical clinics to obtain copies of files or file transfers. Exhibit C-8 referred to contacts from June 10, 2019 and extending to September 9, 2020, a total of 59 more contacts. A consistent theme in these contacts was that patients had not been advised that Dr. Tshiyombo was closing her clinic.

[25] CPSS emailed Dr. Tshiyombo twice on June 11 about these issues and again emailed Dr. Tshiyombo on June 18. No response was received.

[26] Ms. Frey testified that based on her involvement in these contacts and the CPSS records, she believes Dr. Tshiyombo closed her clinic on May 30 or May 31, 2019.

[27] She further testified that all attempts to reach Dr. Tshiyombo by email were sent to Dr. Tshiyombo's email address as contained within CPSS records. No bounce back email was received by CPSS, suggesting that all emails went through.

[28] It was clear from the evidence that Dr. Tshiyombo failed to provide proper notification to her patients of her intention to close her practice, and failure to make any reasonable arrangements for their continuity of care and transfer of/access to their medical records.

[29] The Policy on "Physicians/Surgeons Leaving Practice" (Exhibit C-5) states:

When a physician/surgeon plans to close or leave a practice, it is mandatory that there is timely and appropriate notification to regulatory authorities and patients, provision on [sic] continuity of care for patients in that practice and appropriate disposition of all medical records in the practice

[30] Also, the Guideline on "Physician-Patient Relationships" (Exhibit C-6) provides for the need for appropriate notice, and that arrangements "must be made" for records to be stored and patients to have reasonable access. Further, CPSS "must be notified of the location of the records and how they can be accessed by patients and/or other healthcare professionals with the patient's consent."

[31] The Guideline also requires the physician to provide CPSS with a forwarding address. Ms. Frey testified, as indicated above, that all correspondence was sent to the email address on record.

[32] The Committee is satisfied that Dr. Tshiyombo failed to meet these standards, and also breached the Bylaws.

[33] The Committee is satisfied, based on this evidence, that Dr. Tshiyombo is guilty of the conduct described in **Charge #1**, and that such conduct is unbecoming, improper, unprofessional or discreditable conduct under the CPSS Regulatory Bylaws.

**Charge #2**

The Council of the College of Physicians and Surgeons directs that, pursuant to section 47.6 of **The Medical Profession Act, 1981**, the Discipline Committee hear the following charge against Dr. Tshala Tshiyombo, namely:

You Dr. Tshiyombo are guilty of unbecoming, improper, unprofessional, or discreditable conduct contrary to the provisions of Section 46(o) of **The Medical Profession Act, 1981** S.S. 1980-81 c. M-10.1.

The evidence that will be led in support of this charge will include some or all of the following:

- a) On or about May 8, 2019 you advised an employee of the College of Physicians and Surgeons that you would not be closing your medical practice;
- b) That statement was false or misleading;
- c) On or about May 8, 2019 you advised an employee of the College of Physicians and Surgeons that the College would be informed if and when you closed your practice;
- d) That statement was false or misleading;
- e) You did not advise the College that your practice had been closed;
- f) On or about May 8, 2019 you spoke to an employee of the College of Physicians and Surgeons and advised the employee that, if you closed your medical practice, you would follow the appropriate protocols to do so;
- g) You did not follow the appropriate protocols to close your medical practice.

[34] Based on the evidence of Ms. Frey, particularly as outlined in paragraphs 10 to 24 above, the Committee is satisfied that Dr. Tshiyombo is guilty of the conduct described in **Charge #2**, and that such conduct is unbecoming, improper, unprofessional or discreditable conduct under the CPSS Regulatory Bylaws.

**Charge #3**

The Council of the College of Physicians and Surgeons directs that, pursuant to section 47.6 of **The Medical Profession Act, 1981**, the Discipline Committee hear the following charge against Dr. Tshala Tshiyombo, namely:

You Dr. Tshiyombo are guilty of unbecoming, improper, unprofessional, or discreditable conduct contrary to the provisions of Section 46(o), section 46(h) and/or section 47(5) of **The Medical Profession Act, 1981 S.S. 1980-81 c. M-10.1.**

The evidence that will be led in support of this charge will include some or all of the following:

- a) Your legal counsel accepted service on your behalf of a subpoena which required you to appear on June 3, 2019 before the preliminary inquiry committee that was investigating your conduct;
- b) You appeared before the preliminary inquiry committee on June 3, 2019;
- c) You did not cooperate with the investigation by the preliminary inquiry committee into your conduct;
- d) You refused to provide information to the preliminary inquiry committee related to its investigation.

[35] Alyssa Van Der Woude works in the CPSS Legal Department. She provides administrative support for the staff lawyers and Preliminary Investigation Committees ("PIC"). She also keeps doctor discipline records up to date.

[36] She testified that Dr. Tshiyombo was a resident in Saskatchewan from 2004 to 2006. She worked locums in 2006-07, and became a full member of CPSS in 2007. She resigned her license on June 4, 2019.

[37] Exhibit C-10 was an exchange of emails between CPSS and Mr. Nicholas Stooshinoff, Q.C. regarding a PIC interview of Dr. Tshiyombo scheduled to take place on June 3, 2019.

[38] Exhibit C-11 was an email dated May 29, 2019 from Mr. Stooshinoof to CPSS advising that he would accept service of a subpoena from the PIC to Dr. Tshiyombo to attend at the PIC interview on June 3, 2019.

[39] A video of that interview was then entered through Ms. Van Der Woude. It showed Dr. Tshiyombo present with Mr. Stooshinoff at that interview. At the outset of the video, Dr. Tshiyombo told the members of the PIC that while she had respect for each of them individually, she did not recognize the validity of the PIC or its right to

investigate or question her, and she would not be answering any of their questions. She then read a statement and left without answering any questions.

[40] As indicated, Dr. Tshiyombo resigned her license the following day. Under s. 42.6 of the *MPA*, CPSS retains authority to discipline for conduct that occurred while Dr. Tshiyombo was in practice, even though she no longer holds a licence to practice medicine in Saskatchewan.

[41] The *MPA* gives authority to a PIC to summon the physician under investigation and to place them under subpoena. Failing to appear when summoned, or (Ms. Torrance submitted), failing to provide information as required by the subpoena, is contempt of court:

47 (3) A preliminary inquiry committee may take any steps that it considers proper and may summon any person who is under investigation and any other person whose information may be relevant to the investigation.

(3.1) On application and payment of the appropriate fee, the local registrar of the court at any judicial centre shall issue writs of subpoena ad testificandum or subpoena duces tecum to:

- (a) a member of the preliminary inquiry committee;
- (b) counsel acting for the preliminary inquiry committee.

(3.2) Where a writ issued pursuant to subsection (3.1) is disobeyed, the proceedings and penalties are those applicable in civil cases in the court.

[42] Ms. Torrance acknowledged that she was not aware of case law related to the specific circumstances of this charge under the *MPA*. However, she directed the Committee to case law related to the duty to cooperate with the investigative process within a professional regulatory system.

[43] For example, in *D'Mello v. Law Society of Upper Canada*, 2015 ONSC 5841 (CanLII) the Court stated:

[61] The analysis and discussion of Mr. D'Mello's appeal of the decision that he had failed to co-operate in an investigation can get underway with an observation that concerns the importance of the investigative role of a regulator of a self-governing profession.

[62] The observation is that there are very powerful public policy reasons for requiring the members of a self-governing profession to co-operate with an investigation by their regulator. I agree with the comments of Larry Banack in *Law Society of Upper Canada v. Joseph Dannial Ernest Stewart Baker*, [2006] L.S.D.D. No. 31, at paras. 6-7:

6. It is of paramount importance that members of the Law Society co-operate with investigations and promptly and substantively respond to communications from the Law Society in order that it may fulfill its statutory mandate of governing the profession in the public interest. Members' failure to do so delays investigations, jeopardizes the collection of evidence including the recollection of witnesses, results in a backlog of investigations and can lead to an erosion of public confidence in the self-regulatory authority of the Law Society.

7. Members must be aware that their failure to co-operate and/or respond in a prompt and substantive fashion results in the implementation of a second investigative process to compel the member's compliance. This diverts attention from the primary complaint or investigation at a cost of time and Law Society resources funded by all members of the Society. Members who choose to not co-operate or respond promptly and substantively interfere with the proper functioning of the Law Society, diminish the public's respect for the profession and the self-regulatory process of the Law Society and cause otherwise avoidable expense to be incurred.

(emphasis added)

[44] As well, in *Artinian v. College of Physicians and Surgeons of Ontario*, 1990 Can LII 6860 (Ont. Div. Ct.) Dr. Artinian had been found guilty of failing to cooperate with a review of patient charts by an inspector. One of his grounds of appeal was that there was no duty on him to cooperate with the College's investigation. On appeal, the Court stated: "Fundamentally, every professional has an obligation to cooperate with his self-governing body."

[45] The Committee is satisfied that Dr. Tshiyombo's conduct in refusing to answer the PIC's questions renders Dr. Tshiyombo guilty of the conduct described in **Charge #3**, and that such conduct is unbecoming, improper, unprofessional or discreditable conduct under the CPSS Regulatory Bylaws.

#### **Charge #4**

The Council of the College of Physicians and Surgeons directs that, pursuant to section 47.5 of **The Medical Profession Act, 1981**, the Discipline Committee hear the following charge against Dr. Tshala Tshiyombo, namely:

You Dr. Tshala Tshiyombo are guilty of unbecoming, improper, unprofessional, or discreditable conduct contrary to the provisions of Section 46(o) and/or section 46(p) of **The Medical Profession Act, 1981** S.S. 1980-81 c. M-10.1 and/or paragraphs 1 and/or 2 and/or 7 and/or 13 and/or 52 and/or 54 of the *Code of Ethics* contained in bylaw 7.1 of the Regulatory bylaws of the College of Physicians and Surgeons of Saskatchewan, particulars whereof are that in the course of your professional practice in Saskatoon, you engaged in a pattern of rude, disrespectful and abusive communication with staff members and patients.

The evidence that will be led in support of this charge will include some or all of the following:

- a) You formerly practised in a medical clinic in Saskatoon, Saskatchewan (hereafter called "the clinic");
- b) With respect to a former staff member in the clinic referred to in this charge as Employee 1, you told her that she was lucky to have a job as she was a poor worker and too old to get another job;
- c) With respect to a former staff member in the clinic referred to in this charge as Employee 2, you spoke to her very loudly at the reception desk;
- d) You told Employee 2 that she was stupid and incompetent, and this was done in front of other staff and patients;
- e) When Employee 2 gave you her letter of resignation, you threw it back at her and refused to accept it;
- f) With respect to Employee 1 and Employee 2 and other former employees in the clinic, you were very abrupt with them and would yell at them;
- g) You expressed frustration at patients if they did not speak English well.

[46] N C worked for Dr. Tshiyombo as clinic manager from October 2017 to February 2018. There was a receptionist working there for a short time after

Ms. C began, but for the most part Ms. C worked alone in the clinic with Dr. Tshiyombo

[47] Ms. C described a very stressful work environment. Her duties were to contact patients, take blood pressure readings, attend to billing, and order supplies.

[48] She described the practice as consisting largely of immigration assessments. She was told by Dr. Tshiyombo to book as many immigration assessments as possible because "I make more money", and that Ms. C should do so "if you want to get paid".

[49] For immigration assessments, Ms. C was required to obtain the patient's height and weight, and to take blood pressure readings and obtain urine samples. She also took copies of their passports and photos.

[50] Ms. C said that she saw and heard Dr. Tshiyombo call the receptionist "stupid" very loudly in front of patients, and said Dr. Tshiyombo was "very mean" to the receptionist.

[51] She said that Dr. Tshiyombo was constantly unhappy with everyone. The pace of work in the clinic was incessant, and Ms. C became increasingly stressed and unable to eat, and saw a psychologist at one point.

[52] When Ms. C expressed frustration, she said Dr. Tshiyombo told her "Don't go to Labour Standards, and anyway no one will want to hire you, you're over 50." This was said in front of patients in the reception area in a voice loud enough for patients to hear.

[53] Ms. C observed Dr. Tshiyombo's interactions with patients and described her as having a "strong personality" with patients. Instead of helping them,

Dr. Tshiyombo would make them cry. She did say that if the patients spoke English poorly or had accents, she treated them better.

[54] M G works as a clerical assistant in her husband's clinic in Assiniboia. Dr. Tshiyombo had worked in that clinic on a locum.

[55] In 2018, Dr. Tshiyombo contacted Ms. G asking for help, as her clinic manager (Ms. K S ) had left. She did work for Dr. Tshiyombo from April to June, 2018, working only one afternoon per week as she had other jobs and had to travel to work at Dr. Tshiyombo's clinic.

[56] Ms. G said while she worked there, Dr. Tshiyombo treated her with respect because of their previous relationship. She did observe her with other employees however. She felt Dr. Tshiyombo distrusted her employees, and said she would speak to them at reception, correcting them there and talking to them in a demeaning way, as if she were a mother talking to children. She did not do this privately, but loudly, sometimes yelling, in the small waiting room where patients could clearly hear.

[57] K S now works as an administrative assistant at Royal University Hospital in Saskatoon. She worked in the clinic from February 8, 2018 to April 20, 2018. She worked part-time, alternating mornings and afternoons. Ms. C was also at the clinic in February, 2018, overlapping with Ms. S for about 1.5 weeks until Ms. C was let go (as will be later described).

[58] Ms. S described a very busy, hectic, chaotic work environment. The majority of the practice was immigration assessments, and she was told to try to book 20 immigration patients a day. She said the days ranged from a low of 10 immigration patients a day to as many as 24 or 25.

[59] She said there was little organization in the practice, and as Dr. Tshiyombo became more and more stressed later in the day she became less patient and

tolerant with patients and staff. She said it was hard to bring things to Dr. Tshiyombo's attention, and Dr. Tshiyombo once yelled at her to get out, and that she (Ms. S ) was stupid and did not know how to do her job.

[60] She also observed Dr. Tshiyombo being very short-tempered with Ms. C , telling her that she was lazy and slow, and didn't know her job.

[61] She said Dr. Tshiyombo had no time for staff questions. She said that Dr. Tshiyombo would often criticize them loudly at the front of the clinic with patients present. Dr. Tshiyombo would throw objects at staff members, such as staplers, files or the phone receiver. This was all done in the presence of patients, who were clearly uncomfortable. She said both she and Ms. C asked Dr. Tshiyombo not to do these things in front of patients, but the behaviour continued.

[62] Ms. S said that Dr. Tshiyombo was good with some patients but would be very upset with some. She would raise her voice, and complain that they smelled or the kids were crying too much. She said she didn't have time for their "stupid questions" and patients often left crying.

[63] In particular, and in contrast to the observations of Ms. C , Ms. S said Dr. Tshiyombo became frustrated with patients who had a lack of English. She said Dr. Tshiyombo would speak to them in a demeaning way, and would end up having Ms. S talk to them.

[64] Eventually, Ms. S decided to leave the clinic, for reasons which will be described in the evidence relating to Charge #6. She gave Dr. Tshiyombo a letter of resignation. Dr. Tshiyombo ripped the letter up in front of Ms. S and told her "You have to give me two weeks' notice or I'll sue." Two weeks later, Ms. S gave Dr. Tshiyombo another letter of resignation, which Dr. Tshiyombo then shredded.

[65] Ms. S did leave her employment at the clinic.

[66] The Committee accepts the evidence of Ms. C, Ms. G and Ms. S with respect to the particulars under this charge.

[67] The Committee acknowledges that there is a variance in the evidence of Ms. C and Ms. S regarding how Dr. Tshiyombo dealt with patients who spoke English poorly. On balance, the Committee prefers the evidence of Ms. S as being more detailed and also consistent with the descriptions of other behaviours of Dr. Tshiyombo. In any event, the Committee is not required to find that all particulars of a charge have been proven in order to find that the charge has been made out.

[68] The Committee is satisfied that Dr. Tshiyombo's conduct as described in the evidence renders Dr. Tshiyombo guilty of the conduct described in **Charge #4**, and that such conduct is unbecoming, improper, unprofessional or discreditable conduct under the CPSS Regulatory Bylaws.

#### **Charge #5**

The Council of the College of Physicians and Surgeons directs that, pursuant to section 47.5 of **The Medical Profession Act, 1981**, the Discipline Committee hear the following charge against Dr. Tshala Tshiyombo, namely:

You Dr. Tshiyombo are guilty of unbecoming, improper, unprofessional, or discreditable conduct contrary to the provisions of Section 46(o) and/or section 46(p) of **The Medical Profession Act, 1981** S.S. 1980-81 c. M-10.1. and/or paragraphs 1 and/or 2 and/or 7 and/or 13 of the *Code of Ethics* contained in bylaw 7.1 of the Regulatory bylaws of the College of Physicians and Surgeons of Saskatchewan and/or bylaw 8.1(b)(ii) and/or bylaw 8.1(b)(vi) and/or bylaw 8.1(b)(xi) of the Regulatory bylaws of the College of Physicians and Surgeons of Saskatchewan, particulars whereof are that in the course of your professional practice in Saskatoon, you directed staff not to conduct certain testing, to falsify records, and to conduct tasks that they were not qualified to perform.

The evidence that will be led in support of this charge will include some or all of the following:

- a) You formerly practised in a medical clinic in Saskatoon, Saskatchewan (hereafter called "the clinic");
- b) You encouraged staff members of the clinic to schedule as many immigration medical examinations as possible;

- c) You advised staff members to dump out urine samples without conducting any testing on those samples;
- d) You advised staff members to record the urine testing as “normal” despite not being tested;
- e) You advised staff members to not conduct formal vision testing on patients attending for the purpose of immigration medical examinations;
- f) You advised staff members to record the vision testing as “normal” despite not being tested;
- g) You advised staff members to complete the online physicians’ “grading” portion of the immigration medical examinations despite the fact they were not licenced physicians and were not qualified to do so.

[69] Both Ms. C and Ms. S testified as described above that Dr. Tshiyombo instructed them to book as many immigration patients as possible.

[70] In addition, Ms. C stated that there was a limit to how many immigration patients could be seen in a day, and that Dr. Tshiyombo was always over that limit. However, the Committee was not provided with firm evidence of what that limit was.

[71] Ms. C testified that one of her duties was to obtain urine samples. She said Dr. Tshiyombo told her not to actually test the male urine samples, and to take the sample but throw it out. She said Dr. Tshiyombo said only to test the female samples because “females have more infections”. Dr. Tshiyombo told her to record “normal” for male urine samples. Ms. C said she ignored these instructions and tested the male samples anyway.

[72] Ms. C said Dr. Tshiyombo was to do vision testing as well, though she never saw Dr. Tshiyombo conduct a vision test. Dr. Tshiyombo did not ask Ms. C to do it.

[73] One of Ms. C’s responsibilities was to upload the results of immigration assessments to the online immigration site. She said that on the reporting form were tests, the responses to which she could upload to the site based on her own

credentials. However, there were also tests which could only be reported by the physician. She said Dr. Tshiyombo told her to report the physician testing using Dr. Tshiyombo's credentials because it saved time in Dr. Tshiyombo's day.

[74] Ms. G testified that Dr. Tshiyombo explained to her the basics of the immigration assessment process. In so doing she took Ms. G back to the "lab" where Ms. G observed that urine sample had been thrown out. When Ms. G questioned this, Dr. Tshiyombo said that there was no need to test the samples, that it took too much time and they were normal anyway.

[75] She said Dr. Tshiyombo told her just to record the tests as normal, and she also saw other staff members record the tests as normal.

[76] She said she did see an assistant conducting a vision test.

[77] Ms. S said that Ms. C showed her the immigration reporting system in the 1.5 weeks their employment overlapped. She watched Ms. C use the system and then came in in the evenings after the clinic was closed to learn the system herself.

[78] She said the portion of the reporting form she could complete included the results of vision and urine tests. However, there was a section that the physician was required to fill out which had more reporting categories.

[79] Ms. S said that Dr. Tshiyombo told her every patient needed to have a urine sample taken, but to only test samples from pregnant women, as testing all of them took too long and was too expensive.

[80] She said Dr. Tshiyombo told her to record the results of urine tests as clear or negative. Ms. S said she did not do as Dr. Tshiyombo had instructed.

[81] She said Dr. Tshiyombo also told her not to bother with the vision tests and just record them as normal, saying that “they drove here so it must be good”.

[82] Ms. S said that Dr. Tshiyombo wanted her to fill in the physician’s portion of the medical reporting using Dr. Tshiyombo’s credentials to log in. She said she refused, and that Dr. Tshiyombo brought someone else in on Saturday to do it. She did not know who that person was.

[83] As with Charge #4, there are some minor variances in the evidence in respect of the particulars of the charge. However, the Committee notes that the employment of the witnesses did not overlap for significant periods. The Committee is satisfied that the variances are not material to the central issues, and that it is clear that the advice given in various ways to staff members by Dr. Tshiyombo is consistent in its tenor and effect.

[84] The Committee is satisfied that Dr. Tshiyombo’s conduct as described in the evidence renders Dr. Tshiyombo guilty of the conduct described in **Charge #5**, and that such conduct is unbecoming, improper, unprofessional or discreditable conduct under the CPSS Regulatory Bylaws.

#### **Charge #6**

The Council of the College of Physicians and Surgeons directs that, pursuant to section 47.5 of **The Medical Profession Act, 1981**, the Discipline Committee hear the following charge against Dr. Tshala Tshiyombo, namely:

You Dr. Tshiyombo are guilty of unbecoming, improper, unprofessional, or discreditable conduct contrary to the provisions of Section 46(o) and/or section 46(p) of **The Medical Profession Act, 1981** S.S. 1980-81 c. M-10.1. and/or paragraphs 7 and/or 48 and/or 52 of the *Code of Ethics* contained in bylaw 7.1 of the Regulatory bylaws of the College of Physicians and Surgeons of Saskatchewan, particulars whereof are that in the course of your professional practice in Saskatoon, you forged or falsified a document submitted in relation to an employee’s complaint to the Government of Saskatchewan – Labour Relations and Workplace Safety - Employment Standards.

The evidence that will be led in support of this charge will include some or all of the following:

- a) You formerly practised in a medical clinic in Saskatoon, Saskatchewan (hereafter called "the clinic");
- b) A former staff member in the clinic, referred to in this charge as Employee 1, submitted a complaint to the Government of Saskatchewan - Labour Relations and Workplace Safety - Employment Standards prior to the termination of her employment in the Clinic;
- c) You directed another former staff member, referred to in this charge as Employee 2, to prepare a letter to Employment Standards in response;
- d) After the letter dated March 7, 2018 had been prepared by Employee 2, you altered the letter and/or falsified Employee 2's signature prior to having the letter submitted to Employment Standards.

[85] In February, 2018, Ms. C made a complaint to the Human Rights Commission concerning the workplace. Dr. Tshiyombo learned of this and then fired Ms. C, without cause.

[86] Ms. C then submitted a complaint to the Employment Standards Division of the Department of Labour Relations and Workplace Safety. That office contacted Dr. Tshiyombo for a response.

[87] Dr. Tshiyombo provided Employment Standards with a typewritten letter which read:

"March 7/18

To Whom It May Concern,

My name is K S [sic], I began employment at Confederation Family Medical Clinic on Feb 8/18.

This is to verify that we have office funds that are kept in a cabinet up front. I witnessed N C

Take funds on Feb 9/18 for her personal lunch. The amount I am unsure of. I am unsure of whether she returned it in the fund envelope or not. I witnessed

this 2 times while I was working with her. When I asked what that is used for she stated "It is for office supplies, or for cakes for children or if we need to run and get something. If I use it, I return it later".

Dr. Tshiyombo has since told me that this is not office procedure, we both checked in the office fund envelope, and although there were a couple of empty envelopes in the drawer, there was no money in any of them."

A handwritten signature, which appeared to read "DS" was at the foot of the letter.

[88] Employment Standards contacted Ms. S to speak to her about the letter. Ms. S testified that she looked at the letter and advised Employment Standards that she did not type the letter.

[89] She pointed out that her name was misspelled in the first line of the letter. The signature at the foot of the letter was not hers. The contents of the letter were untrue.

[90] Ms. S testified that she did type a letter for Dr. Tshiyombo but it was simply about office policy. She did not recall the details of it.

[91] When Ms. S learned of this letter she resigned from her employment, which led to Dr. Tshiyombo ripping up the resignation letter, and the events which followed, outlined in the recitation of evidence in connection with Charge #4. Her leaving the clinic was the reason Ms. G was hired.

[92] The Committee is satisfied on this evidence that Dr. Tshiyombo falsified the letter and provided it to Employment Standards. In early March, 2018, Ms. S was the only employee of the clinic. No one but Dr. Tshiyombo would have any interest in providing the letter.

[93] The Committee is satisfied that Dr. Tshiyombo's conduct as described in the evidence renders Dr. Tshiyombo guilty of the conduct described in **Charge #6**, and

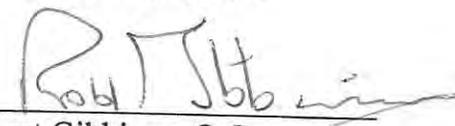
that such conduct is unbecoming, improper, unprofessional or discreditable conduct under the CPSS Regulatory Bylaws.

#### IV. SUMMARY AND CONCLUSION

[94] To summarize, the Committee Committee is satisfied that Dr. Tshiyombo's conduct as described in the evidence renders Dr. Tshiyombo guilty of the conduct described in **Charges #1, 2, 3, 4, 5 and 6**, and that such conduct is unbecoming, improper, unprofessional or discreditable conduct under the CPSS Regulatory Bylaws particularized in each charge.

[95] The Committee was not asked to make any recommendation as to penalty, and makes no recommendation.

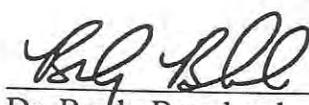
DATED at Saskatoon, Saskatchewan, this 17<sup>th</sup> day of December, 2020

  
Robert Gibbings, Q.C.

DATED at Prince Albert, Saskatchewan, this 17 day of December, 2020

  
Dr. Louis Coertze

DATED at North Battleford, Saskatchewan, this 13 day of December, 2020

  
Dr. Brady Bouchard