



## Dr. Svitlana ZIARKO

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### Council Decision

<b>Date Charge(s) Laid:</b>	January 29, 2022
<b>Outcome Date:</b>	June 17, 2022
<b>Penalty Hearing:</b>	June 17, 2022
<b>Disposition:</b>	Reprimand, Suspension, Fine, Costs

The Council of the College of Physicians and Surgeons of Saskatchewan imposes the following penalty on Dr. Svitlana Ziarko pursuant to The Medical Profession Act, 1981 (the "Act"):

1. Pursuant to Section 54(1)(e) of The Medical Profession Act, 1981, the Council hereby reprimands Dr. Ziarko. The format of that reprimand will be in-person. Dr. Ziarko is required to appear before the next regularly scheduled meeting of the Council to be present to have the reprimand administered in person.
2. Pursuant to Section 54(1)(b) of the Act, the Council hereby suspends Dr. Ziarko for a period of 6 months commencing 1 July, 2022.
3. Pursuant to section 54(1)(f) of The Medical Profession Act, 1981, Council imposes a fine of \$7,500 on Dr. Ziarko, payable on or before 1 January, 2023.
4. Pursuant to section 54(1)(i) of the Act, the Council directs Dr. Ziarko to pay the costs of and incidental to the investigation and hearing in the amount of \$6,400.00. The costs shall be payable in full by 1 January, 2023.
5. Pursuant to section 54(2) of the Act, if Dr. Ziarko should fail to pay the costs as required by paragraph 4, Dr. Ziarko' licence shall be suspended until the costs are paid in full.
6. The Council reserves to itself the right to amend any of the terms of this penalty decision, upon application by Dr. Ziarko. Without limiting the authority of the Council, the Council may extend the time for Dr. Ziarko to pay the fine or costs required by paragraph 3 or paragraph 4.



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REGISTRAR  
KAREN SHAW, M.D.

3 October, 2022

Dr. S. Ziarko

[Redacted address block]

Dr. Ziarko:

On June 17, 2022 the Council of the College of Physicians and Surgeons of Saskatchewan has once again been required to determine penalty for your misconduct. As such, you once again are reprimanded for being found guilty of no less than three distinct charges of professional misconduct.

You have admitted to removing a lesion from a patient and failing to send that lesion for definitive diagnosis. None of us is capable of determining the definitive diagnosis of a malignancy without the aid of a Pathologist. Failing to send such a specimen for diagnosis is unconscionable. This demonstrates a degree of professional arrogance that placed your patient at risk of misdiagnosis with potentially catastrophic results.

You have proceeded to misinterpret the physician fee schedule to your clear financial advantage. You have been able to convince the JMPRC that you did not intend to defraud the people of Saskatchewan. Take this moment to assure yourself that this Council would not have been so convinced. You have demonstrated an ongoing pattern of misconduct that directly benefits you financially. You have failed to correct your ethical shortcomings. Past reprimands have had little affect in deterring you from further misconduct.

Continued.....

***To serve the public by regulating the practice of medicine  
and guiding the profession to achieve the highest standards of care***

This Council of your peers has little confidence that the current penalty will help you toward a more ethical practice. You have demonstrated a disregard for professional regulation that is sufficiently concerning to the Council that you place yourself in jeopardy of being deemed ungovernable. The Council implores you to take time for significant self-reflection while you serve your suspension. Be aware that any further breach of ethics on your part has the potential to have the most severe consequences on your ability to continue to provide care to your patients.

The Council of the College of Physicians & Surgeons of Saskatchewan

## Reasons for Decision

### In the Matter of a Penalty Hearing for Dr. Svitlana Ziarko held before the Council of the College of Physicians and Surgeons of Saskatchewan

June 17, 2022

Mr. Bryan Salte Q.C. representing the Registrar's Office  
Mr. Nicholas Cann Q.C. representing Dr. S. Ziarko

#### Introduction and background

Dr. Svitlana Ziarko is a family physician practising in Regina. She has a substantial discipline history with the College. Several of these matters are listed under her prior surname Cheshenchuk.

Dr. Ziarko appeared before Council virtually for a penalty hearing specific to three charges to which she admitted guilt in March 2022. The charges in question are as follows:

1. *You Dr. Svitlana Ziarko 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 8.1(b)(ix) of the Regulatory Bylaws of the College of Physicians and Surgeons of Saskatchewan in relation to your care of a patient referred to in this charge as "Patient Number 1".*

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

- a) *In July of 2017 you treated Patient Number 1.*
  - b) *You treated Patient Number 1 for a suspected basal cell carcinoma.*
  - c) *You provided laser treatment to Patient Number 1.*
  - d) *You failed to send samples of Patient Number 1's lesion for examination by histology.*
2. *You Dr. Svitlana Ziarko 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 and/or bylaw 7.2(bb) of the bylaws of the College of Physicians and Surgeons of Saskatchewan in relation to billing for laboratory services (payment codes 59V and 62V).*

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

- a) *During the period of June 2016 to December 2018 you failed to take reasonable care to ensure that your claims for payment for professional services in relation to your billings to Medical Services Branch for testing (Code 59V) and (Code 62V) were consistent with the payment schedule for insured services.*

3. *You Dr. Svitlana Ziarko 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 and/or bylaw 7.2(bb) of the bylaws of the College of Physicians and Surgeons of Saskatchewan in relation to billing for virtual visits (Code 510A).*

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

- a) *You failed to take reasonable care to ensure that your claims for payment for professional services were consistent with the payment schedule for insured services.*

### **The position of the Registrar’s Office on Penalty**

The Registrar suggests the appropriate penalty would consist of:

1. A suspension from practise in the range of three to six months
2. The charges of unprofessional billing demonstrate Dr. Ziarko’s cavalier attitude towards inappropriate billing for professional services. In such a situation a fine is appropriate. The maximum fine as per the legislation is \$15,000. The Registrar’s Office does not take a position on what amount is appropriate.
3. Payment of costs.
4. A reprimand in terms developed by the Council. The Council can determine whether an in-person reprimand is appropriate.

The timeline of discipline is paramount to the central totality and progressive discipline arguments of Registrar’s Office. Therefore, a paraphrased, color coded synopsis of the discipline timeline is as follows:

<b>Date</b>			
<b>Oct 17 2014</b>	Dr. Ziarko saw a patient who then returned home and died the next day		
<b>Oct 22 2014</b>	the patient record was altered as set out in the charge admitted		
<b>February 18, 2015</b>	Dr. Ziarko altered patient records on 2 occasions as set out in the charge admitted		
<b>May 21, 2015</b>	Dr. Ziarko altered the patient record.		
<b>June 1, 2015</b>	the College sent a letter to Dr. Ziarko advising her of the complaint related to the care that she provided to the deceased patient		
<b>June 10-22 2015</b>	Dr. Ziarko altered the patient record.		
<b>Nov 4 2015</b>	Dr. Ziarko denied altering the patient		

	record as set out in the charge.		
<b>June 22 2016 – Dec 18 2017</b>			June 22, 2016 to December 18, 2017 - Dr. Ziarko provided the medical care that was the subject of the JMPRC review and the first two charges which Dr. Ziarko has admitted.
September 30, 2017	Dr. Ziarko was charged with unprofessional conduct in relation to the alteration of the patient record and the information provided to CPSS about that alteration		
January 19, 2018	Council imposed penalty in relation to the charge of altering the patient record and denying that the record has been altered.		
February 8 & 9, 2018	Dr. Ziarko completed the ethics course required by the Council penalty		
February 12, 2018 (approx)		Dr. Ziarko's staff advised the patient GE of the charge for her medical record. This resulted in the charge laid by Council January 25, 2020.	
February 26, 2018		Dr. Ziarko's staff advised the patient SB of the charge for her medical record. This resulted in the charge laid by Council January 25, 2020.	
March 19, 2018			Dr. Ziarko was advised of a JMPRC review of her billings
March 22, 2018		CPSS advised Dr. Ziarko of the complaints by patients SB and GE that they were quoted an excessive fee for copies of their patient charts.	
August 15, 2018		Dr. Ziarko was advised that a preliminary inquiry committee had been appointed to investigate her conduct related to the charges quoted to patients SB and GE for copies of their charts.	
December 21, 2018		Dr. Ziarko's staff advised the patient CP of the charge for his medical record. This resulted in the charge	

		laid by Council January 25, 2020.	
January 3, 2019		CPSS advised Dr. Ziarko of the complaint by CP that he was quoted an excessive fee for a copy of his chart	
March 9, 2019			Dr. Ziarko was advised of an interview request by the JMPRC
November 21, 2019			JMPRC interviewed Dr. Ziarko in relation to her billings. The letter of September 16, 2020 sent to legal counsel for Dr. Ziarko
January 25, 2020		Dr. Ziarko charged with unprofessional conduct in relation to the fees to patients for copies of charts.	
March 24, 2020			JMPRC sent a letter to Dr. Ziarko with the proposed reassessment.
April 21, 2020 – September 22, 2020 (approx)	Dr. Ziarko double billed Medical Services Branch for virtual visits with patients.		
June 19, 2020		Council imposed penalty related to charges for copies of patient charts	
September 16, 2020			the JMPRC sent the reassessment to Dr. Ziarko.
September 28, 2020		Council provided the wording of the reprimand to Dr. Ziarko.	
October 7, 2020			CPSS sent a letter to Dr. Ziarko that stated that some of the issues identified in the JMPRC report were being addressed as issues of possible unprofessional conduct.
October 20, 2020	CPSS sent a letter to Dr. Ziarko in respect of the concern of one patient that Dr. Ziarko had billed twice for a virtual consult when she had only interacted with Dr. Ziarko once. Additional information from MSB demonstrated that the double billing for services was not limited to the one patient. With respect to a number of patients.		

With respect to costs applied to the penalty, the Registrar’s Office notes that the PIC investigated 5 matters of which three resulted in charges. For this reason they feel that 60% (3/5) of the total costs should be applied to penalty. The total costs of the PIC was \$6,916.25

which reduced to 60% is \$4,149.75. In house legal costs were \$2,200.00. The final cost suggested was \$6,400.

Mr. Salte expended considerable effort in attempting to establish the weight which should be applied to penalty as it pertains to Dr. Ziarko's prior discipline history. The Registrar's Office did suggest that Dr. Ziarko has proven to be perilously close to demonstrating herself to be ungovernable. Mr. Salte was not quite convinced that she has reached that level. He therefore opined that while revocation is not appropriate at this time, a substantial weight should be given to findings of repetitive past misconduct, and an ongoing pattern of the same.

Mr. Salte argued that while the forms of misconduct differ, there is an ongoing pattern of ethical breaches and that the totality of the misconduct argues in favour of a more substantial penalty. Past findings of misconduct with associated penalties have not altered Dr. Ziarko's pattern of behaviour and therefore more specific deterrence is required if we are to avoid a potential future finding of ungovernability. Specific examples of Dr. Ziarko's alleged cavalier attitude toward professional ethics include:

- a) Dr. Ziarko was inappropriately billing for pregnancy tests **after** being charged with unprofessional conduct regarding the alteration of medical records and providing false information about same.
- b) Dr. Ziarko's staff applied inappropriate charges to her patients within days of Dr. Ziarko completing an ethics course.
- c) While being investigated for overcharging patients, Dr. Ziarko's office overcharged CP.
- d) Arguments provided to JMPC regarding the inappropriate pregnancy test billings could not reasonably be justified by an interpretation of the fee schedule.
- e) Dr. Ziarko double billed for virtual patient visits **after** she had been penalized for overbilling patients and while still in active discipline regarding her inappropriate billings for pregnancy tests. At this point in time, it would be expected that a physician who has been disciplined in the past and who is under increased scrutiny due to established financial misconduct, would demonstrate increased oversight over her billings and potential misinterpretation of the fee schedule.

Mr. Salte cited the Peet decision (*Peet v Law Society of Saskatchewan, 2019 SKCA 49*) as it pertains to progressive discipline. It was argued that past findings of unprofessional misconduct and current investigations, hearings etc. pertaining to past matters should have provided Dr. Ziarko with an increased awareness of her ethical responsibilities and thereby prevented new ethical lapses. Mr. Salte argues that this has not been the case and therefore a more substantive penalty is warranted at this time. Mr. Salte interpreted the Peet decision to suggest that the point in time where penalty is applied is not the start-point from which misconduct occurred and therefore the timeline can and should include the entire timeframe from the actual misconduct once proven. This is significant in this matter as charges one and two preceded Dr. Ziarko/Cheshenchuk's other discipline matters even though some of those matters had been adjudicated prior to Dr. Ziarko being notified that the misconduct of charges

one and two were being investigated. Council's deliberations of this argument will follow in the reasons for decision.

The Camgoz factors were discussed.

Case law discussed included *R. v Sreedhar, 1986 CanLII 2919 (SKCA)*. Consideration was also given to the matter of Dr. Steplewski and the matter of *Ontario (College of Physicians and Surgeons of Ontario) v. Hanson, 2020 ONCPSD 22*.

Dr. Tanyi-Remarck and Dr. Colistro were discussed with respect to length of suspensions.

With respect to the financial misconduct of charges 2 and 3 it was suggested by Mr. Salte that these represent a lack of due diligence rather than fraud. It is clear in the fee code that the submitted billings were incorrect. It was argued that while a JMPRC reassessment is not considered a sign of misconduct, the application of a JMPRC maximum financial penalty of \$15,000 was indicative of the need to discipline Dr. Ziarko as opposed to taking a more educational approach.

### **The position of Dr. Ziarko on Penalty**

Mr. Cann suggests that appropriate penalty would include a reasonable fine, a reprimand, a billing course and payment of a reasonable portion of costs.

Written submissions attempt to clarify the timeline submitted by the Office of the Registrar. It was noted (red text) that the cited clarifications of the timeline are not in conflict with the timeline proposed by the Registrar's Office.

June 22, 2016 – December 18, 2017	Date of Conduct giving rise to Charge 2 (Info 80-22 pg 5 p 11)
July 20, 2017	Date of Conduct giving rise to Charge 1 (Info 80-22 pg 5 p 11)
September 30, 2017	Charges – Alteration of Record (Info 80-22 pg 5 p 12)
December 20, 2017	Admission – Alteration of Record (signed dated document)
January 19, 2018	Penalty – Alteration of Record (Info 80-22 pg 5 p 13)
January 25, 2020	Charges – Fees charged to patients (Info 80-22 pg 7 p 24)
June 04, 2020	Admission – Fees charged to patients (signed dated document)
August 4 – October 2, 2020	Date of Conduct giving rise to Charge 3 (Info 80-22 pg 7 p 26)
September 16, 2020	Final Order of JMPRC – Charge 2 (Info 80-22 pg 7 p 28)

Mr. Cann argues that the facts giving rise to current charge 1 and 2 occurred prior to any notification of any form of past discipline and therefore the principles of progressive discipline are not appropriate to be applied in this matter. Mr. Cann concedes that the conduct resulting in charge 3 did occur after prior discipline penalties had been applied.

Mr. Cann interprets the Camgoz factors to support that prior misconduct must only be considered when it is the same or similar to the misconduct under scrutiny.

Mr. Cann suggests that the conduct involved in charge 1 could be managed with simple notification that all biopsies should be sent for definitive pathology or at most an educational approach per QoCAC.

Mr. Cann suggests that billing errors related to pregnancy testing were adjudicated by JMPC. Drs. Ernst and Kabongo were presented in argument against suspension related to charge 2.

Mr. Cann opined that the conduct of charge 2 cannot be considered as prior misconduct in the context of progressive discipline for charge 3 as both charges were laid at the same time.

Case law discussed included: *Ontario (College of Physicians and Surgeons of Ontario) v Attalah, R v Sreedhar, Ontario (College of Physicians and Surgeons of Ontario) v Hanson, College of Physicians and Surgeons of Saskatchewan -v- Tanyi-Remarck, College of Physicians and Surgeons of Saskatchewan -v- Colistro, College of Physicians and Surgeons of Saskatchewan -v- Steplewski.*

While in obvious opposition to Mr. Salte's suggestions regarding penalty, Mr. Cann argued against the application of harsh penalty based on a lack of clear fraudulent intent on the part of Dr. Ziarko. Mr. Cann also suggests that Dr. Ziarko does not demonstrate poor insight into the application of the fee schedule and that she has repeatedly taken actions to remedy concerns related to her past conduct.

Mr. Cann opined that Mr. Salte is incorrect in his interpretation of Peet as it pertains to this matter. He was clear in his opinion that, in the aggregate, all of the misconduct admitted does not rise to the level of a suspension.

### **The Decision of Council**

*The Council of the College of Physicians and Surgeons of Saskatchewan imposes the following penalty on Dr. Svitlana Ziarko pursuant to The Medical Profession Act, 1981 (the "Act"):*

- 1. Pursuant to Section 54(1)(e) of The Medical Profession Act, 1981, the Council hereby reprimands Dr. Ziarko. The format of that reprimand will be in-person. Dr. Ziarko is required to appear before the next regularly scheduled meeting of the Council to be present to have the reprimand administered in person.*
- 2. Pursuant to Section 54(1)(b) of the Act, the Council hereby suspends Dr. Ziarko for a period of 6 months commencing 1 July, 2022.*
- 3. Pursuant to section 54(1)(f) of The Medical Profession Act, 1981, Council imposes a fine of \$7,500 on Dr. Ziarko, payable on or before 1 January, 2023.*
- 4. Pursuant to section 54(1)(i) of the Act, the Council directs Dr. Ziarko to pay the costs of and incidental to the investigation and hearing in the amount of \$6,400.00. The costs shall be payable in full by 1 January, 2023.*

5. *Pursuant to section 54(2) of the Act, if Dr. Ziarko should fail to pay the costs as required by paragraph 4, Dr. Ziarko's licence shall be suspended until the costs are paid in full.*
6. *The Council reserves to itself the right to amend any of the terms of this penalty decision, upon application by Dr. Ziarko. Without limiting the authority of the Council, the Council may extend the time for Dr. Ziarko to pay the fine or costs required by paragraph 3 or paragraph 4.*

### **Documents under consideration**

Info 80\_22 Dr. Ziarko – Penalty presentation on behalf of the Registrar's Office

Info 121\_22 Dr. Ziarko – Penalty presentation on behalf of Dr. S. Ziarko

### **Points in issue**

- 1) Do the principle of progressive discipline apply?
- 2) Is a suspension warranted and if so, how long?
- 3) What financial penalty should be applied, if any?

### **Reasons for the decision**

#### **Progressive discipline**

The primary issue in determining penalty was clearly felt to be the principle of progressive discipline. Both parties have presented opposing arguments in support of their positions. After considering the written and verbal arguments, the Council was convinced that progressive discipline is appropriate and that the penalty should be framed in that context. The timeline in this matter is complex. There are discreet discipline matters where the actual act(s) of misconduct were not admitted to until a point well after the final adjudication of other matters. In the matters decided today we have three charges. The first two charges occurred during a period of time (June 22, 2016 to December 18, 2017) which was during the time when another and arguably more egregious discipline matter was being actively investigated.

It has been argued that the decision not to send the biopsy specimen for definitive pathology did not lead to patient harm and was an oversight rather than a deliberate act of omission. The fact that the provisional diagnosis was correct does not mean that there was not risk of harm. The provisional diagnosis could very well have been incorrect leading to an incorrect treatment plan that could have had disastrous consequences for the patient. It is never acceptable to remove potentially malignant tissue from a patient and not confirm the diagnosis with pathological assessment. Dr. Ziarko took a substantial risk with this patient's life in a completely unjustifiable manner. Moreso, Dr. Ziarko took a risk with her patient's life while under scrutiny for misconduct resulting from the death of a patient and subsequent alteration of records. In this context, one would expect Dr. Ziarko to be practising in a very thoughtful manner, dotting each 'i' as it were. Therefore, despite not yet having been found guilty of the misconduct of

2014 and 2015, to engage in substandard care is challenging to explain as to how in the totality, it is not considered more egregious than if it had occurred in isolation.

Similarly, in 2018 Dr. Ziarko had recently completed an ethics course as a component of prior penalty. Despite the purported learnings of that course, her office processes still proceeded to overbill for copies of patient charts. Shortly thereafter, Dr. Ziarko was notified about her JMPRC review. Subsequently, her office was notified about the complaints regarding overbilling of patients SB and GE. Despite a past decision of discipline, a recent ethics course, a current JMPRC investigation, and notification of concern regarding overbilling, Dr. Ziarko did not demonstrate any alteration in her conduct as evidenced by the fact that her office continued to attempt to overbill patient CP. This supports the perception that Dr. Ziarko had not taken the time to correct a very easily correctable office policy over which she had sole control and oversight, and which had very recently been brought to her attention as a matter of possible discipline. The Council was challenged to identify the pattern of corrective actions of which Mr. Cann spoke.

Despite a substantial number of issues arising, which, according to the principle of specific deterrence, should have guided Dr. Ziarko toward a more ethical practice and toward a more attentive application of the fee schedule, this seems not to have occurred. While being investigated by JMPRC, after being in receipt of a proposed JMPRC reassessment including a proposed fine, and while embroiled in the discipline process with respect to overcharging patients for files, Dr. Ziarko proceeded to double bill MSB for virtual visits (charge 3). It is challenging to accept that any reasonable physician could honestly believe that an office triage process excluding physician involvement could in any way qualify as a compensable medical service. To bill for such 'services' while in the process of finalizing a JMPRC reassessment for billing irregularities is remarkable. To do so while also actively awaiting a penalty hearing pertaining to other financial misconduct is unfathomable and clearly demonstrates a pattern of deliberate disregard of the regulations which govern the profession and the bodies responsible for those regulations.

Council was inclined to agree with Mr. Cann's assessment, that in isolation, the acts of misconduct would likely not justify severe penalty. The council was not moved by arguments that in the totality, the acts do not require harsh sanction. For these reasons Council set the penalty at the upper end of the range deemed reasonable. Council's assessment of the merits of Mr. Salte's arguments as they pertain to Peet were supported by discussion with independent legal counsel serving the Council.

### **Suspension**

The Council feels that a suspension at the upper limit of what is reasonable is appropriate and a six month suspension was agreed to. Council is concerned that Dr. Ziarko is demonstrating a clear pattern of misconduct that demonstrates disregard for past penalty. As such, a more definitive sanction was required to assist in guiding Dr. Ziarko away from being perceived as

ungovernable, which would have much more dire consequences to her ability to practise medicine if proven to be the case.

### **Financial penalty**

The Council recognizes that Dr. Ziarko's misconduct commonly proves to be financially driven. For this reason, a fine was felt to be appropriate. Despite no clear evidence of intent to defraud, the cavalier misapplication of the fee schedule that seems to recur in her practise must be censured. Council has often found that the most direct means of censure for financial misconduct, is to penalize the physician financially. For this reason we have applied a substantial fine.

It is the routine practice of the Council to apply reasonable costs to a physician found guilty of misconduct. In this matter 60% of the investigation costs was appropriate in addition to the in house legal costs.

**Accepted by Council of the College of Physicians & Surgeons of Saskatchewan:**

**1 October, 2022**