

**IN THE MATTER OF *THE MEDICAL PROFESSION ACT, 1981* AND IN THE MATTER
OF THE SENTENCING OF DR. SAMIR KRISHNA SAHA FORMERLY OF NORTH
BATTLEFORD, SASKATCHEWAN FOLLOWING A FINDING OF
UNPROFESSIONAL CONDUCT BY A DISCIPLINE HEARING COMMITTEE ON
JANUARY 25, 2010**

No one appearing for the Member, Dr. Samir Krishna Saha

Mr. Bryan Salte, Q.C. for the College of Physicians and Surgeons of Saskatchewan

REASONS FOR DECISION

1. OVERVIEW

[1] Dr. Samir Krishna Saha formerly served as a general medical practitioner in North Battleford, Saskatchewan. The College of Physicians and Surgeons of Saskatchewan (the “College”) granted Dr. Saha a temporary licence on October 12, 2007. Unfortunately, Dr. Saha’s tenure in North Battleford was not a happy one. He was unable to challenge the CAPE assessment successfully within the year required under the College’s *Bylaws* with the consequence that the Registrar determined that his temporary license would expire on April 30, 2009. The Council of the College (“Council”) rejected Dr. Saha’s request that it set aside the Registrar’s decision on April 18, 2009.

[2] Complicating his professional difficulties, Dr. Saha was charged in August 2008 with fraud under \$5,000 contrary to section 362(1) of the *Criminal Code of Canada*. The basis of this offence, to which Dr. Saha pleaded guilty involved prescribing a narcotic (cotridin) to a patient and then having the patient return the narcotic to Dr. Saha for his personal use. On December 23, 2008, the Honourable Judge Kaiser of the Provincial Court of Saskatchewan suspended the passing of sentence, placed Dr. Saha on probation for a period of nine (9) months and imposed a series of conditions.

[3] Subsequently, the College charged with Dr. Saha with unprofessional conduct.

The specific charge against him read as follows:

1. You Dr. Samir Saha are guilty of unbecoming, improper, unprofessional, or discreditable conduct contrary to the provisions of Section 46(n) and/or section 46(o) of The Medical Profession Act, 1981 S.S. 1980-81, c. M-10.1 and/or bylaw 44(2) of the bylaws of the College of Physicians and Surgeons of Saskatchewan.

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

a) A patient identified in this charge by the initials J.B. attended at your clinic on or about August 28, 2008;

b) The purpose of J.B.'s visit was to obtain a sick note confirming her illness for employment purposes;

c) You provided a prescription of Cotridin to her;

d) The Cotridin was not intended for her use;

e) You advised J.B. that she should fill the prescription and return the Cotridin to you;

f) You provided her with forty dollars to cover the cost of the prescription;

g) You advised J.B. that, when she returned with the Cotridin, you would provide her with the sick note;

h) You were convicted on a charge that you did by a false pretence with intent to defraud attempt to obtain from J.B. a 100 millitre bottle of Cotridin of a value not exceeding five thousand dollars contrary to Section 362(1)(a) of the Criminal Code.

[4] On January 18, 2010, a Discipline Hearing Committee comprised of Dr. G.R. Gilmour as Chair, Dr. A. Epp and Mrs. M. Sutherland convened to hear the evidence against Dr. Saha and to decide the merits of the charge of unprofessional conduct. At that time, Dr. Saha having left Canada did not appear either in person or through counsel even though he had been notified of these proceedings. On January 25, 2010, the Discipline Hearing Committee released its decision finding Dr. Saha guilty of the charge of unprofessional conduct.

[5] In their reasons for judgment, the Discipline Hearing Committee stated at pages 2 and 3: In doing what he did, Dr. Saha clearly committed acts of dishonesty for which he must be held responsible. Honesty is at the heart of integrity and integrity grounds ethical professional conduct. Dr. Saha's actions discredit not only himself but the profession, and the Committee have (*sic*) come to the conclusion that the conduct here is unbecoming, improper, unprofessional and discreditable.

[6] Following the Discipline Hearing Committee's ruling, this matter came before Council on April 17, 2010 for sentencing. Again, despite being formally advised of these proceedings Dr.

Saha chose not to appear at this hearing either in person or through counsel. At the conclusion of Mr. Salte's submissions on behalf of the College, Council deliberated and passed sentence set out in the following resolution:

The Council has been advised that Dr. Saha no longer has a licence to practice medicine in Saskatchewan and consequently the Council cannot act under section 54(b) of The Medical Profession Act, 1981 to suspend Dr. Saha's licence.

If Dr. Saha was currently licensed in Saskatchewan, the disposition of the Council would have been to order that Dr. Saha be suspended from practice for a period of several months.

As Dr. Saha is not currently licensed in Saskatchewan, the Council orders that:

a) Pursuant to section 54(f) of The Medical Profession Act, 1981 the Council imposes a fine on Dr. Saha in the amount of \$15,000; and

b) Pursuant to section 54(i) of The Medical Profession Act, 1981 the Council directs Dr. Saha to pay the costs of and incidental to the investigation and hearing in the amount of \$3,018.04.

[7] In view of the fact that Dr. Saha elected not to participate in any of the professional disciplinary proceedings against him, including the sentencing hearing before Council, Mr. Salte advised that it was not strictly necessary for Council to file written reasons for its ruling. However, Council believes it is important for all members of the profession to understand why Council views the type of conduct in which Dr. Saha engaged to be extremely serious, detrimental to the integrity of the medical profession and deserving of severe sanction. These reasons are intended to fulfill this objective.

2. THE APPROPRIATE PENALTY

2.1 General Considerations

[8] Once a discipline hearing committee finds a member guilty of unprofessional conduct, Council is authorized by section 54 of *The Medical Profession Act, 1981* to set the appropriate sentence. Section 54 enumerates a wide spectrum of possible penalties ranging at one end from a simple reprimand (s. 54(1)(e)) to suspension or revocation of the member's license to practice medicine in Saskatchewan (ss. 54(1)(b),

(a)) at the other. Council may also impose fines not exceeding \$15,000 (s. 54(1)(f)), require the member to fulfill undertakings relating to retraining or treatment which are tailored to the specific circumstances of a particular case (s. 54(1)(g)), and order the member to pay the costs of the investigation and hearing (s. 54(1)(i)).

[9] Council has considerable latitude to craft a penalty which addresses appropriately the particular circumstances of the case before it. Yet, when fulfilling this task the over-arching consideration is the public interest. The function of Council is to govern the medical profession in the public interest, and protection of the public must be its paramount objective. Indeed, the Saskatchewan Legislature has in section 69.1 of *The Medical Profession Act, 1981* explicitly directed Council to give protection of the public, pride of place in all its sentencing decisions. Section 69.1 provides: In any proceeding before the competency committee or the discipline hearing

committee, in any consideration by the council of a report from either of these committees and in any appeal pursuant to this Act, the protection of the public and the safe and proper practice of medicine shall take priority over the rehabilitation, treatment and welfare of a member.

2.2 Relevant Factors When Sentencing a Physician for Unprofessional Conduct

[10] While Council enjoys wide discretion when sentencing a physician found guilty of unprofessional conduct, any sentence must be crafted on a principled basis. In Saskatchewan, the relevant principles to be taken into account when sentencing a physician for professional misconduct were announced in *Camgoz v. College of Physicians and Surgeons (Saskatchewan)* (1993), 114 Sask. R. 161 (Q.B.) There, a discipline hearing committee found the physician guilty of unprofessional conduct for sexually assaulting a female patient as a result of conducting an unnecessary breast examination. As a consequence, this Council revoked his licence for five years and imposed a fine of \$10,000. On appeal, the Court of Queen's Bench sustained both the finding of unprofessional conduct and the sentence.

[11] Respecting the appeal from sentence, Grotsky J. identified 11 factors which are generally relevant when sentencing a physician. As set out in paragraph 49 of his reasons for judgment, these factors are:

- The nature and gravity of the proven allegations
- The age of the offending physician
- The age of the offended patient
- Evidence of the frequency of the commission of the particular acts of misconduct within particularly, and without generally, the Province
- The presence or absence of mitigating circumstances, if any
- Specific deterrence

- General deterrence
- Previous record, if any, for the same, or similar, misconduct; the length of time that has elapsed between the date of any previous misconduct and conviction thereon; and, the members (properly considered) conduct since that time
- Ensuring that the penalty imposed will, as mandated by section 69.1 of [*The Medical Profession Act, 1981*], protect the public and ensure the safe and proper practice of medicine
- The need to maintain the public's confidence in the integrity of [Council's] ability to properly supervise the professional conduct of its members
- Ensuring the penalty imposed is not disparate with penalties previously imposed in this jurisdiction, particularly, and in other jurisdictions in general, for the same, or similar acts of misconduct

(Similar sentencing factors for professional misconduct have been applied in other provinces, see especially: *Jaswal v. Newfoundland (Medical Board)* (1996), 42 Admin. L. R. (2d) 233 (Nfld. S.C.), at para. 36; *Pottie v. Nova Scotia Real Estate Commission*, [2005] N.S.J. No. 276 (S.C.), at para. 64, and *Litchfield v. College of Physicians & Surgeons (Alberta)*, 2008 ABCA 164, at para. 20.)

[12] Justice Grotzky underscored that these 11 factors were neither exhaustive nor enumerated in degree of importance. He also acknowledged that because a particular sentence must be tailored to the specific factual circumstances before Council, the relevance of these factors will vary in application. See: *Camgoz, supra*, at para. 50. In the case before him, when these various factors were weighed, Grotzky J. concluded that the sentence imposed by Council was appropriate.

[13] Since then, Council has regularly employed the *Camgoz* factors when sentencing members for professional misconduct. It should be noted that Grotzky J. seems to suggest that protection of the public as identified in section 69.1 of *The Medical Profession Act, 1981* is but one factor to be weighed when passing sentence. However, it is more consistent with the statutory injunction contained in section 69.1 to treat protection of the public and the safe and proper practice of medicine as the over-arching objective in sentencing. It is the consideration which must always be top of mind for Council when making any of its decisions, including an appropriate sentence. It was the fundamental consideration employed in this case.

[14] With these general comments, Council now turns to an application of those factors to Dr. Saha's case.

2.3 Application of Relevant Factors

[15] As anticipated in *Camgoz*, not all of the factors identified in that case apply to Dr. Saha's case. In the unusual circumstances of this case only a few of these factors are determinative.

2.3.1 The Nature and Gravity of the Proven Allegations

[16] The first factor asks Council to assess the nature and gravity of the conduct for which a hearing committee comprised of Dr. Saha's peers found him guilty of professional misconduct. It is appropriate that this is the first enumerated factor as the nature of the misconduct will inform the analysis and application of the other factors listed in *Camgoz*.

[17] The misconduct found by the Hearing Committee to be unprofessional in these circumstances is deserving of severe condemnation. The acts constituting professional misconduct were also criminal. Dr. Saha was charged criminally, pleaded guilty and was sentenced by a judge of the Provincial Court of Saskatchewan. The Honourable Judge Kaiser in passing sentence made the following comments relevant to this matter. At pages 23 and 24 of the Provincial Court Sentencing Hearing Transcript dated December 22, 2008 which was placed before the Discipline Hearing Committee, Kaiser P.C.J. stated:

I turn now to the consideration of the public interest. Every doctor has a duty to the patient. The duty to the patient is not all that unlike the duty of a lawyer to a client. It is to act in the best interest of the patient/client and to put that person's interests ahead of one's own.

Dr. Saha breached that duty in this instance. He endeavoured to use this young woman, who was his patient. He put her in a terrible spot. He basically put her in the position where if she did what he wanted, she would be trafficking in a narcotic, or at least a schedule 1 substance.

Fortunately, she had the good sense to go to her employer immediately when this happened and explained the situation, and the matter did not go beyond that.

But the result of Dr. Saha's breach of his obligation to the patient is that the patient now suffers from a lack of trust in the medical profession. In my view, what Dr. Saha did to his patient is most egregious.

[18] Judge Kaiser concluded by observing that Dr. Saha's "problem will now be of such a public kind that his governing body, the College of Physicians and Surgeons, will no doubt see is addressed before he's able to continue on": Provincial Court Sentencing Hearing Transcript at page 28.

[19] The comments of Kaiser P.C.J. are echoed in the ruling of the Discipline Hearing Committee. The nature of this misconduct which took place in this case could not be more despicable. Dr. Saha effectively tried to use his own patient as a drug mule, and without regard for the consequences created a situation where the patient could herself have been subject to criminal prosecution. No doctor should ever be able to jeopardize the personal security, not to mention physical liberty, of his or her patient in this way. Professional misconduct of this kind must be denounced by Council in the strongest terms possible.

2.3.2 Public Confidence in the College's Ability to Supervise its Members

[20] The Saskatchewan Legislature has delegated to the College and to Council the authority to regulate the medical profession in this province. It is a significant grant of power and it must be exercised diligently, responsibly and on a principled basis. One of the most fundamental aspects of this delegated authority is Council's responsibility to govern the medical profession in the public interest. This responsibility includes prosecuting members for alleged professional misconduct and sentencing those members whom a discipline hearing committee determines are guilty of unprofessional conduct. It is precisely for this reason that the sentence which is imposed should demonstrate to members of the public that Council is taking its delegated responsibilities seriously.

[21] Council is aware that Dr. Saha is no longer practicing medicine in Canada and it is extremely unlikely that he will ever do so again. However, conscious of its statutory mandate Council must signal to all members as well as to those physicians who may seek to practice medicine in this province that the kind of unconscionable conduct engaged in by Dr. Saha will be met with a stiff penalty comprising a significant suspension from medical practice, a substantial fine, and costs of these proceedings. A sentence of this kind reflects the public opprobrium which rightly attaches to the criminal nature of professional misconduct at issue here. It should also demonstrate to members of the Saskatchewan public that Council is fulfilling its statutory responsibilities to regulate and supervise the medical profession in the public interest.

2.4 Costs

[22] Subsection 59(1)(i) of *The Medical Profession Act, 1981* authorizes Council to seek indemnification for all costs related to the proceedings from the physician who is found guilty of

unprofessional conduct. Mr. Salte advised that in Dr. Saha's case the total amount of these costs came to \$3,018.04, a relatively modest amount compared to other disciplinary proceedings.

[23] Generally speaking, the physician should be responsible for reimbursing the College for monies expended by it in respect of disciplinary proceedings taken against him or her. This general principle should be departed from only in circumstances where it is demonstrated to Council that it would cause undue hardship to the physician or would not be appropriate for the physician to shoulder all or any of these costs. These will, of course, be assessed on a case by case basis.

[24] Council concluded that in Dr. Saha's case no such circumstances existed. While it does not appear that Dr. Saha did anything to prolong or to delay these proceedings, he did little to expedite them. Accordingly, Council determined that Dr. Saha should be responsible for repaying all costs expended by the College on his professional discipline matter, and it is so ordered.

3. Conclusion

[25] For the foregoing reasons, Council imposed the sentence against Dr. Saha as set out in Council's resolution dated April 17, 2010 and reproduced in paragraph 6 above.

Dated the 25th day of June, 2010 at Saskatoon, Saskatchewan.