

IN THE MATTER OF *THE MEDICAL PROFESSION ACT, 1981* AND IN THE MATTER OF THE REPORT OF THE COMPETENCY HEARING COMMITTEE DATED NOVEMBER 6, 2009 RESPECTING DR. LETSEBE D.R. TSATSI OF YORKTON, SASKATCHEWAN

Ms. Michelle Ouellette, Q.C. for the Applicant, Dr. Letsebe D.R. Tsatsi

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

REASONS FOR DECISION

1. OVERVIEW

[1] This is not the first time the issue of whether Dr. Letsebe D.R. Tsatsi possesses the necessary skills and knowledge to practice medicine in Saskatchewan has confronted the Council (“Council”) of the College of Physicians and Surgeons of Saskatchewan (“College”). Most recently in November 2009, a Competency Hearing Committee appointed by the Executive Committee of the College concluded that Dr. Tsatsi lacked the requisite skill and knowledge to practice diagnostic radiology. In the face of this finding, Dr. Tsatsi allowed his medical licence to lapse and as of January 1, 2010, he no longer possessed a licence to practice medicine in Saskatchewan.

[2] The Competency Hearing Committee’s Report together with the Competency Assessment Committee’s Report was presented to Council at its meeting on January 29, 2010. The decision about what to do respecting Dr. Tsatsi was made more difficult by the fact that he did not possess a licence to practice medicine. At the hearing, counsel for the College, Mr. Bryan Salte, Q.C. nevertheless urged Council to state that had Dr. Tsatsi been licenced the finding of the Competency Committee would require Council to revoke his provisional licence. He also requested Council to direct that Dr. Tsatsi be prohibited for practicing radiology. Mr. Salte advanced this position as in his submission it was in the public interest for Council to announce publicly and without qualification that in view of the findings of the Competency Hearing Committee Dr. Tsatsi was not competent to practice diagnostic radiology.

[3] Ms. Michelle Ouellette, Q.C., Dr. Tsatsi’s counsel, agreed with most of Mr. Salte’s submissions. She did, however, take exception to the nature of the order proposed by Mr. Salte. She submitted that because her client no longer held a licence to practice medicine, Council need

not take any further action at this time. She explained that were Council to adopt the order, it may seriously prejudice Dr. Tsatsi's ability to challenge again the Royal College examination.

[4] After deliberating, Council rejected Ms. Ouellette's position and passed the following resolution unanimously:

The Council has reviewed the report of the competency committee and the report of the competency hearing committee, and received representations from legal counsel on behalf of Dr. Tsatsi and legal counsel for the Registrar's office. The Council has been advised that Dr. Tsatsi has not renewed his licence in Saskatchewan and consequently, the Council cannot act under section 45(12)(a) of The Medical Profession Act, 1981 to revoke Dr. Tsatsi's licence.

If Dr. Tsatsi was currently licensed in Saskatchewan, the disposition of the Council would have been to order that:

a) Dr. Tsatsi's name be struck from the register; and

b) Dr. Tsatsi's licence be revoked.

As Dr. Tsatsi is not currently licensed in Saskatchewan, the Council orders pursuant to section 45(12)(c) of The Medical Profession Act, 1981 that until permitted by the Council to do so, Dr. Tsatsi is prohibited from practicing radiology.

Council also determined that in the circumstances of this case, costs should not be levied against Dr. Tsatsi. What follows are the reasons for Council's disposition of this matter.

2 FACTUAL BACKGROUND

[5] Dr. Tsatsi and his circumstances are well known to Council. Previously, he undertook remediation, much of it at his own expense, in an attempt to succeed either at challenging the Royal College examinations or demonstrating to the College his competence to practice radiology, or both. Yet, he failed to satisfy the College of his competency to practice diagnostic radiology.

[6] In September 2008, after receiving a competency assessment of Dr. Tsatsi's abilities to practice radiology which upon review, Council found indecisive, Council appointed three radiologists to conduct another assessment of Dr. Tsatsi. Prior to the assessment commencing, however, Dr. Tsatsi requested permission from Council to adjourn it pending his challenge to the Royal College examinations in May 2009.

Council denied his request. An application in the Saskatchewan Court of Queen's Bench for judicial review of Council's decision was subsequently dismissed by Mr. Justice Currie.

[7] The Competency Assessment Committee filed an extensive report dated April 24, 2009. The Report was sobering. The members of the Committee unanimously concluded that Dr. Tsatsi lacked “adequate skill and knowledge to practice Diagnostic Radiology in Saskatchewan”: *Competency Assessment Report* dated April 24, 2009 at page 36. The Committee recommended that Dr. Tsatsi undertake “at a minimum, one year of remedial training consisting of 3 months of CT, 3 months of Ultrasound and 6 months of General Radiology before he is allowed to practice Diagnostic Radiology unsupervised”: *Competency Assessment Report* dated April 24, 2009 at page 37. The members of the Committee concluded their report at page 37 with this troubling statement:

[T]he members of the committee wish to express their elevated level of concern about the potential harm that may befall patients who have had their imaging assessed by Dr. Tsatsi and we would be remiss in not stating that we feel that his previous work may require reanalysis in some manner.

[8] After the Competency Assessment Committee’s Report was filed and Dr. Tsatsi reviewed it, he voluntarily withdrew from the practice of medicine and has not practiced since that time.

[9] Upon receipt of the Report, Council’s Executive Committee appointed a Competency Hearing Committee comprised of three members of Council: Dr. Gerry Fernandez, Dr. Sheila Harding and Dr. Alanna Danilkewich. The Competency Hearing Committee held a hearing on November 6, 2009. At that time, the Competency Assessment Committee’s Report was tendered and Dr. Tsatsi elected not to contest its findings. Accordingly, the Competency Hearing Committee announced that it accepted the uncontested findings of the Competency Assessment Committee and pursuant to section 45(8) of *The Medical Profession Act, 1981*, S.S. 1980-81, c. M-10.1 (the “*Act*”) concluded that Dr. Tsatsi lacked adequate skill and knowledge in the practice of medicine.

[10] Council scheduled a hearing for its regular meeting on November 21, 2009 to receive the Competency Hearing Committee’s Report and determine what should be done in respect of Dr. Tsatsi. However, in the interim the Sunrise Regional Health Authority released a report respecting Dr. Tsatsi’s competency and in it referenced the conclusions of the radiologists who performed an external retrospective review of his interpretations. Following the release of this report, Dr. Tsatsi requested an adjournment of this hearing and undertook not to practice

radiology until Council made its determination. The hearing of this matter was then rescheduled for January 29, 2010.

[11] As already stated, at the end of 2009 Dr. Tsatsi did not renew his licence to practice medicine. As a consequence, at the hearing on January 29, 2010 Council was confronted with the Competency Hearing Committee's Report endorsing the devastating conclusions of the Competency Assessment Committee. The submissions presented by Mr. Salte on behalf of the College and by Ms. Ouellette on behalf of Dr. Tsatsi have been outlined earlier in these reasons.

3. ANALYSIS AND CONCLUSIONS

[12] As Dr. Tsatsi does not hold a licence to practice medicine, it is not possible for Council to exercise its discretion under subsection 45(12) of the *Act* and revoke his licence. Moreover, as he does not possess a licence to practice medicine he does not pose a threat to patient safety going forward. However, this only addresses the issue prospectively. Council found compelling Mr. Salte's submissions that in the public interest Council should signal when this level of deficiency in a member's medical skills is identified; the physician involved will no longer be permitted to continue to practice medicine. 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 in section 69.1 of the *Act* explicitly directs Council to give protection of the public, pride of place in all its 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.

[13] In addition, section 69.1 stipulates Council must ensure that in Saskatchewan medicine is practiced safely and properly. Both of these objectives are engaged by Dr. Tsatsi's case. While the Order which Council makes in this case is largely symbolic, it demonstrates Council's unwavering commitment to its over-arching public obligations.

[14] At the hearing, Ms. Ouellette requested Council to make no order respecting Dr. Tsatsi. She argued that as he was no longer licenced to practice medicine in Saskatchewan he posed no threat to the public or to the medical profession in this province. The principal basis for her request, however, was that any order made against Dr. Tsatsi might prejudice his ability to

challenge the Royal College examination. No independent evidence was lead respecting Dr. Tsatsi's intention to challenge this examination, and Ms. Ouellette could be no more definite than to indicate Dr. Tsatsi may at some future time seek again to challenge the Royal College examination. Any order Council made could seriously jeopardize his ability to do so.

[15] Council did not accede to Ms Ouellette's request. At best, it is based on speculative information. Even if there was a credible basis upon which to conclude that Dr. Tsatsi intends to challenge the Royal Examination in the future, Council is of the view that its mandate set out in section 69.1 of the *Act* compels it to act now upon the recommendations of the two committees that reviewed and assessed Dr. Tsatsi's competency. To accept Ms. Ouellette's suggestion that Council refrain from taking any action would be to privilege the "welfare of a member" over Council's legislated mandate to regulate the profession in the public interest, something which section 69.1 expressly precludes.

[16] Accordingly, for these reasons, Council unanimously concluded that the Order set out at paragraph 4 above should issue.

[17] Council also concluded that no order of costs should be made in this case. Subsection 45(12)(1)(g) of the *Act* gives Council the discretion to assess costs against a member found by a competency committee to lack the adequate skill and knowledge to practice medicine. These costs are intended to reimburse the College for monies expended in the course of the competency investigation and any subsequent hearing.

[18] In the circumstances of this case, Council concluded that an order of costs was not warranted for two reasons. First, this investigation was a matter of quality assurance and not a competency review spawned by a complaint of unprofessional conduct. As a general practice, Council does not order costs against a member who has been found to lack the requisite skill and knowledge to practice medicine. Second, Dr. Tsatsi cooperated throughout with the assessment. He did nothing which increased unduly the cost of this assessment.

[19] A final matter. At the hearing the reports of both the Competency Assessment Committee and the Competency Hearing Committee were presented. Mr. Salte on behalf of the College asks that, in particular, the Competency Assessment Committee's Report remain confidential as it contains personal health information of third parties. He suggests that only an appropriately

redacted version of these documents be made available to the general public. Council agrees with Mr. Salte's very sensible request and so directs.

Dated the 17h day of April, 2010 at Saskatoon, Saskatchewan.