

November 16, 2011

NUMBER 278 11

COLLEGE OF PHYSICIANS AND SURGEONS
OF SASKATCHEWAN
TO COUNCIL

FROM: Registrar

SUBJECT: **DISCIPLINE COMMITTEE DECISION – DR. ALI
NOVEMBER 2011**

Please find the above noted information attached

**IN THE MATTER OF THE MEDICAL PROFESSION ACT, 1981,
R.S.S. 1980-81, C.M-10.1, AND**

**DR. AMJAD ALI
MEDICAL PRACTITIONER OF
REGINA, SASKATCHEWAN**

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

**Saskatoon, Saskatchewan
May 26, 2011**

**Before: Walter Matkowski, Deputy Chair
Dr. Joan Baldwin
Dr. George Gilmour
Dr. Lorne Rabuka**

**Counsel: Bryan Salte, Q.C. for the College of Physicians and Surgeons
David Thera, for Dr. Amjad Ali**

DECISION

The Counsel of the College of Physicians and Surgeons had directed that the Disciplinary Committee hear and determine the following disciplinary charges brought against Dr. Amjad Ali.

Charge #1

1. You Dr. Amjad Ali 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 lead in support of this particular will include some or all of the following:

- (a) In 2008 Dr. Emokpare worked in your clinic in Regina, Saskatchewan;
- (b) Dr. Emokpare signed a Direct Payment Request form directed to Medical Services Branch which instructed that payments for services provided by Dr. Emokpare should be paid to his account;
- (c) On or about the 6th day of May, 2008 the Direct Payment Request Form was altered to direct that payment should be made to Dr. Amjad Ali Medical Prof. Corp.;
- (d) On or about the 6th day of May, 2008 the altered Direct Payment Request Form was provided to Medical Services Branch;
- (e) The altered Direct Payment Request Form resulted in payment for medical services provided by Dr. Emokpare being paid to Dr. Amjad Ali Medical Prof. Corp.;
- (f) Dr. Emokpare did not alter the Direct Payment Request Form, nor did he authorize the alteration of the form;
- (g) You provided instructions to your employee, Ms. Peggy Daniel, which resulted in her altering the Direct Payment Request Form;
- (h) You instructed your employee, Ms. Peggy Daniel, to provide the altered Direct Payment Request Form to Medical Services Branch.

Charge #2

1. You Dr. Amjad Ali are guilty of unbecoming, improper, unprofessional, or discreditable conduct for knowingly giving false information to a preliminary inquiry committee contrary to the provisions of Section 46(o) and/or section 55.2 of *The Medical Profession Act, 1981* s.s. 1980-81 c. M-10.1

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

- (a) You were interviewed by a preliminary inquiry committee on or about December 4, 2009;
- (b) During the course of that interview, in relation to the issue of a change to the Direct Payment Request form signed by Dr. Emokpare to have payment made to you or your professional corporation, you said the following: "So on the basis of that I decided, I spoke to him about it, that he would now have to sign documents so that we collect the money because we can't continue, this is not good practice. So after some talking he decided 'yes he would do it'."
- (c) During the course of that interview, in relation to the issue of a change to the Direct Payment Request form signed by Dr. Emokpare to have payment made to you or your professional corporation, you said the following: "He was going to sign the documents and I was to collect the money."

- (d) During the course of that interview, in relation to the issue of a change to the Direct Payment Request form signed by Dr. Emokpare to have payment made to you or your professional corporation you said the following: “So he signed the documents.”
- (e) During the course of that interview, in relation to the issue of a change to the Direct Payment Request form signed by Dr. Emokpare to have payment made to you or your professional corporation, you said the following: “He did sign”
- (f) During the course of that interview, in relation to the issue of a change to the Direct Payment Request form signed by Dr. Emokpare to have payment made to you or your professional corporation, you said the following: “I had nothing to do with that. That was Peggy’s job, she did all that.”
- (g) During the course of that interview, in relation to the issue of a change to the Direct Payment Request form signed by Dr. Emokpare to have payment made to you or your professional corporation, you said the following: “It was in the hands of the front end. They’re the ones who were dealing with this matter. I have nothing to do with this.”
- (h) You knowingly giving false information to the preliminary inquiry committee in connection with one or more statements in this charge.

RELEVANT STATUTORY AUTHORITIES

Sections 46(o) and 55.2 of *The Medical Profession Act*, 1981 s.s.1980-81 c. M-10.1, (hereinafter “the Act”) provide as follows:

46(o) Without in any way restricting the generality of “unbecoming, improper, unprofessional or discreditable conduct”, a person whose name is entered on the register, the education register or the temporary register or the podiatric surgical register is guilty of unbecoming, improper, unprofessional or discreditable conduct, where he: 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;

55.2 No statement or answer given by a person registered under this Act:

- (a) under investigation by a preliminary inquiry committee to that committee;
- (b) interviewed by the council to the council; or
- (c) interviewed by a special committee appointed pursuant to section 55.1 to that committee;

may be used in evidence before the discipline committee except on a charge that the person registered under this Act is guilty of unbecoming, improper, unprofessional or discreditable conduct for knowingly giving false information to the preliminary inquiry committee, council or special committee.

INTRODUCTION

PRELIMINARY ISSUES

Counsel for Dr. Ali raised what in effect amounts to a jurisdictional challenge. Counsel suggested, “An unresolved civil dispute between two physicians should not form the basis of charges of unprofessional conduct.”

We agree our mandate as a Disciplinary Committee is not to answer the question how much either Doctor owes the other. That issue is for the civil courts and it is not an answer we will provide.

We might also agree with the proposition the Disciplinary Committee (hereinafter “the Committee”) should not delve into areas where one Doctor embarrasses another Doctor through legal means. For example, if a Doctor utilized the provisions of *The Attachment of Debts Act* to issue a pre-judgment garnishee summons, so as to embarrass another Doctor, it is doubtful whether a Disciplinary Committee would consider a charge arising from those actions. However, if a Doctor, in obtaining the pre-judgment garnishee summons filed a false affidavit, we could see how charges from the College could arise.

In our case, the essence of the two charges is whether Dr. Ali instructed an employee to alter a document and send it to Medical Services Branch (“MSB”) and whether Dr. Ali then knowingly gave false information to the preliminary inquiry committee in regard to the altered document. The charges in our case more closely resemble the “false affidavit” scenario rather than the “embarrass another Doctor” scenario. Given this conclusion, we are satisfied we do have jurisdiction to review Dr. Ali’s conduct pursuant to the provisions of the *Act*.

OTHER MATTERS

Following the hearing, the panel provided counsel with the following questions:

How is the Committee able to utilize Exhibit C-5, the PIC Interview Transcript? Are we restricted in considering Exhibit C-5 to Charge #2, as set out in s. 55.2 of *The Medical Profession Act*? Or are we also entitled to look at Exhibit C-5, a full Exhibit, in the context of Charge #1 as well. Please discuss a procedure to deal with this question and advise us accordingly.

Counsel for the College answered the Committee was restricted in using the PIC Interview Transcript evidence to Charge #2.

Counsel for Dr. Ali’s answer was that he agreed with Counsel for the College only to the extent the PIC Interview Transcript could not be used in relation to Charge #1 if his client would be negatively affected. If the PIC Interview Transcript assisted his client in regard to Charge #1, Dr. Ali’s counsel suggested different considerations would apply. He did not elaborate on what these different considerations might be.

We will address this issue in our Charge #1 Analysis.

BURDEN OF PROOF FOR DISCIPLINARY CHARGES

In his Brief of Law, counsel for the College relies on the recent Supreme Court of Canada decision *F.H. v. McDougall* 2008 SCC 53 to support his assertion the onus of proof is on the College to prove its case on a balance of probabilities. We accept this assertion and specifically note, as set out in *McDougall*, "...the only practical way in which to reach a factual conclusion in a civil case is to decide whether it is more likely than not that the event occurred."

RELEVANT EVIDENCE

The majority of facts in this case are not in dispute. The College called four witnesses while Dr. Ali testified on his own behalf. The College's witnesses were June Schultz, Director of Medical Services Branch, Saskatchewan Health; Dr. Loewen, who was on the Preliminary Inquiry Committee ("PIC"); Dr. Emokpare who worked with Dr. Ali during the time period in question and Peggy Lynn Moody (formerly Daniel), Dr. Ali's support staff during the time period in question.

Dr. Ali and Dr. Emokpare were acquaintances since 2003. In 2008, Dr. Emokpare was a resident in Vancouver. He agreed to fly to Regina and on occasion work at Dr. Ali's clinic. At all material times, Dr. Ali's clinic carried on business under the corporate name Dr. Amjad Ali Medical Prof. Corp (hereinafter "the Corporation" and/or "the Clinic"). Dr. Ali is the sole shareholder and director of the Corporation.

Unfortunately, the Doctors did not write down what their agreement was in regard to what percentage of his billings Dr. Emokpare would pay towards overhead at the Clinic (hereinafter "the Deal"). The parties did not write down whether the Corporation would reimburse Dr. Emokpare for any of his travel expenses or accommodation costs. In addition, the Deal between the Corporation and Dr. Emokpare changed over time. Ultimately, Dr. Emokpare paid 25% of his billings towards Clinic overhead.

Dr. Emokpare testified he was helping Dr. Ali out by travelling from Vancouver to work at his clinic. Dr. Ali testified he was assisting Dr. Emokpare make some money as a resident.

Dr. Emokpare executed a Direct Deposit Payment Request Form dated March 17, 2008 with Medical Services Branch ("MSB") Saskatchewan Health (The "Initial MSB Form"). Attached to the Initial MSB Form was a void cheque from Dr. Emokpare's bank account.

The result of the Initial MSB Form was that Dr. Emokpare was paid directly by MSB for medical services he performed while at the Clinic. Dr. Emokpare would then pay the Corporation for his share of overhead.

Other Doctors who worked at the Clinic provided documentation to MSB authorizing payment for medical services provided to be paid to the Clinic. The Corporation then paid these doctors their share of income after the agreed overhead percentage cost was deducted.

Based on Dr. Ali's numbers, as supported by the Clinic's Ledger entries, (hereinafter "the Clinic Ledger") Dr. Emokpare was not paying his share of overhead to the Corporation and as at April 21, 2008, was approximately \$3,000 in arrears. Dr. Ali's testimony fluctuated on the point of Dr. Emokpare agreeing to execute the necessary documents with MSB so that monies for medical services performed by Dr. Emokpare while at the Clinic would initially flow to the Corporation. The Corporation would then release these monies to Dr. Emokpare, less his 25% Clinic overhead costs.

On approximately April 24, 2008, either the Corporation or Dr. Ali loaned or advanced Dr. Emokpare the sum of \$4,000.00 ("the \$4,000.00 Advance"). Dr. Ali testified Dr. Emokpare was always short of money and that he loaned the money out of friendship. The Clinic Ledger prepared by Ms. Moody states: "May 1 Dr. Emokpare borrowed \$4,000.00 from Dr. Ali." Dr. Emokpare testified he agreed to repay the \$4,000.00 Advance within two weeks but did not.

On May 6, 2008 a second Direct Deposit Payment Request Form dated May 6, 2008 allegedly signed by Dr. Emokpare was faxed from the Clinic to MSB (The "Second MSB Form"). Attached to the Second MSB Form was a void cheque from the Corporation.

The result of the Second MSB Form was that Dr. Emokpare was no longer directly paid for medical services he performed at the Clinic by MSB. Rather, the Corporation was now paid for these services by MSB. It took a period of time for the Second MSB Form to be implemented. The writing and stamped MSB additions to the Second MSB Form indicate the changes were implemented some time after May 23, 2008.

Dr. Emokpare received two MSB payments in May 2008. The first payment issued on May 12th totaled \$12,901.73, while the second payment on May 26 totaled \$306.82. From these May MSB payments, which totaled \$13,208.55, Dr. Emokpare did not pay any money towards his 25% Clinic overhead or the \$4,000 Advance.

On June 9, 2008, MSB, acting on the Second MSB Form, deposited the sum of \$4,582.40 into the Corporation's bank account ("the Missing MSB Payment").

Dr. Emokpare testified it usually takes approximately two weeks for him to receive payment from MSB for services rendered. He explained his expected MSB payment was late. He approached Ms. Moody about the Missing MSB Payment and was advised to talk to Dr. Ali about it.

The discussion that occurred between Dr. Emokpare and Dr. Ali in regard to the Missing MSB Payment can only be classified as a confrontation ("the Confrontation"). Dr. Emokpare testified during the Confrontation he used words like "are you kidding me" and that he made it clear to Dr. Ali he did not authorize any MSB payment to the Corporation and that he told Dr. Ali his signature must have been forged. Dr. Emokpare testified Dr. Ali indicated to him he was keeping the Missing MSB Payment and that Dr. Emokpare owed him money. Dr. Emokpare

testified the Confrontation ended when he picked up the stethoscope and left. He did not work at the Clinic again.

Dr. Ali's testimony was that during the Confrontation, Dr. Emokpare was angry, used profanities and threatened him with violence. Dr. Ali did not agree Dr. Emokpare accused him of forgery but suggested Dr. Emokpare was angry because he wanted his money and that he was always angry about money. Dr. Ali advised Dr. Emokpare both that he would hold the Missing MSB Payment until they had agreed to a payment plan and that if Dr. Emokpare paid him, he would return the Missing MSB Payment. Dr. Ali testified he was just trying to collect his money from Dr. Emokpare.

On June 19, 2008, Dr. Emokpare attended at MSB's offices. He became aware of the Second MSB Form that directed payment for his medical services to the Corporation. He advised MSB the Second MSB Form did not contain his valid signature. Dr. Emokpare executed a third Direct Deposit Payment Request Form dated June 19, 2008 ("The Third MSB Form"). Attached to the Third MSB Form was a void cheque for Dr. Emokpare's bank account.

The result of the Third MSB Form was that Dr. Emokpare was again paid directly by MSB for any medical services he performed. Both the Doctor Ledger History document supplied by MSB ("the MSB Ledger") and the Clinic Ledger indicate the next MSB payment for Dr. Emokpare's medical services was paid on June 23, 2008 in the amount of \$10,307.53. The Clinic Ledger indicates Dr. Emokpare did not make a payment towards his Clinic overhead.

The MSB Ledger reveals payments of less than \$2500 for the remainder of 2008 from both the Clinic and other clinics in regard Dr. Emokpare's medical services. The MSB Ledger reveals Dr. Emokpare was paid by MSB, for his work at the Clinic, a total of \$74,653.95 in 2008 (Including the Missing MSB Payment).

By attending at MSB's offices, Dr. Emokpare became aware MSB had not made an internal mistake in paying out the Missing MSB Payment to the Corporation.

Dr. Emokpare testified he did not sign the Second MSB Form. Ms. Moody confirmed this fact when she testified she altered the First MSB Form, utilizing white out, attached Dr. Ali's Corporation's cheque, and faxed it to MSB (The "Altered MSB Form"). In effect, the Altered MSB Form and the Second MSB Form are the same document, other than for internal additions made by MSB.

It is at this point where there is significant conflict as to who directed the creation of the Altered MSB Form/Second MSB Form.

Dr. Ali testified Dr. Emokpare owed him over \$14,000 and had agreed to sign new MSB Forms. However, Dr. Ali also testified Dr. Emokpare would not sign the new MSB Forms. Dr. Ali agreed he would often work at the same time as Dr. Emokpare but could not get him to sign the new MSB Forms.

Dr. Ali testified he instructed Ms. Moody to have Dr. Emokpare sign the appropriate documents, being the new MSB Forms, attach a void Corporation cheque, and send the documents to MSB.

Dr. Ali agreed he provided Ms. Moody with his Corporation's void cheque to be submitted to MSB so that monies for Dr. Emokpare's medical services would be initially paid to the Corporation. Dr. Ali testified Ms. Moody advised him the forms had been signed and sent to MSB.

Dr. Ali's testimony was that he did not participate in the completion of the Second MSB Form and that Ms. Moody completed the form on her own and that as far as he knew, Dr. Emokpare signed the Second MSB Form.

Dr. Ali testified he held on to the Missing MSB Payment because he became aware Dr. Emokpare would be going to work at another clinic so he needed some type of repayment plan with Dr. Emokpare.

During cross-examination, Dr. Ali maintained his position he thought Ms. Moody did everything correctly and legally in regard to the Second MSB Form and that Dr. Emokpare had agreed to sign the Second MSB Form. He explained he relied upon Ms. Moody to get things done and that he didn't question what she did. Dr. Ali would not agree the Altered MSB Form had been altered.

Ms. Moody testified that prior to starting her employment at the Clinic she had been employed at a call center, as a waitress and as a bartender. Initially, she was responsible for booking patients at the Clinic and answering phones. These duties expanded to financial/bookkeeping matters once the office manager left her employment at the Clinic. Ms. Moody had no bookkeeping experience when she assumed the expanded Clinic duties.

Ms. Moody testified it was her understanding Dr. Emokpare owed the Corporation/ Dr. Ali money and that Dr. Ali was pressuring her to obtain payment from Dr. Emokpare. Dr. Emokpare was not paying the monies allegedly owing to Dr. Ali. Ms. Moody did not have any first hand information or knowledge in regard to the Deal. The Clinic Ledger, which Ms. Moody maintained, listed Dr. Emokpare's MSB submission totals together with his 25% overhead costs. These numbers indicated Dr. Emokpare owed the Corporation approximately \$3,000 as at April 21, 2008. Dr. Emokpare accepted Ms. Moody's numbers as being correct, subject to his claim for various expenses, including his travel expenses, which according to Dr. Emokpare, resulted in the Corporation, at the end of the day, owing him approximately \$1,000.00.

Ms. Moody testified it never crossed her mind to change the Second MSB Form and take Dr. Emokpare's money. Ms. Moody testified she was acting on Dr. Ali's instructions and that from his actions, she did not think he thought he was doing anything wrong.

Ms. Moody testified after she altered the First MSB Form, she attached the Corporation's cheque and faxed the documents to MSB. When asked why she did this, she answered she did it at the direction of Dr. Ali because "He signed my cheques. It was my job to do what he had asked me to do."

During cross-examination, Ms. Moody testified she was surmising what happened with Dr. Ali. She also answered "No" to the following question: "And Dr. Ali never told you to actually

change any information on the form itself, like the date, white-out the date, that sort of thing, right?”

Shortly after this answer, during cross-examination, Ms. Moody agreed Dr. Ali had been continually calling her about the money Dr. Emokpare owed the Clinic. It was suggested to her that she altered the Altered MSB Form on her own so that she would no longer be hassled by Dr. Ali. Ms. Moody denied this and stated it was not her idea to take Dr. Emokpare’s money and that she would not have suggested, “we change the form and have the money rerouted”.

These two statements led the Committee to ask Ms. Moody, as a point of clarification, what Dr. Ali’s role was in the Altered MSB Form. Ms. Moody confirmed her answer that it was not her idea to change the MSB Form. She then agreed to the Committee’s question that Dr. Ali instructed her to change the MSB Form.

While testifying, Ms. Moody utilized words and phrases such as “I believe”, “I don’t recall the exact words from three years ago” and “I don’t remember Dr. Ali’s exact words”.

Ms. Moody testified Dr. Emokpare was unaware of her actions in regard to the Altered MSB Form. She testified that following the Confrontation, Dr. Emokpare stated words to the effect that he was disappointed and that he would no longer work at the Clinic.

Ms. Moody testified she received a phone call from Dr. Emokpare a few days after the Confrontation and was advised both she and Dr. Ali could be charged with fraud. It was at this point in time Ms. Moody became concerned about her role in regard to the Missing MSB Payment/Altered MSB Form incident. Ms. Moody testified she quit working at the Clinic in August 2008 but remains a friend of Dr. Emokpare. Ms. Moody testified she was paid for her time to be at the Hearing and was also paid her travel expenses.

Dr. Ali testified he had a discussion with Dr. Emokpare in November 2008 and was advised Dr. Emokpare would be dealing with the College of Physicians and Surgeons (“the College”) in regard to the Missing MSB Payment.

Dr. Ali filed a complaint with the College in February 2009 in regard to Dr. Emokpare’s conduct and was informed the College does not get involved in regard to debt collection issues. Dr. Ali testified he was shocked by the College’s actions in charging him in regard to his dealings with Dr. Emokpare and the Missing MSB Payment.

As set out in Charge #2, the PIC interviewed Dr. Ali on December 4, 2009. Dr. Loewen was a member of the PIC and was present at the interview. Dr. Ali’s legal counsel was also present. Dr. Ali cooperated with the PIC. Dr. Loewen testified the interview was taped and transcribed. Dr. Loewen testified that he listening to the tape from the December 4, 2009 interview and that when compared to the transcript, the transcript was accurate as to what occurred at the interview.

The transcript of the December 4, 2009 interview was entered as an Exhibit before the Committee (Exhibit C-5). Portions of the transcript/interview, which the College alleges were improper, are as follows:

“Dr. Amjad Ali:...So on the basis of that I decided, I spoke to him about it, that he would now have to sign documents so that we collect the money because we can’t continue, this is not good practice. So after some talking, he decided ‘yes he would do it’.”

Mr. Chris Mason: “Do what?”

Dr. Amjad Ali: “He was going to sign the documents and I was to collect the money. We would pay him.”

Mr. Chris Mason: “Okay”

Dr. Amjad Ali: “... So he signed the documents, we sent it off to the people....He did sign and we got the money. Subsequently,

Mr. Chris Mason: “Okay. So you’re saying your cheque went onto this and you filled out a new form, and then you got him to sign the new form.

Dr. Amjad Ali: “That’s what’s supposed...”

Mr. Chris Mason: “And then you gave that...”

Dr. Amjad Ali: “I had nothing to do with that. That was Peggy’s job, she did all that.”

Dr. Lowell Loewen: “You had mentioned earlier though that Dr. Emokpare came in and signed another form....”

Dr. Amjad Ali: “ It was in the hands of the front end. They’re the ones who were dealing with this matter. I have nothing to do with this.”

ANALYSIS

CHARGE #1

As set out earlier herein, the College must prove each Charge on a balance of probabilities standard.

As a starting point, during his oral argument, Counsel for Dr. Ali accepted the fact the First MSB Form had been altered. The evidence supported this conclusion. Namely, it was the evidence of Ms. Moody she altered the First MSB Form resulting in a payment of money from MSB to the Corporation rather than to Dr. Emokpare. Ms. Moody has no reason to lie when making an admission such as this, as arguably, she is admitting to the commission of a Criminal Code offence. In addition, we accept the evidence of Dr. Emokpare that he did not sign the Second MSB Form. His actions, most notably during the Confrontation, support the proposition he did not sign the Second MSB Form and that he was angry during the Confrontation given this fact.

The fundamental issue to be decided in regard to Charge #1 is whether or not Dr. Ali instructed Ms. Moody to alter the First MSB Form and subsequently provide the Altered MSB Form to MSB.

Counsel for the College suggested in arriving at a determination on the Charges, the Committee must assess the credibility of Ms. Moody, Dr. Emokpare and Dr. Ali. We agree.

Counsel for the College brought to the Committee's attention the recent Saskatchewan Court of Appeal decision *Shamsuzzaman v. College of Physicians and Surgeons of Saskatchewan*, [2011] S.J. No. 213. In *Shamsuzzaman*, the Court of Appeal set aside a Committee's decision on the basis the Committee "made no explicit finding regarding Dr. Shamsuzzaman's credibility. As such, this Committee must ensure it makes clear findings of fact and credibility in regard to the evidence before it.

Counsel for the College submitted Ms. Moody's evidence should be accepted over Dr. Ali's, as she had no reason or personal motive to not be truthful when testifying. Counsel argued it made no sense for Ms. Moody to alter the First MSB Form, without Dr. Ali's knowledge, where no benefit flowed to her and where she would anger her friend Dr. Emokpare. In addition, Counsel for the College argued Dr. Ali's actions during the Confrontation did not support the conclusion Dr. Ali had no knowledge of the Altered MSB Form.

Counsel for Dr. Ali urged the Committee to accept Dr. Ali's evidence that he did not instruct Ms. Moody to do anything wrong or improper in regard to the Altered MSB Form/Missing MSB Payment incident. In the alternative, Counsel for Dr. Ali suggested Dr. Ali lacked the necessary intent to support a charge of unprofessional conduct. Counsel relied on the fact Dr. Ali initiated contact with the College in regard to his dispute with Dr. Emokpare to support this proposition and on Ms. Moody's testimony that it was her belief Dr. Ali did not think he was doing anything wrong in regard to the Altered MSB Form/Missing MSB Payment incident.

MS. MOODY'S EVIDENCE

Ms. Moody's evidence was that she altered the Altered MSB Form and faxed it to MSB along with the Corporation's cheque. As stated, this is a significant admission for Ms. Moody to make. We accept Ms. Moody did not gain from the Altered MSB Form. We accept from Ms. Moody's evidence she was inexperienced as a bookkeeper and inexperienced in the medical field.

The Committee spent a great deal of time assessing Ms. Moody's testimony identifying Dr. Ali's involvement in regard to the Altered MSB Form and in faxing the Altered MSB Form to MSB. We say this based on Ms. Moody's evidence on this point.

Ms. Moody's evidence in chief was that she altered the Altered MSB Form and submitted the Altered MSB Form to MSB at the direction of Dr. Ali. During questioning by both counsel for the College and when asked by the Committee, Ms. Moody responded that Dr. Ali directed her in this endeavor. The Committee's question arose as a result of some answers Ms. Moody provided during cross-examination.

During Ms. Moody's cross-examination, she answered a question that Dr. Ali did not direct her to change the Altered MSB Form. However, later during her cross-examination, she said it was not her idea to change the Altered MSB Form. In addition, during her testimony, she used such as "I believe" and "I don't recall Dr. Ali's exact words".

We are unsure if Ms. Moody didn't understand the question put to her by counsel for Dr. Ali, or if she was just answering one part of the question, say for example the "white out" element of the question. That being said, later during her cross-examination Ms. Moody confirmed it was not her idea to change the MSB Form and further, when asked by the Committee, she confirmed she was instructed to change the MSB Form by Dr. Ali. We are satisfied Ms. Moody's evidence is that she was instructed by Dr. Ali to change the Altered MSB Form and submit it to MSB.

We observed Ms. Moody to be nervous in providing testimony to the Committee. We attribute Ms. Moody level of discomfort to her role in altering the Altered MSB Form. She agreed that following Dr. Emokpare's telephone call two days after the Confrontation, she became aware of the seriousness of the Altered MSB Form situation. It was evident Ms. Moody was aware she had made a serious error in judgment in regard to the Altered MSB Form. Ms. Moody's level of discomfort over her wrongful actions did not take away from her credibility or believability.

We also found Dr. Emokpare's testimony to be supportive of Ms. Moody's. For example, when Dr. Emokpare asked Ms. Moody, prior to the Confrontation, about the Missing MSB Payment, Ms. Moody ultimately directed Dr. Emokpare to Dr. Ali, her boss. When Dr. Emokpare called Ms. Moody two days after the Confrontation, again, Ms. Moody's actions are revealing. Dr. Emokpare accused both she and Dr. Ali of forgery. She did not deny the allegations. This testimony is consistent with Ms. Moody's assertion of a joint responsibility, namely Dr. Ali and herself, in regard to the Missing MSB Payment/Altered MSB Form incident.

We also note Ms. Moody had no reason to be untruthful before the Committee. She had already testified to her wrongful role in regard to the Altered MSB Form. We accept, given Ms. Moody's limited experience as a bookkeeper and in the medical field, it would be unlikely for her to undertake a task such as forging the Altered MSB Form on her own.

DR. EMOKPARE'S TESTIMONY

Dr. Emokpare's testimony as to what occurred in regard to the Missing MSB Payment, the Confrontation and his actions subsequent to the Confrontation rang true to the Committee. Both Dr. Ali and Ms. Moody supported his testimony in certain areas.

As stated earlier, Dr. Emokpare's testimony that he did not execute the Second MSB Form was supported by the testimony of Ms. Moody who admitted her role in regard to the Altered MSB Form.

Dr. Emokpare's testimony was that he was waiting for the Missing MSB Payment. Ms. Moody's testimony confirmed this as she testified she directed Dr. Emokpare to Dr. Ali to discuss the Missing MSB Payment.

Dr. Emokpare's testimony was that he had a discussion, which we defined as a Confrontation, with Dr. Ali in regard to the Missing MSB Payment.

Dr. Emokpare was agitated in regard to the Missing MSB Payment. During the Confrontation, he used words like "you've got to be kidding". Dr. Ali's testimony confirmed Dr. Emokpare's level of anger in regard to the Missing MSB Payment. Ms. Moody's testimony also confirmed Dr. Emokpare's level of anger in that she stated Dr. Emokpare left the Clinic after the Confrontation stating he was disappointed and that he would no longer work at the Clinic.

In reality, the only significant difference in Dr. Emokpare's testimony and Dr. Ali's testimony as to what occurred during the Confrontation was that Dr. Emokpare accused Dr. Ali of wrongdoing, namely, forgery. Dr. Emokpare's testimony that he accused Dr. Ali of wrongdoing is accepted as it is supported by what occurred during the Confrontation.

The Confrontation arose as a result of the Missing MSB Payment. We accept it escalated as a result of Dr. Emokpare becoming aware the Missing MSB Payment had been received by the Corporation, and that the Corporation was keeping it. Dr. Emokpare knew the Missing MSB Payment should have been paid to him, as he had not signed any MSB documents changing the flow of MSB money from himself to the Corporation. As stated Dr. Ali's evidence confirmed Dr. Emokpare's level of anger during the Confrontation and we accept Dr. Emokpare's anger level during the Confrontation was as a result of the fact he knew he had not executed a new MSB Form and yet the Missing MSB Payment did not flow to him. As such, it was totally logical for Dr. Emokpare to accuse Dr. Ali of wrongdoing in regard to the Missing MSB Payment. As stated, we accept that this did in fact occur.

Following the Confrontation, Dr. Emokpare attended at the MSB offices. This was a logical step for Dr. Emokpare to take for a number of reasons. We say this because we accept the proposition that for the MSB money flow to change from Dr. Emokpare to the Corporation, one of three things would have had to occur.

Firstly, Dr. Emokpare could have signed a new MSB Form authorizing MSB monies to be paid to the Corporation. As stated, based on the evidence, we accept this did not occur.

Secondly, someone could have altered or forged an MSB Form, which would have had the affect of paying Dr. Emokpare's MSB monies to the Corporation. As at the time of the Confrontation, Dr. Emokpare had no knowledge Ms. Moody had altered the Second MSB Form.

Nonetheless, as stated, the forgery allegation made by Dr. Emokpare against Dr. Ali was a logical allegation to make. We say this because both Doctors knew how money flowed from MSB for medical services performed. If Dr. Emokpare did not sign a new MSB Form, it was fair to conclude one possibility was that someone forged or altered an MSB Form. Given Dr. Emokpare's allegation during the Confrontation, it is fair to conclude Dr. Emokpare believed at the time of the Confrontation, that Dr. Ali was responsible for forging his signature to an MSB Form. After all, the Corporation now had the Missing MSB Payment.

Finally, the third possibility was that MSB could have made an internal mistake in regard to the payment of Dr. Emokpare's MSB monies. By attending at the MSB offices, Dr. Emokpare

became aware MSB had not made an internal mistake. He became aware of the existence of the Altered MSB Form and he confirmed with MSB he did not sign or authorize the Altered MSB Form.

Dr. Emokpare then executed the Third MSB Form; ensuring MSB monies now flowed to him rather than the Corporation. As stated, Dr. Emokpare's actions made sense in that he found out why the Missing MSB Payment was sent to the Corporation and he took steps, by signing the Third MSB Form, to ensure the problem was remedied.

Upon finding out what had transpired in regard to the Missing MSB Payment, Dr. Emokpare put Ms. Moody on notice that he took the issue very seriously. Ms. Moody testified Dr. Emokpare called her a few days after the Confrontation and accused both her and Dr. Ali of forgery. This is again consistent with Dr. Emokpare accusing Dr. Ali of forgery during the Confrontation.

Dr. Ali confirmed Dr. Emokpare's level of unhappiness over the Missing MSB Payment as he testified Dr. Emokpare mentioned, in November 2008, approaching the College in regard to the Missing MSB Payment incident.

As stated, Dr. Emokpare's actions during and subsequent to the Confrontation made a tremendous amount of sense and were at times, supported by the testimony of Ms. Moody and Dr. Ali.

In stating this, we concede Dr. Emokpare's testimony indicated at one point he was untruthful with Dr. Ali. We say this based on the following.

Dr. Emokpare either borrowed or received the \$4,000 Advance from either Dr. Ali or the Corporation on April 24, 2008. His testimony was that he advised Dr. Ali he would repay the \$4,000 Advance within two weeks. He did not repay Dr. Ali this amount, in spite of the fact he received approximately \$13,000 from MSB on or about May 12, 2008. Dr. Emokpare did not explain why he did not pay Dr. Ali the \$4,000 Advance as he agreed he would.

However, Dr. Emokpare's untruthfulness with Dr. Ali in regard to repaying the \$4,000 Advance within two weeks did not mean the Committee disbelieved him in regard to what occurred during the Confrontation and subsequent to the Confrontation. Dr. Emokpare's testimony in regard to his actions during and subsequent to the Confrontation were supported at times by Ms. Moody's testimony, Dr. Ali's testimony and were logical actions to take and we have no hesitation in accepting his evidence on these points.

DR. ALI'S TESTIMONY

Dr. Ali testified he had no involvement in regard to the Missing MSB Payment or the Altered MSB Form. During his testimony, he would not even concede the Altered MSB Form was altered. According to Dr. Ali, Ms. Moody was responsible for ensuring Dr. Emokpare executed an MSB Form authorizing payment to the Corporation. This was in direct contrast to Ms. Moody's testimony that Dr. Ali instructed her to alter the Altered MSB Form. We will address the differences between Dr. Ali and Ms. Moody's testimony at the end of this section.

In regard to differences between Dr. Ali's testimony and Dr. Emokpare's testimony, both Doctors agreed the Confrontation occurred and their testimony was fairly consistent but for two issues. Dr. Ali's testimony was that Dr. Emokpare was extremely angry, so angry in fact he wanted to beat Dr. Ali up. The second, and perhaps more important difference was that Dr. Ali testified Dr. Emokpare did not accuse him of wrongdoing in regard to the Missing MSB Payment.

We will initially deal with analyzing Dr. Ali's testimony in regard to the Confrontation and what occurred subsequent to the Confrontation to assist us in assessing Dr. Ali's credibility.

Why was Dr. Emokpare so angry during the Confrontation? It is obvious to the Committee Dr. Emokpare was angry because he had not executed any new MSB Forms so he knew the Missing MSB Payment should have been paid to him rather than the Corporation. Dr. Ali's suggestion Dr. Emokpare was angry because he is always angry over money made no sense and we reject this testimony.

We also reject Dr. Ali's testimony Dr. Emokpare did not accuse him of forgery and wrongdoing during the Confrontation in regard to the Missing MSB Payment. In making this determination, we again rely on the fact Dr. Emokpare knew he had not signed any new MSB forms. As such, he knew the Missing MSB Payment should have been paid to him, not the Corporation. We therefore accept the following factual sequence, which is set out in more detail earlier in this decision:

- i) Dr. Emokpare inquired about the Missing MSB Payment;
- ii) Dr. Emokpare became aware the Missing MSB Payment had been paid to the Corporation;
- iii) Dr. Emokpare became aware the Corporation was keeping the Missing MSB Payment;
- iv) Dr. Emokpare knew he had not executed any MSB Forms which would direct the Missing MSB Payment to the Corporation;
- v) Dr. Emokpare accused Dr. Ali of wrongdoing, namely forgery, and aggressively expressed his anger with Dr. Ali during the Confrontation;
- vi) Dr. Emokpare was extremely angry with Dr. Ali over the MSB Payment incident and quit working at the Clinic;
- vii) Subsequent to the Confrontation, Dr. Emokpare followed up with both Ms. Moody and Dr. Ali and voiced his unhappiness over the Missing MSB Payment/Altered MSB Form incident. (The seven points hereinafter referred to as the "Factual Sequence")

Given our acceptance of the fact Dr. Emokpare accused Dr. Ali of forgery during the Confrontation, if Dr. Ali was truly unaware of the Altered MSB Form (given his assertion Ms. Moody was solely responsible), we would have expected certain actions from Dr. Ali following the Confrontation. In saying this, we note Dr. Emokpare's actions subsequent to the Confrontation. Dr. Emokpare attended at MSB's offices and found out what had happened in regard to the Missing MSB Payment and rectified the problem. He then put both Ms. Moody and Dr. Ali on notice that the matter might not be over.

Dr. Ali provided no evidence that he did anything subsequent to the Confrontation in regard to finding out what happened in regard to the Missing MSB Payment. As an employer and supervisor, we would have expected Dr. Ali to ask Ms. Moody something like “What happened, I thought you got Dr. Ali to sign the MSB Forms”. We heard no such testimony from either Dr. Ali or Ms. Moody. The only logical conclusion to make is that Dr. Ali knew about the Altered MSB Form.

Even if we had accepted Dr. Ali’s testimony that Dr. Emokpare did not accuse him of forgery during the Confrontation, which we did not, we would have required some logical explanation from Dr. Ali as to why, using his words, Dr. Emokpare was so angry with him during the Confrontation he wanted to beat him up. We would have required some logical explanation for why Dr. Emokpare quit working at the Clinic.

As stated earlier, Dr. Ali’s explanation that Dr. Emokpare wanted to beat him up because he was mad over money makes no sense. We did not believe Dr. Ali’s testimony Dr. Emokpare was going to leave the Clinic and though he didn’t say it, that the Confrontation had nothing to do with Dr. Emokpare not working at the Clinic again.

The Factual Sequence sets out why Dr. Emokpare left the Clinic, with the primary reason being he knew he had not signed any new MSB Forms to direct the Missing MSB Payment to the Corporation. The Committee accepts this was the reason why Dr. Emokpare was so angry with Dr. Ali and why he quit working at the Clinic. Ms. Moody’s testimony also supports the proposition Dr. Emokpare quit working at the Clinic because of the Missing MSB Payment. Ms. Moody’s testimony was that after the Confrontation Dr. Emokpare stated to her he was disappointed and would no longer work at the Clinic.

Counsel for the College suggested that if Dr. Ali truly did not know about the Altered MSB Form, he would have said so during the Confrontation. Counsel for the College submitted Dr. Ali would not have focused on money owing by Dr. Emokpare to Dr. Ali’s Corporation. We accept Counsel for the College’s logic, which is consistent with Dr. Ali taking no steps to contact either Ms. Moody or MSB to inquire as to what occurred in regard to the Missing MSB Payment.

Put another way, if Dr. Ali was truly unaware of the Altered MSB Form, he would have denied Dr. Emokpare’s forgery allegation, he would have attempted to find out what the problem was, who caused the problem and perhaps attempted to remedy the situation. We conclude Dr. Ali did not contact either Ms. Moody or MSB to inquire about Dr. Emokpare’s account because he knew the Altered MSB Form had been altered. Given this conclusion, we reject Dr. Ali’s evidence he did not know about the Altered MSB Form or instruct Ms. Moody in regard to the Altered MSB Form.

Prior to arriving at our conclusions in regard to the credibility of Dr. Ali’s evidence, the Committee asked Counsels’ position on Exhibit C-5, the PIC Interview Transcript. As set out earlier herein under the heading “Other Matters”, Exhibit C-5 was entered as a full exhibit. However, Section 55.2 of the *Act* limits the use of Dr. Ali’s PIC interview statement to Charge #2. Counsel for the College submitted Exhibit C-5 could only be used in regard to Charge #2, while Counsel for Dr. Ali submitted if Exhibit C-5 assisted Dr. Ali in regard to Charge #1, the Committee might be able to utilize Exhibit C-5 in regard to Charge #1.

As indicated earlier herein, we stated our belief that if Dr. Ali were truly unaware of the Altered MSB Form, he would have taken steps to inquire as to what occurred.

Prior to making this statement, we were prepared to give Dr. Ali any benefit from the fact Exhibit C-5 was entered as a full exhibit at the Hearing. In other words, we would consider if there was any information in Exhibit C-5 that would assist Dr. Ali and change our statement that Dr. Ali did not take any steps to inquire as to what occurred in regard to the Altered MSB Payment. There was nothing in Exhibit C-5 that either touches on this matter or addresses this issue so as to assist Dr. Ali.

To recap, the Committee placed great weight on what occurred during and subsequent to the Confrontation. The Committee did not accept Dr. Ali's testimony that Dr. Emokpare did not accuse him of forgery and wrongdoing during the Confrontation. The Committee did not accept Dr. Ali's testimony Dr. Emokpare was going to quit working at the Clinic in any event. The Committee accepted Dr. Emokpare was angry during the Confrontation because he knew he had not signed any MSB Forms directing the payment of the Missing MSB Payment to the Corporation. The Committee accepted Dr. Emokpare quit working at the Clinic over the Missing MSB Payment incident.

Our findings in regard to what happened in the Confrontation and subsequent to the Confrontation had a significant impact on whether we accepted Dr. Ali's evidence that he had no involvement in regard to the Altered MSB Form. For the most part, it was Dr. Ali's testimony Ms. Moody acted without his direction in altering the Altered MSB Form, though he would not concede the Altered MSB Form was actually altered.

The Factual Sequence identifies that Dr. Emokpare accused Dr. Ali of forgery in regard to the Missing MSB Payment and that he quit working at the Clinic following the Confrontation. Again, if Dr. Ali were unaware of the Altered MSB Form and Ms. Moody was acting on her own initiative, we would have expected Dr. Ali to at some point in time question Ms. Moody as to what happened. If Dr. Ali was truly not involved in the Altered MSB Form, his actions in not trying to identify what occurred in regard to the Altered MSB Form are not consistent with the conclusion he was unaware of the Altered MSB Form or that he played no role in regard to the Altered MSB Form.

We have accepted Ms. Moody's testimony that she altered the MSB Form and obtained the Missing MSB Payment for the Corporation at the direction of Dr. Ali. We have rejected Dr. Ali's testimony on this point primarily on the basis his actions during and subsequent to the Confrontation did not support the conclusion Dr. Ali was unaware of the Altered MSB Form. Dr. Ali's testimony could only make sense if Dr. Emokpare did not accuse him of forgery during the Confrontation. Once we rejected Dr. Ali's evidence that Dr. Emokpare did not accuse him of forgery during the Confrontation, Dr. Ali's testimony in regard to what transpired after the Confrontation did not make much sense.

NO INTENT ON DR. ALI'S PART

Counsel for Dr. Ali submitted if the Committee did not believe Dr. Ali's testimony that he was not involved in the Missing MSB Payment/Altered MSB Form incident, Dr. Ali did not have the intent necessary to support a finding of "unbecoming, improper, unprofessional or discreditable conduct" contrary to the *Act*.

Counsel for Dr. Ali pointed to Ms. Moody's evidence that she did not believe Dr. Ali thought he was doing anything wrong and that Dr. Ali initiated contact with the College in regard to his dealings with Dr. Emokpare.

While we agree Dr. Ali initiated contact with the College in regard to his dealings with Dr. Emokpare, we do not accept this indicates or supports the finding of no wrongdoing or no intent of wrongdoing on behalf of Dr. Ali. Rather, we find this is just another one of a series of bad decisions on the part of Dr. Ali.

From the evidence, Dr. Ali exhibited bad judgment in not putting the Deal in writing. He exhibited bad judgment in not ensuring Dr. Emokpare executed new MSB Forms prior to the \$4,000 Advance. We have found he exhibited bad judgment for his role in the Altered MSB Form. His decision to approach the College was just another bad decision made by Dr. Ali and not indicative that Dr. Ali had no intent of wrongdoing.

In response to Dr. Ali's counsel's submission that Dr. Ali had no intent of wrongdoing, counsel for the College referred to the recent Saskatchewan Court of Appeal decision *Merchant v. Law Society of Saskatchewan* [2009] S.J. No. 145. In *Merchant*, after reviewing the definition of "conduct unbecoming" as contained in *The Legal Profession Act, 1990*, the Court stated at par. 62:

"The definition in the *Act* is expansive, and conduct unbecoming may be established through intentional conduct, negligent conduct or total insensibility to the requirements of acceptable practice (as in professional incompetence). In the last two instances, where practitioners have been careless or merely incapable in some aspect, moral turpitude is not, typically speaking, a feature of the unacceptable behavior. The section provides that the conduct in question need not be disgraceful or dishonorable to constitute conduct unbecoming. It is abundantly clear that moral turpitude is no longer an active requirement."

In our case, s. 46(o) of the *Act* does not restrict the words "unbecoming, improper, unprofessional or discreditable conduct". The conduct in question can be classified as "intentional conduct, negligent conduct or total insensibility to the requirements of acceptable practice".

Dr. Ali's conduct in instruction Ms. Moody to alter the Altered MSB Form and fax the Altered MSB Form to MSB, resulting in the Missing MSB Payment being paid to the Corporation clearly amounts to "intentional or negligent conduct". We also find this intentional or negligent conduct amounts to "unbecoming, improper, unprofessional and discreditable" conduct. All the Committee members, without hesitation, found Dr. Ali's actions to be extremely unbecoming,

improper, unprofessional and discreditable, pursuant to s. 46(o) of the *Act*. We therefore find Dr. Ali guilty of Charge #1.

CHARGE #2

ANALYSIS

The Committee's determination Dr. Ali is guilty of Charge #1 has a direct impact in regard to our Charge #2 finding. In arriving at our decision on Charge #1, not only did we accept Dr. Emokpare's and Ms. Moody's evidence, we rejected Dr. Ali's testimony he was not involved in the Altered MSB Form/Missing MSB Payment incident.

Dr. Ali provided the same evidence to the PIC that he did to this Committee, namely that he had nothing to do with the Altered MSB Form and that Ms. Moody was responsible for obtaining Dr. Emokpare's signature to the MSB Form and that Dr. Emokpare signed the Altered MSB Form.

Without repeating ourselves in great detail, we arrived at our conclusions on Charge #1 in large part based on what occurred during and subsequent to the Confrontation. We accepted the Factual Sequence. This meant we accepted Dr. Emokpare was angry because he knew he had not executed any MSB Forms to cause the Missing MSB Payment to be paid to the Corporation. We accepted Dr. Emokpare accused Dr. Ali of wrongdoing, namely forgery, during the Confrontation.

As a result of our acceptance of the Factual Sequence, Ms. Moody's evidence and Dr. Emokpare's evidence, as well as our rejection of Dr. Ali's evidence, we must conclude Dr. Ali knowingly gave false information to the PIC. This false information is that he had nothing to do with the Altered MSB Form and that Ms. Moody was solely responsible for the Altered MSB Form/Missing MSB Payment.

Charge #2 is that Dr. Ali is guilty of unbecoming, improper, unprofessional or discreditable conduct "for knowingly giving false information" to the PIC contrary to s. 46(o) and/or s. 55.2 of the *Act*.

Counsel for the College submitted, "Providing false information to one's regulatory body is clearly unprofessional." We agree.

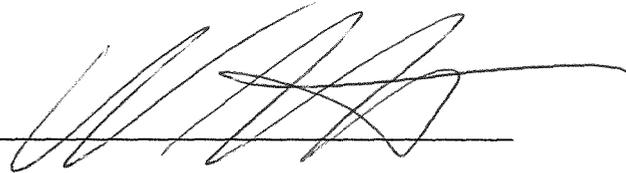
Earlier in this decision we rejected Counsel for Dr. Ali's submission Dr. Ali had no intent of wrongdoing. We set out how s. 46(o) of the *Act* does not place limitations on "unbecoming, improper, unprofessional and discreditable conduct".

It is therefore our conclusion and finding Dr. Ali provided false information to the PIC, contrary to s. 46(o) and s. 55.2 of the *Act* and that such conduct amounts to "unbecoming, improper, unprofessional and discreditable conduct". We find Dr. Ali guilty of Charge #2.

SENTENCING RECOMMENDATIONS

The Committee makes no sentencing recommendations in regard to Charge #1 or #2.

DATED this 6th day of November, 2011



Walter Matkowski, Deputy Chair

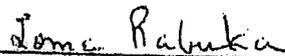


Dr. Joan Baldwin



for:

Dr. George Gilmour



Dr. Lorne Rabuka