

## EXTRACT OF THE COUNCIL MINUTES FOR APRIL 16, 2011

Mr. Salte summarized the facts. Dr. Tshabalala has returned to South Africa, and he said he would send an explanation but did not. Dr. Tshabalala was charged on two counts of unprofessional conduct, he chose not to return for the hearing, he also did not admit to the charges. There are two aspects to this case:

In spite of the fact that three-year-commitments have since been abolished by the Council, Dr. Tshabalala failed to meet the three year commitment he had agreed to. That was the first of charges of the charges dealt with at the hearing. Dr. Tshabalala was advised on more than one occasion of the requirement, and what he needed to do to be released from that requirement.

With respect to the second charge, there was the expectation that Dr. Tshabalala would be returning to provide for care for his patients. He ostensibly left for vacation in Cuba and never returned. Clinic staff were concerned. Was he returning? Was he okay? He didn't let them know. Finally the clinic manager was able to speak to Dr. Tshabalala's wife and found out Dr. Tshabalala wasn't coming back. The clinic was able to back fill the missed appointments and follow up with lab results. However, Dr. Tshabalala's behavior harmed the standing of the medical profession in that community: Now there is concern in the community that doctors will not fulfill their commitments. Council has the read the conclusions of the discipline hearing committee. Council must deal with the facts as found by the discipline hearing committee.

Dr. Tshabalala did provide a brief note from his physician in South Africa saying that he should not return to Canada. Mr. Salte expressed his position that Dr. Tshabalala should have made arrangements for ongoing care of his patients despite his illness. Depression is not an excuse for not meeting professional responsibilities.

Mr. Salte suggested that Council impose a fine. Dr. Tshabalala has no licence to suspend or revoke. There is no other way of imposing conditions other than monetary. The maximum fine is \$15,000.00 for each imposition.

### MOTIONS

Pursuant to section 54(i) of **The Medical Profession Act, 1981** the Council directs Dr. Tshabalala to pay the costs of and incidental to the investigation and hearing in the amount of \$5,094.87.

A reprimand be placed on Dr. Tshabalala's file

The fine for the following guilty verdict be \$2,500.00:

1. You Dr. Augustine Tshabalala 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 21(4)(k) of the

bylaws of the College of Physicians and Surgeons

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

a) In an application form dated September 26, 2007, you agreed to the following terms:

“I am aware of and agree to the conditions of registration for a provisional licence, which include the requirement that I must practice in the community for which I am in for three years from the date of registration on a provisional licence, and can only move before that time with the permission of the Council”

b) You did not complete that commitment.

The fine for the following guilty verdict be \$2,500.00:

You Dr. Augustine Tshabalala 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 paragraph 19 of the Code of Ethics, bylaw 44(6), and/or bylaw 51(2)(l) of the bylaws of the College of Physicians and Surgeons.

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

(a) You left your practice in Leader in or about the month of February, 2009;

(b) You failed to make appropriate arrangements for follow up care for your patients;

(c) You failed to provide information in a timely fashion to your medical practice and/or the Cypress Health Region about your continued practice in Leader.