

**IN THE MATTER OF *THE MEDICAL PROFESSION ACT, 1981, S.S. 1980-81, c. M-10.1*
AND IN THE MATTER OF DR. AMJAD ALI OF REGINA, SASKATCHEWAN**

Mr. David Thera, Q.C. appearing for Dr. Amjad Ali

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

REASONS FOR DECISION

1. OVERVIEW

[1] Dr. Amjad Ali is a family physician who practices at the Northgate Medi-Clinic in Regina, Saskatchewan. Following a formal complaint to the College of Physicians and Surgeon of Saskatchewan (the “College”) in February 2011, and a subsequent investigation into those allegations by a professional investigation committee, a charge of unprofessional conduct was laid against Dr. Ali. This charge read as follows:

You **Dr. Amjad Ali** 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)(vi) of the bylaws of the College of Physicians and Surgeons.

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

- (a) On or about the 20th day of January, 2010 [J.T.] attended at your clinic;
- (b) You prepared a record in relation to [J.T.];
- (c) The record contained an entry “O/E Temp 37.5”;
- (d) The entry “O/E Temp 37.5” was not an accurate reflection of the examination and treatment that you provided;
- (e) The record contained an entry “This patient’s mother is very abusive and used racist remarks to me”;
- (f) The entry “This patient’s mother is very abusive and used racist remarks to me” was not truthful;
- (g) The record contained an entry “She called me a money hungry coloured, who don’t deserve to be in this country”;
- (h) The entry “She called me a money hungry coloured, who don’t deserve to be in this country” was not truthful.

[2] On March 12, 2012, a Discipline Hearing Committee (the “Committee”) comprised of Mr. Daniel Shapiro, Q.C., C.Arb., as Chair, Dr. Lalita Malhotra, Dr. Keith Ogle and Dr. James Stempien released its Decision finding Dr. Ali guilty of unprofessional conduct, see *Re Ali*, March 12, 2012. The resolution of this charge turned ultimately on credibility. Who was telling the truth – the complainant, Ms. T., the mother of the patient in question; J.T., the young patient or Dr. Ali? After hearing all of the testimony, the Committee unequivocally accepted the evidence of the complainant and her daughter. In contrast, the Committee characterized Dr. Ali’s evidence to be “highly problematic” (para. 53); “inconsistent and frankly, neither coherent nor credible” (para. 56). They concluded that to “the extent there is a discrepancy between the testimony of Ms. T and J.T. on the one hand and Dr. Ali on the other (in relation to both temperature and conduct), we prefer that of Ms. T. and J.T.” (para. 58).

[3] Specifically, the Committee ruled that Dr. Ali had acted in a manner which constituted unprofessional conduct as defined in subsections 46(o) and 46(p) of *The Medical Profession Act, 1981*, S.S. 1980-81, c. M-10.1, and bylaw 8.1(b)(vi) of the College’s *Bylaws*.

[4] This matter came before Council on March 30, 2012 for sentencing. At that time Council heard oral submissions from Mr. Salte on behalf of the College, and from Mr. Thera on behalf of Dr. Ali. Both counsel also filed extensive written materials prior to the hearing.

[5] Their positions respecting the appropriate penalty in these circumstances diverged significantly. Mr. Salte asserted that Dr. Ali came perilously close to being an “ungovernable” member of the medical profession. He submitted that in light of Dr. Ali’s prior discipline history, in particular a sentence of six (6) months imposed in November 2011 for unprofessional conduct also in relation to falsifying medical records, Council should suspend Dr. Ali’s ability to practice medicine for one (1) year. In addition, Mr. Salte urged Council to levy a significant fine against him.

[6] For his part, Mr. Thera viewed Dr. Ali’s misconduct more benignly. He maintained that because it in no way affected the young patient’s physical well-being, Dr. Ali’s actions fell at the low end of the spectrum of unprofessional conduct. He submitted that a proportionate sentence

would be in the range of a reprimand to a suspension from practice of three (3) months. He suggested further that this suspension should be removed altogether if Dr. Ali attends at his own expense and successfully completes a professional ethics course, a sentencing practice followed not infrequently by the College of Physicians and Surgeons of Ontario. Finally, Mr. Thera argued that this professional misconduct did not merit the imposition of a fine.

[7] After considerable deliberation Council imposed the following sentence with reasons to follow:

- That Dr. Ali be suspended the practice of medicine for a period of six (6) months;
- That Dr. Ali be fined in the amount of \$10,000, and
- That Dr. Ali pay to the College costs of these proceedings in the amount of \$29, 092.27¹.

[8] These are the promised reasons.

2 FACTUAL BACKGROUND

[9] The events which spawned this matter occurred over a very short period of time late in the day on January 20, 2010. Ms. T., the complainant, attended the Northgate Medi-Clinic with her then eight year old daughter, J.T., who had experienced difficulty urinating for a few days. This clinic is a walk-in medical facility and upon their arrival, Ms. T. and J.T. had to wait for a lengthy period of time before they were ushered into an examination room. Dr. Ali came in, spoke briefly with Ms. T. and without examining J.T. wrote a prescription and handed it to Ms. T. The Committee accepted that the medical “consultation” in question lasted no more than three minutes, *i.e.* from 6:15 p.m. to 6:18 p.m.: *Re Ali, supra*, at para. 14.

[10] A verbal altercation ensued between Ms. T. and Dr. Ali. Tempers flared, Dr. Ali exited the room, and they were soon shouting at each other. Dr. Ali alleged that Ms. T. hurled racial epithets at him. Ms. T. admitted raising her voice but denied making racially motivated comments about Dr. Ali. These unfortunate circumstances necessitated Ms. T. having to attend at another medical clinic later that day. There another doctor diagnosed J.T. as suffering from a urinary tract infection.

¹ A complete break-down of these costs can be found at Appendix “A” to these reasons.

[11] Ms. T. filed a complaint with the College in February 2012. It was only after she received a copy of Dr. Ali's written response to her complaint that this matter became complicated. In his letter Dr. Ali asserted that he had taken J.T.'s temperature prior to writing the prescription and at the conclusion of the consultation Ms. T. had made angry and racist remarks to him. Subsequently, Ms. T. obtained her daughter's medical records and found notations to this effect written on the margins of this document. Only a thorough analysis of the original document by a forensic handwriting expert revealed those marginal notes were in a different ink and made at a different time than the initial entries on the record, entries which made no mention of racist statements by Ms. T.

[12] After hearing all of the testimony the Committee determined that contrary to the hand-written entries on J.T.'s medical record, Dr. Ali had neither taken her temperature nor suffered racist insults from Ms. T. Simply put, the Committee determined that Dr. Ali had falsified the record. The difficulty of this matter is compounded by the fact that prior to Dr. Ali being found guilty by the Committee on this count, he had been convicted and sentenced by Council a brief few months earlier on a charge of falsifying medical records stemming for an entirely separate incident.

3. THE APPROPRIATE PENALTY

3.1 General Considerations

[13] 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 (ss. 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 (ss. 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 (ss. 54(1)(g)), and order the member to pay the costs of the investigation and hearing (ss. 54(1)(i)).

[14] Council has considerable latitude to craft a penalty tailored to the particular circumstances of the case before it. When fulfilling this task, however, the over-arching consideration is always the public interest. Council's principal function 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 Medical Profession Act, 1981* explicitly directs Council to give protection of the public prominence 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.

3.2 Relevant Factors When Sentencing a Physician for Unprofessional Conduct

[15] 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 by conducting an unnecessary breast examination. As a sentence, Council revoked Dr. Camgoz's medical licence for five years and fined him \$10,000. On appeal, the Court of Queen's Bench sustained both the finding of unprofessional conduct and the sentence.

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

- 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.)

[17] It should be noted that in *Camgoz*, Grotsky J. considers protection of the public as identified in section 69.1 of *The Medical Profession Act, 1981* as only 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 all of its decisions, including crafting an appropriate sentence.

[18] Justice Grotsky underscored that these 11 factors were neither exhaustive nor enumerated in order of significance. He also acknowledged that because a particular sentence should be tailored to the specific factual circumstances before Council, the relevance of these factors will vary in application. See: *Camgoz, supra*, at para. 50.

[19] Council regularly employs the *Camgoz* factors in its sentencing decisions, including recently *Re Chambers* (September 17, 2009), *Re Saha* (June 25, 2010) and *Re Ali* (November 25, 2011). Council now explains how applying the *Camgoz* factors to Dr. Ali's misconduct results in the imposition of the sentence set out in paragraph 7 above.

3.3 Application of *Camgoz* Factors to Dr. Ali

3.3.1 The Nature and Gravity of the Proven Allegations

[20] The first *Camgoz* factor asks Council to assess the nature and gravity of the conduct found to constitute professional misconduct. It is appropriate that this is the initial consideration as the nature of the misconduct serves as the prism through which the other factors listed in *Camgoz* are analyzed and applied.

[21] Falsifying a patient's medical record for any reason deserves Council's severe condemnation as it is a dangerous and potentially lethal practice. Continuity of medical care depends upon accurate medical recordkeeping and a fictional entry upon a patient's medical chart not only breaks the patient's trust but can also endanger their physical well-being. It is therefore hardly a surprise that most provincial Colleges of Physicians and Surgeons treat falsifying a medical report as a serious breach of professional ethics incompatible with competent medical practice. See for example: *Re Hanson* (CPSO, August 27, 2001).

[22] *Re Hanson* presents circumstances eerily similar to those in this case. Dr. Hanson made entries on a patient's chart about his medical condition which were inaccurate and which an expert forensic document examiner determined were "in different ink" from, and "not contemporaneous" with, entries made to the original record. These entries were made to avoid liability after he learned the patient had died. (Only after the expert's conclusions were received did Dr. Hanson admit his guilt.) The Discipline Committee ruled as follows:

Public confidence is shaken when a physician falsifies a record. It is conduct that cannot be tolerated. Also, falsification of patients' records casts shadows on the integrity of the profession.

To similar effect, see also: *Re Metcalfe* (CPSO, June 18, 2007); *Re Hershfield* (CPSMantioba), March 25, 2004).

[23] To make matters worse, unlike Dr. Hanson, Dr. Ali continued to deny any wrongdoing even after the forensic document expert determined the records had been falsified. His persistence in proclaiming his innocence forced the College to proceed with its prosecution which not surprisingly ended in a guilty verdict.

3.3.2 The Age of the Offending Physician

[24] In this case, the age of the offending physician is not a consideration. Dr. Ali is neither a young nor inexperienced physician. The grievous and deliberate nature of the misconduct at issue here can in no way be excused because of immaturity or professional inexperience.

3.3.3 The Age of the Offended Patient

[25] In these circumstances, the age of the offended patient is a significant consideration. At the time this incident occurred, J.T. was eight years of age, a mere child who visited the doctor in an attempt to alleviate her physical discomfort. The Committee accepted her evidence that her experience in Dr. Ali's office distressed her greatly. "*I felt like I was going to puke*", she testified, see: *Re Ali, supra*, at para. 21 (italics in original).

[26] Council is troubled by the fact that in these circumstances Dr. Ali treated J.T. as cavalierly as he did. To make matters worse, his behavior to Ms. T. clearly had a significant and detrimental effect upon J.T. Typically, children are wary about visiting a doctor's office and it is critical that physicians try as best they can to make a young and vulnerable patient feel comfortable. Dr. Ali utterly failed to do so.

[27] These early experiences create the foundation upon which any physician/patient relationship J.T. chooses to develop will be built. It is too early to ascertain how Dr. Ali's insensitivity and unprofessional actions towards her may affect how J.T. interacts with medical professionals in future; however it is a consideration which should not be discounted. Council therefore weighed this factor when crafting its sentence.

3.3.4 Frequency of the Misconduct

[28] The fourth *Camgoz* factor invites Council to consider how often falsification of medical records is a professional misconduct issue both within Saskatchewan as well as in other provinces. To begin, this case represents the second time Dr. Ali has been found guilty of

unprofessional conduct for falsifying a patient's medical record. At Council's meeting in November 2011, he was sentenced for similar misconduct to a six month suspension with a three month reprieve upon completion of an accredited professional ethics course. It concerns Council that it has twice in a very short span of time had to punish this member for the same unprofessional conduct.

[29] Apart from Dr. Ali, Council has had occasion to sentence errant physicians for falsifying medical records on at least two other occasions – *Re Chambers* (2009) and *Re Hardy* (1995). To be sure the factual circumstances of these cases are distinguishable from Dr. Ali's. Nevertheless, at bottom the fraudulent nature of the misconduct in question is the same. The fact that this kind of offence occurs infrequently is a credit to the overall professional integrity of the College's members. However, it does not detract from the fact that when it does occur the imposition of a severe penalty is warranted.

[30] Examples of cases where physicians have falsified medical records are found in other provinces. Both Mr. Salte and Mr. Thera referred to cases emanating for other Canadian medical professional regulatory bodies in their submissions to Council. It is apparent that this is an issue across the country.

3.3.5 Presence or Absence of Mitigating Circumstances

[31] Frankly, Council was unable to discern any mitigating circumstances in this case. Nothing could explain Dr. Ali's inappropriate conduct and as already noted Dr. Ali never admitted his wrong-doing. Even at his sentencing hearing he attacked collaterally the Committee's verdict, insisting that his interactions with Ms. T. transpired exactly as he recounted them. In his statement to Council at that time, Dr. Ali also raised the specter of systemic racism within the Saskatchewan health system, an argument which had not been advanced before the Committee and for which no objective evidence was presented.

3.3.6 Specific Deterrence and the Physician's Prior Record

[32] The litany of factors listed in *Camgoz* enumerates “specific deterrence” and “the physician’s prior [discipline] record” as discrete considerations. However, in cases like Dr. Ali’s where a physician possesses a disciplinary history for similar unprofessional conduct, these two factors are more appropriately weighed together as prior sentences should inform the sentence crafted to fulfill the objective of specific deterrence in relation to this particular conviction.

[33] Dr. Ali has a prior discipline history. It is not lengthy but it is significant. It includes:

- **2004:** Convictions on two counts of sexually improper behavior with a patient in 2003 for which he was sentenced to a suspension from medical practice for a period of three months.
- **2011:** Convictions on one count for defrauding the MSB and one count of lying to a preliminary inquiry committee for which he was sentenced to a suspension from medical practice for a period of six months and a fine of \$10,000.00. Council directed further that three months of the six month suspension would be forgiven should Dr. Ali complete a professional ethics course approved by the Registrar’s Office.

[34] Council concluded that the 2011 convictions were the most pertinent. In fairly short order – a time span of less than six months, to be exact – Dr. Ali has been convicted on two counts of unprofessional conduct relating to the falsification of documents relating to the practice of medicine. This is an aggravating factor for purposes of sentencing. As a consequence, an increased penalty is warranted. Council determined that a six month suspension from medical practice was appropriate. In view of its prior decision, Council rejected Mr. Thera’s submission that a portion of any sentence for this charge should be waived in the event Dr. Ali completed a professional ethics course. While Council debated the question about whether completing an ethics course should ever relieve a physician from serving the full sentence imposed upon him or her, it was a question that did not have to be decided in this case as such a dispensation had already been granted to Dr. Ali on November 25, 2011. However, it is a question which Council may likely have to confront at some future time.

3.3.7 General Deterrence

[35] Like specific deterrence, general deterrence is a most relevant consideration in the sentencing process. In this case, it is especially so. Every member of the public reasonably expects that his or her medical records will accurately reflect his or her medical history. As a

consequence, any physician in Saskatchewan who like Dr. Ali succumbs to the temptation of willfully falsifying patients' medical records needs to know that they will be dealt with harshly by their professional regulatory body. A strong message must be telegraphed to all physicians that such dishonesty is reprehensible. The public interest demands no less.

3.3.8 Consistent with section 69.1 of *The Medical Profession Act, 1981*

[36] As set out earlier in these reasons, section 69.1 of *The Medical Profession Act, 1981* admonishes Council to give priority to "protection of the public and the safe and proper practice of medicine". Council treats these important public policy objectives not as simply another consideration in the sentencing process, but rather as the over-arching objectives which the sentence being imposed seeks to secure.

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

[37] 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.

[38] Council is satisfied that Dr. Ali's sentence is sufficient to sustain public confidence in Council's ability to carry out its statutory mandate. The penalty is stiff as it should be reflecting the reality that the member is a repeat offender. It comprises a significant suspension from medical practice and a substantial fine. This sentence reflects the public opprobrium which rightly attaches to the deceitful and deliberate nature of professional misconduct at issue here. Cumulatively, these punitive elements should demonstrate to the Saskatchewan public that

Council is fulfilling its statutory responsibilities to regulate and supervise the medical profession in the public interest.

3.3.10 Proportionality of Sentence Compared to Other Relevant Cases

[39] It is important that any court or tribunal called upon to sentence an individual ensure that the sentence imposed is consistent with similar penalties set in similar cases. Proportionality is a central principle in sentencing for it seeks to ensure that individual sentences are principled and not arbitrary. Not surprisingly then that *Camgoz* enumerates this as a factor to be considered in sentencing.

[40] In addition to *Re Chambers* and *Re Hardy*, Mr. Salte on behalf of the College relied upon the following cases in support of his sentencing submissions: *Re Singh* (1990, CPSO); *Re Laws* (1990, CPSO); *Re Hanson* (2001, CPSO); *Re Gauchi* (2003, CPSO); *Re McGowan* (2004, CPSO); *Re Fiorillo* (2006, CPSO), and *Re Metcalfe* (2007, CPSO). None of these rulings bind Council; rather, they are persuasive only. That said, they offer useful comparators.

[41] On behalf of Dr. Ali, Mr. Thera relied upon the following cases: *Re Hershfield, supra*; *Re Otoo* (1995, CPSO); *Re Zhuk* (2003, CPSO); *Re Smith* (2007, CPSS), *Re Nagai* (2011, CPSS), and *Re Ogundipe* (2003, CPSS).

[42] Council considered these cases during its deliberations. No useful purpose would be served by reviewing each case in detail. Suffice it to say, Council concluded that *Re Smith*, *Re Nagai* and *Re Ogundipe* were of little assistance because while they involved dishonesty, they did not involve the deliberate falsification of a patient's medical record. It is also worthy of note that the sentences imposed by the Ontario College's discipline committees normally range from between three (3) to nine (9) months. Clearly, this brief review of the penalties demonstrates that in most cases a period of suspension as well as a substantial fine is warranted. The circumstances of Dr. Ali's cases, particularly the fact that Council is sentencing him for a second offence warrant the imposition of a penalty at the higher end of the range reflected in these other cases. A

sentence of a six (6) month suspension from practice together with a substantial fine is clearly proportionate in view of Dr. Ali's recidivism.

3.4 Conclusion

[43] In conclusion, when the *Camgoz* factors are applied to Dr. Ali's case Council concluded that it merited a severe penalty. Council determined that suspending Dr. Ali' medical licence for six (6) months and imposing a \$10,000 fine which is lower than the maximum allowed under subsection 54(1)(f) of *The Medical Profession Act, 1981* is a penalty which is both proportionate and principled. It is consistent with penalties imposed for transgressions of this kind taking into account Dr. Ali's previous sentence by this Council for similar unprofessional conduct.

4. COSTS

[44] 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. Ali's case the total amount of these costs is \$28,092.27.

[45] It is settled that an order of costs "is not a penalty": *Brand v. College of Physicians and Surgeons of Saskatchewan* (1990), 86 Sask. R. 18 (C.A.), at para. 22. As a result a physician who is found guilty of unprofessional conduct should reimburse the College for monies expended by it in respect of disciplinary proceedings taken against him or her. It would be unreasonable to expect non-culpable members of the College to underwrite the costs of prosecuting an errant physician. 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 considerations will, of course, be assessed on a case-by-case basis.

[46] Council concluded that in Dr. Ali's case no such circumstances exist.

[47] Accordingly, Council determined that Dr. Ali should reimburse the College for all costs it expended in this professional discipline matter, and it is so ordered.

Dated the 22nd day of June, 2012 at Saskatoon, Saskatchewan.