



## Dr. Amjad ALI

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### Council Decision

<b>Date of Outcome 1</b>	June 21, 2013
<b>Disposition1</b>	Revocation and Costs
<b>Application for Reinstatement</b>	November 2019
<b>Date of Outcome 2</b>	November 29, 2019
<b>Disposition 2</b>	Reinstatement with Conditions

**UPDATE:** On November 29, 2019 the Council agreed to reinstate Dr. Ali's licence, subject to an undertaking relating to his practice and compliance with College bylaws relating to return to practice after an absence.

*"After long and fulsome deliberation on the latest submission and prior decisions Council voted to restore Dr. Ali's license to practice medicine in the Province of Saskatchewan in as much as he signs an undertaking with the terms provided further in this document.*

*Council subsequently voted to rescind its order of September 7, 2013 indefinitely suspending Dr. Ali from the privileges of a duly qualified medical practitioner."*

Reasons for Council's decision are attached.

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#### Council Decision September 7, 2013

1. Pursuant to section 54(1)(a) of The Medical Profession Act, 1981, [S.S.1980-81 c. M-10.1] Dr. Amjad Ali's name be struck from the register;
2. Pursuant to section 54(1)(i), Dr. Amjad Ali is directed to pay the costs of and incidental to the investigation and hearing in the amount of \$48,856.11 payable immediately.

**IN THE MATTER OF *THE MEDICAL PROFESSION ACT, 1981,***  
**SS 1980-81, c M-10.1, Section 86**  
**AND IN THE MATTER OF AN APPLICATION FOR RESTORATION OF LICENCE AND**  
**TERMINATION OF SUSPENSION**  
**BY DR. AMJAD ALI OF REGINA, SASKATCHEWAN**

**NOVEMBER 29, 2019**

**Mr. B. Salte, Q.C. appearing for the College of Physicians & Surgeons of Saskatchewan**

**Mr. D. Kraushaar appearing for Dr. Ali**

**BACKGROUND**

Dr. Ali has a long-standing history with the College of Physicians and Surgeons of Saskatchewan. He currently does not hold a license to practice medicine in Saskatchewan.

In June and November of 2018, Council rejected Dr. Ali's applications for restoration of his license. These decisions were based on persistent concerns regarding Dr. Ali's governability as it pertained to the possible terms of an undertaking to restrict his practice in the event of restoration.

Dr. Ali requested a further hearing to hear arguments in support of his ongoing request.

Dr. Ali's current application is not an appeal of previous decisions of Council. The current application is submitted with new documentation in support of Dr. Ali's request for restoration of licensure. It is understood by Council and Dr. Ali that the onus remains on Dr. Ali to demonstrate with supporting evidence sufficient changes have occurred which would give Council reason to believe that his application is credible, and that he would be able to practice under such restrictions deemed necessary to maintain the safety of the public.

The details of the previous long-standing history of professional misconduct is well documented and will not be reproduced in this document.

**POSITION OF DR. ALI**

Dr. Ali provided an update from his long-term counselor Mr. Dennis Arbuthnott. The most significant portion of that progress note is as follows:

*"...it seems that the biggest concerns expressed by the college regarding Dr. Ali is that he has not been governable in the past. Dr. Ali realizes he needs to establish a genuine sense of trust and governability between himself and the college and council. He also understands that it is incumbent on him to develop this trust by complying with any conditions imposed and by receiving supervision."*

Dr. Ali has provided supplemental information from his physicians outlining that he is compliant with ongoing health matters including both his diabetes and his acoustic neuroma. These documents were responsive to council's previous concerns regarding the status of Dr. Ali's health, which has been purported by Dr. Ali on several occasions to have been pivotal to his flawed decision making.

Dr. Ali has submitted his exhaustive list of continuing medical education. Dr. Ali is aware that in the event of a successful application for restoration and removal of the enduring suspension, he will still have to demonstrate to the Registrar his competence to practice in a manner adherent to Bylaw 4.1.

Dr. Ali has provided letters from various medical specialists with whom he has completed informal clinical observerships. While the specifics of the observerships were not clarified, both letters were generally supportive of Dr. Ali from the perspectives of both professionalism and medical knowledge.

Dr. Ali has provided a letter from Dr. D. Mbanza. Dr. Mbanza is a family physician in good standing with the College. Dr. Mbanza reported on a one month observership completed by Dr. Ali. The professionalism and medical expert aspects of Dr. Ali were supported by Dr. Mbanza. Further, Dr. Mbanza has offered Dr. Ali the opportunity to join his practice in the event of successful restoration of licensure. Dr. Mbanza has not yet specifically undertaken to supervise Dr. Ali in his practice, but Dr. Ali is under the clear understanding that this supervisory role would be filled by Dr. Mbanza if such an opportunity were presented.

## **THE POSITION OF THE REGISTRAR'S OFFICE**

Mr. Salte has placed before Council his interpretation of the test for restoration in as much as any new information provided by Dr. Ali meet the criteria for section 86 of *The Medical Profession Act, 1981* which states:

*86 The council may restore the license or permit, as the case may be, of any person where it considers that the interest of the public has been adequately protected, and it may require that person to pay a restoration fee, the amount of which is not to exceed the amount of the registration fee.*

The Registrar's perspective focused on three issues of greatest concern to Council.

- 1) Does the information satisfy the Council that Dr. Ali is unlikely to again engage in improper sexual conduct with patients?
- 2) Does the information satisfy the Council that Dr. Ali is unlikely to engage in other future unprofessional behaviour?
- 3) If the information satisfies the Council that the public can be adequately protected if there are sufficient safeguards, what are the necessary safeguards and has Dr. Ali established that those safeguards will be in place?

Council was reminded that the terms of section 86 do not allow restoration with conditions. For this reason, any restrictions to be placed on Dr. Ali's practice would have to be articulated in an undertaking to be signed by Dr. Ali.

## **DECISION**

After long and fulsome deliberation on the latest submission and prior decisions Council voted to restore Dr. Ali's license to practice medicine in the Province of Saskatchewan in as much as he signs an undertaking with the terms provided further in this document.

Council subsequently voted to rescind its order of September 7, 2013 indefinitely suspending Dr. Ali from the privileges of a duly qualified medical practitioner.

## **REASONS FOR DECISION**

Past decisions by Council on this matter have focused on the necessity of Council to protect the public from risk. Council has focused on several areas of deliberation associated with past and present applications.

### **1) Credibility of Dr. Ali**

Dr. Ali presented himself in a manner which did not specifically speak against his credibility. In past interactions with Dr. Ali, he has variably presented himself with anger, levity or incredulity. In his most recent appearance before the council, none of these factors were present. While there were certainly opinions expressed by Councilors casting doubt on the credibility of Dr. Ali, these opinions were not sufficient to move the Council as a whole to refuse the current application.

Dr. Ali has presented written submissions on his behalf from colleagues with whom he has spent considerable time in observership. These letters all speak to his aspects of professionalism which were consistently observed from Dr. Ali's supervised interactions with patients.

### **2) Governability of Dr. Ali**

Council has considered past applications and found that Dr. Ali demonstrated poor insight with respect to the significance of restrictions that may be placed upon him, should his application be treated favorably. During this application hearing, Dr. Ali was questioned thoroughly by several councilors to test this component of his insight. Dr. Ali responded in a more definitive manner than previously observed. Dr. Ali demonstrated an improved insight into the fact that restrictions on his practice are to be considered paramount to any other consideration or practice stressors that may arise.

Dr. Ali was adamant that he would not vary from any restrictions placed upon him in any way. He had, in prior applications, implied that practice conditions may make it necessary to modify the number of patients to be seen daily in order to meet the needs of the practice. Council has confirmed with Dr. Ali that he will not vary from strict restriction of no more than 13 patients in any 4 hour shift to a total of no more than 25 patients in any 8 hour shift, to a total of no more than 100 patients in any given 5 day work period. This reduced patient load is more restrictive than any previously suggested by Council. Dr. Ali demonstrated an understanding of both the limits in question, and the Council's specific motivations for those strict limits.

Past applications have lacked clarity with respect to future practice patterns, or practice options. Previously proposed practice opportunities were considered to be of suboptimal nature either in terms of balancing work and health, or in the quality of supervision available. Dr. Ali's current application is supported by a more defined practice which will

comply with any and all restrictions placed upon him. Further support is garnered from the implied role of Dr. Mbanza as a supervisor. While this supervisory role has yet to be clearly articulated to, or undertaken by, Dr. Mbanza there were no factors regarding Dr. Mbanza which gave pause to Council regarding his potential suitability to fulfill this role should he undertake to do so.

Dr. Ali has presented evidence of the ongoing clinical oversight of his personal physician, his clinical psychologist, and his Gamma Knife surgeon. As previously mentioned, much focus has been paid to Dr. Ali's health concerns as a possible contributing factor to poor decision making with respect to actions involved in his previous misconduct. Council has been relatively unmoved by these arguments in the past, however Council has recognized that these health-related factors have been considered by Dr. Ali to be central to his misconduct. In as much as these factors are currently under close observation and control, Council was able to remove these factors as potential risk factors for further misconduct.

After careful consideration Council was sufficiently convinced that Dr. Ali has taken steps to improve his insight, improve his health, and plan for an appropriate re-integration into practice that prior concerns regarding governability were assuaged. Under such circumstances, the only means of assessing Dr. Ali's governability will be a carefully monitored re-integration to practice under strict restrictions.

3) Practice restrictions which may serve to mitigate risk to the public.

Council accepted the undertaking brought forward by Dr. Ali's counsel in 2018 as a template for a final undertaking. This undertaking was reviewed by Dr. Ali's counsel and his psychologist for content prior to submission. The Council did feel that further restrictions and protections were required to increase the likelihood of a successful re-integration to practice. The terms of the final undertaking were approved by both Mr. Kraushaar and Mr. Salte. The terms of the final undertaking, with comments as required, are as follows:

- 1) I will continue to receive medical treatment, including taking my medication and providing confirmation to the College that I am doing so. This includes, if directed by the College, attending for testing to confirm compliance;

As previously articulated, Dr. Ali's health concerns have been an ongoing focus of his prior defense. It is essential that the College can continue to ensure that Dr. Ali is compliant with all relevant medical treatments so as to minimize risk of relapse.

- 2) I will continue to receive such counselling as may be directed by Mr. Dennis Arbuthnott or the College;

Dr. Ali has made strides with his counselling in gaining insight into his misconduct. It is imperative that this counselling continues in order to avoid relapse.

- 3) I will only see adult male patients;

A very significant component of Dr. Ali's misconduct has involved interaction with female patients and sexual boundary breaches. As a result he will be restricted to seeing only male patients. In order to avoid the possible interaction of Dr. Ali with the female parent of a male minor patient, he is restricted to adult male patients only.

- 4) I will ensure that there will be an appropriate sign placed in any office or area where I work, and in any examination room where I see patients, advising that I will only attend upon adult male patients;
- 5) I will restrict my practice to seeing a maximum of 13 patients per 4 hour working period, to a maximum of 25 patients per 8 hour day to a total of a maximum of 100 patients per week, unless otherwise directed by the College. Specifically, I will not increase the number of patients I see unless approved by the College;

Achieving a healthy work life balance was considered essential for Dr. Ali to have any meaningful chance of safe practise. Council deliberated on practise numbers and determined that the terms of condition 5 will permit a full practise to Dr. Ali, and the clinic he will work in, while ensuring he does not return to previous unhealthy workloads, which have been purported to have been a major factor in his poor decision making and subsequent misconduct.

- 6) I will not prescribe any opioids or opioid containing medications;
- 7) I will ensure that all staff working in the clinic where I work will sign a form acknowledging that they are aware of these conditions and will undertake to comply with the same and will report to the College any breach of the conditions by myself;
- 8) I agree to random inspections of my practice;
- 9) I agree to the monitoring of my practice by the College;
- 10) I will, until such time as the College directs otherwise, have a workplace monitor or manager, who must be a physician, and who must be approved by the Registrar, who will regularly report to the College about my compliance with the conditions;

Past applications were refused in part due to a poorly established re-integration plan with proposed supervisors who themselves, recently been found guilty of professional misconduct. In the current application, Dr. Mbanza has been put forward as a potential supervisor. Dr. Mbanza will have to undertake to fulfill this role, but is otherwise considered a suitable candidate if deemed appropriate by the Registrar.

- 11) I will meet with the workplace monitor or manager at least once every two weeks to discuss my practice and any issues of concern;
- 12) I will ensure that the workplace monitor or manager approved by the College has confirmed in writing to the College that the workplace monitor or manager will

report to the College my compliance with the undertaking at such frequency that the Registrar may direct;

- 13) If the workplace monitor or manager is unable or unwilling to continue as supervisor I will cease practicing until a replacement acceptable to the College is in place.

Very careful articulation of this condition was made to Dr. Ali. There was no misunderstanding that Dr. Ali would immediately cease practise if his registrar appointed supervisor ceases to fulfill that role.

- 14) This undertaking shall remain in effect for as long as I remain in practice in the province of Saskatchewan. The terms of this undertaking can only be amended with the consent of the Council.

- 15) I will provide a resignation to be held by the Registrar and only acted upon if Dr. Ali breaches any of the terms of this undertaking, in the objective opinion of the Registrar. I agree that if I breach any terms of this undertaking it may constitute unbecoming, improper, unprofessional or discreditable conduct and that I agree to termination of my licence and I agree not to reapply for a licence.

This condition is explained below.

- 4) Considerations which will serve to protect the profession from further administrative cost should Dr. Ali be unable to practice within the restrictions he will undertake to adhere to.

The Council, the College and thereby the membership at large has utilized a great deal of resources in time, and cost toward the investigations and hearings related to all of Dr. Ali's long history of professional misconduct. The Council has determined that sufficient evidence exists to support that Dr. Ali may return to practice in as much as he meets the requirements of Bylaw 4.1 and is compliant with the restrictions on his practice to which he undertakes to obey. In these circumstances it is the desire of Council for any practitioner re-integrating to practice after suspension will be successful in those efforts and thereby demonstrate value to the people of Saskatchewan whom we serve.

Council considers its role in the protection of the public as paramount to all other considerations. For this reason, Council wishes to ensure that in the unlikely event that Dr. Ali demonstrates an error in judgement which leads to any improper or unprofessional conduct, there will be no further chances for Dr. Ali to ever practice medicine in Saskatchewan again. The most functional means by which to ensure this process is the 'last chance' clause represented by condition 15 of the undertaking. Council considers this clause to be essential as both a specific deterrent to further misconduct on the part of Dr. Ali, but also to serve as a guarantee of sorts to the membership of the College, that no more of its resources will be applied to Dr. Ali, should further discipline be required. We do not look on this condition and a harbinger of failure with respect to Dr. Ali's re-integration into practice, but rather as a prudent means of insuring swift and final action, should such action be required.

**Accepted by Council of the College of Physicians and Surgeons of Saskatchewan:  
Saturday 25 January, 2020**

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

Mr. Aaron Fox, Q.C. and Mr. Darren Kraushaar appearing for Dr. Amjad Ali  
Mr. Bryan Salte, Q.C. for the College of Physicians and Surgeons of Saskatchewan

**REASONS FOR DECISION**

**OVERVIEW**

[1] Dr. Amjad Ali is a family physician who practices at the Northgate Medi-Clinic in Regina, Saskatchewan. He has had a difficult history with the College of Physicians and Surgeons of Saskatchewan (the “College”) which will be outlined later in these reasons.

[2] On September 18, 2012, a Notice of Hearing set out four charges of unprofessional conduct against Dr. Ali. These charges are reproduced in full at Appendix “A” to these reasons.

[3] A Disciplinary Hearing Committee chaired by Professor Beth Bilson, Q.C. adjudicated these charges. The Committee released its decision on December 7, 2012. It found Dr. Ali guilty of three charges of unprofessional conduct (although it acquitted him on one aspect of the third charge) and accepted his guilty plea to a fourth, namely failure to comply with a written undertaking given to the College in December 2004 to the effect that he would have “a chaperone, approved by the College of Physicians Surgeons of Saskatchewan present for all examinations of female patients”.

[4] Following two adjournments requested by Dr. Ali, the penalty hearing on these convictions took place before the Council of the College (“Council”) on June 21, 2013. At that time, Mr. Salte, Q.C. urged Council to revoke Dr. Ali’s licence to practice medicine for the reason that these convictions represented the fourth time he had been disciplined for unprofessional conduct in less than a decade. Mr. Salte contended that this pattern of behavior demonstrated Dr. Ali was ungovernable, a contention Mr. Fox strongly denied.

[6] At the conclusion of oral argument and after deliberation, Council accepted Mr. Salte's characterization of Dr. Ali's actions, and concluded that he was an ungovernable member of the College. Council then passed the following motion:

1. Pursuant to section 54(1)(a) of *The Medical Profession Act, 1981*, [S.S.1980-81 c. M-10.1] Dr. Amjad Ali's name be struck from the register;
2. Pursuant to section 54(1)(i), Dr. Amjad Ali is directed to pay the costs of and incidental to the investigation and hearing in the amount of \$48,856.11 payable immediately.

[7] This case represents the first time Council has found a member to be ungovernable and removed his name from the College's Register. What follows are the reasons explaining why Council came to this decision.

### **FACTUAL BACKGROUND**

[8] As Council's finding of ungovernability turns on Dr. Ali's professional discipline history, it is necessary to review it in some detail. This review commences with the current findings of unprofessional conduct and continues with the findings of unprofessional conduct made in November 2004, May 2011 and March 2012, respectively.

#### **A. December 2012 Findings**

[10] These findings related to four charges of professional misconduct. Charge No. 1 involved a consultation with a female patient who saw Dr. Ali frequently for a variety of complaints. The Discipline Hearing Committee found that Dr. Ali remained in the examination room while the patient undressed and without a chaperone present conducted an examination of her while she was partially naked. Afterwards, Dr. Ali initiated a conversation with her about commencing a personal relationship in the course of which he attempted to kiss her. The Discipline Hearing Committee determined this charge was well-founded.

[11] Charge No. 2 involved a consultation with a second female patient. In the course of this consultation, Dr. Ali embarked upon a sexualized conversation with the patient in which he

suggested she could be his lover and should she come back to the office later, he would suck on her breasts. The Discipline Hearing Committee determined this charge to be well-founded.

[12] Like Charge No. 1, Charge No. 3 involved a female patient whom Dr. Ali had seen on prior occasions. She presented symptoms of severe back pain. In the course of his examination of this patient, Dr. Ali shared with her details about his personal problems, including a difficult sexual relationship with his girlfriend. None of these matters related to the medical problems currently experienced by his patient. This charge also alleged that Dr. Ali attempted to kiss this patient. The Discipline Hearing Committee determined this charge to be well-founded, save in one aspect. The element of the charge alleging an attempt to kiss the patient was dismissed.

[13] Charge No. 4 related to Charge No. 1 and in particular alleged Dr. Ali failed to comply with his previous undertaking to the College that he would not examine female patients in the absence of a chaperone. As mentioned earlier, Dr. Ali pled guilty to this particular charge.

[14] The Discipline Hearing Committee concluded its extensive reasons for decision with the following statement:

All three [patients] sought to rely on Dr. Ali's professional expertise to assist with the solution of medical problems, and all three were plainly shocked by Dr. Ali's failure to respect the boundaries of the relationship they reasonably expected to have with him. We are of the view that the nature of Dr. Ali's infringements of professional expectations must be taken into account in assessing penalties against him.

(*Re Ali*, Decision of Discipline Hearing Committee (Professor Beth Bilson, Q.C.; Dr. Bruce Reeder, and Dr. Chris Ekong) dated December 7, 2012, at p. 37.)

## **B. November 2004 Findings**

[15] The three charges of unprofessional conduct adjudicated by a Discipline Hearing Committee in November 2004 involved allegations by three female patients of inappropriate and provocative sexualized conduct by Dr. Ali. The first charge related to a complaint by a patient that Dr. Ali remained in the examination room while she disrobed, examined her without a

chaperone being present and remained in the room while she dressed. He also initiated a conversation with her regarding intimate details about her personal relationships unrelated to the medical complaint for which she attended at his office. The Discipline Hearing Committee found this charge to be well-founded.

[16] The second charge related to a complaint by a second female patient again alleging involving inappropriate sexualized comments made by Dr. Ali. He suggested she was overweight because she was lonely and needed a man to look after her. Dr. Ali then commented that he preferred to spend time with the woman to whom he was making love, and suggested the patient deserved the same treatment. The Discipline Hearing Committee found this charge was well founded and concluded that the comments Dr. Ali made to this patient “were ‘sexualized comments’ that could objectively be viewed as Dr. Ali attempting to open the door towards a relationship” with the patient and “were ill-advised”. (*Re Ali*, Discipline Hearing Committee (Mr. Walter Matkowski, Dr. Margaret Barsch, Dr. Brenda Hookenson, and Dr. Lionel Lavoie) dated November 22, 2004, at p. 20).

[17] The third charge involved a complaint by a female co-worker of Dr. Ali’s when he worked in Northern Saskatchewan. She alleged that Dr. Ali had sexually harassed her. However, the Discipline Hearing Committee concluded that this charge was not well-founded and dismissed it.

[18] Ultimately, Council suspended Dr. Ali from practicing medicine for three months. Council further required Dr. Ali to attend a boundaries course, examine adult female patients only in the presence of a chaperone and pay costs for these proceedings in the amount of \$20,000.

### **C. November 2011 Findings**

[19] The two charges of unprofessional conduct against Dr. Ali adjudicated by a Discipline Hearing Committee in May 2011 involved 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.

[20] Dr. Ali appealed both these findings of unprofessional conduct and the penalty imposed by the Saskatchewan Court of Queen's Bench. This application failed. See: *Ali v. Saskatchewan (College of Physicians and Surgeons)*, 2013 SKQB 37.

#### **D. March 2012 Findings**

[21] The two charges of unprofessional conduct adjudicated in March 2012 related to an interaction between Dr. Ali and the mother of a female child patient. The mother alleged that Dr. Ali wrote a prescription for her child without having examined the patient. A verbal altercation ensued between the mother and Dr. Ali. It was alleged and subsequently proven that Dr. Ali had made two false entries on the child's medical chart.

[22] The first entry noted the child's temperature as "O/E Temp. 37.5" suggesting Dr. Ali had used a thermometer to determine the child's temperature when he only felt her cheek. The second entry recorded a racial epithet supposedly uttered by the child's mother. The entry read: "She called me a money hungry coloured, who doesn't deserve to be in this country." A thorough analysis of the original document by a forensic handwriting expert revealed those marginal notes to be 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.

[23] After hearing all of the testimony the Discipline Hearing Committee determined that contrary to the hand-written entries on the child's medical record, Dr. Ali had neither taken her temperature nor suffered racist insults from the mother. Simply put, they determined that Dr. Ali had falsified the record.

[24] The Discipline Hearing Committee determined that both charges were well-founded and Council suspended Dr. Ali from practicing medicine for six months and fined him \$10, 000. Dr.

Ali's appeal to the Saskatchewan Court of Queen's Bench succeeded in part. The finding of unprofessional conduct for noting the patient's temperature on her child without having taken it was set aside. As a consequence, the suspension from practice was reduced to three months. See: *Ali v. Saskatchewan (College of Physicians and Surgeons)*, 2013 SKQB 38.

[25] Leave to appeal both the November 2011 and March 2012 findings of unprofessional conduct and the penalties imposed to the Saskatchewan Court of Appeal, was ultimately denied. See: *Ali v. Saskatchewan (College of Physicians and Surgeons)*, 2013 SKCA 23.

### **THE APPROPRIATE PENALTY**

[26] Council has to determine the appropriate penalty to be imposed on Dr. Ali. The positions advanced by each counsel were quite different, largely because of the differing views as to what should be done in response to the most recent finding of unprofessional conduct against Dr. Ali.

#### **A. Position of the Parties**

##### **1. Position of the College**

[27] For the College, Mr. Salte's principal submission was that the time had come to remove Dr. Ali's name from the College's Register. He reviewed Dr. Ali's discipline history outlined above and stated that it demonstrated he continued his unethical behavior, even in the face of prior findings of unprofessional conduct. He submitted that Council had to decide whether it had the confidence Dr. Ali will practice ethically in future.

[28] Mr. Salte submitted that on the totality of the Dr. Ali's discipline history including the most recent findings of unprofessional misconduct, the answer to this question was "no". He reminded Council that in November 2004, Dr. Ali had given an undertaken to the College that he would not physically examine an adult female patient without a chaperone being present. Yet, a failure to comply with this undertaken formed the basis of one of the charges of unprofessional conduct adjudicated in December 2012. As well, Dr. Ali had completed a boundaries course, and in September 2012 an Ethics course as he was directed to do by Council in March 2012. In view

of Dr. Ali's past history Mr. Salte submitted that previous suspensions proved ineffective at protecting the public and these recent attempts at remediation were not sufficient to satisfy the College of any change.

[29] Mr. Salte submitted that to his knowledge Dr. Ali's case was unprecedented. This was the fourth time he had been found guilty of unprofessional conduct. Mr. Salte stated that his research did not yield any reported decision from a medical regulatory body sentencing a physician who had engaged in repeated forms of unprofessional conduct, continually deflected liability for those actions onto others, displayed no remorse for this unprofessional conduct and for whom rehabilitation had proved ineffective. He submitted that this history plainly demonstrated Dr. Ali was unwilling or unable to submit to the oversight of the College or to practice medicine in an ethical and safe manner.

[30] In the alternative, Mr. Salte submitted that should Council decline to make a finding of ungovernability in this case, then suspending Dr. Ali from practicing medicine for a period in excess of six months was an appropriate disposition.

## **2. Position of Dr. Ali**

[31] For Dr. Ali, Mr. Fox took a quite different position. He submitted that at this time finding Dr. Ali to be an ungovernable member of the College would be premature. His principal submission was that recent medical evidence showed that Dr. Ali suffered from a number of physical and mental health conditions which in large measure explained the behaviour giving rise to the more recent findings of professional misconduct.

[32] Respecting the appropriate penalty to be imposed for the December 2012 findings, Mr. Fox urged Council to allow Dr. Ali to continue to practice medicine under strict practice conditions. He submitted that this would enable Dr. Ali to be closely monitored to determine if his recent attempts at remediation, including the completion of a professional ethics course, enabled him to correct his previous behaviour and practice medicine in an ethical and safe manner.

## **B. Relevant Professional Discipline Principles**

### **1. General Considerations**

[33] 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)).

[34] 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.

[35] 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.

[36] 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.)

[37] 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.

[38] 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.

## **2. Principles Respecting A Finding of Ungovernability**

[39] *The Medical Profession Act, 1981* does not explicitly contemplate a finding of ungovernability. On the other hand, it does not preclude such a finding. It is necessary then to assess what kind of professional misconduct should motivate Council to conclude a particular member of the College was ungovernable.

[40] The concept of ungovernability is not uncommon in professional disciplinary jurisprudence created by various provincial law societies. Mr. Salte referred Council to the recent decision of a Hearing Panel of the Law Society of Upper Canada (“LSUC”) in *Law Society of Upper Canada v. Slocombe*, 2012 ONLSHP 22. In turn, *Slocombe* internally referenced previous rulings made by other LSUC Hearing Panels. This line of authority proved helpful and assisted Council in arriving at a principled standard for a finding of ungovernability.

[41] In *LSUC v. Timothy David Salomaa*, CN57/00, Reasons for Decision dated September 20, 2001, for example, the Hearing Panel noted that there is no fixed definition of ungovernability. Rather, the scope of behaviour that may qualify as ungovernable is limitless and is to be determined on a case-by-case basis. The Hearing Panel in *LSUC v. Donna Marie Jones*, 2012 ONLSHP 3 observed at paragraph 8 that “[i]t is not a tangible concept”.

[42] It appears that *LSUC v. Zygmunt John Fenik*, 2005 ONLSHP 25 is the touchstone authority. There the member pled guilty to 50 particulars of professional misconduct which the Hearing Panel characterized as “very serious” (*Fenik, supra*, at paragraph 73). However, the Hearing Panel declined to find the member to be ungovernable. Rather, the member’s misconduct was explained by his serious medical condition. As a consequence, his privileges to practice law were suspended for a period of one year with severe restrictions imposed on his practice once the suspension expired.

[43] In *Fenik* is found the following description of certain relevant criteria for determining ungovernability at paragraphs 83 and 84:

The principles which inform a finding of ungovernability are set out in *Law Society of Upper Canada v. Hicks*, 2005 ONLSHP 2. A finding of ungovernability is based on a

case-by-case analysis. The guiding principle is the public interest. It is essential that members of this profession be willing to be governed by the Society, and to adhere to its dictates. Otherwise, the public cannot be protected.

Factors which inform the determination whether a member is ungovernable included the following:

- (a) the nature, duration and repetitive character of the misconduct;
- (b) any prior discipline history;
- (c) any character evidence;
- (d) the existence or lack of remorse. Remorse includes a recognition and understanding of the seriousness of the misconduct;
- (e) the degree of willingness to be governed by the Society;
- (f) medical or other evidence that explains (though does not excuse) the misconduct;
- (g) the likelihood of future misconduct, having regard to any treatment being undertaken, or other remedial efforts;
- (h) the member's ongoing co-operation with the Society in addressing the outstanding matters that are the subject of the misconduct.

[44] Like the factors identified in *Camgoz*, it is not necessary that each and every factor announced in *Fenik* had to be established before a finding of ungovernability could be made. Each case turns on its particular facts, and factors in one case may play a more significant and determinative role than they do in another case. Of particular significance to the issue of Dr. Ali's amenability to professional regulatory oversight is his lengthy prior discipline history occurring over a number of years

[45] Mr. Salte also drew Council's attention to *Lichtfield*. There the Alberta Court of Appeal upheld the decision of the Council of the College of Physicians and Surgeons of Alberta finding Dr. Lichtfield ungovernable and revoking his medical license. The Alberta Council had concluded that the member repeatedly failed "to maintain appropriate patient-physician boundaries" and past attempts to remediate had not rectified the situation. The Court of Appeal accepted as reasonable the finding of Dr. Lichtfield's ungovernability by Alberta's Council and upheld the revocation of his medical licence.

### **3. Authorities Advanced by Dr. Ali**

[46] For Dr. Ali, Mr. Fox presented a number of authorities which he submitted militated against a finding by Council of his client's ungovernability. He referred to a number of sentencing principles applicable in the criminal law context, most notably the "gap" principle as

being instructive for purposes of professional disciplinary proceedings. While Council acknowledges that criminal sentencing principles may be instructive they cannot be applied slavishly in proceedings such as this. In *Merchant v. Law Society of Saskatchewan*, 2009 SKCA 33, the Saskatchewan Court of Appeal reminded professional regulatory bodies in this province that “the sentencing approach in [professional] disciplinary proceedings is different than in criminal courts”: *Merchant, supra*, at para. 98 per Wilkinson J.A. (as she then was). Justice Wilkinson emphasized that the fundamental purpose of a disciplinary panel’s order is the “collective reputation of the accused licensee’s peer group”, in this case Saskatchewan’s medical profession: *Merchant, ibid.* quoting *LSUC v. Marshall Stephen Kazman*, 2008 ONLSAP 7, at para. 74. As a consequence, this consideration overrides the kind of individualized sentencing which takes place regularly in criminal courts

[47] Mr. Fox also referred to case authorities from Ontario (*College of Physicians and Surgeons of Ontario v. Boodoosingh*, [1993] O.J. No. 859, and *College of Physicians and Surgeons of Ontario v. Lambert*, [1992] O.J. No. 2553), British Columbia (*M. v. College of Physicians and Surgeons of British Columbia*, [1997] B.C.J. No. 297), and Prince Edward Island (*Matheson v. College of Physicians and Surgeons of Prince Edward Island*, 2010 PECA 5)

[48] Even though Council recognizes these authorities are not binding on it, it did have regard to them. It is not necessary to review them in detail; however a few observations about their precedential value may be helpful. First, it is important to point out that none of these authorities involved findings of ungovernability.

[49] Council concluded that the two Ontario cases may no longer be relevant. In 1991, the Ontario College of Physicians and Surgeons adopted a “zero-tolerance” approach to discipline matters involved sexualized conduct between a physician and his or her patients, see: The Final Report of the Task Force on Sexual Abuse of Patients: An Independent Task Force Commissioned by the College of Physicians and Surgeons of Ontario dated November 25, 1991. Both *Boodosingh, supra* and *Lambert, supra*, involved allegations of sexual misconduct which occurred long before this report was finalized and released publicly. The penalties imposed in

those cases which now appear lenient must be assessed in this light. See *e.g.*: *Lambert, supra*, at paras. 38 and 39.

[50] The decision of the British Columbia Supreme Court in *M.* appears to have turned on a legal technicality. It is worth noting that Burnyeat J. concluded that the sentence originally imposed in that case was too lenient and “erasure of the name of the doctor from the Register of the College” was warranted. However, he lacked jurisdiction to impose such a sentence because no cross-appeal had been filed by the British Columbia College. See: *M., supra*, at paras. 20-21.

[51] Finally, *Matheson* is distinguishable on many levels from this case so it is not particularly relevant. Suffice it to say, that the approach of the Prince Edward Island Court of Appeal taken in that case is not unlike the sentence imposed by Council respecting a Saskatchewan physician who found himself in circumstances similar to those of Dr. Matheson. See: *Re Franko*, (CPSS, September 7, 2012).

#### **4. Conclusion on Relevant Professional Discipline Principles**

[52] Council concludes that the *Camgoz* factors listed above are not as relevant in cases where the assertion is that the member being sentenced is ungovernable. In those admittedly rare cases the factors summarized in *Fenik* appear more applicable. With the appropriate analytical framework identified, Council turns to the reasons for its conclusion that Dr. Ali is an ungovernable member of the College and his medical license be revoked.

### **REASONS FOR COUNCIL’S DECISION**

#### **A. Dr. Ali’s Professional Discipline History**

[53] A finding of ungovernability should begin with a consideration of the member’s professional discipline history. In Dr. Ali’s case it is lengthy and littered with convictions for inappropriate physician/patient boundary violations, fraud and dishonesty. It is a history

exhibiting a pattern of either unwillingness or inability on Dr. Ali's part to submit to professional regulatory oversight.

[54] Mr. Fox urged Council to have regard for the chronology of this history. He submitted that findings of unprofessional conduct made by the Discipline Hearing Committee in December 2012 should be treated as a second offence. He submitted that Council should apply a well known rule of criminal sentencing known as the "Coke Principle" as explained by the Supreme Court of Canada in *R. v. Skolnick*, [1982] S.C.J. No. 60. See: Brief of Law Submitted on Behalf of Dr. Amjad Ali Re Penalty Hearing dated June 4, 2013 ("Dr. Ali's Brief of Law"), at paragraphs 58 to 61.

[55] In matters of ungovernability Council concluded it must view the member's professional discipline record globally. Council's over-arching responsibility as set out in section 69.1 of *The Medical Profession Act* is to regulate Saskatchewan's medical profession in the public interest. It would run counter to Council's legislatively delegated mandate were it to ignore for professional disciplinary purposes certain portions of the discipline history Dr. Ali has acquired. Accordingly, in its deliberations Council weighed the entirety of his record.

**B. Medical Evidence That Explains But Not Excuses The Misconduct**

[56] The central pillar of Mr. Fox's argument focused on Dr. Ali's physical and mental health issues. He presented a number of medical reports from various physicians and specialists whom Dr. Ali had consulted recently. Mr. Fox submitted that these reports suggested underlying medical causes for some of Dr. Ali's unprofessional conduct. He urged Council to take these reports into account and permit Dr. Ali to continue to practice medicine subject to some very severe conditions. These conditions are set out in at paragraph 66 of Dr. Ali's Brief of Law.

[57] Council did review these reports. Most Councillors are highly trained and experienced medical practitioners and were able to scrutinize these reports far more critically than a lay-person. At the risk of over-simplifying Council's assessment of these reports, it was the consensus of professional opinion that these reports failed to demonstrate a causal relationship

between the “subclinical mood disorder” referenced in some of the reports and Dr. Ali’s recent actions which resulted in findings of unprofessional conduct. For example, Dr. Mela in his report dated February 25, 2013, states that Dr. Ali’s answers to the mood disorder question were “negative” and indicates Dr. Ali did not manifest any “biological symptoms of depression and mood”.

[58] Council recognizes that these proceedings are stressful for Dr. Ali and a source of anxiety, if not depression, for him; however, the medical evidence presented did not satisfy Council that the underlying reason for Dr. Ali’s actions which gave rise to findings of unprofessional conduct was attributable to any physical or medical condition he may suffer.

### **C. Character Evidence**

[59] Mr. Fox filed approximately 71 letters from current and former patients of Dr. Ali attesting to the good medical care they received from him over the years. Council acknowledges that these patients appear to be satisfied with him and wish to continue the physician/patient relationship with him. However, this penalty hearing is not a popularity contest to be assessed on the basis of the number of letters of support from patients that a physician may obtain.

[60] In contrast, one of the female victims involved in the most recent set of charges filed a victim impact statement. She is a well-educated individual holding a responsible position in a public institution. She indicated that Dr. Ali’s actions had had a devastating effect upon her. She now will only consult a physician if “she is half-dead” and finds she is no longer able to trust a physician of either gender. Council found her statement to be a powerful indictment of the consequences flowing from Dr. Ali’s actions.

### **D. Other Relevant *Finik/Camgoz* Factors**

[61] Certain other factors identified in either *Finik* or *Camgoz* are relevant in this matter and Council’s determination under each of them is summarized below.

## **1. Lack of Remorse**

[62] Throughout all of the proceedings against him, Dr. Ali has maintained a singular lack of remorse for his actions. He has continually deflected responsibility for his behaviour, blaming others when things go wrong. Indeed, Dr. Mela in his report stated that during his interview with Dr. Ali, he admitted being at fault only on one occasion. Dr. Mela wrote that “[a]mong the seven charges of professional misconduct spanning from 2003 to 2012, Dr. Ali acknowledged being at fault when he examined a female patient without a chaperone on August 12, 2011”: Dr. Ali’s Brief of Law at page 59. The inability to admit his indiscretions or be remorseful for them is a consistent element in these matters.

## **2. Degree of Unwillingness to be Governed by the College**

[63] Another consistent element in all of these matters is Dr. Ali’s repeated view that the College is seeking to persecute him. For example, he told both Dr. Mela and Dr. Bowen for example, that he was being victimized by the College and did not believe he would receive fair treatment. He further told Dr. Bowen that the College impedes the practice of medicine in Saskatchewan and the province “continue to experience a physician shortage if the [College] continued to act in such a high-handed manner”: Dr. Ali’s Brief of Law at page 65.

[64] Council concluded that this pattern of behaviour and invective did not evidence a willingness on Dr. Ali’s part to submit to the professional oversight of his professional regulatory body – far from it.

## **E. Conclusion**

[65] For all of these reasons, Council came to the conclusion that Dr. Ali’s professional discipline history demonstrated that he was ungovernable and concluded that the only appropriate penalty is to revoke his licence to practice medicine under subsection 54(1)(a) of *The Medical Profession Act, 1981*.

**COSTS**

[67] Turning to the issue of costs, 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 \$48,856.11.

[68] 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.

[69] Council concluded that in this case no such circumstances exist. 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.

[70] In conclusion, Council is grateful to all counsel for their excellent oral submissions and extensive written materials. They were of great assistance to Council in arriving at a decision in this difficult matter.

Dated the 7th day of September, 2013 at Saskatoon, Saskatchewan.