



Dr. Tshala TSHIYOMBO

Council Decision

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| Date Charge(s) Laid: | September 14, 2019 |
| Outcome Date: | January 22, 2021 |
| Hearing: | January 22, 2021 |
| Disposition: | Reprimand, Revocation, Costs |

The Council of the College of Physicians and Surgeons of Saskatchewan imposes the following penalty on Dr. Tshala Tshiyombo pursuant to **The Medical Profession Act, 1981** (the “Act”):

- 1) Pursuant to Section 54(1)(e) of the Act, the Council hereby reprimands Dr. Tshiyombo. The format of that reprimand will be in writing and provided in-person at a time to be determined in the future.
- 2) Pursuant to Section 54(1)(a) of the Act, the Council hereby strikes the name of Dr. Tshala Tshiyombo from the register and revokes her licence.
- 3) Pursuant to section 54(1)(i) of the Act, the Council directs Dr. Tshiyombo to pay the costs of and incidental to the investigation and hearing in the amount of \$32,775.16.



*College of
Physicians and Surgeons
of Saskatchewan*

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REGISTRAR
KAREN SHAW, M.D.

22 March, 2021

Dr. T. Tshiyombo

Sent via email: [REDACTED]

Dear Dr Tshiyombo,

You, Dr. Tshala Tshiyombo having been found guilty of professional misconduct while practicing medicine in the province of Saskatchewan, are hereby reprimanded by the Council of the College of Physicians and Surgeons of Saskatchewan.

The circumstances which led to your professional misconduct consist of the following:

- You closed your practice suddenly and made no appropriate arrangements for patients' continuity of care, thereby exposing them to potential harm.
- You were dishonest and misled the College about your intention to close your practice and did not follow the appropriate protocols for office closure.
- You blatantly refused to co-operate with the Preliminary Inquiry Committee and disregarded an important College process appointed to investigate your conduct.
- You were disrespectful to patients and employees; openly bullied and demeaned them with harsh, loud and intimidating verbal communications.
- You demonstrated dishonesty by instructing your staff to discard urine specimens without testing and having them record normal results in the chart.
- You instructed your staff not to perform eye acuity examinations and once more told them to record normal.
- You falsified a letter addressed to Employment Standards claiming it to be from one of your employees.

Continued.....

***To serve the public by regulating the practice of medicine
and guiding the profession to achieve the highest standards of care***

The Council is appalled and disappointed by your actions. Your actions speak volumes of your tendency to lack self-regulation, disrespect for legitimate authority and resistance to regulation. Your actions are contrary to the core values of our highly esteemed and honourable profession. Your behaviours are also concerning in relation to bullying which is detrimental to workplace safety.

The Council cannot condone these behaviours and you are hereby reprimanded for these disgraceful actions.

The Council of the College of Physicians & Surgeons of Saskatchewan.



In the matter of a Penalty Hearing before the Council of the College of Physicians and Surgeons of Saskatchewan and Dr. Tshala Tshiyombo

January 22, 2021

Summary of the Decision

A penalty hearing for Dr. Tshiyombo was held before the Council on January 22, 2021. Dr. Tshiyombo was not present and was not represented. Ms. Sheila Torrance presented the position of the Registrar's Office.

Dr. Tshiyombo had been found guilty of six charges of unprofessional conduct following a hearing before a discipline hearing committee on November 23, 2020. She was not present and was not represented at the discipline hearing. The committee provided its reasons for that decision on December 17, 2020.

At the January 22, 2021 penalty hearing, the Council imposed a reprimand, revoked Dr. Tshiyombo's licence, and ordered her to pay the costs of the investigation and hearing in the amount of \$32,775.16.

The Charges against Dr. Tshiyombo

Dr. Tshiyombo was charged with the following charges of unprofessional conduct, each of which was found to be proved by the discipline hearing committee:

1. *The Council of the College of Physicians and Surgeons directs that, pursuant to section 47.6 of **The Medical Profession Act, 1981**, the Discipline Committee hear the following charge against Dr. Tshala Tshiyombo, namely:*

*You Dr. Tshiyombo 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 7.1 and paragraph 19 and/or paragraph 37 of the Code of Ethics contained in*

bylaw 7.1 and/or bylaw 8.1(b)(ix) and/or bylaw 8.1(b)(xi), and/or bylaw 8.1(b)(xii) and/or bylaw 23.1(g).

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

- a) You formerly practised in a medical clinic in Saskatoon, Saskatchewan (hereafter called “the clinic”);*
- b) You closed the clinic and ceased practising in Saskatchewan on or about the 31st of May, 2019;*
- c) You failed to provide appropriate notice to your patients that you intended to close the clinic and cease practising in Saskatoon;*
- d) You failed to make appropriate arrangements to allow your patients to seek medical care from another health care provider;*
- e) You failed to provide continuity of care for patients for whom you had provided care at the clinic;*
- f) You failed to make appropriate arrangements for access to your patient records;*
- g) You failed to make appropriate arrangements for the transfer of your patient records;*
- h) You failed to respond to one or more inquiries from third parties related to your patient’s health information.*

- 2. The Council of the College of Physicians and Surgeons directs that, pursuant to section 47.6 of **The Medical Profession Act, 1981**, the Discipline Committee hear the following charge against Dr. Tshala Tshiyombo, namely:*

You Dr. Tshiyombo 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 led in support of this charge will include some or all of the following:

- a) On or about May 8, 2019 you advised an employee of the College of Physicians and Surgeons that you would not be closing your medical practice;*
- b) That statement was false or misleading;*
- c) On or about May 8, 2019 you advised an employee of the College of Physicians and Surgeons that the College would be informed if and when you closed your practice;*
- d) That statement was false or misleading;*
- e) You did not advise the College that your practice had been closed;*
- f) On or about May 8, 2019 you spoke to an employee of the College of Physicians and Surgeons and advised the employee that, if you closed your medical practice, you would follow the appropriate protocols to do so;*
- g) You did not follow the appropriate protocols to close your medical practice.*

3. *The Council of the College of Physicians and Surgeons directs that, pursuant to section 47.6 of **The Medical Profession Act, 1981**, the Discipline Committee hear the following charge against Dr. Tshala Tshiyombo, namely:*

You Dr. Tshiyombo are guilty of unbecoming, improper, unprofessional, or discreditable conduct contrary to the provisions of Section 46(o), section 46(h) and/or section 47(5) of The Medical Profession Act, 1981 S.S. 1980-81 c. M-10.1.

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

- a) Your legal counsel accepted service on your behalf of a subpoena which required you to appear on June 3, 2019 before the preliminary inquiry committee that was investigating your conduct;*
- b) You appeared before the preliminary inquiry committee on June 3, 2019;*
- c) You did not cooperate with the investigation by the preliminary inquiry committee into your conduct;*
- d) You refused to provide information to the preliminary inquiry committee related to its investigation.*

4. *The Council of the College of Physicians and Surgeons directs that, pursuant to section 47.5 of **The Medical Profession Act, 1981**, the Discipline Committee hear the following charge against Dr. Tshala Tshiyombo, namely:*

You Dr. Tshala Tshiyombo 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 paragraphs 1 and/or 2 and/or 7 and/or 13 and/or 52 and/or 54 of the Code of Ethics contained in bylaw 7.1 of the Regulatory bylaws of the College of Physicians and Surgeons of Saskatchewan, particulars whereof are that in the course of your professional practice in Saskatoon, you engaged in a pattern of rude, disrespectful and abusive communication with staff members and patients.

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

- a) You formerly practised in a medical clinic in Saskatoon, Saskatchewan (hereafter called "the clinic");*
- b) With respect to a former staff member in the clinic referred to in this charge as Employee 1, you told her that she was lucky to have a job as she was a poor worker and too old to get another job;*
- c) With respect to a former staff member in the clinic referred to in this charge as Employee 2, you spoke to her very loudly at the reception desk;*
- d) You told Employee 2 that she was stupid and incompetent, and this was done in front of other staff and patients;*
- e) When Employee 2 gave you her letter of resignation, you threw it back at her and refused to accept it;*

- f) *With respect to Employee 1 and Employee 2 and other former employees in the clinic, you were very abrupt with them and would yell at them;*
- g) *You expressed frustration at patients if they did not speak English well.*

5. *The Council of the College of Physicians and Surgeons directs that, pursuant to section 47.5 of **The Medical Profession Act, 1981**, the Discipline Committee hear the following charge against Dr. Tshala Tshiyombo, namely:*

You Dr. Tshiyombo 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 paragraphs 1 and/or 2 and/or 7 and/or 13 of the Code of Ethics contained in bylaw 7.1 of the Regulatory bylaws of the College of Physicians and Surgeons of Saskatchewan and/or bylaw 8.1(b)(ii) and/or bylaw 8.1(b)(vi) and/or bylaw 8.1(b)(xi) of the Regulatory bylaws of the College of Physicians and Surgeons of Saskatchewan, particulars whereof are that in the course of your professional practice in Saskatoon, you directed staff not to conduct certain testing, to falsify records, and to conduct tasks that they were not qualified to perform.

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

- a) *You formerly practised in a medical clinic in Saskatoon, Saskatchewan (hereafter called “the clinic”);*
- b) *You encouraged staff members of the clinic to schedule as many immigration medical examinations as possible;*
- c) *You advised staff members to dump out urine samples without conducting any testing on those samples;*
- d) *You advised staff members to record the urine testing as “normal” despite not being tested;*
- e) *You advised staff members to not conduct formal vision testing on patients attending for the purpose of immigration medical examinations;*
- f) *You advised staff members to record the vision testing as “normal” despite not being tested;*
- g) *You advised staff members to complete the online physicians’ “grading” portion of the immigration medical examinations despite the fact they were not licenced physicians and were not qualified to do so.*

6. *The Council of the College of Physicians and Surgeons directs that, pursuant to section 47.5 of **The Medical Profession Act, 1981**, the Discipline Committee hear the following charge against Dr. Tshala Tshiyombo, namely:*

You Dr. Tshiyombo 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 paragraphs 7 and/or 48 and/or 52 of the Code of Ethics contained in bylaw 7.1

of the Regulatory bylaws of the College of Physicians and Surgeons of Saskatchewan, particulars whereof are that in the course of your professional practice in Saskatoon, you forged or falsified a document submitted in relation to an employee's complaint to the Government of Saskatchewan – Labour Relations and Workplace Safety - Employment Standards.

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

- a) You formerly practised in a medical clinic in Saskatoon, Saskatchewan (hereafter called “the clinic”);*
- b) A former staff member in the clinic, referred to in this charge as Employee 1, submitted a complaint to the Government of Saskatchewan - Labour Relations and Workplace Safety - Employment Standards prior to the termination of her employment in the Clinic;*
- c) You directed another former staff member, referred to in this charge as Employee 2, to prepare a letter to Employment Standards in response;*
- d) After the letter dated March 7, 2018 had been prepared by Employee 2, you altered the letter and/or falsified Employee 2's signature prior to having the letter submitted to Employment Standards.*

The Position of the Registrar's Office

The position of the Registrar's Office was that the Council should impose the following penalty:

- 1) A reprimand in the form that Council determines.
- 2) Revocation.
- 3) An order that Dr. Tshiyombo pay the costs of the investigation and hearing in the amount of \$32,775.16.

Council's Penalty Decision

The Council of the College of Physicians and Surgeons of Saskatchewan imposes the following penalty on Dr. Tshala Tshiyombo pursuant to **The Medical Profession Act, 1981** (the “Act”):

- 1) Pursuant to Section 54(1)(e) of the Act, the Council hereby reprimands Dr. Tshiyombo. The format of that reprimand will be in writing and provided in-person at a time to be determined in the future.

- 2) Pursuant to Section 54(1)(a) of the Act, the Council hereby strikes the name of Dr. Tshala Tshiyombo from the register and revokes her licence.
- 3) Pursuant to section 54(1)(i) of the Act, the Council directs Dr. Tshiyombo to pay the costs of and incidental to the investigation and hearing in the amount of \$32,775.16.

Points in Issue

Dr Tshiyombo did not appear before Council either in person or by representation, legal or otherwise.

The Registrar's Office argues that Dr. Tshiyombo's conduct, as found by the discipline hearing committee, is a significant departure from appropriate and ethical conduct and so it is deserving of significant sanction.

The Registrar's Office submitted that the conduct found, when considered in light of the previous findings of unprofessional conduct, demonstrate that Dr. Tshiyombo is ungovernable. It was the position of Registrar's Office that ungovernability was proven because there are appropriate findings in evidence which shows that Dr. Tshiyombo is unwilling to be governed by the expectations for members of the profession.

Council has found members to be ungovernable before. In doing so, Council has adopted the factors from the decision of *LSUC v. Fenik*, 2005 ONLSHP 25, paras 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.

Council was convinced of Dr. Tshiyombo's ungovernability by the findings of the discipline hearing committee, including her repetitive abnormal behaviour, discipline history, lack of remorse, failure to alter behaviour after discipline actions, and flagrant disregard of disciplinary proceedings. Council agrees with the position of the Registrar's Office that any regulated member of the profession who is ungovernable should not be allowed to practice the profession. Council concludes Dr. Tshiyombo is ungovernable and further concludes that revocation is the appropriate disposition.

Council also considered Dr. Tshiyombo's conduct in light of the principles set out in *Camgoz*, and concluded that the conduct, including among other things verbal abuse of employees, making false or misleading statements to the College, instructing employees not to perform tests and then to falsely record test results as if the tests had been performed, and forging a letter to Employment Standards, all also pointed to revocation as the appropriate disposition.

The Registrar's Office posits that despite the fact that Dr. Tshiyombo has resigned her license and no longer holds a license to practice in Saskatchewan, her license could still be revoked. The Registrar's Office argued that decisions from Courts and

other regulatory bodies demonstrated that regulatory legislation should be interpreted to allow revocation in appropriate cases. In this situation, the Registrar's Office's position is such that Dr. Tshiyombo's license should be revoked despite her resignation from practice. This decision will enhance public confidence in the ability to regulate the profession, serve as a deterrent to others and protect the ability to sanction inappropriate behaviors. Council agrees.

The Registrar's Office argued that there is no reason to depart from the usual approach that a physician found guilty of professional misconduct should be required to pay the costs of the investigation and hearing. Since Dr. Tshiyombo chose not to appear for the hearing and chose not to admit the charges against her, the College had no choice but to incur the costs associated with the hearing before the Committee. The Council accepted the Registrar's Office's position on costs incurred by the College, and orders that Dr. Tshiyombo pay those costs.

Order

Council therefore imposes the following penalty:

- 1) Dr. Tshiyombo shall receive a verbal reprimand;
- 2) Dr. Tshiyombo's license to practice is revoked;
- 3) Dr. Tshiyombo is ordered to pay the costs of the investigation and hearing in the amount of \$32,775.16.