



Dr. El-fellani MOHAMMED

Council Decision

Date Charge(s) Laid:	June 22, 2019 January 23, 2021
Outcome Date:	September 22, 2023
Hearing:	June 5, 2023
Penalty Hearing:	September 22, 2023
Disposition:	Reprimand, Suspension, Practice Conditions, Costs

The Council of the College of Physicians and Surgeons of Saskatchewan imposes the following penalty on Dr. El-fellani Mohammed pursuant to *The Medical Profession Act, 1981* (the "Act"):

1. Pursuant to Section 54(1)(e) of the Act, the Council hereby reprimands Dr. Mohammed. The format of that reprimand will be in-person. Dr. Mohammed is required to appear before the next regularly scheduled meeting of the Council to have the reprimand administered in person.
2. Pursuant to Section 54(1)(b) of the Act, the Council hereby suspends Dr. Mohammed for a period of 5 months, commencing at 12:01 a.m. on 1 November, 2023.
3. Pursuant to Section 54(1)(b) of the Act, the suspension will remain in effect unless prior to the end of the suspension, Dr. Mohammed provides an undertaking to the College, in a form acceptable to the Registrar, that contains the following:
 - I. Dr. Mohammed's agreement that he will not have any in-person professional encounters with female patients except in the presence of a female practice monitor;
 - II. Dr. Mohammed's agreement that any practice monitor utilized in his office practice will sign an undertaking to the College and that he will provide a copy of that undertaking to the College before that person can act as a practice monitor;
 - III. Dr. Mohammed's agreement that any person who acts as a practice monitor in his office practice will comply with the terms of that person's undertaking;

- IV. Dr. Mohammed's agreement to unannounced inspections by the College to monitor his compliance with the undertaking and the undertaking provided by his practice monitor(s);
 - V. Dr. Mohammed's agreement that he will post a clearly visible sign in his waiting room and in each of the examination rooms in his clinic that states he will not see female patients without the presence of a female practice monitor, such sign to be approved in advance by the Registrar;
 - VI. Dr. Mohammed's agreement that the College can provide a copy of the undertaking to the Saskatchewan Health Authority and to physicians with whom he works or shares office space;
 - VII. A statement that the terms of the undertaking will remain in effect while Dr. Mohammed remains licensed in Saskatchewan unless the Council agrees to an amendment to or termination of the undertaking.
4. Pursuant to Section 54(1)(i) of the Act, the Council directs Dr. Mohammed to pay the costs of and incidental to the investigation and hearing in the amount of \$56,300.43. Such payment shall be made in full by 22 September, 2024 and may be paid by monthly installments.
 5. Pursuant to Section 54(2) of the Act, if Dr. Mohammed should fail to pay the costs as required by paragraph 4, Dr. Mohammed's licence shall be suspended until the costs are paid in full.
 6. The Council reserves to itself the right to reconsider and amend any of the terms of this penalty order if requested to do so by Dr. Mohammed.

In the Matter of a Penalty Hearing regarding Dr. El-fellani Mohammed

Mr. E. Thompson appearing for the Registrar's Office

Mr. N. Cann appearing for Dr. Mohammed

REASONS FOR DECISION

Dr. El-fellani A. Mohammed appeared before the Council of the College of Physicians and Surgeons of Saskatchewan (CPSS) on September 22, 2023 for the purpose of a penalty hearing. He pled no contest to 7 charges of unprofessional conduct. The charges to which he was found guilty of are as follows:

1. *You Dr. El-fellani Mohammed 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 13 and/or 21 and/or 22 of the Code of Ethics contained in bylaw 7.1; and/or bylaw 8.1(b)(ix); and/or bylaw 23.1(a)(ii)2. of the bylaws of the College of Physicians and Surgeons of Saskatchewan.*

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

- 1) *A female person referred to in this charge as Patient #1 was your patient;*
 - 2) *You saw Patient #1 on a number of occasions between 2013 and 2014.*
 - 3) *During several appointments in 2014, you conducted stethoscope examinations on Patient #1 by putting your hand and stethoscope down the front of her shirt without warning, explanation or request for consent.*
 - 4) *The results of these stethoscope examinations were not consistently charted in Patient #1's medical record.*
 - 5) *On one of these occasions, you undid the top button of Patient #1's blouse without warning, explanation or request for consent.*
 - 6) *During one appointment with Patient #1, you asked her a personal question that she felt was inappropriate and not relevant to the examination.*
2. *You Dr. El-fellani Mohammed 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 13 and/or 21 and/or 22 of the Code of Ethics contained in bylaw 7.1; and/or bylaw 8.1(b)(ix) of the bylaws of the College of Physicians and Surgeons of Saskatchewan.*

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

- 1) *A female person referred to in this charge as Patient #2 was your patient. At the time of her appointments with you in 2011, Patient #2 was a minor.*

- 2) *During an appointment with Patient #2 in or about September of 2011, you conducted a stethoscope examination on her by putting your hand and stethoscope down the front of her shirt without warning, explanation or request for consent, involving contact with her breast.*
 - 3) *During the same appointment, you hugged Patient #2.*
3. *You Dr. El-fellani Mohammed 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 13 and/or 21 and/or 22 of the Code of Ethics contained in bylaw 7.1; and/or bylaw 8.1(b)(ix); and/or bylaw 23.1(a)(ii)2. of the bylaws of the College of Physicians and Surgeons of Saskatchewan.*

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

- 1) *A female person referred to in this charge as Patient #3 was your patient;*
 - 2) *You saw Patient #3 on a number of occasions between 2011 and 2016.*
 - 3) *During a number of those appointments, you conducted stethoscope examinations on Patient #3 by putting your hand and stethoscope down the front of her shirt or up from the bottom of her shirt without warning, explanation or request for consent, involving contact with her breasts.*
 - 4) *The results of the stethoscope examinations were not consistently charted in Patient #3's medical record.*
4. *You Dr. El-fellani Mohammed 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 13 and/or 21 and/or 22 of the Code of Ethics contained in bylaw 7.1; and/or bylaw 8.1(b)(ix); and/or bylaw 23.1(a)(ii)2. of the bylaws of the College of Physicians and Surgeons of Saskatchewan.*

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

- 1) *A female person referred to in this charge as Patient #4 was your patient.*
- 2) *You saw Patient #4 on a number of occasions between 2007 and 2018. During a number of those years, Patient #4 was a minor.*
- 3) *During a number of appointments between 2007 and 2018, you conducted stethoscope examinations on Patient #4 by putting your hand and stethoscope down the front of her shirt or up from the bottom of her shirt without warning, explanation or request for consent, involving contact with her breasts.*
- 4) *The results of the stethoscope examination were not consistently charted in Patient #4's medical record.*
- 5) *During several appointments between 2007 and 2010, you took photographs of Patient #4 in the presence of her mother without providing an appropriate explanation of the purpose of those photographs, and without obtaining written consent.*

- 6) *Your medical records for Patient #4 did not contain the photographs, any reference to the photographs being taken, or any reference to a consent discussion relating to the photographs.*
5. *You Dr. El-fellani Mohammed 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 13 and/or 21 and/or 22 of the Code of Ethics contained in bylaw 7.1; and/or bylaw 8.1(b)(ix); and/or bylaw 23.1(a)(ii)2. of the bylaws of the College of Physicians and Surgeons of Saskatchewan.*

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

- 1) *A female person referred to in this charge as Patient #5 was your patient.*
 - 2) *You saw Patient #5 on a number of occasions between 2013 and 2014.*
 - 3) *During an appointment in late 2013 or 2014 you conducted a stethoscope examination on Patient #5 by putting your hand and stethoscope down the front of her shirt without warning, explanation or request for consent, involving contact with her breast.*
 - 4) *The results of the stethoscope examination were not charted in Patient #5's medical record.*
 - 5) *During several appointments with Patient #5, you made comments to her and asked her personal questions that she felt were inappropriate and not relevant to the examinations on those occasions.*
6. *You Dr. El-fellani Mohammed 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 13 and/or 21 and/or 22 of the Code of Ethics contained in bylaw 7.1; and/or bylaw 8.1(b)(ix); and/or bylaw 23.1(a)(ii)2. of the bylaws of the College of Physicians and Surgeons of Saskatchewan.*

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

- 1) *A female person referred to in this charge as Patient #6 was your patient.*
- 2) *You saw Patient #6 on a number of occasions between 2007 and 2014.*
- 3) *During one appointment in 2014, you conducted a stethoscope examination on Patient #6 by putting your hand and stethoscope down the front of her shirt without warning, explanation or request for consent, involving contact with her breasts.*
- 4) *The results of the stethoscope examination were not charted in Patient #6's medical record.*
- 5) *During the same appointment, you made comments to Patient #6 that she felt were inappropriate and not relevant to the examination.*
- 6) *During the same appointment, you stood in the doorway of the examination room, leaving Patient #6 feeling that she had to brush against you in order to leave the room.*

7. You Dr. El-fellani Mohammed 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 (c) and/or bylaw 7.1(g) paragraphs 1 and/or 2 and/or bylaw 8.1(b)(ix) and/or bylaw 23.1(a)(ii)2. of the bylaws of the College of Physicians and Surgeons of Saskatchewan.

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

- 1) A female patient hereinafter referred to in this charge as Patient Number 1 was your patient;
- 2) Patient Number 1 attended on you on or about March 14, 2007;
- 3) On or about March 14, 2007, you advised Patient Number 1 that you needed to conduct a breast examination;
- 4) There was nothing in the medical records that supported the clinical indication for a breast examination of Patient Number 1 on that date;
- 5) You did not offer Patient Number 1 the option of having someone else in the examination room when you conducted the breast examination;
- 6) You remained in the examination room while Patient Number 1 removed her shirt and bra;
- 7) Patient Number 1 was not provided with a sheet, gown or other covering;
- 8) You performed the breast examination in a manner that was not consistent with the standard of practice of the profession;
- 9) You failed to record the breast examination in Patient Number 1's medical records.

The Council imposed the following penalty on Dr. Mohammed:

The Council of the College of Physicians and Surgeons of Saskatchewan imposes the following penalty on Dr. El-fellani Mohammed pursuant to **The Medical Profession Act, 1981** (the "Act"):

1. Pursuant to Section 54(1)(e) of the Act, the Council hereby reprimands Dr. Mohammed. The format of that reprimand will be in-person. Dr. Mohammed is required to appear before the next regularly scheduled meeting of the Council to have the reprimand administered in person.
2. Pursuant to Section 54(1)(b) of the Act, the Council hereby suspends Dr. Mohammed for a period of 5 months, commencing at 12:01 a.m. on 1 November, 2023.
3. Pursuant to Section 54(1)(b) of the Act, the suspension will remain in effect unless prior to the end of the suspension, Dr. Mohammed provides an undertaking to the College, in a form acceptable to the Registrar, that contains the following:
 1. Dr. Mohammed's agreement that he will not have any in-person professional encounters with female patients except in the presence of a female practice monitor;

- II. *Dr. Mohammed's agreement that any practice monitor utilized in his office practice will sign an undertaking to the College and that he will provide a copy of that undertaking to the College before that person can act as a practice monitor;*
 - III. *Dr. Mohammed's agreement that any person who acts as a practice monitor in his office practice will comply with the terms of that person's undertaking;*
 - IV. *Dr. Mohammed's agreement to unannounced inspections by the College to monitor his compliance with the undertaking and the undertaking provided by his practice monitor(s);*
 - V. *Dr. Mohammed's agreement that he will post a clearly visible sign in his waiting room and in each of the examination rooms in his clinic that states he will not see female patients without the presence of a female practice monitor, such sign to be approved in advance by the Registrar;*
 - VI. *Dr. Mohammed's agreement that the College can provide a copy of the undertaking to the Saskatchewan Health Authority and to physicians with whom he works or shares office space;*
 - VII. *A statement that the terms of the undertaking will remain in effect while Dr. Mohammed remains licensed in Saskatchewan unless the Council agrees to an amendment to or termination of the undertaking.*
4. *Pursuant to Section 54(1)(i) of the Act, the Council directs Dr. Mohammed to pay the costs of and incidental to the investigation and hearing in the amount of \$56,300.43. Such payment shall be made in full by 22 September, 2024 and may be paid by monthly installments.*
 5. *Pursuant to Section 54(2) of the Act, if Dr. Mohammed should fail to pay the costs as required by paragraph 4, Dr. Mohammed's licence shall be suspended until the costs are paid in full.*
 6. *The Council reserves to itself the right to reconsider and amend any of the terms of this penalty order if requested to do so by Dr. Mohammed.*

Registrars Position on Penalty

The Registrar's Office asked the Council to consider a suspension of 6 to 8 months, costs, a reprimand and an undertaking acceptable to the Registrar. They noted two aspects of the case that should be taken into account.

- 1) This is not a case of progressive discipline. Meaning, it is not a situation of conduct continuing after a previous finding of similar conduct. The Registrar argues that if this was the case then revocation would be the only option. Dr. Mohammed was found guilty of similar unprofessional conduct in 2019. It is important to note that all findings of unprofessional conduct since resulted from complaints that predate the 2019 finding, occurring between 2007 and 2018. There is no evidence of this unprofessional conduct since the decision of a contested hearing in 2019.

- 2) No contest plea. Dr. Mohammed has criminal charges proceeding through the courts. Any guilty plea could be prejudicial to his criminal case. Dr. Mohammed agreed to plead no contest as long as the allegation of sexual impropriety was withdrawn. This was agreed to by the Registrar's Office. The no contest plea does eliminate the need for the victims to testify at the hearing. Dr. Mohammed presented no evidence nor did he question or challenge the evidence presented by the Registrar's Office.

To justify the suspension of 6 to 8 months the Registrar's Office noted that the unprofessional behavior was both significant in number and the type of unprofessional conduct. The conduct included inappropriate examinations, touching and comments. The effect on the victims was not minimal. Many of the victims have ongoing issues with their mental and physical health. The number of victims was a significant aggravating factor. The conduct was physical/sexual in nature, but not found to be sexually motivated.

The Registrar's Office cited similar cases. *CPSO vs Wardle 2022*. Dr. Wardle was found guilty of inappropriate exam and touching of two victims. The allegation of sexual abuse was withdrawn and a joint recommendation of a suspension of 5 months was agreed upon. In *CPSS vs Dudley 2017*, there were 4 victims involved with inappropriate examinations, touching and comments. Included in the penalty decision by Council was a 4-month suspension and payment of costs. In *CPSO vs El-Tatari 2019* there were 8 victims and similar unprofessional conduct. The penalty included a 5-month suspension and payment of costs.

The Registrar's Office asked that costs be paid. Traditionally this has been imposed by Council. The Council has the legislated right to impose costs at a penalty hearing. The Registrar's Office was unaware of any reason why costs should not be paid by Dr. Mohammed. The Registrar's Office was also unaware of any financial hardship that Dr. Mohammed faces. The Registrar's Office suggested that if there were financial concerns that one year should be sufficient time to allow for payment of the costs.

Dr. Mohammeds Position on Penalty

Dr. Mohammed asked the Council to consider a suspension of 2 to 4 months, a reprimand, continuation of the undertaking and no costs.

Dr. Mohammed has learned from his previous behavior. Dr. Mohammed completed two approved courses on Boundaries, Ethics and Professionalism that were imposed in 2019. The concerning conduct is not an ongoing issue and does not raise a current or future risk to public safety or the safe practice of medicine. This demonstrates the effectiveness of the previously imposed sanctions in deterring any future or ongoing conduct. There have been no more complaints since the investigation and guilty finding in 2019.

Dr. Mohammed agreed that this was not a case appropriate for progressive discipline as all complaints predated his first penalty in 2019. This case must be considered on its own merit and the previous discipline should not be considered.

Dr. Mohammed pleaded no contest. This eliminated the need for any victims to testify at the hearing. As well he also forwent his right to present evidence at the hearing and did not contradict or question the evidence presented by the Registrar's Office. This was suggested to be a significant mitigating factor.

Dr. Mohammed also cited *CPSS vs Dudley*, *CPSO vs Wardle*, and *CPSO vs El-Tatari 2019*. Dr. Mohammed noted that not one of the suspensions was for a period of more than 5 months.

Dr. Mohammed argued that the costs should not be recovered by the Registrar's Office. Dr. Mohammed considered the costs unreasonable. He pled no contest which reduced the length and cost of the proceedings. He cited *Jinnah and the Dental College of Alberta*. The Court of Appeal stated that costs are an "inevitable part of self regulation". The Colleges should be responsible for the costs of self regulation. The Court of Appeal concluded that there are 4 "compelling reasons" that may justify imposing a significant portion of costs on a disciplined member:

- 1) Where a member engages in serious unprofessional conduct that they must have known constituted unprofessional conduct;
- 2) Where a member who is a serial offender engages in unprofessional conduct on two or more occasions, and both the findings of unprofessional conduct are serious breaches;
- 3) Where a member fails to cooperate with investigators and requires additional resources to ascertain the facts, at which time the costs should be equal to the unnecessary expenditures;
- 4) Where a member engages in hearing misconduct, behaviour that unnecessarily prolongs or results in increased costs of the hearing.

Reasons for the Decision of the Council

Council considered Dr. Mohammed's conduct to be a marked departure from the standard of care that should have been provided to his patients and noted that patients should feel safe in a trusting and professional doctor-patient relationship. Council was provided evidence that several of the victims now have difficulty trusting the medical profession which may be detrimental to their physical and mental health.

Council agreed that this was not a case for progressive discipline. We still had to consider the number of victims. This was not just one episode of poor judgement. Dr. Mohammed demonstrated a pattern of behavior that was unprofessional and unethical and one that exploited the 7 victims. Trust in the profession, for these victims, has been severely damaged.

Suspension of 5 Months

Council considered the arguments made by legal counsel from both sides. Council considered the impact on the victims the most important aspect to consider. The Council's mission is public protection. Council considered the cited cases. Council agreed with the Registrar's Office that a significant suspension was in order. The conduct was egregious. Dr. Mohammed is a physician with lots of experience and should be expected to have known that this behavior was unacceptable.

Council acknowledged that Dr. Mohammed has not reoffended since 2017. He has taken the required boundaries and ethics courses. Due to significant similarities in the case law and the Dr. Mohammed case, Council agreed with Dr. Mohammed that a suspension of 6 to 8 months was not supported.

Council felt a suspension of 5 months was supported by the evidence provided and the case law. The suspension demonstrated that the Council acknowledges the significant nature and gravity of the conduct towards the 7 victims. The suspension also acts a general deterrence to the profession. Council considers the suspension will help to maintain the public's confidence in the integrity of the profession.

Costs

Council believed that subsequent to a finding of unprofessional conduct the costs should be borne by the guilty member and not the profession as a whole. This has been a standard for the Council throughout the years. This practise is subject to review on a case by case basis.

Council considered the arguments by both sides. Council agreed with the Registrar's Office that costs would be appropriate in this case. The conduct was egregious and the victims number 7 in total. Council rejected Dr. Mohammed's argument that the costs were unreasonable. The Registrar's Office provided appropriate documentation to support those costs. Council considered the case *Jinnah* cited by Dr. Mohammed. In *Jinnah* it is important to note that the Court stated that costs may be imposed if a member engages in serious unprofessional conduct that they must have known constituted unprofessional conduct. Dr. Mohammed has been in practice for more than 20 years and would be expected to know that his conduct was unprofessional. Council considered the unprofessional conduct by Dr. Mohammed to be serious and significant. Council felt that the profession should not shoulder the costs for this conduct. The Council reviewed Dr. Mohammed financial circumstances and due to this information provided Dr. Mohammed an extension of one year to pay.

Reprimand and Undertaking

Both parties agreed that a reprimand and undertaking were appropriate. The reprimand will be in person as the conduct was considered serious and the impact on the victims significant. When

Dr. Mohammed is allowed back to practice there will be an undertaking, the terms of which must be acceptable to the Registrar.

**Accepted by the Council of the College of Physicians & Surgeons of Saskatchewan:
25 November, 2023**