

IN THE MATTER OF *THE MEDICAL PROFESSION ACT, 1981*

**AND IN THE MATTER OF THE SENTENCING OF
DR. B. ZIMMERMANN OF INDIAN HEAD, SASKATCHEWAN**

Mr. Brad Hunter for Dr. B. Zimmermann
Mr. Bryan Salte for the College of Physicians and Surgeons

REASONS FOR DECISION

1. OVERVIEW

[1] Dr. B. Zimmermann is a family physician who has practiced in Indian Head, Saskatchewan since 1989. He has admitting privileges at the Indian Head Hospital (“Hospital”) which operates under the authority of the Regina Qu’Appelle Regional Health Authority (“Authority”). On March 5, 2008, the Authority wrote a letter to the College of Physicians and Surgeons (“College”) alleging Dr. Zimmermann self diagnosed and treated himself at the Hospital. On May 6th, the Authority wrote another letter to the College referring to incidents where Dr. Zimmermann allegedly refused to attend to patients at the Hospital. The Executive Committee of the College appointed a preliminary inquiry committee under the authority of Section 47 of *the Medical Profession Act, 1981*.

[2] Ultimately, Dr. Zimmermann was charged and pled guilty to unbecoming, improper, unprofessional or discreditable conduct contrary to Section 49 of *The Medical Profession Act, 1981*, S.S. 1980-81, c. M-10.1. The charges are:

1. *You Dr. Bruce Zimmermann 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 44 and paragraph 18 of the Code of Ethics and/or bylaw 51(2)(j) of the College of Physicians and Surgeons of Saskatchewan.*

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

- (a) *On or about the 30th day of April, 2008, a child, identified in this charge by the initials C.H. was brought to the Emergency Room at the Indian Head Hospital;*
- (b) *C.H.’s medical conditions included a congenital heart defect;*
- (c) *You provided medical care to C.H. approximately one week prior to April 30, 2008;*

- (d) C.H.'s symptoms while at the Emergency Room of the Indian Head Hospital included one or more of shortness of breath, tachypnea substernal indrawing and tachycardia;
 - (e) You were contacted by a nurse from the Indian Head Hospital who stated her opinion that C.H.'s condition warranted the attendance of a doctor;
 - (f) You did not attend promptly at the Indian Head Hospital;
 - (g) C.H. was kept waiting at the hospital for a longer period of time than should reasonably have been expected for treatment of his medical condition;
 - (h) You accepted payment for being on-call at the Indian Head Hospital on April 30, 2008.
2. You Dr. Bruce Zimmermann 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 44 and paragraph 18 of the Code of Ethics and/or bylaw 51(2)(j) of the College of Physicians and Surgeons of Saskatchewan.

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

- (a) On or about the 25th day of April, 2008, a patient, identified in this charge by the initials N.H. came to the Emergency Room at the Indian Head Hospital;
 - (b) N.H. was your patient;
 - (c) N.H. had co-morbid conditions which included one or more of mixed connective tissue disease, mitral valve replacement, chronic renal failure, scoliosis, polymyalgia, scleroderma and progressive muscle weakness.
 - (d) A nurse at Indian Head Hospital telephoned you to advise you of the patient's condition;
 - (e) You advised the nurse that you would not attend at the hospital to see N.H.;
 - (f) A nurse at Indian Head Hospital subsequently attempted to contact you on your cellular telephone, but you did not answer your telephone;
 - (g) You accepted payment for being on-call at the Indian Head Hospital on April 25, 2008.
3. You Dr. Bruce Zimmermann 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 44 and paragraph 18 of the Code of Ethics and/or bylaw 51(2)(j) of the College of Physicians and Surgeons of Saskatchewan.

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

- (a) On or about the 11th day of March, 2008, a patient, identified in this charge by the initials A.R. came to the Emergency Room at the Indian Head Hospital with a nose bleed;
- (b) You had previously provided medical treatment to A.R.;
- (c) A nurse at the Indian Head Hospital contacted you and advised you that she was unable to control his nose bleed;
- (d) A nurse at the Indian Head Hospital advised you that the patient was receiving Warfarin;
- (e) You refused to attend at Indian Head Hospital to see A.R.;

- (f) *You failed to order tests such as INR or hemoglobin to assess A.R.'s medical condition;*
 - (g) *You accepted payment for being on-call at the Indian Head Hospital on March 11, 2008.*
4. *You Dr. Bruce Zimmermann 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 44 and paragraph 20 of the Code of Ethics and/or bylaw 51(2)(h) of the College of Physicians and Surgeons of Saskatchewan.*

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

- (a) *On or about the 16th day of December, 2007 you presented at the Indian Head Hospital;*
 - (b) *You ordered administration of Buscopan intravenously for yourself;*
 - (c) *You ordered administration of Gravol intravenously for yourself;*
 - (d) *You remained on call at the Indian Head Hospital during the period of your illness and treatment;*
 - (e) *You provided care to patients in the period surrounding your illness and treatment.*
5. *You Dr. Bruce Zimmermann 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 44 and paragraph 20 of the Code of Ethics and/or bylaw 51(2)(h) of the College of Physicians and Surgeons of Saskatchewan.*

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

- (a) *On or about the 28th day of February, 2008 you presented at the Indian Head Hospital;*
- (b) *You ordered administration of Buscopan intravenously for yourself;*
- (c) *You ordered administration of Gravol intravenously for yourself;*
- (d) *You remained on call at the Indian Head Hospital during the period of your illness and treatment;*
- (e) *You provided care to patients in the period surrounding your illness and treatment.*

[3] On June 10, 2009 Dr. Zimmermann appeared with his legal counsel, Mr. Brad Hunter, to address Council on the appropriate penalty. Mr. B. Salte, counsel for the College, also addressed Council. At the conclusion of legal counsels' representations, Dr. Zimmermann also spoke to Council about his personal circumstances surrounding the events leading to the charges. At the conclusion of the hearing, Council deliberated in camera and imposed the following penalty:

That, pursuant to Section 54(1) of *The Medical Profession Act, 1981*, the Council of the College of Physicians and Surgeons imposes the following disposition upon Dr. Bruce Zimmermann:

1. Pursuant to Section 54(1)(e), the Council reprimands Dr. Zimmermann;
2. Pursuant to Section 54(1)(f), the Council imposes a fine on Dr. Zimmermann in the amount of \$10,000.00;
3. Pursuant to Section 54(1)(g), the Council requires Dr. Zimmermann to take treatment under the direction of the Physician Support Program of the Saskatchewan Medical Association for a period of two years, with that program to provide reports to the College of Physicians and Surgeons each six months; and
4. Pursuant to Section 54(1)(i), the Council directs Dr. Zimmermann to pay the costs of and incidental to the investigation and hearing in the amount of \$16,351.66.

[4] These are the reasons for Council's decision.

Penalty Decision

Principles in Imposing Penalty for Unprofessional Conduct

[5] The Saskatchewan Court of Queen's Bench in *Camgoz v. College of Physicians and Surgeons (Sask.)*, (1993), 114 Sask. R. 161, identified the following considerations as relevant to deciding the appropriate penalty after a finding of sexual abuse:

1. The nature of the proven allegations;
2. The age of the offending physician;
3. The age of the offended patient;
4. Evidence of the frequency of the particular acts of misconduct within particularly, and without generally, the province;
5. The presence or absence of mitigating circumstances, if any;
6. Specific deterrence;
7. General deterrence;
8. Previous record, if any, for the same or similar misconduct;
9. Ensuring that the penalty will protect the public and ensure the safe and proper practice of medicine;
10. The need to maintain the public's confidence in the integrity of the College's ability to properly supervise the professional conduct of its members;

11. Ensuring that the penalty imposed is not disparate with the penalties previously imposed for similar conduct.

[6] Although Dr. Zimmermann's conduct does not involve sexual abuse, these considerations are relevant in determining his penalty.

[7] Council's mandated legislative obligation is to protect the public, in part, through the discipline of its physician members. Section 69.1 of *The Medical Professional Act, supra*, compels Council to keep public protection at the forefront of its deliberations. This is the umbrella under which the *Camgoz, supra*, considerations are examined.

[8] The facts surrounding the charges are not disputed. Three of the five charges relate to Dr. Zimmermann's lack of care for certain patients presenting at the Emergency Room of the Hospital when he was on-call. The first charge involves a three month old child who was awaiting surgery to repair a heart defect. He arrived at the Hospital on April 30, 2008 in distress with shortness of breath, tachypnea of 58-68 respirations per minute, substernal indrawing and tachycardia of 180 beats per minute. When Dr. Zimmermann did not arrive within two hours, the child's caregiver left the Hospital. Dr. Zimmermann then arrived to treat another patient. The next day the child went to Regina for medical treatment. The patient suffered no harm as a result of Dr. Zimmermann's lack of treatment.

[9] The second patient care charge refers to a 72 year old woman who was Dr. Zimmermann's patient. She was admitted to the Hospital on April 25, 2008 because her relatives were concerned about her deteriorating medical condition. Dr. Zimmermann had spoken to his patient earlier in the day and advised her situation was not an emergency so he would see her the next day. The emergency room nurse phoned Dr. Zimmermann's cellular telephone at 8:45 p.m. to tell him that his patient was at the Hospital. Dr. Zimmermann told the nurse he would not attend the Hospital to see his patient. The nurse telephoned him again at 8:47 p.m., 8:50 p.m. and 8:55 p.m., but Dr. Zimmermann did not answer his cellular telephone. Dr. Zimmermann saw his patient the

next day at his office. The patient suffered no harm as a result of Dr. Zimmermann's lack of treatment.

[10] The third charge refers to a 77 year old man who had an uncontrollable nosebleed (epistaxis). Dr. Zimmermann knew the patient was taking a blood thinner (Warfarin). The duty nurse contacted Dr. Zimmermann who said he would not see the patient because the patient received his medical care in Regina and Dr. Zimmermann had little knowledge of his medical situation. As a result of Dr. Zimmermann's refusal to see the patient, the patient was transferred by ambulance to Regina where his nose was cauterized. The patient experienced loss of consciousness due to lack of blood flow to the brain (syncopal episode). In Regina, his hemoglobin level was 114 as compared to the normal level of 140 and 180. His hemoglobin levels while he was at the Hospital were unknown as no readings were taken at that time. The patient suffered no harm as a result of Dr. Zimmermann's lack of treatment.

[11] The last two charges refer to Dr. Zimmermann's conduct in treating himself with intravenous medications and treating patients when he was on-call at the hospital. The Code of Ethics and the College bylaws prohibit self-treatment:

44. (2) Contravention of or failure to comply with the Code of Ethics is unbecoming, improper, unprofessional or discreditable conduct for the purpose of the Act.
 4. Practise the art and science of medicine competently and without impairment.
 20. Limit treatment of yourself or members of your immediate family to minor or emergency services and only when another physician is not readily available; there should be no fee for such treatment.

[12] Dr. Zimmermann is 48 years of age and received his medical training at the University of Saskatchewan. He is dedicated to a nonurban practice. He has worked in Indian Head since 1989. He spoke to the competing needs of raising a young family and training as a triathlete. He spoke of the incredible pressures on an on-call physician in a small community and produced his on-call schedule from June of 2007 to June of 2008. The schedule indicates Dr. Zimmermann was on-call between 16 and 27 times per month.

[13] One of the patient charges occurred in March, 2008. The two other patient charges occurred in late April 2008. In each of those months Dr. Zimmermann was on-call 27 days.

[14] Although Council accepts Dr. Zimmermann was working very hard, it seems he did not appreciate his responsibilities as an on-call physician. Patients and staff expect on-call physicians to respond to emergency situations. Patients reporting to a hospital for medical attention may have been harmed by Dr. Zimmermann's failure to attend at the hospital. Fortunately, none were, but that outcome could not have been known when they attended at the hospital. The nursing staff were sufficiently concerned about the patients' medical conditions to continue calling Dr. Zimmermann for one patient and sending the other patient by ambulance to Regina.

[15] Council is concerned that physicians who accept on-call duties must respond when called. If a physician is unable or unwilling to accept those responsibilities, he/she should not accept the on-call schedule. No one can make that decision for the physician, but the physician himself or herself. Dr. Zimmermann agreed to the schedule and therefore represented to patients and staff that he was available to provide medical services. He failed to do so.

[16] The patients Dr. Zimmermann declined to provide care to were particularly vulnerable due to their age and condition. The child was three months old and had a serious heart condition requiring surgery. The adult woman was 72 years of age and had been seen by Dr. Zimmermann earlier in the day. Her medical condition deteriorated after this examination. The adult man was 77 years of age and suffered such a severe nose bleed that he experienced a loss of consciousness.

[17] Council was mindful that Dr. Zimmermann accepted responsibility for his conduct thereby precluding the need for a disciplinary hearing. However, Dr. Zimmermann has a previous discipline history which was taken into account in assessing

the penalty for these charges. In 2002 and 2005 Dr. Zimmermann pled guilty to the following charges:

(a) 2002

*The Council of the College of Physicians and Surgeons directs that, pursuant to section 47.5 and 47.6 of **The Medical Profession Act, 1981**, the Discipline Committee hear the following charges against Dr. Bruce Zimmermann, namely:*

1. *You Dr. Bruce Zimmermann 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 32 of the bylaws of the College of Physicians and Surgeons.*

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

- (i) *On our about February 2, 2000, the Complaints Resolution Advisory Committee of the College of Physicians and Surgeons wrote you asking for a response to a complaint that had been made against you;*
 - (j) *You failed to respond to that request in a timely fashion*
 - (k) *On our about April 5, 2000, the Complaints Resolution Advisory Committee of the College of Physicians and Surgeons wrote to you, advising you that no response had been received to the complaint that had been made against you and asking for a response from you;*
 - (l) *You failed to respond to that request in a timely fashion*
 - (m) *On our about October 4, 2000, the Complaints Resolution Advisory Committee of the College of Physicians and Surgeons wrote to you, advising you that no response had been received to the complaint that had been made against you and asking for a response from you;*
 - (n) *You failed to respond to that request in a timely fashion*
 - (o) *On our about January 8, 2001, Dr. Dennis Kendel, Registrar of the College of Physicians and Surgeons of Saskatchewan wrote you, advising you that no response had been received to the complaint that had been made against you;*
 - (p) *You failed to respond to that request in a timely fashion*
2. *You Dr. Bruce Zimmermann 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 32 of the bylaws of the College of Physicians and Surgeons*

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

- (a) *On or about July 19, 2000, Dr. Dennis Kendel wrote a letter to you in which he asked for a written response from you in relation to your actions with the PEP program;*
- (b) *You failed to respond to that request in a timely fashion*
- (c) *On or about September 19, 2000, Dr. Dennis Kendel wrote a letter to you in which he reminded you that you had not responded to his letter of July 19, 2000.*
- (d) *You failed to respond in a timely fashion to that letter*

3. You Dr. Bruce Zimmermann 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 32 of the bylaws of the College of Physicians and Surgeons

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

- (a) On our about July 5, 1991, Dr. Dennis Kendel, Registrar of the College of Physicians and Surgeons of Saskatchewan, wrote to you asking for further information in relation to IVP's that you appeared to have performed at Indian Head Hospital
- (b) You failed to respond to that request in a timely fashion
- (c) On or about December 28, 2001, Dr. Kendel wrote to you, by means of a letter addressed to your legal counsel and copied to you, asking for further information in relation to the IVP's that you appeared to have performed at Indian Head Hospital
- (d) On or about January 31, by letter addressed to your legal counsel, Dr. Dennis Kendel asked for a response to the letter dated December 28, 2001
- (e) On or about March 4, 2002, by letter addressed to your legal counsel, Dr. Dennis Kendel asked for a response to the letter dated December 28, 2001
- (f) You failed to respond to the request of December 28, 2001, the request of January 31, 2002, or the request of March 4, 2002 in a timely fashion

(b) 2005

1. You Dr. Bruce Zimmermann 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 32 of the bylaws of the College of Physicians and Surgeons.

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

- (a) On our about January 11, 2005, Dr. Karen Shaw, Deputy Registrar of the College of Physicians and Surgeons wrote to you asking you to provide information as set out in that letter;
- (b) You did not respond to that request as required by Bylaw 32 of the bylaws of the College of Physicians and Surgeons of Saskatchewan;
- (c) You did not respond substantially to that request; and/or
- (d) You did not provide the information or explanation requested by that letter to the best of your ability to do so; and/or
- (e) You did not provide the requested information with 14 days of receipt of that request.

2. You Dr. Bruce Zimmermann 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 32 of the bylaws of the College of Physicians and Surgeons.

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

- (a) *On our about March 17, 2005, Dr. Karen Shaw, Deputy Registrar of the College of Physicians and Surgeons wrote to you asking you to provide information as set out in that letter;*
 - (b) *You did not respond to that request as required by Bylaw 32 of the bylaws of the College of Physicians and Surgeons of Saskatchewan;*
 - (c) *You did not respond substantially to that request; and/or*
 - (d) *You did not provide the information or explanation requested by that letter to the best of your ability to do so; and/or*
 - (e) *You did not provide the requested information with 14 days of receipt of that request.*
3. *You Dr. Bruce Zimmermann 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 32 of the bylaws of the College of Physicians and Surgeons.*

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

- (a) *On our about April 8, 2005, Dr. Karen Shaw, Deputy Registrar of the College of Physicians and Surgeons wrote to you asking you to provide information as set out in that letter;*
 - (b) *You did not respond to that request as required by Bylaw 32 of the bylaws of the College of Physicians and Surgeons of Saskatchewan;*
 - (c) *You did not respond substantially to that request; and/or*
 - (d) *You did not provide the information or explanation requested by that letter to the best of your ability to do so.*
4. *You Dr. Bruce Zimmermann 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 32 of the bylaws of the College of Physicians and Surgeons.*

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

- (a) *On our about May 4, 2005, Dr. Dennis Kendel, Registrar of the College of Physicians and Surgeons wrote to you asking you to provide information as set out in that letter;*
- (b) *You did not respond to that request as required by Bylaw 32 of the bylaws of the College of Physicians and Surgeons of Saskatchewan;*
- (c) *You did not respond substantially to that request; and/or*
- (d) *You did not provide the information or explanation requested by that letter to the best of your ability to do so; and/or*
- (e) *You did not provide the requested information with 14 days of receipt of that request.*

[18] Dr. Zimmermann was fined \$6,000.00 in 2005 and was reprimanded and fined \$3,000.00 in 2002. In seven years, he has pled guilty to 12 charges of unprofessional conduct.

[19] The ability of the College to maintain the public's confidence in its ability to supervise the professional conduct of its members is one of the considerations specifically referred to in *Camgoz, supra*. Although the charges in 2002 and 2005 are failures to respond to requests of the College rather than issues of patient care, the multitude of charges demonstrate Dr. Zimmermann's lack of appreciation of his professional obligations and undermines the College's ability to supervise its members. The penalty imposed on Dr. Zimmermann must serve as punishment for his specific conduct and as a reminder of his ongoing need to comply with professional responsibilities and the ethics of practice.

[20] College counsel recommended a one to three month suspension followed by a period of supervision, a fine and costs. Counsel for Dr. Zimmermann recommended a fine of \$10,000.00 and costs.

[21] The request for supervision and suspension is not supported by Council. There was no evidence or admission that Dr. Zimmermann was incompetent or that his clinical skills were deficient. He did effect poor judgment in not attending to the on-call patients and in self-medicating, but there was no evidence that he provided improper patient care. His poor judgment was a function of a punishing on-call schedule for which he should have accepted responsibility.

[22] Dr. Zimmermann is currently being supported by the Saskatchewan Physician's Support Services which assists physicians in coping with their individual circumstances. Council considers Saskatchewan Physician's Support Services the type of supervision that will assist Dr. Zimmermann rather than clinical supervision which may not address his underlying problems.

[23] Amongst other considerations as described above, it is critical that the penalty recognize the potential risk to patients and the need to deter similar conduct on the part of Dr. Zimmermann and other physicians.

[24] The Council's penalty for Dr. Zimmermann's conduct is a reprimand, a fine of \$10,000.00, a requirement to continue treatment for two years with the Physician Support Program with a report to the College every six months and costs of the investigation and hearing of \$16,351.66.

Dated the 16th day of November, 2009 at Saskatoon, Saskatchewan.