



## Dr. Robert COLISTRO

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### Council Decision

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| <b>Date Charge(s) Laid:</b> | December 1, 2018                                  |
| <b>Outcome Date:</b>        | January 28, 2022                                  |
| <b>Hearing:</b>             | Completed   |
| <b>Disposition:</b>         | Reprimand, Suspension,<br>Fine, Conditions, Costs |

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

- 1) Pursuant to Section 54(1)(e) of the Act, the Council hereby reprimands Dr. Colistro. The format of that reprimand will be in written format.
- 2) Pursuant to Section 54(1)(b) of the Act, the Council hereby suspends Dr. Colistro for a period of 2 months, such suspension to take effect by no later than 1 March, 2022.
- 3) Pursuant to Section 54(1)(f) of the Act, the Council imposes a fine on Dr. Colistro in the amount of \$15,000, payable by no later than 28 April, 2022.
- 4) Pursuant to Section 54(1)(g) of the Act, the Council requires that Dr. Colistro successfully complete the Medical Services Branch online billing course and provide proof of completion. Such course shall be completed within two months.
- 5) Pursuant to Section 54(1)(g) of the Act, the Council requires that Dr. Colistro successfully complete a course on ethics/professionalism acceptable to the Registrar, and provide proof of completion. Such course shall be completed at the first available date, but in any case within six months. The programs “Medical Ethics, Boundaries and Professionalism” by Case Western Reserve University and “Medical Ethics and Professionalism (ME-15 Extended)” by PBI Education are ethics programs acceptable to the Registrar.
- 6) Pursuant to Section 54(1)(i) of the Act, the Council directs Dr. Colistro to pay the costs of and incidental to the investigation and hearing in the amount of \$70,559.17. Such payment shall be made in full by 28 January, 2023.

- 7) Pursuant to Section 54(2) of the Act, if Dr. Colistro should fail to pay the costs as required by paragraph 6, Dr. Colistro's licence shall be suspended until the costs are paid in full.
- 8) The Council reserves to itself the right to reconsider and amend any of the terms of this penalty decision, upon application by Dr. Colistro. Without limiting the authority of the Council, the Council may extend the time for Dr. Colistro to pay the costs required by paragraph 6.



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REGISTRAR  
KAREN SHAW, M.D.

21 March, 2022

Dr. R. Colistro

[REDACTED]

Dr. Colistro,

You have been found guilty of professional misconduct by a duly appointed Discipline Hearing Committee of the College of Physicians and Surgeons of Saskatchewan. Council held a penalty hearing on January 28, 2022 and determined penalty. One component of that penalty was a reprimand.

*You, Dr. Robert Colistro, having been found guilty of professional misconduct while practising medicine in the province of Saskatchewan are hereby reprimanded by the Council of the College of Physicians and Surgeons of Saskatchewan.*

By failing to ensure due diligence over your billings, you caused the clinic to engage in deliberate aggressive billing practices that put you at an undue advantage. You also failed to ensure there was a policy in place in relation to regular inspection of ultrasound equipment. Council abhors your conduct as it fell well short of the ethical and professional standard expected of members of the profession.

The Saskatchewan physician fee-for service billing system is predicated on trust. It is a privilege to have an honour system for the payment of professional fees. It is therefore essential that the privilege is not abused. Furthermore, adherence to proper billing practices is essential to sustaining our publicly funded health care system and the public’s confidence in the practice of medicine.

Continued.....

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

Council considered the mitigating factors put forward by your legal counsel and acknowledged that you had no prior record of professional misconduct, that you cooperated fully with the College process and that your conduct was not found to be fraudulent or dishonest. Nonetheless, it is your responsibility to personally ensure that all billings submitted meet appropriate standards.

It is the hope of the Council that you will reflect and learn from this experience. Council expects that you will maintain the utmost professional and ethical standards in future.

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. Robert Colistro**

**JANUARY 28, 2022**

**Ms. Sheila Torrance appearing for the College of Physicians & Surgeons of Saskatchewan**

**Mr. Collin Hirschfeld, Q.C. appearing for Dr. R. Colistro**

**Background:**

Dr. R. Colistro is a diagnostic radiologist who has maintained a full-time radiology practice in Kamloops, B.C. since 2006. Since August, 2012, he has also acted as the Medical Director of an ultrasound diagnostic clinic in Saskatoon, reading and reporting on scans remotely. There were two charges against Dr. Colistro. The first charge alleged that from August 12, 2013 to March 16, 2015, Dr. Colistro caused or permitted excessive billing or failed to exercise due diligence over billing. This primarily related to billing codes 20W (M-mode) and 50W (Doppler flow studies). The second charge alleged that he failed to meet the obligations of a Medical Director of a diagnostic imaging facility and failed to exercise appropriate oversight over the facility.

Dr. Colistro appeared before the Council of the College of Physicians and Surgeons of Saskatchewan “the Council” for a penalty hearing on January 28, 2022.

Following a Discipline Hearing, Dr. Colistro was found guilty of unbecoming, improper, unprofessional or discreditable conduct pursuant to Section 46(p) of The Medical Profession Act and Bylaw 8.1(b)(iii) – charging fees that are excessive to the services performed.

Dr. Colistro was also found guilty of professional misconduct under Bylaw 25.1(d)(i)4(2) by failing to ensure there was a policy in place in relation to regular inspection of ultrasound equipment.

The Council imposed a reprimand, a fine of \$15,000, a requirement to take a billing course and an ethics and professionalism course, an order to pay cost in the amount of \$70,559.17 and a 2 month suspension.

**Facts Relevant to the Penalty**

The relevant facts are set out in the Decision of the Disciplinary Hearing committee. They include the following:

a) Dr. Colistro agreed to read ultrasound scans for Circle West as the owner and sonographer, T. L. was unable to find a local radiologist to read the scans. The arrangement she had previously made with a radiologist had fallen through [paragraph 11 of the Agreed Statement of Facts (“ASF”), page 8 of the Decision].

b) Dr. Colistro was in communication with the College and Medical Services Branch prior to agreeing to assist T.L and Circle West, and was responsive to all inquiries from the College [paragraphs 13-25 of the ASF, pages 9-10 of the Decision].

c) Dr. Colistro has maintained an active licence with CPSS since August 2012.

d) Dr. Colistro has not been the subject of previous disciplinary action in Saskatchewan or British Columbia.

e) Dr. Colistro's billing of the codes 20W and 50W differed from other Saskatchewan radiologists. He billed 50W significantly more than other radiologists and was the only radiologist billing code 20W in 2014-2015 (when he billed it 1,974 times) [paragraph 127 of the Decision].

f) At his hearing before the Joint Medical Professional Review Committee (JMPRC), "Dr. Colistro acknowledged, in retrospect and given the concerns raised, that the 50W code probably was intended for the use of pulse or spectral Doppler rather than the more common colour Doppler; that he suspected it had been incorrectly used for colour Doppler by Circle West." [paragraph 129 of the Decision].

g) At the JMPRC hearing, Dr. Colistro also "acknowledged, in retrospect, that M-mode to detect fetal heartrate is included in the code 40W services, not as a separate additional 20W billing." [paragraph 129 of the Decision].

h) The Committee concluded that the evidence was "abundantly clear" that the 20W and 50W codes were inappropriately added to Circle West billing submissions, and that those constituted excessive billing [paragraph 136 of the Decision].

i) The Committee concluded that Dr. Colistro's belief that the 20W and 50W codes could be added for routine services was not reasonable and that he had not met his burden of proving due diligence. Both Dr. Colistro and Ms. T. L. stood to profit from these decisions, which were made "without ever questioning their validity or soundness." The Committee noted that Dr. Colistro could have called another radiologist, a diagnostic imaging facility and/or MSB to seek advice on this [paragraphs 140-141 of the Decision].

j) The Committee found that "Dr. Colistro and T.L, without exercising due diligence, agreed on an aggressive billing strategy which worked to their advantage until the regular audit processes unfolded and Dr. Colistro's outlier billing profile was exposed." [paragraph 142 of the Decision].

k) Dr. Colistro cooperated fully with the College investigation and discipline process.

### **Position of the Registrar's Office on Penalty**

The Registrar's Office took the position that the appropriate penalty for Dr. Colistro should be:

- 1) Dr. Colistro should be reprimanded. The Council will determine whether the reprimand should be an in-person (virtual) reprimand or a written reprimand;
- 2) Dr. Colistro should be suspended for between 3 to 6 months. This suspension should commence within 30 days of the Council decision in order to allow Dr. Colistro to make arrangements for Circle West;
- 3) There should be a fine of \$15,000. The Council will determine the date by which it must be paid;
- 4) Dr. Colistro should be required to successfully complete the following:
  - a. a course in medical ethics and professionalism, approved in advance by the Registrar; and,
  - b. the Medical Services Branch online billing course.
- 5) Dr. Colistro should be required to pay the costs associated with the investigation and hearing of this matter in the amount of \$70,559.17 [\$106,429.80 reduced by approximately one-third in recognition of the fact that the majority of Charge #2 was not proven]. The Council will need to determine the appropriate timeframe for the payment of costs;
- 6) Dr. Colistro should be suspended if he fails to pay the costs assessed within the timeframe established by Council;
- 7) Council should reserve the right to revisit the timing of the costs payments if so requested by Dr. Colistro.

### **The Position of The Registrar's Office**

The Registrar's Office takes the position that Dr. Colistro billed for something that did not require additional work. Though not fraudulent, it was found to be a deliberate decision to bill aggressively. There were simple steps he could have taken to confirm that the billings were appropriate; he failed to take those steps. In the Decision, the Disciplinary Hearing Committee found the seriousness of Dr. Colistro's conduct was an 8 on a scale of 10, with 10 being the most serious. Furthermore, the aggressive billing pattern continued for several years before it was discovered and brought to Dr. Colistro's attention.

The Registrar's Office opines that this is a serious misconduct in the context of a billing system that relies on physician's due diligence, honesty and integrity to ensure that only appropriate billings are submitted. The penalty imposed by the Council must therefore adequately reflect the Council's and the public's perspective of the seriousness of Dr. Colistro's misconduct. This needs to send a message to Dr. Colistro that he must be much more careful in the future to ensure his billings are appropriate. It also needs to send a message to all physicians to ensure they understand Council's abhorrence of improper billing and to reinforce their ethical obligation to ensure billings submitted on their behalf are appropriate.

While this case did not directly involve patients, the public is certainly impacted when public funds earmarked for medical services are claimed by physicians in inappropriate circumstances.

With respect to the costs associated with investigating and prosecuting these matters, the Registrar's Office proposed a reduction to 50% for the PIC cost, and one-third of hearing costs to take into account that there was finding of guilt on most of charge #2. It contends that the bulk of the hearing time was focused on Charge#1, with a smaller proportion spent addressing Charge #2.

The Registrar's Office provided case law from the CPSS Council and other regulators relevant to charge #1 to support its position on the proposed range of penalty.

Decisions by the CPSS Council relating to inappropriate billing included:

1. Dr. Chikukwa, CPSS - 2019
2. Dr. Ernst, CPSS - 2019
3. Dr. Kabongo, CPSS - 2016
4. Dr. Opper, CPSS - 2015
5. Dr. Chambers, CPSS - 2009

Decisions of other regulators relating to inappropriate billing included:

1. College of Physicians and Surgeons of Ontario v. Attallah, 2020 ONCPSD 38
2. College of Physicians and Surgeons of Ontario v. Michael, 2020 ONCPSD 43
3. College of Physicians and Surgeons of Ontario v. Goldstein, 2019 ONCPSD 35
4. College of Physicians and Surgeons of Ontario v. Shin, 2015 ONCPSD 19
5. College of Physicians and Surgeons of Ontario v. Makerewich, 2013 ONCPSD 13
6. College of Physicians and Surgeons of Ontario v. Sokol, 2011 ONCPSD 42
7. College of Physicians and Surgeons of Ontario v. Moore, 2002 ONCPSD,16

### **Position of Dr. Colistro on Penalty**

Counsel for Dr. Colistro submitted that the appropriate penalty in the case is:

1. A written reprimand;
2. A fine;
3. A requirement to successfully complete a course on medical ethics and professionalism;
4. A requirement to successfully complete the Medical Services Branch online billing course; and
5. Payment of part of the costs.

### **Position of Dr. Colistro**

Counsel for Dr. Colistro takes the position that this case does not involve several errors made over a long period of time but rather recurrence of the same unintentional error. Dr. Colistro opines that the passage of time should not make a single error more or less significant. Further,

the conduct in question does not amount to fraud or dishonest intention. There was no suggestion that he billed for patients that were not seen, billed for services that were not provided, or falsified documentation to support services that were billed but not performed.

Dr. Colistro took exception to the comment on paragraph 178 of the Discipline Hearing Committee's Decision that "on a scale of 0 to 10, with 10 being the most serious, we judge Dr. Colistro's behaviour at a level of 8". He believes this comment is not essential to the decision the Discipline Hearing Committee was asked to make, no justification is provided for this conclusion and no explanation was provided as to why this billing is an 8 out of 10. Dr. Colistro therefore submitted that the comment was inappropriate and rife with speculation and therefore no weight should be given to it.

Counsel for Dr. Colistro contends that the error arose from a misinterpretation of the billing codes and once the error was flagged by the Medical Services Branch in November 2016 through an audit process, Dr Colistro took immediate steps to audit his billing and did not protest repayment of the incorrect billing. This conduct is not likely to be repeated and no further steps are needed to deter Dr. Colistro or others from similar billing in the future.

With regards to Charge #2, Counsel for Dr. Colistro contends that the breach was a technical one. The overarching charge for Charge #2 has not been proven, but for a minor technical requirement.

Furthermore, Counsel for Dr Colistro argued that the conduct at issue does not involve patients and does not engage patient safety concerns.

Counsel for Dr. Colistro noted that the JMPRC did not order the assessment for any additional amount which it can do for egregious or deliberate conduct.

Counsel for Dr. Colistro argued that that there are some mitigating factors Council should consider. These include the facts that:

- a) Dr. Colistro is a respected member of the radiology community in British Columbia where he has maintained a full-time practice since 2006. Several letters of reference from colleagues of Dr. Colistro speaking to his character and his ethics were provided. The letters demonstrate who Dr. Colistro is and the high ethical standards under which he practices.
- b) Dr. Colistro began working at the ultrasound clinic in 2012 in response to an urgent need as the Clinic was unable to find a local radiologist. The clinic had a backlog of scans that had been performed but were awaiting interpretation. Rather than blindly forging ahead, Dr Colistro acted appropriately and consulted the College and Ministry prior to taking any further steps. He has been open and forthright throughout his dealings with the College and the Ministry.
- c) Dr. Colistro has already completed an online Professionalism and Medical Ethics course from the University of Calgary Cumming School of Medicine.
- d) The Ministry was aware as early as November 2015 of the statistics of Dr. Colistro's billings relative to his comparator group. However, no detail of the concerns was

provided to him until November 2016. He took immediate steps in response to these concerns when he was finally advised in November 2016.

- e) Dr. Colistro does not have a previous record of professional misconduct with the College of Physicians and Surgeons of Saskatchewan or the College of Physicians and Surgeons of British Columbia.

Counsel for Dr. Colistro contends that suspension is not appropriate as it will cause undue hardship to many patients. If Council orders any suspension, the 'Clinic' will have to close as there will be no one to interpret results. Staff would be terminated and put out of work and forced to find other paid work in the current economic climate.

With regards to the cost of the investigation, Counsel for Dr Colistro submits that the split in cost should be closer to a 50-50 split, given that there were two charges dealt with; one where guilt was found and one where no guilt was found, but for a technical requirement on equipment inspection under Bylaw 25.1.

Counsel for Dr. Colistro provided case law from the CPSS Council and other regulators relevant to charge #1 to support its position on the proposed range of penalty.

Decisions by the CPSS Council and other regulators relating to improper billing included:

- 1) Dr. Steplewski, CPSS - 2021
- 2) Dr. Zwane, CPSS – 2020
- 3) Dr. Kabongo, CPSS - 2015
- 4) Dr. Connolly, College of Physicians and Surgeons of Ontario (“CPSO”) 2011
- 5) Dr. Paikin, College of Physicians and Surgeons of Ontario 2002

Counsel for Dr. Colistro submitted that several of the cases cited by the Registrar's Office address conduct that is dissimilar to that of Dr. Colistro. Some of the cases generally involve fraud, fraudulent conduct, or clear findings of dishonesty.

### **Council's Penalty Decision**

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

- 1) Pursuant to Section 54(1)(e) of the Act, the Council hereby reprimands Dr. Colistro. The format of the reprimand will be in written format.
- 2) Pursuant to Section 54(1)(b) of the Act, the Council hereby suspends Dr. for a period of 2 months, such suspension to take effect on March 1, 2022.
- 3) Pursuant to Section 54(1)(f) of the Act, the Council imposes a fine on Dr. Colistro in the amount of \$15,000, payable by 28 April, 2022.
- 4) Pursuant to Section 54(1)(g) of the Act, the Council requires that Dr. Colistro successfully complete the Medical Services Branch online billing course and provide proof of completion. Such course shall be completed within two months.

- 5) Pursuant to Section 54(1)(g) of the Act, the Council requires that Dr. Colistro successfully complete a course on ethics/professionalism acceptable to the Registrar, and provide proof of completion. Such course shall be completed at the first available date, but in any case within six months. The programs “Medical Ethics, Boundaries and Professionalism” by Case Western Reserve University and “Medical Ethics and Professionalism (ME-15 Extended)” by PBI Education are ethics programs acceptable to the Registrar.
- 6) Pursuant to Section 54(1)(i) of the Act, the Council directs Dr. Colistro to pay the costs of and incidental to the investigation and hearing in the amount of \$70,559.17. Such payment shall be made in full by 28 January, 2022.
- 7) Pursuant to Section 54(2) of the Act, if Dr. Colistro should fail to pay the costs as required by paragraph 6, Dr. Colistro’s licence shall be suspended until the costs are paid in full.
- 8) The Council reserves to itself the right to reconsider and amend any of the terms of this penalty decision, upon application by Dr. Colistro. Without limiting the authority of the Council, the Council may extend the time for Dr. Colistro to pay the costs required by paragraph 6.

### **Reasons for the Penalty Decision**

Dr. Colistro had been found guilty of professional misconduct by a properly constituted Disciplinary Hearing Committee. It was Council’s responsibility to determine the appropriate penalty in this case. The Council deliberated on the arguments put forward by the College and Dr. Colistro with the background of the previously submitted written submissions.

Council had a fulsome discussion about the appropriate penalty in this case. One of the major considerations was whether a suspension was required. The Registrar’s Office had proposed a 3-6 month suspension, while Counsel for Dr Colistro contended that the facts in this case did not warrant a suspension, and suspending Dr. Colistro, as the sole radiologist in the “Clinic”, would result in undue hardship to many patients and staff. Council rejected Dr. Colistro’s argument on this issue. The physician fee-for-service billing system is predicated on trust. It is a privilege to have an honour system for the payment of professional services. It is therefore essential that the privilege is not abused. Physicians are ethically obliged to ensure the billings submitted on their behalf are appropriate. Suspension from practice sends a message that Council considers this conduct serious and unacceptable. It is a physician’s responsibility to ensure due diligence in their billings especially in a publicly funded system such as ours. While this case did not directly involve patients, Council agreed with the position of the Registrar’s Office that the public is certainly impacted when public funds earmarked for medical services are claimed by physicians in inappropriate circumstances.

While a physician’s suspension from practice can potentially cause hardship to a community, it is not Council’s policy, and it certainly goes against the principle of fairness to withhold penalty because of the inconvenience a physician’s absence from practice may cause. It is hoped that the delay in the commencement of the suspension will provide adequate time to make alternative arrangements and limit the inconvenience to third parties.

Council considered the length of suspension. Numerous case law was submitted by both the Registrar's Office and counsel for Dr. Colistro. Council agreed with the position of Dr. Colistro that most of the cases involved fraud, fraudulent conduct, or clear findings of dishonesty. While the Disciplinary Hearing Committee found that Dr. Colistro's actions were found to be a deliberate decision to bill aggressively, his conduct was not found to be fraudulent or dishonest. Council also considered the mitigating factors in this case especially the fact that Dr. Colistro has no prior record of professional misconduct with the College of Physicians and Surgeons of Saskatchewan or the College of Physicians and Surgeons of British Columbia and the fact that he cooperated fully with the College process. Council decided a reduction in the length of suspension sought by the Registrar's Office to two months was justifiable.

In addition, the Council addressed the overall cost of the investigations. It is Council's resolute opinion that the costs should be borne by the physician responsible for the misconduct, and not by the profession. The full costs were (\$106,429.80) and that they are reduced by one-third because the majority of the second charge was not proven. Counsel for Dr. Colistro had argued for a 50/50 split in the cost. Council agreed with the Registrar's Office that most of the cost in this case was in regard to the proven Charge #1. A reduction in cost to \$70,599.17 was imposed.

It is the routine practice of Council to reprimand physicians who are guilty of professional misconduct. In this case a written reprimand was preferable.

**Accepted by the Council of the College of Physicians and Surgeons of Saskatchewan:  
18 March, 2022**