



Dr. Josias FURSTENBERG

Council Decision

Date Charge(s) Laid:	June 16, 2018
Outcome Date:	June 16, 2018
Hearing:	June 16, 2018
Disposition:	Revocation, Costs

Council conducted a Penalty Hearing pertaining to Dr. Josias Furstenberg pursuant to Section 54 of **The Medical Profession Act, 1981**. Dr. Furstenberg admitted to 10 separate charges of unprofessional conduct which include unprofessional behavior relating to sexual boundaries, breach of confidence and inappropriate prescribing.

The Council of the College of Physicians and Surgeons imposes the following penalties on Dr. Josias Furstenberg pursuant to **The Medical Profession Act, 1981**:

- 1) Pursuant to Section 54(1)(a) of The Medical Profession Act, 1981, the name of Dr. Josias Jacobus Furstenberg is struck from the Register of the College of Physicians and Surgeons, effective June 16, 2018.*
- 2) Pursuant to Section 54(1)(i) of The Medical Profession Act, 1981, Council orders that Dr. Josias Jacobus Furstenberg pay costs of \$9594.87 to the College and payable immediately effective June 16, 2018.*

In The Matter Of Section 49 Of *The Medical Profession Act*, 1981 S.S. 1980-81,
C. M-10.1 Penalty Hearing For Dr. Josias Furstenberg

Michelle Ouellette, Q.C. appearing for Dr. Furstenberg

Chris Mason appearing for the College of Physicians and
Surgeons of Saskatchewan

June 16, 2018 - Saskatoon, Saskatchewan

The Charges

Dr Furstenberg pled guilty to the following charges:

[1]I, Dr. Josias Furstenberg, pursuant to section 49 of *The Medical Profession Act, 1981* S.S. 1980-81c. M-10.1, after having consulted with legal counsel, voluntarily and with an appreciable understanding of the consequences, admit that I am guilty of unbecoming, improper, unprofessional, or discreditable conduct as set out in the charges laid by the Council of the College of Physicians and Surgeons and set out below.

[2]Charge #1

You Dr. Josias Furstenberg 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 8.1(b)(xvi), particulars whereof are that during the year 2016 you committed acts of sexual impropriety or sexual violation with your patient, referred to in this charge as Person 1.

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

- a) Person 1 was your patient at all times material to this charge;
- b) You engaged in sexual activity with Person 1, which included sexual intercourse.

[3]Charge #2

You Dr. Josias Furstenberg 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 8.1(b)(ix), particulars whereof are that you failed to maintain the standards of practice of the profession in your treatment of Person 1.

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

- a) Person 1 was your patient at all times material to this charge;
- b) You prescribed large quantities of opioids to Person 1 over a long period of time;
- c) You failed to take appropriate steps to deal with Person 1's drug dependency and/or addiction.

[4]Charge #3

You Dr. Josias Furstenberg 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.

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

- a) You were in a romantic relationship with Person 2 at all times material to this charge;
- b) You provided medical treatment to Person 2 in circumstances which were not a medical emergency and when other physicians would have been readily available.

[5]Charge #4

You Dr. Josias Furstenberg 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 31 and/or 35 of the Code of Ethics contained in bylaw 7.1 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 the following:

- a) You caused a photograph of a patient "day sheet" to be sent to Person 2.
- b) You sent the "day sheet" to Person 2 without the expressed or implied consent of the persons listed on the "day sheet".

[6]Charge #5

You Dr. Josias Furstenberg 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.

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

- a) You were in a romantic relationship with Person 3 at all times material to this charge;
- b) You provided medical care to Person 3 in circumstances which were not a medical emergency and when other physicians would have been readily available.

[7]Charge #6

You Dr. Josias Furstenberg 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 8.1(b)(xvi), particulars whereof are that you committed acts of sexual impropriety or sexual violation with your patient, referred to in this charge as Person 4.

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

- a) You provided medical care to Person 4 from time-to-time, on a walk-in basis;
- b) You subsequently became involved in a romantic relationship with Person 4;
- c) While in a romantic relationship with Person 4, you provided medical care to Person 4 in circumstances which were not a medical emergency and when other physicians would have been readily available.

[8]Charge #7

You Dr. Josias Furstenberg 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 8.1(b)(xvi), particulars whereof are that you committed acts of sexual impropriety or sexual violation with your patient, referred to in this charge as Person 5.

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

- a) Person 5 was your patient at all times material to this charge;
- b) You engaged in sexual activity with Person 5, which included sexual intercourse.

[9]Charge #8

You Dr. Josias Furstenberg 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 the following:

- a) In or about the period of approximately February to June of 2017, you accessed the personal health information of a person referred to as person 6 through the Saskatchewan eHealth computer program;
- b) You accessed that personal health information without the consent of person 6 after April 4, 2017;
- c) You accessed that personal health information without a legitimate need to know the information;
- d) You breached the Joint Service and Access Policy that pertained to accessing information from the Saskatchewan eHealth program.

[10]Charge #9

You Dr. Josias Furstenberg 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 8.1(b)(xvi).

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

- a) A female person hereinafter referred to in this charge as "Person 7" was your patient at all times material to this charge;
- b) Person 7 was also your tenant in a rental property;
- c) While Person 7 attended at your home you kissed her.

[11]Charge #10

You Dr. Josias Furstenberg 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 31 and/or 35 of the Code of Ethics contained in bylaw 7.1 and/or bylaw 8.1(b)(x) 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 the following:

- a) A female person hereinafter referred to in this charge as "Person 8" was your patient at all times material to this charge;
- b) On or about January 10, 2016 you exchanged text messages with an individual identified in this charge as Person 9;
- c) During the course of the text message exchange with Person 9 you

- disclosed personal health information about Person 8;
- d) The personal health information you disclosed included some or all of the following:
 - i. Person 8 attended to you as a patient;
 - ii. You had a "patient encounter" with Person 8;
 - iii. You commented about Person 8 "that she was a total bitch to me";
 - iv. You confirmed that Person 8 was "looking for drugs"
 - e) That at no time did you have the expressed or implied consent of Person 8 to disclose information about her.

Agreed Statement of Facts

[12]The agreed statement of facts is fifteen pages long with 72 bullets and 9 appendices. This document is very important to the matter, but will not be reproduced in this document. The document is available to review in document **Info 133_18**.

The College's Position

[13]The Registrar's Office felt that the offences were so heinous that revocation with no conditions would be the most appropriate action. The offences took place over an approximately 3-year period. The unprofessional behavior was repeated over and over in that 3-year period. The Registrar's Office points out the cases of Dr. Huerto in 2003 and Dr. Ali in 2013. They have both been before this Council several times. These two physicians both have extensive records of unprofessional behavior and have had their licenses revoked with no conditions. Their behavior was repetitive and egregious over a lengthy period, as was Dr. Furstenberg's.

Dr. Furstenberg's Position

[14]Dr. Furstenberg has no issues with revocation of his license. At the penalty hearing it was clear that he accepted responsibility for his unprofessional behavior and appeared remorseful. Dr Furstenberg is however asking that conditions be applied to his license for possible restoration in the future. Dr. Furstenberg would like the conditions applied so that they may guide him to get the assistance needed to prevent this type of behavior in the future. It was pointed out that Dr. Furstenberg has no record of previous unprofessional behavior with the College and he did cooperate with the investigation.

Principles in Establishing The Penalty

Protection of the Public

[15] Council's primary responsibility is to the people of Saskatchewan. The public must have faith in the profession that we, as physicians are putting the patient first and foremost in our minds. Having a sexual relationship with a patient is likely the most egregious behavior by a physician. It is important to point out that 2 of the charges specifically include having a sexual relationship with 2 different patients. The Council clearly considers this sexual abuse by a physician. The Ontario Task Force of 1991 points out that there is considerable risk that physicians "who abuse one person will abuse others". This is seen in Dr. Furstenberg's case. His other charges also demonstrate his lack of judgement and insight with regard to boundaries. Eight individuals were affected by his unprofessional conduct. The harm to them may be considerable.

Deterrence

[16] Sexual boundary breaches remain an unfortunate and inexcusable issue in the medical profession. This form of professional misconduct is among the most serious of offences that a physician can commit and as a result must be dealt with by regulatory bodies in an efficient and firm manner so as to ensure that the public trust is maintained. The profession as a whole recognizes the need for significant penalty in isolated cases of sexual boundary breach. General deterrence is ensured when the profession is able to observe harsh yet justified penalty in such cases. It becomes even more essential to demonstrate the application of justice in a case of repetitive boundary breaches as observed in this matter. Specific deterrence in this situation is a much more challenging goal for Council to attain. Dr. Furstenberg has demonstrated an ongoing pattern of absent insight and flagrant disregard for the wellbeing of his patients and the public at large. He has demonstrated an ongoing willingness to disregard the reputation of the profession in the eyes of the public. As such, it seems unlikely that any penalty other than unconditional revocation could be expected to lead to specific deterrence for a physician who has demonstrated such a blatant lack of insight.

Public Interest

[17] The Council always asks itself before assessing penalty if it is in the public interest to do so. In this case Dr. Furstenberg demonstrated repeated and prolonged unprofessional behavior towards his patients. He also demonstrated repeated and prolonged unprofessional behavior that would impugn the reputation of the profession if it went unanswered by Council.

The Decision

[18]The Council agreed with the Registrar's Office and Dr. Furstenberg that revocation of his license was appropriate in this case. Costs of \$9,594.87 were also imposed, as the Council does in most cases. The Council does not feel the profession should be responsible for the costs associated with any individual physician's unprofessional behavior.

[19]The Council agrees with the opinion of the Registrar's Office with respect to not establishing conditions on the revocation. If conditions are placed on the revocation, it is the duty of Council to determine what conditions could be met that would adequately demonstrate that Dr. Furstenberg is ready to return to the practice of medicine. Council was unable to identify any meaningful conditions that would adequately ensure the safety of the public, while also upholding the requirements of specific and general deterrence. Council considered this matter with great care and fulsome debate. Council considered the number of individuals victimized by these behaviors, the length of time over which Dr. Furstenberg committed his misconduct and the inexcusable nature of the misconduct to which he has admitted guilt. In light of these factors, Council will not place conditions on this revocation. This has the direct effect of ensuring that in the event of an application to Council for reinstatement, the burden of proof falls entirely to Dr. Furstenberg to identify what corrective actions could be taken, and subsequently what proof there is of rehabilitation.

Therefore:

[20]The Council of the College of Physicians and Surgeons imposes the following penalty on Dr. Josias Jacobus Furstenberg pursuant to *The Medical Profession Act, 1981*:

- 1) Pursuant to Section 54(1)(a) of *The Medical Profession Act, 1981*, the name of Dr. Josias Jacobus Furstenberg is struck from the Register of the College of Physicians and Surgeons, effective June 16, 2018.
- 2) Pursuant to Section 54(1)(i) of *The Medical Profession Act, 1981*, Council orders that Dr. Josias Jacobus Furstenberg pay costs of \$9,594.87 to the College and payable immediately effective June 16, 2018.

Accepted by the Council of the College of Physicians and Surgeons of Saskatchewan: 1 December, 2018