

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

**AND IN THE MATTER OF A REQUEST BY DR. EVAN FRANKO OF  
WARMAN, SASKATCHEWAN TO REMOVE CERTAIN RESTRICTIONS  
PLACED UPON HIS LICENCE TO PRACTICE MEDICINE BY THE COUNCIL  
OF THE COLLEGE OF PHYSICIANS AND SURGEONS OF SASKATCHEWAN  
IN SEPTEMBER 2009**

No one appearing for Dr. Evan Franko

Mr. Bryan Salte, Q.C. for the College of Physicians and Surgeons of Saskatchewan

**REASONS FOR DECISION**

**INTRODUCTION**

[1] This is the second application presented to the Council (“Council”) of the College of Physicians and Surgeons of Saskatchewan (the “College”) by Dr. Franko in as many years. Dr. Franko requests that Council lift certain restrictions it placed upon his licence to practice medicine in September 2009. At that time, Council also suspended Dr. Franko from the practice of medicine for a period of not less than three months.

[2] The events that gave rise to this penalty began on November 29, 2008 after Dr. Franko had been found unconscious in an on-call room in the emergency department of the Saskatoon City Hospital following a self-administered injection, but accidental overdose, of a narcotic. Dr. Franko who has an extensive history of drug dependency was on duty as a critical care assistant when this incident occurred. Fortunately, he was discovered by paramedics in time to save his life.

[3] The two restrictions Dr. Franko again seeks to have removed relate to prohibitions on his ability (1) to practice in a medical clinic where opiates are available, and (2) to prescribe any opiate. He asserts that as he has remained clean and sober since his unfortunate relapse in November 2008 the continuation of these restrictions unduly impairs his ability to practice medicine.

[4] Dr. Franko made the same request of Council on September 10, 2010. At that time, he appeared before Council along with Ms. Brenda Senger, Director of the Physician Support Programs of the Saskatchewan Medical Association. While pleased with Dr. Franko's apparent progress in his recovery, Council at that time did not think the public interest would be served by removing these restrictions so soon after his relapse and sentencing. See: *Re Franko* (November 2010).

[5] Dr. Franko's second application came before Council on June 22, 2012. It proceeded without a formal hearing as neither Dr. Franko nor his agent appeared. As a consequence, Council had before it only four letters, namely:

- Letter to Dr. Karen Shaw from Dr. Franko dated March 24, 2012;
- Letter to Dr. Karen Shaw from Drs. M. Smith, T. Neuman, S. Zerajic and M. Jagga of the GAMA Integrated Health Clinic dated April 5, 2012;
- Letter to Dr. Karen Shaw from Dr. Jeremy Reed, Associate Clinical Professor of Surgery, University of Saskatchewan dated March 29, 2012, and
- Letter to Dr. Karen Shaw from Ms. Senger dated May 2, 2012.

[6] After reviewing this material and hearing from Mr. Salte, Council concluded that the sentence it imposed upon Dr. Franko in September 2009 should be amended in one significant aspect. Council decided that Dr. Franko may now be allowed to practice medicine in a medical clinic where opiates are available. However, Council felt Dr. Frank had failed to demonstrate that it was in the public interest to permit him to prescribe opiates to any person. Accordingly, this particular restriction remains in force for the time being.

[7] What follows are Council's reasons for disposing of Dr. Franko's application in the manner it did.

### **ANALYSIS**

[8] By virtue of section 54 of *The Medical Profession Act, 1981*, S.S. 1980-81, c. M-10.1 (the "MPA"), Council has considerable latitude to craft a penalty tailored to the

particular circumstances of the case before it. More specifically, subsection 54(1)(c)(ii) permits Council to prohibit a physician from “performing any medical procedure or any medical treatment or surgery of any kind” for “any period of time” it deems appropriate. In its sentencing of Dr. Franko in 2009, Council invoked this particular statutory authority to impose the following practice restrictions found in paragraphs 3 and 4 of its Order – practice restrictions which Dr. Franko now submits should be removed:

Pursuant to section 54(1)(c) [of the *MPA*], Dr. Evan Franko is hereby prohibited from practicing in any medical clinic where opiates are available;

Pursuant to section 54(1)(c), Dr. Evan Franko is hereby prohibited from prescribing any opiate[.]

[9] While subsection 54(1)(c) of the *MPA* contemplates that Council should retain jurisdiction to review at some future time any practice restriction imposed pursuant to this section, in Dr. Franko’s case Council also expressly stipulated this power of review in paragraph 6 of its Order. This paragraph reads as follows:

The Council reserves to itself, upon application by Dr. Evan Franko, the right to relieve Dr. Evan Franko from any of the conditions or restrictions contained in this motion, or to amend the conditions or restrictions imposed.

[10] When fulfilling this task the over-arching consideration is always the public interest. Council’s principal function is to govern the medical profession in the public interest, and protection of the public must be its paramount objective. In the explicit language of section 69.1 of the *MPA*, “the protection of the public and the safe and proper practice of medicine shall take priority over the rehabilitation, treatment and welfare of a member.” See also: *Ali v. College of Physicians and Surgeons of Saskatchewan*, 2012 SKQB 193, at paras. 9-10 per Zarzeczny J.

[11] During its deliberations on Dr. Franko’s application, Council was at somewhat of a disadvantage because it had to rely on little more than the recent correspondence forwarded by Dr. Franko and his supporters to Dr. Karen Shaw, Registrar of the College. As is typical in cases of this kind, these letters were uniformly laudatory and positive in their assessment of Dr. Franko’s rehabilitation and future prospects for resuming a medical practice unencumbered by any practice restrictions. By way of illustration, Ms. Brenda Senger in her correspondence to Dr. Shaw urged Council to remove the

restrictions in question as this “will provide acknowledgement of [Dr. Franko’s] progress and allow him to pursue additional career opportunities”, see: letter to Dr. Karen Shaw from Ms. Senger dated May 2, 2012, at p. 2. This is not to suggest that Council doubts the veracity of the statements made in these various letters. However, Council felt compelled to proceed cautiously in view of Dr. Franko’s absence and its concern that the information laid before it may not provide a complete picture of Dr. Franko’s current situation.

[12] Turning first to the prohibition on Dr. Franko’s ability to practice medicine “in any medical clinic where opiates are available”. When deciding to lift this restriction, Council took comfort from the letter to Dr. Shaw authored jointly by Dr. Franko’s professional colleagues at the GAMA Integrated Health Clinic in Warman. These individuals attested to Dr. Franko’s “flawless” performance of his professional responsibilities, see: letter to Dr. Shaw from the GAMA Integrated Health Clinic dated April 5, 2012, at p. 1. They also corroborated Dr. Franko’s assertion that any and all opiates utilized by the medical staff would continue to be stored in the pharmacy located adjacent to the medical clinic. Council is aware that the removal of this practice restriction would allow Dr. Franko to pursue his medical practice elsewhere where opiates may be more easily accessible than in the Warman clinic. However, it does not appear that he plans to leave the GAMA Integrated Health Clinic in the foreseeable future and the checks currently in place at that facility should provide sufficient protection to the public as Dr. Franko begins to transition to a full medical practice. Council keenly recognizes that the potential for a relapse is always real; however, on balance, Council determined that the public interest would not be jeopardized were this particular practice restriction to be lifted.

[13] Dr. Franko’s request that Council lift the prohibition upon his ability to prescribe an opiate to any person presented a far more difficult issue. The reality of Dr. Franko’s prior history is that his relapses occurred after he had prescribed an opiate for another individual and then diverted this prescription to use the opiate himself. The incident which occurred in November 2008 is a case in point. Dr. Franko prescribed an opiate for

an individual known to him who also had a serious drug addiction. Once this individual had filled this prescription, both of them proceeded to inject this narcotic intravenously with disastrous consequences for Dr. Franko.

[14] On the basis of the documentary evidence before it, Council had no confidence that this pattern of behavior would not repeat itself were it to remove the prohibition on Dr. Franko's ability to prescribe an opiate. It would have been very helpful to Council had Dr. Franko attended the hearing and answered Council's questions about particular aspects of his recovery. Council understands Ms. Senger's argument that lifting this practice restriction would positively acknowledge Dr. Franko's progress in his recovery. However, as section 69.1 of the *MPA* directs it is the public interest which must supersede "the rehabilitation, treatment and welfare of a member". As a result, Council determined that on balance the public interest would not be served by lifting this particular practice restriction at this time.

[15] It should be apparent from these reasons that in the event Dr. Franko decides to apply again to Council to lift this particular practice restriction he should personally attend the hearing and be in a position to address Council's concerns about the potential consequences of lifting this restriction and its impact upon the public interest.

### CONCLUSION

[16] In conclusion, Council is encouraged, as it was in 2010, by Dr. Franko's progress in his recovery and wishes him well as he continues on this journey. However, for the forgoing reasons, Council determined that it could not accede to the entirety of his application.

Dated the 7<sup>th</sup> day of September, 2012 at Saskatoon, Saskatchewan.

## **COUNCIL DECISION NOVEMBER 22, 2014**

The Council considered a request from Dr. Evan Franko to remove the restriction on his licence that he is unable to prescribe opiates and to remove the restriction on his licence that he cannot practise as an emergency room physician.

The Council agreed to both of Dr. Franko's requests.

The only remaining restrictions on his licence arising from the finding of unprofessional conduct of September 17, 2009 are that:

- 1) Dr. Franko is prohibited from working as a critical care associate; and,
- 2) Dr. Franko is required to participate in Physician Support Program of the Saskatchewan Medical Association, to participate in a program of random fluid screening through the Physician Support Program and to follow the recommendations of the program.