



Dr. Tshipita KABONGO

Council Decision

Outcome Date: March 18, 2016
Reasons for Decision: June 24, 2016

Council accepted Dr. Kabongo's admission of unprofessional conduct by causing or permitting excessive billing for his professional services and by maintaining medical records which contained information that did not accurately reflect the care which he provided to patients.

Council considered an agreed statement of facts, agreed to by the Registrar's office and Dr. Kabongo, which stated the following:

AGREEMENT OF FACTS – COLLEGE OF PHYSICIANS AND SURGEONS OF SASKATCHEWAN AND DR. KABONGO

The parties agree to the following facts for the purpose of a penalty hearing before the Council of the College of Physicians and Surgeons.

- 1) *Dr. Kabongo is a 56 year-old physician who graduated from the University of Kinshasa, Democratic Republic of the Congo in 1985. Prior to coming to Saskatchewan in 2006, Dr. Kabongo practiced in Natal, South Africa from 1994 to 1997, and in Durban, South Africa from 1997 to 2006.*
- 2) *Dr. Kabongo was licensed by the CPSS in 2006. He held a temporary licence from July 24, 2006 to March 7, 2007, a provisional licence from March 8, 2007 to June 26, 2013 and a full (regular) licence thereafter.*
- 3) *Dr. Kabongo has no history of professional misconduct.*
- 4) *Dr. Kabongo practised in Preeceville, Saskatchewan from 2006 to 2015 when he relocated to Regina. For most of the time in Preeceville he was in solo practice, and he was the only physician serving the Preeceville area. Since relocating to Regina, he has been working at establishing a new practice. He has been operating his new clinic as a sole practitioner since late May of 2015.*
- 5) *Dr. Kabongo's billings for the period of June 22, 2010 to Sept 20, 2011 were reviewed by the JMPRC. The focus of that review was in relation to his billings for major assessments, other assessments, counselling and surcharges. The JMPRC concluded that he had:*
 - a) *inappropriately used pulmonary spirometry code 264D when he did not have a machine to bill that code;*

- b) *inappropriately billed for partial assessments (5B) by among other things billing 5B codes for injections and billing a 5B in addition to a procedure code when he performed procedures;*
- c) *billed inappropriately for special surcharges by billing a special first call surcharge when the patient was an additional patient seen, and billing a surcharge when patients were directed by the office staff were the Emergency Room after hours for problems that could have been booked during the day;*
- d) *billed inappropriately for complete assessments (3B). Dr. Kabongo billed the 3B code for a number of patients for whom he had not provided the services to bill a 3B.*
- 6) *The JMPRC review resulted in an order that he repay \$119,867.06, all of which has been repaid.*
- 7) *The JMPRC expressed concern to the College about the propriety of his billings and also about the medical records which he maintained. That resulted in a preliminary inquiry committee investigation and charges of unprofessional conduct.*
- 8) *Dr. Kabongo states that the inaccurate billings were due to inadvertence on his part. The billings were done by a billing clerk. He did not review those billings and failed to exercise appropriate oversight related to his billings to MSB.*
- 9) *The College does not dispute Dr. Kabongo's explanation and does not have evidence to contradict that explanation.*
- 10) *Dr. Kabongo has since pursued education to improve his record keeping and billing practices and has since been recording his own billing entries.*
- 11) *Dr. Kabongo utilized an electronic medical record, with which he was not familiar. Dr. Kabongo utilized a pre-populated template for his medical records. As a result of his failure to change the template based upon his interaction with the patient, the charts for some patients contained incomplete and misleading information about the patient's medical condition. This included a description of examinations that were not done and created a misleading clinical picture of findings that were not specific to the patient.*
- 12) *Dr. Kabongo subsequently switched to an EMR system recommended by the SMA.*
- 13) *Dr. Kabongo was cooperative with the JMPRC and has cooperated fully with the College.*

Council imposed the following penalty:

The Council of the College of Physicians and Surgeons imposes the following penalty on Dr. Tshipita Kabongo pursuant to The Medical Profession Act, 1981:

- 1) *Pursuant to Section 54(1)(f) of The Medical Profession Act, 1981, the Council hereby imposes a fine of \$5,000.*
- 2) *Pursuant to Section 54(1)(e), the Council reprimands Dr. Kabongo.*
- 3) *Pursuant to section 54 (1)(g), Dr. Kabongo is required to take an Ethics program in a form acceptable to the Registrar on or before December 31, 2016. The programs "Medical Ethics, Boundaries and Professionalism" by Case Western Reserve University and "Probe Program" by CPEP are ethics programs acceptable to the Registrar.*
- 3) *Pursuant to section 54 (1)(g), Dr. Kabongo is required to take a Records Keeping Course in a form acceptable to the Registrar on or before December 31, 2016.*
- 4) *Pursuant to section 54(1)(i), the Council directs Dr. Kabongo to pay the costs of and incidental to the investigation and hearing in the amount of \$11,425.82. Such payment shall be made by*

monthly payments of \$1000 not later than the 18th of each month commencing April 18, 2016 until the costs are paid in full.

- 5) *Pursuant to section 54(2), if Dr. Kabongo should fail to pay the costs as required by paragraph 4, Dr. Kabongo's licence shall be suspended until the costs are paid in full.*
- 6) *Council reserves the right to amend the terms of this order by extending the time for payment of the costs, by arranging for the payment of costs over time or by installments, or by reducing or forgiving the payment of the costs and, in the event of such an amendment, the Council may impose such additional conditions pertaining to payment and suspension of Dr. Kabongo's license for the non-payment as may be permitted by **The Medical Profession Act, 1981**.*

**In The Matter of Section 49 of *The Medical Profession Act, 1981*
Penalty Hearing for Dr. Tshipita Kabongo**

Ms. Michelle Ouellette, Q.C. appearing for Dr. Kabongo

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

Friday 18 March, 2016
College of Physicians and Surgeons of Saskatchewan Boardroom

Reason for Decision

Charges

Dr. Kabongo pled guilty to the following charges:

I, Dr. Tshipita Kabongo, pursuant to section 49 of **The Medical Profession Act, 1981** admit that I am guilty of unbecoming, improper, unprofessional, or discreditable conduct as set out in the 2 charges laid by the Council of the College of Physicians and Surgeons which state:

1. *The Council of the College and Physicians and Surgeons directs that, pursuant to section 47.5 of **The Medical Profession Act, 1981**, the Discipline Committee hear the following charge against Dr. Tshipita Kabongo, namely:*

*You Dr. Tshipita Kabongo are guilty of unbecoming, improper, unprofessional, or discreditable conduct contrary to the provisions of section 46(o) and/or 46(p) of **The Medical Profession Act, 1981** S.S. 1980-81 c. M-10.1 and bylaw 8.1(b)(iii) of the bylaws of the College of Physicians and Surgeons of Saskatchewan, by excessive billing.*

The evidence, which will be led in support of this charge, will include one or more of the following:

- (a) you caused or permitted excessive billing for your services by claiming special call surcharges when the circumstances did not justify the charge;*
- (b) you caused or permitted excessive billing by charging code 264D when the circumstances did not justify the charge;*
- (c) you caused or permitted excessive billing by charging code 5B when the circumstances did not justify the charge;*
- (d) you caused or permitted excessive billing by charging code 40B or 41B when the circumstances did not justify the charge;*
- (e) you caused or permitted excessive billing by charging code 3B when the circumstances did not justify the charge;*

(f) you failed to exercise due diligence to ensure that you billed appropriately for special call surcharges, and/or code 264D and/or code 5B and/or code 40B and/or code 41B and/or code 3B.

2. The Council of the College of Physicians and Surgeons directs that, pursuant to section 47.5 of **The Medical Profession Act, 1981**, the Discipline Committee hear the following charge against Dr. Tshipita Kabongo namely:

You Dr. Tshipita Kabongo are guilty of unbecoming, improper, unprofessional, or discreditable conduct contrary to the provisions of section 46(o), and/or 46(p) of **The Medical Profession Act, 1981** S.S. 1980-81 c. M-10.1 and bylaw 23.1 and/or bylaw 8.1(b)(ix) of the bylaws of the College of Physicians and Surgeons of Saskatchewan:

The evidence, which will be led in support of this charge, will include one or more of the following:

- (a) you failed to maintain records for your patients that met the requirements of bylaw 23.1 of the College bylaws;
- (b) your medical records contained information that did not accurately reflect the care which you provided to patients;
- (c) you failed to exercise due diligence to ensure that the information in your patient records accurately reflected the care which you provided to patients.

The charges stemmed from an investigation by the College over Dr. Kabongo's practice. This led to a statement on Agreement of Facts as follows:

**Agreement of Facts – College of Physicians and Surgeons of Saskatchewan
and Dr. Kabongo**

The parties agree to the following facts for the purpose of a penalty hearing before the Council of the College of Physicians and Surgeons.

- 1) Dr. Kabongo is a 56 year-old physician who graduated from the University of Kinshasa, Democratic Republic of the Congo in 1985. Prior to coming to Saskatchewan in 2006, Dr. Kabongo practiced in Natal, South Africa from 1994 to 1997 and in Durban, South Africa from 1997 to 2006.
- 2) Dr. Kabongo was licensed by the CPSS in 2006. He held a temporary license from July 24, 2006 to March 7, 2007, a provisional license from March 8, 2007 to June 26, 2013 and a full (regular) license thereafter.
- 3) Dr. Kabongo has no history of professional misconduct.
- 4) Dr. Kabongo practiced in Preeceville, Saskatchewan from 2006 to 2015 when he relocated to Regina. For most of the time in Preeceville he was in solo practice, and he was the only physician serving the Preeceville area. Since relocating to Regina, he

- has been working to establish a new practice. He has been operating his new clinic as a solo practitioner since late 2015.
- 5) Dr. Kabongo's billings for the period of June 22 2010 to September 20, 2011 were reviewed by JMPRC. The focus of that review was in relation to his billings for major assessments, other assessments, counseling and surcharges. The JMPRC concluded that he had:
 - a) inappropriately used pulmonary spirometry code 264D when he did not have a machine to bill that code;
 - b) inappropriately billed for partial assessments (5B) by among other things billing 5B codes for injections and billing a 5B in addition to a procedure code when he performed procedures;
 - c) Billed inappropriately for special surcharges by billing a special first call surcharge when the patient was an additional patient seen, and billing a surcharge when patients were directed by the office staff were the Emergency Room after hours for problems that could have been booked during the day;
 - d) Billed inappropriately for complete assessments (3B). Dr. Kabongo billed the 3B code for a number of patients for whom he had not provided these services to bill a 3B.
 - 6) The JMPRC review resulted in an order that he repay \$119,867.06 all of which has been repaid.
 - 7) The JMPRC expressed concern to the College about the propriety of his billings and also about the medical records, which he maintained. That resulted in a preliminary inquiry committee investigation and charges of unprofessional misconduct.
 - 8) Dr. Kabongo states that the inaccurate billings were due to inadvertence on his part. The billings were done by a billing clerk. He did not review those billings and failed to exercise appropriate oversight related to his billings to MSB.
 - 9) The College does not dispute Dr. Kabongo's explanation and does not have evidence to contradict that explanation.
 - 10) Dr. Kabongo has since pursued education to improve his record keeping and billing practices and has since been recording his own billing entries.
 - 11) Dr. Kabongo utilizes an electronic medical record, with which he was not familiar. Dr. Kabongo utilized a pre-populated template for his medical record. As a result of his failure to change the template based upon his interaction with the patient, the charts for the some patients contained incomplete and misleading information about the patient's medical condition. This included a description of examinations that were not done and created a misleading clinical picture of findings that were not specific to the patient.
 - 12) Dr. Kabongo subsequently switched to an EMR system recommended by the SMA.
 - 13) Dr. Kabongo was cooperative with the JMPRC and has cooperated fully with the College.

The purpose of the penalty hearing was to determine penalty for Dr. Kabongo as the two parties disagreed on appropriate sanctions.

The College's Position

The Registrar's Office felt that a one-month suspension and costs was an appropriate penalty. The Registrar's Office took the position that there is an ethical obligation to have a structure in place to limit inappropriate billing. Dr. Kabongo had no effective oversight of his billings. There was great concern over the inaccuracy of his medical records and the potential effect on patient care.

The Registrar's Office did acknowledge that Dr. Kabongo promptly admitted his unprofessional misconduct and cooperated with the discipline process. The Registrar's Office also acknowledged that there was no deliberate intent to commit fraud but there was a lack of attention on his part.

The Registrar's Office feels that Dr. Kabongo's conduct is a serious breach and therefore mandates serious sanctions. The one-month suspension would demonstrate the seriousness of his actions and show the profession that this conduct is not to be tolerated. As well the public would see that we are serious about protecting the integrity of the records physicians keep.

Dr. Kabongo's Position

Dr. Kabongo felt that a payment of costs and a reprimand were in order. Dr. Kabongo would also welcome other educational opportunities to improve his billing, communication, or record keeping.

Dr. Kabongo cites many mitigating factors in his submission. Dr. Kabongo was new to Canada when this conduct took place. He had joined a practice and within one month was left alone in that practice. He stated that he had no support from other physicians. During this time he was using an electronic medical record that was eventually abandoned by the health region due to serious problems with the program.

Dr. Kabongo acknowledges his conduct was improper. He cooperated with all aspects of the discipline process. He stated that there was no intent to commit fraud. He also is not aware of any harm to come to his patients due to any record keeping deficiencies. Dr. Kabongo had received a positive report from the Practice Enhancement Program in 2011.

Principles in Establishing the Penalty

Protection of the Public

Our primary responsibility is to the people of Saskatchewan. Accurate record keeping ensures that information can pass from provider to provider, when needed, that can be relied upon to

care for patients. The Council and Dr. Kabongo are not aware of any harm coming to patients as a result of Dr. Kabongo's misconduct. However, this does not excuse the conduct, but is important for us to consider. It appears to Council that Dr. Kabongo is committed to improve this aspect of his care. Council feels that the best way to address public protection is through an educational process for Dr. Kabongo.

Deterrence

Dr. Kabongo's conduct is a serious breach of professionalism. It is vital that the Council's decision deters Dr. Kabongo and other physicians from engaging in these practices. Dr. Kabongo has expressed remorse for his actions and assures the Council that there was no intent to commit fraud or place patients at risk. Council agrees that Dr. Kabongo is remorseful and did not intend to commit fraud or endanger his patients. Council feels that there is a low risk of Dr. Kabongo engaging in this type of misconduct again.

Public Interest

The public must have confidence in the profession and in its ability to self regulate. The Council must ensure its decisions promote public protection and deterrence.

The Council felt that a suspension would not serve a purpose in this case. Council felt that if there was intent to commit fraud or patient harm a suspension might be in order. However, Council felt that a significant fine of \$5000 for a first offence was appropriate and would act as a sufficient deterrence to Dr. Kabongo and other members of the profession. Council also felt that costs should be paid by the investigated member.

The Council also felt that Dr. Kabongo's inaccurate records needed to be addressed in an educational matter. A record-keeping course will therefore also be part of the penalty. As in most cases of professional misconduct, ethics plays a role, even if there was no intent to harm or commit fraud. Therefore an ethics course will also be part of the penalty.

Therefore Council imposed the following penalty:

*The Council of the College of Physicians and Surgeons imposes the following penalty on Dr. Tshipita Kabongo pursuant to **The Medical Profession Act, 1981:***

- 1) *Pursuant to section 54(1)(f), the Council hereby imposes a fine of \$5,000.*
- 2) *Pursuant to section 54(1)(e), the Council reprimands Dr. Kabongo.*
- 3) *Pursuant to section 54(1)(g), Dr. Kabongo is required to take an ethics program in a form acceptable to the Registrar on or before December 31, 2016. The programs "Medical Ethics, Boundaries, and Professionalism" by Case Western Reserve University and "Probe Program" by CPEP are ethics programs acceptable to the Registrar.*
- 4) *Pursuant to section 54(1)(g), Dr. Kabongo is required to take a record keeping course in a form acceptable to the Registrar on or before December 31, 2016.*

- 5) Pursuant to section 54(1)(i), the Council directs Dr. Kabongo to pay the costs of and incidental to the investigation and hearing in the amount of \$11,425.82. Such payment shall be made by monthly payments of \$1,000 not later than the 18th of each month commencing April 18, 2016 until the costs are paid in full.
- 6) Pursuant to section 54(2), if Dr. Kabongo should fail to pay the costs as required by paragraph 5, Dr. Kabongo's license shall be suspended until the costs are paid in full.
- 7) Council reserves the right to amend the terms of this order by extending the time for payment of the costs, by arranging for the payment of costs over time or by installments, or by reducing or forgiving the payment of the costs and in the event of such an amendment, the Council may impose such additional conditions pertaining to payment and suspension of Dr. Kabongo's license for the non-payment as may be permitted by **The Medical Profession Act, 198**

Accepted by Council: Friday June 24, 2016