

In The Matter of Section 47.5 of **The Medical Profession Act, 1981** Penalty Hearing for Dr. Chawane-Bekwayo

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

Ms. Sheila Caston appearing for Dr. Chawane-Bekwayo

On this day June 24 2016 in Saskatoon, Saskatchewan

The Charges

Dr. Chawane-Bekwayo has entered a guilty plea to the charge set out below.

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. Nomhle Nobuhlu Chawane-Bekwayo, namely:

You Dr. Chawane-Bekwayo 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) and/or bylaw 8.1(b)(xi) and/or bylaw 7.1 and paragraph 19 of the *Code of Ethics* contained in bylaw 7.1.

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

- a) You formerly practiced in a clinic with Dr. G.G. McGarry in Saskatoon, Saskatchewan (hereafter called "Dr. McGarry's clinic");
- b) You left that clinic approximately December 20, 2010;
- c) You thereafter began practice at an alternative location in Saskatoon;
- d) You failed to make appropriate arrangements to obtain documents pertaining to the care of your patients which were delivered to Dr. McGarry's clinic;
- e) Dr. McGarry's clinic contacted you and advised you that there were documents pertaining to the care of your patients which were at Dr. McGarry's clinic;

This charge was signed April 20 2016, just 5 days before the scheduled discipline hearing date.

Both parties agree upon the pertinent facts pertaining to the charge.

Today's hearing is to determine the appropriate penalty to be levied against Dr. Chawane-Bekwayo.

The College's Position

The College feels that an appropriate penalty would include a suspension of one month, requirement to take an ethics course, a requirement that costs in the amount of \$7742.00 are paid, and suspension from practice if costs were not paid.

The College feels that Dr. Chawane-Bekwayo's conduct was a significant departure from acceptable medical practice. It occurred over a long period of time. It potentially placed considerable risk to patients by not having critical information reviewed. There was a persistent refusal by Dr. Chawane-Bekwayo to pick up and review the records at Dr. McGarry's clinic.

The College cites Dr. van Tonder and Dr. Tshabalala. Neither physician was practicing in Saskatchewan at the time and there was not the ability to impose a suspension. However fines were imposed in both cases.

The College cites Dr. Steenberg who was suspended for one month for failing to maintain appropriate records despite the fact that he had signed an undertaking to meet requirements for appropriate records.

The College cites Dr. Awad-El-Kariem who had failed to maintain appropriate records and was suspended for one month as part of a joint recommendation.

The College cites Dr. Olubajo as not a helpful precedent as she quickly dealt with her failings to follow up with pap smears by dealing with them when they came to her attention.

The College feels the requirement to pay costs is reasonable. The costs would not have been as high as they were had Dr. Chawane-Bekwayo admitted her guilt early in the process rather than wait until 3 business days before the hearing to do so. Included in the costs is compensation of \$1600 paid to the two members of the discipline committee when the hearing was cancelled 5 days prior to the hearing date.

Dr. Chawane-Bekwayo's Position

Dr. Chawane-Bekwayo feels that an appropriate penalty would include a fine of \$2,500.00, a reprimand, an ethics course and costs of and incidental to the investigation and hearing totaling \$6,142.00.

Dr. Chawane-Bekwayo states that there are several mitigating factors in this case. She was new to the country as having arrived in January of 2008 and the conduct

took place in late 2010 and early 2011. She had never been responsible for patient records before. She has no previous record of discipline with this College or any other similar body. She has moved clinics again since the conduct and there has not been a repeat of the behavior. There has been no harm to patients associated with her conduct. Dr. McGarry had made things difficult for her after she had left.

Dr. Chawane-Bekwayo cites Drs. van Tonder and Dr. Tshabalala. Both physicians failed to make follow up arrangements for patient care. They were both fined and there was no suspension imposed.

Dr. Chawane-Bekwayo cites Drs. Goldstruck and Olubajo. Goldstruck abandoned patient charts and was fined and paid costs. Olubajo failed to make arrangements for alternative care for her patients after she left practice. She was fined

Dr. Chawane-Bekwayo recognizes that the costs of and incidental to an investigation or hearing are appropriate in a case where an admission of guilt is made. However, the \$1600 claimed as costs, for lost income, by the College for a hearing that did not take place would be inappropriate.

Principles in Establishing the Penalty

The Nature and Gravity of the Proven Allegations.

It is clear to the Council that persistently ignoring, over a three-month period, the calls from Dr. McGarry's clinic to pick up patient information and results, is reprehensible. We are not aware of any harm that has befallen patients due to this conduct. However the Council is aware the potential for patient harm was significant.

Evidence of the Frequency of the Commission of the Particular Acts of Misconduct within Particularly and Without Generally, the Province.

It is apparent from both the College and Dr. Chawane-Bekwayo's submissions that Dr. Chawane-Bekwayo had repeated calls from Dr. McGarry's clinic to retrieve the documents but these were ignored over a three-month period.

The Presence or Absence of Mitigating Circumstances.

The Council noted that this is Dr. Chawane-Bekwayo's only record of discipline with the College. The Council noted that there is no evidence of any harm coming to patients. Council also noted Dr. McGarry's involvement in the delay of Dr. Chawane-Bekwayo obtaining patient records.

Protection of the public

The Council's primary responsibility is to the people of Saskatchewan. Failure of physicians to review and act on any patient results or documents sent to them could seriously jeopardize the health and wellbeing of their patient population. This conduct must be treated seriously to ensure it is not repeated by the offending physician or their colleagues.

The Penalty

The Council reviewed all the pertinent documents and heard both parties present their submission. The Council agreed with both parties that an ethics course acceptable to the Registrar was in order.

The Council did not feel that a suspension was justified. Council agreed with Dr. Chawane-Bekwayo that there were several mitigating circumstances as noted previously. Dr. Chawane-Bekwayo has also now been in practice in Saskatchewan since 2008 and has no recurrence of the conduct. The cases cited by both parties demonstrated the considerable variability there is case to case. As the same case can be used by differing parties to justify their cause. Council therefore is obligated to strongly consider the merits of the case in question and use precedents not to determine the penalty, but to ensure we are not disparate with penalties previously imposed. Therefore we imposed a reprimand.

Council did feel a fine was in order. As previously stated this conduct is serious and could potentially lead to significant morbidity if practiced by the profession. Council imposed a fine of \$5000.00. This is a significant amount to ensure that the public and the profession know this conduct is wrong.

Council, in general, imposes costs to be paid by the physician who pleads or is found guilty. Dr. Chawane-Bekwayo submits that costs of \$6142.00 are appropriate. The College submits that the costs of \$7742.00 are appropriate. The \$1600.00 paid to the discipline committee that never met, are in contention. After review the Council felt that the 5 days notice to the committee was very short. Dr. Chawane-Bekwayo had ample time to agree to the charge before the discipline committee date, regardless of the modified charges. It is important that the College recognizes the time and effort put in by the physicians of Saskatchewan to assist in professionally led regulation. When a discipline committee is assembled the member physicians must take time from their busy schedules to attend the discipline hearing. If the College were to cancel these on short notice frequently, without compensation, there would likely be a shortage of volunteers for the discipline committees. Council wants to be clear that any stipend/compensation paid to committee members is *not* to replace income, but to acknowledge the time and effort they put into professionally led regulation. The Council imposes costs of \$7742.00.

The Council imposes the following penalty:

The Council of the College of Physicians and Surgeons imposes the following penalty on Dr. Nomhle Nobuhlu Chawane-Bekwayo pursuant to **The Medical Profession Act 1981**:

- 1) Pursuant to section 54(1)(g), Dr. Chawane-Bekwayo is hereby reprimanded.
- 2) Pursuant to section 54(1)(g), Dr. Chawane-Bekwayo 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), Council hereby imposes a fine of \$5,000 to be paid by July 24, 2016.
- 4) Pursuant to section 54(1)(i), Council directs Dr. Chawane-Bekwayo to pay the costs of and incidental to the investigation and hearing in the amount of \$7,742. Such payment shall be made in full by July 24, 2016.
- 5) Pursuant to section 54(2), if Dr. Chawane-Bekwayo should fail to pay the fine and costs as required by paragraph 3 and 4, Dr. Chawane-Bekwayo's license 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 fine and costs, by arranging for the payment of these over time or by installments, or by reducing or forgiving the payment of costs and in the event of such an amendment, the Council may impose such additional conditions pertaining to payment and suspension of Dr. Chawane-Bekwayo's license for the non-payment as may be permitted by **The Medical Profession Act, 1981**.

The Council of the College of Physicians and Surgeons of Saskatchewan.