



Dr. Mishack ZWANE

Council Decision

Date Charge(s) Laid:	September 14, 2018
Outcome Date:	January 24, 2020
Penalty Hearing:	January 24, 2020
Disposition:	Reprimand, Fine, Costs, Conditions

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

1. Pursuant to section 54(1)(e) of *The Medical Profession Act, 1981*, Council imposes a reprimand upon Dr. Zwane.
2. Pursuant to Section 54(1)(f) of *The Medical Profession Act, 1981*, Council imposes a fine of \$15,000 on Dr. Zwane, payable forthwith.
3. Pursuant to section 54(1)(g) of *The Medical Profession Act, 1981*, Dr. Zwane is required to successfully complete an ethics course on professionalism to the satisfaction of the Registrar. Such course shall be completed not later than June 30, 2020. The programs “Medical Ethics, Boundaries and Professionalism” by Case Western Reserve University, “Probe Program” by CPEP and “Medical Ethics and Professionalism” by Professional Boundaries Inc., are ethics programs acceptable to the Registrar.
4. Pursuant to section 54 (1)(g) of *The Medical Profession Act, 1981*, Dr. Zwane is required to successfully complete a prescribing course in a form acceptable to the Registrar on or before December 31, 2020.
5. Pursuant to section 54 (1)(g) of *The Medical Profession Act, 1981*, Dr. Zwane is required to successfully complete a medical record-keeping course in a form acceptable to the Registrar on or before December 31, 2020.
6. Pursuant to section 54(1)(g) of *The Medical Profession Act, 1981*, the Council directs that Dr. Zwane will be suspended from the privileges of a duly qualified medical practitioner if he fails to successfully complete the ethics course on professionalism as required and will remain suspended until he successfully completes that course.
7. Pursuant to section 54(1)(g) of *The Medical Profession Act, 1981*, the Council directs that Dr. Zwane will be suspended from the privileges of a duly qualified medical practitioner if he fails to successfully complete the prescribing course as required and will remain suspended until he successfully completes that course.

8. Pursuant to section 54(1)(g) of *The Medical Profession Act, 1981*, the Council directs that Dr. Zwane will be suspended from the privileges of a duly qualified medical practitioner if he fails to complete the medical record-keeping course as required and will remain suspended until he successfully completes that course.
9. Pursuant to section 54(1)(i) of *The Medical Profession Act, 1981*, the Council directs Dr. Zwane to pay the costs of and incidental to the investigation and hearing in the amount of \$8,726.75. Such payment shall be made in full by June 30, 2020.
10. Pursuant to section 54(2) of *The Medical Profession Act, 1981* if Dr. Zwane should fail to pay the costs as required by paragraph 10, Dr. Zwane's licence shall be suspended until the costs are paid in full.
11. 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. Zwane's licence for the non-payment as may be permitted by *The Medical Profession Act, 1981*.



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REGISTRAR
KAREN SHAW, M.D.

22 June, 2020

Dr. M. Zwane



Dear Dr. Zwane,

On the 24th January 2020, you admitted to charges of unprofessional conduct and appeared before the Council of the College of Physicians and Surgeons for a penalty hearing. A formal reprimand was ordered as one component of the penalty imposed by Council.

You Dr. Mishack Zwane have been found guilty of professional misconduct while practicing medicine in the province of Saskatchewan and are hereby formally reprimanded by the Council of the College of Physicians and Surgeons of Saskatchewan.

The circumstances underlying your professional misconduct are as follows.

You Dr. Mishack Zwane are guilty of unbecoming, improper, unprofessional, or discreditable conduct contrary to the provisions of section 46(l), 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.

You have also been found 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 19.2 and/or bylaw 8.1(b)(ix) and/or bylaw 8.1(b)(xix) of the bylaws of the College of Physicians and Surgeons of Saskatchewan.

Continued.....

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

It is the opinion of this Council that your behaviour fell well short of the ethical and professional standards expected of a health care professional such as yourself in the province of Saskatchewan. You have brought disgrace upon yourself as well as the medical profession of Saskatchewan.

Even though you are no longer practicing in Saskatchewan, in any future practice this Council expects that you will seriously reflect upon this reprimand and practice to the high moral and ethical standards expected of a physician in the province of Saskatchewan.

Sincerely,

The Council of the College of Physicians and Surgeons of Saskatchewan

**In the matter of a penalty hearing before the Council of the
College of Physicians and Surgeons of Saskatchewan
and Dr. Mishack Zwane
January 24, 2020**

Summary of the Decision

Dr. Zwane appeared before the Council for a penalty hearing on January 24, 2020. Dr. Zwane was represented by Allan Stonhouse. Bryan Salte, Q.C. presented the penalty position of the Registrar's Office.

Dr. Zwane admitted to unprofessional conduct in the 2 charges laid by the Council. The conduct which he admitted was causing or permitting excessive billing for his services and failing to meet the standards of the profession and the requirements of College bylaw related to prescribing marihuana. The penalty order included a reprimand, a requirement to take an ethics course, a prescribing course and a medical record-keeping course, a fine of \$15,000 and an order to pay costs.

The charges admitted by Dr. Zwane

Dr. Zwane signed an admission which stated:

I, Dr. Mishack Zwane, 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 charges laid by the Council of the College of Physicians and Surgeons which charges state:

You Dr. Mishack Zwane are guilty of unbecoming, improper, unprofessional, or discreditable conduct contrary to the provisions of section 46(l), 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 that will be led in support of this charge will include one or more of the following:

- a) In the period of approximately January 3, 2017 to February 16, 2017 you carried on practice at Natural Health Services in Saskatoon.
- b) During the period of January 3, 2017 to February 16, 2017 you caused or permitted excessive billing for your services by billing code 3B when the circumstances did not justify the charge.
- c) During the period January 3, 2017 to February 16, 2017 you caused or permitted billings in the following approximate numbers: 972 Code 3B 17 Code 5B 5 Code 9B

- d) On or about February 1, 2017 an individual identified in this charge by the initials K.K attended at the premises of Natural Health Services.
- e) You caused or permitted a bill for a code 3B to be submitted for the services provided to K.K. despite not having met the requirements for that code to be billed.
- f) You failed to exercise due diligence to ensure that you billed appropriately for code 3B.

You Dr. Mishack Zwane 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 19.2 and/or bylaw 8.1(b)(ix) and/or bylaw 8.1(b)(xix) 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 of the following:

- a) In the period of approximately January 3, 2017 to February 16, 2017 you carried on practice at Natural Health Services in Saskatoon;
- b) During the period of January 3, 2017 to February 16, 2017 you assessed patients for eligibility to receive a prescription for medical use of marihuana and issued authorizations to allow patients to purchase marihuana for medical purposes;
- c) You failed to meet the standards of the medical profession in relation to your assessment of patients and authorizations issued;
- d) You failed to meet the requirements of College bylaw 19.2 in relation to your assessment of patients and authorizations issued;
- e) You failed to provide appropriate follow up care to one or more patients who presented with medical conditions;
- f) You failed to appropriately assess patients to determine whether a marihuana prescription was appropriate before prescribing marihuana;
- g) You failed to meet the requirement of bylaw 19.2 with respect to medical records
- h) You failed to meet the requirement of bylaw 19.2 with respect to obtaining previous medical records for patients;
- i) You failed to meet the requirement of bylaw 19.2 that “A physician may only prescribe marihuana for a patient for whom the physician is the primary treating physician for the condition for which the marihuana is prescribed”;
- j) Failed to require patients to sign a treatment agreement that met the requirements of bylaw 19.2;
- k) On or about February 1, 2017 an individual identified in this charge by the initials K.K attended at the premises of Natural Health Services;
- l) You failed to meet the requirements of bylaw 19.2 with respect to your assessment and/or authorization issued to allow K.K. to purchase marihuana for medical purposes.

Agreed Statement of Facts

Dr. Zwane and the Registrar's Office provided an agreed statement of facts, which stated:

Agreed Statement of Facts – Penalty Hearing Dr. Zwane

The Registrar's Office of the College of Physicians and Surgeons and Dr. Zwane agree that the following are facts to be accepted by the Council of the College of Physicians and Surgeons for the purpose of a penalty hearing.

Certain of the facts are put forward by Dr. Zwane. The Registrar's Office cannot independently confirm those facts. However, it agrees that it has no information that contradicts those facts and agrees that those facts are to be accepted by the Council for the purpose of determining the appropriate penalty for the charges which have been admitted by Dr. Zwane.

1. Dr. Zwane is a 60 year-old physician.
2. The charges laid against Dr. Zwane pertain to the period of time in which he carried out practice at Nature Health Services ("NHS") in Saskatoon, Saskatchewan – specifically from January 3, 2017 to February 16, 2017.
3. Dr. Zwane's provisional license was revoked by the College of Physicians and Surgeons for Saskatchewan ("CPSS") effective February 17, 2017 due to his inability to attain LMCC qualifications as required by the conditions of his license. At present, Dr. Zwane is not licensed to practice medicine in Saskatchewan or elsewhere in Canada.

Background:

4. Dr. Zwane completed his medical degree in 1985 from the University of Natal in Durban, South Africa (now known as the University of Kuzulu-Natal College of Health Sciences, and as the Nelson R. Mandela School of Medicine). He interned at the Ga-Rankuwa Hospital (now known as the Dr. George Mukhari Hospital) and started a private practice in 1987. In June of 2005, he completed a Masters degree in Family Medicine from the University of Pretoria. He worked at the urban-set, family practice until 2006.
5. Dr. Zwane came to Canada from South Africa with his family in December of 2006. He first practiced in Tisdale on a locum basis, beginning in December of 2006. He completed the CAPE program in 2007, successfully challenged the MCCQE in the fall of 2008, and was granted a provisional license in January of 2009. Under the Regulatory Bylaws at the time, he had a defined time period to obtain his LMCC qualification. In that pursuit, Dr. Zwane successfully challenged the MCCQE Part 1 in the fall of 2009.
6. Dr. Zwane first wrote the MCCQE Part 2 within a year of becoming eligible - in the fall of 2010. He has written the examination on multiple occasions but has been unsuccessful on each attempt. He has narrowly missed passing the exam. As an example, in the spring of 2011, which was scored under a previous scoring system, Dr. Zwane obtained a passing score. On that occasion, however, he did not pass the necessary threshold of stations (which is no longer a consideration).
7. In November of 2011, Dr. Zwane left Tisdale to practice at the Humboldt Medical Clinic (HMC). After his move to Humboldt, Dr. Zwane maintained his privileges with the Kelsey

Trail Health Region and from time-to-time would do locums in the ER at the Nipawin, Melfort and Tisdale Hospitals when there was need.

8. In April of 2016, Dr. Zwane was advised by CPSS of the requirement to obtain regular licensure by April 21, 2017, failing which he may be directed to wind down his practice. Dr. Zwane wrote the MCCQE Part 2 in the fall of 2016 but did not receive a passing score.
9. When Dr. Zwane commenced practice at the HMC in late November of 2011, he had a one-year contract. After the first year-term, he sought changes to the contract which would allow for extended clinic hours, dedicated administrative staff and the ability to see walk-in patients, amongst other things. While he continued to work at the clinic without a renewal of his contract, most of the contract issues remained unresolved.
10. As a part of Dr. Zwane's duties at the HMC, he was required to take call. In addition to his own on-call obligations, Dr. Zwane performed all on-call duties for 3 physician-owners of the HMC who no longer wished to do call. This involved long hours with very few days off and no vacation.
11. In September 2016, representatives from NHS in Alberta arranged a lunchtime information session for the physicians at HMC to talk to them about medical marijuana and the services they were providing in Alberta. They also announced their intention to open a Saskatoon clinic. Dr. Zwane was asked by NHS to consider working some shifts at the clinic in Saskatoon when it opens in 2017.
12. In October of 2016, Dr. Zwane's management of an ER patient at the Humboldt Hospital was questioned. He had ordered dopamine for an elderly patient. A nurse agreed to administer the same without Dr. Zwane being present. The nurse manager complained to the Health Authority that this was against hospital protocol. The complaint was referred to the SMO, who ultimately conducted a chart audit. During this time, Dr. Zwane withdrew from call at the ER until the issues raised could be fully investigated.
13. While Dr. Zwane was advised he could return to the ER provided a second on-call physician would be available pending completion of the investigation, he was uncomfortable doing so until issues between him and the nursing management could be addressed. His inability to take call for the HMC owners affected his employment at the HMC.
14. Following withdrawal from the call schedule, Dr. Zwane did not feel he was receiving support from his colleagues. He therefore wrote to the HMC owners to indicate he would consider taking a leave-of-absence if the contract issues he raised could not be addressed. Dr. Zwane also began to consider working some shifts at the NHS Clinic when it opened. He had toured the Calgary NHS Clinic while in Calgary to write the MCCQE Part 2 in October 2016 and observed the facility and its operations to be professional and well run.
15. The owners responded by letter dated December 5, 2016, accepting Dr. Zwane's correspondence as a one-month's notice of resignation, advising him that his employment would end on December 31, 2016.
16. In the context of his sudden departure from the HMC, and his efforts to prepare for the MCCQE Part 2, Dr. Zwane agreed to take on a temporary fulltime position at NHS when its Saskatoon clinic opened on January 3, 2017.

17. In December of 2016, Dr. Zwane was also advised by CPSS that it was considering termination of his license due to his inability to obtain the LMCC designation by April 21, 2017 recognizing that the next sitting of the examination was not until May 2017.
18. In the same correspondence, CPSS also requested that Dr. Zwane respond to concerns regarding his practice at HMC and his prescribing of medications in the Prescription Review Program.

Work at the NHS

19. Dr. Zwane understood from the NHS that many patients seeking medical marihuana as an alternative mode of treatment were having difficulty finding a doctor who would consider their requests. The NHS clinic had been filling this void in Alberta and were setting up a similar service in Saskatoon. He understood the physician's role to be similar to any family physician - except that the patients attending the NHS would be seeking medical marihuana as an alternative for their medical issues.
20. Dr. Zwane began working at the NHS Clinic on January 3, 2017 which was his first visit to the completed clinic. He was not aware of the support he would be receiving and did not know what the setup of the clinic would be. He understood he would be using NHS's proprietary EMR and software but had no prior experience with it. He was told that the head office in Calgary would be doing the billing as it did with its other physicians, in multiple locations in Alberta, and this was not something he would have to worry about. Dr. Zwane assumed NHS would operate similar to the Tisdale, and the Humboldt clinics.
21. The NHS EMR was different from the Acuro software that Dr. Zwane was accustomed to using at HMC. For example, instead of using drop-down menus to select between options to document findings, the NHS EMR auto-populated with what one would expect to observe in a normal, healthy patient. Dr. Zwane tried to familiarize himself with the system and how to best use it from the time he commenced work until the time of his departure from NHS.
22. The NHS staff based in Calgary, Alberta were to do the billing for Dr. Zwane. Unlike his experience at the HMC, he was not asked to fill out a billing day sheet at NHS and there was no field in the EMR to indicate the proper billing code. He assumed and expected, as was the case in Humboldt, that he would be consulted and would approve the billing prior to it being submitted for payment – this did not occur.
23. In February, it came to Dr. Zwane's attention that some visits were being erroneously billed as a higher code than they ought to be. Dr. Zwane took steps with NHS towards rectifying the issue. He inquired about how NHS was submitting his billing and the rationale for the codes it had used. He instructed NHS that the billing clerk needed to be educated on the billing procedures specific to Saskatchewan. He discussed speaking to her and meeting with her, but the meeting never took place prior to February 13, 2017 when Dr. Zwane was advised by CPSS that his license was being revoked effective February 17, 2017.
24. While Dr. Zwane was in the process of rectifying billing issues, his license was revoked and his access to NHS and the clinic records was denied by NHS. After Dr. Zwane informed the clinic of the impending revocation of his license, the clinic instructed

Dr. Zwane to turn in his keys, cancelled all appointments moving forward, and deleted his credentials to access the EMR.

Charge 1 – Excessive Billing

25. In the period of approximately January 3, 2017 to February 16, 2017, Dr. Zwane carried on practice at NHS in Saskatoon, Saskatchewan.
26. It was Dr. Zwane's responsibility to ensure that the medical services he provided were appropriately billed.
27. During the period from January 3, 2017 to February 16, 2017, Dr. Zwane's billings included the following:
 - 972 Code 3B – Complete Assessment
 - 17 Code 5B – Partial assessment or subsequent visit
 - 5 Code 9B - Consultation
28. Dr. Zwane's documentation of patient attendances did not always fulfill the requirements for a complete assessment (3B) code to be billed. There are some patients during this timeframe where billing for a code 3B was not justified based on the services documented.
29. A case in point relates to an individual identified by the initials K.K. who attended at NHS on February 1, 2017. K.K. is a private investigator hired by CPSS to make an appointment with Dr. Zwane at NHS and to observe and report on the patient attendance. Billing Code "3B" was submitted for the medical services provided by Dr. Zwane to Investigator K.K. where the requirements for billing that code were not met.
30. Dr. Zwane relied on the NHS staff to do his billing. When it came to his attention that some visits were being billed erroneously at the higher code, Dr. Zwane took steps with NHS towards rectifying that issue. Before doing so, however, his license was revoked, and his employment was terminated.
31. To the extent his billing was excessive for services rendered while carrying on practice at NHS in Saskatoon, any overbilling by Dr. Zwane was unintentional on his part. Further, he did not have an opportunity to address the concern with NHS staff once it became known to him.

Charge 2 – Authorizing access to cannabis for medical purposes

32. In the period of approximately January 3, 2017 to February 16, 2017, Dr. Zwane carried on practice at NHS in Saskatoon, Saskatchewan.
33. During the period of January 3, 2017 to February 16, 2017, Dr. Zwane assessed patients for, amongst other things, their eligibility to receive a medical document authorizing the use of cannabis for medical purposes. In doing so:
 - a. Dr. Zwane failed to meet the standards of the medical profession in relation to his assessment of some patients. Based on what was documented by Dr. Zwane, there were occasions where the history of presenting problems was insufficient, or where examinations relevant to the presenting complaints were not thorough enough. There were patients where a medical document authorizing access to cannabis was given without documenting the full history and physical evaluation required to

establish the diagnoses and identify underlying conditions and/or contraindications to the treatment recommended/provided.

- b. Dr. Zwane failed to comply with some of the requirements of;
CPSS Regulatory Bylaw 19.2 – Standards for Prescribing Marihuana. In addition to the requirement of maintaining adequate records and conducting a full history and/or physical examination, on at least one or more occasions Dr. Zwane:
 - i. was not the primary treating physician for the condition for which medical marihuana access was granted, although this had been Dr. Zwane’s intention;
 - ii. did not require the patient to sign an appropriate written treatment agreement; and
 - iii. did not obtain patients’ pre-existing and relevant medical records for the condition which access to medical marihuana was granted in advance of giving the prescription.
 - c. Dr. Zwane failed to provide appropriate follow-up care to one or more patients who presented with medical conditions. This was due, in part, to the revocation of his license by CPSS and the termination of his employment at NHS which denied him the opportunity to follow-up with his patients. Dr. Zwane required and instructed all his patients to attend a follow-up appointment at a minimum of every 3 months or earlier. Patients were booked for an appointment prior to leaving the clinic and were advised that if they failed to attend for follow-up, their authorization to access cannabis could be revoked.
 - d. Dr. Zwane failed to maintain a single record, separate and apart from patient record, which contained a record of all prescriptions which he had made for medical marihuana. Dr. Zwane was aware that a separate document was required. He was under the impression that he was required to provide the record to CPSS every 6 months. This impression was based upon a CPSS brochure (which can still be accessed on the CPSS website) which indicated such. He advised NHS of the need to produce this record, and expected the EMR could be programed to automatically populate this form. The form was not created prior to his departure.
34. On or about February 1, 2017, at the instruction of CPSS, an individual identified by the initials K.K. attended at NHS inquiring about access to cannabis to treat his chronic lower back pain. Dr. Zwane provided Investigator, K.K., with a medical document authorizing him to access cannabis for medical purposes. In doing so, Dr. Zwane failed to meet the requirements of *CPSS Regulatory Bylaw 19.2* in his assessment and/or authorization.

The Positions of Dr. Zwane and the Registrar’s Office

Although not a joint submission, Dr. Zwane and the Registrar’s Office both argued an appropriate penalty included:

- 1) a reprimand;

- 2) a requirement to take an ethics course on professionalism, a prescribing course and a medical record-keeping course;
- 3) Dr. Zwane remain suspended (or be ineligible to apply for reinstatement of his licence) until he successfully completes the three courses;
- 4) a requirement to pay costs in the amount of \$8,726.75;
- 5) Dr. Zwane remain suspended (or be ineligible to apply for reinstatement of his licence) until he pays the costs.

Council received written submissions from both parties setting out their arguments (documents numbered Info 12_20 and Info 37_20). These were given due consideration in arriving at our Decision.

The Position of the Registrar's Office

Mr. Salte, on behalf of the Registrar's Office, presented verbal arguments in favour of a substantial fine. He recognized Dr. Zwane admitted to the charges. He submits in normal circumstances, where the physician remains licensed and in practice in Saskatchewan, penalty for similar misconduct would often carry a fairly substantial suspension, which would have the effect of a substantial financial loss for the physician. As Dr. Zwane is not licensed in Saskatchewan and is unlikely to return to practice in Saskatchewan, a suspension carries no weight. Case law presented in written arguments identified circumstances where a fine was more appropriate than suspension, including when such a suspension would be moot.

Mr. Salte argued Dr. Zwane relied heavily on the Calgary based firm to do his billings rather than submitting them himself. Dr. Zwane's lack of oversight over the billings submitted should not be taken as an excuse for his misconduct.

Mr. Salte argued Dr. Zwane's departure from the expected standard as it pertains to the prescribing of medical marihuana was extreme. Dr. Zwane was not in a position to possibly comply with CPSS guidelines as he demonstrated no intent to become the primary treating physician for the patients to whom he prescribed marihuana.

Mr. Salte argued Dr. Zwane benefitted from his misconduct financially and overbilled for 942 patients. He further submitted despite the fact total billings from those patients would have gained Dr. Zwane somewhat less than \$30000, a *de minimus* argument should not be accepted as justification for a lesser penalty. Dr. Zwane made no efforts to repay the inappropriately billed monies, as a result he gained financially, and the Registrar's Office argued a substantial financial penalty is appropriate.

The Registrar's Office took the position the appropriate penalty should include a fine of \$15,000 on the charge related to improper billing and a fine of \$10,000 on the charge related to inappropriately authorizing access to cannabis for medical purposes.

The Position of Dr. Zwane

Counsel for Dr. Zwane argued no fine was preferable, but if the Council did decide on a fine, it should not exceed \$15000. Counsel for Dr. Zwane interpreted section 54 of *The Medical Profession Act, 1982* as only authorizing a maximum fine totalling \$15000. He submitted any fine ordered should not exceed \$5000 per charge for a total of \$10000.

Counsel for Dr. Zwane argued the admitted misconduct took place over a relatively short 6-week period and Dr. Zwane has had no prior discipline history. Counsel suggested his actions were inadvertent and occurred during a particularly tumultuous period of practice for Dr. Zwane. He had recently been informed of a possible pending revocation due to his failure to meet the requirements of MCQE2. He had recently suffered a short term termination of employment leading him to take a position with Natural Health Services. Counsel suggested Dr. Zwane went into this practice opportunity naive to the workings of the organization and how billings were managed via the head office in Calgary.

Counsel for Dr. Zwane takes exception to arguments brought forth by Mr. Salte and suggests Dr. Zwane did in fact have the intent of becoming the primary practitioner for the patients for whom he was prescribing cannabis.

Counsel for Dr. Zwane argued the \$25000 fine proposed by the Registrar's Office offends the totality principle. The Council was informed of the nature of this principle which is paraphrased as follows:

The principle of totality is a component of the principle of proportionality. In some sense, totality is a 'subsidiary' of proportionality. The totality principle was intended to avoid sentences that cumulatively are out of proportion to the gravity of the offences.

Dr. Zwane offered a statement to Council which included the following:

- 1) Dr. Zwane wants to conclude the matter.
- 2) Dr. Zwane is truly remorseful.
- 3) Dr. Zwane had no other avenues of income at the time of his misconduct.
- 4) Dr. Zwane entered into his relationship with NHS naively.
- 5) Dr. Zwane blames this matter for the necessity of him returning to South Africa.

Decision of Council

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

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- Registrar. Such course shall be completed not later than June 30, 2020. The programs “Medical Ethics, Boundaries and Professionalism” by Case Western Reserve University, “Probe Program” by CPEP and “Medical Ethics and Professionalism” by Professional Boundaries Inc., are ethics programs acceptable to the Registrar.
4. Pursuant to section 54 (1)(g) of *The Medical Profession Act, 1981*, Dr. Zwane is required to successfully complete a prescribing course in a form acceptable to the Registrar on or before December 31, 2020.
 5. Pursuant to section 54 (1)(g) of *The Medical Profession Act, 1981*, Dr. Zwane is required to successfully complete a medical record-keeping course in a form acceptable to the Registrar on or before December 31, 2020.
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Reasons for Decision

Costs incidental to the investigation were ordered. Council saw no reason why costs should not flow in the circumstances considering the guilty plea. A reprimand was necessary in order to demonstrate Council’s concern with Dr. Zwane’s actions. The requirement Dr. Zwane complete a prescribing course, a medical record-keeping course and ethics course was considered appropriate on the facts before Council. Orders of this nature have been made in similar circumstances where it is evident the physician would benefit from further education.

The only contested matter in this penalty hearing was the issue of a fine, specifically if a fine should be applied and, if so, in what amount?

It was generally accepted by Council that the ‘routine maximum’ fine we deal with is \$15000. Council attempted to have the issue clarified. Mr. Salte interprets the legislation as not containing an aggregate maximum and a maximum of \$15000 per charge is permitted. The pertinent legislation states:

Penalties

54(1) Upon receipt of a report pursuant to section 52, in the case of a person found by the discipline hearing committee to be guilty of unbecoming, improper, unprofessional or discreditable conduct, the council may:

(f) impose a fine on the person not exceeding \$15,000;

The Council interpreted Mr. Salte’s submissions such that the ‘report’ pursuant to section 52 of the Act may contain multiple charges, each of which may be subject to a fine not exceeding \$15000 per charge. The majority of Council was under the understanding the total fine for the entirety of such a report was not to exceed \$15000. Council did consider the matter of Dr. Taratibu in which a total fine of \$17500 was applied.

2. With respect to the finding of guilt on charge #1 and pursuant to Section 54(1)(f) of The Medical Profession Act, 1981, Council imposes a fine of \$15,000 on Dr. Taratibu, payable forthwith.

3. With respect to the finding of guilt on charge #2 and pursuant to Section 54(1)(f) of The Medical Profession Act, 1981, Council imposes a fine of \$2,500 on Dr. Taratibu, payable forthwith.

The factors in determining an appropriate penalty, as outlined in *Camgoz v. College of Physicians and Surgeons*, 1993 CanLII 8952 (SKQB), were given due consideration. The nature and conduct of the proven allegations are serious. Dr. Zwane is suspended from practice and will remain suspended until he undergoes significant training. He has no previous discipline history. After fulsome debate on the matter, the Council decided a total fine of \$15000 was appropriate.

The Council, on the facts of this case, was uncomfortable with the nuances of *The Medical Profession Act, 1981* in this matter and was therefore unwilling to apply the \$25000 fine requested by the Registrar’s Office. The Council recognizes the matter of fines per report not equating to fines per charge warrants further exploration, and the President has determined this will be added to a future Council agenda. This decision should in no way be interpreted that Council may be prevented in future appropriate cases from imposing an aggregate fine in excess of \$15000.

**Accepted by the Council of the College of Physicians and Surgeons of Saskatchewan:
21 March, 2020**