



Dr. Alfred ERNST

Council Decision

Date Charge(s) Laid:	September 15, 2018
Outcome Date:	June 21, 2019
Hearing:	Not Required
Disposition:	Suspension, Conditions, Costs

The Council of the College of Physicians and Surgeons imposes the following penalty on Dr. Alfred Ernst pursuant to *The Medical Profession Act, 1981* (the "Act"):

- 1) Pursuant to Section 54(1)(e) of the Act, the Council hereby reprimands Dr. Ernst. The format of that reprimand will be in written and verbal format. Dr. Ernst is required to appear before the next regularly scheduled meeting of the Council to be present to have the reprimand administered in person.
- 2) Pursuant to Section 54(1)(b) of the Act, the Council hereby suspends Dr. Ernst for a period of one month, commencing 20 July, 2019;
- 3) Pursuant to section 54(1)(g) of *The Medical Profession Act, 1981*, Council requires that Dr. Ernst successfully complete a communications course and a HIPA Course to the satisfaction of the Registrar. Such courses shall be completed at the first available date. The Program "Effective Team Interactions" by "Saegis" is a communications program acceptable to the Registrar.
- 4) Pursuant to section 54(1)(i) of the Act, the Council directs Dr. Ernst to pay the costs of and incidental to the investigation and hearing in the amount of \$11,092.42. Such payment shall be made in full by July 21, 2019.
- 5) Pursuant to section 54(2) of the Act, if Dr. Ernst should fail to pay the costs as required by paragraph 4, Dr. Ernst's licence shall be suspended until the costs are paid in full.
- 6) Council reserves to itself the right to reconsider and amend the time within which payment of costs must be made set out in paragraph 4 and the right to reconsider and amend the requirements of the retraining or education set out in paragraph 3. Such reconsideration shall only be done if requested by Dr. Ernst.



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REGISTRAR
KAREN SHAW, M.D.

16 September, 2019

Dr. A. Ernst
Rosetown Medical Centre
Box 340
Rosetown
Saskatchewan
S0L 2V0

Dear Dr. Ernst,

You, Dr. Ernst, having been found guilty of professional misconduct while practising medicine in the province of Saskatchewan are hereby reprimanded by the Council of the College of Physicians and Surgeons of Saskatchewan.

In the spring of 2016, you Dr. Ernst were being audited by the JMPRC for irregular billing practices which is not your first review by this committee. As part of the review you required outpatient charts and requested these from Medical Records personnel at Rosetown Hospital. It was during these interactions with these allied healthcare professionals that you demonstrated a complete lack of respect for these individuals. Your tone and manner could simply be described as bullying in nature and significantly traumatized these individuals.

The behaviour you demonstrated was unprofessional and unethical and showed a complete disregard for the important role these individuals play in the healthcare system. When allied healthcare providers are forced to work in an environment of intimidation and bullying, their performance is often impaired because of fear of coming into conflict with individuals such as yourself. This causes an unwillingness to speak up when they know something is wrong which leads to a poor performing team and ultimately poor patient outcomes. It may have been that this type of behaviour was tolerated in the past, but this is no longer the case and is completely unacceptable by the profession and the public.

Continued.....

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

In your address to the Council, you demonstrated the fact that you are stuck in the past, using words such as “girls” when describing your clerical support staff or hospital health record personnel. You also demonstrated you have no concept of HIPA regulations and the importance of protection of the integrity of the health records. These are extremely importance nuances and changes in societal expectations and your lack of acceptance of these leads you into conflict with other healthcare providers.

The Council recognizes that this is your third finding of unprofessional conduct by the College. Very few physicians find themselves in front of the Council this often and it demonstrates a potential lack of respect for your profession and the ethics which we practice under.

It is the Council’s experience that when physicians potentially stay too long in their profession and begin to make not the best decisions, they are not remembered for all the good things they have done over their career but only their failures. You have served the community of Rosetown faithfully for over fifty years and the Council wishes you to think seriously about the way you want to be remembered as a physician. The trajectory you are presently on is not likely the path that will lead to you being remembered for all the good you have done.

Sincerely,

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

**IN THE MATTER OF *THE MEDICAL PROFESSIONS ACT, 1981,*
RSS 1980-81, c. M-10.1 and Dr. Alfred Ernst**

Penalty Hearing of Dr. A. Ernst pleading guilty to unprofessional conduct charges
of the College of Physicians and Surgeons of Saskatchewan

Mr. A Stonhouse, Q.C. appearing for Dr. A. Ernst

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

June 21, 2019 Saskatoon, Saskatchewan

BACKGROUND

The parties filed with the Council an Agreed Statement of Facts, which provided as follows:

- 1) Dr. Ernst is a 78 year-old physician who has been licensed in Saskatchewan since 1967.
- 2) He has previously admitted unprofessional conduct on two occasions:
 - a. In 2013, he pled guilty to a charge that he made a comment in a public area that there was a rumour in the community about a person to whom he had provided medical care. He was reprimanded, ordered to take an ethics program and directed to pay the costs in the amount of \$3,839.84; and
 - b. In 2015, he pled guilty to charges related to providing inaccurate or misleading answers to questions on his application for reappointment to practitioner staff for Heartland Health Region. He was ordered to pay a fine of \$2,000.00 and costs in the amount of \$600.00.
- 3) In 2016, Dr. Ernst was undergoing a billing review by the Joint Medical Professional Review Committee (JMPRC). In late January of 2016, the JMPRC requested that Dr. Ernst provide it with copies of patient records, providing him with a deadline of March 11, 2016 to do so. Dr. Ernst was subsequently granted an extension to March 28, 2016. In the interim period, the JMPRC was advised of difficulties in obtaining records from the Heartland Health Region.
- 4) On or about February 22, 2016, Dr. Ernst told Ms. Kathleen Gordon, Health Records Technician at Rosetown Health Centre, that he needed hospital charts as he was being reviewed by the JMPRC. The parties agree that if Kathleen Gordon and Jeannette Abbott were to testify, they would testify that Dr. Ernst asked for originals of patient charts. For the purpose of these proceedings, Dr. Ernst does not admit, but has agreed not to contest those statements and agrees that the Council can consider that as proved for the purpose of

imposing penalty. Dr. Ernst indicated that his office manager, Diane Machart, could come and pull the records and enquired about the process for doing so. Ms. Gordon responded that Diane was not able to pull the charts herself, but that it was Ms. Gordon that needed to do so despite and irrespective of the number of charts that would need to be accessed.

5) Dr. Ernst's understanding was that, at least on previous occasions when patient records held by the Health Centre were needed, his office manager would be given access to make photocopies of the charts herself. He was surprised to be informed that she would not be able to do so, and he was unaware of any policy to the contrary. He was concerned about how long his request would take given the number of records requested by the JMPRC and due to Ms. Gordon's workload. At the time, the records department for Rosetown Health Centre was short-staffed.

6) It came as a surprise to Dr. Ernst that he would not be granted access to review the patient charts, and he found it offensive that he would not be trusted to review them. Dr. Ernst was concerned with getting the information contained within the patient records so that he could pass the same onto the JMPRC. He did not understand that the original patient charts were being withheld to protect their integrity. Rather, he felt slighted.

7) When Dr. Ernst was told he could not have the original charts, Ms. Gordon perceived him to become frustrated and angry. She viewed his demeanour to be aggressive and demanding. Dr. Ernst agrees that he was concerned about the time it would take to comply with his request, and reiterated that he had deadlines imposed on him by the JMPRC that he was required to comply with. He was frustrated in that he felt his concerns were not being taken seriously and that he had no control over the situation.

8) Later that same day, Dr. Ernst attended at the Health Records Office and gave Ms. Gordon a list of documents, insisting that he needed the documents urgently to comply with the JMPRC's review and request. Ms. Gordon advised that she was the only person working in the Health Records Office ("one person in a two-person office"), that she was busy with other duties, there would be some delay in meeting his request, and that he would not be getting the records as soon as he would like. She invited him to see Jeanette Abbott, Manager of Quality Improvement, Privacy and Access Officer, to discuss the matter.

9) When he was told by Ms. Gordon that she could not obtain copies of the documents as soon as he would like, she perceived him to be angry. She recalls that he spoke quickly, his face became red and she felt that he intruded on her personal space. Ms. Gordon became sufficiently upset that she could not continue her work.

10) Dr. Ernst does not recall but takes no issue with the description of a telephone conversation given by Ms. Abbott. Specifically, on or about February 23, 2016, Dr. Ernst contacted Ms. Abbott informing her that he needed access to patient charts for the purpose of a JMPRC review. Ms. Abbott observed Dr. Ernst to have been pleasant on the phone. Dr. Ernst offered to have his staff assist in pulling the charts. Ms. Abbott advised Dr. Ernst that the Rosetown Health

Centre would handle his request and that he would be provided copies of the documents but would not be granted access to the originals. Dr. Ernst said he would have his staff contact the Rosetown Health Centre to provide a list of what was needed.

11) Over the next six weeks, Dr. Ernst approached Ms. Gordon on multiple occasions and at different locations. Ms. Gordon felt that Dr. Ernst was inappropriately exerting pressure on her. Dr. Ernst was concerned about meeting the impending deadline imposed by the JMPRC.

12) The experience with Dr. Ernst has left Ms. Gordon fearful of possible retribution and confrontation by Dr. Ernst.

13) On or about March 7, 2016, a group of copied documents was provided, and picked up by someone from Dr. Ernst's office. On March 12, 2016, a request for additional documents was made. Dr. Ernst was unaware that an initial group of documents had been provided to his office, and that a second request had been made. Rather, he understood that the initial request for documents was still being worked on. Dr. Ernst acknowledges that this was a misunderstanding on his part which could have been avoided with better communication.

14) On or about March 16, 2016, Ms. Abbott was contacted by Dr. Ernst's legal counsel about the need to obtain further information from the patient charts to comply with the JMPRC review, and that copies should be provided. Dr. Ernst had asked his legal counsel to become involved because he did not feel that his request for copies of patient records was being dealt with in a timely manner.

15) On or about March 17, 2016, Ms. Abbott was working in the visiting specialist's room at the Rosetown Health Centre. Dr. Ernst came to the door and asked her if she was working on his request for patient records. Ms. Abbott advised that he would not be given originals of the hospital patient charts, but only copies. Ms. Abbott perceived Dr. Ernst as being angry, while he has acknowledged he was frustrated. Dr. Ernst walked into the room where Ms. Abbott was sitting. She felt that he was attempting to intimidate her. He insisted that the hospital charts were his documents. Ms. Abbott advised that, in fact, the Heartland Health Region was Trustee of the records and was responsible for maintaining their integrity. Dr. Ernst threatened to sue the health region, stating his lawyer would be getting involved if he was not provided with copies of the requested records, and asked for the telephone number of Greg Cummings, the then CEO of the Health Region.

16) Dr. Ernst and the Registrar's Office agree that for the purpose of the penalty hearing there is no evidence of Dr. Ernst's motives in asking for original documents, and that the Council cannot consider any possible motives for that request in determining the appropriate penalty.

17) In May 2017, as part of his written response to the complaint, Dr. Ernst acknowledged that:

- a. the manner in which he communicated to coworkers may have been perceived as rude or disrespectful;

- b. there was likely some miscommunication or misunderstanding on his part;
- c. he certainly made his frustration known;
- d. he made a statement along the lines of a threat to sue the health region and that, in hindsight, he acknowledges the statement was unwarranted; and
- e. he appreciates that Ms. Gordon and Ms. Abbott were just doing their jobs.

18) More recently, Dr. Ernst acknowledged he “probably was a bit out of line” when he felt Ms. Abbott was not going to give him the information required of him from the JMPRC, and that he “probably could have been a little bit more tactful”.

19) In October 2016, Dr. Ernst attended and successfully completed the ProBE Canada program, a three-day, in-person ethics and boundary program provided by the Center for Personalized Education for Professionals (CPEP) in Vancouver, British Columbia.

20) He states to have learned that better communication is vital to avoiding situations like this from occurring.

Council was also provided with a letter from Dr. Ernst admitting the conduct, and reports from a Probe Course previously attended by Dr. Ernst.

SUBMISSIONS OF COUNSEL

In setting the penalty for Dr. Ernst, the Council considered both the opinion of the legal counsel for the Registrar’s Office, legal counsel for Dr. Ernst and an oral presentation to the Council by Dr. Ernst. The legal representation submissions from both parties agreed on the following:

1. Dr. Ernst would be reprimanded,
2. Dr. Ernst would be required to attend an ethics or communication course,
3. Payment of all agreed upon costs.

The counsel for the Registrar’s Office and Dr. Ernst disagreed that a suspension was indicated in this case.

For the Registrar

Legal counsel for the Registrar’s Office argued that because this was Dr. Ernst’s third time in front of the Council for findings of unprofessional conduct, only a suspension would demonstrate the gravity of his unethical behaviour. Dr. Ernst must understand that intimidation in the workplace has negative consequences to the performance of the team and felt that only a suspension could reinforce this message. Dr. Ernst was not fully involved in the first ethics course he had taken for previous findings of unprofessional conduct. Only a suspension would make him understand the gravity of what he had done.

For Dr. Ernst

Legal counsel for Dr. Ernst felt that neither of the two charges by Dr. Ernst were similar in any way and therefore a suspension was not indicated. Counsel for Dr. Ernst disagreed that Dr. Ernst was not fully involved in the ethics course and argued that he had learned from the course. Dr. Ernst has served his community for a very long time and was a vital practitioner to his community which would bring significant hardship to the community he served if a suspension was part of the penalty.

During Dr. Ernst's verbal presentation the Council felt that Dr. Ernst did not demonstrate that he recognized that allied health professionals are not subordinate servants that can be ordered around by physicians. Dr. Ernst used terms such as "girls" when referring to his office staff and also the complainants. At no time did Dr. Ernst acknowledge the severity of his behaviour and verbal treatment of the complainants. He felt that he was not abusive and disrespectful and said that he was easy to get along with. The other issue that became obvious to the Council during Dr. Ernst's presentation was his lack of understanding of the importance of the confidential nature of hospital records (HIPA regulations). He insisted that he thought it was okay if he sent one of his office "girls" over to copy the charts he needed because this is what he did in the past. He was told that this was no longer acceptable and he did not seem to understand why this was not allowed.

REASONS FOR DECISION

Camgoz v. College of Physicians and Surgeons, 1993 CanL11 8952 (SKQB) sets out factors which are commonly considered when dispensing penalties for unprofessional acts. The Council reviewed each of those factors and with each reached the following conclusions.

a) the nature and gravity of the proven allegations;

The Council felt that the nature of the repeated intimidation that Dr. Ernst demonstrated to his allied healthcare team members demonstrated a complete lack of respect of his colleagues. Dr. Ernst agreed that his actions could be perceived as rude and or disrespectful in his agreed upon facts and his verbal presentation. His wording of this acknowledgement does not own the behaviour but rather implies that some people could see this behaviour as not acceptable instead of a statement such as my behaviour was rude and disrespectful. The actions of Dr. Ernst left members of the healthcare team feeling intimidated and fearful of retribution. The Council felt the nature of the allegations were very serious and demonstrated a complete lack of respect by Dr. Ernst and a significant breach of ethical standards and in today's terms could be called bullying.

b) the age of the offending physician;

Dr. Ernst is a senior member of the medical profession in the province having practiced in Rosetown for 52 years. The Council does not accept age as an excuse for bad behaviour. The Council felt Dr. Ernst was stuck in a time when physicians were all powerful and never questioned.

c) the age of the offended patient;

There were no patients involved in this complaint but the complainants were experienced healthcare team members and they were traumatized by Dr. Ernst's behaviour.

d) evidence of the frequency of the commission of the particular acts of misconduct within particularly, and without generally, the Province;

Intimidation and harassment continue to occur, but the Council has acted firmly in sending a message that this behaviour is not acceptable. (Dr. Lubega, Dr. Spies, Dr. Jansen and Dr. Rostoker). The continued intimidation and disrespect shown by Dr. Ernst was not just on one occasion but involved several interactions with medical records personnel during his requests for medical records.

e) the presence or absence of mitigating circumstances, if any;

The Council feels that the only mitigating factor was that Dr. Ernst did not contest the allegations. He however took several months after the findings of the PIC to admit the charges.

f) specific and general deterrence;

The Council felt that acts of intimidation and harassment must be dealt with, by way of a strong message that this behaviour is not acceptable under any circumstances by physicians in their work environment. The Council felt the decision in Ontario with regards to Dr. Podell closely mimicked the feelings of the committee with regard to the impact of workplace harassment and intimidation on the team and function of the healthcare providers.

The Discipline Committee of the Ontario College of Physicians and Surgeons made the following comments when imposing penalty on Dr. Podell:

<https://www.canlii.org/en/on/oncpsd/doc/2017/2017oncpsd4/2017oncpsd4.pdf>:

"Physicians are a self-regulating profession and the expectation is that each doctor personally, is responsible to conduct him or herself with integrity, with honesty, and with respect for others and to follow policy and procedure that the profession has formulated to ensure the highest level of care and protection of patients. Respect for fellow workers and patients are a simple concept but is central to the professional behaviours expected of physicians.

Dr. Podell's behaviour was clearly disruptive to the surgical team. Disruptive behaviour is never acceptable. Civility is more than just being polite and involves the culture that an organization creates. A culture lacking in civility and respect has high rates of absenteeism, low employee engagement and high turnover. When unaddressed and uncorrected, it results in an infusion of risk and insecurity in the clinical environment.

More and more of clinical care requires a coordinated and well-functioning team. By repeatedly not being dependable when on call Dr. Podell had an effect on surgeries and brought people into danger. Dr. Podell improperly asked a social worker to portray him in a more favorable light in her report; this suggested a level of aggression and perhaps

an attempt to intimidate. Dr. Podell's instilling fear in a nursing colleague adversely affected the team's functioning. Patient outcomes have been clearly demonstrated to be negatively affected in such circumstances."

g) previous record, if any, for the same or similar misconduct,

The Council is aware of two previous findings of unprofessional conduct, although the Council realizes that these actions were not similar. The Council is concerned that this physician has been charged and found guilty of unprofessional conduct three times now. Generally speaking, unprofessional conduct findings are on the basis of unethical behaviour, governance issues, and honesty and integrity issues. It is the Council's experience that physicians rarely come before the Council on more than one occasion, but to be in front of the Council three times is very concerning.

h) the length of time that has elapsed between the date of any previous misconduct and conviction thereon, and, the member's (properly considered) conduct since that time;

Dr. Ernst has had two previous findings of unprofessional conduct. These findings were in 2013 and 2016. This certainly should still be fresh in this physician's mind.

i) ensuring that the penalty imposed will, as mandated by s. 69.1 of the Act, protect the public and ensure the safe and proper practice of medicine

The Council's views with respect to factor (f) and (j) are applicable here as well.

j) the need to maintain the public's confidence in the integrity of the respondent's ability to properly supervise the professional conduct of its members;

The Council felt that Dr. Ernst's behaviour was intimidating and bullying to allied healthcare professionals, was unethical and did not meet the expected standards of behaviour of a practicing physician. The Council felt strongly that society holds physicians to a higher standard of behaviour. Intimidation and bullying of allied healthcare workers and patients by physicians is not acceptable under any circumstances to the public or the profession. The Council felt strongly that a decisive statement must be made ensuring that the public continues to have confidence in the governance model of physicians.

k) ensuring that the penalty imposed is not disparate with penalties previously imposed in this jurisdiction in particular, and in other jurisdictions in general, for the same or similar act of misconduct.

The Council realizes that there are no two cases with the same set of facts. The Council considered each of the authorities submitted on behalf of the Registrar and Dr. Ernst. The Council considered the nature of the ethical breach, the consequences to the complainants, the previous inability to grasp all the teaching points of the ethics course he had previously taken and the fact that this was his third finding of unprofessional conduct. The Council is satisfied that its finding is not disparate from other findings in similar circumstances.

PENALTY DECISION

As indicated above, the parties were in agreement on some aspects of an appropriate penalty. They disagreed on whether a suspension was appropriate.

In the end, the Council concurred with the legal counsel for the Registrar that only a suspension of one month would send a strong enough message to Dr. Ernst and would fulfill the Council's obligations to the profession and the public.

Therefore, the Council of Physicians and Surgeons imposed the following penalty on Dr. Alfred Ernst, pursuant to *The Medical Profession Act, 1981* (the "Act")

- 1) Pursuant to Section 54(1)(e) of the Act, the Council hereby reprimands Dr. Ernst. The format of that reprimand will in written and verbal format. Dr. Ernst is required to appear before the next regularly scheduled meeting of the Council to be present to have the reprimand administered in person;*
- 2) Pursuant to Section 54(1)(b) of the Act, the Council hereby suspends Dr. Ernst for a period of one month, commencing 20 July, 2019;*
- 3) Pursuant to section 54(1)(g) of The Medical Profession Act, 1981, Council requires that Dr. Ernst successfully complete a communications course and a HIPA Course to the satisfaction of the Registrar. Such courses shall be completed at the first available date. The Program "Effective Team Interactions" by "Saegis" is a communications program acceptable to the Registrar.*
- 4) Pursuant to section 54(1)(i) of the Act, the Council directs Dr. Ernst to pay the costs of and incidental to the investigation and hearing in the amount of \$11,092.42. Such payment shall be made in full by July 21, 2019;*
- 5) Pursuant to section 54(2) of the Act, if Dr. Ernst should fail to pay the costs as required by paragraph 4, Dr. Ernst's licence shall be suspended until the costs are paid in full;*
- 6) Council reserves to itself the right to reconsider and amend the time within which payment of costs must be made set out in paragraph 4 and the right to reconsider and amend the requirements of the retraining or education set out in paragraph 3. Such reconsideration shall only be done if requested by Dr. Ernst.*

Accepted by the Council of the College of Physicians and Surgeons of Saskatchewan: 14 September, 2019