



Dr. Boniface LUBEGA

Council Decision

Date Charge(s) Laid:	October 11, 2022
Outcome Date:	November 25, 2022
Penalty Hearing:	November 25, 2022
Disposition:	Reprimand, Fine

The Council of the College of Physicians and Surgeons of Saskatchewan imposes the following penalty on Dr. Boniface Lubega pursuant to **The Medical Profession Act, 1981** (the “Act”):

- 1) Pursuant to Section 54(1)(e) of The Medical Profession Act, 1981, the Council hereby reprimands Dr. Lubega. The format of that reprimand will be in written format.
- 2) Pursuant to section 54(1)(f) of the Act, the Council imposes a fine of \$5,000 on Dr. Lubega, but payment of that fine is held in abeyance until and unless Dr. Lubega returns to full-time employment, in which case it becomes payable 6 months after he begins such employment.
- 3) Council reserves to itself the right to reconsider and amend the time within which payment of the fine must be made set out in paragraph 2. Such reconsideration shall only be done if requested by Dr. Lubega.



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of Saskatchewan

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REGISTRAR
KAREN SHAW, M.D.

30 January, 2023

Dr. B. Lubega



Dr. Lubega:

The Council of the College of Physicians and Surgeons of Saskatchewan accepted your admission of guilt relating to charges of unprofessional conduct. These charges were pertaining to your inappropriate billing of services to the Medical Services Branch (MSB). You permitted billings to MSB for surgical assisting services when those services were not medically necessary or requested by the surgeon. These billings were completely unjustified.

The Council of the College of Physician and Surgeons has imposed penalties pursuant to *The Medical Professional Act, 1981*. These penalties include a fine and a written reprimand.

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

The Saskatchewan physician fee-for service billing system is predicated on trust. It is a privilege to have an honour system for the payment of professional fees. It is therefore essential that this privilege is not abused. Furthermore, adherence to proper billing practices is essential in sustaining our publicly funded health care system and the public's confidence in the practice of medicine. It is therefore your responsibility to ensure that all billings submitted meet appropriate standards.

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

Council considered the mitigating factors put forwards by your legal counsel, and while Council was inclined to demonstrate some degree of compassion towards your personal circumstances, it abhors your conduct as it fell well short of the ethical and professional standard expected of members of the profession.

It is the hope of Council that you reflect upon your lapse in ethics, and strive to maintain the high professional and ethical standards that we expect.

Council of the College of Physicians and Surgeons of Saskatchewan

IN THE MATTER OF A PENALTY HEARING FOR DR. BONIFACE LUBEGA PURSUANT TO SECTION 46 OF **THE MEDICAL PROFESSION ACT, 1981** AND/OR BYLAW 7.2 AND/OR 8.1 OF THE REGULATORY BYLAWS OF THE COLLEGE OF PHYSICIANS AND SURGEONS OF SASKATCHEWAN

Mr. D. Thera K.C. representing Dr. B. Lubega

Mr. E. Thompson representing the Registrar's Office

Background

Dr. Boniface Lubega is a 68 year old physician. He came to Saskatchewan in 2006 and located to Swift Current where he worked as an anesthetist until circumstances led to a reassessment of his skills and knowledge. Subsequently Dr. Lubega was deemed to require further training if he was to continue in practise as an anesthetist. Dr. Lubega was unable to acquire the required training and thereafter changed his scope of practise to surgical assisting. He entered a one year supervised program of training under the supervision of Dr. Joseph Buwembo at the Regina General Hospital.

During the course of training and thereafter, Dr. Lubega submitted billings to MCIB for the payment of surgical assistant services that were subsequently determined to be not medically indicated and/or not requested by the surgeons of record.

Dr. Lubega's privileges to assist in surgery within the Regina Area of the Saskatchewan Health Authority had been rescinded by Dr. John Tsang, Area Lead of the Department of Surgery.

Dr. Lubega was charged with professional misconduct by the Executive Committee of the Council of the College of Physicians & Surgeons of Saskatchewan and subsequently admitted the following charges:

*You Dr. Boniface Lubega 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/or bylaw 7.2(bb) and/or bylaw 8.1(b)(iii) of the regulatory bylaws of the College of Physicians and Surgeons of Saskatchewan, by inappropriate billing.*

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

- *You caused or permitted billings to Medical Services Branch for surgical assisting services (Codes 30J and 31J) when you did not provide services that were medically necessary as required to bill for those Codes.*
- *You caused or permitted billings to Medical Services Branch for surgical assisting services (Codes 30J and 31J) when you were not asked by the surgeon to work as a surgical assistant.*

Documents under Consideration

Information document 235_22 - Dr. B. Lubega – Penalty Hearing – Submissions on Behalf of Dr. Lubega
Information document 197_22 - Dr. B. Lubega – Penalty Presentation on Behalf of the Registrar's Office

Points at Issue

Verbal submissions were presented both on behalf of the Registrar's Office and Dr. Lubega. There was no substantial variance in the positions of both parties. There was no joint recommendation on this matter put forward, however, both parties argued against either a fine or suspension in this matter, not based on precedent but rather on irrelevance in the face of Dr. Lubega's ongoing lack of work and inability to pay even a modest fine.

Decision

Following deliberation of verbal and written submissions from both parties the Council determined penalty as follows:

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

*1) Pursuant to Section 54(1)(e) of **The Medical Profession Act, 1981**, the Council hereby reprimands Dr. Lubega. The format of that reprimand will be in written format.*

2) Pursuant to section 54(1)(f) of the Act, the Council imposes a fine of \$5,000 on Dr. Lubega, but payment of that fine is held in abeyance until and unless Dr. Lubega returns to full-time employment, in which case it becomes payable 6 months after he begins such employment.

3) Council reserves to itself the right to reconsider and amend the time within which payment of the fine must be made set out in paragraph 2. Such reconsideration shall only be done if requested by Dr. Lubega.

Reasons for Decision

Council deliberations led to a penalty that is divergent from the penalties proposed by legal counsel of both the Registrar's Office and Dr. Lubega. This decision was not taken lightly.

A suspension was felt to be appropriate in this matter.

There was consideration given to a suspension in this matter. Dr. Lubega is limited in scope of practise to surgical assisting. Dr. Lubega currently has no surgical assisting prospects both in the short term and likely in the long term. As a result of these factors, a suspension has no punitive effect and is therefore a futile form of penalty.

It is commonly the will of Council that matters of misconduct which directly benefit the physician financially are punished with an appropriate fine. The Council feels that a fine is a substantial tool to support both general and specific deterrence and therefore that a fine is appropriate in this matter. The Council recognizes that Dr. Lubega is in a very constrained financial situation. Documentation has been presented to the Registrar's Office demonstrating the very modest annual income of Dr. Lubega. It has been suggested that in light of Dr. Lubega's inability to pay, that no fine should be levied against him. The Council felt that this was unacceptable from a precedential perspective. We feel that the case law supports a fine and therefore a fine was levied against Dr. Lubega. Given the financial constraints that Dr. Lubega finds himself in, and the likelihood of that circumstance being somewhat long-lasting, the Council did wish to demonstrate some degree of compassion, and therefore have deferred payment of

the fine until such time as Dr. Lubega demonstrates that he is in a financial position to begin payment either in whole or in part.

Costs in this matter were negligible and as such they were not included as part of the penalty.

Accepted by the Council of the College of Physicians and Surgeons of Saskatchewan: 28 January, 2023