



Dr. Svitlana ZIARKO (formerly CHESHENCHUK)

Council Decision

Date Charge(s) Laid:	January 25, 2020
Outcome Date:	June 19, 2020
Hearing:	Completed
Disposition:	Fine, Reprimand, Undertaking, Costs

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

- 1) Pursuant to Section 54(1)(f) of *The Medical Profession Act*, the Council directs that Dr. Ziarko pay a fine in the amount of \$3000. The fine shall be paid in full on or before December 1, 2020.
- 2) Pursuant to Section 54(1)(e) of *The Medical Profession Act*, the Council hereby reprimands Dr. Ziarko. The format of that reprimand will be in written format.
- 3) Pursuant to Section 54(1)(g) of *The Medical Profession Act, 1981*, Dr. Ziarko is required to sign an undertaking wherein she agrees within 6 months of the signing to do the following:
 - a. Establish an office policy on charges made for the provision of patient records and the transfer of patient charts;
 - b. Submit the office policy document to the Registrar of the College of Physicians and Surgeons for approval. If the policy is not approved, make whatever revisions are recommended and resubmit it to the Registrar;
 - c. Take steps to ensure staff are instructed on the policy and to comply with the policy and report those steps to the Registrar.
- 4) Pursuant to Section 54(1)(i) of *The Medical Profession Act, 1981* the Council directs that Dr. Ziarko pay the costs of the investigation in the amount of \$8,522.24. Such payment shall be made in full on or before 31 March, 2021. Payments will be made in equal monthly installments.



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REGISTRAR
KAREN SHAW, M.D.

PERSONAL AND CONFIDENTIAL

28 September, 2020

Dr. S. Ziarko



Dear Dr. Ziarko,

On 19 June, 2020 the Council of the College of Physicians and Surgeons of Saskatchewan determined penalty for your misconduct. Following deliberation, Council accepted the joint submission on penalty. One component of that penalty was an official reprimand by the Council.

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

This is the second time that you have been penalized by the Council for professional misconduct. Your behaviour has demonstrated a lack of ethical judgement and a disregard for your patients' wishes. Council does not want to see you before it again.

Patients have the right to choose their primary care provider. It is not appropriate for a physician to become a hinderance in this decision, but to facilitate good communication between the two providers. The amounts you were charging for transfer of electronic records were absurd. The Council is fully aware of the actual costs associated with this type of transfer. We expect that moving forward you have proper oversight and a policy in place, approved by the Registrar, so that this financial abuse of patients does not occur again.

Sincerely,

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

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



**In the Matter of a Penalty Hearing before
the Council of the College of Physicians and Surgeons of Saskatchewan
and Dr. Svitlana Ziarko,
June 19, 2020**

Summary of the Decision

Dr. Ziarko appeared before the Council for a penalty hearing on June 19, 2020. Dr. Ziarko was represented by Mr. Nicolas Cann. Ms. Rochelle Wempe presented the position of the Registrar's Office.

Dr. Ziarko was charged with the following charge of unprofessional conduct:

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 that the following charges against Dr. Svitlana Ziarko, namely:

1. You Dr. Svitlana Ziarko 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 and/or bylaw 8.1(b)(iii), and /or bylaw 7.1(b) and (c), paragraph 16 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:

- 1) You terminated the physician-patient relationship with Patient 1 who had been a long-term patient of your clinic.*
- 2) On or about February 21, 2018 you received a written request for Patient 1's medical chart to be transferred to her new physician.*
- 3) On or about February 26, 2018 you and/or staff advised Patient 1 that a fee of \$174.60 would need to be paid before the file would be transferred.*

- 4) *Patient 2 was a long-term patient of your clinic who terminated the physician-patient relationship because she was re-locating.*
- 5) *On or about February 12, 2018 you received a request for Patient 2's medical chart to be transferred to her new physician.*
- 6) *You and/or staff verbally told Patient 2 that a chart transfer fee of \$295.00 must be paid before the chart would be transferred.*
- 7) *Patient 3 was a patient of another physician in your clinic.*
- 8) *The physician-patient relationship was terminated.*
- 9) *On or about December 19, 2018 your clinic received a fax request from Patient 3's new physician for Patient 3's medical records.*
- 10) *On or about December 21, 2018 Patient 3 received a phone call from you and/or clinic staff advising he had to pay \$150.00 before his patient file would be transferred.*
- 11) *Patient 3 advised you and/or your staff that he had no money to pay the \$150.00 to transfer his file and he was told that he must pay it if he wanted the file transferred.*
- 12) *You caused or permitted your staff to quote an excessive fee to Patient 1;*
- 13) *You caused or permitted your staff to quote an excessive fee to Patient 2;*
- 14) *You caused or permitted your staff to quote an excessive fee to Patient 3;*
- 15) *You failed to exercise due diligence to ensure that the fees your clinic charged and/or quoted for transferring patient files for Patient 1, Patient 2, and/or Patient 3's were not excessive.*

At the June 19, 2020 Penalty Hearing the Council imposed the following penalty on Dr Ziarko:

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

- 1) *Pursuant to Section 54(1)(f) of The Medical Profession Act, 1981, the Council directs that Dr. Ziarko pay a fine in the amount of \$3000. The fine shall be paid in full on or before December 1, 2020.*
- 2) *Pursuant to Section 54(1)(g) of The Medical Profession Act, 1981, Dr. Ziarko is required to sign an undertaking wherein she agrees within 6 months of the signing to do the following:*
 - a) *Establish an office policy on charges made for the provision of patient records and the transfer of patient charts;*
 - b) *Submit the office policy document to the Registrar of the College of Physicians and*

Surgeons for approval. If the policy is not approved, make whatever revisions are recommended and resubmit it to the Registrar;

c) Take steps to ensure staff are instructed on the policy and to comply with the policy and report those steps to the Registrar.

3) Pursuant to Section 54(1)(i) of The Medical Profession Act, the Council directs that Dr. Ziarko pay the costs of the investigation in the amount of \$8522.24. Such payment shall be made in full on or before December 1, 2020.

The Position of the Registrar's Office on Penalty

The Registrar and Dr. Ziarko entered into a joint submission with respect to items 1 and 2 of the penalty. There however was not agreement with costs in the amount of \$12,596.57. The Registrar set out that in Sec 54(1)(i) of **The Medical Profession Act, 1981**, the Council has the legislative authority to direct that a physician pays any costs, or portion there of, associated with an investigation. This may include legal and preliminary inquiry committee costs. Also, the Registrar quoted Mr. Bryan Salte's book, *The Law of Professional Regulation, 2015: LexisNexis Canada Inc.*, in which he sets out a number of principles to be considered when a court reviews a cost award (at page 262). One principle is that a member has an obligation to provide financial information to support a contention that a cost award will impose an undue financial hardship. Dr. Ziarko has not provided this.

It is the Registrar's contention that had Dr. Ziarko followed the direction given to her in 2012 and 2014, regarding the same conduct, that these costs would not have been incurred. The Registrar therefore asks that all cost in the amount of \$12,596.57 be imposed.

Dr. Ziarko's Position on Penalty

Dr. Ziarko considers the costs being sought are excessive. Her counsel also quotes Mr. Bryan Salte's book at page 262.

1. Whether the costs are so large that the costs are punitive;

2. Whether the costs are so large that they are likely to deter a member from raising a legitimate defence;
3. The member's financial status;
4. A member has an obligation to provide financial information to support a contention that a cost award will impose an undue financial hardship;
5. The regulatory body should provide full supporting material for the amount of costs claimed;
6. The regulatory body should provide the individual with an opportunity to respond to the information and respond to the total quantum of costs which may be ordered before costs are imposed;
7. The regulatory body should provide reasons for reaching the decision that it made.

Counsel for Dr. Ziarko contends that the amount of costs are punitive in nature as they are disproportionate to the conduct at issue. Counsel for Dr. Ziarko contends that the costs are so high as to dissuade physician's from ever mounting a legitimate defense.

Counsel for Dr. Ziarko also considers the appointment of a PIC as unnecessary. In 2018 she apologized for her conduct and sought assistance from the College on how to proceed. In early 2019 she proposed an ADR solution which was not accepted by the College due to her previous complaint history. It was then that a PIC was appointed. Dr. Ziarko's counsel in summary states:

The PIC costs are unreasonably high, particularly in consideration of the conduct being investigated;

The costs being sought are inconsistent with the principles of proportionality and the reasonable expectations of parties in light of cases which involved far more serious and/or complex breaches;

There can be no suggestion that Dr. Ziarko's actions prolonged the process and in fact, Dr. Ziarko's actions would have had the effect of significantly shortening the process; and

Resolution of complaints should be encouraged for the benefit of all concerned. The costs being sought will have a dangerous ripple effect on the decision-making of other physicians in whether to proceed in defending charges alleged against them or attempting to resolve them early.

Council's Decision

Documents submitted and considered were Info documents 121_20, 124_20, 156_20, and 161_20.

There is only one issue being contested, that is of costs related to the investigation of Dr. Ziarko.

The Registrar's argument that we, the Council have the authority to impose all costs in this case is accepted. The Council does in most cases recover the costs of the investigations, hearings, and legal costs if applicable. This can be seen in the case law and is supported in the decision, *Reid v College of Chiropractors of Ontario, 2016 ONSC 1041*. The Council does not consider the conduct that resulted in a charge and signed admission minor. We take our role in public protection seriously and must ensure that our members treat the public in a fair and reasonable way when it comes to charging them for uninsured services, such as chart transfers.

Dr. Ziarko's argument that a PIC was not needed was considered by Council. The Council did not agree that a PIC was not necessary. Due to Dr. Ziarko's complaint and discipline history, the Council considers that a PIC was necessary to clarify for the College, Dr. Ziarko's culpability in relation to the complaints. Counsel for Dr. Ziarko contends that the conduct at issue is not sufficiently severe to justify the costs. We agree that there are varying degrees of severity when it comes to unprofessional conduct, but due to Dr. Ziarko's history a thorough investigation was initiated which resulted in the costs. Counsel for Dr. Ziarko argued that the costs could be considered punitive in nature and may dissuade future member from mounting a legitimate defence to a complaint. The Council did agree with Dr. Ziarko's counsel on this point. The joint submission contains a punitive component of a \$3,000.00 fine. It is not the Council's wish to further "fine" a member, but

just recover fair costs. The Council also does not wish to deter any members from obtaining competent legal counsel when faced with a complaint. The Council reviewed the invoices from the PIC and confirmed that the legal costs and one of the member's costs to be fair and reasonable. However found one of the member's costs excessive. The Council is not saying that the costs of that PIC member were not justified on their part, as they wrote the report. However, in the context of this case, the costs were out of proportion to what the other member had reported. In light of this information, Council determined it would be fair and reasonable to share the costs, of that one member, equally between the College and Dr. Ziarko. Therefore, the Council decreased the costs imposed on the member from \$12,596.57 to \$8,522.24.

Approved by the Council of the College of Physicians & Surgeons of Saskatchewan: 26 September, 2020