



## Dr. El-fellani MOHAMMED

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### Council Decision

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| <b>Date Charge(s) Laid:</b>      | June 17, 2017   |
| <b>Outcome Date:</b>             | July 31, 2019   |
| <b>Penalty Hearing Date:</b>     | September 13, 2019  |
| <b>Disposition:</b>              | Reprimand, Suspension,<br>Undertaking,<br>Conditions, Costs |
| <b>Amendment to Disposition:</b> | June 19, 2020   |

The Council of the College of Physicians and Surgeons of Saskatchewan imposes the following penalty on Dr. El-fellani Mohammed pursuant to *The Medical Profession Act, 1981* (the "Act"):

- 1) Pursuant to Section 54(1)(e) of the Act, the Council hereby reprimands Dr. Mohammed. The format of that reprimand will be determined by the Council.
- 2) Pursuant to Section 54(1)(b) of the Act, the Council hereby suspends Dr. Mohammed for a period of 3 months, commencing at 12:01 a.m. on October 13, 2019 and ending at 11:59 p.m. on January 12, 2020.
- 3) Pursuant to Section 54(1)(b) of the Act, the suspension will remain in effect unless prior to the end of the suspension, Dr. Mohammed provides an undertaking to the College, in a form acceptable to the Registrar, that contains the following:
  - a. Dr. Mohammed's agreement that he will not have any in-person professional encounters with female patients except in the presence of a female practice monitor;
  - b. Dr. Mohammed's agreement that any practice monitor utilized in his office practice will sign an undertaking to the College and that he will provide a copy of that undertaking to the College before that person can act as a practice monitor;
  - c. Dr. Mohammed's agreement that any person who acts as a practice monitor in his office practice will comply with the terms of that person's undertaking;
  - d. Dr. Mohammed's agreement to unannounced inspections by the College to monitor his compliance with the undertaking and the undertaking provided by his practice monitor(s);
  - e. Dr. Mohammed's agreement that he will post a clearly visible sign in his waiting room and each of his examination rooms in his clinic that states he will not see female patients without the presence of a female practice monitor, such sign to be approved in advance by the Registrar;
  - f. Dr. Mohammed's agreement that the College can provide a copy of the undertaking to the Saskatchewan Health Authority and to physicians with whom he works;

- g. A statement that the terms of the undertaking will remain in effect while Dr. Mohammed remains licensed in Saskatchewan unless the Council agrees to an amendment to or a termination of the undertaking.
- 4) Pursuant to Section 54(1)(g) of the Act, the Council requires that Dr. Mohammed successfully complete a boundaries course acceptable to the Registrar, and provide proof of completion. Such course shall be completed at the first available date, but in any case within six months. The programs “PROBE Ethics & Boundaries Course” by CPEP and “Professional Boundaries and Ethics” by PBI Education are boundaries programs acceptable to the Registrar.
  - 5) Pursuant to Section 54(1)(g) of the Act, the Council requires that Dr. Mohammed successfully complete a course on ethics/professionalism acceptable to the Registrar, and provide proof of completion. Such course shall be completed at the first available date, but in any case within six months. The programs “Medical Ethics, Boundaries and Professionalism” by Case Western Reserve University and “Medical Ethics and Professionalism” by PBI Education are ethics programs acceptable to the Registrar.
  - 6) Pursuant to Section 54(1)(i) of the Act, the Council directs Dr. Mohammed to pay the costs of and incidental to the investigation and hearing in the amount of \$87,467.69. Such amount shall be paid in 13 monthly payments, the first payment to be due on or before October 31, 2019. Twelve payments will be in the amount of \$6,728.28 and the last payment will be in the amount of \$6,728.33. The costs must be paid in full by October 31, 2020.
  - 7) Pursuant to Section 54(2) of the Act, if Dr. Mohammed should fail to pay the costs as required by paragraph 6, Dr. Mohammed’s licence shall be suspended until the costs are paid in full.
  - 8) The Council reserves to itself the right to reconsider and amend any of the terms of this penalty order if requested to do so by Dr. Mohammed.

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## **Amendment to Council Decision – June 19, 2020**

At the Council meeting on June 19, 2020, the Council approved an extension of time requested by Dr. Mohammed to successfully complete the boundaries course he had been directed to take.

The resolution stated:

The Council amends paragraph 4 of the penalty imposed on Dr. Mohammed in September 2019 to read as follows:

- 4) Pursuant to Section 54(1)(g) of the Act, the Council requires that Dr. Mohammed successfully complete a boundaries course acceptable to the Registrar, and provide proof of completion. Such course shall be completed at the first available date, but in any case by June 1, 2020. The programs “PROBE Ethics & Boundaries Course” by CPEP and “Professional Boundaries and Ethics” by PBI Education are boundaries programs acceptable to the Registrar.



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REGISTRAR  
KAREN SHAW, M.D.

2 December, 2019

Dr. El-fellani A. Mohammed  
Landmark Medical Centre  
2 - 4150 Albert Street  
Regina  
Saskatchewan  
S4S 3R8

Dear Dr. Mohammed:

On the 31<sup>st</sup> of July 2019 the Discipline Hearing Committee of the College of Physicians and Surgeons found you guilty of unprofessional conduct, pursuant to sub-section 46(o) of *The Medical Profession Act, 1981* and on the 13 September, 2019 the Council of the College of Physicians and Surgeons of Saskatchewan imposed penalty upon you. A formal reprimand has been ordered as part of your penalty component.

*You Dr. El-Fellani Mohammed 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 participated knowingly in a series of acts involving two patients which demonstrated an escalating pattern of unprofessional conduct. Your actions have had a grave impact on the emotional health of both patients and calls into question the fiduciary relationship between doctor and patient as evidenced by the victim impact statement.

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 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 in general. Council has taken into account your unblemished record as a physician and set out an appropriate punishment given the level of misconduct and the fact that there was more than one patient involved.

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 for the remainder of your career.

Sincerely,

The Council of the College of Physicians and Surgeons of Saskatchewan

**IN THE MATTER OF THE MEDICAL PROFESSION ACT, 1981,  
SS 1980-81, c M-10.1, Section 86  
AND IN THE MATTER OF PENALTY HEARING OF  
DR. EL FELLANI MOHAMMED**

**13 SEPTEMBER, 2019**

**Ms. Sheila Torrance appearing for the College of Physicians & Surgeons of Saskatchewan  
and Mr. Nicholas Cann, Q.C. appearing for Dr. Mohammed**

**Introduction and Background:**

Dr. Mohammed is a physician with a Royal College specialty in internal medicine and endocrinology.

He did his undergraduate training in Libya in 1981 and a subsequent fellowship in Toronto in 1990. He has been practicing medicine in Saskatchewan since 1997 and obtained regular licensure in 2001.

Dr. Mohammed is currently in independent practice at the Landmark Medical Centre in Regina and is also on the teaching staff of the College of Medicine at the University of Saskatchewan. He has not been the subject of any previous disciplinary action by the College of Physicians and Surgeons of Saskatchewan (CPSS).

**Council Charges:**

The following charges were laid by the CPSS.

1. You Dr. El-fellani Mohammed 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) (xvi) of the bylaws of the College of Physicians and Surgeons.

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

- 1) A female person hereinafter referred to in this charge as Patient #1 was your patient;
- 2) On or about the 19th day of July, 2016, Patient #1 attended upon you;
- 3) On or about July 19, 2016 you placed your hand, with a stethoscope, down the front of Patient #1's shirt;
- 4) You placed the stethoscope on or in close proximity to Patient #1's breast;
- 5) You asked Patient #1 to lean forward while you were standing in front of her;
- 6) On or about August 18, 2016 you advised Patient #1 that you would conduct a thyroid examination on her;
- 7) While conducting that examination you brushed Patient #1's hair from her neck;
- 8) On or about August 18, 2016 you conducted a stethoscope examination without an appropriate medical justification;

- 9) You placed your hand, with a stethoscope, down the front of Patient #1's shirt;
- 10) You placed the stethoscope on or in close proximity to Patient #1's breast;
- 11) You asked Patient #1 to lean forward while you were standing in front of her;
- 12) On or about August 18, 2016 after your examination of Patient #1, you stood in front of the door to the room with your foot against the door;
- 13) On or about August 18, 2016 after your examination of Patient #1, you placed your arm around her lower back and hip;
- 14) On or about August 18, 2016 after your examination of Patient #1, you placed your hand on her buttocks;
- 15) On or about August 18, 2016, after your examination of Patient #1, you looked at her buttocks.

2. You Dr. El-fellani Mohammed 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) (xvi) of the bylaws of the College of Physicians and Surgeons.

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

- 1) A female person hereinafter referred to in this charge as Patient #2 was your patient;
- 2) On or about the 4th day of August, 2016, Patient #2 attended upon you;
- 3) On or about the 4th day of August, 2016, you repeatedly touched Patient #2's forearm and shoulder;
- 4) On or about the 4th day of August, 2016, you placed your hand on her right shin;
- 5) On or about the 4th day of August, 2016, you inserted your stethoscope under Patient #2's dress from the top of that dress;
- 6) You placed the stethoscope on Patient #2's breast;
- 7) On or about August 4, 2016 you touched Patient #2 frequently, or in inappropriate places and/or for extended times;
- 8) On or about August 4, 2016 you engaged in inappropriate personal conversation with Patient #2 including asking her about her vacations and her work;
- 9) On or about August 4, 2016 you asked Patient #2 if you could visit her at work;
- 10) You inappropriately and unnecessarily touched Patient #2 on visits prior to August 4, 2016.

A Discipline Hearing Committee (DHC) was convened to adjudicate this matter. A Hearing took place September 17-19, 2018 with the DHC rendering a Decision on July 31, 2019. The DHC found Dr. Mohammed guilty of unprofessional conduct, pursuant to sub-section 46(o) of *The Medical Profession Act, 1981* (the "Act") for conduct found to be unbecoming, improper, unprofessional or discreditable.

## **Penalty Decision:**

The Council of the College of Physicians and Surgeons of Saskatchewan imposes the following penalty on Dr. El-fellani Mohammed pursuant to The Medical Profession Act, 1981 (the “Act”):

- 1. Pursuant to Section 54(1)(e) of the Act, the Council hereby reprimands Dr. Mohammed.*
- 2. Pursuant to Section 54(1)(b) of the Act, the Council hereby suspends Dr. Mohammed for a period of three months, commencing at 12:01 a.m. on October 13, 2019 and ending at 11:59 p.m. on January 12, 2020.*
- 3. Pursuant to Section 54(1)(b) of the Act, the suspension will remain in effect indefinitely unless prior to the end of the imposed suspension, Dr. Mohammed provides an undertaking to the College, in a form acceptable to the Registrar, that contains the following:*
  - 3.1. Dr. Mohammed’s agreement that he will not have any in-person professional encounters with female patients except in the presence of a female practice monitor.*
  - 3.2. Dr. Mohammed’s agreement that any practice monitor utilized in his office practice will sign an undertaking to the College and that he will provide a copy of that undertaking to the College before that person can act as a practice monitor.*
  - 3.3. Dr. Mohammed’s agreement that any person who acts as a practice monitor in his office practice will comply with the terms of that person’s undertaking.*
  - 3.4. Dr. Mohammed’s agreement to unannounced inspections by the College to monitor his compliance with the undertaking and the undertaking provided by his practice monitor(s).*
  - 3.5. Dr. Mohammed’s agreement that he will post a clearly visible sign in his waiting room and each of his examination rooms in his clinic that states he will not see female patients without the presence of a female practice monitor, such sign to be approved in advance by the Registrar.*
  - 3.6. Dr. Mohammed’s agreement that the College can provide a copy of the undertaking to the Saskatchewan Health Authority and to physicians with whom he works.*
  - 3.7. A statement that the terms of the undertaking will remain in effect while Dr. Mohammed remains licensed in Saskatchewan unless the Council agrees to an amendment to or a termination of the undertaking.*
- 4. Pursuant to Section 54(1)(g) of the Act, the Council requires that Dr. Mohammed successfully complete a boundaries course acceptable to the Registrar, and provide proof of completion. Such course shall be completed at the first available date, but usually within six months. The programs “PROBE Ethics & Boundaries Course” by CPEP and “Professional Boundaries and Ethics” by PBI Education are boundaries programs acceptable to the Registrar.*
- 5. Pursuant to Section 54(1)(g) of the Act, the Council requires that Dr. Mohammed successfully complete a course on ethics/professionalism acceptable to the Registrar, and provide proof of completion. Such course shall be completed at the first available date, but within six months. The programs “Medical Ethics, Boundaries and Professionalism” by Case Western Reserve University and “Medical Ethics and Professionalism” by PBI Education are ethics programs acceptable to the Registrar.*
- 6. Pursuant to Section 54(1)(i) of the Act, the Council directs Dr. Mohammed to pay the costs of and incidental to the investigation and hearing in the amount of \$87,467.69. Such amount shall be paid in 13 monthly payments, the first payment to be due on or before October 31, 2019. Twelve payments will be in the amount of \$6,728.28 and the last payment will be in the amount of \$6,728.33. The costs must be paid in full by October 31, 2020.*

7. Pursuant to Section 54(2) of the Act, if Dr. Mohammed should fail to pay the costs as required by paragraph 6, Dr. Mohammed's licence shall be suspended until the costs are paid in full.

8. The Council reserves to itself the right to reconsider and amend any of the terms of this penalty order if requested to do so by Dr. Mohammed.

### **Factors in Establishing Penalty**

The factors which are frequently considered in imposing an appropriate penalty are outlined in *Camgoz v. College of Physicians and Surgeons, 1993 CanLII 8952 (SK.Q.B.)*

<https://www.canlii.org/en/sk/skqb/doc/1993/1993canlii8952/1993canlii8952.html?resultIndex=3>

- a) the nature and gravity of the proven allegations;
- b) the age of the offending physician;
- c) the age of the offended patient;
- d) evidence of the frequency of the commission of the particular acts of misconduct within particularly, and without generally, the Province;
- e) the presence or absence of mitigating circumstances, if any;
- f) specific deterrence;
- g) general deterrence;
- h) previous record, if any, for the same or similar misconduct,
- i) 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;
- j) 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;
- k) 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;
- l) 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.

### **Information Considered by Council in Establishing Penalty**

Detailed submissions were reviewed by Council. These included CPSS submissions (151/19), victim impact statement (153/19), submissions on behalf of Dr. Mohammed (181/19), the joint submission on costs and redaction (193/19) and information concerning consecutive versus intermittent suspension (194/19). Case law submitted by the parties for Council's consideration in this penalty hearing included:

1. Dr. Alistair Dudley, CPSS – 2017
2. Dr. Amjad Ali, CPSS – 2005
3. Dr. Bassam El-Tatari, CPSO – 2019
4. Dr. Robert Cameron, CPSO – 2013
5. Dr. James McInnis, CPSO – 2013 and 2011
6. Dr. Miguel Bonin, CPSO – 2012
7. Dr. Philip Choptiany, CPSO – 2011

8. Dr. Lawrence Gotkind, CPSO – 2005
9. Dr. Yagan Pillay, CPSS – 2016
10. Dr. Martinus Moolman, CPSS – 2013
11. Dr. Ernest Hajcsar, CPSO – 2014
12. Dr. Chinniah Krishnalingam, CPSO – 2005
13. CPSO v. Peirovy, 2018 ONCA 420
14. CPSO v. Dr. Szoda 2019, ONCPSD 14
15. CPSO v. Dr. Anastasio, 2012 ONCPSD 21
16. CPSO v. Dr. Muhammed, 2013 ONCPSD 23
17. CPSO v. Dr. Dao, 2018 ONCPSD 56

### **Position of the Registrar's Office:**

As referenced, detailed submissions were provided by counsel and will not be repeated here. Ms. Torrance argued the allegations against Dr. Mohammed were serious and his conduct was progressive. All of the findings against Dr. Mohammed were in the context of administering stethoscope examinations. The culminating incidents involving patient number one were the “scooping” of the buttocks and the blocking of the doorway. The culminating incidents for patient number two were the touching of the forearm, shoulder and shin and verbalizing he’d like to see her outside of work.

Counsel argued that a general and specific deterrence should be considered and it was important the public maintain confidence in the CPSS’s ability to regulate their members. The cases submitted on behalf of Dr. Mohammed all involved guilty pleas and the complainants did not have to testify. She argued this was not an aggravating factor but a lack of a mitigating factor. Further, the cases submitted on behalf of Dr. Mohammed involved joint submissions Council was bound to follow. Ms. Torrance argued a 2-4 month suspension was appropriate but did not take a position on a specific length of suspension. She stated there was no joint submission on penalty when it came to suspension length. Further, Ms. Torrance urged Council to consider the information (194-19) provided in relation to a consecutive versus a non-consecutive suspension.

Ms. Torrance advised the parties had reached agreement on a joint submission on two issues: the costs payable by Dr. Mohammed and the redaction of financial information contained in document 181/19.. While the parties agreed with respect to the appropriateness of a reprimand, an agreement on a practice monitor, and completion of boundaries and ethics courses, those were not the subject of a joint submission. (193-19)

### **Position of Counsel on behalf of Dr. Mohammed:**

Mr. Cann indicated although there was no formal joint submission on length of suspension, Council should consider imposing a two-month non-consecutive suspension as it would be in the range for similar conduct. He argued the DHC made a finding of ulterior motive but did not find him guilty of sexual impropriety (para. 216). He was only found guilty under subparagraphs

46(o) and (p) of the Act and not under 8.1(b)(xvi) of the By-laws. He further argued cases where a 4-5 month suspension was imposed had a finding of a specific sexual element.

Mr. Cann urged the Council to take into account patient care when considering imposing a consecutive versus a non-consecutive suspension. He argued by imposing a non-consecutive suspension the penalty would, in essence, be the same as Dr. Mohammed would serve the same length of suspension and suffer the same economic impact.

### **Reasons for the Penalty Decision:**

#### **Mitigating factors:**

This was Dr. Mohammed's first offence and he has no previous complaints with the CPSS.

#### **Aggravating factors:**

The fact that there was more than one patient involved seems to indicate a disturbing pattern of sexualized behavior as well potential grooming of the patients. The DHC found the conduct in question could also be seen as an escalating pattern of unprofessional conduct (para. 217).

These were vulnerable patients who had placed their faith and trust in Dr. Mohammed. As found by the DHC, there were factors on both complainants' personal history forms that could lead a physician with an ulterior motive to assume a certain vulnerability on the part of both patients (para. 175). It is evident Dr. Mohammed's conduct had a very negative effect on both patients as evidenced in the DHC's decision and in the victim impact statement (Document Info 153/19).

Neither patient returned to Dr. Mohammed's care.

The breach in the fiduciary relationship between the doctor and patient will also compromise the public's confidence in the medical profession.

A significant period of suspension is required to provide both the general and specific deterrence that is appropriate for this type of misconduct that cuts to the heart of physician/patient trust. The imposition of a reprimand and suspension, together with the publication of the disciplinary action, will act to deter other physicians who may be inclined to proceed down this pathway of boundary violations. This suspension will serve to deter Dr. Mohammed and, in conjunction with remediation courses, correct his behaviour to make him more mindful of his actions and words during patient encounters.

### **Summary of Reasons for the Penalty Decision:**

1. We are cognizant of the joint submissions made in relation to the payment of costs and redaction of financial information and the impact they have on our deliberations.
2. Boundary violations are significant breaches of trust and as such warrant a significant penalty. This is required in order to emphasize the College's concern with this type of misconduct and to assure the public that the consequences for such conduct will be appropriate. The progressive nature of Dr. Mohammed's advances to these female patients is especially concerning. The submissions made by and cases cited by counsel illustrate a three (3) month consecutive suspension, in the circumstances, is appropriate and falls within an acceptable range for penalty. We are not convinced a non-consecutive suspension is appropriate. We have reviewed the submissions on this point and the information related to the Saskatchewan Health Authority's perspective concerning the effect on patient care (194-19). We do not find evidence that emergency coverage or patient care would be detrimentally impacted if a consecutive suspension was imposed.
3. The requirement for courses in professional boundaries and professional ethics are required in order to remediate Dr. Mohammed. This requirement, together with the requirement for an undertaking to have a permanent practice monitor, demonstrate the College's efforts to ensure public protection in the future.
4. It is appropriate to expect that physicians who engage in unprofessional conduct will be responsible for the costs associated with proving that they acted unprofessionally. The only alternative is to have the costs borne by the membership at large. We accept the joint submission on this point.

We agree with the joint submission on redaction of information contained in document Info 181/19. In the event any party requests access to this document, the following information will be redacted prior to permitting access: Paragraphs 51 and 52 of the written submissions on red page 14 of 181/19; paragraphs 4-33 inclusive of Dr. Mohammed's affidavit found at red pages 72-75 and pages 116-119 of 181/19 and exhibits "A" and "B" to Dr. Mohammed's affidavit found at red pages 79-84 and pages 123-128 of 181/19.

The above factors have played a significant role in determining the reasons for the punishment following the guilty verdict by the DHC. The penalty findings of suspension and financial costs are in keeping with previously cited case law on the subject.

At all times the function of the CPSS remains the protection of the public as well as the medical regulation of physicians in their daily practice.

**Approved by the Council of the College of Physicians and Surgeons of Saskatchewan:  
1 December, 2019**

**Amended by the Council of the College of Physicians and Surgeons of Saskatchewan: 24  
January, 2020**