

COLLEGE OF PHYSICIANS & SURGEONS OF MANITOBA

RE: Dr. ADOLPHUS SOWEMIMO
APPLICATION FOR REINSTATEMENT

REASONS FOR RESOLUTION AND ORDER

INTRODUCTION AND BACKGROUND

Dr. Sowemimo became registered with the College of Physicians & Surgeons of Manitoba (the "College") as a non-specialist ObGyn in January, 1994. On December 13, 1995, he appeared before the Inquiry Committee of the College to face serious charges of professional misconduct. The misconduct which was referred to in those charges is summarized below:

1. In the course of management of one or more of 12 patients, Dr. Sowemimo failed to maintain a standard of care by neglecting or failing to investigate adequately the medical condition of the patients before recommending surgery;
2. Dr. Sowemimo recommended and performed unnecessary surgery in one or more of 14 patients;
3. Dr. Sowemimo recommended and performed emergency surgery in one or more of 5 patients;
4. Dr. Sowemimo failed to have or maintain adequate records in one or more of 14 patients;
5. Dr. Sowemimo failed to follow conservative treatment in one or more of four patients and instead recommended and proceeded to laparoscopy;
6. Dr. Sowemimo failed to maintain the proper standard of care in one or two patients; and
7. When applying for registration to the College, Dr. Sowemimo submitted misleading information in his curriculum vitae in respect of the nature and status of the medical staff positions he had previously held, and he thereby misrepresented his professional experience.

As a result of those charges, Dr. Sowemimo was initially erased from the Medical Register. However, he appealed the penalty of erasure to the Court of Queen's Bench, and the issue of penalty was remitted back to the Executive Committee of the College for reconsideration. At a special hearing, which was convened on January 27, 1997, a joint recommendation from counsel for the College and counsel for Dr. Sowemimo, that Dr. Sowemimo be permitted to practice medicine on certain specified terms and conditions was accepted. Those conditions included Dr. Sowemimo completing the Clinicians Assessment and Enhancement Program ("CAEP") to demonstrate that he could meet the acceptable standards for the practice of general medicine. Dr. Sowemimo satisfied the applicable conditions and was returned to the Medical Register effective April 22, 1997.

On February 20, 2004, a Notice of Inquiry was issued to Dr. Sowemimo outlining 88 counts of professional misconduct against him. On April 14, 2004, Dr. Sowemimo entered into an agreement with the College whereby the number of counts of professional misconduct was reduced from 88 to 56 and Dr. Sowemimo agreed to plead guilty to the amended charges, and he and the College agreed to a joint recommendation as to penalty. The 56 counts of professional misconduct to which Dr. Sowemimo pled guilty included:

- a) multiple instances in which he had provided medical care, beyond minor or emergency services, to his daughter, including prescribing potentially addictive medications to her on dozens of occasions;
- b) multiple instances in which Dr. Sowemimo had provided medical care, beyond minor or emergency services, to his wife, including prescribing potentially addictive medications to her on dozens of occasions;
- c) the mismanagement of the care of approximately 40 patients;
- d) the breach of the terms of an undertaking given to the College with respect to restricting the number of patients seen per day;
- e) taking active steps to conceal the breach of the undertaking from the College, including making false entries in patients' charts and submitting false billings to Manitoba Health;
- f) instructing his receptionist to withhold the submission of some daily billings to Manitoba Health and attempting to prevent her from speaking to any representative of the College about his medical practice;
- g) preparing Medical Assessment forms and sickness certificates with respect to various patients and submitting them to various third parties, when those documents were false and misleading, and when Dr. Sowemimo knew or ought to have known that they were false and misleading;

- h) making false and misleading statements to the Investigation Chair with respect to the relevant background facts.

On April 19, 2004, Dr. Sowemimo pled guilty to the amended charges, and in accordance with the joint recommendation as to penalty, the Inquiry Panel cancelled his registration and license and ordered him to pay the costs of the investigation and inquiry in the amount of \$93,525.24. At that time, the College and Dr. Sowemimo entered into an agreement that provided that the Investigation Committee would support Dr. Sowemimo's application for reinstatement pursuant to Section 59.13 of *The Medical Act* in prescribed circumstances and pursuant to very strict conditions. Those conditions contemplated Dr. Sowemimo successfully completing a formal residency program, and also the imposition of extensive restrictions on his practice if he were to successfully complete the necessary residency training.

These proceedings involve an application by Dr. Sowemimo for reinstatement to the Medical Register. This is Dr. Sowemimo's fourth application for reinstatement since 2006.

His first two applications, in September, 2006 and June, 2007 were for reinstatement to the Medical Register. Both of those applications were opposed by the Investigation Committee of the College, and denied by the Executive Committee of the College.

Dr. Sowemimo's third application in December, 2009 was to be reinstated to be eligible to be registered as a clinical assistant on the Clinical Assistant Register. Notwithstanding the fact that the Investigation Committee provided limited and qualified support to that application, it was denied by the Executive Committee.

Dr. Sowemimo applied for judicial review of that decision in the Court of Queen's Bench seeking an order setting aside the Executive Committee's decision and allowing him to be registered as a Clinical Assistant. The judicial review application was resolved by agreement between Dr. Sowemimo and the College. That agreement stipulated that:

- i) Dr. Sowemimo was at liberty to apply to be registered as a clinical assistant at any time;
- ii) the Registrar would place Dr. Sowemimo's name on the Clinical Assistant Register as a clinical assistant upon being satisfied that Dr. Sowemimo had met all of the registration requirements set forth in *The Medical Act* and the clinical assistant and physician assistant Regulation (183/99), and subject to the additional requirements that Dr. Sowemimo had made complete disclosure of his discipline history with the College to his proposed supervisor and that the Investigations Chair of the College had

approved the contract of supervision, practice description and the supervising physician.

Dr. Sowemimo was unable to find employment as a clinical assistant. Concerns on the part of potential supervisors about Dr. Sowemimo's discipline history, the nature and extent of the supervision which would be required, the extent of the time commitment involved, and the responsibility associated with the supervision, undoubtedly represented barriers to Dr. Sowemimo's attempts to become registered as a clinical assistant. Liability insurance and billing concerns on the part of potential supervisors were also impediments to Dr. Sowemimo's efforts to become registered as a clinical assistant.

The Medical Act provides the statutory authority for reinstatement applications. Section 59 of *The Medical Act* states:

Reinstatement

59.13 The executive committee may, on application by a person whose registration or licence has been cancelled, direct the registrar to reinstate the person's name in the register, subject to any conditions that the executive committee may prescribe, and may order the person to pay any costs arising from the imposition of such conditions.

Before a date had been set for the hearing of his most recent application for reinstatement, Dr. Sowemimo objected to the Chair and certain members of the executive committee of the College hearing his current application. He did so on the basis that those members had heard and determined one or more of his previous applications for reinstatement and were therefore biased against him, or alternatively that in such circumstances, it was reasonable for him to apprehend bias against him on the part of those members of the Executive Committee.

Although the College did not agree with Dr. Sowemimo's objections, the Council of the College, by motion dated September 13, 2011 nonetheless took the necessary steps to appoint a replacement chair and various substitute members. The Council did so in order to have a properly constituted Executive Committee comprised of an acting chair and a quorum of members, all of whom were acceptable to Dr. Sowemimo.

On September 16, 2011, Dr. Sowemimo, representing himself, appeared before the Executive Committee. He has previously filed written materials in support of his application to be reinstated to the Medical Register. Dr. Sowemimo made it clear in both his written materials and in his oral submissions on September 16, 2011 that his application was not for a full unrestricted licence, but for a restricted licence to enable him "to practice under the supervision of a licenced physician" until the College could "be satisfied with his standard of medical practice".

Prior to the hearing, and at the commencement of the hearing, Dr. Sowemimo confirmed that he had no objection to any of the members of the Executive Committee who would be sitting on the Committee for the purpose of hearing and determining his reinstatement application.

General counsel for the College appeared at the hearing representing the Investigation Committee. She had previously filed written materials outlining the Investigation Committee's opposition to Dr. Sowemimo's application for reinstatement, and made oral submissions on September 16th further explaining the Investigation Committee's position.

PRINCIPLES APPLICABLE TO REINSTATEMENT APPLICATIONS

It is noteworthy that *The Medical Act* is silent with respect to the criteria to be applied by the Executive Committee when considering reinstatement applications. In considering the respective positions of Dr. Sowemimo and the Investigation Committee in relation to Dr. Sowemimo's current application for reinstatement, the Executive Committee has been mindful of the principles relating to reinstatement applications generally. Those principles include:

- i) The power to reinstate a person whose registration or licence has been cancelled, to the Medical Register, is discretionary; the discretion is to be exercised by the Executive Committee.
- ii) The discretion is to be exercised judicially and in good faith, meaning that the Committee's discretion must be guided by rules and principles of law, and cannot be exercised in a manner which is arbitrary or biased, or motivated by ill will towards the applicant, or based on information not properly presented to the Committee. Inasmuch as *The Medical Act* is silent with respect to the criteria to be applied, the principles articulated in the case law are of particular importance.
- iii) The purpose of the reinstatement application is to determine whether the present circumstances of the applicant (as opposed to the circumstances which prevailed when the applicant's licence was cancelled) warrant reinstatement.
- iv) The applicant bears the onus of persuading the Executive Committee that the applicant's medical licence should be reinstated.
- v) Public safety and patient wellbeing are the critical factors which the Executive Committee must consider as part of its assessment of the reinstatement application. When addressing the issues of public safety and patient wellbeing, the following questions are relevant:

- a) has the applicant been rehabilitated?
 - b) what, if anything, can be done to ensure that the applicant's medical knowledge, skill and judgment are at the level required to currently practice medicine at an acceptable standard?
 - c) has the applicant demonstrated the necessary insight into the factors which caused or contributed to the initial problems and to ensure that he or she will be able to practice safely and ethically if returned to practice?
- vi) The passage of time is not sufficient in and of itself to justify reinstatement.
 - vii) In cases which involve multiple factors, such as dishonesty and competency issues, the applicant must introduce evidence which is sufficient to satisfy the Executive Committee that the risk of repetition of any of the multiple behaviours which caused the initial cancellation of the licence is low.
 - viii) Before considering the types of conditions which should be imposed to protect the public interest and to minimize the risk of future problems, the Committee must first be satisfied that the applicant is fit to return to the practice of medicine. In the case of *McQuat v. The Law Society of British Columbia* (1993) 78 B.C.L.R. (2nd) 106, dealing with the application to be reinstated of a lawyer who had been disbarred, the British Columbia Court of Appeal stated:

A reinstatement with practice conditions is appropriate in some circumstances, especially where the concern is about an adequate skill level or a successful recovery from substance abuse rather than moral fitness. ...

But deeper than that, we are under the statutory constraint that we must not readmit persons about whose fitness we are not satisfied simply because we hope to prevent the effect of the unfitness from damaging the public or members of the profession by some specially crafted safeguard.

ANALYSIS

One of the striking features of this reinstatement application is the seriousness of Dr. Sowemimo's disciplinary history relative to the actual length of his practice as a physician in Manitoba. He first became registered in January, 1994, and within two years

was facing serious charges of professional misconduct. As a result of those charges, there was a period of time when he was not practicing medicine. He resumed practice in 1997, but was facing a new set of serious charges by February, 2004.

The first set of charges (1995) involved competency and honesty issues. The second set of charges (2004) also involved competency and honesty issues, but in addition involved judgment and boundary issues (e.g. the multiple instances of providing care to his wife and daughter and submitting misleading information to third parties, and pressuring staff to avoid speaking to the College investigators). Both sets of charges (1995 and 2004) involved many separate occurrences. Those multiple and repeated transgressions all occurred within a period of practicing medicine of approximately 10 years.

Moreover, it is significant that Dr. Sowemimo has not practiced medicine since 2004.

The deficiencies which had manifested themselves in Dr. Sowemimo's medical knowledge and his skill and judgment in the practice of medicine in 1995 were extremely serious. They were addressed by the imposition of conditions, including the completion of the "CAEP" program to demonstrate that he was then capable of meeting acceptable standards for the practice of general medicine.

The deficiencies in Dr. Sowemimo's medical knowledge and his skill and judgment in the practice of medicine in 2004 were grossly deficient. Those gross deficiencies were clearly recognized by Dr. Sowemimo himself, in that he pled guilty to 56 counts of professional misconduct and agreed that the appropriate penalty for such misconduct was the cancellation of his registration and licence.

The condition set by the Investigation Committee of the College in 2004 requiring Dr. Sowemimo to re-train through a residency program was a fair and reasonable condition given the serious deficiencies which he had exhibited and acknowledged by way of his guilty plea.

The Executive Committee agrees with the statement in the written submission filed on behalf of the Investigation Committee wherein it is stated at page 11 that:

The Investigation Committee notes that the serious and extensive nature of the concerns of the Investigation Committee in relation to the risk to the public that Dr. Sowemimo practicing represents, cannot be understated. It is because of those concerns that the conditions precedent to it supporting his reinstatement were so specific and stringent.

Dr. Sowemimo indicates that he has not been able to be admitted to any of the many residency programs to which he has applied. The Executive Committee understands that Dr. Sowemimo may have been initially accepted by Queen's University for residency training, but was subsequently rejected after that University further reviewed his file in response to a request from him that he be considered for a Practice Ready Assessment, as opposed to completing a full two year residency program.

In any event, while recognizing Dr. Sowemimo has not been able to meet the admission standards for a residency program in Manitoba or elsewhere because of his disciplinary history with the College, the Executive Committee has concluded, after careful consideration of that issue, that such a result is not a factor which can be used by Dr. Sowemimo to support his current application for reinstatement, for at least four reasons:

- i) It was Dr. Sowemimo's past misconduct which has created the bar to his acceptance into various residency programs. He was entirely responsible for that misconduct.
- ii) The residency programs to which Dr. Sowemimo has applied establish their own admission standards and entry criteria; the College has no influence over those standards and criteria.
- iii) The College made no representation, and gave no assurances to Dr. Sowemimo in 2004 or thereafter that he would be able to gain admission into a residency program. In fact, the April, 2004 agreement contained an express stipulation that the College would "not be responsible in any way to facilitate Dr. Sowemimo's participation in the residency program" and that the College would assume "no obligation in relation to Dr. Sowemimo's participation in a residency outside its statutory obligations to all residents". Dr. Sowemimo was represented by counsel at the time he entered into that agreement.
- iv) The condition requiring the completion of a residency program was imposed because it was a reasonable condition relative to the gross deficiencies which had been displayed and acknowledged by Dr. Sowemimo. The condition was a good faith attempt to properly protect the public interest and to meaningfully address issues relative to public safety. It was the Investigation Committee's considered position in 2004 that nothing short of the successful completion of a residency program would be sufficient to address the serious and extensive deficiencies which existed in Dr. Sowemimo's practice, and which involved competency, integrity, and boundary/judgment issues.

Inasmuch as the purpose of a reinstatement application is to determine whether the present circumstances of Dr. Sowemimo warrant reinstatement, the Executive

Committee has concluded that Dr. Sowemimo must demonstrate that the condition requiring him to complete a residency program is no longer required, or that the alternatives which he is proposing are sufficient to satisfy the Executive Committee that he currently possesses the knowledge and the skill and judgment to practice medicine safely and ethically.

In Dr. Sowemimo's written submission and in his oral submission of September 16th, he addressed the deficiencies which had manifested themselves in 2004, relative to his ability to practice medicine currently, in three ways. They were:

- i) By submitting information with respect to his attendance at various Continuing Medical Education Sessions, his participation in a Clinical Observership, and his attendance at various Internal Medicine Grand Rounds through the University of Manitoba Faculty of Medicine between 2007 and 2011, and at the Family Medicine Rounds of the Family Medicine Program at the St. Boniface General Hospital. A summary of those activities is set forth at page 7 of Dr. Sowemimo's written submission, supported by the documentary materials included at Tabs 28 to 37 inclusive of his written submission.
- ii) By emphasizing that his application for reinstatement is for a restricted licence, to practice medicine under the supervision of a licenced physician, with the same supervisory requirements as proposed by the Investigation Committee in relation to Dr. Sowemimo's attempts to become registered on the Clinical Assistant register.

The Executive Committee considers items 1 and 2 above as relevant to Dr. Sowemimo's current medical skill and knowledge and his ability to practice medicine competently and safely.

- iii) By submitting psychological assessments and reports from three Clinical Psychologists, along with many "testimonials" from various individuals who have had positive interactions with Dr. Sowemimo in the last several years.

The Executive Committee considers item iii) above as relevant to the issue of Dr. Sowemimo's integrity and character and his efforts to understand and resolve any issues relating to his functioning and mental health which may have caused or contributed to the problems which were outlined in the 1995 and 2004 charges.

Given the nature and extent of Dr. Sowemimo's deficiencies as a physician as set forth in the 1995 and 2004 charges, and the fact that Dr. Sowemimo has not practiced medicine since 2004, the Executive Committee considers it imperative that the serious competency issues which existed in 2004 be adequately and meaningfully addressed in

order for the College to fulfill its responsibility to protect the public interest and safeguard patient safety.

Dr. Sowemimo's attendance at the CME events which he has identified and at the Grand Rounds and Rounds as particularized in his materials, and his participation in the Clinical Observership are laudable. However, none of those activities involve a thorough or comprehensive evaluation of the extent of Dr. Sowemimo's current medical skill and knowledge, nor do they involve an assessment of what he learned from his participation in those various activities. Therefore, they are not adequate to demonstrate an overall fitness to practice medicine according to current standards.

Furthermore, the Executive Committee has also concluded that Dr. Sowemimo's proposal of practicing under supervision is not an option which adequately addresses the College's obligation to protect the public and ensure patient safety.

Given the nature and breadth of the deficiencies outlined in the 2004 charges, the Executive Committee is not satisfied that one, or even several doctors could devote the necessary time and diligence required to educate, train and supervise Dr. Sowemimo to the extent required to protect the public interest and to adequately provide for patient safety. Supervision by a licenced physician and a requirement to practice under strict conditions are appropriate mechanisms in certain types of cases, but are not adequate in the case of Dr. Sowemimo. The deficiencies in Dr. Sowemimo's medical skills and knowledge, as demonstrated by the number and seriousness of the 56 counts of professional misconduct to which he pled guilty in 2004, and the integrity issues which characterized both the 1995 and 2004 charges are simply too serious, varied and widespread to be properly addressed through supervision and a set of limiting conditions.

In terms of the integrity issues which are present in this case, the Committee acknowledges that Dr. Sowemimo has submitted relevant and helpful information with respect to his own insight into his past misconduct and his rehabilitation. Specifically, that information consists of the reports from the psychologists. The reports are consistent in concluding that Dr. Sowemimo is not suffering from a mental health disorder or psychopathology.

However, there are gaps in the reports in terms of providing a convincing and consistent explanation for the multiple forms of misconduct in which Dr. Sowemimo engaged over an extended period. Some aspects of Dr. Sowemimo's misconduct are not adequately explained by the reports. For example, all of the reports described Dr. Sowemimo as an individual preoccupied with trying to please people, but none of those reports explain how submitting false billings is a product of that preoccupation. One of those reports specifically acknowledges that personal gain likely played a role in Dr. Sowemimo's behaviour in seeing more than 40 patients a day. One of the psychologists expressed the opinion that his self-serving behaviour likely contributed to the deficiencies which he displayed.

Furthermore, the three psychologist's reports are dated December 20, 2006, February 11, 2007, and March 6, 2009. Therefore, all of the reports are now out dated and do not speak to Dr. Sowemimo's current circumstances.

With respect to the letters of support, they are impressive in highlighting positive aspects of Dr. Sowemimo's character. However, it is impossible to determine from many of the letters whether they were written with knowledge of Dr. Sowemimo's disciplinary history and a full appreciation of the implications of his multiple transgressions.

The Executive Committee therefore concluded on the basis of the information submitted by Dr. Sowemimo that his proposal to be granted a restricted licence to practice under the supervision of a licenced physician, until the College is satisfied of his ability to practice according to reasonable standards, is not acceptable. The Executive Committee is not satisfied on the basis of the information submitted to it that Dr. Sowemimo currently possesses the medical skill and knowledge to practice medicine competently and safely.

The Executive Committee also considered other alternatives, including another CAEP assessment, and the development of a program of training and supervision in accordance with that assessment.

However, the Committee was mindful that Dr. Sowemimo had undergone a CAEP assessment in 1997, after he had been practicing medicine in Manitoba since 1994 and that he successfully completed that assessment. However, when faced with the rigours and pressures of practice, he exhibited the serious deficiencies which led to the cancellation of his registration and licence in 2004. The Committee is mindful that after the serious charges of 1995, Dr. Sowemimo failed to alter his behaviour and adequately reform himself, and proceeded to engage in even more serious misconduct which resulted in the charges of 2004.

The Executive Committee also considered alternate education and training programs and rejected them as they would not be sufficient to ensure patient safety. The Executive Committee concluded that a residency program is the only viable education and training option for Dr. Sowemimo.

Furthermore, none of the available alternatives adequately address the fundamental reality that the deficiencies to which Dr. Sowemimo pled guilty were so broad and extensive, including multiple types of problematic behaviour, that both a thorough and far ranging program of re-training and significant behavioural change are required in order for the Executive Committee to be satisfied that Dr. Sowemimo is able to practice medicine competently and safely. Until that threshold can be met, any consideration of the type of restrictions and conditions which should be imposed to address specific areas of concern is both premature and an inadequate fulfillment of the College's responsibility to protect the public interest.

Therefore, Dr. Sowemimo's application for reinstatement to the Medical Register, and for a restricted licence entitling him to practice under the supervision of a licenced physician, is denied.