

IN THE MATTER OF: *THE MEDICAL ACT*, CCSM c. M90

AND IN THE MATTER OF: DR. ADOLPHUS SOWEMIMO

REASONS FOR RESOLUTION AND ORDER

Introduction

On April 19, 2004, in proceedings under *The Medical Act* (“the *Act*”) Dr. Adolphus Sowemimo (Dr. Sowemimo) pled guilty to 56 counts of professional misconduct and other breaches of professional standards. As a result, penalties were imposed which were consistent with a joint recommendation made by Dr. Sowemimo through his counsel, and by the Investigation Committee of the College of Physicians and Surgeons of Manitoba (the College). Pursuant to that joint recommendation, an Inquiry Panel of the College cancelled Dr. Sowemimo’s registration under the *Act*, and his licence to practice medicine, and ordered him to pay the costs of the 2004 investigation and inquiry in the amount of \$93,525.24.

Section 59.13 of the *Act* under the heading “Reinstatement” stipulates that:

“59.13 The executive committee may, on application by a person whose registration or licence has been cancelled, direct the registrar to reinstate the persons’ 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.”

On or about February 23, 2017, pursuant to subsection 59.13 of the *Act*, Dr. Sowemimo applied to be reinstated to the medical register and for the conditional reinstatement of his licence to practice medicine. The application of February 23, 2017

(the “current application”) was Dr. Sowemimo’s fifth application for reinstatement since 2006. The current application is opposed by the Investigation Committee of the College.

Background

Dr. Sowemimo became registered with 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 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 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 which outlined 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. 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 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 which provided that the Investigation Committee would support Dr. Sowemimo's application for reinstatement pursuant to Section 59.13 of the *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.

As noted in the Introduction to these Reasons, this is Dr. Sowemimo's fifth 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 an 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 *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, and liability insurance issues thwarted Dr. Sowemimo's efforts to become registered as a clinical assistant.

Dr. Sowemimo applied to be reinstated to the medical register for the fourth time in 2011. He applied for a restricted licence to enable him to practice under the supervision of a licensed physician until the College was satisfied with his standard of medical practice. As part of his fourth application, he submitted psychological assessments and reports, and provided positive references and testimonials as to his character and conduct.

The Executive Committee denied his fourth application for reinstatement. Regarding his disciplinary history, the Executive Committee commented that Dr. Sowemimo's medical knowledge, skill and judgment were "grossly deficient" and described his disciplinary history relative to his actual length of practice as "striking". The Executive Committee specifically stated:

Given the nature and breadth of the deficiencies outlined in the 2004 charges, the Executive Committee is not satisfied that one, or 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 interests and to adequately provide for patient safety. Supervision by a licensed 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 plead guilty to in 2004, and the integrity issues which characterize 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 dismissing Dr. Sowemimo's fourth application for reinstatement, the Executive Committee determined that Dr. Sowemimo failed to demonstrate an overall fitness to practice medicine, stating as follows:

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

Dr. Sowemimo sought judicial review of the Executive Committee's decision, and the Court of Queen's Bench dismissed that application. Chief Justice Joyal, who heard the judicial review application, commented as follows:

Public safety must always be a primary concern for the Executive Committee in reinstatement applications. In the context of the case involving concerns about core competence and what were acknowledged to be gross deficiencies in knowledge, skill and ethics, that concern for public safety was determinative in the decision to deny the reinstatement sought by Sowemimo.

Insofar as the Executive Committee determined on the evidence that the proposed reinstatement would not protect the public and would in fact cause the public to lose confidence in the College's ability to regulate the medical profession (were reinstatement to have resulted on the present proposal), the Committee's decision was reasonable.

In September 2017, before a date had been set for the hearing of his fifth and most recent application for reinstatement, Dr. Sowemimo objected to certain

members of the current Executive Committee hearing his application on the basis that those members had been on the Executive Committee, which had heard and determined his fourth application for reinstatement in 2011. Dr. Sowemimo asserted that those individuals “would have a conflict of interest if they are included in the committee that would hear my application for reinstatement”.

Although the College did not agree with Dr. Sowemimo’s objection, the Council of the College, by motion made and passed on September 29, 2017, nonetheless took the necessary steps to appoint various substitute committee members to an Executive Committee specifically constituted for the purpose of hearing Dr. Sowemimo’s application for reinstatement. In early October, Dr. Sowemimo confirmed that he had no objection to any of the substitute members sitting on the Executive Committee for that purpose.

On October 11, 2011, Dr. Sowemimo, representing himself, appeared before the Executive Committee. The Executive Committee was composed of Dr. Eric Sigurdson, as Chair, and the substitute members referred to above. None of the individuals who had heard the fourth application for reinstatement and to whom Dr. Sowemimo had objected, sat on the Executive Committee or otherwise participated in the decision-making process of the Executive Committee with respect to Dr. Sowemimo’s fifth application for reinstatement.

Prior to the hearing on October 11, 2017, Dr. Sowemimo and counsel for the Investigation Committee filed the following written submissions:

- (i) a written submission by Dr. Sowemimo dated February 23, 2017;

- (ii) a submission by counsel on behalf of the Investigation Committee dated September 8, 2017;
- (iii) a rebuttal submission by Dr. Sowemimo dated September 20, 2017 and an addendum to the rebuttal dated September 30, 2017.

On October 11, 2017, Dr. Sowemimo made an oral presentation before the Executive Committee. In both his written and oral submissions, Dr. Sowemimo emphasized that his application was not for a full unrestricted licence, but was rather for a conditional licence, “to enable me to undergo one of two options”:

- (i) one year of supervised training under The Medical Licensure Program for International Medical Graduates (MLPIMG); or
- (ii) the Clinicians’ Assessment and Professional Enhancement (CAPE) assessment followed by a prescribed period of supervised training as recommended by CAPE.

In his initial written submissions dated February 23, 2017, Dr. Sowemimo had also indicated that to “further reassure the Executive Committee of [his] medical skills and knowledge”, he would take the CAPE assessment prior to undertaking the MLPIMG program.

Jeremy de Jong appeared at the October 11, 2017 hearing, representing the Investigation Committee of the College. He made oral submissions on October 11, 2017 supplementing the Investigation Committee’s written submissions and further explaining the basis of the Investigation Committee’s opposition to Dr. Sowemimo’s application for reinstatement.

Principles Applicable to Reinstatement Applications

The *Act* does not set forth specific criteria to be applied by the Executive Committee when considering reinstatement applications. However various judicial authorities, both from Manitoba and other Canadian jurisdictions have established principles which are to be applied by professional regulatory authorities when determining reinstatement applications. Those principles were summarized and commented upon by the Manitoba Court of Queen's Bench in the court's decision involving Dr. Sowemimo's application for judicial review of the College's decision to deny his fourth reinstatement application (*Sowemimo v. College of Physicians and Surgeons of Manitoba 2014 MBQB 4, Joyal CJQB*). The court dismissed Dr. Sowemimo's application for judicial review and upheld the decision of the College's Executive Committee denying his reinstatement application. In doing so, the Court identified the following principles as being applicable to reinstatement applications:

1. The decision maker must strive to achieve a balancing between the individual rights of an applicant and the public interest. Reinstatement may be appropriate once rehabilitation and sufficient public protection has been reasonable established.
2. The focus of the reinstatement application should be on the present circumstances of the applicant.
3. The applicant bears the onus of establishing that his or her licence should be reinstated.
4. Public safety and patient wellbeing are critical factors to be considered, and the following questions should be addressed:
 - (i) Has the applicant been rehabilitated?
 - (ii) What, if anything, can be done to ensure that the applicant's medical knowledge, skill and judgment are of the level required to currently practice medicine at an acceptable level?

- (iii) Has the applicant demonstrated the necessary insight into the factors which caused or contributed to the earlier problems and to ensure that he/she will be able to practice safely and ethically if returned to practice?
5. The passage of time is not sufficient in and of itself to justify reinstatement.
 6. 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.
 7. Before considering the types of conditions which should be imposed to protect the public interest and to minimize the risk of future problems, the Executive Committee must first be satisfied that the applicant is fit to return to the practice of medicine.

Analysis

Recognizing that Dr. Sowemimo's fourth application for reinstatement in December 2011 was denied by the Executive Committee of the College, and that the Executive Committee's decision was upheld by the Court of Queen's Bench, the current Executive Committee carefully considered the primary grounds for Dr. Sowemimo's current application for reinstatement, with particular reference to whether or not the current application is materially different from the 2011 application.

In Dr. Sowemimo's submissions in support of his current application, one of his primary arguments related to the College's decision made in April 2004. Following Dr. Sowemimo's plea of guilty to 56 charges of professional misconduct and other breaches of professional standards, an Inquiry Panel of the College accepted a joint recommendation that Dr. Sowemimo's registration and licence be cancelled. The April 2004 disposition was part of a detailed agreement between the Investigation Committee of the College and Dr. Sowemimo. Two of the conditions of that agreement were that:

...

7. Subject to the terms of this agreement, Dr. Sowemimo will be at liberty to make application for reinstatement pursuant to Section 59.13 of *The Medical Act* whenever he wishes to do so. Nothing in this agreement purports to bind the Executive Committee to the outcome of a reinstatement application.

8. The Investigation Committee will support Dr. Sowemimo's application for reinstatement pursuant to Section 59.13 of *The Medical Act* provided that the application is restricted to either an application for registration on the Clinical Assistant Register, part I, while enrolled in an approved residency training program in accordance with REG. 25/03 or in an application for registration on the Manitoba Medical Register following completion of an approved University teaching program in accordance with REG. 25/03, and the other conditions set out herein have been met.

Notwithstanding considerable efforts on Dr. Sowemimo's part, he has been unable to become enrolled in, or to complete an approved residency training program. Dr. Sowemimo was accepted into two such residency training programs, but was ultimately unable to enroll or participate in such programs, after the medical faculties involved, became aware of his disciplinary record with the College.

As a result of being unable to enroll in an approved residency program, Dr. Sowemimo argued that the College had put him in a "catch-22 situation" by effectively preventing him from being able to enroll in a residency program, thereby barring him from being reinstated to the Medical Register in Manitoba or elsewhere, and from obtaining a licence to practice medicine.

The Executive Committee does not accept the "catch-22" argument. Specifically, the Executive Committee does not agree that the Investigation Committee of the College, in April 2004, knew or ought to have known that one of the important

conditions of that agreement might prove incapable of fulfillment. There are several reasons why the Executive Committee does not accept the “catch-22” argument. They are as follows:

- (i) Dr. Sowemimo was represented by a lawyer, experienced in medical regulatory matters, when he entered into the April 2004 agreement. It was the responsibility of Dr. Sowemimo, with the advice and assistance of his lawyer, to assess the proposed terms and conditions of the April 2004 agreement, before entering into the agreement and to evaluate the prospects of the conditions of that agreement being fulfilled;
- (ii) The agreement itself expressly provided in subparagraph 9(d) that: “The College will not be responsible in any way to facilitate Dr. Sowemimo’s participation in the residency program...”. The Investigation Committee made no representation and gave no assurances in 2004 or thereafter that Dr. Sowemimo would be able to be admitted into an approved residency program.
- (iii) Residency programs are operated by faculties of medicine within Canadian universities. Those faculties establish their own admission standards and entry criteria.
- (iv) As was noted by the Executive Committee which considered Dr. Sowemimo’s fourth reinstatement application in 2011, it

was Dr. Sowemimo's past misconduct which created the bar to his acceptance into various residency programs; he was entirely responsible for that misconduct.

- (v) As was also noted by the Executive Committee which considered Dr. Sowemimo's fourth reinstatement application in 2011, the condition requiring the completion of a residency program was imposed in 2004 because it was a reasonable condition relative to the considerable deficiencies in Dr. Sowemimo's medical practice. Dr. Sowemimo's guilty plea was an explicit acknowledgment by him of those deficiencies. The condition was a good faith attempt to properly protect the public interest and to meaningfully address the issues relative to public safety. It was the Investigation Committee's considered position in 2004 that nothing short of a successful completion of a residency program would be sufficient to address the serious and extensive deficiencies which existed in Dr. Sowemimo's practice. Those deficiencies involved competency, integrity, and boundary/judgment issues.

A second important argument of Dr. Sowemimo in support of his current application for reinstatement was that his current application is not for a full unrestricted licence, but for a conditional licence. In his rebuttal submission, dated September 20, 2017, Dr. Sowemimo stated: "I am not applying for reinstatement to be allowed to practice

medicine independently or engage in any form of practice without the requisite assessment and training”.

In support of that second argument, Dr. Sowemimo submitted that because he has been effectively prevented from enrolling in or completing a residency program, he should be allowed instead to complete one year of supervised training under the MLPIMG, and/or to undertake the CAPE assessment, followed by a prescribed period of supervised training as recommended by CAPE.

Dr. Sowemimo submits that the MLPIMG and/or the CAPE assessment, either individually or in combination with one another, represent training programs, which should be considered as substitutes for the residency program which was contemplated by the April 2004 agreement. Dr. Sowemimo submits that given the practical impossibility of him ever being accepted into an approved residency program, the MLPIMG program and/or the CAPE assessment and subsequent requirements are “viable alternatives” to a residency.

CAPE is part of the Division of Continuing Professional Development at the University of Manitoba Faculty of Health Sciences. CAPE has an arm’s length relationship with the College. According to CAPE’s own informational materials, physicians may be referred to CAPE for several reasons. The categories of physicians typically referred to CAPE include:

- (i) Physicians whose competence is questionable and who may have undergone an investigative process by a licensing authority which has disclosed some competency concerns;

- (ii) Physicians whose skills and knowledge need to be assessed for a specific practice setting, such as international medical graduates, or Canadian trained physicians who are changing their practice area;
- (iii) Physicians who are re-entering practice after a period of absence;
- (iv) Medical students who are encountering difficulties in the clinical portion of their training program;
- (v) Physicians who wish to have their skills assessed in order to determine the focus of their continuing education efforts.

CAPE is an assessment program. It is not a route to licensure for a physician who has pled guilty to multiple counts of misconduct and breaches of professional standards involving competency, integrity and boundary/judgment issues.

The MLPIMG's mandate, according to its own informational material, is the provision of a one year training program for international medical graduates to enhance those graduates' previous training. The program also addresses the specific learning needs of international medical graduates in order to prepare them to obtain medical licensure to practice as primary care physicians in Manitoba.

The MLPIMG is not equivalent to a full family medicine residency program and it is not designed to remediate incompetence and/or misconduct. It is also uncertain whether Dr. Sowemimo would meet the entrance requirements for the program. Indeed

in Dr. Sowemimo's written submissions, he acknowledged that some of the requirements of the program may not be applicable to him and he asked the Executive Committee to grant him a waiver of two specific requirements.

Given the breadth of Dr. Sowemimo's shortcomings, as evidenced by his guilty plea in April 2004, the Executive Committee has concluded that the MLPIMG program, and the CAPE assessment are inadequate to provide the remediation which Dr. Sowemimo requires in order to practice medicine competently and ethically.

Furthermore, the Executive Committee has also concluded that Dr. Sowemimo's arguments are based on a fundamental misapprehension of the April 2004 agreement. Specifically, his arguments, based on the residency requirement in the 2004 agreement being impossible to fulfill, and his argument that the CAPE assessment and the MLPIMG program are reasonable and viable alternatives to a residency program, do not properly recognize the purpose of the condition in the April 2004 agreement relating to the completion of a residency program.

In considering a reinstatement application, the Executive Committee's primary concern must be to fulfil its statutory mandate to ensure the safety of the public. The Executive Committee must be satisfied that Dr. Sowemimo is currently fit to practice medicine competently and ethically. The purpose of reinstatement is not to provide remediation and rehabilitation. The Investigation Committee is correct in stating that it is only upon proof of remediation and rehabilitation that reinstatement becomes a possibility. Completion of an approved residency program arguably provides satisfactory evidence of sufficient remediation and rehabilitation. However, the Executive Committee is not

satisfied that a CAPE assessment and the completion of the MLPIMG program, either alone or in combination with one another, provide evidence of sufficient remediation and rehabilitation.

The Executive Committee is also mindful that Dr. Sowemimo bears the onus of establishing that his licence should be reinstated. In that context, it is noteworthy that Dr. Sowemimo has provided very little evidence as to how the CAPE assessment or the MLPIMG program would apply or operate in his unique circumstances. Specifically, he has not submitted evidence relating to his admissibility into either program. He has not applied to either program, and nor has he provided evidence of any communications to or from the administrators of CAPE or MLPIMG providing an explanation of how, if at all, those programs could be tailored to his needs and circumstances.

In the absence of such evidence, the Executive Committee has no basis for concluding that either program would provide sufficient remediation or rehabilitation for the very wide range of deficiencies outlined in the 2004 proceedings.

The Executive Committee also has serious concerns about the College's authority and jurisdiction to proceed as suggested by Dr. Sowemimo. It is the faculty of Health Sciences, at the University of Manitoba which administers those programs and determines their eligibility requirements, not the College.

The Executive Committee is also aware that as a result of the difficulties encountered by Dr. Sowemimo in the late 1990's, he underwent the equivalent of a CAPE assessment at that time, but nonetheless subsequently engaged in the serious misconduct which resulted in the cancellation of his licence in 2004.

The Executive Committee has also carefully scrutinized Dr. Sowemimo's current application for reinstatement to discern Dr. Sowemimo's present circumstances and to further consider what material changes have occurred since his fourth application for reinstatement was denied in 2011.

Dr. Sowemimo obtained a certificate from Red River College in Medical Laboratory Science in February 2015, and received a Masters of Business Administration from the University of Manitoba in October 2016. Those are impressive accomplishments but do not address the issue of remediation and rehabilitation relative to his shortcomings as a physician.

Most of the letters of reference and "testimonials" relied upon by Dr. Sowemimo in his current application pre-date his fourth application for reinstatement. It is not clear that the authors of those testimonials had been informed of the misconduct which had resulted in the cancellation of his medical licence.

Dr. Sowemimo also submitted reports from various psychologists and a psychiatrist in support of his current application. However, all of those reports, except one, had been submitted as part of his fourth application for reinstatement. The report of Psychiatrist A dated November 2, 2015 is new and supplements Psychiatrist A's prior reports but was based on one meeting with Dr. Sowemimo on October 26, 2015. It simply submits that Dr. Sowemimo's past problems with his medical practice were not likely to have been associated with a mental disorder.

With respect to the issue of Dr. Sowemimo's current medical skill and knowledge, Dr. Sowemimo has submitted proof of attendance at various CME events and

at various Grand Rounds and Clinical Observorships at certain facilities. Although those attendances are commendable, when they are considered in their entirety over the period of time in which they occurred, they do not meet the standards of acceptable continuing professional development for family physicians who are actively practicing, as set forth by the College of Family Physicians of Canada. They fall significantly short of establishing a fitness to practice medicine according to current standards for Dr. Sowemimo, who has not been practicing medicine for over 13 years.

In summary, apart from Dr. Sowemimo's specific suggestion relating to CAPE and the MLPIMG, there is very little to differentiate his current application from his fourth application for reinstatement.

Recognizing that the College's statutory mandate is to ensure the safety of the public, and that public safety must be a primary concern in reinstatement applications, the Executive Committee is acutely aware of the nature and extent of Dr. Sowemimo's deficiencies as a physician as established in the 2004 proceeding.

Dr. Sowemimo's suggested conditions (MLPIMG, and/or CAPE) are inadequate to address the nature and extent of the deficiencies outlined in the 2004 charges which, as noted previously, involved issues of core competence and gross deficiencies in his knowledge, skill and ethics.

The Executive Committee has also specifically considered the decision of the British Columbia Court of Appeal in *McOuat v. Law Society of British Columbia* 1993 CanLII 1794. In that case the British Columbia Court of Appeal reviewed and upheld a Law Society of British Columbia committee's decision to dismiss an application for

reinstatement to the bar on the basis that the committee was not satisfied that the applicant was fit to ethically practice in the legal profession. The committee commented that:

It has been suggested that whatever worry we may be left with concerning the possibility of fresh misappropriation could be cured by placing restrictions upon his freedom to practice such as prohibiting him from handling trust funds with or without a requirement that he practice only in association with another member of the Law Society.

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

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 hoped to prevent the effect of the unfitness from damaging the public or members of the profession by some specially crafted safeguard.

The Executive Committee is simply not satisfied that the conditional reinstatement proposed by Dr. Sowemimo would protect the public. Indeed, the Executive Committee is greatly concerned that the proposed reinstatement may cause the public to lose confidence in the College's ability to regulate the medical profession.

It is the unanimous decision of the Executive Committee that for all of the foregoing reasons, Dr. Sowemimo's current application to be reinstated to the Medical Register and to be provided with a conditional licence to practice medicine, is hereby denied.

DATED this 8th day of January 2018.