

COLLEGE OF PHYSICIANS & SURGEONS OF ALBERTA

IN THE MATTER OF  
A HEARING UNDER THE *HEALTH PROFESSIONS ACT*,  
RSA 2000, c. H-7

AND IN THE MATTER OF A HEARING REGARDING  
THE CONDUCT OF DR. 'LEMI ADEBAYO

**DECISION OF THE HEARING TRIBUNAL OF  
THE COLLEGE OF PHYSICIANS  
& SURGEONS OF ALBERTA  
December 6, 2022**

## **I. INTRODUCTION**

1. The Hearing Tribunal held a hearing into the conduct of Dr. 'Lemi Adebayo on November 15, 2022. The members of the Hearing Tribunal were:

Dr. Robin Cox, physician member and Chair;  
Dr. Fraulein Morales, physician member;  
Ms. June MacGregor, public member (recused);  
Mr. Douglas Dawson, public member.

2. Ms. Natasha Egan acted as independent legal counsel for the Hearing Tribunal.

3. Appearances:

Ms. Annabritt Chisholm, legal counsel for the Complaints Director;  
Ms. Alison Gray, legal counsel for Dr. 'Lemi Adebayo;  
Dr. 'Lemi Adebayo (the "Investigated Member").

## **II. PRELIMINARY MATTERS**

4. At the outset of the hearing, Ms. June McGregor (public member), realized she had been a member of the original CRC that considered this matter four years earlier.
5. The parties heard from Ms. Natasha Egan, Independent Legal Counsel (ILC), that it would appear under s. 71 of the *Health Professions Act, RSA 2000, c. H-7* (the "HPA") that Ms. McGregor could not continue to be serve as a member of the Hearing Tribunal. She invited submissions from the parties with respect to that issue and whether or not s. 16(3) of the HPA would be applicable.
6. After a brief recess, the parties returned and made the following submissions.

### **Complaints Director**

7. Ms. Chisholm indicated that both parties were in agreement that under s. 71 of the HPA, Ms. MacGregor would be unable to continue to carry out her duties as a member of the Hearing Tribunal because of the realization that she sat on an earlier panel that referred this matter to a hearing.
8. She further submitted that the parties were prepared to proceed under the interpretation that s. 16(3) of the HPA would permit a hearing tribunal to continue to hold a hearing despite the fact that one of the public members could not participate.

**Investigated Member**

9. Ms. Gray on behalf of the Investigated Member agreed that the Hearing Tribunal could proceed pursuant to s. 16(3) of the HPA with three members instead of four. That section seems to permit a Hearing Tribunal to continue when one member is unable to fulfill their duties as a panel member.
10. Given that the parties are making joint submissions today and that the matter has been outstanding for some time, counsel for the Investigated Member does have concerns that if another public member is not available tomorrow at 9 am it is likely that this will not proceed before the end of the year.

**Decision on Preliminary Matter**

11. The Hearing Tribunal agreed with the submissions of the parties with respect to s. 16(3) of the HPA. The risk of further delay on a matter that has been outstanding for some time outweighs any potential concerns with respect to the parties' interpretation of s. 16(3) of the HPA and proceeding without Ms. MacGregor.
12. There were no additional objections to the constitution of the Hearing Tribunal and the matter was not closed to the public.

**III. CHARGES**

13. The Notice of Hearing listed the following allegations:
  - 1) In relation to the uninsured services the Investigated Member provided to his patient, (the "Complainant") in January and February 2018, he did fail to comply with the College of Physicians and Surgeons of Alberta (CPSA) Standard of Practice – Charging for Uninsured Professional Services, particulars of which include one or more of the following:
    - a. Failing to adequately account for the fees charged to his patient;
    - b. Failing to create an adequate record of the services provided, including the lack of the product name, the amount of product administered, or the location of the injections;
    - c. Failing to ensure that his patient understood and accepted the fees that would be charged prior to the uninsured service being provided; and

- d. Failing to create an adequate record of the discussion with his patient after they questioned the fees charged for the uninsured services.
- 2) In relation to the administration of Botox to his patient, the Complainant, in January and February, 2018, did fail to comply with the CPSA Standard of Practice for Patient Record Content, particulars of which include one or more of the following:
    - a. Failure to record an adequate history and physical examination to support the administration of Botox for migraine headache; and
    - b. Failure to record any specific follow-up advice provided to the patient after the administration of Botox.
  - 3) The Investigated Member claimed from the Alberta Health Care Insurance Plan health service code 08.19G (a psychiatric evaluation) for a visit with his patient on or about January 4, 2017 when his patient record failed to include notes related to a psychiatric evaluation contrary to the CPSA Standard of Practice for Patient Record Content.

#### **IV. EVIDENCE**

14. The hearing proceeded based on the Admission and Joint Submission Agreement of November 13, 2022 ("Joint Submissions") and the Agreed Exhibit Book ("Exhibit Book") attached thereto as Schedule "A". No witnesses were called to testify.
15. The Tribunal reviewed the Joint Submission and Exhibit Book agreed to by both parties. These documents set out the party's agreement as follows:
  - a) The Complaints Director received a written complaint from the Complainant on May 31, 2018 regarding uninsured charges rendered by the Investigated Member for Botox and micro fill injections (the "Complaint").
  - b) The Complaints Director dismissed the Complaint under section 55(2)(f) of the HPA.
  - c) The Complainant exercised her right to review the Complaint's Director's decision under s. 68 of the HPA and the Complaints Review Committee directed that the matter be sent to further investigation under s. 68(5)(b) of the HPA.

- d) The Complaints Director conducted a further investigation and, upon review, determined that the matter should be referred to a hearing before the Hearing Tribunal.
- e) A Notice of Hearing Dated April 27, 2022 was issued by the Hearing Director for a hearing to be held on November 15-16, 2022 and the Notice of Hearing was served on the Investigated Member on April 28, 2022.
- f) The Investigated Member admitted to the following allegations in the Notice of Hearing (the "Admissions"):
  - (1) In relation to the uninsured services he provided to his patient, the Complainant, in January and February 2018, he did fail to comply with the College of Physicians and Surgeons of Alberta (CPSA) Standard of Practice – Charging for Uninsured Professional Services, particulars of which include one or more of the following:
    - (a) Failing to adequately account for the fees charged to his patient; and
    - (c) Failing to ensure that his patient understood and accepted the fees that would be charged prior to the uninsured service being provided;
  - (2) In relation to the administration of Botox to his patient, the Complainant, in January and February, 2018, did fail to comply with the CPSA Standard of Practice for Patient Record Content, particulars of which include one or more of the following:
    - (a) Failure to record an adequate history and physical examination to support the administration of Botox for migraine headache; and
    - (b) Failure to record any specific follow-up advice provided to the patient after the administration of Botox.
- g) The Complaints Director agrees to withdraw the remainder of the allegations contained in the Notice of Hearing.
- h) The Investigated Member agrees to confirm that he admits to the Admissions and that his conduct represents unprofessional conduct within the meaning of the HPA.
- i) The Investigated Member has been a regulated member of the CPSA since 2003, there are no prior findings of unprofessional conduct against him and he has cooperated with the investigation into the Complaint.

16. The Exhibit Book contained the following documents, all of which were considered by the Tribunal in its deliberation of this matter:
  - a) Notice of Hearing dated April 27, 2022;
  - b) Complaint Reporting Form and Authorization to Release Records received May 31, 2018 from the Complainant;
  - c) Supplementary Letter of Complaint from the Complainant received December 15, 2018;
  - d) Letter of Response from the Investigated Member Dated September 29, 2019;
  - e) Patient Chart for the Complainant;
  - f) Standard of Practice – Patient Record Content (January 2016);
  - g) Standard of Practice – Charging for Uninsured Professional Services;
  - h) *Health Profession Act*, RSA 2000 c. H-7 section 1(1)(pp) and Part 4;
  - i) *Casey J., Regulation of Professions in Canada*, pages 14-5 to 14-8;
  - j) *R. v. Anthony-Cook*, 2016 SCC 43;
  - k) *Bradley v. Ontario College of Teachers*, 2021 ONSC 2303.

## **V. SUBMISSIONS**

### **Complaints Director**

17. Ms. Chisholm, on behalf of the Complaint Director, introduced the facts that led to the Joint Submission and the Admissions and entered the entire Exhibit Book as Exhibit 1.
18. Ms. Chisholm specifically drew the Tribunal's attention to Tabs 2, 3, 4 and 5 of the Exhibit Book which indicated as follows:
  - a) The Complainant alleges that she did not receive a breakdown of the \$1000 for services charged by the Investigated Member, that she did not understand what the fees were for and that she did not receive a detailed receipt.
  - b) The Complainant confirms that she received a receipt for \$1000 for Botox treatments but that it did not account for micro fill or GST.
  - c) The patient charts provided by the Investigated Member mention administration of Botox for migraines but do not provide any notes about the history or physical examination taken to support same, nor do they contain specific follow up advice.

**Investigated Member**

19. Ms. Gray, on behalf of the Investigated Member, agreed that the Complaints Director thoroughly set out the basis for the Investigated Member's Admissions and submitted that the Hearing Tribunal should accept the Investigated Member's Admissions.

**VI. DECISION OF THE HEARING TRIBUNAL**

20. The Hearing Tribunal deliberated on whether, on a balance of probabilities, the Investigated Member is guilty of allegations 1(a), 1(c), 2(a), and 2(b), as laid out in the Notice of Hearing. The Hearing Tribunal carefully reviewed and considered the documents contained in Exhibit 1 and the submissions of both parties.
21. As set out above, the Investigated Member has admitted to these allegations and that his conduct represents unprofessional conduct under s. 70(1) of the HPA.
22. The Hearing Tribunal finds that allegations 1(a), 1(c), 2(a) and 2(b) in the Notice of Hearing are factually proven and that the evidence does support the Investigated Member's Admissions on a balance of probabilities. The Tribunal also finds that the Investigated Member's conduct constitutes unprofessional conduct under s. 1(1)(pp)(ii) of the HPA.

**VII. FINDINGS WITH REASONS**

23. Allegation 1(a) states that the Investigated Member failed to adequately account for the fees charged to his patient in contravention of the CPSA's Standard of Practice - Charging for Uninsured Professional Services. This standard states that a regulated member must inform a patient of any fee to be charged for an uninsured professional service, and be able to account for the fee. The Complainant documented that, on January 23, 2018, she received an invoice for \$1000 for Botox, which she was expecting. However, she noted that the amount was exactly \$1000, with no breakdown of what that covered, and no mention of GST. Although the receipt provided to the Complainant for January 23, 2018 was \$1000 for Botox, there were undated, unsigned written notes on the receipt indicating that this amount was also for other services, such as fillers. These various items were not itemized.
24. Given this evidence, and the fact that the Investigated Member is not denying that allegation 1(a) is true, the Hearing Tribunal has determined that this allegation is proven on a balance of probabilities.
25. Allegation 1(c) states that the Investigated Member failed to ensure that his patient understood and accepted the fees that would be charged prior to the uninsured service being provided. Details of the events of January 23, 2018

provided in the Complaint Reporting Form and the admission by the Investigated Member that the Complainant's allegation was true, leads the Hearing Tribunal to determine that allegation 1(c) is proven on a balance of probabilities.

26. Allegation 2(a) states that the Investigated Member failed to record an adequate history and physical examination to support the administration of Botox for migraine headache, in contravention of the CPSA's Standard of Practice - Patient Record Content. This standard stipulates the items that are required to be documented after assessing, advising and/or treating a patient. The clinic records for the Complainant for January 4, 20, and 23, 2018 did include some of the required elements, including history, examination, and treatment procedures. The Complaints Director, however, alleges that the record did not adequately include specific justification for the use of Botox for migraine headaches, such as other treatments tried. The Investigated Member admitted that his documentation fell below the required standard. The Hearing Tribunal finds therefore that allegation 2(a) has been proven on a balance of probabilities.
27. Allegation 2(b) states that The Investigated Member failed to document specific follow-up advice following the administration of Botox. The standard requires that the plan, including follow-up, be documented. The clinic records for January 2018 do not include these details. Again, The Investigated Member admits that his documentation falls below the required standard. The Hearing Tribunal finds therefore that allegation 2(b) has been proven on a balance of probabilities.
28. The Hearing Tribunal took note that the admission by the Investigated Member formed part of a Joint Submission Agreement between the Complaints Director and the Investigated Member. The Hearing Tribunal is mindful that such agreements should be respected and found no reason to interfere with the Admissions.
29. The Hearing Tribunal then considered whether the conduct admitted to was unprofessional. Given that s.1(1)(pp)(ii) of the HPA includes conduct that contravenes standards of practice and, as detailed above, it has been proven that the Investigated Member's conduct breached two of the CPSA's Standards of Practice, the Hearing Tribunal finds that the conduct admitted to constitutes professional misconduct.
30. The parties were informed that the Hearing Tribunal accepted the Admissions as proven and agreed that the conduct was unprofessional. The parties were invited to make submissions on sanctions.



## **VIII. SUBMISSIONS ON SANCTION**

### **Complaints Director**

31. Ms. Chisholm, on behalf of the Complaints Directors reviewed the proposed sanction. The sanctions proposed by the parties are as follows:
  - a) The Investigated Member shall receive a written reprimand in the form of a copy of this Tribunal's written decision;
  - b) The Investigated Member shall provide the Complaints Director with evidence that he successfully completed a record keeping course, which course was completed on May 12, 2021, the evidence of which has been provided to the Complaints Director;
  - c) The Investigated Member shall provide the Complaints Director with a written submission that reflects on his conduct leading to the Admissions in the Notice of Hearing, the relevant Standards of Practice, and how he intends to prevent a similar incident in the future. The written submission is to be provided to the Complaints Director within 60 days of the date the Investigated Member receives the Hearing Tribunal's written decision. If the Complaints Director is not satisfied with the Investigated Member's written submission, they may provide the Investigated Member with suggestions on how to revise the submission. If the Complaints Director and the Investigated Member disagree on the completeness or sufficiency of the written submissions, they may seek direction from the Hearing Tribunal;
  - d) The Investigated member shall prepare and provide the Complaints Director with a copy of an office policy and procedure that addresses changes he has already implemented or intends to implement in his practice as a result of this hearing. The office policy and procedure is to be provided to the Complaints Director within 60 days of the date the Investigated Member receives the Hearing Tribunal's written submission. If the Complaints Director is not satisfied with the Investigated Member's office policy and procedure, they may provide the Investigated Member with suggestions on how to revise the office policy and procedure. If the Complaints Director and the Investigated Member disagree on the completeness or sufficiency of the office policy or procedure, they may seek direction from the Hearing Tribunal; and
  - e) The Investigated Member shall be responsible for 50% of the costs of the investigation and hearing, to be paid in full within 24 months of the date of the Hearing Tribunal's written decision and in accordance with a payment plan acceptable to the Complaints Director.

32. Ms. Chisolm directed the Hearing Tribunal to the text contained in Exhibit 1 by J. Casey entitled "*Regulation of Professions in Canada*" which provides an overview of the four purposes that a sanction should serve. Namely, protection of the public, maintaining integrity of the profession, fairness to the member and deterrence (both specific and general).
33. Ms. Chisolm also highlighted the list of non-exhaustive factors which a Hearing Tribunal may consider when making a decision on sanction as set out in *Jaswal v. Newfoundland Medical Board*, (1996), 42 Admin L.R. (2d) 233. Ms. Chisolm made the following submissions with respect to the factors from *Jaswal*:
- a) The Investigated member failed to comply with two standards of practice. Although not at the most egregious end of the spectrum this is still serious unprofessional conduct that the Investigated Member should have known not to engage in.
  - b) The Investigated Member had been a practitioner for 15 years in Alberta and should have known about the standards of practice.
  - c) There are no prior complaints or findings of unprofessional conduct against the Investigated Member and this is a factor in his favour.
  - d) The conduct occurred over a two-month period. A less serious case would have been one instance and a more serious case would involve repeated conduct with multiple patients.
  - e) The Investigated Member has acknowledged his conduct and cooperated with the investigation which is a mitigating factor.
  - f) The Complainant is an adult and has not been identified as vulnerable. She was displeased by the conduct.
34. Ms. Chisolm further submitted that the sanctions are specifically and generally deterrent in that the reprimand sends a message to the Investigated Member and other members of the profession that the conduct is unacceptable. Similarly, the requested orders (b) through (d) will ensure that the Investigated Member understands why his conduct was unprofessional and that he has the knowledge and procedures in place to prevent it from recurring in the future. It also sends a clear message to legislators and to the public that the profession takes the requirement of the Act and the Standards of Practice seriously and that there will be appropriate sanctions if the obligations or requirements are not upheld.
35. Finally, Ms. Chisolm reviewed the public interest tests from the cases *R. v. Anthony-Cook*, 2016 SCC 43 and *Bradley v. Ontario College of Teachers*, 2021 ONSC 2303. She submitted that the Tribunal should not depart from a joint

submission unless the proposed penalty would bring the administration of justice into disrepute or would otherwise be contrary to the public interest.

### **Investigated Member**

36. Ms. Gray, on behalf of the Investigated member, indicated that she was in agreement with the principles that Ms. Chisholm put before the Tribunal – particularly around accepting joint penalty submissions.
37. Ms. Gray reiterated that this is the Investigated Member’s first disciplinary proceeding, that he has had no prior findings of professional conduct, that he fully cooperated in the investigation process and that he admitted to professional misconduct. Ms. Gray further submitted that these facts demonstrate that the Investigated Member takes full responsibility for his actions.
38. It was also submitted by Ms. Gray that the agreed-to penalty is aimed at assisting the Investigated Member in improving his charting, his interactions with patients relating to uninsured services and, in particular, with respect to discussions on fees. Finally, it aims at improving office practices and procedures around charging for uninsured services and ensuring patients understand the fee structure and agree to fees before proceeding with any treatment. He has also already taken the record-keeping course.
39. Finally, Ms. Gray submits that the proposed penalty will protect the public, uphold the integrity of the medical profession and ensure that the Investigated Member exemplifies that mandate.

### **IX. FINDINGS AND DECISION ON SANCTIONS**

40. The Hearing Tribunal adjourned to carefully consider the submissions of the parties and the factors that are typically considered when determining sanction in the professional regulatory area. Sanctions must be in the public interest and are designed to protect the public from unprofessional conduct by regulated members. Both deterrence and rehabilitation are relevant factors to consider in determining whether a proposed sanction is appropriate and in the public interest.
41. The Hearing Tribunal was also mindful that significant deference is to be given to the Joint Submissions. It is the view of the Tribunal that the sanctions proposed will not bring the administration of justice in the professional regulatory context into disrepute.
42. The Tribunal agrees with Ms. Chisholm’s review of the *Jaswal* factors as they relate to this instance and agrees that the weight she suggests be given to each of those reviewed is appropriate. The Tribunal is of the view that the sanction proposed falls within the range of acceptable sanctions having regard

to the factors set out in *Jaswal*, the relevant Standards of Practice, the caselaw provided and the Investigated Member's admitted conduct.

43. The proposed sanctions can be summarized as a reprimand, several educational and practice improvement measures, and payment of 50% of costs of the investigation and hearing. The Hearing Tribunal agreed with this approach, with the emphasis being on rehabilitation of the Investigated Member, rather than punishment. Both parties agreed that the written decision would serve as the reprimand.
44. The Hearing Tribunal considered the issue of costs. It was noted that the College, as part of the Joint Submissions, withdrew Allegations 1(b), 1(d), and 3. These represent approximately half of the possible charges. The Hearing Tribunal also considered the various mitigating factors set out by both parties with regards to costs, including that the Investigated Member had cooperated with the College, agreed with the Joint Submission, and had not introduced witnesses to the hearing.
45. The reprimand and costs proposed are appropriate in these circumstances as a consequence for the Investigated Member's unprofessional conduct. The reprimand will also serve to remind the profession that such conduct can have real and lasting consequences for patients.
46. For the above reasons, and in light of the four purposes of a sanction, the Hearing Tribunal accepts the sanctions proposed in the Joint Submissions, with the written decision serving as the reprimand.

## **X. ORDERS**

47. Accordingly, the Hearing Tribunal accepts the Joint Submissions and makes the following orders pursuant to s. 82 of the HPA:
  - a) The Investigated Member shall receive a written reprimand in the form of a copy of this Tribunal's written decision.
  - b) The Investigated Member shall provide the Complaints Director with evidence that he successfully completed a record keeping course, which course was completed on May 12, 2021, the evidence of which has been provided to the Complaints Director.
  - c) The Investigated Member shall provide the Complaints Director with a written submission that reflects on his conduct leading to the Admissions in the Notice of Hearing, the relevant Standards of Practice, and how he intends to prevent a similar incident in the future. The written submission is to be provided to the Complaints Director within 60 days of the date the Investigated Member receives the Hearing Tribunal's written decision. If the Complaints Director is not satisfied with the Investigated Member's

written submission, they may provide the Investigated Member with suggestions on how to revise the submission. If the Complaints Director and the Investigated Member disagree on the completeness or sufficiency of the written submissions, they may seek direction from the Hearing Tribunal;

- d) The Investigated member shall prepare and provide the Complaints Director with a copy of an office policy and procedure that addresses changes he has already implemented or intends to implement in his practice as a result of this hearing. The office policy and procedure is to be provided to the Complaints Director within 60 days of the date the Investigated Member receives the Hearing Tribunal's written submission. If the Complaints Director is not satisfied with the Investigated Member's office policy and procedure, they may provide the Investigated Member with suggestions on how to revise the office policy and procedure. If the Complaints Director and the Investigated Member disagree on the completeness or sufficiency of the office policy or procedure, they may seek direction from the Hearing Tribunal; and
- e) The Investigated Member shall be responsible for 50% of the costs of the investigation and hearing, to be paid in full within 24 months of the date of the Hearing Tribunal's written decision and in accordance with a payment plan acceptable to the Complaints Director.

Signed on behalf of the Hearing Tribunal by the Chair:

A handwritten signature in black ink, appearing to read "R. Cox", enclosed in a thin black rectangular border.

Dr. Robin Cox

Dated this 6<sup>th</sup> day of December, 2022.