

IN THE MATTER OF THE HEALTH PROFESSIONS ACT

-and-

**IN THE MATTER OF AN INVESTIGATION INTO A COMPLAINT AGAINST DR.
DAVID ODUGBEMI, A REGULATED MEMBER OF THE COLLEGE OF
PHYSICIANS AND SURGEONS OF ALBERTA**

**DECISION OF THE HEARING TRIBUNAL OF THE COLLEGE OF PHYSICIANS
AND SURGEONS OF ALBERTA CONCERNING ADJOURNMENT**

The Hearing Tribunal convened on January 19, 2018 in relation to a hearing into the conduct of Dr. David Odugbemi. The members of the Hearing Tribunal were Dr. Don Yee as Chair, Dr. John Pasternak and Hugh Campbell, public member. Mr. Gregory Sim was also present as independent legal counsel to the Hearing Tribunal.

Mr. Craig Boyer was legal counsel for the Complaints Director of the College. Dr. David Odugbemi was present without legal counsel.

Preliminary Matters

There were no objections to the composition of the Hearing Tribunal or to its jurisdiction. Mr. Boyer explained that the parties intended to address the Hearing Tribunal regarding an adjournment to new dates for the hearing of the merits of the allegations.

Submissions Regarding Adjournment Request

Mr. Boyer explained that this matter was originally set to be heard on December 15, 2017. Mr. Boyer introduced exhibits 1-10 which included the Notice of Hearing as well as correspondence between Mr. Boyer and Dr. Odugbemi regarding the scheduling of the hearing. These exhibits confirmed that Dr. Odugbemi was originally served with the Notice of Hearing on October 27, 2017. Due to Dr. Odugbemi's preplanned trip overseas and to his need to engage legal counsel, the hearing was adjourned by consent to January 19, 2018.

The exhibits also confirm that between October and January, Mr. Boyer provided Dr. Odugbemi with suggestions to contact the Canadian Medical Protective Association ("CMPA") for assistance and the names of at least two Edmonton-based lawyers experienced in acting for physicians in College matters. It also appears from Dr. Odugbemi's correspondence in the exhibits that he has made some efforts to contact the CMPA and to speak with defence counsel. Despite this Dr. Odugbemi did not have counsel as of January 19, 2018.

Mr. Boyer indicated he was seeking an order adjourning the matter to new dates for a three day hearing to be peremptory on the defence. There was some discussion of dates during the proceedings on January 19 and Mr. Boyer subsequently confirmed by email that he was proposing June 25, 26 and 27, 2018 and the Hearing Tribunal and Dr. Odugbemi also confirmed their availability on these dates by email.

Mr. Boyer also confirmed on the record that he was providing disclosure of the Complaints Director's investigation records to Dr. Odugbemi while the parties were all present on January 19, 2018.

Dr. Odugbemi elected to make no submissions in response.

Decision on Adjournment Request

The Hearing Tribunal considered the exhibits entered by Mr. Boyer as well as his submissions and Dr. Odugbemi's decision not to make submissions. The Hearing Tribunal decided to adjourn the hearing to June 25, 26 and 27, 2018, at which time the parties are expected to present their evidence and argue the merits of the allegations.

The Hearing Tribunal declined to order that this adjournment be peremptory on the defence but it advised the parties it was considering imposing conditions. The Tribunal explained that it was considering imposing a condition that if Dr. Odugbemi intends to engage a lawyer to assist him he must do so and advise Mr. Boyer of his lawyer's identity within two weeks, by February 2, 2018. The Hearing Tribunal also advised Dr. Odugbemi that the Hearing Tribunal would be very reluctant to grant any further adjournments if he was not prepared to proceed on June 25, 26 and 27, 2018. Neither party expressed any concerns with the Hearing Tribunal's proposed order.

This matter is therefore adjourned to June 25, 26 and 27, 2018. The parties are expected to present their evidence and argue the merits of the allegations at that time.

Dr. Odugbemi is directed to engage any legal counsel that he chooses to assist him and to advise Mr. Boyer of that counsel's identity by February 2, 2018.

The Hearing Tribunal will be very reluctant to entertain any further requests to adjourn this matter and may decide to proceed with the hearing on June 25, 26 and 27, 2018 if Dr. Odugbemi appears without counsel or if he fails to appear.

Signed on behalf of the Hearing Tribunal by its Chair this 24th day of January 2018.



Dr. Don Yee, Chair

IN THE MATTER OF
A HEARING UNDER THE *HEALTH PROFESSIONS ACT*,
R.S.A. 2000, c. C-7

AND IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF DR. DAVID ODUGBEMI

**DECISION OF THE HEARING TRIBUNAL OF
THE COLLEGE OF PHYSICIANS
& SURGEONS OF ALBERTA**

I. INTRODUCTION

The Hearing Tribunal held a hearing into the conduct of Dr. David Odugbemi June 25 and June 26, 2018 at the offices of the College of Physicians and Surgeons of Alberta (the "College") in Edmonton, Alberta.

Present were:

The members of the Hearing Tribunal:

Dr. Don Yee of Edmonton as Chair,
Dr. John Pasternak of Medicine Hat
Dr. Hugh Campbell (public member)

Mr. Craig Boyer and Ms. Annabritt Chisholm, legal counsel for the Complaints Director of the College of Physicians & Surgeons of Alberta.

Dr. Odugbemi was not present when the Hearing opened and introductions were made. There was no legal counsel for Dr. Odugbemi present when the Hearing opened. Dr. Odugbemi appeared for the first time in the afternoon on June 25, 2018.

Also present was Mr. Greg Sim who acted as independent legal counsel to the Hearing Tribunal.

Members of the public present during the hearing included Ms. Lilian Lai, Ms. Janelle Gehring and Mr. Keith Gerein from the Edmonton Journal.

The hearing was held under the terms of Part 4 of the *Health Professions Act* (the "HPA"). There were no objections to the composition of the Hearing Tribunal or the jurisdiction of the Hearing Tribunal to proceed with a hearing.

II. CHARGE

The charge to be considered by the Hearing Tribunal (the "Tribunal") were set out in the Notice of Hearing (Exhibit 1), which were as follows:

It is charged that:

1. You have demonstrated a pattern of ungovernable conduct in you have failed to fulfill the Terms of Resolution agreement between you and the Complaints Director of the College of Physicians and Surgeons of Alberta (the "College") dated February 27, 2015 (the "TOR"), particulars of which include one or more of the following;
 - a. Failure to attend and complete the multi-disciplinary assessment at the Gabbard Centre or another program acceptable to the Complaints Director in a timely manner,
 - b. Failure to pay costs as agreed under the TOR in a timely fashion
 - c. Failure to pursue further education acceptable to the College relating to weight loss programs and provide a report to the College within 3 months of the date of the TOR including written approval from a dietician who is acceptable to the College,
 - d. Failure to improve the quality of your charting as demonstrated in a practice audit conducted by Dr. Mark Godel in March 2016,

- e. Failure to improve the quality of your care provided to patients for chronic disease management as demonstrated in a practice audit conducted by Dr. Mark Godel in March 2016,
- f. Failure to improve the quality of your prescribing, in particular the prescribing of opioids and benzodiazepines, despite the educational interventions directed by Dr. Susan Ulan and Dr. Ken Gardener, Assistant Registrars of the College, and
- g. During the periods of March to December 2015 and January to June 2017, you have failed to comply with the restrictions of seeing no more than 50 patients per day and no more than 250 patients per week.

III. PRELIMINARY MATTERS

It was noted that at 0905 hours on June 25, 2018, Dr. Odugbemi still had not arrived at the College offices. Additionally, there was no legal counsel for Dr. Odugbemi present at the opening of the Hearing. There had been no notice from Dr. Odugbemi to Mr. Boyer, the College or the Tribunal by phone or email to indicate that he would be delayed for the Hearing.

The Tribunal decided to proceed with the Hearing without Dr. Odugbemi present and the Hearing commenced at 0915 hours with Mr. Boyer providing his opening statements.

The College had received a series of complaints about Dr. Odugbemi from different parties related to his obstetrical care, medical advice regarding weight loss and prescribing practices for opioid and benzodiazepine drugs. The College investigated the complaints and the result of the investigations was that Dr. Odugbemi signed a Terms of Resolution Agreement with the College on February 27, 2015 (the "TORA"). Follow-up on these terms conducted by the College raised concerns regarding Dr. Odugbemi's compliance with the TORA, which lead to the Notice of Hearing being issued with the charge that Dr. Odugbemi did not comply with several aspects of the TORA he signed with the College.

The Tribunal first sat on January 19, 2018 to deal with this matter. Exhibits 1-10 were entered on this date. Dr. Odugbemi was present for that proceeding which dealt with an adjournment request by Dr. Odugbemi to retain and instruct legal counsel. The original Notice of Hearing was issued and served October 25, 2017 with the Hearing scheduled for December 15, 2017. The Complaints Director and Dr. Odugbemi had agreed to adjourn the date to January 2018 as Dr. Odugbemi was out of country and to allow Dr. Odugbemi time to retain and instruct legal counsel. Therefore, Dr. Odugbemi's January 19, 2018 request for an adjournment was for a second adjournment of the hearing.

The Tribunal issued a preliminary decision granting Dr. Odugbemi's request to adjourn in January 2018 and the hearing was then rescheduled to the dates of June 25-27, 2018. The Tribunal noted that Dr. Odugbemi had confirmed his availability for the hearing on June 25-27, 2018. In its preliminary decision the Tribunal had indicated that it would be very reluctant to entertain any further adjournment requests and that it may decide to proceed with the hearing in Dr. Odugbemi's absence if he did not appear on June 25, 2018. The Tribunal was satisfied that Dr. Odugbemi was aware that the hearing would commence on June 25, 2018.

IV. EVIDENCE

Mr. Boyer indicated he prepared an exhibit book continuing at Exhibit Number 11. Mr. Boyer distributed his Exhibit Book and suggested that as each of his witnesses testified, the exhibits would be identified individually.

The following Exhibits were entered at the hearing:

Notice of Hearing, October 25, 2017	Exhibit 1
Statutory Declaration, October 30, 2017	Exhibit 2
Dr. Odugbemi fax to Dr. Caffaro, October 28, 2017	Exhibit 3
Mr. Boyer letter to Dr. Odugbemi, December 1, 2017	Exhibit 4
Dr. Odugbemi letter to Mr. Boyer, December 10, 2017	Exhibit 5
Mr. Boyer letter to Dr. Odugbemi, December 11, 2017	Exhibit 6
Mr. Boyer email to Dr. Odugbemi, December 20, 2017	Exhibit 7
Dr. Odugbemi email to Mr. Boyer, January 5, 2018, 1:47pm	Exhibit 8
Dr. Odugbemi email to Mr. Boyer, January 5, 2018, 3:37pm	Exhibit 9
Dr. Odugbemi email to Mr. Boyer, January 9, 2018	Exhibit 10
Terms of Resolution Agreement with Schedules A to G, February 27, 2015	Exhibit 11
Letter from Dr. Ulan to Dr. Odugbemi, April 1, 2016	Exhibit 12
Letter from Dr. Odugbemi to Dr. Ulan, April 24, 2016	Exhibit 13
Letter from Dr. Ulan to Dr. Caffaro, May 5, 2016	Exhibit 14
Letter from K. Jarvis to Dr. Odugbemi, May 12, 2016	Exhibit 15
Letter from Dr. Odugbemi to Dr. Caffaro, June 28, 2016	Exhibit 16
Letter from K. Jarvis to Dr. Odugbemi, July 19, 2016	Exhibit 17
Letter from Dr. Odugbemi to K. Jarvis, August 1, 2016	Exhibit 18
January 2015 to December 2016- Days with over 50 patients seen	Exhibit 19
January to June 2017 – Days with over 50 patients seen	Exhibit 20
Letter from Dr. Mazurek to Dr. Caffaro, July 4, 2016	Exhibit 21
Memo to file by Dr. Caffaro, September 26, 2016	Exhibit 22
Letter from K. Jarvis to Dr. Odugbemi, October 17, 2016	Exhibit 23
Letter from Dr. Odugbemi to K. Jarvis, November 20, 2016	Exhibit 24
Letter from Dr. Caffaro to Dr. Odugbemi, January 7, 2016	Exhibit 25
Memo by Dr. Caffaro, February 10, 2016	Exhibit 26
March 2016 Report from Dr. Godel from remote access chart review	Exhibit 27
Letter from Dr. Wickland-Weller to Dr. Odugbemi, April 8, 2016	Exhibit 28
Letter from Dr. Odugbemi to Dr. Wickland-Weller with Dr. Godel summary of chart review, April 24, 2016	Exhibit 29
Dr. Godel's response to Dr. Odugbemi's comments, May 16, 2016	Exhibit 30
Q1 2016 CPSA Prescriber details for Dr. Odugbemi	Exhibit 31
July 2015 Failure to make payment for costs	Exhibit 32
2014 CPSA practice audit	Exhibit 33
Dr. Odugbemi's response to practice audit, July 18, 2014	Exhibit 34
Letter from Dr. Gardener to Dr. Odugbemi, August 8, 2014	Exhibit 35
Memo from Dr. Ulan to Dr. Gardener, February 7, 2014	Exhibit 36
Letter from Dr. Gardener to Dr. Odugbemi, May 15, 2014	Exhibit 37
Dr. Lamoureux's October 2013 Peer Review Report	Exhibit 38
Dr. Odugbemi's Statements to Hearing Tribunal	Exhibit 39
Articles and Publications Reviewed by Dr. Odugbemi	Exhibit 40
Enclosures One "This Pack Explains Who I am"	Exhibit 41
Enclosures Two "This Pack Explains What We do"	Exhibit 42

Enclosures Three “This Pack Explains Our Efforts and Attempt to Understand Some of Our Patients Behaviour”

Exhibit 43

Enclosures Four “This Pack Explains Our Records and Attempt to Document Some of Our Patient Behaviour”

Exhibit 44

Mr. Boyer indicated he had four witnesses to call: Dr. Caffaro, Complaints Director, Dr. Susan Ulan, Assistant Registrar with the College, Dr. Mark Godel and Dr. Ken Gardener.

Dr. Odugbemi presented evidence on his own behalf but called no other witnesses.

The key testimony of the witnesses who gave evidence during the hearing is summarized below.

Dr. Michael John Caffaro

Dr. Caffaro attended University of Alberta medical school from 1986-1990. He then practiced as a family physician at Misericordia Hospital from 1990-1992. He then practiced as a general practice surgeon from 1992-1993 and then was a family practitioner from July 12, 1993 to March 13, 2015 in Hinton, Alberta. He took over as CPSA Complaints Director April 8, 2015 and remains in that role.

Dr. Caffaro confirmed he has dealt with Dr. Odugbemi before when he became CPSA Complaints Director. There were several concerns amongst CPSA staff regarding non-compliance with the TORA he had signed with the CPSA. Dr. Ulan had contacted him about this issue. Dr. Caffaro confirmed he had seen the TORA before when provided to him by Dr. Ulan when she contacted him about concerns she had about Dr. Odugbemi not being compliant with the TORA. At the time Dr. Ulan contacted him, she was the Assistant Registrar for Physician Health and Monitoring for the College.

Dr. Caffaro confirmed Exhibit 11 was the TORA with associated Schedules A to G, dated February 27, 2015. Dr. Caffaro confirmed Exhibit 14 was a letter from Dr. Ulan to him where she expressed concerns she had developed while monitoring Dr. Odugbemi and noticing deviation and non-compliance from the TORA. In this letter Dr. Ulan indicates explanation and documentation requested from Dr. Odugbemi was not satisfactory and therefore she was referring Dr. Odugbemi’s case to Professional Conduct for Dr. Caffaro’s review. Dr. Caffaro confirmed Exhibit 16 was a letter from Dr. Odugbemi to Dr. Caffaro in response to the concerns raised by Dr. Ulan in her letter to Dr. Caffaro, complaint file 160254.

Dr. Caffaro confirmed Exhibit 21 was a letter he received from Dr. Karen Mazurek outlining concerns she had about Dr. Odugbemi stemming from a remote chart access practice audit performed by Dr. Mark Godel in March 2016. At the time, Dr. Mazurek was the Deputy Registrar responsible for Continuing Competence at the College. As part of his TORA, Dr. Odugbemi had agreed to a competence review of his practice including an audit review of aspects such as charting, preventative medicine and interventions. Dr. Mazurek’s letter was a summation of the work done by Continuing Competence and she did not feel Dr. Odugbemi responded in the appropriate fashion upon request to improve various aspects of his medical practice.

Dr. Caffaro indicated that Dr. Mazurek’s concerns regarding Dr. Odugbemi were related to medical practice issues and standard expectations of a competent community family physician (ie. Competency-related issues) including medical charting, chronic disease management, preventative health, screening and prescribing practices with opioids and benzodiazepines.

Dr. Caffaro explained that Dr. Ulan's concerns were more related to practice restrictions imposed on Dr. Odugbemi in the previously signed TORA such as number of patients seen per day and that he was not to attend on pregnant patients past 24 weeks gestation.

Dr. Mazurek's letter indicated that despite efforts made by the College to support, educate and remediate various aspects of Dr. Odugbemi's medical practice he continued to demonstrate a lack of competence that could not be remediated by the Continuing Competence Department. Subsequently, Dr. Caffaro opened a new complaint in response to Dr. Mazurek's letter, confirmed in a memo (Exhibit 22).

Dr. Caffaro verified Exhibit 17 was a letter from Kristy Ivans to Dr. Odugbemi requesting explanation for the discrepancy in his daily patient counts versus what Dr. Ulan discovered. Ms. Ivans is an investigator within the Professional Conduct department and reports to the Director of Complaints who reports to Dr. Caffaro.

Dr. Caffaro verified Exhibit 15 was a letter from Ms. Katherine Jarvis (now Damron) to Dr. Odugbemi. Ms. Damron is the Complaints Inquiry Coordinator with Professional Conduct. Her letter was requesting Dr. Odugbemi's response to the Complaint opened by Dr. Caffaro.

Dr. Odugbemi's response to Ms. Ivans was Exhibit 18. Exhibit 19 was a distillation of billing records for Dr. Odugbemi to the Alberta Health Care Insurance Plan, including a daily patient count between January 2015 to June 30, 2017, obtained by Kristy Ivans to investigate Dr. Odugbemi's compliance with the restrictions in the TORA. From this data, it appeared Dr. Odugbemi was not compliant with all items in his TORA.

Page 34 in Exhibit 11 outlines the specific restrictions on Dr. Odugbemi's practice with respect to maximum number of patients seen per day. This was effective February 27, 2015, being the date the TORA was signed, and the terms were never amended or revoked since. Therefore, these terms are still in place today.

Exhibit 19 outlined the number of patients Dr. Odugbemi saw per day which, according to the TORA, should be less than 50. January 2016 clinic records in Exhibit 19 at page 165 show he was seeing more than 50 patients per day. Alberta Health Insurance Plan billings for Dr. Odugbemi from January 2017 to June 30, 2017 are summarized in Exhibit 20. This information was considered as part of Dr. Caffaro's review of Dr. Odugbemi and based on this data Dr. Caffaro had concerns Dr. Odugbemi was violating the TORA with respect to maximum number of patients to be seen per day. Ms. Jarvis drafted another letter to Dr. Odugbemi requesting response to Dr. Ulan's concern from October 2016 (Exhibit 23).

Dr. Mazurek brought her concerns regarding Dr. Odugbemi to Dr. Caffaro in July 2016. Dr. Odugbemi responded to Ms. Damron's letter of inquiry (Exhibit 24). Dr. Caffaro indicated Dr. Odugbemi's responses did not satisfactorily address the concerns brought forth to him by Drs. Ulan and Mazurek.

Dr. Caffaro authored a memo (Exhibit 26) referencing Dr. Odugbemi's agreement to attend an assessment at the Gabbard Centre, or its equivalent, as part of the TORA with the College. Dr. Caffaro explained that to date, Dr. Odugbemi has never attended the Gabbard Centre for an assessment. He has never undergone an assessment at any College-approved centre. Dr. Caffaro explained the requirement for this assessment came from a concern the College had with Dr. Odugbemi's fitness to practice medicine and the referral to the Gabbard Centre was for a fitness to practice medicine assessment on Dr. Odugbemi.

Exhibit 11, page 33 related to the part of the TORA addressing an educational opportunity for weight loss care. Dr. Caffaro indicated Dr. Odugbemi never has confirmed to the College he has undertaken such training.

The TORA also provided that Dr. Odugbemi would be responsible for all costs associated with the Agreement. Exhibit 32 was a copy of a cheque from Dr. Odugbemi to the College for costs of investigations leading up to the TORA. The cheque was returned NSF. Dr. Caffaro indicated that to his knowledge there were no follow-up payment efforts made by Dr. Odugbemi after the first NSF cheque.

Exhibit 31 set out prescriber details for Dr. Odugbemi with respect to opioids. Dr. Caffaro explained that this area is supervised by Dr. Mazurek. Dr. Wickland-Wellar is now the Senior Medical Advisor with the College's Continuing Competence Department specifically in relation to prescribing practices program.

Dr. Caffaro confirmed that at this time the College has concerns with Dr. Odugbemi in terms of his non-compliance with the details of his TORA including that he:

- 1) Has not taken weight loss training
- 2) Has exceeded his daily patient numbers limit
- 3) has not paid costs in a timely manner
- 4) Has not undergone an assessment at Gabbard Centre
- 5) Matters concerning a competence review from Dr. Mazurek's department.

Dr. Caffaro confirmed the letter in Exhibit 25 was a letter he sent to Dr. Odugbemi in January 2016 in response to material Dr. Ulan gave him demonstrating that Dr. Odugbemi had not satisfactorily complied with each item in the TORA. In this letter, Dr. Caffaro requests a response as to why Dr. Odugbemi has not undergone the required assessment at the Gabbard Centre. It points out that failure to abide by the TORA is grounds for referral to a hearing and specifically outlines Dr. Caffaro's expectation that the Gabbard assessment be completed by March 30, 2016. Dr. Caffaro indicates that if confirmation of registration with the Gabbard Centre including payment of the registration deposit is not confirmed by February 8, 2016, Dr. Odugbemi's file will be referred to the College's external legal counsel to begin preparations for a hearing.

Dr. Susan Ruth Ulan

Dr. Ulan graduated from the University of Western Ontario medical school in 1988 and subsequently completed a family medicine residency at the University of Alberta. She then practiced family medicine for about 19 years before joining the College in 2009 as a Senior Medical Advisor for Physician Prescribing Practices. In this role, she worked with physicians who were identified as high prescribers of medications with abuse potential and looked at how to support and improve their prescribing practices. She became Assistant Registrar at the College in 2014 responsible for the College's Physician Health Monitoring Program and monitoring physicians with practice conditions. In 2016 she switched portfolios at the College and is now responsible for Registration and Practice Readiness Assessments.

She confirmed she has had dealings with Dr. Odugbemi for prescribing and practice condition monitoring issues. She confirmed she authored the letter at Exhibit 14. This was a letter she wrote to Dr. Caffaro to indicate to Dr. Caffaro her observations while monitoring Dr. Odugbemi in the Physician Health Monitoring Program through his billings to Alberta Health. It was apparent to her

that he was not compliant with his TORA. She requested and received a response from Dr. Odugbemi regarding her expressed concerns and felt Dr. Odugbemi's response was inadequate. She subsequently forwarded her concerns to Dr. Caffaro.

Dr. Ulan confirmed Exhibit 12 was a letter she wrote to Dr. Odugbemi requesting explanation of appearance of non-compliance with the TORA. She had reviewed his Alberta Health billings from March 1, 2015 to December 31, 2015. According to the TORA Dr. Odugbemi was not to see obstetrical patients beyond 24 weeks gestation. Additionally, he was to have no more than 50 direct patient contacts per day and no more than 250 clinic patients per week and to work a maximum of 6 days per week.

Dr. Ulan shared her findings from the Alberta Health billings with Dr. Odugbemi and asked him to explain the situations where it appeared that he was not compliant with the TORA. Dr. Ulan confirmed Exhibit 13 was Dr. Odugbemi's April 24, 2016 response to her queries. She believes the reference in the second last paragraph of this letter to the Gerber Center is a typo and that Dr. Odugbemi is referring to the Gabbard Center. She was aware that the TORA also required that Dr. Odugbemi attend the Gabbard Center for an assessment and to her knowledge he has not done so.

Dr. Ulan said that Dr. Odugbemi's responses to her request in his April 24, 2016 letter were inadequate. He did not take necessary steps to restrict his obstetrical practice. He was relying on obstetrical patients to read signage in his office and determine for themselves that he could not see them if they were beyond 24 weeks gestation. She felt Dr. Odugbemi's explanation of the instances where he appeared to have seen over 50 patients per day was not satisfactory. He indicated he sometimes works long hours and sometimes patient appointments run into the next day and that his clinic staff did not change the date of service correctly in those instances. He indicated he rarely sees up to fifty patients per day. Dr. Ulan felt that he was blaming his billing staff for the appearance that he was seeing more than 50 patients per day but he provided no evidence that this was not actually occurring, or that if it had occurred the situation had been rectified.

She had previously drafted a letter to Dr. Ken Gardener (Exhibit 36), who at the time was the Assistant Registrar responsible for Peer Review process. At the time, Dr. Ulan was a Senior Medical Advisor for Physician Prescribing Practices at the College. This letter was regarding Dr. Odugbemi's opioid and benzodiazepine prescribing practices. Dr. Ulan knew Dr. Odugbemi had a peer review coming up and she had ongoing concerns about his prescribing of medications with abuse potential. She expressed significant concerns in these regards. As prescribing is part of a peer review, she intended on providing Dr. Gardener with some background information and some of her communication with Dr. Odugbemi to help inform Dr. Gardener's peer review.

Dr. Ulan explained the College had received significant complaints from multiple sources about Dr. Odugbemi's prescribing. He was identified by First Nations Inuit Health Branch as one of the highest prescribers in the province of opioids and benzodiazepines to First Nations communities. The College also received numerous concerns from pharmacists regarding Dr. Odugbemi's prescribing practices, including a pharmacist whose practice was across the street from Dr. Odugbemi's west end Edmonton office. This pharmacist contacted Dr. Ulan and described a van Dr. Odugbemi used to pick patients up from First Nations communities and bring them as a group to his office where they would receive almost identical prescriptions for medications with abuse potential. The patients would then go as a group to the pharmacy across the street to have their prescriptions filled. The patients advised the pharmacist that they were not examined by Dr. Odugbemi. The van used to transport the patients was known as "The Mercy Ship".

Dr. Gardener proceeded with a peer review. Dr. Ulan was not privy to the results of this peer review as peer reviews are confidential. This program is under the Continuing Competence program which is what Dr. Mazurek currently is overseeing. Dr. Ulan explained that if a practice restriction came about as a result of the peer review, it would have been reflected in Dr. Odugbemi's practice permit. As she was someone involved with monitoring his practice at the time, Dr. Ulan would have been notified of this. Dr. Ulan confirmed Dr. Odugbemi is still in practice.

Dr. Joseph Mark Godel

Dr. Godel graduated from University of Alberta medical school in 1985 and subsequently completed a family medicine residency at the University of Alberta. He practiced as a locum physician for 1 year then practiced as a full-service family physician in Cold Lake for the next 27 years. He started doing peer reviews for the College around 1992 or 1993 and has done them intermittently since then. In 2014 or 2015 he worked part time as a CPSA Senior Medical Advisor in Continuing Competence and at this time he gave up his family practice in Cold Lake. He still practices in the Urgent Care Clinic in east Edmonton and still does ad hoc peer reviews for other Senior Medical Advisors in Continuing Competence at the College.

Dr. Godel confirmed he completed a remote chart review of Dr. Odugbemi's practice in March 2016 and prepared a report for the College. The remote chart review was performed via access to Dr. Odugbemi's EMR that Dr. Odugbemi had granted. Dr. Godel logged in to the EMR and reviewed 22 individual case files (Exhibit 27). He indicated accessing patient files through the EMR was advantageous because it saved much work in printing charts and sending them in to the College and trips in to physically visit a physician's office. Additionally, it enabled examination of parts of an individual chart that sometimes do not get copied such as interoffice memos. The purpose of the chart review was to get a sense of the way a physician interacted with patients, the way they managed chronic conditions, prescribed opioids and benzodiazepines, their screening practices and in general how a physician maintained their medical records.

Several concerns came out of Dr. Godel's chart review. He discovered widespread use of templates. Dr. Godel testified he had never seen this much use of templates and never in the fashion that he found them in Dr. Odugbemi's charts. The templates seemed random, and in many cases did not correlate with details of a specific clinic visit.

Dr. Godel observed almost all clinic visits had an upper respiratory tract infection template and physical exam template. Dr. Godel stated that templates often appeared to have been pre-selected and inserted into the chart before the actual patient visit and often clinical details within individual templates contradicted each other. He noted sometimes information in templates would contradict each other within the same patient chart. Some clinic visits were noted to have up to 8-10 different templates. Sometimes there were 2 or 3 different smoking or smoking cessation templates and sometimes 2 or 3 different physical exam templates. One would indicate 'head and neck examination normal' and another would note 'erythema of the anterior oropharynx and adenopathy'. Parts of a chart would indicate the patient was a non-smoker and a different part would contain a smoking cessation template.

Dr. Godel went through aspects of individual patient case examples (with no identifying data) to highlight his findings:

Patient 1

He thought templates were used to avoid having to obtain clinical information directly from the patient because information was already filled into the template. There were peculiar notes on gynecologic and rectal exams documented in the chart even though the patient was in for a mental health visit.

Patient 2

This was a clinic visit for hypertension, but notes were made of red reflex and anus and hernia sites being assessed. There is a note that the patient has no history of smoking or asthma, but the documented visit goal was to stop smoking. Dr. Godel commented that the diagnostic codes in the chart were not related to the history and physical for several visits. He concluded that evidence of care in the chart was difficult to find. Dr. Godel characterized the chart as poor.

Patient 3

This clinical visit was for Care Coordination, but the only history available is that the patient is travelling to Ghana and needed prophylaxis. An upper respiratory tract infection (URI) template and a physical exam template were inserted into the chart, but the templates contradicted each other. The chart indicated Dr. Odugbemi billed for 'injections' but there was no note of where the injection was given, what was injected and what the clinical indication was for the injection. For this patient, the EMR indicated hypertension was excluded, but the patient had hypertension and was on an anti-hypertensive. This patient was on NSAIDs but there is no documentation of a discussion about side effects or risks of the medication. There was little evidence of care in the notes.

Patient 4

The concern noted was 'Comprehensive care', but a URI template was used. Dr. Godel could not find any documentation of a discussion of the medications prescribed to treat the upper respiratory tract infection. Screening tests were done for some bowel problem with no explanation given. An anti-transglutaminase test was done but no indication on the chart as to why and no documentation of any discussion with the patient of the result.

Patient 5

This chart had the URI template inserted. There was no noted history of hypertension or diabetes, but the patient is on Metformin and Diovan (diabetic and hypertension medications, respectively). There is a documented clinical note of 'acute reaction to stress' but no other details to elaborate on this. Dr. Godel noted the tone in clinical notes was similar all the way through.

Patient 6

"Hypertension CDM" is the charted concern but contradictory templates are inserted in the chart. Dr. Godel noted that the charting for each clinic visit seemed very disorganized.

Patient 7

The clinical visit documented is for 'psychotherapy'. There is no further discussion in the EMR about mood, anxiety or depression. The URI template was used again in this chart. Dr. Goedel noted that the templates used were inappropriate for a psychotherapy visit and that there was no value in any of the notes.

Patient 8

This is a 10-year-old girl with anxiety. There is no mention of the patient's anxiety past or what interventions were done for it. There is no mention of how the anxiety affected the patient or her parents. There is documentation that the patient's anus and vulva were examined. Dr. Godel feels there is no reason to examine below the waist for psychiatric reasons outside of very extenuating and specific clinical circumstances such as the patient's anxiety stemming from some issue related to these body regions. Dr. Godel felt this was another example of inappropriate use of generic templates without modification specific to the clinical situation.

Dr. Godel noted that in most cases, the templates used were not modified. Dr. Godel felt that patients' blood pressure readings were not truly taken when it was recorded.

Patient 9

This chart had contradictory templates. The management plan is simply a URI template which includes drinking lots of fluids, getting rest, when it was not applicable to the complaint for that specific visit.

Patient 10

This is a 28-year-old woman with depression. This visit was for 'comprehensive care'. Among several templates in the chart was a severe back pain template. Details of the patient's complaints of pain were not elaborated on appropriately or documented clearly. There was nothing in the chart about the history of this pain in the cumulative patient profile or previous patient visits.

For the March 9 visit, templates were inserted into the patient EMR, but no clinical details provided or filled in. Dr. Godel found that the only thing in the EMR was the template for that visit and it was completed later. This patient's chart indicated obesity was excluded but the patient had a recent BMI of 42.2, which is consistent with morbid class 3 obesity. This patient was seen five times in January, four times in February and nine visits booked for the ensuing month, with no explanation for all of the visits.

Patient visits 11 and 12 (appear to be the same patient)

This patient had a BMI of over 30 but obesity was excluded. This patient had an anti-transglutaminase ordered which was positive. There was no indication as to what the reason for the test was and no documentation of any discussion about the positive test or documented plan to follow-up on it. Dr. Godel characterized this chart as very poor.

Patient 13

This was an annual pain review visit. No clinical details surrounding pain or associated diagnoses are in the chart. This patient was seen on a day where 96 patients were seen with 4 no shows (Dec 12, 2015). Dr. Godel noted it was very difficult to reconcile different parts of a patient chart to match and correlate. Dr. Godel noted he could not understand how such a complex patient visit could be booked in to a clinic day where there were 96 patients booked to be seen.

Patient 14

This is a 57-year-old man with depression, smoking history and chronic low back pain. There is intermittent use of smoking cessation template in the chart. There is no indication of any prescription for Champix despite repeated notes indicating that it would be prescribed. The chart indicated the patient was being treated for hypertension, but the patient profile showed hypertension was excluded. The patient is a diabetic but Dr. Godel could not find any bloodwork done in the previous two and a half years. There was no evidence of colon cancer screening done in this 57 year-old male. The most recent lipid test was done in 2013.

Patient 15

This is an 18-year-old man with low back pain. A “Low back pain” template was inserted into the EMR but not filled in and had no specific clinical detail supplied. The URI template was incorporated for seven consecutive clinic visits. There is a note on chart that the patient’s father was dying of cancer, but in another part of the chart, there is a note that there is no family history of cancer. The low back pain template was used multiple times throughout the chart with the only thing changing template to template is the recorded blood pressure and pulse. Dr. Godel commented that this was a very poor chart with no connection between the billing diagnosis and the visit note.

Patient 16

This is a 6-year-old girl with anxiety. The diagnosis of anxiety is recorded, but there are no further notes about the anxiety or source of anxiety or stress. The clinic visit was billed as ‘acute reaction to stress’. The documented management plan was the ‘push fluids, limit salt’. Dr. Godel commented in his report that he could find no useful information in any of the four visits Dr. Odugbemi had with this patient in the last two years.

Patient 17

This is a 4-year-old girl with a diagnosis of laryngitis and tracheitis. The initial patient complaint was ‘rash between fingers’. The usual URI template was inserted with no comment about the rash or lesion. Again, the chart details were confusing, and details did not match between different parts of the chart.

Patient 18

This is a 28-year-old patient in for a general medical examination. The physical exam template was used in addition to a URI template. A barium swallow was ordered with no details as to the clinical reasoning behind this investigation for this patient. On one visit the previous February, a large

number of tests were ordered including HIV, hepatitis, ferritin, rheumatoid factor, TSH, renal profile and echocardiogram, but no explanation for any of these tests. Dr. Odugbemi billed phone calls to the pharmacist, but the patient is on no medications.

Patient 19

There are repeated notes in the chart indicating the patient has never smoked but then the smoking cessation template is inserted immediately after. The patient presented for arthritis but was advised to push fluids, limit salt, avoid smoking and illicit drugs. The previous 12 visits in the file all started with the same URI template and two of them had that as the diagnosis out of the 12 using that template.

Patient 20

This is a 32-year-old man with depression. URI, depression and quit smoking templates are used throughout the chart. No clinical details about patient's mood or treatment for his depression are supplied. The March 3 and March 4 clinic notes are identical but billed as 2 visits.

Patient 21

This is a 36-year-old man with depression since a diagnosis of being HIV positive. HIV is not listed on patient problem list. Most of the visits have URI and stop smoking with low back pain, and depression templates. Patient has chronic pain and is on oxy-neo. No opioid agreement is found on chart. There is a positive urine test for cocaine and benzodiazepines, but no documentation of any discussion with the patient about these issues. There are 6 clinic visits in March alone with 7 booked with no explanation for why there are so many planned clinical visits for this patient and who requested them.

Patient 22

This is a 59-year-old man with depression. A pediatric complete physical examination with testicular exam template is inserted. A 'Positive fecal occult blood test' is commented on but no such test result exists on the file. The patient is on opioids and testosterone but no appropriate monitoring blood levels are on file since 2014. The most recent results were below normal, but it seemed to never be followed up on. A cardiac echocardiogram is ordered, but no clinical reason documented as to why. A bone scan was ordered with no accompanying bone density. The patient is known to have osteoporosis but is not on any vitamin D or bisphosphonates.

Overall Dr. Godel testified that he found Dr. Odugbemi's charts to be the most bewildering he has ever seen. Details in one part of a chart did not correlate with other parts of the chart for the same patient. Templates seemed to be inserted into the chart before the actual patient visit. He observed frequent contradictions between the physical examination findings, clinical history from each visit versus the circumstances of the cumulative patient profile. Dr. Godel noted the cumulative patient profile often was not up to date and if it was up to date, it was inaccurate and did not match other clinical details within the same chart.

Dr. Godel noted the high volume of patients Dr. Odugbemi has in his practice. He stated sometimes using templates is acceptable for safety and chart accuracy, but he felt the use of templates he observed in Dr. Odugbemi's charts was dangerous for patients as there is contradictory

information about individual patients within several charts and that details documented in several charts do not actually reflect reality. Dr. Godel stated he felt the charting in many instances in Dr. Odugbemi's charts did not seem to reflect what likely occurred during patient visits.

It was noted that patient 13 was seen on a day where 96 patients were seen and Patient 17 was seen on a day where 72 patients were seen. Dr. Godel indicated he had access via the EMR to clinic day sheets to confirm these clinic numbers. Dr. Godel acknowledged that there was other evidence that Dr. Odugbemi saw 46 patients on the date of Patient 17's visit but he suggested Dr. Odugbemi may not have billed Alberta Health for all 72 clinic visits that day.

Exhibit 28 was an April 8, 2016 letter from Dr. Monica Wickland-Weller to Dr. Odugbemi providing a copy of Dr. Godel's report and requesting he address the use of templates in his EMR and the consistent lack of correlation within individual patient charts. Dr. Wickland-Weller is the Senior Medical Advisor for Continuing Competence for the College and was managing Dr. Odugbemi's file at the College.

Exhibit 29 was Dr. Odugbemi's response to Dr. Wickland-Weller's letter. Exhibit 30 was Dr. Godel's response to Dr. Odugbemi's comments in Exhibit 29. Dr. Godel testified that in most cases Dr. Odugbemi did not adequately explain the charting discrepancies that were found. He felt many of Dr. Odugbemi's responses did not make sense. Dr. Odugbemi in at least 5 instances blamed his transcriptionist for incorporating the incorrect templates into the EMR. Dr. Odugbemi seemed to give out a lot of handouts to his patients but there is no evidence he spends time to explain the handouts to them. It appeared that the handouts were given to patients by a secretary as part of a template on their way in or out of clinic.

Exhibit 31 was Dr. Odugbemi's opioid prescribing snapshot for the 1st quarter of 2016. Dr. Godel had access to this document and had concerns when he saw this with respect to Dr. Odugbemi's benzodiazepine prescribing. Dr. Godel commented that the pattern to be inferred from this snapshot is a large number of patients getting prescribed frequent small amounts of benzodiazepines. Dr. Godel said it was obvious that Dr. Odugbemi was prescribing benzodiazepines to other physician's patients. More than 10% of his patients receiving benzodiazepines received these prescriptions from two or more doctors. Dr. Godel indicated that the snapshot did not raise concerns about opioid prescribing, but once one starts looking into individual patient cases, one starts to get more information.

Dr. Godel emphasized that in his years as a physician and peer reviewer for the College he has never seen charts like he saw from Dr. Odugbemi's practice. He characterized them as chaos, random and full of contradictions.

There was some evidence in the charts of referrals made to specialists, but these contained inadequate communication. One referral stated simply 'see lab results'. Another referral did not specify any reason for the actual referral. If there were any details in the referral letters they usually were very scanty. He felt Dr. Odugbemi used his EMR to cover for his clinical shortcomings. There was no evidence any of the referral letters were edited or reviewed by Dr. Odugbemi.

With respect to appropriate testing and ongoing longitudinal care, Dr. Godel noted this was done only sporadically and without any consistent process. Lab screening in follow-up care was sporadic and many times the actual testing done did not seem clinically justified. No details of any discussion with the patient or clinical rationale for testing were provided on the chart. Testing inadequacies were common throughout charts despite the ability to use the EMR to provide automated reminders.

Dr. Kenneth Jack Gardener

Dr. Gardener graduated from University of Alberta Medical school and subsequently completed a family medicine residency in 1978. He entered practice as family physician in west Edmonton with privileges at Misericordia Hospital. In his second year of practice, he started taking on Faculty of Medicine residents on as a clinical preceptor. He was appointed Clinical Lecturer and then Clinical Professor with the Faculty of Medicine. In 1985 he accepted a 0.5 FTE position as Chief of General Practice at Misericordia Hospital which evolved into becoming Chief of Family Medicine for Caritas Health, currently Covenant Health. He then became regional program Clinical Director for Family Health in the Capital Health Region. He then became Medical Director of Community Care for the Leduc Hospital and Glenrose Hospital within the Capital Health Region. He left clinical practice in 1999 to focus full time on his medical administrative positions.

In 2002 he was appointed Vice President of Medical Affairs within Capital Health, a position he held until Capital Health ceased to exist. He left Alberta Health Services at the end of December 2008 and joined the College in 2009 as Assistant Registrar. He has taken Physician Management Institute leadership courses and completed a Diploma program at Harvard University in Public Health and Medical Leadership. He has also attended Coalition for Physician Enhancement conferences.

Dr. Gardener confirmed he has dealt with Dr. Odugbemi before. He received a February 7, 2014 letter from Dr. Ulan regarding her dealings with Dr. Odugbemi. In this letter Dr. Ulan referenced that she has received several complaints from the First Nations Inuit Health Branch and two pharmacists regarding Dr. Odugbemi's prescribing practices for opiates and benzodiazepines.

Dr. Ulan had met with Dr. Odugbemi and reviewed patient cases with him. From this she identified concerns that the care Dr. Odugbemi was providing was not reflected within the medical record and that there were discrepancies within the medical record that could not be reconciled. She was concerned about the high volume of patients he was seeing. She had a discussion with Dr. Odugbemi and he agreed to a peer review and therefore she referred the file to Dr. Gardener for a peer review.

Dr. Lamoureux performed an October 2013 peer review of Dr. Odugbemi. Dr. Lamoureux's Peer Review report was entered as Exhibit 38.

With regards to Dr. Lamoureux's peer review, Dr. Gardener explained the process of peer review involves finding a physician to do the review and making sure there are no conflicts of interest between the reviewer and physician being reviewed. This process was followed for Dr. Odugbemi's review. The process of the peer review is to inspect the premises, interview the physician and for the peer reviewer to randomly select and review about 20 patient files. Dr. Lamoureux had Dr. Odugbemi stay with him for the chart review.

Dr. Lamoureux found positives and negatives in his Peer Review. The physical site and premises were fine with adequate patient rooms, handwashing stations, sharps and instrument handling procedures. He felt Dr. Odugbemi's medical knowledge was adequate. He found problems in that there were discrepancies in the medical records between what was documented and what Dr. Odugbemi said happened. There was no documented evidence to support Dr. Odugbemi in what he said he did at a given clinical visit.

The biggest problem Dr. Lamoureux noted was getting useful information out of the medical records. In 2012 the EMR Dr. Odugbemi used changed from Wolf medical system to Med Access. There were a lot of patient files and much information was not findable in the files. There was no obvious evidence of over-prescribing of narcotics or benzodiazepines but Dr. Gardener felt that a peer review depends on the accuracy of the medical records kept, and Dr. Lamoureux had concerns about the accuracy of the medication records and poor physical exams.

Dr. Lamoureux expressed concern with the use of templates in patient files. For example, he observed two different patients with back pain, one of which had chronic back pain. The charts for both patients appeared identical. Dr. Odugbemi admitted this was because of use of a template, but he blamed his resident for inputting incorrect information into the record.

Dr. Lamoureux felt he was unable to pull useful information out of patients' medical records. He characterized Dr. Odugbemi's physical exams as 'spotty' and noted there was poor documentation of details of clinic visits. Dr. Lamoureux felt that the medical record needed to be fixed immediately.

Dr. Gardener could not remember if he had a face to face meeting with Dr. Odugbemi about this Peer Review, but the entire review was sent to Dr. Odugbemi and a response to the concerns raised was requested of him. He did receive a response from Dr. Odugbemi. He was satisfied that Dr. Odugbemi was aware of the entire contents of the Peer Review report.

Dr. Gardener sent a May 15, 2014 letter to Dr. Odugbemi outlining the process for a practice audit as follow-up to the 2013 peer review performed by Dr. Lamoureux. This letter was entered as Exhibit 37. The Practice Audit was to be conducted by two registered nurses, Sharon Laden and Leanne McKenzie employed by Alberta Health Services and previously Capital Health as quality auditors. They both are experienced at auditing patient files looking for specific information. Exhibit 33 was the June 2014 Practice Audit they did on Dr. Odugbemi's practice. The main focus of the audit by the RN's was completeness of the charts and fulsomeness of the medical record and looking for processes in place to follow up on abnormal results.

The process of the audit was explained to Dr. Odugbemi. The auditors would assess a random selection of charts. They would also assess 70 individual files pulled by Dr. Odugbemi and his staff, 30 of which would be females aged 30-75 years, 20 would be males aged 55-70 years, and 20 would be diabetic patients of either gender. All files would be patients seen in the previous year. Files were assessed for compliance with established screening guidelines for colon cancer, breast cancer and cervical cancer, and diabetes management. These criteria were explained to Dr. Odugbemi.

Dr. Gardener received the Practice Audit report and reviewed it. Findings of the report were consistent with findings of Dr. Lamoureux's Peer Review and Dr. Ulan's previously expressed concerns about Dr. Odugbemi's practice. The auditors said they were unable to find documented evidence in the charts to reflect that a minimum acceptable standard of care exists. Despite Dr. Odugbemi's response to Dr. Lamoureux's review, many similar issues were still present.

The Auditors found that the minimum criteria for clinical care tasks they were assessing for were not done adequately. Breast cancer screening was done in only about 60% of the cases in which it was warranted. Cervical cancer screening was below 50%. There was lack of evidence of appropriate follow-up being done in diabetic patients such as eye exams, neurologic assessment and renal testing. The auditors had much difficulty finding and extracting information from the charts. They noted Dr. Odugbemi could not find the required information from the charts when asked to

find it. The auditors found inconsistencies in templates inserted throughout individual charts (for example a diabetic was noted to have normal sensation in a limb that was being assessed for amputation).

Dr. Gardener's impression from the Audit was that concerns raised by Dr. Ulan and Dr. Lamoureux were still present in June 2014 despite Dr. Odugbemi claiming he had remedied the issues raised. Dr. Gardener proceeded to forward Dr. Odugbemi's file to Dr. Heisler.

Dr. Odugbemi was provided with a copy of the Practice Audit Report and he responded to the concerns raised in the Practice Audit (Exhibit 34) on July 18, 2014. Dr. Odugbemi's response implied that the Auditors were incorrect in their assessment of his practice. There was a large disconnect between what Dr. Odugbemi claimed to be his level of clinical care and competency versus what the auditors found from his charts. Dr. Odugbemi implied the nurse auditors were perhaps not familiar with Med Access, but Dr. Gardener felt Med Access was quite easy to use. Dr. Odugbemi claimed he was 100% compliant in referral of diabetics for eye exams and follow up of urine protein testing, but there was no evidence from his charts to support this claim. Dr. Gardener felt that Dr. Odugbemi was basically implying that the Audit was inaccurate.

On August 8, 2014 Dr. Odugbemi was notified by letter indicating the College was not satisfied with his response to the practice audit concerns (Exhibit 35). Dr. Gardener indicated to Dr. Odugbemi that the evidence gleaned from the Audit did not support Dr. Odugbemi's claims to adherence to established practice guidelines. The College was not accepting of Dr. Odugbemi's explanation and the letter indicated that his file would be transferred to Dr. Heisler who was the Assistant Registrar in charge of Professional Conduct. The Peer Review file was closed when it was transferred to Dr. Heisler.

Neither Dr. Odugbemi nor any legal counsel representing him were present for any of the testimony given by the College's four witnesses and therefore there was no cross-examination of these witnesses. Mr. Boyer then closed the Complaints Director's case.

After a lunch break, Dr. Odugbemi arrived at the Hearing at 1306pm. He was without legal counsel. It was explained to Dr. Odugbemi that the Hearing started at 0900 hours because the parties were advised following the January 2018 appearance that the hearing would proceed on June 25, 2018 even if Dr. Odugbemi failed to appear.

When asked by the Tribunal Chair, Dr. Odugbemi confirmed he was not requesting another adjournment. Dr. Odugbemi stated he had a letter from the College dated January 25, 2018 but was delivered via courier February 2, 2018, the deadline by which he was to have obtained legal counsel. Dr. Odugbemi indicated he understands that by proceeding with the Hearing he was forgoing his chance to review the testimony from the four witnesses Mr. Boyer called to testify. Therefore, the next step in the proceeding was either for Dr. Odugbemi to call evidence himself or for Mr. Boyer to make submissions on evidence presented by the witnesses.

Dr. Odugbemi indicated he 'may' choose to call one or more witnesses, pending his review of the Exhibit book. He was given the choice of testifying or calling witness(es) immediately or doing so first thing the following morning after he has had some time to review the Exhibits.

Dr. Odugbemi then confirmed his intention to testify himself. He confirmed he would not be calling any witnesses. He confirmed he intended to testify and present his submission without waiting until the following morning. He indicated he had documents he wanted to enter as evidence.

The Tribunal notes that prior to Dr. Odugbemi commencing his testimony he was given copies of the Exhibits to review and he was instructed he could take time to review the materials before testifying. He requested no time to review the materials provided before commencing his testimony. He also indicated he had evidence “packages” and materials he wanted to distribute to the Tribunal and enter as evidence, but he did not distribute these materials before commencing his testimony.

Dr. David Odugbemi

Dr. Odugbemi apologized for being late for the Hearing. He said he is not in the business of being late. He is a Canadian citizen and came to Canada in 2001. He started his medical education in 1983. He is married and has eight children, biologic and adopted. Four are adults and he has four grandchildren. He is a Pentecostal Christian and is an ordained pastor of the Redeemed Christian Church of God since 1996. He describes himself as quiet, shy, humble and soft-spoken. He swims, walks, reads the Bible, listens to music and plays tennis. He is an accomplished writer and has published eight books and many medical articles. He highlighted a memorable article he wrote about emergency contraception in teenagers which was adopted by the University as best research of the year and adopted by the World Health Organization. Today, pregnant teenagers who have sex without contraception can just ‘go and get it’ and he claimed this is the work he did for his master’s thesis.

He supports many charities including Canadian Bible Society, Ducks Unlimited, UNICEF Children Fund, food banks, homeless charities and many more.

He claimed at an early age he was identified as a ‘gifted child’ by missionaries of the apostolic faith missions in Portland, Oregon. He became a physician at the age of 24 with distinctions in Internal Medicine, community medicine, psychiatry, obstetrics and gynecology, pediatrics and general surgery. During his general internship he was awarded ‘best intern’ in the state for competency, skills, good behaviour and the fact he put together multiple emergency cesarian section kits for poor people to use. He was voted ‘best youth corper’ in the federal capital territory in the whole country. He received the presidential prize with a scholarship to study abroad which is how he came to Canada.

He has membership in the “Royal College of General Practitioner”, certification in the College of Family Medicine in South Africa, Fellowship in Family Medicine in South Africa, and certification in Family Medicine in Canada. He alluded to co-authoring a book about counselling and pre-counselling for patients being screened for HIV and AIDS and for those who test positive and negative. He was appointed the HIV and AIDS director for the Mpumalanga Province of South Africa, head of family medicine at Tempa Hospital and chief of emergency medicine and director of the residency program and preceptor for over thirty residents. He stated his hospital in South Africa is the third largest in the world. His preceptor, Professor Ron Henbest, who was the former head of family medicine at the University of Alberta suggested he immigrate to Canada.

Dr. Odugbemi said he was the chairman of the AIDS Committee that convinced the South African president to allow use of a drug used in ‘the mother-child transmission protocol’. For this, he was given an honorary doctorate with the president on the certificate. He has helped with missions in Lesotho Kingdom Adventist Hospital and in gold and platinum mines. He has licences with the medical and dental council of Lesotho, South Africa, Nigeria, Saskatchewan and Alberta.

Dr. Odugbemi then stated he has had no complaints against him in the past 20 years in any of these jurisdictions. In Saskatchewan he had dealings with Dr. Michael Howard-Tripp who had also

worked for the College in Alberta and then subsequently for the Saskatchewan College of Physicians. Dr. Howard-Tripp was site chief in Maidstone Saskatchewan when Dr. Odugbemi worked there. Dr. Odugbemi stated in a conversation he had with Dr. Howard-Tripp, Dr. Howard-Tripp threatened to post Dr. Odugbemi to Little Pine and Poundmaker, which are small first nations reserves. When he did end up working there, Dr. Odugbemi said he started a health club, diabetic walk teams, exercise program for men and women, seniors and youth. With the late filmmaker, Chief Gordon Tootoosis, they built a new health centre. Dr. Odugbemi stated the then Saskatchewan premier, Lorne Calvert drove to this health centre and personally thanked Dr. Odugbemi.

Dr. Odugbemi described an episode at work one day in Maidstone Saskatchewan when a community nurse named Louise Hume entered his office and slapped him so hard he fell off his chair. She said to him 'you are a Christian, turn your bad cheek'. Then Dr. Howard-Tripp came in and said, 'turn your bad cheek'. He said the situation 'escalated' and it took the intervention of Dr. Jim Cross who appointed Dr. Odugbemi vice president of medicine for Prairie Health North to thank him for being 'forgiven'. He was then appointed Director for Emergency medical services for the Prairie Health Region and started a journal club with peer-to-peer learning which he states is his passion.

Dr. Odugbemi stated it was a very political situation in Saskatchewan and he had to move his practice to Stony Plain, Alberta. He said Dr. Howard-Tripp told him 'you finally got it'. He described one day in 2011 he got a phone call from Dr. Howard-Tripp who at the time was the Assistant Complaints Director with the College. He said Dr. Howard-Tripp asked him if he remembered his boast that Dr. Odugbemi would end up driving a truck. He states after this conversation is when the 'rain of letters' from the College started.

Dr. Odugbemi indicated he is focussed on 'peer to peer learning' and 'took it as a learning opportunity'. He said he 'believes in the work, which is difficult' and has worked with two College Registrars so far. He states he believes in self-regulation and that most of our officials here are sincere and focussed on 'what we do'. He said he would not 'allow the boasting of Dr. Howard-Tripp affect his actions'.

Dr. Odugbemi said he came to Canada to help. He is apolitical but very religious. He bears no grudge with anyone and that if he offended anyone through his actions or inactions he apologizes.

Dr. Odugbemi said in Stony Plain, he became part of the group of people who designed the Primary Care Network and was one of the people who worked with Alberta Health Services to ultimately produce the Primary Care Networks protocol. He said he is still part of the mood research program dealing with depression, anxiety and mood disorders in family medicine based psychopathies. He is part of the Canadian Pain Society.

Dr. Odugbemi says he still helps anyone who asks for help. He was site chief for Westview Centre Acute Care Services for 6 years. He has been involved with post-graduate education for the Alberta International Medical Graduate Program. He is a clinical lecturer at the University of Alberta. He is an examiner for certification in family medicine in Canada, something he has done for a number of years.

He works in acute care services, emergency rooms, operating rooms and seniors' health care. When he left Lloydminster, he was given a certificate of recommendation. When he finished in Stony Plain he was given a letter of commendation. Prairie North Health Region gave him a letter of recommendation. Alberta Health Services gave him a letter of commendation.

Dr. Odugbemi said people who know him personally would describe him as manageable, biddable, controllable, obedient, tractable, acquiescent, amenable, compliant, conformable, docile, orderly, submissive. He is known to be good at what he does, good with governance and bodies, is a team and community player. He says many peers tell him he is too yielding, very accepting, accommodating, agreeable, amiable, well-behaved, co-operative, courteous, devoted, disciplined, flexible, gentle, kind, lamb-like, long-suffering, lowly, devoted, mannerly and meek.

Dr. Odugbemi said operating room staff tell him he is obliging and non-resistant, persuadable and pliable, polite, pliant, always proper, respectful to staff and receptive to ideas, deeply responsive to all the surgical team. In the emergency room he is called efficient, temperate, tolerant, ruly. He is known to take much time to explain things to patients and staff and make everyone feel comfortable. He is described as a very well-bred gentleman and not a complainer, very trainable, a truly very tolerant MD. He indicated the responsibility for being late today is the fault of others.

Dr. Odugbemi described being in a motor vehicle collision in 1996 where he suffered bilateral suprapatellar fractures, shattering both his knees. He at the time declined opioids and used Paragin and NSAIDS. This was the first time he experienced NSAID-induced gastropathy. Even today if he uses Advil his gastropathy recurs and he has to go see Dr. Ferguson again. After one of the surgeries for his fractures, he was placed on IV morphine and for the first time experienced opioid induced constipation. Since then he vowed to not go near opioids again. He still has pain but he keeps active and gets generous rest every night.

Dr. Odugbemi then discussed his dealings with the College.

He signed the TORA with the College after dealing with Dr. Heisler. He stated Dr. Heisler advised him to sign it to avoid a Hearing. The mandated referral to the Gabbard Centre was to satisfy a 'constituency'. Dr. Odugbemi asked Dr. Heisler which constituency but stated Dr. Heisler did not say. Dr. Odugbemi said he attempted to arrange this by calling the Gabbard Centre himself. He claimed he was told on the phone that the Gabbard Centre only treated mentally ill physicians and there seemed to be no problem with Dr. Odugbemi's case. He said he told Dr. Ulan he was willing to attend an assessment at the Gabbard Centre. He then said he called the Gabbard Centre many times to arrange a time for his assessment, but his calls were never returned. He stated he has followed all instructions given to him but feels the College gave the Gabbard Centre some instructions because previously when he called Dr. Gabbard, his message was immediately returned. He said he has met Dr. Gabbard.

His passport had been confiscated in London England because of a false report that someone reported his passport stolen. He said Dr. Ulan had indicated it was because of child support issues. Dr. Odugbemi said every time he met Dr. Ulan she spoke of his billings. He claimed his child support payments are taken straight from his billings and that Dr. Ulan should be aware of that. He said his passport was renewed for 10 years. He booked a meeting with Dr. Ulan to show her his new passport. She sent him a package that he was to take to Houston with him but he discovered it was full of malicious and unsigned letters claiming he falls asleep at work, and other malicious claims.

Regarding the unpaid fee to the College, Dr. Odugbemi implied he spends most of his money on his staff and office overhead. He testified for every \$9000 he earns, he only gets \$600 of it to pay his staff and office overhead. He said this was the reason why it took the time it did for him to pay the fee to the College.

In regard to the weight loss education requirement, Dr. Odugbemi said he never saw a complaint letter regarding his practice pattern with respect to weight loss methods and counselling. Dr. Odugbemi said he is part of the Choosing Wise Program and the obesity program at the University of Alberta. He said he decided to start referring patients to the Primary Care Network and Alberta Health Services as he just tried to comply with the College restriction.

Dr. Odugbemi indicated his transcriptionist was the reason for discrepancies found in his patient charts at Dr. Godel's chart review. Dr. Odugbemi claimed he created a paper chart for each patient to cross-reference with the electronic chart. Dr. Odugbemi stated the unfortunate thing about Dr. Godel's review was it was done before Dr. Odugbemi could evaluate his charts. Dr. Odugbemi said he met with Dr. Mazurek for five minutes where he explained he has no opportunity to read some of the notes which he found to be silly and childish and do not make sense to him. However, he planned to go back and validate his charts with the paper versions. He said he has implemented the CMPA guidelines published about using secretaries and transcriptionists.

Dr. Odugbemi stated Dr. Godel's chart review focussed mostly on psychiatric patients. He claimed he has a comprehensive psychiatric review protocol that is handwritten. He said he has referred many patients to a psychiatrist and has received much praise about his psychiatric care. He explained part of his competence in psychiatry is from the training he got in this area in Edinburgh. He claimed most doctors are not as comprehensive in their review of psychiatric patients as he is.

Dr. Odugbemi said Dr. Godel's comment about pain contracts not being present in charts of patients on opioids was not correct because his patients' pain contracts are enclosed in the EMR and Dr. Godel simply did not see it. He said he pointed this out to Dr. Mazurek. He said all of the necessary documentation about his patients is in the EMR and he is not sure why Dr. Godel did not see the documents. He said that some of the missing records in his charts Dr. Godel had identified were actually present such as Champix prescriptions for people trying to quit smoking. Dr. Odugbemi indicated these records were all present when he validated his chart with his written records.

Dr. Odugbemi thanked Dr. Ulan for the course she offered him at the University of Calgary which had an emphasis on self-referral. He indicated he was not instructed by her to attend any pain program, but instead he chose to go on his own.

He says he carefully reviews all the quarterly reports he gets about his prescribing. He says in 2017 he gave out only 5 prescriptions for benzodiazepines and none so far in 2018. Dr. Odugbemi stated his top five drugs he prescribes are 1) NSAIDS, 2) proton pump inhibitors, 3) supplements like calcium and vitamin D, 4) anti-hypertensives, 5) anti-diabetics.

Dr. Odugbemi said he agrees opioids are a problem and said he follows all published materials about opioid prescribing to the letter. However, he said prescriptions are often forged and filled multiple times and sent across provincial lines.

Dr. Odugbemi says the methods used by the College to produce the prescribing reports are data-based and quantitative in nature which he feels have a lot of faults. He stated what is needed is multi-faceted well-designed qualitative research which is better because it is context-based.

He stated to quantify prescription numbers is biased because it depends on what a physician manages mostly in their practice and the population a physician serves. He indicated a huge wealth of knowledge is discovered by looking at the context rather than the content.

Dr. Odugbemi said he gets threatened a lot. He indicated he has had someone show him he is a Hells Angel. He described an incident where a patient put a sword against his neck in clinic. He said this was because the patient wanted a prescription for a benzodiazepine. He referenced a RCMP case file 170845325P1 for this incident. He said this individual pled guilty in court and was sentenced to 3 years in prison. He said he recently spent a day at a medical conference—the Academy of Family Medicine Conference in Banff where they discussed pain management and wondered what will happen when these patients get out of jail and rhetorically asked if he should walk around with police escorts.

Dr. Odugbemi said the public needs education and that this issue needs to be looked at as a profession instead of ‘picking on individuals’. He claims he and all physicians who deal with addicts are in danger of being killed because addicts will do anything when they are under pressure including killing physicians.

Dr. Odugbemi says he deals a lot with First Nations patients in his practice who have problems of poverty, ignorance, disease, multiple injuries, dishonesty, interpersonal and intergenerational violence. He claimed he designed a protocol to roll out qualitative research to break the cycle of issues affecting First Nations patients. He claimed he has research data that shows his prescriptions for short and long-acting opioids, asthma medication, diabetic medication, and anti-hypertensives gets sold using social media such as Facebook, communities, bingo halls and on sport fields. He says he has several reports from pharmacies proving forged prescriptions.

Dr. Odugbemi said he co-operated with Dr. Gardener’s practice audit, but he questioned what the goal was of having nurses review a physician. He claims he has been ‘dragged to the floor’. He said he does not think the Alberta Law Society would send paralegal aides to review an attorney. He indicated all of his charts were ‘properly done’. Dr. Odugbemi claimed the week before he got a letter from the College indicating there are no problems in his obstetrical charting. This letter was not produced for the Tribunal to see. He had received a request from a nurse from the College to provide them with obstetrics patients’ records which he co-operated with.

The final issue Dr. Odugbemi raised was he feels his office manager is the source of a malicious intent in that they faked his billings to reflect he was seeing more than 50 patients per day. He said this particular office manager was seeking more pay and was upset because she did not get a raise. He said this manager found out on the College website of the practice condition limit of 50 patients maximum per day and figured out a way to hurt Dr. Odugbemi to get revenge for not getting a raise she wanted. He said when he discovered this he switched to a billing company.

Dr. Odugbemi claimed he is not ‘ungovernable’. He claimed at a meeting with Dr. Mazurek she told him to ‘go treat his people’ and replied he is Canadian and is treating his people. Dr. Odugbemi said Dr. Mazurek threatened him with jail and was going to ‘take him down’. He said he was told that Alberta Health Services will criminalize their concern and throw him in jail. He said the comment ‘go treat your people’ is not one to make to a person of color. He said he was told he works too long. He indicated that physicians are hard-working and he himself works hard and that he believes “all labs should be done today, all referrals are to be done today”.

Dr. Odugbemi personally promised to uphold the laws of Canada, Alberta, Alberta Health, the College's Code of Ethics, and to adhere strictly to his scope of practice and protocols advanced by the Canadian Medical Association, College of Family Physicians of Canada and all advisory bodies.

It was pointed out to Dr. Odugbemi that if he wants the Tribunal to see and rely on a document he has to distribute a copy of it to Mr. Boyer and to each Tribunal member and ask for it to be marked as an Exhibit. Mr. Boyer would have a right to review it and to object to it being marked as an exhibit, in which case the Tribunal would determine its admissibility.

The Hearing then adjourned for the day to make enough copies of Dr. Odugbemi's materials prior to Mr. Boyer's cross-examination of Dr. Odugbemi.

June 26, 2018

Dr. Odugbemi appeared at 9:18am and distributed his materials. Dr. Odugbemi had been asked on the previous day whether he had any further witnesses to call and he indicated he did not. Mr. Boyer indicated that he had had a chance to review Dr. Odugbemi's materials and that they could all be entered as Exhibits.

Dr. Odugbemi's materials consists of six bundles of documents which were marked as Exhibits 39 to 44.

The Tribunal noted that some of Dr. Odugbemi's materials include specific charts with patient names and other individually identifying information. Under section 78(1)(i) of HPA, the Tribunal may close part of a hearing to protect a patient's confidential health information if it is felt that not disclosing a person's confidential personal or health information would outweigh the desirability of having the hearing open to the public. Mr. Boyer had no objection to this, but indicated he may refer to specific patient names, but not their health information. Dr. Odugbemi said he included this information in his templates to demonstrate he does not use pre-populated templates in his charts. Dr. Odugbemi indicated clinical details were included in his materials to demonstrate his comprehensive care, appropriate testing, complete charting with nothing pre-populated and that he provides appropriate care for patients with chronic illness.

The Tribunal was satisfied that in this case protecting the health information and privacy of individuals whose personal health information was included in Dr. Odugbemi's materials outweighed the desirability of an open hearing. The Tribunal determined that it would close only part of the hearing, specifically Dr. Odugbemi's presentation of his exhibits and his cross-examination, during which he would be expected to answer questions about the care he provided to the patients whose records he provided.

Dr. Odugbemi was then invited to present his Exhibits before Mr. Boyer's cross-examination. He was reminded that he was still under oath.

Exhibit 40 was a list of 40 articles that Dr. Odugbemi reviewed that helped him gain insight into Indigenous culture. Citation 8 was titled "Indigenous Ways of Knowing and Being". Citation 10 was "Social Conditions of Indigenous People and Indigenous Community and Indigenous Participatory Community Development, Community Empowerment and Preserving Indigenous Culture. Citation 27 was "8 Issues for Aboriginal People of Canada".

Enclosure 1 (Exhibit 41)

Dr. Odugbemi entered this package of documents consisting of blank patient information sheets and visit templates, an article by Dr. Ron Henbest and a notice to Dr. Odugbemi from the University of Alberta's Faculty of Kinesiology, Sport and Recreation concerning his tennis membership fees. Dr. Odugbemi explained he included this to show he has work-life balance.

Enclosure 2 (Exhibit 42)

Dr. Odugbemi said in June 2017 he got a letter from MD Snapshot alerting him about certain patients. He said he followed up on these cases and replied to MD Snapshot. Dr. Odugbemi's prescribing record compiled by the College includes patient names and number of prescriptions given for opioids. He claims every patient has a documented paper trail of their care and that he told patients on the list that he may refuse at any time to provide them future prescriptions.

The materials entered by Dr. Odugbemi include patient records of one specific patient.

Dr. Odugbemi claims the templates he used in his patient charts were not pre-populated. He indicated one still has to input data into the template once it is inserted into a patient's record.

Dr. Odugbemi reviewed a diagram demonstrating the concept of pain management included in his materials. He claimed this proves he understands what he is doing when managing pain. He presented the consent form patients sign and the protocols he uses for patients on opioids.

Enclosure 3 (Exhibit 43)

Dr. Odugbemi entered this package of documents as Exhibit 43. He explained this was designed to understand patients. Dr. Odugbemi emphasized 'context matters'. He presented a World Health Organization diagram of the cycle of endemicity, poor housing, malnourishment, leading to infection and re-infection, leading to loss of healthy life, leading to chronic morbidity, leading to cognitive and growth retardation, leading to loss of educational opportunities, unrealized potential and back to social stigma. Dr. Odugbemi felt that this describes most of what Health Canada has identified in our indigenous populations.

Dr. Odugbemi presented the triad of poverty leading to ignorance, ignorance leading to disease and disease leading to death. Dr. Odugbemi stated as a physician it is too time-consuming to deal with all of the socio-economic factors listed in his diagram of poverty. Exhibit 43 also included a victim impact statement from an incident when a patient put a sword to Dr. Odugbemi's neck. The patient is in jail now. Dr. Odugbemi questions what will happen when the patient gets out of jail. Dr. Odugbemi ended by claiming 'we need to do more'.

Enclosure 4 (Exhibit 44)

Dr. Odugbemi entered this package of documents as Exhibit 44. Dr. Odugbemi explained this enclosure addresses the pharmacists' complaints about his prescribing practices.

There is a January 8, 2018 reply letter regarding a consult to rheumatology indicating it was 'not an appropriate referral'. Dr. Odugbemi claimed it is very difficult managing pain patients. They self-injure to get opioids (eg. Fracturing mandible with steel-toed boots).

September 5, 2017 ER records from a ‘very interesting case’ are included, showing the medical profession is “jittery” in Dr. Odugbemi’s words. Dr. Odugbemi explained ‘Abdominal pain, drug abuse’ listed as diagnosis in this case, but patient actually had appendicitis.

Dr. Odugbemi said the most complex issue is ‘mental issues’. He claimed he has lots of no shows in this patient population. He says these patients do not trust the system. He included x-ray records to demonstrate he is looking for valid reasons to prescribe opioids. He said one patient made multiple copies of the same prescription and tried to fill the prescriptions but the pharmacy refused.

Dr. Odugbemi said some patients fax his prescriptions to BC and Saskatchewan to get them filled there.

Dr. Odugbemi also presented some individual patient records that he said illustrated certain points.

Patient TJ

November 23, 2017 visit. Dr. Odugbemi provided the records to demonstrate comprehensive psychiatric care and review and that the chart was not pre-populated. Dr. Odugbemi’s notes indicated that on page 10/11 of this review, Dr. Odugbemi included references used for his management decisions. Dr. Odugbemi’s notes also indicated that a referral was made to a specialist for the patient on the same day of a clinic visit.

Patient JA

Dr. Odugbemi provided the records to demonstrate proper comprehensive care of a psychiatric patient.

The patient had complex regional joint syndrome or reflex sympathetic dystrophy due to non-union of a fracture secondary to patient removing the cast themselves. Dr. Odugbemi indicated this phenomenon needs better management to prevent chronic pain and subsequent regular dependence on analgesics.

Cross examination of Dr. Odugbemi

Dr. Odugbemi confirmed his previous testimony that he has eight adopted and biologic children and that he has to pay child support for them. He has re-married and hence has two families relying on him financially. Dr. Odugbemi also said that an office staff member was maliciously submitting false billings to make it look like he was seeing over 50 patients per day. Dr. Odugbemi emphasized that when he responded to Dr. Ulan’s letter, he never opposed authority and always obeyed authority.

However, Mr. Boyer pointed out Exhibit 13 which was the letter to Dr. Ulan from Dr. Odugbemi dated April 24, 2016, in which he explains the appearance that he was seeing more than 50 patients per day. Dr. Odugbemi had said that his staff had inadvertently recorded the dates he provided services to some patients incorrectly. At the hearing, Dr. Odugbemi also explained he discovered false billings after this letter was written. Dr. Odugbemi said he changed to a private billing company in October 2017 after he found out about the false billings.

Dr. Odugbemi confirmed he has different sources of income as a physician including Alberta Health insurance plan, Worker's Compensation Board ("WCB") and the Department of National Defence. He confirmed that if he bills WCB he cannot bill Alberta Health and vice versa. He feels Alberta Health pays for healthcare for Treaty Status patients.

Dr. Odugbemi said in a meeting with Dr. Mazurek, she said to him 'why are we still having this conversation' and 'how can all the departments of the College not take down a physician.' Dr. Odugbemi said he was not suggesting Dr. Mazurek had any malicious intent in her dealings with him for the College.

Dr. Odugbemi said Dr. Gabbard himself told him that he does not deal with the issues Dr. Odugbemi was referred to the Gabbard Centre for. He indicated that the Gabbard Centre told him they would contact the College to discuss his case and get back to Dr. Odugbemi. Thereafter, Dr. Odugbemi called the Gabbard Centre several times and they never called back to him. He did not produce any documentation to confirm that Dr. Gabbard or anyone else at the Gabbard Centre told him he did not need to attend an assessment at the Gabbard Centre. He said the Gabbard Centre did not pursue the referral the College made to them and indicated 'I cannot impose myself on that centre just because I signed an agreement'.

Dr. Odugbemi testified Dr. Howard-Tripp said in a conversation with him that he would make sure Dr. Odugbemi ended up driving a truck. Dr. Odugbemi indicated he interpreted this to mean that Dr. Howard-Tripp intended to get him out of the practice of medicine and that Dr. Howard-Tripp was threatening him. Dr. Odugbemi emphasized it was implicit that Dr. Howard-Tripp had malicious intent in his dealings with Dr. Odugbemi. Dr. Odugbemi said all his problems with College complaints started after Dr. Howard-Tripp threatened him, but he is unsure of what Dr. Howard-Tripp's exact role was in subsequent complaints and College dealings.

Exhibit 32 included a copy of a cheque payable to the College dated July 31, 2015. Mr. Boyer pointed out it took from February 2015 to July 2015 for Dr. Odugbemi to pay costs to the College as set out in the TORA and when he did purport to pay the College, Dr. Odugbemi's cheque was returned NSF. Dr. Odugbemi wrote a handwritten explanation on a copy of the letter he received from the College about the NSF cheque. Dr. Odugbemi explained that his father had died and he had to return to Africa. He said he did not send payment for another two months after May 25, 2015.

EXHIBIT 42 was the College's continuing competence prescribing record for opioids for Dr. Odugbemi. Dr. Odugbemi had entered this exhibit during his direct examination. During cross-examination, Dr. Odugbemi acknowledged the prescribing record was incomplete. It consisted of only 1 of the 4 total pages.

Exhibit 31 was the same document for Dr. Odugbemi from a year earlier (2016). In 2016, of Dr. Odugbemi's patients who were receiving opioids, only two of them were receiving opioids from three or more prescribers. One year later, in 2017 the list was much longer. Dr. Odugbemi argued there is a difference between prescribing opioids and triplicates, as some opioids are not in the triplicate program such as Tramadol, Tylenol 2, Tylenol 3 and Tylenol 4. There was no evidence that the classification of opioids changed between 2016 and 2017

Patient 13 of Dr. Godel's Peer Review

Mr. Boyer pointed out that this patient was seen on a day where there were 96 patients listed on the day sheet. Dr. Odugbemi claimed he did not see 96 patients that day. He explained the number 96 is inflated by saying the patient counts include things such as faxing a document about a patient. Mr. Boyer pointed out that Dr. Godel testified the day sheets reflected actual daily patient visits.

Patient 17 of Dr. Godel's Peer Review

This patient was seen on a day where there were 72 office visits listed on the day sheet. Dr. Odugbemi said this is an example of multiple complaints for one patient. Dr. Odugbemi stated most of what Dr. Godel documented in his chart review was inaccurate.

Mr. Boyer put it to Dr. Odugbemi that he was seeing in excess of 50 patients per day in clinic and that his patient visit numbers are not accurately reflected in his billings to Alberta Health because he was billing other payors. Dr. Odugbemi stated he did not renew his contract with WCB and as such he does not bill WCB any longer. He additionally said he no longer sees military patients so he does not bill the Department of National Defence.

Dr. Odugbemi indicated he instructed his staff not to book more than 40 patients per day to account for last-minute urgent add-ons. He re-iterated he is not in the business of disrespecting authority bodies. He re-iterated that before he hired a private billing service his high apparent patient visits and billing numbers were the result of a malicious staff member intent on making it seem like Dr. Odugbemi was overbilling.

Dr. Odugbemi was given an opportunity at re-direct examination.

Dr. Odugbemi stated he felt Mr. Boyer's questions in cross examination were him being re-prosecuted. He claimed Dr. Janet Wright told him to sign the TORA with the College or else be called 'ungovernable'. He said he feels he is here at the Hearing today to be re-punished for "things in the past" which have been punished before.

Dr. Michael Howard-Tripp

Mr. Boyer then indicated he wished to call a Rebuttal Witness---Dr. Howard-Tripp. Mr. Boyer argued that with respect to reply evidence, if an issue arises in the defence's evidence that was not foreseeable during the presentation of the Complaints Director's case, there is a limited ability to bring new evidence in to respond to this narrow point. Mr. Boyer indicated he wished to have Dr. Howard-Tripp testify via telephone. Dr. Howard-Tripp is currently the Deputy Registrar of the College of Physicians and Surgeons of Saskatchewan. Mr. Boyer wished for Dr. Howard-Tripp to testify to address Dr. Odugbemi's evidence that Dr. Howard-Tripp threatened him with malicious intent to create regulatory problems for Dr. Odugbemi.

Dr. Odugbemi opposed this request and stated he does not want to be traumatized again. Dr. Odugbemi added that he also had witnesses to call about what Dr. Howard-Tripp said.

The Tribunal deliberated and decided to allow Dr. Howard-Tripp's reply testimony by telephone. The Tribunal considered that it was not foreseeable that Dr. Odugbemi would assert that Dr. Howard-Tripp threatened him with malicious intent to cause regulatory problems. The Complaints Director could not reasonably have anticipated this issue and called Dr. Howard-Tripp as part of his case. The Tribunal also considered that Dr. Howard-Tripp's evidence would be relevant and

material in response to Dr. Odugbemi's evidence that Dr. Howard-Tripp acted in bad faith towards him. The Tribunal did not allow Dr. Odugbemi to call additional witnesses in response to Dr. Howard-Tripp's evidence. The Chair pointed out the time to bring additional witnesses to testify to corroborate his charge about Dr. Howard-Tripp was during Dr. Odugbemi's case, not after he had closed it. Dr. Odugbemi was informed that he would be given the opportunity to cross examine Dr. Howard-Tripp.

Dr. Howard-Tripp is the Deputy Registrar of the College of Physicians and Surgeons of Saskatchewan. He worked at the College from July 1, 2009 to May 30, 2014 as a Senior Medical Advisor in the Professional Conduct department. He confirms he knows Dr. Odugbemi. He was Dr. Odugbemi's colleague in Maidstone, Saskatchewan for 3-4 years. When he was with the College he does recall running into Dr. Odugbemi in a shopping mall and having a short casual conversation with him during that encounter. He also recalls one phone conversation with him when he was a Senior Medical Advisor with the College.

The topic of their phone conversation was an issue Dr. Howard-Tripp was trying to resolve involving Dr. Odugbemi. Dr. Howard-Tripp explained the process of Resolve with Consent. This is used when a physician complaint is not considered serious and the Senior Medical Advisor to the College attempts to resolve the matter with both sides by consulting the Complainant and physician to try to find a suitable resolution to the complaint. He confirmed he had no other dealings with Dr. Odugbemi while employed at the College. He confirmed that he was aware that there were complaints to the College about Dr. Odugbemi, but he tried to distance himself from those proceedings and that he had no role in the investigations into those complaints.

Dr. Howard-Tripp denied that he ever said he would finish Dr. Odugbemi's medical career and have him driving a truck or anything to that effect. He confirmed he never made any kind of threat to Dr. Odugbemi when he was employed at the College. He said the Maidstone Saskatchewan practice still exists, even after he and Dr. Odugbemi left the practice.

Dr. Odugbemi then cross-examined Dr. Howard-Tripp

Dr. Odugbemi asked Dr. Howard-Tripp if he remembered Louise Hume. Dr. Howard-Tripp acknowledged that he remembered her; she was an LPN in the Maidstone clinic. Dr. Odugbemi asked Dr. Howard-Tripp what she did, but Dr. Howard-Tripp was not sure what he was referring to. Dr. Howard-Tripp denied being aware that Ms. Hume hit Dr. Odugbemi on the head at one time. Dr. Odugbemi then said 'Sandra' witnessed it. Dr. Howard-Tripp was not aware of this either. Dr. Odugbemi said Dr. Juta was aware of this. Dr. Howard-Tripp was also unaware of this.

Dr. Odugbemi asked Dr. Howard-Tripp if he discussed Dr. Odugbemi's dealings with the College with Dr. Bisi Aluko who is Dr. Odugbemi's wife. Dr. Howard-Tripp was not sure he ever did this. Dr. Odugbemi referred to Dr. Jamie Cross in Maidstone. He indicated Dr. Cross told him that Dr. Howard-Tripp put pressure on him to push Dr. Odugbemi to the College. Dr. Cross was the then VP of Medicare in Prairie North Health Region. Dr. Odugbemi indicated this conversation was witnessed by David Fine, the CEO of Prairie North Health Region. Dr. Howard-Tripp denied ever having such a conversation with Dr. Cross.

Dr. Odugbemi indicated he had a phone conversation with Dr. Howard-Tripp while in his Stony Plain office where Dr. Howard-Tripp told him he is too energetic and should go play golf, and if not, he would not be practicing medicine but instead driving trucks. Dr. Howard-Tripp denied ever saying this.

V. SUBMISSIONS REGARDING CHARGE

Mr. Boyer's closing submissions

In Mr. Boyer's closing submissions he explained that this hearing deals with matters of non-compliance with the TORA. He cited *Walsh v. Council of Licensed Practical Nurses of Newfoundland*, 2010 NLCA 11 at para. 26, which set out 3 functions of a Hearing Tribunal, which include:

- 1) Make finding of fact;
- 2) Identify the standard of conduct regulated members are to be held to; and
- 3) Apply facts of the case presented to this standard.

Faryna v. Chorny, [1952] 2 D.L.R. 354 (BCCA) was presented for the legal test of witnesses' credibility. Paragraph 11 addresses the issue of when conflicting evidence is presented in testimony. Mr. Boyer indicated the Tribunal in this situation needs to examine the evidence presented and how it fits together or not with the preponderance of the probabilities and will have to decide what witness to accept on certain disputed facts.

Mr. Boyer pointed out that Dr. Odugbemi has provided documents and testimony in relation to the charge. The Gabbard Centre requirement was never satisfied. Dr. Odugbemi said he tried to contact them, but nobody got back to him and so he claims he has done nothing wrong.

Dr. Odugbemi paid costs to the College but only after his initial cheque bounced NSF and a follow-up letter was sent to him. Payment was only received 6 months after the TORA was signed and Mr. Boyer submits that this part of the TORA was not satisfied in a timely fashion.

The third particular in the charge was failure to pursue and complete further education acceptable to the College relating to weight loss programs and counselling and to provide to the College within three months of the TORA the name of a dietician who is acceptable to the College. The evidence presented by the Complaints Director indicated this aspect of the TORA was never satisfied. Dr. Odugbemi had an obligation to the College via his signed TORA and Mr. Boyer submitted it is irrelevant if Dr. Odugbemi continues to include this area in his medical practice or not. If he wished to be relieved of this obligation he should have asked the College and explained he does not plan to practice any more in this area, but this never happened.

Points D and E in the TORA refer to charting quality and competence in chronic disease management. The 2013 Peer Review by Dr. Lamoureux, the 2014 audit performed by nurses Laden and McKenzie and the 2016 practice review by Dr. Godel all identified similar themes and significant deficiencies. That is 3 years of consistent similar findings. In his response to the RN-led audit Dr. Odugbemi questioned why 2 nurses should be able to judge him, a physician, but the 2 nurses who conducted his chart audit were experienced in conducting such audits.

Mr. Boyer pointed out that Dr. Odugbemi claims he already provides good care and all of his patients have proper follow-up, a claim contrary to the findings of Drs. Godel and Lamoureux. They found widespread inappropriate use of templates in patient charts with no flow, reason or consistency in the charting information. Dr. Godel could not figure out what was going on in a given patient's care by reading the patients' charts. Multiple different templates were scattered throughout the charts and some had no accurate application to a given patient with respect to gender, age or presenting conditions. Over the span of 3 years, the same deficiencies were consistently found with no signs of improvement.

Regarding paragraph F in the TORA, Mr. Boyer acknowledged the evidence on Dr. Odugbemi's prescribing practice was thin.

Paragraph G of the TORA refers to the daily limit on clinic patient numbers. Dr. Odugbemi claimed the days where more than 50 patients are listed on the clinic day sheet are a result of the actions of a malicious subversive clinic employee. Mr. Boyer pointed out this claim is a common thread in Dr. Odugbemi's testimony to the charge: if it happened it is not his fault.

Dr. Godel pointed out from his Peer review (Exhibit 27, pages 217-218) that 72 and 96 patients were seen on March 4 and 8, 2016 according to clinic day sheets. Despite this, Alberta Health billing data shows less than 50 patients seen those days. Mr. Boyer suggested the remainder of the patients on the clinic day sheets were billed for through other revenue sources. Mr. Boyer also pointed out that the Alberta Health billing data shows several days where more than 50 patients seen and billed to Alberta Health. There were days where over 80, 90 and even 100 patients are seen.

Exhibit 20 was 2017 billing information. There were consecutive days of more than 50 patients seen in a day. While Dr. Odugbemi claimed that a rogue employee was responsible for this, Mr. Boyer suggested this claim was difficult to accept. He pointed out there is no evidence that these billings were reversed after Dr. Odugbemi allegedly discovered the dishonesty in the billing submissions. Mr. Boyer pointed out that Dr. Odugbemi acknowledged he has a financial incentive to maximize his billings as he has two families that he supports financially plus his office overhead expenses.

Mr. Boyer presented the case of *McInerney v. MacDonald*, [1992] 2 S.C.R. 138 to illustrate the importance of the patient chart. A patient wanted access to their medical record, but their physician claimed ownership of the chart. The Supreme Court ruled that a physician is a fiduciary whose role is to act in their patients' best interests and that while the physician owns the physical chart, the patient owns the information in the chart, not the physician. The College's standard of practice 23 "Patient Records" was included in Exhibit 11. It outlines that a chart must be complete and accurate and that it is a common law duty that has been long-standing. Mr. Boyer explained that Dr. Godel testified he could make no sense of Dr. Odugbemi's charts and that he would not be able to provide appropriate care to Dr. Odugbemi's patients from these charts because of how incomprehensible and inconsistent they were. Mr. Boyer submitted the low quality of charting demonstrated a clear breach of the fiduciary duty Dr. Odugbemi has to keep accurate and clear patient records.

Mr. Boyer argued that Dr. Heisler relied on section 55(2)(a.1) of the *Health Professions Act* to try to resolve the complaints made about Dr. Odugbemi without proceeding to a Hearing. He pointed out that all Terms of Resolution are done to protect the public interest but that Dr. Odugbemi thwarted this by failing to comply with the TORA. He pointed out that the public needs to be confident that a regulatory body can effectively regulate its own members, but the Terms of Resolution option in this case has been thwarted by Dr. Odugbemi's non-compliance.

Regarding credibility, Mr. Boyer stated where there is conflict between Dr. Odugbemi and the testimony of the other witnesses, the Tribunal should prefer the other witnesses' testimony as it fits the preponderance of circumstances presented at this Hearing. Several different and separate College assessments of Dr. Odugbemi found the same recurring themes in his practice. Therefore Mr. Boyer submitted Dr. Odugbemi breached his TORA with the College and demonstrated he cannot be governed. Efforts made by the College to improve this regulated member's quality of

care were unsuccessful and Dr. Odugbemi has failed to live up to the signed commitment he made in the TORA with the College and therefore he is guilty of the charge as presented in the Notice of Hearing.

Dr. Odugbemi's Closing Submissions

Dr. Odugbemi indicated some of his kids are adults and are not a financial burden to him. One son has a PhD and another has a Masters degree. A third has a law degree and is pursuing graduate studies at the University of Toronto. A fourth is a dental student at the University of British Columbia. He also pointed out his wife is a physician.

Dr. Odugbemi says he takes responsibility for his actions. Regarding patient clinic numbers, he admitted that perhaps in a month, he will see one or two WCB patients. He claimed he has now had his practice audited 3 times by the College and has done reconciliation of his clinic numbers and billings and he has done nothing illegal.

Regarding the College peer reviews, he says he attended a charting course at UBC and has a certificate of attendance which he gave to Dr. Mazurek. Dr. Odugbemi said the College did not follow up on this issue.

Dr. Odugbemi said the notes Dr. Godel referred to were clearly non-validated. He pointed out that after Dr. Godel's practice review he performed a 3-month validation but the College did nothing to follow-up on this issue.

He said he reported to Dr. Heisler before Dr. Caffaro took over as Complaints Director and in a conversation Dr. Heisler had with him, he advised to just stop the weight loss counselling in his practice. He suggested that he took from this conversation that he did not have to satisfy this aspect of his Terms of Resolution.

Dr. Odugbemi claimed Alberta Health has audited him four times with no issue. He claimed he told Dr. Ulan that he tried contacting the Gabbard Centre but had received no return call. He said Dr. Ulan told him the College was going to put pressure on the Gabbard Center to call him back but he never got a call back and stated "I can't force myself". He said the phrase "timely manner" in Dr. Caffaro's letter in reference to the Gabbard Center assessment means to him that somebody dropped the issue. He re-iterated he called the Gabbard Center nine times to try and arrange an assessment but as they never called him back he could not compel himself to go if they are not welcoming him. He did not produce any documentation from the Gabbard Centre confirming he did not have to go for an assessment.

Regarding his claim that a malicious office staff member falsified his billings to reflect he was seeing more than 50 patients per day, Dr. Odugbemi claimed he wrote a letter to staff when he discovered this but did not produce this letter. He claimed he was awarded 1.5 million Pounds in a settlement from a motor vehicle accident where he suffered fractured legs and therefore does not have any financial incentive to maximize his billings. He claimed he does not work to amass money.

He indicated this hearing was bringing up issues from the past. He said the College wrote a letter back to him indicating there was nothing wrong with the level of his obstetrical care. He said where the College did follow up, there was no concern and re-iterated on the other points.

Dr. Odugbemi said he does not want to be petty and talk more about Dr. Howard-Tripp. He claimed he has never had a complaint against him in any previous jurisdiction. Exhibit 11, pg. 138 was a letter from Dr. Heisler to Dr. Odugbemi regarding the numerous complaints about Dr. Odugbemi's medical practice the College had received. This letter instructs Dr. Odugbemi to follow up with Dr. Janet Wright with respect to these complaints. It also strongly advises Dr. Odugbemi to obtain legal counsel for these complaints. In this letter, Dr. Heisler also indicates he believes it may be necessary for Dr. Odugbemi to undergo assessment at the Gabbard Centre, but that he would await direction and advice from Dr. Wright. Dr. Odugbemi stated that from this letter, he gave Dr. Heisler permission to talk to Dr. Wright and he claimed that they subsequently decided "maybe all this can go away" and that there was no follow up from College.

Dr. Odugbemi said he is not sure when he got an invoice from the College after he signed the TORA, but said it was mailed to him months after he signed the TORA with the College. Dr. Odugbemi did not provide the invoice for the Tribunal to review.

Dr. Odugbemi claimed he is far from the person the College is trying to depict him to be. He reiterated he has no problem with authority and does not break rules. He says he does not have a driving ticket. He does not have a speeding ticket. He does not drink alcohol or smoke and implied all of these traits are a reflection of his character. He says he has done 'a lot of things' on his own end. He claimed he recently had a meeting with Dr. Caffaro about referral of pain patients where Dr. Caffaro agreed with his goal to refer these patients to pain specialists.

He again tried to explain why he was late for the Hearing. He explained Stony Plain Road was shut down which delayed his arrival and then when he did arrive he was told to sit down and wait for Adele Gendron. He claimed he deeply respects the work his peers are doing.

Mr. Boyer's Reply Argument

Mr. Boyer indicated that Exhibit 11, page 139 documented that Dr. Odugbemi attended a medical record keeping course in BC in February 2013 which pre-dated Dr. Lamoureux's peer review and the TORA.

He also pointed out that Dr. Odugbemi initially testified that out of every \$9000 billed he gets \$600, but then later testified money is not an issue.

Mr. Boyer also pointed out an email from Dr. Gabbard to Dr. Ulan indicating there had been no effort made by Dr. Odugbemi by February 9, 2016 to book an assessment at the Gabbard Centre (Exhibit 26, pg. page 213).

QUESTIONS FROM THE PANEL

With respect to the charge that Dr. Odugbemi "demonstrated a pattern of ungovernable conduct..." Mr. Boyer submitted that the core issue is that Dr. Odugbemi has broken an agreement he made with the College and that the word ungovernable was used to communicate the seriousness of the issue to Dr. Odugbemi. He pointed out that the charge is the culmination of a large period of time, with multiple parties involved trying to address and resolve poor performance, poor charting, poor conduct but to no good effect.

Mr. Boyer indicated that there is a pattern of conduct that suggests Dr. Odugbemi cannot be governed, but the Tribunal could find the charge, or parts of it, to be proven without concluding that Dr. Odugbemi is ungovernable. Mr. Boyer suggested the Tribunal should focus on the failure to

fulfill the TORA which resolved five previous different complaints made against Dr. Odugbemi. He pointed out that there is a history of multiple complaints against Dr. Odugbemi that were investigated and deemed not so insignificant that they could be dismissed but were instead addressed through a TORA.

Mr. Boyer reiterated that all terms in the TORA have been broken and that Dr. Odugbemi has shown a pattern of conduct in his dealings with the College that indicates he cannot be governed through the regulatory process and that this amounts to unprofessional conduct. Dr. Mazurek's experience with Dr. Odugbemi was that he cannot be remediated with respect to the issues identified in his medical practice.

With respect to the Gabbard assessment, Dr. Odugbemi insisted he placed nine phone calls in to the Gabbard Centre to try and arrange a time for an assessment. He claimed that Dr. Heisler told him that the Gabbard assessment was to satisfy a constituency, so he has since assumed the College has dropped this issue. He does not have anything to this effect in writing from the College however and felt this was his only wrong-doing in this aspect of the TORA.

Regarding the requirement to pursue acceptable education on weight loss programs, Dr. Odugbemi claimed he was told he only had to complete formal training in weight loss management if he intended on continuing to do this in his medical practice. Dr. Odugbemi did not provide documentation to support this claim. He claimed that this was his understanding of this part of the TORA from what Dr. Heisler said to him about it when he was Complaints Director.

Dr. Odugbemi claimed he writes out a paper chart first which is later transcribed into the EMR. The paper chart is scanned into the EMR. It was pointed out that the auditors never saw or made record of these scanned paper charts when they reviewed his EMR. He claimed he spent three months reviewing his charts and revising for accuracy after his chart audit. He referenced Enclosure one (Exhibit 41) to make his point. It was pointed out to him that these templates he included in his materials are blank.

VI. ANALYSIS OF EVIDENCE AND CHARGE

Introduction

In reaching a decision in this hearing, the Tribunal must decide whether the College has proven the Charge in the Notice of Hearing on a balance of probabilities.

If the Charge is factually proven, the Tribunal must then assess whether the proven conduct constitutes "unprofessional conduct" as defined in s. 1(1)(pp) of the HPA.

The Tribunal contemplated one Charge relating to Dr. Odugbemi's alleged demonstration of a pattern of ungovernable behaviour with respect to compliance with the TORA with particulars (a) through (g). The analysis and findings of the Hearing Tribunal in relation to each of the particulars of the Charge is set out below.

Charge 1(a)

Charge 1(a) relates to having failed to attend and complete a multi-disciplinary assessment at the Gabbard Centre or another program acceptable to the Complaints Director as required by the TORA. The Tribunal heard testimony from Dr. Caffaro, the College's Complaints Director

indicating that to date, Dr. Odugbemi has not attended the Gabbard Centre or any other facility acceptable to the College for this assessment.

There was no dispute that Dr. Odugbemi has not completed an assessment as required by the TORA. However, in response to this charge, Dr. Odugbemi indicated that Dr. Gabbard himself told him in a phone conversation that he does not deal with the issues Dr. Odugbemi had been referred for and that Dr. Gabbard said he would contact the College about Dr. Odugbemi's case and get back to him. Dr. Odugbemi also said that he did phone the Gabbard Centre nine times to try and arrange a time for him to attend for an assessment but his calls were never returned. The Tribunal heard testimony from Dr. Odugbemi that he took from this that he was not welcome there and did not want to impose himself onto the Gabbard Centre. Dr. Odugbemi also testified that Dr. Heisler told him that the Gabbard assessment was to satisfy a "constituency", so he had since assumed the College had dropped this issue.

Despite his claims, Dr. Odugbemi did not produce any documentation to confirm that Dr. Gabbard or anyone else at the Gabbard Centre or any staff from the College told him he did not need to attend an assessment at the Gabbard Centre. On the contrary, Exhibit 26, pg. 213 included an email from Dr. Gabbard to Dr. Ulan confirming that Dr. Odugbemi had not scheduled an appointment as of February 9, 2016.

In determining whether this portion of the charge against Dr. Odugbemi was proven, the Tribunal was required to assess the credibility of Dr. Odugbemi. The reasons for rejecting Dr. Odugbemi's evidence on this charge are:

- 1) Dr. Odugbemi made claims to try to explain why the Gabbard Centre assessment was not completed that were wholly unsubstantiated. Dr. Odugbemi insisted that he called the Gabbard Centre multiple times to arrange an assessment only to have his calls go unreturned. Dr. Odugbemi also said that Dr. Heisler at the time he was the College Complaints Director alluded to this requirement as only one to satisfy "a constituency". Dr. Odugbemi said Dr. Gabbard indicated that he does not deal with the issues Dr. Odugbemi was referred to him for. Dr. Odugbemi said his understanding was that the College was to contact the Gabbard Centre to induce them to return Dr. Odugbemi's phone calls. When asked to, Dr. Odugbemi was unable to produce any form of documentation to substantiate any of these claims.
- 2) There was no evidence that Dr. Odugbemi had ever contacted the College to explain he was having difficulties reaching the Gabbard Centre to schedule an assessment, or that Dr. Gabbard ever told him he did not deal with the issues for which Dr. Odugbemi was referred to him. There was no evidence Dr. Odugbemi ever asked the College to be released from this aspect of the TORA.
- 3) Dr. Odugbemi's evidence was also inconsistent with other evidence. Dr. Gabbard confirmed in an email dated February 9, 2016 to Dr. Ulan that up until that date, Dr. Odugbemi had not scheduled time to attend for the required assessment. The Tribunal felt this undermined Dr. Odugbemi's credibility.
- 4) Dr. Odugbemi's testimony regarding this part of the Charge became part of a recurrent pattern in his testimony. Namely, he testified that he made much effort but is the victim of unfavourable circumstances and the shortcomings and oversight of others resulting in him ultimately not fulfilling the required portion of the TORA. The Tribunal found that Dr. Odugbemi's testimony negatively impacted his credibility. This recurring theme in his testimony will be referred to again below.

In light of the Tribunal's findings regarding credibility outlined above, the Tribunal rejects Dr. Odugbemi's version of events. The Tribunal finds on the balance of probabilities, Charge 1(a) to be proven. The Tribunal does not believe Dr. Odugbemi has made any substantial effort to arrange an assessment at the Gabbard Centre or any other Program acceptable to the Complaints Director.

Charge 1(b)

Charge 1(b) relates to failing to pay costs as agreed under the TORA in a timely fashion. In the TORA, Dr. Odugbemi agreed that he would be responsible for all costs associated with the TORA as well as any costs incurred as a result of any education and remedial activities that were brought forward.

The Tribunal heard testimony from Dr. Caffaro indicating that Dr. Odugbemi's first attempt at payment of the costs by cheque was returned 'NSF' for insufficient funds. Exhibit 32 included a copy of a cheque for the required amount dated July 31, 2015, approximately 5 months after Dr. Odugbemi signed the TORA with the College. Exhibit 32 also included a letter from Dr. Heisler to Dr. Odugbemi informing him that the cheque was returned as NSF. Dr. Odugbemi had written on the letter from Dr. Heisler and sent it back to the College. Dr. Odugbemi wrote that his father had died and he went to Africa and that he had told Dr. Ulan about it. At the hearing Dr. Odugbemi testified that he was out of country attending his father's funeral at the time this first payment attempt failed. The Tribunal also heard testimony from Dr. Odugbemi that it took him longer to complete this portion of the TORA because of the financial pressures on him. Dr. Odugbemi testified that for every \$9000 he bills, he only gets \$600 to himself which he uses to pay his staff and cover his office overhead costs. Dr. Odugbemi also testified he received the invoice for the fee owed from the College months after signing the TORA, but he produced no documentation to substantiate this claim or to demonstrate that he had paid the costs as required by the TORA. In his submissions Mr. Boyer acknowledged that Dr. Odugbemi eventually paid the amount owing after a further two months.

The Tribunal finds this portion of the Charge to be proven. The amount of costs in issue is relatively modest (\$3860.44) for a physician who works full time. The College should be entitled to expect that Dr. Odugbemi would make prompt payment or at the very least prompt arrangements for payment. Instead the College had to wait approximately 5 months only to find the payment failed due to insufficient funds. The Tribunal accepted that Dr. Odugbemi had to tend to his father's death in another country at the time his first payment attempt failed in 2015 but there was no corroborating evidence of a delay in providing Dr. Odugbemi with an invoice for payment of the costs, and no other explanation for the long delay in payment. Dr. Odugbemi made contradictory testimony regarding the financial pressures he is under which will be elaborated on below but given the preponderance of his entire testimony surrounding his finances, the Tribunal did not find Dr. Odugbemi's testimony regarding his finances entirely forthcoming.

Charge 1(c)

Charge 1(c) relates to failing to pursue further education acceptable to the College relating to weight loss programs including provision of a report to the College within 3 months of the date of the TORA including written approval from a dietician acceptable to the College. The Tribunal heard testimony and received other evidence that this portion of the TORA has not been satisfied to date. There was no dispute that Dr. Odugbemi has not pursued education in weight loss programs or provided a report to the College with the written approval of a dietician.

Rather than deny this part of the charge, Dr. Odugbemi testified that he never saw a complaint letter regarding his practice pattern with respect to weight loss methods and counselling. Dr. Odugbemi said he is part of the Choosing Wise Program and the obesity program at the University of Alberta. He said he decided to start referring patients to the Primary Care Network and Alberta Health Services as he just tried to comply with the College restriction. He also testified that Dr. Heisler as Complaints Director indicated to him that he only had to complete this portion of the TORA if he intended on including this aspect of patient care in his medical practice moving forward, but he produced no documentation or other corroborating evidence to this effect.

In determining whether this portion of the charge against Dr. Odugbemi was proven, the Tribunal was required to assess the credibility of Dr. Odugbemi. The Tribunal's reasons for rejecting Dr. Odugbemi's testimony on this issue are:

- 1) Dr. Odugbemi, despite his claim of being advised by Dr. Heisler that he only had to satisfy this portion of the TORA if he intended on keeping this aspect of patient care in his medical practice, did not produce any documentation or other corroborating evidence to this effect. There was no evidence that Dr. Odugbemi had advised the College he planned to limit his practice for example.
- 2) The Tribunal also felt that whether or not Dr. Odugbemi intended on providing weight loss advice and care in his medical practice moving forward was irrelevant to the fact that he signed the TORA with the College which required him to complete this further education. There was also no evidence that Dr. Odugbemi had requested a release from his obligation to comply with the TORA.
- 3) The Tribunal did not feel that a letter or any other type of guidance from the College explaining this part of the TORA to Dr. Odugbemi was required for it to be binding upon him. Dr. Odugbemi signed the TORA on February 27, 2015 and he should have been aware of each of the requirements expected of him from that date on.
- 4) Dr. Odugbemi's testimony again reverted to a pattern of explanation whereby he portrayed himself as an innocent bystander to a set of circumstances around him beyond his control which ultimately resulted in the appearance that he has failed to comply with his TORA with the College. In this instance, he indicated it was the College and specifically Dr. Heisler who indicated this portion of the TORA was not actually required and that he was just following the direction of Dr. Heisler and did nothing wrong. The Tribunal found Dr. Odugbemi's testimony to be an attempt to deflect responsibility and that it negatively impacted Dr. Odugbemi's credibility.

In light of the Tribunal's findings regarding credibility outlined above, the Tribunal rejected Dr. Odugbemi's version of events. The Tribunal finds on the balance of probabilities, Charge 1(c) to be proven. The Tribunal does not believe Dr. Odugbemi has made any substantial effort to seek further education acceptable to the College in weight loss programs as required by the TORA. Furthermore, the Tribunal does not accept Dr. Odugbemi's testimony that Dr. Heisler advised him this portion of the TORA was not mandatory if Dr. Odugbemi excluded weight loss management from his medical practice moving forward.

Charge 1(d)

Charge 1(d) relates to Dr. Odugbemi's failure to improve his charting quality as demonstrated by a practice audit conducted by Dr. Mark Godel in March 2016.

The Tribunal heard testimony from Dr. Godel where he described his findings from a remote chart audit he performed on 22 of Dr. Odugbemi's charts in 2016. Dr. Godel reviewed Dr. Odugbemi's charting for patient visits between January and March 2016, well after Dr. Odugbemi signed the TORA in February 2015.

Dr. Godel summarized his findings by describing Dr. Odugbemi's charts as incomprehensible and chaotic and indicated he would not be able to provide care for Dr. Odugbemi's patients based on these charts because of the poor quality of the documentation. Dr. Godel described the rampant use of templates throughout the EMR which seemed pre-populated before a given patient was even assessed. Much of the clinical information contained in several charts was inaccurate and at times contradictory to other portions of a given patient's chart. The Tribunal heard testimony from Dr. Godel summarizing specific findings from the 22 charts he reviewed to highlight the themes of his observations from reviewing Dr. Odugbemi's charts. Dr. Godel also had access to Dr. Odugbemi's day sheets for specific clinics and noted several days where Dr. Odugbemi saw much more than 50 patients which was the daily limit he agreed to in the TORA. Dr. Godel also testified that the referral letters he reviewed in Dr. Odugbemi's charts appeared to be unedited and contained scanty and at times zero clinical information about the referred patient.

Dr. Godel's findings from his practice audit echoed many of the findings from Dr. Lamoureux's October 2013 peer review. There, Dr. Lamoureux expressed concern with the frequent use of templates and inability to extract any useful information from Dr. Odugbemi's charts. Additionally, Dr. Godel's findings echoed some of the findings from the 2014 Practice Audit conducted by Nurses Laden and McKenzie. In this Audit, the Auditors noted much difficulty finding and extracting information from the charts. They noted Dr. Odugbemi could not find the required information from the charts when asked to locate it. The auditors also found inconsistencies in templates inserted throughout individual charts.

The Tribunal heard testimony from Dr. Odugbemi regarding these charting deficiencies. He testified that it was his transcriptionist's fault that incorrect templates were incorporated into specific charts. He repeatedly claimed that he does not pre-populate templates inserted into patient charts. He said many of the charts Dr. Godel reviewed were of psychiatric patients and that he provides comprehensive psychiatric care and has in the past been praised for his care of psychiatric patients. With regards to documentation Dr. Godel noted was missing from charts such as Pain Contracts for patients who had been prescribed opioids and prescriptions for Champix in patients attempting to quit smoking, Dr. Odugbemi stated the documentation was present in the EMR and that Dr. Godel simply did not see it. The Tribunal heard testimony that it is Dr. Odugbemi's routine to hand-write a chart and then transfer his information into the EMR. Dr. Odugbemi claimed the hand-written notes are scanned into the EMR, and that Dr. Godel simply did not see them.

Dr. Odugbemi entered limited portions of patient charts he chose as exhibits to demonstrate he does not use pre-populated templates in his EMR. On this point, Dr. Odugbemi was asked how this limited sampling of charts that he selected demonstrated that his charting overall is adequate, but he did not answer this question.

The Tribunal was not provided with copies of the charts that Dr. Godel reviewed. Therefore, in determining whether this portion of the charge against Dr. Odugbemi was proven, the Tribunal was required to assess the credibility of both Drs. Godel and Odugbemi, as they provided conflicting evidence regarding Charge 1(d). In general, the Tribunal found Dr. Godel to be a more credible witness than Dr. Odugbemi. Where their evidence conflicted on material points, the Tribunal preferred the testimony of Dr. Godel. The reasons for preferring Dr. Godel's testimony are:

- 1) Dr. Odugbemi reverted to a pattern of testimony he used to address other portions of the Charge. Dr. Odugbemi made an unsubstantiated claim that he does not use pre-populated templates. The Tribunal noted that the use of pre-populated templates was evident in the 2013 Peer Review conducted by Dr. Lamoureux whereby approximately 20 charts were reviewed, and then again in Dr. Godel's 2016 remote chart review of 22 charts. The evidence Dr. Odugbemi presented was a sampling of limited portions of less than 5 patient charts of his choosing. The Tribunal considered the evidence Dr. Odugbemi presented but did not feel that it overcame Dr. Godel's evidence of his chart review. The Tribunal accepted the findings of Dr. Godel to be more credible and likely representations of the quality of Dr. Odugbemi's charting since the TORA.
- 2) Dr. Odugbemi also claimed his care of psychiatric patients is comprehensive and he has previously received praise for this. Again, this testimony went unsubstantiated. It was also contradicted. As an example, Dr. Godel's report included evidence that the templates on some of Dr. Odugbemi's charts for mental health visits included notes regarding gynecologic and rectal examinations. The Tribunal found it alarming that Dr. Odugbemi's charting indicated that he would have conducted gynecologic or rectal examinations during a visit with a patient to discuss mental health concerns and then recorded that information in the chart during or after the visit. The Tribunal concluded it was more likely that Dr. Odugbemi was using a pre-populated template.
- 3) Dr. Odugbemi initially testified that he simply does not use pre-populated templates and that the factual contradictions and incoherence in his charts observed by Dr. Godel was the fault of his transcriptionist. Later in the Hearing, he provided a completely different explanation. He said that he hand-wrote his patient charts initially and then transferred his hand-written notes into the EMR. He claimed his hand-written notes were scanned directly into the EMR and that Dr. Godel simply missed them on his review. He added that the Pain Contracts and Champix prescriptions for pain patients and patients attempting to quit smoking, respectively, that Dr. Godel noted were missing from the EMR were actually in the EMR. These portions of his testimony were again unsubstantiated and the Tribunal felt they were attempts made by Dr. Odugbemi to deflect blame and responsibility. Dr. Odugbemi made no attempts to provide the Tribunal with any of the records that Dr. Godel said were missing from the charts. The Tribunal felt Dr. Odugbemi's testimony regarding Charge 1 (d) negatively impacted his credibility.
- 4) Dr. Godel is a very experienced family physician who has maintained a clinical practice for over 30 years, 27 of which were as a full-service rural family physician in Cold Lake. He also has over 25 years of experience as a Peer Reviewer for the College. The Tribunal felt his testimony was clear and that it was based on his independent, objective review of Dr. Odugbemi's charting. The Tribunal noted that Dr. Godel has nothing to gain from his involvement in this hearing and found his evidence to be credible.
- 5) Dr. Odugbemi testified that in response to the Peer Review and Practice Audit he took a charting course at UBC and had a certificate to prove it. He indicated that from this course his charting has improved to adequate levels. Mr. Boyer pointed out that Exhibit 11, pg. 139 shows that Dr. Odugbemi completed this charting course at UBC in February 2013, which pre-dated the TORA. The Tribunal felt this too undermined Dr. Odugbemi's credibility.

In light of the Tribunal's findings regarding credibility outlined above, the Tribunal finds that Dr. Godel's testimony regarding Charge 1(d) is more credible and believable than Dr. Odugbemi's.

Accordingly, where the testimony differs on material points, the Tribunal accepts the evidence of Dr. Godel and rejects the explanation put forward by Dr. Odugbemi. The Tribunal finds on the balance of probabilities, Charge 1(d) to be proven. The Tribunal does not believe Dr. Odugbemi has made any significant improvement in his charting quality since the TORA.

Charge 1(e)

Charge 1(e) relates to failure to improve the quality of care provided to patients for chronic disease management as demonstrated in a practice audit conducted by Dr. Mark Godel in March 2016. The Hearing Tribunal heard testimony from Dr. Gardener with respect to a 2014 Practice Audit performed by Nurses Laden and McKenzie in which they noted a lack of appropriate follow-up of diabetic patients for evidence of diabetes-related organ damage such as retinopathy and nephropathy. This Practice Audit had similar findings to Dr. Lamoureux's 2013 Peer Review on these points.

The Tribunal also heard testimony from Dr. Godel regarding his 2016 remote chart review where he found a common thread of incomprehensible clinical charting in patients with chronic conditions such as depression, chronic back pain, hypertension, smoking, obesity and anxiety. The severe charting issues identified by Dr. Godel prevented Dr. Godel from being able to make any sense of what was happening in the clinical care of these patients. The use of multiple templates within individual patient charts oftentimes left contradictory clinical information scattered within a chart. With respect to appropriate testing and ongoing longitudinal care, Dr. Godel testified that the charts demonstrated that Dr. Odugbemi only sporadically and inconsistently tested patients in longitudinal care and when he did there was no systemic pattern to the testing and often no clinical rationale documented for the specific tests being done. Dr. Godel also noted that when tests were done the actual testing done did not seem clinically justified. No details of any discussion with the patient or clinical rationale for testing were provided on the chart. Testing inadequacies were common throughout charts despite the ability to use the EMR to provide automated reminders. Referral letters to specialists often appeared un-edited and contained little-to-no useful clinical information. Dr. Godel's observations of poor quality in the longitudinal care of patients with chronic illness echoed the findings from the 2013 Peer Review and 2014 Practice Audit.

The Tribunal heard testimony from Dr. Odugbemi that Dr. Godel's findings were simply incorrect as many elements reported as missing from his charts were simply unseen by Dr. Godel. Dr. Odugbemi testified he provides comprehensive care for his psychiatric patients. He entered as Exhibits limited portions of a patient chart to demonstrate he provides comprehensive psychiatric care. He testified that Dr. Godel had a perception that there were missing elements in his charts because he had not validated those charts with his written clinical notes by the time Dr. Godel had reviewed them. He assured the Tribunal that all of his charts have now been validated and are accurate and complete, but he did not seek to enter validated copies of the charts Dr. Godel had reviewed. Dr. Odugbemi's response to Dr. Godel's findings mirrored his response to the findings of the 2014 Practice Audit conducted by Nurses Laden and McKenzie. Regarding the 2014 Audit, Dr. Odugbemi indicated the findings of the nurses were incorrect and they perhaps did not know how to use his EMR. He also implied that nurses should not be evaluating physicians. However, the Tribunal heard testimony confirming Nurses Laden and McKenzie were very experienced in conducting this specific type of Practice Audit on physicians.

As above, the Tribunal did not receive copies of the charts Dr. Godel reviewed. Therefore, in determining whether this portion of the charge against Dr. Odugbemi was proven, the Tribunal was required to assess the credibility of both Drs. Godel and Odugbemi, as they provided conflicting evidence regarding Charge 1(e). In general, the Tribunal found Dr. Godel to be a more credible

witness than Dr. Odugbemi. Where their evidence conflicted on material points, the Tribunal preferred the testimony of Dr. Godel. The reasons for preferring Dr. Godel's testimony are:

- 1) Similar to the reasoning presented with regards to credibility in relation to Charge 1(d), the Tribunal preferred Dr. Godel's testimony over Dr. Odugbemi's. Dr. Godel is an experienced clinician and Peer Reviewer for the College who provided an independent, objective review of Dr. Odugbemi's charting. Dr. Godel had nothing to gain from his involvement in the hearing and the Tribunal found him to be credible.
- 2) Dr. Odugbemi presented limited portions of a small number of his charts that he chose to demonstrate he is competent in managing patients with chronic conditions such as psychiatric illness. However, Dr. Odugbemi's limited evidence could not overcome what was found in Dr. Godel's chart review. For example, in Dr. Godel's report (Exhibit 27, pg. 217) he referred to patient #14 who was a 57 year old man with depression, diabetes, chronic low back pain and a history of smoking. Dr. Odugbemi saw this patient on March 7, 2016 but there was no evidence Dr. Odugbemi had ordered any blood work for this diabetic patient since 2013. There was also no evidence that Dr. Odugbemi provided a prescription for Champix even though the included template said it would be provided. As another example, Dr. Godel's report noted that patient #7 was a 54 year old woman with unspecified anxiety. Dr. Odugbemi saw this patient on February 11, 2016 and billed for psychotherapy but there was no evidence in his chart of any discussion of the patient's anxiety or mood. Dr. Godel reported that there was instead evidence of examinations that were not appropriate for a psychotherapy visit. The Tribunal felt the deficiencies Dr. Godel observed showed that there has been no significant improvement in Dr. Odugbemi's ability to competently manage patients with chronic medical conditions in a family practice setting.

In light of the Tribunal's findings regarding credibility outlined above, it finds that Dr. Godel's testimony regarding Charge 1(e) is more credible and believable than Dr. Odugbemi's. Accordingly, where the testimony differs on material points, the Tribunal accepts the evidence of Dr. Godel and rejects the explanation put forward by Dr. Odugbemi. The Tribunal finds on the balance of probabilities, Charge 1(e) to be proven. The Tribunal does not believe Dr. Odugbemi has made any significant improvement in the quality of his care to patients for chronic disease management since the TORA.

Charge 1(f)

Charge 1(f) relates to the failure to improve the quality of prescribing, in particular the prescribing of opioids and benzodiazepines, despite the educational interventions directed by Dr. Susan Ulan and Dr. Ken Gardener, Assistant Registrars of the College.

The Tribunal heard testimony that Dr. Odugbemi's 1st quarter 2016 prescribing Snapshot generated by the College demonstrated a large number of patients being prescribed frequent small amounts of benzodiazepines and that Dr. Odugbemi was also prescribing benzodiazepines to other physician's patients. No concerns were raised about Dr. Odugbemi's opioid prescribing from this Snapshot, but it was suggested that closer examination of individual patient cases may provide a more accurate picture of Dr. Odugbemi's opioid prescribing.

The Tribunal was presented evidence that in 2016, Dr. Odugbemi prescribed opioids to just two patients who were being prescribed opioids by three or more practitioners at the same time. One year later, in 2017 the list was longer. However Dr. Odugbemi argued there is a difference between prescribing opioids and triplicates, as some opioids are not in the triplicate program such as

Tramadol, Tylenol 2, Tylenol 3 and Tylenol 4. Dr. Odugbemi did not explain how he felt that this mitigated the College's concerns.

The Tribunal also heard Dr. Odugbemi testify that in 2017 he gave out only 5 prescriptions for benzodiazepines and none so far in 2018 and that his top 5 prescribed drugs are 1) NSAIDS, 2) proton pump inhibitors, 3) supplements like calcium and vitamin D, 4) anti-hypertensives, 5) anti-diabetics.

Dr. Odugbemi said he agrees opioids are a problem and said he follows all published guidelines about opioid prescribing to the letter. However, he said prescriptions are often forged and filled multiple times and sent across provincial lines. He also testified that he has been physically threatened by at least one patient for prescriptions. Dr. Odugbemi testified that the College is incorrect by using quantitative methods to obtain prescriber data. He claimed that qualitative methods which take into consideration clinical context would provide more accurate data. He did not elaborate on this point.

This particular of the charge is dismissed. Mr. Boyer acknowledged the evidence was thin and the Tribunal did not feel that the evidence presented was sufficient to find it proven on the balance of probabilities. The Tribunal dismissed this particular because of a lack of evidence that Dr. Odugbemi failed to comply with the TORA by improving the quality of his prescribing, particularly of opioids and benzodiazepines. The Tribunal emphasizes that it is not dismissing this particular because of any clear evidence that Dr. Odugbemi has improved this aspect of his practice to an acceptable level.

Charge 1(g)

Charge 1(g) relates to failure to comply with the restrictions of seeing no more than 50 patients per day and no more than 250 patients per week between March 2015 to December 2015 and January 2017 to June 2017. The Tribunal heard testimony from Drs. Caffaro and Ulan indicating that Dr. Odugbemi was regularly seeing more than 50 patients per day through review of his billings to the Alberta Healthcare Insurance Plan. Dr. Godel testified that he had access to clinic day sheets in his remote chart review and found multiple days on which well over 50 patients were seen.

The Tribunal heard testimony that Dr. Odugbemi responded to College requests to explain his clinic numbers by indicating that he often works late hours and there are times where his office staff incorrectly record the date of clinical service. He also claimed that his clinic day sheets count a 'visit' per patient complaint and also for tasks performed such as faxing a document, and therefore his clinic day sheets within the EMR provide the appearances of an inflated number of patient clinic visits over and above the true number of patients seen. Dr. Odugbemi did not provide any examples of his day sheets to explain this.

Dr. Odugbemi also testified that his large billings to the Alberta Health Care Insurance plan are the result of a malicious office employee who found out about this restriction on Dr. Odugbemi's practice and submitted many false billings to inflate Dr. Odugbemi's patient numbers in an attempt to make it appear that Dr. Odugbemi was not compliant with this portion of the TORA. Dr. Odugbemi claimed this particular employee was upset over not receiving a pay raise. He testified that when he discovered this he wrote a letter to the employee and started using a private billing service. He did not produce a copy of this letter or explain what he did about the false billings or provide any other corroborating evidence.

The College submitted that Dr. Odugbemi had a financial incentive to have high billings, as he acknowledged that he supports two families financially and said that for every \$9000 he earns, he only keeps \$600 which he uses to pay his office staff and clinic overhead. Dr. Odugbemi later modified this point, saying that he doesn't actually support two entire families financially as his wife is a physician and several of his children are adults and are not financially dependent on him.

The College submitted that Dr. Odugbemi likely bills other revenue sources such as the Workers' Compensation Board and the Department of National Defence. During cross-examination Dr. Odugbemi acknowledged that he received some income from WCB and the Department of National Defence, but later said he will not renew his contract with the WCB and said he does not see military patients.

In determining whether this portion of the charge against Dr. Odugbemi was proven, the Tribunal was required to assess the credibility of Drs. Caffaro, Ulan and Godel versus that of Dr. Odugbemi, as they provided conflicting evidence regarding Charge 1(g). In general, the Tribunal found Drs. Godel, Caffaro and Ulan to be more credible than Dr. Odugbemi in this regard. Where their evidence conflicted on material points, the Tribunal preferred the testimony of Drs. Godel, Caffaro and Ulan. The reasons for preferring their testimony are:

- 1) Drs. Godel, Caffaro and Ulan based their testimony on objective records of Dr. Odugbemi's Alberta Healthcare Insurance Plan billings and clinic day sheets for the periods of time in question.
- 2) Dr. Odugbemi took no responsibility for his billing records and clinic day sheets. He instead claimed they were the result of incorrect entries of service dates by a clinic employee. Later, he claimed they were the result of a malicious campaign of falsification of billings done by a member of the clinic staff. This use of a sensational conspiracy against him was another common theme throughout Dr. Odugbemi's testimony in the Hearing and will be referred to again below. Dr. Odugbemi produced no corroborating evidence to support these claims and the Tribunal found these claims unbelievable.
- 3) To explain his inability to pay fees to the College in a timely manner, the Tribunal had heard testimony from Dr. Odugbemi that he is under immense financial pressures as he supports two families financially. He testified that for every \$9000 he bills for, he only keeps \$600 which he uses to cover his office overhead including clinic employee salaries. However, when this testimony was alluded to as a motive for having high billings, Dr. Odugbemi backpedaled and claimed he actually does not support two full families financially, as several of his children are adults and his wife is a physician. This was a contradiction in his testimony and the Tribunal felt that this negatively impacted Dr. Odugbemi's credibility. Dr. Odugbemi also testified that he received 1.5 million Pounds in a settlement from an accident he was involved in, so he has no financial incentive to amass wealth through high billings.
- 4) As noted above, in cross-examination, Dr. Odugbemi said that his billing sources included the WCB and the Department of National Defence. However, later in the Hearing when it was suggested that Dr. Odugbemi's patient numbers are underestimated if one relies only on billing records from the Alberta Health Care Insurance Plan, Dr. Odugbemi testified that he intends to cancel his WCB contract and that he no longer sees military patients and therefore does not bill the Department of National Defence. The Tribunal felt this contradiction in Dr. Odugbemi's testimony also impacted his credibility on this point in a negative fashion.

In light of the Tribunal's findings regarding credibility outlined above, the Tribunal accepts the evidence from Drs. Godel, Caffaro and Ulan regarding Charge 1(g) as more credible and believable than Dr. Odugbemi's. Accordingly, where the testimony differs on material points, the Tribunal accepts the evidence presented by Drs. Godel, Caffaro and Ulan and rejects the explanations put forward by Dr. Odugbemi. The Tribunal finds on the balance of probabilities, Charge 1(g) to be proven. The Tribunal felt Dr. Odugbemi did have financial incentive to maximize his billings. The Tribunal felt Dr. Odugbemi's testimony to be contradictory and it finds Dr. Odugbemi did not comply with the restrictions on the number of patients he was to see set out in the TORA.

Conclusions Regarding Charge 1(a) to 1(g)

With the exception of Charge 1(f), the Tribunal finds that on the balance of probabilities Charge 1(a), (b), (c), (d), (e), and (g) are all proven.

Overall, the Tribunal finds Dr. Odugbemi's conduct to constitute "unprofessional conduct" within the meaning of Section 1(1)(pp)(xii) of the HPA, which defines such conduct to include conduct that harms the integrity of the regulated profession. The Tribunal found that the conduct referenced in Charge 1(a), (b), (c), (d), (e) and (g) was unprofessional because Dr. Odugbemi signed a TORA with the College to resolve issues arising from several significant complaints made to the College about various aspects of his medical practice.

The College and the public it is intended to protect must be able to rely on physicians to diligently follow through on agreements they make with the College. This is particularly critical in the case of agreements to resolve complaints and improve the quality of physicians' patient care and medical record keeping. The failure of a physician to do so is serious and undermines the integrity of the medical profession in the eyes of the public.

The TORA was intended to resolve multiple complaints about Dr. Odugbemi's professional conduct. Several of the conditions of the TORA were also aimed to improve quality of care and record keeping. Given Dr. Odugbemi's non-compliance, the Tribunal did not feel that in this 5-year process with the College Dr. Odugbemi has made any significant improvements in the aspects of his medical practice that the College found lacking to overall provide improved and acceptable medical care for his patients. With his ongoing poor care management and charting, Dr. Odugbemi has failed to fulfill his role as a fiduciary to his patients. Dr. Odugbemi has also not complied with the restriction on the numbers of patients he sees daily. By seeing so many patients per day, the Tribunal questions the actual quality of care he is providing his patients given the time constraints of working overbooked clinics. Dr. Odugbemi failed to improve his levels of longitudinal care for patients with common chronic medical conditions. The Tribunal heard testimony that the requirement to attend the Gabbard Centre or another facility acceptable to the College for an assessment came out of a concern regarding Dr. Odugbemi's fitness to practice medicine and as he failed to comply with this portion of the TORA, the question as to Dr. Odugbemi's fitness and suitability to practice medicine remains.

Dr. Odugbemi gave rambling testimony that was at times superfluous, irrelevant and non-sensical. He described many personal and professional accomplishments without offering any evidence to substantiate them. Several aspects of Dr. Odugbemi's testimony were also contradictory. Dr. Odugbemi went to great lengths to describe himself to the Tribunal as co-operative, docile and courteous but at times during his testimony he appeared frustrated, adversarial, defensive and confrontational. He testified he was obedient and respectful of authority but was also late for the first day of the Hearing without bothering to inform Mr. Boyer, the College or the Tribunal that he would be late.

At other times Dr. Odugbemi seemed less than forthcoming with answers to questions or just did not address a question when asked. Where it became clear during the Hearing that there was evidence proving a point against him, Dr. Odugbemi reverted to deflecting blame onto others around him. At one point in the Hearing he implied specific shortcomings in his medical practice are not his fault but that of his patients. He said a high risk obstetrical patient did not see a perinatologist because she was mentally ill and could not keep appointments. He said another obstetrical patient of his presented to hospital without a documented consult note because she is indigenous and as is typical of indigenous patients she was not compliant with pre-natal visits. He also testified that the reason he had not completed the Gabbard Assessment or the required weight loss counselling training was the fault of others for failing to follow-up on these issues. He blamed his transcriptionist and resident for inserting incorrect templates into his charts. He identified Dr. Howard-Tripp as having a personal vendetta against him and being the source of all of his dealings with the College. He did not get legal counsel for the Hearing because the courier service delivered his letter with instructions from the College late. His clinic lists look too large because his office staff incorrectly input the date of service when he works late, although later he said this was because of a rogue staff member who was conspiring against him. He was late for the Hearing on June 25 because of the airline and on June 26 he was late again because he was told to wait in the College's waiting area when he did arrive.

Dr. Odugbemi often in his testimony made claims that were never substantiated with evidence. He replied to findings reported in practice audits and chart reviews by simply stating they were inaccurate. He used more than one sensational unproven claim that others were out to get him, resulting in the issues he has with the College, including a rogue clinic employee submitting falsified billings and a personal vendetta Dr. Howard-Tripp had against him. The Tribunal heard testimony from Dr. Howard-Tripp indicating he never threatened Dr. Odugbemi. The Tribunal heard testimony from College witnesses indicating that Dr. Odugbemi's responses to concerns about his compliance with the TORA were wholly inadequate and unacceptable.

The Tribunal acknowledges that Dr. Odugbemi did eventually show up for the hearing and respected the process and rules of the proceeding. However, based on all of the evidence the Tribunal heard and the Findings it made based on this evidence, the Tribunal finds that Dr. Odugbemi has demonstrated aspects of ungovernable behaviour in his dealings with the College with respect to the TORA. In light of Dr. Odugbemi's failure to comply with the TORA the Tribunal has serious concerns about his ongoing governability and suitability to practice medicine in Alberta.

The College has put forth much effort since 2013 to work with Dr. Odugbemi to remediate significant shortcomings in his medical practice, but the Tribunal found that he has failed to comply with significant aspects of the TORA that directly impact patient care. Dr. Odugbemi's actions and words seem to only serve himself. He did not demonstrate that he takes responsibilities for his actions and commitments. Aspects of his direct care of patients raise significant concerns about exploitive behaviours that have no therapeutic value and do not serve patients, such as the poor-quality charting demonstrated and the overloaded clinics. Instead of any tangible potential benefit to patients, these behaviours can be perceived as self-serving.

The issues in Dr. Odugbemi's medical practice that require remediation as identified in the TORA are not minor; they are matters that directly involve patient care including pursuing continuing medical education, keeping accurate medical records, and providing adequate care for patients with common chronic conditions. It is of great concern to the Tribunal that Dr. Odugbemi, despite several years' effort from the College, has failed to improve in these and other areas described in

this decision, as the conditions in the TORA were meant to ultimately result in Dr. Odugbemi delivering competent and safe care to his patients. As he has failed to comply with the majority of the aspects of the TORA, he has thwarted the efforts made by the College to safeguard the public.

VII. SUMMARY OF FINDINGS

For the reasons set out above, the Tribunal's findings with respect to the charge are as follows:

- Charge 1(a) – proven
- Charge 1(b) – proven
- Charge 1(c) – proven
- Charge 1(d) – proven
- Charge 1(e) – proven
- Charge 1(f) – not proven
- Charge 1(g) – proven

The Hearing Tribunal will receive submissions on sanction from the parties.

The parties are encouraged to discuss the possibility of making submissions on sanction in writing, so as to ensure that this matter can be concluded expeditiously. If either party wishes to make oral submissions on sanction, please advise the Hearings Director so that a date can be scheduled.

The Tribunal suggests a deadline of three (3) weeks from receipt of this decision for provision of the Complaints Director's written submissions on sanctions to Dr. Odugbemi (and a copy of that submission to the Hearings Director) and a further one (1) week for Dr. Odugbemi to respond (that response to be sent to the Complaints Director and a copy to the Hearings Director). The Tribunal acknowledges that these deadlines are suggestions only and the parties should agree on alternate deadlines or seek further direction from the Tribunal if necessary.

Signed on behalf of the Hearing Tribunal by
the Chair



Dated: November 22, 2018

Dr. Don Yee

COLLEGE OF PHYSICIANS & SURGEONS OF ALBERTA

IN THE MATTER OF
A HEARING UNDER THE *HEALTH PROFESSIONS ACT*,
R.S.A. 2000, c. C-7

AND IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF DR. DAVID ODUGBEMI

**DECISION OF THE HEARING TRIBUNAL OF
THE COLLEGE OF PHYSICIANS
& SURGEONS OF ALBERTA CONCERNING
SANCTIONS**

I. INTRODUCTION

The Hearing Tribunal (the “Tribunal”) consisting of Dr. Don Yee as Chair, Dr. John Pasternak and Dr. Hugh Campbell, public member held a hearing into the conduct of Dr. David Odugbemi on June 25 and 26, 2018. The Hearing Tribunal issued a written decision dated November 22, 2018 finding Dr. Odugbemi to have committed unprofessional conduct.

On February 11, 2019 the Tribunal reconvened to consider evidence and submissions on sanctions. Mr. Gregory Sim acted as independent legal counsel to the Hearing Tribunal.

The Tribunal had received a written submission from Mr. Craig Boyer, Counsel for the Complaints Director, dated December 11, 2018. Mr. Boyer suggested that given the Complaints Director’s position that revocation should be ordered, the Complaints Director would not be opposed to giving Dr. Odugbemi some additional time, until the first half of January 2019 to provide his submissions on sanction. The Tribunal had also received a one page submission from Dr. Odugbemi on December 13, 2018 but it was dated December 1, 2018, prior to the date of Mr. Boyer’s submissions. On January 2, 2019 the Tribunal directed that Dr. Odugbemi would have until January 18, 2019 to provide any submissions on sanctions. On January 14, 2019 the Tribunal received a two page “Second Response to the Tribunal as per Sanctions” from Dr. Odugbemi. It was mistakenly dated January 14, 2018.

This is the Hearing Tribunal’s decision on sanctions.

II. FINDINGS

The June 2018 hearing was held to consider Dr. Odugbemi’s conduct in his dealings with the College of Physicians and Surgeons of Alberta (the “College”) with respect to a Terms of Resolution agreement (TORA) he signed with the College in February 2015. It was alleged that Dr. Odugbemi had demonstrated a pattern of ungovernable conduct by failing to fulfill several aspects of the TORA. After considering the testimony and evidence presented during the hearing, the Tribunal found several particulars of the allegation against Dr. Odugbemi proven, specifically his:

- a. Failure to attend and complete the multi-disciplinary assessment at the Gabbard Centre or another program acceptable to the Complaints Director in a timely manner,
- b. Failure to pay costs as agreed under the TORA in a timely fashion,
- c. Failure to pursue further education acceptable to the College relating to weight loss programs and provide a report to the College within 3 months of the date of the TORA, including written approval from a dietician who is acceptable to the College,
- d. Failure to improve the quality of charting as demonstrated in a practice audit conducted by Dr. Mark Godel in March 2016,
- e. Failure to improve the quality of care provided to patients for chronic disease management as demonstrated in a practice audit conducted by Dr. Mark Godel in March 2016, and
- f. During the periods of March to December 2015 and January to June 2017, failure to comply with the restrictions of seeing no more than 50 patients per day and no more than 250 patients per week.

In making these findings, the Tribunal found that Dr. Odugbemi’s actions constituted unprofessional conduct within the meaning of section 1(1)(pp)(xii) of the *Health*

Professions Act, R.S.A. 2000, c. H-7 (“HPA”), which defines such conduct to include conduct that harms the integrity of the regulated profession. The Tribunal concluded that Dr. Odugbemi signed the TORA with the College to resolve issues arising from several significant complaints about his medical practice. The College, and the public it is intended to protect, must be able to rely on physicians to diligently follow through on agreements they make with the College. This is particularly critical in the case of agreements to resolve complaints and improve the quality of physicians’ patient care and medical record keeping to an acceptable standard. The Tribunal held that the failure of a physician to do so is serious and undermines the integrity of the medical profession in the eyes of the public.

III. EVIDENCE

Submissions on sanctions were received in writing from both parties as set out above.

Mr. Boyer, legal counsel for the Complaints Director, included an affidavit of Dr. Michael Caffaro, Complaints Director, with his submissions. In his affidavit, Dr. Caffaro swore that Dr. Odugbemi obtained his medical degree in 1989 and that he has been a regulated member of the College since 2004. Dr. Caffaro’s affidavit also provided a summary of complaints about Dr. Odugbemi predating the subject matter of this hearing. Mr. Boyer explained that Dr. Odugbemi’s history of complaints giving rise to this hearing totaled 13 separate complaint files.

Dr. Odugbemi provided two letter submissions on sanction but he did not present any new evidence in his submissions. Dr. Odugbemi did not object to Dr. Caffaro’s affidavit being considered or request an opportunity to cross-examine Dr. Caffaro on its contents.

IV. SUBMISSIONS

Submissions of the Complaints Director

The Complaints Director submitted that Dr. Odugbemi has demonstrated he is no longer worthy of the privilege of being a regulated member of the College. The Complaints Director sought orders cancelling Dr. Odugbemi’s registration and practice permit and that Dr. Odugbemi be held responsible for the full costs of the investigation and hearing.

The Complaints Director argued that Dr. Odugbemi did not take the required steps under the TORA to improve his patient care and charting and serious concerns remained. He also failed to take ownership over his transgressions and attempted to pass blame to his patients, his transcriptionist, a resident and his office staff. Dr. Odugbemi failed to abide by an express agreement he had signed with the College to rectify significant complaints and this was recognized by the Tribunal to have been harmful to the integrity of the profession and serious unprofessional conduct.

The Complaints Director noted that the Tribunal found Dr. Odugbemi to have demonstrated aspects of ungovernable behavior. The Tribunal expressed great concern that Dr. Odugbemi had failed to improve his patient care and medical record keeping despite several years of effort by the College. The Tribunal found that Dr. Odugbemi had failed to comply with the majority of the

aspects of the TORA and he had thwarted the College's efforts to safeguard the public. The Tribunal had concluded that it had serious concerns about his ongoing governability and his suitability to practice medicine in Alberta.

The Complaints Director then explained that cancellation of Dr. Odugbemi's registration and practice permit and orders for the payment of costs of the investigation and hearing were options available to the Tribunal pursuant to s. 82(1)(h) and (j) of the HPA, and set out factors relevant to the determination of sanctions, relying on *Jaswal v. Newfoundland Medical Board*, [1996] NJ No. 50.

The Complaints Director then argued that Dr. Odugbemi should be considered 'ungovernable' given his conduct with respect to the TORA. The Complaints Director referred to section 3 of the HPA, including subsection (a) which requires the College to govern its regulated members in a manner that protects and serves the public interest, and (b) which requires the College to provide direction to and regulate the practice of the medical profession by its regulated members. The Complaints Director argued that these and other provisions in the HPA make it clear that the College's primary role is to serve and protect the public interest. He also cited cases for this proposition: *Pearlman v. Manitoba Law Society Judicial Committee*, [1991] 2 S.C.R. 869 at para. 39, 44; and *Law Society of New Brunswick v. Ryan*, 2003 SCC 20 at para. 36. The Complaints Director argued that the College serves and protects the public interest by enforcing the high standards of conduct and ethics expected of members of the self-regulating medical profession.

For the purposes of determining sanction, the Complaints Director then referred to three previous cases:

1) *College of Physicians and Surgeons v Ali*, 2016 SKQB 59

In this case, the Saskatchewan Court of Queen's Bench laid out a non-exhaustive list of factors which inform whether a professional is ungovernable. The Tribunal considered these factors with respect to Dr. Odugbemi as summarized below. In this specific case, Dr. Ali had a history of repeated unacceptable conduct extending over several years with multiple disciplinary actions taken which had little or no effect on Dr. Ali's behaviours. Dr. Ali was found to be ungovernable and had his license revoked.

The Complaints Director argued that Dr. Odugbemi similarly has a pattern of unacceptable conduct which spans several years and actions from the College to remedy his behaviors have not been effective and therefore it is appropriate for the Tribunal to find that Dr. Odugbemi is ungovernable in the interests of protecting the public.

2) *Ahluwalia v College of Physicians and Surgeons of Manitoba*, 2017 MBCA 15

In this case, the Manitoba Court of Appeal upheld the finding that Dr. Ahluwalia was ungovernable and the cancellation of his medical license. The factors considered in reaching this finding included several incidents of written and oral misrepresentations to the College, demonstrating he was willing to lie to his governing body to avoid their regulatory jurisdiction, and a history of similar offenses dating back to the 1990s which was felt to reflect his lack of insight into the seriousness of his misconduct and the importance of adhering to professional standards.

The Complaints Director argued that Dr. Odugbemi has demonstrated a similar pattern of unacceptable conduct and lack of insight over a span of several years, including a willingness to mislead his regulatory body through his actions and inactions and a similar inability or unwillingness to appreciate the severity of his misconduct and the importance of professional standards.

3) *Litchfield v College of Physicians and Surgeons (Alberta)*, 2008 ABCA 164

Dr. Litchfield was found to be ungovernable after multiple issues spanned several years and he demonstrated an inability to accept and implement remedial behavior.

The Complaints Director stated that Dr. Odugbemi had become ungovernable as he had repeatedly shown unwillingness or inability to comply with the conditions of his TORA with the College.

The Complaints Director argued the Tribunal should prioritize the public interest over Dr. Odugbemi's interests, and find him ungovernable. Dr. Odugbemi has demonstrated a longstanding pattern of unacceptable conduct, failures to comply with restrictions and conditions placed upon him and failures to appreciate the severity of his misconduct.

The Complaints Director indicated that there is no evidence that Dr. Odugbemi has developed or can ever develop the insight necessary for him to practice medicine ethically. He has become ungovernable and no longer worthy of the privilege of being a regulated member of the College.

Submissions of Dr. Odugbemi

Dr. Odugbemi in his submissions on sanction received on December 13, 2018 and January 14, 2019 did not directly address the Complaints Director's recommended sanctions of cancellation and payment of the full costs of the investigation and hearing. He did not make any reference to the cases presented by the Complaints Director or factors relevant to the determination of sanctions either.

In Dr. Odugbemi's first submission on sanction received on December 13, 2018 he indicated he had now accepted the assessments of his peers, though he maintained that his responses to the Tribunal were true. He also expressed his deep and unreserved apology to Dr. Ulan of the College as he now felt the College had been making efforts to work with him. He ended by saying that he would graciously accept the decision of the Tribunal. He added that he would personally undertake to follow through with any recommendations and further instructions regarding the complaint files.

In his January 14, 2019 submission on sanction, Dr. Odugbemi said that he was focused on self-improvement. He said that in his meetings and written submissions he had always admitted guilt, apologized and changed his practice as a result of the complaints against him. He then commented on the particular breaches of the TORA found by the Tribunal.

Dr. Odugbemi indicated that his failure to attend at the Gabbard Centre was due to his own mistake for which he offered an apology. He also apologized for his delay in paying the costs as agreed under the TORA to the College in a timely fashion and for his mistake in assuming the requirement for him to take weight loss training had been dropped.

Dr. Odugbemi was not apologetic about his failure to improve the quality of his charting, his failure to improve the quality of his chronic disease management or his failure to comply with the restrictions on the number of patients he could see. Dr. Odugbemi did state that he takes "responsibility for my actions and inactions" and that he is "open to travelling to the Gabbard center, educational opportunities and undertake to fully work with CPSA as recommended".

V. ORDERS

The Tribunal has carefully considered the evidence before it, the Tribunal's finding of unprofessional conduct by Dr. Odugbemi and the submissions on sanction from both parties.

The Tribunal orders that Dr. Odugbemi's registration and practice permit with the College be cancelled and that Dr. Odugbemi pay 100% of the costs of the investigation and hearing in this matter.

VI. REASONS for ORDERS

The Tribunal considered factors relevant to determining sanctions in professional discipline matters listed in *Jaswal v Newfoundland Medical Board*, supra at para. 36 including:

- 1) The nature and gravity of the proven allegations

The Tribunal felt that Dr. Odugbemi's proven unprofessional conduct in this matter was very serious in that his actions thwarted the College's ability to self-regulate. In this case, the College had taken measures over a period of several years to help Dr. Odugbemi remediate several aspects of his medical practice to ensure safe medical practice and protect the public.

- 2) The age and experience of the offending physician

Dr. Odugbemi testified that he has practiced medicine for at least 20 years in several jurisdictions including South Africa, Nigeria, Saskatchewan and Alberta. He is an experienced physician and the Tribunal felt he ought to have had a clearer understanding of the importance of the role of his regulatory body and importance of practicing medicine ethically and respecting signed agreements one has with their professional regulatory body.

- 3) The previous character of the physician and in particular the presence or absence of any prior complaints or convictions

Dr. Odugbemi has a long history of complaints made against him to the College. While the Tribunal was not provided with details of these complaints and there was no evidence of any prior findings of unprofessional conduct, several previous complaints were resolved with the TORA which he repeatedly demonstrated an inability or unwillingness to abide by. As such, the Tribunal feels Dr. Odugbemi's actions in this matter are not an isolated incident but instead a continuation in a well-established pattern of behavior. The Tribunal considered it likely that if Dr. Odugbemi was permitted to retain his registration he would continue to breach the TORA such as by failing to improve the quality of his charting for example.

- 4) The age and mental condition of the offended patient

In this case Dr. Odugbemi's proven unprofessional conduct did not arise from his care of any one patient but there was evidence that Dr. Odugbemi's patients include some who should be considered particularly vulnerable. The Tribunal received Dr. Godel's remote chart review report. Dr. Godel noted that of the 22 charts he reviewed, Dr. Odugbemi cared for several patients suffering from mental health conditions such as anxiety and depression. At least two of these were minors, 6 and 10-year old girls suffering from anxiety.

- 5) The number of times the offence was proven to have occurred

Dr. Odugbemi signed the TORA with the College in February 2015. Since then several College staff raised concerns about his repeated acts of non-compliance. Despite numerous interventions from the College to ensure compliance with the TORA, Dr. Odugbemi failed to comply.

6) The role of the physician in acknowledging what had occurred

Dr. Odugbemi demonstrated a pattern of deflecting blame to others for his non-compliance. In his testimony at the hearing, he blamed his medical resident, transcriptionist, booking clerk, patients and various College staff he dealt with for his non-compliance with the TORA. The Tribunal felt this reflected his inability or unwillingness to take responsibility and ownership of his actions with respect to the TORA.

More recently, in his January 14, 2019 submission on sanctions, Dr. Odugbemi was apologetic for having failed to arrange to attend the Gabbard Centre, for failing to pay the costs as agreed under the TORA in a timely way and for failing to pursue the weight loss training. The Tribunal considered that Dr. Odugbemi was contrite about these failures but noted that there was still no evidence that he had taken any steps to attend the Gabbard Centre or to pursue weight loss management training as required by the TORA. Dr. Odugbemi signed the TORA in February 2015. The Notice of Hearing was originally served on Dr. Odugbemi on October 25, 2017. The Tribunal did not consider the apologies in Dr. Odugbemi's January 14, 2019 submission to be sincere given the lack of evidence of attempts to rectify his failures to comply with those parts of the TORA.

Dr. Odugbemi's January 14, 2019 submission on sanction was not apologetic for failing to improve the quality of his charting, for failing to improve the quality of his care to patients with chronic diseases or for failing to comply with the restrictions on the number of patients he could see. The Tribunal did not believe that Dr. Odugbemi acknowledged these aspects of his proven unprofessional conduct on the issue of sanctions.

7) Whether the offending physician had already suffered other serious financial or other penalties as a result of the allegations having been made

The Tribunal heard testimony from Dr. Susan Ulan that since the allegations were made, Dr. Odugbemi has continued to practice medicine and earn a physician's income. There was no evidence that Dr. Odugbemi had suffered any financial or other penalties as a result of the allegations before the Tribunal.

8) The presence or absence of any mitigating circumstances

Dr. Odugbemi testified his inability to promptly pay costs to the College as per the TORA was because of the death of his father which required him to travel to Africa to attend a funeral. The Tribunal still felt that Dr. Odugbemi should have taken steps to ensure prompt payment to the College. The amount of money involved was quite modest for a practicing physician. In Dr. Odugbemi's January 14, 2019 submission on sanctions he explained that he had reserve savings but the funds were "locked for years". He offered no explanation for why his own financial reserves were "locked" or why he did not explore other means of obtaining the funds. Dr. Odugbemi did not demonstrate any other significant mitigating circumstances to the Tribunal.

9) The need to promote specific and general deterrence and, thereby, to protect the public and ensure the safe and proper practice of medicine

The TORA was meant to protect the public by helping Dr. Odugbemi remediate several aspects of his medical practice to ensure he can safely practice medicine. Dr. Odugbemi's demonstrated inability or unwillingness to comply with the signed TORA leaves several aspects of his medical practice sub-standard. The Tribunal feels this leaves the public at risk if Dr. Odugbemi is allowed to continue to practice medicine. Cancelling Dr. Odugbemi's registration and practice permit will prevent him from continuing to practice and protect the

public. An order for cancellation for breaching the terms of an agreement with the College will also serve as a general deterrent to other members of the profession who enter into agreements with the College to bring their medical practices up to acceptable levels.

10) The need to maintain the public's confidence in the integrity of the medical profession

The medical profession in Alberta has the privilege of self-regulation through the processes and jurisdiction of the College. It is an absolute necessity that signed agreements made between practicing physicians and the College as their regulatory body be adhered to such that all physicians meet a minimum standard of professional conduct and public safety. The public must have confidence that the College can ensure this for them. Dr. Odugbemi has thwarted all efforts made by the College to remediate several crucial aspects of his medical practice and by doing so he has thwarted the College's efforts to protect the public. A sanction short of cancellation in this case is likely to undermine public confidence in the integrity of the medical profession.

11) The degree to which the offensive conduct that was found to have occurred was clearly regarded, by consensus, as being the type of conduct that would fall outside the range of permitted conduct

Dr. Odugbemi's actions which were found to be unprofessional conduct did not come close to being acceptable behaviors with respect to the requirements set forth in the TORA and the requirement that he honor the signed TORA with the College. The Tribunal felt his behaviors in this case fell well outside of the range of acceptable and permitted conduct.

12) The range of sentence in other similar cases

The Complaints Director presented three similar cases, summarized above, of physicians with long histories of unacceptable conduct and a demonstrated inability or unwillingness to take actions to remediate. All three physicians were deemed ungovernable and had their medical licenses revoked by their regulatory bodies.

The Tribunal also considered the factors summarized by the Saskatchewan Court of Queen's Bench in *College of Physicians and Surgeons v Ali*, supra in concluding that Dr. Odugbemi has proved to be ungovernable in his dealings with the College. These factors include:

1) The nature, duration and repetitive character of the misconduct

Dr. Odugbemi signed a TORA with the College in 2015. Since then, the College has spent much time and effort to try to ensure Dr. Odugbemi's compliance with the TORA in the interests of patient care and ensuring that Dr. Odugbemi can practice safe, competent family medicine in the community. Despite these efforts, Dr. Odugbemi showed a repetitive pattern of non-compliance with the terms of the TORA over this time period.

2) Any prior discipline history

The Complaints Director referenced in his December 2018 sanction submission that taking into account the number of complaint investigation files noted in the TORA plus the four additional complaint investigation files which were ultimately resolved by agreement and advice given to the physician, there exists a total of thirteen separate complaints made to the College regarding Dr. Odugbemi who became a member of the College in Alberta in 2004. Though details of all thirteen complaints were not available to the Tribunal, the sheer volume

of complaints speaks to the long history of complaints and conduct concerns involving Dr. Odugbemi while he has practiced medicine in Alberta. The Tribunal noted that there was no evidence of any prior findings of unprofessional conduct by a hearing tribunal.

3) Any character evidence

Dr. Odugbemi spent a considerable amount of time during his direct testimony on June 25, 2018 describing his own character. This evidence was described in the Tribunal's decision finding Dr. Odugbemi guilty of unprofessional conduct dated November 22, 2018. Dr. Odugbemi did not call any other witnesses to comment on his character at either stage of the hearing.

4) The existence or lack of remorse. Remorse includes a recognition and understanding of the seriousness of the misconduct

The Tribunal did not feel Dr. Odugbemi displayed genuine remorse for his proven unprofessional conduct. Instead, he demonstrated a repeated pattern of deflecting blame onto others for his conduct. Throughout the June 2018 hearing he blamed his office staff, transcriptionist, medical resident, patients, Dr. Howard-Tripp, and various College staff he dealt with for his non-compliance with various aspects of the TORA. The Tribunal also did not feel Dr. Odugbemi truly grasped how significantly his actions degraded the medical care he provided to his patients.

As set out above, in his January 14, 2019 submission on sanctions Dr. Odugbemi was apologetic for having failed to arrange to attend the Gabbard Centre, for failing to pay the costs as agreed under the TORA in a timely way and for failing to pursue the weight loss training. The Tribunal did not consider these apologies to be sincere given the lack of evidence of attempts to rectify some of his failures.

The Tribunal also considered that Dr. Odugbemi's January 14, 2019 submission on sanction was not apologetic for failing to improve the quality of his charting, for failing to improve the quality of his care to patients with chronic diseases or for failing to comply with the restrictions on the number of patients he could see. Dr. Odugbemi has not expressed remorse for these proven failures.

5) The degree of willingness to be governed by the College

The Tribunal heard testimony from Dr. Odugbemi that he is obedient and respects the role of the College as his regulator. However, his repeated non-compliance with the TORA despite numerous interventions from the College demonstrated a repeated pattern of unwillingness to respect a signed agreement with his professional regulatory body. Dr. Odugbemi's submissions on sanction were contrite and expressed his willingness to submit to the College's direction, but his actions since February 2015 demonstrate otherwise.

6) Medical or other evidence that explains (though does not excuse) the misconduct

No specific evidence regarding a medical or other explanation for Dr. Odugbemi's non-compliance with the TORA was presented. However, the Tribunal did hear testimony that part of the requirement in the TORA for an assessment at the Gabbard Centre came from a concern regarding Dr. Odugbemi's fitness to practice medicine. As Dr. Odugbemi to date has not made any effort to attend such an assessment, this question still remains.

- 7) The likelihood of future misconduct, having regard to any treatment being undertaken, or other remedial efforts

This factor is discussed immediately below, under factor 8.

- 8) The member's ongoing co-operation with the College in addressing the outstanding matters that are the subject of the misconduct

Despite numerous efforts made by the College to facilitate Dr. Odugbemi's compliance with the TORA, he repeatedly demonstrated his inability or unwillingness to comply with the TORA. The repeated pattern of expressing a promise in the future to improve and comply with the TORA only to eventually be found non-compliant gives the Tribunal no reason to believe that Dr. Odugbemi can or will comply with a signed agreement with his professional regulatory body or that he will improve his practice to acceptable levels.

The Tribunal has carefully considered the evidence before it, the Tribunal's finding of unprofessional conduct on the part of Dr. Odugbemi and the submissions on sanction from both parties. The Tribunal has weighed the factors set out in *Jaswal v. Newfoundland Medical Board*, supra and in *College of Physicians and Surgeons v. Ali*, supra.

When considering the above-listed factors and Dr. Odugbemi's repeated pattern of non-compliance and deflecting blame onto others for his own actions in his dealings with the College, the Tribunal finds that Dr. Odugbemi is ungovernable and that the appropriate sanction is cancellation of his registration and practice permit. While he provided many promises to improve his medical practice and expressions of remorse over his proven unprofessional conduct, the Tribunal finds that Dr. Odugbemi's actions in his dealings with the College with respect to the TORA to repeatedly demonstrate ungovernability. The Tribunal does not feel Dr. Odugbemi has insight into the importance of the College's role in facilitating compliance with standards of practice in all Alberta physicians to ensure Albertans receive safe competent care. The Tribunal also felt that if Dr. Odugbemi were to remain in medical practice it is unlikely the deficiencies and concerns intended to be addressed by the TORA would improve.

Dr. Odugbemi did not provide any substantive arguments against the recommended sanctions from the Complaints Director. Instead, in his submissions, Dr. Odugbemi continued to reference the allegation and particulars that the Tribunal found proven. The Tribunal did not find these comments helpful at this point given the time to make submissions regarding the allegation and particulars was at the June 2018 hearing and the Tribunal has already made findings of unprofessional conduct. Additionally, Dr. Odugbemi in his January 2019 submissions indicated he is now open to complying with aspects of the TORA with the College such as "travelling to the Gabbard Centre, educational opportunities and undertake to fully work with CPSA as recommended". The Tribunal interpreted these submissions from Dr. Odugbemi as being opposed to cancellation, and seeking instead an order that he comply with the TORA. The Tribunal felt Dr. Odugbemi's submissions that he merely be directed to comply with the TORA demonstrated his lack of insight into his own proven unprofessional conduct.

In making these orders the Tribunal recognizes that cancelling Dr. Odugbemi's registration and practice permit is the most severe sanction that can be imposed. The Tribunal determined that while cancellation is a severe sanction, it is necessary in this case to prioritize the health and safety of the public over Dr. Odugbemi's own interests in continuing to engage in the practice of medicine. The College is unable to effectively regulate Dr. Odugbemi's practice of medicine because his actions have repeatedly thwarted the College's efforts. The College will therefore be unable to carry out its primary purpose to protect the public interest if Dr. Odugbemi's registration and practice permit are not cancelled.

The Tribunal also considered the factors set out in the *Jaswal* case to determine whether an order for costs should be imposed on Dr. Odugbemi and if so, whether all or a portion of the costs should be ordered to be paid. These factors include:

- 1) The degree of success, if any, of the physician in resisting any or all of the charges

All but one of the particulars set out in the allegation against Dr. Odugbemi were proven. The one particular that was not proven involved Dr. Odugbemi's prescribing practices. This particular was dismissed mainly because of a lack of evidence that Dr. Odugbemi failed to comply with the TORA by improving the quality of his prescribing and not because there was any compelling evidence that Dr. Odugbemi clearly improved his prescribing practices. Counsel for the Complaints Director, Mr. Boyer, had acknowledged in argument on June 26, 2018 that the evidence in support of this particular was thin.

- 2) The necessity for calling all of the witnesses who gave evidence or for incurring other expenses associated with the hearing

Dr. Odugbemi did not admit to any of the particulars in the allegation made against him, necessitating proceeding with a full hearing and the calling of multiple witnesses by the Complaints Director. The Tribunal considered that all of these witnesses gave relevant evidence and were necessary. During the course of the hearing Dr. Odugbemi made an unanticipated claim that Dr. Howard-Tripp had a personal vendetta against him and was the source of all of his dealings with the College. This resulted in Dr. Howard-Tripp being called as a rebuttal witness to provide testimony to this specific point. The Tribunal deliberated and decided to permit the Complaints Director to call Dr. Howard-Tripp as a rebuttal witness. Additionally, the original Notice of Hearing in this matter was issued and served October 25, 2017 and the hearing was adjourned twice at Dr. Odugbemi's request prior to June 2018. The first adjournment was because Dr. Odugbemi was out of the country. The second adjournment was to allow Dr. Odugbemi more time to seek legal counsel, although he ultimately chose to proceed without the benefit of legal counsel. The Tribunal considered that these adjournments, particularly the second one, added to the overall costs of the proceedings

- 3) Whether the persons presenting the case against the doctor could reasonably have anticipated the result based upon what they knew prior to the hearing

Given the protracted history of Dr. Odugbemi's dealings with the College with respect to the TORA, there was much evidence accumulated. It was necessary to present the evidence and to provide Dr. Odugbemi the opportunity to respond in a hearing. Upon considering all of the evidence, the Tribunal found all but one of the particulars alleged to have been proven. There was no significant hearing time spent on matters that went unproven.

- 4) Whether those presenting the case against the doctor could reasonably have anticipated the lack of need for certain witnesses or incurring certain expenses in light of what they knew prior to the hearing

The witnesses called by the College in this hearing were relevant and necessary given that they had direct dealings with Dr. Odugbemi in matters related to the allegation and particulars alleged against him. The Tribunal did not feel that any of the witnesses or evidence called by the Complaints Director were unnecessary or unhelpful to the Tribunal in its deliberations.

- 5) Whether the doctor cooperated with respect to the investigation and offered to facilitate proof by admissions, etc.

This factor is relevant only to the assessment of costs. Dr. Odugbemi denied the allegation and all of the particulars alleged against him. A contested hearing was therefore necessary. As described above, Dr. Odugbemi's conduct in seeking adjournments also contributed to the overall costs of the proceedings.

- 6) The financial circumstances of the doctor and the degree to which his financial position has already been affected by other aspects of any penalty that has been imposed.

Since the allegation was made, Dr. Odugbemi has continued to practice medicine and earn a physician's income. There is therefore no evidence that his financial position has been affected by other aspects of any penalty imposed upon him. Dr. Odugbemi had also testified that he was the recipient of a substantial personal injury settlement and that finances are not an issue for him. He repeated this point in his closing submissions.

In this case the Complaints Director is seeking an order that Dr. Odugbemi be responsible for all of the investigation and hearing costs. Dr. Odugbemi provided no submissions on the issue of costs. The Tribunal weighed the factors described above and determined that in this case it is appropriate that Dr. Odugbemi be ordered to pay the full costs of the investigation and hearing into his conduct. The hearing was conducted efficiently. The Complaints Director presented all of his evidence during the morning of June 25, 2018, with the exception of brief reply evidence from Dr. Howard-Tripp. The allegation was found proven, as were all but one of the particulars alleged, and no significant amount of hearing time was spent on matters that went unproven. The hearing was necessary as were all of the witnesses. There was no evidence that the costs would place a crushing or unfair burden on Dr. Odugbemi.

Signed on behalf of the Hearing Tribunal by
the Chair



Dated: April 15, 2019

Dr. Don Yee