

COLLEGE OF PHYSICIANS & SURGEONS OF ALBERTA

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

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

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

## **I. INTRODUCTION**

1. The Hearing 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. The Hearing Tribunal then received submissions from the parties concerning sanctions and issued a decision on April 15, 2019 ordering the cancellation of Dr. Odugbemi's registration and practice permit with the College. The Hearing Tribunal also ordered that Dr. Odugbemi pay the costs of the investigation and hearing into his conduct.
2. Dr. Odugbemi appealed to the College's Council Review Panel. On November 21, 2019 the Council Review Panel allowed an application by Dr. Odugbemi to introduce new evidence. The new evidence consisted of an assessment report from Vanderbilt University's Comprehensive Assessment Program and the results of further testing recommended by the Vanderbilt University Program following Dr. Odugbemi's attendance there in August of 2019. The Council Appeal Panel referred the matter back to the Hearing Tribunal for reconsideration of the sanctions in light of the new evidence.
3. The Council Review Panel directed the sanctions to be reconsidered within 6 months of November 21, 2019, but provided that this deadline could be adjusted. The matter was scheduled before the Hearing Tribunal but then adjourned. The reconsideration of the sanctions was delayed by the need for the parties to obtain and exchange reports that would be germane to sanctions, and later by Ms. Hiebert's inability to obtain instructions from Dr. Odugbemi and the need for a [REDACTED]. The Hearing Tribunal issued adjournment decisions in May of 2020, September of 2020 and April of 2021. The hearing was ultimately scheduled for June 16, 2022 following a meeting of counsel and the Hearings Director.

## **II. PARTIES**

4. The Hearing Tribunal met on June 16, 2022 virtually via Zoom. Mr. Gregory Sim attended as independent legal counsel for the Hearing Tribunal.
5. Mr. Craig Boyer and Ms. Tracy Zimmer appeared as legal counsel for the Complaints Director. Ms. Tari Hiebert, Tory Hibbitt and Ms. Kaitlynd Hiller appeared as counsel for Dr. Odugbemi. Dr. Odugbemi did not attend.

## **III. PRELIMINARY MATTERS**

6. There were no objections to the composition of the Hearing Tribunal or its jurisdiction to proceed to reconsider the sanctions previously imposed. Neither party applied to close the hearing to the public.

#### **IV. EXHIBITS**

7. The parties entered an agreed exhibit book into evidence. The Exhibit Book was labelled as Exhibit 45. The agreed exhibits were:
  1. Vanderbilt Comprehensive Assessment Program report dated September 20, 2019;
  2. Memorandum of Agreement to Withdraw from medical practice signed by Dr. Odugbemi dated October 1, 2019;
  3. Memorandum with attached records from Dr. Michael Caffaro to Dr. Scott McLeod dated May 14, 2020 requesting an interim suspension order under section 65 of the *Health Professions Act*;
  4. Letter from Dr. Scott McLeod to Dr. David Odugbemi dated May 22, 2020 regarding request for interim suspension under section 65 of the *Health Professions Act*;
  5. Letter from Dr. Scott McLeod to Dr. David Odugbemi dated May 25, 2020 regarding the interim suspension of practice permit ordered under section 65 of the *Health Professions Act*;
  6. Notice of Suspension issued to Dr. David Odugbemi dated May 27, 2020;
  7. Report from Dr. Roger Brown, forensic psychiatrist dated July 7, 2020 with *curriculum vitae*;
  8. Report from Dr. Therese Chevalier, neuropsychologist dated June 18, 2020 with *curriculum vitae*.

#### **V. OPENING REMARKS**

8. Mr. Boyer explained that Dr. Odugbemi is currently suspended, but he remains a regulated member of the College. The Hearing Tribunal must reconsider the appropriate sanctions for his proven unprofessional conduct and impose sanctions to conclude this matter. The Complaints Director will not assert that Dr. Odugbemi is ungovernable, but the practical reality is that he is not fit to practice medicine. Cancellation remains the appropriate sanction. Mr. Boyer said that the Complaints Director is no longer seeking an order for Dr. Odugbemi to pay the costs of the investigation and hearing.
9. Mr. Boyer referenced Dr. Chevalier's assessment report which concluded that Dr. Odugbemi's [REDACTED] situation is such that he should retire from the practice of medicine. He stated this conclusion is consistent with the Vanderbilt report which was available to Council Appeal Panel when they met to consider Dr. Odugbemi's appeal in 2019. Mr. Boyer said that the Complaints Director would rely on the evidence that was admitted by agreement and did not intend to call witnesses. Mr. Boyer suggested that the Hearing Tribunal may wish to hear from Dr. Brown who would be available to testify if desired. Mr. Boyer indicated Dr. Brown would be able to provide comments on when he thinks Dr. Odugbemi's medical condition started to affect his decision making.

10. Ms. Hiebert agreed with Mr. Boyer and suggested that both Dr. Brown and Dr. Chevalier were on call if the Tribunal wished to hear them testify in person. Ms. Hiebert explained that she was engaged to represent Dr. Odugbemi, but she had no instructions on the Complaints Director's position that cancellation was the appropriate sanction. Because of this, she stated she was only in a position to provide reports and background information. She stated her understanding of the Complaints Director's position on the practical aspect of the medical finding that Dr. Odugbemi is not fit to practice medicine and indicated that Dr. Brown could provide comments on the retrospective consideration of Dr. Odugbemi's conduct in light of his medical diagnosis. Ms. Hiebert acknowledged that both Dr. Brown and Ms. Chevalier conclude that it is not safe for Dr. Odugbemi to return to practice.
11. The Hearing Tribunal deliberated and requested that the parties call Dr. Roger Brown to testify.

## VI. TESTIMONY – DR. ROGER BROWN

12. Dr. Roger Brown is a Forensic Psychiatrist and an Assistant Clinical Professor in the Department of Psychiatry at the University of Alberta. He also serves as the Forensic Psychiatry Zone Section Chief for Alberta Health Services which in effect is the medical lead for forensic psychiatry services in Edmonton and northern Alberta. He is also the lead for the competence by design process and the competence committee within the University of Alberta residency program. The parties agreed that Dr. Brown was properly qualified to give opinion evidence at the hearing and as contained in his report.
13. Dr. Brown conducted a document review and an assessment of Dr. Odugbemi including a virtual interview of Dr. Odugbemi on May 5, 2020. Dr. Brown produced a report dated July 7, 2020 that was in evidence. Dr. Brown was asked about his diagnosis of Dr. Odugbemi. He explained that in his opinion, Dr. Odugbemi suffers from a [REDACTED] disorder. Dr. Brown based his opinion on Dr. Chevalier's testing results, Dr. Odugbemi's MRI report, his interview with Dr. Odugbemi, Dr. Odugbemi's statements and overall presentation before the Hearing Tribunal in 2018 as well as Dr. Godel's comments during the 2018 Tribunal hearing about his review of Dr. Odugbemi's charting. Dr. Brown commented that in his interview with Dr. Odugbemi he did note some [REDACTED] difficulties but that there were not significant telling features from that interview.
14. Dr. Brown explained that [REDACTED] disorder is a chronic, progressive condition which was previously referred to as [REDACTED]. For a patient it results in deterioration of the [REDACTED] functioning. In this case it relates to the [REDACTED]. Dr. Brown explained that onset of the condition can be gradual or sudden, but the effects can include impairments of memory, executive functioning such as complex thinking, sequencing, organizing activities and planning events, abstractions and conclusions, and motor functions including coordination or precise movements. He explained that [REDACTED] disorder can be more subtle at its

onset and in this case it is called a [REDACTED] disorder. In Dr. Odugbemi's case because the degree of impairment is more significant, it is considered a [REDACTED] disorder.

15. Dr. Brown explained that in general, the sorts of executive functions that are affected would include the ability to carry out tasks related to independent living. He stated there would be more dysfunction noted if a patient were in a more cognitively demanding occupation relative to other areas of a person's life where certain activities can still be achieved due to habitual rehearsal such as preparing a specific meal. Activities that require adaptation, learning, analysis and planning would show deficits earlier on in the course of this illness.
16. Dr. Brown referenced Dr. Chevalier's report to explain the nature of deficits seen in Dr. Odugbemi. This report found Dr. Odugbemi's premorbid intellectual abilities to be [REDACTED]. Dr. Chevalier commented that there were significant [REDACTED] deficits including [REDACTED]. Dr. Brown stated these observations were consistent with Dr. Godel's testimony regarding Dr. Odugbemi's charting deficiencies. Dr. Chevalier found that Dr. Odugbemi's memory was [REDACTED], but the testing revealed significant impairments of [REDACTED]. The MRI report indicating [REDACTED] would correlate with the observed [REDACTED] deficits. Dr. Brown stated all of these findings support the notion that Dr. Odugbemi has a [REDACTED] and that [REDACTED] causes are the main causative factor.
17. Dr. Brown indicated Dr. Odugbemi's [REDACTED] disorder would negatively affect his judgment and his ability to carry out the occupational demands of practicing medicine. Dr. Brown wrote that:
  18. The ability to plan and direct an investigative diagnostic process, to prioritize the importance of findings, to synthesize information into a plausible diagnosis and management plan, and to document information in an organized fashion, would all be significantly affected.
19. Dr. Brown was significantly concerned that Dr. Odugbemi's could not safely practice and concluded in his report that Dr. Odugbemi is no longer able to practice medicine safely. Dr. Brown explained that Dr. Odugbemi would have significant difficulty [REDACTED]. Dr. Brown indicated these functional deficits appeared present from Dr. Godel's previous testimony from his review of Dr. Odugbemi's practice and charting.
20. Dr. Brown indicated his assessments of patients' functional capacity are done in a multi-disciplinary setting. Assessments include neuropsychological tests, neuroimaging and occupational therapist assessments. The neuropsychological tests used are standardized.

21. Dr. Brown was then asked to comment on when Dr. Odugbemi's [REDACTED] deficits began, and whether those deficits could have affected his ability to comply with the Terms of Resolution Agreement ("TORA") with the College in 2015. Dr. Brown explained that there was no literature to guide this analysis. On the contrary, the literature suggests there is a high degree of variability among patients with [REDACTED] disorder. Dr. Brown nevertheless said it was reasonable to conclude that Dr. Odugbemi's disease process was beginning around 2013 and resulted in a significant level of impairment by 2016. His apparent ability to complete some aspects of the TORA, but not the more demanding tasks suggested that his [REDACTED] deficits could have been a contributing factor. Dr. Brown stated that his impression of Dr. Odugbemi was based on his experience with previous similar cases and his understanding of [REDACTED] disease. The only neuropsychological testing he is aware of for Dr. Odugbemi is the testing done by Dr. Chevalier in 2020.
22. As an example, Dr. Brown pointed out Dr. Odugbemi's inability to contact the Gabbard Center to arrange an assessment. This would have required a degree of sequencing, organizing and planning. Additionally, Dr. Odugbemi demonstrated an inability to enhance the quality of his medical charting. At the same time, Dr. Odugbemi did cease providing service for his "Mercy Ship" and also ceased providing care to obstetrical patients past a certain gestational age. Dr. Brown indicated that in casual conversation Dr. Odugbemi would not exhibit the full degree of his [REDACTED] impairment but with more focused questioning the deficits would become more apparent. Dr. Brown also said that Dr. Odugbemi appeared to lack insight into his deficits and is likely to make attempts to explain lapses in ability or organization through confabulation.
23. Dr. Brown indicated the most likely cause of Dr. Odugbemi's deficits was [REDACTED] disease instead of a single significant stroke event and that Dr. Odugbemi's [REDACTED] decline is consistent with an accrual of more and more deficits over time. By 2016 there was evidence of disorganized documentation from Dr. Godel's practice review which is a very significant deficit for a practicing physician. Dr. Brown explained that earlier on in the disease process, smaller deficits can be compensated for initially but as more deficits accrue over time there is increasing difficulty with function. Dr. Brown noted that in 2013 and 2014 there were multiple complaints about Dr. Odugbemi which are potentially related to the [REDACTED] changes which were likely to be occurring at the time.
24. Dr. Brown had not undertaken an analysis as to whether Dr. Odugbemi would have been "not criminally responsible" for his failure to comply with the TORA. Dr. Brown explained that a "not criminally responsible" determination under the criminal law is a much higher standard. He stated this form of disorder usually would not enter into a reason for someone to be not criminally responsible unless the deficits are extremely significant. Dr. Brown stated that Dr. Godel's description of Dr. Odugbemi's disorganized charting should raise the consideration of his [REDACTED] fitness but at the same time does not lead to an automatic conclusion of a [REDACTED] deficit. He stated in reaching his conclusions in his assessment that he had the benefit of hindsight and pre-existing information from his prior assessments, neuroimaging and Dr. Godel's practice review findings. He stated that the previous requirement of an assessment at the Gabbard

Center would have involved neuropsychological testing, medical and psychiatric testing and all of these would have been appropriate assessments for Dr. Odugbemi to undergo at the time in his opinion.

25. Dr. Brown was aware that Dr. Odugbemi was undergoing a [REDACTED] Assessment around the time of his own assessment but he did not know the outcome of that assessment. He is aware that this assessment was intended to determine if Dr. Odugbemi may require an [REDACTED] for certain tasks but he believed that Dr. Odugbemi did lack [REDACTED] in some areas. He was unaware at the time if the courts had issued an order granting [REDACTED].

## VII. SUBMISSIONS

### Submissions on behalf of the Complaints Director

26. Mr. Boyer began by reviewing the background to the case before the Hearing Tribunal. He stated that the present hearing is to deal with the 2019 Council decision to reconsider the finding of Dr. Odugbemi being ungovernable and the sanction of cancellation. He referenced the *Ahluwalia* case from Manitoba and the *Al-Ghamdi* case from Alberta which dealt with findings of ungovernability and stated that the interpretation of the term is somebody who despite direction and guidance from a regulator is unwilling to comply with the requirements of practice and being governed by the regulator.
27. Mr. Boyer acknowledged the medical evidence of Dr. Odugbemi's significant [REDACTED] decline due to [REDACTED] disease [REDACTED] and submitted it suggests that Dr. Odugbemi was not willfully defiant of the TORA; with the benefit of hindsight, the evidence instead suggests that Dr. Odugbemi's failure to comply with the TORA was due to his lack of [REDACTED]. A more fulsome picture of Dr. Odugbemi's [REDACTED] in 2015 and 2016 may have been obtained if he had completed the TORA including the obligation to undergo a fitness to practice assessment at the Gabbard Centre, but Dr. Odugbemi did not do this.
28. Mr. Boyer indicated that at least as of the testing done in 2020, Dr. Odugbemi lacks the [REDACTED] and this may explain why he did not fulfill the requirements outlined in his TORA. He indicated that from Dr. Brown's testimony this is not a situation where someone due to psychosis or extreme mental illness is unable to recognize right from wrong. Instead, Dr. Brown described Dr. Odugbemi as someone who even in casual conversation seems capable and fit. Mr. Boyer stated that his understanding was that the courts have not granted a [REDACTED] order which would have determined Dr. Odugbemi to be an [REDACTED].
29. Mr. Boyer summarized the neuropsychological testing, psychiatric evaluation and neuroimaging done in 2020 that demonstrated Dr. Odugbemi to be unfit. He also indicated the Vanderbilt assessment from 2019 demonstrated at least at that point in time that Dr. Odugbemi was unfit. Dr. Odugbemi provided a Memorandum of Agreement

dated October 1, 2019 that he would withdraw from practice in light of the Vanderbilt assessment. However, he did not honor this as he continued to see patients, practice and prescribe. This resulted in an application under section 65 of the *Health Professions Act*, RSA 2000, c. H-7 (“*HPA*”) to the Registrar for an interim suspension which was granted in May 2020. Dr. Odugbemi remains a regulated member of the CPSA but any practice permit is suspended.

30. Mr. Boyer indicated that by several reports Dr. Odugbemi is unfit to practice medicine and because of his medical condition will not be able to return to medical practice in the future. He pointed out Dr. Chevalier’s conclusion that Dr. Odugbemi should retire from practicing medicine. Mr. Boyer stated the College is not seeking punishment for Dr. Odugbemi continuing to practice after he signed a Memorandum of Agreement to withdraw from practice in 2019, but the section 65 order ultimately reinforces Drs. Brown’s and Chevalier’s findings that Dr. Odugbemi is unfit and does not understand the commitment he made.
31. Mr. Boyer indicated that under section 43 of the *HPA*, a physician can ask to have their registration cancelled as part of the registration process but this has not been done in this case as Dr. Odugbemi has not offered or requested a cancellation by way of retirement. Therefore, the Hearing Tribunal has a role here to complete in that there is an order that needs to be issued that is consistent with the totality of the evidence before the Tribunal. This case is of a physician who after multiple different complaints was given the opportunity to address the concerns through a TORA but failed to comply with these terms and failed to go through with a Gabbard Center assessment which Dr. Brown testified would have been the correct thing to do.
32. Mr. Boyer stated that Dr. Brown’s and Dr. Chevalier’s reports explained how in hindsight Dr. Odugbemi failed to appreciate the gravity, appropriately prioritize or foresee the potential consequences of not following through with the TORA. Despite this, Dr. Odugbemi is still living independently and has not been declared [REDACTED] by the courts. Therefore, he is not someone who has demonstrated such diminished mental capacity that he could not be found guilty of unprofessional conduct.
33. Mr. Boyer said the evidence shows that Dr. Odugbemi is able to carry on daily living independently. There is no evidence that he is unable to appreciate right from wrong, and therefore no evidence that he is of such diminished capacity that his failure to comply with the TORA conduct would not constitute unprofessional conduct. Dr. Odugbemi’s [REDACTED] deficits, and particularly the deficits in his [REDACTED] functioning mean that it would be unsafe for him to practice medicine. Mr. Boyer pointed out that the evidence from Dr. Brown, Dr. Chevalier and the Vanderbilt report all show that Dr. Odugbemi is simply unfit to practice medicine with no hope of successfully returning to safe medical practice. While this means Dr. Odugbemi was not necessarily willfully defiant and ungovernable, his conduct still amounts to unprofessional conduct and therefore requires an appropriate order for cancellation.



34. To do otherwise would leave the public with no confidence that they can be protected from a physician who is unfit to practice. The Hearing Tribunal should therefore maintain the cancellation order, but for different reasons. Mr. Boyer said the Complaints Director is no longer seeking an order for Dr. Odugbemi to pay the costs of the investigation and hearing.
35. Mr. Boyer summarized the *Collett v. CPSA*, 2019 ABCA 461 case which involved a physician in his mid-70's who was found to have a mild neurocognitive deficit on neuropsychological testing. The physician appealed a direction to cease practicing and undergo further testing. About year later further testing showed the physician to be mentally fit and he returned to practice. He stated the case went through the Court of Appeal which set the bar high to proceed through an incapacity finding via section 118 of the *HPA*.
36. Mr. Boyer also referenced the *Wright v College and Association of Registered Nurses of Alberta (Appeals Committee)*, 2012 ABCA 267 case involving nurses stealing from a hospital drug cart but arguing they did so because of an addiction. Mr. Boyer stated this case is distinct from the *Wright* case in that Dr. Odugbemi has a medical condition that cannot be treated into remission like an addiction can. Instead, his [REDACTED] disease has made him unfit and will only continue to progress and therefore there is no hope of him becoming fit enough in the future to practice medicine again.

#### **Submissions on behalf of Dr. Odugbemi**

37. Ms. Hiebert explained that Dr. Odugbemi was able to attend the Vanderbilt University Comprehensive Assessment Program with assistance from Dr. Terrie Brandon from the Physician Family Support Program. She said that Dr. Odugbemi had not organized his own attendance at Vanderbilt. It was a joint undertaking involving the Physician Family Support Program, Dr. Beach who is the Physician Health Registrar of the College, and Ms. Hiebert. Funding to attend the Vanderbilt assessment was provided from the Physician Family Support Program.
38. Ms. Hiebert urged the Tribunal not to draw conclusions about Dr. Odugbemi's current [REDACTED] functioning from the lack of appointment of a [REDACTED] by a court, but instead indicated there is enough evidence to understand Dr. Odugbemi's [REDACTED] abilities from his assessments by Dr. Chevalier and Dr. Brown which speak to the seriousness of Dr. Odugbemi's [REDACTED] illness but do shed light on his past conduct with the College. Ms. Hiebert then explained that she was unable to support or oppose Mr. Boyer's proposed sanction.
39. Ms. Hiebert referenced section 82(1) of the *HPA* which outlines the broad powers a Tribunal has to make orders that it considers appropriate for the protection of the public. She added that even when a Tribunal makes a finding of unprofessional conduct such as in the *Wright v CARNA* case, it does not imply moral failing. She stated the current definition of unprofessional conduct in the *HPA* does include conduct which occurs because of a medical condition.

## VIII. DECISION AND REASONS

40. The Hearing Tribunal orders that Dr. Odugbemi's registration with the College and any practice permit be cancelled. There will be no order for Dr. Odugbemi to pay costs of the investigation or hearing.
41. The Hearing Tribunal's merits decision found Dr. Odugbemi to have failed to fulfill the TORA between him and the College. This included failing to attend and complete a multi-disciplinary assessment at the Gabbard Centre; failing to pay agreed upon costs to the College in a timely fashion; failing to pursue education in weight loss programs; failing to improve his charting and chronic disease management; and failing to abide by a restriction on the number of patients he could see each day and week.
42. The Hearing Tribunal found Dr. Odugbemi's failure to comply with the TORA to be unprofessional conduct within the meaning of section 1(1)(pp)(xii) of the *HPA*, which defines unprofessional conduct to include conduct that harms the integrity of the regulated profession. The Tribunal found Dr. Odugbemi's conduct to be unprofessional because he signed the TORA with the College to resolve issues arising from several significant complaints about his medical practice, and then failed to comply with it.
43. The Hearing Tribunal held that the College and the public must be able to rely on physicians to diligently follow through on agreements they make with the College. This is particularly so in the case of agreements to resolve complaints and improve the quality of physicians' charting and care. The failure of a physician to comply with such an agreement is serious and undermines the integrity of the medical profession in the eyes of the public and erodes the public's confidence that the College can ensure they receive safe and competent care from their regulated members. It also caused the Tribunal to question the actual quality of the care Dr. Odugbemi was providing to his patients.
44. The new evidence before the Hearing Tribunal demonstrated that Dr. Odugbemi may not have been acting with insight and intent when he failed to comply with the TORA in 2015 and 2016. In Dr. Odugbemi's clinical interview at the Vanderbilt Comprehensive Assessment Program he acknowledged that he had not fulfilled the TORA, but the Vanderbilt report explained that their testing raised questions about Dr. Odugbemi's [REDACTED] abilities and his fitness to practice medicine.
45. Dr. Chevalier wrote in her June 18, 2020 neuropsychological assessment report that Dr. Odugbemi scored in the [REDACTED] range for certain tests. Dr. Chevalier found that Dr. Odugbemi had prominent [REDACTED] deficits in his [REDACTED]. [REDACTED] Dr. Chevalier also found greater than expected deficits in Dr. Odugbemi's [REDACTED]. Dr. Chevalier explained that these deficits meant that when faced with a complex or novel problem, Dr. Odugbemi would have difficulty paying attention to critical details and with creative problem solving. This would render him vulnerable to errors in judgment. Dr. Chevalier concluded that Dr. Odugbemi had

demonstrated a significant decline in his [REDACTED] abilities and it was her opinion that Dr. Odugbemi was not fit to practice medicine.

46. Dr. Brown relied, in part, on Dr. Chevalier's assessment in coming to his conclusion that Dr. Odugbemi's failures to complete the TORA were more likely than not related to a [REDACTED] disorder with deficits in [REDACTED] functioning. Dr. Brown concluded that Dr. Odugbemi could not safely practice medicine. Both Drs. Brown and Chevalier found Dr. Odugbemi's [REDACTED] deficits to be permanent, irreversible and most likely to continue to worsen with time.
47. The Hearing Tribunal considered whether Dr. Odugbemi's conduct could still constitute unprofessional conduct and concluded that it did. The Hearing Tribunal's conclusion that Dr. Odugbemi's conduct was unprofessional was not based on a determination of his level of insight or intention. It was the fact of a physician entering into an agreement with the College to resolve significant complaints and then not complying with that agreement that was held unprofessional.
48. The *HPA* defines "unprofessional conduct" in section 1(1)(pp) to include conduct that harms the integrity of the regulated profession "whether or not it is disgraceful or dishonourable". The Alberta Court of Appeal has also considered whether conduct related to a health condition or disability can amount to unprofessional conduct and engage the College's statutory discipline process, concluding that it can. In *Wright v College and Association of Registered Nurses of Alberta (Appeals Committee)* at paragraphs 67-74, the majority of the Court of Appeal held that it is not discriminatory to hold College registrants accountable for unprofessional conduct where that conduct may be caused on some level by a health condition or disability. On the contrary, if the College were prohibited from engaging its discipline process to address conduct that would otherwise amount to unprofessional conduct, it would likely amount to an undue hardship for the College. The Court concluded that health conditions and disabilities can be adequately accommodated in the sanctions process. The College is not restricted to the incapacity process in section 118 of the *Health Professions Act*, for example.
49. The Hearing Tribunal then considered whether cancellation is still the appropriate sanction to be imposed for Dr. Odugbemi. In this case Ms. Hiebert was limited by the scope of her engagement on Dr. Odugbemi's behalf and she was unable to support or oppose Mr. Boyer's submissions on behalf of the Complaints Director that cancellation remains the appropriate sanction. Ms. Hiebert did acknowledge the evidence of Dr. Brown and Dr. Chevalier that it would be unsafe for Dr. Odugbemi to return to medical practice.
50. Dr. Odugbemi's proven unprofessional conduct was very serious and warrants a very serious sanction in order to deter other members of the medical profession from similar unprofessional conduct in the future. The Hearing Tribunal has considered the evidence of Dr. Odugbemi's [REDACTED] disorder and its likely impacts on his ability to comply with the TORA. Given the evidence of Dr. Brown and Dr. Chevalier that Dr. Odugbemi cannot safely return to practice, it is unnecessary to decide whether a

different sanction short of cancellation would be appropriate for a physician in different circumstances. Cancellation of Dr. Odugbemi's registration with the College is appropriate and consistent with the public's interest in the safe and proper practice of medicine. Any other sanction would cause the public to lose confidence in the regulation of the medical profession.

51. The Hearing Tribunal agreed with and accepted the Complaints Director's proposal that there should be no costs order against Dr. Odugbemi in light of the medical evidence.

Signed on behalf of the Hearing Tribunal by the Chair:



Dr. Don Yee

Dated this 26<sup>th</sup> day of August, 2022.