

COLLEGE OF PHYSICIANS & SURGEONS OF ALBERTA

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

AND IN THE MATTER OF A HEARING REGARDING  
THE CONDUCT OF DR. MALGORZATA EJSMONT

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

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## **I. INTRODUCTION**

1. The Hearing Tribunal held a hearing into the conduct of Dr. Malgorzata Ejsmont, a regulated member of the College of Physicians and Surgeons of Alberta (the “College”) on June 21, 2018. The hearing was held at the offices of the College in Edmonton, Alberta.
2. In attendance at the hearing were:  
  
Members of the Hearing Tribunal:  
Dr. Paul Greenwood, Chair  
Dr. Neelam Mahil  
Ms. Georgeann Wilkin, public member  
  
Also in attendance were:  
  
Ms. Julie Gagnon, independent legal counsel for the Hearing Tribunal  
Mr. Craig Boyer, legal counsel for the Complaints Director  
Dr. Malgorzata Ejsmont, investigated person  
Ms. Valerie Prather, legal counsel for Dr. Ejsmont

## **II. PRELIMINARY MATTERS**

3. There were no objections to the composition of the Hearing Tribunal or the jurisdiction of the Hearing Tribunal to proceed with the hearing.
4. The hearing was open to the public pursuant to section 78 of the *Health Professions Act*, RSA 2000, c. H-7 (the “HPA”).
5. The hearing proceeded by way of an admission of unprofessional conduct and agreed statement of facts.

## **III. ALLEGATION:**

6. The Allegation, in the Notice of Hearing is that:
  - a. On June 19, 2014, as the primary physician for your labouring patient, [V.M.R.-A.], you did fail to recognize and adequately address in a timely manner the distress of your patient’s unborn child.

## **IV. EVIDENCE**

7. The following documents were entered as Exhibits during the hearing:  
  
Exhibit 1 - Exhibit Book containing:
  - Notice of Hearing dated March 21, 2018;

- Complaint Reporting Form dated April 24, 2015 from V.M.R.-A. (“Ms. R-A” or the “patient”);
- Letter from Dr. Malgorzata Ejsmont dated June 30, 2015;
- Dr. Michael Caffaro memo to file dated September 23, 2015 regarding meeting with the patient and her spouse;
- Dr. S. Michelle Fairgrieve-Park opinion dated August 20, 2015;
- Dr. Michael Caffaro memo to file dated August 12, 2016 regarding the interview with of Dr. Simrit Brar;
- Dr. Michael Caffaro memo to file dated January 13, 2017 regarding interview of Dr. Amber Burrige;
- Hospital records for the patient;
- Hospital records for the infant;
- Summary of continuing medical education by Dr. Ejsmont.

Exhibit 2 - Agreed Statement of Facts

Exhibit 3 - Joint Submission and Admission Agreement

## **V. SUBMISSIONS**

8. Mr. Boyer noted that the parties had entered into an agreement and had put together an agreed Exhibit Book. Mr. Boyer reviewed the Exhibit Book briefly and directed the Hearing Tribunal to certain portions of the Exhibit Book, including the opinion of the independent expert, Dr. Fairgrieve-Park and the fetal monitoring strip in the hospital record.
9. Mr. Boyer noted that pursuant to section 70 of the HPA, a member can submit an admission of unprofessional conduct. The Hearing Tribunal must review the evidence and be satisfied that the evidence supports the admission and that the conduct constitutes unprofessional conduct. Mr. Boyer submitted that there was ample evidence to support the admission of unprofessional conduct. Mr. Boyer also introduced the Agreed Statement of Facts.
10. Ms. Valerie Prather, counsel for the member, did not contest any of the evidence introduced by Mr. Boyer. Ms. Prather noted that Dr. Ejsmont admitted to the conduct in the allegation and that the conduct was unprofessional conduct deserving of sanction. She noted that Dr. Ejsmont had previously expressed her deepest apology and wanted to reiterate that apology at the hearing.

## **VI. DECISION OF THE HEARING TRIBUNAL**

11. The Hearing Tribunal adjourned to review the evidence and consider the submissions. The Hearing Tribunal found that the allegation was proven and that the conduct constitutes unprofessional conduct for the reasons set out below.

## **VII. FINDINGS OF THE HEARING TRIBUNAL**

12. The allegation concerns events that occurred on June 19, 2014. Ms. R-A was a patient in the labour and delivery suite at the Foothills Medical Centre. She was 31 years of age and in her first pregnancy with the due date of June 18, 2014. Ms. R-A was considered a low risk delivery.
13. At the time of the incident, Dr. Ejsmont had recently qualified as a family physician at the University of Calgary and had completed further training in obstetrics and gynecology. This further training was completed in April 2014. On the night of the events that led to the complaint, it was Dr. Ejsmont's ninth shift working in low risk obstetrics and her second shift at the Foothills Medical Centre.
14. On June 18, 2014, Ms. R-A had been induced with oxytocin following an artificial rupture of membranes. Dr. Ejsmont met her for the first time in the delivery suite where she was one of the physicians on duty. At this time, Dr. Ejsmont became responsible for the care of Ms. R-A during her labour and was the primary physician for Ms. R-A.
15. The Hearing Tribunal carefully reviewed and considered Exhibit 1 and in particular the report of Dr. Fairgrieve-Parks. The Hearing Tribunal has placed significant weight on the report of Dr. Fairgrieve-Parks.
16. There is evidence of several instances of Dr. Ejsmont failing to recognize the severity of the situation or acting appropriately in the circumstances.
17. There was a failure for labour to progress satisfactorily. Dr. Ejsmont did not recognize that the labour was not progressing satisfactorily. A consultation for non-progression of labour should have been done.
18. Dr. Ejsmont ordered the oxytocin to be further increased as she recognized that labour was not progressing satisfactorily. There was an increase in the oxytocin drip rate outside the accepted range for the first stage of labour. The increase in the oxytocin drip rate was ordered despite an atypical fetal heart tracing and regular two-minute contractions lasting approximately 60 seconds.
19. Dr. Ejsmont did not recognize or respond in an appropriate time to the abnormal fetal heart rate recorded when the patient was 8-9 cm dilated. At this time fetal resuscitation should have been initiated. Dr. Ejsmont was notified of this abnormal tracing but was unable to attend an appropriate time as she was busy with a complication involving another patient. When she did attend, she did recognize the severity of the situation.
20. At this time, Dr. Burridge, the senior obstetrical resident on-call entered the room having noted the abnormal fetal heart rate. The patient was moved to the operating room for forceps or possible cesarean section delivery. Once in the operating room, Dr. Burridge and the obstetrician Dr. Brar, attempted to apply forceps and a complicated delivery ensued including shoulder dystocia. At delivery, the baby had low Apgar scores and a pediatric resuscitation team was present. The infant was in hospital for nine days and diagnosed with stage II hypoxic ischemic encephalopathy.

21. The Hearing Tribunal reviewed the medical files and the opinion of Dr. Fairgrieve-Park and is satisfied that the allegation is proven. The Hearing Tribunal finds that Dr. Ejsmont was the primary physician for the patient and failed to recognize and adequately address in a timely manner the distress of the patient's unborn child.
22. The Hearing Tribunal finds that the conduct constitutes unprofessional conduct as defined in the HPA at section 1(1)(pp), on the basis that Dr. Ejsmont displayed a lack of knowledge of or lack of skill or judgment in the provision of professional services.
23. The Hearing Tribunal finds that Dr. Ejsmont demonstrated a lack of knowledge, skill or judgment in failing to recognize that labour was not progressing satisfactorily and in failing to take appropriate steps in a timely manner. Dr. Ejsmont would be expected to recognize the fetal distress at an earlier stage and taken appropriate steps. The failure to do so demonstrates a lack of knowledge, skill or judgment in the provision of professional services. Although Dr. Ejsmont was a relatively inexperienced member of the profession, all members are held to the minimum standard of care. Dr. Ejsmont did not meet the minimum accepted standard and her conduct in this case constitutes unprofessional conduct.

#### **VIII. SUBMISSIONS ON SANCTION**

24. Mr. Boyer and Ms. Prather presented a joint submission on sanction. They proposed that the following was appropriate in this case:
  - a. Dr. Ejsmont shall receive a reprimand;
  - b. Dr. Ejsmont's Practice Permit shall be subject to the condition that her obstetrical practice would be restricted to only low risk obstetrics in an Alberta Health Services facility with the appropriate member(s) of the medical staff/administration being aware of the circumstances of this matter. This Practice Permit condition can be removed if Dr. Ejsmont signs a written undertaking to the Registrar that she will not practice obstetrical deliveries or alternatively, Dr. Ejsmont can demonstrate to the satisfaction of the Registrar when making her application for a new annual practice permit that the practice condition is no longer required;
  - c. Dr. Ejsmont's Practice Permit shall be subject to the further condition that she is required to participate in the MORE OB program of the Society of Obstetricians and Gynecologists of Canada for as long as her practice includes obstetrical deliveries. This Practice Permit condition can be removed if Dr. Ejsmont signs a written undertaking to the Registrar that she will not practice obstetrical deliveries or alternatively, Dr. Ejsmont can demonstrate to the satisfaction of the Registrar when making her application for a new annual practice permit that the practice condition is no longer required;
  - d. Dr. Ejsmont shall be responsible for the costs of the investigation and the hearing before the Hearing Tribunal payable on terms acceptable to the Complaints Director.

25. Mr. Boyer also presented a Brief of Law, containing excerpts of cases to support the proposition that where there is a joint submission, a decision-maker should only differ from that joint submission where the submission is against the public interest or would bring the administration of justice into disrepute.
26. Mr. Boyer also reviewed the *Jaswal v. Newfoundland Medical Board (1996)* decision from the Newfoundland Supreme Court which provides a series of factors for a decision-maker to consider when applying sanctions in cases of unprofessional conduct.
27. The relevant factors noted by Mr. Boyer for this case are:
  - a. the age and experience of the member;
  - b. the previous character of the physician;
  - c. the number of times the offence was proven to have occurred;
  - d. the role of the physician in acknowledging what had occurred;
  - e. the impact of the incident on the patient;
  - f. the need to promote specific and general deterrence;
  - g. the need to maintain the public's confidence in the integrity of the profession;
  - h. the range of sentence in other similar cases.
28. Mr. Boyer noted that the proposed sanction was consistent with other cases and that it satisfies the factors in *Jaswal* and is in the public interest.
29. Ms. Prather noted the importance of deference to a joint penalty submission. She noted that through the admission of Dr. Ejsmont, the patient and her family were saved from the stress of a hearing. She noted that the joint submission represented a fair resolution. This case involved a single instance, where a newly trained physician showed an error in judgment. This was not a situation of deliberate neglect by the physician, but rather a new physician, in an unfamiliar setting, dealing with various competing interests.
30. Ms. Prather further submitted that Dr. Ejsmont's letter of response expresses her regret, which is also reflected in her admission of unprofessional conduct. She has taken a number of proactive steps to ensure that a similar situation does not reoccur. Dr. Ejsmont has, of her own volition, focused on her continuing medical education, as illustrated at page 359 of Exhibit 1. Dr. Ejsmont also elected to not practice in the setting at the Foothills Medical Center and now practices only out of one hospital. She has recognized the importance of choosing her setting and ensuring she is comfortable in the setting she is practicing in.
31. Ms. Prather noted that the proposed sanction is reasonable and protects the public interest.

## **IX. DECISION OF THE HEARING TRIBUNAL ON SANCTION**

32. The Hearing Tribunal accepts the joint submission on sanction. The Hearing Tribunal has considered the factors in *Jaswal* as follows:
- a. The age and experience of the member – Dr. Ejsmont was relatively inexperienced at the time of the incident;
  - b. The previous character of the physician - Dr. Ejsmont has no prior findings of unprofessional conduct;
  - c. The number of times the offence was proven to have occurred – the incident represented a single isolated incident;
  - d. The role of the physician in acknowledging what had occurred - Dr. Ejsmont has admitted the allegation and taken several courses to obtain more knowledge in obstetrics and communication skills. She has also voluntarily withdrawn from practice at the Foothills Medical Centre to practice in a more familiar environment. This represents insight by Dr. Ejsmont into her conduct;
  - e. Impact of the incident on the patient – clearly this was a significant incident for the patient and her family;
  - f. The need to promote specific and general deterrence – the Hearing Tribunal believes that specific deterrence is achieved through this hearing and proposed sanction and that Dr. Ejsmont has learned a great deal from this matter. The Hearing Tribunal also finds that the proposed sanction achieves the purpose of general deterrence for the membership;
  - g. The need to maintain the public’s confidence in the integrity of the profession – the Hearing Tribunal finds that the proposed sanction will maintain the public’s confidence in the integrity of the profession;
  - h. The range of sentence in other similar cases – the Hearing Tribunal considered the cases presented by the parties in support of the sanction and finds that the proposed sanction is consistent with other similar cases.
33. The Hearing Tribunal recognizes the principle of deference to be given to joint submissions on sanction. The case law indicates that a joint submission on sanction should not be rejected unless it is unfit, unreasonable or contrary to the public interest. The Hearing Tribunal finds that the proposed sanction in this case is appropriate, reasonable and is in the public interest.
34. A reprimand represents a serious penalty for a member. In addition, the conditions to be placed on Dr. Ejsmont’s Practice Permit are significant. They address the need to protect the public and ensure safe practice by Dr. Ejsmont. The reprimand and conditions are appropriate in the circumstances of this case. The payment of costs is also proper in this case. Where a member has been found to engage in unprofessional conduct, it is appropriate for the member to bear some or all of the costs of the hearing. The joint submission of the parties that Dr. Ejsmont pay the costs of the investigation and hearing is reasonable.

35. For these reasons the Hearing Tribunal accepts the joint submission on sanction.

**X. ORDERS OF THE HEARING TRIBUNAL**

36. The Hearing Tribunal orders that:

- a. Dr. Ejsmont shall receive a reprimand;
- b. Dr. Ejsmont's Practice Permit shall be subject to the condition that her obstetrical practice would be restricted to only low risk obstetrics in an Alberta Health Services facility with the appropriate member(s) of the medical staff/administration being aware of the circumstances of this matter. This Practice Permit condition can be removed if Dr. Ejsmont signs a written undertaking to the Registrar that she will not practice obstetrical deliveries or alternatively, Dr. Ejsmont can demonstrate to the satisfaction of the Registrar when making her application for a new annual practice permit that the practice condition is no longer required;
- c. Dr. Ejsmont's Practice Permit shall be subject to the further condition that she is required to participate in the MORE OB program of the Society of Obstetricians and Gynecologists of Canada for as long as her practice includes obstetrical deliveries. This Practice Permit condition can be removed if Dr. Ejsmont signs a written undertaking to the Registrar that she will not practice obstetrical deliveries or alternatively, Dr. Ejsmont can demonstrate to the satisfaction of the Registrar when making her application for a new annual practice permit that the practice condition is no longer required;
- d. Dr. Ejsmont shall be responsible for the costs of the investigation and the hearing before the Hearing Tribunal payable on terms acceptable to the Complaints Director.

Signed on behalf of the Hearing Tribunal by the Chair



Dated: July 23, 2018

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Dr. Paul Greenwood