

COUNCIL OF THE COLLEGE OF PHYSICIANS AND SURGEONS OF MANITOBA

IN THE MATTER OF: **Section 13(5) of The Medical Act;**

AND IN THE MATTER OF: **A Notice Of Intention To Consider Cancellation Of
Licence and Registration in the Medical Register;**

AND IN THE MATTER OF: **Dr. Ramon Eduardo Jovel, a Member of the
College of Physicians and Surgeons of Manitoba.**

REASONS FOR DECISION OF COUNCIL

INTRODUCTION

On February 13, 2018, the Registrar of the College of Physicians and Surgeons of Manitoba (the “College”) requested that the Executive Committee of the College consider cancelling the licence and registration (the “Registrar’s cancellation request”) of Dr. Ramon Eduardo Jovel (the “Member”). In so doing, the Registrar had considered the decision of Justice K. Simonsen dated January 31, 2018, in *R. v Ramon Eduardo Jovel* 2018 MBQB 21 (“Justice Simonsen’s decision”), dealing with Dr. Jovel’s conviction for sexually assaulting a patient.

The Executive Committee of the College was scheduled to consider the Registrar’s cancellation request on March 16, 2018. The March 16, 2018 matter was adjourned.

The matter did not proceed before Executive Committee. Instead, it was determined that the Registrar’s cancellation request would be dealt with by the Council of the College (“Council”).

On May 31, 2018, the College’s President and Chair of Council, Dr. E. Sigurdson, issued a Notice of Intention to Consider Cancellation of Licence and Registration in the Medical Register (the “Notice” - attached as Appendix “A”). The Member and the Registrar were invited to make written submissions in the matter.

The following written submissions were received from the parties:

1. Submission dated May 23, 2018, on behalf of the Member, by legal counsel, Keith Ferbers of MLT Aikins;
2. Submission dated June 1, 2018, on behalf of the Registrar, by legal counsel, Lynne Arnason, which included the following additional material:
 - (a) Justice Simonsen's decision.
 - (b) The Queen v. Jovel, Queens Bench Criminal Disposition Sheet, January 31, 2018 (the "Certificate of Conviction").
 - (c) Tab 3 - Excerpt, *The Medical Act* (the "Act").
 - (d) Tab 4 - Decision of the Executive Committee on Interim Suspension, March 13, 2018.
 - (e) Tabs 5 - 9 - Legal decisions.
3. Reply Submission dated June 4, 2018, on behalf of the Member, by his legal counsel.

At a duly constituted meeting of Council held on June 15, 2018, members of Council carefully reviewed the submissions of the parties and associated materials. It is noted that Council members Dr. D. Pinchuk and Mr. A Fineblit did not receive any materials, attend such meeting, nor participate in any way in the matter, including the preparation of this decision.

After careful review and deliberation, on June 15, 2018, Council passed the following resolution:

"Council, effective immediately, under s. 13(5) of *The Medical Act*, has canceled the licence and registration of Dr. Ramon Eduardo Jovel who has been convicted by the Court of Queen's Bench on January 31, 2018 of a criminal offence that is relevant to his suitability to practice".

("Council's Section 13(5) resolution")

By letter dated June 18, 2018, the Registrar communicated Council's Section 13(5) resolution to the Member; indicating that reasons would follow by separate letter as soon as possible.

This serves as the reasons of Council in the matter.

BACKGROUND

On January 31, 2018, Dr. Jovel, a member of the College, was convicted of committing sexual assaults on a patient over a period of more than two years, from about the fall of 1991 to the spring of 1994. As set out in Justice Simonsen's decision, the Member repeatedly touched his patient's vaginal area for a sexual purpose; and on one occasion, the Member rubbed his erect penis against his patient's hip. The findings and reasons underlying the Member's conviction are set out in Justice Simonsen's decision.

The Certificate of Conviction was signed the same date as Justice Simonsen's decision, and additionally stated that the matter was adjourned for sentencing on May 10, 2018. Council was advised within the materials submitted that:

1. The matter came before Justice Simonsen for submissions as to sentencing on May 10, 2018;
2. Sentencing is scheduled to be pronounced by the Court on July 4, 2018;
3. Dr. Jovel intends to appeal his conviction, but must first await the decision of Justice Simonsen as to sentence;
4. By decision of the Registrar dated January 31, 2018, the Member has been suspended from practice on an interim basis, (pursuant to Section 51.1(1) of the Act). On appeal by the Member to the College's Executive Committee, the Registrar's decision was confirmed, by decision dated March 12, 2018, pursuant to Section 51.2(4) of the Act; and
5. The Member has not to date challenged the Executive Committee's Section 51.2(4) decision; although it is noted by Council that the ability of the Member to

seek a “stay” of that decision from the Court, under Section 51.2(5) of the Act, is not time-limited.

REASONS FOR DECISION

Subsection 13(5) of *The Medical Act* provides that:

“Council may cancel the licence and registration of a member or associate member who has been convicted of an offence that is relevant to his or her suitability to practise, but it must first notify the member or associate member that it intends to do so and give him or her an opportunity to make representations.”

Pursuant to Section 13(5) of *The Medical Act*, to cancel the licence and registration of a member, the following elements must be satisfied:

1. The member must be notified and be given an opportunity to make representations;
2. The member must have been convicted of an offence relevant to the member’s suitability to practice; and
3. Council must turn its attention to the matter, and therefore exercise its discretion as to whether to cancel the member’s licence and registration.

(collectively “the Section 13(5) test”)

There is no issue in this case as to the first and third elements of the Section 13(5) test. The Member raised the issue of the timing involved in considering the second element of the Section 13(5) test; and therefore whether Council should deal with the matter now or alternatively await further proceedings as to the Member’s conviction for sexually assaulting his patient.

The ability of Council to cancel a member’s licence and registration under Section 13(5) is contained within Part 3 of the Act, dealing with “Registration and Licensing of Members.” The procedure that occurred earlier this year, the Member’s interim

suspension from practice, arose from Part 9 of the Act, dealing with the College's Investigation Committee. The Investigation Committee performs a critical function in relation to the College's overall powers to receive and investigate complaints, hold inquiries, and ultimately to discipline its members (the College's "discipline powers").

The powers of the College dealing with licensure, on the one hand, and its discipline powers on the other hand, are both powers available to be exercised by the College pursuant to its legal duty to regulate the practice of medicine in Manitoba in the public interest. When regulating in the public interest in a given case, it is not necessary, nor may it be appropriate, for the College to select a single regulatory tool. Such decisions are to be made on a case by case basis, keeping in mind all of the circumstances of a given case.

At the same time, in determining any matter before it under Section 13(5), as in any case where the legal ability of an individual to practice a profession is in question, Council must be mindful of the potential impact of its decision on a member.

As stated by the Registrar in her submission, the issue of suitability to practice is integral to the College's regulatory mandate to protect the public and to maintain the public's confidence in the College's ability to regulate the medical profession. Where, as here, a sexual assault occurs in the course of a patient's medical visits, it necessarily follows that this is "an offence that is relevant to his or her suitability to practise."

In the current case, the Member did not contest, nor properly could he, that at present, the Member is convicted of a criminal offence that is relevant to his suitability to practice. Justice Simonsen's decision and the Certificate of Conviction are conclusive in this regard.

Instead, the Member argued that with the interim suspension in place and the expected appeal of his criminal conviction, Council ought to delay making any decision under Section 13(5) pending sentencing and the exhaustion of any appeals of the criminal conviction. Council declines to postpone its dealing with the matter. All of the elements

of the Section 13(5) decision have been satisfied, and it is in the public interest that such decision be made.

The Member also submits that should Council proceed to determine the matter, and decide to cancel the Member's licence and registration, Council should include in its disposition that if the criminal conviction is overturned, the Member's licence and registration will be immediately reinstated. Council declines to include such a provision in its decision.

CONCLUSION

Council is of the view that in this case:

1. All of the procedural and legal elements of the Section 13(5) test have been satisfied. Council notes in particular that the Notice was given, submissions received and carefully considered, and the Member has been convicted of an offence that is relevant to his suitability to practise.
2. There is no legal nor practical requirement for Council to delay its determination of the Registrar's cancellation request pending the disposition of the Member's appeal of his criminal matters.
3. Council declines to incorporate into its disposition of this matter any requirement that should the criminal conviction be overturned, the Member's licence and registration is to be reinstated. Should the Member be successful in his appeal(s), he may reapply for licensure under Part 3 of the Act, as in the normal course.
4. There is no legal requirement for Council to select a single power to regulate in the public interest. Council considers that this is a case for the application of Section 13(5) of the Act, despite the interim suspension of the Member under Part 9 of the Act.

DISPOSITION

Accordingly, Council directs, per its motion passed on June 15, 2018, that effective that date, pursuant to Section 13(5) of *The Medical Act*, the licence and registration of Dr. Ramon Eduardo Jovel, who has been convicted by the Court of Queen's Bench on January 31, 2018 of a criminal offence that is relevant to his suitability to practice, be and is hereby cancelled.

NOTE

The Medical Act states:

Appeal to court

18(1) A person who is aggrieved by a decision of the council under this Part to

- (a) refuse registration;
- (b) alter or refuse to alter a registration;
- (c) refuse to issue or renew a licence;
- (c.1) issue or renew a licence on conditions; or
- (d) cancel a registration;

may appeal the decision to the court by filing a notice of appeal within 30 days after the day on which the person is notified of the decision.

DATED at Winnipeg, Manitoba, the 22nd day of June, 2018



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Appendix A



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COUNCIL OF THE COLLEGE OF PHYSICIANS AND SURGEONS OF MANITOBA

NOTICE OF INTENTION TO CONSIDER CANCELLATION OF LICENCE AND REGISTRATION IN THE MEDICAL REGISTER (Subsection 13(5) of The Medical Act)

TO: DR. RAMON EDUARDO JOVEL

AND TO: THE REGISTRAR OF THE COLLEGE OF PHYSICIANS AND SURGEONS OF
MANITOBA (the "Registrar")

TAKE NOTICE that the Council of The College of Physicians and Surgeons of Manitoba ("Council") intends to consider whether the registration and licence of Dr. Ramon Eduardo Jovel should be cancelled pursuant to section 13(5) of *The Medical Act*.

BACKGROUND:

On February 13, 2018, the Registrar requested that the Executive Committee of the College consider cancelling Dr. Jovel's licence and registration (the "Registrar's cancellation request"). The Registrar had considered the decision of Simonsen, J. in *R. v Ramon Eduardo Jovel* 2018 MBQB 21 dealing with Dr. Jovel's conviction for sexual assault of a patient.

The Executive Committee of the College was scheduled to consider the Registrar's cancellation request on March 16, 2018. Prior to that date, counsel for the Registrar and for Dr. Jovel (the "parties") jointly asked that Executive Committee adjourn the matter. Executive Committee agreed to the joint request of the parties and the March 16, 2018 matter was adjourned. The matter has not proceeded before Executive Committee.

Council will now consider the matter previously scheduled to be considered by Executive Committee.

AUTHORITY:

Section 13(5) of *The Medical Act* states:

The council may cancel the licence and registration of a member or associate member who has been convicted of an offence that is relevant to his or her suitability to practise, but it must first notify the member or associate member that it intends to do so and give him or her an opportunity to make representations.

PROCEDURAL MATTERS:

Written Representations

Council will deal with the matter of whether Dr. Jovel's registration and licence should be cancelled on the basis of **written representations** (see below).

Council will meet to consider the written submissions and any other material submitted by the parties, and issue a written decision. The parties will be advised should anything further be required in order to facilitate Council's consideration of the matter.

The parties and/or legal counsel on their behalf should take note of the following information and time lines.

Materials previously received

Certain materials were received by the College in connection with the matter previously set before Executive Committee:

As for Dr. Jovel:

1. Submission described as "Outline of Oral Argument" received March 13, 2018, provided in connection with the matter scheduled before the Executive Committee on March 16, 2018.

As for the Registrar:

1. Submission of the Registrar dated March 2, 2018
2. Case law submitted March 6, 2018

The parties should advise Council's legal counsel by close of business on **Friday, June 1, 2018**, whether they request that such materials previously provided now be provided to Council.

Timelines and additional materials

The College has received from Dr. Jovel's legal counsel a document dated May 23, 2018 described as "Submission of Dr. Jovel ... June 15, 2018". This submission will be provided to Council.

Should counsel for the Registrar wish to provide a further submission in response, please do so by close of business, **Monday, June 5, 2018**. Such timeline will also apply to any other documents which are being filed by agreement of the parties, relied upon by the Registrar in support of the request to cancel Dr. Jovel's license and registration, and by Dr. Jovel in opposition to such request.

If there is any dispute as to the submission of any materials, particulars of that dispute should be provided to the legal counsel for Council.

The President shall have the discretion to determine any further procedural matters, including whether Council will consider any material filed outside of these timelines.

Additional materials to be provided to Council

It is expected that a package of hearing material will be provided to Council on **Tuesday, June 6, 2018**. In addition to the submissions and materials referred to above, the following material will be included in Council's package:

1. Registrar's previous request to the Executive Committee to consider this matter dated February 13, 2018 (a copy of which is attached);
2. This Notice explaining the revised procedure; and

3. Written reasons for decision of Justice Simonsen in *R v Jovel*, 2018 MBQB 21.

Objection to Members of Council

The parties are advised that the following are members of Council. The parties are asked to promptly advise of any objection to consideration of the matter by any of these Council members.

Mr. R. Dawson	Dr. H. Domke
Dr. S. Duncan	Mr. A. Fineblit
Dr. B. Kvern	Dr. D. Lindsay
Dr. D. Mabin	Dr. W. Manishen
Ms M. McPherson	Dr. F. Padeanu
Dr. E. Persson	Dr. D. Pinchuk
Dr. B. Postl	Dr. S. Reitmeier
Dr. N. Riese	Dr. I. Ripstein
Dr. E. Senderewich	Ms P. Shah
Dr. N. Shenouda	Dr. E. Sigurdson
Dr. J. Silha	Dr. A. Vorster
Dr. M. West	

Further information

Council may request any additional information it deems necessary and accordingly may adjourn its deliberations in the matter to request additional information from the parties.

Communication of Council's Decision

Council's decision shall be communicated to the parties in writing, by way of a Resolution and Order of Council and Reasons for Decision.

Issued on 31st day of May, 2018



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