

PROVINCE OF NOVA SCOTIA )  
COUNTY OF HALIFAX )

IN THE MATTER OF:                    The Canada Evidence Act

- and -

IN THE MATTER OF:                    The Medical Act, S.N.S. 1995-96 c. 10  
(formerly the Medical Act, R.S.N.S. 1989,  
c.278)

- and -

IN THE MATTER OF:                    A Complaint against Dr. Angus J. Gardner

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HEARING COMMITTEE DECISION

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Members of the Hearing Committee:    Dr. Reginald Yabsley, Chair  
  Dr. Patricia Pearce  
  Dr. Rodney Wilson  
  Dr. Richard MacLachlan  
  Ms. Gwen Haliburton

Date of Decision:                        January 17, 2003

**WHEREAS** by Notice of Hearing dated December 7, 2001, a complaint was filed by the College of Physicians and Surgeons of Nova Scotia against Dr. Angus J. Gardner, a physician licensed to practice medicine in Nova Scotia.

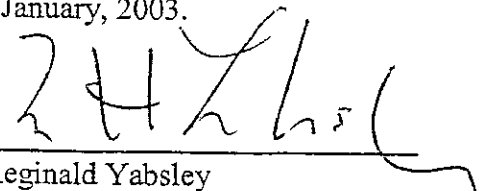
**AND WHEREAS** the Settlement Agreement attached hereto was negotiated pursuant to section 57(1) of the **Medical Act**;

**AND WHEREAS** acceptance of the Settlement Agreement was recommended by an Investigation Committee on January 7, 2003.

**AND WHEREAS** the Hearing Committee appointed to hear the complaint reviewed the Settlement Agreement on January 17, 2003, and accepted the recommendation of the Investigation Committee;

**THE HEARING COMMITTEE** pursuant to section 57(5) of the **Medical Act** hereby accepts the recommendation of the Investigation Committee and by this written decision confirms its acceptance of the Settlement Agreement attached hereto.

**DATED** at Halifax, Nova Scotia, this 17<sup>th</sup> day of January, 2003.



Dr. Reginald Yabsley  
Chair of Hearing Committee

PROVINCE OF NOVA SCOTIA )  
COUNTY OF HALIFAX )

IN THE MATTER OF: *The Canada Evidence Act*

- and -

IN THE MATTER OF: *The Medical Act, S.N.S. 1995-96, c.10*

- and -

IN THE MATTER OF: Dr. Angus J. Gardner

### SETTLEMENT AGREEMENT

Dr. Angus J. Gardner, a medical practitioner in the Province of Nova Scotia, and a member of the College of Physicians and Surgeons of the Province of Nova Scotia (the "College") hereby agrees with and consents to the following in accordance with the provisions of the *Medical Act, S.N.S. 1995-96, c.10*.

#### I. STATEMENT OF FACTS

1. Dr. Angus J. Gardner is a 56 year old physician who has practiced as an Obstetrician and Gynecologist for 23 years.
2. Dr. Gardner has practised as an obstetrician and gynecologist in Sydney, Nova Scotia since November 1979.
3. On December 1, 1999 Patient X was referred to Dr. Gardner for an office consultation by her family physician. Her expected date of delivery was in mid to late April 2000.
4. Dr. Gardner continued to see Patient X in his office every three weeks until her last office visit with him on February 2, 2000.
5. Two ultrasounds had been performed on Patient X prior to her first consultation with Dr. Gardner, and two ultrasounds were conducted after December 1, 1999 at Dr. Gardner's request, none of which indicated the zygosity or chorionicity of the twins. Dr. Gardner did not attempt to determine the zygosity of the twin pregnancy, which would have indicated the number of placentas and whether there was a dividing membrane between the twins. Such information assists in determining whether there is a risk of twin to twin transfusion.
6. On February 12, 2000, Patient X began to experience discomfort, and after

checking with Dr. Gardner's answering service, was advised to go to the Cape Breton Regional Hospital as she may be in premature labour.

7. Patient X attended at the Cape Breton Regional Hospital (the "hospital") between 5:30 and 6:00 a.m. on February 12, 2000, at which time she was assessed by a nurse. Her cervix was one centimetre dilated and a provisional diagnosis was made by nursing staff of possible premature labour. Electronic fetal monitoring ("EFM") was commenced shortly after Patient X's admission, and continued on an intermittent basis throughout her hospital stay.

8. At 0735 on February 12 nursing staff notified Dr. Gardner by telephone of the admission and status of Patient X, at which time Dr. Gardner ordered medications for Patient X.

9. Dr. Gardner arrived at the hospital at approximately 1000 hours on February 12 and conducted an assessment of the patient. Dr. Gardner conducted an ultrasound to determine the fetal position of the twins. He did not order a biophysical profile of the twins. Dr. Gardner reviewed the fetal heart tracings, but made no chart entries with respect to his findings. He prescribed Gravol for nausea and charted "vomiting with cramps ? viral" and requested that the patient be observed and hydrated.

10. EFM was applied intermittently for the remainder of the day on February 12. Tracings for one twin showed long stretches of poor variability.

11. EFM continued on an intermittent basis for the remainder of February 12 and into the day on February 13th. On the morning of February 13th, the patient stated she found she had more fluid, especially on her right leg. At approximately 1500 hours the patient began to complain of back pain radiating to the front of the abdomen, and she was nauseous and vomiting at that time. Nursing staff had difficulty in obtaining accurate fetal heart rates at this time. Nursing staff contacted Dr. Gardner by telephone, and he ordered Demerol and Gravol for Patient X.

12. At 1800 hours Patient X's abdomen was shiny and taut, and she had vomited again. Patient X's husband and mother expressed concern about her condition to nursing staff, who telephoned Dr. Gardner. Dr. Gardner prescribed medication, but Patient X was reluctant to take any medications. She requested to speak with Dr. Gardner, who advised at approximately 1820 that he would be in to speak with Patient X and her family.

13. Dr. Gardner arrived in Patient X's room between 1900 and 1930 that evening. Patient X expressed to Dr. Gardner that she was still vomiting off and on with cramps. Dr. Gardner noted at this time there was no change in Patient X's cervix. Patient X's family asked whether it would be preferable for the babies to be delivered. Dr. Gardner responded that as long as the fetal hearts were reassuring that it would be best to wait until the babies were a little more mature, or at least until the betamethasone was likely to have had its beneficial effect the following day. He charted that one fetal heart was flat at times, and the other reactive but baseline approximately 100 bpm. He ordered an ultrasound for early the next morning. Dr. Gardner explained to Patient X that she had polyhydramnios, a condition involving a build-up of fluid, and reassured her that the medications he prescribed were appropriate. Patient X then took

the medications and attempted to rest.

14. EFM continued throughout the evening on an intermittent basis. At 0115 on the morning of February 14th, the patient awoke with pain and nausea and EFM was reapplied after having been discontinued for seven hours. The nursing notes document the following: 0115 - fetal heart rate "very difficult to monitor at present"; 0345 - fetal heart rate for two babies recorded as 175 and 160; 0645 - "very difficult to obtain tracing"; 0705 - "Dr. Gardner notified re tracings and blood pressure". Dr. Gardner advised the nursing staff to continue to try to obtain fetal heart rates and that he would be right in.

15. At 0730 nursing staff were unable to pick up fetal heart rates. Dr. Gardner arrived at the hospital at some time between 0740 and 0800. Along with a member of the nursing staff, Dr. Gardner accompanied Patient X to the ultrasound department where an ultrasound technician and a radiologist performed an ultrasound scan. No fetal heart activity was identified at this time and Patient X was advised that the twins had died.

16. Labour was then induced and at approximately 1630 on February 14th two stillborn female infants were delivered.

17. An autopsy was performed on the twin girls, indicating that the placenta was diamniotic and monochorionic, which is associated with an increased risk of fetal death. Throughout Patient X's admission in the hospital, no biophysical profile had been ordered or conducted to determine the status of the twins, particularly where abnormal heart tracings and polyhydramnios were present.

18. Following the filing of a complaint by the family of Patient X and an investigation by the College, a Notice of Hearing was issued by the College, the details of which are contained in Part II herein.

19. As a result of the foregoing, the College determined that Dr. Gardner should undergo an assessment of his knowledge, skill and judgment at the Centre for Personalized Education for Physicians ("CPEP") in Colorado.

20. As a further result of the foregoing, Dr. Gardner has voluntarily offered to remove himself from practice and undertake a period of training/study to address issues arising from this complaint.

## II. COMPLAINT

21. In a Notice of Hearing dated December 7, 2001, the College of Physicians and Surgeons charged Dr. Angus Gardner with the following:

"That being registered under the *Medical Act*, S.N.S. 1995-96, c.10, and being a medical practitioner in the Province of Nova Scotia, it is alleged that during the time period February 12, 2000,

to February 15, 2000 with respect to your care of patient, "X", you did one or more of the following:

1. you failed to adequately recognize or address the significance of the abnormal fetal heart tracings;
2. you failed to re-examine your patient at appropriate intervals of time following the initial admission to hospital;
3. you failed to adequately investigate the cause of the patient's polyhydramnios;
4. you did not attempt to determine zygosity of the twin pregnancy;
5. you failed to consider the possibility of twin-to-twin transfusion during the patient's admission to hospital;
6. you failed to obtain a biophysical profile at the time of admission and/or prior to February 14, 2000;

and in relation to any or all of the above, you demonstrated professional misconduct and are therefore guilty of a disciplinary matter within the meaning of the *Medical Act*."

### III. ADMISSIONS

22. Dr. Angus Gardner admits allegations 1 through 6 outlined in the Notice of Hearing and admits that he is guilty of professional misconduct.

### IV. CONSENT TO DISPOSITION

23. Dr. Angus Gardner hereby consents to the following:

- (a) Dr. Gardner is reprimanded with respect to the finding of professional misconduct.
- (b) Dr. Gardner shall attend the Center for Personalized Education for Physicians ("CPEP") in Colorado at the earliest available date. Dr. Gardner shall complete reasonable and appropriate remediation recommended from the CPEP assessment. Dr. Gardner's attendance at the CPEP assessment, and completion of any remediation arising from such assessment shall be at his expense.
- (c) As referenced in the Statement of Facts above, Dr. Gardner and the College have

agreed that Dr. Gardner will be removing himself from practice to participate in a four week training/study program. This training/study program will be conducted in the Fetal Assessment and Treatment Centre in the Division of Fetal Maternal Medicine, Department of Obstetrics and Gynaecology of Dalhousie University located at the IWK Health Centre and will address issues arising from this complaint. The parties further agree that in the event that recommendations for reasonable and appropriate remediation are advanced by CPEP which will not be otherwise addressed through the training/study program, Dr. Gardner will participate in and complete such additional reasonable and appropriate remediation as is recommended by CPEP.

- (d) Dr. Gardner and the College agree that the Hearing Committee which approves this Settlement Agreement shall retain jurisdiction over this matter until successful completion of the remediation and training outlined in subparagraphs (b) and (c) above.
- (e) Dr. Gardner agrees that copies of any information in the College's files respecting Dr. Gardner may be provided to CPEP and to the persons responsible for the conduct of the training/study program outlined in subparagraph (c) above. The College shall provide a copy of any information supplied to CPEP or to the persons responsible for the conduct of the training/study program outlined in subparagraph (c) above to Dr. Gardner.

## V. COSTS

24. Dr. Gardner agrees to pay costs in the amount of \$10,000.00, inclusive of HST, as a contribution towards the College's costs to the conclusion of this matter. Such costs shall be paid in three instalments, with the first instalment of \$3500.00 due by July 1, 2003; the second instalment of \$3500.00 due by December 1, 2003, and the third instalment of \$3000.00 due by March 1, 2004, failing which Dr. Gardner's license to practice medicine shall be suspended until such payments are made.

25. Dr. Gardner shall bear the costs of any and all assessments, reports, training or remediation programs required as a result of this Settlement Agreement.

VI EFFECTIVE DATE

26. This Settlement Agreement shall only become effective and binding when it has been recommended for acceptance by the Investigation Committee of the College, and accepted by the Hearing Committee appointed to hear this matter.

DATED at 2002 <sup>2003</sup> Province of Nova Scotia, this <sup>17th</sup> day of <sup>January</sup> ~~December~~, <sup>me</sup>

*[Signature]*  
WITNESS

*[Signature]*  
DR. ANGUS I. GARDNER

*[Signature]*  
WITNESS

*[Signature]*  
MARJORIE A. HICKEY  
COUNSEL FOR THE COLLEGE OF  
PHYSICIANS AND SURGEONS  
OF NOVA SCOTIA

*[Signature]*  
CHAIR,  
The Investigation Committee  
of the College of Physicians and Surgeons  
of Nova Scotia

*[Signature]*  
CHAIR,  
The Hearing Committee  
of the College of Physicians and Surgeons  
of Nova Scotia

This <sup>17</sup> day of ~~December~~, ~~2002~~.  
January, 2003

This <sup>17</sup> day of ~~December~~, ~~2002~~.  
January, 2003