

IN THE MATTER OF A HEARING REGARDING GLORIA MAYDANIUK

SUMMARY OF THE DECISION OF THE HEARING TRIBUNAL

On July 23, 2013 a hearing tribunal held a hearing into the conduct of Gloria Maydaniuk. The written decision of the hearing tribunal was issued on October 28, 2013.

The Allegations

The Notice of Hearing filed as an exhibit in the hearing alleged that:

1. Ms. Maydaniuk was directed by a letter dated May 2, 2012 from the complaints director of the Alberta College of Pharmacists to submit for a mental health assessment under Section 118(1) of the *Health Professions Act*.
2. Ms. Maydaniuk appealed the decision of the complaints director pursuant to Section 118(6) of the *Health Professions Act* to a panel of the council of the Alberta College of Pharmacists which heard the appeal on October 25, 2012 and issued a decision on November 28, 2012 dismissing the appeal and confirming that the complaints director had grounds to believe that Ms. Maydaniuk was incapacitated and supporting the complaints director's direction to Ms. Maydaniuk to submit to a mental health assessment.
3. On January 7, 2013 the complaints director sent a further letter to Ms. Maydaniuk directing Ms. Maydaniuk to submit for a mental health assessment as outlined in the letter of May 2, 2012. The letter of January 7, 2013 noted that throughout the complaint investigation and appeal process Ms. Maydaniuk had repeatedly stated her refusal to submit for a mental health assessment and the letter pointed out that her refusal to be examined under section 118(1) of the *Health Professions Act* might be considered to be unprofessional conduct under Section 1(1)(pp)(vii)(C) of the Act and might warrant a referral to a hearing tribunal in accordance with Section 66(3) of the Act. Ms. Maydaniuk was directed to reply to the letter by January 30, 2013.
4. Despite the letter of January 7, 2013, Ms. Maydaniuk continued to fail or refuse to submit to the mental health assessment directed by the complaints director and confirmed by the appeal panel of the council.
5. Ms. Maydaniuk's conduct in failing or refusing to comply with the direction under Section 118(1) of the *Health Professions Act* constitutes unprofessional conduct pursuant to Section 1(1)(pp)(vii)(C) of the *Health Professions Act*.

The Notice of Hearing further alleged that Ms. Maydaniuk's conduct constituted a breach of Standard 1 and sub-Standard 1.1 of the Standards of Practice for Pharmacists and Pharmacy Technicians; Principle X(1) of the Code of Ethics Bylaw; and Sections 1(1)(pp)(ii),

1(1)(pp)(vii)(C), and 1(1)(pp)(xii) of the *Health Professions Act* and that the breach of some or all of these provisions constituted unprofessional conduct under Sections 1(1)(pp)(ii), 1(1)(pp)(vii)(C), and 1(1)(pp)(xii) of the *Health Professions Act*.

During the course of the hearing, Ms. Maydaniuk admitted to the facts alleged in Paragraphs 1 through 4 above. However, Ms. Maydaniuk did not admit that her conduct as outlined in 1 – 4 constituted “unprofessional conduct” and therefor did not admit the conduct as alleged in Paragraph 5.

Closed Portion of the Hearing

Ms. Maydaniuk requested that the hearing be closed to the public in order to protect any of her personal health information that might be disclosed during the course of the hearing. The complaints director agreed with closing the portions of the hearing where Ms. Maydaniuk’s personal health information was referred to. However, he submitted that the remainder of the hearing should be open to the public in the interests of transparency.

After hearing the evidence and the submissions of the parties, the tribunal made an order pursuant to section 78(1)(iii) of the *Health Professions Act* (“the HPA”) that the portions of the hearing which refer to Ms. Maydaniuk’s personal health information be closed.

Findings of the Hearing Tribunal

After hearing the evidence and submissions of the parties, the Hearing Tribunal accepted Ms. Maydaniuk’s admissions and found that the conduct as alleged in Paragraphs 1 to 4 of the Notice of Hearing was factually proven on a balance of probabilities.

The Hearing Tribunal then considered whether Paragraph 5 of the Notice of Hearing was proven, and in particular, whether Ms. Maydaniuk’s conduct constitutes “unprofessional conduct” given the circumstances, including the reasons for her refusal to comply with the direction issued by the complaints direction pursuant to section 118 of the HPA.

In respect to this issue, the hearing tribunal found as follows:

Counsel for Ms. Maydaniuk argued that she was “unable” to comply with the complaints director’s direction to undergo a mental health assessment and stated that being unable to comply with a direction under Section 118 of the *Health Professions Act* due to her religious beliefs is different than failure or refusal.

The hearing tribunal reviewed the language of Section 118 of the HPA and found no meaningful distinction between the failure or refusal to undergo an assessment, and an inability to comply due to personal beliefs. Although her refusal to comply with the direction may be due to her personal beliefs, the fact that she has not complied with the direction issued by the complaints director nevertheless constitutes a “failure” or “refusal” as contemplated in Section 118.

Ms. Maydaniuk's sole reason for non-compliance was that her personal or religious beliefs made it impossible for her to comply with the direction that was issued pursuant to Section 118.

Further it has already been determined through the appeals process (Exhibit 2 Tab 5) that the mental health assessment that Ms. Maydaniuk was directed to undergo under Section 118 of the HPA is valid.

The hearing tribunal then concluded that Ms. Maydaniuk's repeated and ongoing refusal to undergo an examination under Section 118 of the HPA was a breach of Standard 1.1 of the Standards of Practice for Pharmacists and Pharmacy Technicians and Principle X(1) of the Code of Ethics Bylaw. The hearing tribunal also concluded that Ms. Maydaniuk breached Sections 1(1)(pp)(ii), 1(1)(pp)(vii)(C), and 1(1)(pp)(xii) of the HPA. In summarizing these conclusions, the hearing tribunal stated as follows:

All portions of the HPA, regulations and bylaws of the practice of pharmacy are vital to the safety of the public. Pharmacists are a self-regulated profession; each member has a great responsibility to ensure that they adhere to all laws, regulations and bylaws. If pharmacists do not ensure that they are practicing within all legal aspects of pharmacy, the very nature of self-regulation, and the protection of the public is threatened. The practice of pharmacy is inclusive and the laws apply to each regulated member, regardless of faith or beliefs. A member cannot choose which portion or which laws they wish to abide by, they must abide by them all. Therefore the tribunal finds that Ms. Maydaniuk's conduct in refusing to be assessed under section 118 constitutes unprofessional conduct.

Orders of the Hearing Tribunal

After hearing submissions from the lawyers for the complaints director and for Ms. Maydaniuk, the hearing tribunal issued the following orders pursuant to Section 82 of the *Health Professions Act*:

1. Ms. Maydaniuk's practice permit shall be suspended pursuant to section 82(1)(d) until the following conditions are met to the satisfaction of the complaints director:
 - a. Ms. Maydaniuk undergoes a mental health assessment with a health professional who is selected by and satisfactory to the complaints director;
 - b. the complaints director receives a report from the health professional that provides the information requested by the complaints director;
 - c. Ms. Maydaniuk complies with any treatment recommendations made by the health professional conducting the assessment in a manner satisfactory to the health professional and the complaints director; and

- d. the complaints director is satisfied that Ms. Maydaniuk has the capacity and necessary supports to resume the practice of pharmacy and has satisfied all registration requirements of the ACP.
2. The costs of the assessment, any resulting reports, any recommended treatments or supports, and any out of pocket costs shall be paid by Ms. Maydaniuk.
3. Ms. Maydaniuk:
 - a. Shall pay 50% of the costs of this hearing to be capped at a maximum of \$5000, and
 - b. Must begin payment of these costs on a schedule satisfactory to the complaints director commencing when the complaints director has determined that Ms. Maydaniuk has satisfied the conditions imposed in Orders 1(a) to 1(d) above.

The hearing tribunal concluded its decision with the following comment:

Pharmacists are required to use their professional judgment in all aspects of their daily practice – this is the heart of being a self-regulated profession. The practice of pharmacy is not a right, but a privilege and it is not up to each individual member to decide which directions from their governing body they will or will not follow regardless of their religious or personal beliefs. The protection of the public is a key principle in the provision of all pharmacy services and the public needs to know that all pharmacists hold public safety in the highest manner.