

ALBERTA COLLEGE OF PHARMACY

IN THE MATTER OF
THE HEALTH PROFESSIONS ACT

AND IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF

RAJEH ABU ZAHRA
Registration number 7676

DECISION OF THE HEARING TRIBUNAL
with respect to sanction

I. INTRODUCTION

The Hearing Tribunal held a hearing into the conduct of Rajeh Abu Zahra. In attendance on behalf of the Hearing Tribunal were Rick Hackman (pharmacist and chair), Hugo Leung (pharmacist), Sarah Gutenberg (pharmacist), and Pat Matusko (public member). The hearing took place on June 10 and 11, 2019 at Edmonton, Alberta. The hearing was held under the terms of Part 4 of the *Health Professions Act*.

In a decision dated August 7, 2019 the Hearing Tribunal found that the following three allegations had been proven against Mr. Abu Zahra:

IT IS ALLEGED THAT, between January 1, 2018 and May 3, 2018, while you were both a licensed Alberta pharmacist and the licensee of Boyle McCauley Pharmacy & Home Health Care (ACP License #2498), you:

- 1. Knowingly dispensed or as the licensee permitted your staff to dispense approximately 1,395 Type 1 Triplicate Prescription Program medications from one physician prior to, and without ever, receiving a Triplicate Prescription Program form from that physician for the Type 1 medications;*
- 2. Failed to comply with the Triplicate Prescription Program requirement to dispense Type 1 medications pursuant to a Triplicate Prescription Program prescription over an extended period of time;*
- 3. Inappropriately created procedures to facilitate the ongoing dispensing of Type 1 Triplicate Prescription Program medications without requisite Triplicate Prescription Program prescriptions;*

The Hearing Tribunal requested written submissions by the parties with respect to the orders that should be made by the Hearing Tribunal. The Hearing Tribunal received written submissions on behalf of the Complaints Director, written submissions on behalf of Mr. Abu Zahra, reply submissions on behalf of the Complaints Director, and a final comment on behalf of Mr. Abu Zahra.

II. POSITION OF THE PARTIES

The Complaints Director sought the following orders: a suspension of Mr. Abu Zahra's practice permit for 3 months; a requirement to pass the Ethics & Jurisprudence Exam; a direction that Mr. Abu Zahra not be permitted to be an owner, proprietor or licensee of a pharmacy for 3 years; a fine of \$5,000 to be paid within 90 days; and an order that Mr. Abu Zahra pay all costs of the hearing with a reasonable payment schedule as directed by the Complaints Director with costs to be paid in full within 24 months of receipt of the Hearing Tribunal's decision.

The Complaints Director, through legal counsel, submitted that: the proven allegations were serious; Mr. Abu Zahra failed to comply with fundamental obligations concerning the TPP program designed to protect the public; Mr. Abu Zahra had a previous complaint although it was resolved; there was a repeated pattern of conduct that occurred over an extended period of time; Mr. Abu Zahra indicated that in the future he would do the same thing but would be more proactive in getting the Triplicate prescription forms after filling the prescriptions; general and specific deterrence require a significant sanction; and the sanctions must ensure that the public has confidence in ACP's ability to regulated the profession.

Mr. Abu Zahra submitted that the appropriate sanction was a reprimand and that he should not be ordered to pay any of the costs. Mr. Abu Zahra, through legal counsel, submitted that: all three proven allegations concern Mr. Abu Zahra's interactions with a single physician; Mr. Abu Zahra was not trying to thwart the authority of the College; Mr. Abu Zahra had sought guidance from the College on what a pharmacist can do if he does not receive a TPP; his misconduct was not intentional and the allegations are not at the serious end of the spectrum; Mr. Abu Zahra has an impeccable record; there is no evidence of any harm to patients or members of the public; other prescriptions for other physicians were handled appropriately; he fully cooperated with the College in acknowledging the missing TPPs; the assertion about Mr. Abu Zahra not changing his practice misapprehends the evidence; the publication of the decision and sanction is sufficient for general deterrence; and the sanctions being sought are more serious than the range of sanctions in other cases with some similarities. With respect to the issue of costs, awarding full indemnity costs should not be the default. The hearing was relatively straight forward due to Mr. Abu Zahra's admissions about the TPP's. Costs should not be a crushing financial blow.

In reply the Complaints Director noted that the ability to process a TPP medication without a TPP is only to happen on rare, emergency situations. While the allegations did not allege patient harm, information from the CPSA indicates that Dr. Visconti was prescribing opioids at amounts drastically higher than other physicians. The Complaints Director noted that there was no evidence of compliance or non-compliance with prescriptions written by other physicians. Only prescriptions written by Dr. Visconti were the focus of the investigation and hearing. The Complaints Director submits that a reprimand alone would be insufficient given the seriousness of the misconduct.

Mr. Abu Zahra, through Mr. Renouf, submitted a final comment that the issue of alleged improper prescriptions was not part of the allegations before the Hearing Tribunal.

III. DECISION

With respect to the various factors referenced by the parties, the tribunal does not place any weight on the fact that there was one other complaint of some sort against Mr. Abu Zahra that was resolved. The fact that the complaint was made does not prove any improper conduct. Nor does the fact that it was resolved show anything negative towards Mr. Abu Zahra since pharmacists should be encouraged to resolve complaints where possible. The tribunal agrees with the Complaints Director that there was no evidence one way or the other as to whether Mr. Abu Zahra was in full compliance with the TPP program with respect to

other physicians. The material we were provided at the hearing only focused on prescriptions written by Dr. Visconti. With respect to the Complaints Director's reply submission, the tribunal agrees with Mr. Renouf that the tribunal should not infer that the prescriptions filled by Mr. Abu Zahra were inappropriate other than for non-compliance with the TPP program. There was no evidence presented at the hearing that the prescriptions' dosage or frequency was improper, and this was not the focus of the allegations.

ORDERS:

After considering all the submissions of the parties, the Hearing Tribunal makes the following orders:

1. Mr. Abu Zahra's practice permit shall be suspended for a period of 3 months starting on a date acceptable to the Complaints Director and being no later than 30 days after the date of the Hearing Tribunal decision;
2. Mr. Abu Zahra shall successfully pass the Ethics & Jurisprudence Exam and provide proof of same to the Complaints Director before Mr. Abu Zahra's suspension is lifted;
3. Upon completion of the 3-month suspension, Mr. Abu Zahra shall, for a period of 1 year, provide a copy of the Hearing Tribunal findings and decision to any person or entity that employs him as a pharmacist;
4. Mr. Abu Zahra shall not be permitted to be an owner, proprietor, or licensee of a pharmacy for a period of 2 years. If at any time after the 2 years Mr. Zahra wishes to be an owner, proprietor, or licensee, then for a period of 1 year while being an owner, proprietor or licensee, at the discretion of the Alberta College of Pharmacy (ACP), Mr. Abu Zahra must agree to full cooperation with further inspection(s) by the ACP to ensure compliance with the rules of the Triplicate Prescription Program and all other required standards;
5. Mr. Abu Zahra shall pay a fine in the amount of \$5,000 to be paid in full within 90 days of the date of receipt of the Hearing Tribunal's written decision on sanction; and
6. Mr. Abu Zahra shall be responsible for payment of all costs of the hearing. Payment will occur in accordance with a reasonable monthly payment schedule as directed by the Hearings Director. The costs shall be paid in full within 24 months of the date of receipt of the Hearing Tribunal's written decision on sanction.

The Hearing Tribunal's goals are to impose a suitable sanction that reflects the nature and severity of the offense; to provide appropriate deterrence to the profession of Pharmacy and to Mr. Abu Zahra; and, to provide protection to the public. The Hearing Tribunal recognized the financial impact of the sanctions and discussed, at length, what would be appropriate in this particular case.

It is the position of the Hearing Tribunal that the proper implementation of the Triplicate Prescription Program (TPP) enables vital surveillance of the prescribing and distribution of Type 1 medications under the TPP program. This program is a critical piece in the effort to combat the misuse, overuse, and diversion of the medicines. Alberta finds itself in the grips of an Opioid crisis and lives are at stake. Pharmacists play a vital role in ensuring that the integrity of the TPP remains intact. Pharmacy licensees have an obligation to ensure that the processes and policies in the operation of their pharmacies are consistent with ACP standards and the rules of the TPP program. Licensees have a further obligation to provide consistent oversight of their operations and exercise their professional judgement to intervene when situations arise that are in contravention to the rules of the TPP program. Mr. Abu Zahra failed to exercise acceptable professional judgement in creating the processes that resulted in 1,395 Type 1 medications being distributed without the requisite TPP form.

The very serious nature of the unprofessional conduct justifies the serious sanction of a 3-month suspension and a \$5,000 fine to ensure specific and general deterrence and ensure public confidence in the ACP's ability to regulate the profession. Mr. Abu Zahra failed to fulfill his fundamental obligations as a licensee which makes a 2-year prohibition on being an owner, proprietor or licensee appropriate. Further, the Hearing Tribunal considered it to be appropriate to ensure some oversight in Mr. Abu Zahra's first year back as a licensee. The ACP can perform performance audits at its discretion to ensure that Mr. Abu Zahra is able to demonstrate the competencies necessary to be a successful pharmacy licensee.

The Hearing Tribunal was concerned that Mr. Abu Zahra did not fully appreciate the potential consequences to his patients as a result of his actions. Furthermore, the Hearing Tribunal was not convinced that Mr. Abu Zahra fully understands the professional judgement that would have been reasonably expected of a pharmacist and of a licensee in the circumstances of this matter. The study of Ethics and Jurisprudence will serve as a reminder of the core ethical and legal obligations of pharmacists. The Hearing Tribunal wanted to ensure that in addition to the exam on Ethics and Jurisprudence, Mr. Abu Zahra could be appropriately mentored when his suspension was lifted. Ensuring that employers are aware of the findings of the Hearing Tribunal is important to ensure that this occurs.

With respect to costs, it was Mr. Abu Zahra's serious unprofessional conduct that resulted in the costs being incurred in this matter. Given these circumstances we consider it to be appropriate that he be responsible for the costs of the hearing with payments scheduled over 24 months.

Signed on behalf of the Hearing Tribunal by the Chair on November 27, 2019.

[Rick Hackman]

Mr. Rick Hackman