

ALBERTA COLLEGE OF PHARMACY

IN THE MATTER OF
THE HEALTH PROFESSIONS ACT

AND IN THE MATTER OF A HEARING
REGARDING THE CONDUCT OF

CONRAD AGLAH

Registration number: 7526

DECISION OF THE HEARING TRIBUNAL

May 10, 2022

I. INTRODUCTION

The Hearing Tribunal held a hearing into the conduct of Conrad Aglah on April 6, 2022. In attendance on behalf of the Hearing Tribunal were Cassandra Woit (pharmacist and chair), Tanner Bengry (pharmacist), Naz Mellick (public member) and Juane Priest (public member).

The hearing took place by way of video conference. The hearing was held under the terms of Part 4 of the *Health Professions Act* (“HPA”).

In attendance at the hearing were: Mr. James Krempien, Complaints Director for the Alberta College of Pharmacy (the “College”), Ms. Annabritt Chisholm, legal counsel representing the Complaints Director, and Mr. Conrad Aglah, Investigated Member. Mr. Aglah confirmed he was aware of his right to be represented by legal counsel and chose to represent himself during the hearing. Mr. Jason Kully was also in attendance, acting as independent counsel for the Hearing Tribunal.

Ms. Margaret Morley, Hearings Director for the College, was also present. Ms. Morley did not participate in the hearing but was available to assist in administering the virtual hearing.

There were no objections to the composition of the Hearing Tribunal or to the jurisdiction of the Hearing Tribunal to proceed with the hearing.

II. ALLEGATIONS

The Hearing Tribunal held a hearing to inquire into the following allegations with respect to Mr. Aglah, as set out in the Notice of Hearing:

IT IS ALLEGED THAT, between July 2, 2016, and August 4, 2021, while you were a registered Alberta pharmacist, you:

1. Did not maintain professional liability insurance,
2. Breached the professional declarations you made on or about,
 - a. May 29, 2016;
 - b. May 30, 2017;
 - c. May 30, 2018;
 - d. May 26, 2019;
 - e. May 29, 2020; and
 - f. June 1, 2021

by not maintaining professional liability insurance while on the clinical pharmacist register.

3. Practiced without professional liability insurance between July 2, 2016, and January 29, 2021, during approximately 477 eight-hour pharmacist shifts at one of Shoppers Drug Mart #2383 (ACP Licence #2603), Shoppers Drug Mart #321 (ACP Licence #2095) and CMRx4 Pharmacy (ACP Licence #3428).

IT IS ALLEGED THAT your conduct in these matters:

- a. Breached your statutory and regulatory obligations to the Alberta College of Pharmacy as an Alberta pharmacist,
- b. Undermined the integrity of the profession, and
- c. Failed to exercise the professional and ethical judgment expected and required of an Alberta pharmacist.

IT IS ALLEGED THAT your conduct constitutes a breach of the following statutes and standards governing the practice of pharmacy:

- a. Standard 1 (sub-standards 1.1 and 1.2) of the Standards of Practice for Pharmacists and Pharmacy Technicians;
- b. Principles 1(1), 10(1) and 10(2) of the Alberta College of Pharmacy's Code of Ethics;
- c. Section 13(1) of the Pharmacists and Pharmacy Technicians Profession Regulation; and
- d. Sections 40(1)(c) of the *Health Professions Act*;

and that your conduct set out above and the breach of some or all of these provisions constitutes unprofessional conduct pursuant to the provisions of sections 1(1)(pp)(ii) and 1(1)(pp)(xii) of the *Health Professions Act*.

III. EVIDENCE AND SUBMISSIONS ON CONDUCT

The hearing proceeded by way of an Agreed Statement of Facts and an Admission of Unprofessional Conduct on the part of Mr. Aglah. No witnesses were called to testify.

An Agreed Exhibit Book, which included the Notice of Hearing, the Admission of Unprofessional Conduct, and the Agreed Statement of Facts, was entered as Exhibit 1 by agreement of the parties.

The Agreed Statement of Facts stated:

1. At all relevant times, Mr. Aglah was a registered member of the Alberta College of Pharmacy (the "ACP") on the clinical pharmacist register and practiced as a pharmacist at one or more of Shoppers Drug Mart #2383 (ACP Licence #2603), Shoppers Drug Mart #321 (ACP Licence #2095) and CMRx4 Pharmacy (ACP Licence #3428).

2. On September 29, 2021, Mr. James Krempien, the Complaints Director of the ACP, received an email of complaint from Ms. Arlene Raimondi, Policy Lead and Registration of the ACP. The information provided with Ms. Raimondi's email of complaint stated in part:
 - a. On August 5, 2021, Mr. Aglah was randomly selected for the 2021-2022 professional declaration audit and was asked to submit documentation of his current Professional Liability Insurance ("PLI") coverage.
 - b. In response to the audit, Mr. Aglah provided in part a copy of his PLI policy, which showed a policy period from August 5, 2021 to July 1, 2022.
 - c. The only proof of PLI that Mr. Aglah provided prior to August 5, 2021 covered a policy period of June 1, 2016 to July 1, 2016.

Ms. Raimondi's email of complaint and enclosures are attached as Exhibit "A" to this Agreed Statement of Facts.

3. Based on the information received from Ms. Raimondi, Mr. Krempien commenced an investigation into the conduct of Mr. Aglah. Mr. Krempien appointed himself as investigator. The information gathered during the investigation resulted in Mr. Krempien's determination that this matter must be referred to a hearing.

Facts Relevant to the Complaint

4. On September 30, 2021, Mr. Krempien had a telephone conversation with Mr. Aglah, notifying him of the complaint and requesting a written response. A summary of their conversation is attached as Exhibit "B" to this Agreed Statement of Facts.
5. On September 30, 2021, Mr. Krempien wrote to Mr. Aglah and requested that he review the Complainant's concerns and provide a written response to the complaint. Specifically, Mr. Krempien asked Mr. Aglah to respond to the following matters of concern:
 - a. He breached the professional declarations that he declared on or about June 1, 2020, and by extrapolation also on May 29, 2019, May 26, 2019 and May 30, 2018, May 30, 2017 and May 26, 2016, and possibly additional earlier declarations as part of his annual practice permit renewals in that he did not maintain valid professional liability insurance while on the clinical register;
 - b. He was on the clinical register from July 2, 2016 until on or about August 4, 2021, and possibly between September 13, 2007 and May 31, 2016 without valid professional liability insurance; and
 - c. He may have practiced as a pharmacist without valid professional liability insurance from July 2, 2016 until on or about August 4, 2021,

and possibly between May 26, 2008 and May 31, 2016 without valid professional liability insurance.

Attached as Exhibit “C” to this Agreed Statement of Facts is the letter and enclosures provided by Mr. Krempien to Mr. Aglah.

6. On October 21, 2021, Mr. Krempien received Mr. Aglah’s written response to the complaint. In his written response, Mr. Aglah stated:
 - a. He had unintentionally breached his professional declarations;
 - b. He believed that he was automatically provided PLI as a pharmacist with Shoppers Drug Mart;
 - c. Prior to 2010, he had multiple PLI coverages and between at least 2010 to 2016, he purchased PLI through RxA;
 - d. He unintentionally failed to maintain or obtain PLI between 2016 and 2021; and
 - e. He had worked approximately 3,740 hours, or 467 eight-hour shifts between 2016 and 2021.

As part of his written response to the complaint, Mr. Aglah enclosed documentation of his previous PLI coverage as well as Canada Revenue Agency T4 Statements of Remuneration Paid to indicate his income from Shoppers Drug Mart 2383 and Shoppers Drug Mart 321 between 2016 to 2020. Attached as **Exhibit “D”** to this Agreed Statement of Facts is a copy of Mr. Aglah’s written response to the complaint.

7. On October 22, 2021, Mr. Krempien and Mr. Aglah spoke via telephone. During this call, Mr. Aglah:
 - a. Admitted he had provided false professional declarations on May 29, 2016, May 30, 2017, May 30, 2018, May 26, 2019, May 29, 2020, and June 1, 2021, as part of his annual practice permit renewal;
 - b. Admitted he did not have PLI during the period of July 1, 2016 to August 4, 2021 while on the clinical pharmacist register;
 - c. Admitted that he practiced as a pharmacist at Shoppers Drug Mart pharmacies and CMRx4 Pharmacy for approximately 477 eight-hour shifts without PLI between July 1, 2016 and January 29, 2021;
 - d. Indicated he had unintentionally failed to maintain PLI while on the clinical pharmacist register during this time;

- e. Indicated he was not aware of any significant professional errors or omissions on his part that have given rise or may give rise to a civil claim against him; and
- f. Indicated that while practicing without PLI, he provided customary RPh services such as prescribing, dispensing, administering medication by injection, and care plans.

Mr. Krempien's summary of his meeting with Mr. Aglah is attached as Exhibit "E" to this Agreed Statement of Facts.

8. As part of his investigation, Mr. Krempien reviewed a sample of recent ACP communications regarding notices and reminders for pharmacists to obtain professional liability insurance. Specifically, Mr. Krempien noted that the following documents had been previously communicated to ACP pharmacists during the relevant time period:
- a. The February 1, 2017, The Link edition included the article: *Are your professional declarations up to date*, which reminded pharmacists of the requirement for professional liability insurance. This article had an embedded link to the *Guidelines for audits of professional declarations* section on the ACP website.
 - b. The October 17, 2018, The Link edition included the article: *Failing to fulfill professional declarations and not carrying current liability insurance can be a costly mistake*, which notified pharmacists about a recent hearing tribunal decision involving a pharmacist who was found to have failed to renew his professional liability insurance.
 - c. The September 18, 2019, The Link edition included the article: *Failing to fulfill your professional declarations and not carrying current professional liability insurance can become a costly mistake*, which notified pharmacists about three of five recent hearing tribunal decisions involving pharmacists who were found to have failed to renew their professional liability insurance.
 - d. The October 30, 2019, *The Link edition included the article: Failing to fulfill your professional declarations and not carrying current professional liability insurance can become a costly mistake*, which notified pharmacists about two of five recent hearing tribunal decisions involving pharmacists who were found to have failed to renew their professional liability insurance.
 - e. The November 12, 2020, The Link edition included the article: *Failing to fulfill your professional declarations and not carrying current professional liability insurance can become a costly mistake*, which notified pharmacists about two recent hearing tribunal decision

involving pharmacists who were found to have failed to renew their professional liability insurance.

- f. The May 26, 2021, article on the ACP website: *Pharmacists must renew and possess current personal professional liability insurance* reminding pharmacists that most pharmacist PLI policies need to be renewed for July 1.
- g. The July 7, 2021, The Link edition included the article: *Failing to fulfill your professional declarations and not carrying current professional liability insurance can become a costly mistake*, which notified pharmacists about a recent hearing tribunal decision involving a pharmacist who was found to have failed to renew his professional liability insurance; and
- h. Information on the Alberta College of Pharmacy's website, including *Guidelines for audits as professional declarations*.

The sample documents reviewed by Mr. Krempien are attached as Exhibit "F" to this Agreed Statement of Facts.

- 9. Mr. Aglah has no prior findings of unprofessional conduct or matters referred to a hearing tribunal.
- 10. Mr. Aglah acknowledges that he has waived his opportunity to receive legal advice prior to entering into this Agreed Statement of Facts and that he understands that the Hearing Tribunal may use this Agreed Statement of Facts as proof of allegations set out in the Notice of Hearing.

The Admission of Unprofessional Conduct stated:

- 1. Mr. Aglah acknowledged and admitted the allegations and particulars found in the Notice of Hearing.
- 2. Mr. Aglah agreed and acknowledged that his conduct breached his statutory and regulatory obligations to the College as a pharmacist, undermined the integrity of the profession, and failed to exercise the professional and ethical judgment expected and required of a pharmacist.
- 3. Mr. Aglah agreed and acknowledged his conduct breached the Standard 1 of the Standards of Practice for Pharmacists and Pharmacy Technicians, Principles 1(1), 10(1), and 10(2) of the College's Code of Ethics, s. 13(1) of the *Pharmacists and Pharmacy Technicians Profession Regulation*, and s. 40(1)(c) of the HPA.
- 4. Mr. Aglah agreed and acknowledged his conduct constituted unprofessional conduct pursuant to the HPA.

Ms. Chisholm reviewed the Notice of Hearing and the allegations against Mr. Aglah. She advised the three allegations stemmed from Mr. Aglah's failure to maintain professional liability insurance during six practice permit years, and his corresponding failure to uphold six professional declarations that he made to the College when he renewed his practice permit. Ms. Chisolm stated the Tribunal's task was to determine whether the allegations in the Notice of Hearing had been factually proven on a balance of probabilities, and if so whether the proven allegations constituted unprofessional conduct under the HPA.

Ms. Chisholm advised Mr. Aglah had acknowledged his conduct by providing an admission of unprofessional conduct and that the documents in the Agreed Exhibit Book provided sufficient evidence for the Tribunal to find that the allegations were proven on a balance of probabilities and that they amounted to unprofessional conduct. Ms. Chisholm then reviewed the Admission of Unprofessional Conduct and the Agreed Statement of Facts, including the attached exhibits. She stated the reason the Tribunal was holding a hearing was because a pharmacist has a positive statutory and regulatory obligation to maintain professional liability insurance. She stated it was a requirement, found in both the Standards of Practice and the Code of Ethics, for a pharmacist to comply with the letter and the spirit of the law that governs their practice to ensure that the public and each patient receives the full protection of the law. She stated this was particularly important as professional liability insurance would protect patients. She submitted professional liability insurance is a very important part of the protection of the public as it allows the public to be assured that a pharmacist's actions would be covered regardless of where they were working. Ms. Chisholm submitted that while the College was not alleging Mr. Aglah's actions were deliberate, his conduct was a result of an error in judgment and a lack of attention to his professional obligations.

Ms. Chisholm stated that every year the College relies on the accuracy of over 6,100 professional declarations by pharmacists and that the ability to belong to a professional regulatory body and to be entrusted to make such declarations are privileges of a professional. It is a fundamental expectation that when a member completes their declaration and declares something to be true, it will be.

Mr. Aglah acknowledged that he had made a fundamental error in that he believed Shoppers Drug Mart provided him with liability insurance. He stated that while he previously had external liability insurance, he ceased obtaining such coverage in or around 2016 when he received communications that his contract would be regularized as an employee instead of a contractor. He stated that it was not Shoppers' responsibility and that he was responsible for obtaining liability insurance. Mr. Aglah blamed himself for the error and took responsibility that he was the one filing and declaring the oath that he had liability insurance, even though he did not check a physical copy prior to completing the declaration. He stated his actions were not intentional but that he should not have left it in the hands of his employer. He stated that he regretted his actions.

IV. FINDINGS

The members of the Hearing Tribunal accepted Mr. Aglah's admission of unprofessional conduct and found the allegations were proven on a balance of probabilities and that the conduct was unprofessional conduct.

In determining that the allegations were proven and that the admission should be accepted, the Hearing Tribunal carefully considered the Agreed Statement of Facts and the Admission of Unprofessional Conduct entered as Exhibit 1.

Mr. Aglah admitted that he did not maintain his professional liability insurance. This admission was supported by the evidence which demonstrated that Mr. Aglah did not maintain or obtain professional liability insurance between July 2, 2016, and August 4, 2021. The evidence indicated Mr. Aglah had insurance coverage between June 1, 2016, and July 1, 2016, and between August 5, 2021, and July 1, 2022. While Mr. Aglah provided an explanation as to why he did not maintain his insurance, being that he believed he was provided such insurance as a pharmacist with Shoppers Drug Mart when his employment was being clarified, he also accepted and acknowledged that he was responsible for maintaining insurance and acknowledged that he was at fault. Accordingly, Allegation 1 is proven.

Mr. Aglah also admitted that he breached his professional declarations on May 29, 2016, May 30, 2017, May 30, 2018, May 26, 2019, May 29, 2020, and June 1, 2021. The evidence demonstrates that as part of the yearly practice permit renewal process, pharmacists are required to declare that they are in possession of valid professional liability insurance that provides no less than two million dollars worth of personal coverage and to declare that they understand that they must maintain this valid insurance coverage while registered on the clinical register. Mr. Aglah signed and dated this declaration indicating that he was in possession of such insurance and that he would maintain it despite not being in possession of the valid professional liability insurance. He then failed to maintain the insurance while on the register. While the evidence indicates Mr. Aglah had insurance coverage between June 1, 2016, and July 1, 2016, so he did have insurance at the time of his May 29, 2016, declaration, Mr. Aglah then failed to maintain professional liability insurance for the entire 2016 year and beyond, meaning he breached the declaration. Allegation 2 is proven.

Mr. Aglah admitted, and the facts demonstrated, that Mr. Aglah practiced without professional liability insurance between July 2, 2016, and January 29, 2021, during approximately 477 eight-hour pharmacist shifts. Mr. Aglah calculated this number and provided this information to the College. Allegation 3 is proven.

In summary, for approximately 5 years Mr. Aglah practiced without professional liability insurance. While this was not intentional, Mr. Aglah was careless and did not exercise due diligence in ensuring that he had the required insurance coverage. During this period of time, the College sent out numerous notices and reminders for pharmacists to obtain professional liability insurance. Mr. Aglah also had to make a yearly declaration that he still had professional liability insurance which could have acted as a reminder to review his coverage prior to making the declaration. Mr. Aglah had plenty of opportunities to confirm his mistaken belief that he had such insurance coverage but failed to do so.

Section 40(1)(c) of the HPA and Section 13 of the Pharmacists and Pharmacy Technicians Profession Regulation state that regulated members must possess professional liability insurance in order to obtain a practice permit. This is necessary to protect the public when receiving pharmacy services as it ensures that there is a financial resource that is independent of the pharmacists to meet the costs of any damages regardless of where the pharmacist is practicing. It is in the public interest for professionals, like pharmacists, to have professional liability insurance. It is not practical for members of the public to confirm that individuals with whom they interact in a pharmacy have liability insurance and the public trusts that members of the profession have met their obligation to obtain professional liability insurance coverage. A failure to have professional liability insurance contravenes the public interest.

The HPA outlines that contravening the HPA and other legislation applicable to the practice of the profession constitutes unprofessional conduct. As Mr. Aglah failed to comply with the HPA and the Pharmacists and Pharmacy Technicians Profession Regulation in not having professional liability insurance, and as he jeopardized the public interest, he engaged in unprofessional conduct.

Mr. Aglah disregarded his regulatory obligation to the College, as well as his ethical obligations to patients and the public, to ensure he maintained professional liability insurance while registered as an Alberta pharmacist and while practicing as a pharmacist. While Mr. Aglah explained why he did not have insurance and where he believed the process could be improved, Mr. Aglah had a professional obligation to take active steps to ensure he had insurance. He failed to do so and chose to rely upon assumptions.

While the Tribunal accepts that Mr. Aglah's actions were not deliberate or intentional, his conduct showed an error in judgement and a lack of respect for his professional obligations and declarations. Pharmacists are a self-regulated profession and one of the foundations of a self-regulating profession is that their members are diligent and trustworthy in their practice to ensure public safety. Breaches of statutory requirements, even if unintentional, have the potential to harm the public. While there is no evidence of any error or omission by Mr. Aglah giving rise to a claim against him which would not be covered by insurance, he was providing customary services such as prescribing, dispensing, administering medication by injection, and care plans while practicing without professional liability insurance. A significant number of members of the public were exposed to possible risk and loss as a result of Mr. Aglah's actions.

Mr. Aglah's conduct also harmed the reputation of pharmacists within the profession as well as within society as a whole. This is particularly true in light of the College's significant and continuing efforts to inform members of their obligation to maintain insurance and to make members aware of the consequences of failing to maintain insurance. Mr. Aglah should not have been surprised by the insurance requirement and of its importance.

With respect to Mr. Aglah's breaches of his professional declarations, every year the College relies on the accuracy of professional declarations that are made when registered pharmacists renew their Practice Permit. It is impossible for the College to verify all of the declarations made and impossible for the College to review the insurance coverage of all pharmacists. Beyond the logistical difficulties, such verification should not be necessary. It is a fundamental expectation

that the statements declared can be counted on to be true when a pharmacist completes their professional declaration. False declarations, due to errors in judgement, lack of attention, or any other reason – deliberate or not – are serious.

Principle 1(1) of the College’s Code of Ethics states that a pharmacist will act in the best interest of each patient. Principle 10(1) states that a pharmacist will comply with the letter and spirit of the law and Principle 10(2) states that a pharmacist is honest in their dealings. Standard 1 of the Standards of Practice for Pharmacists and Pharmacy Technicians requires pharmacists to comply with the law. Mr. Aglah did not act in the best interests of his patients when he did not have valid insurance, was not honest with the College when he did not comply with his declaration and did not comply with the law when he did not comply with the HPA and the Pharmacists and Pharmacy Technicians Profession Regulation.

Mr. Aglah’s actions constitutes serious misconduct. As Mr. Aglah’s conduct contravened the HPA, the Pharmacists and Pharmacy Technicians Profession Regulation, and the Code of Ethics it was unprofessional conduct as defined in s.1(1)(pp)(ii) of the HPA. In addition, Mr. Aglah’s conduct was unprofessional conduct pursuant to s. 1(1)(pp)(xii) of the HPA as it harmed the integrity of the profession.

V. SUBMISSIONS ON ORDERS

After the Hearing Tribunal deliberated to review evidence and submissions, the Tribunal advised the parties that it accepted the Admission of Unprofessional Conduct by Mr. Aglah and that it determined the conduct constituted unprofessional conduct. The Hearing Tribunal invited the parties to make submissions with respect to sanction.

Ms. Chisholm advised the Tribunal that the parties had prepared a Joint Submission on Sanction and a Joint Submission on Sanction was entered as Exhibit 2. In the Joint Submission on Sanction, the parties jointly proposed the following sanctions:

1. Mr. Aglah shall receive a written reprimand, which the Hearing Tribunal’s written decision shall serve as.
2. Mr. Aglah shall pay a fine of \$1,000. Payment will occur in accordance with a payment schedule satisfactory to the Hearings Director. The fine shall be paid in full within 12 months of the date Mr. Aglah receives a copy of the Hearing Tribunal’s written decision.
3. Mr. Aglah shall be responsible for payment of all costs of the investigation and hearing to a maximum of \$7,000. Payment will occur in accordance with a payment schedule satisfactory to the Hearings Director. The costs shall be paid in full within 24 months of the date Mr. Aglah receives a copy of the Hearing Tribunal’s written decision.

Ms. Chisholm submitted there are four main purposes relating to sanctions in the professional discipline context: protection of the public, maintaining the integrity of the profession, fairness to

the member, and specific and general deterrence. She submitted the Tribunal should assess the factors referenced in *Jaswal vs. Medical Board (Newfoundland)* (1996), 42 Admin L.R. (2d) 233 in considering what sanctions are appropriate to meet the purposes. In discussing the factors, Ms. Chisholm submitted:

1. *Nature and gravity of proven allegations/degree to which the conduct was clearly regarded as unprofessional conduct:* Mr. Aglah failed to uphold six statutory professional declarations and did not maintain professional liability insurance for more than 5 years. This posed a risk of harm to the public and constitutes unprofessional conduct. While the conduct is serious as it goes to the heart of the ability of a self-regulation profession to function, it is on the lower end of the spectrum of unprofessional conduct and was not as serious as a drug diversion, false claims to third party insurers or a boundary violation.
2. *Age and experience of the offender:* Mr. Aglah was registered with the College since September 13, 2007. When the conduct occurred between 2016 and 2021, he was not a new practitioner and ought to have known the expectations regarding insurance. His actions were not caused by inexperience.
3. *Previous character of a member and prior findings of unprofessional conduct:* There were no prior complaints or findings of unprofessional conduct against Mr. Aglah which was a factor in his favour.
4. *Number of times the offence occurred:* The conduct spanned 6 renewal cycles, resulting in six false declarations, and between July 2, 2016, and August 4, 2021, Mr. Aglah practiced without insurance during approximately 477 eight-hour pharmacist shifts. The conduct was repeated over a number of years.
 - *Role of the member in acknowledging what occurred:* Once Mr. Aglah was made aware of the situation, he admitted to the error, and took steps to remedy the error and obtain the required insurance. Mr. Aglah admitted the allegations as part of the hearing. This is a mitigating factor in this case.
 - *The need to promote deterrence:* This means the sanctions should be such that Mr. Aglah does not repeat the conduct, and that the sanctions send a message to others in the profession so that similar conduct does not arise. Obligations arising from registration, including professional declarations, depends on members knowing what their obligations are, saying they perform the obligations and then actually doing so. Self-regulating professions would fail if members cannot be trusted to comply with what is expected of them. The College clearly communicates the requirements regarding insurance but ultimately the College relies on the member to comply. Specific deterrence to Mr. Aglah is served by imposing the reprimand and fine. With regards to general deterrence of the larger membership, the sanctions send the message that if a member fails to maintain professional liability insurance, the College will take appropriate action.

- *The need to maintain public confidence in the integrity of the profession:* Self-regulating professions are statutory bodies. It is therefore important that, through discipline proceedings, the College sends a clear message that the profession takes regulation seriously and that appropriate sanctions will be imposed where obligations and requirements are not upheld.
- *The range of sanctions in other similar cases:* Ms. Chisholm referred to the Decision of the Hearing Tribunal of the Alberta College of Pharmacy in the matter of Kar Leung, dated October 5, 2020, and the Decision of the Hearing Tribunal of the Alberta College of Pharmacy in the matter of Hugo Leung, dated May 31, 2021, as being similar cases where pharmacists failed to uphold a professional declaration and had practiced without professional liability insurance for more than a year. Ms. Chisholm advised that the sanctions imposed in those two decisions were largely consistent with the sanctions outlined in the Joint Submission on Sanction. She advised that Mr. Hugo Leung had made false declarations over multiple renewal cycles and practiced without professional liability insurance during those years.

Ms. Chisholm then discussed the case of *R v Anthony* which establishes a “public interest” test which requires that joint submissions on sanctions should be given deference by the Hearing Tribunal. While this is a criminal case, she submitted the case of *Bradley v Ontario College of Teachers* is a recent case which accepts that the public interest test is the correct test to be applied in discipline hearings.

She submitted that pursuant to the public interest test, the Hearing Tribunal is required to accept a Joint Submission on Sanction, unless the proposed sanctions would bring the administration of justice into disrepute or would otherwise be contrary to the public interest. She submitted this a stringent test, in part because of the time that the parties might have spent arriving at the agreement, as well as the fact that the member should have some degree of certainty in the sanctions that would be ordered against them if they do decide to make an Admission of Unprofessional Conduct. She submitted that, if the Tribunal finds that the Joint Submission is against the public interest, it should advise the parties and seek further submissions on any changes or different orders the Tribunal proposes to make.

Ms. Chisholm submitted that the Joint Submission on Sanction met the sentencing principles and the public interest test set out in *R v Anthony-Cook* as the proposed sanctions were serious enough that they would ensure specific and general deterrence, as well as protect the public and the integrity of the profession.

Mr. Aglah did not make any submissions on sanction.

VI. ORDERS

After carefully considering the Joint Submission on Sanction, the facts of the case, and the submissions, the Hearing Tribunal accepted the Joint Submission on Sanction.

The Hearing Tribunal acknowledged deference should be provided to a Joint Submission on Sanctions and acknowledged the high threshold outlined in *R v. Anthony-Cook* and applied in discipline proceedings. The Hearing Tribunal accepted that it ought not to depart from the Joint Submission unless the proposed sanctions would bring the administration of justice into disrepute or would otherwise be contrary to the public interest.

The Hearing Tribunal considered the orders proposed and took into account the submissions of the parties and the factors discussed in the *Jaswal* decision. The Tribunal considered the seriousness of the conduct which involved a failure to obtain professional liability insurance, working without such insurance, and the breach of the declarations, the 5 years during which the conduct was repeated, the number of declarations that were made, Mr. Aglah's experience as a pharmacist, and the range of sanctions previously ordered in similar cases. These factors were balanced with Mr. Aglah's admission and cooperation with the College, which were significant mitigating factors. Mr. Aglah's lack of a previous discipline history and the absence of a significant impact on patients were considered as neutral factors.

The Hearing Tribunal accepted that the orders in the Joint Submission were appropriate having regard to the allegations and the factors. Mr. Aglah's conduct was serious and had the potential for harm. He repeatedly failed to meet the expectations of a professional and, while the Tribunal finds the conduct was not deliberate or intentional, Mr. Aglah failed to exercise appropriate due diligence and was careless. There was no excuse for his actions and the sanctions ordered will address the purposes of sentencing in this case. Specifically, the fine and reprimand serve as an appropriate deterrent to Mr. Aglah and the profession at large from engaging in similar unprofessional conduct in the future.

The orders also serve the public's interest and uphold the integrity of the profession. The sanctions will also demonstrate to members of the profession and the public that the College will take appropriate action if a member fails to maintain professional liability insurance, even when the conduct is not intentional.

Finally, the sanctions proposed were consistent with previous decisions, indicating Mr. Aglah was being treated fairly and that the integrity of the profession was being maintained.

The Hearing Tribunal concluded it was appropriate that Mr. Aglah be responsible for a portion of the costs of the investigation and hearing as it was his conduct that required the discipline proceedings. The cap on the total cost payable was fitting in the circumstances, particularly given Mr. Aglah's early admission and cooperation throughout.

In light of the above, the Hearing Tribunal made the following orders under Section 82 of the *Health Professions Act*:

1. Mr. Aglah shall receive a written reprimand, which the Hearing Tribunal's written decision shall serve as.
2. Mr. Aglah shall pay a fine of \$1,000. Payment will occur in accordance with a payment schedule satisfactory to the Hearings Director. The fine shall be paid in full within 12 months of the date Mr. Aglah receives a copy of the Hearing Tribunal's written decision.
3. Mr. Aglah shall be responsible for payment of all costs of the investigation and hearing to a maximum of \$7,000. Payment will occur in accordance with a payment schedule satisfactory to the Hearings Director. The costs shall be paid in full within 24 months of the date Mr. Aglah receives a copy of the Hearing Tribunal's written decision.

Signed on behalf of the Hearing Tribunal by the Chair on May 10, 2022

Cassandra Voit
Per: [Cassandra Voit \(May 10, 2022 17:14 MDT\)](#)
Cassandra Voit