

ALBERTA COLLEGE OF PHARMACY

IN THE MATTER OF
THE HEALTH PROFESSIONS ACT

AND IN THE MATTER OF A HEARING
REGARDING THE CONDUCT OF

SHAHAMA ALSABE

Registration number: 14026

DECISION OF THE HEARING TRIBUNAL

I. INTRODUCTION

The Hearing Tribunal held a hearing into the conduct of Shahama Alsabe. In attendance on behalf of the Hearing Tribunal were Yasir Iqbal, pharmacist, Pat Matusko, public member, and Teryn Wasilevko, pharmacist and chair.

The hearing took place on July 8, 2020 via videoconference. 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 and Ms. Leah Macklin, legal counsel representing the Complaints Director, and Shahama Alsabe, investigated member. Ms. Alsabe confirmed she was aware of her right to be represented by legal counsel and chose to represent herself during the hearing. Ms. Tessa Gregson was also in attendance, acting as independent counsel for the Hearing Tribunal.

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

II. ALLEGATIONS

The Hearing Tribunal held a hearing to inquire into the following allegations with respect to Ms. Alsabe, as set out in the Notice of Hearing, entered as Exhibit 1:

IT IS ALLEGED THAT

1. Between July 1, 2018 to on or about August 15, 2018, while you were a registered Alberta pharmacist, you:
 - a. Did not maintain professional liability insurance;
 - b. Breached your professional declaration of May 18, 2018 by not maintaining professional liability insurance while on the clinical pharmacist register;
 - c. Practiced without professional liability at Cure Care Pharmacy (#11, 9104 179 Ave NW, Edmonton, AB T5Z 2K9) for approximately five shifts per week.

2. Between July 1, 2019 and October 21, 2019, while you were a registered Alberta pharmacist, you:
 - a. Did not maintain professional liability insurance;
 - b. Breached your professional declaration of May 20, 2019 by not maintaining professional liability insurance while on the clinical pharmacist register;

- c. Practiced without professional liability insurance:
 - i. at Cure Care Pharmacy (#11, 9104 179 Ave NW, Edmonton, AB T5Z 2K9) for approximately five shifts per week from July 1, 2019 to on or about October 1, 2019;
 - ii. at RX Drug Mart 2023 (1-6601 48th Ave, Camrose, AB T4V 3G8) on or about October 2, 2019;
 - iii. at RX Drug Mart - Boyle (5188 3rd St, Boyle, AB T0A 0M0) on or about October 19, 2019.

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:

- Standard 1 (sub-standards 1.1 and 1.2) of the Standards of Practice for Pharmacists and Pharmacy Technicians;
- Principles 1(1), 10(1) and 10(2) of the Alberta College of Pharmacy's Code of Ethics;
- Section 13(1) of the Pharmacists and Pharmacy Technicians Profession Regulation;
- Section 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*.

Ms. Chisholm made an application to amend allegation 1(c) to add the word "insurance after "professional liability" so that the allegation read "Practiced without professional liability insurance at Cure Care Pharmacy." Ms. Alsabe consented to this amendment and the Tribunal granted the application.

III. EVIDENCE AND SUBMISSIONS

The hearing proceeded with an Agreed Statement of Facts and an Admission of Unprofessional Conduct on the part of Investigated Member, Shahama Alsabe. No witnesses were called to testify.

The following exhibits were entered by agreement of the parties:

- Exhibit 1: Notice of Hearing
- Exhibit 2: Admission of Unprofessional Conduct
- Exhibit 3: Agreed Statement of Facts

Ms. Chisholm proceeded to make submissions on behalf of the Complaints Director to the Tribunal regarding the three documents that had been jointly submitted.

She summarized the documents as follows:

- The Notice of Hearing (Exhibit 1) outlined the allegations of unprofessional conduct brought against Ms. Alsabe;
- The Admission of Unprofessional Conduct (Exhibit 2):
 - Ms. Alsabe admits to Allegations 1 and 2 in the Notice of Hearing under s. 70 of the HPA.
 - Ms. Alsabe agrees and acknowledges that her conduct in these matters breached her statutory and regulatory obligations to the Alberta College of Pharmacy, undermined the integrity of the profession, and that she failed to exercise the professional and ethical judgement expected and required of an Alberta pharmacist.
 - Ms. Alsabe agrees and acknowledges that her conduct breached the Standards of Practice for Pharmacists and Pharmacy Technicians, Code of Ethics, the *Health Professions Act*, and the Pharmacists and Pharmacy Technicians Profession Regulation.
 - Ms. Alsabe waived her opportunity to receive legal counsel prior to entering into the Admission of Unprofessional Conduct and she understands that if the Hearing Tribunal accepted the Admission, that the Tribunal may proceed to issue orders under s. 82(1) of the HPA.
- The Agreed Statement of Facts (Exhibit 3):
 - Ms. Alsabe was at all relevant times a registered member with the College and on the clinical pharmacist register.
 - On October 21, 2019 Ms. Alsabe was notified by e-mail that she had been randomly selected for a professional declaration audit. As part of the audit she was asked to submit her current professional liability insurance coverage policy for the 2018/2019 registration year.
 - On November 3, 2019 Ms. Alsabe submitted her insurance documents for the 2018 and 2019 practice year to the College, along with the other documents that had been requested as part of the audit. At this time Dr. Timanson, the competence director for the College, noted

that Ms. Alsabe's insurance certificate for 2018/2019 only provided coverage from August 16, 2018, to July 1, 2019.

- Ms. Alsabe was also asked to submit her insurance for the 2019/2020 practice year. It was noted that Ms. Alsabe's insurance certificate showed that her coverage was only from October 22, 2019 to July 1, 2020.

The Complaints Director began his investigation by sending a letter to Ms. Alsabe on November 29th, 2019, notifying her of the complaint and requesting that she address Dr. Timanson's concerns in a written response to the allegations that she breached the professional declarations she made in May 2018 and 2019 as part of her practice permit renewal because it appeared that she did not maintain valid professional liability insurance while on the clinical register from July 1, 2018 to (on or about) August 15, 2018, and then again from July 1, 2019 to (on or about) October 21, 2019 during which time she was practicing as a pharmacist without the required liability insurance.

- On December 28, 2019 Ms. Alsabe's responded to the complaint and indicated that she had sent in an application to renew her professional liability insurance in May of 2019, and she paid her fee by MasterCard, but later she found in her junk folder an e-mail that showed that her payment did not go through.
- On January 9, 2020 Mr. Krempien met with Ms. Alsabe. During this interview, she admitted providing false professional declarations in May of 2018 and 2019 due to her failure to maintain professional liability insurance from July 1, 2018 to August 15, 2018, and also between July 1, 2019 and October 22, 2019. She admitted that she did not hold professional liability insurance between the periods while she was on the clinical register. She indicated that her failure to maintain professional liability insurance was an unintentional error and apologized. She admitted to practicing as a pharmacist approximately five shifts a week at Cure Care Pharmacy between July 1, 2018 and August 15, 2018 when she did not have valid insurance. She also admitted to practicing as a pharmacist approximately five shifts a week at Cure Care Pharmacy between July 1, 2019 and October 21, 2019, as well as at RX Drug Mart 2023 on October 2, 2019, when she did not have valid insurance.
- During the relevant period, the College communicated with its members as to the importance of maintaining current liability insurance and fulfilling professional declarations.
- The Admission of Unprofessional Conduct (Exhibit 2) and the Agreed Statement of Facts (Exhibit 3) signed by Ms. Alsabe and Mr.

Krempien matched the allegations in the Notice of Hearing (Exhibit 1). In this document, Ms. Alsabe agreed and acknowledged that her conduct breached the *Health Professions Act* and the College's Standards of Practice and the Code of Ethics.

Ms. Chisolm submitted the Complaints Director had met the onus of proving its case on a balance of probabilities. She advised the facts were not in dispute and that the evidence established the allegations in the Notice of Hearing.

Ms. Chisholm submitted that Ms. Alsabe's failure to maintain her professional liability insurance and fulfill her professional declarations was unprofessional conduct. She advised Ms. Alsabe admitted to this and then led the Tribunal through the relevant portions of the statutory authorities that govern the practice of pharmacy, including s. 40(1)(c) of the HPA, Section 13(1) of the Pharmacists and Pharmacy Technicians Professional Regulations, Standard 1.2 from the Standards of Practice, and Principle 1(1) and Principles 10 (1) and 10 (2) from the Code of Ethics. She explained that the HPA defines unprofessional conduct as a contravention of the HPA, a Standard of Practice or the Code of Ethics and that section 40(1)(c) confirms that an application for a practice permit requires evidence of professional liability insurance. Ms. Chisholm advised Ms. Alsabe's conduct was unprofessional conduct as she contravened s. 40 of the HPA, the Standards of Practice and the Code of Ethics

Ms. Chisholm concluded her submissions by emphasizing the necessity for pharmacists to be diligent in upholding their professional declarations in the interest of protection of the public.

Ms. Alsabe elected to not provide any submissions and it was noted that she was fully cooperative with the College throughout the entire process. Ms. Alsabe's case was then closed and the members of the Hearing Tribunal caucused to review the evidence.

IV. FINDINGS

The members of the Hearing Tribunal accepted Ms. Alsabe's admission of unprofessional conduct, concluded the allegations were proven, and the conduct was deemed unprofessional conduct.

In determining that the allegations were proven and that Ms. Alsabe's admission should be accepted, the Hearing Tribunal carefully considered the Agreed Statement of Facts entered into by the parties, and the Admission of Unprofessional Conduct. After reviewing the evidence, the Admission of Unprofessional Conduct, and the Agreed Statement of Facts, the Hearing Tribunal found that the allegations detailed in the Notice of Hearing were factually proven and that Ms. Alsabe's conduct constituted unprofessional conduct.

The reasons for the Hearing Tribunal's findings are as follows:

- The evidence demonstrated that Ms. Alsabe's insurance certificate for 2018/2019 only provided coverage from August 16, 2018 to July 1, 2019.

- The evidence also established that Ms. Alsabe's insurance certificate for 2019/2020 showed that her coverage was only from October 22, 2019 to July 1, 2020.
- Ms. Alsabe admitted that she was on the clinical register from July 1, 2018 to August 15, 2018, and then again from July 1, 2019 to October 21, 2019 and practicing as a pharmacist without professional liability insurance.
- Ms. Alsabe breached her professional declarations of May 18, 2018 and May 20, 2019 by not maintaining professional liability insurance while on the clinical pharmacist register as she had declared.
- The evidence demonstrated that Ms. Alsabe practiced as a pharmacist approximately five shifts a week at Cure Care Pharmacy between July 1, 2018 and August 15, 2018 when she did not have valid insurance. It demonstrated she also practiced as a pharmacist approximately five shifts a week at Cure Care Pharmacy between July 1, 2019 and October 21, 2019, as well as at RX Drug Mart 2023 on October 2, 2019, when she did not have valid insurance.
- 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. The HPA outlines that contraventions of the HPA and other legislation applicable to the practice of the profession constitute unprofessional conduct.
- Professional liability insurance is an important part of the protection of the public because it means that the public is ensured that the actions of a pharmacist are covered. It is also not practical for members of the public to verify that individuals with whom they interact in a pharmacy have liability insurance.
- Ms. Alsabe's conduct disregarded both her regulatory obligation to the College and her ethical obligation to her patients and the public to ensure she maintained professional liability insurance while on the clinical register.
- Without the audit Ms. Alsabe's failure to hold insurance in accordance with the HPA and the Pharmacy Technicians Profession Regulation may not have been identified.
- 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 these requirements, even if

unintentional, have the potential to harm the public, as well as the reputation of pharmacy both within the profession as well as within society as a whole.

- The Alberta College of Pharmacy's Code of Ethics states in Principle 1 (1) that a pharmacist will act in the best interest of each patient. It states in Principle 10 (1) that a pharmacist will comply with the letter and spirit of the law and in 10 (2) that a pharmacist is honest in their dealings. Ms. Alsabe did not act in the best interests of her patients when she did not have valid insurance. This insurance is an expectation for all regulated members and serves to protect registrants and their patients. Ms. Alsabe was not honest with the College when she did not comply with her declaration and, as discussed, she did not comply with the HPA and the Pharmacists and Pharmacy Technicians Profession Regulation.
- Every year the College relies on the accuracy of professional declarations that are made when registered pharmacists renew their Practice Permit. It is a fundamental expectation that when a pharmacist completes their professional declaration, that the statements declared can be counted on to be true. False declarations, due to errors in judgement, lack of attention, or any other reason – deliberate or not, have the capacity to harm the public and are therefore taken very seriously.
- Ms. Alsabe's failure to maintain professional liability insurance was in violation of the HPA, section 40(1)(c), and Section 13 of the Pharmacists and Pharmacy Technicians Profession Regulation. Ms. Alsabe's breaches of both her May 2018 and May 2019 professional declarations were in breach of the Alberta College of Pharmacy's Code of Ethics Principles 10 (1) and (2).

V. SUBMISSIONS ON ORDERS

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

The Hearing Tribunal was provided with a Joint Submission on Sanctions and Authorities (Exhibit 4). The parties jointly proposed a number of sanctions, including:

1. Ms. Alsabe would receive a written reprimand.
2. Ms. Alsabe would pay a fine of \$1,000 within 12 months of the date Ms. Alsabe received a copy of the Tribunal's written decision.
3. Ms. Alsabe would pay costs of the investigation and hearing to a maximum of \$7,000 within 24 months of the date Ms. Alsabe received a copy of the Tribunal's written decision.

Ms. Chisholm explained that there are four main purposes for imposing sanctions on members found to have engaged in unprofessional conduct: to protect the public, to maintain the integrity of the profession, and to ensure that imposed sanctions strike a balance between public protection and maintaining professional integrity, while at the same time being fair to the member, and finally deterrence for other members.

Ms. Chisholm reviewed the factors referenced in *Jaswal vs. Medical Board (Newfoundland) (1996)*, 42 Admin L.R. (2d) 233, which should be considered when determining sanctions and how these factors should apply in this case:

- *Nature and gravity of proven allegations:* Ms. Alsabe failed to uphold two statutory professional declarations on two separate licensure years and did not maintain professional liability insurance for approximately a five-and-a-half-month period over two different permit years. This posed a risk of harm to the public but was on the lower end of the spectrum of unprofessional conduct.
- *Age and experience of the offender:* Ms. Alsabe was a fairly new pharmacist who registered with the Alberta College of Pharmacy in 2017. While in some cases this could be a mitigating factor, Ms. Chisholm submitted there were numerous notices sent to the profession regarding the importance of professional declarations and liability insurance that were given during this time. As such, Ms. Alsabe's short tenure as a member of the College should not excuse her conduct.
- *Previous character of a member and prior findings of unprofessional conduct:* Ms. Alsabe has no previous history of complaints with the College.
- *Number of times the offence occurred:* Ms. Alsabe made two false professional declarations – the first in 2018, where she practiced approximately 5 shifts per week for one and a half months without liability insurance, and the second in 2019, where she where she practiced for approximately four months without liability insurance. She only obtained the required insurance when prompted by the audit.
- *Role of the member in acknowledging what occurred:* This is a mitigating factor in this case. Once Ms. Alsabe was made aware of the situation, she admitted to her error, and took steps to remedy her error and obtained the required insurance. Ms. Alsabe also admitted the allegations as part of the hearing.
- *Whether the member has suffered other serious financial or other penalties:* No evidence was presented that suggests that this factor applies to the case.

- *The presence or absence of any mitigating circumstances:* Ms. Alsabe admitted her error and remedied the error, which showed her understanding of the seriousness of the unprofessional conduct. She was cooperative with all aspects of the College's investigation.
- *The need to promote deterrence:* Specific deterrence of deterring Ms. Alsabe from a similar breach is served because she acknowledged her mistake and will take steps to not repeat this mistake in the future. With regards to general deterrence of the larger membership, it is important that the sanctions imposed remind members of the expectations of upholding professional declarations and the consequences of failing to do so. A message should be sent that appropriate sanctions will be imposed if obligations and requirements of regulated members are not upheld.
- *The need to maintain public confidence in the integrity of the profession:* Self-regulating professions need to show governance over their members to prove to legislators and the public that the profession takes the HPA and the Alberta College of Pharmacy's Code of Ethics seriously and sanctions members accordingly for breaches.
- *The range of sanctions in other similar cases:* The Joint Submission on Sanctions and Authorities (Exhibit 4) contained five hearing tribunal decisions from 2019 where pharmacists had failed to uphold a professional declaration and had practiced without professional liability insurance for approximately three to four months, including:
 1. Decision of the Hearing Tribunal of the Alberta College of Pharmacy in the matter of Pashupati Raut dated May 29, 2019;
 2. Decision of the Hearing Tribunal of the Alberta College of Pharmacy in the matter of Harsh Shah dated August 8, 2019
 3. Decision of the Hearing Tribunal of the Alberta College of Pharmacy in the matter of Doreen Chow dated August 14, 2019
 4. Decision of the Hearing Tribunal of the Alberta College of Pharmacy in the matter of Tadesse Kene dated September 23, 2019
 5. Decision of the Hearing Tribunal of the Alberta College of Pharmacy in the matter of Ebenezer Asare dated September 25, 2019

Ms. Chisholm outlined the sanctions imposed in the decisions and explained that the agreed penalties outlined in the Joint Submission on Sanctions in Ms. Alsabe's case

mirrored four out of five of these decisions, where the members received a reprimand, a \$1,000 fine, and paid the costs of the investigation and hearing, which were capped at \$7,000 and paid within 24 months on a schedule acceptable to the Hearings Director. Ms. Chisholm noted that the outlier among these past decisions was the case of Tadesse Kene, where the costs of the investigation and hearing were capped at \$10,000 rather than \$7,000, due to adjournments sought by the member.

Another key difference between Ms. Alsabe's case and the others was that Ms. Alsabe made two false declarations over a period of two years and practiced without professional liability insurance for two separate periods of time during those years – whereas the other cases involved only one false declaration and one year where insurance lapsed for a period of time. Ms. Chisholm explained that despite this difference, the College sought similar penalties in the case of Ms. Alsabe because the audit was the first time that her conduct was brought to her attention and this was the first time that she had been called before a Hearing Tribunal to address the misconduct.

Based on all the factors, Ms. Chisholm submitted the sanctions were appropriate and fair.

Ms. Chisholm also discussed the cases of *R v Anthony Cook*, 2016 SCC 43 and *Rault v Law Society of Saskatchewan*, 2009 SKCA 81 which indicate that joint submissions on sanctions should be given deference by Hearing Tribunals as they show cooperation between both parties to reach an agreement on penalties. She explained that the courts have held that the bar for rejecting or varying a joint submission is high, and the Hearing Tribunal must not do so unless it is unfit, unjust or unreasonable, or unless it brings the administration of justice into disrepute.

Ms. Alsabe made no 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 Sanctions. Accordingly, the Hearing Tribunal made the following orders pursuant to s. 82 of the HPA:

1. Ms. Alsabe shall receive a written reprimand. This decision shall serve as a written reprimand for Ms. Alsabe.
2. Ms. Alsabe shall pay a \$1,000 fine on a monthly schedule determined by the Hearings Director. The fine will be paid in full within 12 months of the date that Ms. Alsabe receives a copy of the Hearing Tribunal's written decision.
3. Ms. Alsabe shall pay all costs of the investigation and hearing, capped at \$7,000, payable on a monthly schedule determined by the Hearings Director.

The costs will be paid in full within 24 months of the date that Ms. Alsabe receives a copy of the Hearing Tribunal's written decision.

The Hearing Tribunal carefully considered the submissions by Ms. Chisolm with respect to the deference that must be exercised when considering a Joint Submission on Sanctions. The cases referred to establish that when a joint submission is presented, the Hearing Tribunal should exercise deference and should not reject or vary it unless there is good reason to do so.

The Hearing Tribunal considered the orders that were jointly proposed. The Hearing Tribunal took into account all of the factors discussed in the *Jaswal* decision and the submissions of the parties, including the range of sanctions previously ordered in similar cases, the seriousness of Ms. Alsabe's breach of her declarations, the length of time she failed to maintain professional liability insurance, and Ms. Alsabe's admission and cooperation with the College.

The Hearing Tribunal agreed that the proposed orders were appropriate having regard to the factors that are relevant in assessing sanction in the professional discipline context. Specifically, the sanctions would deter Ms. Alsabe and the profession at large from similar unprofessional conduct in the future. They also serve the public's interest and uphold the integrity of the profession.

Signed on behalf of the hearing tribunal by the Chair on September 29, 2020


Per: [Teryn Wasileyko \(Sep 29, 2020 08:09 MDT\)](#)

Teryn Wasileyko