

ALBERTA COLLEGE OF PHARMACY

IN THE MATTER OF  
THE HEALTH PROFESSIONS ACT

AND IN THE MATTER OF A HEARING REGARDING  
THE CONDUCT OF

**EBENEZER ASARE**

**Registration Number 9917**

**DECISION OF THE HEARING TRIBUNAL**

## **I. INTRODUCTION**

The Hearing Tribunal held a hearing into the conduct of Ebenezer Asare. In attendance on behalf of the Hearing Tribunal were Kelly Olstad, pharmacist, June McGregor, public member, and Teryn Wasileyko, pharmacist and chair.

The hearing took place on April 1, 2019 at the Alberta College of Pharmacy, 1100-8215-112 Street, Edmonton, AB. The hearing was held under the terms of Part 4 of the *Health Professions Act*.

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. Ebenezer Asare, Investigated Member. Mr. Asare chose to represent himself during the hearing.

Mr. Gregory Sim 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 complaints or matters with respect to Mr. Asare, as set out in the Notice of Hearing, entered as Exhibit 1:

IT IS ALLEGED THAT, between July 1, 2018 and October 9, 2018, while practicing as a pharmacist at Shoppers Drug Mart #2405 (Pharmacy Licence #2953) in Edmonton, Alberta, you:

1. Did not maintain professional liability insurance;
2. Breached your professional declaration of May 30, 2018 by not maintaining professional liability insurance while on the clinical pharmacist register; and
3. Practiced, on average, at least 32 hours per week without professional liability insurance.

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 conduct 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*; and
- 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*.

### **III. EVIDENCE**

The Complaints Director for the College, Mr. James Krempien, was called as a witness and testified. The Record of Decision was introduced as Exhibit 2 and the Investigation Records, which contained tabs 1 through 11 detailing records gathered during the investigation process were introduced as Exhibit 3. Mr. Krempien provided the following key evidence with reference to these documents:

- The Record of Decision (Exhibit 2) outlined his reasons for referring the matter to a Hearing Tribunal.
- Tab 1, Exhibit 3 was a copy of the complaint referral form from Dr. Timanson, the Competence Director at the College, that explained Mr. Asare was randomly selected for a 2018-2019 professional declaration audit on September 28, 2019. It was found that he breached his May 30, 2018 professional declaration which stated that he would maintain professional liability insurance and that he may have practiced without this insurance from July 1, 2018 to October 9, 2018.
- Tab 1, Exhibit 3 outlined the sequence of events, with Mr. Asare being notified on October 2, 2018 to submit documentation of his current professional liability insurance coverage, CPR, and first aid Certification. On October 30, 2018 Mr. Asare responded by email and indicated that he was not aware that his liability insurance had lapsed. He provided his CPR and first aid documents as well as proof of liability insurance from October 10, 2018 to July 1, 2019.
- Tab 5, Exhibit 3 was a letter sent by Mr. Krempien on November 2, 2018 to Mr. Asare that included a copy of the memo of complaint as well as summary of concerns expressed in Dr. Timanson's memo of complaint. Mr. Krempien advised that he would be investigating the matter and requested that Mr. Asare respond to this letter by December 3, 2018.

- Tab 6, Exhibit 3 contained Mr. Asare's response to Dr. Timanson's Audit of Professional Declaration received on October 30, 2018, in which he assumed full responsibility for the lapse in his professional liability insurance. He explained that he is a Shoppers Drug Mart pharmacist, licensee, and associate who had held insurance with Marsh Insurance in the past. Although he had set-up and submitted new liability insurance policies for his staff pharmacists, he did not realize that he had to also do this for himself, as he believed that his insurance would automatically renew.
- Tab 7, Exhibit 3 detailed a telephone conversation held between Mr. Krempien and Mr. Asare on November 2, 2018 in which Mr. Krempien advised Mr. Asare that he would be conducting an investigation of Dr. Timanson's complaint, as well as the customary steps of a complaint investigation and the timeframe in which it would be carried out. Mr. Asare had no questions at that time.
- Tab 8, Exhibit 3 contained the letter that Mr. Asare sent to Mr. Krempien on November 26, 2018. Mr. Asare admitted that he had breached his professional declaration upon renewal of his 2018/2019 practice permit as he did not have active professional liability insurance while on the clinical register from July 1, 2018 to October 10, 2018 and he had practiced as a pharmacist during this time for approximately 32 hours per week. Mr. Asare renewed his professional liability insurance effective October 10, 2018.
- Tab 11, Exhibit 3 summarized the meeting between Mr. Krempien and Mr. Asare on December 7, 2018. Mr. Asare indicated that he had been a licensee with Shoppers Drug Mart since October 2015 and that he had previously renewed his insurance through Shoppers Drug Mart processes with Marsh Insurance. He thought that since Marsh insurance had his information from previous years that it would automatically renew. Shoppers Drug Mart had implemented a procedural change for insurance renewal for the 2018/2019 renewal period and at the time he did not realize that he should have received an email reminder to renew. He did not recall receiving a reminder email and inadvertently forgot to renew his insurance for 2018/2019. Despite this, he facilitated insurance renewal for two new staff pharmacists through Marsh insurance.
- Mr. Asare apologized for his mistake and indicated that he was not aware of any significant drug errors that occurred during the lapse. He was fully cooperative with the investigation by the College and indicated that he would take steps to prevent recurrence, including sharing his experience with the Shoppers Drug Mart Pharmacy Operations Specialist and Licensee Peer Group to ensure that this omission is not repeated by others.

This ended Mr. Krempien's testimony. Mr. Asare did not ask any questions of Mr. Krempien in cross-examination. The Complaints Director's case was then closed.

Mr. Asare provided an opening statement in which he expressed thanks to the College and Mr. Krempien for ensuring due diligence in the investigation process and for their role in ensuring that pharmacists in the province are competent to serve the public. He assumed full responsibility for the lapse in his professional liability insurance.

Mr. Asare was sworn in and provided the following key evidence:

- Mr. Asare had renewed professional liability insurance for his staff pharmacists, however, he thought that since his insurance had previously been renewed automatically that it would continue to do so on an annual basis.

- Upon notification of the declaration audit, Mr. Asare contacted Marsh Insurance and learned that they did not have an active insurance policy for him, however, they had records of policies he held in the past. Mr. Asare reviewed his emails and was unable to find the renewal reminder email sent by Marsh Insurance, however, he did locate the email from Shoppers Drug Mart advising associates to ensure that their staff pharmacists were insured. Mr. Asare acted on this email at the time to ensure his staff pharmacists had valid insurance without realizing that his own insurance had not been renewed.
- Exhibit 4 was a letter written by Mr. Asare which details his contributions to the pharmacy profession, the community, and mentoring international students.
- Exhibit 4 was titled “Guilty Plea” and contained an express admission by Mr. Asare that he:
  1. Did not maintain professional liability insurance
  2. Breached his professional declaration on May 30, 2018 by not maintaining a professional liability insurance while on the Clinical Register of the Alberta College of Pharmacy
  3. Practiced on average of at least 32 hours per week without Professional liability insurance.
- Mr. Asare also admitted in Exhibit 4 that he had acted unprofessionally.
- Mr. Asare was cross-examined by Ms. Chisholm and he confirmed that he did not take steps prior to the professional declaration audit to renew his insurance.

Mr. Asare called no other witnesses and closed his case. The hearing proceeded to closing arguments.

#### **IV. SUBMISSIONS**

On behalf of the Complaints Director, Ms. Chisholm explained that the Complaints Director bears the onus of proof. The onus of proof is based on the civil standard of a balance of probabilities, rather than the criminal standard which is beyond a reasonable doubt. Ms. Chisholm said that the Complaints Director considered the Notice of Hearing to contain one charge with three particulars.

Ms. Chisholm submitted that although the Complaints Director has the onus of proof, Mr. Asare had provided an admission of unprofessional conduct. Ms. Chisholm then referred to section 40(1)(c) of the *Health Professions Act* and section 13(1) of the *Pharmacists and Pharmacy Technicians Profession Regulation*, Alta. Reg. 129-2006 which state that, in order for a practice application to be complete, the member must have professional liability insurance in the amount and type specified by Council and that these provisions prove an obligation by pharmacists to have personal insurance apart from their employers coverage.

Ms. Chisholm explained that one of the fundamental obligations of a self-regulating profession is protection of the public and that professional liability insurance is an important part of that protection. She noted that although Mr. Asare’s actions were not deliberate, his error in judgement and lack of attention to the matter amounted to unprofessional conduct through failing to uphold this professional obligation.

Ms. Chisholm submitted that it is essential that the public is able to trust the College's ability to regulate its members and ensure that professional declarations are upheld. She further explained that members must maintain their individual obligations as professionals, including their obligation to maintain a minimum amount of professional liability insurance.

Ms. Chisholm described that ethical conduct of an Alberta pharmacist includes making declarations that can be counted on to be true, which was not the case with Mr. Asare. She submitted according to the Code of Ethics, Principle 1, Mr. Asare had not acted in the best interests of each patient because he had practiced without professional liability insurance. Also, according to Principle 10 (1) and (2), Mr. Asare had not acted according to the letter and the spirit of the law governing the practice of pharmacy, or with honesty and integrity. To his credit, Mr. Asare admitted his mistake, however, Ms. Chisholm outlined that even unintentional acts constitute unprofessional conduct and have the potential to cause serious harm to the public. Although in this case there had been no evidence of harm to the public, there could have been and self-regulating professions require conscientiousness and integrity from their members to protect the public.

Ms. Chisholm explained that the College does not have the resources to check each of its 5500 members annually, so it relies on its member's declarations being dependable. Mr. Asare's misconduct in this regard harms the integrity of pharmacy as a self-regulating profession. Mr. Asare's conduct was also said to breach the Standards of Practice and the Code of Ethics as alleged in the Notice of Hearing.

Mr. Asare did not disagree with Ms. Chisholm's submissions. He expressed gratitude for the College's process in ensuring that an audit system is in place to monitor its members. He acknowledged his mistake and advised that he would use his learnings as an opportunity to educate other pharmacists and students on the matter.

## **V. FINDINGS**

After reviewing all of the evidence and submissions presented, and the admission from Mr. Asare (Exhibit 4), the Hearing Tribunal found that the allegation detailed in the Notice of Hearing was factually proven and that Mr. Asare's conduct constituted unprofessional conduct.

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

- Mr. Asare admitted that he did not maintain professional liability insurance from July 1, 2018 to October 9, 2018, while practicing as a pharmacist at Shoppers Drug Mart #2405 (Pharmacy Licence #2953) in Edmonton, Alberta on average at least 32 hours per week.
- Mr. Asare admitted that he made a false professional declaration on May 30, 2018 when submitting his renewal for a pharmacist license with the College, by not maintaining professional liability insurance.
- These admissions were supported by the documentation and testimony provided both by Mr. Krempien and by Mr. Asare.
- Section 40(1)(c) of the *Health Professions Act* 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, including advanced scope of practice activities such as administering medications by injection and prescribing. The *Act* outlines that contraventions of the *Act* and other legislation applicable to the practice of the profession, such as the *Pharmacists and Pharmacy Technicians Profession Regulation*, constitute unprofessional conduct. 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. Breach of these standards, even if unintentional, has 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 also states in Principle 10(1) that the pharmacist will comply with the letter and spirit of the law and in 10 (2) that the pharmacists will be honest in their dealings.
- 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.
- Mr. Asare's failure to maintain professional liability insurance were in violation of the *Health Professions Act* Section 40(1)(c) and section 13(1) of the *Pharmacists and Pharmacy Technicians Profession Regulation*. Mr. Asare's breach of his professional declaration violated the Alberta College of Pharmacy's Code of Ethics Principles 1 (1) and 10 (1) and (2). His conduct was unprofessional conduct, contrary to the *Health Professions Act*.
- In light of the Hearing Tribunal's conclusions it is unnecessary to consider the other standards and codes referenced in the Notice of Hearing.

## **VI. SUBMISSIONS ON ORDERS**

Ms. Chisholm submitted that from the Complaints Director's perspective, discipline proceedings serve four main purposes: protection of the public, preservation of the integrity of the profession in the eyes of the public, fairness to the investigated member, and deterrence to other members to prevent similar conduct in the future.

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:* Although Mr. Asare's conduct was found to constitute unprofessional conduct, on the spectrum of unprofessional conduct, it was on the lower end. Despite this, for the period of July 1, 2018 to October 9, 2018, Mr. Asare practiced without professional liability insurance due to a lack of attention and follow through on his part. Had the worst case scenario played out and a claim had been made during this time against him, he would not have had insurance to protect the public. Ms. Chisholm provided this as a reason why sanctions and orders were required in this case.

- *Age and experience of the offender:* Mr. Asare registered with the College in 2011. This was not a mitigating factor in Mr. Asare's case as he is an experienced pharmacist.
- *Previous character of a member and prior complaints:* Mr. Asare has no history of prior findings of unprofessional conduct with the College so this would weigh in his favor.
- *Number of times the offence occurred:* Mr. Asare was found to have a single breach that extended over a nearly 3 and a half month period of time. This breach was not discovered by Mr. Asare, but rather, was only discovered through him being chosen randomly for an audit. Both the extended length of time of the breach and the fact that he did not discover the breach himself, should weigh in the decision on sanction.
- *Role of the member in acknowledging what occurred:* This is a clear mitigating factor in this case. Once Mr. Asare learned of the situation, he obtained professional liability insurance which was in place on October 10, 2018. Mr. Asare admitted his breach in conduct to the Complaints Director and the College.
- *Whether the member has suffered other serious financial or other penalties:* No evidence was presented that suggests this applies.
- *The presence or absence of any mitigating circumstances:* Mr. Asare acknowledged his conduct and took steps to remedy the situation. He was fully cooperative with the College and its investigation, apologized and expressed remorse for his actions.
- *The need to promote deterrence:* Specific deterrence of Mr. Asare from a similar breach is served because he acknowledged his mistake and would take steps to ensure not to repeat this mistake in the future. In addition, he stated that he would share these learnings with pharmacy students that he mentors. With regards to general deterrence of the larger membership, it is important that members of self-regulating professions are held responsible for the truthfulness of their declarations.
- *The need to maintain public confidence in the integrity of the profession:* The sanctions imposed need to show the public that the membership takes the *Health Professions Act and Regulations* and the Alberta College of Pharmacy's Code of Ethics seriously.
- *The degree to which the offensive conduct is clearly regarded, by consensus, as falling outside of the range of permitted conduct:* Mr. Asare's conduct, although lower on the spectrum of misconduct, is still considered misconduct.
- *The range of sentence in other similar cases:* Ms. Chisholm presented three similar cases from the Alberta College of Pharmacy in which pharmacists were found to have practiced without professional liability insurance and outlined the sanctions imposed:
  - *Arshad Mehmood v. ACP:* Mr. Mehmood practiced for approximately 3 months and on 89 shifts without professional liability insurance. He received a reprimand, a \$1,000 fine payable on a schedule acceptable to the Complaints Director with at least 12 months to pay, and payment of full costs of the investigation and hearing to a maximum of \$10,000 payable on a schedule acceptable to the Complaints Director, with a minimum of 24 months to pay.
  - *Sonia Chahal v. ACP:* Ms. Chahal breached her professional declaration regarding professional liability insurance and practiced without professional liability insurance for a one month period. Ms. Chahal also practiced while no

longer registered. The Hearing Tribunal accepted a joint submission that she receive a reprimand, a \$750 fine to be paid within 60 days, and an order to pay the investigation and hearing costs to a maximum of \$4,000 over a period of 24 months.

- *Saeed Sattari v. ACP*: Mr. Sattari breached his professional declaration regarding professional liability insurance and failed to maintain professional liability insurance for 10 months. Although he was out of the country for a portion of this time, he practiced without insurance while on the clinical register for approximately 3 months. He received a reprimand, a \$1,000 fine payable on a schedule acceptable to the Complaints Director, and payment of all costs associated with the investigation and hearing.

After reviewing these similar cases, the most similar being *Arshad Mehmood v. ACP*, Ms. Chisholm, on behalf of the Complaints Director, submitted that the following sanctions would be appropriate in this case:

- A reprimand
- A fine of \$1,000, payable on a schedule acceptable to the Hearings Director, with at least 12 months to pay
- Full costs of the investigation and hearing capped at \$7,000 to be paid on a schedule acceptable to the Hearings Director, with at least 24 months to pay

Ms. Chisholm submitted that the reprimand and fine would serve as a specific deterrent to Mr. Asare, as well as a general deterrent to the general membership. She noted that the Complaints Director was willing to cap the costs at \$7,000 due to Mr. Asare's cooperation with the process, the ability to complete the hearing within half of one day, and because Mr. Asare had not made any adjournment requests.

Mr. Asare declined to make a presentation to the Tribunal on sanctions.

## **VII. ORDERS**

The Hearing Tribunal carefully considered the submissions on sanction presented by Counsel for the College and makes the following orders:

1. Mr. Asare shall receive a written reprimand. This decision shall serve as a written reprimand for Mr. Asare.
2. Mr. Asare shall pay a fine of \$1,000, to be paid within 12 months from the date of his receipt of the written decision on a schedule acceptable to the Hearings Director.
3. Mr. Asare shall pay the costs of the investigation and hearing, capped at \$7,000, to be paid within 24 months from the date of his receipt of the written decision on a schedule acceptable to the Hearings Director.

A written reprimand, fine and an order for expenses, costs and fees up to \$7,000 are reasonable and proportionate for the findings of unprofessional conduct in this case. The Tribunal was satisfied that these sanctions will adequately deter Mr. Asare and the profession at large from similar unprofessional conduct in the future. Mr. Asare submitted, and the Tribunal accepts, that he teaches foreign trained pharmacists and that this experience will motivate him to instill a strong respect for professional ethics in his students. The Tribunal was also satisfied that these sanctions will serve the public's interest in the regulation of the pharmacy profession.

Signed on behalf of the Hearing Tribunal by its chair on September 25, 2019.

*[Teryn Wasileyko]*

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Teryn Wasileyko, Pharmacist, Chair