

ALBERTA COLLEGE OF PHARMACISTS

IN THE MATTER OF
THE HEALTH PROFESSIONS ACT

AND IN THE MATTER OF A HEARING REGARDING THE
CONDUCT OF

SONIA CHAHAL

DECISION OF THE HEARING TRIBUNAL

July 8, 2014

I. INTRODUCTION

The Hearing Tribunal held a hearing into the conduct of Sonia Chahal. In attendance on behalf of the Hearing Tribunal was Peter Van Bostelen, public member, Beverley Rushton, pharmacist, Denise Nilsen, pharmacist and Anita Warnick, pharmacist and chair.

The hearing took place on June 19, 2014 at the Alberta College of Pharmacists, 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 was: Mr. James Krempien, Complaints Director and Mr. David Jardine, legal counsel representing the Complaints Director, Ms. Sonia Chahal, investigated member and Mr. Kenneth Fitz counsel for the investigated member. Mr. Gregory Sim was also in attendance for part of the hearing, 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 Notice of Hearing was entered as Exhibit 1, and stated the following:

IT IS ALLEGED THAT:

1. You breached your professional declaration that you declared on December 19, 2013 as part of your practice permit registration in that contrary to your declaration, you did not have valid professional liability insurance for the practice of pharmacy as required for a regulated member on the clinical register;
2. You were on the clinical register from December 23, 2013 to on or about January 20, 2014 without valid professional liability insurance for the practice of pharmacy; and
3. You may have practiced as a pharmacist without valid professional liability insurance during the December 23, 2013 to January 20, 2014 period, or
4. You may have practiced as an intern while not registered (and thus not authorized) to do so.

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

- Section 1 and subsections 1.1 and 1.2 of the Standards of Practice for Pharmacists and Pharmacy Technicians;
- Sections 1(1)(pp)(ii), 1(1)(pp)(iii), 1(1)(pp)(xii) and 40(1)(c) of the *Health Professions Act*;
- Sections 13(1), 15(2) and 17(1) of the Pharmacists and Pharmacy Technicians Profession Regulation;
- Principles I and X of the ACP Code of Ethics; and

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

IV. EVIDENCE

The parties entered into evidence a document entitled “Agreed Statement of Facts, Admission of Unprofessional Conduct and Joint Submission on Sanctions.” This document was marked as Exhibit 2 and is attached to this decision.

In Exhibit 2, Ms. Chahal admitted to the following amended allegations of unprofessional conduct:

1. You breached your professional declaration that you declared on December 19, 2013 as part of your practice permit registration in that contrary to your declaration, you did not have valid professional liability insurance for the practice of pharmacy as required for a regulated member on the clinical register;
2. You were on the clinical register from December 23, 2013 to on or about January 20, 2014 without valid professional liability insurance for the practice of pharmacy; and
3. You worked at Loblaws from December 23, 2013 to January 20, 2014 while on the clinical register without valid professional liability insurance and from January 1, 2014 to January 20, 2014 while no longer registered as an intern.

The parties also entered into evidence an Exhibit Book (tabs 1-18) as Exhibit 3.

V. SUBMISSIONS

Complaints Director Submissions:

The Complaints Director submitted the following with respect to the issue of Sonia Chahal not having valid professional liability insurance:

- Ms. Chahal was a new member with the College.

- Ms. Chahal was working at Loblaws and being paid as an intern during the omission period.
- Ms. Chahal admitted to signing the declaration regarding professional liability insurance without realizing she had not obtained any insurance.
- Ms. Chahal on her own volition contacted the College to inquire about malpractice insurance and realizing that she did not have any immediately obtained malpractice insurance from the Alberta Pharmacists' Association (RxA).
- The omission of liability insurance was not intentional.

The Complaints Director then explained the legislation and standards that apply to this case including:

- A member's conduct can be found unprofessional whether or not it was with dishonorable or disgraceful intent;
- Unprofessional conduct as defined by the *Health Professions Act* includes (ii) contraventions of the *Health Professions Act*, the ACP Code of Ethics or the Standards of Practice; (iii) contravention of another enactment that applies to the pharmacy profession; and (xii) conduct that harms the integrity of the pharmacy profession;
- Sections 40(1)(c) of the *Health Professions Act* and 13(1) of the Pharmacists and Pharmacy Technicians Profession Regulation indicate the requirement for professional liability insurance;
- The ACP Code of Ethics Bylaw Principle 1 holds the well-being of each patient to be a pharmacist's primary consideration and Principle X requires a pharmacist to act with honesty and integrity.

The Complaints Director acknowledged the breach of the declaration was unintentional but the oversight could have harmed the integrity of the profession and risked the safety of the public. The Complaints Director also argued that the requirements of registration are clearly advertised on ACP's website, through newsletters and reminders by College administration.

Investigated Member's submissions:

Ms. Chahal did not make substantive submissions. She highlighted paragraph 21 of the Agreed Facts in Exhibit 2 which confirmed that she acted unintentionally and that she rectified her lack of professional liability insurance as soon as she became aware of the issue.

VI. FINDINGS

The Hearing Tribunal adjourned to discuss the merits of the Agreed Statements of Facts and Admission of Unprofessional Conduct in Exhibit 2. After reconvening, the Hearing Tribunal advised the parties that Ms. Chahal's admissions had been accepted and that the

Hearing Tribunal found that Ms. Chahal had committed unprofessional conduct in accordance with her admissions in Exhibit 2.

The Hearing Tribunal recognizes there was a misinterpretation of the registration process on the part of Ms. Chahal as she is a new registrant with Alberta College of Pharmacists, and unintentionally did not recognize the implications of signing an application for registration to the clinical register without valid professional liability insurance at time of registration.

The tribunal acknowledges that professional liability insurance is required to protect the safety of the public. Even though Ms. Chahal worked for a short period of time before acquiring liability insurance, there was the potential for serious consequences. As a self-regulated profession, pharmacists conduct themselves with autonomy but there is also an obligation to be responsible, accurate, honest and trustworthy.

The processes put in place to be a member of the clinical register serve not only to protect the public but also to uphold the integrity of the profession itself.

VI. ORDERS

Once the parties were advised that the Hearing Tribunal had found unprofessional conduct, the parties were invited to present evidence and make submissions with respect to sanctions. The parties referred to their joint submission on sanctions in Exhibit 2. The Complaints Director and Ms. Chahal jointly submitted that the following sanctions would be appropriate:

- A written reprimand;
- A fine in the amount of \$750.00 to be paid within 60 days from the date of the receipt of the Hearing Tribunal's written decision; and
- Payment of costs of the investigation and hearing capped at \$4,000.00 to be paid over a period of 24 months in equal monthly installments, from the date of receipt of the Hearing Tribunal's written decision or on such other terms as may be satisfactory to the Complaints Director.

Complaints Director's Submissions on Sanction:

Mr. Jardine submitted that from the College's point of view, the purpose of sanctions was threefold:

- To protect the public;
- To maintain the confidence of the public and the integrity of the profession; and
- To be fair to the member.

Mr. Jardine spoke to a number of factors that are taken into account for the purpose of sanctions. He referred to *Jaswal v. Medical Board (Newfoundland) (1996)*, 42 Admin L.R. (2d) 233 which listed several such factors. Mr. Jardine explained how these factors should apply in this case:

- Nature and gravity of the proven allegations: The fact that the declaration of professional liability insurance was signed and dated during a short period of time when Ms. Chahal did not actually have that insurance is serious in nature, but requires a lesser punishment to be imposed as Ms. Chahal genuinely recognizes that her conduct was wrong.
- Age and experience of the offender: Ms. Chahal was a first time registrant with the College and inexperienced with the insurance requirements.
- Number of times the offence occurred: It was for a short period of time; however it did occur for greater than one day.
- Role of the member in acknowledging what occurred: Ms. Chahal acknowledged that her conduct was unprofessional, has been very cooperative and willing and is understandably remorseful.
- The impact of the incidence: There is an overall concern for the safety of the public.
- The presence or absence of any mitigating circumstances: Ms. Chahal is a new pharmacist, is cooperative and understands she made a mistake.
- The need to promote deterrence: Specific deterrence of Ms. Chahal from similar misconduct in the future will be served because Ms. Chahal has already acknowledged that she made a mistake and she will not repeat this conduct. Nevertheless general deterrence of the membership at large is also important. The membership should understand the important public safety purpose of insurance and the serious consequences of a false insurance declaration.
- The need to maintain public confidence in the integrity of the profession: As the profession of pharmacy is self-regulated, the College relies on its membership to be honest when signing their professional declarations and must be transparent in the consequences for unprofessional conduct by its members.
- The degree to which the offensive conduct is clearly regarded, by consensus, as falling outside the range of permitted conduct: Ms. Chahal's unintentional signing of the insurance declaration is deemed as "minimal" in severity, but her conduct is clearly outside the bounds of professional conduct as it is mandatory for all registrants to have in place professional liability insurance at the time of registration.
- The range of sentence in other similar cases: Mr. Jardine provided examples of similar cases of practicing pharmacy without professional liability insurance where the penalties have included a reprimand, fines and costs and expenses of the hearings. From the sample cases presented, the most relevant one was in Saeed Sattari v. ACP, the conduct of Mr. Sattari was found unprofessional in that he breached his professional declaration as he did not maintain valid professional liability insurance while on the clinical register. The sanctions imposed at the time were:
 1. A reprimand,

2. A fine of \$1,000.00 payable on a schedule acceptable to the Complaints Director, and
3. The payment of all costs of the investigation and hearing on a schedule acceptable to the Complaints Director.

Mr. Jardine felt that a “cap” on the costs of the investigation and hearing was warranted as Ms. Chahal throughout this matter has been an extremely willing, cooperative participant and the Complaints Director wished to give recognition to Ms. Chahal for her cooperation.

Mr. Jardine concluded, arguing that the need for transparency for the membership and the general public would include the need to publish the member’s conduct in this matter, but it would be to the discretion of the Registrar pursuant to ACP Bylaw 78 enacted pursuant to Section 119 of the *Health Professions Act*.

Investigated Member’s Submissions on Sanction

Mr. Fitz then made submissions on behalf of Ms. Chahal.

Ms. Chahal came to Canada in 2005 from India where she had trained as a pharmacist. From then until 2008 Ms. Chahal lived in Montreal with her husband and concentrated on raising her young family.

When Ms. Chahal and family moved to Alberta, she undertook to pursue her career as a pharmacist realizing the need for further education. She passed her PEBC Qualifying Examination in November 2013. After completing what she thought was the full application process, Ms. Chahal was licensed as a clinical pharmacist on December 23, 2013.

It was on her own volition of calling the College to enquire about malpractice insurance and realizing she had none in place that she quickly rectified the situation. However Ms. Chahal takes full responsibility for her actions and is naturally very upset. Throughout this investigation, Ms. Chahal has been very willing and cooperative with the College.

Ms. Chahal acknowledges her mistake, accepts the allegations made against her and was hoping to desperately settle this matter without bringing it to the level of the Hearing Tribunal.

Ms. Chahal agrees with the Joint Submission on Sanctions and feels that they are fair. Of note, one of the *Jaswal* factors was whether the offender had already suffered other serious or financial penalties as a result of the allegations having been made. Ms. Chahal volunteered at Loblaws in 2009 and was an intern in 2010. Ms. Chahal was not offered a permanent position with Loblaw’s after this incident occurred and as such has secured employment in Calmar, Alberta.

Mr. Fitz spoke to the cap on costs. He recognized that the Complaints Director was attempting to deal fairly with Ms. Chahal but stated Ms. Chahal was trying to avoid large costs for a relatively minor mistake.

Mr. Fitz spoke to the publication realizing this is the “norm” and that the decision lies with the Registrar. Mr. Fitz asked that the Hearing Tribunal show some compassion to the member in that within a month of practicing, she recognized her mistake without an audit from the College. Mr. Fitz stated that the profession is a self-regulated profession and general deterrence could be established without mentioning the member’s name. Mrs. Chahal does not want to start her career with a potential black mark against her.

Mr. Jardine countered that it was not the intention of the Complaints Director to be perceived as “difficult” in pushing for a hearing and publication, but indicated that publication is important in the interest of the public, transparency and the need for general deterrence. Mr. Jardine argued that a self-regulating profession has as its primary responsibility the protection of the public.

The Hearing Tribunal adjourned to discuss the Joint Submissions on Sanctions. After reconvening, the Hearing Tribunal advised the parties that it agreed with the Joint Submissions on Sanctions in its entirety.

With regard to publication, the Hearing Tribunal noted that the member’s name was already posted on ACP’s website with respect to the Notice of Hearing for unprofessional conduct in accordance with the *Health Professions Act*. The Hearing Tribunal recognizes the need for transparency in the professional discipline process in a self-regulating profession. Transparency serves to protect the public and ultimately the pharmacy profession by promoting a strong, self-regulating profession. The Hearing Tribunal notes that the final decision on publication of Ms. Chahal’s name and the outcome of this matter lies with the College’s Registrar under the bylaws.

Signed on behalf of the Hearing
Tribunal by the Chair

Dated: July 8, 2014

Per: [Anita Warnick]