

ALBERTA COLLEGE OF PHARMACY

IN THE MATTER OF
THE HEALTH PROFESSIONS ACT

AND IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF

DOREEN CHOW

Registration Number 5368

DECISION OF THE HEARING TRIBUNAL

I. INTRODUCTION

The Hearing Tribunal held a hearing into the conduct of Doreen Chow. 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”) and Ms. Annabritt Chisholm, legal counsel representing the Complaints Director, and Ms. Doreen Chow, Investigated Member. Ms. Chow chose to represent herself 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 Ms. Chow, as set out in the Notice of Hearing, entered as Exhibit 1:

IT IS ALLEGED THAT, between July 1, 2018 and November 14, 2018, while practicing as a pharmacist at Rexall Outpatient Pharmacy, University of Alberta Hospital (Pharmacy Licence #3241) in Edmonton, Alberta, you:

1. Did not maintain professional liability insurance;
2. Breached your professional declaration of May 28, 2018 by not maintaining professional liability insurance while on the clinical pharmacist register; and
3. Practiced without professional liability insurance on 81 separate days.

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 12 detailing records gathered during the investigation process was 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 Ms. Timanson, the Competence Director at the College, that explained Ms. Chow was randomly selected for a 2018-2019 professional declaration audit on September 28, 2019. It was found that she breached her May 28, 2018 professional declaration which stated that she would maintain professional liability insurance and had practiced without this insurance from July 1, 2018 to November 14, 2018.
- Tab 1, Exhibit 3 outlined the sequence of events, with Ms. Chow being notified on October 2, 2018 to submit documentation of her current professional liability insurance coverage and CPR and first aid Certification. On November 1, 2018 Ms. Chow was sent a second notice email, as the requested documentation was not received, and the College had not had any correspondence with her. On November 15, 2018, the Competence Administrator (Denise Brooks) phoned and left a voicemail message for Ms. Chow and also emailed Ms. Chow the previous two email notifications, to which Ms. Chow responded by both telephone and email to the Competence Administrator. On November 16, 2018, Ms. Chow attended the College office and provided her professional liability insurance coverage for November 15, 2018 to July 1, 2019, in addition to her first aid/CPR certification.
- Tab 6, Exhibit 3 was a summary of a telephone conversation from November 20, 2018 between Mr. Krempien and Ms. Chow where Mr. Krempien advised

Ms. Chow that the notice of complaint letter would be mailed out to her, provided information about the investigation and complaints process, and advised Ms. Chow that he would be awaiting her written response once she had an opportunity to review the complaint.

- Tab 7, Exhibit 3 contained Ms. Chow's email from November 26, 2018 to the College requesting a meeting with Mr. Krempien to discuss the complaint.
- Tab 8, Exhibit 3 summarized the meeting that occurred between Mr. Krempien and Ms. Chow on November 28, 2018. Ms. Chow inquired if she was able to continue practicing while the matter was under investigation and was advised by Mr. Krempien that since she now had professional liability insurance in place and since there were no identified concerns with her practice that she could do so.
- Tab 9, Exhibit 3 was the written response from Ms. Chow addressing the complaint. Ms. Chow indicated that upon audit of her professional declarations, she became aware that she did not have professional liability insurance from July 1, 2018 to November 14, 2018. She indicated that her omission was inadvertent, and that a change in her insurance provider from Alberta First Insurance to Sheppard Insurance may have contributed. She also provided a calendar with the shifts she worked during that time period, which indicated a total of 82 shifts without professional liability insurance.
- Tab 10, Exhibit 3 summarized a December 11, 2018 telephone conversation between Mr. Krempien and Ms. Chow where they agreed to meet to review Ms. Chow's written response to the complaint as well as answer any further questions related to resolution and the investigation process.
- Tab 12, Exhibit 3 summarized the meeting between Mr. Krempien and Ms. Chow on December 13, 2018. Ms. Chow indicated that in May/June 2018 her former insurance provider, Alberta First/Wynward Insurance had been bought by Excel/Sheppard insurance. She indicated that in previous years her insurance representative would send several email reminders prior to renewal, however, this did not occur during this renewal period. She practiced for 82 shifts, during which she provided typical pharmacy services such as dispensing, injections, care plans, and prescribing. She indicated that during the month of October that she failed to respond to the College's initial emails from the Competence department due to issues with her home email address-however, she did respond promptly to the telephone call from the College and, upon discovery, obtained professional liability insurance within 24 hours.
- Ms. Chow was fully cooperative with the investigation by the College, indicated that she would take steps to prevent recurrence, and showed remorse for her actions.

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

Mr. Sim, independent legal counsel for the Hearing Tribunal, explained to Ms. Chow her right to make an opening statement and to provide evidence to support her case under oath. Ms. Chow declined providing an opening statement and presenting

evidence. Instead, she apologized for her conduct and, at her request, the hearing proceeded to the College's closing arguments.

IV. SUBMISSIONS

On behalf of the Complaints Director Ms. Chisholm submitted to the Hearing Tribunal that although the Complaints Director has the onus of proof, Ms. Chow had provided an admission of unprofessional conduct. Ms. Chisholm explained that 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 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 states 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 statutes prove an obligation for pharmacists to have personal insurance apart from their employers coverage.

Ms. Chisholm provided an example of the professional declaration Ms. Chow completed falsely which stated that, while on the clinical register, she would have professional liability coverage for no less than \$2 million dollars. She 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 Ms. Chow's actions were not deliberate, her 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 professional declarations and ethical conduct of an Alberta pharmacist include making declarations that can be counted on to be true. She submitted that, although there had been no evidence of harm to the public, there could have been, and that self-regulating professions require conscientiousness and integrity from their members to protect the public.

Ms. Chisholm explained that since the College does not have the resources to check each of its 5500 members annually, it relies on its members' declarations being dependable. Had Ms. Chow not have been chosen for a random audit, there would be a 12-month period during which she would be practicing without insurance. Ms. Chow's conduct was also said to breach the Standards of Practice and the Code of Ethics as alleged in the Notice of Hearing.

Ms. Chow did not disagree with Ms. Chisholm's submissions. She acknowledged that, although unintentional, she takes full responsibility for not renewing her professional liability insurance before July 1, 2018. She stated that if she had not been selected for a random audit, she could have gone for an entire year without professional liability insurance, which could have had adverse outcomes on her patients. She was thankful this did not happen during the time period where her insurance lapsed. Ms. Chow indicated that she has shared her learnings with her colleagues and will take additional steps to ensure that this situation

does not happen again. Ms. Chow apologized and expressed remorse to the College and members of the Hearing Tribunal for her misconduct.

V. FINDINGS

After reviewing all of the evidence and submissions presented and the admissions from Ms. Chow, the Hearing Tribunal found that the allegation detailed in the Notice of Hearing was factually proven and that Ms. Chow's conduct constituted unprofessional conduct.

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

- Ms. Chow admitted that she did not maintain professional liability insurance from July 1, 2018 to November 14, 2018, while practicing as a pharmacist at Rexall Outpatient Pharmacy, University of Alberta Hospital (Pharmacy Licence #3241) in Edmonton, Alberta.
- Ms. Chow admitted that she made a false professional declaration on May 28, 2018 when submitting her renewal for a pharmacist license with the College.
- Ms. Chow admitted that she practiced without professional liability insurance on approximately 82 separate days between July 1 and November 14, 2018.
- These admissions were supported by the documentation and testimony provided both by the Complaints Director and by Ms. Chow.
- 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 applicable statutes 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 states in Principle 10(1) that the pharmacist will comply with the letter and spirit of the law and (2) be honest in their dealings.
- It is a fundamental expectation that, when a pharmacist completes their professional declaration, 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. Chow's actions were in violation of the *Health Professions Act* Section 40(1)(c), Section 13 of the *Pharmacists and Pharmacy Technicians Profession Regulation* and The Alberta College of Pharmacy's Code of Ethics Principle 1 (1) and 10(1) and (2).

VI. SUBMISSIONS ON ORDERS

Complaints Director's Submissions:

Ms. Chisholm submitted that from the College's perspective, disciplinary 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 on behalf of the Complaints Director, 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 Ms. Chow'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 November 14, 2018, Ms. Chow practiced without professional liability insurance due to a lack of attention and follow through on her part. Had the worst-case scenario played out and a claim had been made during this time against her, she would not have had insurance to protect the public.
- *Age and experience of the offender:* Ms. Chow registered with the College in 1997. Members with less experience may be given more lenience than those who have practiced longer. This is not considered a mitigating factor in Ms. Chow's case as she is an experienced pharmacist.
- *Previous character of a member and prior complaints:* Ms. Chow has no history of prior complaints with the College.
- *Number of times the offence occurred:* Ms. Chow was found to have a single breach that extended over a 5 ½ month period of time. This breach was not discovered by Ms. Chow herself, but rather, was only discovered through her being chosen randomly for an audit. Both the extended length of time of the breach and the fact that she did not discover the breach herself, should weigh in the decision on sanction.
- *Role of the member in acknowledging what occurred:* This is a clear mitigating factor in this case. Although Ms. Chow was delayed in her initial response to the College due to not getting the first two emails, once she was made aware of the situation, she acted immediately to obtain professional liability insurance which was in place on November 15, 2018. Ms. Chow admitted this 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:* Ms. Chow acknowledged her conduct and took immediate steps to remedy the situation. She was fully cooperative with the College and its investigation, apologized and expressed remorse for her actions.
- *The need to promote deterrence:* Specific deterrence of Ms. Chow from a similar breach is served because she acknowledged her mistake and would take steps to ensure not to repeat this mistake in the future, as well as checking with colleagues to ensure that they verify their coverage before submitting professional declarations. With regards to general deterrence of the larger membership, it is important that the sanctions imposed by the Hearing Tribunal educate the membership and deter them from similar conduct.
- *The need to maintain public confidence in the integrity of the profession:* The sanctions imposed need to make it clear to the public that the membership takes the *Health Professions Act and Regulations* and the Alberta College of Pharmacy's Code of Ethics seriously and sanctions members accordingly with breaches.
- *The degree to which the offensive conduct is clearly regarded, by consensus, as falling outside of the range of permitted conduct:* Ms. Chow's conduct, although lower on the spectrum of misconduct, is still 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:
 1. *Sonia Chahal v. ACP:* Ms. Chahal practiced without professional liability insurance for a one-month period and was registered only as an intern with the College although she was practicing as a pharmacist. She received 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.
 2. *Saeed Sattari v. ACP:* Mr. Sattari did not maintain professional liability insurance for 10 months and 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.
 3. *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, and payment of full costs of the investigation and hearing payable on a schedule acceptable to the Complaints Director, with a minimum of 24 months to pay.

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, on behalf of the Complaints Director, submitted that the reprimand and fine would serve as a specific deterrent to Ms. Chow, as well as to the general membership. She noted that the Complaints Director was willing to cap the costs at \$7,000 due to Ms. Chow's cooperation with the process, the ability to complete the hearing within half of one day, and that Ms. Chow had not made any adjournment requests. At the request of the Hearing Tribunal, Mr. Krempien further explained that compared to similar cases, the most similar being *Arshad Mehmood v. ACP*, the College was requesting a lower cap on costs due to full cooperation from Ms. Chow as well as administrative efficiencies gained from processing multiple similar complaints this year.

Ms. Chow's Submissions:

Ms. Chow submitted that:

- She accepts that the College will impose sanctions for his admitted professional misconduct.
- She accepts that she must pay a fine and costs, however, asked the Hearing Tribunal to consider a lower amount as it would add to her financial burden due to the educational costs for her two daughters.

Ms. Chisholm's Reply:

Ms. Chisholm, in reply to Ms. Chow's submissions, stated that it was appropriate for a member to pay a portion of the costs but that the total of those costs should not be the responsibility of the membership as a whole to cover when a member finds themselves in a disciplinary proceeding due to their own conduct. She further supported this argument by referencing *Fitzpatrick v. College of Physical Therapists of Alberta*, which found that costs of a disciplinary hearing could reach \$20,000 per day considering the costs of writing decisions, independent legal counsel, legal counsel for the College, and bringing the Hearing Tribunal together with the College and member to hear the matter and deliberate. Finally, she restated that Mr. Krempien had given reasons for the College only seeking a maximum of \$7,000 in costs, despite the possibility that this amount may not represent the full costs of the hearing itself.

VII. ORDERS

The Hearing Tribunal carefully considered the submissions on sanction from both the College and Ms. Chow and made the following orders:

1. Ms. Chow shall receive a written reprimand. This decision shall serve as a written reprimand for Ms. Chow.
2. Ms. Chow shall pay a fine of \$1,000 to be paid on a schedule acceptable to the Hearings Director, but within 12 months from the date of this written decision.
3. Ms. Chow shall pay the costs of the investigation and hearing, capped at \$7,000, and payable on a schedule acceptable to the Hearings Director, within a 24 month period from the date of this written decision.

The Hearings Tribunal's reasons for its orders are as follows:

- The Hearing Tribunal determined that a written reprimand, fine, and costs of the investigation and hearing were reasonable sanctions to impose based upon the factors described above including the previous, similar cases that were provided. The parties did not dispute that the Tribunal should order a reprimand, fine and costs.
- The Complaints Director suggested capping the costs of the investigation and hearing at \$7,000.
- Ms. Chow suggested that a lower cap would be appropriate since costs of up to \$7,000 would weigh heavily upon her as she is responsible for her daughter's education expenses. Ms. Chow did not introduce any evidence of her financial circumstances to support this claim.
- The Tribunal was not satisfied that there was any reason to further reduce Ms. Chow's share of the investigation and hearing costs below the proposed \$7,000 cap. The Tribunal directed that Ms. Chow would have up to 24 months to pay the costs.

Signed on behalf of the Hearing Tribunal by its chair: on August 14, 2019.

[Teryn Wasileyko]

Teryn Wasileyko, Pharmacist, Chair