

ALBERTA COLLEGE OF PHARMACY

IN THE MATTER OF  
THE *HEALTH PROFESSIONS ACT*

AND IN THE MATTER OF A HEARING REGARDING  
THE CONDUCT OF

**David Hiebert**

Registration Number 13801

**DECISION OF THE HEARING TRIBUNAL ON SANCTIONS**

## **I. Introduction**

In its written decision dated November 14, 2019, the Hearing Tribunal described its findings with respect to the allegations of unprofessional conduct as set out in the Notice of Hearing dated, June 18, 2019 against David Hiebert. In summary, the Hearing Tribunal found that Allegations:

1. During the period of March 1, 2017 to September 24, 2018, while you were working as a registered pharmacy technician at Bow Island Apple Drugs (the “Pharmacy”), you
  - a. diverted approximately
    - i. 100 Mylan-fentanyl 75ug patches, and
    - ii. 1160 Mylan-fentanyl 100ug patches (collectively, the “Fentanyl Patches”) from the pharmacy on multiple occasions.
  - b. manually adjusted the Pharmacy’s electronic inventory records to conceal your diversion of the Fentanyl patches, and
  - c. continued to divert Fentanyl Patches until your diversions were discovered by your employer and your employment was terminated.
2. You failed to comply with a request or cooperate with the investigator by:
  - a. suggesting you had not received a copy of the complaint despite Canada Post Records indicating the letter was signed for on October 25, 2018 and an email delivery receipt indicating you received a copy of the same by email from the Complaints Director on November 20, 2018; and
  - b. not providing a written response to the concerns raised by the complainant.

were proven on the balance of probabilities, and that the conduct in issue was “unprofessional conduct” as defined in the *Health Professions Act*, R.S.A. 2000, c. H-7 (“HPA”).

The Tribunal received written submissions on sanctions on behalf of the Complaints Director dated September 12, 2019. Mr. Hiebert provided submissions on sanction via email on September 12, October 21, November 11 and 13, 2019. The Tribunal convened on November 14, 2019 to deliberate on the issue of sanctions.

## **II. Summary of Submissions on Sanction by the College**

The Complaints Director submitted that the Hearing Tribunal should impose the following sanctions and costs orders for Mr. Hiebert:

1. Mr. Hiebert's registration with the College shall be cancelled;
2. Mr. Hiebert shall not be permitted to be an owner or proprietor of a pharmacy for a period of 5 years from the date of receipt of the Hearing Tribunal's written decision on sanctions and costs; and
3. Mr. Hiebert shall pay all of the costs of the hearing on a monthly schedule as directed by the Hearings Director and the costs shall be paid in full within 24 months of the date of receipt of the Hearing Tribunal's written decision on sanctions and costs.

The Complaints Director referred to factors from *Jaswal v. Newfoundland (Medical Board)* (1996), 42 Admin. L.R. (2d) 233, describing how those factors should apply in this case. Key points made by the Complaints Director were:

- **Nature and Gravity of the proven allegations:**

Mr. Hiebert's proven unprofessional conduct was serious. He diverted potent Schedule 1 drugs, Mylan-fentanyl patches, contrary to several laws and standards, including the *Pharmacy and Drug Act*, the *Controlled Drugs and Substances Act*, the College's Code of Ethics and its Standards of Practice. These are basic expectations for a regulated member of the College. Mr. Hiebert also failed to respond to the complaint and to cooperate with the Complaints Director's investigation into his conduct. The Hearing Tribunal found that Mr. Hiebert's conduct breached the trust bestowed upon him and demonstrated blatant disregard for the College's authority to self-govern and its ability to regulate him.

- **Age and Experience of the Offending member:**

Mr. Hiebert was registered with the College on its general register from July 19, 2017 to October 3, 2018. Prior to that time, Mr. Hiebert was on the provisional pharmacy technician register from January 12, 2016 to July 18, 2017. Although Mr. Hiebert was a relatively new pharmacy technician, his unprofessional conduct was not caused by inexperience. Mr. Hiebert wilfully diverted narcotics and frustrated the Complaints Director's investigation. He failed to uphold basic expectations of regulated members of the Alberta College of Pharmacy.

- **Presence of any prior complaints or convictions:**

There was no suggestion of any prior complaints or proven unprofessional conduct to serve as an aggravating factor on the issue of sanctions.

- **The number of times the offence was proven to have occurred:**

Mr. Hiebert's proven diversions of narcotics occurred on a number of occasions. He diverted over 250 boxes of Mylan-fentanyl patches over approximately 18 months. The evidence at the hearing established a repeated pattern of unprofessional conduct.

- **Role of the member in acknowledging what had occurred:**

While Mr. Hiebert failed to respond to the complaint, cooperate with the investigation or attend the hearing, the Tribunal noted that Mr. Hiebert voluntarily canceled his practice permit on October 4, 2018. The Complaints Director also noted that following receipt of the Hearing Tribunal's Decision on the merits, Mr. Hiebert emailed the Hearings Director stating "I understand that I have lost any right to work in pharmacy and sincerely regret my actions."

- **Whether the member had already suffered other serious financial or other penalties as a result of the allegations:**

The Complaints Director noted that Mr. Hiebert is subject to a parallel criminal proceeding arising from the same conduct. The Complaints Director provided evidence that Mr. Hiebert received a criminal sentence of 90 days incarceration, \$2,900 restitution order and two years of probation.

- **Impact of the incident on the offended patient:**

There was no evidence of any impact of Mr. Hiebert's proven unprofessional conduct on any patients of the pharmacy in this case.

- **The presence of any mitigating circumstances:**

There was no evidence of any mitigating circumstances to take into account in determining appropriate sanctions. The Complaints Director pointed out to the Tribunal that in the parallel criminal proceedings, Mr. Hiebert had agreed to attend addiction counselling and to refrain from using any drugs or alcohol during his probation, but there was no specific evidence of Mr. Hiebert's condition.

The Complaints Director also pointed out that Mr. Hiebert had the opportunity to participate both in the investigation and in the hearing, but he declined both. If he had evidence of mitigating circumstances those would have been the opportunities to provide it.

- **Need to promote specific and general deterrence and, thereby, to protect the public and ensure the safe and proper practice of pharmacy:**

It is vital that Mr. Hiebert, but also the profession at large understand that conduct as serious as his, warrants losing the privilege to practice as a pharmacy technician. As a self-regulating profession, the College depends upon the cooperation of its members, their willingness to comply fully with their legal and ethical duties and to be regulated by the College. The sanctions imposed in this case must make very clear that diversion of a Schedule 1 drug

combined with a failure to cooperate with the College's investigator necessitates very severe sanctions.

- **The need to maintain the public's confidence in the integrity of the pharmacy profession:**

Protecting the integrity of the profession is one of the primary responsibilities of the College. The College must be able to demonstrate to the public that it is willing and able to regulate and govern the conduct of each of its members. To maintain confidence in the College, the public must be able to see that steps have been taken to sanction Mr. Hiebert's conduct and to ensure that it does not recur in the future. Therefore, orders made by the Hearing Tribunal must make clear to the public that a pharmacy technician's theft of a Schedule 1 drug and further disregard for the regulatory process will not be tolerated.

- **The degree to which the offensive conduct was outside the range of permitted conduct:**

The proven unprofessional conduct in this case was egregious and clearly beyond the range of permitted conduct. Mr. Hiebert's conduct demonstrated an unwillingness to be regulated or adhere to the regulatory framework under which the profession of pharmacy operates in Alberta.

- **The range of sanctions in other similar cases:**

The Complaints Director explained that there were no comparable cases including both the diversion of Schedule 1 drugs and the failure to cooperate with the Complaints Director's investigation. The Complaints Director referred instead to cases in which the issues arose separately.

#### **Karen Nevett:**

In 2015 a Hearing Tribunal found that between June 2013 and February 2014 Karen Nevett, a pharmacist, diverted approximately 14,500 tablets and capsules of hydromorphone and an undetermined amount of hydromorphone granules on approximately 128 separate occasions. The Hearing Tribunal also determined that Ms. Nevett attempted to conceal her diversion of the drugs by creating false patient, physician and dispensing records; and the public was at risk. The Tribunal ordered that Ms. Nevett's registration with the College be cancelled and that she pay the full cost of the investigation and hearing.

Ms. Nevett's substance abuse led to behaviors that could not be tolerated in the profession. The possibility of significant harm to the public jeopardized public safety and the integrity of the profession. The Hearing Tribunal was confident that the penalty served the interest of the public and the profession.

**Melissa Kendrick:**

Also in 2015 a Hearing Tribunal found Melissa Kendrick to have committed unprofessional conduct for diverting syringes of Eprex from the pharmacy and \$415 from the employee change room. The diversions and theft occurred over a period of two months, commencing shortly after Ms. Kendrick began her employment and she was terminated from her employment as a result. Ms. Kendrick provided an admission to her unprofessional conduct. The Hearing Tribunal ordered a three-month suspension, a \$2,000 fine and Ms. Kendrick was required to pay the full costs of the investigation and hearing.

**Sinan Hadi:**

In 2018, a Hearing Tribunal found pharmacist Sinan Hadi committed unprofessional conduct for unlawfully confining and sexually assaulting a minor. Mr. Hadi also failed to inform his employer or the College of related criminal charges against him and he failed to comply with requests of the College's investigator. Mr. Hadi's registration was cancelled and he was ordered to pay the full costs of the investigation and hearing. The Tribunal noted that Mr. Hadi's persistent failure to cooperate with the Complaints Director's investigation suggested a lack of the indicia of governability upon which the effective regulation of a self-governing profession depends. Mr. Hadi's lack of any discipline history had to be weighed against the gravity and the totality of his proven unprofessional conduct.

In relation to costs, the Complaints Director again referred to factors drawn from the *Jaswal* case and submitted that Mr. Hiebert should bear the full costs of the investigation and hearing into his conduct, so that the College's membership would not have to bear those costs. Rather than facilitate the hearing or minimize the costs, Mr. Hiebert's refusal to cooperate with the investigation had increased the overall costs. There was no justification for him to bear less than the full costs over a period of 24 months. The Complaints Director estimated the costs up to October 31, 2019 to be \$17,911.

**III. Summary of Submissions on Sanction by Mr. Hiebert**

Mr. Hiebert submitted a September 12, 2019 email to the College's Hearings Director after receiving the Hearing Tribunal's decision on the merits in which he stated, "I understand that I have lost any right to work in pharmacy and sincerely regret my actions".

Mr. Hiebert also responded by email on October 21, November 11 and 13, 2019 to the Complaints Director's submissions on sanction. In these emails Mr. Hiebert stated, "I forfeit any right to own or work in any pharmacy forever." He explained that he diverted the medications in order to use them [himself] and that he had been referred to psychiatric medical care in [REDACTED]. While he referred to documentation of these circumstances, he did not attempt to provide any such documentation to the Tribunal. Mr. Hiebert also submitted that he earns approximately [REDACTED] annually and has outstanding legal and student loan debts. He argued that the estimated \$20,000 costs of the investigation and hearing would be an excessive

burden to impose upon him to repay over the proposed timeframe and would lead to bankruptcy. He requested leniency.

#### **IV. Orders**

The Hearing Tribunal has carefully considered the evidence and findings from the merits hearing, the submissions of the Complaints Director and Mr. Hiebert's submissions on sanction. The Hearing Tribunal makes the following orders pursuant to Section 82 of the *Health Professions Act*:

1. Mr. Hiebert's registration with the College is cancelled;
2. Mr. Hiebert shall not be permitted to be an owner or proprietor of a pharmacy for a period of 5 years from the date of receipt of this decision of the Hearing Tribunal;
3. Mr. Hiebert shall pay the full costs of the investigation and hearing in this matter on a monthly payment schedule acceptable to the Hearings Director over a period of no more than 36 months from the date of receipt of this decision of the Hearing Tribunal.

#### **V. Reasons for Orders**

Mr. Hiebert's practice permit has been cancelled. While his diversion of drugs may have been related to an addiction, his conduct went well beyond drug diversion and included his failure to cooperate with the College. His overall conduct was incompatible with continuing as a regulated member of the College. Mr. Hiebert voluntarily cancelled his practice permit when he was caught diverting drugs and he subsequently confirmed in writing that he forfeits any right to work in pharmacy again. The Hearing Tribunal accepts and agrees that cancellation is appropriate in this case to protect the public and the integrity of the profession of pharmacy. It also appears likely to protect Mr. Hiebert and to be his desired outcome.

Trust, honesty and integrity are critical attributes of the profession of pharmacy technicians. Mr. Hiebert has shown a lack of respect and trust for the profession. The College and the pharmacy owner placed Mr. Hiebert in a position of trust and the trust was abused.

Serving as an owner or proprietor of a pharmacy carries responsibilities to ensure safe, effective and efficient care delivery to patients by the pharmacist and pharmacy technician. In particular these roles must ensure that the legislative requirements along with the standards of practice are met fully and completely. Mr. Hiebert has shown that he is incapable of following or adhering to the legislative requirements or standards of practice for pharmacies or pharmacy technicians. Cancellation and a 5-year prohibition on serving as an owner or proprietor are appropriate to protect the public and the integrity of the pharmacy profession.

On the issue of costs, the Hearing Tribunal noted that the investigation costs were modest. Mr. Hiebert failed to cooperate with the investigation, and this would have increased the investigation costs to some degree. The bulk of the overall costs claimed by the Complaints Director were related to the hearing. All of the allegations were proven and the Complaints Director called no unnecessary evidence. Mr. Hiebert elected not to participate in the hearing so there were no opportunities to reduce costs through agreed facts or exhibits for example. The Tribunal concluded the costs incurred by the College were reasonable and appropriate for Mr. Hiebert to bear. The Hearing Tribunal did consider Mr. Hiebert's submissions that he has limited income. The Tribunal extended the proposed repayment timeframe to 36 months, in accordance with a payment schedule acceptable to the Hearings Director, in order to alleviate some of the financial burdens that these orders will place on Mr. Hiebert.

Signed on behalf of the hearing tribunal by the Chair on January 30, 2020.

[Sharon Van Wert]  
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