

ALBERTA COLLEGE OF PHARMACY

IN THE MATTER OF
THE *HEALTH PROFESSIONS ACT*
being Chapter H-7 of the Revised Statues of Alberta, 2000

AND IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF

KEVIN D. HILL
Registration No: 4267

DECISION OF THE HEARING TRIBUNAL

May 15, 2019

I. INTRODUCTION

The Hearing Tribunal held a hearing into the conduct of Kevin D. Hill (the "Investigated Member"). In attendance on behalf of the Hearing Tribunal were Kevin Kowalchuk, pharmacist and Chair; Anil Goorachurn, pharmacist; Mary Gunther, pharmacist; and Pat Matusko, public member.

The hearing took place on April 3, 2019 at Edmonton, Alberta. The hearing was held under the terms of Part 4 of the *Health Professions Act*.

In attendance at the hearing were Arman Athwal and Leah Maclin (articling student) representing the Complaints Director, and Tom Marriot, representing the Investigated Member, who was in attendance. James T. Casey, Q.C. was in attendance acting as independent legal counsel to 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 allegations considered by the Hearing Tribunal are as follows:

"IT IS ALLEGED THAT, between September 12, 2017 to February 21, 2018, while you were both a registered Alberta pharmacist and the licensee of Vic's Super Drugs (the "Pharmacy") (ACP Licence #1569), you failed in your responsibilities to:

1. take reasonable steps to protect and secure narcotics in the Pharmacy, which resulted in 1,156 to 1,440 tablets of Statex 25mg (the "Statex") being lost, stolen or diverted from the Pharmacy;
2. ensure adequate systems and procedures for narcotic security were in place to identify the loss, theft or diversion of the Statex by failing to keep pharmacy records, specifically:
 - a. an accurate tally of unserviceable controlled substances (expired stock);
 - b. a record of the date the Statex was received from a licensed dealer for the period of December 16, 2016 to November 15, 2017; and
 - c. a perpetual inventory of each narcotic and controlled drug in stock that was routinely audited to verify accuracy.
3. detect that the Statex was missing until the missing tablets were detected during an audit by the Health Canada/Office of Controlled Substances ("OCS"); and
4. determine what happened to the missing Statex and identify any likely suspects involved.

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 and a pharmacy licensee;
- b. Undermined the integrity of the profession;
- c. Decreased the public's trust in the profession; and
- d. Was contrary to accepted pharmacist and licensee practice.

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

- Standards 1 (sub-standards 1.1(a), 1.1(f), 1.2(a)) and 5 (5.11 and 5.12) of the Standards for the Operation of Licensed Pharmacies;
- Section 43 of the Narcotic Control Regulations;
- Sub-section 25(d) of the Pharmacy and Drug Regulation; and
- Sub-sections 1(1)(p)(ii), 1(1)(p)(vi) and 1(1)(p)(ix) of the *Pharmacy and Drug 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 sub-sections 1(1)(pp)(ii), 1(1)(pp)(iii) and 1(1)(pp)(xii) of the *Health Professions Act* and misconduct pursuant to the provisions of sub-sections 1(1)(p)(ii), 1(1)(p)(vi) and 1(1)(p)(ix) of the *Pharmacy and Drug Act*.”

This matter proceeded by Admission of Unprofessional Conduct, an Agreed Statement of Facts and a Joint Submission on Sanction. Through the Admission of Unprofessional Conduct, the Investigated Member admitted the allegations set out above.

III. EVIDENCE

The Agreed Statement of Facts provided by the parties states:

1. Kevin Hill has been a registered regulated pharmacist with the Alberta College of Pharmacy (the "College") since 1988. Kevin Hill has been the licensee of Vic's Super Drugs (the "Pharmacy") since 1996.
2. Mr. Hill has not previously been the subject of a complaint to the College for any reason.
3. On February 21, 2018 Health Canada/Office of Controlled Substances (the "OCS"), conducted an inspection at the Pharmacy under section 31 of the *Controlled Drugs and Substances Act*.
4. During the course of the investigation, the following concerns were noted:

- (a) the accountability reconciliation from the inspection revealed a large unexplained variance (the Pharmacy was missing 1156 Statex 25mg tablets), and
 - (b) there was no accurate tally of unserviceable controlled substances ("expired stock"), thereby offering no means to detect diversion should any of the controlled substances go missing.
5. As a result of the inspection, the OCS determined that the Pharmacy was not in compliance with several sections of:
 - (a) the Narcotic Control Regulations,
 - (b) the Benzodiazepines and Other Targeted Substances Regulations, and
 - (c) Parts G and J of the Food and Drug Regulations.
6. On July 18, 2018, the OCS emailed a letter and the below enclosures to Greg Eberhart, the Registrar of the College:
 - (a) Inspection Report dated March 7, 2018 (the " Inspection Report"),
 - (b) Mr. Hill's response to the Investigation Report dated April 6, 2018, and
 - (c) Monitoring letter dated June 5, 2018.
7. The Inspection Report indicated, in part:
 - (a) the review period was from September 12, 2017 to February 21, 2018 ("the period"),
 - (b) ten controlled substances were inspected for the period,
 - (c) a negative balance of 1,156 tablets of Statex 25mg was determined (i.e. the Pharmacy was missing 1,156 tablets),
 - (d) a "critical" observation was noted in regard to the missing Statex 25mg tablets. The Inspection Report suggested there may not have been compliance with, in part, s.42 and s.43 of the Narcotic Control Regulations ("NCR") in that required reasonable steps at the Pharmacy were not taken to protect narcotics against loss or theft,
 - (e) a "major" observation was noted in regard to the lack of an accurate tally of expired stock, thereby offering no means of detecting diversion if any of the controlled substances went missing. It was further noted in the Inspection Report that during the inspection an accurate tally of expired stock was created and no further response about this observation was expected, and
 - (f) a "minor" observation was noted in regard to the period from December 16, 2016 to November 15, 2017 where it was identified that the invoices maintained in the dispensary were not dated by the pharmacist, thereby lacking evidence as to the date the controlled substances were received.

8. On April 6, 2018, Mr. Hill responded to the Inspection Report. He, in part:
 - (a) stated that in the future there must be further control of regulated activities at the Pharmacy,
 - (b) suggested that relief pharmacists, technicians and other unspecified individuals may have contributed to the missing 1,156 Statex 25mg tablets, and
 - (c) described the steps he has taken, and would be taking, to secure and account for narcotics at the Pharmacy.
9. On July 20, 2018, the Registrar emailed a complaint to the Complaints Director.
10. On August 24, 2018, Mr. Hill submitted his written response to the Complaints Director. In summary, Mr. Hill responded that:
 - (a) the loss of the Statex tablets discovered through the OCS inspection "was a result of poor oversight, control and lack of security that was not in place" at the Pharmacy,
 - (b) he has made changes that have resulted in no further narcotics discrepancies being detected, and
 - (c) the above (a) and (b), "[do] not mitigate [his] responsibility and [he] clearly did not adequately impose and enforce to prevent or detect diversion".
11. On August 28, 2018, the Complaints Director emailed McKesson and Imperial (drug suppliers to the Pharmacy) and requested a sales total of the Statex 25mg tablets sent by McKesson and Imperial to the Pharmacy during the period.
12. On August 29, 2018, the Complaints Director met with Mr. Hill at the Pharmacy. Mr. Hill indicated that:
 - (a) the Pharmacy had received 2,000 tablets of Statex 25mg from its drug suppliers during the period and he provided records,
 - (b) the 1,156 Statex 25mg tablets determined to be missing by OCS were likely diverted or stolen from his Pharmacy,
 - (c) he did not know how the Statex may have gone missing or who might be responsible. However, Mr. Hill indicated that as a licensee, he failed in his responsibilities to properly secure and account for the narcotics, allowing the Statex to be diverted,
 - (d) lack of proper narcotic accounting practices/records and security at the Pharmacy, which resulted, in part, in his inability to determine who may have diverted the Statex, and
 - (e) he was now maintaining an accurate tally for expired stock at the Pharmacy.
13. On August 31, 2018, the Complaints Director received an email from Imperial indicating that they had sent the Pharmacy 800 tablets of Statex 25mg during the period.

14. On September 4, 2018, the Complaints Director received an email from McKesson indicating that they had sent the Pharmacy 1,200 tablets of Statex 25mg during the period.
15. The Complaints Director determined based on his investigation that, during the period between 1,156 to 1,440 tablets of Statex 25mg had been lost, stolen or diverted from the Pharmacy.
16. Mr. Hill did not detect that the Statex 25 mg was missing until the tablets were detected by the OCS inspection.
17. Mr. Hill is not able to determine how the Statex 25mg was diverted or who diverted it.
18. Subsequent to the OCS inspection, Mr. Hill has implemented reasonable measure to account for and secure narcotics at the Pharmacy. The issues identified with the accurate tally for stock at the Pharmacy has been resolved by Mr. Hill.
19. Mr. Hill is remorseful for his failures as a licensee and has been open and proactive in wanting to ensure his future compliance with his associated responsibilities.
20. Mr. Hill has improved the Pharmacy's narcotics security and accounting since the inspection by OCS. He has also installed cameras covering the dispensary and front store.

IV. SUBMISSIONS

Ms. Athwal, on behalf of the Complaints Director, and Mr. Mariott, on behalf of the Investigated Member, provided a Joint Submission on Sanction proposing the following orders:

1. Vic's Super Drugs (the "Pharmacy") shall be monitored by a field officer of the College. The monitoring shall consist of a field officer conducting three visits of the Pharmacy each year, for a period of two years. Mr. Hill shall be responsible for the costs of each visit, which shall be the Re-inspection Fee in the Schedule of Fees: <https://abpharmacy.ca/fec-schedule>.
2. Mr. Hill shall pay a fine of \$5,000. The fine shall be due to the College within 90 days of the date of the Hearing Tribunal's written decision.
3. Mr. Hill shall be responsible for costs of the hearing to a maximum of \$8,000. Payment will occur in accordance with a reasonable monthly payment schedule as directed by the Hearings Director. The costs shall be paid in full within 18 months of the date of the Hearing Tribunal's written decision.

Ms. Athwal emphasized that this matter was proceeding by way of a joint submission on sanction and as a result the Hearing Tribunal should not interfere with the proposed sanction unless it considers the sanctions unfit, unreasonable, or contrary to public policy. Mr. Marriot also emphasized the deference that should be provided to a joint submission. He submitted that the objectives of specific and general deterrence are met by the \$13,000 combined amount of the fine and costs. In addition, the Investigated Member is responsible for the costs of the inspections. He emphasized the significance of the

Investigated Member accepting responsibility for his shortcomings. He noted the significant steps the Investigated Member has already taken to ensure that this does not happen again. The 2-year period of inspections, paid for by the Investigated Member, assure the public and the profession that there will be effective oversight to ensure the problems do not recur. Mr. Marriott emphasized the full cooperation of the Investigated Member and his unblemished 30-year record of professional service. Mr. Marriott noted that the Investigated Member makes an active contribution to his community and tendered a letter of appreciation from a family member of a pharmacy client.

V. FINDINGS

During the hearing on April 3, 2019 the Hearing Tribunal verbally advised the parties that it accepted the Investigated Member's admission of unprofessional conduct. The facts as admitted by the Investigated Member support the admission.

VI. ORDERS

At the conclusion of the hearing on April 3, 2019 the Hearing Tribunal provided a verbal decision accepting the Joint Submission on Sanction. This written decision confirms the verbal decision and provides reasons. The tribunal acknowledges the deference that should be provided to Joint Submissions on Sanction. It considered that the unprofessional conduct is serious in nature but that it is balanced by a number of very significant mitigating factors:

- The results of the controlled substances inspections were forwarded by Health Canada in a letter dated March 7, 2018 identifying the problems. The Investigated Member replied in a letter dated April 6, 2018 identifying all the changes that he had already made to physical security, computer security, pharmacy processes, pharmacy documentation, and narcotic audits. He volunteered to make any further changes as may be deemed necessary. He notes that this is obviously very distressing to him and his desire is to go beyond the regulations required if necessary.
- The Investigated Member cooperated fully with the College investigation and fully accepted responsibility through the admission of unprofessional conduct.
- The Investigated Member is genuinely remorseful.
- The Investigated Member has no disciplinary findings over a 30-year professional history.

The tribunal considers that the findings of unprofessional conduct and the very significant financial repercussions will provide specific deterrence to the Investigated Member to ensure this doesn't happen again. These findings will also provide general deterrence to the membership; emphasizing the importance of ensuring proper security, procedures, and documentation. The order requiring inspections over a two-year period will assure the public and the profession that appropriate oversight is being provided to ensure that the problems do not recur.

The Hearing Tribunal makes the following orders under section 82 of the *Health Professions Act*:

1. Vic's Super Drugs (the "Pharmacy") shall be monitored by a field officer of the College. The monitoring shall consist of a field officer conducting three visits of the Pharmacy each year, for a period of two years. Mr. Hill shall be responsible for the costs of each visit, which shall be the Re-inspection Fee in the Schedule of Fees: <https://abpharmacy.ca/fee-schedule>.
2. Mr. Hill shall pay a fine of \$5,000. The fine shall be due to the College within 90 days of the date of the Hearing Tribunal's written decision.
3. Mr. Hill shall be responsible for costs of the hearing to a maximum of \$8,000. Payment will occur in accordance with a reasonable monthly payment schedule as directed by the Hearings Director. The costs shall be paid in full within 18 months of the date of the Hearing Tribunal's written decision.

Signed on behalf of the Hearing Tribunal by its Chairperson this fifteenth day of May 2019.

[Kevin Kowalchuk]

Kevin Kowalchuk, Pharmacist and Chairperson