

IN THE MATTER OF THE HEALTH PROFESSIONS ACT,
BEING CHAPTER H-7 OF THE REVISED
STATUTES OF ALBERTA, 2000

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and

IN THE MATTER OF A HEARING REGARDING THE
CONDUCT OF TUYEN HUYNH and CALGARY
MEDICAL PHARMACY and
LOI NGUYEN and SAIGON PHARMACY

ORDERS OF THE HEARING TRIBUNAL

The Hearing tribunal issued its reasons for decision on May 17, 2010 with respect to allegations of unprofessional conduct in this matter. In that decision, the Hearing Tribunal asked the parties to make submissions on the appropriate orders to be imposed under section 82 of the *Health Professions Act*.

Counsel for the Alberta College of Pharmacists (the "ACP") and Counsel for Tuyen Huynh and Loi Nguyen have agreed to proceed by way of written submissions on penalty and to recommend a joint submission on penalty on all sanctions except on the issue of publication of the decision. The parties provided written submissions on the joint submission on penalty and on whether or not publication of the decision should be on a named basis.

Joint Submission on Penalty

The Alberta College of Pharmacists and the members jointly request that the Hearing Tribunal impose the following orders under section 82 of the *Health Professions Act*:

Mr. Nguyen

- a. a written reprimand
- b. an order that Mr. Nguyen pay a fine of \$2,000.00 within 60 days of receipt of the Hearing Tribunal's decision on sanctions;
- c. an order that Mr. Nguyen, jointly with Ms. Huynh, pay 50% of the expenses, costs and fees related to the investigation and hearing of this matter to be paid over a 4 year period in equal monthly payments with the member having the option to prepay all or a portion of the costs at anytime;

- d. an order that unless Mr. Nguyen successfully passes the ACP's Jurisprudence Examination within 4 months from the date he is served with a copy of the Hearing Tribunal's decision on sanctions, the following conditions will be placed on Mr. Nguyen's practice permit:
 - i. Mr. Nguyen shall not act as the licensee of a pharmacy for a minimum period of 4 months; and
 - ii. must pass the ACP's Jurisprudence Examination before he is eligible to act as a licensee at the expiry of the 4-month period.

Ms. Huynh

- a. a written reprimand
- b. an order that Ms. Huynh pay a fine of \$3500.00 within 60 days of receipt of the Hearing Tribunal's decision on sanctions;
- c. an order that Ms. Huynh, jointly with Mr. Nguyen, pay 50% of the expenses, costs and fees related to the investigation and hearing of this matter to be paid over a 4 year period in equal monthly payments with the member having the option to prepay all or a portion of the costs at anytime;
- d. an order that the following conditions will be placed on Ms. Huynh's practice permit:
 - i. Ms. Huynh shall not act as the licensee of a pharmacy for a minimum period of 2 years from the date she receives the Hearing Tribunal's written decision on sanctions; and
 - ii. must pass the ACP's Jurisprudence Examination before she is eligible to act as a licensee at the expiry of the 2-year period.

Submissions on Publication:

Counsel for the Alberta College of Pharmacists and Counsel for Tuyen Huynh and Loi Nguyen did agree that a summary of the decision should be published in the *ACP News*. However the members wish to have the publication on a no name basis and the Alberta College of Pharmacists opposes this request.

On the publication of name, Counsel for the Alberta College of Pharmacists submitted:

- Publication should be on a named basis;
- Publication of summaries of decisions show both the public and the members of the profession how the ACP's responds to complaints from members of the public that disclose potential unprofessional conduct;
- Publication of the names of members involved is part of the transparency of the process;

- Publication serves an educational purpose in making members aware of potential issues so the members can reflect on their own practice;
- Publication on a named basis serves as an important deterrent;
- Publication on a no name basis raises public concern that the College is seeking to protect rather than discipline members who have been found to have engaged in unprofessional conduct;
- The College submits that there are no exceptional circumstances to justify publication of this decision on a no name basis.

On the publication of name. Counsel for the Members submitted:

- The members do not agree that their names should be published in respect of these matters;
- The more serious allegation and the allegation against Mr. Nguyen of not cooperating were not made out;
- This is the first time either member has been involved in disciplinary proceedings and Ms. Huynh was not sure of her duty to cooperate in the manner found by the Hearing Tribunal;
- It is not necessary in the public interest for their names to be published and not necessary for other pharmacists to be aware that they have been found guilty of problems with record keeping;
- The members feel they will have great difficulty obtaining employment as pharmacists if the licensee is not prepared to employ them because of publication of their names;
- In other cases where the names of members were published the allegations were more serious.

Decision of the Hearing Tribunal:

The Hearing Tribunal makes the following orders pursuant to Section 82 of the *Health Professions Act*:

Mr. Nguyen

- a. a written reprimand
- b. an order that Mr. Nguyen pay a fine of \$2,000.00 within 60 days of receipt of the Hearing Tribunal's decision on sanctions;
- c. an order that Mr. Nguyen, jointly with Ms. Huynh, pay 50% of the expenses, costs and fees related to the investigation and hearing of this matter to be paid over a 4 year period in equal monthly payments with the member having the option to prepay all or a portion of the costs at anytime;
- d. an order that unless Mr. Nguyen successfully passes the ACP's Jurisprudence Examination within 4 months from the date he is served with a copy of the Hearing Tribunal's decision on sanctions, the following conditions will be placed on Mr. Nguyen's practice permit:

- i. Mr. Nguyen shall not act as the licensee of a pharmacy for a minimum period of 4 months; and
- ii. must pass the ACP's Jurisprudence Examination before he is eligible to act as a licensee at the expiry of the 4-month period.

Ms. Huynh

- a. a written reprimand
- b. an order that Ms. Huynh pay a fine of \$3500.00 within 60 days of receipt of the Hearing Tribunal's decision on sanctions;
- c. an order that Ms. Huynh, jointly with Mr. Nguyen, pay 50% of the expenses, costs and fees related to the investigation and hearing of this matter to be paid over a 4 year period in equal monthly payments with the member having the option to prepay all or a portion of the costs at anytime;
- d. an order that the following conditions will be placed on Ms. Huynh's practice permit:
 - i. Ms. Huynh shall not act as the licensee of a pharmacy for a minimum period of 2 years from the date she receives the Hearing Tribunal's written decision on sanctions; and
 - ii. must pass the ACP's Jurisprudence Examination before she is eligible to act as a licensee at the expiry of the 2-year period.

The Hearing Tribunal also makes the following order with regard to publication of this decision.

- a. an order that a summary of this decision be published in the *ACP News* for those allegations that were proven at the hearing and the publication will include the member's names.

Reasons for the Decision:

In determining the appropriate orders to impose, the Hearing Tribunal considered the evidence presented at the hearing. In addition, the Hearing Tribunal considered the joint submission on penalties presented by both parties.

Both parties came to a resolution/agreement on penalty, which the Hearing Tribunal finds fair. Having regard to all of the circumstances of the case, the Hearing Tribunal is satisfied that the joint submission on penalty is reasonable in the circumstances of this case.

In order to address the issue raised by Mr. Devlin that publication may be prejudicial to the members because the more serious allegations were not made out,

publication shall include only those allegations that were found by the Hearing Tribunal to be proven.

The Hearing Tribunal is satisfied that the penalty protects the public, maintains confidence in the integrity of the profession and provides fairness to the investigated members. The reprimands and fines provide emphasis on the seriousness of the conduct and makes it clear that the conduct is unprofessional and unacceptable. The conditions on the practice permits are necessary to address the deficiencies in the operation of the pharmacies of both members. The differences in the fines and the conditions on the practice permits for Ms. Huynh and Mr. Nguyen reflects the different findings for each member. Finally, the assessment of costs at 50% reflects that not all allegations were made out at the hearing. The Hearing Tribunal accepts that although the length and complexity of the hearing was increased because the members failed to provide any information during the investigation or hearing to explain the substantial discrepancies, the total estimated cost of the investigation and hearing would place a very heavy burden on the members.

The Hearing Tribunal finds that the above sanctions are fair and reasonable and has considered that neither member has any prior findings of unprofessional conduct and that the members have cooperated with the Alberta College of Pharmacists in presenting a joint submission on sanction.

The Hearing Tribunal recognizes that the tribunal process is an open one, accountable to the public. The Hearing Tribunal, in making the decision to publish the members' names, cites the following reasons for doing so:

The Hearing Tribunal agrees with the Alberta College of Pharmacists that the publication of summaries of the decision is a very important part of this process. Publication serves an educational purpose in that members are made aware of potential issues and they can use this information to reflect on their own practice. Publishing the member's names demonstrates to both the public and the membership that the process of the Hearing Tribunal is open, transparent and credible. Publishing the members names reinforces deterrence-both specifically for these members and in a general manner for the membership of the Alberta College of Pharmacists.

Respectfully submitted October 17, 2010 on behalf of the Hearing Tribunal



Deb Santos, Pharmacist, Chair Hearing Tribunal

Deana Sabuda, Pharmacist

Peter Macek, Pharmacist

Diane Adams, Public Member