

ALBERTA COLLEGE OF PHARMACY

IN THE MATTER OF  
THE HEALTH PROFESSIONS ACT

AND IN THE MATTER OF A HEARING  
REGARDING THE CONDUCT OF

**SHEMINA JUMA**  
**Registration Number 5522**

**DECISION OF THE HEARING TRIBUNAL**

## **I. INTRODUCTION**

The hearing tribunal held a hearing into the conduct of Shemina Juma on August 26, 2020. The following persons were in attendance on behalf of the Hearing Tribunal: Kevin Kowalchuk (pharmacist and chair), Patrick Thomson (pharmacist), and Nancy Brook (public member). Jason Kully acted as independent counsel to the Hearing Tribunal.

The hearing took place by way of video conference. The hearing was held under the terms of Part 4 of the *Health Professions Act* (“HPA”).

The following persons were also in attendance at the hearing: Annabritt Chisholm, legal counsel for the College and James Krempien, Complaints Director. Joel Fairbrother, legal counsel for Shemina Juma, the investigated member;

Margaret Morley, Hearings Director, was also present. Ms. Morley did not participate in the hearing but was available to assist in administering the virtual hearing.

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 allegation with respect to Ms. Juma, as set out in the Notice of Hearing, entered as Exhibit 1:

IT IS ALLEGED THAT, between September 26, 2017 and May 15, 2019, while you were a registered Alberta pharmacist practicing at Alberta Children’s Hospital, you:

1. Accessed Alberta Health Services’ electronic health records of 11 individuals on 20 or more occasions when you did not have an authorized purpose for doing so, the particulars of which include:
  - a. Patient A on:
    - i. September 26, 2017;
    - ii. March 15, 2018;
    - iii. February 21, 2019;
  - b. Patient B on:
    - i. September 26, 2017;
    - ii. February 6, 2018;
    - iii. March 8, 2018;
    - iv. September 20, 2018;
    - v. February 21, 2019;
    - vi. March 13, 2019;

- c. Patient C on October 13, 2017;
- d. Patient D on February 6, 2018;
- e. Patient E on:
  - i. February 6, 2018;
  - ii. June 13, 2018;
- f. Patient F on November 19, 2018;
- g. Patient G on January 29, 2019;
- h. Patient H on March 4, 2019;
- i. Patient I on March 5, 2019;
- j. Patient J on March 12, 2019;
- k. Your own on:
  - i. April 18, 2018;
  - ii. May 15, 2019.

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;
- c. Decreased the public's trust in the profession; and
- d. Failed to exercise the professional and ethical judgment 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 and Sub-sections 1.1 and 1.2 of the Standards of Practice for Pharmacists and Pharmacy Technicians;
- Principles 1(9), 4(4) and 10(1) of the ACP Code of Ethics;
- Sections 25, 27(1), and 107(2)(a) and (b) of *the Health Information 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), 1(1)(pp)(iii), and 1(1)(pp)(xii) of the *Health Professions Act*.

Ms. Chisholm advised that the Complaints Director was withdrawing the allegation that Ms. Juma breached Principle 1(9) of the Code of Ethics.

The hearing proceeded by Admission of Unprofessional Conduct, an Agreed Statement of Facts, and a Joint Submission on Sanction. Through the Admission of Unprofessional Conduct, Ms. Juma admitted the allegation set out above, subject to the Complaints Director's withdrawal the allegation that she breached Principle 1(9) of the College's Code of Ethics. For clarity, Ms. Juma did not admit her conduct constituted a breach of Principle 1(9) of the Code of Ethics.

### **III. EVIDENCE**

No witnesses were called to give testimony and evidence was entered by way of an Agreed Statement of Facts, which was entered as Exhibit 3. The facts as agreed upon by the parties are as follows:

1. Ms. Juma has been a registered clinical pharmacist with the Alberta College of Pharmacy since July 1, 1998.
2. At all relevant times, Ms. Juma was an employee of Alberta Health Services and practiced at the Alberta Children's Hospital in Calgary, Alberta.
3. On November 1, 2019 the Complaints Director received a phone call and email of complaint from [REDACTED], Alberta Health Services Drug Information, Utilization & Stewardship ("AHS").
4. Based on [REDACTED] complaint, the Complaints Director commenced an investigation into the conduct of Ms. Juma. The investigation resulted in this complaint being referred to a hearing.
5. In July 2019 AHS commenced an internal investigation into Ms. Juma's access to health information on the Sunrise Clinical Management system ("SCM") after Ms. Juma accessed her own health information on SCM. SCM is the term used for patient's electronic health records at Calgary AHS hospitals, including the Alberta Children's Hospital.
6. As a result of its discussions with Ms. Juma, AHS reviewed Ms. Juma's access to SCM over three audit periods:
  - a. Blue – March 2019 to May 2019;
  - b. Yellow – March 2018 to February 2019; and
  - c. Green – September 2017 to February 2018.
7. AHS's internal investigation found that over the three audit periods, Ms. Juma inappropriately accessed the health information of 11 individuals, including herself, on 20 occasions between September 2017 and May 2019 when she did not have an authorized purpose for doing so, the particulars of which included:
  - a. Patient A on:
    - i. September 26, 2017;
    - ii. March 15, 2018;

- iii. February 21, 2019;
  - b. Patient B on:
    - i. September 26, 2017;
    - ii. February 6, 2018;
    - iii. March 8, 2018;
    - iv. September 20, 2018;
    - v. February 21, 2019;
    - vi. March 13, 2019;
  - c. Patient C on October 13, 2017;
  - d. Patient D on February 6, 2018;
  - e. Patient E on:
    - i. February 6, 2018;
    - ii. June 13, 2018;
  - f. Patient F on November 19, 2018;
  - g. Patient G on January 29, 2019;
  - h. Patient H on March 4, 2019;
  - i. Patient I on March 5, 2019;
  - j. Patient J on March 12, 2019;
  - k. Her own on:
    - i. April 18, 2018;
    - ii. May 15, 2019.
8. Ms. Juma and Patient F provided consent for Ms. Juma to access their health information.
  9. Patient G was a patient of the Alberta Children's Hospital, but Ms. Juma was not involved in his care and did not provide him pharmacy services.
  10. Patients A, B, C, D, E, F, H, I, J and Ms. Juma were not patients of Alberta Children's Hospital and Ms. Juma was not involved in their care and did not provide them with pharmacy services.
  11. Of the 10 individuals accessed aside from Ms. Juma, five individuals were members of a single family known to Ms. Juma, three individuals were not related to Ms. Juma, and two individuals were family members of Ms. Juma. One of the family members (Patient F) provided consent for Ms. Juma to access his information, the other did not. After the commencement of the investigation, Ms. Juma personally disclosed her access to the family member who had not provided consent, and she apologized.
  12. As a result of AHS' internal investigation, AHS terminated Ms. Juma's employment on October 30, 2019. Ms. Juma had been an employee of AHS since 1998.
  13. AHS notified the Office of the Information and Privacy Commissioner of the findings of its internal investigation and also provided letters to nine of the individuals whose health information was accessed by Ms. Juma. AHS did not provide a letter to Ms. Juma or to one individual who was deceased.
  14. Ms. Juma grieved her termination but was unsuccessful. She is not eligible for rehire with AHS.
  15. Following her termination from AHS, and according to ACP registration records, Ms. Juma was employed as a pharmacist at Medisystems

Pharmacy West from January 6, 2020 to May 15, 2020. Ms. Juma disclosed the ACP investigation to her supervisor at Medisystems Pharmacy West on April 8, 2020 and her employment was terminated on May 15, 2020.

16. Following her termination from employment at Medisystems Pharmacy West, Ms. Juma obtained further temporary employment as a pharmacist at Mint Health + Drugs, Franklin Station which commenced on May 26, 2020 and is for an 8-week term.
17. Ms. Juma has stated that the only use or disclosure made of any of the health information she accessed was when she provided diagnostic information about Patient F to Patient F. The Complaints Director is not aware of any evidence to suggest that Ms. Juma used or disclosed any of the health information she accessed, except where she provided diagnostic information about Patient F to Patient F.

The parties also entered an Admission of Unprofessional Conduct as Exhibit 2. Ms. Juma admitted to all of the allegations in the Notice of Hearing as amended after the withdrawal of the allegation that her conduct breached Principle 1(9) of the College's Code of Ethics.

#### **IV. SUBMISSIONS**

On behalf of the Complaints Director, Ms. Chisholm provided the following comments on the Admission of Unprofessional Conduct and the Agreed Statement of Facts:

- Ms. Juma was making an admission of unprofessional conduct pursuant to s. 70 of the HPA.
- The Tribunal's task was to determine whether or not the allegation in the Notice of Hearing had been factually proven on a balance of probabilities and, if so, whether the proven allegation constituted unprofessional conduct.
- While the parties had not put forward all of the records accessed by Ms. Juma, paragraph 7 of the Agreed Statement of Facts contained the agreement between the parties of whose records were accessed by Ms. Juma when she did not have an authorized purpose, as well as agreement when the records were accessed.
- Patient care was not affected by Ms. Juma's conduct, and the accuracy of patient records was not affected.
- Ms. Juma's admission and the Agreed Statement of Facts clearly demonstrated there was evidence to support the allegation in the Notice of Hearing.
- Ms. Juma's conduct should also be found to amount to unprofessional conduct.
- By inappropriately accessing health information of multiple individuals, when she had no authorized purpose for doing so, Ms. Juma's conduct

demonstrated a disregard for the authority and the trust granted to members of the profession. Pharmacists are entrusted with access to health information and entrusted to access that health information only for an authorized purpose in accordance with the legislation and the ethical standards of the profession.

- A lack of evidence of malicious intent or an intent to harm the individual's whose information is accessed, while potentially relevant to sanction, does not make a pharmacist's conduct any less unprofessional.
- The access of health information without an authorized purpose for doing so undermines the integrity of the profession and decreases the public's trust in the profession.
- Ms. Juma breached Standards 1.1 and 1.2 of the Standards of Practice, as well as Principles 4(4) and 10(1) of the Code of Ethics.
- Ms. Juma breached s. 25 of the *Health Information Act* because her access of identifying health information was not for any of the purposes outlined in s. 27(1) of the *Health Information Act* which sets out the list of reasons that a custodian may use individually identifying health information. All pharmacists are custodians by virtue of the Health Information Regulation.

On behalf of Ms. Juma, Mr. Fairbrother submitted:

- He agreed with Ms. Chisholm's summary.
- Ms. Juma had been an employee of AHS since 1998 prior to her termination.
- Ms. Juma's employment at Medisystems Pharmacy West was terminated almost immediately after she disclosed the College's investigation to her supervisor.
- He could not confirm that the termination was a result of the disclosure because no reason was provided in the letter. However, the Tribunal could choose to draw an inference because of the timing.
- Ms. Juma fully admitted that her actions were unprofessional conduct and that was not disputed.

## V. **FINDINGS**

The members of the Hearing Tribunal accepted Ms. Juma's admission of unprofessional conduct and concluded the allegation was proven and that the conduct was unprofessional conduct.

In determining that the allegation was proven and that Ms. Juma's admission should be accepted, the Hearing Tribunal carefully considered the Agreed Statement of Facts entered into by the parties and the Admission of Unprofessional Conduct. After reviewing the evidence, the Admission of Unprofessional Conduct, and the Agreed Statement of Facts, the Hearing Tribunal found that the allegation detailed in the

Notice of Hearing was factually proven and that Ms. Juma's conduct constituted unprofessional conduct.

The reasons for the Hearing Tribunal's findings that Ms. Juma accessed Alberta Health Services' electronic health records of 11 individuals on 20 or more occasions when she did not have an authorized purpose for doing so include:

- The Agreed Statement of Facts which demonstrated that an investigation and audit was completed by AHS in relation to Ms. Juma's access to electronic health records. The investigation confirmed Ms. Juma accessed the health records of individuals on occasions without an authorized purpose and that all of the individuals and occasions matched those set out in the allegation.
- The Briefing Note of AHS attached as Exhibit "A" to the Agreed Statement of Facts further demonstrated that Ms. Juma was found to have accessed the health records of the individuals as alleged in the allegation and on the dates as alleged in the allegation.
- Ms. Juma acknowledged and admitted that she engaged in the conduct as alleged in the allegation.

Based on the foregoing, and the evidence set out above, the Hearing Tribunal is satisfied that the conduct alleged in the allegation has been established on the balance of probabilities.

The reasons for the Hearing Tribunal's findings that Ms. Juma behaviour resulted in unprofessional conduct include:

- The allegation is a concern for the fact that Ms. Juma accessed health information of members of the public without an authorized purpose.
- Ms. Juma's conduct displayed a clear lack of judgment. She was not a new employee or pharmacist and should have understood that accessing health records without an authorized purpose was not appropriate. This was not an isolated incident of a single lapse in judgment. Ms. Juma's conduct was repeated over a number of years and for a number of patients, including individuals who had no relationship to her or her family.
- Pharmacists are entrusted with access to the personal and health information of patients. It is a fundamental expectation that pharmacists will only access the information when authorized to do so and only use it for a proper purpose. The public has the right to expect that health records will only be accessed when there is an authorized purpose for doing so.

- Ms. Juma’s decision to review the personal information of individuals for purposes unrelated to medical care constitutes a serious violation of privacy. It was a breach of her obligations owed to the public, as well as to the profession, and is conduct that harms the integrity of the pharmacy profession.
- Ms. Juma breached Standards 1.1 and 1.2 of the Standards of Practice as she failed to act professionally and failed to maintain professional relationships.
- She also breached Principles 4(4) as she failed to use information obtained in the course of practice only for the purpose for which it was obtained, as well as 10(1) of the Code of Ethics as she did not comply with the letter and spirit of the law governing pharmacy.
- Ms. Juma, who is a custodian for the purposes of the *Health Information Act*, breached s. 25 of the *Health Information Act* because her access of identifying health information was not for any of the purposes permitted. This breach is unprofessional conduct as s. 1(1)(pp)(iii) of the *HPA* defines unprofessional conduct to include the “contravention of another enactment that applies to the profession”.

## **VI. SUBMISSIONS ON SANCTIONS**

A Joint Submission on Sanction, which was entered as Exhibit 4, was proposed by Ms. Chisholm and Mr. Fairbrother. This joint submission stated that:

1. Ms. Juma shall receive a reprimand, which the Hearing Tribunal’s written decision will serve as.
2. Ms. Juma shall, within 12 months from the date the Hearing Tribunal issues its written decision
  - a. successfully pass the Centre for Personalized Education for Professional’s (CPEP) Probe Course at her own cost; and
  - b. provide written confirmation to the Complaints Director that she has successfully passed the CPEP Probe Course;
3. Ms. Juma’s practice permit shall be suspended for a period of 3 months, with
  - a. 1 month to be served on dates acceptable to the Complaints Director and completed within 5 months from the date the Hearing Tribunal issues its written decision; and
  - b. 2 months to be held in abeyance pending Ms. Juma’s completion of Order 2 above and there being no further

privacy concerns coming to the attention of the Complaints Director for a period of 12 months from the date the Hearing Tribunal issues its written decision.

If the Complaints Director receives a new complaint about Ms. Juma related to privacy concerns within 12 months from the date the Hearing Tribunal issues its written decision or Ms. Juma fails to complete Order 2, the Complaints Director shall then be at liberty to impose the remaining 2 month suspension on Ms. Juma's practice permit. If Ms. Juma successfully completes Order 2 and no further privacy concerns come to the attention of the Complaints Director for a period of 12 months from the date the Hearing Tribunal issues its written decision, the remaining 2-month suspension shall then expire.

4. Ms. Juma shall provide a copy of the Hearing Tribunal's written decision to the licensee of any pharmacy in which she applies to work or works as a pharmacist for a period of two years, commencing on the date she receives a copy of the Hearing Tribunal's written decision.
5. A condition shall be placed on Ms. Juma's practice permit that states she shall not be permitted to serve as a licensee for a period of two years, commencing on the date she receives a copy of the Hearing Tribunal's written decision.
6. Ms. Juma shall be responsible for payment of all costs of the investigation and hearing to a maximum of \$10,000. Payment will occur in accordance with a monthly payment schedule as directed by the Hearings Director. The costs shall be paid in full within 24 months of the date she receives a copy of the Hearing Tribunal's written decision.

Ms. Chisholm submitted:

- In disciplinary proceedings sanction orders serve four purposes: to protect the public from similar unprofessional conduct occurring in the future, to protect the integrity of the profession, to provide specific and general deterrence for the regulated member and the other members of the profession, and to also take into account what is fair to the investigated member.
- The non-exclusive factors from case of *Jaswal v the Newfoundland Medical Board* are often considered by panels in the assessment of appropriate sanctions. A review of the factors demonstrates that the sanctions presented achieve the four main purposes of sanction.
- With respect to the nature and gravity of the proven allegations, any misuse or access without an authorized purpose of health information by a pharmacist is serious. Ms. Juma displayed a pattern of conduct during which she accessed AHS patient records and health information of 11 individuals on 20 occasions over an almost two-year period. Despite the

lack of evidence that she acted with any malicious intent or intent to harm those patients, Ms. Juma's conduct demonstrated a disregard for the trust granted to her as a pharmacist.

- At the same time, this was not a case where Ms. Juma disclosed the information she reviewed to others or to the public (with the exception of Patient F). Further, no patient records were adapted, and patient care was not affected. Such conduct would have made the conduct more serious.
- With respect to the age and experience of the pharmacist, Ms. Juma is a senior pharmacist who had been registered since 1998. The error was not due to inexperience.
- The Complaints Director was not aware of any prior findings of unprofessional conduct against Ms. Juma and that weighed in her favor given her long career.
- Regarding the number of times the offence occurred, Ms. Juma's conduct happened multiple times, specifically 20 occasions, over a two-year period.
- Ms. Juma's role in acknowledging what occurred was clearly a mitigating factor.
- With respect to other mitigating factors, there was evidence that Ms. Juma was terminated from her position with AHS as a result of her conduct. There was also her acknowledgment of what occurred and her admissions.
- Addressing specific and general deterrence, the sanctions are such that Ms. Juma would not repeat her conduct in the future, and they would also send a deterring message to others in the profession, making it clear that such conduct would not be tolerated.
- It is important that the discipline proceedings send a clear message to the legislators and to the public that the profession takes the requirements of the HPA and the regulations seriously, and that there will be appropriate sanctions if obligations and requirements are not upheld.
- With respect to the age and experience and the impact on the offended patients, this was a neutral factor as there was no evidence on what the impact on the patients was. However, patients were affected, and they were alerted that their health information had been inappropriately accessed.
- Looking at the range of sentences in other similar cases, the sanctions proposed were supported by the other cases. Specifically:
  - In 2011, Marianne Songgadan was found to have abused her authority to access Netcare when she accessed and used private health information of four individuals that she knew on multiple occasions, when those individuals were not patients of the Shoppers Drug Mart that she worked at, and she then disclosed that private health information on her Facebook page. Initially she attempted to deny her conduct in a manner that was found to be unprofessional. However, she admitted her conduct before the Hearing Tribunal and she received a verbal reprimand, four \$1,000 fines for each of the individuals accessed, a four month

suspension, with two months being held in abeyance provided that the Complaints Director did not receive further evidence of misconduct, and costs of \$11,000 to be paid over one to two years. The Tribunal also ordered that a summary of the decision be published in the College newsletter on a named basis, and that other regulatory bodies be made aware of Ms. Songgadan's conduct.

- In 2017, Kyle Kostyk admitted that he misused his authority as a pharmacist and a custodian under the *Health Information Act* when he used a 16 year old patient's health information, which he obtained from a patient receipt, to attempt to contact the patient to pursue a personal encounter. It was agreed that he did not realize the patient's age at the time. The Hearing Tribunal accepted a joint submission on sanction and ordered a three-month suspension, with one month to be served and the other two to be held in abeyance. Mr. Kostyk was also required to take the CPEP Probe Course. He was also ordered to pay a \$1,000 fine, and costs to a maximum of \$10,000. He was finally ordered to provide a copy of the Hearing Tribunal's decision to any pharmacy employer for two years after the Hearing Tribunal's decision.
- The case involving Basel Alsaadi was provided as it also involved health information privacy breaches. However, there were also numerous other allegations, including a failure to cooperate and to mislead the Complaints Director, so it was not similar to Ms. Juma's conduct in that regard.
- Based on all the factors and the context of the case, the Joint Submission on sanction was fair and appropriate.
- The CPEP Probe Course is a weekend long intensive seminar that is individually tailored to review the specifics of an individual's conduct with them. Participants in the CPEP Probe Course are required to submit a final essay, which is graded. Ms. Juma would be required to demonstrate that she understands the error in her conduct. The course would serve the purpose of specific deterrence by generating self-reflection to minimize the possibility of recurrence.
- Any recorded suspension is serious. That Ms. Juma demonstrated remorse from her actions and admitted to her conduct in the first instance is one of the reasons the served suspension would be lower than that in the Songgadan case. Ms. Songgadan received a four-month suspension, with two months held in abeyance, but in that case, there were added elements of initially denying her behavior in a manner that was unprofessional and disclosing the information she reviewed in a public manner.
- Providing a copy of the Hearing Tribunal's decision to employers is consistent with other decisions and it is important because Ms. Juma's conduct involved taking advantage of her role as a pharmacist. That should be something her future employer should be made aware of for a period of time.

- The condition regarding Ms. Juma not being permitted to serve as a licensee is appropriate. Licensees are in an elevated position of trust, so it is appropriate that some time should pass, and Ms. Juma should demonstrate some rehabilitation before she is eligible to serve as a licensee.
- \$10,000 in costs would take into account Ms. Juma's cooperation in the investigation and the Hearing, and the fact that there was no need to call witnesses.
- The cases of *Rault v the Law Society of Saskatchewan* and *R v Anthony Cook* stand for the principle that a Joint Submission on Sanction must be given deference by a tribunal to reflect the fact that a member should have some degree of certainty that a Joint Submission on Sanction will be accepted if they admit to their conduct, admit to the facts, and agree to a sanction. A tribunal should only depart from a Joint Submission on Sanction if it believes that that joint submission is harmful and would bring the administration of justice into disrepute or be contrary to public interest.

Mr. Fairbrother submitted:

- It was acknowledged that Ms. Juma's conduct was serious.
- A joint submission should not be disregarded lightly as it is arrived at through a process of negotiation between the parties on what is appropriate.
- Ms. Juma had been forthright and forthcoming and compliant with the investigation, and there was no evidence of any particular use of the information or modification of records. These were important factors.
- The absence of any previous complaints or convictions was a mitigation factor, as was Ms. Juma's acknowledgment and cooperation.
- Ms. Juma was terminated from her position with AHS because of the conduct and she cannot work for AHS ever again. She also lost another job shortly after disclosing that the investigation into her conduct was taking place.
- Ms. Juma suffered financially, and her career had been set back.
- The agreed sanction promoted deterrence, protected the public and maintained the public's confidence.
- Ms. Juma's conduct was less serious than the case of Songgadan and Kostyk as there was no evidence Ms. Juma did anything with the information, other than accessing it.
- Ms. Juma admitted that her conduct was unprofessional, cooperated with the investigation, did not falsify evidence, and there was no evidence that she has used the information for any purpose. In the circumstances she asked that the Joint Submission on Sanction be accepted.

## **VII. APPLICATION TO CLOSE THE HEARING**

After the Hearing Tribunal heard submissions on sanction, Mr. Fairbrother made an application to close a discrete portion of the hearing pursuant to s. 78 of the *HPA*, which gives the tribunal the authority to close a portion or all of the hearing. Specifically, Mr. Fairbrother requested that the hearing be closed to allow Ms. Juma to provide a statement. Mr. Fairbrother submitted that due to the content of the statement, a member of the public could be endangered. Mr. Fairbrother confirmed the statement would not have an impact on the Joint Submission on Sanction. The application to close the hearing was limited to Ms. Juma's proposed forthcoming statement.

Ms. Chisholm stated that the Complaints Director had been made aware of the application and was aware of the content of the statement. She advised that the Complaints Director did not object to the application to hold part of the hearing in private.

The Hearing Tribunal adjourned to deliberate. Upon returning, it advised the parties that the application to close the discrete portion of the hearing involving Ms. Juma's statement was granted.

Although there is a presumption that all parts of a hearing held under Part 4 of the *HPA* will be held in public, there are circumstances where the presumption is outweighed by other factors. The Hearing Tribunal agreed with the submission by Mr. Fairbrother that a portion of the hearing should be closed to the public, given that there was a risk that a member of the public could be endangered by the statement.

The Hearing Tribunal notes that although the application to close a small part of the hearing was granted, the majority of the hearing was open to the public and members of the public would nevertheless be able to obtain a copy of the Hearing Tribunal's written decision in accordance with s. 85 of the *HPA*. However, members of the public will not be able to access the transcripts of the portion of the hearing closed to the public. This strikes the appropriate balance between concern for the safety of individuals, and the public's interest in transparency of discipline proceedings conducted pursuant to Part 4 of the *HPA*.

## **VIII. APPLICATION REGARDING PUBLICATION**

Based on the statement made by Ms. Juma while the hearing was closed, Mr. Fairbrother made an application requesting that the Hearing Tribunal make a recommendation to the Registrar that the Tribunal's written decision should not be available to the public and that it should not be published. In the alternative, Mr. Fairbrother requested that the decision be published without Ms. Juma's name and other identifying information. Mr. Fairbrother recognized that the Hearing Tribunal could not actually make an order regarding publication, as the authority to determine

publication rested with the Registrar, but that the Tribunal could provide a recommendation to the Registrar.

Mr. Fairbrother stated that a member of the public may not be protected if the decision was published. Since the protection of the public was fundamental to sentencing, this concern should be taken seriously. The protection of the member of the public was important. He stated that while publication of the decision forms a part of the mechanism of deterrence for other members, in this case, a recommendation to not publish would protect a member of the public and that was more important than deterrence.

Ms. Chisholm stated that s. 119 of the HPA provides the Registrar with the discretion regarding publication and that s. 81 of the College's Bylaws give the Registrar the express authority to publish the written decision or a summary of the decision. Nonetheless, she recognized the Tribunal could make a recommendation to the Registrar. Ms. Chisholm asked the Tribunal to consider that the College must consider the need for transparency of its processes and that publication will educate and provide a message of deterrence, which fulfills the goal of protecting the public from similar conduct in the future. Publication also demonstrates how seriously the College takes conduct which serves to maintain the integrity of the profession.

## **VII. FINDINGS AND ORDERS**

After carefully considering the Joint Submission on Sanction, the facts of Ms. Juma's case, and the submissions by the parties, the Hearing Tribunal accepted the Joint Submission on Sanction.

The Hearing Tribunal acknowledged that deference should be provided to Joint Submissions on Sanction and the Hearing Tribunal ought not to depart from the Joint Submission unless it consider the sanctions to be unfit or to subvert the principles of justice or to bring the administration of justice into disrepute.

The Tribunal considered the orders that were jointly proposed in light of the factors discussed in the *Jaswal* decision and the purposes of sanctions. It found that the orders were appropriate. Specifically:

- The conduct was serious as Ms. Juma breached the trust given to her as a member of the profession and Ms. Juma breached the privacy of other individuals. There was repeated conduct and there was no doubt the conduct harmed the integrity of the profession. Specific and general deterrence were important.
- Ms. Juma was an experienced pharmacist, so a lack of experience did not excuse her behavior.

- The absence of any previous finding of unprofessional conduct against Ms. Juma and her acknowledgement of what occurred were mitigating factors to be considered against the serious and repeated conduct.
- The sanctions set out in the joint submission fell within the range of penalties ordered for similar unprofessional conduct.
- The CPEP Probe course is appropriate as it will require Ms. Juma to reflect on her privacy violations. This will minimize the possibility of a recurrence of the actions.
- The Hearing Tribunal assessed the joint submission for appropriateness of sanction and its effectiveness as a future deterrent for both Ms. Juma and the profession at large. The suspension from practicing as a pharmacist for 3 months (with 2 months to be held in abeyance) and a further restriction from assuming a role as licensee for 2 years amount to a significant deterrent. Given Ms. Juma's disregard for her position as a custodian of personal health information and her failure to ensure the privacy of individuals, such a suspension was necessary. The Hearing Tribunal also recognized the requirement to provide a copy of the Hearing Tribunal written decision to any future licensee she works for as a pharmacist for 2 years.
- It is appropriate that Ms. Juma be responsible for costs of the hearing and investigation, as it was her conduct that necessitated the proceedings. Nonetheless, the cap on the total costs payable was appropriate given the financial consequences she previously suffered, including losing her job with AHS.

In conclusion, the Hearing Tribunal agreed that the proposed orders were appropriate having regard to the factors that are relevant in assessing sanction in the professional discipline context. Specifically, the sanctions would deter Ms. Juma and the profession at large from similar unprofessional conduct in the future. They also serve the public's interest and uphold the integrity of the profession.

In response to Mr. Fairbrother's application regarding publication, the Hearing Tribunal declines to make any recommendation to the Registrar to consider withholding publication of the decision or to anonymize the names and details in the decision.

Pursuant to s. 119 of the HPA and the College's Bylaws, decisions regarding publication are made by the College's Registrar. The Hearing Tribunal has no jurisdiction to determine publication. Although the Tribunal can make a recommendation, it is of the view that since the authority is given to the Registrar, the Tribunal should not interfere with the Registrar's discretion or become involved in matters of publication unless it is presented with exceptional circumstances

warranting a recommendation. In this case, the Hearing Tribunal was not presented with any exceptional factors to warrant interference with the Registrar.

Further, the information presented does not warrant a Tribunal making a recommendation that deviates from the aim for transparency in disciplinary hearings. The Tribunal agrees that protection of the public is important, but it determined that the public, as a whole, would not be served if it made a recommendation that the decision not be published. While the Tribunal was presented a statement that one member of the public might potentially be harmed, it was not satisfied that the potential and speculative risk to one individual outweighed the benefit of ensuring that other members of the profession were deterred from such conduct in the future.

In addition, maintenance of the integrity of the profession is important. Publication of a decision demonstrates that the College takes unprofessional conduct seriously and that such conduct is addressed in a transparent manner. This demonstrates to the public, as well as other members of the profession, that the conduct of the College was fair and aimed at their protection of the public.

Finally, it was Ms. Juma's conduct that necessitated the need for a public hearing. The Tribunal did not find it would be appropriate to recommend that her actions and conduct be concealed from the public, including future employers.

In conclusion, there was a lack of justification to make a recommendation to the Registrar to not publish.

In light of the above, the Hearing Tribunal makes the following orders under section 82 of the *HPA*:

1. Ms. Juma shall receive a reprimand, which the Hearing Tribunal's written decision will serve as.
2. Ms. Juma shall, within 12 months from the date the Hearing Tribunal issues its written decision
  - a. successfully pass the Centre for Personalized Education for Professional's (CPEP) Probe Course at her own cost; and
  - b. provide written confirmation to the Complaints Director that she has successfully passed the CPEP Probe Course;
3. Ms. Juma's practice permit shall be suspended for a period of 3 months, with
  - a. 1 month to be served on dates acceptable to the Complaints Director and completed within 5 months from the date the Hearing Tribunal issues its written decision; and
  - b. 2 months to be held in abeyance pending Ms. Juma's completion of Order 2 above and there being no further privacy concerns coming to the attention of the Complaints

Director for a period of 12 months from the date the Hearing Tribunal issues its written decision.

If the Complaints Director receives a new complaint about Ms. Juma related to privacy concerns within 12 months from the date the Hearing Tribunal issues its written decision or Ms. Juma fails to complete Order 2, the Complaints Director shall then be at liberty to impose the remaining 2 month suspension on Ms. Juma's practice permit. If Ms. Juma successfully completes Order 2 and no further privacy concerns come to the attention of the Complaints Director for a period of 12 months from the date the Hearing Tribunal issues its written decision, the remaining 2-month suspension shall then expire.

4. Ms. Juma shall provide a copy of the Hearing Tribunal's written decision to the licensee of any pharmacy in which she applies to work or works as a pharmacist for a period of two years, commencing on the date she receives a copy of the Hearing Tribunal's written decision.
5. A condition shall be placed on Ms. Juma's practice permit that states she shall not be permitted to serve as a licensee for a period of two years, commencing on the date she receives a copy of the Hearing Tribunal's written decision.
6. Ms. Juma shall be responsible for payment of all costs of the investigation and hearing to a maximum of \$10,000. Payment will occur in accordance with a monthly payment schedule as directed by the Hearings Director. The costs shall be paid in full within 24 months of the date she receives a copy of the Hearing Tribunal's written decision.

Signed on behalf of the hearing tribunal by the Chair on the 25 day of September 2020.

Per:   
[Kevin Kowalchuk \(Sep 25, 2020 10:42 PDT\)](#)  
Kevin Kowalchuk