

ALBERTA COLLEGE OF PHARMACY

IN THE MATTER OF
THE HEALTH PROFESSIONS ACT

AND IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF

TADESSE KENE

Registration Number 6677

DECISION OF THE HEARING TRIBUNAL

I. INTRODUCTION

The Hearing Tribunal held a hearing into the conduct of Tadesse Kene. In attendance on behalf of the hearing tribunal were Kamal Dullat, pharmacist, Nancy Brook, public member, and Teryn Wasileyko, pharmacist and chair.

The hearing took place on May 14, 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. Aman Athwal, legal counsel representing the Complaints Director. Mr. Scott MacMillan, counsel for investigated member Mr. Tadesse Kene, was in attendance, however Mr. Kene himself was not present due to family health concerns but was available for consultation if needed by telephone.

Mr. Gregory Sim, who acted as independent counsel for the Hearing Tribunal, was also present.

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 Mr. Kene, as set out in the Notice of Hearing, entered as Exhibit 1:

IT IS ALLEGED THAT, between July 1, 2018 and October 2, 2018, while practicing as a pharmacist at Zinoha Pharmacy and Travel Health Services (Pharmacy License #2135) in Calgary, Alberta, you:

1. Did not maintain professional liability insurance;
2. Breached your professional declaration of May 29, 2018 by not maintaining professional liability insurance while on the clinical pharmacist register; and
3. Practiced without professional liability insurance on approximately 80 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 and SUBMISSIONS

Ms. Athwal, legal counsel for the Complaints Director, began by advising that the parties had reached an agreed statement of facts and admissions to be put before the Hearing Tribunal and that no witnesses would be called to testify by either party. Ms. Athwal submitted to the Tribunal five documents for consideration including the Notice of Hearing (Exhibit 1), the Record of Decision (Exhibit 2), an Agreed Statement of Facts (Exhibit 3), an Admission of Unprofessional Conduct (Exhibit 4), and the Investigation Records, which contained tabs 1 through 12 detailing records gathered during the investigation process was marked as Exhibit 5. These were marked as Exhibits by agreement.

Ms. Athwal proceeded to make a presentation to the Tribunal regarding the five documents that had been jointly submitted. She summarized the documents as follows:

- The Notice of Hearing (Exhibit 1) outlined the allegations of unprofessional conduct brought against Mr. Kene.
- The Record of Decision (Exhibit 2) written by the Complaints Director, Mr. Krempien, explained the reason for referral of the complaint to a hearing.
- The Agreed Statement of Facts (Exhibit 3), provided the following key evidence:
 - Mr. Kene was at all relevant times a registered member with the College and practicing as a pharmacist at Zinoha Pharmacy & Travel Health Services.
 - Mr. Kene made a professional declaration on May 29, 2018 in which he acknowledged that he would be in possession of valid professional liability

- insurance that provides no less than 2 million dollars of personal coverage with a claims-made or occurrence-based policy.
- Mr. Kene declared that he understood that he must maintain this level of professional liability insurance while on the clinical register regardless of whether or not he was working or residing in Alberta.
 - Mr. Kene declared that he understood that his professional liability insurance must be personal and provide coverage for him whenever he practices pharmacy and regardless of who his employer was.
 - Mr. Kene declared that he understood that his insurance status was subject to audit and that false or misleading statements concerning his coverage may be referred to the Complaints Director for further investigation.
 - On September 28, 2018 Mr. Kene was randomly selected for the College's 2018-2019 professional declaration audit.
 - On October 2, 2018 Mr. Kene was notified of his selection via email.
 - On October 3, 2018 Mr. Kene provided the Competence Department with copies of his CPR, First Aid Certification, and professional liability insurance policy. The professional liability insurance policy provided was noted to be in effect from October 3, 2018 to July 1, 2019.
 - Mr. Kene's previous policy expired on June 30, 2018 and this meant that from July 1, 2018 until October 2, 2018 he had practiced pharmacy without professional liability insurance. This amounted to practicing pharmacy without professional liability insurance on approximately 80 separate occasions during the uninsured period.
 - Between July 1, 2018 and October 2, 2018 Mr. Kene did not take steps to renew his professional liability insurance. His omission was inadvertent. He only became aware of the lapse through the audit process. As soon as he learned of his error, he took immediate steps to remedy the situation and obtained insurance for October 2, 2018 to June 30, 2019 as well as retroactive insurance to cover the lapse from July 1, 2018 to October 2, 2018.
- The Admission of Unprofessional Conduct (Exhibit 4) signed by Mr. Kene and Mr. Krempien matched the allegations in the Notice of Hearing (Exhibit 1). In this document, Mr. Kene agreed and acknowledged that his conduct breached the *Health Professions Act* and the College's Standards of Practice and the Code of Ethics.
 - Ms. Athwal then led the Tribunal through the relevant portions of these statutory authorities that govern the practice of pharmacy, including Standard 1.1 and Standard 1.2 from the Standards of Practice, Principle 1 and Principle 10 (1) and (2) from the Code of Ethics, and 13(1) from the *Pharmacists and Pharmacy Technicians Professional Regulation*. She also referred to section 1(1)(pp) of the *Health Professions Act* that defines unprofessional conduct as including contraventions of Standards of Practice or the Code of Ethics and to section 40(1)(c) that confirms that an application for a practice permit requires evidence of the professional liability insurance required by the Regulation, in this case being the *Pharmacists and Pharmacy Technicians Professional Regulation*.
 - In addition, it was noted that the Complaints Director acknowledged that Mr. Kene and his legal counsel had been fully cooperative with the investigation process.

- The Investigation Records (Exhibit 5), tabs 1 to 12, provided a complete summary of the entire investigation. Ms. Athwal summarized key points from this document:
 - Tab 1, page 1, contained a complaint from Dr. Pamela Timanson, the College's Competence Director, to the Complaints Director Mr. Krempien regarding the results of Mr. Kene's professional declaration audit. The audit found that upon renewing his practice permit, Mr. Kene made a false declaration by failing to renew his professional liability insurance. This meant that he may have practiced pharmacy without the necessary insurance while on the clinical register and while he was also the licensee of Zinoha Pharmacy & Travel Health Services.
 - Tab 1 contained an email from Mr. Kene acknowledging and apologizing for his lapse in insurance coverage and copies of insurance policy documentation for both his personal liability insurance (dated October 3, 2018) and his commercial insurance for Zinoha Pharmacy & Travel Health Services (dated October 6, 2018).
 - Tab 5 contained Mr. Krempien's letter to Mr. Kene on October 30, 2018 that requested Mr. Kene respond in writing to the complaint.
 - Tab 6 detailed a telephone conversation between Mr. Krempien and Mr. Kene on November 1, 2018. Mr. Kene indicated that his insurance lapse was, in part, due to a lapse in communication that occurred at the time of a change in ownership where his former insurer, Wynward Insurance, was bought by Excel Sheppard Insurance. Also, Mr. Kene noted that 2018 had been a difficult year for him personally due to construction at his pharmacy and family issues which also may have contributed to his mistake.
 - Tab 8 provided a copy of the backdated insurance policy from Sheppard Excel Insurance dated November 1, 2018, which was after the complaint had been made. This policy covered the July 1, 2018 to July 1, 2019 period.
 - Tab 12 provided a summary of a meeting between Mr. Krempien and Mr. Kene on November 16, 2018. Mr. Kene admitted that until he was audited by the College, he was not aware of his mistake and that it was not intentional. He made a false declaration when renewing his practice permit on May 29, 2018 and had practiced without the required insurance from July 1, 2018 until October 2, 2018, on approximately 80 days. On November 1, 2018 he managed to obtain retroactive insurance from Sheppard Excel Insurance to cover this time period.

Ms. Athwal then concluded her presentation and asked the Hearing Tribunal to accept Mr. Kene's admissions pursuant to section 70 of the *Health Professions Act*. In response to a question from the Hearing Tribunal, Mr. Krempien explained that from the College's perspective, the fact that Mr. Kene managed to obtain retroactive insurance coverage did not meet the requirements of the legislation. He explained that in 2005/2006 when the College implemented requirements for professional liability insurance, it was decided that pharmacists needed to carry personal professional liability insurance and that corporate insurance was not sufficient. He also noted that pharmacists are required to carry valid personal insurance at all times while on the clinical register. Backdated coverage is not a substitute for this. The

members of the Hearing Tribunal had no further questions for Mr. Krempien. The Complaints Director's case was then closed.

Mr. MacMillan made a presentation on behalf of Mr. Kene. He stated that this had been a difficult process but Mr. Kene was comfortable with the admissions that he had made and with the contents of the documents that had been jointly submitted. In response to a question about Mr. Kene's absence, Mr. MacMillan explained that Mr. Kene was absent due to family reasons. Mr. Kene was fully cooperative with the College throughout the entire process. Mr. MacMillan assured the Hearing Tribunal that if the Hearing Tribunal required Mr. Kene for any reason, that he would be accessible via telephone during the hearing. The members of the Hearing Tribunal had no further questions.

Mr. Kene's case was then closed and the members of the Hearing Tribunal caucused to review the evidence and admissions of unprofessional conduct.

IV. FINDINGS

After reviewing the investigative records, the agreed facts and the admissions of unprofessional conduct, the Hearing Tribunal found that the allegations detailed in the Notice of Hearing were factually proven and that Mr. Kene's conduct constituted unprofessional conduct.

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

- Mr. Kene admitted that he did not maintain professional liability insurance from July 1, 2018 until October 2, 2018 and that during this time he was the licensee and practiced as a pharmacist at Zinoha Pharmacy and Travel Health Services (Pharmacy License #2135) on approximately 80 days.
- Mr. Kene admitted that he made a false professional declaration on May 29, 2018 when submitting his renewal of his practice permit by not maintaining professional liability insurance while on the clinical pharmacist register.
- These admissions were supported by the Agreed Statement of Facts signed by the College and Mr. Kene as well as the investigative records entered into evidence by agreement of the parties.
- 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 legislation applicable to the practice of the profession 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. Breaches of these requirements, even if unintentional, have 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 a pharmacist will comply with the letter and spirit of the law and in 10 (2) that a pharmacist is honest in their dealings.
- It is a fundamental expectation that when a pharmacist completes their professional declaration, that 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.
- Mr. Kene's failure to maintain professional liability insurance was in violation of the *Health Professions Act* section 40(1)(c) and Section 13 of the *Pharmacists and Pharmacy Technicians Profession Regulation*. Mr. Kene's breach of his May 29, 2018 professional declaration was in breach of the Alberta College of Pharmacy's Code of Ethics Principles 10 (1) and (2).
- As a result of the Hearing Tribunal's analysis and findings as set out above it is unnecessary to consider whether Mr. Kene's proven conduct breached other standards and codes applicable to the practice of pharmacy.

V. SUBMISSIONS ON ORDERS

Ms. Athwal submitted a Joint Submission on Sanctions, which was marked as Exhibit 6. She explained that both parties had proposed the following sanctions for consideration by the Hearing Tribunal:

- A written reprimand with the Hearing Tribunal's decision to serve as the reprimand
- A fine of \$1,000 payable within 12 months of the Tribunal's written decision
- Costs, expenses and fees related to the investigation and the hearing up to a maximum of \$10,000 to be payable within 36 months of the Tribunal's written decision.

Ms. Athwal explained that the primary purpose of sanctions for professional misconduct is the protection of the public from these acts. In addition, sanctions are required to protect the integrity of the profession and need be fair to the member while promoting general deterrence among other members.

Ms. Athwal 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 Mr. Kene's conduct was found to constitute unprofessional conduct, on the spectrum of unprofessional conduct, it was on the lower end. Although it was not a deliberate act, Mr. Kene practiced without professional liability insurance from July 1, 2018 to October 2, 2018. Had a claim been made against him during this time, he would not have had the required insurance to protect the public. This error had the potential to cause significant harm to the public as well as the integrity of the profession.

- *Age and experience of the offender:* Mr. Kene is an experienced pharmacist who has been registered with the College since 2005 so inexperience is not a factor here.
- *Previous character of a member and prior complaints:* Mr. Kene has no history of prior findings of unprofessional conduct with the College, which weighs in his favor.
- *Number of times the offence occurred:* Mr. Kene was without insurance for 80 days. This lapse was not discovered by Mr. Kene himself, but rather, it was only realized upon audit by the College. The duration of the lapse and the fact that Mr. Kene did not notice the error himself are both factors that the Hearing Tribunal's should consider.
- *Role of the member in acknowledging what occurred:* This is a clear mitigating factor in this case. Once Mr. Kene was aware of the situation, he acted immediately to remedy the situation. Mr. Kene admitted his breach to the Complaints Director and both parties, along with their legal counsel, worked together to reach a joint submission. This cooperation made it possible to proceed with the hearing without calling witnesses, which removed the need to hold a longer hearing.
- *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:* As above, Mr. Kene acknowledged the breach, apologized, expressed remorse, and remedied the situation. He was fully cooperative with the College throughout the process.
- *The need to promote deterrence:* The Complaints Director believes that the decision and sanctions imposed will educate and provide general deterrence to other members. Pharmacy, as a self-regulating profession, requires that its members understand and reliably follow through with all requirements related to registration, professional declarations, and insurance. Members should also know that if they fail to meet these requirements, there will be consequences. Mr. Kene was remorseful for his conduct and assured the Complaints Director that he would take steps to prevent similar mistakes in the future. Deterrence of Mr. Kene will also be served by sanctions imposed by the Hearing Tribunal.
- *The need to maintain public confidence in the integrity of the profession:* The sanctions imposed need to be severe enough to retain public confidence in pharmacy as a self-regulating profession.
- *The degree to which the offensive conduct is clearly regarded, by consensus, as falling outside of the range of permitted conduct:* Both parties agreed that Mr. Kene's conduct constituted unprofessional conduct.
- *The range of sentence in other similar cases:* Ms. Athwal 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. *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 with at least 12 months to pay, and payment of full costs of the investigation and hearing to a maximum of \$10,000 payable on a schedule acceptable to the Complaints Director, with a minimum of 24 months to pay.

2. *Sonia Chahal v. ACP*: Ms. Chahal breached her professional declaration regarding professional liability insurance and practiced without professional liability insurance for a one-month period. Ms. Chahal also practiced while no longer registered. The Hearing Tribunal accepted a joint submission that she receive 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.
3. *Saeed Sattari v. ACP*: Mr. Sattari breached his professional declaration regarding professional liability insurance and failed to maintain professional liability insurance for 10 months. 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.

Ms. Athwal suggested that costs should be capped at \$10,000 in this case because there had been previous adjournments contributing to the overall costs. This distinguished this case from cases like the Chahal case where costs were capped at \$4,000.

Mr. MacMillan, acting as legal counsel on behalf of Mr. Kene, submitted that:

- Mr. Kene is remorseful for his actions and his lapse in professional liability insurance was not intentional. He immediately rectified the problem upon becoming aware of it.
- Mr. Kene acknowledges Mr. Krempien's position on backdated insurance and agrees that it is not always the case that coverage can be backdated.
- Mr. Kene understands and accepts the sanctions outlined in the Joint Submission on Sanctions.

VI. ORDERS

The Hearing Tribunal carefully considered the Joint Submission on Sanctions from the Complaints Director and Mr. Kene and the factors outlined from the *Jaswal* case. The Hearing Tribunal fully agreed with the submissions and makes the following orders:

1. Mr. Kene shall receive a written reprimand. This decision shall serve as a written reprimand for Mr. Kene.
2. Mr. Kene shall pay a fine of \$1,000 to be paid within 12 months of the date of Mr. Kene's receipt of this written decision on a payment schedule acceptable to the Hearings Director.
3. Mr. Kene shall pay the costs, expenses and fees related to the investigation and hearing, to a maximum of \$10,000, payable within 36 months of the date of Mr. Kene's receipt of this written decision on a payment schedule acceptable to the Hearings Director.

The Hearing Tribunal recognized the need to show deference to the parties' Joint Submission on Sanctions. The Tribunal identified no concern that the jointly proposed sanctions were unfit, unreasonable or contrary to the public interest and no basis to impose anything different.

A written reprimand, fine and an order for expenses, costs and fees up to \$10,000 are reasonable and proportionate for the findings of unprofessional conduct in this case. The Tribunal was satisfied the jointly submitted sanctions will adequately deter Mr. Kene and the profession at large from similar unprofessional conduct in the future. The Tribunal was also satisfied that the jointly submitted sanctions will serve the public's interest in the regulation of the pharmacy profession.

Signed on behalf of the hearing tribunal by the Chair on September 23, 2019.

[Teryn Wasilevko]

Teryn Wasilevko, Pharmacist, Chair