

ALBERTA COLLEGE OF PHARMACISTS

IN THE MATTER OF
THE HEALTH PROFESSIONS ACT

AND IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF
PHILIP LEUNG

DECISION OF THE HEARING TRIBUNAL

I. INTRODUCTION

The Hearing Tribunal held a hearing into the conduct of **Philip Leung**. In attendance on behalf of the Hearing Tribunal were Brad Willsey (Chair), Bob Sprague, Nancy Brook, and Joyce Markson-Besney. In addition, Gregory Sim acted as legal counsel to the Hearing Tribunal.

The hearing took place on October 19, 2010 at the Alberta College of Pharmacists. The hearing was held under the terms of Part 4 of the *Health Professions Act*.

In attendance at the hearing was David Jardine representing the College. Philip Leung was not present at the hearing, nor was he represented by legal counsel.

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

1. On at least two occasions (February 4 and 19, 2010) Philip Leung stole large quantities of Oxycontin and other narcotics from the pharmacy at which he was employed for the purposes of illegal distribution:

- a. Video footage of Mr. Leung provided by the pharmacy show him stealing the complete narcotic orders contained in the shipments to the pharmacy from a wholesaler on February 4 and February 19, 2010;
- b. Based on the drug inventory reports from the pharmacy and the narcotic invoices/receipts from the wholesaler, the orders stolen by Mr. Leung contained:

Invoice 527-286871, received February 4, 2010: 100 Oxycontin 40mg tabs and 200 Oxycontin 80mg tabs, plus 100 tabs Apo-lorazepam 1mg, 100 tabs Dilaudid 8mg. 100 tabs PMS-clonazepam 0.5mg, and 100 tabs Tylenol #4,

Invoice 527-309037, received February 19, 2010: 300 Oxycontin 40mg tabs and 2050 Oxycontin 80mg tabs, plus 30 sachets Androgel 1%, 100 tabs Apo-lorazepam 1mg, 100 tabs Ratio-codeine 30mg, and 600 tabs SDZ Supeudol 20mg;

- c. On February 25, 2010 when the pharmacy Loss Prevention personnel interviewed Mr. Leung regarding the results of their investigation, Mr. Leung admitted to ordering the Oxycontin, manually adjusting the computerized inventory system and distributing the narcotics to “his friends,” and a review of the digital video tape evidence supports Mr. Leung’s admissions;

- d. The pharmacy's drug inventory reports and physical audits of the pharmacy showed that the Oxycontin received at the pharmacy on February 4 and February 19, 2010 had not been physically added to the quantity that was in the narcotic safe and that manual adjustments had been made to the inventories of Oxycontin by Mr. Leung.
2. On various occasions, Mr. Leung manipulated the computerized inventory system at the pharmacy to trigger orders of Oxycontin and to conceal his thefts:
 - a. The investigation by the pharmacy Loss Prevention personnel found that there had been numerous adjustments to the electronic inventories of Oxycontin tablets attributed to Mr. Leung;
 - b. The investigation also determined that the manual adjustments to the electronic inventory records were used to reduce the electronic inventories of Oxycontin to trigger the system to order Oxycontin and to cover up thefts of the additional Oxycontin delivered to the pharmacy;
 - c. Mr. Leung admitted making manual adjustments to the inventory system at this interview with the pharmacy Loss Prevention personnel on February 25, 2010.
 3. Mr. Leung did not properly cooperate with the investigation conducted by the Complaints Director into these alleged theft of narcotics in the following respects:
 - a. Mr. Leung showed a pattern of unresponsiveness to and not co-operating with requests from ACP staff in their numerous voicemails, emails, and letters issued to him requesting that he provide his written responses to the complaint, to contact the Complaints Director by telephone and to return his practice permit after he was suspended pursuant to section 65 of the *Health Professions Act*,
 - b. Mr. Leung was unresponsive to the voicemail messages that the Complaints Director left for him March 29, 30, 31 and April 1, 8, 12, 14, 22 of 2010 requesting that he contact the Complaints Director by telephone immediately;
 - c. Mr. Leung was unresponsive to the email that the Complaints Director sent him on April 8, 2010 requesting that he contact the Complaints Director by telephone immediately;
 - d. Mr. Leung, without any prior explanation or extension request, did not provide the Complaints Director with his written response to the complaint as set forth in the Complaint Director's letter dated March 10, 2010 (submission deadline of April 1, 2010), the Complaint Director's email sent on April 8, 2010 (submission deadline of April 16, 2010), and then in his telephone conversation with the Complaints Director on April 19, 2010 (submission deadline of April 23, 2010); and

- e. Mr. Leung was unresponsive to the letter dated March 29, 2010 from Linda Hagen requesting that he send back his practice permit subsequent to the March 26, 2010 decision to suspend his licence;
- f. Mr. Leung's prolonged and blatant manner failure to co-operate with the Complaint Director's investigation and his failure to provide any further explanation regarding the statements he made on February 25, 2010 demonstrates Mr. Leung's disregard for the authority under which he practises as a pharmacist.

III. PRELIMINARY MATTERS

In the Matter of a Request for Adjournment from Mr. Leung:

Mr. Jardine, legal counsel for the Alberta College of Pharmacists, presented an adjournment request from Mr. Leung. The application for adjournment was made by Mr. Leung via text message, 23 minutes prior to the commencement of the Hearing (8:37a.m October 19, 2010), to Margaret Morley of the Alberta College of Pharmacists. He indicated that he "won't be able to attend the hearing due to financial difficulty. Still in the process of finding a legal counsel to represent me."

Mr. Jardine took us through a series of correspondence between the Alberta College of Pharmacists and Mr. Leung:

- a. A revised notice of hearing was sent couriered to Mr. Leung on August 19, 2010 advising him that the hearing had been adjourned to October 19-20, 2010. Mr. Leung was in receipt of that correspondence.
- b. Follow-up correspondence from the Alberta College of Pharmacists dated September 29, 2010 reminding Mr. Leung of the hearing date set for October 19-20, 2010, and advising him to seek legal counsel.
- c. October 6, 2010, Margaret Morley's attempt to contact Mr. Leung via telephone and subsequent voice message left for him to contact the Alberta College of Pharmacists.
- d. October 13, 2010 telephone conversation between Mr. Leung and the Hearings Director, confirming that Mr. Leung had received the revised Notice of Hearing for October 19-20, 2010 and advising him to seek legal counsel. Mr. Leung did indicate that he may seek a further adjournment and was advised that his request would have to be made in writing and be considered by the Hearing Tribunal.
- e. October 19, 2010, 8:37 am text message request for adjournment of the hearing.

Mr. Jardine requested that the hearing proceed in the absence of Mr. Leung.

Ruling:

1. The Hearing Tribunal accepted Mr. Leung's message as an adjournment request even though his message was not specific to requesting an adjournment of the hearing.
2. The Hearing Tribunal considered the test for adjournment being whether the hearing would be fair to Mr. Leung in his absence.
3. We are satisfied that it is appropriate to proceed notwithstanding Mr. Leung's request for adjournment and his absence for the October 19, 2010 Hearing.
4. Service has clearly been proven that Mr. Leung had proper Notice of Hearing for October 19th, 2010.

Reasons:

1. Under section 79(6) of the *Health Professions Act*, the Hearing Tribunal can proceed with a hearing in the absence of the member.
2. The hearing has already been adjourned once on August 19, 2010 to allow Mr. Leung an opportunity to secure legal counsel.
3. We are not aware of any attempts that Mr. Leung has made to seek legal counsel and he has no plan in that regard that the Tribunal was informed of.
4. There were multiple attempts to communicate with Mr. Leung and advise him of the Notice of Hearing.
5. Mr. Leung was non-responsive to many of the attempts to communicate with him regarding the Notice of Hearing.
6. Mr. Leung received the revised Notice of Hearing with the date of October 19-20, 2010.
7. This is the second request by Mr. Leung to adjourn the hearing and both requests were received at the last moment prior to the hearing dates.
8. Witnesses have been brought in on both occasions for the Tribunal hearing dates.
9. The allegations are very serious and involve medication diversion and non-cooperation with the authority of the Alberta College of Pharmacists, which governs his practice of pharmacy.
10. There is an obligation that the Alberta College of Pharmacists resolve matters in a timely fashion and this investigation has been ongoing since February 2010.

IV. EVIDENCE

Evidence was submitted by the College for all three allegations in the Notice of Hearing.

With regard to Allegation #1: on at least 2 occasions (February 4 and 19, 2010) Philip Leung stole large quantities of Oxycontin and other narcotics from the pharmacy at which he was employed for the purposes of illegal distribution.

The College presented video evidence of Mr. Leung stealing the entire narcotic order from his place of employment on two occasions - February 4 and 19, 2010, by

placing the orders in his work bag and subsequently leaving the pharmacy later on those days with his work bag containing the narcotic orders. Based on the wholesaler invoices to the pharmacy for those days, the narcotic orders contained the following:

Invoice 527-286871, received February 4, 2010: 100 Oxycontin 40mg tabs and 200 Oxycontin 80mg tabs, plus 100 tabs Apo-lorazepam 1mg, 100 tabs Dilaudid 8mg, 100 tabs PMS-clonazepam 0.5mg, and 100 tabs Tylenol #4;

Invoice 527-309037, received February 19, 2010: 300 Oxycontin 40mg tabs and 2050 Oxycontin 80mg tabs, plus 30 sachets Androgel 1%, 100 tabs Apo-lorazepam 1mg, 100 tabs Ratio-codeine 30mg, and 600 tabs SDZ Supeudol 20mg;

The evidence showed that none of these drugs from these orders were ever present as part of the pharmacy inventory and this was verified by reviewing physical audit counts of the narcotic inventory dated February 23, 2010.

The pharmacy Loss Prevention personnel and the pharmacy manager suspected that diversion was occurring at the pharmacy and Philip Leung was subsequently confronted by Loss Prevention personnel on February 25, 2010. This meeting was documented and in the course of the meeting Philip Leung admitted to stealing narcotics from the pharmacy, manually adjusting inventory records, and then giving the Oxycontin to his friends. Philip Leung signed an admission of these activities for the pharmacy Loss Prevention personnel after reading the submission. Further, Mr. Leung admitted to the pharmacy Loss Prevention Personnel that he was giving Oxycontin to his "friends". This admission, in addition to the large quantities of narcotics stolen from the pharmacy, provide strong evidence that the thefts were for illegal distribution of narcotics.

With regard to Allegation #2: on various occasions Mr. Leung manipulated the computerized inventory system at the pharmacy to trigger orders of Oxycontin and to conceal his thefts.

Upon review of the pharmacy's drug inventory records there are clearly many manual adjustments that were made to the inventory on-hand of Oxycontin. The far majority of these entries were made by Leung to conceal his thefts of the incoming narcotic orders from the wholesaler. The evidence with regard to the manner in which Mr. Leung accomplished this is as follows:

The day prior to the thefts he would go into the drug inventory record of Oxycontin and manually adjust the on-hand quantity down and then the automatic perpetual inventory system of the pharmacy would re-order the Oxycontin to meet the predetermined on-hand level. Mr. Leung would then steal these narcotics when they were delivered to the pharmacy and an audit of the pharmacy count would show no variance. On both February 3 and February 18, Mr. Leung made manual adjustments to the drug inventory record for Oxycontin to trigger an order from the automatic perpetual inventory ordering system. For the period February 1-4 manual inventory

adjustments amounted to over 2500 tablets of Oxycontin. The pharmacy Loss Prevention personnel also testified that access into the computer system is password protected and identify using initials who makes entries in the system. Mr. Leung was responsible for various adjustments to the drug inventory record relating to large quantities of Oxycontin. Mr. Leung also signed an admission to the pharmacy Loss Prevention personnel admitting to manually adjusting Oxycontin inventory records.

With regard to Allegation #3: Mr. Leung did not properly cooperate with the investigation conducted by the Complaints Director into these alleged theft of narcotics.

Mr. Leung demonstrated a pattern of non-cooperation with the College discipline process and non-responsiveness to the Complaints Director and Hearings Director. Despite numerous requests, Mr. Leung has provided no meaningful response whatsoever to the allegations presented against him in the investigation. Mr. Leung did not return telephone calls and messages left for him on March 29, 30, 31; April 1, 8, 12, 14, and 22, 2010. There was also no written response to the complaint as set forth in a letter dated March 2010, e-mail sent April 8, 2010, and phone call dated April 19, 2010. Mr. Leung also did not respond to the letter dated March 29, 2010 from ACP staff requesting he send in his practice permit subsequent to the March 26, 2010 decision to suspend his licence.

V. SUBMISSIONS

The following items were submitted as exhibits:

Exhibit #1: Revised Notice of Hearing

Exhibit #2: Hearing Directors Sequence Of Attempts To Communicate With Mr. Leung Between August 19th, 2010, and October 18th, 2010

Exhibit #3: Memo To File From Margaret Morley Dated October 19th, 2010, Text Message From Philip Leung

Exhibit #4: Sequence Of Events Report

Exhibit #5: Report of Decision Under Section 66(3)

Exhibit #6: Correspondence With Mr. Leung Or His Lawyer And Records Of Telephone Contacts Subsequent To April 26th, 2010

Exhibit #7: Pharmacy Drug Inventory History Report , Date Range 20 December, 2009, To 21 January, 2010

Exhibit #8: Drug Inventory History Report, Date Range 17 January, 2010, To 23 January, 2010

Exhibit #9: Letter Dated March 4th, 2010, From The Pharmacy, And Attached Action Form

Exhibit #10: Loss Prevention Personnel's Notes And Attachments

Exhibit #11: CD, With A Received Stamp Of April 6th, 2010

VI. FINDINGS

The Hearing Tribunal's findings are as follows:

Allegation #1

The Hearing Tribunal found the allegation to be well-founded and that the proven conduct constitutes unprofessional conduct.

Reasons:

1. The videotape evidence clearly showed Mr. Leung taking the packaged narcotic box delivered from the wholesalers to the pharmacy dispensing counter, and placing it in his personal bag.
2. Wholesaler invoices identified the narcotics that were ordered and that subsequently were not entered into the pharmacy inventory control system at the pharmacy.
3. When confronted with the diversion by the pharmacy Loss Prevention personnel, on February 25, 2010, Mr. Leung admitted to stealing the packaged narcotic box with Oxycontin and giving it to "his friends".

The Hearing Tribunal considers Allegation #1 to be unprofessional conduct for the following reasons:

1. Pharmacists have signing authority and responsibility for ensuring the safe procurement and storage of narcotics. The public and the profession expect this to be conducted in a manner that encourages the safe and responsible use of narcotics while protecting these agents from inappropriate use and distribution for illegal purposes in our communities. Mr. Leung clearly violated the trust and responsibility placed in him by the profession and the public by stealing narcotics and distributing them for non-therapeutic purposes.
2. Stealing is a criminal offense and statutory breaches of this nature are not consistent with professional behaviour, nor are they the behaviours of a professional placed in a position of trust within our community.

Allegation #2

The Hearing Tribunal found the allegation to be well-founded and that the proven conduct constitutes unprofessional conduct.

Reasons:

1. Manual inventory adjustments were made by Mr. Leung in the pharmacy computer system triggering an order for Oxycontin the day prior to the theft of the narcotics on both February 4 and 19, 2010. This was a deliberate attempt by Mr. Leung to conceal his theft of the Oxycontin on February 4 and 19, 2010.

2. The drug inventory records provided from the pharmacy system by the pharmacy Loss Prevention staff for the period December 20, 2009 through January 23, 2010; February 14 through 23, 2010 showed various inventory adjustments made by Mr. Leung to on-hand inventory quantities of Oxycontin to deliberately conceal his thefts.

The Hearing Tribunal considers Allegation #2 to be unprofessional conduct for the following reasons:

1. Pharmacists have narcotic signing authority and responsibility for ensuring the safe procurement and storage of narcotics. The public and the profession expect this to be conducted in a manner that encourages the safe and responsible use of narcotics while protecting these agents from inappropriate use and distribution for illegal purposes in our communities. Mr. Leung clearly violated the trust and responsibility placed in him by the profession and the public by stealing large quantities of narcotics and distributing them for non-therapeutic purposes, which he admitted to giving Oxycontin to “his friends”.
2. Mr. Leung intentionally covered up his thefts to conceal his actions.
3. Stealing is a criminal offense and statutory breaches of this nature are not consistent with professional behaviour nor are they the behaviours of a professional placed in a position of trust within our community.
4. Mr. Leung’s actions were deliberate with no regard to neither societal nor the professional impact from his thefts of narcotics.

Allegation #3

The Hearing Tribunal found the allegation to be well-founded and that the proven conduct constitutes unprofessional conduct.

Reasons:

1. Mr. Leung never provided a written response to the complaints against him.
2. Mr. Leung was non-responsive to multiple attempts made by the Complaints Director and other College staff to communicate directly with him. There were at least 8 voice messages and multiple written submissions that were not returned to the Complaints Director and the other College staff.
3. Mr. Leung never returned his practice permit, even after it was suspended on March 26, 2010, and he was requested in writing to return it to the College.

The Hearing Tribunal considers Allegation #3 to be unprofessional conduct for the following reasons:

1. Pharmacists enjoy the privilege of self-regulation. As part of this privilege there is an expectation that pharmacists conduct themselves according to professional and ethical standards. Inherent in this is the understanding and expectation that

pharmacists are accountable and responsible towards their regulatory authority. Failure to cooperate with the profession undermines the self-regulatory privilege and places this privilege in peril. There is zero tolerance for a member that exhibits ungovernability like those behaviours exhibited by Mr. Leung.

VI. ORDERS

The Hearing Tribunal requested the Alberta College of Pharmacists to provide written submissions on sanction by October 29, 2010. The Hearing Tribunal requested that the College indicate in its submissions whether it intended to make oral submissions on sanction in addition to its written submissions. Upon receipt of the Alberta College of Pharmacists' submission, Mr. Sim immediately sent the College's submissions to Mr. Leung. The Hearing Tribunal directed Mr. Leung to provide any written submissions on sanction he wished to make to Mr. Sim no later than November 15, 2010. The Hearing Tribunal requested that Mr. Leung indicate in his submissions whether he intends to make oral submissions on sanction in addition to or in lieu of any written submissions. The Hearing Tribunal advised that it would convene to hear oral submissions on sanction if either party wished to appear before it for that purpose.

Mr. Leung requested an opportunity to present oral submissions on sanction and had requested a date after the middle of January 2011. The Hearing Tribunal honored Mr. Leung's request for oral submissions and directed a hearing date of December 7, 2010. In the interest of resolving the complaint in a timely manner, the fact that two prior adjournments had been granted and Mr. Leung had failed to appear at either hearing or respond in writing to the allegations, and that there was a significant public safety issue, the Hearing Tribunal granted the opportunity for oral submission on penalty but directed the date earlier than Mr. Leung's request.

The Hearing Tribunal convened on December 7, 2010. Mr. Leung was informed via registered mail of the hearing date and Ms. Morley from the ACP had tried on multiple occasions leading up to the hearing date to contact Mr. Leung. Mr. Leung was also offered at this time the opportunity to deliver his oral submission via teleconference. Despite these attempts, Mr. Leung failed to respond to the attempts to contact him and failed to attend the hearing on sanctions. The Hearing Tribunal was satisfied that Mr. Leung had received adequate notice of service and had respected his request for an oral submission on sanction.

The Hearing Tribunal convened on sanction and the ruling is as follows:

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

- a. an order for the immediate cancellation of the registration and practice permit of Mr. Leung;
- b. an order that Mr. Leung pay a fine of \$10,000.00 for each of allegations 1, 2 and 3;
- c. an order that Mr. Leung pay all of the expenses, costs and fees related to the investigation and hearing of this matter;
- d. an order that a summary of this decision be published in the *acpnews* including the name of Mr. Leung;
- e. an order that a summary of this decision be immediately communicated to all licensed pharmacies in the Province of Alberta including the name of Mr. Leung;
- f. an order that a summary of this decision be provided to all other pharmacy regulators in Canada by the Registrar of the ACP with the suggestion they communicate this summary decision to their respective members; and
- g. an order that the Hearings Director send a summary of this decision to the Minister of Justice and the Attorney General under section 80(2) of the Act.

The reasons for the decision are as follows:

- a. Cancellation is the appropriate sanction for such serious unprofessional conduct. It is the order that provides the maximum protection for the public and makes clear to Mr. Leung, the members of the profession and most importantly, the public that unprofessional conduct of this nature cannot and will not be tolerated and will attract the most severe sanction possible.
- b. The appropriate conduct schedule in the *Health Professions Act* permits fines of up to \$10,000.00 for each proven finding of unprofessional conduct.
- c. All of the allegations of unprofessional conduct were established as well founded. The hearing was required because of the serious unprofessional conduct of Mr. Leung. In these circumstances, it is reasonable and proper that Mr. Leung be ordered to pay the costs of the investigation and hearing. The hearing was necessary and very serious unprofessional conduct was proven. The College and its members should not be forced to bear the expense of the hearing when both the need for the hearing and the

length and complexity of the hearing arose as a direct result of the unprofessional conduct of Mr. Leung.

- d. There are no special or exceptional circumstances that justify publication of this decision on a no name basis and that the members of the profession and the public are entitled to know that Mr. Leung has had his registration and permit cancelled. This is a very serious offense and publication is important for specific and general deterrence.
- e. Notification to other pharmacy governing bodies of the cancellation of Mr. Leung's registration and permit is required by section 119(1)(e) of the *Health Professions Act*.
- f. The Hearing Tribunal has reasonable and probable grounds to believe that the investigated person has committed a criminal offence and the provisions of section 80(2) of the *Health Professions Act* apply in regard to these circumstances.