

ALBERTA COLLEGE OF PHARMACY

IN THE MATTER OF
THE HEALTH PROFESSIONS ACT

AND IN THE MATTER OF A HEARING
REGARDING THE CONDUCT OF

K. WAYNE LYNCH
Registration number: 3241

DECISION OF THE HEARING TRIBUNAL

August 1, 2023

I. INTRODUCTION

The Hearing Tribunal of the Alberta College of Pharmacy (the “College”) held a hearing into the conduct of K. Wayne Lynch. In attendance on behalf of the Hearing Tribunal were Gillian Hansen (pharmacist and chair), Lisa Lix (pharmacist), Patricia Hall (public member), and Doug Dawson (public member).

The hearing took place virtually on May 17, 2023. The hearing was held under the terms of Part 4 of the *Health Professions Act* (“HPA”).

In attendance at the hearing were: James Krempien, Complaints Director of the College, Monica Tran and Annabritt Chisholm, legal counsel representing the Complaints Director, and Mr. Lynch, the investigated member. Mr. Lynch confirmed he was aware of his right to be represented by legal counsel and chose to represent himself. Kimberly Precht was also in attendance as independent legal counsel to the Hearing Tribunal.

There were no objections to the composition of the Hearing Tribunal or the jurisdiction of the Hearing Tribunal to proceed with a hearing.

II. ALLEGATIONS

The allegations against Mr. Lynch, as set out in the Notice of Hearing, were as follows:

IT IS ALLEGED THAT, while you were a registered Alberta clinical pharmacist employed with Dispensaries (1991) Limited (ACP Licence #224 and #335) or Dispensaries Compounding Centre (ACP License #3452), you:

1. Did not maintain professional liability insurance while you were registered on the clinical pharmacist register between:
 - a. July 1, 2015 to June 30, 2016;
 - b. July 1, 2016 to June 30, 2017;
 - c. July 1, 2017 to June 30, 2018;
 - d. July 1, 2018 to June 30, 2019;
 - e. July 1, 2019 to June 30, 2020;
 - f. July 1, 2020 to June 30, 2021;
 - g. July 1, 2021 to June 30, 2022; and
 - h. July 1, 2022 to July 22, 2022;
2. Breached the professional declarations you made on or about
 - a. May 31, 2015;
 - b. May 31, 2016;
 - c. May 31, 2017;
 - d. June 30, 2018;
 - e. May 31, 2019;

- f. May 31, 2020;
- g. May 31, 2021; and
- h. May 31, 2022;

by not maintaining valid professional liability insurance while on the clinical pharmacist register; and

- 3. Practiced as a pharmacist without valid professional liability insurance between July 1, 2015 and July 22, 2022 during approximately 1500 pharmacist shifts.

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;
- d. Failed to fulfill professional and ethical obligations 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;
- Sections 13(1) of the Pharmacists and Pharmacy Technicians Profession Regulations; 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*.

Mr. Lynch acknowledged and admitted that he engaged in unprofessional conduct as set out in the Notice of Hearing.

III. EVIDENCE

The Complaints Director and Mr. Lynch presented the Hearing Tribunal with an Agreed Statement of Facts, setting out the information and documentation they considered relevant to the allegations against Mr. Lynch. The Agreed Statement of Facts was entered as **Exhibit 1**, which also included the Notice of Hearing and Mr. Lynch's Admission of Unprofessional Conduct.

The Agreed Statement of Facts provided as follows:

1. At all relevant times, Mr. Lynch was a registered member of the College on the clinical pharmacist register.
2. On November 24, 2022, the Complaints Director received an email of complaint from Ms. Arlene Raimondi, Policy Lead and Registration Officer, Alberta College of Pharmacy (the “Complainant”). Ms. Raimondi’s email of complaint and enclosed attachments were attached as Exhibit “A” to the Agreed Statement of Facts.
3. Based on Ms. Raimondi’s letter of complaint, the Complaints Director commenced an investigation into the conduct of Mr. Lynch. This investigation resulted in this complaint being referred to a hearing.

Facts Relevant to the Complaint

4. On November 28, 2022, the Complaints Director spoke with Mr. Lynch and provided him with verbal notification of the complaint.
5. On November 29, 2022, the Complaints Director wrote to Mr. Lynch and requested that he review the Complainant’s concern and provide a written response to the complaint. Specifically, the Complaints Director asked Mr. Lynch to respond to the following allegations:
 - a. You breached the professional declarations that you declared on or about May 31, 2022, and by extrapolation also on May 31, 2021 and May 21, 2020, May 31, 2019, June 30, 2018, May 31, 2017, May 31, 2016 and May 31, 2015, as part of your annual practice permit renewals in that you did not maintain valid professional liability insurance (“PLI”) while on the clinical register;
 - b. You were on the clinical register from July 1, 2015 until on or about July 22, 2022 without valid PLI; and
 - c. You may have practiced as a pharmacist without valid professional liability insurance from July 1, 2015 until on or about July 22, 2022, without valid PLI.

Attached as Exhibit “B” to the Agreed Statement of Facts was the letter and enclosures provided by the Complaints Director to Mr. Lynch.

6. On January 6, 2023, the Complaints Director received Mr. Lynch’s written response to the Complaint. In his written response, Mr. Lynch confirmed the information in the complaint was accurate and took responsibility for his conduct. Attached as Exhibit “C” to the Agreed Statement of Facts was a copy of Mr. Lynch’s written response to the complaint with the enclosures received by the Complaints Director.
7. As part of his investigation, the Complaints Director reviewed a sample of recent ACP communications regarding notices and reminders for pharmacists to obtain PLI. Specifically, the Complaints Director noted that the following documents had been previously communicated to ACP pharmacists during the relevant time period:

- a. the February 1, 2017 The Link edition included the article: Are your professional declarations up to date, which reminded pharmacists of the requirement for PLI. This article had an embedded link to the Guidelines for audits of professional declarations section on the ACP website;
- b. the October 17, 2018 The Link edition included the article: Failing to fulfill professional declarations and not carrying current liability insurance can be a costly mistake, which notified pharmacists about a recent Hearing Tribunal decision involving a pharmacist who was found to have failed to renew his PLI;
- c. the September 18, 2019 The Link edition included the article: Failing to fulfill your professional declarations and not carrying current professional liability insurance can become a costly mistake, which notified pharmacists about three of five recent Hearing Tribunal decisions involving pharmacists who were found to have failed to renew their PLI;
- d. the October 30, 2019 The Link edition included the article: Failing to fulfill your professional declarations and not carrying current professional liability insurance can become a costly mistake, which notified pharmacists about two of five recent Hearing Tribunal decisions involving pharmacists who were found to have failed to renew their PLI;
- e. the November 12, 2020 The Link edition included the article: Failing to fulfill your professional declarations and not carrying current professional liability insurance can become a costly mistake, which notified pharmacists about two recent Hearing Tribunal decisions involving pharmacists who were found to have failed to renew their PLI;
- f. the May 25, 2021 The Link edition included the article: Professional liability insurance is a must for all regulated members, which reminded pharmacists of the requirement for PLI;
- g. the July 7, 2021 The Link edition included the article: Keep track of your professional liability insurance policy effective dates, which notified pharmacists about a recent Hearing Tribunal decision involving a pharmacist who was found to have failed to renew his PLI;
- h. the January 12, 2022 The Link edition included the article: Professional Liability Insurance (PLI) is a must, which notified pharmacist and pharmacy technicians about a pharmacy technician who failed to fulfill her professional responsibilities to renew her PLI;
- i. the June 15, 2022 The Link edition included the article: Professional declarations: confirm before you click, which notified regulated members about a pharmacist's failure to renew his PLI;

- j. information through the Search function of the College's website, using the search term "audits", regarding Guidelines for audits of professional declarations.

The sample of documents reviewed by the Complaints Director were attached as Exhibit "D" to the Agreed Statement of Facts.

8. On January 12, 2023, the Complaints Director met with Mr. Lynch. During their meeting, Mr. Lynch admitted to:
 - a. providing false declarations during his annual practice permit renewals from 2015 to 2022;
 - b. not having PLI during the period of July 1, 2015 to July 22, 2022, while on clinical pharmacists register;
 - c. practicing as a pharmacist at three Dispensaries Limited pharmacies on approximately 1500 eight-hour shifts while he did not have PLI.

The Complaints Director's summary of their meeting was attached as Exhibit "E" to the Agreed Statement of Facts.

Facts Relevant to Sanctions

9. Mr. Lynch has been registered with the College on the clinical pharmacist register since May 14, 1980.
10. There have been no prior findings of unprofessional conduct against Mr. Lynch.
11. The Complaints Director is not aware of any member of the public being impacted by Mr. Lynch's conduct in this matter.
12. Mr. Lynch admitted that his conduct was inadvertent but took responsibility for it.

Mr. Lynch also acknowledged in the Agreed Statement of Facts that he had waived his opportunity to receive legal advice before entering the Agreed Statement of Facts, and that he understood the Hearing Tribunal could use the Agreed Statement of Facts as proof of the allegations set out in the Notice of Hearing.

The information contained in the exhibits to the Agreed Statement of Facts showed that Mr. Lynch mistakenly believed his employer was purchasing PLI on his behalf during the seven-year period in which he failed to maintain PLI. For many years, Mr. Lynch's employer had purchased PLI for its employees, but it changed its approach during a period of upheaval and Mr. Lynch had not been aware his employer was no longer purchasing PLI on his behalf. Mr. Lynch realized his employer was no longer purchasing PLI on his behalf shortly *before* the College's audit and took steps right away to get insurance.

In the Admission of Unprofessional Conduct, Mr. Lynch admitted the allegations set out in the Notice of Hearing. Mr. Lynch also acknowledged that his conduct breached his

statutory and regulatory obligations to the College, undermined the integrity of the of the profession, decreased the public's trust in the profession, and failed to fulfil the professional and ethical judgment expected and required of an Alberta pharmacist.

Mr. Lynch further agreed and acknowledged that his conduct constituted unprofessional conduct as defined in sections 1(1)(pp)(ii), 1(1)(pp)(xii) of the HPA and breached Standard 1 and 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 College's Code of Ethics, section 13(1) of the Pharmacists and Pharmacy Technicians Professional Regulation, and section 40(1)(c) of the HPA.

IV. SUBMISSIONS

On behalf of the Complaints Director, Ms. Tran took the Hearing Tribunal carefully through the Agreed Statement of Facts. She noted the allegations against Mr. Lynch arose from his failure to maintain PLI over the course of approximately seven years, all while declaring that he was in possession of valid PLI in his annual declarations to the College. Ms. Tran urged the Hearing Tribunal to accept the Agreed Statement of Facts and the attached exhibits as sufficient evidence that the allegations are factually proven and constitute unprofessional conduct. She reminded the Hearing Tribunal that the Complaints Director bears the onus of proving the allegations.

Ms. Tran submitted that pharmacists have a positive obligation to maintain PLI, and failure to do so amounts to unprofessional conduct. Ms. Tran submitted that every year the College relies on more than 5,000 self-declarations it receives from its members. She stated that along with the privilege of self-regulation comes the expectation that when a professional declares something is so, it is so. She acknowledged that in this case, Mr. Lynch's failure to maintain PLI, his inaccurate declarations stating he was in possession of valid PLI, and his seven years of practice without PLI were not intentional. However, while there was no evidence of harm to a patient resulting from Mr. Lynch's conduct, Ms. Tran emphasized the potential for harm over the approximately 1500 shifts Mr. Lynch worked without PLI in place.

Ms. Tran took the Hearing Tribunal through the specific provisions of the HPA, the Standards of Practice, and the Code of Ethics identified in the Notice of Hearing and in the Admission of Unprofessional Conduct and made submissions on how Mr. Lynch's factual conduct breached each provision.

At the time of Mr. Lynch's conduct, s. 40(1)(c) of the HPA required a registrant applying for a practice permit to provide evidence of having the amount and type of PLI required by the regulations (the requirements for PLI are now set out in the College's bylaws). Ms. Tran submitted these are clear regulatory requirements for a pharmacist on the clinical register.

Sub-standard 1.1 of the Standards of Practice requires pharmacists to practice in accordance with the law that governs their practice, including the HPA, its regulations, the Standards of Practice, and the Code of Ethics. Sub-standard 1.2 of the Standards of Practice adds that in

approaching the law that governs their practices, pharmacists “must comply with its letter and its spirit to ensure that the public and each patient receive the full protection of the law.”

Principle 1 of the Code of Ethics requires pharmacists to hold the well-being of each patient as their primary consideration which includes acting in the best interest of each patient (sub-principle 1(1)). Ms. Tran emphasized that the requirement for pharmacists to maintain PLI protects patients.

Principle 10 of the Code of Ethics requires pharmacists to act with honesty and integrity, which includes complying with both the letter and the spirit of the law that governs the practice of pharmacy and the operation of pharmacies (sub-principle 10(1)), and being honest in dealing with patients, the College, and others (sub-principle 10(2)). Ms. Tran submitted that Mr. Lynch’s conduct was contrary to both principles.

For his part, Mr. Lynch acknowledged the allegations and that, due to a regretful series of misunderstandings and assumptions on his part, he was without PLI for a significant period. He emphasized that as soon as he realized he had no PLI, he corrected the situation, and that this occurred before the College’s audit. Mr. Lynch was glad to have been able to correct the situation so he could keep going in that direction, recognizing his responsibility. While observing that a number of reasons or factors played into his failure to maintain valid PLI, he emphasized that none of this serves as an excuse. It is in the interests of patients, individual pharmacists, and employers to ensure pharmacists maintain valid PLI, and it was ultimately his responsibility to ensure his PLI was in place. Mr. Lynch advised the Hearing Tribunal he was currently working on an internal document for his employer to ensure what happened to him would not happen to another pharmacist.

Given the evidence that Mr. Lynch mistakenly believed he had PLI in place when he completed his annual declarations, the Hearing Tribunal asked for clarification on the Complaints Director’s position that Mr. Lynch’s inaccurate declarations amounted to a failure to be honest, contrary to sub-principle 10(2) of the Code of Ethics. Counsel for the Complaints Director took the position that the requirement to be honest encompassed false or misleading statements, regardless of intention. Mr. Lynch, on the other hand, confirmed he was taking responsibility for his inaccurate declarations, but stated he would not personally view his declarations as being dishonest, as he did not make a conscious decision to claim he had PLI when he did not.

V. FINDINGS

The Hearing Tribunal found the allegations in the Notice of Hearing were factually proven and accepted Mr. Lynch’s admission that his conduct amounted to unprofessional conduct.

The Agreed Statement of Facts and attached exhibits clearly established that Mr. Lynch practiced without PLI for seven years, in breach of the professional declarations he made to the College throughout that period stating was in possession of valid PLI.

As referenced in the Notice of Hearing, the HPA defines unprofessional conduct to include a contravention of the HPA, a code of ethics or standards of practice (s. 1(1)(pp)(ii)) and conduct that harms the integrity of the regulated profession (s. 1(1)(pp)(xi)).

The Hearing Tribunal had no trouble concluding Mr. Lynch's failure to maintain PLI over the course of seven years constituted a breach of sub-standards 1.1 and 1.2 of the Standards of Practice, and sub-principle 10(1) of the Code of Ethics, which require pharmacists to practice in accordance with the letter and spirit of the law that governs their practice. Pharmacists are required by law to maintain PLI and are required to provide proof (typically in the form of a self-declaration provided to the College) that they have valid PLI in place when they apply to renew their practice permit each year. The College receives more than 5,000 renewal applications each year and relies on pharmacists to ensure their self-declarations are accurate. It is a fundamental expectation that when a pharmacist tells the College they are in possession of PLI, they are. Inaccurate declarations, regardless of whether they are deliberate, have the potential to harm the public and are taken very seriously.

Further, the Hearing Tribunal found Mr. Lynch's conduct contravened sub-principle 1(1) of the Code of Ethics, which requires pharmacists to act in the best interest of each patient. While the College takes steps to remind its members of their obligations, it is ultimately the obligation of individual pharmacists to ensure they have valid PLI at all times. Patients are protected when pharmacists fulfil this obligation. Regardless of the reasons for Mr. Lynch's failure to maintain PLI, it amounted to a failure to act in the best interests of the patients he served.

On this basis, the Hearing Tribunal concluded Mr. Lynch's conduct under each of the three allegations amounted to unprofessional conduct as defined in the HPA.

However, the Hearing Tribunal was not satisfied, based on the evidence set out in the Agreed Statement of Facts, that Mr. Lynch's conduct contravened sub-principle 10(2) of the Code of Ethics, which requires pharmacists to be honest in their dealings. Certainly, pharmacists have a positive obligation to ensure that they have valid PLI before declaring to the College that they do. The College should be able to rely on the accuracy of a pharmacist's self-declaration, and the public should be able to have confidence that every pharmacist who provides services to them has valid PLI in place. However, the Hearing Tribunal was not prepared to find that Mr. Lynch's conduct constituted a lack of honesty where the evidence clearly established that Mr. Lynch had no intention to mislead the College or the public, and in fact believed he had valid PLI throughout the period in issue.

The Hearing Tribunal's conclusion that Mr. Lynch's conduct did not contravene sub-principle 10(2) of the Code of Ethics did not impact its overall finding that Mr. Lynch's conduct amounted to unprofessional conduct for each of the three allegations in the Notice of Hearing.

In light of the Hearing Tribunal's findings on sub-principle 10(2) of the Code of Ethics, the Chair sought confirmation whether the parties were still prepared to make submissions on sanction. The parties confirmed they were.

VI. SUBMISSIONS ON ORDERS

The Complaints Director and Mr. Lynch presented a Joint Submission on Sanctions to the Hearing Tribunal, asking the Hearing Tribunal to make the following orders under s. 82 of the HPA:

1. Mr. Lynch shall receive a reprimand, which the Hearing Tribunal's written decision shall serve as.
2. Mr. Lynch shall pay a fine of \$1,000. Payment will occur in accordance with a payment schedule satisfactory to the Hearings Director. The fine shall be paid within 90 days of the date Mr. Lynch receives a copy of the Hearing Tribunal's written decision.
3. Mr. Lynch shall be responsible for payment of the costs of the investigation and hearing to a maximum of \$2,000. Payment will occur in accordance with a payment schedule satisfactory to the Hearings Director. The costs shall be paid within 24 months of the date Mr. Lynch receives a copy of the Hearing Tribunal's written decision.

The Joint Submission on Sanctions and supporting materials were entered as **Exhibit 2**.

On behalf of the Complaints Director, Ms. Tran submitted that the fundamental purpose of sanctions in the professional discipline context is to ensure the public is protected from acts of unprofessional conduct, citing James Casey's text, *Regulation of Professions in Canada*. Relevant factors include specific deterrence of the member from engaging in further misconduct, general deterrence of other members of the profession, the need to maintain the public's confidence in the profession's ability to properly supervise the conduct of its members, and ensuring the penalty imposed is not disparate with penalties imposed in similar cases.

Citing factors identified in *Jaswal v Medical Board (Newfoundland)* (1996), 42 Admin LR (2d) 233 (Nfld TD), Ms. Tran submitted the following factors were relevant in determining an appropriate sanction in this case:

- *Nature and gravity of the proven allegations:* Although the conduct happened over the course of seven years and was serious enough to constitute unprofessional conduct, it was on the lower end; more serious conduct would include false claims to insurers and boundary violations.
- *Age and experience:* Mr. Lynch has been practicing since 1980 and should have known and understood the requirements to maintain PLI.
- *Character and prior findings of unprofessional conduct:* Mr. Lynch has no prior findings of unprofessional conduct. This is a mitigating factor.

- *Taking responsibility:* Mr. Lynch addressed his error when he realized it. He was candid with the Complaints Director during the investigation and also acknowledged and accepted what the Complaints Director proposed as appropriate sanctions. This is a mitigating factor, and the Hearing Tribunal should look at his admission favourably.
- *Deterrence:* The sanctions imposed by the Hearing Tribunal will send a message to other members of the College that professional regulation relies on members knowing what they have to do, saying they will do it, and doing it. While the College puts out bulletins and reminds members of their obligations, ultimately it is the obligation of members to do it.
- *Message to legislators and public:* The proposed sanctions signal to legislators and the public that the College takes the requirements in the HPA seriously and that there are serious consequences when these requirements are breached.
- *Range of sanctions in similar cases:* Although the Hearing Tribunal is not bound by previous cases, out of fairness to members, similar sanctions should be applied in similar cases. Ms. Tran provided two decisions from 2021 involving similar allegations and admissions, in which similar sanctions were imposed. The Complaints Director's position is that in cases involving a failure to maintain PLI, similar sanctions should apply regardless of the length of the lapse. In this case, Mr. Lynch's failure to maintain PLI over the course of seven years is a "single event" from year to year because Mr. Lynch did not know he did not have PLI.

With respect to costs, Ms. Tran emphasized that costs orders are not automatic and should not be approached formulaically, and that the parties agreed to keep the costs order on the lower end because the conduct was on the lower end of what could be considered serious unprofessional conduct. Ms. Tran submitted this was consistent with the Alberta Court of Appeal's decision in *Jinnah v Alberta Dental Assn and College*, 2022 ABCA 336.

Ms. Tran advised the Hearing Tribunal was required to show deference to the Joint Submission on Sanctions and could only stray from it if the proposed sanctions were drastically against the public interest, citing the Supreme Court of Canada's decision in *R v Anthony-Cook*, 2016 SCC 43 and the Ontario Superior Court of Justice's decision in *Bradley v Ontario College of Teachers*, 2021 ONSC 2303. Ms. Tran emphasized that, from the Complaints Director's perspective, the proposed sanctions were appropriate and protected the public, providing specific deterrence for Mr. Lynch as well as general deterrence for other members of the profession who will learn of this decision.

Mr. Lynch took the opportunity to comment on the joint submission on sanction and emphasized that he corrected the situation *before* the College's audit, when he independently discovered his employer was not purchasing PLI on his behalf.

VII. ORDERS

After carefully considering the Joint Submission on Sanctions, the facts of the case, and the parties' submissions, the Hearing Tribunal accepted the Joint Submission on Sanctions.

The Hearing Tribunal acknowledged it should defer to the Joint Submission on Sanction unless it believed the proposed sanctions would bring the administration of justice into disrepute or would otherwise be contrary to the public of interest.

Having regard for the factors identified in the *Jaswal* decision, the Hearing Tribunal accepted the parties' submissions as to why the proposed sanctions were appropriate and served the purpose of sanctions in the professional discipline context.

The Hearing Tribunal was also glad to hear that Mr. Lynch is working with his employer to ensure this does not happen in the future to other pharmacists or pharmacy technicians working for his company. While not part of the sanctions order, this is a positive step that will help protect the public.

The Hearing Tribunal found the proposed costs order to be reasonable, recognizing it represented only a portion of the overall cost of the proceedings. It was appropriate that Mr. Lynch be responsible for some of the costs of the hearing and investigation because his conduct necessitated the proceedings. However, Mr. Lynch's candour and cooperation throughout the investigation and hearing supported a cap on the overall costs award.

Accordingly, the Hearing Tribunal orders as follows:

1. This written decision shall serve as a reprimand to Mr. Lynch;
2. Mr. Lynch shall pay a fine of \$1,000 within 90 days of the date he receives a copy of this written decision, in accordance with a payment schedule satisfactory to the Hearings Director; and
3. Mr. Lynch shall pay \$2,000 towards the costs of the investigation and hearing within 24 months of the date he receives a copy of this written decision, in accordance with a payment schedule satisfactory to the Hearings Director.

Signed on behalf of the Hearing Tribunal by the Chair on August 1, 2023.

Per: 
Per: [Gillian Hansen \(Aug 1, 2023 09:21 MDT\)](#)

Gillian Hansen