

ALBERTA COLLEGE OF PHARMACY

IN THE MATTER OF
THE *HEALTH PROFESSIONS ACT*

AND IN THE MATTER OF A HEARING
REGARDING THE CONDUCT OF

AMANDA MOSUR

Registration number: 8655

DECISION OF THE HEARING TRIBUNAL

November 30, 2021

I. INTRODUCTION

The Hearing Tribunal held a hearing into the conduct of Amanda Mosur (“Ms. Mosur”) on October 4, 2021. In attendance on behalf of the Hearing Tribunal were Jennifer Teichroeb (pharmacy technician and chair), Sharon Van Wert (pharmacy technician), Jim Lees (public member) and Juan Priest (public member). Tessa Gregson was present and acted as independent legal 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”).

In attendance at the hearing were: Mr. Raymond Chen, legal counsel representing the Complaints Director of the Alberta College of Pharmacy (“the “College”); Mr. James Krempien, the Complaints Director of the College; Ms. Mosur, the investigated member; and Ms. Nancy Tran, legal counsel representing Ms. Mosur.

Ms. Margaret Morley, Hearing Director, was present to administer the virtual hearing.

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

II. ALLEGATIONS

The Hearing Tribunal held a hearing to inquire into the following allegations with respect to Ms. Mosur, as set out in the Notice of Hearing, included at Tab 1 of in the “Combined Exhibit Book”, entered as Exhibit 1 to the hearing:

IT IS ALLEGED THAT, between January 1, 2020 and February 21, 2021, while practicing as a registered Alberta pharmacy technician at Holy Cross Pharmacy, Covenant Health, you:

1. Did not maintain professional liability insurance for the periods of:
 - a. January 1, 2020 to December 31, 2020; and
 - b. January 1, 2021 to February 21, 2021.
2. Breached the professional declarations you made on or about:
 - a. November 30, 2019; and
 - b. November 30, 2020

by not maintaining professional liability insurance while on the pharmacy technician register.

3. Practiced without professional liability insurance between January 1, 2020 and February 21, 2021 during approximately 159 pharmacy technician 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 pharmacy technician,
- b. Undermined the integrity of the profession; and
- c. Failed to exercise the professional and ethical judgment expected and required of an Alberta pharmacy technician.

IT IS ALLEGED THAT your conduct constitutes a breach of the following statutes and standards governing the practice of pharmacy:

- a. Standard 1 (sub-standards 1.1 and 1.2) of the Standards of Practice for Pharmacists and Pharmacy Technicians,
- b. Principles 1(1), 10(1) and 10(2) of the Alberta College of Pharmacy's Code of Ethics,
- c. Section 13(1) of the Pharmacists and Pharmacy Technicians Profession Regulation,
- d. Sections 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 ON CONDUCT

The hearing proceeded by way of an Agreed Statement of Facts and an Admission of Unprofessional Conduct on the part of the investigated member, Ms. Mosur. No witnesses were called to testify.

The following exhibit was entered by agreement of the parties at this stage of the hearing:

Exhibit 1: Combined Exhibit Book, which contained:

- The Notice of Hearing (Tab 1);
- An Admission of Unprofessional Conduct (Tab 2);
- An Agreed Statement of Facts (Tab 3); and
- Excerpts from the Standards of Practice, Code of Ethics and relevant legislation (Tabs 4-7).

Mr. Chen made submissions on behalf of the Complaints Director regarding the Notice of Hearing (Exhibit 1, Tab 1). He summarized the conduct at issue as Ms. Mosur's failure to maintain professional liability insurance during two permit years and the failure to uphold declarations made when renewing her permit. Mr. Chen then reviewed the allegations in the Notice of Hearing.

Ms. Tran made submissions on behalf of Ms. Mosur. She advised that Mr. Chen had fairly summarized the allegations in the Notice of Hearing. Ms. Tran stated that Ms. Mosur understood the significance and seriousness of the conduct outlined in the Notice of Hearing, took full responsibility, and hoped to resolve this matter and continue to provide the standard care expected of her as a pharmacy technician.

The parties then presented submissions on the Admission of Unprofessional Conduct and Agreed Statement of Facts.

Mr. Chen summarized the documents as follows:

- The Admission of Unprofessional Conduct (Exhibit 1, Tab 2):
 - Ms. Mosur acknowledges and admits to allegations 1 and 2 in the Notice of Hearing under s. 70 of the HPA (Exhibit 1, Tab 1).
 - Ms. Mosur agrees and acknowledges that her conduct breached her statutory and regulatory obligations to the College, undermined the integrity of the profession, and that she failed to exercise the professional and ethical judgement expected and required of an Alberta pharmacy technician.
 - Ms. Mosur agrees and acknowledges that her conduct breached: Standard 1 (sub-standards 1.1 and 1.2) of the Standards of Practice; principles 1(1), 10(1) and 19(2) of the Code of Ethics; section 40(1)(c) and sections 1(1)(pp)(ii) and (xii) of the HPA; and section 13(1) of the Pharmacy Technicians Profession Regulation.
 - Mr. Krempien acknowledges that Ms. Mosur was fully co-operative with the investigation, hearing process, and in developing the Admission of Unprofessional Conduct.
 - Ms. Mosur acknowledges that she received legal advice prior to entering into the Admission of Unprofessional Conduct and understands that if the Hearing Tribunal accepts the Admission, the Tribunal may proceed to issue orders under s. 82(1) of the HPA.
- The Agreed Statement of Facts (Exhibit 1, Tab 3):
 - At all relevant times, Ms. Mosur was a registered member with the College of on the pharmacy technician register and employed at Holy Cross Pharmacy, Covenant Health.

- On February 22, 2021, Ms. Mosur was randomly selected for the 2021 professional declaration audit. As part of the audit, she was asked to submit documentation for current professional liability insurance coverage.
- On March 12th, 2021, Ms. Mosur was sent a final notification email reminding her that her audit case was still outstanding and requesting that she provide documentation of her current professional liability insurance coverage.
- On March 17th, 2021, Ms. Mosur submitted her current insurance certificate for February 22, 2021 - December 31, 2021 and indicated that she allowed challenging personal circumstances to affect her professional obligations and for that she was truly sorry.
- In subsequent e-mails on March 18, 2021, Ms. Mosur confirmed that she had worked 180 shifts in 2020 and 10 shifts in 2021 without insurance dating back to January 1, 2020. This was a rough calculation provided by Ms. Mosur at the time.
- Each year when renewing registration, every pharmacy technician is required to sign a professional liability insurance declaration to declare that: they have valid professional liability insurance, they understand they must maintain valid insurance and that the consequences of failing to have valid professional liability insurance includes having their practice permit cancelled. The declaration also includes an acknowledgment that their practice permit is subject to audit.
- On April 15, 2021 the Complaints Director received an email of complaint (with attachments) from Ms. Arlene Raimondi, Policy Lead and Registration Officer of the College regarding Ms. Mosur's failure to renew her professional liability insurance upon license renewal in 2020 and 2021 and breach of the professional declarations.
- Based on Ms. Raimondi's email of complaint, the Complaints Director commenced an investigation into Ms. Mosur's conduct. The Complaints Director had a phone conversation with Ms. Mosur on April 19, 2021 to advise her of the complaint and request a written response.
- Also on April 19, 2021, the Complaints Director wrote to Ms. Mosur to request that in addition to reviewing the complaint and providing a written response, she respond to the following allegations:
 - you breached the professional declarations that you declared on or about November 30, 2019 and November 30, 2020 as part of your annual practice permit renewals in that you did not maintain valid professional liability insurance while on the pharmacy technician register;
 - you were on the pharmacy technician register from January 1, 2020 until on or about Feb 21, 2021 without valid professional liability insurance; and

- may have practiced as a pharmacy technician without valid professional liability insurance from January 1, 2020 until on or about February 21, 2021 without valid professional liability insurance.
- On May 19, 2021, the Complaints Director received Ms. Mosur's written response to the complaint. In her response, Ms. Mosur indicated that she realized on February 22, 2021 that she had not renewed her professional liability insurance for 2020 and 2021 and was therefore on the pharmacy technician register from January 1, 2020 until February 21, 2021 without professional liability insurance. Ms. Mosur stated that she had allowed challenging personal circumstances to affect her professional obligations and undertook to not repeat her conduct, explaining that she accepted responsibility for her oversight and was truly sorry. Ms. Mosur also admitted to:
 - breaching her professional declarations as part of her annual practice permit renewals as she did not maintain professional liability insurance while on the pharmacy technician register; and
 - practicing as a pharmacy technician without professional liability insurance from January 1, 2020 until February 21, 2021 during approximately 159 pharmacy technician shifts.
- On May 19, 2021, the Complaints Director had a phone conversation with Ms. Mosur to confirm the information in her written response.
- As part of his investigation, the Complaints Director reviewed a sample of recent ACP communications including notices and reminders for ACP registrants to obtain professional liability insurance. During the relevant period, the College communicated with its members as to the importance of maintaining current liability insurance and fulfilling professional declarations, including highlighting recent hearing tribunal cases where members had failed to uphold their declarations and their conduct had been deemed to constitute unprofessional conduct.

Mr. Chen stated the Tribunal's task was to determine whether the allegations in the Notice of Hearing had been factually proven and if so, whether the proven allegations constituted unprofessional conduct. Mr. Chen submitted the Complaints Director had met the burden of proving its case on a balance of probabilities as sufficient evidence had been provided to the Tribunal. He advised the facts were not in dispute and that the evidence established the allegations in the Notice of Hearing.

Mr. Chen emphasized that pharmacy technicians have a positive statutory and regulatory obligation to maintain professional liability insurance and to uphold their professional declarations. He advised the College takes the requirements and obligations seriously and the failure to uphold them warranted a finding of unprofessional conduct.

Mr. Chen highlighted that Ms. Mosur had taken responsibility and admitted that her conduct is unprofessional. He referenced the relevant portions of the statutory authorities that govern the practice of pharmacy, including s. 40(1)(c) of the HPA, and section 13(1) of the Pharmacists and Pharmacy Technicians Professional Regulations, which confirm that an application for a practice

permit requires evidence of professional liability insurance. Mr. Chen also reviewed Standard 1.1 and 1.2 from the Standards of Practice for Pharmacists and Pharmacy Technicians, and Principle 1(1) and Principles 10 (1) and 10 (2) from the Code of Ethics.

Mr. Chen discussed the obligation of self-regulating bodies to serve and protect the public, and that the maintenance of adequate professional liability insurance was part of this protection. Professional liability insurance allows the public to be ensured that a pharmacy technician's actions would be covered regardless of where they are practicing.

Mr. Chen stated that although Ms. Mosur's actions were not deliberate, her conduct showed an error in judgment and a lack of attention to her professional obligations and declarations. The College relies on a member's accuracy when making professional declarations and it is a fundamental responsibility of a professional that their declarations can be trusted to be true. In Ms. Mosur's case, a period of over one year without professional liability insurance represents a lengthy period of time where if any harm resulting from her practice occurred to a patient, there would have been no professional liability insurance coverage in place to protect them. Mr. Chen advised that while there was no evidence of harm before the Tribunal, the conduct at issue presented the potential for harm over the approximately 159 shifts in which Ms. Mosur practiced without insurance. Ms. Mosur admitted her error, but the error constitutes serious misconduct as without the audit, Ms. Mosur's failure to hold insurance would not have been identified.

Ms. Tran urged the Tribunal to accept Ms. Mosur's admission of unprofessional conduct. She advised that Mr. Chen had presented the facts fairly and that Ms. Mosur understands the severity of the complaint, the significance of the conduct, and accepts full responsibility. Ms. Mosur admitted to the professional misconduct and the admission should be accepted.

The members of the Hearing Tribunal caucused to review the evidence.

IV. FINDINGS ON CONDUCT

The members of the Hearing Tribunal accepted Ms. Mosur's admission of unprofessional conduct and concluded the allegations were proven and that the conduct was unprofessional conduct.

In determining that the allegations were proven and that Ms. Mosur's admission should be accepted, the Hearing Tribunal carefully considered the Agreed Statement of Facts and the Admission of Unprofessional Conduct entered into evidence by the parties. The Hearing Tribunal found that the allegations detailed in the Notice of Hearing were factually proven on a balance of probabilities and that Ms. Mosur's conduct constituted unprofessional conduct.

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

- The evidence demonstrated that Ms. Mosur did not maintain professional liability insurance from January 1, 2020 to December 31, 2020 and also between January 1, 2021 to February 21, 2021 while she was on the pharmacy technician register.

- The evidence established that Ms. Mosur's insurance for 2019 expired January 1, 2020 and she did not renew her insurance for 2020. Ms. Mosur obtained insurance coverage for 2021 after she received notice of the College's audit on February 22, 2021. Ms. Mosur's insurance certificate shows that her coverage was from February 22, 2021 to January 1, 2022.
- Ms. Mosur admitted that she was on the pharmacy technician register from January 1, 2020 to February 2021 and practicing as a pharmacy technician without professional liability insurance.
- The evidence established that Ms. Mosur breached her professional declarations of November 30, 2020 and November 30, 2021 by not maintaining professional liability insurance while on the pharmacy technician register as she had declared.
- The evidence demonstrated that Ms. Mosur practiced as a pharmacy technician for approximately 159 pharmacy technician shifts at Holy Cross Pharmacy between January 1, 2020 and February 21, 2021 without having valid professional liability insurance.
- Section 40(1)(c) of the HPA 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. The HPA outlines that contraventions of the HPA and other legislation applicable to the practice of the profession constitute unprofessional conduct.
- Professional liability insurance is an important part of the protection of the public because it means that the public is ensured that the actions of a pharmacy technician are covered. It is also not practical for members of the public to verify that individuals with whom they interact in a pharmacy have liability insurance.
- Ms. Mosur's conduct disregarded both her regulatory obligation to the College and her ethical obligation to patients and the public to ensure she maintained professional liability insurance while on the pharmacy technician register.
- Without the professional declaration audit, Ms. Mosur's failure to hold professional liability insurance in accordance with the HPA and the Pharmacy Technicians Profession Regulation may not have been identified.
- Ms. Mosur practiced for approximately 159 shifts. A significant number of members of the public were exposed to risk as a result of Ms. Mosur's actions.
- Pharmacy technicians are part of a self-regulated profession. 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 College’s Code of Ethics states in Principle 1(1) that a pharmacy technician will act in the best interest of each patient. It states in Principle 10(1), that a pharmacy technician will comply with the letter and spirit of the law, and in Principle 10(2) that a pharmacy technician will be honest in their dealings. Ms. Mosur did not act in the best interests of her patients when she did not have valid insurance. Insurance is a requirement for all regulated members. Ms. Mosur was not honest with the College when she declared she had valid professional liability insurance in the permit renewals on November 30, 2019 and November 30, 2020. Further, as discussed, she did not comply with the HPA and the Pharmacists and Pharmacy Technicians Profession Regulation.
- Every year the College relies on the accuracy of professional declarations that are made when registered pharmacy technicians renew their Practice Permit. It is a fundamental expectation that when a pharmacy technician completes their professional declaration, 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.
- Ms. Mosur’s failure to maintain professional liability insurance was in violation of the HPA, section 40(1)(c), and section 13 of the Pharmacists and Pharmacy Technicians Profession Regulation. Ms. Mosur’s breaches of both her November 30, 2019 and November 30, 2020 professional declarations were in breach of the College’s Code of Ethics Principles 10 (1) and (2). Accordingly, the conduct constitutes unprofessional conduct as defined in s.1(1)(pp)(ii) and (xii) of the HPA.

V. EVIDENCE AND SUBMISSIONS ON ORDERS

After the Hearing Tribunal deliberated, the Tribunal advised the parties that it accepted the Admission of Unprofessional Conduct by Ms. Mosur and determined that the conduct admitted to constituted unprofessional conduct. The Hearing Tribunal invited the parties to make submissions with respect to sanction.

Mr. Chen advised that the parties had prepared a Joint Submission on Sanctions and Authorities and would be making separate submissions on costs. The following exhibits were entered:

Exhibit 2: Joint Submissions on Sanction and Authorities

Exhibit 3: Authorities of the Complaints Director for Submissions on Costs

Exhibit 2 was entered by the agreement of the parties and Exhibit 3 was entered by Mr. Chen with no objection by Ms. Tran.

A. Joint Submission on Sanctions

As set out in the Joint Submission on Sanctions (Exhibit 2, Tab 1), the parties jointly proposed the following sanctions:

1. Ms. Mosur shall receive a written reprimand of which the Hearing Tribunal's written decision shall serve as; and
2. Ms. Mosur shall pay a fine of \$500. Payment will occur in accordance with a monthly payment schedule as directed by the Hearings Director. The fines shall be paid in full within 12 months of the date Ms. Mosur receives a copy of the Hearing Tribunal's written decision.

Citing *The Regulation of Professions in Canada* (Exhibit 2, Tab 2), Mr. Chen explained that there are five main purposes for imposing sanctions on members found to have engaged in unprofessional conduct: (1) to protect the public, (2) to maintain the integrity of the profession, (3) fairness to the member and (4) rehabilitation and (5) deterrence for other members.

Mr. Chen cited the case of *Jaswal vs. Medical Board (Newfoundland)*(1996), 42 Admin L.R. (2d) 233 (Exhibit 2, Tab 1) for the factors that should be considered when determining sanctions and explained how the relevant factors should apply in this case:

- **Nature and gravity of proven allegations:** Ms. Mosur failed to uphold two statutory professional declarations and did not maintain professional liability insurance for more than one year. This posed a risk of harm to the public and constitutes unprofessional. However, the conduct is on the lower end of the spectrum of unprofessional conduct.
- **Age and experience of the offender:** Ms. Mosur was first registered with the College as a pharmacy technician on February 14, 2008. Between January 1, 2011 and December 15, 2011, Ms. Mosur was registered as a voluntary pharmacy technician, and then as a provisional pharmacy technician from January 2014 to December 2016. Ms. Mosur moved back to the pharmacy technician register on January 1, 2016 and has been registered thereon since that time. The conduct occurred in 2020-2021 and at this time, she was not a new practitioner and ought to have known the expectations regarding insurance.
- **Previous character of a member and prior findings of unprofessional conduct:** There are no prior complaints or findings of unprofessional conduct against Ms. Mosur. This is therefore a mitigating factor.
- **Number of times the offence occurred:** the conduct involves two permit renewal cycles and two false professional declarations in 2020 and 2021. Ms. Mosur practiced without insurance over approximately 159 shifts between January 1, 2020 and February 21, 2021.
- **Role of the member in acknowledging what occurred:** This is a mitigating factor in this case. Once Ms. Mosur was made aware of the situation, she admitted to her error, and took steps to remedy her error and obtained the required insurance. Ms. Mosur again acknowledge her conduct when she spoke with Mr. Krempien and has admitted the allegations as part of the hearing.
- **Whether the member has suffered other serious financial or other penalties:** Mr. Chen advised that Ms. Mosur's legal counsel, Ms. Tran, may speak to this factor.

- **The presence or absence of any mitigating circumstances:** Ms. Mosur acknowledged and formally admitted the conduct, which demonstrates an understanding of the issues and why the conduct is unacceptable. This is a mitigating factor.
- **The need to promote deterrence:** This means the sanctions should be such that Ms. Mosur does not repeat the conduct, and that the sanctions send a message to others in the profession so that similar conduct does not arise. Obligations arising from registration, including professional declarations, depends on members knowing what their obligations are, saying they will do, perform the obligations, and then actually doing so. Self-regulating professions would fail if members cannot be trusted to comply with what is expected of them. The College clearly communicates the requirements regarding insurance but ultimately the College relies on the member to comply. Specific deterrence to Ms. Mosur is served by imposing the reprimand and fine. With regards to general deterrence of the larger membership, the sanctions send the message that if a member fails to maintain professional liability insurance, the College will take appropriate action.
- **The need to maintain public confidence in the integrity of the profession:** Self-regulating professions are statutory bodies. It is therefore important that, through discipline proceedings, the College sends a clear message to legislators and the public that the profession takes the HPA and regulation seriously and appropriate sanctions will be imposed where obligations are not fulfilled.
- **The range of sanctions in other similar cases:** Mr. Chen referred to Tabs 3 and 4 of Exhibit 2, which contained the following tribunal decisions where members failed to uphold a professional declaration and had practiced without professional liability insurance for more than a year:
 - Tab 3: Decision of the Hearing Tribunal of the Alberta College of Pharmacy in the matter of Kar Leung dated October 5, 2020.
 - Tab 4: Decision of the Hearing Tribunal of the Alberta College of Pharmacy in the matter of Hugo Leung dated May 31, 2021.

Mr. Chen advised that the sanctions imposed in those two decisions were largely consistent with the sanctions outlined in the Joint Submission. He explained that the Complaints Director was seeking a \$500 fine rather than a \$1,000 fine in recognition of the fact that pharmacy technicians are required to carry half the amount of professional liability insurance that is required of pharmacists.

Mr. Chen then discussed the cases of *R v Anthony Cook*, 2016 SCC 43 and *Rault v Law Society of Saskatchewan*, 2009 SKCA 81 which indicate that joint submissions on sanctions should be given deference by Hearing Tribunals to reflect the time the parties may have spent to reach an agreement on penalties and that the member should have some certainty that a joint submission will be accepted. He explained that the Hearing Tribunal may stray from a joint submission where it is drastically against the public interest and this is a high bar. If the Tribunal finds that the Joint

Submission is against the public interest, it should advise the parties and seek further submissions on any changes or different orders the Tribunal proposes to make.

Mr. Chen concluded that the Joint Submission on Sanctions meets the sentencing principles and the public interest test set out in *R v Anthony-Cook* as it ensures specific and general deterrence. It further protects the public and the integrity of the profession.

Ms. Tran then addressed the Joint Submission on Sanctions. She argued that the sanctions consider the factors outlined in *Jaswal* and fulfill the objective of sanctions in professional discipline (i.e. to protect the public, provide specific and general deterrence as well as rehabilitation and ensuring fairness and integrity of the profession). Ms. Tran submitted that Ms. Mosur acknowledges and understands that her conduct was serious, unprofessional, and placed the public at risk. Ms. Mosur hopes that her cooperation throughout the process and full admission of the allegations spoke to this understanding. Ms. Tran assured the Tribunal this would be the one and only time Ms. Mosur appears before a Hearing Tribunal as she understands the importance of practicing to the standard expected of her.

B. Costs

As noted above, the parties advised that they would be providing separate submissions on the order for costs. The Complaints Director sought an order that Ms. Mosur pay all costs of the investigation and hearing within 24 months of receiving the Tribunal's written decision. Ms. Mosur sought an order that she pay costs up to \$3,500.

The parties' submissions on costs are as follows:

Mr. Chen submitted a package of authorities regarding costs, and this was marked as Exhibit 3. Mr. Chen advised that the Complaints Director sought the following order:

Ms. Mosur pay all the costs of the investigation and hearing. Payment will occur in accordance with a monthly payment schedule as directed by the Hearing Tribunal. The costs shall be paid in full within 24 months of the date Ms. Mosur receives a copy of the Hearing Tribunal's written decision.

Mr. Chen stated that as of October 1, 2021 the costs incurred by the College totalled \$2,632.05 but this amount did not reflect any costs incurred to prepare the submissions on costs, the cost of the hearing, or the costs the Tribunal will incur in writing its decision. He explained that the Hearing Tribunal has authority under s. 82(1)(j) of the HPA to direct Ms. Mosur to pay all or part of the costs of the investigation and hearing.

Mr. Chen directed the Tribunal to paragraphs 44 to 46 of *Abrametz v. The Law Society of Saskatchewan*, 2018 SKCA 37 (Exhibit 3, Tab 2), which addresses the purpose of a costs award in professional discipline. Specifically, the purpose is that the member bears the cost of disciplinary proceedings as a consequence of being a member of a self-regulating profession rather than having the cost associated with their misconduct borne by the membership. Mr. Chen submitted that in this case, the College and its members should not be forced to bear the costs of the investigation or hearing as the need for it arose out of Ms. Mosur's unprofessional conduct.

While Mr. Chen highlighted that the court in *Abrametz* recognized that a costs order should not be so prohibitive that it prevents members from defending themselves or disputing allegations of misconduct, he submitted that was not the case here. Mr. Chen stated that the Complaints Director was not aware of any information indicating that the costs award sought would impose undue hardship on Ms. Mosur. The obligation to provide such financial information is on the member. Mr. Chen then referred to *Lysons v Alberta Land Surveyors' Association*, 2017 ABCA 7 (Exhibit 3, Tab 3) for the principle that requiring the professional to pay all or a portion of the costs of the investigation and hearing is a common part of disciplinary sanctions.

Finally, Mr. Chen referenced the case of *Jaswal* for the non-exhaustive list of factors to consider when determining a costs order (Exhibit 3, Tab 4) and outlined the following as the relevant factors to this case:

- the degree of success, if any, of the professional in resisting any or all of the charges;
- whether the professional cooperated with respect to the investigation and offered to facilitate proof by admissions; and
- the financial circumstances of the professional and degree to which their financial position has already been affected by other aspects of any penalty that has been imposed.

Mr. Chen provided submissions on the first two factors having previously advised that the Complaints Director was not aware of any information indicating that the costs award sought would impose undue hardship on Ms. Mosur:

- **The degree of success, if any, of the professional in resisting any or all of the charges:** Ms. Mosur admitted, and the Tribunal accepted, that she engaged in unprofessional conduct on all three allegations in the Notice of Hearing.
- **Whether the professional cooperated with respect to the investigation and offered to facilitate proof by admissions:** Ms. Mosur cooperated, as indicated in the Admission of Unprofessional Conduct and Agreed Statement of Facts, and this will already have an effect on the associated costs of the investigation and hearing. However, unlike the decisions of the College's Hearing Tribunal included with the Joint Submission on Sanction (Exhibit 2, tabs 3 and 4), the parties had not come to a full agreement regarding sanction. Those decisions capped costs at \$7,000 which accounts for full agreement on conduct and sanction.

Mr. Chen submitted that while the Tribunal is not bound by its precedents, out of fairness to members it should impose similar sanctions in similar cases. However, here it would be inappropriate to impose a costs order on Ms. Mosur that required her to pay substantially less than the costs ordered in comparable cases based only on the fact she is a pharmacy technician. Mr. Chen referenced the Tribunal's decision regarding Jody Pyne (Exhibit 3, Tab 5) where the Tribunal considered the fact that Ms. Pyne was a pharmacy technician and therefore had a lower income than a pharmacist. There, the Tribunal placed little weight on that fact given that the costs incurred in an investigation and hearing are no different between a pharmacist and pharmacy technician.

Mr. Chen referred the Hearing Tribunal to the decision regarding Michelle Menzies dated March 2, 2021 (Exhibit 3, Tab 6) as the most recent case involving a pharmacy technician. There, the Complaints Director considered Ms. Menzies' admission, full agreement on sanction, and financial circumstances when considering the costs award sought in the joint submission on sanction that limited costs to \$7,000. Mr. Chen differentiated the case of Ms. Menzies from the current case on the basis that Ms. Mosur had not agreed to the costs award. Accordingly, additional costs were incurred to prepare argument on costs and extra time spent at the hearing to canvas this issue.

Given these reasons, the Complaints Director sought all costs of the investigation and hearing to be paid within 24 months of receiving the written decision.

Ms. Tran submitted that the Complaints Director was seeking full indemnity costs and that Ms. Mosur was only advised of this position the night prior to the hearing. Ms. Tran argued that this is a departure from comparable cases where costs were capped at \$7,000. Comparable cases included the Tribunal's decisions regarding Kar Leung, Hugo Leung, Jody Pyne and Michele Menzies (Exhibit 2 at Tabs 3 and 4, and Exhibit 3 at Tabs 5 and 6). It would not be fair to treat Ms. Mosur differently and impose an order for all costs without a cap. Ms. Tran argued that the reason previous decisions cap costs at a certain amount was to strike a balance between not imposing the burden of costs on the collective membership and ensuring costs orders are not punitive or deter a member from raising defences to allegations of unprofessional conduct as stated in *Abrametz*.

Ms. Tran advised that Ms. Mosur recognized that the order for costs to a maximum of \$3,500 was a departure from comparable cases where the costs order imposed contained a maximum of \$7,000, or in the Jody Pyne decision a maximum of \$8,000. Ms. Tran submitted that from a fairness perspective, the Tribunal should consider that pharmacy technicians make substantially less money than pharmacists. Accordingly, an order for costs up to \$7,000 was high and burdensome for pharmacy technicians in general. Instead, imposing a maximum of \$3,500 would strike a more fair and reasonable balance between the financial discrepancy in these positions and the fact that Ms. Mosur cooperated and provided a full admission. Ms. Tran submitted that imposing a higher maximum would be inappropriate where the matter proceeds by consent because Ms. Mosur would still be responsible for paying most, if not all, of the costs associated with the investigation and hearing.

Mr. Chen provided reply submissions regarding costs. He noted that the discussions regarding the Joint Submission on Sanction were done on a without prejudice basis and while the parties attempted to reach a full agreement on sanctions in the three weeks leading up to the hearing, the Complaints Director was advised of Ms. Mosur's position that the joint submission should not include a costs order on Friday, October 1, 2021. Ms. Tran further submitted that the Complaints Director has been aware of Ms. Mosur's costs position since it was provided on September 23, 2021. She reiterated that Ms. Mosur was made aware of the Complaints Director's position regarding costs the night prior.

The Hearing Tribunal inquired as to whether the Complaints Director was able to provide an estimate of what the final costs would be in light of the request to make an order for all costs of the investigation and hearing. Mr. Chen advised that it was difficult to provide an estimate because

the Complaints Director has no control over the hearing costs. He reiterated that costs as of October 1, 2021 were roughly \$2,600 but this did not include the costs incurred for him to prepare submissions on costs, and costs associated with the hearing and decision writing.

Ms. Tran advised that during discussions with Mr. Chen, that were not without prejudice, she requested a ballpark figure for the amount of costs that would be incurred in addition to the \$2,600 amount. Mr. Chen had advised that additional costs would be in the range of \$3,000 to \$5,000 but this was an estimate.

Following submissions from the parties on costs, the case of *Alsaadi v. Alberta College of Pharmacy*, 2021 ABCA 313 was raised with the parties. The parties were invited to comment on Justice Khullar's discussion of costs in professional regulatory context and their applicability in the instant case. The parties were given time to review and consider the decision.

Mr. Chen first made submissions regarding *Alsaadi*. He noted that Justice Khullar's decision was concurring and not the decision of the majority of the Court of Appeal. He differentiated the facts of *Alsaadi* from the case before the Hearing Tribunal; specifically, Mr. Alsaadi was faced with a much higher costs order, of over \$250,000 and a significantly longer hearing. Mr. Chen highlighted that Justice Khullar relied on the decision in *KC v College of Physical Therapists of Alberta*, 1999 ABCA 253, which states that a Tribunal must reasonably exercise its discretion to award costs and acknowledge that whether the award is a crushing financial blow is a factor to be considered. However, in this case there was no evidence before the Tribunal of Ms. Mosur's financial hardship or inability to pay and no suggestion that the costs of the hearing were unreasonable or exorbitantly high. The Complaints Director's position on costs represents a reasonable exercise of the Hearing Tribunal's discretion to award costs, payable over 24 months, given the applicable factors.

Ms. Tran then made submissions on the *Alsaadi* case. She argued that, as indicated in *Alsaadi*, the HPA gives the Tribunal the discretion to order costs but they are not mandated or automatic. The seriousness of the charges, the conduct of the parties and the reasonableness of the amount of costs should be considered when ordering costs in this case. Ms. Tran stated that while there was no doubt the findings of unprofessional conduct in this case were serious and posed a risk to the public, but they fell on the lower end of the spectrum (as previously indicated by the Complaints Director). Accordingly, an order for full indemnity of the costs of the proceeding was unreasonable. Ms. Tran referred the Tribunal to and quoted from paragraph 123 of the *Alsaadi* decision and emphasized that if a costs amount would deliver a crushing financial blow, the Tribunal must reflect and consider if it is exercising its discretion to order costs in a reasonable manner.

Ms. Tran reiterated that ordering costs without a maximum is unreasonable in light of past decisions of this Tribunal where even when the parties contested the cost order, a maximum was imposed. She further emphasized that ordering full indemnity costs to a maximum of \$7,000 was burdensome on pharmacy technicians given their salary. Ms. Tran stated that the average pharmacy technician takes home around \$2,000 to \$3,000 a month; thus, a \$7,000 order of costs over 24 months would still result in at least 10% of the person's income going to paying costs. Ms. Tran concluded that given Ms. Mosur's cooperation and the balance between not burdening the

membership and not unduly burdening and punishing the member, a costs order to a maximum of \$3,500 was reasonable.

The members of the Hearing Tribunal caucused to review the submissions.

VI. FINDINGS ON ORDERS

A. Joint Submission on Sanction

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

The Hearing Tribunal acknowledged that deference should be provided to a Joint Submission on Sanctions and the high threshold outlined in *R v. Anthony-Cook*. The Hearing Tribunal accepted that it ought not to depart from the Joint Submission unless the proposed sanctions would bring the administration of justice into disrepute or would otherwise be contrary to the public interest.

The Hearing Tribunal considered the orders that were jointly proposed. The Tribunal took into account all of the factors discussed in the *Jaswal* decision and the submissions of the parties, including the range of sanctions previously ordered in similar cases, Ms. Mosur's experience as a pharmacy technician and her lack of previous discipline history, the seriousness of Ms. Mosur's breach of her declarations which occurred on two separate occasions, the length of time she failed to maintain professional liability insurance which was over a year, and Ms. Mosur's admission and cooperation with the College.

The Hearing Tribunal agreed that the orders in the Joint Submission were appropriate having regard to the factors that are relevant in assessing sanction in the professional discipline context. Specifically, the sanctions serve as an appropriate deterrent to Ms. Mosur and the profession at large from engaging in similar unprofessional conduct in the future. The orders also serve the public's interest and uphold the integrity of the profession.

B. Costs

The Hearing Tribunal concluded it is appropriate that Ms. Mosur be responsible for a portion of the costs of the investigation and hearing as it was her conduct that required the discipline proceedings.

The Hearing Tribunal considered the relevant factors from *Jaswal* noting in this case that Ms. Mosur was not successful in resisting the charges as she fully admitted to the allegations of unprofessional misconduct. The evidence indicated that Ms. Mosur cooperated with the discipline proceedings and made admissions from the outset. Ms. Mosur facilitated the hearing through the Admission of Unprofessional Conduct and Agreed Statement of Facts.

In considering Ms. Mosur's financial circumstances and the extent to which her financial position has already been affected by other aspects of any penalty that has been imposed, the Hearing Tribunal considered that Ms. Mosur will be subject to a \$500 fine (under the Joint Submission on

Sanction, accepted by the Tribunal). The Hearing Tribunal also accepted that, as stated in *Abrametz*, the obligation to provide evidence of their financial position is on the member.

Information about Ms. Mosur's financial circumstances before the Hearing Tribunal was limited to:

- a) Ms. Tran's submitted that pharmacy technicians have a lower salary than pharmacists and the average pharmacy technician takes home around \$2,000 to \$3,000 a month. No evidence was adduced to substantiate this quantum.
- b) Mr. Chen confirmed that the Complaints Director was not aware of any information indicating that the costs award sought would impose undue hardship on Ms. Mosur.

The Hearing Tribunal accepted, based on its experience, the general premise that pharmacy technicians have a lower salary than pharmacists; however, this carried minimal weight in the analysis. The Tribunal agreed with the comments made in the decision regarding Jody Pyne that the salary of a pharmacist versus pharmacy technician carries little weight because the member's designation does not impact the costs incurred in the discipline proceeding (Exhibit 3, Tab 5 at p. 12). There was no evidence before the Tribunal indicating that the difference in salary between a pharmacist and pharmacy technician would generally render a costs award above a certain amount unreasonable. Further, and significantly, in considering a costs order the Tribunal must consider the financial circumstances of the particular member before them. Financial circumstances can vary greatly from member to member regardless of whether they are a pharmacist or pharmacy technician. In this case, Ms. Mosur did not provide evidence as to her specific financial circumstances.

In addition to the *Jaswal* factors, the Tribunal was guided by the following principles:

- a) The purpose of costs orders in professional discipline is not to indemnify the opposing party but to recognize that the member should bear some of the costs of the proceedings arising from their misconduct. The burden of the costs should not be borne by the wider membership alone.
- b) The Tribunal should balance the allocation of costs to the member against ensuring the order is not so prohibitive that it may prevent members from exercising their right to contest allegations of unprofessional conduct.
- c) The Tribunal must examine the reasonableness of the amounts being awarded and ensure it does not impose undue financial hardship.

The Hearing Tribunal also considered costs awards in the similar cases provided by the parties. It observed that, consistent with the fact that the purpose of costs awards is not full indemnification, none of the cases ordered the member to pay all costs of the investigation and hearing. Instead, each award, including where costs were contested, included a maximum amount.

Based on the foregoing, the Hearing Tribunal determined that it was not appropriate to order that Ms. Mosur pay all the costs of the investigation and hearing in this case. The Hearing Tribunal observed this was particularly the case given that it had very limited information on the anticipated total costs of the disciplinary proceedings. The Hearing Tribunal concluded that placing a cap on

the costs order struck the appropriate balance between ensuring Ms. Mosur is responsible for costs associated with her unprofessional conduct and the interest in ensuring the award is not prohibitive. In all the circumstances, the Tribunal concluded that Ms. Mosur should be required to pay the costs of the investigation and hearing to a maximum amount of \$6,500 within 24 months of receiving its written decision.

VII. Orders

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

1. Ms. Mosur shall receive a written reprimand. This decision shall serve as a written reprimand for Ms. Mosur.
2. Ms. Mosur shall pay a fine of \$500. Payment will occur in accordance with a monthly schedule as directed by the Hearings Director. The fine shall be paid in full within 12 months of the date that Ms. Mosur receives a copy of the Hearing Tribunal's written decision.
3. Ms. Mosur to pay the costs of the investigation and hearing to a maximum of \$6,500. The costs shall be paid in accordance with a monthly payment schedule directed by the Hearings Director. The costs shall be paid in full within 24 months of the date Ms. Mosur receives a copy of the Hearing Tribunal's written decision.

Signed on behalf of the Hearing Tribunal by the Chair on November 30, 2021

Per: *Jennifer Teichroeb*
Jennifer Teichroeb (Nov 30, 2021 23:31 MST)
Jennifer Teichroeb