

ALBERTA COLLEGE OF PHARMACISTS

IN THE MATTER OF  
THE HEALTH PROFESSIONS ACT  
being Chapter H-7 of the Revised Statutes of Alberta, 2000

AND IN THE MATTER OF AN INVESTIGATION  
REGARDING THE CONDUCT OF A REGULATED MEMBER

**KAREN NEVETT**  
Registration number 6583

**DECISION OF THE HEARING TRIBUNAL**

May 5, 2015

## **I. INTRODUCTION**

1. The Hearing Tribunal held a hearing into the conduct of Karen Nevett. The members of the Hearing Tribunal were: Ms. Anita Warnick, pharmacist and Chair; Mr. Kevin Kowalchuk, pharmacist; Ms. Marlene Gukert, pharmacist; and Mr. Peter Van Bostelen, public member.
2. In attendance at the hearing was Ms. Fiona Vance, legal counsel for the Alberta College of Pharmacists (the “College”) and Mr. Fred Kozak, independent legal counsel for the Hearing Tribunal. Also present was Mr. James Krempien, Complaints Director for the College and Mr. William Willms, who appeared as counsel for Ms. Nevett.
3. The hearing was held under the terms of Part 4 of the *Health Professions Act* (“HPA”).
4. The hearing took place on March 13, 2015 at the offices of the College in Edmonton, Alberta. There were no objections to the composition of the Hearing Tribunal, the jurisdiction of the Hearing Tribunal to proceed with the hearing, or the timelines of the service of the Notice of Hearing. The hearing was open to the public.

## **II. PRELIMINARY MATTERS**

5. Ms. Nevett was not present at the hearing, but Mr. Willms confirmed that she was available by telephone in the event the Hearing Tribunal had any questions for her. Because the College had no objection to that arrangement, the Hearing Tribunal agreed to proceed on that basis.

## **III. ALLEGATIONS**

6. The allegations to be considered by the Hearing Tribunal were set out in the Revised Notice of Hearing dated January 2, 2015 as follows:

IT IS ALLEGED THAT:

During the period from June, 2013 to February, 2014, as a pharmacist at the Shoppers Drug Mart #2362 in Innisfail and #2415 in Red Deer, you:

- 1) Diverted approximately 14,500 tablets and capsules of hydromorphone and an undetermined amount of hydromorphone granules from Hydromorph Contin capsules from Shoppers Drug Mart #2363 and Shoppers Drug Mart #2415 on approximately 128 separate occasions based on:
  - a. Your two-page written statement dated February 12, 2014 in which you:

- Admitted diverting PMS-hydromorphone and Hydromorph Contin for your personal use,
  - Outlined your initial motivation for your diversions,
  - Confirmed that you diverted the medications by creating false patient profiles and then processing false prescriptions in their name,
  - Indicated that you paid cash for the medication that you diverted,
  - Denied diverting any medication for beyond your personal use, and
  - Indicated your desire to take responsibility for your conduct.
- b. The detailed records of the pharmacy and statements from the licensee, that demonstrate you diverted:
- 100 hydromorphone 2 mg tablets on one occasion;
  - 90 hydromorphone 4 mg tablets on three occasions; and
  - 14,588 hydromorphone tablets on 120 occasions.
- 2) Abused your position of trust as a pharmacist by creating false patient, physician and dispensing records to conceal your diversion of the drugs you diverted from the pharmacy on approximately 124 separate occasions as supported by the pharmacy records collected and provided by Shoppers Drug Mart personnel and by your admissions.
- 3) Placed the public at risk:
- a. By partially emptying Hydromorph Contin capsules that were then dispensed to at least 4 patients, may have been dispensed to other unidentified patients and could have still be dispensed to other patients of the pharmacy; and
  - b. By continuing to practice while ingesting large quantities of narcotics on a daily basis without medical authorization or management.
- 4) Diverted narcotics beyond your personal use.

While you have denied diverting any medication for beyond your personal use, the information gathered in the investigation of this complaint contradicts this assertion for the following reasons:

- a. Even based on your assertion that you ingested approximately 10 hydromorphone 8 mg tablets daily, this amount of ingestion does not account for the approximately 14,500 tablets diverted by you in approximately 240 days;
- b. If you were to have ingested all of the diverted hydromorphone you would have had to ingest approximately 62 hydromorphone tablets daily which would be a daily average of 1954.4 morphine equivalents (“MEq”) which

is approximately 10 times the customary maximum use of 200 morphine-equivalent mg's daily as set by the current Canadian Guidelines for Safe and Effective Use of Opioids for Chronic Non-Cancer Pain; and

- c. based on this information, and given that no other reasonable explanation for this very large discrepancy between reasonable personal use and the amount of narcotics diverted, it is alleged that it is more probably than not that the disposition of the narcotics in this matter is a split between your personal ingestion and your further trafficking of "excess" narcotics to others.

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

- Standard 1 and sub-standards 1.1 and 1.2 of the Standards of Practice for Pharmacists and Pharmacy Technicians;
- Sections 1(1)(pp)(ii), 1(1)(pp)(iii) and 1(1)(pp)(xii) of the *Health Professions Act*;
- Sections 31(2)(a) and 38 of the *Pharmacy and Drug Act*;
- Principles I (1,6,7,8,9), X (1 and 2) and XI (2, 3, 4, and 5) of the ACP Code of Ethics;
- Section 4(1), 5(1) and 5(2) of the *Controlled Drugs and Substances Act*;
- Section 31(1) of the Narcotic Control Regulations; 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)(iii) and 1(1)(pp)(xii) of the *Health Professions Act*.

7. Ms. Vance advised the Hearing Tribunal that the Complaints Director was withdrawing Allegation #4, and also the alleged breaches of:

- Section 5(1) of the *Controlled Drugs and Substance Act*,
- Section 5(2) of the *Controlled Drugs and Substance Act*, and
- Section 31(1) of the Narcotic Control Regulation.

The Hearing Tribunal accepted the withdrawal of Allegation 4.

#### IV. EVIDENCE

8. By agreement, the parties entered the following documents at the hearing:

Exhibit #1	Notice of Hearing
Exhibit #2	Agreed Statement of Facts and Admission of Unprofessional Conduct, as well as binder of documents (720 pages)
Exhibit #3	March 13, 2015 Email

The Hearing Tribunal noted that the agreed exhibits included an agreed statement of facts and admission of unprofessional conduct, either signed or acknowledged by the parties through their respective legal counsel.

9. Ms. Nevett was a pharmacist and a regulated member of the Alberta College of Pharmacists. She first became a regulated pharmacist with the College in 2004. Her practice permit expired at the end of June, 2014. During the period between January, 2013 and February 11, 2014, Ms. Nevett was a practicing pharmacist at the Shoppers Drug Mart #2362 in Innisfail and #2415 in Red Deer.
10. The Agreed Statement of Facts included the following acknowledgments:
  - a. Between January 2013 and February 11, 2014, Ms. Nevett:

Diverted from pharmacies in which she practiced as a pharmacist:

    - 100 hydromorphone 2 mg tablets on one occasion;
    - 90 hydromorphone 4 mg tablets on three occasions; and
    - 14,588 hydromorphone tablets on 120 occasions.
  - b. Ms. Nevett further acknowledged that to conceal this diversion, she created false patient, physician, and dispensing records and paid cash for the diverted medications.
  - c. Ms. Nevett further acknowledged that she removed an undetermined amount of hydromorphone granules from Hydromorph Contin capsules that were then dispensed to at least 4 patients, may have been dispensed to other unidentified patients, and could have still been dispensed to other patients of the pharmacy.
  - d. Ms. Nevett acknowledged that she practiced pharmacy while ingesting large quantities of narcotics on a daily basis without medical authorization or management.
  - e. Ms. Nevett admits her conduct constitutes a breach of the following statute, regulations, and standards governing the practice of pharmacy:
    - Standard 1 and sub-standards 1.1 and 1.2 of the Standards of Practice for Pharmacists and Pharmacy Technicians;
    - Sections 31(2)(a) and 38 of the *Pharmacy and Drug Act*;
    - Principles I (1, 6, 7, 8, and 9), X (1 and 2) and XI (2, 3, 4, and 5) of the ACP Code of Ethics;
    - Section 4(1), 5(1) and 5(2) of the *Controlled Drugs and Substances Act*; and

that her conduct set out above and the breach of some or all of these provisions constitutes unprofessional conduct pursuant to the provisions of sections 1(1)(pp)(ii), 1(1)(pp)(iii) and 1(1)(pp)(xii) of the *Health Professions Act*.

- f. Ms. Nevett and her counsel Mr. Willms have cooperated in the process of setting this matter for a hearing including developing the Agreed Statement of Facts and Admission of Unprofessional Conduct.
- g. The College further acknowledges that Ms. Nevett has not practiced pharmacy since February 12, 2014 and did not renew her practice permit that expired on June 30, 2014.
- h. On February 12, 2014 Ms. Nevett was confronted by Shoppers Drug Mart and the RCMP and was held in police custody for a period of time. Intensive treatment for her addictions commenced at:
  - Alberta Hospital in Ponoka, and
  - Aventa Intensive Care in Calgary; from April 10 – May 21, 2014, and a 90 day residential program from May 21 to August 26, 2014.
- i. Since August 27, 2014 and up to the time of this Hearing, Ms. Nevett has resided at Keys of Recovery Centre in Calgary, an alcohol and drug free apartment complex. Ms. Nevett has been alcohol and drug free since February 2014.
- j. Ms. Nevett has indicated that she has no intention of pursuing a career in Pharmacy in the future, and has expressed her intention to the College not to seek reinstatement in the future as a regulated member.
- k. On February 2, 2015, Ms. Nevett pled guilty in Provincial Court in Red Deer AB to:
  - Section 380(1)(b) of the *Criminal Code*, which provides:

380(1) Everyone who, by deceit, falsehood or other fraudulent means, whether or not it is a false pretence within the meaning of this Act, defrauds the public or any person, whether ascertained or not, of any property, money or valuable security or any service, ...

(b) is guilty

    - (i) of an indictable offence and is liable to imprisonment for a term not exceeding two years, or
    - (ii) of an offence punishable on summary conviction, where the value of the subject matter of the offence does not exceed five thousand dollars.
  - Section 4(1) of the *Controlled Drugs and Substances Act*, SC 1996, c.16, which provides:

4(1) Except as authorized under the regulations, no person shall possess a substance included Schedule I, II or III

where Schedule I includes Hydromorphone (dihydromorphinone) at s. 1(17).

11. The body of the Agreed Statement of Facts (without tabbed attachments) is attached as an appendix to this decision of the Hearing Tribunal.
12. The Hearing Tribunal carefully considered the evidence presented during the hearing and the joint submissions from both the Complaints Director and Ms. Nevelt.
13. The term “unprofessional conduct” is defined in section 1(1)(pp) of the *Health Professions Act* as:
  - Displaying a lack of knowledge of, or skill or judgment in, the provision of professional services;
  - Contravening a code of ethics or standards of practice;
  - Contravening another enactment that applies to the practice of the profession, such as the *Pharmacy and Drug Act* or the *Controlled Drugs and Substances Act*;
  - Conduct that harms the integrity of the profession.
14. Ms. Nevelt admitted that the 3 remaining allegations in the Notice were well founded, and also admitted that the conduct constituted unprofessional conduct as defined in section 1(1)(pp) of the *Health Professions Act*. Ms. Nevelt acknowledged diverting Hydromorphone for her own personal use. Diverting and misusing controlled substances is conduct that clearly harms the integrity of the profession.
15. Creating fraudulent patient, physician and dispensing records of this narcotic, to conceal her diversions also constitutes unprofessional conduct. Standard of Practice for Pharmacists and Pharmacy Technicians 1.1 speaks to practicing pharmacy within the laws and Standard 1.2 speaks to practicing pharmacy by ensuring the public and each patient will receive the full protection of the law.
16. Ms. Nevelt clearly contravened section 31(2)(a) of the *Pharmacy and Drug Act*, by intentionally creating false documentation of patients names, physicians, and dispensing records which is an offense under section 38 of this Act. These intentional acts also contravene Principles 1 and 10 of the Alberta College of Pharmacy Code of Ethics where the well-being and safety of each patient should be the primary consideration. Removing small quantities of Hydromorphone granules from Hydromorph Contin capsules and then returning the tampered capsules to stock certainly created a risk of harm to the public. Although no direct evidence of any actual harm was established, the risk of harm is enough to establish a lack of judgment and unprofessional conduct. Ms. Nevelt’s admission of obtaining and ingesting a controlled substance that was not prescribed for her clearly breached Principle 11 (2, 3, 4 and 5) in failing to demonstrate responsibility for herself, failing to disclose her fitness and competence to practice, and misusing or abusing substances.
17. Finally Ms. Nevelt contravened section 4(1) of the *Controlled Drugs and Substances Act* by ingesting large quantities of Hydromorphone, a narcotic which she was not authorized to possess under these regulations.

18. Ms. Nevelt's actions and behaviour continued for a period of approximately eight months and did not halt until she was confronted with her illegal activity. Members of the public were at risk of being harmed by Ms. Nevelt's actions. Her behaviour not only endangered the public, but also harmed the integrity of the pharmacy profession.

## **VI. DECISION AND REASONS FOR PENALTY**

19. The Hearing Tribunal accepts the penalty submissions jointly proposed by counsel for the College and counsel for Ms. Nevelt, having determined that the submission falls within a reasonable range of penalties given Ms. Nevelt's unprofessional conduct. Accordingly, Ms. Nevelt's registration is cancelled and she is ordered to pay the full costs of the investigation and hearing.
20. In reviewing the joint submission, the Hearing Tribunal took into account that Ms. Nevelt did not renew her Practice Permit and confirmed through her counsel that she had no desire or intention of seeking reinstatement from the College in the future.
21. In citing previous case law, counsel for the College referred to some of the factors referenced in *Jaswal v. Newfoundland (Medical Board)*(1996), 42 Admin L.R. (2d) 233 (T.D.) which identifies thirteen factors to be considered when determining penalty. Of particular note to address both deterrence and rehabilitation are:
  - The nature and gravity of the proven allegations: The allegations were of a serious nature and constituted a significant breach of professional conduct by falsifying records, diverting narcotics for Ms. Nevelt's own personal use and committing fraud.
  - Role of the member in acknowledging what occurred: Ms. Nevelt took full responsibility for her actions and has taken steps to deal with her substance abuse issues that led to this behaviour.
  - The presence or absence of any mitigating circumstances: Ms. Nevelt was cooperative with the College and freely admitted the allegations. She participated in an Agreed Statement of Facts and a Joint Submission on penalty. Ms. Nevelt was remorseful for her actions both to the College and before the criminal court.
  - The need to promote deterrence: There is a great need to promote specific and general deterrence in matters such as this. The general public needs to know that drug diversion for personal use is viewed as a serious breach of the College's professional standards and Code of Ethics. There is a need to ensure that other members of the profession at large are deterred from engaging in similar conduct of diversion, and falsifying records to conceal that diversion. Practicing while incapacitated not only harms the integrity of the profession but risks the safety of the general public.

- Public confidence in the integrity of the profession: The public needs to be confident that pharmacists will act in the best interest of their patients, and not take advantage of them for personal reasons, including for personal gain. The imposition of a serious penalty will ensure this will happen.

22. In conclusion, Ms. Nevett's substance abuse led to behaviours that will not be tolerated in the profession of pharmacy. The possibility of significant potential harm to the public by her conduct jeopardizes public safety and the integrity of the profession. The Hearing Tribunal is confident that the penalty serves the interests of the public and the profession.

## **VII ORDERS**

23. The Hearing Tribunal makes the following orders:

- 1) Ms. Nevett's registration with the College is cancelled.
- 2) Ms. Nevett shall pay the full costs of the investigation and hearing, on a schedule satisfactory to the Hearings Director of the College.

Signed on behalf of the Hearing Tribunal by  
the Chair

Dated:

May 5, 2015

Per:

[Anita Warnick]