

ALBERTA COLLEGE OF PHARMACY

IN THE MATTER OF
THE HEALTH PROFESSIONS ACT

AND IN THE MATTER OF A HEARING
REGARDING THE CONDUCT OF

SI HUU NGUYEN

Registration number 4718

DECISION OF THE HEARING TRIBUNAL

December 18, 2019

I. INTRODUCTION

The Hearing Tribunal held a hearing into the conduct of Si Huu Nguyen, regulated member of the Alberta College of Pharmacy. In attendance on behalf of the hearing tribunal were Kevin Kowalchuk, pharmacist and Chair, Anita McDonald, pharmacist, Ted Szumlas, pharmacist and Pat Matusko, public member.

The hearing took place on October 23, 2019 at College Plaza, 2nd floor conference centre, 8215 112 Street NW in Edmonton, Alberta. The hearing was held under the terms of Part 4 of the *Health Professions Act*.

In attendance at the hearing were James Krempien, Complaints Director for the Alberta College of Pharmacy, and Annabritt Chisholm, legal counsel for the Complaints Director. Mr. Nguyen did not attend the hearing in person or by counsel.

Gregory Sim attended as independent legal counsel for 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 Notice of Hearing entered into evidence provided:

IT IS ALLEGED THAT between January 1, 2017 and December 31, 2017, as the licensee and sole practicing pharmacist at the former V-Can Pharmacy, located at 10767 97 St NW, Edmonton, Alberta T5H 2M2, you:

1. Submitted approximately \$124,830 worth of claims for drug costs and approximately \$50,000 worth of claims for dispensing fees for Zovirax 5% oint, Elidel 1% cr, Tactupump 0.1/2.5% gel, Taro-diclofenac 1.5% soln, Protopic 0.1% oint, Taro-mometasone 0.1% cr, Topicort 0.25% cr, diclofenac pwd, clindamycin pwd (the “Audited Drugs”) to Telus Health for which drugs were not dispensed to patients and for which V-Can Pharmacy did not have sufficient stock to account for the claims allegedly provided to patients;
2. Submitted approximately 1031 claims (out of a total of 1058 audited claims) to Telus Health for the Audited Drugs without being able to provide the required supporting invoices from V-Can Pharmacy’s sole drug provider, Kohl & Frisch; and
3. Created approximately 1031 false patient prescription transaction records because V-Can Pharmacy did not have sufficient stock to account for one or more of the Audited Drugs allegedly provided to patients pursuant to those patient prescription transaction records.

IT IS ALLEGED THAT your conduct in these matters:

- a. Failed to demonstrate the ethical conduct and professional judgment expected and required of an Alberta pharmacist and a licensee;
- b. Failed to meet the record keeping obligations expected of an Alberta pharmacist and a licensee;
- c. Created an environment in which your patients were at risk of harm based on the false records created;
- d. Was contrary to accepted pharmacist standards and practice;
- e. Breached the trust placed in you as a pharmacist and a licensee by the Alberta College of Pharmacy; and
- f. Harmed the integrity of the profession.

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

- Standards 1 (sub-sections 1.1 and 1.2) and 18 of the Standards of Practice for Pharmacists and Pharmacy Technicians;
- Standards 1 (sub-sections 1.1 and 1.2) and 8 (sub-sections 8.1, 8.2 and 8.5a) of the Standards for the Operation of Licensed Pharmacies;
- Principles 1 (1 and 12) and 10 (1, 2 and 4) of the Alberta College of Pharmacy's Code of Ethics;
- Sections 10(1)(a) and 10(1)(d)(iv) of the *Pharmacy and Drug Act*; and
- Section 12(1) of the *Pharmacy and Drug Regulation*;

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), 1(1)(pp)(iii) and 1(1)(pp)(xii) of the *Health Professions Act* and misconduct pursuant to the provisions of sections 1(1)(p)(i), 1(1)(p)(ii), and 1(1)(p)(ix) of the *Pharmacy and Drug Act*.

Also entered into evidence was an Admission of Unprofessional Conduct pursuant to section 70 of the *Health Professions Act* by which Mr. Nguyen admitted the allegations of unprofessional conduct as set out in the Notice of Hearing.

III. PRELIMINARY MATTERS

At the outset, Ms. Chisholm made an application to proceed with the hearing in the absence of Mr. Nguyen. Ms. Chisholm explained that pursuant to sections 72 and 74 of the *Health Professions Act*, Mr. Nguyen is required to attend the hearing and he is a compellable witness, but section 79(6) permits the Hearing Tribunal to proceed in his absence if the Tribunal is satisfied that Mr. Nguyen was given proper notice of the hearing.

Ms. Chisholm referred to an October 16, 2019 letter from Sid Kobewka, legal counsel for Mr. Nguyen which confirmed that Mr. Nguyen and Mr. Kobewka were aware of the hearing but neither would attend. A copy of this letter was also entered into

evidence. Ms. Chisholm explained that the hearing would not be contested and suggested that the hearing should proceed in the absence of Mr. Nguyen.

Section 79(6) of the *Health Professions Act* provides that if the investigated person does not appear at a hearing and there is proof that the investigated person has been given a notice to attend, the Hearing Tribunal may proceed with the hearing in the absence of the investigated person and act or decide on the matter being heard in the absence of the investigated person.

The Hearing Tribunal noted the letter from Mr. Kobewka and that Mr. Nguyen was therefore aware of the hearing and had chosen not to attend. The Hearing Tribunal decided to proceed in the absence of Mr. Nguyen and Mr. Kobewka.

IV. EVIDENCE

The parties tendered an Agreed Statement of Facts which confirmed the following material facts:

- At all relevant times, Mr. Nguyen was a registered member of the Alberta College of Pharmacy and the licensee at V-Can Pharmacy located at 10767 97 St. NW in Edmonton, Alberta.
- On January 15, 2019 Telus Health/Health Benefits Management made a complaint to the Complaints Director which resulted in the Complaints Director commencing an investigation into the conduct of Mr. Nguyen and V-Can Pharmacy.
- Telus Health commenced an on-site audit of V-Can Pharmacy on September 10, 2018 and audited 168 separate prescription claims made between January 1, 2017 and December 31, 2017.
- Mr. Nguyen provided the Telus Health auditor with original prescriptions and hardcopies to support the prescription claims.
- V-Can Pharmacy purchased \$35,889.23 worth of the Audited Drugs from its sole drug supplier, Kohl & Frisch during the audit period, but it submitted claims to Telus Health over the same period including approximately \$124,830 in drug costs and approximately \$50,000 in fees for dispensing the Audited Drugs.
- Approximately \$124,830 worth of claims for drug costs and approximately \$50,000 worth of claims for dispensing fees for the Audited Drugs were made by V-Can Pharmacy to Telus Health when those drugs were not dispensed to patients and V-Can Pharmacy did not have sufficient stock to account for the claims for drugs allegedly provided to patients.
- A total of 1,058 claims made by V-Can Pharmacy to Telus Health were audited.
- V-Can Pharmacy could not provide the required supporting invoices from Kohl & Frisch for approximately 1,031 of the 1,058 audited claims.
- Between January 1, 2017 and December 31, 2017, Mr. Nguyen created approximately 1,031 false patient prescription transaction records because

V-Can Pharmacy did not have sufficient stock to account for one or more of the Audited Drugs allegedly provided to patients pursuant to those patient prescription transaction records.

- Mr. Nguyen paid \$107,102.61 to Telus Health after being advised by Telus Health of the request from the Complaints Director to Telus Health for supporting documents for the complaint.
- Mr. Nguyen cooperated with the investigation and acknowledged that he did not have records of invoices to support the claims made.

In addition, the Complaints Director Mr. Krempien was sworn and testified as follows in response to questions from the Hearing Tribunal:

- The V-Can Pharmacy closed on December 25, 2018 and remains closed.
- There was no indication that any of the audited prescriptions were invalid, but there were insufficient drugs in the Pharmacy's stock to dispense all of the drugs for which dispensing claims were submitted to Telus Health.
- Neither Telus Health, nor the College contacted patients of V-Can Pharmacy to assess whether patients obtained all of their medications.
- The false patient prescription transaction records referred to in allegation 3 were the pharmacy's dispensing records.
- Mr. Nguyen has been a registered member of the College since 1992 and a licensee for a significant portion of that period.

V. SUBMISSIONS

Ms. Chisholm reviewed the allegations in the Notice of Hearing and Mr. Nguyen's matching Admission of Unprofessional Conduct. Ms. Chisholm also explained that while the Admission of Unprofessional Conduct was marked "Without Prejudice", Mr. Kobewka's letter confirmed that the documents could be relied upon. Ms. Chisholm suggested the Hearing Tribunal review the documents and determine whether it was prepared to accept Mr. Nguyen's admission of the alleged unprofessional conduct.

VI. FINDINGS

The Hearing Tribunal carefully reviewed and considered the Agreed Statement of Facts, Mr. Krempien's evidence, and the Admission of Unprofessional Conduct entered into evidence.

The Hearing Tribunal decided to accept Mr. Nguyen's admission of unprofessional conduct. The evidence and Mr. Nguyen's admissions confirmed that he:

1. Submitted approximately \$124,830 worth of claims for drug costs and approximately \$50,000 worth of claims for dispensing fees for Zovirax 5% oint, Elidel 1% cr, Tactupump 0.1/2.5% gel, Taro-diclofenac 1.5% soln, Protopic 0.1% oint, Taro-mometasone 0.1% cr, Topicort 0.25% cr, diclofenac pwd, clindamycin pwd (the "Audited Drugs") to Telus Health

for which drugs were not dispensed to patients and for which V-Can Pharmacy did not have sufficient stock to account for the claims allegedly provided to patients;

2. Submitted approximately 1,031 claims (out of a total of 1,058 audited claims) to Telus Health for the Audited Drugs without being able to provide the required supporting invoices from V-Can Pharmacy's sole drug provider, Kohl & Frisch; and
3. Created approximately 1,031 false patient prescription transaction records because V-Can Pharmacy did not have sufficient stock to account for one or more of the Audited Drugs allegedly provided to patients pursuant to those patient prescription transaction records.

The Hearing Tribunal determined that Mr. Nguyen's admitted conduct constituted unprofessional conduct. Mr. Nguyen's submissions of dispensing claims to Telus Health for drugs that were not actually dispensed and for which V-Can Pharmacy did not have sufficient stock represented dishonest conduct in dealings with Telus Health, contrary to principle 10(2) of the Alberta College of Pharmacy Code of Ethics. Mr. Nguyen's conduct also demonstrated that he allowed his professional judgment to be impaired by financial gain, contrary to principle 1(1) of the Code of Ethics. The public should be entitled to expect pharmacists to be honest in their dealings with others in the provision of healthcare services. The public should also be entitled to expect that pharmacists will not allow their own financial interests to take precedence over the professional obligations and judgment.

Mr. Nguyen's submissions of claims without being able to provide the supporting invoices for the Audited Drugs from V-Can Pharmacy's sole drug provider, and his creation of false patient prescription transaction records without having had sufficient stock to account for the drugs claimed to have been provided to patients contravened Standards 8.1, 8.2 and 8.5 of the Standards for the Operation of Licensed Pharmacies, section 12(1) of the *Pharmacy and Drug Regulation*, A.R. 240/2006 and Standard 18.1 of the Standards of Practice for Pharmacists and Pharmacy Technicians. The rules and standards for the creation and maintenance of accurate pharmacy records and records of care exist to enable regulators like the College to regulate effectively in the public interest. Breaching them is unprofessional.

Mr. Nguyen's conduct was also conduct that harms the integrity of the profession of pharmacy and unprofessional, contrary to section 1(p)(ix) of the *Pharmacy and Drug Act*, R.S.A. 2000, c. P-13 and section 1(1)(pp)(xii) of the *Health Professions Act*.

VI. **ORDERS**

Ms. Chisholm made submissions on sanctions orders. Ms. Chisholm reviewed the Hearing Tribunal's powers to impose sanctions pursuant to section 82 of the *Health Professions Act* and discussed the purposes of sanctions to protect the public, to uphold

the integrity of the profession, to ensure fairness to the member and to deter future unprofessional conduct.

Ms. Chisholm then reviewed relevant factors in the assessment of sanctions orders in this case. In terms of the nature and gravity of Mr. Nguyen's conduct, Ms. Chisholm described his conduct as a very serious pattern of repetitive, unacceptable behaviour that included the creation of false records, breaching ethical duties, harming the integrity of the pharmacy profession and impacting the profession's relationship with the insurer. Ms. Chisholm pointed out that Mr. Nguyen's impugned claims to Telus Health numbered over 1,000.

In terms of Mr. Nguyen's age and experience, Ms. Chisholm explained that Mr. Nguyen has been registered with the College continuously since March 1992 although his practice permit has been suspended since October 23, 2019, as further discussed below. Mr. Nguyen's conduct was therefore not the result of any lack of experience.

Ms. Chisholm also referred to Mr. Nguyen's previous findings of unprofessional conduct. She explained that Mr. Nguyen's previous findings were based on similar conduct, but the current findings of unprofessional conduct should not be considered repeat behaviour since the current findings are based on claims made to Telus Health prior to the previous hearing.

Ms. Chisholm acknowledged Mr. Nguyen's significant cooperation with the investigation and that his admission of unprofessional conduct was a mitigating factor on the issue of sanctions.

On the other hand, Ms. Chisholm argued that when Mr. Nguyen and V-Can Pharmacy made false dispensing claims, there were false patient records created and made available to other health care professionals. This was an aggravating factor on the issue of sanctions.

Ms. Chisholm suggested that sanctions should be imposed to specifically deter Mr. Nguyen and to generally deter other members of the profession from similar unprofessional conduct in the future.

In terms of public confidence in the regulation of the pharmacy profession, Ms. Chisholm submitted that the public, including insurers expect members of the College to comply with the law and the College's standards. Insurers pay millions of dollars each year to pharmacies and pharmacists based on trust in pharmacists' compliance with the law and standards. The College must impose serious sanctions on regulated members who breach the law and standards so that the public remains confident in the College's ability to regulate the profession properly in the public interest.

Finally, Ms. Chisholm referred to other, similar cases. In the case of Shereen Elbayomy, currently under appeal, the Hearing Tribunal found Ms. Elbayomy guilty of unprofessional conduct for submitting approximately \$300,000 in dispensing claims that could not be substantiated based on the pharmacy's inventory. Ms. Elbayomy was also found to have failed to cooperate with the Complaints Director's investigation.

The Hearing Tribunal imposed orders cancelling Ms. Elbayomy's registration with the College, imposing fines of \$50,000, prohibiting her from serving as a licensee or owning all or part of a pharmacy for 10 years and requiring her to pay the costs of the investigation and hearing.

Similarly, in Mr. Nguyen's own previous case before the Hearing Tribunal he was found guilty of unprofessional conduct based on conduct very similar to his proven unprofessional conduct in this case, except that he was also found to have failed to comply or cooperate with the insurer's audit. His practice permit was suspended for 12 months, he received a reprimand, \$30,000 in fines and he was prohibited from serving as a licensee or proprietor of a pharmacy for 5 years. He was also ordered to pay the costs of the investigation and hearing, to complete the College's ethics and jurisprudence exam and to provide a copy of the Hearing Tribunal's decision to any pharmacy employer for a 5-year period. As noted above, the Hearing Tribunal's decision finding Mr. Nguyen guilty of unprofessional conduct and imposing sanctions occurred after he had submitted the claims to Telus Health that are the subject of this hearing.

Ms. Chisholm then produced a Joint Submission on Sanctions from both Mr. Nguyen and the Complaints Director. The Joint Submission on Sanctions provided for the Hearing Tribunal to make the following orders:

1. Mr. Nguyen's practice permit shall be suspended for a period of 24 months, commencing the day following the end of his period of suspension ordered by the Hearing Tribunal in its decision on sanctions dated July 2, 2019.
2. Mr. Nguyen shall pay a fine of \$10,000 for allegations 1 and 2 combined and \$10,000 for allegation 3, for a total fine of \$20,000, payable on a 24-month payment schedule acceptable to the Hearings Director that shall commence one month after the end of the payment schedule set out in accordance with Order 3 of the Hearing Tribunal in its decision on sanctions dated July 2, 2019.
3. Mr. Nguyen shall not be reinstated as a clinical pharmacist with the ACP after serving his period of suspension in order 1, unless he has successfully completed the Centre for Personalized Education for Professional's (CPEP) Probe Course and provided evidence of successful completion to the Complaints Director.
4. Mr. Nguyen shall not serve as a licensee, owner or proprietor for a period of 5 years, commencing five years after the day Mr. Nguyen received the Hearing Tribunal decision on sanctions dated July 2, 2019.
5. After serving his suspension set out in Order 1 above, and upon reinstating as a clinical pharmacist with the ACP, Mr. Nguyen's practice permit shall be subject to the condition that he practice under direct supervision for a 1-year period, under a direct supervisor approved by the Complaints

Director, with a report to be provided by the direct supervisor to the Complaints Director on a monthly basis and to the satisfaction of the Complaints Director;

6. Mr. Nguyen shall be responsible for payment of all costs, expenses and fees related to the investigation and hearing of this matter, all of which are to be paid on a 24-month payment schedule acceptable to the Hearings Director, that shall commence one month after the end of the payment schedule set out in accordance with Order 5 of the Hearing Tribunal decision on sanctions dated July 2, 2019.
7. If Mr. Nguyen misses a payment in the payment schedule set out by the Hearings Director arising from the findings and orders by the Hearing Tribunal decision on sanctions dated July 2, 2019, the costs and fines as set out in Orders 2 and 6 above are payable immediately on a payment schedule acceptable to the Hearings Director.

Ms. Chisholm explained that Mr. Nguyen's suspensions and the prohibitions on serving as a licensee, owner or proprietor would be served consecutively because Mr. Nguyen had not demonstrated that he could be trusted. She explained that the Probe course was included because Mr. Nguyen's conduct engaged ethical implications and the course provider would tailor the course work to his specific ethical lapses. Ms. Chisholm also confirmed the Probe course would be at Mr. Nguyen's own cost. Ms. Chisholm explained that the requirement for direct, supervised practice would ensure Mr. Nguyen would only return to practice with appropriate oversight. Ms. Chisholm also highlighted that Mr. Nguyen had been very cooperative so the costs up to the hearing date were modest at approximately \$5,000, but the costs would be higher after the hearing.

Finally Ms. Chisholm explained that the Hearing Tribunal should defer to the Joint Submission on Sanctions unless it would bring the administration of justice into disrepute or be contrary to the public interest, referring to *Rault v. Law Society of Saskatchewan*, 2009 SKCA 81 and *R. v. Anthony Cook*, [2016] 2 S.C.R. 204. Ms. Chisholm asked the Hearing Tribunal members to advise if they had any questions or concerns about the jointly proposed sanctions before departing from the Joint Submission on Sanctions.

Ms. Chisholm also acknowledged the Hearing Tribunal could direct the Hearings Director to send a copy of the Tribunal's decision to the Minister of Justice and Solicitor General, if the Tribunal has reasonable and probable grounds to believe Mr. Nguyen has committed a criminal offence, pursuant to section 80(2) of the *Health Professions Act*.

In response to questions from the Hearing Tribunal, Mr. Krempien explained that overall a long suspension was more suitable than cancellation in this case. Mr. Nguyen's cumulative 36-month suspension was comparable to the 36-month period that a cancelled pharmacist would have to wait before re-applying to the College. Mr.

Krempien added that suspending Mr. Nguyen would permit greater flexibility to impose and enforce conditions on his practice if he returns to work in the future.

The Hearing Tribunal carefully considered the Joint Submission on Sanctions, Ms. Chisholm's submissions on the sanctions orders and Mr. Krempien's responses to the Hearing Tribunal's questions. The Hearing Tribunal considered Mr. Nguyen's conduct to be very serious. The integrity of the pharmacy profession and the public's confidence in the College's ability to properly regulate the profession in the public interest depends on members' compliance with the law and with the College's Codes and Standards. Mr. Nguyen failed to do that in this case, as he was found to have done in the other, prior decision of a Hearing Tribunal.

The Hearing Tribunal might have been prepared to cancel Mr. Nguyen's registration and practice permit, particularly if the previous Hearing Tribunal decision had been made prior to the conduct at issue in this hearing. The Hearing Tribunal recognized that it is important to defer to the Joint Submission on Sanctions. The Tribunal accepts that the Complaints Director has considerable experience assessing cases and developing submissions on the appropriate sanctions for unprofessional conduct. The Tribunal also noted that Mr. Nguyen's proven unprofessional conduct in this hearing pre-dated the prior Hearing Tribunal's decision. Based on the foregoing, the Hearing Tribunal considered that imposing the jointly submitted sanctions would not bring the administration of justice into disrepute or be contrary to the public interest. The Tribunal decided to accept the Joint Submission on Sanction. The Hearing Tribunal therefore makes the following orders:

1. Mr. Nguyen's practice permit shall be suspended for a period of 24 months, commencing the day following the end of his period of suspension ordered by the previous Hearing Tribunal in its decision on sanctions dated July 2, 2019.
2. Mr. Nguyen shall pay a fine of \$10,000 for allegations 1 and 2 combined and \$10,000 for allegation 3, for a total fine of \$20,000, payable on a 24-month payment schedule acceptable to the Hearings Director that shall commence one month after the end of the payment schedule set out in accordance with Order 3 of the previous Hearing Tribunal in its decision on sanctions dated July 2, 2019.
3. Mr. Nguyen shall not be reinstated as a clinical pharmacist with the College after serving his period of suspension in Order 1, unless he has successfully completed the Centre for Personalized Education for Professional's (CPEP) Probe Course and provided evidence of successful completion to the Complaints Director.
4. Mr. Nguyen shall not serve as a pharmacy licensee, owner or proprietor for a period of 5 years, commencing five years after the day Mr. Nguyen received the previous Hearing Tribunal's decision on sanctions dated July 2, 2019.

5. After serving his suspension set out in Order 1 above, and upon reinstating as a clinical pharmacist with the ACP, Mr. Nguyen's practice permit shall be subject to the condition that he practice under direct supervision for a 1-year period, under a direct supervisor approved by the Complaints Director, with a report to be provided by the direct supervisor to the Complaints Director on a monthly basis and to the satisfaction of the Complaints Director;
6. Mr. Nguyen shall be responsible for payment of all costs, expenses and fees related to the investigation and hearing of this matter, all of which are to be paid on a 24-month payment schedule acceptable to the Hearings Director, that shall commence one month after the end of the payment schedule set out in accordance with Order 5 of the previous Hearing Tribunal's decision on sanctions dated July 2, 2019.
7. If Mr. Nguyen misses a payment in the payment schedule set out by the Hearings Director arising from the findings and orders by the previous Hearing Tribunal's decision on sanctions dated July 2, 2019, the costs and fines as set out in Orders 2 and 6 above are payable immediately on a payment schedule acceptable to the Hearings Director.

Finally, the Hearing Tribunal determined pursuant to section 80(2) of the *Health Professions Act* that it has reasonable and probable grounds to believe that Mr. Nguyen has committed a criminal offence and the Hearing Tribunal directs the Hearings Director to send a copy of this written decision to the Minister of Justice and Solicitor General, and on the request of the Minister to also send a copy of the record of the hearing.

Signed on behalf of the hearing tribunal by the Chair on December 18, 2019.

[Kevin Kowalchuk]

Kevin Kowalchuk