

ALBERTA COLLEGE OF PHARMACISTS

IN THE MATTER OF  
THE HEALTH PROFESSIONS ACT

AND IN THE MATTER OF A HEARING REGARDING  
THE CONDUCT OF **Connie Orbeck (#1299)**

DECISION OF THE HEARING TRIBUNAL  
REGARDING PENALTY

## Introduction

In a previous decision dated October 27, 2010, the Hearing Tribunal determined that all of the allegations in the Notice of Hearing were proven.

The parties were provided an opportunity to make written submissions with respect to penalty. The Hearing Tribunal met via teleconference on [insert date] and via e-mail to consider the submissions.

## Submissions

Counsel for the Alberta College of Pharmacists (ACP), Mr. Jardine, provided written submissions dated November 12, 2010. The ACP requested that the Hearing Tribunal impose a number of orders pursuant to s. 82 of the *Health Professions Act* (HPA), including a suspension for a period of three years, and a restriction prohibiting Ms. Orbeck from acting as a proprietor or a licensee or practicing as a sole pharmacist in a pharmacy. The ACP suggested that these restrictions would apply in the event that Ms. Orbeck sought to change her status to active, and was issued a practice permit. In addition, the ACP sought to impose fines in the total amount of \$7,000.00, an order requiring Ms. Orbeck to pay the expenses and costs associated with the investigation and the hearing, and an order requiring publication and distribution of the decision.

Mr. Jardine submitted that the sanctions sought were appropriate, having regard to the purposes of disciplinary proceedings under the HPA, including protection of the public, maintaining the integrity of the profession, fairness to the member, and deterrence. In addition, Mr. Jardine indicated that factors such as the seriousness of the conduct, the age of the offender, and presence or absence of prior complaints or convictions must be considered.

Ms. Orbeck provided a letter to the Hearing Tribunal dated November 12, 2010. Ms. Orbeck argued that the only appropriate penalty was a letter of reprimand, in light of her limited financial means, the pending closure of her pharmacy, and the health concerns she was experiencing during the relevant period of time.

## Orders of the Hearing Tribunal and Reasons

The Hearing Tribunal has considered the arguments of both parties regarding penalty.

The factors that are relevant to penalty in this case are as follows:

- Concerns regarding ungovernability are the very heart of the professional and ethical obligations of a pharmacist and part of being a self-governed profession. Ms. Orbeck breached a fundamental duty as a member of a self-

regulated profession and therefore the orders should reflect the gravity of the situation.

- The pattern of previous discipline decisions were a concern even though the member has moved to retirement status and the Tribunal agrees with the ACP that the member must not be permitted to continue to practice in this manner in order to protect the public.
- Ms. Orbeck did attend the hearing and admitted that the allegations were well founded. Although she did not acknowledge that the conduct constituted unprofessional conduct, her admission nevertheless shortened the hearing and this is a mitigating factor that must be considered.
- Ms. Orbeck was suffering from serious health concerns during the relevant period of time. This is a mitigating factor that must also be considered.
- Previous discipline decisions have not changed Ms. Orbeck's pattern of conduct and the Tribunal agrees that sanctions are necessary to ensure that Ms. Orbeck understands that her conduct was grossly unprofessional.
- In order to maintain the public's confidence in the integrity of the pharmacy profession the orders should reflect the seriousness of the conduct exhibited by the member.
- The orders made in this case should ensure that this conduct does not recur in the future.

Although Ms. Orbeck argued that a letter of reprimand would be sufficient penalty, the Tribunal feels that a simple letter of reprimand is not sufficient considering the history of ungovernability that the member has shown and the lack of acknowledgment of the College as an authority.

Therefore, the Tribunal imposes the following orders under section 82 of the *Health Professions Act*:

- a. Ms. Orbeck's practice permit shall be suspended for a period of 1 year. The suspension will be stayed and will take effect only if Ms. Orbeck applies to change her status to active status;
- b. If Ms. Orbeck does request a change in status to obtain an active permit and has completed the 1 year suspension, she must complete and pass the ACP's jurisprudence exam and all other requirements set by the Registration Department;
- c. If Ms. Orbeck is issued an active practice permit that she be subjected to the following conditions:
  - a. Ms. Orbeck shall be prohibited from acting as a proprietor or licensee of a pharmacy, and;
  - b. Ms. Orbeck shall not practice as a sole pharmacist in a pharmacy;

Although the ACP sought a suspension of 3 years, the Hearing Tribunal felt that a suspension of 1 year was more appropriate, having regard to the mitigating factors referred to above. These conditions shall be applied for the time that Ms. Orbeck has an active practice permit. Ms. Orbeck's competency as a pharmacist was not brought into question during the hearing but her ability to act as a proprietor and licensee was. Therefore, the Tribunal feels that her future activities in this role should be limited in order to protect the public.

- d. Ms. Orbeck shall pay a fine of \$2000.00 for allegations 1 and 2 and a fine of \$5000.00 for allegation 3. The payment schedule to be determined by the College;
- e. Ms. Orbeck shall pay 50% of all expenses, costs and fees related to the investigation and the hearing of this matter. The payment schedule to be determined by the College;

The ACP sought full costs as part of the order for Ms. Orbeck but the Tribunal felt that 50% is appropriate as Ms. Orbeck had stated during the hearing that she is of limited financial means. The Tribunal also felt that asking Ms. Orbeck to pay all costs as well as fines given the 1 year suspension and her current retired status would inflict financial hardship on the member. The inability to practice as independently as before is meant to be a significant deterrent to the member instead.

- f. A summary of this decision be published in the *acpNews* including the name of Ms. Orbeck and the name of the pharmacy;
- g. A copy of this decision be provided to all other pharmacy regulators in Canada by the Registrar of ACP;
- h. The Hearing Tribunal will retain jurisdiction if there are any questions regarding the costs of the investigation or hearing or the payment schedule imposed by the ACP.

Signed on behalf of the Hearing Tribunal  
by the Chair

Dated:

Dec 20, 2010

Per:

