

ALBERTA COLLEGE OF PHARMACISTS

IN THE MATTER OF  
THE HEALTH PROFESSIONS ACT

AND IN THE MATTER OF A HEARING REGARDING  
THE CONDUCT OF **A PHARMACIST REGISTRANT**

**DECISION OF THE HEARING TRIBUNAL**

## **I. INTRODUCTION**

The Hearing Tribunal held a hearing into the conduct of a pharmacist registrant. In attendance on behalf of the Hearing Tribunal were Cathy Biggs (the Chair), Sheryl Pearson (Public Member), Peter Macek and Bob Sprague (The Tribunal).

The hearing took place on November 10th, 2010 at the Alberta College of Pharmacists, 1200, 10303 Jasper Ave., Edmonton, Alberta. The hearing was held under the terms of Part 4 of the *Health Professions Act*.

In attendance at the hearing were Fiona Moore representing the Alberta College of Pharmacists (the ACP) and Stewart Baker representing the registrant.

There were no objections to the composition of the Hearing Tribunal.

## **II. ALLEGATIONS**

1. On July 7, 2009 the pharmacist registrant entered into a Resolution Agreement with the Complaints Director of the Alberta College of Pharmacists pursuant to section 55(2)(a.1) of the *Health Professions Act* in order to resolve a complaint investigation (Complaint File #963) being conducted by the College. In that Resolution Agreement in paragraph 6 the registrant acknowledged and admitted the following facts:
  - a. that on March 31, 2009 she removed and ingested one Dexedrine 15 mg capsule from the expired drugs stored at the pharmacy at which she had been employed since June 2008;
  - b. that on March 31, 2009 she removed and ingested approximately 500mg of ketamine from the pharmacy at which she worked;
  - c. that on March 31, 2009 in addition to the Dexedrine and ketamine she also consumed alcohol and was using a fentanyl patch previously prescribed for chronic back pain;
  - d. that on or about March 31, 2009 she attended the emergency department at her local hospital in an incapacitated state due to the concurrent use of Dexedrine, ketamine, alcohol and fentanyl;
  - e. that she had previously struggled with a substance abuse issue related to the use of cocaine and was being treated by her physician;
  - f. that her actions in this matter constitute unprofessional conduct.

2. In paragraphs 12 and 14 of the Resolution Agreement the registrant acknowledged and agreed that if she failed to fulfill the terms of the Resolution Agreement and the covenants and undertakings in the Resolution Agreement:
  - a. the Complaints Director could make a determination under section 66(3) of the *Health Professions Act* to refer the matters covered in Complaint File #963 and the Resolution Agreement to a hearing tribunal; and
  - b. if the matters were referred to a hearing tribunal by the Complaints Director, the registrant acknowledged that the admissions in the Resolution Agreement would constitute an admission of unprofessional conduct pursuant to section 70 of the Act and that the hearing tribunal would then determine whether or not the admitted conduct is unprofessional conduct in accordance with section 70(3) of the Act.
3. During the fall of 2009 the registrant relapsed with her substance abuse issues and began misusing alcohol and prescription medications which constituted a breach of the Resolution Agreement.
4. On five or six occasions prior to November 18, 2009 the registrant diverted amounts of ketamine (totaling approximately 5 grams) for her personal use from the pharmacy where she was employed and these actions also constituted a breach of the Resolution Agreement.
5. On November 18, 2009 the theft and use of ketamine was detected by the pharmacy and the registrant was subsequently terminated from the pharmacy.
6. After November 18, 2009 the registrant continued to misuse alcohol and prescription medications and was admitted to hospital on November 21, 2009.
7. Subsequent to her discharge from hospital on December 9, 2009, she continued to misuse alcohol and prescription medications and was readmitted to hospital on December 29, 2009. During this period the registrant also used cocaine for a period of at least 3 days.

AND IT IS ALLEGED THAT the registrant's conduct described above constitutes a breach of the following statutes, regulations, and standards governing the practice of pharmacy:

- Section 1 and subsections 1.1 and 1.2 of the Standards for Pharmacist Practice;
- The *Controlled Drugs and Substances Act*, section 4(1);
- Principles X and XI of the ACP Code of Ethics Bylaw;

- Sections 1(1)(pp)(ii), 1(1)(pp)(iii) and 1(1)(pp)(xii) of the *Health Professions 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*.

### **III. PRELIMINARY MATTERS**

There were no preliminary matters raised.

### **IV. EVIDENCE**

An Agreed Statement of Facts was presented to the Tribunal. Facts agreed on by the registrant and the ACP are as follows:

1. Following the Resolution Agreement in July 2009, the registrant attended alcoholics/narcotics anonymous programs for a couple of months, but then stopped.
2. During approximately September through November 2009, the registrant experienced stress at work and began to drink in the evenings resulting in hangovers and instability in the mornings. As time went on she proceeded to mix alcohol with zopiclone and benzodiazepines. (Exhibit 5, Tab B15)
3. The registrant's drug screens, as late as November 9, 2009, were clear of cocaine and other illicit drugs. However, during October and November the registrant rescheduled appointments and missed some drug screen tests.
4. On five or six occasions, the registrant diverted ketamine powder from the pharmacy where she worked for personal use after hours, with about 5 grams total diverted from the pharmacy.
5. On November 18, 2009, evidence of the registrant's ketamine use at the pharmacy was discovered. She left the pharmacy, gambled about \$400.00 at VLT machines and drank. (Exhibit 5, Tab B15)
6. On November 18, 2009, her employer informed the registrant by telephone she could no longer work at the pharmacy.
7. After termination from the pharmacy, experiencing further stress and difficulty sleeping, the registrant increased her alcohol, lorazepam and zopiclone use. There was at least one blackout during this time. Finally, on November 21, 2009 the registrant's daughter came over to go shopping with her mother and found the registrant in a state warranting a call for an ambulance. (Exhibit 5, Tab B15)

8. The registrant was hospitalized from November 21, 2009 to December 9, 2009. During a weekend pass home (December 4-6), she filled prescriptions for lorazepam and zopiclone, bought alcohol and proceeded to use these in combination during the weekend to the point of blacking out and falling. She called a nurse from the hospital to help her back to the hospital and bandage her minor head injury. (Exhibit 5, Tab B15)
9. Upon discharge from the hospital on December 9, 2009 the registrant was instructed to seek addiction centre treatment and daily counseling. During this time, the registrant experienced stress and difficulty sleeping and immediately began using alcohol, zopiclone and lorazepam that she had hidden in her home. (Exhibit 5, Tab B15) When that ran out, she began using cocaine and Endocet between December 20 and 23, 2009. (Exhibit 5, Tab B18) She did not practice pharmacy during this time. (Exhibit 5, Tab B11, page 2 of 3)
10. On December 29, 2010 the registrant called an ambulance for herself and was re-admitted to hospital through the emergency department with withdrawal anxiety and depression. (Exhibit 5, Tab B18). She remained in hospital until January 9, 2010.
11. After her second discharge from hospital on January 9, 2010 the registrant acquired an AA sponsor and an ADAAC counselor and attended the AADAC recovery program on weekdays and groups at the hospital psychiatric ward. (Exhibit 5, Tab B15 and B24)
12. On February 10, 2010 the registrant began a 91-day residential treatment program in Kelowna, British Columbia. (Exhibit 5, Tab B21 and B26) She returned to her hometown on or about May 19, 2010 with a certifying letter regarding her completion of the treatment program (Exhibit 5, B27)

## V. ADMISSIONS

The registrant admitted unprofessional conduct by acknowledging that:

1. on July 7, 2009 she entered into a Resolution Agreement with the Complaints Director of the ACP pursuant to section 55(2)(a.1) of the *Health Professions Act* in order to resolve a complaint investigation (Complaint File #963) being conducted by the ACP (Resolution Agreement). In the Resolution Agreement in paragraph 6 the registrant acknowledged and admitted that:
  - a. on March 31, 2009 she removed and ingested one Dexedrine 15 mg capsule from the expired drugs stored at the pharmacy at which she had been employed since June 2008;
  - b. on March 31, 2009 she removed and ingested approximately 500mg of ketamine from the pharmacy;

- c. on March 31, 2009 in addition to the Dexedrine and ketamine she also consumed alcohol and was using a fentanyl patch previously prescribed for chronic back pain;
  - d. on or about March 31, 2009 she attended the emergency department at the local hospital in an incapacitated state due to the concurrent use of Dexedrine, ketamine, alcohol and fentanyl;
  - e. she had previously struggled with a substance abuse issue related to the use of cocaine and was being treated by her physician;
  - f. her actions in this matter constitute unprofessional conduct.
2. in paragraphs 12 and 14 of the Resolution Agreement the registrant acknowledged and agreed that if she failed to fulfill the terms of the Resolution Agreement and the covenants and undertakings in the Resolution Agreement:
  - a. the Complaints Director could make a determination under section 66(3) of the *Health Professions Act* to refer the matters covered in Complaint File #963 and the Resolution Agreement to a hearing tribunal; and
  - b. if the matters were referred to a hearing tribunal by the Complaints Director, the registrant acknowledged that the admissions in the Resolution Agreement would constitute an admission of unprofessional conduct pursuant to section 70 of the Act and that the hearing tribunal would then determine whether or not the admitted conduct is unprofessional conduct in accordance with section 70(3) of the Act.
3. during the fall of 2009 she relapsed with her substance abuse issues and began misusing alcohol and prescription medications which constituted a breach of the Resolution Agreement.
4. on five or six occasions prior to November 18, 2009 the registrant diverted amounts of ketamine (totaling approximately 5 grams) for her personal use from the pharmacy where she was employed and these actions also constituted a breach of the Resolution Agreement.
5. on November 18, 2009 the theft and use of ketamine was detected by the pharmacy and she was subsequently terminated from the pharmacy.
6. after November 18, 2009 she continued to misuse alcohol and prescription medications and was admitted to hospital on November 21, 2009.
7. subsequent to her discharge from hospital on December 9, 2009, she continued to misuse alcohol and prescription medications and was readmitted to hospital on December 29, 2009. During this period she used cocaine for a period of at least 3 days.

The registrant admitted that her conduct described above breaches the following statutes, regulations, and standards governing the practice of pharmacy:

- Section 1 and subsections 1.1 and 1.2 of the Standards for Pharmacist Practice;
- The *Controlled Drugs and Substances Act*, section 4(1);
- Principles X and XI of the ACP Code of Ethics Bylaw;
- Sections 1(1)(pp)(ii), 1(1)(pp)(iii) and 1(1)(pp)(xii) of the *Health Professions 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*.(Exhibit 3)

The ACP submitted the following admissions:

- a. That the registrant and her counsel Mr. Baker have cooperated in the process of setting this matter for a hearing including this Agreed Statement of Facts and Admission of Unprofessional Conduct.
- b. The College further acknowledges that the registrant has had her right to practice pharmacy suspended since January 8, 2010 and has not practiced pharmacy since November 17, 2009.

The Tribunal accepted the Agreed Statement of Facts as entered into evidence and found that the admitted conduct constitutes unprofessional conduct in accordance with section 70(3) of the *Health Professions Act*.

## **VI. SUBMISSIONS**

Ms. Moore submitted the following recommendations for orders on behalf of the ACP:

1. An 18-month suspension starting from January 8, 2010 was applicable in this case as the registrant was a repeat offender. Due to her breach of the Resolution Agreement and the potential harm to the public a suspension continuing until July 8, 2011 should be implemented.
2. Publication of the decision and order in the ACP News on an unnamed basis.
3. Payment of all costs of the investigation and the hearing.
4. Conditions on her practice permit as follows:
  - a. She shall not act as a licensee or as a signing authority for narcotics or controlled drugs for 3 years;
  - b. She must not obtain or ingest any Schedule 1 or 2 drugs without a valid prescription from a prescriber who is aware of these orders;
  - c. She shall be subject to compliance monitoring carried out by Dr. Canniff and Associates. Reports of noncompliance with these orders will be reported to the Complaints Director. If noncompliance with these orders is found that the registrant's practice permit be suspended until a review by the ACP can be undertaken.
  - d. That for 36 months after obtaining her practice permit the registrant obtain agreement in writing from her employer to conduct narcotic audits every 3 months. Discrepancies that appear to be related to the registrant will be reported to the ACP.
  - e. The registrant disclose the existence and content of this order to her employers for 3 years.
  - f. A copy of this agreement be sent to all regulatory bodies within Canada.

Mr. Baker agreed with the orders except for the length of the suspension and the costs associated with the investigation and the hearing. Mr. Baker stated that the registrant should not be seen as a repeat offender as her offence is related to her illness and was not a malicious intent to divert medication for profit. Mr. Baker also pointed out that the registrant paid approximately \$40,000.00 to attend an inpatient rehabilitation center and is remorseful about the trouble she has caused. He also stated that she is committed to her recovery and has cooperated fully with the ACP during the investigation.

## VII. ORDERS

Under section 82 of the *Health Professions Act* the Tribunal orders that in the hearing regarding the matter of the registrant:

1. The suspension of the registrant's Alberta practice permit shall continue until January 8, 2011.

The Hearing Tribunal felt that a longer suspension would not act as a deterrent to the registrant. As Mr. Baker had stated, she has been clean for nine months at the time of the hearing, has a good support network and has shown motivation to maintain her recovery.

2. The following conditions are imposed on the registrant's practice permit for a period of 36 months starting from when she obtains new employment as a pharmacist:
  - A. She not hold the position of the licensee or have narcotic signing authority.
  - B. She shall only use Schedule 1 and 2 drugs under the supervision and only by prescription of an authorized physician or prescriber that is aware of this order.
  - C. She enter into drug use compliance monitoring (drug screening) with an acceptable organization as agreed upon by the ACP and the registrant. Schedule to be determined by Jim Krempian, Complaints Director.
  - D. Narcotic audits be conducted every 3 months for 36 months with the agreement of the licensee and employer. Results of discrepancies are to be reported to Jim Krempian, Complaints Director within 7 days.
  - E. She practice under direct supervision of a licensed pharmacist for 12 months once employment has started.
3. The registrant disclose this order to her employer and licensee for 36 months starting from the reinstatement of her practice permit.
4. The registrant obtain professional counseling for 12 months by an organization agreed upon by the registrant and the ACP. Frequency of counseling to be determined by the counselor and Jim Krempian, Complaints Director. Semi-annual and final reports are to be provided to Jim Krempian, Complaints Director

The Tribunal felt that ongoing counseling will assist the registrant in her recovery and identify stressors that may risk her sobriety. In an attempt to circumvent a crisis that may put the public at risk the Tribunal felt it was necessary to involve the ACP in the registrant's recovery. If there is a disagreement with respect to identifying an acceptable organization for compliance monitoring or with respect to the organization that will provide professional counseling then the

disagreement may be remitted back to the Hearing Tribunal that will determine the matter.

5. A copy of these orders to be sent to all pharmacy licensing and professional bodies in Canada.
6. The registrant write a letter to her previous employer acknowledging the impact of her actions and responsibility prior to renewal of her practice permit. A copy must be received by the ACP Hearings Director before her practice permit can be renewed.

The Tribunal felt it was important for the registrant to identify the potential harm she has caused her employer's business and the personal stress she would have placed on her employer and staff.

7. The registrant pay all costs associated with this hearing on a schedule determined by the ACP.

The Tribunal deliberated over costs for some time and decided to order the registrant to pay all costs as deterrent to the registrant relapsing into drug use. The majority of the orders are meant to act as monitoring of the registrant's condition and protect the public from harm.

8. A summary of this Decision be published in the ACP newsletter withholding the name of the member, the name of the pharmacy involved and the name of the city the incident took place.

Signed on behalf of the Hearing Tribunal  
by the Chair

Dated:

Per:

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