

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

REDACTED

October 21, 2013

I. INTRODUCTION

The hearing tribunal held a hearing into the conduct of [REDACTED]. In attendance on behalf of the hearing tribunal were Ms. Anita Warnick, pharmacist (chairperson), Ms. Sherilyn Houle, pharmacist, Mr. Tony Nickonchuk, pharmacist, and Mr. Mike Dungey, public member.

The following persons were also in attendance:

Mr. James Krempien, Complaints Director
Mr. David Jardine, legal counsel representing the complaints director
[REDACTED], investigated person
Mr. Alex Pringle, legal counsel representing [REDACTED]
Ms. Katrina Haymond, independent legal counsel to the hearing tribunal

The hearing took place on [REDACTED] at the office of the Alberta College of Pharmacists ("ACP"). The hearing was held under the terms of Part 4 of the *Health Professions Act* ("HPA").

II. PRELIMINARY AND JURISDICTIONAL ISSUES

There were no objections to the composition of the hearing tribunal or the jurisdiction of the hearing tribunal to proceed with a hearing.

Mr. Pringle indicated at the outset of the hearing that he would be making an application to close certain parts of the hearing pursuant to Section 78 of the *Health Professions Act*. He indicated that he would be making his application at the relevant point in time. The substance of the application, the decision on the application, and the hearing tribunal's reasons are set out in detail below.

III. ALLEGATION

The Notice of Hearing was entered as Exhibit 1, and stated the following:

It is alleged that:

1. Between September 2012 and April 2013 on multiple occasions you stole merchandise and medications from Shoppers Drug Mart [REDACTED] of an estimated total dollar value between \$500.00 and \$2500.00 while you were practicing as a pharmacist and that the thefts only ended when you were confronted by the pharmacy licensee [REDACTED] and the Shoppers Drug Mart Loss Prevention Coordinator.

The Notice of Hearing alleged that [REDACTED]'s conduct failed to meet the standards of practice reasonably expected of a pharmacist, was contrary to the Code of Ethics, harms the integrity of the profession, and constitutes a breach of a number of statutes, regulations and standards governing the practice of pharmacy.

At the outset of the hearing, Mr. Pringle confirmed on [REDACTED]'s behalf that [REDACTED] admitted that the facts as alleged in the Notice of Hearing were true, and that the conduct constituted unprofessional conduct.

EVIDENCE

At the outset of the hearing, Mr. Jardine sought to admit into evidence an Exhibit Book consisting of the only evidence Mr. Jardine sought to tender on behalf of the complaints director, in light of [REDACTED]'s admission. Mr. Pringle did not object to the admission of this evidence, which consisted of:

- Exhibit 1 Notice of Hearing
- Exhibit 2 Record of Decision Under Section 66(3) of the *Health Professions Act*
- Exhibit 3 Tabs A-O: Various records relating to the investigation concerning [REDACTED]

Mr. Pringle also requested that a report consisting of an Independent Medical Examination by Dr. Charl Els, dated August 31, 2013, be entered as an exhibit. Mr. Pringle indicated that the report was relevant to penalty but wished to tender it at the outset of the hearing, so that the tribunal could review it and the information contained in Exhibits 1-3 at the same time. Mr. Jardine did not object, and Dr. Els' report was entered as **Exhibit 4**.

After the tribunal indicated its findings regarding whether the allegation was proven, [REDACTED] testified in relation to penalty. The substance of her testimony is summarized below.

FINDINGS REGARDING THE ALLEGATION

Although [REDACTED] admitted that her conduct was proven and constituted "unprofessional conduct," the hearing tribunal nevertheless reviewed the material in the Exhibits 1-3 to determine whether the admission was appropriate in light of the evidence that was submitted by agreement.

The hearing tribunal makes the following findings of fact:

- [REDACTED] obtained her BSc in Pharmacy from the University of Alberta [REDACTED]. She commenced employment as a pharmacist at Shoppers Drug Mart in [REDACTED] in June of 2011.

- On April 15, 2013, [REDACTED], the pharmacy licensee at Shoppers Drug Mart in [REDACTED], contacted Mr. Krempien to report that she had terminated [REDACTED]'s employment. On April 19, 2013, [REDACTED] followed up by forwarding a letter of complaint to Mr. Krempien in relation to [REDACTED]'s conduct.
- The letter of complaint indicated that she had discovered that [REDACTED] had stolen product from the store. Attached to the letter of complaint was a written report from Daryl Blackmore, Loss Prevention Officer for Shoppers Drug Mart. The report indicates that he was contacted on April 7, 2013 by [REDACTED], who believed that [REDACTED] was stealing product from the store. Another employee reported to [REDACTED] that she found that the contents of a skin care product had been removed from the box. The box was full the previous day. After reviewing video footage, [REDACTED] advised that [REDACTED] was seen removing and returning the box to the cosmetics dermatology section on April 6, 2013.
- As a result, further video footage was reviewed. [REDACTED] could be seen removing a number of items from the store without paying for them. The conduct in question occurred between February 23, 2013 and April 11, 2013.
- On April 12, 2013, [REDACTED] and the Loss Prevention Officer met with [REDACTED], who admitted that she had been taking items from Shoppers Drug Mart. [REDACTED] was extremely apologetic and offered to pay for the items.
- On April 23, 2013, Mr. Krempien contacted [REDACTED] to advise her that a complaint had been received. [REDACTED] immediately acknowledged responsibility for her actions and at no time denied responsibility.
- Mr. Krempien forwarded a copy of the written letter of complaint to [REDACTED] by way of letter dated April 23, 2013.
- On May 20, 2013, [REDACTED] submitted a written letter of response to the complaint. [REDACTED] fully acknowledged responsibility for her conduct. She provided further background regarding her personal life at the time of the incidents. She indicated that she got married in [REDACTED]. However her husband became emotionally abusive shortly after she was married. On one occasion he almost became physically abusive. [REDACTED] and her husband separated and were divorced in [REDACTED]. However, her husband continued to attempt to contact her after they were separated. [REDACTED] was in turmoil during this period of time and experienced intense anxiety. She took a period of stress leave from work from [REDACTED].
- Upon her return to work after her period of stress leave, she stole additional items from the store.
- After she was terminated, she was diagnosed with depression, and has been receiving treatment for depression since that time.

After adjourning to deliberate, the hearing tribunal reconvened and advised the parties that the hearing tribunal accepted [REDACTED]'s admission. The hearing tribunal advised that it found that the allegation was factually proven, and that [REDACTED]'s conduct constituted "unprofessional conduct" pursuant to the HPA.

The tribunal bases its finding both on [REDACTED]'s admission, and the additional evidence that was entered during the course of the hearing. Specifically, the tribunal finds that between

September 2012 and April 2013, ██████████ stole merchandise and medications from Shoppers Drug Mart ██████████ on multiple occasions, the value of which totaled somewhere between \$500.00 and \$2500.00.

The hearing tribunal also finds that the conduct constitutes “unprofessional conduct” as defined in Section 1(1) (pp) of the *Health Professions Act* (“HPA”) which includes:

1. Contravening a code of ethics or standards of practice;
2. Contravening another enactment that applies to the practice of the profession
3. Conduct that harms the integrity of the profession.

The hearing tribunal finds that ██████████’s conduct is “unprofessional conduct” because her acts of theft constitute a breach of the Code of Ethics and Standards of Practice. Such acts constituted a breach of trust and professionalism, and were dishonest. Standard of Practice for Pharmacists and Pharmacy Technicians Standard 1 and Subsections 1.1 and 1.2 indicate that pharmacists and pharmacy technicians must practice in accordance with the laws that govern our profession to ensure the public and patients receive full protection of the law. Pharmacists obey the laws, regulations, bylaws and standards that affect the practice of pharmacy, not only in letter but also in spirit. ██████████ abused her position in the pharmacy by stealing merchandise, displayed poor decision making and demonstrated a lack of personal responsibility. Therefore, this behavior is a clear breach of Principles X (1) and (2) of the Code of Ethics – acting with integrity and honesty.

In addition, the evidence confirmed that ██████████ also breached the *Criminal Code*, which is “another enactment” that applies to the profession. In addition, her conduct harms the integrity of the profession given the position of trust that the public, including employers, must have in members of the pharmacy profession.

In the circumstances, ██████████’s conduct constitutes “unprofessional conduct” within the meaning of Section 1(1)(pp) of the HPA.

PENALTY

After the parties were advised that ██████████’s admission was accepted and that the allegation was proven, the parties were invited to present evidence and make submissions with respect to penalty.

Mr. Pringle indicated that ██████████ wished to provide testimony in relation to penalty. ██████████ was sworn in and testified as follows:

- ██████████ graduated with a B.Sc. in Pharmacy in the spring of ██████████ and began employment with Shoppers Drug Mart (SDM) in ██████████ June 2011.
- ██████████ married in ██████████ to a man that she had known previously in a long distance relationship for two years, and provided sponsorship for him to come to Canada

from [REDACTED] for his studies. The marriage broke down following destructive and abusive behavior by her husband.

- [REDACTED] filed for divorce in September 2012. Following this, [REDACTED]'s ex-husband began harassing and stalking her and her family. As a result, her subsequent mental breakdown led to her stealing merchandise from Shoppers Drug Mart.
- [REDACTED] fully accepts her wrongdoing and stated remorse for her behavior, noting that she is taking the appropriate steps to resolve her mental issues.
- On September 5, 2013 [REDACTED] pled guilty in Provincial Court to theft under \$5000.00 and was given a conditional discharge.
- [REDACTED] has voluntarily taken herself off the clinical register for 2013/14 citing that she wants to continue with her therapy and that she would not practice again until she was mentally fit.
- [REDACTED] pleaded that her criminal action would bring shame not only on herself but would have devastating consequences for her parents if the proceedings of the hearing were published on the website. Concerns for [REDACTED] health were also voiced, as she has [REDACTED].
- From a cultural perspective [REDACTED] stated that publication of the proceedings would not only destroy herself and her parents, but could also lead to alienation and humiliation by other family members, friends, and colleagues.

After [REDACTED] testified, Mr. Jardine made submissions with respect to penalty. Mr. Jardine referred to an excerpt from the *Regulation of Professions in Canada*, which makes it clear that the primary consideration at the penalty phase of the proceedings is to impose an order, which ensures that the public is adequately protected from future conduct of a similar nature. Additionally, the second principle is protection of the integrity of the profession, and the third is fairness to the member. It is necessary to balance all of these factors in determining appropriate sanctions.

Mr. Jardine also referred to a number of factors that are relevant when assessing penalty in the professional discipline context as outlined in *Jaswal v. Medical Board (Newfoundland)*. Mr. Jardine summarized the relevant factors as follows:

- a. Nature and gravity of the proven allegations: Theft from an employer is a serious matter that shows a lack of judgment and unprofessional conduct.
- b. Age and experience of the offender: [REDACTED] is young, a new member to the Alberta College of Pharmacists, and is relatively inexperienced.
- c. Previous character of the offender: There are no prior complaints or convictions.
- d. Age and mental condition of offended patient: Not applicable.
- e. Number of times offence occurred: A series of thefts occurred over a period of time, namely eight months (September 2012-April 2013).

- f. Role of member in acknowledging what occurred: ██████████ is acknowledging her conduct was unprofessional and wrong and is clearly remorseful.
- g. Other serious or financial penalties: ██████████ has voluntarily removed herself from the clinical register for 2013/14 choosing to impose her own financial penalty that has not been imposed by the college.
- h. Impact of the incident on the offended patient: Not applicable.
- i. Mitigating circumstances: ██████████'s age, collapse of her marital relationship and the abuse that followed, her full cooperation with the college, and demonstrating that she is sincerely remorseful should be considered.
- j. Need to promote deterrence: Specific deterrence has already been acknowledged by ██████████ in that she knows she was wrong to steal from her employer and there has to be consequences for that.
- k. Public confidence in the integrity of the profession: There is also a need for the profession to be confident in the integrity of this process and the consequences must be balanced and fair.
- l. Degree to which the conduct is clearly regarded, by consensus, as falling outside of the range of permitted conduct: Theft is clearly over the permitted level of conduct, but in ██████████'s case, the college has chosen not to suspend or cancel her license.
- m. Range of penalties in similar cases: From examples of similar cases of theft, the penalties have been from a reprimand, suspension of licence, not being a licensee for a period of time, fines, costs and expenses of the hearings.

Having regard to those factors, Mr. Jardine requested that the hearing tribunal impose the following orders pursuant to Section 82 of the HPA, including:

- Formal reprimand;
- Fine of \$2,000.00;
- An order under Section 82(1)(d) of the HPA directing that ██████████ must not practice as a pharmacist until she provides to the complaints director with a report from a medical professional that satisfies the complaints director that the treatment she has undertaken has been successful and she is fit to resume practice.
- An order under Section 82(1)(e) of the HPA requiring ██████████ to enroll in a monitoring and maintenance program that does not involve drug testing for a period of three years, which may be reduced to two years on the advice of ██████████'s medical professionals conducting the program and at the discretion of the complaints director. This will be done at her own cost.
- As part of the monitoring and maintenance program and at her own cost, ██████████ is to remain under the care of a psychiatrist and registered psychologist for a period of three

years (which may be reduced to two years), who will inform the complaints director of [REDACTED]'s progress or deterioration in her mental status and her fitness to practice as a pharmacist.

- An order under Section 82(1)(c)(i) requiring [REDACTED] to practice under the direct supervision of another pharmacist for the first 200 hours after she resumes practice. At the end of the period of supervised practice [REDACTED] will provide a report to the complaints director confirming that the period of supervised practice has been satisfactorily completed.
- [REDACTED] is to pay all costs of the investigation and hearing.

Mr. Jardine also commented on the hearing tribunal's authority with respect to publication. Mr. Jardine stated that:

- Bylaw 78 of Section 119 of the *Health Professions Act* states that if a member's practice permit is suspended or cancelled or if conditions are imposed or an investigation is conducted under Parts 2 or 4 of the *Health Professions Act*, the registrar may publish information respecting the order as the registrar sees fit, including the name of the investigated person, the nature of the order made and the reasons of the hearing committee or a summary of them. There are a number of reasons why publication is deemed appropriate:
 1. For public interest, the hearings should be transparent and should not be seen as protecting the member;
 2. As a deterrence factor for other members;
 3. A self-regulating profession has its primary responsibility for protecting the public; and
 4. Publication is not intended as a career ending sanction but there must be consequences to a member's conduct.

Mr. Pringle then made submissions on [REDACTED]'s behalf with respect to penalty, which are summarized as follows:

[REDACTED] does not dispute the sanctions proposed by the college and supports the college's submissions based on the following:

[REDACTED] is very proud and from a high achieving family. After a possibly abusive and negative relationship with her husband that ended in divorce, her mental state was fragile and she spiraled into depression. Unfortunately, instead of seeking professional help at that time and with a lack of insight, she acted out by behaving irrationally and out of character, and began stealing from her employer over a period of eight months. [REDACTED] has done everything she can to rectify her situation and has taken responsibility for her actions. She feels absolute remorse, and continues to seek counseling from her psychologist and psychiatrist, including taking medications that are required for her rehabilitation. She has also voluntarily removed herself from the clinical register for the year 2013/14. [REDACTED] acknowledges that she is wholly responsible for her actions both at the college level and in the criminal court. Therefore, [REDACTED] is in agreement with the sanctions proposed by the complaints director.

Mr. Pringle noted that specific deterrence has been addressed by ██████'s embarrassment and horror of being confronted by her employer, being charged with a crime under the *Criminal Code*, and having to deal with the effect these activities have had on her family. Imposing of sanctions will display to the members at large that even though there were unique identifying circumstances in this case, theft of any kind cannot be tolerated. The penalties being sought are fair and appropriate in terms of general deterrence to protect the safety and trust of the general public.

Having regard to Section 119 of the HPA and the wording of the ACP's Bylaw with respect to publication, Mr. Pringle did not request that the hearing tribunal make any orders with respect to publication. However, Mr. Pringle requested that the hearing tribunal make a recommendation to the registrar that the registrar publish the decision without reference to ██████'s name, having regard to Dr. Els' opinion that such publication may have a detrimental impact on ██████'s health and well-being.

ORDERS AND REASONS

The hearing tribunal has carefully considered the submissions made by Mr. Jardine on behalf of the complaints director and by Mr. Pringle on behalf of ██████ in relation to sanctions. The hearing tribunal specifically notes that ██████ did not take issue with the orders being sought on behalf of the complaints director.

In addition, the hearing tribunal considered the factors referenced in *Jaswal*. The hearing tribunal is in agreement with the terms of the submissions on penalty that both counsel for the complaints director and counsel for ██████ agreed to. The hearing tribunal recognized that its orders with respect to penalty must be fair, reasonable and proportionate taking into account the facts of this case. In making its decision on penalty, the hearing tribunal considered a number of factors including the following:

1. The nature and gravity of the proven allegation

██████'s conduct demonstrated a significant lack of judgment. The conduct was serious, and also constituted a violation of the *Criminal Code*.

2. The age and experience of the investigated member

██████ is young and relatively inexperienced not only with the profession of pharmacy but also with life.

3. The presence or absence of any prior complaints or convictions

██████ has no previous complaints or disciplinary matters with the college

4. The number of times the offending conduct was proven to have occurred

The agreed to conduct and breach of adherence to standards of practice occurred over several months (September 2012-April 2013) allowing for significant front store merchandise to be stolen.

5. The role of the member in acknowledging what occurred

██████████ has been very remorseful and extremely cooperative throughout the investigation and hearing. ██████████ has been given a conditional discharge from the criminal court and has made full restitution in payment to Shoppers Drug Mart. She is voluntarily complying with weekly visits to her psychologist and is under the care of a psychiatrist.

6. Other serious or financial penalties

██████████ has self-suspended herself from the practice of pharmacy on the clinical registrar for 2013/2014. She has undergone criminal proceedings and has also been terminated by her employer.

7. The presence or absence of any mitigating circumstances

██████████ is very young, and was married to a man who actively used her to gain entry to Canada and betrayed her trust and loyalty. ██████████ testified that he purposely made her life miserable, and on one occasion he almost hit her. On another occasion after they had separated, he was waiting for her in the parking lot at work after she finished her night shift. These events led to ██████████'s emotional instability at the time of the thefts, as confirmed by medical evidence.

While theft from an employer may, in appropriate circumstances, lead to a lengthy period of suspension or other more punitive type of penalties, the hearing tribunal did not feel that such an order was necessary given the unique facts of this case. In particular, ██████████ demonstrated genuine remorse, evidenced by deciding to voluntarily self-suspend her practice permit (without the college intervening) for a period of a year. She has no intention to return to practice until she and her medical team feels she is mentally fit. The hearing tribunal also found that while this was indeed a serious matter of theft, it did not involve the diversion of drug or narcotics and did not jeopardize patient care and safety.

The hearing tribunal hereby makes the following orders pursuant to Section 82 of the HPA:

1. ██████████ shall receive a reprimand and the hearing tribunal's decision shall serve as the reprimand.
2. ██████████'s practice permit is suspended until she provides proof that is satisfactory to the complaints director demonstrating that she is not incapacitated and that she is fit to practice as a pharmacist.

3. Prior to resuming employment as a pharmacist, [REDACTED] will notify the complaints director that she is enrolled in an appropriate monitoring/assistance program, subject to the following requirements:
 - a. [REDACTED] must participate in a program under the care of a psychologist or psychiatrist that is satisfactory to the complaints director, such as that offered by Caniff & Associates;
 - b. The psychologist or psychiatrist must agree to notify the complaints director if he becomes aware that [REDACTED]'s status has changed or deteriorated such that she is no longer able to provide professional services in a safe and competent manner;
 - c. [REDACTED] must commit to the program for three years; however, after participation in the program for a period of two years, [REDACTED] may provide evidence to the complaints director that participation in the program is no longer required, in which case the complaints director may confirm that she is no longer required to participate in the program;
 - d. [REDACTED] shall be responsible for the costs of the monitoring/assistance program.
4. Upon returning to work as a pharmacist, a condition shall be placed on [REDACTED]'s practice permit requiring her to practice under direct supervision of another licensed pharmacist for a period of 200 hours. The supervisor shall provide a report to the complaints director confirming the results of the period of supervised practice.
5. [REDACTED] shall pay a fine in the amount of \$2,000.00, to be paid within 60 days of service of the hearing tribunal's decision upon [REDACTED]
6. [REDACTED] shall pay the costs of the investigation and hearing, subject to the following:
 - a. [REDACTED] shall pay the costs within a period of 24 months from the date of the hearing tribunal's written decision, in accordance with a payment schedule agreed to with the complaints director.
7. Should any disagreement regarding the implementation of the above-referenced orders arise, the matter may be remitted to a hearing tribunal, which shall retain jurisdiction over all matters relating to penalty.

APPLICATION TO CLOSE THE HEARING

After [REDACTED] provided her testimony, Mr. Pringle made an application to close a portion of the hearing pursuant to Section 78 of the *Health Professions Act*, which gives the tribunal the authority to close a portion or all of the hearing. Mr. Pringle submitted that due to the nature of the information received, the following portions of the hearing should be closed:

1. ██████████'s testimony;
2. Dr. Els' report; and
3. All material received in which ██████████ discussed the details of her marriage.

Mr. Jardine stated that he did not object to the order being sought on behalf of ██████████.

As such, after consideration of the application, the hearing tribunal made a retroactive order closing those portions of the hearing as requested on ██████████'s behalf, pursuant to Section 78 of the HPA. The reasons for this decision were as follows:

1. ██████████'s testimony referred to intimate details regarding her personal health information, and also referenced intimate details of her relationship with her ex-husband.
2. Although the HPA generally contemplates that hearings are to be held in public, the HPA also recognizes that there are competing interests, including the right to privacy of the complainant or witnesses that should be considered when an application to close the hearing is made pursuant to Section 78.
3. Although the hearing will be closed to the public, the goal of transparency is still achieved, since members of the public will have access to the written decision of hearing tribunal.
4. ██████████'s mental status is still in jeopardy, and deterioration may occur further possibly to the point of harming herself if parts of her delicate testimony are made public.
5. As ██████████'s ex-husband still remains in the ██████████ area, there is a strong possibility that further harassment, abuse and other acts of revenge would be taken upon her and her family.

PUBLICATION

██████████ did not request that the hearing tribunal make an order with respect to publication. Accordingly, the hearing tribunal has not considered whether it has jurisdiction to do so.

However, both Mr. Pringle and Mr. Jardine indicated that the hearing tribunal could consider making a recommendation with respect to publication if it was deemed to be appropriate.

The hearing tribunal strongly recommends that the registrar consider posting the decision on the ACP's website without specific reference to ██████████'s name. Although the hearing tribunal understands the ACP's desire to conduct its proceedings in a transparent manner, this is achieved in part by holding the hearing in public, and by providing members of the public with access to the hearing tribunal's written decision upon request. Although posting the decision online is an additional means of achieving transparency, it is not required by the HPA.

The hearing tribunal believes that posting decisions online with the inclusion of the member's name may have a significant impact on a member, given that the decision becomes publicly available to a broader population and easily accessible by searching the member's name. Moreover, if such decisions are published, the member's discipline history may follow the member in perpetuity, even after the posting is removed from the ACP's website. Although in many instances the goals of transparency may outweigh the member's need for anonymity, whether or not to post the decision online with the member's name should be considered carefully in all cases.

In this case, the hearing tribunal does not believe that it is appropriate to post the decision online with ██████████'s name, for the following reasons:

- The hearing tribunal, based on the psychiatric report from Dr. Els, has serious concern regarding ██████████'s mental status. We do not wish for this young lady to be beholden to any further emotional stress that may occur from publicizing her name.
- The hearing tribunal is sensitive to the nature of this case, the fragility of ██████████'s mental health and the concerns regarding the nature of the relationship between ██████████, ██████████'s family and her ex-husband.

On a final note, the hearing tribunal wishes to remind ██████████ and all members of the Alberta College of Pharmacists of the importance of seeking help when encountering difficult personal circumstances. Support services are available to members of the profession. It is imperative that members who encounter difficult personal circumstances that adversely affect their performance at work seek assistance, to ensure that their personal circumstances do not interfere with their professional obligations.

Signed on behalf of the hearing tribunal by the
chair

Dated:

October 21, 2013

Per:

[Anita Warnick]