

ALBERTA COLLEGE OF PHARMACY

IN THE MATTER OF
THE HEALTH PROFESSIONS ACT

AND IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF

PASHUPATI RAUT
Registration Number 14142

DECISION OF THE HEARING TRIBUNAL

I. INTRODUCTION

The Hearing Tribunal held a hearing into the conduct of Pashupati Raut. In attendance on behalf of the Hearing Tribunal were Tyler Watson, pharmacist, Kamal Dullat, pharmacist, Nancy Brook, public member, and Teryn Wasileyko, pharmacist and chair.

The hearing took place on January 24, 2019 at the Alberta College of Pharmacy (the “College”), 1100-8215 112 Street, Edmonton, AB. The hearing was held under the terms of Part 4 of the *Health Professions Act*.

In attendance at the hearing were Mr. James Krempien, Complaints Director for the College, Ms. Annabritt Chisholm, legal counsel representing the Complaints Director, and Mr. Pashupati Raut, Investigated Member. Mr. Raut chose to represent himself during the hearing. Mr. Gregory Sim was also in attendance, acting as independent 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 Hearing Tribunal held a hearing to inquire into the following complaints or matters with respect to Mr. Raut, as set out in the Notice of Hearing, entered as Exhibit 1:

IT IS ALLEGED THAT, between July 1, 2018 and October 3, 2018, while practicing as a pharmacist at the 6th Street Guardian Pharmacy (Pharmacy Licence #3139) in Lethbridge, Alberta, you:

1. Did not maintain professional liability insurance;
2. Breached your professional declaration of May 28, 2018 by not maintaining professional liability insurance while on the clinical pharmacist register; and
3. Practiced without professional liability insurance on 63 separate days.

IT IS ALLEGED THAT your conduct in these matters:

- a. Breached your statutory and regulatory obligations to the Alberta College of Pharmacy as an Alberta pharmacist;
- b. Undermined the integrity of the profession; and
- c. Failed to exercise the professional and ethical conduct expected and required of an Alberta pharmacist.

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

- Standard 1 (sub-standards 1.1 and 1.2) of the Standards of Practice for Pharmacists and Pharmacy Technicians;
- Principles 1(1), 10(1) and 10(2) of the Alberta College of Pharmacy's Code of Ethics;
- Section 13(1) of the *Pharmacists and Pharmacy Technicians Profession Regulation*; and
- Section 40(1)(c) of the *Health Professions Act*;

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)(xii) of the *Health Professions Act*.

III. EVIDENCE

The Complaints Director for the College, Mr. James Krempien, was called as a witness and testified. The Record of Decision was introduced as Exhibit 2 and the Investigation Records, which contained tabs 1 through 12 detailing records gathered during the investigation process was introduced as Exhibit 3. Mr. Krempien provided the following key evidence with reference to these exhibits:

- The Record of Decision (Exhibit 2) outlined his reasons for referring the matter to a Hearing Tribunal.
- Tab 1 Exhibit 3 is a copy of the complaint memo from Ms. Timanson, the Competence Director at the College. Ms. Timanson's complaint explained that Mr. Raut was randomly selected for a 2018-2019 professional declaration audit on September 28, 2019. It was found that he failed to renew his professional liability insurance upon renewal of his practice permit and he breached his May 28, 2018 professional declaration which stated that he would maintain professional liability insurance. It was also explained that Mr. Raut may have practiced without insurance from July 1, 2018 to October 5, 2018.
- Tab 1 Exhibit 3 also outlined the sequence of events, with Mr. Raut being notified on October 2, 2018 to submit documentation of his current Professional liability insurance Coverage and CPR and First Aid Certification. On October 5, 2018, Mr. Raut identified that his professional liability insurance coverage had lapsed and contacted the College explaining that he would forward his insurance renewal documents. These documents were received via email on October 10, 2018.
- Tab 9 Exhibit 3 contains a letter to the College from Mr. Raut explaining his lapse in professional liability insurance: he was not previously aware that it had expired until he received a letter from Dr Pamela Timanson, he emailed his insurance company upon receipt of her letter, and he had stopped taking shifts at 6th Street Guardian Pharmacy once he became aware of this issue.

- Tab 9 Exhibit 3 also provides a detailed list of the shifts that Mr. Raut worked during the period in which his professional liability insurance had lapsed. There were 63 shifts worked in total.
- Mr. Raut was fully cooperative with the investigation by the College and showed remorse for his actions.

This ended Mr. Krempien's testimony. Mr. Raut did not ask any questions of Mr. Krempien in cross-examination. The Complaints Director's case was then closed.

Mr. Raut was sworn in and provided evidence to the Hearing Tribunal as follows:

- Mr. Raut stated that he was first registered with the College as an Intern in August 2016 and then as a Pharmacist in December 2017.
- Mr. Raut first purchased professional liability insurance in December 2017 and mistakenly believed that the policy was effective for a one-year period lasting until December 2018. He admitted that this misunderstanding led him to ignore a renewal email from Sheppard Insurance sent prior to the true expiration date of July 1, 2018 and also to make a false professional declaration on May 28, 2018.
- Mr. Raut presented that he had to go to Nepal to visit his sick father-in-law around the time he made the false declaration, however, he felt that although this event contributed to life stress at the time, he likely still would have made the false declaration due to his false belief that his professional liability insurance expired in December 2018.
- Mr. Raut admitted to a lapse in his professional liability insurance from July 1, 2018 until October 10, 2018 and provided a list of the shifts he worked (63 in total) to the College.
- Mr. Raut stated that he was not aware of any significant drug errors/omissions or other complaints about his practice during the time of the lapse. He also explained that as soon as he became aware of the issue with his insurance coverage, he stopped taking shifts until his coverage was reinstated and until Mr. Krempien confirmed he could resume working.
- Mr. Raut apologized and indicated that the lapse in his professional liability insurance was an unintentional error.
- During his cross-examination by Ms. Chisholm Mr. Raut advised that his patient population largely consists of opioid-dependent individuals, so he feels like he is doing good by saving lives in his practice.
- In response to questions from the Hearing Tribunal Mr. Raut confirmed that he is not a pharmacy licensee, nor does he have a managerial or supervisory role. He works almost full-time hours in a group practice with two other pharmacists, one manager/licensee and three pharmacy assistants.

IV. SUBMISSIONS

On behalf of the Complaints Director Ms. Chisholm submitted that the Hearing Tribunal's role was to determine whether the allegations in the Notice of Hearing were factually proven, and if so whether the proven conduct was unprofessional

conduct. Ms. Chisholm said the Complaints Director considered the Notice of Hearing to contain one allegation with three particulars.

Ms. Chisholm noted that Mr. Raut had not disputed any of the facts put forward and the allegations had been factually proven. She also referred to section 40(1)(c) of the *Health Professions Act* and section 13(1) of the *Pharmacists and Pharmacy Technicians Profession Regulation*, Alta. Reg. 129/2006 which prescribe the requirement to maintain the type and amount of professional liability insurance required by the Council. Council requires pharmacists on the clinical register to maintain no less than \$2,000,000 in professional liability insurance coverage. Ms. Chisholm argued that breaches of the *Health Professions Act* and *Regulation* are included in the definition of unprofessional conduct.

Ms. Chisholm then pointed the Hearing Tribunal to the form of declaration Mr. Raut completed falsely declaring that he would have professional liability coverage. Ms. Chisholm explained that the College does not have the resources to check the professional liability insurance coverage of each of its approximately 5,500 members so it relies on members' compliance with the professional declaration. She explained that the form warned Mr. Raut that his declaration was subject to an audit and a false declaration may be referred to the Complaints Director. Ms. Chisholm referred to Mr. Krempien's evidence that it was important for professional liability insurance to be personally held and not held by the employer. This is because professional liability insurance is fundamentally intended to protect the public and so it must be held by each individual pharmacist on the clinical register. The public ought to be able to expect pharmacists to comply with rules created by the College for the public's protection. Failing to comply with those rules undermines the integrity of the profession in the eyes of the public. Mr. Raut's conduct was also said to breach the Standards of Practice and the Code of Ethics as alleged in the Notice of Hearing.

Mr. Raut did not disagree with Ms. Chisholm's submissions. He acknowledged that there could have been harm to a member of the public although fortunately this did not occur.

V. FINDINGS

After reviewing all of the evidence and submissions presented and the admissions from Mr. Raut, the Hearing Tribunal found that the allegation detailed in the Notice of Hearing was factually proven and that Mr. Raut's conduct constituted unprofessional conduct.

The reasons for the Hearing Tribunal's findings are as follows:

- Mr. Raut admitted that he unintentionally did not maintain professional liability insurance from July 1, 2018 until October 10, 2018 and that during this time he practiced as a pharmacist at 6th Street Guardian Pharmacy for 63 shifts.

- Mr. Raut admitted that he unintentionally made a false professional declaration on May 28, 2018 when submitting his renewal for a pharmacist license with the College.
- These admissions were supported by the documentation and testimony provided both by the College and by Mr. Raut.
- Section 40(1)(c) of the *Health Professions Act* and Section 13 of the *Pharmacists and Pharmacy Technicians Profession Regulation* state that regulated members must possess professional liability insurance in order to obtain a practice permit. This is necessary to protect the public when receiving pharmacy services, including advanced scope of practice activities such as administering medications by injection and prescribing. The *Act* outlines that contraventions of the *Act* or other applicable enactments constitutes unprofessional conduct. Pharmacists are a self-regulated profession and one of the foundations of a self-regulating profession is that their members are diligent and trustworthy in their practice to ensure public safety. Breach of these standards, even if unintentional, has the potential to harm the public, as well as the reputation of pharmacy both within the profession as well as within society as a whole.
- The Alberta College of Pharmacy's Code of Ethics states in Principle 1 (1) that a pharmacist will act in the best interest of each patient. It states that in order to uphold this principle the pharmacist will comply with the letter and spirit of the law and (2) be honest in their dealings. The College's Standard of Practice 1.1 and 1.2 are very similar.
- It is a fundamental expectation that when a pharmacist completes their professional declaration, that the statements declared can be counted on to be true. False declarations, due to errors in judgement, lack of attention, or any other reason – deliberate or not, have the capacity to harm the public and undermine the integrity of the profession in the eyes of the public and are therefore taken very seriously.
- Mr. Raut's actions were in violation of the *Health Professions Act* Section 40(1)(c), the *Pharmacists and Pharmacy Technicians Profession Regulation* section 13(1) and The Alberta College of Pharmacy's Code of Ethics Principle 1 (1).

VI. SUBMISSIONS ON ORDERS

Complaints Director's Submissions:

Ms. Chisholm submitted that from the Complaints Director's perspective, pharmacy, like other self-regulating professions, has a requirement to hold disciplinary proceedings and subsequently sanction members. Ms. Chisholm cited the following main reasons: for protection of the public, deterrence to the member and other members, and to maintain the integrity of the profession in the eyes of the public. Ms. Chisholm also submitted that there is a duty to be fair to the member when determining sanctions by balancing the unprofessional conduct that was found to have occurred and the reasons for ordering sanction, with the fairness of those decisions to the member.

Ms. Chisholm reviewed the factors referenced in *Jaswal vs. Medical Board (Newfoundland) (1996)*, 42 Admin L.R. (2d) 233, which should be considered when determining sanctions and how these factors should apply in this case:

- *Nature and gravity of proven allegations:* Although Mr. Raut's conduct was found to constitute unprofessional conduct, on the spectrum of unprofessional conduct, it was on the lower end. Despite this, for the period of July 1, 2018 to October 10, 2018 where Mr. Raut practiced without professional liability insurance, if the worst-case scenario had played out and a serious error had occurred it could have resulted in serious harm to the public.
- *Age and experience of the offender:* Mr. Raut first registered with the College in August 2016 as an intern, and in December 2017 as a pharmacist. Members with less experience are generally given more lenience than those who have practiced longer.
- *Previous character of a member and prior complaints:* Mr. Raut has no history of prior complaints with the College.
- *Number of times the offence occurred:* Mr. Raut was found to have a single breach that extended over a 3-month period of time. This breach was not discovered by Mr. Raut himself, but rather, was only discovered through him being chosen randomly for an audit. Both the extended length of time of the breach and the fact that he did not discover it and come forward himself, should weigh in the decision on sanction.
- *Role of the member in acknowledging what occurred:* This is a clear mitigating factor in this case. Once Mr. Raut was aware of the situation, he acted immediately to obtain professional liability insurance and acknowledged his breach in conduct to the Complaints Director and the College.
- *Whether the member has suffered other serious financial or other penalties:* No evidence was presented that suggests this applies.
- *The presence or absence of any mitigating circumstances:* Mr. Raut was relatively new to the profession and this was the first time that he had to make his professional declaration and renew his professional liability insurance. When he was made aware of the breach, he took immediate steps to correct it, cooperated with the College's investigation, and was remorseful for this error.
- *The need to promote deterrence:* Specific deterrence of Mr. Raut from a similar breach is served because he acknowledged his mistake and would be careful not to repeat it in the future. With regards to general deterrence of the larger membership, it is important that the imposed sanctions alert their attention to the fact that professional declarations must be true and made with due care.
- *The need to maintain public confidence in the integrity of the profession:* The sanctions imposed need to make it clear to the public that the membership takes the *Health Professions Act and Regulations* and the Alberta College of Pharmacy's Code of Ethics seriously and sanctions members accordingly with breaches.
- *The degree to which the offensive conduct is clearly regarded, by consensus, as falling outside of the range of permitted conduct:* Mr. Raut's conduct, although lower on the spectrum of misconduct, is still clearly considered misconduct.
- *The range of sentence in other similar cases:* Ms. Chisholm presented three similar cases from the Alberta College of Pharmacy in which pharmacists were found to have practiced without professional liability insurance and outlined the sanctions imposed:

1. *Sonia Chahal v. ACP*: Ms. Chahal practiced without professional liability insurance for a one-month period and was registered only as an intern with the College although she was practicing as a pharmacist. She received a reprimand, a \$750 fine to be paid within 60 days, and an order to pay the investigation and hearing costs to a maximum of \$4,000 over a period of 24 months.
2. *Saeed Sattari v. ACP*: Mr. Sattari did not maintain professional liability insurance for 10 months, although he was out of the country for a portion of this time, he practiced without insurance while on the clinical register for approximately 3 months. He received a reprimand, a \$1,000 fine payable on a schedule acceptable to the Complaints Director, and payment of all costs associated with the investigation and hearing.
3. *Arshad Mehmood v. ACP*: Mr. Mehmood practiced for 89 shifts (July to mid-October) without professional liability insurance. He received a reprimand, a \$1,000 fine payable on a schedule acceptable to the Complaints Director, and payment of full costs of the investigation and hearing capped at \$10,000 payable on a schedule acceptable to the Complaints Director, with a minimum of 24 months to pay.

After reviewing these similar cases, the most similar being *Arshad Mehmood v. ACP*, Ms. Chisholm, on behalf of the Complaints Director, submitted that the following sanctions would be appropriate in this case:

- A reprimand,
- A fine of \$1,000, and
- Full costs of the investigation and hearing capped at \$7,000 to be paid on a schedule acceptable to the Hearings Director.

Ms. Chisholm submitted that the reprimand and fine would serve as a specific deterrent to Mr. Raut, as well as to the general membership. Ms. Chisholm suggested that the amount of \$7,000 in costs should be compared to the likely actual costs of a one-day hearing which often approach \$20,000. In response to a question from the Hearing Tribunal she also explained that the fine could be paid immediately or on a schedule acceptable to the Hearings Director at Mr. Raut's option.

Mr. Raut's Submissions:

Mr. Raut submitted that:

- He accepts that the College will impose sanctions for his admitted professional misconduct.
- He accepts that he must pay a fine and costs, however, asked that these be reduced at the Hearing Tribunal's discretion, as it would affect his ability to serve his community and support his family in Nepal. Mr. Raut also reiterated that he works in an opioid addictions clinic. He suggested that any amount by which the Hearing Tribunal discounts the financial aspects of the sanctions would be used to develop community programming for his patient population.

VII. ORDERS

The Hearing Tribunal carefully considered the submissions on sanction from both the College and Mr. Raut and made the following orders:

1. Mr. Raut shall receive a written reprimand. This decision shall serve as a written reprimand for Mr. Raut.
2. Mr. Raut shall pay a fine of \$1,000 to be paid over 12 months from the date Mr. Raut receives this decision and on a payment schedule acceptable to the Hearing Director.
3. Mr. Raut shall pay the costs of the investigation and hearing, capped at \$7,000, and payable over a 24-month period from the date Mr. Raut receives this decision and on a payment schedule acceptable to the Hearings Director.

The Hearings Tribunal determined that a written reprimand, fine, and costs of the investigation and hearing were reasonable sanctions to impose based upon similar cases. Mr. Raut was very cooperative and conciliatory in his response to this matter and his conduct was a significant mitigating factor. The Tribunal considered that there is little need for specific deterrence of future unprofessional conduct from Mr. Raut and that the sanctions would adequately deter others. During their deliberations, the Hearing Tribunal explored the possibility of a College mandated activity (Jurisprudence course, essay, etc.) as an additional deterrence to the membership for this type of misconduct. However, since the Tribunal is unfamiliar with any appropriate activity currently in existence or in development and also because this type of order would be atypical of similar decisions made in the past, the Hearing Tribunal determined no further sanction was required in this instance.

Signed on behalf of the Hearing Tribunal by the Chair on May 29, 2019.

[Teryn Wasileyko]

Teryn Wasileyko