

ALBERTA COLLEGE OF PHARMACY

IN THE MATTER OF  
THE HEALTH PROFESSIONS ACT

AND IN THE MATTER OF A HEARING REGARDING  
THE CONDUCT OF

**LEANNE ROGALSKY**

Registration No. 4260

**HEARING TRIBUNAL DECISION ON MERIT**

February 28, 2019

## **I. INTRODUCTION**

The Hearing Tribunal held a hearing into the conduct of Leanne Rogalsky. In attendance on behalf of the Hearing Tribunal were Brad Willsey, pharmacist and chairperson, Sarah Gutenberg, pharmacist, and Jim Lees, public member. Gregory Sim acted as independent counsel to the Hearing Tribunal.

The hearing took place on the 30th day of October 2018 at the second-floor conference center, 8215 112 St. NW, Edmonton AB. The hearing was held under the terms of Part 4 of the *Health Professions Act* (“HPA”).

In attendance at the hearing were James Krempien, Complaints Director and Aman Athwal and Annabritt Chisholm, legal counsel for the Complaints Director. Ms. Rogalsky was not in attendance at the hearing in person or by counsel.

## **II. ALLEGATIONS**

The allegations in the Notice of Hearing entered into evidence alleged that between August 1, 2012 and October 13, 2017, while practicing as a pharmacist at Safeway Pharmacy #8917 in Okotoks, Alberta, Ms. Rogalsky:

1. Diverted medications from the pharmacy on more than 360 separate occasions, with 343 diversions of those diversions occurring between April 1, 2014 and October 13, 2017 totaling approximately 34,065 pills almost all of which were narcotics (primarily oxycodone and morphine);
2. Fraudulently created 17 fictitious patient profiles and 367 prescription transactions to conceal her diversions;
3. Routinely practiced while incapacitated, although the danger of doing so was brought to her attention in April 2017; and at which point she should have recognized the potential danger that her incapacity had for her patients; and
4. Diverted medications for beyond her personal use;

and that by engaging in this conduct she:

1. Abused her position of trust as a pharmacist by diverting medications and creating fictitious patient profiles and prescription transactions to facilitate and conceal her diversion of the medications;
2. Created an environment that endangered the public with her practice when she practiced incapacitated and diverted medications for beyond her personal use; and
3. Misused her authority as a pharmacist.

It was alleged that Ms. Rogalsky's conduct:

- a. Abused the authority and access she had been granted as a pharmacist under the *Health Professions Act*, the *Pharmacy and Drug Act* and the *Controlled Drugs and Substances Act* and the respective regulations;
- b. Undermined the integrity of the profession;
- c. Failed to exercise the judgment and professional and ethical conduct expected and required of an Alberta pharmacist; and
- d. Was contrary to accepted pharmacy practice.

Ms. Rogalsky's conduct was alleged to have breached various statutes, regulations and standards governing the practice of pharmacy.

### **III. PRELIMINARY MATTERS**

There were no objections to the composition of the Hearing Tribunal or the jurisdiction of the Hearing Tribunal to proceed with a hearing. As neither Ms. Rogalsky nor any legal counsel on her behalf were present at 9:30 a.m. on October 30, 2018, the Hearing Tribunal heard the Complaints Director's application pursuant to section 79(6) of the HPA to proceed with the hearing in Ms. Rogalsky's absence and to determine the matters being heard.

The Complaints Director submitted materials in support of the application to proceed including the following:

1. On March 1, 2018 the Hearings Director, Ms. Morley, wrote to Ms. Rogalsky at her address registered with the Alberta College of Pharmacy enclosing a Notice of Hearing returnable on May 9, 2018, a Notice to Attend and a Notice to Produce.
2. On September 17, 2018 the Hearings Director wrote to Ms. Rogalsky and to Ms. Shanna Hunka of Bishop & McKenzie LLP, counsel for Ms. Rogalsky, and to Ms. Athwal. The Hearings Director confirmed that with the agreement of the parties, the hearing had been postponed in April 2018 pending the execution of a standstill agreement. The Hearings Director wrote that in the absence of a standstill agreement the hearing had been rescheduled to October 30, 2018. The Hearings Director enclosed a Notice to Attend and Notice to Produce on October 30, 2018.
3. On October 22, 2018, Ms. Hunka conveyed a message to the Hearings Director on behalf of Ms. Rogalsky, with Ms. Rogalsky's express approval. Ms. Hunka confirmed that Ms. Rogalsky was not seeking an adjournment. She was going through a rough patch with her own health and with the health of members of her immediate family, as well as other very difficult personal circumstances. Ms. Rogalsky did not expect to practice pharmacy again and felt the cancellation of her registration was inevitable and that she would accept it. She admitted allegations 1, 2 and 3 in the Notice of Hearing.

She disputed the 4<sup>th</sup> allegation of diversion of medications for beyond her personal use and said that all diversions were for her personal use. Ms. Rogalsky states she cannot pay any fine, she cannot afford to pay legal counsel and she cannot afford the cost of travelling to Edmonton for the hearing. Ms. Hunka advised that Ms. Rogalsky wishes to convey this message to the College to allow the hearing to proceed with the least possible inconvenience to the panel and all involved. Neither Ms. Rogalsky nor Ms. Hunka would attend the hearing.

The Complaints Director explained that there were attempts to reach agreement on admissions to the allegations in light of Ms. Rogalsky's October 22, 2018 message, but this was unsuccessful. As a result, the Complaints Director would call evidence to prove all of the allegations in the Notice of Hearing.

The Complaints Director argued that pursuant to section 79(6) of the *HPA*, the Hearing Tribunal can proceed with the hearing in Ms. Rogalsky's absence and determine the matters being heard if there is evidence that Ms. Rogalsky received proper notice of the hearing. Section 120(3) of the *HPA* then provides that a document required to be given to a member under Part 4 of the *HPA*, such as a Notice of Hearing, is sufficiently given if given by personal service or sent by certified or registered mail to the person's address as shown on the College's register.

In this case the materials described above demonstrate that Ms. Rogalsky was provided with notice of the hearing by registered mail as required by the *HPA*. In any event, there is no question that Ms. Rogalsky had actual notice of the hearing, including through her lawyer, Ms. Hunka. Ms. Hunka confirmed that neither Ms. Rogalsky, nor herself would be attending the hearing on October 30, 2018.

The Hearing Tribunal caucused to consider the application to proceed in Mr. Rogalsky's absence. The Tribunal was satisfied that the Complaints Director had provided notice of the hearing to Ms. Rogalsky as contemplated by the *HPA*. The Tribunal also noted that Ms. Rogalsky had actual notice of the hearing date, she indicated she was not seeking an adjournment of the hearing and she indicated that neither she, nor legal counsel on her behalf would be attending the hearing. The Tribunal concluded that it would be appropriate to proceed with the hearing and decide the matters before the Tribunal in Ms. Rogalsky's absence.

#### **IV. EVIDENCE**

The Complaints Director, Mr. James Krempien testified. Mr. Krempien was also put forward as an expert to give opinion evidence in the area of pharmacy, the effects of oral morphine equivalents on the human body and specifically the ability to consume up to 423mg of oral morphine equivalent and then abruptly cease doing so.

The Hearing Tribunal heard evidence from Mr. Krempien concerning his expertise. Mr. Krempien testified that:

- He practiced as a pharmacist in the Canadian Armed Forces, including at the Alcohol Rehabilitation Centre.
- He also worked as a community pharmacist in both Calgary and Edmonton, with many patients with substance abuse issues. He routinely worked with other health care professionals to manage patients with opioid dependency and during supervision of patients weaning off such medications.
- He has completed continuing education in substance abuse treatment management, including a week-long program at the Betty Ford Centre in California.
- As Complaints Director he has dealt with and oversees the management of several College registrants with substance abuse issues. This includes at least 12 formal complaint investigations with substance abuse issues but also monitoring and support programs ordered by Hearing Tribunals and by himself, including psychiatric and psychological services, screening and monitoring for slips and relapses.
- He has also administered his powers under section 118 of the *HPA* relating to incapacity and has had to consider members' substance abuse issues and fitness to practice.

The Hearing Tribunal deliberated and determined that it would accept that Mr. Krempien is qualified to give expert opinion evidence in the areas of pharmacy including the effects of oral morphine equivalents on the human body and the ability to consume oral morphine and then abruptly cease doing so. In accepting Mr. Krempien as qualified to give opinion evidence the Hearing Tribunal is conscious that Mr. Krempien is the Complaints Director responsible for presenting the case against Ms. Rogalsky.

Mr. Krempien identified key evidence including the following:

- Mr. Krempien has been the Complaints Director for the College for just over 10 years. He received a complaint about Ms. Rogalsky, a member registered on the Clinical Pharmacist Register.
- Mr. Krempien investigated the complaint, prepared an investigation report and reached a decision to refer the matter to this hearing on January 15, 2018.
- Mr. Krempien then gave evidence describing the evidence collected as part of his investigation.
- On October 16, 2017, [The] Director of Pharmacy Operations for Alberta and British Columbia for Sobeys National Pharmacy Group first contacted Mr. Krempien advising they had discovered the diversion of narcotics in one of their stores. Sobeys was in the process of acquiring Safeway at this time.

- Mr. Krempien spoke with [REDACTED] later that day and learned that the pharmacy had found, through auditing and reconciliation, that Ms. Rogalsky had potentially been creating false patient profiles and prescription transactions in support of diversions of narcotics.
- [REDACTED] indicated he would be interviewing Ms. Rogalsky that afternoon and that if his concerns were verified, he would then submit a complaint.
- Mr. Krempien also received a telephone voice message from Ms. Rogalsky on October 16, 2017. Ms. Rogalsky referred to issues she had “several years back” and stated that she was “experiencing some problems, she was relapsing and she was in trouble”. She asked that Mr. Krempien call her.
- Mr. Krempien explained that in the early 2000s, Ms. Rogalsky had been found to have diverted controlled substances for herself and for [REDACTED]. When Ms. Rogalsky mentioned that she had relapsed Mr. Krempien understood this to mean that she was again diverting and using medications.
- Later on October 16, 2017 [REDACTED] also left a voice message for Mr. Krempien. He indicated Ms. Rogalsky had admitted to diverting and ingesting narcotics while practicing and that a formal complaint would be forthcoming.
- Mr. Krempien received copies of records from Sobeys, including records of an internal investigation by [the] Licensee for the pharmacy at which Ms. Rogalsky worked.
- [REDACTED] became suspicious when he found a receipt in the pharmacy for a patient, [REDACTED], which had not been rung in to the till. His attempts to obtain explanations from staff, including Ms. Rogalsky were unsatisfactory so he investigated. He discovered that there was no original prescription on file for any of [REDACTED]'s recent narcotics dispensing events.
- [REDACTED] ran a Missing Rx Images Report of any dispensing events for which no scanned image of a prescription existed. He discovered a number of narcotics dispensing events with missing prescription images. When [REDACTED] attempted to verify the prescriptions with the supposed prescribers, he learned that there were 17 fictitious patient profiles in the pharmacy system which had been used to dispense narcotics, often full bottles of oxycodone and morphine preparations. The pharmacy records pointed to Ms. Rogalsky as being solely responsible for all steps in the prescription dispensing workflow.

Mr. Krempien discussed the matter with Ms. Rogalsky by phone on October 17, 2017. The conversation was recorded and transcribed. The transcription confirmed that Ms. Rogalsky admitted to creating false patient records and to a substance abuse problem. Ms. Rogalsky also confirmed that her employment had been terminated and she would voluntarily withdraw from active clinical practice.

- Mr. Krempien summarized the information gathered from pharmacy records obtained through [REDACTED] and [REDACTED]. Mr. Krempien testified that the records demonstrated that between April 1, 2014 and October 13, 2017, Ms. Rogalsky diverted over 34,000 pills, mostly oxycodone and morphine, on 367 different occasions.
- Mr. Krempien testified that on average that is 26 pills/day and on average 423mg of oral morphine equivalent/day. In comparison, Mr. Krempien explained that there is no therapeutic purpose for anything over 90mg/day of oral morphine equivalent and an amount of 423mg/day suggests the pills are being diverted for other than Ms. Rogalsky's personal use.

During Mr. Krempien's testimony the Hearing Tribunal allowed an application to close part of the hearing pursuant to section 78(1) of the *HPA*. The Hearing Tribunal deliberated and determined that Exhibit 4, Tab 14 contained highly personal details of the health and personal circumstances of identifiable individuals, including individuals other than Ms. Rogalsky. The Tribunal determined that not disclosing these highly personal details outweighed the desirability of having the hearing open to the public, so the Tribunal decided to close the portion of the hearing during which Exhibit 4, Tab 14 was discussed.

- Mr. Krempien explained that these records included Sobeys internal investigation records, including documentation of an interview in which Ms. Rogalsky admitted she had been taking the pills while at the pharmacy.
- Mr. Krempien also said that the records demonstrated that Ms. Rogalsky had been suffering workplace performance issues during the period in question. She was found to have been late, unproductive and inattentive at work. There were also concerns about drug errors in her work in the pharmacy.
- Ms. Rogalsky provided a written response as part of Mr. Krempien's investigation and also met with Mr. Krempien in person on November 20, 2017. She did not deny the diversion of narcotics for her personal use. She did so through creating false patient records and false prescriptions. She did deny diversion for anyone other than herself. She also denied ever taking narcotics from patients with valid prescriptions.
- Ms. Rogalsky did not know a precise number of pills she diverted but she acknowledged that she diverted full pill bottles and she did not deny that the quantity would have been in excess of 30,000 pills. She said she did not stockpile any narcotics from the pharmacy.
- Ms. Rogalsky advised Mr. Krempien that since the termination of her employment and her access to narcotics, she stopped her consumption of narcotics without weaning off and without the supervision of a physician. She has since been prescribed mirtazapine for sleep but no narcotics.

- Mr. Krempien expressed that it was unbelievable that Ms. Rogalsky could stop taking narcotics so abruptly without suffering very serious withdrawal symptoms. He said it made more sense that Ms. Rogalsky was not taking all of the medications herself but diverting some of the medications for the use of others.
- Mr. Krempien described Ms. Rogalsky's actions to divert medications as a sophisticated scheme. She created fictitious patient profiles with patient names and birthdates but no healthcare numbers so as to avoid automatic rejection notices from Netcare. She then created electronic dispensing events, meaning that drug inventories would automatically be replenished, and this occurred over a period of some 4 years.

The Complaints Director also called [REDACTED]. [REDACTED] gave the following key evidence:

- [REDACTED] graduated with his degree in pharmacy in 2013 and then began working with Sobeys, formerly Safeway, in a float pharmacist position covering vacations in Calgary and Southern Alberta. In March 2014 he was promoted and began working at the Okotoks Sobeys. It was here that he first met Ms. Rogalsky.
- In March 2014 [REDACTED] became the licensee and full-time manager at the Okotoks Sobeys.
- [REDACTED] said he had some awareness of Ms. Rogalsky's background with narcotics diversion, but he understood she had done everything necessary to regain her license to practice. [REDACTED] was not fully aware of her College discipline history.
- [REDACTED] explained that in October 2017, he noticed a receipt on the floor of the pharmacy for 60 tablets of Oxy IR for a patient, [REDACTED]. [REDACTED] asked the pharmacy assistants if they knew where the vial of medications was that went with the receipt, but the pharmacy assistants did not know.
- [REDACTED] said that he then ran the receipt through the till and it was noted to be awaiting payment. He said this was concerning because it was unusual.
- [REDACTED] texted Ms. Rogalsky a picture of the receipt to ask her about the medication and receipt. Ms. Rogalsky called [REDACTED] back and said it was a duplicate receipt she had printed and that the medications had already been picked up. [REDACTED] said this did not make sense since the till still said the receipt was awaiting payment.
- [REDACTED] investigated further and discovered 5 previous fills for narcotics (supedol and oxycodone) but there were no scanned images of prescriptions from [REDACTED]'s physician in the computer.

- [REDACTED] noted that Ms. Rogalsky's name appeared by every step of the dispensing events, which was also very unusual. He said typically there would be several pharmacy staff members on a workflow report for a dispensing event, including a pharmacist, an assistant, a technician and then another pharmacist performing a check and the person who operates the till. You would only see one person on the workflow report when they are working alone.
- [REDACTED] then printed drug inventory history reports and made lists of prescription numbers for supedol and oxycodone. He spotted names of patients he did not recognize on these lists and immediately contacted his regional pharmacy manager with his concern that Ms. Rogalsky was involved in theft and diversion.
- On his Manager's instructions, [REDACTED] printed a report of missing prescription images. He then located 16 or 17 fake patient files. He attempted to verify whether the files were real by contacting the physicians' offices but in each case the physicians verified that they had no record of the patients.
- [REDACTED] then met with Ms. Rogalsky along with his regional pharmacy manager, the head of Sobeys security and a human resources representative on October 16, 2017.
- During this meeting on October 16, 2017 Ms. Rogalsky acknowledged a problem with narcotics and that she had created fake patient files to obtain narcotics for her own use. [REDACTED] also said that during this meeting Ms. Rogalsky acknowledged ingesting pills in the pharmacy and asked for help for her problem, which he understood to mean narcotics abuse.
- Ms. Rogalsky's employment was terminated and [REDACTED] completed a report to Health Canada and to the police.
- [REDACTED] described Ms. Rogalsky's activities as a complex, elaborate diversion scheme. He said Ms. Rogalsky had not been detected even though the pharmacy had been the subject of a Health Canada audit.

The Complaints Director called no other evidence.

## V. **SUBMISSIONS**

The Complaints Director then made closing submissions to the Hearing Tribunal. The main arguments on behalf of the Complaints Director were:

- The onus is on the Complaints Director to prove that the allegations are factually true, and that the proven conduct amounts to unprofessional conduct under the *HPA*. The Complaints Director is not relying on Ms. Rogalsky's express endorsement of Ms. Hunka's email suggesting that allegations 1, 2 and 3 were admitted.

- In relation to allegations 1 and 2, the Hearing Tribunal heard ██████████'s evidence and received the documentation of the timeframe and number of diversions Ms. Rogalsky committed. The Tribunal also heard Mr. Krempien's evidence summarizing the Sobeys records of diversions between April 1, 2014 and October 13, 2017. Mr. Krempien used ██████████'s documentation and prepared a list of over 34,000 diverted pills, almost all of which were narcotics.
- The Tribunal received ██████████'s evidence that he uncovered some 17 fake patient profiles with fake prescription transactions to conceal Ms. Rogalsky's diversions of narcotic medication.
- The Tribunal also received Mr. Krempien's and ██████████'s evidence that Ms. Rogalsky acknowledged her conduct in interviews with them.
- Both ██████████ and Mr. Krempien testified that Ms. Rogalsky's scheme to conceal her diversions was an elaborate one that was not detected by Sobeys or Health Canada over a matter of years. It was suggested the scheme would likely have continued had ██████████ not found the receipt on the pharmacy floor and conducted an investigation.
- In relation to allegation 3, Ms. Rogalsky indicated that she was not diverting the medication for other than her personal use, and that she used all of it. Mr. Krempien said that this meant that on average, Ms. Rogalsky was taking 26 pills/day and 423mg of oral morphine equivalent/day and that any amount of morphine would cause sleepiness and drowsiness.
- Mr. Krempien pointed out that contrary to Ms. Rogalsky's suggestion in the investigation that she only took the drugs at night, taking 26 pills/day meant that she would be taking them all day. Even if she were to take them only at night, such a large dose meant that Ms. Rogalsky would still be under the influence by the next day at work. ██████████ confirmed that Ms. Rogalsky worked full-time hours.
- It was submitted that taking this amount of oral morphine equivalent and then working would create a risk for the pharmacy's patients. The HPA's definition of "incapacity" includes an addiction to drugs in a manner that would impair the ability to provide professional services in a safe manner.
- ██████████ testified that at the October 16, 2017 meeting Ms. Rogalsky admitted to ingesting the pills at work.
- Ms. Rogalsky did not self-report her drug abuse to Sobeys or to the College until after her diversions were discovered by ██████████.
- In relation to allegation 4, the Complaints Director pointed out that the applicable standard of proof is the balance of probabilities standard. Thus, the Complaints Director only needs to prove that it is more likely than not that Ms. Rogalsky diverted the medications for beyond her personal use.

- The Complaints Director argued that the quantity of narcotics diverted from April 1, 2014 to October 13, 2017 combined with Ms. Rogalsky's own evidence that she did not stockpile any medications and that she was able to abruptly stop taking narcotics demonstrates on a balance of probabilities that she was not consuming all of the medications herself. It is more probable that Ms. Rogalsky diverted at least some of the medications for use by others.

## VI. **FINDINGS**

The Hearing Tribunal carefully considered the evidence presented during the hearing and the submissions made for allegations 1, 2, 3, and 4 in the Notice of Hearing. The Hearing Tribunal makes the following findings:

### **Allegation 1:**

Ms. Rogalsky diverted medications from the pharmacy on more than 360 separate occasions, with 343 diversions of those diversions occurring between April 1, 2014 and October 13, 2017 totaling approximately 34,065 pills almost all of which were narcotics (primarily oxycodone and morphine).

The Hearing Tribunal finds this allegation to be factually proven on a balance of probabilities. Dispensing records provided in the complaint file showing the diversion of more than 34,000 pills, along with the evidence of admissions of diversion by Ms. Rogalsky during the Sobeys' and Complaints Director's investigations support this finding. Pharmacy professionals have a duty and responsibility to ensure the safe storage, appropriate use, and monitoring of all medications, in particular, narcotic and controlled drugs. Ms. Rogalsky undermined the integrity of the profession by failing to ensure these responsibilities were met and by intentionally diverting substantial amounts of narcotic and controlled drugs. In this regard she contravened and breached the following statutes, regulations, and standards governing the practice of pharmacy:

- Section 1 and subsections 1.1 and 1.2 of the Standards of Practice for Pharmacists and Pharmacy Technicians, which require pharmacists and pharmacy technicians to comply with both the letter and spirit of the law;
- Sections 31(2)(a) and 38 of the *Pharmacy and Drug Act* which provide that Schedule 1 drugs may only be dispensed in accordance with a prescription;
- Section 4(1) and 5(1) of the *Controlled Drugs and Substances Act*, which provide that no one may possess or traffic in a Schedule I, II or III drug without authorization;
- Section 31(1) of the *Narcotic Control Regulations* which provides that no pharmacist, including any person who is registered and entitled to engage

in the practice of pharmacy, shall sell or provide narcotics except as expressly authorized.

Ms. Rogalsky's conduct therefore represented unprofessional conduct as defined in section 1(1)(pp)(ii), (iii) and (xii) of the HPA. These sections provide that unprofessional conduct includes conduct that contravenes the HPA, the College's Code of Ethics or Standards of Practice, conduct that contravenes other enactments that apply to the profession, and conduct that harms the integrity of the profession.

**Allegation 2:**

Ms. Rogalsky fraudulently created 17 fictitious patient profiles and 367 prescription transactions to conceal her diversions.

The Hearing Tribunal finds this allegation to be factually proven on a balance of probabilities. Documentation and evidence provided by [REDACTED] and Mr. Krempien clearly identified falsified patient records with the intention of keeping these records hidden. Ms. Rogalsky treated the patient records as cash accounts and did not input any Alberta Healthcare information in the system. This allowed her to not create any identifiable flags in the Sobey's software system and in the Alberta Netcare system. Over several years, Ms. Rogalsky carried out a thoughtful, complex and elaborate scheme designed to divert substantial amounts of narcotics. Ms. Rogalsky undermined the trust and integrity of the profession by designing and carrying out this scheme to divert narcotics. If not caught, she would have continued to divert narcotics in large quantities from her unknowing employer. As a result, Ms. Rogalsky contravened and breached the following statutes, regulations, and standards governing the practice of pharmacy:

- Section 1 and subsections 1.1 and 1.2 of the Standards of Practice for Pharmacists and Pharmacy Technicians, which require pharmacists and pharmacy technicians to comply with both the letter and spirit of the law;
- Sections 31(2)(a) and 38 of the *Pharmacy and Drug Act* which provide that Schedule 1 drugs may only be dispensed in accordance with a prescription;
- Section 4(1) and 5(1) of the *Controlled Drugs and Substances Act*, which provide that no one may possess or traffic in a Schedule 1, II or III drug without authorization;
- Section 31(1) of the *Narcotic Control Regulations* which provides that no pharmacist, including any person who is registered and entitled to engage in the practice of pharmacy, shall sell or provide narcotics except as expressly authorized; and

Ms. Rogalsky's conduct therefore represented unprofessional conduct as defined in section 1(1)(pp)(ii), (iii) and (xii) of the HPA.

### **Allegation 3:**

Ms. Rogalsky routinely practiced while incapacitated, although the danger of doing so was brought to her attention in April 2017; and at which point she should have recognized the potential danger that her incapacity had for her patients.

The Hearing Tribunal finds this allegation to be factually proven on a balance of probabilities.

The Hearing Tribunal heard evidence provided by Ms. Rogalsky that she was not diverting the medication for other than her personal use, and that she had taken all the medication herself. Mr. Krempien testified that this meant on average, Ms. Rogalsky was taking 26 pills/day and 423mg of oral morphine equivalent/day and that any amount of morphine would cause sleepiness and drowsiness. Further, Mr. Krempien pointed out that contrary to Ms. Rogalsky's suggestion in the investigation that she only took the drugs at night, taking 26 pills/day meant that she would be taking them all day. Even if she were to take them only at night, such a large dose meant that Ms. Rogalsky would still be under the influence by the next day at work.

██████████ confirmed that Ms. Rogalsky worked full-time hours. The Hearing Tribunal also heard from ██████████ that at the October 16, 2017 meeting Ms. Rogalsky admitted to ingesting the pills at work. It was also submitted that taking this amount of oral morphine equivalent and then working would create a risk for the pharmacy's patients. The HPA's definition of "incapacity" includes an addiction to drugs in a manner that would impair the ability to provide professional services in a safe manner. ██████████ provided further testimony that Ms. Rogalsky was having performance issues at work which they were attempting to resolve.

The Hearing Tribunal finds that Ms. Rogalsky was using and under the influence of diverted medications during her work hours rendering her incapacitated. The Tribunal concluded that using diverted narcotics without a prescription or any medical supervision while working in a pharmacy would create a risk for the pharmacy's patients. While the Hearing Tribunal did not accept Ms. Rogalsky's evidence that all the diverted medication was used by her alone, ██████████ testified that she admitted to using the diverted medication during work hours and Mr. Krempien testified that any amount of oral morphine equivalent would result in sleepiness and drowsiness. This evidence was sufficient to prove the allegation. Ms. Rogalsky should have recognized the potential danger this had for her patients, but she failed to do so.

Ms. Rogalsky's conduct undermined the trust and integrity of the profession and significantly impaired her ability to provide professional services in a safe manner. Further, she did not self-report her drug abuse to either the College or Sobeys' until after confronted by ██████████ and her employment was terminated.

Ms. Rogalsky contravened and breached the following statutes, regulations, and standards governing the practice of pharmacy:

- Section 1 and subsections 1.1 and 1.2 of the Standards of Practice for Pharmacists and Pharmacy Technicians, which require pharmacists and pharmacy technicians to comply with both the letter and spirit of the law;
- Sections 31(2)(a) and 38 of the *Pharmacy and Drug Act* which provide that Schedule 1 drugs may only be dispensed in accordance with a prescription;
- Section 4(1) and 5(1) of the *Controlled Drugs and Substances Act*, which provide that no one may possess or traffic in a Schedule 1, II or III drug without authorization;
- Section 31(1) of the *Narcotic Control Regulations* which provides that no pharmacist, including any person who is registered and entitled to engage in the practice of pharmacy, shall sell or provide narcotics except as expressly authorized; and
- Principles X(1 and 2) and XI(1.3 and 4) of the ACP Code of Ethics, which provide that regulated members of the College must comply with the law and act honestly, and they must practice only when fit to do so, and promptly declare and seek assistance for any circumstances that may call into question their fitness to practice or bring the profession into disrepute.

Ms. Rogalsky's conduct therefore represented unprofessional conduct as defined in section 1(1)(pp)(ii), (iii) and (xii) of the HPA.

**Allegation 4:**

Ms. Rogalsky diverted medications for beyond her personal use.

Ms. Rogalsky has denied this allegation and maintains that the diversion was only for personal use. The Complaints Director submits that the quantity of medication taken over the period in question, her history of drug addiction and her personal circumstances, Ms. Rogalsky's statement that she did not stockpile any medication, and the fact that she could discontinue this quantity of medication without any consequences suggests that it is impossible that this quantity of medication was only for personal use.

Consuming 423mg of oral morphine equivalent per day is an extremely high and potentially lethal dose of oral morphine. The Hearing Tribunal finds it to be incredible that Ms. Rogalsky could abruptly discontinue this dosage with no untoward effects. On a balance of probabilities, it is therefore extremely likely that at least some of the diverted medication was for beyond personal use. Ms. Rogalsky's conduct undermined the trust and integrity of the profession of pharmacy. Her behavior allowed for potentially dangerous medications to be accessible to other Albertans in a manner that goes unchecked and lacks the usual safety protocols and monitoring that goes along with the appropriate therapeutic use of these medications. Based on the evidence provided the Hearing Tribunal finds the allegation to be factually proven and that Ms. Rogalsky has contravened and

breached the following statutes, regulations, and standards governing the practice of pharmacy:

- Section 1 and subsections 1.1 and 1.2 of the Standards of Practice for Pharmacists and Pharmacy Technicians, which require pharmacists and pharmacy technicians to comply with both the letter and spirit of the law;
- Sections 31(2)(a) and 38 of the *Pharmacy and Drug Act* which provide that Schedule 1 Drugs may only be dispensed in accordance with a prescription;
- Section 4(1) and 5(1) of the *Controlled Drugs and Substances Act*, which provide that no one may possess or traffic in a Schedule 1, II or III drug without authorization;
- Section 31(1) of the *Narcotic Control Regulations* which provides that no pharmacist, including any person who is registered and entitled to engage in the practice of pharmacy, shall sell or provide narcotics except as expressly authorized; and

Ms. Rogalsky's conduct therefore represented unprofessional conduct as defined in section 1(1)(pp)(ii), (iii) and (xii) of the HPA.

## **VII. ORDERS**

The Hearing Tribunal will receive submissions on sanctions. The Tribunal suggests that the parties discuss their preferred procedure to make submissions on sanction and advise the Tribunal through the Hearings Director of their preferred procedure within two weeks of receiving this decision.

Signed on behalf of the hearing tribunal on February 28, 2019.

[Brad Willsey]

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Brad Willsey  
Hearing Tribunal Chair