

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 Number 4260

DECISION OF THE HEARING TRIBUNAL ON SANCTION

I. Introduction

In its written decision dated February 28, 2019 the Hearing Tribunal described its findings of unprofessional conduct against Leanne Rogalsky. In summary, the Hearing Tribunal found that the allegations against Ms. Rogalsky that she:

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,

were all proven on the balance of probabilities, and that the conduct in issue was “unprofessional conduct” as defined in the *Health Professions Act*, R.S.A. 2000, c. H-7 (“HPA”).

The Tribunal received written submissions on sanctions on behalf of the Complaints Director from Ms. Aman Athwal and Ms. Annabritt Chisholm dated April 9, 2019. On May 15, 2019 Ms. Rogalsky’s legal counsel Shanna Hunka confirmed in writing that she had no instructions to provide any reply submissions on sanction. She added that Ms. Rogalsky had no funds to retain counsel to assist her or, more importantly to pay any amounts ordered. Ms. Rogalsky also declined to submit any written submissions on sanction herself for the findings of unprofessional conduct against her.

The Tribunal met via teleconference on May 21, 2019 to consider the Complaints Director’s written submissions on sanction for Ms. Rogalsky. The Tribunal consisted of Brad Willsey (Chair), Jim Lees (public member) and Sarah Gutenberg. Gregory Sim of Field Law acted as independent legal counsel for the Hearing Tribunal.

II. Summary of Submissions on Sanction by the Complaints Director

Ms. Athwal and Ms. Chisholm began their submissions by arguing that the purpose of sanctions is to protect the public, protect the integrity of the profession and to be fair to the member. They also discussed the need for both specific and general deterrence to prevent similar cases in the future. After these introductory comments Ms. Athwal and Ms. Chisholm took the Hearing Tribunal through the factors referenced in *Jaswal v. Newfoundland (Medical Board)* (1996), 42 Admin. L.R. (2d) 233 and described the application of the factors in this case. Key points were:

The Nature and Gravity of the Proven Allegations

The Complaints Director argued that the proven allegations are very serious. Ms. Rogalsky was proven to have engaged in a pattern of unprofessional conduct that repeatedly breached the ethical and professional duties of a pharmacist over a period of approximately three and a half years. Her conduct was sophisticated and if she had not been caught, she likely would have continued to divert large quantities of medications. Ms. Rogalsky's proven unprofessional conduct goes to the heart of a pharmacist's professional and ethical obligations as the proper control and distribution of narcotic and controlled drugs is critical for public safety.

The Age and Experience of the Member

Ms. Rogalsky was a regulated member of the College from 1988 until October 20, 2017 when she voluntarily cancelled her practice permit. While Ms. Rogalsky was suspended from the clinical register between 2004 and 2009, she did not lack experience at the time of her most recent proven unprofessional conduct. Lack of experience does not excuse or mitigate her proven unprofessional conduct.

The Presence or Absence of Prior Complaints or Convictions

There has been one prior finding of unprofessional conduct against Ms. Rogalsky by a Hearing Tribunal of the Alberta College of Pharmacy. In 2009, a Hearing Tribunal found Ms. Rogalsky engaged in unprofessional conduct by creating fictitious patient records and altering inventory records to facilitate the diversion of approximately 40,000 narcotic tablets from Shoppers Drug Mart #376 where she was the owner and licensee. The Hearing Tribunal also found Ms. Rogalsky diverted approximately 8,000 tablets from Pharmasave #341. The Complaints Director argued that this similar, prior unprofessional conduct should weigh heavily against Ms. Rogalsky in this case.

The Age and Mental Condition of the Offended Patient

The Complaints Director acknowledged this factor was inapplicable to Ms. Rogalsky's case.

The Number of Times the Offences Were Proven to Have Occurred

The Complaints Director argued that the evidence at the hearing established that the conduct in question involved a repeated pattern of conduct that occurred over an extended period of time.

The Role of the Member in Acknowledging What has Occurred

The Complaints Director pointed out that in an email dated October 22, 2018, Ms. Hunka, counsel for Ms. Rogalsky, conveyed that Ms. Rogalsky did not expect to practice pharmacy again and that the cancellation of her registration was inevitable and that she would accept it. Ms. Hunka also explained that Ms. Rogalsky admitted Allegations 1, 2 and 3 in the Notice of Hearing but denied allegation 4. This email was entered as Exhibit 2 at the hearing. While the Complaints Director did not rely upon this email as evidence to prove the allegations against

Ms. Rogalsky, it does provide some evidence that Ms. Rogalsky has acknowledged the seriousness of her conduct with respect to Allegations 1, 2 and 3 and that it had the potential to greatly harm members of the public.

Whether the Offending Member has Already Suffered Other Serious Financial or Other Penalties as a Result of the Allegations Having Been Made

The Complaints Director acknowledged that there was evidence that Ms. Rogalsky was terminated from Sobeys as a result of the allegations made against her.

The Impact of the Incident on the Offended Patient

The Complaints Director acknowledged there was no evidence of an offended patient. The Complaints Director noted that in respect to Allegation 3, the Hearing Tribunal found that Ms. Rogalsky should have recognized the potential danger her conduct had for her patients when she was using and under the influence of diverted medications during her work hours rendering her incapacitated.

The Presence or Absence of any Mitigating Circumstances

The Complaints Director was unaware of any mitigating factors in this case that would weigh in Ms. Rogalsky's favour.

The Need to Impose Specific and General Deterrence

The Complaints Director argued that severe sanctions are necessary in this case. It is vital that Ms. Rogalsky be aware that her conduct was unacceptable and unprofessional and will not be condoned. This is Ms. Rogalsky's second hearing of a substantially similar nature. Therefore, the orders imposed by the Hearing Tribunal must serve to ensure that Ms. Rogalsky is unable to repeat this type of conduct again at a later date.

It is also vital that the sanctions ordered by the Hearing Tribunal serve as a mechanism for general deterrence to the other members of the profession. The orders must relay to the profession that the College cannot and will not tolerate this type of conduct and that the sanctions imposed for such conduct will be severe.

The Hearing Tribunal noted that Ms. Rogalsky "did not self-report her drug abuse to either the College or Sobeys' until after confronted by [REDACTED] and her employment was terminated." Therefore, for the safety of the individual, their colleagues, and the public, it is important that members of the profession understand they have an ethical obligation to self-report any issues with drug abuse and seek assistance before anyone is harmed as a result.

The Need to Maintain the Public's Confidence in the Integrity of the Profession of Pharmacy in Alberta

The Complaints Director argued that protecting the public and the integrity of the profession of pharmacy are the primary responsibilities of the College. As members of a self-regulating profession, these responsibilities carry over to each individual pharmacist. In this case, the

Hearing Tribunal found the proven allegations constituted a fundamental violation of this duty. The College must be able to demonstrate to the public that it is willing and able to regulate and govern the conduct of each member of the profession. Conduct such as that shown by Ms. Rogalsky in this case may seriously undermine the public confidence unless it is fully addressed by appropriate orders from the Hearing Tribunal.

The Degree to Which the Conduct is Clearly Outside the Range of Permitted

The Complaints Director submitted that the conduct in this case went far beyond the range of permitted conduct. The proven allegations demonstrate an unwillingness to comply with the fundamental duties of a pharmacist. This point was clearly recognized by the Hearing Tribunal in its decision.

The Range of sentences in Other Similar Cases

The Complaints Director explained that prior hearing decisions are not binding on this panel, but fairness to the member requires efforts to ensure similar sanctions are imposed for similar unprofessional conduct. The Complaints Director summarized five prior cases as follows:

Karen Nevett

In 2015, a Hearing Tribunal found that between June 2013 and February 2014, Karen Nevett, a pharmacist, diverted approximately 14,500 tablets and capsules of hydromorphone and an undetermined amount of hydromorphone granules on approximately 128 separate occasions. The Hearing Tribunal also determined that Ms. Nevett attempted to conceal her diversion of the drugs by creating false patient, physician, and dispensing records; and the public was at risk. The Hearing Tribunal ordered that Ms. Nevett's registration with the College be cancelled and that she pay full costs of the investigation and hearing. On page 9 of its decision, the Hearing Tribunal concluded that:

Ms. Nevett's substance abuse led to behaviours that will not be tolerated in the profession of pharmacy. The possibility of significant harm to the public by her conduct jeopardizes public safety and the integrity of the profession. The Hearing Tribunal is confident that the penalty serves the interests of the public and the profession.

Crystal McIntyre

In 2018, a Hearing Tribunal found that between November 1, 2014 and July 14, 2016; Crystal McIntyre, a pharmacy technician, diverted over 81,000 tablets of oxycodone and a significant number of Dilaudid tablets from the pharmacy where she was employed by manipulating the pharmacy's inventory records. The Hearing Tribunal also found that Ms. McIntyre gave the tablets to an individual she believed was associated with a criminal element. The Hearing Tribunal ordered that Ms. McIntyre's registration with the College be cancelled and that she pay full costs of the investigation and hearing. On page 12 of its decision, the Hearing Tribunal concluded that:

McIntyre's conduct was extremely serious. The medications she diverted are powerful and dangerous in any quantity, let alone the unprecedented

quantities that she obtained and diverted onto the streets. Pharmacy professionals represent a line of defence to the opioid crisis, but Ms. McIntyre's conduct seriously undermined that line of defence. Her conduct breached the public's trust in the profession and harmed its integrity.

The Hearing Tribunal was of the view that cancellation was reasonable and appropriate to achieve the necessary deterrent effect in this case. ... This decision should serve as an example that the diversion of any quantity of dangerous medications should attract severe consequences, but particularly where the scale of the diversion is significant.

Calvin Boey

In the case of Calvin Boey, a Hearing Tribunal found that Mr. Boey diverted Zopiclone, Sublinox, Dexedrine, and Nitrazepam from his employer, Shoppers Drug Mart, on 53 separate occasions and did so by creating fictitious patient profiles to facilitate and conceal his diversion of medications. Mr. Boey was also found to have diverted medications for beyond his personal use and actively circumvented the abuse monitoring and support provisions he was receiving, as ordered by a previous Hearing Tribunal.

The Hearing Tribunal found the above conduct constituted unprofessional conduct and:

...clearly demonstrate[d] a profound lack of judgment, particularly in light of them occurring while under an order of a previous hearing tribunal and in a manner similar to that which led to the initial hearing" (at page 22).

As a result, the Hearing Tribunal ordered the immediate cancellation of Mr. Boey's registration with the ACP, payment of four fines of \$10,000 each in respect to the proven allegations, costs of the investigation and hearing, and that a summary of the decision be sent to the Minister of Justice and Solicitor General under section 80(2) of the *Health Professions Act*.

The Complaints Director submitted that the Boey case is the most factually similar to Ms. Rogalsky's as it deals with a registrant who went before a hearing tribunal for a second time for allegations related to diversion and the creation of fictitious records to conceal those diversions.

Leonard Johnson

In the case of Leonard Johnson, the hearing tribunal found that Mr. Johnson diverted and misused narcotics and targeted substances by diverting approximately 641 tablets and capsules of hydromorphone and a small amount of Ativan for personal use from his employer. He also obtained and used an undetermined quantity of Paxil, Ativan and Zopiclone from his wife's prescriptions and altered the inventory of the pharmacy and created false patient records to conceal his diversions.

The hearing tribunal found this conduct constituted unprofessional conduct and ordered 6 months of active suspension; 18 months of suspension held in abeyance; monitoring and supervision; a prohibition from Mr. Johnson acting as a licensee, owner, or proprietor for a

minimum of five years after his return to practice; that Mr. Johnson will advise his employers in a pharmacy setting of the hearing tribunal's decision for five years following his return to practice; and required to pay the costs of the investigation and hearing.

Philip Leung

In the case of Mr. Leung, the hearing tribunal found that he had engaged in diversion activities and used manual adjustments of Kroll to conceal his actions. He also failed to cooperate with the investigation. The hearing tribunal ordered that his registration and practice permit be cancelled; he pay fines of \$10,000 for each of the three proven allegations; costs; that the decision be communicated to all licensed pharmacies in Alberta on a named basis and to other pharmacy regulators in Canada; and that a summary of the decision be sent to the Minister of Justice and the Attorney General under section 80(2) of the *Health Professions Act*.

The Complaints Director proposed the following sanction orders for Ms. Rogalsky:

1. Ms. Rogalsky's registration with the College shall be cancelled;
2. Ms. Rogalsky shall pay a fine of \$10,000 for each of the proven allegation of unprofessional conduct, for a total fine of \$40,000, payable within 180 days of the date of the Hearing Tribunal's written decision on sanctions and on a payment schedule acceptable to the Hearings Director;
3. Ms. Rogalsky shall not serve as a pharmacy licensee, proprietor, or own all or part of a pharmacy in the next five years, starting on the date of the Hearing Tribunal's written decision on sanctions;
4. A summary of the Hearing Tribunal's decision shall be sent to all licensed pharmacies on a named basis with the direction that the decision be sent to all pharmacy licensees; and
5. Ms. Rogalsky shall pay the costs of the investigation and hearing of this matter within 36 months from the date of the Hearing Tribunal's written decision on sanctions and on a payment schedule acceptable to the Hearings Director.

The Complaints Director provided the following explanation for the sanctions orders he proposed:

Cancellation of Ms. Rogalsky's Registration

The Complaints Director argued that Ms. Rogalsky cannot be trusted to act with honesty and integrity in the performance of duties required of a pharmacist or to comply with the letter and spirit of the law governing the practice of pharmacy. In that sense, she cannot be regulated and cancellation of her registration and practice permit is necessary to protect the public and to preserve the integrity of the profession.

This is the second time Ms. Rogalsky has been called before a hearing tribunal of the Alberta College of Pharmacy for similar conduct that was found to be very serious unprofessional conduct. After the first hearing, Ms. Rogalsky returned to practice following a 48-month suspension which was served prior to that hearing. She was subject to monitoring conditions for three years and an undertaking to attend addiction counseling for 24 months.

Based on the Hearing Tribunal's finding of fact in the present case, Ms. Rogalsky began engaging in the conduct that formed the basis for the above proven allegations shortly after the conditions of the previous hearing tribunal had expired. There is no evidence that she can be rehabilitated or trusted not to engage in similar behaviour at a later date.

A member who cannot be trusted to comply with the fundamental legal and ethical requirements of a pharmacist and who continues to place herself, the public, and the integrity of the profession at risk after significant sanctions were imposed on her by an earlier hearing tribunal of the College, must now be removed from practice. Only in this way can the Hearing Tribunal make clear to other members of the profession, and the general public, that such conduct cannot and will not be tolerated; and will result in the most severe sanction available under the HPA.

Fines

The Complaints Director argued it is also appropriate to impose fines of \$10,000 for each of the four proven allegations. A fine of \$10,000 for each of four allegations is the maximum fine permitted under the HPA. The nature of Ms. Rogalsky's conduct in each of the allegations is serious enough to warrant a substantial fine.

The seriousness, and thereby the need for the maximum fine, results from the evidence that Ms. Rogalsky failed to uphold her responsibilities as an Alberta pharmacist and intentionally diverted substantial amounts of narcotic and controlled drugs and this was a repeat offence. Fines also serve as a general deterrent to any member who may be considering engaging in similar conduct.

The Complaints Director asserted that in the absence of any evidence of personal or financial hardship, it is appropriate and reasonable for the Hearing Tribunal to order that the fines be paid within 180 days of the date of the Hearing Tribunal's written decision on sanctions, on a payment schedule acceptable to the Hearings Director.

An Order Preventing Ms. Rogalsky From Serving as a Licensee or Proprietor For Five Years

The Complaints Director also submitted that if Ms. Rogalsky is entitled to return to practice at any point in the next five years, she should not be able to serve as a licensee or a proprietor during that time period. Ms. Rogalsky's conduct, including the fact that this is her second time before a Hearing Tribunal for the diversion of narcotic and controlled drugs, demonstrates she cannot be trusted to serve in these roles and uphold the subsequent statutory and regulatory obligations required of someone who holds these positions.

The Order That the Hearing Tribunal's Decision be Forwarded to All Licensed Pharmacies

The Complaints Director proposed that a copy of the Hearing Tribunal's decision should be forwarded to all licensed pharmacies on a named basis with the direction that it be sent to all licensees. The Complaints Director noted that even if the Hearing Tribunal cancels Ms. Rogalsky's registration, it does not have the authority to prevent Ms. Rogalsky from being employed in a pharmacy in a non-regulated capacity or to require her to present the Hearing Tribunal's decisions to a prospective pharmacy employer. Therefore, the

Complaints Director believes that this order is necessary to ensure the integrity of the profession is maintained, and Ms. Rogalsky's conduct is not repeated in the future.

The Order for Payment of Costs

The Complaints Director argued that the Hearing Tribunal has specific authority under section 82(1)(j) of the HPA to direct that Ms. Rogalsky pay all or part of the expenses, costs and fees related to the investigation or hearing or both. In the circumstances of this case, the Complaints Director submitted that the College and its members should not be forced to bear the expense of the hearing when the need for the hearing arose as a direct result of Ms. Rogalsky's unprofessional conduct, which was proven and found to amount to serious unprofessional conduct.

The Complaints Director referred to several cases confirming that requiring a regulated professional to pay all or a portion of the investigation and hearing costs is common in professional discipline proceedings. The Complaints Director explained that the costs incurred in this matter could exceed \$40,000 but that these would not be disproportionate. The Complaints Director highlighted that in this case he had proved all of the allegations in the Notice of Hearing, all of the witnesses were necessary, and the hearing was completed in one day with written submissions on sanction to be considered on a subsequent day. The Complaints Director argued that the Hearing Tribunal should direct that Ms. Rogalsky pay the costs of the investigation and hearing within 36 months from the date of the Hearing Tribunal's written decision on sanctions, on a payment schedule acceptable to the Hearings Director.

III. Summary of Submissions on Sanction by Ms. Rogalsky

Neither Ms. Rogalsky, nor any counsel on her behalf made any submissions on sanction.

IV. Orders

The Hearing Tribunal has carefully considered the submissions of the Complaints Director. The Hearing Tribunal has also considered Ms. Hunka's email indicating that Ms. Rogalsky has no funds to retain counsel, or to pay any amounts ordered. The Hearing Tribunal makes the following orders pursuant to Section 82 of the *Health Professions Act*:

1. Ms. Rogalsky's registration with the College is cancelled.
2. Ms. Rogalsky shall pay a fine of \$10,000 for each of the proven allegation of unprofessional conduct, for a total fine of \$40,000, payable within 180 days of the date of the Hearing Tribunal's written decision on sanctions and on a payment schedule acceptable to the Hearings Director.
3. Ms. Rogalsky shall not serve as a pharmacy licensee, proprietor, or own all or part of a pharmacy in the next five years, starting on the date of the Hearing Tribunal's written decision on sanctions.
4. A summary of the Hearing Tribunal's decision shall be sent to all licensed pharmacies on a named basis with the direction that the decision be sent to all pharmacy licensees.

5. Ms. Rogalsky shall pay the costs of the investigation and hearing of this matter within 36 months from the date of the Hearing Tribunal's written decision on sanctions and on a payment schedule acceptable to the Hearings Director.

V. Reasons

In determining the appropriate sanction orders to impose, the Hearing Tribunal considered the evidence presented at the hearing as well as the submissions of the Complaints Director with respect to sanction. Ms. Rogalsky declined to provide a submission on sanction, but the Hearing Tribunal did consider Ms. Hunka's email on her behalf.

Ms. Rogalsky's registration with the College is cancelled

Trust, honesty, and integrity are critical attributes of pharmacists. Albertans require this of the pharmacy profession in order to receive appropriate care. The profession of pharmacy requires this of pharmacists to ensure that practice is conducted in a manner that is safe and effective for all those who utilize pharmacy services. Ms. Rogalsky's behavior has breached these important attributes and she has shown that she does not subscribe to the level of professionalism required of a pharmacist. Her conduct occurred despite being sanctioned on a previous occasion for similar behaviors. It is the Tribunal's belief that Ms. Rogalsky is unable to meet the standard set for a pharmacist and is unable to be regulated as a pharmacist and as such is a danger to the public and a threat to the integrity of the profession. Her behavior cannot be tolerated by the profession of pharmacy and puts patients at risk; the only reasonable order in this circumstance, and the one that the public should expect, is cancellation of Ms. Rogalsky's practice permit.

Payment of Fines

The HPA allows a maximum fine of \$10,000 for each proven allegation. Ms. Rogalsky's proven actions, the complete disregard for the legislative requirements of the practice of pharmacy, and the potential harm from the misuse of narcotic and controlled drugs to the general public, makes these proven allegations extremely significant. In addition, this is a repeat offense for Ms. Rogalsky, and previous significant sanction did not serve as a deterrent to her for this reckless and dangerous behavior. Cancellation and significant fines will serve as a deterrent to others from similar unprofessional conduct.

Ms. Rogalsky Cannot Serve as a Proprietor or Licensee for Five Years

Serving as a proprietor or licensee in pharmacy practice carries additional responsibilities to ensure safe, effective, and efficient care delivery to patients by the pharmacy and pharmacy staff. In particular, these roles must ensure that the legislative requirements along with the standards of practice are met fully and completely. Ms. Rogalsky has shown that she is incapable of following or adhering to the legislative requirements or standards of practice for pharmacies or pharmacists. As such, in the event that she is entitled to return to practice in the next five years she cannot be permitted to undertake either of these important roles in pharmacy practice.

Hearing Tribunal Decision to be Forwarded to All Licensed Pharmacies

The College of Pharmacy regulates Pharmacies, Pharmacists, and Pharmacy Technicians but not unregulated personnel who may work in a pharmacy. In this regard, the tribunal decision must be made available to those who might employ Ms. Rogalsky in a pharmacy in an unregulated role, to ensure she is not given access to controlled medications. This is essential in order to maintain the integrity of the profession and protect the public.

Payment of Costs

It is only reasonable, and the courts have agreed, that costs related to the discipline process should not be borne by the profession but by the member who is responsible for them. Ms. Rogalsky's behavior was serious unprofessional conduct with no regard to professional standards or legislative requirements. As such, she is responsible for the costs incurred by the college in conducting the hearing. There is no justification for any significant portion of those costs to be borne by the College's membership.

Signed on behalf of the Hearing Tribunal by the Chair.

[Brad Willsey]

Dated: August 12, 2019

Brad Willsey