

ALBERTA COLLEGE OF PHARMACY

IN THE MATTER OF
THE HEALTH PROFESSIONS ACT

AND IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF

AARON SAYLER
Registration Number 14368

DECISION OF THE HEARING TRIBUNAL

I. INTRODUCTION

The Hearing Tribunal held a hearing into the conduct of Aaron Sayler. The hearing took place on July 29, 2020 via videoconference. The hearing was held under the terms of Part 4 of the *Health Professions Act*. In attendance on behalf of the Hearing Tribunal were Mr. Brad Willsey, Pharmacist and Chair, Mr. Ted Szumlas, Pharmacist, and Ms. June McGregor, Public Member.

In attendance at the hearing were Mr. James Krempien, Complaints Director for the Alberta College of Pharmacy (the “College”), Ms. Annabritt Chisholm, legal counsel representing the Complaints Director from Shores Jardine LLP, and Ms. Ashley Reid, an articling student with Shores Jardine LLP. Neither Mr. Sayler, nor his legal counsel Mr. Rod Gregory attended the hearing.

Mr. Gregory Sim of Field LLP was also in attendance, as independent counsel for the Hearing Tribunal.

There were no objections to the composition of the Hearing Tribunal or the jurisdiction of the Tribunal to proceed with a hearing. There were no applications to close any part of the hearing to the public.

II. PRELIMINARY APPLICATION TO PROCEED

Ms. Chisholm began by explaining that legal counsel for Mr. Sayler was Mr. Rod Gregory. The Tribunal was provided with emails from the Hearings Director, Ms. Morley to Mr. Gregory with instructions about how to attend the hearing by videoconference and emails from Mr. Gregory confirming that he and Mr. Sayler were aware of the hearing date, but that neither of them would be attending the hearing. Mr. Gregory also indicated he understood and did not object to Mr. Krempien testifying about his investigation report and the investigation records. Ms. Chisholm then applied to proceed with the hearing in Mr. Sayler’s absence pursuant to section 79(6) of the *Health Professions Act*.

The Tribunal caucused to consider the application to proceed in Mr. Sayler’s absence. Section 79(6) of the *Health Professions Act* gives the Hearing Tribunal discretion to proceed with the hearing in the absence of the investigated person if they do not appear and there is proof they have been given a notice to attend the hearing. Based on the emails placed into evidence, the Hearing Tribunal was satisfied that Mr. Sayler and his counsel were aware of the hearing date, they had been given a notice to attend the hearing and that they did not intend to appear. The Tribunal therefore exercised its discretion to proceed with the hearing in Mr. Sayler’s absence.

III. ALLEGATIONS

The Hearing Tribunal held a hearing to inquire into the following complaints or matters with respect to Mr. Saylor, as set out in the Notice of Hearing:

IT IS ALLEGED THAT, while you were a regulated member of the Alberta College of Pharmacy, you:

1. Were convicted under sections:
 - a. 264(1) [engaging in harassing or threatening conduct],
 - b. 334(b) [theft],
 - c. 362(1)(a) [obtaining by false pretense monies related to transfer benefits based on a false statement],
 - d. 362(1)(c)(ii) [creating a false document for the purpose of obtaining money from Intact Insurance Company],
 - e. 368(1)(a) [used, or dealt or acted on a form that he knew was forged to obtain transfer benefits],
 - f. 380(1) [by deceit, falsehood or other fraudulent means defrauded the RCMP of transfer related benefits],
 - g. 380(1)(b) [by deceit, falsehood or other fraudulent means defrauded Intact Insurance of money in the sum of \$1,658.68 more or less],
 - h. 430(1)(d) [willfully obstruct, interrupt or interfere with the lawful enjoyment of property], and
 - i. 430(1)(a) [willfully, without legal justification or excuse and without colour of right caused damage to property not exceeding \$5,000],of the *Criminal Code*, RSC 1985, c. C-46 on September 28, 2018 as reported in *R. v. Saylor*, 2018 ABPC 224 (CanLII);
2. Provided testimony under oath in the Provincial Court of Alberta on one or more of July 3, 4, 5, 6, 13 or 19, 2018, that the Honourable Judge M.B. Golden found, on several points, was:
 - a. highly self-serving, makes little sense and the vast majority has no air of reality [paragraph 40 of the decision];
 - b. lacked any credibility [paragraph 46];
 - c. made no sense whatsoever [paragraph 49]; and
 - d. provided multiple explanations that contained no air of reality or were beyond fantasy [paragraph 64].

IT IS ALLEGED THAT your conduct in these matters:

- a. failed to exercise the ethical judgment expected and required of a regulated member of the Alberta College of Pharmacy; and

- b. decreased the public's trust in the profession; and
- c. undermined the integrity of the profession.

IT IS ALLEGED THAT your conduct constitutes a breach of Principle 10 of the Alberta College of Pharmacy Code of Ethics and that your conduct set out above and the breach of this provision constitutes unprofessional conduct pursuant to the provisions of section 1(1)(pp)(ii), 1(1)(pp)(iii) and 1(1)(pp)(xii) of the *Health Professions Act*.

III. EVIDENCE

The Hearing Tribunal received the following documents into evidence:

- Exhibit 1: Notice of Hearing, April 18, 2019
- Exhibit 2: Notice to Attend and Notice to Produce, April 18, 2019
- Exhibit 3: Email message from R. Gregory to M. Morley, June 16, 2020
- Exhibit 4: Email message from Ms. Morley to R. Gregory, July 27, 2020
- Exhibit 5: Email message from R. Gregory to M. Morley, July 29, 2020
- Exhibit 6: Admission of Unprofessional Conduct, May 18, 2020
- Exhibit 7: Investigation Report, December 20, 2018
- Exhibit 8: Certificates of Conviction, May 4, 2020
- Exhibit 9: Joint Submission on Sanction, May 26, 2020
- Exhibit 10: Undertaking of Aaron Sayler, May 18, 2020

The Complaints Director for the College, Mr. James Krempien, was called as a witness and testified. Mr. Krempien provided the following key evidence:

- Mr. Krempien confirmed that in his capacity as the Complaints Director of the Alberta College of Pharmacy he received a complaint about Mr. Sayler. The complaint was from Mr. Greg Eberhart, the Registrar of the College.
- Mr. Eberhart complained on the basis of media reports of Mr. Sayler's criminal convictions in the Provincial Court of Alberta, and a copy of the Judge's decision dated September 28, 2018.
- At the time of his trial and his convictions Mr. Sayler was registered on the College's pharmacy student register, making him a regulated member of the College and binding him to the same ethical principles and regulatory framework as all other regulated members.
- Mr. Krempien identified and reviewed his investigation report and the supporting records as well as Ms. Sayler's certificates of conviction.

- Mr. Krempien described meeting with Mr. Sayler on December 12, 2018. Mr. Sayler described his testimony in the Provincial Court proceedings and indicated he would not change his testimony and that he stood by what he had said.
- Mr. Krempien also described receiving an email from Mr. Sayler following the December 12, 2018 meeting. Mr. Sayler explained that his actions that led to his criminal trial and convictions pre-dated his registration on the College's student register. He also expressed that he may appeal some of his convictions, although Mr. Krempien understood that this did not ultimately occur.
- Mr. Krempien completed his investigation and determined that the matter should be referred to a hearing.

This ended Mr. Krempien's testimony. The Complaints Director's case was then closed.

While Mr. Sayler did not attend the hearing, the evidence provided to the Hearing Tribunal included an Admission of Unprofessional Conduct signed by Mr. Sayler and witnessed by Mr. Gregory on May 18, 2020. The Admission of Unprofessional Conduct mirrored allegations 1 and 2 in the Notice of Hearing such that Mr. Sayler admitted both allegations of unprofessional conduct in their entirety.

IV. SUBMISSIONS

On behalf of the Complaints Director, Ms. Chisholm explained that the Complaints Director bears the onus of proof. The onus of proof is based on the civil standard of a balance of probabilities. Ms. Chisholm acknowledged that there is no onus on Mr. Sayler.

Ms. Chisholm then submitted that the Hearing Tribunal had more than sufficient information to make findings of unprofessional conduct on both allegations. She referred to Mr. Krempien's testimony and the documents he obtained in his investigation. Ms. Chisholm also referred Mr. Sayler's Admission of Unprofessional Conduct.

Ms. Chisholm submitted that this matter had come before the Hearing Tribunal because a regulated member of the College had been convicted of harassment, mischief, theft, fraud, and the creation of false records. Although none of the convictions resulted from conduct that occurred while Mr. Sayler was a regulated member of the College, his conduct occurred while he was a member of the RCMP and he was convicted while on the College's student register. His conduct for which he was convicted would be wholly unacceptable if it had occurred while a regulated member of the College, as it calls into question his integrity and that of the whole profession of pharmacy. His convictions after becoming a regulated member of the College have the same effect.

While some criminal conduct, such as traffic offences, may not impact on the integrity of the pharmacy profession, the Complaints Director submitted that Mr. Sayler's criminal convictions are very impactful. They are particularly concerning because a pharmacist

occupies a position of trust with access to significant, sensitive personal health information. Mr. Saylor's offences undermine that trust, in that they included theft and deceit. Ms. Chisholm also pointed out that Mr. Saylor was found to have provided sworn testimony that was highly self-serving, that lacked any air of reality and credibility.

Ms. Chisholm argued that Mr. Saylor's conduct contravened Principle 10 of the College's Code of Ethics.

V. FINDINGS

After reviewing all the evidence and submissions presented, the Hearing Tribunal accepted Mr. Saylor's admissions and found that all of the allegations in the Notice of Hearing were factually proven and that Mr. Saylor's conduct constituted unprofessional conduct.

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

- Mr. Eberhart's complaint stated that Mr. Saylor became a regulated member of the College on the student register on October 20, 2016. Mr. Saylor was tried over several dates in July 2018 and convicted on September 28, 2018.
- While Mr. Saylor's underlying conduct occurred before he became a regulated member of the College, his trial and the convictions occurred after he became a regulated member on the College's student register. Mr. Saylor's conduct at trial and the convictions are the basis for the Tribunal's findings of unprofessional conduct in this case.
- Mr. Eberhart explained to Mr. Krempien that he was concerned that Mr. Saylor's convictions and his conduct during the criminal trial damaged the integrity of the pharmacy profession. This was exacerbated by the media coverage of Mr. Saylor's trial and convictions, and the fact that he was enrolled in a pharmacy program.
- There was no dispute that Mr. Saylor had been tried and convicted of the criminal offences as alleged in the Notice of Hearing. He admitted this in his Admission of Unprofessional Conduct.
- The Hearing Tribunal considered that Mr. Saylor's convictions were extremely serious for a regulated member of the College. Mr. Saylor's convictions included defrauding the RCMP of financial benefits, defrauding an insurance company, harassing women, damaging property, and theft.
- These are not trivial matters with no connection to the practice of pharmacy. These are serious matters that engage Mr. Saylor's capacity to occupy a position of trust and responsibility. The practice of pharmacy requires strict adherence to a code of ethics and standards of practice, the care and management of patients' personal health and wellbeing, the care and management of highly confidential personal health information, and insured drug benefit claims. The Hearing Tribunal concluded that Mr. Saylor's

convictions while he was a regulated member of the College, including for insurance fraud, would have harmed the integrity of the pharmacy profession.

- Mr. Sayler’s testimony at trial was also unprofessional. The Provincial Court Judge held that Mr. Sayler’s testimony was “highly self-serving”, it made “little sense” and “the vast majority has no air of reality”. He was also noted to have been “extremely evasive” in cross-examination and some of his explanations were “mystifying” and made “no sense whatsoever”.
- When questioned about this by Mr. Krempien, Mr. Sayler said he wouldn’t change any of the things he said in court. The Hearing Tribunal concluded that Mr. Sayler was not forthcoming with the Court or with Mr. Krempien and this was not in keeping with the expectations of a regulated member of the College. The matter was publicized and Mr. Sayler’s conduct would have undermined public confidence in the profession and its integrity.
- Unprofessional conduct as defined by the *Health Professions Act* at section 1(1)(pp)(xii) includes conduct that harms the integrity of the regulated profession.
- Ms. Chisholm also emphasized that Mr. Sayler’s conduct at his criminal trial and his convictions contravened the *Criminal Code of Canada* and Principle 10 of the College’s Code of Ethics and was therefore unprofessional. The Hearing Tribunal agreed.
- The definition of unprofessional conduct includes contraventions of enactments that apply to the profession of pharmacy, like the *Criminal Code of Canada* pursuant to section 1(1)(pp)(iii) of the *Health Professions Act*.
- Breaches of the Code of Ethics can also be unprofessional conduct pursuant to section 1(1)(pp)(ii) of the *Health Professions Act*. Principle 10 of the Code requires regulated members of the College to comply with both the letter and the spirit of the law that governs the practice of pharmacy. This includes the *Criminal Code of Canada*. Principle 10 also requires that regulated members of the College are honest with others encountered in dealings related to the practice of the profession. Mr. Sayler had the opportunity to clarify what he told the court when he met with Mr. Krempien, but he did not. Mr. Sayler breached Principle 10 of the Code of Ethics.
- With the benefit of legal advice, Mr. Sayler submitted an admission of unprofessional conduct to both allegations in the Notice of Hearing, pursuant to section 70 of the *Health Professions Act*. After considering all the evidence and submissions from Ms. Chisholm, the Hearing Tribunal determined that it would be appropriate to accept the admissions and make findings of unprofessional conduct on all allegations.

VI. SUBMISSIONS ON ORDERS

Ms. Chisholm produced a Joint Submission on Sanctions signed by both the Complaints Director and Mr. Sayler and an Undertaking signed by Mr. Sayler.

The Joint Submission on Sanctions provided that commencing immediately, Mr. Sayler's registration with the College would be cancelled and that he would be prohibited from becoming an owner or proprietor or a pharmacy student registered with the College.

Mr. Sayler's undertaking provided that he would not seek to reapply for registration as a regulated member of the College in the future; and that the College could rely upon his undertaking as a ground for the College to agree to the joint submission on sanctions.

Ms. Chisholm submitted that from the Complaints Director's perspective, discipline proceedings serve four main purposes: protection of the public, preserving the integrity of the profession in the eyes of the public, fairness to the investigated member, and deterrence to the investigated member and other members to prevent similar conduct in the future.

She then explained that in this case the parties were proposing that cancellation and a prohibition on Mr. Sayler serving as an owner or proprietor of a pharmacy would serve those purposes. Ms. Chisholm submitted that cancellation and the prohibition on serving as an owner or proprietor were also consistent with the relevant sentencing factors considered in the case law, referring to *Jaswal vs. Medical Board (Newfoundland) (1996)*, 42 Admin L.R. (2d) 233:

- *Nature and gravity of proven allegations:* Ms. Chisholm submitted that Mr. Sayler's conduct was serious and it called into question his ability to act with integrity as a member of the pharmacy profession. He provided testimony found to be highly self-serving and lacking any credibility and he was convicted of 10 criminal charges. Some of the convictions stemmed from his creation of false documents for his own financial gain.
- *Age and experience of the offender:* Mr. Sayler became a regulated student member of the College in October of 2016. His trial and convictions occurred in 2018. While a lack of experience can sometimes be a mitigating factor on sanctions, this was not such a case. Experience is not necessary to understand that honesty and integrity are essential. Mr. Sayler was also a member of the RCMP for many years before returning to school to become a pharmacist. There can be no doubt that he knew his conduct was wrong.
- *Previous character of a member and prior complaints:* Mr. Sayler had no history of prior findings of unprofessional conduct with the College, so this weighed in his favor.
- *Number of times the offence occurred:* The convictions were all entered at the same time but based on conduct that occurred over a long period of time between 2012 and 2016.
- *Role of the member in acknowledging what occurred:* Mr. Sayler admitted his unprofessional conduct and entered into a joint submission on sanction for

cancellation and prohibiting him from acting as a pharmacy owner or proprietor. He also gave an undertaking to the College not to reapply. Mr. Sayler demonstrated recognition that his conduct had impacted the integrity of the profession. This was therefore a mitigating factor.

- *Whether the member has suffered other serious financial or other penalties:* Ms. Chisholm acknowledged that Mr. Sayler received a total term of incarceration of 24 months from the Court for his convictions.
- *The need to promote deterrence:* Ms. Chisholm explained that specific deterrence of Mr. Sayler would be achieved by the order for cancellation and the prohibition on serving as a pharmacy owner or proprietor. He would be permanently removed from pharmacy practice. She also explained that the sanctions would serve the need for general deterrence of others.
- *The need to maintain public confidence in the integrity of the profession:* The sanctions imposed should demonstrate that the profession and the College take the obligation to regulate according to the *Health Professions Act* and to discipline unprofessional conduct seriously.
- *The range of sentence in other similar cases:* Ms. Chisholm then explained that fairness requires the Hearing Tribunal to ensure its orders are proportional to orders imposed in other, similar cases. While there were no directly comparable cases, Ms. Chisholm referred the Tribunal to the case of *Sinan Hadi* and the Alberta College of Pharmacy. In the *Hadi* case, the member was found to have confined and sexually assaulted a minor. He also failed to comply, respond or to participate in the College's discipline process. Mr. Hadi's registration was cancelled. The facts of the *Hadi* case were very different from Mr. Sayler's, but the case illustrated that serious illegal behavior outside of a pharmacy practice setting can justify cancellation.

Ms. Chisholm then explained that the Complaints Director was not seeking an order for Mr. Sayler to pay the costs of the investigation or the hearing. She acknowledged that it is unusual for the Complaints Director not to seek costs. Ms. Chisholm pointed out that Mr. Sayler was a student, he was incarcerated, and he and his lawyer had worked expeditiously with the College to reach the agreements and undertaking described above. In those unique circumstances the Complaints Director was prepared to forego costs.

Ms. Chisholm then reviewed the law applicable to joint submissions on sanctions, referring to *Rault v. Law Society of Saskatchewan*, 2009 SKCA 81 and *R. v. Anthony Cook*, 2016 SCC 43. Ms. Chisholm explained that a joint submission on sanctions should receive deference from the Hearing Tribunal, to reflect the time and effort the parties have spent coming to an agreement, and the need for certainty in the process. She acknowledged that the Tribunal could stray from a joint submission on sanctions where it believes the jointly submitted sanctions are harmful to the public interest, but it should first give the parties an opportunity to address those concerns with further submissions.

VII. ORDERS

The Hearing Tribunal carefully considered the submissions on sanction presented by Ms. Chisholm and make the following orders:

1. Mr. Sayler's registration with the College is cancelled; and
2. Mr. Sayler is prohibited from becoming an owner or proprietor of a pharmacy registered with the College commencing immediately and in the future.

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

The Hearing Tribunal accepted that it had a duty to defer to the parties' joint submission on sanctions unless the sanctions would be contrary to the public interest. The jointly submitted sanctions in this case were appropriate to protect the public interest and the integrity of the profession, fair to Mr. Sayler, and they will adequately deter others in the profession from similar conduct in the future. The jointly submitted sanctions are appropriate in light of the relevant sentencing factors in the case law described above. There was no reason to depart from the jointly submitted sanctions of cancellation and a prohibition on Mr. Sayler acting as a pharmacy owner or proprietor in the future.

The profession of pharmacy enjoys the privilege of being a self-regulated profession. It is imperative that the profession regulates and governs the practice of pharmacy at a high level to continue to satisfy this privilege and to maintain the integrity of the profession. Effective pharmacy practice is based on the values of trust, integrity, sound judgement, good decision making, and critical thinking. There is simply no room or exception for practitioners or soon to be practitioners to deviate from these values. Mr. Sayler deviated substantially from these values, to the point where he received a criminal conviction for serious crimes, then lacked insight and accountability for his actions, and as such deserves no place in the profession of pharmacy. Pharmacists are continually and consistently granted access to confidential personal health information and financial information from insurers and are required to handle that information with the highest degree of diligence to allow excellent clinical decision-making. Individuals who fail to adhere to the rule of law, especially in serious matters, cannot be allowed to practice in the profession of pharmacy.

Signed on behalf of the Hearing Tribunal by its chair:



Brad Willsey, Pharmacist, Chair

Dated: October 28, 2020