

ALBERTA COLLEGE OF PHARMACY

IN THE MATTER OF
THE HEALTH PROFESSIONS ACT

AND IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF

HARSH SUNILKUMAR SHAH

Registration Number 13345

DECISION OF THE HEARING TRIBUNAL

I. INTRODUCTION

The Hearing Tribunal held a hearing into the conduct of Harsh Sunilkumar Shah. In attendance on behalf of the Hearing Tribunal were Sarah Gutenberg, pharmacist, Ted Szumlas, pharmacist, Pat Matusko, public member, and Teryn Wasileyko, pharmacist and chair.

The hearing took place on February 26, 2019 at the Alberta College of Pharmacy in 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 Alberta College of Pharmacy (the “College”), Ms. Annabritt Chisholm, legal counsel representing the Complaints Director and Mr. Harsh Sunilkumar Shah, investigated member. Mr. Shah acknowledged he had the right to engage legal counsel, but he 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. PRELIMINARY MATTERS

At the outset of the hearing, the parties agreed to amend the allegations in the Notice of Hearing entered as Exhibit 1, to refer to a pharmacy location in Airdrie, Alberta rather than Calgary, and to refer to practicing without professional liability insurance on 96 separate shifts, rather than 96 separate days. These amendments have been incorporated below.

II. ALLEGATIONS

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

IT IS ALLEGED THAT, between July 1, 2018 and October 2, 2018, while practicing as a pharmacist at Shoppers Drug Mart #2431 (Pharmacy Licence 3416) in Airdrie, Alberta, you:

1. Did not maintain professional liability insurance;
2. Breached your professional declaration of May 27, 2018 by not maintaining professional liability insurance while on the clinical pharmacist register; and
3. Practiced without professional liability insurance on 96 separate shifts.

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 11 detailing records gathered during the investigation process was introduced as Exhibit 3. Mr. Krempien provided the following key evidence with reference to these documents:

- The Record of Decision (Exhibit 2) outlined his reasons for referring the matter to a Hearing Tribunal.
- Tab 1, Exhibit 3 was a copy of the complaint referral form from Ms. Timanson, the Competence Director at the College, that explained Mr. Shah was randomly selected for a 2018-2019 professional declaration audit on September 28, 2019. It was found that he breached his May 27, 2018 professional declaration which stated that he would maintain professional liability insurance and had practiced without this insurance from July 1, 2018 to October 2, 2018.
- Tab 1, Exhibit 3 outlined the sequence of events, with Mr. Shah being notified on October 2, 2018 to submit documentation of his current professional liability insurance coverage and CPR and first aid certification. On October 3, 2018, Mr. Shah provided his professional

liability insurance coverage for October 3, 2018 to July 1, 2019. On October 16, 2018 Mr. Shah was sent a letter from the competence administrator requesting insurance documentation for April 10, 2017 to April 10, 2018, and for April 11, 2018 to October 2, 2018.

- Tab 6, Exhibit 3 was a summary of a telephone conversation from October 24, 2018 between Mr. Krempien and Arsen Gincher (Registration No. 7148), the licensee of Shoppers Drug Mart #2431. Mr. Gincher indicated that he was “responsible for” and “taking fault” for the lapse in Mr. Shah’s professional liability insurance coverage. Mr. Gincher explained that Shoppers Drug Mart had moved to a new location and that he had failed to submit Mr. Shah’s annual insurance renewal along with the rest of his employees.
- Tab 7, Exhibit 3 contained an email to the College from Mr. Shah explaining his lapse in professional liability insurance: he believed that Mr. Gincher had renewed his insurance policy along with the other staff pharmacists at the location. Upon further investigation, he and Mr. Gincher learned that there were technical difficulties with the online renewal form, and in fact, Mr. Shah’s insurance was not renewed. Neither Mr. Shah nor Mr. Gincher was aware of this prior to the College audit.
- Tab 8, Exhibit 3 also provided a detailed list of the shifts that Mr. Shah worked during the period in which his professional liability insurance had lapsed. There were 96 shifts worked in total.
- Tab 11, Exhibit 3 was a summary of Mr. Krempien’s meeting with Mr. Shah and Mr. Gincher on November 23, 2018. Mr. Shah indicated that he completed his professional declaration regarding professional liability insurance on May 27, 2018. Mr. Gincher stated that he told Mr. Shah to go ahead and renew his permit because he would be renewing the professional liability insurance through Marsh Insurance for all his staff pharmacists. Mr. Shah received a renewal notice from his previous insurer, Alberta First Insurance before May/June 2018, but disregarded it as he thought his insurance was being taken care of by Mr. Gincher/Shoppers Drug Mart. Mr. Shah indicated that he was not aware that he should have been waiting for an email from Marsh Insurance, confirming his 2018/2019 policy. It was only upon his selection for random audit by the College that he realized his professional liability insurance had not been renewed by Shoppers Drug Mart and that it had lapsed. Both Mr. Shah and Mr. Gincher advised that they were not aware of any drug errors or incidents during the lapse in insurance coverage.
- Mr. Shah was fully cooperative with the investigation by the College and showed remorse for his actions.

This ended Mr. Krempien’s testimony. Mr. Shah did not ask any questions of Mr. Krempien in cross-examination. The Complaints Director’s case was then closed. Mr. Shah was sworn in and provided evidence to the Hearing Tribunal as follows:

- Mr. Shah stated that has been practicing as a pharmacist with the College since April 2017.
- Mr. Shah purchased professional liability insurance that was in effect from April 17, 2017 to July 1, 2017 and from July 1, 2017 to July 1, 2018 with Alberta First Insurance. He became employed full-time at Shoppers Drug Mart in Airdrie, Alberta on October 26, 2017. He admitted that although he confirmed his professional liability insurance coverage verbally with Mr. Gincher prior to making his professional declaration, he did not ask for a copy of the policy itself as proof of insurance. This misunderstanding led him to make a false professional declaration on May 27, 2018.
- Mr. Shah indicated that he did receive a renewal notice from his previous insurance provider, Alberta First Insurance, however, disregarded this as he believed that he was now covered by Marsh Insurance.
- Mr. Shah explained that as a result of the audit, he and Mr. Gincher looked into the status of his professional liability insurance and at that point discovered that there had been a change in process and due to a technical difficulty, Mr. Shah's renewal had not been processed by Marsh Insurance with the other staff pharmacists at Shoppers Drug Mart #2431.
- Mr. Shah admitted to a lapse in his professional liability insurance from July 1, 2018 until October 2, 2018 and provided a list of the shifts he worked (96 in total) to the College.
- Mr. Shah stated that he was not aware of any significant drug errors/omission or other complaints about his practice during the time of the lapse.
- Mr. Shah apologized and indicated that the lapse in his professional liability insurance was an unintentional error.
- During his cross-examination by Ms. Chisholm, Mr. Shah confirmed that he did not take any steps between July 1, 2018 and October 2, 2018 to confirm his insurance coverage, despite the other staff pharmacists at Shoppers Drug Mart #2431 receiving personal emails confirming coverage from Marsh Insurance. This concluded Mr. Shah's cross-examination by Ms. Chisholm. Mr. Shah provided no further evidence in re-direct.
- The Hearing Tribunal asked Mr. Shah if he had taken any steps to confirm his insurance status prior to the October declarations audit from the College and he confirmed that he had not. He stated he had relied solely on the verbal confirmation from Mr. Gincher and assumed he was covered. Mr. Shah confirmed that although he did not have any paperwork to support that Shoppers Drug Mart would pay for his professional liability insurance, Mr. Gincher had verbally confirmed payment for it. In addition, Mr. Gincher had already paid for his licensing fees and CPR. Mr. Shah also confirmed for the Tribunal that his expanded scope of practice included provision of medication by injection but not additional prescribing authorization.

Mr. Shah then called Mr. Gincher as a witness. He was sworn in and provided the following evidence:

- Mr. Gincher has been the associate of a new Shoppers Drug Mart location (#2431) in Airdrie since November 2017.
- Mr. Gincher stated that he provided an updated staff list of his pharmacists to the College in February 2018. He indicated that he received an email from Marsh Insurance that included a link for his pharmacists to use to update their insurance information. Mr. Gincher's wife, who is also a pharmacist at the same location, tried to use the link and discovered that Shoppers Drug Mart #2431 was not included in the list. She contacted Marsh Insurance and on May 7, 2018 they provided a new link for the staff pharmacists to use. Mr. Gincher's staff pharmacists found this link in their email and updated their insurance. Mr. Gincher confirmed that Mr. Shah had asked him about his insurance prior to making his professional declaration and Mr. Gincher told Mr. Shah that it was good order, which later as he and Mr. Shah discovered, was not the case.
- Ms. Chisholm cross-examined Mr. Gincher. Mr. Gincher confirmed that he renewed his own professional liability insurance via the email link sent by Marsh Insurance and that each of his employees had done the same for themselves through personal emails sent by Marsh Insurance. Mr. Gincher did not specifically ask Mr. Shah if he had received an email from Marsh Insurance. Mr. Gincher confirmed that Shoppers Drug Mart pays for staff pharmacists' professional liability insurance.
- The Hearing Tribunal confirmed with Mr. Gincher that he did not ask Mr. Shah if he had received the email link and that his typical process was to keep copies of his employee's certificates, such as CPR, injection certification, and insurance; however, in this case Mr. Shah's insurance certificate was missed. Mr. Gincher confirmed that after the technical error related to the new store number (#2431) being omitted from the insurance link, he did not directly follow up with each employee individually. Mr. Gincher suggested that he has learned from this and would do so going forward.

This concluded Mr. Shah's evidence.

IV. SUBMISSIONS

On behalf of the Complaints Director Ms. Chisholm submitted to the Hearing Tribunal that the Complaints Director considered the Notice of Hearing to contain one charge with three particulars. Although the Complaints Director has the onus of proof on the balance of probabilities, Mr. Shah admitted the facts presented as evidence by the Complaints Director and he provided an admission of unprofessional conduct.

Ms. Chisholm 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 state that in order for a practice permit application to be complete, the member must have professional liability insurance in the amount and type specified by Council. Ms. Chisholm explained that these statutes prove an obligation by pharmacists to have personal insurance apart from their employers' coverage.

Ms. Chisholm referred to an example of the type of professional declaration Mr. Shah completed, falsely stating that while on the clinical register, he would have professional liability coverage for no less than \$2 million dollars regardless of his employer. She explained that one of the fundamental obligations of a self-regulating profession is protection of the public and that professional liability insurance is an important part of that protection, regardless of whether the pharmacist is working as a relief pharmacist or as a full-time pharmacist, as in Mr. Shah's case. She noted that although Mr. Shah's actions were not deliberate, he did not personally take steps to ensure that his insurance coverage was valid beyond making an assumption based on a conversation with his licensee, Mr. Gincher.

Ms. Chisholm submitted that ethical conduct of an Alberta pharmacist includes making declarations that can be counted on to be true. Mr. Shah's conduct was contrary to acceptable pharmacist practice under the Act, the regulations, the standards of practice, and the code of ethics. She also explained that individual emails were sent to each pharmacist at the pharmacy and that it was not the responsibility of the licensee to use those links to renew professional liability insurance for each pharmacist. It was a personal responsibility for each pharmacist to do so for themselves.

Ms. Chisholm explained that the College does not have the resources to check each of its 5,500 members, so it relies on its members' declarations as being dependable. Had Mr. Shah not been chosen for a random audit, there would be a 12-month period during which he would have been practicing without insurance. Mr. Shah's conduct was also said to breach the standards of practice and the code of ethics as alleged in the Notice of Hearing.

Mr. Shah did not disagree with Ms. Chisholm's submissions. He acknowledged that he was guilty of the allegation against him. He indicated he would ensure his professional declarations are accurate going forward.

V. FINDINGS

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

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

- Mr. Shah admitted that he did not maintain professional liability insurance from July 1, 2018 until October 2, 2018 and that during this time he practiced as a pharmacist at Shoppers Drug Mart #2431 for 96 shifts.

- Mr. Shah admitted that he made a false professional declaration on May 27, 2018 when submitting his application for a practice permit with the College.
- These admissions were supported by the documentation and testimony provided both by the Complaints Director and by Mr. Shah.
- 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 constitute 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. Breaches of these standards, even if unintentional, harm the integrity of pharmacy both within the profession as well as within society as a whole and have the potential to harm the public.
- 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.
- 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, harm the integrity of pharmacy both within the profession as well as within society as a whole. False declarations have the capacity to harm the public and are therefore taken very seriously.
- Mr. Shah's actions were in violation of the *Health Professions Act* section 40(1)(c) and section 13 (1) of the *Pharmacists and Pharmacy Technicians Profession Regulation* as well as the Alberta College of Pharmacy's code of ethics principle 1 (1). Mr. Shah's actions were sufficiently serious to constitute unprofessional conduct pursuant to sections 1(1)(pp)(ii), (iii) and (xii) of the *Health Professions Act*.

VI. SUBMISSIONS ON ORDERS

Complaints Director's Submissions:

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

Ms. Chisholm reviewed the factors referenced in *Jaswal v. 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. Shah'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 2, 2018, Mr. Shah practiced without professional liability insurance due to a lack of attention and follow through on his part, instead relying on an assumption based on a discussion with his employer. Had the worst-case scenario played out he would not have had insurance to protect the public.
- *Age and experience of the offender:* Mr. Shah first registered with the College in August 2015 as an intern, and in April 2017 as a pharmacist. Members with less experience may be given more lenience than those who have practiced longer.
- *Previous character of a member and prior findings of unprofessional conduct:* Mr. Shah has no history of prior complaints with the College.
- *Number of times the offence occurred:* Mr. Shah was found to have a single breach that extended over a 3-month period of time. This breach was not discovered by Mr. Shah himself, but rather, was only discovered through a random audit. Both the extended length of time of the breach and the fact that he practiced on 96 shifts during this time, 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. Shah was aware of the situation, he acted immediately to obtain professional liability insurance which was in place on October 3, 2018. Mr. Shah admitted his breach 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. Shah was relatively new to the profession and this was the second 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. Shah from a similar breach is served because he acknowledged his mistake and will take steps to ensure not to repeat this mistake in the future. With regards to general deterrence of the larger membership, it is important that the sanctions imposed by the Hearing Tribunal educate the membership and deter them from similar conduct.
- *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 for breaches.
- *The degree to which the offensive conduct is clearly regarded, by consensus, as falling outside of the range of permitted conduct:* Mr. Shah's conduct, although lower on the spectrum of misconduct, is still considered misconduct.
- *The range of sanctions 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, and 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 approximately 3 months and 89 shifts 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 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 submitted that the following sanctions would be appropriate in this case:

- A reprimand;
- A fine of \$1,000; and
- 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. Shah, as well as a deterrent to the general membership. She noted that the Complaints Director was suggesting capping the costs at \$7,000 due to Mr. Shah's cooperation with the process, the ability to complete the hearing within one day, and that Mr. Shah had not made any adjournment requests. The Hearing Tribunal asked Ms. Chisholm to clarify typical timeframes within which the Hearing Director would expect payment of costs. She asked Mr. Krempien, who suggested that typically costs should be paid within 18 and 24 months.

Mr. Shah's Submissions:

Mr. Shah accepted that sanctions would be imposed for his admitted unprofessional conduct and he had no objection to the Complaints Director's position on sanctions and costs or the suggested timeframe for payment.

VII. ORDERS

The Hearing Tribunal carefully considered the submissions on sanction from both the Complaints Director and Mr. Shah and made the following orders:

1. Mr. Shah shall receive a written reprimand. This decision shall serve as a written reprimand for Mr. Shah.
2. Mr. Shah shall pay a fine of \$1,000, payable on a schedule acceptable to the Hearings Director within 12 months from the date of this written decision.
3. Mr. Shah shall pay the costs of the investigation and hearing, capped at \$7,000, payable on a schedule acceptable to the Hearings Director within 24 months from the date of this written decision.

Mr. Shah's failure to maintain professional liability insurance and his breach of his professional declaration is unprofessional conduct. His conduct reflected poorly on the profession and is unacceptable. The Hearing Tribunal determined that a written reprimand, fine, and costs of the investigation and hearing were reasonable sanctions to impose based upon the *Jaswal* factors discussed above. In particular the Hearing Tribunal considered that Mr. Shah was a relatively junior pharmacist when he committed the unprofessional conduct, his conduct was at the low end of the severity spectrum, he has no prior discipline history and he immediately took responsibility and addressed his lack of insurance when it was brought to his attention. The sanctions imposed on Mr. Shah are also consistent with those in recent similar cases and this promotes proportionality and fairness to the member.

During their deliberations, the Hearing Tribunal explored the possibility of a College mandated activity (Jurisprudence course, essay, etc.) as an additional deterrent to the membership for this type of misconduct. However, since no particular activity currently exists or is 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.

Signed on behalf of the Hearing Tribunal by its Chair on August 8, 2019.

[Teryn Wasilevko]

Teryn Wasilevko, Pharmacist, Chair