

ALBERTA COLLEGE OF PHARMACY

IN THE MATTER OF  
THE HEALTH PROFESSIONS ACT

AND IN THE MATTER OF A HEARING  
REGARDING THE CONDUCT OF

**Soosai Stanislaus**

Registration number: 10493

**DECISION OF THE HEARING TRIBUNAL**

October 25, 2021

## **I. INTRODUCTION**

On September 15, 2021, the Hearing Tribunal held a hearing into the conduct of Soosai Stanislaus. In attendance on behalf of the Hearing Tribunal were Juane Priest, public member, David Rolfe, public member, Lisa Lix, pharmacist, and Rick Hackman, pharmacist and chair.

The hearing took place via videoconference. The hearing was held under the terms of Part 4 of the *Health Professions Act* (“HPA”).

In attendance at the hearing were: Mr. James Krempien, Complaints Director for the Alberta College of Pharmacy (the “College”), Ms. Annabritt Chisholm and Mr. Raymond Chen, legal counsel representing the Complaints Director, and Soosai Stanislaus, Investigated Member. Mr. Stanislaus confirmed he was aware of his right to be represented by legal counsel and chose to represent himself during the hearing. Mr. Jason Kully was also in attendance, acting as independent counsel for the Hearing Tribunal.

Margaret Morley, Hearings Director, was also present. Ms. Morley did not participate in the hearing but was available to assist in administering the virtual hearing.

There were no objections to the composition of the Hearing Tribunal or the jurisdiction of the Hearing Tribunal to proceed with a hearing.

## **II. ALLEGATIONS**

The Hearing Tribunal held a hearing to inquire into the following allegations with respect to Mr. Stanislaus, as set out in the Amended Notice of Hearing:

IT IS ALLEGED THAT while you were a registered Alberta pharmacist practicing at The Medicine Shoppe #340 (ACP License #2624) in Edmonton, Alberta (the “Pharmacy”), you:

1. Used your authority as a custodian of health information to access the personal health information of [REDACTED] on Netcare on February 6, 2018 without an authorized purpose for doing so, as [REDACTED] was not your patient, or a patient of the Pharmacy and you did not have [REDACTED] prior knowledge or consent to access her personal health information.
2. Used the personal health information of [REDACTED] that you accessed on Netcare on February 6, 2018 in a telephone conversation with [REDACTED] on February 7, 2018, even though [REDACTED] was not your patient or a patient of the Pharmacy.

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,
- c. Decreased the public's trust in the profession, and
- d. Failed to exercise the professional and ethical judgment 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-sections 1.1 and 1.2) of the Standards of Practice for Pharmacists and Pharmacy Technicians,
- Principles 4(4) and 10(1) of the Alberta College of Pharmacy's Code of Ethics,
- Section 25 and sub-section 27(1) and sub-section 107(2)(a) of the *Health Information Act*,
- Sub-section 1(1)(pp)(ii), 1(1)(pp)(iii), and 1(1)(pp)(xii) of the *Health Professions Act*.

### **III. EVIDENCE AND SUBMISSIONS**

The hearing proceeded with an Agreed Statement of Facts and an Admission of Unprofessional Conduct on the part of Mr. Stanislaus. No witnesses were called to testify.

The following exhibits were entered by agreement of the parties:

Exhibit 1: Agreed Book of Exhibits, which included the Amended Notice of Hearing, an Admission of Unprofessional Conduct, and an Agreed Statement of Facts.

#### **Agreed Statement of Facts**

The Agreed Statement of Facts submitted states:

1. At all relevant times, Mr. Stanislaus was a registered member of the Alberta College of Pharmacy on the clinical pharmacist register and practiced as a pharmacist at The Medicine Shoppe #340 (ACP Licence #2624) (the "Pharmacy").
2. On January 19, 2021, the Complaints Director considered information obtained from a news release from the Alberta Office of the Information and Privacy Commissioner ("OIPC") and an article from the Edmonton Journal. The information indicated that on or about January 15, 2021, Mr. Stanislaus had been found guilty of an offence under the *Health Information Act* ("HIA") and received a \$5,000 fine and a \$1,000 victim fine surcharge for using health information in contravention of the HIA. The OIPC news release and Edmonton Journal article are attached as **Exhibit "A"** to this Agreed Statement of Facts.

3. The Complaints Director treated the information as a complaint and commenced an investigation into the conduct of Mr. Stanislaus. This investigation resulted in this complaint being referred to a hearing.

Facts Relevant to the Complaint

4. On January 19, 2021, the Complaints Director sent a letter to Mr. Stanislaus notifying him about the investigation and requesting a written response to the complaint. Attached as **Exhibit "B"** to this Agreed Statement of Facts is the letter and enclosures provided by the Complaints Director to Mr. Stanislaus.
5. On January 19, 2021, the Complaints Director had a phone conversation with Mr. Stanislaus. Mr. Stanislaus indicated that:
  - a. he had accessed [REDACTED] Netcare information after his car accident with her, out of concern for her health and wanting to help her, but he did not disclose, post or print her health information; and
  - b. he only viewed [REDACTED] Netcare health information for a minute.

A summary of their conversation is attached as **Exhibit "C"** to this Agreed Statement of Facts.

6. On February 17, 2021, the Complaints Director had another phone conversation with Mr. Stanislaus, Mr. Stanislaus indicated that:
  - a. he had accessed [REDACTED] Netcare information after his car accident with her, out of concern for her health and wanting to help her, but he did not disclose or print her health information;
  - b. he only viewed [REDACTED] Netcare health information for a minute to help her and he did not disclose her health information to anyone;
  - c. [REDACTED] had previously made a complaint to the OIPC and it was "thoroughly" investigated by the OIPC and referred to the Courts and that he was open and transparent throughout that process;
  - d. he has previously been a preceptor to pharmacy students and is aware of the importance of handling health information properly; and
  - e. he will ensure he will never repeat this conduct in the future.

A summary of their conversation is attached as **Exhibit "D"** to this Agreed Statement of Facts.

7. On March 15, 2021, the Complaints Director received Mr. Stanislaus' written response to the complaint. In his written response to the complaint, Mr. Stanislaus:

- a. described a January 22, 2018 car accident between him and [REDACTED]
- b. indicated that on January 29, 2018 he called [REDACTED] and “asked about her health” and [REDACTED] replied by telling him “that she sustained some injuries and missed work”;
- c. stated that he “wanted to help her any way in my capacity as a healthcare provider including referral to other health care providers. So I accessed her Netcare profile to see what type of injury she sustained” and then called [REDACTED] and “enquired about her health”;
- d. stated that “I admitted in the court that, I accessed her Netcare and the court penalized me with \$5,000 fine + \$1,000 victim fine surcharge”;
- e. indicated that he did not print, publish or disclose [REDACTED] health information; and
- f. apologized for the incident and undertook to not repeat the conduct.

Mr. Stanislaus’ written response to the complaint is attached as **Exhibit “E”** to this Agreed Statement of Facts.

8. On April 7, 2021, the Complaints Director received court documents relating to Mr. Stanislaus' January 15, 2021 court appearance, including the Court Endorsement and Hearing Transcript. The court documents indicated that:
  - a. On January 15, 2021, in Provincial Court in Edmonton, Mr. Stanislaus pled guilty, and was found guilty, to one count of a charge of contravening section 107(2)(a) of the HIA and was fined \$5,000 and ordered to pay a \$1,000 victim surcharge; and
  - b. Mr. Stanislaus acknowledged and confirmed the Admitted Statement of Facts that was read into the transcript, which indicated that:
    - i. on February 7, 2018, Mr. Stanislaus contacted [REDACTED] at her workplace; [REDACTED] described Mr. Stanislaus as being aware of information that could only be gleaned from her Netcare, including medication dispensed to her and the fact that she had been to emergency;
    - ii. [REDACTED] was provided with her Netcare access disclosure log which showed that her health profile was accessed by Mr. Stanislaus on February 6, 2018;
    - iii. at no time did [REDACTED] ever approach or deal with Mr. Stanislaus in his capacity as a pharmacist, and at no time did she ever grant access to him to her health, or grant access to her health file for him; and

- iv. during an interview with the privacy commissioner investigators, Mr. Stanislaus immediately confessed to improperly accessing [REDACTED] records.

The Court documents are attached as **Exhibit “F”** to this Agreed Statement of Facts.

9. On April 8, 2021, the Complaints Director interviewed Mr. Stanislaus by telephone. During the meeting, Mr. Stanislaus indicated that:

- a. [REDACTED] was not a patient of his or the Pharmacy;
- b. prior to January 22, 2018, he had never provided [REDACTED] with a prescription or a pharmacy service;
- c. after January 22, 2018, he never provided [REDACTED] with a drug or professional service;
- d. he never created a record of care in relation to [REDACTED] Netcare health information he viewed on February 6, 2018;
- e. he never collaborated with [REDACTED] other health care team members;
- f. he never referred [REDACTED] to another health care professional;
- g. he never asked [REDACTED] to provide her with a pharmacy service;
- h. he never documented his February 7, 2018 call with [REDACTED] as a record of care and did not create or maintain pharmacy records for [REDACTED] “because she was not my patient”;
- i. during his last phone conversation with [REDACTED] on February 7, 2018, and after he viewed her Netcare health information on February 6, 2018, he suggested to [REDACTED] that her reported pain and other medical conditions might be related to her obesity and she could benefit from losing weight; and
- j. he accessed and viewed [REDACTED] Netcare health information on February 6, 2018.

The Complaints Director's summary of this interview is attached as **Exhibit “G”** to this Agreed Statement of Facts.

10. Mr. Stanislaus acknowledges that he has waived his opportunity to receive legal advice prior to entering this Agreed Statement of Facts and that he understands that the Hearing Tribunal may use this Agreed Statement of Facts as proof of the allegations set out in the Notice of Hearing.

Admission of Unprofessional Conduct:

In the Admission of Unprofessional Conduct, Mr. Stanislaus admitted the allegations set out in the Amended Notice of Hearing. Mr. Stanislaus also agreed and acknowledged that his conduct breached his statutory and regulatory obligations to the College, undermined the integrity of the profession, decreased the public’s trust in the profession, and that he failed to

exercise the professional and ethical judgment expected and required of an Alberta pharmacist.

Mr. Stanislaus further agreed and acknowledged that his conduct breached Standard 1 and sub-sections 1.1 and 1.2 of the Standards of Practice for Pharmacists and Pharmacy Technicians; Principles 4(4) and 10(1) of the College's Code of Ethics; and sections 25 and sub-section 27(1) and sub-section 107(2)(a) of the *Health Information Act*.

Mr. Stanislaus admitted that his conduct constitutes "unprofessional conduct" as defined in sections 1(1)(pp)(ii), 1(1)(pp)(iii) and 1(1)(pp)(xii) of the HPA.

Ms. Chisholm made submissions on behalf of the College.

Ms. Chisholm advised the hearing arose because of allegations that Mr. Stanislaus had accessed the personal health information of an individual, with whom he was in a car accident with, without an authorized purpose and then used that information in a phone call with the individual. Ms. Chisholm reviewed the two specific allegations found in the Amended Notice of Hearing.

Ms. Chisholm stated the Tribunal's first task was to determine whether the allegations in the Amended Notice of Hearing had been proven on a balance of probabilities, and if so, the second task was to determine whether the proven allegations constituted unprofessional conduct under the HPA.

Ms. Chisholm reviewed the Admission of Unprofessional Conduct. Ms. Chisholm advised Mr. Stanislaus had acknowledged his conduct and admitted to the allegations in the Admission of Unprofessional Conduct. She stated that Mr. Stanislaus also acknowledged his conduct breached his statutory and regulatory obligations, undermined the integrity of the profession, decreased the public's trust in the profession, and failed to exercise the professional and ethical judgment expected and required of a pharmacist. She added that Mr. Stanislaus acknowledged his conduct breached the Standards of Practice for Pharmacists and Pharmacy Technicians, the College's Code of Ethics, and the *Health Information Act*. Ms. Chisholm advised Mr. Stanislaus admitted his conduct constituted unprofessional conduct.

Ms. Chisholm then reviewed the Agreed Statement of Facts, including the attached exhibits. She advised the alleged conduct came to the attention of the Complaints Director on January 19, 2021 after he obtained information from the Alberta Office of the Information Commissioner and an article from the Edmonton Journal that indicated Mr. Stanislaus was found guilty of an offence under the *Health Information Act* on January 15, 2021. This information was treated as a complaint and investigated.

The investigation revealed that Mr. Stanislaus had accessed [REDACTED] Netcare information on February 6, 2018 after the two were in a car accident together on January 22, 2018. Mr. Stanislaus then called [REDACTED] on February 7, 2018 to ask about her health. Mr. Stanislaus stated he wanted to help [REDACTED] in his capacity as a health care provider and that his reason for accessing her Netcare profile was to see what injury she sustained in the car accident. At no time did [REDACTED] deal with Mr. Stanislaus in his capacity as a pharmacist and at no time did she grant him access to her health information or health file.

In closing, Ms. Chisholm submitted that the Hearing Tribunal had more than sufficient information to make findings for both allegations based on the Admission of Unprofessional Conduct, the Agreed Statement of Facts, and the investigation records of the Complaints Director. She advised the reason the hearing was occurring was because a pharmacist has a positive statutory and regulatory obligation to abide by the responsibilities as custodians under the *Health Information Act* and to protect and use only as authorized the access that they are granted to Netcare. Such an authorization does not extend to accessing to assist someone who is not a patient and who has not asked for assistance. She submitted that while there was no suggestion that Mr. Stanislaus' actions were malicious or of poor intent, he did not abide by his obligations as a pharmacist and pharmacists cannot be seen to be allowed to access health information without a purpose.

Mr. Stanislaus submitted he had a clean record of service and that this was an isolated incident that took place in 2018. He stated that it never happened before and that it never happened after. He advised he has never accessed any file of any person without their consent unless they were his patient and stated that after this incident, he has not accessed anyone's file other than if they were his patient. Ms. Stanislaus submitted that he did not have any malicious intention in viewing the Netcare of [REDACTED] and that he was careful to not print any information and to not give it to anybody and to not publish it on social media. He stated that the OIPC inquiry, the court proceedings, the punishment from the court of \$6,000, and the disciplinary proceedings put immense mental pressure on him. Mr. Stanislaus stated that the conduct would not happen again and that he was sorry for what happened.

#### **IV. FINDINGS**

The members of the Hearing Tribunal accepted Mr. Stanislaus' admission of unprofessional conduct and concluded the allegations were proven on a balance of probabilities and that the conduct constituted unprofessional conduct as defined in the HPA.

In determining that the allegations were proven, and that Mr. Stanislaus' admission should be accepted, the Hearing Tribunal carefully considered the Agreed Statement of Facts entered into by the parties, as well as the Admission of Unprofessional Conduct.

The reasons for the Hearing Tribunal's findings that the allegations in the Notice of Hearing are factually proven on a balance of probabilities are as follows.

With respect to Allegation 1, the facts and evidence demonstrate that Mr. Stanislaus accessed the personal health information of [REDACTED] on Netcare on February 6, 2018 without an authorized purpose as [REDACTED] was not his patient or a patient of the Pharmacy and he did not have [REDACTED] prior knowledge or consent to access her personal health information.

Mr. Stanislaus admitted that he accessed [REDACTED] personal health information via Netcare on February 6, 2018 and that he did so without an authorized purpose. The Hearing Tribunal accepts this admission. In addition, the agreed facts demonstrate [REDACTED] was provided with a Netcare disclosure log that showed Mr. Stanislaus accessed her health profile on February 6,

2018. The agreed facts also demonstrate that [REDACTED] never dealt with Mr. Stanislaus in his capacity as a pharmacist and that she never granted him access to her health file. Mr. Stanislaus himself acknowledged that [REDACTED] was not his patient. The facts and evidence clearly demonstrate that Mr. Stanislaus accessed [REDACTED] Netcare information after he was involved in a car accident with [REDACTED] and that Mr. Stanislaus did not have an authorized purpose for this access as it was related to the car accident, not the provision of health services.

With respect to Allegation 2, the facts and evidence demonstrate that Mr. Stanislaus used the personal health information that he accessed on Netcare in a telephone conversation with [REDACTED] on February 7, 2018 even though [REDACTED] was not his patient or a patient of the pharmacy.

Mr. Stanislaus admitted that he used [REDACTED] personal health information in a telephone conversation with [REDACTED] on February 7, 2018 even though she was not his patient or a patient of the pharmacy. The Hearing Tribunal accepts this admission. The agreed facts demonstrate that Mr. Stanislaus contacted [REDACTED] at her workplace on February 7, 2018 and that he was aware of medication dispensed to her and the fact that she had been to emergency; information that could only be gleaned from her Netcare file. During this call, Mr. Stanislaus suggested to [REDACTED] that her reported pain and other medical conditions might be related to her obesity and she could benefit from losing weight. The facts also indicate that [REDACTED] never dealt with Mr. Stanislaus as a pharmacist and never granted him access to her health information. Mr. Stanislaus never documented his February 7, 2018 call with [REDACTED] as a record of care and did not create or maintain pharmacy records for [REDACTED] because he did not consider her to be a patient.

Mr. Stanislaus' actions are inappropriate and contrary to the fundamental principle that pharmacists must only access and use health information for an authorized purpose. His accessing and using confidential information for a personal reason is not acceptable by any health professional for any reason.

Regulated members are granted the authority of accessing Netcare, which contains a significant amount of personal health information, for specific and authorized purposes related to the provision of clinical pharmacy services. Mr. Stanislaus accessed and used [REDACTED] personal health information for personal reasons relating to a car accident, which had nothing to do with his professional responsibilities or any clinical care he was providing to [REDACTED] without justification or authorization.

Mr. Stanislaus stated that he utilized Netcare to find out more about [REDACTED] health out of concern for her health and so that he could help her after the car accident. He stated that he then used the information in a phone call to try and help [REDACTED]. Regardless of Mr. Stanislaus' intentions and regardless of the fact that he only briefly viewed [REDACTED] health information and did not share it, clearly he was not authorized or justified in accessing [REDACTED] records on Netcare and then using the information found in her records in the absence of a legitimate reason connected to clinical pharmacy services that he was providing, or in the absence of written consent from [REDACTED]. Although Mr. Stanislaus' stated that he did not intend to breach [REDACTED] privacy, he had no right to access [REDACTED] personal health information on Netcare or to then use it for his own personal reasons when he was not involved in [REDACTED] care and had no legitimate reason to do so. As Mr. Stanislaus was not responsible for providing care to [REDACTED] he should never have looked at her personal health information or used it in any way.

The Hearing Tribunal finds that the conduct in issue in Allegation 1 and 2 is “unprofessional conduct” pursuant to the HPA, which is defined to include a breach of the code of ethics, or standards of practice, or contravention of another enactment that applies to the profession. Mr. Stanislaus’ conduct breached Standard 1 of the Standards of Practice for Pharmacists and Pharmacy Technicians as he failed to comply with the law. His conduct also breached Principles 4(4) and 10(1) of the College’s Code of Ethics as he failed to use information only for the purpose for which it was maintained and failed to comply with the spirit and intent of the law. Section 25 of the HIA states custodians must only use health information in accordance with the HIA. Section 27 of the HIA specifies the circumstances in which a health care provider and its employees are entitled to use personal health information. The HIA clearly prohibits health care providers from accessing personal information for personal reasons. There is no exception permitting access merely because the health care provider has concerns about the person. Mr. Stanislaus was found guilty of collecting, using, disclosing, or creating health information in contravention of the HIA pursuant to s. 107(2). Accordingly, Mr. Stanislaus’ conduct breached the HIA.

Accordingly, the Tribunal finds that Mr. Stanislaus’ conduct breached the College’s Standards of Practice, the Code of Conduct, and the HIA. The breaches are a significant violation of privacy and are not merely technical in nature. While there was no suggestion that Mr. Stanislaus’ actions were malicious or of poor intent, he did not abide by his obligations as a pharmacist and pharmacists cannot be seen to be allowed to access health information without a purpose. The public has a right to expect that their health information will only be accessed for authorized purposes.

Mr. Stanislaus’ conduct undermined the integrity of the profession, decreased the public’s trust in the profession, and demonstrated a lack of judgment. Accordingly, the conduct proven in Allegation 1 and allegation 2 are “unprofessional conduct” pursuant to the HPA.

## **V. SUBMISSIONS ON ORDERS**

After receiving the Agreed Statement of Facts and Admission of Unprofessional Conduct, the Hearing Tribunal adjourned to deliberate. After the Hearing Tribunal deliberated, the Tribunal advised the parties that it accepted the Admission of Unprofessional Conduct by Mr. Stanislaus and determined that the allegations were proven and constituted unprofessional conduct. The Hearing Tribunal invited the parties to make submissions with respect to sanction.

The Hearing Tribunal was provided with a Joint Submission on Sanctions and Authorities of the Complaints Director (Exhibit 2). The Joint Submission on Sanctions stated:

1. Mr. Stanislaus shall receive a written reprimand of which the Hearing Tribunal's written decision shall serve as.
2. Mr. Stanislaus shall, within 12 months from the date the Hearing Tribunal issues its written decision, provide evidence to satisfy the Complaints Director that he has

received an unconditional pass on the Center for Personalized Education for Physicians (CPEP) Probe Course. If Mr. Stanislaus fails to provide evidence to satisfy the Complaints Director that he has received an unconditional pass on the CPEP Probe Course within 12 months of the date the Hearing Tribunal issues its written decision, his practice permit shall be suspended until such time as the Complaints Director is satisfied that an unconditional pass has been received.

3. Mr. Stanislaus's practice permit shall be suspended for 3 months, with
  - a. 1 month to be served on dates acceptable to the Complaints Director and completed within 6 months from the date the Hearing Tribunal issues its written decision; and
  - b. 2 months to be held in abeyance pending there being no further privacy concerns coming to the attention of the Complaints Director and referred to an investigation for a period of 2 years from the date the Hearing Tribunal issues its written decision.

If the Complaints Director receives and directs an investigation into a new complaint about Mr. Stanislaus related to privacy concerns within 2 years from the date the Hearing Tribunal issues its written decision, the Complaints Director shall be at liberty to impose the remaining 2-month suspension on Mr. Stanislaus's practice permit. If no further privacy concerns come to the attention of the Complaints Director that are referred to an investigation for a period of 2 years from the date the Hearing Tribunal issues its written decision, the remaining 2-month suspension shall expire.

4. Mr. Stanislaus shall provide a copy of the Hearing Tribunal's written decision in this matter to any pharmacy employer or licensee of a pharmacy in which he works for a period of 2 years, commencing on the date he receives a copy of the Hearing Tribunal's written decision.
5. Mr. Stanislaus shall be responsible for payment of all costs of the investigation and hearing to a maximum of \$8,000. Payment will occur in accordance with a payment schedule satisfactory to the Hearings Director. The costs shall be paid in full within 24 months of the date he receives a copy of the Hearing Tribunal's written decision.

Mr. Chen made submissions on behalf of the Complaints Director. He explained that there are four main purposes for imposing sanctions on members found to have engaged in unprofessional conduct: protection of the public, maintaining the integrity of the profession, fairness to the member, and deterrence.

Mr. Chen suggested the Tribunal should, in arriving at its decision on the appropriate sanctions to meet these four purposes, consider the factors referenced in *Jaswal vs. Medical Board (Newfoundland) (1996)*, 42 Admin L.R. (2d) 233. Mr. Chen reviewed the factors and made submissions as follows:

- *Nature and gravity of proven allegations:* Mr. Stanislaus' conduct was serious as he used his authority as a custodian of health information to access [REDACTED] personal health information without an authorized purpose and then used that information in a phone conversation with [REDACTED] Mr. Stanislaus' conduct demonstrated a disregard for the authority and trust granted to the profession, thereby undermining the integrity and decreasing the public's trust in the profession. Although the evidence did not establish malicious intent or any further disclosure of the health information, the conduct was still significant.
- *Age and experience of the offender:* Mr. Stanislaus is a senior pharmacist as he was initially registered with the College on the provisional/intern register in 2011 and then moved to the clinical pharmacist register in January 2013. This was not an error of inexperience.
- *Previous character of a member and prior findings of unprofessional conduct:* The Complaints Director was not aware of any prior findings of unprofessional conduct.
- *Number of times the offence occurred:* Mr. Stanislaus inappropriately accessed personal health information of one individual on one occasion and then used that information in a single phone conversation. The fact that there was not a pattern of behavior was favorable to Mr. Stanislaus.
- *Role of the member in acknowledging what occurred:* Mr. Stanislaus' admission to the allegations was a clear mitigating factor in this case.
- *Financial or other serious penalties suffered as a result of the conduct:* Mr. Stanislaus was found guilty in a separate proceeding under the HIA which resulted in Mr. Stanislaus paying a \$5,000 fine and a \$1,000 mandatory victim surcharge for the fine. The fact that Mr. Stanislaus had already paid a fine is why the Complaints Director did not seek one. In addition, on July 1, 2021, the Registrar placed conditions on Mr. Stanislaus' practice permit that he cannot be a preceptor or proprietor of a pharmacy until the allegations were resolved.
- *The presence or absence of any mitigating circumstances:* Mr. Stanislaus acknowledged and admitted his misconduct.
- *The need to promote deterrence:* This means the sanctions should be such that Mr. Stanislaus does not repeat his conduct, and that the sanctions send a message to others in the profession so that similar conduct does not arise. This goes back to the members of the profession knowing what they need to do as members of a self-regulating profession. A self-regulating profession and the framework that upholds it would fail if members cannot be trusted to comply with what is expected of them. The sanctions proposed would remind members of the importance of upholding their obligations and the consequences of failing to do so.

- *The need to maintain public confidence in the integrity of the profession:* It is important, through discipline proceedings, to send a clear message to legislators and to the public that the profession takes the requirements of the HPA and other legislation seriously and that there will be appropriate sanctions for breaches of professional obligations and requirements.
- *Degree to which the conduct was regarded as unprofessional conduct:* The conduct was serious and clearly outside what is permitted.
- *The range of sanctions in other similar cases:* The Joint Submission on Sanctions and Authorities of the Complaints Director contained two hearing tribunal decisions, the *Decision of the Hearing Tribunal of the Alberta College of Pharmacy in the Matter of K.Kostyk* and the *Decision of the Hearing Tribunal of the Alberta College of Pharmacy in the Matter of S. Juma*, where pharmacists inappropriately used personal health information. Mr. Chen outlined the sanctions imposed in the decisions and explained that the agreed penalties outlined in the Joint Submission on Sanctions were similar to these two decisions.

In summary, Mr. Chen submitted that the reprimand was appropriate as it served the purpose of specific deterrence and was consistent with the *Juma* decision. He also submitted that requiring Mr. Stanislaus to pass the CPEP Probe Course will ensure that he has a clear understanding of the reasons why his conduct was unprofessional. The CPEP Probe course is a week-long intensive seminar that is tailored to the specifics of the conduct. Participants are required to submit a final essay and Mr. Stanislaus will be required to demonstrate that he understands the error in his conduct and has a desire to take responsibility for it. Mr. Chen submitted this will satisfy the public that the behavior will not occur again and will ensure the integrity of the profession is maintained.

Mr. Chen advised that the suspension length was comparable to the *Juma* and *Kostyk* decisions and was appropriate. Similarly, Mr. Chen submitted the requirement for Mr. Stanislaus to provide a copy of the Tribunal's written decision to any pharmacy employer or licensee for a period of two years was consistent with the *Juma* and *Kostyk* decisions and is important because future employers or the licensee of the pharmacy in which Mr. Stanislaus works should be made aware of the conduct to ensure that similar conduct is not repeated. With respect to costs, Mr. Chen submitted the \$8,000 in costs took into account Mr. Stanislaus' cooperation in the investigation and the lead-up to the hearing, as well as the fact that the Complaints Director did not need to call witnesses to prove the allegations.

Mr. Chen also discussed the cases of *R v Anthony Cook*, 2016 SCC 43, and *Rault v Law Society of Saskatchewan*, 2009 SKCA 81, which state that joint submissions on sanctions should be given deference by Hearing Tribunals as they show cooperation between both parties to reach an agreement on penalties. He explained that should the Hearing Tribunal intend to stray from the Joint Submission on Sanctions, that the legal test for this action is a high bar - meaning that the proposed sanctions would have to be found to be drastically against the public interest in order for the agreed sanctions to be rejected by the Hearing Tribunal.

In conclusion, Mr. Chen submitted the sanctions met the sentencing principles as well as the public interest test. It would ensure specific deterrence with respect to Mr. Stanislaus and met the principles of general deterrence to tell the profession that this conduct is serious and will attract serious consequences. Lastly, the sanctions protected the public and the integrity of the profession.

Mr. Stanislaus stated he signed the Joint Submission on Sanctions. He submitted he accessed [REDACTED] file with only good intentions and there was no malicious intention. He submitted his case was not comparable with the other cases. Specifically, *Kostyk* involved accessing a file for personal gain or personal encounter and *Juma* involved accessing 11 individual's files for a period of two years. He submitted in his case he only accessed the file for a minute and to help [REDACTED]. He states he acted as a good Samaritan. Mr. Stanislaus confirmed he accessed the file and was sorry for that. He stated it never happened before and would never happen again.

## **VI. ORDERS**

After carefully considering the Joint Submission on Sanctions, the facts of the case, and the submissions, the Hearing Tribunal accepted the Joint Submission on Sanctions.

The Hearing Tribunal acknowledged that deference should be given to a joint submission on sanction and that the Hearing Tribunal ought not to depart from the joint submission unless the proposed sanctions would bring the administration of justice into disrepute or would otherwise be contrary to the public interest.

The Hearing Tribunal considered the orders that were jointly proposed. The Hearing Tribunal took into account all of the factors discussed in the *Jaswal* decision and the submissions of the parties, including the range of sanctions previously ordered in the two similar cases, Mr. Stanislaus' lengthy experience as a pharmacist, the absence of previous discipline history, the seriousness of Mr. Stanislaus' conduct, and Mr. Stanislaus' admission and cooperation with the College.

Mr. Stanislaus' conduct was serious. He used his authority as a custodian of health information to access personal health information in Netcare without an authorized purpose. He then used that information in a phone conversation for personal reasons. Mr. Stanislaus' conduct demonstrated a disregard for the authority and trust granted to the profession. Patients have the right to know that their personal health information contained in Netcare will be used appropriately and that the information will only be accessed if there is a legitimate reason pursuant to the HIA. Pharmacists cannot use Netcare like a phone directory and are not entitled to access Netcare for personal reasons. Although the evidence did not establish malicious intent or any disclosure of the health information, the conduct is significant as it demonstrates either carelessness or a disregard of professional obligations.

In addition, Mr. Stanislaus is a senior pharmacist, and this was not an error caused by inexperience. He should have understood his obligations regarding the use of a patient's personal health information.

The Tribunal also recognized the sanctions proposed were consistent with previous decisions.

The Hearing Tribunal acknowledges that Mr. Stanislaus has suffered other consequences as a result of his unprofessional conduct, including the \$5,000 fine and \$1,000 victim fine surcharge, which must be taken into account. The Tribunal also acknowledges that Mr. Stanislaus admitted responsibility for his conduct and agrees that this is a factor that must be taken into account when considering what orders should be imposed.

These were mitigating factors considered against the serious conduct from an experienced member of the profession who should have been aware of his obligations relating to personal information. In addition, there was an absence of further aggravating factors such as a previous discipline history or pattern of behavior.

There is a need to ensure that Mr. Stanislaus, as well as other members of the profession, is aware that this type of conduct is not acceptable and will not be tolerated. The sanction imposed must deter future conduct of this nature and maintain the public's confidence in the integrity of the profession. Confidentiality of patient medical information is a core competency and the public needs to be made aware that a failure in this regard is something taken seriously.

The Hearing Tribunal is satisfied that the orders set out in Joint Submission on Sanction will meet these needs. In addition, the Tribunal is of the view that they are fair and appropriate in the circumstances.

In this case, the reprimand and suspension will serve as an appropriate deterrent to Mr. Stanislaus and other members of the profession. It will also demonstrate to other members of the profession and the public that the College will take appropriate action if a member inappropriately accesses and uses the personal health information of another individual, even when the conduct is not malicious. Given the significant requirements of the CPEP Probe Course, it will provide deterrence while also providing rehabilitative and educational components that will protect the public from future similar conduct. The reflective nature of this course is important.

It is appropriate that Mr. Stanislaus be responsible for costs of the hearing and investigation, as it was his conduct that necessitated the proceedings. Nonetheless, the cap on the total costs payable is appropriate given the circumstances, particularly Mr. Stanislaus' admission and cooperation throughout.

In conclusion, the Hearing Tribunal agreed that the proposed orders are appropriate having regard to the *Jaswal* factors and the principles that are relevant in assessing sanction in the professional discipline context. Specifically, the Hearing Tribunal found that the sanctions would deter both Mr. Stanislaus and the profession at large from similar unprofessional conduct in the future. The sanctions also serve the public's interest and uphold the integrity of the profession.

**Accordingly, the Hearing Tribunal made the following orders pursuant to s. 82 of the HPA:**

1. Mr. Stanislaus shall receive a written reprimand of which the Hearing Tribunal's written decision shall serve as.
2. Mr. Stanislaus shall, within 12 months from the date the Hearing Tribunal issues its written decision, provide evidence to satisfy the Complaints Director that he has received an unconditional pass on the Center for Personalized Education for Physicians (CPEP) Probe Course. If Mr. Stanislaus fails to provide evidence to satisfy the Complaints Director that he has received an unconditional pass on the CPEP Probe Course within 12 months of the date the Hearing Tribunal issues its written decision, his practice permit shall be suspended until such time as the Complaints Director is satisfied that an unconditional pass has been received.
3. Mr. Stanislaus's practice permit shall be suspended for 3 months, with
  - a. 1 month to be served on dates acceptable to the Complaints Director and completed within 6 months from the date the Hearing Tribunal issues its written decision; and
  - b. 2 months to be held in abeyance pending there being no further privacy concerns coming to the attention of the Complaints Director and referred to an investigation for a period of 2 years from the date the Hearing Tribunal issues its written decision.

If the Complaints Director receives and directs an investigation into a new complaint about Mr. Stanislaus related to privacy concerns within 2 years from the date the Hearing Tribunal issues its written decision, the Complaints Director shall be at liberty to impose the remaining 2-month suspension on Mr. Stanislaus's practice permit. If no further privacy concerns come to the attention of the Complaints Director that are referred to an investigation for a period of 2 years from the date the Hearing Tribunal issues its written decision, the remaining 2-month suspension shall expire.

4. Mr. Stanislaus shall provide a copy of the Hearing Tribunal's written decision in this matter to any pharmacy employer or licensee of a pharmacy in which he works for a period of 2 years, commencing on the date he receives a copy of the Hearing Tribunal's written decision.
5. Mr. Stanislaus shall be responsible for payment of all costs of the investigation and hearing to a maximum of \$8,000. Payment will occur in accordance with a payment schedule satisfactory to the Hearings Director. The costs shall be paid in full within 24 months of the date he receives a copy of the Hearing Tribunal's written decision.

Signed on behalf of the Hearing Tribunal by the Chair on October 25, 2021.

Per:   
Richard Hackman (Oct 25, 2021 10:54 MDT)  
Rick Hackman