

**IN THE MATTER OF THE HEALTH PROFESSIONS ACT,
being Chapter H-7 of the Revised Statutes of Alberta, 2000
AND IN THE MATTER OF A HEARING REGARDING THE
CONDUCT OF
TRENT WALSH**

DECISION OF THE HEARING TRIBUNAL

I. INTRODUCTION

The Hearing Tribunal (the "Tribunal") held a Hearing into the conduct of Trent Walsh on September 20, 2011 at the office of the Alberta College of Pharmacists ("the ACP") in Edmonton. The Hearing was held pursuant to Part 4 of the *Health Professions Act*.

The Hearing Tribunal was comprised of Deana Sabuda (Chair), Bill Veniot, Paulise Ly and Mike Dungey (Public Member).

In attendance at the Hearing were David Jardine, Legal Counsel for the Complaints Director, Jim Krempien, Complaints Director for the ACP, Bonnie Bokenfohr, Independent Legal Counsel for the Hearing Tribunal, and Trent Walsh, the investigated member. Mr. Walsh affirmed that he did not wish to be represented by legal counsel.

There were no objections to the composition of the Hearing Tribunal or to the jurisdiction of the Hearing Tribunal.

II. ALLEGATIONS

The allegations at this Hearing were set out in a Notice of Hearing dated September 20, 2011. The allegations as set out in the Notice of Hearing are reproduced here as Appendix 1.

III. PRELIMINARY MATTERS

A potential conflict relating to the composition of the Hearing Tribunal was addressed as a preliminary matter. Prior to commencement of the Hearing, and at the outset of the Hearing, Mr. Walsh and the Complaints Director were made aware that one of the Hearing Tribunal Panel members, Mr. Bill Veniot, holds the position of Pharmacy Operations Manager for northern Alberta for Mr. Walsh's former employer. Mr. Walsh was employed in southern Alberta. Mr. Veniot declared that he had no prior knowledge of the matter at hand nor did he know Mr. Walsh. Both Mr. Walsh and counsel for the Complaints Director stated that they had no concern with the composition of the Tribunal or Mr. Veniot's participation as a Tribunal member.

There were no objections to proceeding with the hearing.

IV. EVIDENCE

Mr. Jardine called one witness, James Krempien, Complaints Director for the Alberta College of Pharmacists.

Mr. Krempien stated that as a result of his investigation starting in April of 2011 and culminating in a report dated June 2, 2011, that he referred the matter to the hearings director for a hearing. His Record of Decision under Section 66(3) of the HPA was filed as an exhibit in the hearing and indicates that it was dated and transmitted on June 20, 2011 to the Hearings Director.

Mr. Jardine entered as an exhibit a number of documents from the complaint file of the Complaints Director, Mr. Krempien. Through his testimony, Mr. Krempien provided an overview of the investigation and the various documents. As per the testimony of Mr. Krempien, this matter arises out of a previous complaint which involved a self-report by Mr. Walsh of the diversion and ingestion of drugs from his employer, the related complaint by his former employer, and the Agreement or series of acknowledgements or agreed-upon undertakings that followed from that complaint. The complaint was resolved by way of a resolution Agreement which required, amongst other things, that Mr. Walsh participate in an Aftercare Program and abstains from the use of all prescription drugs unless prescribed by his family physician or with the knowledge of his family physician. Mr. Krempien outlined the course of action that was agreed would occur if Mr. Walsh failed to fulfill the Agreement, namely that Mr. Krempien would reassess and refer any issues to a Hearing Tribunal and that should Mr. Walsh breach the Agreement that it would constitute an admission of unprofessional conduct. The Agreement was for a two year term commencing September 22, 2009. The Agreement set out, and the Tribunal was shown, the details of how the monitoring would occur and the signatures to that effect signed by Mr. Krempien and Mr. Walsh in 2009. The complainant employer had agreed to resolution at the Complaints Director level and was notified of the resolution of the complaint. Mr. Krempien testified that the letter to the complainant employer marked resolution of the previous complaint.

Pursuant to the Agreement, Mr. Walsh entered into an Aftercare Agreement with Canniff and Associates that included both therapy and monitoring. Mr. Krempien reviewed a series of emails from the Executive Director of Canniff and Associates indicating staff raised concern on some irregularities by Mr. Walsh in that he failed to report by telephone as required and missed a drug screen. Further emails indicated that a meeting was scheduled between the Executive Director and Mr. Walsh and that Mr. Walsh failed to attend. Finally, Mr. Walsh tested positive on April 5, 2011 for methadone metabolites and amphetamines. A meeting was scheduled for Mr. Walsh to meet with Mr. Krempien and the Executive Director to discuss the test results. Mr. Walsh again failed to attend.

Mr. Krempien treated the information about Mr. Walsh's positive drug screen and other breaches of the Aftercare Agreement as a complaint and decided to conduct an investigation into the matter.

Mr. Krempien and the Executive Director of Canniff and Associates met with Mr. Walsh on April 28, 2011 to discuss his lack of compliance with the Aftercare Agreement (missed phone calls, missed appearance at collection site, Canniff and Associates was having difficulty contacting Mr. Walsh, missed two meetings) and the drug screen results. In response, Mr. Walsh provided a number of excuses for his behaviour including that he had forgotten the first meeting and was involved in a motor vehicle collision on the day of the second meeting. Mr. Walsh agreed that he wanted to resolve the new complaint by way of a resolution Agreement that would require that he continue to be monitored and extend the time that he would be subject to the Aftercare Agreement to September 2012.

The Tribunal heard that Mr. Walsh committed to the Agreement, that he said he wouldn't relapse on Dexedrine and that they should speak again before a decision was made on tightening/extending the Agreement. Mr. Walsh confirmed that he notified the new licensee where he was employed about his conditions.

In an attempt to resolve the complaint by Agreement, a copy of the draft was sent to Mr. Walsh for review. This draft was not signed as a result of subsequent disclosures by Mr. Walsh to Mr. Krempien.

The Tribunal was provided and reviewed a typed transcript of a telephone conversation between Mr. Walsh and Mr. Krempien that took place on May 12, 2011. Mr. Krempien's testimony and the transcript recount that Mr. Walsh called Mr. Krempien to explain that he was called in to the Pharmacy Associate's office of his employer to address the Pharmacy Associate's concern that Mr. Walsh had been caught on video tape diverting Oxycontin and Dexedrine while working. Mr. Krempien suggested that Mr. Walsh voluntarily cease practicing as a pharmacist.

Mr. Krempien contacted the staff pharmacist of Mr. Walsh's employer who reported that for the past 1-1.5 months, there had been missing narcotics, that he had involved a Loss Prevention professional, and that surveillance video showed Mr. Walsh diverting and ingesting Dexedrine and Oxycontin pills (not bottles) while working. A facsimile dated May 12, 2011 confirming Mr. Walsh's termination was included in the evidence. Mr. Krempien requested a copy of the compact disc containing video surveillance from the employer so that he could have direct evidence for his ongoing investigation.

Mr. Krempien testified that as per a letter dated May 12, 2011, he notified three Committee members designated by the Council of ACP to consider recommendations made pursuant to section 65 of the *Health Professions Act* for suspensions or the imposition of conditions on practice pending the completion of proceedings under the professional conduct provisions of Part 4 of the *Health Professions Act*. Mr. Krempien's recommendation to the Committee members was, pending conclusion of the matter, that Mr. Walsh's practice permit be suspended. Each of the Committee members was sent a letter outlining the course of events, with accompanying enclosures.

As per a letter dated May 12, 2011 included as evidence, Mr. Krempien testified that he wrote a letter to Mr. Walsh to provide advance warning of his recommendation to the Committee, should the Committee request a submission from Mr. Walsh prior to rendering their decision. Mr. Walsh was provided with the same letter and enclosures as was sent the Committee members.

Mr. Krempien testified that he had a telephone conversation with Mr. Walsh on May 13, 2011 (typed transcript provided) where they discussed whether Mr. Walsh should stay on the Canniff monitoring program. Mr. Krempien stated that he advised Mr. Walsh to do so, not only for his health but also for consideration by the Hearing Tribunal and/or any criminal investigation that may occur.

Mr. Krempien stated that during a telephone conversation on May 13, 2011, he updated Canniff and Associates with the information from the employer, namely that Mr. Walsh was observed on closed circuit television diverting & ingesting narcotics, and that as a result he was seeking a suspension of Mr. Walsh's practice permit. They had a brief conversation with regard to continuation of the Canniff monitoring program.

In an email received on May 17, 2011, Mr. Krempien confirmed that Mr. Walsh did in fact acknowledge what occurred. Mr. Krempien, in reply by email, encouraged Mr. Walsh to seek support, and that the decision of the Committee members would be forthcoming.

The Committee appointed by Council, under section 65 to consider the recommendation of the Complaints Director, submitted their written decision on May 24, 2011. The Committee accepted Mr. Krempien's recommendation and suspended Mr. Walsh. On the same day, this recommendation was forwarded to the Registrar for ACP, and the Registration department.

Per a facsimile transmitted on May 30th, the Tribunal heard that Mr. Krempien received a Witness Statement written by a Loss Prevention Coordinator with Mr. Walsh's employer. In the Statement, submitted as evidence, the Loss Prevention Officer summarized what he observed on the video tape, and on what dates. Mr. Krempien testified that he reviewed the video tape and that the Witness Statement did accurately depict his own observations. On questioning by a Tribunal Panel member, Mr. Krempien stated that the video (submitted as Exhibit 4) contained about 20 minutes of footage over 4-5 different dates.

Mr. Walsh had no questions arising from Mr. Krempien's testimony. He addressed the Tribunal and said that he takes full responsibility for what happened, that he was very sorry about it, that he was sorry that he tried to lie (about the failed test) and that he was scared of losing everything. He acknowledged that his lies just made everything worse. **Mr. Walsh admitted that the conduct as alleged in the Notice of Hearing was true.**

Under further questions from Tribunal members, Mr. Walsh admitted that what he did was unprofessional conduct and that he was working hard on recovery.

Under question from a Tribunal member, Mr. Walsh did recall signing the Agreement in Mr. Canniff's office and he testified that he was fully aware of the circumstances and implications of the Agreement.

V. SUBMISSIONS

Mr. Jardine provided the following statutory authorities to the Tribunal:

- Section 1 and subsections 1.1 and 1.2 of the Standards for Pharmacist Practice;
- Sections 1(1)(pp)(ii), 1(1)(pp)(iii), and 1(1)(pp)(xii) of the *Health Professions Act*;
- Principles X and XI of the ACP Code of Ethics Bylaw; and
- Section 4(1) of the *Controlled Drugs and Substances Act*.

Section 1 and subsections 1.1 and 1.2 of the Standards for Pharmacist Practice provides that a pharmacist has a duty to act professionally and to conduct the pharmacist's practice in accordance with the law that governs the practice of pharmacy.

Sections 1(1)(pp) of the *Health Professions Act* outlines unprofessional conduct, including (pp)(ii) and (pp)(iii) where there is a contravention of the *Act*, a code of ethics, the standards of practice or another enactment that applies to the profession; as well as (pp)(xii) where the conduct harms the integrity of the regulated profession.

Section 4(1) of the *Controlled Drugs and Substances Act* states that no person shall possess a Schedule I, II or III substance except as authorized under the regulations to the Act.

Principles X and XI of the ACP Code of Ethics Bylaw provide that a pharmacist act with honesty and integrity in dealing with the College and demonstrate responsibility for self and other health professionals.

Mr. Jardine acknowledged that Mr. Walsh was forthright during the Hearing and that Mr. Walsh acknowledged and responded frankly and directly to the allegations against him.

Mr. Jardine confirmed that although the College identified three separate allegations, there was one global charge of professional misconduct. The four points in the Notice of Hearing were particulars of the one charge of unprofessional conduct.

Mr. Walsh had no further submissions.

VI. FINDINGS

Mr. Walsh admitted the factual allegations. He admitted that he diverted narcotics and controlled substances from his employer for his own use and he failed to comply with the requirements of his Aftercare Agreement including not making the required daily phone calls, not providing a urine sample, using prescription and non-prescription medications that had not been prescribed for him, and failing to disclose this fact to the Aftercare program. These are the facts that are set out in the Notice of Hearing. The Tribunal found all of those facts as true.

The Hearing Tribunal finds that the conduct of Mr. Walsh as set out above, breaches the following provisions governing the practice of pharmacy:

- Section 1 and subsections 1.1 and 1.2 of the Standards for Pharmacist Practice;
- Sections 1(1)(pp)(ii), 1(1)(pp)(iii), and 1(1)(pp)(xii) of the *Health Professions Act*;
- Principles X and XI of the ACP Code of Ethics Bylaw; and
- Section 4(1) of the *Controlled Drugs and Substances Act*.

and constitutes unprofessional conduct for the following reasons:

Section 1 and subsections 1.1 and 1.2 of the Standards for Pharmacist Practice provides that a pharmacist has a duty to act professionally and to conduct the pharmacist's practice in accordance with the law that governs the practice of pharmacy. Section 4(1) of the *Controlled Drugs and Substances Act* states that no person shall possess a Schedule I, II or III substance except as authorized under the regulations to the Act. Mr. Walsh admitted to diverting and ingesting a narcotic and controlled substance from his workplace. The Tribunal finds that stealing a narcotic and a controlled drug from one's employer, ingesting them while working as a pharmacist in the workplace, and using a narcotic and controlled drug without a prescription are serious breaches of behaviour that constitute unprofessional conduct.

Sections 1(1)(pp) of the *Health Professions Act* outlines unprofessional conduct, including (pp)(ii) and (pp)(iii) where there is a contravention of the *Act*, a code of ethics, the standards of practice or another enactment that applies to the profession; as well as (pp)(xii) where the conduct harms the integrity of the regulated profession. The Tribunal finds that there were clear and undisputed violations of Statutes related to the practice of Pharmacy, namely the Standards for Pharmacist Practice and the *Controlled Drugs and Substances Act*, as referenced above. As set out below, the Tribunal also finds that the conduct of Mr. Walsh was in contravention of the Code of Ethics, such contravention being unprofessional conduct. Furthermore, the Tribunal finds that the conduct of Mr. Walsh harms the integrity of our self-regulating profession in that it undermines the public's confidence in the exemplary behaviour of the pharmacist, and the pharmacist's role as a steward and safe-keeper of narcotics and other controlled substances.

Principles X and XI of the ACP Code of Ethics Bylaw provide that a pharmacist act with honesty and integrity in dealing with the College and demonstrate responsibility for self and other health professionals. Mr. Walsh did not promptly explain to the Complaints Director the reason for his positive drug screen. Mr. Walsh admitted that he lied to the Complaints Director during the course of the investigation. The evidence is clear that Mr. Walsh did not promptly attend to the circumstances that called into question his fitness to practice. This behaviour is in breach of Principle XI in the Code of Ethics. In light of this, the Tribunal finds his conduct to be unprofessional.

VII. Orders and Reason for Decision on Penalty

With regard to sanctions, Mr. Jardine submitted the following:

- In terms of mitigating factors to consider:
 - Mr. Walsh was forthright during the Hearing and he acknowledged that his conduct was wrong.
 - In terms of progressive discipline, it was noted that this was the first instance in which a complaint against Mr. Walsh led to a Hearing.
 - Whether restitution has been made by the offender was considered, and it was noted that the monetary value of the diverted medications was of a small amount.
- Mr. Jardine provided the Tribunal with a decision from the Supreme Court of Newfoundland, *Jaswal v. Medical Board (Newfoundland)*, which provided certain factors

to take into consideration when determining the appropriate sanction in disciplinary matters. Mr. Jardine then asked the Tribunal to consider that:

- In this case, although narcotics were not diverted to a third party for trafficking or for financial gain, the matter of this Hearing was still a serious offence, that of the misuse of highly addictive narcotics. The conduct of Mr. Walsh goes against the basic tenet of what a pharmacist does.
- Mr. Walsh was an experienced pharmacist.
- It was proven that Mr. Walsh diverted and used narcotics on more than one occasion.
- Mr. Walsh did not immediately acknowledge to the Complaints Director what had occurred. However, Mr. Walsh fully cooperated in the Hearing and was candid in admitting that he had lied to the Complaints Director.
- Mr. Walsh was encouraged to talk about any mitigating factors.
 - Mr. Walsh testified that he had some underlying depressive problems. He noted that recent physical labour on his parents' farm has been therapeutic and it has given him lots of time to reflect on his actions. He stated that he was committed to it not happening again. He admitted to being under a significant financial burden.
- In terms of promoting deterrence, the sanction has to be severe enough but fair.
- There is the need to maintain the public's confidence in the integrity of the self-regulating profession.
- That the conduct of Mr. Walsh was quite far outside the range of permitted conduct by a pharmacist.
- There are a range of sanctions imposed in other similar cases. Two decisions from ACP Hearing Tribunals were reviewed in terms of sanctions as well as two disciplinary documents from the Ontario College of pharmacists.

Mr. Jardine submitted recommendations for orders on behalf of the Complaints Director. The Complaints Director sought the following orders:

- Suspension to the end of December 31, 2011 or January 31, 2012;
- Conditions on Mr. Walsh's practice permit as follows:
 - For a period of five (5) years, Mr. Walsh shall provide a copy of the Hearing Tribunal's decision to any employer in the field of pharmacy
 - Mr. Walsh not act as a licensee for a period of five (5) years
 - For a period of five (5) years, Mr. Walsh participate in a mandatory monitoring and recovery program, at his own cost, that is satisfactory to the Complaints Director
 - For a period of two (2) or three (3) years, if Mr. Walsh is employed in a pharmacy, the licensee must agree to submit to random narcotics audits at least quarterly
- Costs of the investigation and hearing.

Mr. Walsh agreed with the appropriateness of the proposed sanctions and stated that he felt that he could comply with them. He said that he was not physically dependent on narcotics but that he needs to continue to overcome the psychological addiction.

The Tribunal accepted the submissions as made by the College with slight revision.

Under section 82 of the *Health Professions Act*, the Tribunal orders that in the Hearing regarding the matter of Trent Walsh:

- The suspension of Mr. Walsh's practice permit shall continue to Dec 31, 2011.
- The following conditions are imposed on Mr. Walsh's practice permit:
 - He not hold the position of licensee for 5 years
 - He provide a copy of this Hearing Tribunal's written decision to any employer in the field of pharmacy for a period of 5 years
 - Effective immediately and for a period of 5 years after Mr. Walsh obtains his practice permit, Mr. Walsh shall enter into a mandatory monitoring and recovery program with an acceptable organization approved by the Complaints Director. Non-compliance shall be reported to the Complaints Director. Mr. Walsh shall be responsible for the costs of this program. The period of 5 years may be shortened at the discretion of the Complaints Director on the recommendation of the program.
 - For a period of 3 years after Mr. Walsh obtains his practice permit, narcotic audits shall be conducted at least quarterly with the agreement of the licensee(s) under which Mr. Walsh is employed in a manner approved by the Complaints Director. Mr. Walsh will be responsible for any costs associated with these audits.
 - Mr. Walsh shall be responsible for the costs of the investigation and Hearing on a payment schedule agreed to by the College. The College shall provide Mr. Walsh with a Statement of Costs. Any dispute as to the amount as set out in the Statement of Costs shall be brought back before this Tribunal who shall determine the amount.

The Tribunal considered the seriousness of the misconduct by Mr. Walsh, that is, theft from an employer and ingesting non-prescribed narcotics and controlled substances while at work. The Tribunal also noted that Mr. Walsh has continued to communicate with the Canniff monitoring program, including attendance at monthly support meetings and he stated that he is committed to maintain his recovery. The Tribunal believes that ongoing counselling will assist Mr. Walsh in his recovery and identify stressors that may put him at risk.

Although the Tribunal recognized and was supportive of Mr. Walsh's rehabilitative efforts towards his goal of overcoming his psychological addiction and of continuing to be a pharmacist and a member of this College, it also had a duty to deter Mr. Walsh and others and this duty justified a suspension in this circumstance. The Tribunal felt that there needed to be a clear message to the public and other members, for the consequences of conduct that falls far outside the range of professionalism.

With respect to the sentence imposed, the Hearing Tribunal concluded that a longer suspension would not act as a deterrent to Mr. Walsh. Taking into account the interim suspension, the Tribunal felt that a suspension until December 31, 2011 (effectively a seven month suspension) was significant enough for the seriousness of the misconduct. The Tribunal noted that while Mr. Walsh was suspended on May 24, 2011, he had not been employed as a pharmacist since his termination on May 8th, 2011. This suspension is somewhat less than the one year sanction imposed in one of the decisions provided by Mr. Jardine but aggravating factors differed between the two situations.

With regard to the conditions imposed:

By Mr. Walsh needing to provide a copy of this Hearing Tribunal's written decision to any employer in the field of pharmacy for a period of 5 years, the Tribunal felt that this condition ensures that the employer is aware of the matter and is supportive of Mr. Walsh's return to the practice of Pharmacy.

With regard to Mr. Walsh having to immediately, and for a period of 5 years after obtaining his practice permit, enter into a mandatory monitoring and recovery program with an acceptable organization approved by the Complaints Director, the Tribunal heard that research by Canniff and Associates showed that 5-7 years of monitoring is generally needed for successful outcomes and that they typically recommended 5 years. It was noted that a lessening degree of monitoring is needed as time goes on and the Tribunal allowed for that in its order. In the past, the duration of monitoring has been ~3 years. In considering that the Canniff monitoring program costs a set fee of \$400 per month, the Tribunal felt that this cost ought to be borne by Mr. Walsh.

The Tribunal deliberated over costs. The conditions on Mr. Walsh's practice permit are meant to assist the member as he is reinstated back into practice rather than be punitive. However, Mr. Walsh's conduct has been found to constitute professional misconduct and it is appropriate that he pay the costs of the process rather than the costs being borne by the membership of the ACP as a whole. The Tribunal considered that ACP can set up a payment schedule for Mr. Walsh.

In closing, the Tribunal recognized Mr. Walsh's cooperation during the Hearing and it is confident that with the supports that are being put in place, Mr. Walsh will be able to achieve his goal of remaining a member of this College. The Tribunal encouraged Mr. Walsh to continue to work with the College towards his success.

Signed on behalf of the Hearing Tribunal by the Chair

Dated: Nov. 8 / 2011

Per: Dr. Sabuda
DEANA SABUDA

APPENDIX 1

Allegations against Mr. Trent Walsh as per the Notice of Hearing:

The Hearing Tribunal held a Hearing to inquire into the following complaints or matters:

IT IS ALLEGED THAT during the period from February to May, 2011, you:

1. breached your September 22, 2009 Professional Undertaking Agreement by not properly participating in the Aftercare Program administered by Canniff and Associates and by failing to abstain from the use of all prescription drugs, unless prescribed by your family physician or another physician with the knowledge of your family physician and these breaches pursuant to the terms of the Professional Undertaking Agreement constitute an admission of unprofessional conduct regarding the occurrences recognized in the Professional Undertaking Agreement and ACP Complaint File #1069;
2. failed to comply with aspects of your Aftercare Agreement including:
 - a. not making the required daily phone call on at least 6 occasions in March and April, 2011;
 - b. not providing a urine sample on one occasion;
 - c. using prescription and non-prescription medications that had not been prescribed for you; and
 - d. not disclosing to Canniff and Associates your use of prescription and non-prescription medications; and
3. repeated your conduct of diverting and misusing controlled substances at the pharmacy at which you were working as a result of the relapse of your substance abuse issues by:

- a. diverting a small number (less than 10 each) of Dexedrine and Oxycontin pills, and a small quantity of methadone solution for your personal use on at least 3 separate occasions during the March to May 2011 period while working as a pharmacist at Shoppers Drug Mart #359 in Calgary, Alberta; and
- b. despite a positive drug test taken on April 5, 2011, you denied any breach of the Aftercare Agreement and only acknowledged your conduct after you were confronted by your employer with videotape evidence of the diversions.

IT IS ALLEGED THAT your conduct constitutes a breach of the following statutes, regulations, and standards governing the practice of pharmacy:

- Section 1 and subsections 1.1 and 1.2 of the Standards for Pharmacist Practice;
- Sections 1(1)(pp)(ii), 1(1)(pp)(iii), and 1(1)(pp)(xii) of the *Health Professions Act*;
- Principles X and XI of the ACP Code of Ethics Bylaw; and
- Section 4(1) of the *Controlled Drugs and Substances 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), 1(1)(pp)(iii), and 1(1)(pp)(xii) of the *Health Professions Act*;