

ALBERTA COLLEGE OF PHARMACISTS

IN THE MATTER OF
THE HEALTH PROFESSIONS ACT

AND IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF

Arshad Mehmood

DECISION OF THE HEARING TRIBUNAL

June 15, 2018

I. INTRODUCTION

The Hearing Tribunal held a hearing into the conduct of Arshad Mehmood. In attendance on behalf of the Hearing Tribunal were James Lees, public member, Anita McDonald, pharmacist, Tyler Watson, pharmacist and Chris Heitland, pharmacist and chair.

The hearing took place on April 18, 2018 at the Alberta College of Pharmacists, 8215 112 Street, Edmonton, AB, 2nd floor conference centre. 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 Pharmacists (the “College”), Mr. David Jardine, legal counsel representing the Complaints Director, Ms. Annabritt Chisholm, articling student assisting Mr. Jardine, and Mr. Arshad Mehmood. Mr. Mehmood was unrepresented and chose to represent himself during the hearing. Mr. Jason Kully, independent legal counsel for the Hearing Tribunal, was also in attendance for the 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 complaints or matters with respect to Mr. Mehmood as set out in the Notice of Hearing, entered as Exhibit 1:

IT IS ALLEGED THAT between July 1, 2017 and October 18, 2017, while practicing as a pharmacist at the Smoky Lake Pharmachoice and the Vilna Pharmacy, you:

1. Did not maintain professional liability insurance (PLI);
2. Breached your professional declaration of May 24, 2017 by not maintaining PLI while on the clinical pharmacist register; and
3. Practiced without PLI on 89 separate days;

and that by engaging in this conduct you:

1. Disregarded your positive regulatory obligation to the Alberta College of Pharmacists to ensure that you maintained PLI while on the clinical register;
2. Disregarded your ethical obligation to your patients and the public to ensure that you maintained PLI while on the clinical register; and
3. Called into question the trust placed in you as a member of a self-regulating profession.

IT IS ALLEGED THAT your conduct in these matters:

- a. Undermined the integrity of the profession;
- b. Failed to exercise the professional and ethical conduct expected and required of an Alberta pharmacist; and
- c. Was contrary to accepted pharmacist practice.

IT IS ALLEGED THAT your conduct constitutes a breach of the following statutes, regulations, 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 1(1) and 10(1) and 10(2) of the ACP Code of Ethics;
- Section 13(1) of the Pharmacists and Pharmacy Technicians Profession Regulation;

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)(xii) and 40(1)(c) of the *Health Professions Act*.

III. EVIDENCE

The Complaints Director for the College, Mr. James Krempien, was called as a witness. The Record of Decision was introduced as Exhibit 2 and the Investigation Record, containing tabs 1-12 of records gathered during the investigation, was introduced as Exhibit 3.

Mr. Krempien introduced the following key evidence as he walked through these two documents:

- The Record of Decision (Exhibit 2) outlined his reasons to refer this matter to a Hearing Tribunal.
- Mr. Mehmood was a newly licensed pharmacist who was very cooperative with the College and expressed remorse for his actions.
- Tab 1, Exhibit 3, is a copy of the initial complaint from Ms. Timanson, the Competence Director at the College, that explained a random audit of professional declarations revealed that Mr. Mehmood did not hold professional malpractice insurance, as he declared he would, between July 1, 2017 and approximately October 18th, 2017 while practicing at Smoky Lake Pharmachoice and Vilna Pharmacy.

- Documents faxed to the College by Mr. Mehmood indicated that he had a lapse in malpractice coverage from July 1, 2017 and approximately October 18th, 2017.
- In an e-mail on November 9, 2017, Mr. Mehmood expressed his regret and declared to the College that he failed to renew his professional liability insurance that expired on July 1, 2017. Mr. Mehmood cited that he was a new pharmacist who worked alone and did not have any prompts from fellow colleagues. In addition, Mr. Mehmood claimed that his malpractice insurance provider did not notify him of his expired insurance or provide renewal notice.
- Tab 2, Exhibit 3, is a copy of the memo from Ms. Timanson to Mr. Krempien which served as the official written complaint regarding Mr. Mehmood's professional declaration to maintain professional liability insurance with supporting documentation from the Competence Director. A copy of the declaration provided by Mr. Mehmood as part of his annual permit renewal was included.
- Tab 5, Exhibit 3, is a transcript of a telephone conversation that took place between Mr. Krempien and Mr. Mehmood on November 21, 2017. Mr. Krempien explained:
 - Mr. Mehmood was to receive a formal letter from the College that, as Complaints Director, he had received a complaint that Mr. Mehmood had practiced without having current professional liability insurance for a period.
 - As Complaints Director, Mr. Krempien laid out the customary process for a complaint and that he would be meeting Mr. Mehmood at Smoky Lake Pharmacy to determine next steps and that Mr. Mehmood was to provide a written response to the complaint.
- Tab 6, Exhibit 3, is a copy of Mr. Krempien's Notice of Complaint that formally requested a written response from Mr. Mehmood. The Notice of Complaint also contained sample renewal documents similar to those that Mr. Mehmood would have received from the Alberta College of Pharmacists during his registration renewal in May 2017. Mr. Krempien reviewed these as part of his investigation and he also pointed out that this was Mr. Mehmood's first time renewing his pharmacist permit.
- Tab 7, Exhibit 3, is a letter from Mr. Krempien to Ms. Timanson informing her that a formal investigation had been initiated as a result of her complaint.
- Tab 8, Exhibit 3, contains excerpts from ACP newsletters (both acpnews and The Link) that contain sections pertaining to annual permit renewal deadlines, requirements and specific sections outlining the requirement to carry professional liability insurance.
 - Mr. Krempien highlighted that outside of the declaration where pharmacists renew their license, pharmacists are reminded and communicated to in newsletters that they are required to hold and maintain professional liability insurance.
 - Mr. Krempien pointed out that Mr. Mehmood likely would have received the acpnews Spring 2016 document (pg. 47 of Exhibit 3) and the February 1, 2017

edition of The Link (pg. 48 of Exhibit 3) which is the College's bi-weekly newsletter. Both documents contained information about permit renewals and the requirement to carry liability insurance.

- Mr. Krempien also outlined that there is additional information on the College's website that speaks to the guidelines for audits for professional declarations, like that Mr. Mehmood received, and the requirement for pharmacists to hold professional liability insurance.
- Tab 9, Exhibit 3, is Mr. Mehmood's December 6, 2017 response to the Complaints Director's information request. Mr. Krempien explained that:
 - Mr. Mehmood had confirmed the information in the formal complaint that Mr. Krempien received from the Competence Director that he had renewed his practice permit by the end of May 2017 and contrary to the declaration that he provided, he did not maintain professional liability insurance while on the clinical register.
 - Mr. Mehmood confirmed that he had worked 89 shifts as a clinical pharmacist without professional liability insurance between the dates of July 1 to approximately October 18, 2017.
 - Mr. Mehmood stated his regret for this oversight and discussed some of the circumstances that led to this oversight in not renewing his insurance. Mr. Krempien's interpretation of his letter was that this oversight was not intentional or deliberate and that Mr. Mehmood had made a detailed plan to prevent this from reoccurring in the future.
 - Mr. Krempien confirmed that Mr. Mehmood had renewed his insurance almost immediately upon receipt of the random professional declaration audit. Mr. Mehmood was notified of this audit on or about October 16th and by the time he responded to the audit on October 18th, he had already provided evidence that he renewed his insurance.
 - Mr. Krempien stated that Mr. Mehmood took this matter very seriously, cooperated with College's investigation and took action in a very prompt manner.
 - Mr. Krempien also pointed out that when Mr. Mehmood renewed his insurance in October of 2017, that he took it upon himself to get a policy that contained a three-year retroactive coverage to cover the period that he did not maintain professional insurance.
- Tab 12, Exhibit 3, is a summary of the meeting that took place between Mr. Krempien and Mr. Mehmood on December 14, 2017.
 - Mr. Krempien explained that during his visit with Mr. Mehmood at Smoky Lake Pharmacy that Mr. Mehmood admitted that he provided a false professional declaration on May 24, 2017 and that the lack of professional liability insurance was an unintentional error on his part.

- He further admitted that he practiced as a pharmacist during the period on 89 separate days without insurance and that he was not aware of any significant drug errors that occurred at his pharmacy.

Mr. Krempien testified that he was then required to determine whether this investigation would be referred to the Hearing Tribunal and his decision as outlined in Exhibit 2, Record of Decision. Mr. Krempien testified that he felt that this matter warranted a hearing because:

- There was a substantiated breach of a professional declaration when Mr. Mehmood renewed his annual practice permit and failed to maintain professional liability insurance.
- The College serves as the regulator of a self-regulating profession that has responsibility of licensure of approximately 1,200 licensed pharmacies and roughly 6,000 registrants including pharmacists and registered pharmacy technicians.
- In order to regulate both pharmacies and registrants, the College uses both statutory and professional declarations and relies on both registrants and licensees to fulfill those declarations.
- In this case, Mr. Mehmood, however inadvertent, had breached his declaration by not maintaining professional liability insurance.
- Mr. Krempien further stated that the matter was referred to the Hearing Tribunal based on three factors:
 - Mr. Mehmood breached his professional declaration on his annual practice permit renewal by remaining on the clinical register when he did not have professional liability insurance.
 - Mr. Mehmood did not have valid professional liability insurance for a period of approximately 4 months.
 - Mr. Mehmood remained in active practice and practiced on 89 separate occasions without professional liability insurance.

Mr. Krempien also discussed that there were other isolated cases whereby the Competence Department found through a random selection audit other professionals who breached their declaration and had also not maintained professional liability insurance while on the clinical register. Subsequent to these matters, the College issued communications to registrants about the requirement to maintain liability insurance. Mr. Krempien also clarified that there were at least two other occasions whereby registrants without liability insurance were referred to a Hearing Tribunal and that Mr. Mehmood was not being singled out.

Mr. Krempien concluded by stating that the College instituted the requirement for professional liability insurance in 2005 when the College was pursuing expanded scope of practice for pharmacists that included restricted activities such as administering medication by injection and prescribing privileges. The largest concern of government at this time was

protecting the public and ensuring that pharmacists had professional liability insurance before granting this expanded scope of practice.

This ended Mr. Krempien's testimony as a witness.

Mr. Mehmood was sworn in and provided evidence to the Hearing Tribunal as follows:

- Mr. Mehmood indicated that Mr. Krempien's statements were "100% correct" and the information that he had previously provided to the College remained unchanged.
- Mr. Mehmood admitted that he had made a mistake and had failed to renew his professional liability insurance and that his failure to renew his insurance was unintentional.
- Mr. Mehmood stated that all insurance policies that he has ever held automatically renew and are an annual policy that expire 1-year from the date they were purchased. Since his professional liability insurance started in September, he expected it would expire in September.
- Mr. Mehmood entered Exhibit 4, Letter dated October 18, 2017 from Excel Insurance. This letter was with respect to his new policy that he renewed after he received the complaint from the College. It showed a discrepancy from his current insurance policy that stated in the cover letter that his professional liability insurance, that was renewed on October 18, 2017, was set to expire on October 18, 2018. However this was contradicted on a copy of the actual insurance policy that stated the policy actually expired on July 1, 2018.

The Hearing Tribunal asked Mr. Mehmood for a few clarification questions regarding his professional malpractice insurance for his current policy's expiry and whether he had ever had any insurance policy product lapse in coverage.

The Hearing Tribunal further questioned Mr. Mehmood that he expected his insurance to expire in September, yet the random professional declaration audit from the College took place in October. Mr. Mehmood again stated that he expected the policy to automatically renew, that he did not receive a notice indicating his insurance was expiring and that he had to renew it, and also cited that he worked alone as the licensee at Smoky Lake Pharmachoice and did not have any colleagues to confer with about the license renewal process. Ultimately, Mr. Mehmood stated, in response to a question about whether it was his responsibility to check this, that "whatever the reason, I have a responsibility and I failed to do that".

Under cross examination from Mr. Jardine, Mr. Mehmood provided the Hearing Tribunal with relevant information surrounding Mr. Mehmood's licensure in Alberta, which was as follows:

- Before coming to Canada, Mr. Mehmood worked in a production facility and was not working in a clinical pharmacy practice.
- There was no concept or requirement of insurance in the country of his previous residence.

- Mr. Mehmood moved to Canada approximately 5 years ago. After passing his PEBC exams, he began his internship at Shoppers Drug Mart.
- In September 2016, Mr. Mehmood completed his internship hours and then received his pharmacist practice permit and professional liability insurance. September 2016 was the first time he acquired practice insurance.
- In May 2017, Mr. Mehmood started working in the new pharmacy in Smoky Lake. He also renewed his Practice Permit in May 2017. At that time, Mr. Mehmood was completely aware that he had valid insurance so it was in his mind that he would continue to maintain his Practice Permit and insurance.
- Mr. Mehmood concluded by providing that he was the licensee of Smoky Lake Pharmachoice who worked alone in serving a small community and that he commuted a significant distance each day to care for his patients. He stated he was out of touch with his other colleagues and the pharmacist community.

Under cross-examination, Mr. Mehmood confirmed he thought his insurance might expire in September 2017, that he received the audit in October 2017, and that he had not resubmitted anything in the month between September and October because he believe it would automatically renew.

IV. SUBMISSIONS

Complaints Director Submissions:

Mr. Jardine submitted that the Complaints Director must demonstrate that the three allegations are factually proven and that if the allegations are proven, they are serious enough to constitute unprofessional conduct. Mr. Jardine submitted that the standard of proof was a balance of probabilities.

Mr. Jardine referred the Tribunal to the Notice of Hearing. He submitted:

- The documentary evidence established that Mr. Mehmood did not maintain professional liability insurance, breached his professional declaration of May 24th, 2017, by not maintaining professional liability insurance while on the clinical pharmacist register, and practiced without professional liability insurance on 89 separate days.
- Mr. Mehmood's written response to the College admitted to filling out the professional declaration on May 24, 2017. The written response also confirmed that Mr. Mehmood had practiced on 89 separate days between July 1st and October 18th without professional liability insurance.
- Mr. Mehmood did not dispute any of the factual matters and he confirmed the allegations initially to the Registration Department, then to Mr. Krempien, and then to the Tribunal.

- By Mr. Mehmood's own admission, he disregarded his positive regulatory obligation to the College to ensure he maintained professional liability insurance while on the clinical register.
- Mr. Krempien provided evidence on the obligation to maintain insurance and talked about the importance of that, including the shift that happened in 2007.
- Professional liability insurance is a very important part of the protection of the public because it means that the public is ensured that the actions of a pharmacist are covered.
- By not maintaining professional liability insurance, Mr. Mehmood disregarded his ethical obligation to his patients and the public while on the clinical register.
- There was an ethical obligation to meet the standards and requirements of the professional and particularly elements there for the protection of the public.
- There is trust placed on Mr. Mehmood by the general public and the College as a member of a self-regulating profession and that was called into question by his conduct. Mr. Jardine made it clear that Mr. Mehmood did not deliberately set out to not maintain professional liability insurance or thwart the College or the profession. Rather, this case was picked up by a random audit and there was a 95% chance that this would not have been picked up had he not been audited.
- There was no way that the College could check every member and every piece of paperwork. The nature of self-regulation is that it depends on the member assuming professional responsibility to regulate themselves. The College has to trust that when members give them a professional declaration that it is accurate and that it will remain accurate. This trust was called into question.
- Mr. Jardine submitted that by failing to maintain professional liability insurance, Mr. Mehmood's conduct undermined the integrity of the profession. While his conduct was not deliberate, everyone is required to comply with the same rules and when that is not done, the integrity of the profession is brought into concern. In addition, essential to the profession is the fact that the public can trust that the College regulates their members, ensures compliance with their members, and when there are problems, the College deals with them.
- There is an element of integrity of the profession within the profession. Everyone is required to comply with the same rules and, when that is not done, there has to be a message to the rest of the profession that it is taken seriously.
- A fundamental expectation is that a member will fill in their professional declaration accurately and that they will abide by it.

Mr. Jardine took the Hearing Tribunal through the legislation and standards that applied to this case including:

- A member's conduct can be found unprofessional whether or not it was with dishonourable or disgraceful intent;
- Section 40(1)(c) of the *Health Professions Act* and Section 13(1) of the *Pharmacists and Pharmacy Technicians Profession Regulation* indicate the requirement for professional liability insurance;
- The Standards of Practice for Pharmacists and Pharmacy Technicians, Standard 1, more specifically 1.1 and 1.2, speaks to compliance with the law, including both the letter of and the spirit of the law; and

- The ACP Code of Ethics, specifically Principle I – “Hold the well-being of each patient to be my primary consideration”; and Principle X – “Act with honesty and integrity.”

Mr. Jardine submitted the proven and acknowledged conduct was serious enough to constitute unprofessional conduct. Mr. Jardine stated that the breach of the declaration was unintentional but Mr. Mehmood’s oversight of his responsibilities in knowing his professional statutes harmed the integrity of the profession and risked the safety of the public.

While Mr. Mehmood promptly renewed his insurance upon completion of the audit done by the College, he initially provided the College with a professional declaration that he would maintain professional liability insurance, and ultimately he failed to do so. Mr. Mehmood did not have insurance for an extended period of time and it would have extended longer without the audit. Mr. Mehmood’s conduct breached significant matters. Having over a 3-month gap in insurance coverage while actively practicing is not in the spirit of, or in alignment with his professional obligations in protecting the public.

Mr. Jardine submitted Mr. Mehmood was responsible for knowing what was required for his Practice Permit and that he had to be trusted to do it. The breach of trust with the College and the lack of attention to professional obligations was serious enough to constitute unprofessional conduct.

Mr. Jardine shared with the Hearing Tribunal two specific cases (*Sonia Chahal v. ACP* and *Saeed Sattari v. ACP*) whereby the College had dealt with two separate members who also failed to maintain professional liability insurance and reviewed the specific circumstances and orders associated with those cases. Mr. Jardine submitted the decisions both resulted in findings of unprofessional conduct and that reasoning was applicable to Mr. Mehmood.

In response to a question from the Hearing Tribunal, Mr. Jardine submitted that Mr. Mehmood’s purchase of retroactive insurance coverage was not an answer to the unprofessional conduct. While it could be considered in mitigation, it was about addressing a problem after the fact. It did not remedy the lack of compliance with the obligation to maintain insurance and the declaration that he would.

Mr. Mehmood’s submissions:

Mr. Mehmood agreed with Mr. Jardine that the allegation is correct and that his failure to maintain professional liability insurance was not deliberate and was unintentional. Mr. Mehmood was regretful for his oversight.

V. FINDINGS

After weighing the evidence and the admissions from Mr. Mehmood, the Hearing Tribunal found that the allegations found in the Notice of Hearing were factually proven and that Mr. Mehmood's conduct constituted unprofessional conduct.

The Hearing Tribunal's reasons for its findings are as follows.

Mr. Mehmood acknowledged and admitted that he did not maintain professional liability insurance between July 1, 2017 and October 18, 2017 while practicing as a pharmacist at the Smoky Lake Pharmachoice and the Vilna Pharmacy, that he breached his professional declaration of May 24, 2017 by not maintaining this insurance while on the clinical register and that he practiced without professional liability insurance on 89 separate days.

These admissions were supported by the documentary evidence. A copy of the professional declaration that was sworn by Mr. Mehmood as part of his Practice Permit renewal on May 24, 2017 was included at Tab 2, Exhibit 3. Mr. Mehmood declared that he understood that he needed to maintain valid professional liability insurance coverage while on the clinical register. A copy of Mr. Mehmood's professional liability insurance with a policy period from September 2, 2016 to July 1, 2017 was included at Tab 1, Exhibit 3. A copy of Mr. Mehmood's professional liability insurance with a policy period from October 18, 2017 to July 1, 2018 was also included at Tab 1, Exhibit 3. The evidence demonstrates that Mr. Mehmood did not have valid professional liability insurance between July 1, 2017 and October 18, 2017.

In response to the notice of the formal complaint by the College, Mr. Mehmood submitted his work schedule from July 4, 2017 to December 6, 2017 (Tab 9, Exhibit 3). This schedule indicated that Mr. Mehmood practiced as a pharmacist at the Smoky Lake Pharmachoice and the Vilna Pharmacy without professional liability insurance on 89 separate days between July 1, 2017 and October 18, 2017.

Mr. Mehmood's conduct disregarded both his regulatory obligation to the College and his ethical obligation to his patients and the public to ensure he maintained professional liability insurance while on the clinical register.

Section 40(1)(c) of the *Health Professions Act* and section 13 of the Pharmacists and Pharmacy Technicians Profession Regulation speak directly to regulated members requiring professional liability insurance. These requirements of obtaining a practice permit and being a member of the clinical register serve to protect the public.

The Tribunal recognizes that professional liability insurance is an important part of the protection of the public because it means that the public is ensured that the actions of a pharmacist are covered. It is also not practical for members of the public to verify that individuals with whom they interact in a pharmacy have liability insurance. By not maintaining professional liability insurance, Mr. Mehmood disregarded his ethical obligation to his patients and the public while on the clinical register. In addition, Mr. Mehmood worked for an extended period of time before acquiring liability insurance and there was a potential for negative consequences of a member of the public.

As a self-regulated profession, pharmacists conduct themselves with autonomy. However, there is a corresponding obligation to be responsible, accurate, and trustworthy. Self-regulation depends upon the accountability of regulated professionals to their regulators as regulators rely on the statements and declarations made by their members to be true. Mr. Mehmood's conduct disregarded his obligation to the College and called into question the trust placed in him as a member of a self-regulated profession.

Based on the Tribunal's findings with regards to Mr. Mehmood's conduct, the Tribunal finds his conduct in these matters:

- a. Undermined the integrity of the profession;
- b. Failed to exercise the professional and ethical conduct expected and required of an Alberta pharmacist; and
- c. Was contrary to accepted pharmacist practice.

The Hearing Tribunal finds that the proven conduct constitutes unprofessional conduct.

The Hearing Tribunal acknowledges and recognizes that Mr. Mehmood was a new registrant and that this was his first renewal of his practice permit and that his failure to maintain professional liability insurance was unintentional and that he showed genuine remorse. Despite the intentions and remorse, this is a serious matter and all registrants sign a professional declaration upon renewal of their practice permit that they will maintain this insurance to protect the safety of public and in the event that there is a mistake or accident that requires appropriate compensation.

The Hearing Tribunal has concerns that the discovery of Mr. Mehmood's lapse in professional liability insurance was only identified by a random audit by the College and that he worked as the sole pharmacist on 89 occasions without insurance coverage. As discussed in the reasons, as a self-regulated profession pharmacists conduct themselves with professional autonomy but in addition to this, there is also an obligation to the profession and the public to be responsible, honest and trustworthy and to uphold the integrity of the profession itself. The integrity of the profession was harmed when Mr. Mehmood provided a false professional declaration in May of 2017, regardless of his intent. This meets the definition of unprofessional conduct as set out in section 1(1)(pp)(xii) of the *Health Professions Act*.

As discussed in these reasons, Mr. Mehmood's conduct breached section 40(1)(c) of the *Health Professions Act*. It also violated the College's Standards of Practice. Standard 1.1 requires pharmacists to practice in accordance with the law that governs their practice, including the *Health Professions Act* and the Code of Ethics, and Standard 1.2 requires pharmacists to comply with the letter and spirit of the law to ensure that the public receives the full protection of the law. Mr. Mehmood's failure to maintain professional liability insurance resulted in a breach of the *Health Professions Act* that prevented the public from receiving full protection.

Mr. Mehmood's conduct also violated the College's Code of Ethics, particularly principles 1(1), 10(1), and 10(2). Principle 1(1) requires pharmacists to act in the best interest of each patient. Mr. Mehmood did not act in the best interests of his patients when he did not have

valid insurance. This insurance is an expectation for all regulated members and it ensures the actions of all pharmacists are covered, thereby providing members of the public with recourse if needed. Principle 10(1) requires pharmacists to comply with the letter and spirit of the law that governs the practice of pharmacy and Principle 10(2) requires pharmacists to be honest with the College. Mr. Mehmood was not honest with the College when he did not comply with his declaration and, as discussed, he did not comply with the *Health Professions Act* and the Pharmacists and Pharmacy Technicians Profession Regulation.

Mr. Mehmood's violations of the Code of Ethics and Standards of Practice meet the definition of unprofessional conduct under section 1(1)(pp)(ii) of the *Health Professions Act*.

VI. SUBMISSION ON ORDERS

Complaints Director's Submissions on Sanction:

Mr. Jardine submitted that from the College's perspective, the primary purpose of sentencing is to protect the public through deterrence and education. Sentencing also protects the integrity of the profession for the same reasons. Mr. Jardine also submitted there is a duty to be fair to the member and that there is a balancing act involving what occurred and the reasons for the sanction.

Mr. Jardine spoke to the two cases that the College had referred to during the earlier part of the hearing (*Sonia Chahal v. ACP* and *Saeed Sattari v. ACP*) and also to a number of factors that are taken into account for the purposes of sanctions. He referred to *Jaswal v. Medical Board (Newfoundland) (1996)*, 42 Admin L.R. (2d) 233, which listed several such factors that are a starting point for consideration on sanctions. Mr. Jardine explained how these factors should apply in this case:

- *Nature and gravity of the proven allegations:* The fact that the declaration of professional liability insurance was signed and dated in May of 2017 and Mr. Mehmood did not actually have that insurance between July 1 and Oct 18, 2017 is serious in nature but not at the severe end of the spectrum of unprofessional conduct. The act was not deliberate and the lack of attention was dealt with promptly when discovered.
- *Age and experience of the offender:* Mr. Mehmood, a relatively new Alberta pharmacist, was renewing his practice permit for the first time with the College and inexperienced with the insurance requirements, and this should be considered with more leniency for a newer member.
- *Previous character of a member and prior complaints:* There were no previous complaints or issues in dealing with Mr. Mehmood. This is a mitigating factor.
- *Number of times the offence occurred:* There was a single breach that continued over an extended period of time as Mr. Mehmood practiced as a clinical pharmacist on 89 separate occasions and the lapse in insurance coverage was only discovered by a random professional audit from the College.

- *Role of the member in acknowledging what occurred:* This was clearly a mitigating factor. Mr. Mehmood acknowledged that his conduct was unprofessional. Upon receipt of the audit, he immediately self-reported and took steps to remedy the issue by obtaining an insurance policy that was 3-years retroactive. He has been very cooperative, candid and is understandably remorseful.
- *Whether the member has suffered other serious financial or other penalties:* The College was not aware of any impact.
- *The impact of the incidence:* This factor was not relevant.
- *The presence or absence of any mitigating circumstances:* Mr. Mehmood is a relatively new and inexperienced Alberta pharmacist, who was cooperative and understood he made a mistake. There are no prior concerns and he dealt with his error in a prompt and responsible way. He tried to right his wrong by reporting this immediately and getting a 3-year retroactive rider on his professional malpractice insurance. Mr. Mehmood expressed his remorse and talked about understand what occurred. These are all mitigating circumstances.
- *The need to promote deterrence:* Specific deterrence of Mr. Mehmood from similar misconduct in the future will be served because Mr. Mehmood has already acknowledged that he made a mistake and he will be careful to not repeat this conduct. General deterrence of the membership at large is also important. The membership should understand the important public safety purpose of insurance, the integrity of the profession and the serious consequences of a false professional declaration associated with practice permit renewal. The declaration process relies upon members knowing what they have to do, saying they will do it and finally, doing it.
- *The need to maintain public confidence in the integrity of the profession:* The profession of pharmacy is self-regulated and the College relies on its membership to be honest and trustworthy when signing their professional declarations. The College must also demonstrate that it takes such requirements seriously and it must be transparent in the consequences for unprofessional conduct by its members.
- *The degree to which the offensive conduct is clearly regarded, by consensus, as falling outside the range of permitted conduct:* Mr. Mehmood's conduct was offside but it did not carry additional deliberateness or recklessness and was not the type of error that would make it considerable further along the spectrum.
- *The range of sentence in other similar cases:* Mr. Jardine provided two examples, *Sonia Chahal v. ACP* and *Saeed Sattari v. ACP*, of similar cases of practicing pharmacy without professional liability insurance where the penalties included a reprimand, fines and costs/expenses of the hearings. The conduct of Ms. Chahal and Mr. Sattari were both found unprofessional in that they breached their professional declaration and did not maintain valid professional liability insurance while on the clinical register. The sanctions imposed at the time were:
 1. A reprimand;
 2. A fine payable on a schedule acceptable to the Complaints Director. In the case of Mr. Sattari a fine of \$1,000 was issued and with Ms. Chahal a \$750 fine was issued; and
 3. The payment of the costs of the investigation and hearing on a schedule acceptable to the Complaints Director. In the case of Mr.

Sattari, he was required to pay the full costs of the investigation and hearing. In the case of Ms. Chahal, there was a \$4,000 cap placed on these costs pursuant to a Joint Submission on Sanctions.

Mr. Jardine submitted that Mr. Mehmood's case fell within the same general parameters as the *Chahal* case and the *Sattari* case, and despite Mr. Mehmood being unrepresented, Mr. Mehmood had been an extremely willing and cooperative participant and the Complaints Director gave recognition to Mr. Mehmood for his cooperation.

Mr. Jardine submitted that a reprimand was appropriate and that a fine should be imposed. He submitted a fine of \$1,000, as was done in the *Sattari* case, would be appropriate given the duration of the conduct.

Mr. Jardine also submitted that Mr. Mehmood should be ordered to pay the costs of the investigation and Hearing on a schedule acceptable to the Complaints Director. This was the same as the previous cases. Mr. Jardine estimated that the costs, up to the date of the hearing, were between \$2,000 and \$3,000. Mr. Jardine submitted that the total costs could exceed \$10,000 at the end of the hearing and that this is the range the Tribunal would be looking at. He submitted this fit with the prior cases.

Mr. Jardine concluded by indicating the Tribunal's findings would be reported to the Registrar to make the decision as to whether the matter would be reported on a named basis or not. He indicated that it was his assumption the Registrar would report the case on a named basis. The Tribunal could make recommendations to the Registrar on publication but it was up to the Registrar to make the decision. There was no particular factor in this case that posed a problem with publication.

Mr. Mehmood's Submissions on Sanction:

Mr. Mehmood submitted that:

- Since the discovery that his professional malpractice insurance had lapsed, this has caused him duress since October and has weighed heavily on his mind for the past 6 months.
- He is extremely regretful for his oversight in not maintaining his insurance and it was extremely difficult for him to be in front of the Hearing Tribunal.
- He is supporting his wife and three children and has parents back home that he supports. He asked that the Hearing Tribunal consider some concessions in the fine and costs when making their decision. He just started his practice so it would be hard for him to pay the sum.
- He is greatly remorseful and will not allow this to happen again and will advocate to his colleagues not to make the same unintentional mistake as he had made as there are consequences.

VII. ORDERS

The Hearing Tribunal carefully considered the submissions on sanction from both the College and Mr. Mehmood and made the following orders:

1. Mr. Mehmood shall receive a reprimand. This decision shall serve as the written reprimand for Mr. Mehmood.
2. Mr. Mehmood shall pay a fine of \$1,000. This is to be payable on a schedule acceptable to the Complaints Director but Mr. Mehmood shall have at least 12 months to pay.
3. Mr. Mehmood shall pay the full costs of the investigation and hearing, up to a maximum of \$10,000. This is to be payable on a payment schedule acceptable to the Complaints Director but Mr. Mehmood shall have at least 24 months to pay.

In assessing the sanctions, the Hearing Tribunal took into account all of the factors discussed in the *Jaswal* decision and the submissions of Mr. Jardine and Mr. Mehmood, including the range of sanctions previously ordered in similar cases, the seriousness of Mr. Mehmood's breach of his declaration, the length of time he failed to maintain professional liability insurance, Mr. Mehmood's remorse, his cooperation with the College, and the actions he took to try and correct his misconduct.

As Mr. Mehmood's conduct was unprofessional, a reprimand is clearly warranted.

In terms of the fine, the Hearing Tribunal agreed with the Complaints Director that a fine was necessary in this matter to address Mr. Mehmood's unprofessional conduct. The range of fine for a finding of unprofessional conduct is up to \$10,000 but a higher fine is not appropriate in this matter due to the quantum of fines ordered in other related cases (*Chahal* and *Sattari*), the cooperation of Mr. Mehmood throughout the process, and the nature of the conduct. A fine is warranted in this matter as a measure of specific deterrence to Mr. Mehmood and general deterrence to the membership at large and \$1,000 is deemed appropriate in this case.

The Hearing Tribunal deliberated and determined that Mr. Mehmood should be responsible for the full costs of the investigation and hearing process to maximum of \$10,000 because:

- It is reasonable for Mr. Mehmood to pay the full costs as the investigation and hearing were required due to his misconduct.
- At the time of the hearing the investigation costs were low – estimated at the time of the hearing to be between \$2,000 and \$3,000.
- The hearing was as efficient as possible due to Mr. Mehmood's cooperation.
- The Hearings Tribunal recognized Mr. Mehmood's familial obligations and support in combination with the fact that he is a key member and service provider to the rural community of Smoky Lake and want to see him continuing to provide care for these residents. The Tribunal understood and appreciated Mr. Mehmood's cooperation and hardships and tried to balance this with the fact that the general membership of the College should also not bear the costs of this investigation or hearing.

- The Hearing Tribunal committed to seeking to reduce further costs and to put Mr. Mehmood's mind at ease in knowing that the Hearing Tribunal costs would be capped at \$10,000.
- Mr. Mehmood can make arrangements with the Complaints Director to pay the costs over a 24 month period or a term that is agreeable to the Complaints Director.

With respect to publication of the Tribunal's findings with the inclusion of Mr. Mehmood's name, the Hearing Tribunal does not see any unusual circumstances that would warrant withholding the details of this matter or replacing Mr. Mehmood's name with a pseudonym. The Hearing Tribunal recognizes the need for general deterrence and transparency of the hearing process to the public and the profession and as per College Bylaw 74, leaves the final decision regarding publication to the Registrar of the College.

Signed on behalf of the Hearing Tribunal by the Chair on June 15, 2018.

Per: Chris Heitland