

ALBERTA COLLEGE OF PHARMACY

IN THE MATTER OF
THE HEALTH PROFESSIONS ACT

AND IN THE MATTER OF A HEARING
REGARDING THE CONDUCT OF

SIN YOUNG (JENNY) PARK

Registration number: 11755

DECISION OF THE HEARING TRIBUNAL

August 12, 2024

I. INTRODUCTION

The Hearing Tribunal held a hearing into the conduct of Sin Young (Jenny) Park (“Ms. Park”).

In attendance on behalf of the Hearing Tribunal were: Brad Couldwell (pharmacist and chair) (“the Chair”), Mareiz Morcos (pharmacist), Patricia Hull (public member) and Kate Freeman (public member). Maya Gordon acted as independent counsel to the Hearing Tribunal.

The hearing commenced on July 18, 2024 and proceeded by way of videoconference. The hearing was held under the terms of Part 4 of the *Health Professions Act*, RSA 2000, c. H-7 (“the *HPA*”).

Also in attendance at the hearing were:

- Ms. Monica Tran (“Ms. Tran”), representing the Complaints Director of the Alberta College of Pharmacy (“College”);
- Mr. James Krempien, Complaints Director for the College;
- Ms. Park, the Investigated Member, and
- Mr. Bryan J. McHale, Counsel for Ms. Park (“Mr. McHale”).

Margaret Morley (“Ms. Morley”), Hearings Director for the College, was also present. Ms. Morley did not participate in the hearing but was available to assist in administering the virtual hearing. There was also a Court Reporter, Jessica Young, who was present.

There were three (3) observers in attendance at the hearing.

II. ALLEGATIONS

The Hearing Tribunal held a hearing to inquire into the following allegations with respect to Ms. Park (“the Allegations”), as set out in the Notice of Hearing, which was entered as Exhibit 1, at Tab 1:

IT IS ALLEGED THAT, on or about July 28, 2021, while you were a registered Alberta pharmacist at Alberta Health Services, you:

1. Accessed one or more of the following functions on [REDACTED] Netcare record when you did not have an authorized purpose for accessing that information:
 - VIEW - Patient Demographics;
 - VIEW - P_Event History;
 - VIEW - Chemistry;
 - VIEW - Lab Transcribe;
 - VIEW - Viewer Frames;
 - VIEW - C_Events;
 - VIEW - Microbiology;

- VIEW - Hematology;
- VIEW – ImmARL Immunization;
- VIEW - PIN;
- VIEW - PIN_Med_Profile;
- VIEW - E_Records.

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 and Sub-standards 1.1 and 1.2 of the Standards of Practice for Pharmacists and Pharmacy Technicians;
- Principles 4(4 and 5) and 10(1) of the ACP Code of Ethics; and
- Sections 25 and 107(2)(a) and (b) of the *Health Information 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*.

III. PRELIMINARY MATTERS

Request for a Closed Hearing

Prior to the commencement of the hearing, counsel for Ms. Park brought a motion to have the hearing closed to the public and a number of other preliminary remedies, pursuant to section 78 of the *HPA*.

Section 78 states as follows:

Access to hearing

78(1) A hearing is open to the public unless

- (a) the hearing tribunal holds the hearing or part of the hearing in private on its own motion or on an application of any person that the hearing or part of the hearing should be in private
 - (i) because of probable prejudice to a civil action or a prosecution of an offence,
 - (ii) to protect the safety of the person or of the public,

- (iii) because not disclosing a person's confidential personal, health, property or financial information outweighs the desirability of having the hearing open to the public,
 - (iv) because the presence of the public or complainant could compromise the ability of a witness to testify, or
 - (v) because of other reasons satisfactory to the hearing tribunal,
- or
- (b) another Act requires that the hearing or part of the hearing be held in private.
- (2) If a hearing or part of a hearing is held in private, the hearing tribunal must state the reason why and must include the reason in the record.
- (3) Even if a hearing is held in private,
- (a) the investigated person and the investigated person's counsel may attend,
 - (b) the complainant may attend unless the hearing tribunal directs otherwise, and
 - (c) the complaints director and hearing tribunal's, complaints director's and college's counsel may attend.
- (4) Even if a hearing is open to the public, a witness, except for the investigated person, may be excluded from the hearing until the witness has given evidence and has been released or dismissed from the hearing.

The requests of counsel for Ms. Park were denied by the Hearing Tribunal. The Hearing Tribunal did not close the hearing to the public, and the reasons for that decision are recorded in a preliminary decision which has already been provided to the parties.

Additional Preliminary Matters

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

There were no further applications to close the hearing to the public.

IV. EVIDENCE

Exhibit 1

To begin, Ms. Tran requested that a document entitled "2024-07-16 Combined Exhibit Book - Merits.pdf" to be entered as Exhibit 1. This document, in full, was entered as Exhibit 1 by the Hearing Tribunal.

Included in Exhibit 1, at Tab 1, is the Notice of Hearing (revised date and time) which was served upon Ms. Park's counsel, Mr. McHale. There were no concerns with service of the Notice of Hearing in this matter.

Agreed Statement of Facts

No witnesses were called to give testimony and evidence was entered by way of an Agreed Statement of Facts, which was included in Exhibit 1, at Tab 3. Therefore, the allegations were not contested.

Admission of Unprofessional Conduct

In Exhibit 1, Tab 2, Ms. Park has provided an Admission of Unprofessional Conduct (“the Admission”). Section 70(2) of the *HPA* states that it cannot be acted upon unless it is accepted in part or in whole by the Hearing Tribunal.

V. SUBMISSIONS REGARDING MERIT

Opening Statements

Ms. Tran began with the opening statement of the College. She advised that in Exhibit 1, there is the Notice of Hearing, an Admission of Unprofessional Conduct, and an Agreed Statement of Facts.

She reviewed Tab 1 of Exhibit 1 and went over the Allegation before the Hearing Tribunal.

Mr. McHale chose to make his opening statement within his own submissions on merit.

Submissions on Behalf of the Complaints Director as to Merit

In her submissions, Ms. Tran went through the Admission in detail for the Hearing Tribunal. She noted that this is a complete admission to the Allegations in the Notice of Hearing. She requested that the Hearing Tribunal accept the admissions that have been provided by Ms. Park.

Ms. Tran added that within the Admission, Ms. Park confirmed that she had received legal advice, and that if the Hearing Tribunal accepts her Admission, the Hearing Tribunal may proceed to issue one or more of the orders set out in section 82(1) of the *HPA*.

Ms. Tran then went through the Agreed Statement of Facts, found at Tab 3 of Exhibit 1. This document includes several exhibits. She noted that there were other allegations made by the complainant included in the documents which do not form part of this hearing and the Hearing Tribunal should disregard those claims.

The task of the Hearing Tribunal is to ascertain whether the facts have been proven, and if proven, whether they constitute unprofessional conduct. In this case, she argued that the Hearing Tribunal has more than sufficient evidence to find this conduct to have been proven factually, and that it is unprofessional. There is an Agreed Statement of Facts, an Admission of Unprofessional Conduct, as well as documentation from the investigation which supports the record, all contained within Exhibit 1.

Ms. Park accessed information for someone who was not a patient, [REDACTED] Ms. Park has taken responsibility for her actions, there was no finding that she had acted in bad faith or disclosed this information to anyone else.

However, she did not uphold her obligations under the Standards of Practice for Pharmacists and Pharmacy Technicians, effective March 2023 (“Standards of Practice”), the Code of Ethics of the Alberta College of Pharmacy, effective May 22, 2009 (“Code of Ethics”), or the *Health Information Act* RSA 2000, c H-5 (“the *HIA*”).

Submissions on Behalf of Ms. Park as to Merit

Mr. McHale noted that he had no objections to Ms. Tran’s submissions.

However, he did make some cautionary comments regarding Exhibit 1. He noted that some of the Exhibits should not be considered or contemplated by the Hearing Tribunal, as they include evidence that may be considered hearsay.

VI. FINDINGS REGARDING MERIT

Facts

After hearing from both parties and being given time to review the Agreed Statement of Facts, the Admission, and the documents contained in Exhibit 1, the Hearing Tribunal accepts the following facts, on a balance of probabilities, which were admitted by Ms. Park:

Background

1. Ms. Park is a member of the Alberta College of Pharmacy (ACP) having been granted admission to ACP with a permit to practice pharmacy in Alberta on January 30, 2020.
2. Ms. Park is presently 34 years of age with four and a half years of experience as a licensed pharmacist in Alberta.
3. Ms. Park has held her practice permit with ACP continuously and is currently actively practicing pharmacy in Alberta.
4. The Complaints Director is not aware of any earlier complaints to ACP about Ms. Park, and Ms. Park has had no history of professional disciplinary action with ACP.

The July 28, 2021 Incident

5. On July 28, 2021, from 11:07:35 to 11:11:35, Ms. Park accessed the Netcare record of [REDACTED] (the “Complainant”) without the Complainant’s authorization and without an authorized purpose.

6. Ms. Park accessed the Complainant's Netcare record while working at home using her work laptop computer.
7. Ms. Park did not print the Netcare information accessed and did not share the Netcare information other than for Ms. Park's personal use. There is no allegation before the Hearing Tribunal that Ms. Park otherwise used or further disclosed the health information she accessed without an authorized purpose.
8. On October 18, 2023, Mr. James Krempien, the Complaints Director of the ACP, received a complaint (the "Complaint") from the Complainant. The Complaint is attached as Exhibit "A" to this Agreed Statement of Facts and states in part that:
 - a. Ms. Park accessed the Complainant's confidential health information without the Complainant's knowledge.
 - b. Ms. Park accessed [REDACTED] Netcare on July 28, 2021, from 11:07:35 to 11:11:35.
 - c. The Complainant has never met Ms. Park or been in the Alberta Health Services setting where Ms. Park was her healthcare provider.
 - d. The Complainant developed anxiety as a result of her private medical records being accessed.

(Exhibit "A", the Complaint, is entered as limited evidence in relation to the facts the Complaint was made and the Complainant's statement(s) about her bodily and mental condition. Other statements made by the Complainant therein are not entered as fact or as proof of the truth of their contents, except where explicitly stated herein.)
9. Based on the Complaint, the Complaints Director directed an investigation into Ms. Park's conduct by himself, Jennifer Mosher, and Brad Willsey.
10. On October 19, 2023, the Complaints Director wrote to Ms. Park and requested that she review the Complainant's concerns and provide 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 Ms. Park. (Exhibit "B", the Letter Enclosures, is entered as limited evidence in relation to the facts the Complaint was delivered to Ms. Park. Other statements made in the Complaint therein are not entered as fact or as proof of the truth of their contents, except where explicitly stated herein.)
11. On November 16, 2023 Ms. Park, upon request, delivered a written response to the ACP Complaints Director. In the written response, Ms. Park accepted responsibility for the July 28, 2021 unauthorized access to Netcare, apologized to the Complainant, and accepted responsibility for her misconduct. Attached

as Exhibit “C” to this Agreed Statement of Facts is a copy of Ms. Park’s written response to the Complaint and associated email chain regarding the request and delivery of Ms. Park’s response.

12. On November 29, 2023, Ms. Mosher met with Ms. Park. During this meeting, Ms. Park confirmed that she had accessed the Complainant’s Netcare records on July 28, 2021 without an authorized purpose, apologized for her actions, and confirmed that she would never repeat them. Ms. Mosher’s summary of their meeting is attached as Exhibit “D” to this Agreed Statement of Facts. (Exhibit “D”, Summary of Ms. Park’s Interview, is entered as a summary of the responses provided by Ms. Park to the Investigator on November 29, 2023.)
13. On December 14, 2023, Ms. Mosher met with and interviewed the Complainant wherein Ms. Mosher indicated to the Complainant Ms. Park has been very forthcoming, honest, and apologetic during the investigative process. Attached as Exhibit “E” to this Agreed Statement of Facts is a summary of Ms. Mosher’s meeting with the Complainant, where she describes Ms. Park’s conduct during the investigation. (Exhibit “E”, Summary of Complainant’s Interview, is entered as a summary of the responses provided by the Complainant to the Investigator on December 14, 2023.)
14. At the conclusion of the investigation, the Complaints Director referred this matter to a hearing.

Acknowledgment of Right to Legal Advice

15. Ms. Park acknowledges that she has received legal advice prior to entering this Agreed Statement of Facts and that she understands that the Hearing Tribunal may use this Agreed Statement of Facts as proof of the allegations set out in the Notice of Hearing and in considering appropriate sanctions.

Accordingly, the Complaints Director has proven Allegation 1 on a balance of probabilities.

Unprofessional Conduct

The Hearing Tribunal finds that the facts found, as expressed above, do constitute unprofessional conduct as defined in s. 1(1)(pp) of the *HPA*, which includes the following:

- (pp) “unprofessional conduct” means one or more of the following, whether or not it is disgraceful or dishonourable:
 - (i) displaying a lack of knowledge of or lack of skill or judgment in the provision of professional services;
 - (ii) contravention of this Act, a code of ethics or standards of practice;
 - (iii) contravention of another enactment that applies to the profession;

...

- (xii) conduct that harms the integrity of the regulated profession;

In her signed Admission of Unprofessional Conduct, Ms. Park acknowledged and admitted that:

1. Pursuant to section 70 of the *Health Professions Act*, Ms. Sin Young Jenny Park (“Ms. Park”) wishes to provide a written admission of unprofessional conduct under the *Health Professions Act* for consideration by the Hearing Tribunal.
2. Ms. Park acknowledges and admits that, on or about July 28, 2021, while she was a registered Alberta pharmacist at Alberta Health Services, she accessed one or more of the following functions of [REDACTED] Netcare record when she did not have an authorized purpose for accessing that information:
 - VIEW - Patient Demographics;
 - VIEW - P_Event History;
 - VIEW - Chemistry;
 - VIEW - Lab Transcribe;
 - VIEW - Viewer Frames;
 - VIEW - C_Events;
 - VIEW - Microbiology;
 - VIEW - Hematology;
 - VIEW – ImmARL Immunization;
 - VIEW - PIN;
 - VIEW - PIN_Med_Profile;
 - VIEW - E_Records.
3. Ms. Park agrees and acknowledges that her conduct in these matters:
 - a. Breached her 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.
4. Ms. Park further agrees and acknowledges that her conduct, as set out above, constitutes unprofessional conduct and breaches of the following statutes and standards governing the profession of pharmacy:
 - Standards 1 and sub-standards 1.1 and 1.2 of the Standards of Practice for Pharmacists and Pharmacy Technicians,
 - Principles 4(4 and 5) and 10(1) of the Alberta College of Pharmacy’s Code of Ethics,

- Sections 25 and 107(2)(a) and (b) of the *Health Information Act*, and Sections 1(1)(pp)(ii), 1(1)(pp)(iii) and 1(1)(pp)(xii) of the *Health Professions Act*.
5. Ms. Park acknowledges that she has received legal advice prior to entering into this Admission of Unprofessional Conduct. She also understands that if the Hearing Tribunal accepts this Admission of Unprofessional Conduct, it may issue one or more orders set out in section 82(1) of the *Health Professions Act*.

The Admission is accepted, in whole, by the Hearing Tribunal.

The Hearing Tribunal agrees with both parties that that the conduct constitutes breaches of the following statutes and standards governing the profession of pharmacy, which were expressly acknowledged as breached by Ms. Park in her signed Admission of Unprofessional Conduct:

- Standard 1 and Sub-standards 1.1 and 1.2 of the Standards of Practice for Pharmacists and Pharmacy Technicians;
- Principles 4(4 and 5) and 10(1) of the Alberta College of Pharmacy's Code of Ethics;
- Sections 25 and 107(2)(a) and (b) of the *Health Information Act*; and
- Sections 1(1)(pp)(ii), 1(1)(pp)(iii) and 1(1)(pp)(xii) of the *Health Professions Act*.

The Hearing Tribunal was satisfied that Ms. Park's conduct in accessing [REDACTED] health information contravened the Standards of Practice and the College's Code of Ethics. As set out in Sub-section 1.1 and 1.2 of the Standards of Practice for Pharmacists and Pharmacy Technicians and Sub-section 10(1) of the Code of Ethics, pharmacists must uphold the letter and spirit of the law governing the profession, including the law concerning access to individuals' health information. The expectation that pharmacists only access or use health information for authorized purposes is also made clear in Subsections 4(4) and 4(5) of the Code of Ethics, which sets out limits on the information pharmacists may seek and how pharmacists may use information obtained while practicing.

In addition, Ms. Park's conduct was a violation of sections 25 and 107(2)(a) and (b) of the HIA. Section 25 of the *Health Information Act* prohibits a custodian of health information, such as Ms. Park, from using health information except in accordance with the Act. None of the purposes set out in the *Health Information Act* applied when Ms. Park accessed [REDACTED] health information.

Finally, Ms. Park's conduct undermined the profession's integrity, decreased the public's trust, and demonstrated a lack of judgment because regulated members are granted the privilege of accessing Netcare, which contains a significant amount of personal health information for specific and authorized purposes related to medical services. It is a

fundamental expectation that Pharmacists will only access the information when authorized to do so and only use it pursuant to patient care.

As such, the Hearing Tribunal finds that Ms. Park is guilty of unprofessional conduct as her conduct was a contravention of the codes and standards applicable to her profession, contravened another enactment that applies to the profession (the HIA), and undermined the integrity of the profession.

VII. SUBMISSIONS ON SANCTIONS

Submissions on Behalf of the Complaints Director as to Sanctions

Moving to submissions on sanction, Ms. Tran submitted a document entitled “2024-07-16 Combined Exhibit Book - Sanctions.pdf” to be entered as Exhibit 2. The Hearing Tribunal admitted that document as Exhibit 2, and it was reviewed by the Hearing Tribunal after submission.

Ms. Tran then went through the joint submission on sanction, which included the following proposals:

1. Ms. Park shall receive a reprimand, which the Hearing Tribunal’s written decision shall serve as.
2. Ms. Park shall, within 12 months from the date the Hearing Tribunal issues its written decision, provide evidence to satisfy the Complaints Director that she has received an unconditional pass on the Center for Personalized Education for Professionals (CPEP) Probe Course. If Ms. Park fails to provide evidence to satisfy the Complaints Director that she has received an unconditional pass on the CPEP Probe Course within 12 months of the date the Hearing Tribunal issues its written decision, her practice permit shall be suspended until such time as the Complaints Director is satisfied that an unconditional pass has been received.
3. Ms. Park’s practice permit shall be suspended for 3 months, with:
 - a. One month to be served on dates acceptable to the Complaints Director and completed within six months from the date the Hearing Tribunal issues its written decision; and
 - b. Two 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 two 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 Ms. Park related to privacy concerns within two 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 Ms. Park’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 two years from the date the Hearing Tribunal issues its written decision, the remaining 2-month suspension shall expire.

4. Ms. Park 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 she works for a period of two years, commencing on the date she receives a copy of the Hearing Tribunal's written decision.
5. Submissions by the parties on the issue of costs for the investigation and hearing to be heard by the Hearing Tribunal at the Hearing.

The parties did not provide a joint submission with respect to costs, and each made submissions in relation to costs at the hearing.

Ms. Tran went over the sentencing principles applicable to this case. She pointed to a text on the Regulation of Professions in Canada (excerpt included in Exhibit 2, Tab 2) on the four purposes of sanctions:

- i. Protection of public;
- ii. Maintaining the integrity of the profession;
- iii. Fairness to the member; and
- iv. Deterrence.

Ms. Tran suggested the Hearing Tribunal to consider each of the four factors in coming to this decision.

In addition, she provided the *Jaswal* factors, which comes from the case of *Jaswal v. Medical Board of Newfoundland* (1996) 42 Admin L.R. (2d) 233 (Nfld. T.D.) ("*Jaswal*") which can assist a Hearing Tribunal in assessing a sanction in each particular case.

Ms. Tran made the following submissions on each of the *Jaswal* factors:

1. **The nature and gravity of the proven allegations:** In this case, the Hearing Tribunal has found that the proven allegations constituted unprofessional conduct. Accessing a Netcare record is serious unprofessional conduct. Pharmacists are entrusted with health information and are expected only to access it with authorized purposes. This demonstrated a disregard of the trust of the public placed in her as a professional. However, there was no additional use of the information to any third party in this case, it was only used by Ms. Park.
2. **Age and experience of the offending member:** Ms. Park has been registered since January 30, 2020, so she was a relatively new pharmacist when the conduct occurred. However, regardless of her experience, she should have known this would be unacceptable.

3. **Previous character of the member (presence or absence of any prior complaints or convictions):** There are no other findings or complaints against Ms. Park.
4. **Age and mental condition of the offended patient:** To the knowledge of the Complaints Director, the complainant was not a minor or otherwise a vulnerable individual.
5. **The number of times the offence was proven to have occurred:** The evidence is that [REDACTED] Netcare record was only accessed once, for a total time of 4 minutes, but there were a number of screens that were accessed during this period.
6. **Role of the factor in acknowledging what had occurred:** Ms. Park has admitted to the allegations, which demonstrates a recognition that she was aware that it was unprofessional and allowed this process to occur in a cooperative manner. Ms. Park provided a sincere apology to the complainant.
7. **Whether member has suffered financial or other serious penalties:** Ms. Tran allowed Mr. McHale to make submissions on this, and his submissions are captured below.
8. **Impact of incident on offended patient:** Following the incident, [REDACTED] developed anxiety, which was provoked by other people accessing her medical records.
9. **The presence or absence of any mitigating circumstances:** Ms. Park has acknowledged and formally admitted her conduct. This demonstrates an understanding of the issues, and why the conduct was not acceptable.
10. **The need to promote specific and general deterrence and, thereby, to protect the public and ensure the safe and proper practice of medicine:** In short, the sanctions should ensure that Ms. Park does not repeat this conduct and should ensure that other members of the profession do not engage in the same conduct. The deterrent effect of these sanctions will remind members of the importance of upholding these requirements and will also ensure Ms. Park does not repeat this conduct.
11. **Need to maintain the public confidence and integrity of the profession:** The College is a self-regulating body. There must be a clear message provided to the legislature and to the public that when someone does not abide by their requirements, significant consequences will follow.
12. **Degree to which the conduct falls outside the range of permitted conduct:** As noted above, this conduct was serious and Ms. Park should have known this conduct was unacceptable, regardless of her experience.
13. **Range of sentences in other similar cases:** Exhibit 2 included within it, five (5) decisions of College Hearing Tribunals with similar complaints where the sanctions are comparable to the ones being proposed here, allowing for some differences in the facts:

- a. *Re: Hannah Yoo* (Hearing Tribunal, May 30, 2024) – In this case, Ms. Yoo accessed one patient’s Netcare records on 8 different days. There was a Joint Submission on Sanctions, agreed to by both parties. Ms. Yoo was ordered to have nearly identical submissions as what was proposed to apply to Ms. Park, with costs being set by the Tribunal at 50%, to a maximum of \$8,000.00, over a period of 24 months.
- b. *Re: Ravi Chawla* (Hearing Tribunal, March 22, 2022) – Mr. Chawla was found to have accessed one patient’s Netcare records on 4 different days for a former patient. Again, Mr. Chawla entered into a Joint Submission on Sanctions which was proposed to the Hearing Tribunal in that case. He received the same set of sanctions being proposed in this case, except with full costs of the hearing being imposed, to a maximum of \$8,000.00, payable over 24 months.
- c. *Re: Soosai Stanislaus* (Hearing Tribunal, October 25, 2021) – Mr. Stanislaus used his authority as a custodian of health information to access the Netcare information for one person, on one date, without consent. He then used that personal health information in a telephone call with the individual, with whom he had been in a car accident, even though the individual was not his patient or a patient of his pharmacy. In this case, there was a Joint Submission on Sanctions provided, and the Hearing Tribunal followed it, ordering the same sanctions as being proposed here, but with full costs of the hearing being imposed, to a maximum of \$8,000.00, payable over 24 months.
- d. *Re: Shemina Juma* (Hearing Tribunal, September 25, 2020) – Ms. Juma was found to have accessed multiple patient records without authorization (9 patients, plus her own records) over multiple days. She provided one patient’s records to that patient. Again, there were Joint Submissions on Sanctions. Ms. Juma was given similar sanctions to Ms. Park, with some additional sanctions due to the severity of this conduct. She was ordered to pay full costs, to a maximum of \$10,000.00, within 24 months.
- e. *Re: Kyle Kostyk* (Hearing Tribunal, December 21, 2017) – In this case, Mr. Kostyk used a patient’s health care information to obtain her telephone number, and then sent a text message to that individual’s landline in an attempt to contact her in order to arrange a personal encounter. The victim in this case was a minor, and there were boundary violations present, but there was no Netcare access that occurred in this case. There were Joint Submissions on Sanctions, which were distinct from what was being proposed for Ms. Park. The costs imposed were the full costs of the investigation and hearing to a maximum of \$10,000.00, payable within 24 months.

Ms. Tran noted that in this case, the conduct does not rise to the levels that were existent in both *Juma* and *Kostyk*. Additionally, only the *Yoo* decision was issued after the issuance of the current leading case on costs in these types of proceedings, being *Jinnah v. Alberta Dental Association and College, 2022 ABCA 336* (“*Jinnah*”).

Ms. Tran then advised that when it comes to joint submissions on sanction, the Supreme Court of Canada's decision in *R. v. Anthony Cook*, 2016 SCC 43 ("*Anthony-Cook*") is the leading case. In that decision, the Supreme Court confirmed that the correct test "is whether the proposed sentence would bring the administration of justice into disrepute or would otherwise be contrary to the public interest." If neither of those tests are met, the Hearing Tribunal must exercise a very high level of deference to the joint submission of the parties.

If the Hearing Tribunal wishes to alter the joint submission on sanction in any way, the *Timothy Edward Bradley v. Ontario College of Teachers*, 2021 ONSC 2303 case suggests that the Hearing Tribunal would be required to come back to the parties with the proposed alteration, to allow both parties to make submissions on it, prior to making such an order.

In terms of costs, the Complaints Directors was seeking the same costs ordered in the *Yoo* decision from May 2024: that Ms. Park be responsible for fifty (50%) percent of the costs of the investigation and hearing, to a maximum of \$8,000.00, payable over 24 months.

Although this Hearing Tribunal is not bound by the precedent of these cases, there is a principle that similar sanctions should be expected by professionals for similar conduct. The decision relating to Ms. Yoo is directly applicable to this case, being heard recently, after *Jinnah* was rendered, and with very similar conduct being considered. The costs being sought here are comparable, or less than what has previously been sought in similar cases from the past.

Ms. Tran then made brief submissions about *Jinnah*, contained at Tab 10 of Exhibit 2. Ms. Tran noted that *Jinnah* stated that costs are not automatic in every case, and if applied, should not be applied in a formulaic fashion. In her view, this conduct falls into an exemption in *Jinnah* where the Court stated that a significant portion of costs could be awarded: when there is "serious unprofessional conduct". In Ms. Tran's view, the conduct that was found in this case is serious enough to order some measure of costs. It is conduct that Ms. Park must have known was completely unacceptable.

In the Hearing Tribunal's decision in *Yoo*, they were aware of *Jinnah*, and did order the costs quantum being sought by the Complaints Director in this case, although in that case there was a Joint Submission on Sanction.

Finally, Ms. Tran made submissions regarding the case of *Charkhandeh v College of Dental Surgeons of Alberta*, 2024 ABCA 239 ("*Charkhandeh*") (Exhibit 2, Tab 11). She argued that this case of the Alberta Court of Appeal had found that *Jinnah* had not created any settled expectation and has not been applied consistently, and the Court allowed the application for reconsideration.

To conclude, in the submission of the Complaints Director, the proposed sanction meets the four purposes of sentencing, and the portion that is agreed-upon also meets the public interest test. The sanctions are serious enough to create deterrence, to protect the public, and to maintain the integrity of the profession, going forward. Regarding costs, the

Complaints Director's position is that the costs request is respectful of *Jinnah* and *Yoo* and represents a fair balancing of the principles at play when costs are awarded.

Submissions on Behalf of Ms. Park as to Sanction

Mr. McHale made submissions in respect of the proposed sanctions.

In regard to the *Jaswal* factors, he noted the following mitigating factors on behalf of Ms. Park:

- a. Although accessing Netcare for ■■■ was a breach of professional conduct, he argued that it was not "serious" in the way that *Jinnah* contemplated seriousness. In *Jinnah*, one example of serious misconduct was the sexual assault of a patient, which is much more serious than the access of personal information one time.
- b. The conduct in this case happened one time, for a four-minute period only, relating to only one patient, ■■■
- c. Ms. Park has expressed remorse. She has been apologetic and cooperative with the investigation and hearing process. She offered her sincere apology to the complainant for any harm that was caused to her. Mr. McHale read her apology out to the Hearing Tribunal.
- d. Finally, Ms. Park has stated that she will never engage in this conduct again. Specific deterrence has been addressed in this matter.

Regarding costs, Mr. McHale spoke to the *Jinnah* decision, which he submitted is still the law in Alberta when it comes to costs in professional discipline matters. He argued that the *Charkhandeh* decision does not overturn *Jinnah*, nor does it go to the merits of *Jinnah*, it simply allows the College of Dental Surgeons of Alberta to ask the Alberta Court of Appeal to reconsider their previous decision. *Jinnah* continues to be the binding authority that should apply regarding costs.

Going through *Jinnah*, it does provide principles as to how costs should be awarded, and how much should be awarded. The Court confirmed that "Costs are not supposed to be a sanction" (para. 124). There are other punitive measures which are already in effect in the proposed sanctions, including a course that will cost about \$2,500.00, which must be paid for by Ms. Park.

The Court of Appeal wrote in *Jinnah* that professions should bear most if not all, costs associated with the privilege and responsibility of self-regulation unless:

1. A member has committed serious unprofessional conduct,
2. Is a serial offender,
3. Has failed to cooperate with investigators, or
4. Has engaged in hearing misconduct.

In the opinion of Mr. McHale, the only exception that may apply in this case would be “serious unprofessional conduct”, as the other three clearly do not apply in this case.

When it comes to “serious unprofessional conduct”, the Court in *Jinnah* discusses this concept. It uses a few examples, including sexual assault on a patient, fraud perpetrated on an insurer, performance of a dental procedure while suspended, or the performance of a dental procedure in a manner that is a marked departure from the ordinary standard of care. In Mr. McHale’s submission, none of these are analogous to Ms. Park’s conduct in this matter.

The presumption is that no costs will be awarded, and that costs are an inevitable part of self-regulation (para. 135). Quoting another decision (*College of Physicians & Surgeons Alberta v. Ali*, 2017 ABCA 442), the Court in *Jinnah* included this paragraph, which Mr. McHale highlighted in his submissions:

Professions in Alberta are extended the privilege of self-regulation. With that comes the responsibility to supervise and, when necessary, discipline members. The disciplinary process must necessarily involve costs, and any self-regulating professional organization must accept those costs as an inevitable consequence of self-regulation. It is acceptable for the profession to attempt to recover some of those costs back from disciplined members, but the burden of the costs of regulation is, to some extent, inevitable.

Mr. McHale then went through some of the other rationales for limited costs awards set out in the *Jinnah* decision. There should be accountability in the way that these matters are prosecuted by the College, and presumptively costs should not be imposed upon the member unless it falls into one of the enumerated exceptions.

In his submission, either no costs or minimal costs should be awarded against Ms. Park. She made a sincere apology (Exhibit 1, page 30), which Mr. McHale read into the record. Mr. McHale also specifically stated that during a call between Ms. Mosher and the complainant, Ms. Mosher stated that “Ms. Park had been very forthcoming, honest, and apologetic both in her written response and during our meeting” (Exhibit 1, page 33).

Mr. McHale went on to discuss the five cases that were put forth as similar cases by the Complaints Director. He noted, as a preliminary point, that all five cases included a Joint Submission on Sanction, so the costs in each case had been agreed upon by counsel for the investigated member. That was not the case here and distinguished all five cases from the case of Ms. Park. Regarding costs, this Hearing Tribunal does not owe the same deference that the other Hearing Tribunals would have felt, given the joint submissions in those cases.

Specifically turning to the cases, Mr. McHale made submissions on how each of them were distinguishable from the case against Ms. Park. Only *Yoo* was made following *Jinnah*, and therefore it was the only decision provided that grappled with the new costs parameters found in *Jinnah*. All the other pre-*Jinnah* cases should be approached with caution by the Hearing Tribunal.

In his submission, the *Juma* and *Kostyk* decisions had no relevance at all, as the conduct in those cases was significantly more severe than this conduct.

Mr. McHale noted, earlier in his submissions, that these similar cases are not binding upon the Hearing Tribunal. They can be referenced, and similar cases should attract similar penalties, but they are not binding on this Hearing Tribunal.

He concluded by noting that Ms. Park has practiced for four years as a licensed pharmacist. That concluded Mr. McHale's submissions.

Reply Submissions of Ms. Tran

Ms. Tran noted that Mr. McHale mentioned that costs are not supposed to be punitive, and she agrees with his submission on that. These costs are not intended to be punitive.

Regarding whether the conduct was serious, *Jinnah* did mention some categories of conduct in that decision. However, she argued that with respect to those types of conduct, *Jinnah* stated that in those cases, the professional would pay "a substantial portion or all of the costs". That is not what is being sought in this case – it is fairly low at fifty percent (50%) and capped at \$8,000.00. Again, she stated that this is something a pharmacist should know not to do.

Regarding the *Charkhandeh* case, she noted that the Alberta Court of Appeal seemed to imply, by citing the *R v Arcand*, 2010 ABCA 363 case, that the case was perhaps not properly created in the correct manner.

Reply Submissions of Mr. McHale

Mr. McHale stated that there is a punitive nature of a high costs award. Even though it is a partial reimbursement, it would be significant for Ms. Park.

He then replied to Ms. Tran's submissions on the *Charkhandeh* case – that decision is simply a request for permission to reconsider the *Jinnah* decision. He would strongly urge the Hearing Tribunal not to consider *Charkhandeh* at all in this matter, until the Court of Appeal has in fact made any changes to *Jinnah*, which it has not done yet.

VIII. ORDERS

Order of the Hearing Tribunal

After consideration of the partial Joint Submission on Sanction and the submissions of the parties as to costs, the Hearing Tribunal orders the following:

1. Ms. Park shall receive a reprimand, which the Hearing Tribunal's written decision shall serve as.

2. Ms. Park shall, within 12 months from the date the Hearing Tribunal issues its written decision, provide evidence to satisfy the Complaints Director that she has received an unconditional pass on the Center for Personalized Education for Professionals (CPEP) Probe Course. If Ms. Park fails to provide evidence to satisfy the Complaints Director that she has received an unconditional pass on the CPEP Probe Course within 12 months of the date the Hearing Tribunal issues its written decision, her practice permit shall be suspended until such time as the Complaints Director is satisfied that an unconditional pass has been received.
3. Ms. Park's practice permit shall be suspended for 3 months, with:
 - a. One month to be served on dates acceptable to the Complaints Director and completed within six months from the date the Hearing Tribunal issues its written decision; and
 - b. Two 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 two 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 Ms. Park related to privacy concerns within two 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 Ms. Park'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 two years from the date the Hearing Tribunal issues its written decision, the remaining 2-month suspension shall expire.

4. Ms. Park 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 she works for a period of two years, commencing on the date she receives a copy of the Hearing Tribunal's written decision.
5. Ms. Park shall be responsible for payment of twenty-five (25%) percent of the costs of the investigation and hearing to a maximum of \$8,000. Payment shall occur in accordance with a payment schedule satisfactory to the Hearings Director. The costs shall be paid within 24 months of the date Ms. Park, or her counsel on her behalf, receives a copy of the Hearing Tribunal's written decision.

Reasoning of the Hearing Tribunal

It is the opinion of the Hearing Tribunal that this sanction is fair and appropriate in the circumstances.

It protects the public by ensuring that this conduct does not occur again on the part of Ms. Park. She has acknowledged her conduct in this case, been cooperative, and has apologized to the complainant, and the Hearing Tribunal is satisfied that it has been brought home to her the severity and breach of trust inherent in her actions. It also protects the public by

ensuring that all members of this regulated profession are aware that the College and the Hearing Tribunal take this conduct seriously and that actions have consequences.

In addition, the appropriateness and completeness of these sanctions will maintain the integrity of the pharmacy profession.

It is also a sanction which is fair to Ms. Park. It was, in large part, crafted with her agreement, and in considering the costs to be awarded, fairness to her was one of the factors considered by the Hearing Tribunal.

Finally, it establishes both general and specific deterrence. Current regulated members of the pharmacy profession will have access to these sanctions, allowing for reflection about the ramifications of acting unprofessionally.

In addition, the Hearing Tribunal has considered the factors in a *Jaswal* decision and the parties' submissions on those factors and has concluded that this is a fair and appropriate sanction in this case.

Specific Reasoning on Costs

The Hearing Tribunal wishes to make it clear that it considered the direction in *Jinnah* carefully and made efforts to ensure that the costs award in this case aligns with the principles set out in that decision.

The Hearing Tribunal was made aware of the decision of *Charkhandeh*, where the Court of Appeal has recently granted permission to reconsider the *Jinnah* decision but agrees with the submissions of Mr. McHale that at this time, this is simply an allowance for a reconsideration, not a change to the existing law.

In this case, the Hearing Tribunal acknowledged the following:

1. That the purpose of costs under the HPA is full or partial indemnification of the College in appropriate cases (*Jinnah*, para. 127). As such, the Hearing Tribunal gave thought as to whether this is an "appropriate case" to award costs.
2. Costs are not to be awarded in every case (*Jinnah*, para. 128). The Hearing Tribunal considered whether this was an appropriate case to award costs and appreciated the parties' submissions specific to costs on this matter.
3. A Hearing Tribunal must justify a decision to impose costs (*Jinnah*, para. 128).
4. That all being said, the Court in *Jinnah* makes it clear that compelling reasons need to be provided when what is being contemplated is "a significant portion of the costs of the investigation and hearing of a complaint" (para. 138, emphasis added). The Hearing Tribunal did ask the parties to provide guidance on whether the amount being sought by the Complaints Director, fifty percent (50%) of costs up to

a maximum of \$8,000.00, was in fact a “significant portion of the costs of the investigation and hearing of a complaint”.

5. Counsel for the Complaints Director provided the Hearing Tribunal with information that the costs, as of the end of June 2024, were just over \$9,800.00, however, that would not include the work done by the Complaints Director’s legal counsel in July to prepare these matters and the joint submissions, and today’s hearing.
6. As such, the Hearing Tribunal retains its discretion to consider and award costs when what is being sought is not a significant portion, as in this case.
7. In addition, the Court in *Jinnah* cited a previous decision of the Court of Appeal, the *K.C. v. College of Physical Therapists of Alberta*, 1999 ABCA 253 (cited at para. 129), which states that Hearing Tribunals can consider “the seriousness of the charges, the conduct of the parties and the reasonableness of the amounts”.


In this case, the Hearing Tribunal considered the fact that these charges are serious but are not the most grave actions that can be taken by a pharmacist. It also considered Ms. Park’s acknowledgment of the conduct and cooperation with the investigation and hearing.

The Hearing Tribunal desired to be alive to the principles found in *Jinnah* and to the concept of parity in recognizing what previous Hearing Tribunals had done in similar cases, such as *Yoo* and *Chawla*. The Hearing Tribunal particularly noted the comments in *Jinnah* where the Court identified that the profession as a whole, not just the disciplined member, benefits from the privilege of self-regulation and that costs are an inevitable part of self-regulation (paras. 134 and 135). Similarly, the Hearing Tribunal agrees that this decision may reinforce in the minds of regulated professionals the very existence of boundaries that a member may not cross (para. 137).

All of these factors have persuaded the Hearing Tribunal to lower the percentage of costs being awarded against Ms. Park to twenty-five (25%) percent from the fifty (50%) being sought by the Complaints Director, in recognition of the fact that only in certain cases should a “significant portion of the costs of an investigation into and hearing of a complaint” be awarded against a member. The Hearing Tribunal will order the maximum amount of costs sought by the Complaints Director, given that Ms. Park should have a maximum amount payable and some certainty as to the limit of costs, and given that this hearing had some additional procedural matters that extended it, and the lack of any financial hardship demonstrated by Ms. Park.

Accordingly, the Hearing Tribunal makes the orders set out above, pursuant to section 82(1) of the *HPA*.

Signed on behalf of the Hearing Tribunal by the Chair on the 12th day of August 2024.

Per: 
Brad Couldwell (Aug 12, 2024 19:16 MDT)

Brad Couldwell, Chair