

ALBERTA COLLEGE OF PHARMACY

IN THE MATTER OF
THE HEALTH PROFESSIONS ACT

AND IN THE MATTER OF A HEARING REGARDING THE CONDUCT
OF

DENNIS TANG

Registration number 10288

DECISION OF THE HEARING TRIBUNAL

April 22, 2024

I. INTRODUCTION

The Hearing Tribunal held a hearing into the conduct of Dennis Tang, Pharmacy Technician, on February 21, 2024. The Hearing Tribunal members were Rhonda Bodnarchuk, Pharmacy Technician and Chair; Dana Lyons, Pharmacy Technician; Vince Paniak, Public Member; and Andrew Otway, Public Member.

The hearing took place via video conference. The hearing was held under the terms of Part 4 of the *Health Professions Act*.

In attendance at the hearing were Monica Tran, legal counsel for the Complaints Director, and James Krempien, Complaints Director for the Alberta College of Pharmacy (the "College"). Dennis Tang attended the hearing with his legal counsel, Daniel Murphy and Opeyemi Afeni, student at law.

Jason Kully of Field Law LLP attended as independent legal counsel for the Hearing Tribunal.

Margaret Morley, Hearings Director for the College, attended as the virtual hearing administrator but took no part in 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 Notice of Hearing listed the following allegations that were referred to hearing concerning Mr. Tang:

IT IS ALLEGED THAT, while you were a registered Alberta pharmacy technician employed at the Royal Alexandra Hospital (the "Hospital"), you:

1. Copied the ID cards of three co-workers without their knowledge in 2015 or 2016;
2. Improperly used your co-workers' ID cards to access parking privileges between 2017 and 2023, including but not limited to on June 1, 2023 and June 2, 2023;
3. Engaged in theft of parking from AHS Parking Services in an estimated amount of \$11,223.00 between 2017 and 2023; and
4. Breached the confidentiality of the AHS investigation on June 2, 2023 by twice contacting or attempting to contact a co-respondent, [REDACTED] [REDACTED] after being advised of the confidentiality obligations of the investigative process.

IT IS ALLEGED THAT your conduct in these matters:

- a. Undermined the integrity of the profession;

- b. Decreased the public's trust in the profession; and
- c. Failed to fulfill the ethical judgment expected and required of an Alberta pharmacy technician.

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

- Standard 1 (sub-standards 1.1, 1.2) of the Standards of Practice for Pharmacists and Pharmacy Technicians.
- Principles 10(1), 10(2), and 10(10) of the ACP Code of Ethics.

and that your conduct set out above and the breach of some or all of these provisions constitutes unprofessional conduct pursuant to the provisions of sections 1(1)(pp)(ii) and 1(1)(pp)(xii) of the *Health Professions Act*.

III. EVIDENCE

Mr. Tang provided a written admission to the allegations and the parties worked together to provide an agreed statement of facts prior to the hearing. The hearing proceeded by way of an Agreed Statement of Facts and an Admission of Unprofessional Conduct on the part of Mr. Tang.

A Book of Exhibits, which included the Notice of Hearing, the Admission of Unprofessional Conduct, and the Agreed Statement of Facts, was entered by agreement of the parties as Exhibit 1.

No witnesses were called to testify, and no additional evidence was entered.

The Book of Exhibits also contained the Complaints Director's Record of Decision, dated February 21, 2024, referring the complaint to a hearing, as well as investigation records from the investigation into the complaint. The information found in these investigation records in the Book of Exhibits included:

- Email from Ms. [REDACTED] to J. Krempien dated July 21, 2023, providing Notification of Unprofessional Conduct with attached documents regarding a workplace investigation that was conducted by the employer, the hospital, and the outcome of that investigation.
- Memo from J. Krempien to file dated July 21, 2023 regarding a conversation with Mr. Tang notifying him of the decision to conduct an investigation.
- Letter from J. Krempien to Mr. Tang dated July 25, 2023 sent via registered mail, regarding a request for response and enclosing:
 - Initial complaint document, and
 - Termination of employment document from employer.

- Email from Mr. Murphy to file dated August 10, 2023 identifying legal counsel representation of Mr. Tang and requesting the particulars of the complaint in order to provide a response.
- Email response from J. Krempien to Mr. Murphy outlining the particulars of the allegations and the alleged unprofessional conduct by Mr. Tang.
- Investigation report conducted by the employer May 22 to June 2, 2023 outlining the investigation steps that were taken, people who were interviewed and the outcome of the investigation.
- Email from Mr. Murphy to J. Krempien dated September 6, 2023 responding to the allegations on behalf of Mr. Tang.
- Memo from J. Mosher to file dated October 10, 2023 regarding a conversation with Mr. Tang, Mr. Murphy, and Mr. Afeni regarding a virtual meeting to discuss the allegations.
- Alberta College of Pharmacy Standards of Practice
 - Standard 1 (sub-standards 1.1, 1.2) of the Standards of Practice for Pharmacists and Pharmacy Technicians.
- Alberta College of Pharmacy Code of Ethics
 - Principles 10(1), 10(2), and 10(10) of the ACP Code of Ethics.

Health Professions Act

- section 1(1)(ii), section 1(1)(xii), section 40(1)(c)

The evidence in the Book of Exhibits, including that found in the Agreed Statement of Facts, can be summarized as follows:

- The Complaints Director received a notification of unprofessional conduct from Ms. [REDACTED] on July 21, 2023. The complaint reported that Alberta Health Services (AHS) completed a workplace investigation with regards to Mr. Tang which resulted in termination of his employment. The complaint indicated that Mr. Tang was found to be responsible for copying the ID cards of three co-workers without their knowledge to access free parking using their privileges and that Mr. Tang engaged in theft of parking from AHS Parking services for an estimated amount of \$11,223.00 between 2016 and 2023. In addition, Mr. Tang breached the confidentiality of the investigation twice by contacting people associated with the investigation after being advised of the confidentiality obligations associated with the investigative process.
- At the time of receiving the complaint and at all relevant times, Mr. Tang was registered with the Alberta College of Pharmacy as a Registered Pharmacy Technician.
- On July 21, 2023 the Complaints Director had a phone conversation with Mr. Tang and provided him with verbal notification of the complaint.

- On July 25, 2023, the Complaints Director sent a letter to Mr. Tang summarizing the complainant's concerns and requested a written response to the complaint.
- On August 10, 2023, Mr. Murphy, counsel for Mr. Tang, wrote to the Complaints Director and asked the particulars of the complaint. On August 10, 2023, the Complaints Director wrote to Mr. Murphy and asked for Mr. Tang's response to the allegations.
- On August 18, 2023, the Complaints Director received the AHS investigation report of Mr. Tang from Ms. [REDACTED]. The report found that Mr. Tang had in 2016 cloned the ID cards of three co-workers he knew had parking privileges at the Royal Alexandra Hospital to facilitate the theft of parking from AHS Parking services, using them until June 2023, to facilitate a 7.5-year theft by conversion of approximately \$11,223.00.
- On September 6, 2023, Mr. Murphy sent the Complaints Director Mr. Tang's written response in which Mr. Tang admitted that he:
 - copied the ID cards of three co-workers without their knowledge to access free parking in 2016.
 - improperly used his co-workers ID badge to access parkade privileges.
 - engaged in theft of parking from AHS parking services for an estimated amount of \$11,223.00 over 7.5 years.
 - breached the confidentiality of the AHS investigation by twice contacting people associated with the investigation after being advised of the confidentiality obligations of the investigative process.
- On October 10, 2023, Ms. Mosher, appointed by the Complaints Director as an investigator into the complaint, met with Mr. Tang and Mr. Murphy via video conference. Mr. Tang did not dispute the allegations and expressed continued remorse for his actions. He was grateful to be allowed to still practice as a Pharmacy Technician.

In the Admission of Unprofessional Conduct, Mr. Tang acknowledged and admitted to the four allegations. He also agreed and acknowledged that his conduct was unprofessional conduct.

V. SUBMISSIONS ON ALLEGATIONS

Ms. Tran reviewed the Notice of Hearing and the allegations against Mr. Tang. She stated that the allegations before the Tribunal stemmed from an investigation into information received by the Complaints Director that Mr. Tang cloned the ID cards of three coworkers to access free parking at AHS without their knowledge, engaged in theft of parking from the Hospital where he was employed and breached the confidentiality of the AHS investigation twice during the investigative process.

Ms. Tran explained that the Complaints Director had the onus to prove the allegations. There was no onus on Mr. Tang to disprove the allegations. The standard of proof was the civil standard of a balance of probabilities and in this case, it was the Complaints Director's submission that the Hearing Tribunal had more than sufficient information to make findings for all four allegations in the Notice of Hearing.

Ms. Tran stated that the facts were not in dispute. Mr. Tang's admission of Unprofessional Conduct and the Agreed Statement of Facts, including the relevant investigation records, demonstrated that there was sufficient evidence to support the allegations in the Notice of Hearing on a balance of probabilities.

Ms. Tran submitted that a pharmacy technician has a positive statutory and regulatory obligation to comply with the Code of Ethics to ensure that the public receives the full protection of the law. This is found in the Alberta College of Pharmacy Standards of Practice, Standard 1.1 and 1.2. She also stated that the Alberta College of Pharmacy Code of Ethics Principle 10(2) requires that the member act with honesty and integrity and specifically with other pharmacists, pharmacy technicians, healthcare professionals and any others encountered in the business dealings related to the operation of a pharmacy.

It was the Complaints Director's submission that Mr. Tang's conduct breached the standards and principles when he copied his fellow health professionals' ID cards without their knowledge and used those ID cards to obtain parking privileges at his place of employment.

Code of Ethics Principle 10(10) states that members must respond honestly, openly, and courteously to complaints and criticism. Ms. Tran submitted that Mr. Tang's conduct breached this principle when he contacted people associated with the AHS investigation after he was advised of his confidentiality obligations during the investigative process.

Ms. Tran noted that Mr. Tang had taken responsibility for his actions and admitted that the Hearing Tribunal should find that his conduct was unprofessional.

Mr. Afeni stated that Mr. Tang admitted that his conduct was unprofessional and took responsibility for this conduct as indicated in the signed Admission of Unprofessional Conduct.

VI. FINDINGS ON ALLEGATIONS

During the hearing on February 21, 2024, the Hearing Tribunal verbally advised the parties that after consideration of the submissions and the evidence presented, the Hearing Tribunal accepted the Agreed Statement of Facts and Mr. Tang's Admission of Unprofessional Conduct and found that the evidence was sufficient to establish that the allegations outlined were proven on a balance of probabilities and amounted to unprofessional conduct.

The evidence in the Book of Exhibits supports the admission of unprofessional conduct made by Mr. Tang both at the hearing and during the investigation of the complaint. It demonstrated that in 2015 or 2016, Mr. Tang used an RFID scanner to "read" the ID cards of three pharmacy employees who he knew had parking. He "wrote" two key fobs and an ID card and began using these to access the Hospital parkade. None of the employees were aware of what had occurred. Mr. Tang acknowledged this went on for approximately 7.5 years, until June 2, 2023, and that it resulted in approximately \$11,223.00 in lost revenue for AHS.

The evidence also indicates that on June 2, 2023, after Mr. Tang had been advised not to talk to anyone about the investigation, Mr. Tang called one of his co-workers who was one of the employees that he had copied the ID card of, on two separate occasions. Mr. Tang discussed the allegations regarding the copying of ID cards and using the parkade without authorization. Mr. Tang acknowledged that he was worried about what would happen to him and apologized

to him about what occurred. All of this occurred after the involvement of AHS Protective Services.

In light of this evidence, and the Agreed Statement of Facts and the Admission of Unprofessional Conduct, the Tribunal concluded all four allegations were proven.

Mr. Tang's conduct demonstrated a disregard in his dealings toward his fellow healthcare professionals and his employer. The improper copying of ID cards and theft from an employer is serious conduct that violates the inherent trust required of an employee and that undermines the integrity of the profession. Regulated members of the College are expected to maintain a high level of trust and are required to conduct themselves appropriately in all aspects of their professional life. Mr. Tang used his employment and position as a pharmacy technician to engage in the theft and improper use of the ID cards, all of which cost his employer a significant amount of money. He also breached confidentiality obligations in an investigation. All of this decreases the public's trust in the profession. Mr. Tang's actions to copy the ID cards of his co-workers and engage in the theft of parking from AHS Parking services was unprofessional conduct under section 1(1)(pp)(xii) of the *Health Professions Act*.

By engaging in the conduct, Mr. Tang also failed to fulfill the ethical judgment and standards expected and required of an Alberta pharmacy technician.

The Tribunal found that Mr. Tang did not act with honesty and integrity when he cloned the ID cards of his co-workers without their knowledge to gain free parking privileges at his place of employment as required under the Code of Ethics, Principle 10(2).

The Tribunal also found that Mr. Tang did not respond to the investigation with honesty and courtesy even though he was fully aware of his confidentiality obligations during the investigative process conducted by his employer as required by the Code of Ethics, Principle 10(10).

Accordingly, Mr. Tang's actions were unprofessional conduct under section 1(1)(pp)(ii) of the *Health Professions Act*.

VI. SUBMISSIONS ON SANCTION

The parties presented a Joint Submission on Sanction which was entered as Exhibit 2. The parties jointly proposed the following sanctions for Mr. Tang:

1. Mr. Tang shall receive a reprimand, which the Hearing Tribunal's written decision shall serve as.
2. Mr. Tang shall provide a copy of the written decision to any pharmacy employer or licensee of a pharmacy in which he is employed for a period of one year after he receives a copy of the written decision.
3. Within 12 months of the decision date, Mr. Tang shall successfully complete the Centre for Personalized Education for Professionals (CPEP) PROBE Course at his own cost and provide evidence of successful completion to the Complaints Director.

4. Mr. Tang shall be responsible for the payment of the cost of the investigation and hearing to a maximum of \$2,000. Payment will occur in accordance with a payment schedule satisfactory to the Hearings Director. The costs shall be paid within 24 months of the date Mr. Tang receives a copy of the Hearing Tribunal's written decision.

Ms. Tran stated the four proposed sanctions would serve to meet the sentencing principles and would protect the public, maintain the integrity of the profession, provide fairness to the member and act as deterrence.

Ms. Tran submitted there are a number of factors that are considered when deciding on proposed sanctions and directed the Tribunal to consider the factors set out in the *Jaswal v. Newfoundland Medical Board* case in determining whether the appropriateness of sanction was served. In the case of Mr. Tang, Ms. Tran submitted those factors were:

- a) The nature and gravity of the proven allegations: The proven allegations constitute unprofessional conduct and are serious. Mr. Tang copied the ID cards of his co-workers without their knowledge, then used those cards to access parking privileges to engage in theft of parking from AHS Parking Services in an estimated amount of \$11,223.00. Mr. Tang also breached the confidentiality of the AHS investigation by twice contacting or attempting to contact a co-respondent despite being advised of the confidentiality obligations of the investigative process. Pharmacy Technicians are expected to act with honesty and integrity in their dealings with other healthcare professionals and their employer. Mr. Tang's conduct demonstrated a disregard in his dealings toward his fellow healthcare professionals and his employer, thereby undermining the integrity of the profession.
- b) The age and experience of the member: Mr. Tang has been consistently registered as a pharmacy technician with the Alberta College of Pharmacy since January 2016. He had become a relatively recently registered pharmacy technician at the beginning of the relevant times. However, in this case the evidence showed that Mr Tang's conduct occurred over a number of years, to the point where he could no longer be considered a new pharmacy technician. His conduct was such that any professional, regardless of experience, should have been aware that it was unacceptable.
- c) Previous character of the member: There were no prior complaints or findings against Mr. Tang.
- d) The number of times the offence was proven to have occurred: Mr. Tang copied three of his coworkers ID cards and used those cards over a period of at least 6 years to obtain their parking privileges. The exact number of times Mr. Tang accessed those privileges is not clear. AHS estimated that based on the length of time that this occurred, Mr. Tang's conduct cost them \$11,223.00 in parking.
- e) The role of the member in acknowledging what occurred: When the matter was brought to Mr Tang's attention during the AHS investigation, Mr. Tang

admitted to the conduct during the investigation. Mr. Tang admitted what had happened when he corresponded with the Complaints Director during the investigation and did not dispute the allegations when he spoke with the investigator Ms. Mosher. He again acknowledged his conduct at the Hearing Tribunal through the Admission of Unprofessional Conduct and Agreed Statement of Facts. Through the Joint Submission on Sanctions, he acknowledged and accepted what the Complaints Director proposed as appropriate sanctions. This admission demonstrated an understanding of why the conduct was not acceptable and was a mitigating factor.

- f) The need to maintain public confidence in the integrity of the profession: Regulated members and the public must understand that a failure to uphold the expectation that a pharmacy technician will act with integrity and in accordance with the legislation that governs their practice will result in significant consequences.

Ms. Tran then addressed the sanctions imposed in similar cases and highlighted that the range of sanctions in other cases was somewhat similar and the sanctions imposed in the other cases should be considered as a ceiling with respect to Mr. Tang's case rather than a comparable sanction. She reviewed a decision regarding Mumtaz Ebied which involved conduct more serious than Mr. Tang's, as well as a decision involving Melissa Kendrick which also involved more serious conduct. Both of these decisions involved theft of medications. There was also the decision regarding Jennifer Lindsey which involved access of health information without an authorized purpose. This was proposed to be a floor of sanctions as it involved less serious conduct.

Ms. Tran submitted that the proposed sanctions for Mr. Tang mirrored those ordered in the Lindsey decision. However, the proposed sanction that Mr. Tang take the CPEP PROBE course was added to reflect the severity of the lack of integrity that Mr. Tang demonstrated in his conduct.

Ms. Tran then reviewed the *Jinnah* decision on costs, which states that it is not appropriate to impose a significant portion of cost of an investigation into, and hearing of, a complaint unless a compelling reason to do so exists. Ms. Tran's position was that Mr. Tang engaged in multiple acts of unprofessional conduct spread over a number of years and this has led to four findings of unprofessional conduct that was serious. On this basis, the conduct included multiples acts of misconduct and was of such a magnitude that Mr. Tang must have known it was unacceptable and therefore a costs award was appropriate. She submitted the costs amount was not punitive and was reasonable in the circumstances.

Ms. Tran closed her submission by reviewing the law on joint submissions, including the *R v. Anthony-Cook* decision. The case states that decision makers should not depart from a joint submission on sanction unless the proposed sentence would bring the administration of justice into disrepute or would otherwise be contrary to the public interest.

Ms. Tran asked the Tribunal to accept the Joint Submission, based on the factors reviewed and having been agreed upon by the Complaints Director and the Investigated Member to be reasonable, appropriate, and fair. She submitted they would ensure specific deterrence with respect to Mr. Tang and send a message of general deterrence to the profession. The sanctions were also serious enough to protect the public and the integrity of the profession going forward.

Mr. Afeni submitted that the Joint Submission proposal satisfied the four basic sentence principles which are the protection of the public interest, the preservation of the reputation, the integrity and trustworthiness of this profession in the public eye, deterrence for members, and then fairness to the member, which was Mr. Tang.

Mr. Afeni ended his submissions by requesting that the Tribunal accept the Joint Submission as being fit and appropriate.

The Hearing Tribunal requested more information regarding the rationale for a letter to the employer for a period of one year. Ms. Tran stated that it is not necessarily a letter, and that the requirement was for Mr. Tang to provide a copy of the Hearing Tribunal's decision to employers for a period of one year. This speaks to one of the principles of sentencing, which is the public interest and to protect the public. This would ensure that Mr. Tang's employer is aware of the previously addressed conduct and can ensure that similar conduct is not repeated for that period.

VII. FINDINGS ON SANCTION

After carefully considering the Joint Submission on Sanction, the facts of the case, and the submissions, the Hearing Tribunal accepted the Joint Submission on Sanction. At the conclusion of the hearing on February 21, 2024, the Hearing Tribunal provided a verbal decision accepting the Joint Submission on Sanction. This written decision confirms the decision of the Hearing Tribunal and provides reasons for accepting the proposed sanctions.

The Hearing Tribunal acknowledged deference should be provided to a Joint Submission on Sanction and acknowledged the high threshold outlined in *R v. Anthony-Cook*. The Hearing Tribunal accepted that it ought not to depart from the Joint Submission on Sanction unless the proposed sanctions would bring the administration of justice into disrepute or would otherwise be contrary to the public interest.

The Hearing Tribunal noted that sanctions must serve the following purposes: protect the public, maintain the integrity of the profession, fairness to Mr. Tang, as well as specific and general deterrence. The Hearing Tribunal reviewed the proposed Joint Submission on Sanction for appropriateness of sanction and effectiveness as a deterrent for Mr. Tang and the profession at large. The Tribunal found that the proposed sanctions would serve all of these purposes.

The reprimand, completion of the PROBE course, and the provision of the decision to any employer will all act as a deterrent for Mr. Tang and protect the public from future conduct by Mr. Tang. They will also demonstrate to other members of the profession the regulatory response and deter similar conduct by others, thereby protecting the public. They also serve the public's interest and uphold the integrity of the profession. Finally, the sanctions proposed were consistent with previous decisions, indicating Mr. Tang was being treated fairly and that the integrity of the profession was being maintained.

The Hearing Tribunal agreed with the mitigating factors as submitted by Ms. Tran, specifically that there have been no prior findings of unprofessional conduct for the investigated member and Mr. Tang did not dispute the allegations during the investigation. Mr. Tang admitted to his unprofessional conduct at the hearing through the Admission of Unprofessional Conduct and Agreed Statement of Facts.

At the same time, the conduct of Mr. Tang was outside the expected conduct of a pharmacy technician and therefore required sanctions to promote deterrence, not only for Mr. Tang, but all pharmacy technicians and to protect the public. The self-regulatory nature of the profession of pharmacy relies on the integrity and professionalism of its members.

When these factors were considered, the Tribunal found the proposed sanctions were appropriate.

The Hearing Tribunal noted the agreement for Mr. Tang to pay for the cost of the investigation and the hearing to a maximum of \$2,000. The Tribunal concluded that given the agreement and the facts, this was an appropriate case to order the payment of costs. Mr. Tang's conduct was serious, and he ought to have known it was unacceptable. The amount of costs agreed to was reasonable and appropriate.

VIII. ORDERS OF THE HEARING TRIBUNAL

In light of the above, the Hearing Tribunal accepts the Joint Submission on Sanction for Mr. Tang and makes the following orders under section 82 of the *Health Professions Act*:

1. Mr. Tang shall receive a reprimand, which the Hearing Tribunal's written decision shall serve as.
2. Mr. Tang shall provide a copy of the written decision to any pharmacy employer or licensee of a pharmacy in which he is employed for a period of one year after he receives a copy of this written decision.
3. Within 12 months of the decision date, Mr. Tang shall successfully complete the Centre for Personalized Education for Professionals (CPEP) PROBE Course at his own cost and provide evidence of successful completion to the Complaints Director.
4. Mr. Tang shall be responsible for payment of the costs of the investigation and hearing to a maximum of \$2,000. Payment will occur in accordance with a payment schedule satisfactory to the Hearings Director. The costs shall be paid within 24 months of the date Mr. Tang receives a copy of the Hearing Tribunal's written decision.

Signed on behalf of the Hearing Tribunal by the Chair on April 22, 2024.

Per: *Rhonda Bodnarchuk*
Rhonda Bodnarchuk (Apr 22, 2024 14:09 MDT)
Rhonda Bodnarchuk, Chair