

NOVA SCOTIA COLLEGE OF PHARMACISTS
HEARING PANEL

IN THE MATTER OF: The *Pharmacy Act*, R.S.N.S. 2001, c.36 and Regulations made
thereunder

-and-

IN THE MATTER OF: Ms. Tamala Fadelle, RPh, Pharmacist of River Hebert Pharmacy,
1671 Main Street, River Hebert Nova Scotia, B0L 1G0

DECISION OF THE HEARING COMMITTEE
REGARDING SANCTIONS

May 3rd, 2012

Decision of the Hearing Committee- Sanctions

Introduction

The Hearing Committee delivered its decision on the merits on February 24th, 2012. Its findings are summarized in Schedule A attached.

The Hearing Committee is authorized under the *Pharmacy Act*, 2001, c.36 (the “Act”) and regulations to impose penalties and award costs (see Sections 53 and 54 of the Act, and sections 20 and 21 of the *Qualification and Professional Accountability Regulations* made pursuant to the Act, attached as Schedule B to this decision).

On April 4, 2012, the Hearing Committee convened for the purpose of receiving submissions from Counsel for the College and the Registrant regarding sanctions.

Overview of the Nova Scotia College of Pharmacists’ (“the College’s”) Submission

Counsel for the College provided written and oral submissions, including proposed sanctions (see Schedule C). In support of its submission, the College asserted that the following factors moved the Registrant’s conduct to a very serious sanction level:

- the Registrant’s prior discipline record, as outlined in the March 2, 2009 Settlement Agreement;
- The seriousness of the 6.5 proven charges, in that they, for example, involved trafficking, false prescriptions, and the creation of a fictitious patient profile;
- The Registrant’s intent to deceive, for instance, creating the fictitious patient profile while undergoing monitoring by the College;
- The College’s concern of the Registrant becoming ungovernable – for instance, the College noted a pattern of behavior and events over time, and submitted that the fictitious patient was created at the same time the 2009 Settlement Agreement was being negotiated and the professionalism and ethics course was being taken.

The College provided a number of cases to support its submission.

- *Ontario (College of Pharmacists) v. Chabursky*, [2011] ONC PDC 27, for considerations when establishing penalty;
- *Jaswal v. Newfoundland Medical Board*, [1996] N.J. No.50, for a non-exhaustive list of factors to consider when assessing penalty;
- For examples of serious administrative decision sanctions:
 - *Alberta College of Pharmacists Re: Michael Tweedy* (Decision date January 11, 2012);
 - *Alberta College of Pharmacists Re: Andrew Kwok Fai Wong* (December 13, 2007);
 - *Ontario College of Pharmacists Re: Roshdy Boshara* (2005 and 2006);
 - *Alberta College of Pharmacists Re: Leanne Rogalsky* (October 7, 2008);
- *Osif v. College of Physician and Surgeons of Nova Scotia*, 2009 NSCA 28, for assessment of costs.

Overview of the Registrant's Submission

Counsel for the Registrant provided written and oral submissions. Counsel advised that the Registrant respects, but disputes the Hearing Committee's findings and noted that his client intended to appeal once the decision on sanctions was finalized. He noted that any lack of remorse on the Registrant's part pending the appeal should not be viewed in a prejudicial manner or as an aggravating factor in the Hearing Committee's deliberations.

Counsel for the Registrant submitted that an appropriate penalty would be a short suspension on par with other jurisdictional findings, and a variety of conditions (not specified) to be met prior to reinstatement.

Counsel asserted that:

- Governability is an issue in any case where there is a repeat discipline event; and
- The College's proposed sanctions are not on par with the majority of precedents. That is to say, they are more severe than the precedents.

Counsel for the Registrant provided a number of cases to support his submission for a less severe sanction.

- For examples of short suspensions in cases involving dishonesty and repeat offences, Counsel for the Registrant cited 14 cases, including *Ontario (College of Pharmacists) v. Wrightman*, 2010 ONC PDC 9 (CanLII);
- For assessing allocation of costs and the importance of the reasonableness of costs so that individuals are not prevented from defending a charge nor effectively barred from returning to practice he cited:
 - *Hills v. Nova Scotia (Provincial Dental Board)*, 2009 NSCA 13
 - *Provincial Dental Board of Nova Scotia v. Dr Clive Creager*, 2005 NSCA 9

Counsel for the Registrant asked the Hearing Committee to consider a 30 day stay in the effective date of any ordered suspension until the appeal status could be determined or a stay applied for. Counsel for the College responded to this request by suggesting to the Hearing Committee that any stay should be dealt with through the appeal process itself.

Hearing Committee's Decision on Sanction

The Hearing Committee found the following considerations for assessing penalty as described in *Ontario (College of Pharmacists) v. Chabursky*, [2011] ONC PDC 27, to be relevant and applied them in its decision:

[26] "In determining the appropriate penalty in this particular case, we remind ourselves that the primary purpose of these proceedings is protection of the public; however, in addition to the public interest, we must address our consideration to both the interests

of the profession as a whole, as well as the particular circumstances of the individual member before us here today.

[27]When we consider the public interest, we are mindful that the public must have confidence that the profession will police itself and do so with the best interests of the community as its primary concern. We must also consider the extent to which the public requires protection from any sort of misconduct in the practice of health professions.

[28]We consider the interests of the profession itself because this committee owes a duty to the profession at large to enforce and maintain the high standards of practice that exist without our profession. In each case the, the Committee must consider to what extent a message to the profession is required to make clear that misconduct will not be tolerated.

[29]And thirdly, we must consider the unique and particular circumstances of... [the pharmacist]... The penalty must be appropriate, fair and reasonable in the circumstances of the member and to the nature of the admitted allegations.”

The Hearing Committee finds that the Registrant’s misconduct is at the most serious end of the scale and the sanction should be commensurate. The 6.5 proven charges are serious examples of misconduct and form part of a pattern of behavior. The Hearing Committee finds that the Registrant’s actions were in part intended to deceive the College during a period in which she was negotiating a settlement agreement for previous infractions and undergoing monitoring by the College. The Registrant’s conduct falls outside the range of acceptable behavior for a member of the profession, and the Hearing Committee finds that in this case, there is a need for both specific and general deterrence, protection of the public, and a need to maintain the public’s confidence in the integrity of the profession.

The Committee concludes that the Registrant’s behavior warrants a significant suspension, a fine, conditions on re-entry to practice, and payment of a portion of costs.

In addition to the above factors, the Hearing Committee considered the range of sanctions in other similar cases to determine an appropriate specific penalty. From those cases provided, the Hearing Committee found the *Boshara*, *Wrightman*, *Tweedy*, and *Rogalsky* cases to be most relevant in their similarity.

- **Suspension**

A suspension of the Registrant’s license to practice pharmacy is warranted to deter future misconduct by the Registrant, protect the public, and to send a clear message to other members of the profession and the public that this type of behavior is unacceptable and will be dealt with seriously. A 2 year suspension from practice is at the higher end of those reviewed in similar cases (6 months in *Boshara*, 18 months in *Wrightman*, 36 months with 18 conditionally stayed in *Tweedy*, 48 months in *Rogalsky*). In consideration of the factors noted above, the Hearing Committee finds a 2 year suspension to be appropriate in the present case. In order to

permit the Registrant and the patients of River Hebert Pharmacy to make arrangements for provision of their ongoing pharmacy care, the effective date of suspension will be 2 weeks from the date of this decision. In addition, the Hearing Committee orders that the Registrant's suspension and its effective date be published in a newspaper with provincial circulation to ensure public notice.

- **Fine**

In 2009, the Registrant was fined \$3,000. This is her second offence. The proven charges are serious. The Hearing Committee does not have any information before it that the Registrant has experienced financial or other penalties to date as a result of the allegations that would affect her ability to respond to a financial penalty. The Committee finds that the \$10,000 requested by the College is appropriate, well below the maximum possible fine of \$100,000 permitted by the legislation, and signals to the Registrant, the profession, and the public that this type of misconduct is not acceptable.

- **Other Conditions for Re-Entry to Practice**

The Hearing Committee finds that a number of conditions for practice re-entry are appropriate to protect the public, deter future repeat offences on the part of the Registrant, and to appropriately guide the Registrant in re-entering practice. This includes having the Registrant work for a period of three years under the guidance of a Pharmacy Manager who is aware of the Registrant's disciplinary decision and sanction, completing education in the areas of ethics, public policy, and addiction, and being restricted from dispensing prescriptions for herself and family members.

The Hearing Committee considered the College's submission that for a period of three years, the Registrant be restricted from dispensing benzodiazepines and narcotics, working alone, and creating patient profiles without first securing photocopies of 2 pieces of identification. The Committee finds that these conditions could make the Registrant unemployable, having the unintended consequence of effectively revoking her license. Additionally, the Committee finds that photocopying identification may be expected to present practicality issues, privacy concerns from patients and an impediment to care (eg, patients with limited carried identification, such as identification for children). The Committee is satisfied that the goals of these re-entry conditions can be met through the other conditions imposed.

In addition to restricting the Registrant from acting as a Pharmacy Manager for a period of three years, to further balance the need for protection of the public while not effectively revoking the Registrant's license, the Committee orders that the Registrant be subject to random audits by the College. The costs of such monitoring are to be paid by the Registrant. The total audit costs paid during the three years will be credited to the balance payable by the Registrant (as outlined below) so as not to be overly punitive.

- **Costs**

The Hearing Committee finds relevant the principle in *Hills v. Nova Scotia (Provincial Dental Board-supra)* regarding ordering costs be paid in proportion to the allocation of expenses

between charges which resulted in convictions and those involving acquittals. In the Registrant's case, 6.5 of 10 charges were found by the Committee to be proven. The enumerated costs are difficult to separate by charge. Costs would be expected to be reasonably evenly distributed among the charges. Applying the principle in this case, the Hearing Committee finds it appropriate to allocate 65% of the full costs to the Registrant.

The Hearing Committee assessed the reasonableness of the costs considering the standard offered in *Provincial Dental Board of Nova Scotia v. Dr. Clive Creager* [2005] NSCA 9. Consideration was given to the total amount of the costs and the impact they would have on the Registrant's ability to defend herself, and the possibility of effectively barring the Registrant from practice if the total costs were too high.

In the Registrant's case, given the length of the hearing and the number of charges and witnesses, it is not surprising that the costs are high. Determining whether these costs will effectively bar a Registrant from disputing charges of misconduct is very difficult. The Hearing Committee does not have information about the Registrant's financial circumstances or ability to pay before it. On balance, and weighing the information, the Committee does not conclude that the allocation of costs would restrict a Registrant from disputing charges of misconduct.

It would not be reasonable to expect the Registrant to pay costs while under suspension – the Hearing Committee finds this would be effectively barring the Registrant from returning to practice. As such, the Registrant's share of costs will not become payable until her license is reinstated.

On the related issue of default, the Committee believes it is reasonable that following reinstatement, the Registrant comply with her required payments to the College in a timely fashion. The College suggested that if there was any one default of payment, the full balance of costs ordered should be accelerated and due, and that suspension would continue until payment in full was made. However, the Committee is concerned that this condition could effectively bar the Registrant from returning to practice. Instead, the Hearing Committee finds that in the event of a default of payment, suspension will continue until any arrears of payments owed are paid. If circumstances change, and financial exigency becomes a factor, the Registrant has the option to apply for new payment terms from the College.

Orders

Pursuant to its authority under the *Pharmacy Act* and regulations, the Hearing Committee imposes the following sanctions to take effect, May 17th, 2012:

1. The Registrant's license and the Registrant's ability to practice pharmacy shall be suspended for a period of two years. For clarification, during this time, the registrant shall also not be permitted to be a license holder of a pharmacy.

2. A fine of \$10,000.00 is payable by the Registrant to the Nova Scotia College of Pharmacists on or before December 31, 2012.
3. Prior to the reinstatement of the Registrant's license, the Registrant must, at her own expense, successfully complete the following:
 - a. An educational program, approved by the Nova Scotia College of Pharmacists, the principal curriculum of which is based on ethics.
 - b. An educational program, approved by the Nova Scotia College of Pharmacists, the principal curriculum of which is based on public policy.
 - c. An educational program, approved by the Nova Scotia College of Pharmacists, the principal curriculum of which is based on addiction.
4. Following the reinstatement of the Registrant's license, the following restrictions shall be placed on her license to practice for a period of three years:
 - a. The Registrant shall not work as a manager of a pharmacy.
 - b. The Registrant must report all new patient profiles to her Pharmacy Manager in a form and on a schedule to be determined with her Pharmacy Manager.
 - c. The Registrant shall not dispense prescriptions, of any nature or kind whatsoever, to herself or to any family member, spouse, grandparent, parent, child or sibling.
5. The Registrant shall be subject to up to six random, unannounced audits over a period of three years, on a schedule to be determined by the College. The costs of such audits will be calculated by the College using standard rates and paid by the Registrant within 60 days of invoicing. The total costs of these paid audits will be credited to the balance of costs payable by the Registrant as noted in #6 below. To illustrate, if the audits cost \$10,000, this amount will reduce the balance payable by \$10,000.
6. The Registrant shall pay to the Nova Scotia College of Pharmacists costs in the amount of \$100,000.00 to be paid in monthly installments of \$3,000.00 commencing on the first day of the month following the date of reinstatement of her license and continuing on the first of every month thereafter until the amount of \$100,000.00 is paid in full. Any credits for the costs of the inspections pursuant to clause 5 shall be credited to the final balance owed.
7. Publication of a summary of the determination of the Hearing Committee in the Nova Scotia College of Pharmacists President's Bulletin including penalty imposed, with reference to name.
8. A notice of the Registrant's suspension from the practice of pharmacy is to be published in a newspaper with provincial circulation. The publication is to include the Registrant's name, the effective date of the suspension, and the term of the suspension.

9. For clarity, it is the order of this Hearing Committee that paras. 1, 2, and 3 must be fully and completely complied with prior to the reinstatement of the Registrant's license. For further clarity, if the Registrant defaults on the payment of costs in para. 6, the Registrant shall be suspended from practice until such time as any arrears have been paid in full. Should financial exigency necessitate changes to these terms, the Registrant has the option to apply for new terms with the College. The College will have the final decision in this application.
10. Following reinstatement of her license, the Registrant must disclose the summary of the determination of the Hearing Committee, including penalty, to any prospective employer and to her Pharmacy Manager for a period of three years.

Dated at Halifax, Nova Scotia this 3rd day of May, 2012.

Signed on behalf of the Hearing
Committee by the Chair

Per: 

Susan Halliday Mahar, Chair

Schedule 'A'

SUMMARY OF FINDINGS

By way of summary, the findings of the Hearing Committee, for the reasons set out above are as follows:

Allegation 1

- Particular (a) – proven
- Particular (b)(i) – proven
- Particular (b)(ii) – proven
- Particular (b)(iii) – proven

Allegation 2

- (a) – proven
- Particular (b)(i) – proven

Allegation 3

- (a) – proven
- Particular (b)(i) – proven

Allegation 4

- (a) – proven
- Particular (b)(i) 1-8 – proven

Allegation 5

- (a) – proven
- Particular (b)(i) – proven with respect to the November prescription

Allegation 6

- (a) – dismissed
- Particular (b)(i) – dismissed

Allegation 7

- (a) – proven
- Particular (b)(i) – proven for 8 occasions
- (ii) – proven for 13 occasions
- (iii) – dismissed

Allegation 8

- (a) – dismissed
- Particular (b)(i) – dismissed
- (ii) – dismissed

Allegation 10

- (a) – proven in part
- Particular (b)(i) – proven in part

Schedule 'B'

Pharmacy Act

S.N.S. 2001, c. 36, ss 53, 54

Findings and dispositions

53(1) The hearing committee shall determine whether the member is guilty of charges relating to a disciplinary matter.

(2) Where there is a guilty finding, the hearing committee may determine that

(a) the registration, licence, or both, of the member or pharmacy be revoked, and that the member's or pharmacy's name be stricken from the registers in which it is entered;

(b) the licence of the member or pharmacy be suspended

(i) for a fixed period, or

(ii) for an indefinite period until the occurrence of some specified future event or until compliance with conditions prescribed by the committee;

(c) conditions, limitations or restrictions be imposed on the licence of the member or pharmacy;

(d) the member undergo such treatment or re-education as the committee considers necessary;

(e) the member or pharmacy pay the fine that the committee considers appropriate to the College to be applied to such purposes as determined by the Council, but not exceeding one hundred thousand dollars;

(f) the member to be reprimanded;

(g) such other disposition as it considers appropriate be imposed.

(3) A hearing committee may make any combination of the dispositions that are set out in subsection (2) or the committee may make such other dispositions as it considers appropriate in accordance with the objects of this Act.

(4) Where there is not a guilty finding, the hearing committee shall dismiss the charges.

(5) The hearing committee shall file its decision, including reasons, at the offices of the College.

(6) The Registrar shall provide the member or associate member, the complainant and such other persons as the Registrar considers appropriate with a copy of the decision of the hearing committee.

(7) Where there are references in a decision identifying patients or persons other than the complainant, those references, as well as other personal information about those persons, shall be deleted if, in the Registrar's opinion, it is appropriate.

Schedule 'B' continued

(8) The decision of a hearing committee has effect immediately upon service on the member or from such time as the decision may direct.

(9) Service on the manager of a pharmacy is sufficient service on a pharmacy.

(10) The hearing committee shall release documents and things put into evidence at a hearing to the person who produced them, on request, within a reasonable time after the matter in issue has been finally determined. 2001, c. 36, s. 53.

Costs

54 (1) In this Section, "costs of the College" include

(a) expenses incurred by the College, the Council, the investigation committee and the hearing committee;

(b) sums paid to members of the investigation committee and the hearing committee; and

(c) solicitor and client costs and disbursements of the College relating to the investigation and hearing of the complaint.

(2) When a hearing committee finds a member or pharmacy guilty of charges relating to a disciplinary matter, it may order that the member or pharmacy pay the costs of the College, in whole or in part.

(3) When a member or pharmacy is ordered to pay the costs of the College, the Council may make it a condition of the registration or licence of the member or pharmacy that the costs be paid forthwith, or at such time and on such terms as the Council may fix. 2001, c. 36, s. 54.

Qualification and Professional Accountability Regulations

(made under subsection 80(1) of the

Pharmacy Act

S.N.S. 2001, c. 36) ss 20, 21

Determination of disposition by hearing committee

20 In determining a disposition to be imposed pursuant to subsections 53(2) and (3) of the Act, a hearing committee must consider any relevant previous disciplinary decision regarding the person who is the subject of the proceedings, including undertakings and consents given as part of a settlement agreement pursuant to Section 46 of the Act.

Publication

21 (1) If a hearing committee revokes or suspends a licence, the College must publish the name of the party who has been found guilty and the details of the disposition made by the hearing committee.

(2) Unless otherwise ordered by the hearing committee, if a hearing committee revokes or suspends a licence, fines a member or a pharmacy, or reprimands a member or a pharmacy, the College must communicate to the members of the College the name of the party who has been found guilty and the details of the disposition made by the hearing committee.

Schedule 'C'

PROVINCE OF NOVA SCOTIA
HALIFAX REGIONAL MUNICIPALITY

IN THE MATTER OF:

The *Pharmacy Act*, R.S.N.S. 2001, c. 36 and
Regulations made thereunder

-and-

IN THE MATTER OF:

Ms. Tamala Fadelle, RPh, Pharmacist of River Hebert
Pharmacy, 1671 Main Street, River Hebert, Nova Scotia,
B0L 1G0

SUGGESTED PENALTY

The College requests that the Hearing Committee impose the following penalty:

1. The Member's license and the Member's ability to practice pharmacy shall be suspended for a period of two years.
2. The license of the River Hebert Pharmacy shall be suspended for a period of two years.
3. A fine of \$10,000.00 payable to the Nova Scotia College of Pharmacists on or before December 31, 2012.
4. Prior to the reinstatement of the Member's license, the Member must successfully complete the following:
 - a. An educational program whose principal curriculum is based on ethics.
 - b. An educational program whose principal curriculum is based on public policy.
 - c. An educational program whose principal curriculum is based on addiction.
5. Following the reinstatement of the Member's license, the following restrictions shall be placed on the license to practice including:
 - a. The Member shall not dispense prescriptions for benzodiazepines or narcotics for three years after the effective reinstatement date of license.
 - b. The Member shall not work as a manager of a pharmacy for three years after the effective reinstatement date of license.
 - c. The Member shall not work alone in a dispensary. For clarity, the Member may only work in the presence of another pharmacist.
 - d. The Member shall not dispense prescriptions, of any nature or kind whatsoever, to any family member, including spouse, grandparent, parent, child or sibling.
 - e. The Member shall not open, create or otherwise authorize the creation of a patient profile for a period of three years without physically maintaining a quality photocopy of two pieces of identification of the patient.

6. The Member shall pay to the Nova Scotia College of Pharmacists costs in the amount of \$100,000.00 to be paid in monthly installments of \$3,000.00 until the amount of \$100,000.00 is paid in full.
7. Publication of a summary of the determination of the Hearing Panel including penalty imposed, with reference to name.
8. For clarity, it is the order of this Panel that paras. 1, 2, 3 and 4 must be fully completely complied with prior to the reinstatement of the Member's license. For clarity, if the member defaults on the payment of costs in para. 6, the member shall be suspended from practice until such time as the entire outstanding balance of para. 6 has been paid in full.
9. The Member must disclose the summary of the determination of the Hearing Panel including penalty to any prospective employer.

1. Ethics:

Mount St. Vincent University

BUSI 2250/RELS 2250/PHIL 2250

Business Ethics

0.5 unit

A course in applied ethics that explores the bearing of ethical theory on business-related issues, including advertising, consumer rights, managerial structures, discrimination in the workplace, and corporate responsibility. Casework helps the student to develop skills in decision-making.

2. Public Policy:

Mount St. Vincent University

POLS 2203

Introduction to Public Policy and the Public Interest

0.5 unit

An introduction to the theoretical, philosophical and ethical foundations of public policy formulation in modern societies. Students will consider issues relating to the nature of democracy, civil society and the public interest in examining the social logic of public policy formation.

3. Addiction:

Two on-line courses through the Centre for Addiction and Mental Health (CAMH).

(1) Fundamentals of Mental Health Online Course

Description

This eight-week course offers an overview of mental health for practitioners in the fields of health, education, security or social services. The course covers definitions of mental health and illness, the prevalence of mental illness in Canada, the mental status examination, symptoms and treatment strategies for mood disorders, anxiety disorders and schizophrenia, and health-promoting strategies used when working with clients experiencing mental illness.

At the end of this course, you will be able to

- define mental health and illness
- summarize statistics on mental illness in Canada
- describe the various components of the mental status examination

- list three or more signs and symptoms of mood disorders, anxiety disorders and schizophrenia
- describe two treatment strategies used to treat mood disorders, anxiety disorders and schizophrenia
- list three or more health-promoting strategies used when working with clients experiencing mental illness.

Faculty

- David Goldbloom, MD, FRCP(C), Senior Medical Advisor, Education and Public Affairs, CAMH
- Anna Giallonardo, RN, MSN, CPMHN (C), Community Health and Education Specialist, Program Development, CAMH
- Mahreen Hasan, BScN, M.Ed., Community Health and Education Specialist, Program Development, CAMH

Date: TBA

(2) Fundamentals of Addiction Online Course

Course Sessions Begin: April 16 - June 22, 2012

Description

This eight-week course offers an overview of addictions for practitioners in the fields of health, education, security or social services and for anyone who would like to work in those fields. The course covers common psychoactive drugs and their effects, drug-use patterns and treatment needs, key strategies in screening, assessment and treatment referral, and key concepts in health promotion, prevention and harm reduction.

At the end of this course, you will be able to

- define “addiction”
- list common psychoactive drugs and their effects
- describe drug use patterns and treatment needs among diverse client populations
- explain the key strategies in screening, assessment and treatment referral
- describe key concepts in health promotion, prevention and harm reduction

Faculty

- Jeff Dunn, BA, RSSW, Therapist, Brief Treatment Services, CAMH