

ALBERTA COLLEGE OF PHARMACY

IN THE MATTER OF
THE HEALTH PROFESSIONS ACT

AND IN THE MATTER OF A HEARING
REGARDING THE CONDUCT OF

JENNIFER LINDSEY
Registration number: 8720

DECISION OF THE HEARING TRIBUNAL

August 24, 2023

I. INTRODUCTION

The Hearing Tribunal of the Alberta College of Pharmacy (the “College”) held a hearing into the conduct of Jennifer Lindsey. In attendance on behalf of the Hearing Tribunal were Kelly Boparai (pharmacy technician and chair), Jennifer Teichroeb (pharmacy technician), Barb Rocchio (public member), and Doug Dawson (public member). Kimberly Precht attended as independent legal counsel to the Hearing Tribunal.

The hearing took place virtually on May 17, 2023. The hearing was held under the terms of Part 4 of the *Health Professions Act* (“HPA”).

In attendance at the hearing were: James Krempien, Complaints Director of the College; Annabritt Chisholm, legal counsel representing the Complaints Director; and Christopher Younkens, legal counsel representing Ms. Lindsey. Mr. Younkens advised that Ms. Lindsey was not present but was available if needed.

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 allegations against Ms. Lindsey, as set out in the Notice of Hearing, were as follows:

IT IS ALLEGED THAT, between October 24, 2020 and August 31, 2021, while you were both a registered Alberta pharmacy technician and employed at Leduc Community Hospital, you:

1. Used ConnectCare to access the health information of 146 patients, including yourself, without an authorized purpose.

IT IS ALLEGED THAT your conduct in these matters:

- a. Breached statutory and regulatory obligations to the Alberta College of Pharmacy as an Alberta pharmacy technician;
- b. Undermined the integrity of the profession;
- c. Decreased the public’s trust in the profession;
- d. Failed to exercise the professional and ethical judgment expected and required of an Alberta pharmacy technician.

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

- Standard 1 and Sub-section 1.1 and 1.2 of the Standards of Practice for Pharmacists and Pharmacy Technicians;
- Principles 4(4) and 10(1) of the ACP Code of Ethics;
- 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*.

Ms. Lindsey acknowledged and admitted, via her legal counsel, that she engaged in unprofessional conduct as set out in the Notice of Hearing.

III. EVIDENCE

The Complaints Director and Ms. Lindsey presented the Hearing Tribunal with an Agreed Statement of Facts, setting out the information and documentation they considered relevant to the allegation against Ms. Lindsey. The Agreed Statement of Facts was entered as **Exhibit 1**, which also included the Notice of Hearing and Ms. Lindsey's Admission of Unprofessional Conduct.

The Agreed Statement of Facts provided as follows:

Background

1. At all relevant times, Ms. Lindsey was a registered member of the College on the pharmacy technician register and employed by Alberta Health Services ("AHS") at Leduc Community Hospital.
2. On September 12, 2022, Mr. Krempien, the Complaints Director of the College, received a complaint about Ms. Lindsey from [REDACTED] Pharmacy Manager, Suburban Edmonton Zone, AHS. [REDACTED] complaint was attached as Exhibit "A" to the Agreed Statement of Facts and stated in part, that:
 - a. A workplace investigation found that between October 24, 2020 and August 31, 2021 Ms. Lindsey used ConnectCare, AHS' electronic health record, to access the health information of 146 different patients, including herself, without an authorized purpose;
 - b. Ms. Lindsey had received training for privacy and appropriate access of health information;
 - c. Ms. Lindsey was not able to provide an authorized purpose for the above-noted accesses to health information; and
 - d. As a result of the workplace investigation, Ms. Lindsey was terminated from her employment as a pharmacy technician at AHS as of September 12, 2022.
3. The Complaints Director directed an investigation into the conduct of Ms. Lindsey and he and Arlene Raimondi acted as the primary investigators of the complaint. At the conclusion of the investigation, the Complaints Director referred this matter to a hearing.

Facts Relevant to the Complaint

4. As part of the investigation, Mr. Krempien asked [REDACTED] for additional documentation relevant to [REDACTED] complaint.
5. On September 26, 2022, Mr. Krempien received an email from [REDACTED] that included the final AHS investigation report concerning Ms. Lindsey's conduct. The report was titled as "Inappropriate Access of Information" and dated September 2, 2022. It was attached as Exhibit "B" to the Agreed Statement of Facts and indicated:
 - a. [REDACTED] reported a potential privacy breach by Ms. Lindsey on September 20, 2021;
 - b. [REDACTED] conducted an investigation into Ms. Lindsey's conduct, which was delayed because of Ms. Lindsey's absence from work due to an unrelated medical leave;
 - c. AHS Audit Reports showed that Ms. Lindsey accessed patient notes on ConnectCare for 146 patients between October 24, 2020 and August 31, 2021;
 - d. During the workplace investigation, Ms. Lindsey confirmed she did not have a relationship with any of the 146 patients but that she routinely accessed patient notes after the implementation of ConnectCare to determine doses of certain medications to perform her duties as a pharmacy technician;
 - e. Ms. Lindsey did not access patient care notes on ConnectCare during any of the 26 shifts she worked between October 24, 2020 and January 22, 2021; and
 - f. Although AHS contemplates that pharmacy technicians may access patient notes to complete work on a patient's Best Possible Medication History, this task is not completed by pharmacy technicians at Leduc Community Hospital.
6. On October 6, 2022, [REDACTED] sent additional information by email to Mr. Krempien which indicated that a pharmacy technician may also access patient notes for purchasing but that this also was not a task that was completed by Ms. Lindsey.
7. Ms. Lindsey accessed the patient notes of 146 patients on ConnectCare without an authorized purpose. She does not remember the detail surrounding the individual patients.
8. There is no allegation before the Hearing Tribunal that Ms. Lindsey otherwise used or further disclosed the health information she accessed without an authorized purpose.

Facts Relevant to Sanctions

9. Ms. Lindsey graduated from the Red Deer online pharmacy technician program in 2001. Until her termination on September 12, 2021, she was employed as a hospital pharmacy technician since 2001.
10. Ms. Lindsey has been a registered pharmacy technician with the College since January 1, 2016, until December 31, 2022 when she did not renew her annual practice permit.
11. The Complaints Director is not aware of any earlier complaints to the College about Ms. Lindsey and there have been no other findings of unprofessional conduct against her.
12. Ms. Lindsey complied and cooperated with the College's investigation and in the lead up to this hearing.
13. Affected patients were notified by AHS that their health information was improperly accessed and many contacted [REDACTED] as a result.
14. Ms. Lindsey's employment with AHS was terminated because of the workplace investigation that led to [REDACTED] complaint.

Ms. Lindsey also acknowledged in the Agreed Statement of Facts that she received legal advice before entering the Agreed Statement of Facts, and that she understood the Hearing Tribunal could use the Agreed Statement of Facts as proof of the allegations set out in the Notice of Hearing.

In the Admission of Unprofessional Conduct, Ms. Lindsey acknowledged and admitted the allegations set out in the Notice of Hearing. Ms. Lindsey also agreed and acknowledged her conduct breached her statutory and regulatory obligations to the College, undermined the integrity of the profession, decreased the public's trust in the profession, and was a failure to exercise the professional and ethical judgment expected and required of an Alberta pharmacy technician.

Ms. Lindsey further agreed and acknowledged her conduct constituted unprofessional conduct as defined in sections 1(1)(pp)(ii), 1(1)(pp)(iii) and 1(1)(pp)(xii) of the HPA, and breached standard 1 and sub-sections 1.1 and 1.2 of the Standards of Practice for Pharmacists and Pharmacy Technicians, principles 4(4) and 10(1) of the College's Code of Ethics, and sections 24 and 107(2)(a) and (b) of the *Health Information Act*.

IV. SUBMISSIONS

On behalf of the Complaints Director, Ms. Chisholm noted the allegation arose from Ms. Lindsey's inappropriate access to health information, and specifically her use of ConnectCare to access the health information of 146 patients without an authorized purpose.

Ms. Chisholm submitted the Hearing Tribunal had two tasks: first, to determine whether the Complaints Director had proven the allegations on a balance of probabilities (i.e., are they

more likely than not true?) and second, to determine whether the factually proven conduct amounted to unprofessional conduct. A third task, dealing with sanctions, only arises if the Hearing Tribunal finds the allegations are proven and constitute unprofessional conduct. Ms. Chisholm noted that the evidence before the Hearing Tribunal was in the form of an admission of unprofessional conduct and an agreed statement of facts, and stated it was the parties' intention that the Hearing Tribunal would have ample evidence to find the allegation was proven and amounted to unprofessional conduct.

Ms. Chisholm carefully took the Hearing Tribunal through the admissions set out in the Admission of Unprofessional Conduct and the facts set out in the Agreed Statement of Facts. Ms. Chisholm highlighted that Ms. Lindsey did not have any relationship with the patients whose health information she accessed, and that Ms. Lindsey used the information to inform her duties as a pharmacy technician. Although in some AHS settings a pharmacy technician may access patient notes to complete work on a patient's Best Possible Medication History, this task was not completed by pharmacy technicians at Leduc Community Hospital, where Ms. Lindsey was working. Ms. Chisholm also highlighted that although Ms. Lindsey *accessed* the health information of 146 patients without an authorized purpose, there is no allegation Ms. Lindsey otherwise *used* or *disclosed* the information she accessed, and no suggestion she acted in bad faith when she accessed the information.

In response to a question from the Hearing Tribunal, the parties clarified that although Ms. Lindsey had admitted to accessing patient information over the period of the AHS Audit from October 24, 2020 to August 31, 2021, the evidence was that no accesses took place between October 24, 2020 and January 22, 2021.

Ms. Chisholm submitted there was sufficient information before the Hearing Tribunal for the Hearing Tribunal to accept Ms. Lindsey's admission and make a finding of unprofessional conduct.

Ms. Chisholm emphasized the positive obligation on pharmacy technicians to uphold the law in letter and spirit, as set out in sub-sections 1.1 and 1.2 of the Standards of Practice, and principle 10(1) of the Code of Ethics. Under the *Health Information Act*, Ms. Lindsey was not authorized to access patients' health information in ConnectCare except for a purpose authorized by her employer, AHS, a custodian under the *Health Information Act*. This is further emphasized in principle 4(4) of the Code of Ethics, which provides that pharmacy technicians use information obtained in the course of professional practice only for the purposes for which it was obtained, unless otherwise authorized by law.

Ms. Chisholm submitted that although Ms. Lindsey has taken responsibility for her conduct, she did not abide by her professional obligations. Pharmacy technicians cannot be seen to access health information without an authorized purposes and, as such, the Hearing Tribunal should find Ms. Lindsey's conduct constituted unprofessional conduct.

Mr. Younkers did not make any submissions on behalf of Ms. Lindsey at this stage of the proceedings.

V. FINDINGS

The Hearing Tribunal found the allegation in the Notice of Hearing was factually proven and accepted Mr. Lindsey's admission that her conduct amounted to unprofessional conduct.

After carefully reviewing the Agreed Statement of Facts and attached exhibits, the Hearing Tribunal found Ms. Lindsey used ConnectCare to access the health information of 146 patients without an authorized purpose, between January 22, 2022 and August 31, 2022, while employed at Leduc Community Hospital. As such, the allegation set out in the Notice of Hearing is factually proven, although the period of access is narrower than stated in the allegation.

The Hearing Tribunal accepted that Ms. Lindsey accessed these patients' health information in good faith to inform her duties as a pharmacy technician, did not know the patients personally (apart from having accessed her own health information), and did not make any other use or disclosure of the information she accessed. However, the Hearing Tribunal found that, as a pharmacy technician employed by AHS, a custodian under the *Health Information Act*, Ms. Lindsey did not have an authorized purpose for accessing the patient information or authorization from her employer to access this information. Accordingly, Ms. Lindsey did not abide by her obligations and in doing so breached sections 24 and 107(2)(a) and (b) of the *Health Information Act*, and her obligations under the College's Standards of Practice and Code of Ethics, as set out in the Notice of Hearing and as articulated by the Complaints Director's legal counsel.

Pharmacy technicians are part of a self-regulated profession. One of the foundations of a self-regulating profession is that their members are diligent and trustworthy in their practice. It is a fundamental expectation that pharmacy technicians will demonstrate understanding and compliance with their legal and ethical obligations when accessing health information. Breaches of this trust, even if unintentional, have the potential to harm the public, and the reputation of the pharmacy profession.

On this basis, the Hearing Tribunal found Ms. Lindsey's conduct amounted to unprofessional conduct, as defined in the HPA. Specifically, her conduct contravened expectations set out in the College's Standards of Practice and Code of Ethics, contrary to s. 1(1)(pp)(ii) of the HPA. Ms. Lindsey's conduct also contravened another enactment that applies to the profession, namely the *Health Information Act*, contrary to s. 1(1)(pp)(iii). Finally, by accessing patients' health information without an authorized purpose, Ms. Lindsey engaged in conduct that harms the integrity of the regulated profession, contrary to s. 1(1)(pp)(xii) of the HPA.

VI. SUBMISSIONS ON ORDERS

After receiving the Agreed Statement of Facts and Admission of Unprofessional Conduct, the Hearing Tribunal adjourned to deliberate. After the Hearing Tribunal deliberated, the Tribunal advised the parties it accepted the Admission of Unprofessional Conduct by Ms. Lindsey and determined the allegation was proven and constituted unprofessional conduct. The Hearing Tribunal then invited the parties to make submissions on sanction.

The parties provided the Hearing Tribunal with a Joint Submission on Sanctions and supporting materials, which were entered as **Exhibit 2**. The Joint Submission on Sanctions stated:

1. Ms. Lindsey shall receive a reprimand, which the Hearing Tribunal's written decision shall serve as.
2. Ms. Lindsey shall provide a copy of the Hearing Tribunal's written decision to any pharmacy employer or licensee of a pharmacy in which she is employed for a period of one year, commencing on the date she receives a copy of the Hearing Tribunal's written decision.
3. Ms. Lindsey 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 Ms. Lindsey receives a copy of the Hearing Tribunal's written decision.

On behalf of the Complaints Director, Ms. Chisholm submitted that sanctions in professional discipline cases serve four functions: (1) the protection of the public; (2) maintaining the integrity of the profession; (3) ensuring fairness to the professional member; and (4) deterring future unprofessional conduct.

Citing factors identified in *Jaswal v Medical Board (Newfoundland)* (1996), 42 Admin LR (2d) 233 (Nfld TD), Ms. Chisholm submitted the following factors were relevant in determining an appropriate sanction in this case:

- *Nature and gravity of the proven allegations:* Ms. Chisholm submitted it was serious unprofessional conduct for Ms. Lindsey to access the health information of 146 patients when she did not have an authorized purpose to do so. Ms. Lindsey's conduct displayed a disregard for the trust placed in the profession. At the same time, Ms. Chisholm recognized this was not one of the more egregious cases of unprofessional conduct as there was no evidence Ms. Lindsey further used or shared the information she accessed.
- *Age and experience:* Ms. Lindsey has been practicing as a pharmacy technician since 2001. Her age and experience are not a mitigating factor.
- *Character and prior findings of unprofessional conduct:* Ms. Lindsey has no prior findings of unprofessional conduct. This is a mitigating factor.
- *Number of times offence proven to have occurred:* Ms. Chisholm noted the conduct occurred with respect to 146 patients over a number of months.
- *Impact on patients:* Ms. Chisholm submitted that although there was no evidence the information was used improperly beyond the initial unauthorized access, many of the

patients who received notification that their information had been improperly accessed expressed concern to AHS.

- *Taking responsibility:* Ms. Lindsey has admitted her conduct and has acknowledged it did not meet the standard expected of a registered pharmacy technician and was harmful to the integrity of the profession. Her admission has allowed the hearing to proceed in an efficient and cooperative manner. This is a mitigating factor.
- *Other financial impacts arising from the complaint:* Ms. Lindsey lost her position at AHS as a result of her conduct. This warrants a lesser sanction than if Ms. Lindsey's employment had not been terminated as a result of her conduct.
- *Deterrence:* Ms. Chisholm submitted the proposed sanctions will ensure Ms. Lindsey, specifically, does not repeat her conduct in the future and will also send a deterrent message to others in the profession.
- *Public confidence:* Ms. Chisholm noted that self-regulating professions are created by and exist because of legislation. As such, it is important to send a message to the public when a self-regulated professional fails to meet expectations for their conduct, there are serious consequences.
- *Range of sanctions in similar cases:* Although the Hearing Tribunal is not bound by previous cases, out of fairness to members, similar sanctions should be applied in similar cases. Ms. Chisholm provided two cases involving similar allegations and admissions, in which similar sanctions were imposed:
 - *Stanislaus (2021)* – In this case the member accessed the health information of a single individual on a single occasion. The individual was not a patient of the member, but rather a person with whom the member had got in a car accident. The member reviewed the individual's health information, then called her and discussed it with her. The member received a reprimand, a three-month suspension (one month served and two months held in abeyance), was required to complete a PROBE course, was required to provide a copy of the discipline decision to employers for two years and was ordered to pay \$8,000 of the investigation and hearing costs.
 - *Juma (2020)* – In this case the member accessed the health information of 11 individuals over a two-year period. The member knew the individuals whose information she accessed, some of whom were family members who had not consented to her accessing their health information. The member received a reprimand, a three-month suspension (one month served and two months held in abeyance), was required to complete a PROBE course, was required to provide a copy of the discipline decision to employers for two years, was prohibited from serving as a licensee for two years and was ordered to pay \$10,000 of the investigation and hearing costs.

- In comparing this case with these previous cases, Mr. Chisholm stated no PROBE course or suspension was warranted given that Ms. Lindsey had a purported clinical purpose for accessing the health information in question, albeit not an authorized purpose. In *Stanislaus* and *Juma*, there was no noted clinical purpose for the unauthorized accesses, such that the element of intent was different than in the present case. Ms. Chisholm also noted that a pharmacy technician cannot be a licensee, so there was no need for a prohibition on serving as a licensee, as had been ordered in the *Juna* case.

Consistent with the Alberta Court of Appeal's decision in *Jinnah v Alberta Dental Assn and College*, 2022 ABCA 336, Ms. Chisholm submitted it should not be assumed that a member found to have engaged in unprofessional conduct should pay the entire costs of the proceedings. However, the parties agreed it was appropriate that Ms. Lindsey pay some of the hearing costs.

Citing the Supreme Court of Canada's decision in *R v Anthony-Cook*, 2016 SCC 43 and the Ontario Superior Court of Justice's decision in *Bradley v Ontario College of Teachers*, 2021 ONSC 2303, Ms. Chisholm submitted that the Hearing Tribunal must accept the Joint Submission on Sanction unless it would bring the administration of justice into disrepute or otherwise be contrary to the public interest. Ms. Chisholm emphasized the time and effort that goes into arriving at a joint submission on penalty, and the need for some certainty if parties are to invest this time and effort. Ms. Chisholm advised the Hearing Tribunal that if it intended to reject the Joint Submission on Sanction, it must first bring its concerns to the parties. Ms. Chisholm urged the Hearing Tribunal to accept the Joint Submission on Sanctions, emphasizing the Complaints Director's view that the proposed sanctions would adequately protect the public.

On behalf of Ms. Lindsey, Mr. Younker expressed that Ms. Chisholm had summarized things fairly well. Mr. Younkers emphasized that Ms. Lindsey lost her job as a result of her employer's investigation and had subsequently let her license lapse. He noted Ms. Lindsey has not sought or obtained similar employment, although she did find other employment at a lower pay rate and asked the Hearing Tribunal to take this into account.

The Hearing Tribunal advised the parties that it viewed Ms. Lindsey's conduct very seriously and wanted to clearly understand the impact of the reprimand the parties were proposing. The Hearing Tribunal asked for clarification as to how its decision would be published, how long it would be maintained on Ms. Lindsey's file with the College, and how accessible it would be after the one-year period proposed by the parties during which Ms. Lindsey must provide it to any pharmacy employer.

Ms. Chisholm responded that once the Hearing Tribunal's decision is issued, it will be posted on the College's website. The College's practice has been to post decisions for ten years, so the decision will be available to the public for ten years, that includes the one-year period in which Ms. Lindsey has a positive obligation to provide it to any pharmacy employer. Ms. Chisholm noted that the HPA provides an opportunity for a member to apply to the registrar for publication on an unnamed basis, but that the HPA specifically states such a request cannot rely on the impact of named publication on the member's reputation. Further, Ms. Chisholm advised that if Ms. Lindsey were to request a standing letter from the College, the Hearing

Tribunal's decision would be included. Mr. Younkens had no additional submissions in response to the Hearing Tribunal's question.

VII. ORDERS

After carefully considering the Joint Submission on Sanctions, the facts of the case, and the parties' submissions, the Hearing Tribunal accepted the Joint Submission on Sanctions.

The Hearing Tribunal acknowledged it should defer to the Joint Submission on Sanction unless it believed the proposed sanctions would bring the administration of justice into disrepute or would otherwise be contrary to the public of interest.

Having regard for the factors identified in the *Jaswal* decision, the Hearing Tribunal accepted the parties' submissions as to why the proposed sanctions were appropriate and served the purpose of sanctions in the professional discipline context.

The Hearing Tribunal found Ms. Lindsey's conduct, in accessing 146 patient files in a small community, raised very serious concerns. When regulated health professionals breach their legal and ethical obligations by accessing health information without proper authorization, it undermines the public's confidence in the safeguarding of their health information. Indeed, and understandably, the evidence indicated that individuals whose health information Ms. Lindsey accessed were concerned when AHS notified them of the unauthorized access. The Hearing Tribunal also recognized that this was Ms. Lindsey's first offence, and she has already faced serious consequences as a result of her conduct, in particular the loss of her position with AHS.

The Hearing Tribunal recognized Ms. Lindsey had a purported clinical reason for accessing patients' health information. There was no evidence Ms. Lindsey intended to behave in an unethical manner. However, pharmacy technicians must ensure they clearly understand and comply with their legal and ethical obligations concerning access to health information. The Hearing Tribunal is satisfied that Ms. Lindsey will accept this decision as a formal reprimand and will not repeat her mistake.


Given the College's practice of publishing discipline decisions on the College website for ten years, the Hearing Tribunal is satisfied that a reprimand is a meaningful sanction that protects the public interest, alongside the requirement that Ms. Lindsey provide any pharmacy employer with a copy of this written decision for a one-year period.

The Hearing Tribunal found the proposed costs order to be reasonable, recognizing it represented only a portion of the overall cost of the proceedings, and that costs orders are not intended to be punitive. It was appropriate that Ms. Lindsey be responsible for some of the costs of the hearing and investigation because her conduct necessitated the proceedings. However, Ms. Lindsey's cooperation throughout the investigation and hearing supported a cap on the overall costs award.

Accordingly, under the authority of section 82 of the *Health Professions Act*, the Hearing Tribunal orders as follows:

1. This written decision shall serve as a reprimand to Ms. Lindsey;
2. Ms. Lindsey shall provide a copy of this written decision to any pharmacy employer or licensee of a pharmacy in which she is employed for a period of one year after she receives a copy of this written decision; and
3. Ms. Lindsey shall pay \$2,000 towards the costs of the investigation and hearing within 24 months of the date she receives a copy of this written decision, in accordance with a payment schedule satisfactory to the Hearings Director.

Signed on behalf of the Hearing Tribunal by the Chair on August 24, 2023

Per: 
[Kelly Boparai \(Aug 25, 2023 00:03 MDT\)](#)

Kelly Boparai