

IN THE MATTER OF THE COLLEGE OF PHARMACISTS OF BRITISH COLUMBIA

AND

ALI ASGHAR LAAL

**Decision on Penalty and Costs
(Michael MacDougall, Chair, Barbara Stipp, Peter Cook)**

Hearing Date:

September 6, 2013

Counsel for the College of Pharmacists of BC:

Catharine Herb-Kelly, Q.C.

Counsel for Mr. Laal:

No one appearing

Counsel for the Discipline Committee:

Maureen Baird, Q.C.

Introduction

1. The hearing panel of the Discipline Committee (the “panel”) reconvened on September 6, 2013 to hear submissions on the appropriate penalty for the professional misconduct set out in its Decision dated June 26, 2013 (the “Decision”) and on the assessment of costs against Mr. Laal.
2. The panel was advised of the steps that the College of Pharmacists of British Columbia (the “College”) had taken to bring the June 26, 2013 decision to the attention of Mr. Laal, including three attempts at personal service which were unsuccessful, delivery by registered mail which was not picked up and delivery by email.
3. The panel was advised of the steps taken to notify Mr. Laal of the date of the teleconference that was held on July 25, 2013 at which this date for submissions on penalty and costs was established.

4. The panel was advised that with respect to today's hearing date, the College attempted to contact Mr. Laal by registered mail and email. It was noted that the registered mail was not picked up by Mr. Laal.

5. The panel is satisfied that the College has made every attempt necessary to notify Mr. Laal of this proceeding and as such it is prepared to proceed in his absence.

Submission on Penalty

6. The College commenced its submission by advising that it was seeking cancellation of Mr. Laal's registration as provided for in section 39(2)(d) of the *Health Professions Act* (the "Act") and costs.

7. The College reviewed those findings of fact in the Decision that it said underscored the seriousness of the conduct of Mr. Laal and supported the penalty of cancellation of registration. In particular, the College noted the following findings of fact:

- The inappropriate personal relationship with two female patients, S.G. and B.W.;
- Mr. Laal initiated both of the inappropriate relationships;
- The vulnerability of both S.G. and B.W.;
- With respect to B.W., she was a young, single mother with an infant daughter. She had low self-esteem. She suffered from depression, something Mr. Laal would have known from the prescriptions he filled for her. They had sexual relations on two occasions in pharmacies owned by Mr. Laal including one time on the couch where the unregistered firearm was found, and the other time in the pharmacy washroom;
- With respect to S.G. although the panel did not find that sexual relations occurred, it did find that there were serious breaches of the professional boundaries when Mr. Laal, who was in a position of trust, injected her in her buttock in the back room of Pharmaesthetics, and, also, when he came to her home, uninvited, at night, for the stated purpose of drinking wine and injecting her with Demerol for "laughs".

- That the possession of a loaded, restricted firearm on the pharmacy premises in an area accessible to the public is unsafe to the public, whose health and well-being Mr. Laal is licensed by the College to serve and also to pharmacy staff;
- The existence of expired pharmaceuticals as part of the active pharmacy inventory; and
- The renovation of the Pharmaesthetics premises without the required approval of the College.

8. The College referred the panel to section 16(1) of the Act which establishes the public interest as the paramount duty of the College.

9. The College introduced a prior disciplinary record of Mr. Laal. In or about August 26, 2005, Mr. Laal was found guilty at a discipline hearing of the Ontario College of Pharmacists of professional misconduct related to misrepresenting himself as a pharmacist before he was registered with the Ontario College and by misrepresenting his speciality practice credentials. The panel was advised that a penalty had been imposed by the Discipline Committee of the Ontario College of Pharmacists that once registered with the Ontario College, he could not practise for six months after which he would practise under certain conditions and also that he was required to complete certain courses. The panel was advised that Mr. Laal did not fulfill these requirements of the Ontario College, but rather, returned to British Columbia. The submission of the College was that the conduct in not fulfilling the disciplinary penalty in Ontario indicated a disrespect for that governing body.

10. The College directed the panel's attention to the factors to be considered in assessing penalty that are set out in the text *The Regulation of Professions*, by James Casey in reference to *Jaswal v. Medical Board (Newfoundland)*. The panel was told that while this is an older case that the enumerated factors provided useful guidance. In this regard, the College said that the panel should consider whether Mr. Laal poses a threat to the public. It was submitted that the fact he preyed on two vulnerable women for his own gratification was a strong indicator that cancellation of registration was necessary to remove the risk of future similar conduct affecting other patients. Further, the panel was told that it was important to send a strong message to other

pharmacists that sexual misconduct is unacceptable. Lastly, it was important that the public understood that it was being protected from the types of professional misconduct in which Mr. Laal engaged.

11. In respect of Mr. Laal's sexual misconduct, the panel was referred to the case of *Mussani v. College of Physicians and Surgeons of Ontario*, a 2003 decision of the Ontario Court of Appeal. While it was noted that Ontario has a zero tolerance approach to sexual misconduct, the panel was referred to principles set out in that case to support cancellation as the appropriate result in cases of sexual misconduct with patients. These principles include the vulnerability of patients in such relationships, the power imbalance, the privileged position of health care professionals in society, the breach of trust inherent in such conduct, the potential injury to the victim, both physical and emotional and the diminishment of the public trust in the profession.

12. Two other cases were presented to the panel. In *Seidman v. College of Physicians and Surgeons of Ontario*, a 2003 decision of the Ontario Superior Court of Justice, Divisional Court, a revocation of a doctor's licence was upheld in a case of sexual misconduct with a 15 year old patient. In *M. v. The College of Physicians and Surgeons of British Columbia*, a 1997 decision of the British Columbia Supreme Court, the court said it did not have the jurisdiction to set aside an 18 month suspension, \$10,000 fine and \$26,800 in costs. However the court did say that if it had jurisdiction it would have substituted a more harsh penalty of a longer suspension or erasure from the Register of the College.

13. The panel was asked not to exercise its discretion under s.39(8) of the Act.

Panel Determination on Penalty

14. Having considered the cases referred to and the gravity of the facts as found in the Decision, the panel finds that the appropriate penalty is cancellation of Mr. Laal's registration in the College.

15. In respect of the two incidents of inappropriate relationship, one of which included sexual relations with a patient, the panel is of the view that Mr. Laal preyed on the vulnerability of these two female patients for his own gratification without regard for their wellbeing. In the case of S.G. the professional misconduct was found to have a negative impact on her health. Cancellation will address the need to ensure that this does not occur again.

16. In respect of the gun charge, the panel finds that cancellation of registration is appropriate as this conduct was criminal and was contrary to the safety of the public.

17. The fact that Mr. Laal has shown in the past that he does not respect the privilege of being a member of a self-governing health profession by his failure to fulfill his disciplinary penalty in Ontario and by his failure to follow the College requirement for approval for renovation of his pharmacy premises support the view of the panel that in all of the circumstances cancellation of registration is appropriate.

18. In its totality the professional misconduct found, in the view of the panel, requires cancellation of registration to ensure that the public is safe. Given the spectrum of misconduct found in this case, no lesser penalty will, in the view of the panel achieve this result.

19. The panel sees no reason to exercise its discretion under section 39(8) of the Act and declines to do so.

Costs

20. Pursuant to section 39(5) the panel is authorized to award costs to the College against Mr. Laal, based on a tariff that has been established by the College. The panel was provided with a copy of the tariff that it has established.


21. The panel was advised that it is entitled to award the following:

- 50% of legal fees incurred by the College including the investigation. The panel was advised that this was \$5,888.47 in the case of counsel for the panel, and \$85,517.69 in respect of counsel for the College, totalling: \$ 91,406.16
- Travel expenses of witnesses, as follows:
 - Alan Samuelson - \$ 1,363.45
 - B.W. - \$ 764.04
 - S.G. and daughter - \$ 1,100.37
- Other expenses of the hearing – Charest Reporting \$ 4,736.81
- These costs total \$ 99,370.83

22. In addition, the panel directs that in addition to the costs set out in the preceding paragraph that Mr. Laal pay the costs of the September 6, 2013 hearing which will be calculated and added to the total award of costs to the College as at September 20, 2013

23. The panel cannot see any reason why these amounts should not be assessed against Mr. Laal. The legislation provides that the panel has the discretion to make this award of costs to a person against whom an adverse finding has been made, and in the circumstances the panel feels that all of the costs should be assessed against Mr. Laal and so orders.

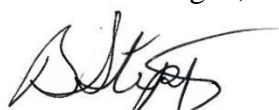
By the Discipline Committee:



 Michael MacDougall, Chair

September 9, 2013


 Date



 Barbara Stipp

September 9, 2013

 Date



 Peter Cook

September 9, 2013

 Date