

DISCIPLINE DECISION: KOMAL KALER

Pursuant to the Notice of Hearing dated the 4th day of August, 2016, it was alleged that Mr. Komal Kaler (“Kaler”), being a pharmacist under the provisions of *The Pharmaceutical Act* (“*The Act*”), and a registrant of the College, was guilty of professional misconduct and had contravened the *Code of Ethics* (“*Code*”) approved pursuant to Section 76(1) of *The Act*, and acted contrary to his professional duties related to *The Personal Health Information Act* (“*PHIA*”) and Section 7 of the *Practice Direction - Hospital Standards of Practice* (“*Practice Direction – Hospital Standards*”), in his role as pharmacist employed with the Winnipeg Regional Health Authority, at the Grace Hospital in Winnipeg, by illegally accessing health records of 113 patients not under his care, including but not limited to those of family members, current and former friends, work colleagues, fellow pharmacists, and in addition, his own health records, he breached his ethical obligations outlined in Statements IV, VII, VIII, and X of the *Code* approved pursuant to Section 76(1) of *The Act*, and acted contrary to his professional duties related to the *PHIA* and Section 7 of the *Practice Direction - Hospital Standards*.

The hearing into the charges was originally scheduled to commence on April 27, 2016, and at the member’s request, was adjourned with the consent of counsel for the College.

On July 27, 2016, this Committee convened to address the charges. Mr. Anthony Kavanagh appeared as legal counsel on behalf of the College. Mr. William Haight appeared with and as legal counsel on behalf of Kaler.

Kaler entered a guilty plea to all 113 counts of accessing health records of patients not under his care, including but not limited to those of family members, current and former friends, work colleagues, fellow pharmacists, and in addition, his own health records.

In a Statement of Agreed Facts, the parties agreed that:

1. Kaler is a member of the College of Pharmacists of Manitoba.
2. Kaler was validly served with the Notice of Hearing dated March 21, 2016, and the College complied with the requirements of sub-sections 46(2) and 46(3) of *The Pharmaceutical Act*, SM 2006, c 37 (the “*Act*”).
3. Kaler had no objection to any of the panel members or legal counsel to the panel either on the basis of bias, a reasonable apprehension of bias or a conflict of interest.
4. Kaler graduated with his pharmacy degree from the University of Manitoba in 2011.
5. Kaler has been registered as a pharmacist under the *Act* since July 11, 2011, and has worked at several Safeway Food and Drug Pharmacies since that date, and at the Grace Hospital as a staff pharmacist from spring 2012 until March of 2015, working in the Internal Medicine section as well as covering shifts in the Emergency Department and ICU.
6. Kaler has no previous discipline history with the College.

Although Kaler entered a guilty plea to all 113 counts, the parties were unable to agree upon a joint disposition in respect of an appropriate penalty to be imposed.

After having had the opportunity to review the authorities provided to the Discipline Committee and having considered the submissions of legal counsel, the Discipline Committee ordered that:

- a) Kaler pay a fine in the amount of \$1,000.00, no later than August 31, 2016;
- b) Kaler pay \$13,242.28, as a contribution to the cost of the discipline proceedings no later than December 31, 2016;
- c) As a condition of licensure for each of the years 2016, 2017, 2018 and 2019, Kaler must continue to participate in a counselling program and provide the Registrar of the College, at his own cost, and at a minimum of once annually, a health assessment report from the counsellor, addressing the reasons for the significant breach and the likelihood of Kaler repeating the errant behavior. These reports must be in a form acceptable to the College;
- d) Upon compliance with condition “a”, Kaler may apply to the Registrar for a pharmacist licence;
- e) As a condition of retaining his license, Kaler must, upon relicensing by the College and for the period up to December 31, 2021, provide to the pharmacy manager of every future employer, a written copy of the Discipline Order and Decision. When providing the Order and Decision to the employer, Kaler must provide the Registrar of the College with a copy of his correspondence to the employer confirming that the Order and Decision has been given to the employer; and
- f) The College must publish the circumstances relevant to the Discipline Committee’s finding and the Order and Decision, as well as Kaler’s name.

In arriving at its decision, the Discipline Committee considered the following:

- Kaler had no prior discipline history with the College;
- He voluntarily undertook to withdraw from the practice of pharmacy on March 17, 2015;
- His candor when meeting with the Complaints Committee, separately with the Registrar of the College and in two interviews with the College investigators, all during which he admitted that he breached the personal health information of many patients; and
- He did not share this information with any third party.

However, while the Discipline Committee acknowledged these mitigating factors, it felt it necessary to stress the seriousness of Kaler’s actions, for which he alone is responsible, and felt it necessary, in order to protect the public’s interest, to send a message to Kaler and other members of the profession that, but for interim suspension and excess loss of income during the period of approximately 16 months, the Discipline Committee would have imposed a fine of \$10,000.00 and ordered that Kaler’s pharmacist registration and pharmacist licence be suspended for 6 months.