

**UNIVERSITY TRIBUNAL
UNIVERSITY OF TORONTO**

IN THE MATTER of charges of academic dishonesty made on September 9, 2014

AND IN THE MATTER OF the University of Toronto *Code of Behaviour on Academic Matters*, 1995,

AND IN THE MATTER OF the *University of Toronto Act*, 1971, S.O. 1971, c. 56 as amended S.O. 1978, c. 88

B E T W E E N:

UNIVERSITY OF TORONTO (the "University")

- and -

H [REDACTED] ([REDACTED] K [REDACTED] (the "Student")

REASONS FOR DECISION

Hearing Date: November 12, 2014

Panel Members:

Ms. Roslyn M. Tsao, Barrister and Solicitor, Chair
Professor Ernest Lam, Faculty of Dentistry, Faculty Panel Member
Mr. Simon Czajkowski, Student Panel Member

Appearances:

Ms. Tina Lie, Assistant Discipline Counsel for University, Paliare Roland Barristers
Ms. Sonya Tors, Downtown Legal Services, for the Student

In Attendance:

Ms. H [REDACTED] ([REDACTED] K [REDACTED], the Student
Dr. Kristi Gourlay, Manager of Office of Academic Integrity, Faculty of Arts and Science
Ms. Sinéad Cutt, Administrative Assistant, Appeals, Discipline and Faculty Grievances

1. The Trial division of the Tribunal heard this matter on November 12, 2014. The Student was charged on September 9, 2014 with eight (8) charges relating to the falsifying and/or forging of documents or evidence which were submitted to the Committee on Standing ("Committee") in support of two (2) petitions for examination deferral and one (1) request for accommodation for a missed mid-term test on the basis of medical reasons.
2. The Student has been charged with:

May 2012

- 1) On or about May 2, 2012, you knowingly falsified a document or evidence required by the University of Toronto, or uttered, circulated or made use of any such falsified document, namely, a petition form seeking academic accommodations or relief that you submitted to the Committee on Standing of the Faculty of Arts and Science at the University of Toronto (the "Committee"), contrary to Section B.I.1(a) of the Code.
- 2) On or about May 2, 2012, you knowingly falsified evidence required by the University of Toronto, namely, a Personal Statement, which you submitted to the Committee in support of your request for academic accommodation, contrary to Section B.I.1(a) of the Code.
- 3) On or about May 2, 2012, you knowingly forged or in any other way altered or falsified a document or evidence required by the University of Toronto, or uttered, circulated or made use of any such forged, altered or falsified document, namely, a University of Toronto Student Medical Certificate, dated April 13, 2012, which you submitted to the Committee in support of your request for academic accommodations, contrary to Section B.I.1(a) of the Code.
- 4) On or about May 2, 2012, you knowingly forged or in any other way altered or falsified a document or evidence required by the University of Toronto, or uttered, circulated or made use of any such forged, altered or falsified document, namely, a University of Toronto Student Medical Certificate, dated April 18, 2012, which you submitted to the Committee in support of your request for academic accommodations, contrary to Section B.I.1(a) of the Code.

CSB351

- 5) On or about March 4, 2014, you knowingly forged or in any other way altered or falsified a document or evidence required by the University of Toronto, or uttered, circulated or made use of any such forged, altered or falsified document, namely, a University of Toronto Student Medical Certificate, dated March 4, 2014, which you submitted to the Committee in support of your request for academic accommodations, contrary to Section B.I.1(a) of the Code.
- 6) On or about May 5, 2014, you knowingly falsified evidence required by the University of Toronto, namely, a Personal Statement dated May 5, 2014, which you submitted to the Committee in support of your request for academic accommodation, contrary to Section B.I.1(a) of the Code.
- 7) On or about May 5, 2014, you knowingly forged or in any other way altered or falsified a document or evidence required by the University of Toronto, or uttered, circulated or made use of any such forged, altered or falsified document, namely, a University of Toronto Verification of Student Illness or Injury Form, dated April 21, 2014, which you submitted to the Committee in support of your request for academic accommodations, contrary to Section B.I.1(a) of the Code.

Alternative charges

- 8) In the alternative to each of the charges above you knowingly engaged in a form of cheating, academic dishonesty or misconduct, fraud or misrepresentation in order to obtain academic credit or other academic advantage of any kind, which violated section B.I.3(b) of the Code.
3. The Hearing proceeded by way of an Agreed Statement of Facts ("ASF") and with the University withdrawing the one (1) alternative charge (Charge 8).

Facts of the Case

4. In addition to the admissions set out in the ASF, the Student also testified under oath to supplement some of the factual background.
5. A summary of the facts based on the ASF and the Student's testimony at the hearing is as follows:

BIO130H, CHM139H, JMB170Y and MAT 136H

- 1) In May, 2012, the Student submitted a petition to the Committee, seeking permission to write deferred examinations in four (4) courses. The examinations in those four courses occurred between April 11 and 25, 2012 ("Petition 1").
- 2) In support of Petition 1, the Student submitted a personal statement which contained false statements and two (2) Student Medical Certificates which she had altered. The Student was, in fact, ill and did attend for a medical appointment to treat illness during this time frame but she changed the date of the attendance on the certificates believing that she needed to have attended for medical attention on the dates of the examinations.
- 3) Petition 1 was granted by the Committee on the basis of the false and altered documents.

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- 4) In March, 2014, the Student sought to excuse her absence from a mid-term test in her Virology course based on a "Verification of Student Illness or Injury" certificate purportedly dated March 4, 2014. This certificate was forged and falsified in its entirety as the Student had not attended for medical attention.
- 5) The professor of the course accepted the certificate without verification and excused the Student from the mid-term test.
- 6) The Student testified that she later learned that her failure to complete the mid-term test disqualified her from passing the course even if she completed the other evaluations in the course.
- 7) In any event, in about May, 2014, the Student submitted a petition to the Committee seeking permission to write a deferred examination in the course which was originally held on April 22, 2014 ("Petition 2").

- 8) In support of Petition 2, the Student submitted a personal statement which contained a false statement regarding the date she attended at the medical clinic and a Verification of Student Illness or Injury Certificate which she had altered vis-à-vis the date she attended at the clinic and the date on which the doctor signed the certificate.
- 9) Again, the Student was apparently ill at around April 20-23, 2014 and did attend at the medical clinic for such illness but she changed the dated on the certificate instead of relying on the original certificate from the doctor.

Dean's Designate Meeting

- 10) On May 16, 2014, the Student met with the Dean's Designate and admitted having committed the offences described above.

Background of Student

- 11) The Student testified that she was now 22 years old and was residing with roommates at the time of the offences. Her mother and father, separated about 5-6 years ago and she lived immediately thereafter with her mother who was financially responsible for the family. The Student's mother told her that she had to do well academically in order to have a different life from her. Her mother was proud of her attending university and the Student has always wanted to pursue a career as a pharmacist.
- 12) Her mother moved back to South Korea in about April, 2012, leaving the Student here to attend university in Toronto. The Student has funded her education through OSAP loans and bursaries.
- 13) The Student has repeatedly suffered from health issues during university with symptoms of vomiting, diarrhea and low blood pressure. The Student has tried acupuncture and Chinese medicine, exercise and good diet to combat her ailments.

- 14) In the spring of 2012, the Student faced a lot of new things arising from her mother moving away, her having to find part-time employment and finding roommates. She was often stressed, pressed for time and staying up late with caffeine.
- 15) In May, 2012, March 2014 and May 2014, the Student was apparently ill with the symptoms described above. In May 2012 and May 2014, the Student did see doctors who confirmed her illness. In March, 2014, the Student stated that she did not see a doctor (but rather fabricated a medical note) because she did not have the money to get such a medical certificate (the cost of such certificate was stated to be \$20). In particular, in May, 2014, the doctor who saw the Student confirmed in a letter dated May 5, 2014 that although his medical certificate had been altered, the Student did see him on April 23rd after having been ill for 3 days with a kidney infection, confirmed by objective laboratory testing.
- 16) The Student expressed remorse and indicated that she wanted to return to the University to become a pharmacist and states that she would, in future, not alter documents but submit what she had and hope for the best.

Decision of the Tribunal

6. Based on the foregoing admitted facts, the Tribunal finds the Student guilty of Charges 1-7.
7. The University has withdrawn Charge 8.

Penalty

7. The Student and University submitted an Agreed Statement of Facts on Penalty ("ASFP") and the following Joint Submission on Penalty ("JSP"):
 - 1) The Student will receive a final grade of zero in the five (5) courses which were the subject matter of Petitions 1 and 2;
 - 2) The Student will be suspended from the University for a period of five years from the date of the order;

- 3) There will be a notation of the sanction on the Student's academic record and transcript from the date of the order until graduation; and
 - 4) The Tribunal should report the decision to the Provost for publication.
8. The ASFP confirmed the following:
- 1) The Student has suffered from hypotension, headache, dizziness, indigestion and neck and back pain since as early as fall 2011. The Student has sought acupuncture treatment on a regular basis since October, 2011;
 - 2) Since the Winter 2012 term, the Student has sought and obtained permission to defer various tests and examinations on the basis of medical reasons;
 - 3) On August 28, 2012, the Student was sanctioned for having a cell phone in her possession during an examination on August 16, 2012 and received a written reprimand and notation on her transcript for 8 months (there was no allegation that the cell phone was used as an aid during the examination); and
 - 4) On February 1, 2013, the Student was again sanctioned for having a cell phone in her possession during an examination written on December 12, 2012 and received a reduction of 5 marks on her final grade in that course and a notation on her transcript for 2 years (again, there was no allegation that the cell phone was used as an aid during the examination).
9. The University and Student submitted a Joint Book of Authorities and a summary of six of these cases which all involved a guilty plea and Joint Submissions on Penalty ("Summary"). I do not believe that the Panel is bound by decisions based on JSPs given the high deference given by panels to follow JSPs.
10. The University submitted that a five (5) year suspension in this case was in the range of sanctions and noted that the University was not treating the two prior cell phone offences as "prior" aggravating offences.

11. Attention was drawn to the recent F [REDACTED] appeal decision (where I was the co-Chair at the hearing of first instance). In that case, the panel "jumped" the joint submission of a 5 year suspension and recommended expulsion. On appeal to The Discipline Appeals Board, the sanction was set aside and replaced with the 5 year suspension penalty tendered in the joint submission. In allowing the student's appeal and confirming the *high burden upon a tribunal which chooses to reject a joint submission*, the Appeals Board stated:

[22] In an effort to make more specific and understandable the high burden upon a tribunal which chooses to reject a joint submission, various expressions of the test have been attempted in a variety of decisions released by bodies and tribunals bound to apply these principles. One particularly illuminating expression of the concept is found in a decision of the Law Society Appeal Panel in a case that came before it on appeal, raising the same issues as this Appeals Board now has before it. In that matter, that Appeal Panel stated that only truly unreasonable or "unconscionable" joint submissions should be rejected. We think this is good, understandable expression of the test.⁸

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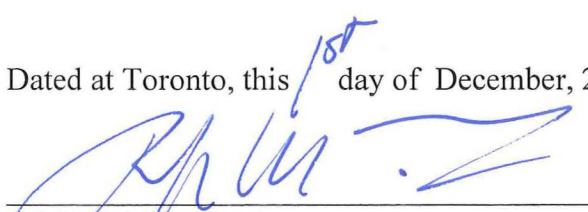
[25] It may be that a penalty of expulsion from the University was one reasonable sanction in the circumstances of this case, as evidently the Panel believed to be so, but that is not the test. The fact that the penalty actually imposed by the Tribunal may itself be reasonable, does not permit the Panel as a matter of law to substitute its conclusion for that called for in the JSP, on that ground alone.

12. As such, the panel accepts the recommendation set out in the JSP as such result would not be "truly unreasonable or unconscionable".
13. There is no doubt, based on the Summary of decisions, that a five (5) year suspension for forging/fabricating of multiple medical certificates would appear to be in alignment with other like joint submissions on penalty. We note that we were not provided with decisions where there was no joint submission and how panels had considered other aggravating or mitigating circumstances.
14. To be clear, the Panel considers falsification and alteration of medical notes to be a very serious offence. However, the Panel may have, in this case, weighed the mitigating circumstances in this Student's case, such as her family history and apparent genuine

illnesses since October, 2011, her guilty plea at the earliest opportunity and cooperation, had there not been a joint submission on penalty as it appears that this Student is distinguishable from students sanctioned in the Summary cases. However, given the strong direction of the Appeals Board in *Fernando*, this Panel feels bound by the JSP tendered.

15. The Tribunal, therefore, makes the following Order regarding penalty:
 - 1) The Student will receive a final grade of zero in MAT136H1, BIO130H1, CHM139H1, JMB170Y1 and CSB351Y1;
 - 2) The Student will be suspended from the University for a period of five years from November 12, 2014; and
 - 3) There will be a notation of the sanction on the Student's academic record and transcript from November 12, 2014 until graduation.
16. The Tribunal shall report this decision to the Provost for publication of a Notice of this decision and the sanction in the University newspaper, with the Student's name withheld.
17. The Tribunal signed an Order at the Hearing per the above findings.

Dated at Toronto, this ^{18th} day of December, 2014.



ROSLYN M. TSAO
Co-Chair