

BREAKING CASE LAW

**Maximum Financial
Services v. 1144517
Alberta Ltd., 2015
ABQB 646**



This Issue

Professional duties
trump business
obligations

***Maximum Financial Services Inc. v. 1144517 Alberta Ltd.* 2015 ABQB 646**

The pharmacy (owned by 1144517 Alberta Ltd.) operated for approximately a year but business was poor. The owner tried to find a buyer but was unable. The pharmacy owner knew that the pharmacy would have to close. He contacted the Alberta College of Pharmacists for guidance as to how to properly deal with his drug and narcotics inventory as well as his patient records. On the eve of the insolvency and in the absence of a prospective buyer, the pharmacy owner transferred the patient records to a nearby pharmacy for consideration of \$1 and put a sign on the door directing patients to that pharmacy. The pharmacist did this in accordance with the standards of the profession which require that he act to ensure continuity of care for his patients.

The new pharmacy received the records and as patients came in or called either continued their drug therapy or transferred the files as requested by the patient. After several months, the financing company initiated an action against the second pharmacy to re-acquire the records or receive payment for damages in the amount of fair market value of the patient records.

Although the court concluded that patient records could be assets, both the application to seize the records and the application for damages were refused. In doing so the Court made several significant findings.

First, the Court affirmed and applied the principle set out in *McInerney v. McDonald* [1992] 2 SCR 138 that patient records are owned by the health care provider but the information contained therein is held in a fashion akin to a trust. The information is only to be used by the health care provider for the benefit of the patient.

The Court also recognized that the transfer of patient records in non-emergency situations engages the issue of patient consent. The Court concluded that pharmacists do not have a proprietary interest in a patient – rather it is the patients who have the right to choose their pharmacist.

Suite 2250
10104 – 103 Avenue
Edmonton, Alberta
T5J 0H8

Tel 780.448.9275
Fax 780.423.0163
shoresjardine.com

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Finally, and perhaps most importantly, the Court was faced with prioritizing two public policy objectives. On one hand is the public policy objective of facilitating the financing of pharmacies where the principal assets of such businesses are the prescription records of patients. On the other hand is the public policy objective of ensuring continuity of care and record-keeping for pharmaceutical patients. In this scenario, the Court concluded that the public policy objective of patient care must prevail.

In short, this case stands for the proposition that when a regulated professional is in a position of conflict between their business obligations and their professional obligations, the professional obligations must prevail.

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shoresjardine.com