

ALBERTA COLLEGE OF PHARMACY

IN THE MATTER OF  
THE *HEALTH PROFESSIONS ACT*

AND IN THE MATTER OF A HEARING REGARDING  
THE CONDUCT OF

**AHMED ABUEL SHOUHOUD**

Registration Number: 11214

**DECISION OF THE HEARING TRIBUNAL ON SANCTION AND COSTS**

**REDACTED FOR PUBLICATION**

January 26, 2022

## **I. Introduction**

The Hearing Tribunal held a hearing into the conduct of Ahmed Abuel Shouhoud under the authority of the *Health Professions Act* (“HPA”) and on July 13, 2021, issued a written decision finding two allegations of unprofessional conduct against Mr. Abuel Shouhoud to have been proven (“Findings Decision”). Allegations 2 and 3 set out in the Notice of Hearing dated July 14, 2020, were found to be proven, and Allegation 1 was not proven on a balance of probabilities.

The Hearing Tribunal indicated it would receive submissions from the parties on sanctions and costs in writing, or if either party wished to make oral submissions, they were invited to request an oral hearing. The parties did not request an oral hearing and provided written submissions.

The Hearing Tribunal met via Zoom videoconference on October 15, 2021, to deliberate. As with the prior hearing on findings, the Hearing Tribunal consisted of Mr. Naeem Ladhani, Chair and Pharmacist Member; Ms. Cassandra Woit, Pharmacist Member; and Ms. Pat Matusko, Public Member. The Hearing Tribunal was also joined by Ms. Ayla Akgungor, in the capacity of independent legal counsel for the Hearing Tribunal.

## **II. Findings of the Hearing Tribunal**

In the Findings Decision, the following allegations of unprofessional conduct against Mr. Abuel Shouhoud were found to be proven:

On December 3, 2019, while you were a registered Alberta pharmacist practicing at [REDACTED] [REDACTED] (the “Pharmacy”), you:

2. Disclosed [REDACTED]’s personal health information to her after she asked you not to review it, and
3. Disclosed [REDACTED]’s personal health information to her in a manner that was neither private nor confidential when you did so in front of [REDACTED].

The following allegation was not proven:

1. Disclosed personal health information from your patient and employee [REDACTED]’s Netcare profile to [REDACTED], another employee of the Pharmacy who is not a health care professional,
  - a. without an authorized purpose, and
  - b. after [REDACTED] expressly asked you not to review her personal health information.

## **III. Summary of Submissions made by the Complaints Director**

The Complaints Director provided written submissions dated August 27, 2021, which can be summarized as follows:

Section 82 of the HPA sets out the various and broad range of orders that the Hearing Tribunal may order when unprofessional conduct is proven.

There are four primary purposes of orders in discipline proceedings:

1. protection of the public,
2. maintaining the integrity of the profession,
3. fairness to the member, and
4. deterrence (specific deterrence and general deterrence).

Each case must be considered on its particular facts and the four purposes noted may have more or less weight in a particular case.

*Jaswal v. Newfoundland (Medical Board) (1996)*, 42 Admin. L.R. (2d) 233 [at para 36] lays out specific factors that should be considered when imposing sanctions. The Complaints Director reviewed these factors in relation to Mr. Abuel Shouhoud's case and the proven allegations.

A. The Nature and Gravity of the Proven Allegations

Each of the proven allegations constitute unprofessional conduct and are serious. The proven allegations go to the heart of the professional and ethical obligations of a pharmacist.

B. The Age and Experience of the Member

Mr. Abuel Shouhoud is an experienced Alberta pharmacist and licensee. He has been registered with the College as a clinical pharmacist since August 13, 2013. Inexperience is not a mitigating factor in this case. Mr. Abuel Shouhoud should be aware of the responsibilities entrusted to a pharmacist to only access and disclose a patient's health information when it is appropriate to do so.

C. The Presence or Absence of Prior Complaints or Convictions

The Complaints Director is not aware of there being any prior complaints against Mr. Abuel Shouhoud.

D. The Age and Mental Condition of the Offended Patient

█ was not underage, and the Complaints Director has no evidence that █ was suffering from any mental condition at the time of the December 3, 2019 incident.

E. The Number of Times the Offences were Proven to Have Occurred

Mr. Abuel Shouhoud's disclosure of █'s personal health information occurred on one occasion.

F. The Role of the Member in Acknowledging What has Occurred

A member has every right to defend themselves in a discipline proceeding and invoking their right to defence cannot be used as an aggravating factor against them in sanction. However, in cases where a member acknowledges their conduct, that acknowledgement may serve as a mitigating factor.

Mr. Abuel Shouhoud vigorously defended all three allegations in the Notice of Hearing, which was within his right to do. However, this means the Complaints Director is not aware of any evidence that Mr. Abuel Shouhoud has acknowledged that his conduct was unprofessional or of a serious nature. Thus, acknowledgement is not a mitigating factor in this case.

G. Whether the Offending Member has Already Suffered Serious Financial or other Penalties as a Result of the Allegations Having Been Made

The Complaints Director is not aware of any evidence that Mr. Abuel Shouhoud has suffered any other consequences as a result of the allegations in the Notice of Hearing.

H. The Impact of the Incident on the Offended Patient

Mr. Abuel Shouhoud's conduct had a significant impact on ██████ testified that "the events of December 3, 2019 had a significant impact on her. She hadn't worked in a year and struggled to go back to her place of work. She has been in therapy."

I. The Presence or Absence of any Mitigating Circumstances

The Complaints Director is not aware of any mitigating circumstances.

J. The Need to Impose Specific and General Deterrence

In terms of specific deterrence, it is vital that Mr. Abuel Shouhoud understand that his conduct was unacceptable and unprofessional. None of the evidence before the Hearing Tribunal suggests that Mr. Abuel Shouhoud believes his conduct to be serious or unprofessional. In regard to Allegations 2 and 3, Mr. Abuel Shouhoud attempted to diminish ██████'s express direction not to review her ██████ results by indicating that he interpreted this direction to mean that she did not want to hear bad news. He did not accept that his actions were a deliberate decision to act contrary to the direction a patient provided to him or that a staff meeting was not an appropriate time to relay sensitive health information.

In terms of general deterrence, it is vital that other members of the profession see that

the College will not tolerate the proven conduct and that the sanctions imposed for such conduct will be significant. Members are entrusted with personal health information and must not access or be seen to access and use that information except in the context of providing pharmacy services. Members are expected to understand and respect the boundaries and express direction by a patient, and the need for confidentiality.

K. The Need to Maintain the Public's Confidence in the Integrity of the Profession of Pharmacy in Alberta

Protecting the integrity of the profession of pharmacy is one of the primary responsibilities of the College. The College must be able to demonstrate to the public that it is willing and able to regulate and govern the conduct of its members. As the Hearing Tribunal noted at page 41 of its decision: "Pharmacists are entrusted by society and patients with access to personal health information. This information is sacrosanct, and its collection, use and disclosure is protected by statutory and regulatory duties. Beyond these prescribed duties, pharmacists are bound by a covenant of trust with patients and society for the great responsibility entrusted to them with access to patients' personal health information. Breaking this trust brings disrepute to the profession and harms the ability for the profession to self-regulate."

The public must see that the College takes this conduct very seriously and that such conduct will not be tolerated. The public must know that steps have been taken to sanction the conduct that does not meet the public's expectations and to ensure that it does not recur in the future. The public will not maintain confidence in the College's integrity as a self-regulating profession if the College tolerates or permits this conduct.

L. The Degree to Which the Conduct is Clearly Outside the Range of Permitted Conduct

The conduct in this case is clearly beyond the range of permitted conduct.

At page 41 of its decision, the Hearing Tribunal found in respect to the proven conduct that: "In this case, the Complainant plainly informed Mr. Abuel Shouhoud that she did not want him to check her [REDACTED] results. Mr. Abuel Shouhoud, no matter his good intentions or desire to help the Complainant, chose to act against her express wishes. He made no attempt to clarify or ascertain if his assumption that she did not want to hear bad news was correct. This was not a mere error in judgment but a deliberate decision by Mr. Abuel Shouhoud to act in a manner contrary to the Complainant's specific direction.

Similarly, by sharing the results of the [REDACTED] with the Complainant while [REDACTED]

was in the room, Mr. Abuel Shouhoud, by his own admission, was not in a position to discuss or explain the results to the Complainant or to answer any questions she might have. Again, this was not a mere error in judgment. Mr. Abuel Shouhoud is an experienced pharmacist who should have been aware of the need to ensure a private and confidential setting when sharing personal health information.”

M. The Range of Sentences in Other Similar Cases

While previous decisions of other panels of the Hearing Tribunal are not binding on this Hearing Tribunal, fairness to the member requires that there be some attempt to impose similar levels of sanctions for similar unprofessional conduct.

Summaries of three relevant earlier cases from the College’s Hearing Tribunal are as follows. It is noted that Mr. Abuel Shouhoud had an opportunity to learn from the Songgadan and Kostyk cases, which were published on the College website and available to members before the events leading to the allegations in the Notice of Hearing took place on December 3, 2019.

Marianne Songgadan

In a 2011 case involving pharmacist Marianne Songgadan, a Hearing Tribunal found that Ms. Songgadan accessed and used the private health information of four individuals and disclosed some of this information on her Facebook page.

At the hearing, Ms. Songgadan cooperated by submitting an Admission of Unprofessional Conduct and the hearing proceeded by way of an Agreed Statement of Facts. After hearing submissions from both parties on sanctions, the Hearing Tribunal ordered that Ms. Songgadan pay a fine of \$4,000 (\$1,000 for each individual whose information was inappropriately accessed), that her practice permit be suspended for a period of four months (two months to be served and the remaining two months to be served if Ms. Songgadan sought registration in Alberta in the future, unless she could demonstrate to the Complaints Director that she had no further findings of misconduct), and that she pay costs of \$11,000. The Hearing Tribunal also ordered that a verbal reprimand be delivered by the Hearing Tribunal.

In Ms. Songgadan’s case, the Hearing Tribunal felt that a suspension was necessary. It held that “As a custodian of personal health information a pharmacist must act in a professional manner at every point of access to this information. Failure to do so portrays a lack of respect for the legislation governing the information and a disregard for the importance of the custodian designation.”

Kyle Kostyk

In a 2017 case involving pharmacist Kyle Kostyk, Mr. Kostyk admitted to allegations that he misused his authority as a pharmacist and a custodian under the *Health Information Act* when he used a patient's health information to contact her at home in order to pursue a personal encounter.

The Hearing Tribunal accepted a Joint Submission on Sanction and ordered a three-month suspension, with one month to be served and the other two to be held in abeyance. Mr. Kostyk was also required to take the CPEP Probe Course and ordered to pay a \$1,000 fine and costs to a maximum of \$10,000. He was also ordered to provide a copy of the Hearing Tribunal's decision to any pharmacy employer for two years after the Hearing Tribunal's decision.

Shemina Juma

In a 2020 case involving pharmacist Shemina Juma, the Hearing Tribunal found that Ms. Juma accessed Alberta Health Services' electronic health records of 11 individuals on 20 occasions over a two-year period when she did not have an authorized purpose for doing so. The hearing proceeded by way of an Agreed Statement of Facts, an Admission of Unprofessional Conduct and a Joint Submission on Sanction.

The Hearing Tribunal accepted the Joint Submission on Sanction and ordered that Ms. Juma receive a reprimand and a three-month suspension, with one month to be served and the other two to be held in abeyance. Ms. Juma was also required to take the CPEP Probe Course and to provide a copy of the Hearing Tribunal's written decision to the licensee of any pharmacy in which she applied to work or works as a pharmacist for a period of two years. Additionally, a condition was placed on her practice permit prohibiting her from serving as a licensee for a period of two years. She was also ordered to pay all of the costs of the investigation and hearing to a maximum of \$10,000.

The Complaints Director proposed the following orders to be made by the Hearing Tribunal:

1. Mr. Abuel Shouhoud shall receive a reprimand, and the Hearing Tribunal's written decision shall serve as the reprimand.
2. Mr. Abuel Shouhoud shall pay a \$500 fine for each of the proven allegations (Allegations 2 and 3), for a total fine of \$1,000, within 90 days of receiving the Hearing Tribunal's written decision.
3. Mr. Abuel Shouhoud shall, at his own cost, provide evidence to satisfy the Complaints Director that he has received an unconditional pass on the CPEP Probe Course within 6 months of receiving the Hearing Tribunal's written decision. Should Mr. Abuel Shouhoud not satisfy this order within

the 6-month period, his practice permit and registration with the College shall be suspended until such time as he satisfies this order.

4. Mr. Abuel Shouhoud shall provide a copy of the Hearing Tribunal's written decision in this matter to any pharmacy employer or licensee of a pharmacy in which he applies to work or works as a pharmacist for three years, commencing on the date he receives a copy of the Hearing Tribunal's written decision.
5. Mr. Abuel Shouhoud shall pay 2/3 of the costs of the investigation and hearing. Payment will occur in accordance with a monthly payment schedule as directed by the Hearings Director and the costs shall be paid in full within 24 months of the date Mr. Abuel Shouhoud receives a copy of the Hearing Tribunal's written decision.

The Complaints Director provided the following reasons for the requested orders:

Order 1: Reprimand

The Complaints Director submits that a reprimand is appropriate in this case as it serves the purpose of specific deterrence. This is consistent with the Songgadan and Juma cases, where the pharmacists received a reprimand for their unprofessional conduct.

Order 2: Fines

Under the HPA, the Hearing Tribunal may award fines of up to \$10,000 per proven allegation of unprofessional conduct up to a maximum total of \$50,000.

The Complaints Director submits that in Mr. Abuel Shouhoud's case, it is appropriate to impose a \$500 fine for each of the proven allegations (Allegations 2 and 3). The fines in this case would be comparable with the fines ordered in the Songgadan case and Kostyk case. In the Songgadan case, the Hearing Tribunal ordered Ms. Songgadan to pay a \$1,000 fine for each individual whose information was inappropriately accessed. In the Kostyk case, the Hearing Tribunal ordered that Mr. Kostyk pay a \$1,000 fine for a single event.

Order 3: CPEP Probe Course

The CPEP Probe Course would serve the purpose of specific deterrence by providing Mr. Abuel Shouhoud with the opportunity to self-reflect on his conduct and demonstrate to both the public and the College that he has developed an understanding of why it is unprofessional and should not be repeated.

Order 4: Providing Written Decision to Pharmacy Employer or Licensee of a Pharmacy

Providing a copy of the Hearing Tribunal's decision to employers or licensees of pharmacies in which Mr. Abuel Shouhoud works is consistent with the Kostyk and Juma cases and is important because Mr. Abuel Shouhoud's conduct involved taking advantage of his role as a pharmacist. Mr. Abuel Shouhoud's conduct should be something his future

employer, or the licensee of the pharmacy in which he works, should be made aware of for a period time to ensure that similar conduct is not repeated.

#### Order 5: Payment of Costs

The Hearing Tribunal has specific authority under section 82(1)(j) of the HPA to direct that Mr. Abuel Shouhoud pay all or part of the costs of the investigation and hearing of these matters. In the circumstances of this case, the College and its members should not be forced to solely bear the expense of the investigation or the hearing. The need for the investigation and the hearing arose as a direct result of Mr. Abuel Shouhoud's unprofessional conduct, which was proven and found to amount to serious unprofessional conduct.

As of July 13, 2021, the costs incurred by the College in this matter are \$55,292.50. These costs do not reflect any costs incurred to prepare submissions on sanction or the costs that will be incurred by the Hearing Tribunal in making its decision on sanctions. As a result, the final costs in this matter may well exceed \$60,000.

The Alberta Court of Appeal has confirmed that "Requiring the professional to pay all or a portion of hearing and investigation costs is a common part of professional disciplinary sanctions" [*Lysons v Alberta Land Surveyors' Association* at para 13].

The Alberta Court of Appeal has also accepted representations of legal counsel that it was common that costs in a discipline hearing in 2013 could be \$23,000 per day. [*Alberta College of Physical Therapists v Fitzpatrick* at paras 8 and 9].

Finally, *Jaswal, supra*, at para 5 provides the following non-exhaustive list of factors to consider on costs:

- a. the degree of success, if any, of the professional in resisting any or all of the charges;
- b. the necessity for calling all of the witnesses who gave evidence or for incurring other expenses associated with the hearing;
- c. whether the persons presenting the case against the professional could reasonably have anticipated the result based upon what they knew prior to the hearing;
- d. whether those presenting the case against the professional could reasonably have anticipated the lack of need for certain witnesses or incurring certain expenses in light of what they knew prior to the hearing;
- e. whether the professional cooperated with respect to the investigation and offered to facilitate proof by admissions, etc.; and
- f. the financial circumstances of the professional and the degree to which his financial position has already been affected by other aspects of any penalty that has been imposed.

In this case:

- a. the Complaints Director proved unprofessional conduct in two out of the three charges;
- b. the witnesses called by the Complaints Director were necessary for providing evidence in relation to the basis for the allegations in the Notice of Hearing;
- c. the Hearing Tribunal's decision to dismiss Allegation 1 could not have been reasonably foreseen by the Complaints Director; and
- d. due to its contested nature, the merits portion of the hearing extended to two and a half days and could not have been streamlined by including admissions of unprofessional conduct.

Based on these factors, the costs incurred to date in this matter have been reasonable.

Therefore, the Complaints Director requests that the Hearing Tribunal direct that Mr. Abuel Shouhoud pay 2/3 of the costs of the hearing within 24 months of receiving the Hearing Tribunal's written decision in this matter on a schedule satisfactory to the Hearings Director.

#### **IV. Summary of Submissions made by Mr. Abuel Shouhoud**

Mr. Abuel Shouhoud provided written submissions dated September 16, 2021, which can be summarized as follows:

Mr. Abuel Shouhoud agrees with the Complaints Director's summary of the purpose of orders in a discipline proceeding. Mr. Abuel Shouhoud submits that the consideration by the Hearing Tribunal of relevant factors favourable to the member fulfills one part of the two-part purpose of fairness. The duty of fairness at sanctioning dictates both the process and outcome are to be fair: paragraph 2 on page 9 of the Kyle Kostyk Hearing Tribunal decision.

It is submitted, the factors for imposing an appropriate sanction at the conclusion of disciplinary proceedings are those set out in *Jaswal, supra*, at para 36. It is further noted that the factors are meant to be non-exhaustive in nature and are appropriate to formulate the proper sanction by applying the principles against the facts of the case.

Mr. Abuel Shouhoud reviewed the *Jaswal* factors as applied to the case and the proven allegations:

##### **A. The Nature and Gravity of the Proven Allegations**

The nature of Allegation 2 may be described as an unauthorized disclosure of personal health information to the patient. The nature of Allegation 3 may be described as disclosure of the personal health information to the patient in a non-private or

non-confidential manner.

The nature of the Allegations is serious. The gravity (otherwise described as the severity), it is submitted, falls on the less severe end of the spectrum for Allegations of this nature.

The disclosure was only made to the patient and not to a third-party. The manner in which Mr. Abuel Shouhoud disclosed the health information in his office to [REDACTED] with [REDACTED] present, by turning the screen away from [REDACTED]'s point of view and stating none of the information aloud, suggests some effort was made to disclose the information in a private and confidential manner.

B. The Age and Experience of the Member

Mr. Abuel Shouhoud was 40 years of age at the time of the incident in question. He has been a member of the Alberta College of Pharmacy in good standing since August 13, 2013. Although not new to the profession he is not long in tenure.

C. The Presence or Absence of Prior Complaints or Convictions

There are no prior complaints nor convictions against Mr. Abuel Shouhoud.

D. The Age and Mental Condition of the Offended Patient

The Complainant was 40 years old at the time of the incident. There was no evidence of mental condition before the Hearing Tribunal.

E. The Number of Times the Offences were Proven to have Occurred

The Allegations of unprofessional conduct arise out of the same incident, occurred on a single occasion, and were brief in duration.

F. The Role of the Member in Acknowledging what has Occurred

The right to defend against allegations is not an aggravating factor that can be held against a member at sanctioning should the Hearing Tribunal find the allegations demonstrate unprofessional conduct. Mr. Abuel Shouhoud is entitled to test the 'evidence' against him and did so, successfully on Allegation 1.

In response to the Complaints Director's submissions, Mr. Abuel Shouhoud's failure to acknowledge his conduct was unprofessional or serious is an assumption premised on his running of a defence at the hearing and should be rejected.

Mr. Abuel Shouhoud testified he accessed Netcare and the [REDACTED] to ensure no contraindication with a potential [REDACTED] [REDACTED] when refilling the Complainant's prescription for [REDACTED]. There is no evidence this review was unlawful or unwarranted in the circumstances. He disclosed the [REDACTED] results to the

Complainant at the time in question so as to relieve her stress and make her feel better. Mr. Abuel Shouhoud's actions were to help the patient. He testified that he did not verbalize the results due to the presence and proximity of [REDACTED] in the room.

Mr. Abuel Shouhoud's actions were a result of his interpretation of the Complainant's demeanour and response of "please don't" to his offer to check the Complainant's [REDACTED] result (from earlier that day) which he interpreted to mean she did not want to hear bad news.

Although Mr. Abuel Shouhoud's reasons for his conduct were not accepted by the Hearing Tribunal, it found no evidence of malice on his part. Further there was no obstructive behaviour from him in the investigation, hearing or otherwise. Mr. Abuel Shouhoud at all times conducted himself in an honest and forthright manner.

Mr. Abuel Shouhoud acknowledges remorse for any pain he has caused to the Complainant for the events of December 3, 2019.

G. Whether the Offending Member has Already Suffered Serious Financial or Other Penalties as a Result of the Allegations Having been Made

Mr. Abuel Shouhoud had to retain legal counsel to defend the Allegations against him and as a result of same has suffered financially for payment of his defence, despite successfully defending Allegation 1.

The publication of the *Hearing Notice* on the Alberta College of Pharmacy's website with the wording of "*Charge: Unprofessional conduct pursuant to the Health Professions Act*" is penal in nature. It is submitted s. 135.93(2) of the *Act* sets out information that must be maintained on the website. Any further information to be published on the website is subject to a bylaw *describing* the additional information to be published (s. 135.93(4) of the *Act*).

Bylaw 78 of the *Bylaws of The Alberta College of Pharmacy* (the "*Bylaws*") sets out the Additional General Information that May be Published on the College's Website. Nowhere does Bylaw 78 expressly describe the *Hearing Notice* as *additional information* that may be publishable.

H. The Impact of the Incident on the Offended Patient

[REDACTED]'s evidence was that the events of December 3, 2019 had a significant impact on her. She hadn't worked in a year and struggled to go back to her place of work. She has been in therapy.

I. The Presence or Absence of Mitigating Circumstances

Mr. Abuel Shouhoud's cooperation throughout the investigation was both timely and non-obstructive. There is no indication from the Complaints Director that Mr. Abuel Shouhoud was less than forthcoming in the investigation process. Although

he is legally obligated to comply with the investigation his honest and forthright behaviour at investigation and hearing, while expected of a member of the College, should be considered a mitigating factor or alternatively, a factor generally to consider at sanction.

Mr. Abuel Shouhoud has no prior complaints nor findings of unprofessional conduct against him which is a mitigating factor on sanction.

The Hearing Tribunal found Mr. Abuel Shouhoud exhibited no malice, and it was quite plausible he believed he was trying to help the Complainant. The absence of malice is a relevant factor to consider at sanction.

The fact Allegations 2 and 3 were one-off incidents, arising from the same act and were very brief in nature are mitigating factors on sanction.

J. The Need to impose Specific and General Deterrence

In response to paragraph 31 of the Complaints Director's submission, Mr. Abuel Shouhoud testified as to his interpretation of the salient events which led to his actions. The Hearing Tribunal found no malice and that it was quite plausible Mr. Abuel Shouhoud believed he was trying to help the Complainant. Mr. Abuel Shouhoud is remorseful for any pain caused to the Complainant for the incident on December 3, 2019.

Specific and general deterrence are vital for the purpose of Orders issued by the Hearing Tribunal.

K. The Need to Maintain the Public's Confidence in the Integrity of the Profession of Pharmacy in Alberta

Mr. Abuel Shouhoud admits that pharmacists are entrusted by society and patients with access to personal health information and that breaking this trust brings disrepute to the profession and harms the ability of the profession to self-regulate. Further to that, the public's confidence in the integrity of all self-regulating professions, including the Alberta College of Pharmacy, is strengthened where the entirety of the complaint process, including the investigation, hearing and sanctioning, is subject to the duty of fairness for all parties involved.

L. The Degree to which the Conduct is Clearly Outside the Range of Permitted Conduct

Allegations 2 and 3 were found by the Hearing Tribunal to be outside the range of permitted conduct.

M. The Range of Sentences in Other Similar Cases

In response to paragraph 38 of the Complaints Director's submission, it is submitted the cases referenced are significantly more aggravating in nature than the circumstances of this case.

i. Songgadan

In *Songgadan* the member accessed and disclosed personal health information to attack the character of 4 complainants. When confronted with questions regarding her actions, the member initially denied committing the acts that make out the allegations and only admitted to the acts after being provided with Person A's Netcare disclosure log. Each complainant's respective Netcare profile was accessed multiple times and the disclosure of the complainants' personal health information was disseminated across the member's Facebook page with sufficient access to the public.

*Songgadan's* initial denial of the allegations, multiple breaches of multiple complainants' NetCare, unlawful access of personal health information, and disclosure of personal health information on to a public domain is evidence of significantly more aggravating circumstances than the facts in this case. As such the sanctions imposed therein should likely be more severe than those imposed in this case.

ii. Kostyk

*Kostyk* accessed personal health information of a 16-year-old girl for the purpose of a personal encounter. Although there was no evidence to support the fact *Kostyk* was aware of the age at the time of communication or that *Kostyk* deliberately attempted to contact a minor and evidence was led that no criminal charges were issued for this correspondence; *Kostyk's* use of information for personal objectives and for purposes unrelated to care are still significantly more aggravating than the facts in this case. As such the sanctions imposed therein should be more severe than those imposed in this case.

iii. Juma

*Juma's* case deals with unlawful access of personal health information of 11 individuals on 20 occasions over the course of two years. The case evidences significant repetitive behaviour and is significantly more aggravating than the facts in this case. As such the sanctions imposed therein should be more severe than those imposed in this case.

There are no reported decisions similar in circumstances to the facts before the Hearing Tribunal. Pursuant to the purposes of sentencing - fairness to the process and the outcome suggest where no similar cases exist, the Hearing Tribunal, shall impose a sanction it determines fit by adjusting the sanctions to reflect the severity of the unprofessional conduct findings found in other cases. Under the circumstances the case before the Hearing Tribunal warrants a less severe sanction than those cases put forth by the Complaints Director due to the significantly less-aggravating circumstances, including:

- a) Disclosure in this case was a one-time event as opposed to repetitive behaviour (*Songgadan, Juma*);
- b) Disclosure in this case was to the patient as opposed to third parties or the public (*Songgadan*); and
- c) Disclosure was done to reduce the stress of the patient and make her feel better and with no personal gain or personal objective in mind (*Songgadan, Kostyk*)

Mr. Abuel Shouhoud responded to the Complaints Director's proposed orders as follows:

A. Order 1: Reprimand

A Reprimand is an appropriate Order in this case. A Reprimand serves the purposes of both specific and general deterrence. It is notice to both Mr. Abuel Shouhoud and other members of the College that acts of unprofessional conduct are taken seriously. A Reprimand maintains the integrity of the profession as it sends a clear notice that acts of unprofessional conduct will not be tolerated. A Reprimand protects the public as it is a record originating from the College that acts of unprofessional conduct will not be tolerated and will not be repeated.

B. Order 2: Fine

A fine is an appropriate Order in this case. A fine serves the purposes of both specific and general deterrence. It is notice to both Mr. Abuel Shouhoud and other members of the College that acts of unprofessional conduct are taken seriously. A fine maintains the integrity of Profession as it sends a clear notice that acts of unprofessional conduct will not be tolerated. A fine protects the public as it is a record originating from the College that acts of unprofessional conduct will not be tolerated and will not be repeated. A fine in the range of \$500.00 per offence is within the range of acceptable fines for the Allegations.

An appropriate fine in this case would be a global amount of \$500.00 to \$750.00. The basis for this quantum of fine is:

- a) Mr. Abuel Shouhoud has no prior finding of unprofessional conduct against him;
- b) Allegations 2 and 3 arise from the same incident (disclosure of personal health information) and to award \$500 fine per Allegation would result in fining him twice for the same incident;
- c) The finding of no malice by the Hearing Tribunal is a factor that should be considered for a lower fine.

C. Order 3: CPEP Probe Course

The CPEP Probe Course is not an appropriate Order in this case. Mr. Abuel Shouhoud has taken part in the investigation and hearing and has reflected on the Hearing Tribunal's decision. Mr. Abuel Shouhoud has recommitted himself to ensuring strict compliance with the legislative and regulatory authorities moving forward and has taken it upon his own volition, since the Notice of Hearing was issued, to review the Alberta College of Pharmacy's Code of Ethics and Standards of Practice as well as the HPA to ensure compliance moving forward.

D. Order 4: Providing Written Decision to Pharmacy Employer or Licensee of a Pharmacy

The providing of the written decision to the parties contemplated herein is neither necessary nor serves any purposes in sanctioning that are not already achieved by the aforementioned Orders.

In the alternative, if this Hearing Tribunal finds the Order is appropriate it is submitted three years is excessive. Kostyk and Juma each received a similar form of Order for a period of two years. The circumstances in Kostyk and Juma were significantly more aggravating as set out above. As this Hearing Tribunal found no indication of malice and it was quite plausible Mr. Abuel Shouhoud truly believed he was trying to help the Complainant any Order issued should be for a significantly reduced time period than what is being proposed by the Complaints Director.

E. Order 5: Payment of Costs

It is submitted the College should pay the entirety of the expenses of costs of and fees related to the investigation, hearing and sanctioning process, without restriction, for itself, the Complaints Director and the Hearing Tribunal.

The majority of this hearing centred around Allegation 1 and the disclosure without authorized purpose to a third party. The Hearing Tribunal dedicated four pages of its decision to its finding on Allegation 1 as opposed to two paragraphs for each of its findings on Allegations 2 and 3. Submissions on Allegations 2 and 3 were succinct and direct as opposed to Allegation 1 which was much more contentious and elaborate.

The fact the decision noted Mr. Abuel Shouhoud admitted Allegation 2 during the hearing and that his own testimony supported Allegation 3 – should come as no surprise. Mr. Abuel Shouhoud's narrative of events in his interviews and written statements with the Complaints Director mirrored his testimony. Mr. Abuel Shouhoud did not deny the act of disclosure set out in Allegations 2 and 3 but chose to articulate his reasons behind those actions for the Hearing Tribunal to determine whether it constituted unprofessional conduct. The Hearing Tribunal found those reasons did not constitute mere errors in judgment and findings of unprofessional conduct were made. Mr. Abuel Shouhoud had no choice in this matter but to run a defence and did so, successfully on Allegation 1.

The evidence suggests the Complaints Director conducted an extensive investigation into the complaint. Two individuals from the Complaints Director's office worked on this investigation including, speaking with the involved parties over the phone, collecting and reviewing written statements, conducting in-person interviews, drafting an investigation report summarizing the findings based on the evidence collected and drafting a Record of Decision. Admittedly Mr. Krempien was less involved than Mr. Stanowich in the investigation but he reviewed the findings and recommendations of Mr. Stanowich's investigation report prior to issuing his Record of Decision of Complaints Director to proceed with three Allegations of unprofessional conduct. Notwithstanding the Complaint Director's due diligence in the investigation, the Hearing Tribunal found the Complaints Director did not discharge its burden of proof on Allegation 1 on the basis of insufficient evidence tendered at the hearing.

The fact is, the Hearing Tribunal found no reason to engage in a credibility assessment of the Parties, because even if it could accept the Complainant or Third-party witness' respective version of events, their respective version of events did not, on a balance of probabilities, make out Allegation 1. The fact a credibility assessment was not

required to determine Allegation 1 is directly due to the Complaints Director's failure to tender sufficient evidence. This is a significant factor that must be considered by the Hearing Tribunal in apportioning costs.

The time and resources spent to investigate and prosecute Allegation 1, in the face of a finding of insufficient evidence, should not be borne by Mr. Abuel Shouhoud.

In response to paragraphs 55 and 56 of the Complaints Director's submission, the Alberta Court of Appeal in *K.C. v. College of Physical Therapists of Alberta, 1999 ABCA 253* confirmed although the Act and its regulations permit recovery of all hearing costs it does not mean it must be ordered in every case. Costs on a full indemnity basis should not be the default, nor in the case of mixed success, should costs be a straight mathematical calculation based on number of convictions divided by number of charges. In addition to success and failure, the party awarding costs must consider other factors such as seriousness of charges, conduct of parties and reasonableness of amounts. If a costs award would deliver a crushing financial blow, it deserves further scrutiny, as exorbitant cost awards may deny an investigated person a fair chance to dispute allegations of professional misconduct.

In the Hearing Tribunal's Decision in the Matter of Basel Alsaadi the Hearing Tribunal awarded 50% of the costs of the hearing be paid by the Investigated Person. That case dealt with a pharmacist who had accessed multiple individual's personal health information over 700 times without authorized purpose, while on holiday and while the investigation into the complaint was ongoing. Alsaadi further misled investigators by holding back information during the investigation that was provided at the hearing and was found to have attempted to obtain false evidence for his defence, by asking a patient to sign a false letter for provision of care. The costs for Alsaadi's hearing were expected to be in the range of \$240,000 due to, amongst other things, Alsaadi misleading investigators, requesting a series of adjournments to discharge and retain new legal counsel, and launching unsubstantiated allegations of bias and inappropriate conduct against the Complaints Director and Hearing Tribunal. Notwithstanding Alsaadi's egregious conduct and post-offence behaviour during the investigation and hearing and the acknowledgement of the factors set out in in *Lysons v Alberta Land Surveyors Association* and *Alberta College of Physical Therapists v. Fitzpatrick* (as referenced in the Complaint's Director's submission); the Hearing Tribunal relied on *K.C.* and the principal that cost orders that deny investigated persons a fair chance to dispute allegations are to be avoided. The result was the costs award was cut in half despite the Complaints Director success on all but one of the allegations. Although the allegations before the Hearing Tribunal are significantly less aggravating than Alsaadi, the quantum of costs award sought by the Complaints Director, if accepted would serve to deny, deter and impede those faced with similar allegations from defending themselves in the future.

Allegations 2 and 3, while serious in nature, do not necessitate the costs award sought by the Complaints Director given their gravity is on the lower end of the spectrum for allegations of this nature.

With respect to the *Jaswal* factors on costs Mr. Abuel Shouhoud reiterates the application of the factors to the case suggests all the costs should be borne by the College.

A. The Degree of Success, if any, of the Professional in Resisting Any or All of the Charges

Mr. Abuel Shouhoud was successful in defending the most serious and time-consuming of the allegations, that being Allegation 1.

B. The Necessity for Calling all of the Witnesses who gave Evidence or for Incurring Other Expenses Associated with the Hearing

The finding by the Hearing Tribunal was clear - the Complaints Director led insufficient evidence to prove Allegation 1. The Complaints Director should have realized from its investigation - it lacked sufficient evidence to proceed on Allegation 1 and should not have proceeded on Allegation 1. It is clear ■■■'s evidence was not necessary for Allegations 2 and 3 based on the evidence arising from the investigatory record which came out at the hearing from both Mr. Abuel Shouhoud and ■■■

C. Whether the Persons Presenting the Case Against the Professional Could Reasonably Have Anticipated the Result Based Upon What They Knew Prior to the Hearing

Given the extensive investigation measures taken by the Complaints Director including, phoning of witnesses, collecting written statements and conducting detailed in-person interviews after review of those statements; the evidence at hearing came out in accordance with the investigatory record. As such it was reasonably foreseeable to believe the Complaints Director should have been aware it had insufficient evidence to meet its burden on Allegation 1.

D. Whether Those Presenting the Case Against the Professional Could Reasonably Have Anticipated the Lack of Need for Certain Witnesses or Incurring Certain Expenses in Light of What They Knew Prior to the Hearing

■■■ was not a necessary witness to make out Allegations 2 and 3 given the evidence of ■■■ and Mr. Abuel Shouhoud in the investigatory record. The Hearing may have been streamlined had the Complaints Director recognized the insufficient evidence it had to make out Allegation 1 after its extensive investigation, and not called ■■■ for Allegations 2 and 3.

E. Whether the Professional Cooperated with Respect to the Investigation and Offered to Facilitate Proof by Admissions

Mr. Abuel Shouhoud's conduct during the investigation and hearing was honest and forthright and was what one would expect of a member of the College.

F. The Financial Circumstances of the Professional and the Degree to Which his Financial Position has Already Been Affected by Other Aspects of any Penalty that has been Imposed

Mr. Abuel Shouhoud has spent extensive legal costs in defending himself and he was exonerated with respect to the most significant allegation. Given the process commenced over Covid, while Mr. Abuel Shouhoud was unemployed, he has suffered some financial hardship from the process.

Given the *Jaswal* factors on costs were meant to be a non-exhaustive list, and in light of *K.C.*, it is submitted an additional factor for consideration regarding a costs award should be whether the costs award would serve to deny, deter or impede the member and future investigated persons a fair chance to dispute the allegations. Given the purposes of sanctioning includes fairness in both process and outcome it is submitted that the totality of the costs award should be evaluated to ensure it is not too onerous to preclude members from defending themselves from similar allegations in the future.

G. Whether the Costs Would Serve to Deny, Deter or Impede a Member or Future Investigated Persons a Fair Chance to Dispute the Allegations

The costs have not been finalized but are understood to be in excess of \$60,000. In a case of this nature the fines and other penalties proposed are, admittedly, not financially substantial in nature. As such a costs award in the amount of two thirds (2/3) of the total projected cost is still exorbitant in light of the sanctions. While costs are not intended to be punitive, they invariably may have that effect and must be considered in the totality of the sentence. To award a substantial cost award against Mr. Abuel Shouhoud would serve to deny, deter and impede other investigated persons going forward a fair chance to dispute similar Allegations against them due to the cost-prohibitive nature of similar proceedings. It is submitted a cost award of this quantum offends the purposes of sentencing, including fairness and integrity of the profession.

Considering Mr. Abuel Shouhoud defended Allegation 1, successfully; and the Hearing Tribunal found he exhibited no malice, and it was quite plausible he believed he was trying to help the Complainant, an exorbitant costs award would offend the purposes of sentencing.

In the alternative, in the event that the Hearing Tribunal believes an Order for Costs is appropriate, it is submitted the appropriate range for a costs award in these circumstances should be between \$5,000 to \$7,500 for the investigation, hearing and sanction.

That costs award is a multiple of ten times the amount of the fine proposed. That multiple was applied (approximately) in Songgadan (4 fines of \$1,000.00 per offence and \$11,000.00 in costs) and Kostyk (\$1,000.00 fine and \$10,000.00 in costs). Although Songgadan and Kostyk did not proceed to contested hearings – the fact is their conduct was for personal gain and personal objectives. The findings in our case necessitate a lower amount of costs award under all the circumstances outlined above and the fact Allegation 1 was dismissed.

Mr. Abuel Shouhoud submits that the Hearing Tribunal make the following orders:

- A. Mr. Abuel Shouhoud shall receive a reprimand.

- B. Mr. Abuel Shouhoud shall pay a global fine in the amount of \$500 for Allegations 2 and 3 within 90 days of receiving the Hearing Tribunal's written decision.
- C. Mr. Abuel Shouhoud shall pay none of the expenses of, costs of and fees related to the investigation, the hearing and the sanctioning, without restriction, for the College, the Complaints Director and/or the Hearing Tribunal.

## **V. Summary of Reply Submissions made by the Complaints Director**

The Complaints Director provided written reply submissions dated September 27, 2021, which can be summarized as follows:

### The Role of the Member in Acknowledging What has Occurred

Beyond the written submissions of his legal counsel, there is no evidence that Mr. Abuel Shouhoud has acknowledged that his conduct was unprofessional or of a serious nature. Rather, he attempted to diminish ■■■'s express direction not to review her ■■■■■ by unilaterally interpreting the direction as her not wanting to hear bad news.

The suggestion by Mr. Abuel Shouhoud that there is no evidence that his review of ■■■'s Netcare profile was unlawful or unwarranted in the circumstances is contrary to the findings of the Hearing Tribunal. As found by the Hearing Tribunal, the onus is on the pharmacist to clarify and ascertain consent.

### Whether the Offending Member has Already Suffered Serious Financial or other Penalties as a Result of the Allegations Having Been Made

The Complaints Director disagrees that the Hearing Notice that is published on the website is penal in nature. Hearings are open to the public and the Hearing Notice, which does not provide particulars of the allegations, appropriately balances transparency in the regulatory process with fairness to the member.

### The Presence or Absence of any Mitigating Circumstances

A regulated member's cooperation is not a mitigating factor to consider when assessing orders for penalty. A member is statutorily and ethically required to cooperate with regulatory processes under the HPA.

### The CPEP Probe Course is Necessary for Specific Deterrence and Assurance

Mr. Abuel Shouhoud's submissions on sanction provided insufficient assurance that he understands why his conduct was unacceptable and unprofessional. As such, the CPEP Probe Course is a necessary order.



4. Mr. Abuel Shouhoud shall provide a copy of the Hearing Tribunal's written decision in this matter to any pharmacy employer or licensee of a pharmacy in which he applies to work or works as a pharmacist for two years, commencing on the date he receives a copy of the Hearing Tribunal's written decision on sanction and costs.
5. Mr. Abuel Shouhoud shall pay half (1/2) of all the costs of the investigation and hearing. Payment will occur in accordance with a monthly payment schedule as directed by the Hearings Director and the costs shall be paid in full within 24 months of the date Mr. Abuel Shouhoud receives a copy of the Hearing Tribunal's written decision on sanction and costs.

## **V. Reasons**

In determining the appropriate orders to impose, the Hearing Tribunal carefully considered the submissions of both parties with respect to sanction and costs as well as the factors from *Jaswal, supra*, at para 36 and makes the following findings:

### A. The Nature and Gravity of the Proven Allegations

The proven allegations constitute unprofessional conduct and are serious. They were however on the less severe end of the spectrum of unprofessional conduct.

### B. The Age and Experience of the Member

Mr. Abuel Shouhoud is an experienced Alberta pharmacist and licensee, being 40 years old at the time of the incidents in question and registered with the Alberta College of Pharmacy as a clinical pharmacist since August 13, 2013. Inexperience is not a mitigating factor in this case.

### C. The Presence or Absence of Prior Complaints or Convictions

There are no prior complaints or convictions against Mr. Abuel Shouhoud.

### D. The Age and Mental Condition of the Offended Patient

■ was not underage and there is no evidence that ■ was suffering from any mental condition at the time of the December 3, 2019 incident.

### E. The Number of Times the Offences were Proven to Have Occurred

The unprofessional conduct arises from a single incident and occurred on a single occasion.

### F. The Role of the Member in Acknowledging What has Occurred

Mr. Abuel Shouhoud chose to fully contest the allegations against him. This is his right

and the Hearing Tribunal is cognizant that availing himself of his right to full answer and defence is not to be considered an aggravating factor in assessing orders for penalty.

The Hearing Tribunal acknowledges that in his written submissions on penalty, Mr. Abuel Shouhoud expressed remorse for any pain he caused to the complainant as a result of the events of December 3, 2019. This is an appropriate acknowledgement, but the Hearing Tribunal views this acknowledgement as distinct from an acknowledgement that the conduct as set out in the allegations amounted to unprofessional conduct. As such, the Hearing Tribunal does not view the mere acknowledgement of remorse as one that would amount to a mitigating factor in the same way as might an acknowledgement of unprofessional conduct. Again, however, Mr. Abuel Shouhoud had every right to contest the allegations of unprofessional conduct.

In the result, this factor is neutral and has neither aggravating nor mitigating value when assessing orders for penalty.

G. Whether the Offending Member has Already Suffered Serious Financial or other Penalties as a Result of the Allegations Having Been Made

Aside from Mr. Abuel Shouhoud's raising his legal costs and his concern regarding the publication of a hearing notice on the College's website, there is no evidence of serious financial or other penalties suffered by the member. While it is a member's right to defend himself and retain legal counsel of his choosing, the cost to do so is the member's choice and responsibility and not considered a financial or other penalty which would mitigate sanctions ordered.

The Hearing Tribunal rejects Mr. Abuel Shouhoud's argument that the publication of hearing notices on the College's website is penal and should be considered a serious penalty he suffered. This is the College's standard practice and informs the membership and public that there is a charge of unprofessional conduct against a member and provides the dates and times of the hearing to be held. As noted by the Complaints Director, given that the Hearing Notice is clear that these are charges (not findings) of unprofessional conduct and that the Notice does not detail particulars of the conduct, this strikes an appropriate balance between fairness to the member and transparency to the public.

Further, Mr. Abuel Shouhoud was clear that his relationship as a licensee with ██████████ ██████████ was terminated due to a mutual parting of the ways and was not related to the College proceedings.

Accordingly, the Hearing Tribunal finds that Mr. Abuel Shouhoud did not suffer

serious financial or other penalties as a result of the allegations having been made.

H. The Impact of the Incident on the Offended Patient

█ testified before the Hearing Tribunal that the events of December 3, 2019 had a significant impact on her. She hadn't worked in a year and struggled to go back to her place of work. She has been in therapy.

I. The Presence or Absence of any Mitigating Circumstances

There was no evidence presented of any specific mitigating circumstances. The Hearing Tribunal does not accept that a member's mere cooperation with his regulatory body should be considered a mitigating circumstance. As noted by the Complaints Director, a member is both ethically and statutorily bound to cooperate with the regulator and, as such, should not receive mitigating credit for something he is already bound to do.

Mr. Abuel Shouhoud submits that the absence of malice should be considered a mitigating factor. In the Hearing Tribunal's view, the presence of malice would certainly serve as an aggravating factor when assessing orders for penalty. However, it does not put significant weight on the absence of malice as a mitigating factor. The fact that Mr. Abuel Shouhoud may have had good intentions when he ignored █'s express direction not to review her █ results does not significantly mitigate the fact that he ultimately chose to ignore her express direction.

J. The Need to Impose Specific and General Deterrence

The Hearing Tribunal agrees with both parties that specific and general deterrence are vital for the purpose of the orders issued by the Hearing Tribunal. The Hearing Tribunal agrees that a reprimand, fine and CPEP Course are necessary in particular to serve the purpose of specific deterrence. These penalties will assist in driving home to Mr. Abuel Shouhoud the seriousness of his conduct and why it cannot be repeated in the future.

K. The Need to Maintain the Public's Confidence in the Integrity of the Profession of Pharmacy in Alberta

Protecting the public's confidence in the integrity of the profession of pharmacy is fundamental and the key mandate of the College. The Hearing Tribunal also agrees with Mr. Abuel Shouhoud that the member is owed a duty of fairness throughout the complaint and hearing process. However, being fair to the member does not necessarily lead to the imposition of less severe penalties. In the Hearing Tribunal's view, the duty of fairness to the member requires the Hearing Tribunal to assess orders for penalty that are responsive and proportionate to the findings of unprofessional conduct.

L. The Degree to Which the Conduct is Clearly Outside the Range of Permitted Conduct

The conduct in this case is clearly beyond the range of permitted conduct. As noted in the Findings Decision at page 41:

“Mr. Abuel Shouhoud’s conduct in Allegations 2 and 3 is serious, breaches statutory and regulatory obligations, including Standards of Practice 1.1 and 1.2, Principles 2.5, 4.6 and 10.1 of the Code of Ethics and harms the integrity of the profession. Pharmacists are entrusted by society and patients with access to personal health information. This information is sacrosanct, and its collection, use and disclosure is protected by statutory and regulatory duties. Beyond these prescribed duties, pharmacists are bound by a covenant of trust with patients and society for the great responsibility entrusted to them with access to patients’ personal health information. Breaking this trust brings disrepute to the profession and harms the ability for the profession to self-regulate.”

M. The Range of Sentences in Other Similar Cases

While the previous decisions of other panels of the Hearing Tribunal cited by the Complaints Director, namely Songgadan, Kostyk, and Juma, were relevant, the facts of those cases were different and the nature of the unprofessional conduct in those cases was comparatively more severe with more aggravating factors than are present in Mr. Abuel Shouhoud’s case. The cited cases all also proceeded by way of agreed statements of facts and admissions of unprofessional conduct whereas Mr. Abuel Shouhoud’s case did not.

The Hearing Tribunal considered these cases in determining penalty orders for Mr. Abuel Shouhoud. Recognizing these differences and the fact that Mr. Abuel Shouhoud engaged in a single instance of less serious conduct, the Hearing Tribunal determined that lower fines should be payable by Mr. Abuel Shouhoud than were ordered in the Songgadan, Kostyk and Juma cases. Neither party suggested that a suspension was appropriate in this case, as was ordered in the Songgadan, Kostyk and Juma cases, and the Hearing Tribunal agrees that a suspension is not warranted in the case of Mr. Abuel Shouhoud.

The Hearing Tribunal will address further reasons for specific orders below.

**Order 1**

The Hearing Tribunal concurs with both parties, who agree that a reprimand is an appropriate order in this case. This is consistent with the Songgadan and Juma cases and it serves the purposes of both specific and general deterrence. It is notice to both the member and other members of the College that this conduct is unprofessional conduct and serious. The reprimand further demonstrates to the public that this type of conduct is not acceptable to the College.

## **Order 2**

The Hearing Tribunal concurs with both parties, who agree that a fine is an appropriate order in this case.

The Complaints Director proposed a \$500 fine for each of the proven allegations (Allegations 2 and 3), drawing a comparison to the Songgadan and Kostyk cases. Mr. Abuel Shouhoud submits that a fine in the range of \$500 per offence is within the range of acceptable fines and that an appropriate fine in this case would be a global amount of \$500 to \$750.

The Hearing Tribunal ordered a \$350 fine for each of the proven allegations (Allegations 2 and 3), for a total fine of \$700. The allegations arose from one incident, but there are two distinct findings of unprofessional conduct. A fine for each finding is appropriate and not duplicative. A \$350 fine for each allegation for a total fine of \$700 is an appropriate quantum in this case. The two cases cited by the Complaints Director (Songgadan and Kostyk) have different facts and the unprofessional conduct in both of those cases is comparatively more severe than that in the present case. In the Songgadan case, the member inappropriately accessed and disclosed the personal health information of four individuals and disclosed some of the information via Facebook. In the Kostyk case, the member used a patient's health information to contact her personally in order to pursue a personal encounter.

In Mr. Abuel Shouhoud's case, in a single instance, he disclosed personal health information to the patient herself even though he was requested not to access that information and did so in a non-confidential setting in front of another staff member. The Hearing Tribunal also acknowledges that unlike the Songgadan and Kostyk cases there was no apparent personal reason or benefit for the conduct. As previously discussed in the Findings Decision, both allegations are inappropriate, serious, and constitute unprofessional conduct. However, on a spectrum, and in comparison, to Songgadan and Kostyk, they are less severe.

## **Order 3**

The Hearing Tribunal concurs with the Complaints Director that an order requiring Mr. Abuel Shouhoud to, at his own cost, take and receive an unconditional pass on the CPEP Probe Course is appropriate.

The PROBE course is a common order in disciplinary cases involving violations of privacy as evidenced by both the Kostyk and Juma cases. As noted by the Complaints Director, "The Program is a non-adversarial ethics and boundaries educational intervention. This personalized Program targets participants' professional misconduct. Intensive discussions and case analysis facilitate the participant 'probing' into their ethical misstep and recommitting to professional ideals." Privacy and respect violations are specifically noted as types of violations or infractions addressed by the course.

Based on the facts of this case, there are fundamental issues related to patient consent and personal health information and not respecting a patient's express wishes. The PROBE course is an appropriate and necessary order for remediation and to provide specific deterrence and protection of the public.

The Hearing Tribunal acknowledges Mr. Abuel Shouhoud's submission that he has recommitted himself to ensuring strict compliance with the legislative and regulatory authorities moving forward and has taken it upon his own volition, since the Notice of Hearing issued, to review the College's Code of Ethics and Standards of Practice as well as the HPA to ensure compliance moving forward. This is commendable on Mr. Abuel Shouhoud's part.

However, in the Hearing Tribunal's view, the fact that Mr. Abuel Shouhoud felt that he could unilaterally interpret ■■■'s express direction not to access her personal information points to a need for an order that will ensure that Mr. Abuel Shouhoud fully and sufficiently understands that his conduct was serious, unacceptable and unprofessional. To that end, the Hearing Tribunal remains satisfied that the PROBE course is appropriate and will assist Mr. Abuel Shouhoud with a more comprehensive understanding of his conduct.

#### **Order 4**

The Complaints Director proposed an order requiring Mr. Abuel Shouhoud to provide a copy of the Hearing Tribunal's written decision in this matter to any pharmacy employer or licensee of a pharmacy in which he applies to work or works as a pharmacist for three years, commencing on the date he receives a copy of the Hearing Tribunal's written decision. Mr. Abuel Shouhoud submits that the proposed order is neither necessary nor serves any purposes in sanctioning that are not already achieved by other orders. Mr. Abuel Shouhoud alternatively submits that should the Hearing Tribunal find the proposed order appropriate; three years is excessive.

The Hearing Tribunal agrees with the Complaints Director that an order of this nature is appropriate and required in this case. Mr. Abuel Shouhoud disclosed a patient's personal health information to the patient herself even though she specifically requested Mr. Abuel Shouhoud not access that information, and Mr. Abuel Shouhoud made that disclosure in a non-confidential setting in front of another staff member. As previously noted, this conduct is serious, breaches several statutory and regulatory obligations, including Standards of Practice 1.1 and 1.2, Principles 2.5, 4.6 and 10.1 of the Code of Ethics, and harms the integrity of the profession. This order is required as an additional measure of specific deterrence and protection of the public to ensure that the conduct does not recur.

However, the Hearing Tribunal finds that the duration should be for a period of two, not three, years, consistent with the Kostyk and Juma cases. In the Hearing Tribunal's view, there was no justification provided for this order to be in effect for three years. The three years sought by the Complaints Director significantly exceeds the two-year time period ordered in the Juma and Kostyk cases.

The Hearing Tribunal does not agree with Mr. Abuel Shouhoud that the relative severity of the conduct compared to Kostyk and Juma justifies a duration shorter than two years or no order of this nature at all. Mr. Abuel Shouhoud's conduct was serious, and a two-year duration is consistent with other cases. The two-year period provides a reasonable amount of time for Mr. Abuel Shouhoud to not only take the CPEP Probe course, but to reflect on his conduct and the course and put his learnings into practice. The two-year period also allows for a future employer to be aware of Mr. Abuel Shouhoud's disciplinary action so as to mitigate the risk of the conduct recurring.

The Hearing Tribunal notes here as well that ■ was not only Mr. Abuel Shouhoud's patient but also his employee. Given that the conduct at issue in this case also impacted an employer-employee relationship, the Hearing Tribunal is of the view that it is particularly important that any future pharmacy employer or licensee be aware of Mr. Abuel Shouhoud's conduct for this prescribed period of time.

The two-year period will commence on the date that Mr. Abuel Shouhoud receives a copy of the Hearing Tribunal's written decision on sanctions and costs.

### **Order 5**

The Complaints Director requested that Mr. Abuel Shouhoud be ordered to pay two thirds (2/3) of the costs of the investigation and hearing, in accordance with a monthly payment schedule as directed by the Hearings Director and the costs to be paid in full within 24 months of the date Mr. Abuel Shouhoud receives a copy of the Hearing Tribunal's written decision.

Mr. Abuel Shouhoud submitted that the College should pay the entirety of the expenses of costs and fees related to the investigation, hearing, and sanctioning process, without restriction, for itself, the Complaints Director and the Hearing Tribunal. In the alternative, it was submitted that if the Hearing Tribunal found an order for costs to be appropriate, the appropriate range for a costs award should be between \$5,000 and \$7,500 in this case.

The Hearing Tribunal has determined that Mr. Abuel Shouhoud shall pay half (1/2) of all the costs of the investigation and hearing, with payment to occur in accordance with a monthly payment schedule as directed by the Hearings Director and the costs to be paid in full within 24 months of the date Mr. Abuel Shouhoud receives a copy of the Hearing Tribunal's written decision on sanctions and costs.

While in hindsight there may have been opportunities to streamline the parties' cases and the hearing process, both parties made their cases through the course of the hearing process and the process played out as it should in our system. It is the right of both parties to make robust and fulsome cases, and the Hearing Tribunal does not find that either party was inappropriate or unreasonable in making its case.

While the Hearing Tribunal did not find Allegation 1 to be proven on a balance of probabilities, the Complaints Director could not reasonably have foreseen this to the extent that he should not have pursued the allegation at hearing. A large part of the Hearing Tribunal's decision on this allegation was based on witness testimony arising during the hearing. Witness testimony can be unpredictable, and it cannot be expected that a party can specifically predict how and exactly what evidence a witness will produce under direct examination and cross examination. To suggest that this case should have been streamlined by the Complaints Director by not pursuing Allegation 1 would be akin to suggesting that Mr. Abuel Shouhoud should have admitted to Allegations 2 and 3; neither is appropriate.

In concluding that Mr. Abuel Shouhoud should be responsible for 50% of the costs of the investigation and hearing, the Hearing Tribunal considered both parties' submissions as well as the case law from *Jaswal, supra, K.C. v. College of Physical Therapists of Alberta, 1999 ABCA 253*, and *Alsaadi v Alberta College of Pharmacy, 2021 ABCA 313*.

The Hearing Tribunal also notes that it would be a serious departure from standard practices in professional regulation to order no costs against a member where the member has been found to have engaged in unprofessional conduct. As noted by the Alberta Court of Appeal in *Lysons v. Alberta Land Surveyors Association*, 2017 ABCA 7, “requiring the professional to pay all or a portion of hearing and investigation costs is a common part of professional disciplinary sanctions.” Were it otherwise, then the costs of investigating and prosecuting unprofessional conduct would be borne solely by the other members of the profession. A more equitable approach is to have the member bear at least certain of the costs occasioned by their own unprofessional conduct.

*Jaswal, supra*, at paragraph 5 provides the following non-exhaustive list of factors to consider on costs:

- a. the degree of success, if any, of the professional in resisting any or all of the charges;
- b. the necessity for calling all of the witnesses who gave evidence or for incurring other expenses associated with the hearing;
- c. whether the persons presenting the case against the professional could reasonably have anticipated the result based upon what they knew prior to the hearing;
- d. whether those presenting the case against the professional could reasonably have anticipated the lack of need for certain witnesses or incurring certain expenses in light of what they knew prior to the hearing;
- e. whether the professional cooperated with respect to the investigation and offered to facilitate proof by admissions, etc.; and
- f. the financial circumstances of the professional and the degree to which his financial position has already been affected by other aspects of any penalty that has been imposed.

The Hearing Tribunal found two of the three allegations in the Notice of Hearing proven, and so Mr. Abuel Shouhoud was successful in partially resisting the allegations. Regarding cooperation, Mr. Abuel Shouhoud did cooperate with the investigation as is his duty under the HPA, so this is not an aggravating factor, but neither is it a mitigating factor. Mr. Abuel Shouhoud did not make admissions, but as previously discussed, mounting a defence is not an aggravating factor.

Regarding financial circumstances, the Hearing Tribunal was provided little or no evidence or argument regarding Mr. Abuel Shouhoud’s financial circumstances or why a costs order should fall in the range of \$5,000 to \$7,500. Mr. Abuel Shouhoud argued that he spent extensive legal costs to defend himself and noted that he was unemployed during the hearing process. The Hearing Tribunal recognizes the legal costs incurred by Mr. Abuel Shouhoud but while there is a right to defend oneself and to avail oneself of legal counsel, it comes at one’s own cost. A member’s legal costs are not considered a mitigating factor on its own. The logical extension of this argument is that any member who chooses to retain and pay their own legal counsel to

defend the allegations should not also be required to pay the costs associated with the hearing and investigation. This cannot be the case and would not be consistent in any event with the Hearing Tribunal's authority to order costs in accordance with section 82(1)(j) of the HPA.

While it has become relatively standard practice for disciplinary tribunals to award costs based on the proportion of allegations found to be proven, this Hearing Tribunal considered *K.C.*, *supra*, and *Alsaadi*, *supra*, looked at the costs globally and carefully weighed their reasonableness, the impact on both Mr. Abuel Shouhoud himself and future investigated members. The Hearing Tribunal is mindful that costs should not amount to a crushing financial blow and should not be so high as to deter members in the future of availing themselves of the right to make full answer and defence. In the circumstances, the Hearing Tribunal is of the view that Mr. Abuel Shouhoud should pay 50% of all the costs of the investigation and hearing. The Hearing Tribunal is cognizant that while 50% of all the costs may still appear significant to Mr. Abuel Shouhoud, the financial impact is mitigated by the 24-month payment schedule.

Signed on behalf of the hearing tribunal by the Chair on January 26, 2022

Per: *Naeem Ladhani*  
Naeem Ladhani (Jan 26, 2022 07:47 HST)

Naeem Ladhani