

ALBERTA COLLEGE OF PHARMACY

IN THE MATTER OF
THE *HEALTH PROFESSIONS ACT*

AND IN THE MATTER OF A HEARING
REGARDING THE CONDUCT OF

BASEL ALSAADI
Registration No. 9796

DECISION OF THE HEARING TRIBUNAL ON SANCTIONS

Redacted

May 14, 2019

I. INTRODUCTION

5 The Hearing Tribunal held a hearing into the conduct of Basel Alsaadi and on August 3, 2018 issued a decision finding seven allegations of unprofessional conduct against Mr. Alsaadi to have been proven (“Findings Decision”).

10 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. An oral hearing was requested and held on November 14, 2018.

15 The Hearing Tribunal on November 14, 2018 consisted of Mr. Naeem Ladhani, Pharmacist and Chairperson; Ms. Judi Parrott, Pharmacist; and Ms. Pat Matusko, Public Member. Ms. Teryn Wasileyko, Pharmacist, who was a member of Hearing Tribunal for the findings stage of the hearing was unavailable on November 14, 2018 and took no part in the sanctions stage of the hearing or this decision.

20 The Hearing Tribunal advised the parties that Ms. Parrott had been elected to the Council of the Alberta College of Pharmacy (the “College”) since the findings stage of the hearing. The parties were advised that Ms. Parrott would participate in the sanctions stage of the hearing but would take no part in any potential appeal to the Council of the College. The parties had no objections to Ms. Parrott’s involvement in the hearing, and there were no other issues of a preliminary nature.

25 The hearing on sanctions and costs was held at College Plaza, in the second-floor conference centre, located at 8215 112 Street NW in Edmonton, Alberta. The hearing was conducted pursuant to the *Health Professions Act*, R.S.A. 2000, c. H-7 (the “*Health Professions Act*”).

30 Mr. James Krempien, Complaints Director for the College attended the hearing represented by Mr. David Jardine and Ms. Annabritt Chisholm, legal counsel. Mr. Basel Alsaadi was also present with Mr. Simon Renouf, QC, legal counsel. Mr. Gregory Sim provided independent legal counsel to the Hearing Tribunal.

35 The Hearing Tribunal received and reviewed written submissions from both parties in advance and heard oral arguments on sanctions and costs on November 14, 2018. Mr. Alsaadi’s submission on sanctions attached a copy of his Conditional Sentence Order and a Consent Court Order from his *Health Information Act* proceedings, a letter from his physician and material from the University of Ottawa. These were received by the Hearing Tribunal without
40 objections. Neither party called any other additional evidence.

45 **II. FINDINGS of the HEARING TRIBUNAL**

In its Findings Decision, the Hearing Tribunal found Mr. Alsaadi guilty of the following allegations of unprofessional conduct:

- 50 1. Accessed the private health information of [seven] individuals without their prior knowledge, consent or an authorized purpose. For these individuals no associated pharmacy record of care or authorized purpose could be found. These individuals include: [REDACTED];¹
- 55 2. Accessed the private health information of [twelve] individuals with their stated consent, but for whom no associated pharmacy record of care or authorized purpose could be found. These individuals include: [REDACTED],²
- 60 3. Did not create any records of care associated with the pharmacy “consultative” services you indicated you provided and thereby failed to meet the minimum standards of practice regarding record keeping;
- 65 5. Reviewed portions of the Electronic Health Records (“EHRs”) that were outside of the scope of practice of a pharmacist in regards to your multiple and detailed access of [two] individuals’ EHRs: [REDACTED] during which the health information you reviewed included [sensitive diagnostic health information]
- 70 6. Accessed the private health information of your family members as part of your admitted provision of pharmacy services to members of your immediate family despite the fact that all family members reside in Edmonton and thus any pharmacy service you provided was not allowed under one of the exceptions outlined in the Code of Ethics to the general prohibition on providing care to family members and it is further alleged that in accessing those records you could provide no authorized purpose and no records of care for those individuals;
- 75 7. Displayed conduct not consistent with the ethical requirement of honesty and the duty to comply with and cooperate with an investigator as displayed in your reported conversation with [REDACTED] in which you sought to have [her] sign [a letter] indicating that you had provided pharmacy services to [her];³
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¹ The Complaints Director withdrew the portion of this allegation as it pertained to two other individuals, [REDACTED] and [REDACTED]

² The Complaints Director withdrew the portion of this allegation as it pertained to one other individual, [REDACTED].

³ Allegation 7 alleged that Mr. Alsaadi had sought to have another individual, [REDACTED] sign a similar letter. This aspect of allegation 7 was not proven.

The ethical requirement of honesty and duty to comply with and cooperate with the Investigator and Complaints Director was also breached in the following manner:

85 7a. Failing throughout the investigation and up to November 6, 2017 to advise the
Complaints Director and the Investigator of the actions taken by [REDACTED], on April
19, 2014, at SDM [REDACTED];

90 7b. Responding to questions from the investigator on July 15, 2015 about the
access to Netcare on April 19, 2014 as follows:

95 *I asked Basel about accessing people on April 29, 2014 while working at
Shoppers Drug Mart [REDACTED] using his Grey Nuns access code. Basel stated
that all of these people were work related but may not have been patients
at the drugstore. Some may have been patients where he was providing
counselling. However, my investigation showed that some of these people
accessed stated that Basel did not act as their pharmacist, did not fill
prescriptions for them nor have any reasons to access their health records.*

100 *I mentioned to Basel that he said in his response to Mr. Krempien that some
of these patients may have been accessed by another staff member using
Basel's code. I told Basel that my understanding, after talking to [REDACTED]
[an] associate at Shoppers Drug Mart [REDACTED], was that he was the only
pharmacist working at that time. Basel told me he would have been
105 working alone and now realizes that someone else couldn't have accessed
Netcare using his code during these shifts.*

(Exhibit 3, Tab 31, p. 264-265)

110 7c. By responding to the Complaints Director in his response letter of April 26,
2015 and stating:

115 *4) Patients accessed under any of Netcare access sites may have been
accessed by individuals other than myself.*

*a. Patients' files could have been accessed using my Netcare login
without my knowledge by other individuals who have access to a
computer terminal on which I am logged into Netcare*

120 *b. In some instances, it is possible that I had forgotten to log out of
Netcare after the completion of my shift at a certain site, and other
pharmacy staff may have had access to my Netcare login.*

*These scenarios would result in a log that shows patients being accessed
at a particular site where they are not receiving treatment. This would*

125 *rightfully be alarming to the Network Administrator of that site. I can assure you, however, that all of the patients I have access under any of the access site listed on my Netcare ID are indeed my patients, and I have cared for them within my scope of practice.*

130 *For the patients listed in the March 6th, 2016 letter addressed to me, I have attempted to contact some of the names I recognize, explained the situation, and have obtained letter from these patients. There are a few patients however, that I have not been able to contact:*

135 [REDACTED] *(I do not recognize this name)*
[REDACTED] *(A patient of mine, unable to contact, no records available)*
[REDACTED] *(A patient at SDM [REDACTED])*
[REDACTED] *(A patient at SDM [REDACTED])*
140 [REDACTED] *(I do not recognize this name)*
[REDACTED] *(I do not recognize this name)*
[REDACTED] *(A patient at SDM [REDACTED])*
[REDACTED] *(I do not recognize this name)*
[REDACTED] *(A patient of mine, unable to contact, no records available)*

145 *Although I may have a personal relationship with some of the patients listed in the letter (i.e. Family members, friends, acquaintances), I have always attempted to maintain a professional relationship when providing services to these patients.*

150 (Exhibit 3, Tab 22, p. 211-212)

7d. By providing the Complaints Director a letter from [REDACTED] stating that he had been her pharmacist since July 13, 2013 and had been providing her with pharmacy services to the full scope of his practice;

155 (Exhibit 3, Tab 22, p. 221)

7e. The admission made on July 27, 2017 regarding [REDACTED] on the admission of unprofessional conduct (Exhibit 23), made after the hearings on July 18-20, 2017 [with respect to breach of ethical duty of honesty only];

8. Engaged in these unauthorized accesses of patients EHRs over a lengthy period of time involving the unauthorized access of private and sensitive health information of multiple individuals on multiple separate occasions.

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III. SUBMISSIONS ON SANCTIONS

The Complaints Director’s written and oral submissions on sanctions and costs may be summarized as follows:

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- Discipline proceedings are an important aspect of self-regulating professions, such as Pharmacy. Discipline proceedings and discipline orders must serve purposes such as the protection of the public, the maintenance of the integrity of the profession, fairness to the member of the profession and deterrence, including both specific deterrence of the member and general deterrence of the profession at large.

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 - Section 82 of the *Health Professions Act* gives the Hearing Tribunal broad authority to make orders to address Mr. Alsaadi’s proven unprofessional conduct.
 - In determining what orders to make, the Hearing Tribunal may take into account a number of factors taken from *Jaswal v. Newfoundland Medical Board* (1996), 42 Admin L.R. (2d) 1242.

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 - In relation to the nature and gravity of the proven allegations, Mr. Alsaadi’s proven unprofessional conduct was very serious. It goes to the heart of the professional and ethical obligations of a pharmacist.

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 - Mr. Alsaadi was found to have accessed individuals’ personal health information without an authorized purpose, contrary to the College’s Code of Ethics, and he breached the trust placed in pharmacists. He failed to create required pharmacy records of care, contrary to the Standards of Practice. The Hearing Tribunal found that he accessed an “extremely troubling” volume and types of personal health records, and this conduct occurred in part while Mr. Alsaadi was overseas on vacation and it continued even after he had formally responded to the Complaints Director on April 26, 2015 and claimed his intention to create records for all patients for whom he provides pharmacy services.

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 - Mr. Alsaadi was also found to have attempted to obtain false evidence from ■■■ for his defence. Mr. Alsaadi had asked ■■■ to provide a false letter claiming he had provided her with pharmacy services.

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 - The Hearing Tribunal found that Mr. Alsaadi had not been forthright and that he had not cooperated during the College investigation about the events of April 19, 2014. Mr. Alsaadi held back information during the investigation that he later provided during his oral evidence. He actively misled the investigation. During the investigation, he implied that he had accessed Netcare appropriately himself on April 19, 2014. He later testified that he believed those accesses were done inappropriately by ■■■. This was a contravention of the *Health Professions Act* but also a matter of professional ethics, honesty and integrity.

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The Hearing Tribunal said it was particularly troubling that Mr. Alsaadi did not seem to understand the gravity of this allegation.

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- The Hearing Tribunal also concluded that Mr. Alsaadi inappropriately accessed Netcare over 700 times between April 1, 2014 and May 27, 2015 for individuals identified in the allegations. The Hearing Tribunal remarked that it was “particularly troubling” that Mr. Alsaadi’s conduct continued during the College investigation and even after Mr. Alsaadi’s formal response to the Complaints Director on April 26, 2015.
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- In relation to Mr. Alsaadi’s age and experience, the Hearing Tribunal should consider that Mr. Alsaadi was a relatively new pharmacist at the material time. However, the nature and depth of his proven unprofessional conduct should not be excused based on his lack of experience. It was submitted that it does not take a lot of experience to understand that misleading the College’s investigators would be unprofessional.
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- The Complaints Director acknowledges that Mr. Alsaadi had no prior findings of unprofessional conduct.
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- Regarding the age and condition of any offended patients, the Complaints Director acknowledged there was no evidence that any of the individuals whose private health information was accessed by Mr. Alsaadi were underage or particularly vulnerable.
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- Regarding the number of times Mr. Alsaadi was proven to have engaged in unprofessional conduct, the Complaints Director emphasized that Mr. Alsaadi’s conduct involved many separate unprofessional actions over an extended period of time up to and during the investigation and the hearing itself.
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- Regarding Mr. Alsaadi’s role in acknowledging what happened, the Complaints Director submitted that it was clear he did not acknowledge there was anything seriously improper with the majority of his conduct. Mr. Alsaadi acknowledged errors in his record keeping and in treating his family members, but suggested these were innocent errors of a young pharmacist. He also acknowledged some accesses of personal health information for some individuals but he did not accept or acknowledge the severity of his proven unprofessional conduct. The Complaints Director submitted there was no evidence of self-reflection or understanding of the serious nature of Mr. Alsaadi’s proven conduct.
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- Regarding any other serious financial or other penalties as a result of the allegations having been made, the Complaints Director acknowledged that Mr. Alsaadi had resigned from his position with Grey Nuns Hospital as a result of his actions. He voluntarily removed himself from practice. As a result, this cannot be taken as a consequence of the allegations in the Notice of Hearing having been made.
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- Mr. Alsaadi also pleaded guilty to an offence under the *Health Information Act* and lost his ability to access Netcare. Based on the conviction under the *Health Information Act*, Mr. Alsaadi was sentenced, including to house arrest. Mr. Alsaadi then retained Mr. Renouf and learned he should not have been sentenced to house arrest and this was vacated. Mr. Alsaadi nevertheless served three months of house arrest. The Complaints Director argued that this was not a consequence the College had anything to do with.

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 - Regarding the impact on any offended patients, the Complaints Director pointed out that a number of female classmates or friends of Mr. Alsaadi testified that they were concerned and upset by his unauthorized access of their private health information. Some individuals were also upset that Mr. Alsaadi attempted to convince them that he had performed a pharmaceutical service for them.

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 - Regarding the presence of any mitigating circumstances, the Complaints Director highlighted the lack of any prior findings of unprofessional conduct and the fact that Mr. Alsaadi lost his employment at the Grey Nuns Hospital.

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 - Regarding the need for specific deterrence, the Complaints Director argued it is vital that Mr. Alsaadi understand that his conduct was unacceptable and unprofessional. Unfortunately, Mr. Alsaadi did not seem to think so. The Complaints Director argued that Mr. Alsaadi's lack of insight into his unprofessional conduct undermines the College's ability to regulate his practice as a pharmacist. Regarding general deterrence, the Complaints Director argued that other members of the pharmacy profession must see that the College will not tolerate Mr. Alsaadi's conduct and that the sanctions should be severe. Self-regulation by the College depends on the cooperation of its members and their willingness to comply fully with their legal and ethical duties.

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 - Regarding the need for public confidence in the profession, the Complaints Director argued that Mr. Alsaadi's proven conduct would undermine public confidence in the College and the profession unless it can be fully addressed with appropriate sanctions. The public must be able to see that steps have also been taken to ensure Mr. Alsaadi's unprofessional conduct does not reoccur.

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 - Regarding the degree to which Mr. Alsaadi's proven unprofessional conduct is clearly outside the range of permitted conduct, the Complaints Director submitted that Mr. Alsaadi's conduct demonstrated an unwillingness to comply with the fundamental duties of a pharmacist. His conduct included not cooperating with the College's investigation and actually frustrating the investigation. Mr. Alsaadi's conduct went far beyond the range of permitted conduct.

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 - Regarding the range of sanctions imposed in other, similar cases, the Complaints Director explained that there are no other cases with the same combination of unprofessional conduct as in Mr. Alsaadi's case. There are other cases each dealing with appropriate sanctions for some of Mr. Alsaadi's proven conduct.

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- 290 • Regarding Mr. Alsaadi's failure to cooperate with the College's investigator and
Complaints Director; his attempts to obtain false or misleading letters from various
individuals; and his provision of false, incomplete or misleading information; the
Complaints Director referred to the cases of Greg Rudy, Philip Leung and Andrew Wong.
- 295 • In July 2008, Mr. Rudy was found to have refused to cooperate with the College's
investigation; he had advised the investigator he had destroyed the records of the pharmacy,
and he failed to appear at his hearing. The Investigating Committee found that Mr. Rudy
had attempted to subvert the discipline process and this was conduct of the most serious
300 nature. Mr. Rudy received a fine of \$10,000 for his failure to cooperate with the
investigation, a fine of \$10,000 for destroying pharmacy records and failing to produce
them in response to a notice to produce, a further fine of \$10,000 for the destruction of
records required to be retained for two years, an order for permanent cancellation, and an
order that he pay all of the costs of the investigation and hearing. These sanctions were
upheld on appeal to the College's Council on February 23, 2010.
- 305 • Mr. Leung was found to have failed to cooperate with the College investigation into the
alleged theft of narcotics. The Hearing Tribunal held that failing to cooperate with an
investigation undermines self-regulatory privilege and places it in peril. The Tribunal held
that Mr. Leung's behaviour exhibited ungovernability. On March 1, 2011, the Tribunal
imposed a \$10,000 fine and ordered that Mr. Leung's registration be permanently
310 cancelled. He was also ordered to pay the costs of the investigation and hearing.
- 315 • Mr. Wong was found to have intentionally misled the College and a previous Investigating
Committee. Mr. Wong was held to be unwilling to respect the authority of a self-regulating
profession and to be ungovernable. The Investigating Committee held that the integrity of
the discipline process is necessary in self-governing professions. Without consequences
and penalties, the profession is unable to protect the public. Mr. Wong's actions and
attitude rendered him untrustworthy. On December 13, 2007 Mr. Wong was fined \$10,000,
his registration was revoked, and he was ordered to pay the total costs of the investigation.
- 320 • Regarding Mr. Alsaadi's misuse of Netcare, the Complaints Director referred to the case
of Marianne Songgadan. Ms. Songgadan was found to have accessed and used the private
health information of four individuals, including disclosing some of the information on
Facebook. Ms. Songgadan initially denied the allegations, only admitting them after being
confronted with a Netcare disclosure log. Ms. Songgadan thereafter cooperated with the
investigation and admitted that her conduct was unprofessional. The Hearing Tribunal held
325 that a pharmacist must act in a professional manner at every point of access to personal
health information. The Tribunal imposed a \$4,000 fine and suspended Ms. Songgadan's
practice permit for four months, with two of those months to be conditional and held in
abeyance in the event that Ms. Songgadan ever sought registration in Alberta in the future.

330 She had lost her job and moved to Ontario following the conduct in question. She was also directed to pay costs of \$11,000.

- Finally, the Complaints Director referred to four other cases of health professionals engaging in unauthorized and inappropriate access to private electronic health information.

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- In *Nova Scotia College of Pharmacists v. Robyn Keddy*, July 26, 2018, the member had inappropriately accessed patient personal health information over several months. The College's Hearing Committee endorsed a settlement agreement whereby Ms. Keddy received a reprimand, a six-month suspension, a \$5,000 fine and \$4,000 in costs. She was also required to undertake an ethics course.

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- In *Ontario (College of Physicians and Surgeons of Ontario) v. Brooks*, 2016 ONCPSD 29, the Discipline Committee found Dr. Brooks had committed a number of unauthorized accesses to the private electronic health information of two individuals with whom he had a close personal connection. The Committee accepted a joint submission and imposed a reprimand, a five-month suspension, a requirement to complete instruction in medical ethics, and a requirement that he pay \$5,000 in costs.
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- In *College of Nurses of Ontario v. Trudel*, 2018 CanLII 62040, Ms. Trudel admitted that she had inappropriately accessed the private electronic health information of 63 individuals, including her family members, co-workers, neighbours or friends. The Discipline Panel accepted a joint submission on penalty and imposed a reprimand, a four-month suspension, a requirement to meet with a nursing expert to discuss ethical conduct and a requirement to disclose the Discipline Panel's decision to future nursing employers.
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- In *College of Nurses of Ontario v. Duke*, 2018 CanLII 40491, Ms. Duke was found to have inappropriately accessed the health records of 355 patients over the course of one year without consent or authorization. The Discipline Panel imposed a reprimand, a five-month suspension, a requirement to meet with a nurse expert to discuss ethical conduct and a requirement to disclose the Discipline Panel's decision to future nursing employers.
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- The Complaints Director argued that based on the foregoing, the following sanctions should be imposed by the Hearing Tribunal in this case:
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- a) An order cancelling Mr. Alsaadi's registration;
 - b) An order imposing a \$10,000 fine in respect of Mr. Alsaadi's proven misuse of Netcare to access information in allegations 1, 2, 5, and 8;
 - c) An order imposing a \$10,000 fine in respect to the failure to cooperate with the investigation, the attempts to obtain false or misleading letters and providing false, incomplete or misleading information to the Complaints Director and Investigator in allegation 7;
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- d) An order imposing a \$2,000 fine for the failure to create records of care in allegations 2 and 3;
 - e) An order imposing a \$1,000 fine for accessing Netcare health information of family members and treatment of family members in allegation 6;
 - f) An order that the fines should be paid within 180 days after the written decision on sanctions and the schedule of costs are provided to Mr. Alsaadi by the Hearings Director; and
 - g) An order that Mr. Alsaadi pay the costs of the investigation and hearing of this matter in an amount capped at the sum of \$120,000 to be paid within 10 years from the date the written decision on sanctions is received by Mr. Alsaadi pursuant to a payment schedule acceptable to the Hearings Director.

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- The Complaints Director submitted that cancellation should be ordered in this case. The Rudy, Leung and Wong cases demonstrate that members who subvert the investigation and hearing processes of self-regulating professions cannot remain as practicing members.

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- The Complaints Director also argued that it would be appropriate to impose the maximum, \$10,000 fine for the finding that Mr. Alsaadi committed unprofessional conduct as alleged in allegation 7. He argued that the Rudy, Leung and Wong cases also demonstrated the appropriateness of this.

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- A \$10,000 fine would also be an appropriate response to Mr. Alsaadi's multiple inappropriate accesses of Netcare information, in addition to an order for cancellation.

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- Fines of \$2,000 and \$1,000 were also argued to be appropriate for Mr. Alsaadi's failure to create records and for his accessing Netcare information about his family members and his treatment of family members. The Complaints Director argued that these fines should be imposed if Mr. Alsaadi's registration is ordered cancelled to make clear that there are sanctions being imposed for all of his unprofessional conduct as found by the Hearing Tribunal.

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- On the issue of costs, the Complaints Director argued that this matter involved a long investigation that was complicated and hampered by Mr. Alsaadi's own conduct and his attempts to mislead the investigators.

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- The hearing was required because of Mr. Alsaadi's conduct but also prolonged by his conduct. Mr. Alsaadi had requested a series of adjournments as a result of retaining and then discharging legal counsel. He made ongoing unsubstantiated allegations of bias or other inappropriate conduct on the part of the Complaints Director and the Hearing Tribunal. He also provided contradictory evidence about the events of April 19, 2014 resulting in additional particulars being added to allegation 7.

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- Ultimately there were 8 days of hearings for the findings stage of the hearing.
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- The Hearing Tribunal found all but one of the allegations to be proven to amount to unprofessional conduct.
 - All of the witnesses called by the Complaints Director were necessary.
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- The College incurred costs of \$187,210 by July 31, 2018, which does not include any costs for the Complaints Director’s submissions on sanctions or the Hearing Tribunal’s determination of sanctions. The Complaints Director expects the final costs of this matter may reach \$240,000.
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- The Alberta Court of Appeal has held that requiring a professional to pay all or a portion of investigation and hearing costs is a common part of professional discipline sanctions: *Lysons v. Alberta Land Surveyors Association*, 2017 ABCA 7 at para. 13. It is not uncommon for these costs to exceed \$20,000 per day of hearings, and the Complaints Director referred to other cases in which substantial costs orders against professionals have been upheld by the Courts: *Alberta College of Physical Therapists v. Fitzpatrick*, 2015 ABCA 95 at para. 8, *Erdmann v. Complaints Inquiry Committee*, 2016 ABCA 145 at paras. 44-47, and *Zuk v. Alberta Dental Association and College*, 2018 ABCA 270 [*Zuk*] at para. 193.
- 435
- In recognition of the need to ensure that a costs order is sensitive to a member’s financial circumstances, costs orders that could deliver a “crushing financial blow” must be carefully scrutinized. Further, costs orders that may deny “an investigated person a fair chance to dispute allegations of professional conduct” are to be avoided: *Zuk* at para. 194 citing *KC v. College of Physical Therapists of Alberta*, 1999 ABCA 253 at para. 94.
- 440
- The Complaints Director sought an order that Mr. Alsaadi pay costs of \$120,000, or less than 60% of the College’s total costs to July 31, 2018. The Complaints Director also explained that he was seeking an order that payment could be made over an extended period of 10 years in recognition that Mr. Alsaadi may require considerable time to pay.
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- In addition, in oral argument the Complaints Director put forward an alternative submission on sanctions, in the event the Hearing Tribunal was not prepared to order cancellation.
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- The Complaints Director argued that in the alternative to cancellation, the Hearing Tribunal could impose a long suspension. He argued the Hearing Tribunal could make the following orders:
 - a) An order suspending Mr. Alsaadi’s registration for 2 years from the date that the written decision on sanctions is received;

- 455 b) A fine of \$10,000 in relation to the findings of unprofessional conduct in allegations 1, 2, 5 and 8;
- c) A fine of \$2,000 in relation to the findings of unprofessional conduct in allegations 2 and 3;
- 460 d) A fine of \$1,000 in relation to the finding of unprofessional conduct in allegation 6;
- e) A fine of \$10,000 in relation to the findings of unprofessional conduct in allegation 7;
- f) An order that Mr. Alsaadi must successfully complete the PROBE Course before he can apply for registration after his period of suspension;
- 465 g) An order that Mr. Alsaadi must provide notice to the Alberta College of Pharmacy when he commences work at any pharmacy in Alberta for a period of 5 years;
- 470 h) An order that Mr. Alsaadi must provide a copy of the Hearing Tribunal's Findings Decision and the sanctions decision to any employer where Mr. Alsaadi has access to health information and to any licensee in a pharmacy in which he is employed for a period of 5 years from when he receives the sanctions decision and that he must provide confirmation to the Alberta College of Pharmacy that he has done so;
- 475 i) An order that upon reinstatement of his registration, Mr. Alsaadi's practice permit will be subject to a condition that requires him to practice under direct supervision for a period of 1,000 hours with a supervisor, or supervisors, who are aware of the Hearing Tribunal's Findings Decision and the sanctions decision and who agree:
- 480 i. to review Mr. Alsaadi's Netcare access log once every two months during the period of direct supervision and to provide a copy of the log to the Complaints Director, along with any noted concerns including any access by Mr. Alsaadi to individuals who are not patients of the pharmacy or who are his immediate family
- 485 ii. to report to the Complaints Director at the end of the period of direct supervision and advise the Complaints Director that no incidents of inappropriate access to Netcare have occurred;
- 490 j) An order that the fines imposed on Mr. Alsaadi shall be paid within 180 days after the decision on sanctions and schedule of costs are provided to him by the Hearings Director; and
- k) An order that Mr. Alsaadi pay the costs of the investigation and hearing of this matter in an amount capped at \$120,000 to be paid within 10 years from the date the decision on sanctions and schedule of costs are provided to Mr. Alsaadi pursuant to a payment schedule satisfactory to the Hearings Director.
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500 • The Complaints Director explained that the PROBE Canada course is an ethics and boundaries course consisting of “intensive small group sessions” targeting “participants’ unprofessional or unethical behaviour, such as: misrepresentations, boundary crossings, financial improprieties, and other lapses” and is offered in Toronto and Vancouver at different times throughout the year at a cost of \$1,795 USD plus tax. This course has been ordered as a remedial sanction a number of times by different Canadian health professional tribunals.

505 • The Complaints Director submitted that if Mr. Alsaadi’s registration is not cancelled and he is given the opportunity to return to pharmacy practice, these alternative orders are appropriate to protect the public. He argued they are important, especially because Mr. Alsaadi has expressed an intention to perform relief pharmacy.

510 **Mr. Alsaadi’s written and oral submissions on sanctions and costs may be summarized as follows:**

515 • Mr. Alsaadi has reviewed the Hearing Tribunal’s Findings Decision very carefully and he takes the findings extremely seriously. Mr. Alsaadi’s proposals on sanctions are based on an assessment of the legal factors and are not an attempt to avoid the appropriate sanction for the actions he has been found guilty of.

• The decision itself brought home to Mr. Alsaadi the seriousness of the allegations of which he was found guilty and the seriousness of his obligations towards the profession

520 • None of the orders available to the Hearing Tribunal under section 82 of the *Health Professions Act* represent a “slap on the wrist”. The fact of being found guilty of unprofessional conduct is a significant thing in and of itself.

525 • Mr. Alsaadi takes strong issue with the suggestion that a reprimand is minor. It is an expression of a finding that a member fell short of expectations of the profession. There is much embarrassment and shame to the member that go along with that order.

530 • A finding of unprofessional conduct based on failure to cooperate does not require a fine or cancellation; the Hearing Tribunal has discretion. There is no legislated minimum sanction.

535 • The law in Alberta is well established on the approach and principles to determine sanctions once there is a finding of unprofessional conduct. Mr. Alsaadi agrees with the approach and principles that the Complaints Director presented.

• Mr. Alsaadi agrees that breaches of the *Health Information Act* are serious and justify a suspension. However, without minimizing the seriousness, Mr. Alsaadi submits that this

540 is not the core of what a pharmacist does. Accessing health information is somewhat peripheral. There is no allegation of harm to a patient, which would come about from a dispensing error or providing improper advice to patients. Those are the core functions of a pharmacist.

545 • The Hearing Tribunal in the *Songgadan* case referred to by the Complaints Director drew an analogy between healthcare professionals accessing Netcare improperly and police officers accessing the Canadian police information system, called CPIC. In cases where police officers improperly access CPIC, there are typically suspensions of a week or two and fines of \$1,000 to \$5,000

550 • Mr. Alsaadi accepts there is a higher standard for health care professionals, and the Hearing Tribunal in the *Songgadan* case found that.

• The *Songgadan* case is the only other decision by the College dealing with *Health Information Act* breaches.

555 • A distinguishing feature between Mr. Alsaadi and Ms. Songgadan is that there was no evidence that Mr. Alsaadi improperly used any of the health information that was accessed and no evidence of malicious intent. Ms. Songgadan accessed the private health information of friends and acquaintances who were all member of a religious group and her purpose was to humiliate and embarrass these individuals by posting the information on Facebook.

560 • Ms. Songgadan also omitted to create any patient care records for the individuals she accessed. However, it was not a question of going beyond what she had a proper entitlement to do; she had no entitlement what so ever.

565 • Improper access to health information is not lacking in seriousness, but it is something that attracts a suspension normally, certainly for a first offence.

570 • With respect to lack of cooperation with the College and misleading the investigation, it was not a very sophisticated attempt and demonstrated that Mr. Alsaadi was naïve and not thinking through the consequences.

575 • The matters Mr. Alsaadi was found guilty of are serious, but not the most serious possible. There was no evidence that Mr. Alsaadi's conduct directly affected the health or well-being of patients.

• Mr. Alsaadi was new to the practice of Pharmacy at the time of the conduct and was youthful. Mr. Alsaadi emphasized that he has voluntarily not practiced as a pharmacist since October 2016.

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- Mr. Alsaadi appeared before the Hearing Tribunal as a pharmacist with a previously clean record.
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- Mr. Alsaadi argued there was no evidence that any of the individuals whose private health information he accessed were under age or suffering any particular mental health condition.
- 590
- Mr. Alsaadi acknowledged there were numerous occasions when he accessed their health information.
- Mr. Alsaadi disagreed with the Complaints Director’s position that he did not acknowledge his conduct was unprofessional. He emphasized that he participated in the investigation and the hearing, and the Hearing Tribunal found that he acknowledged misconduct with respect to portions of allegation 1, 2, 3, 4 (although found not to have been unprofessional by the Hearing Tribunal) 6, and 7.
- 595
- Regarding other serious financial or other penalties sustained as a result of the allegations having been made, Mr. Alsaadi pled guilty to an offence under the *Health Information Act* for his inappropriate Netcare accesses and received a sentence including house arrest. This was later determined to have been incorrect as in law only a fine was available. By the time this error was discovered, Mr. Alsaadi had already served three months of 24/7 house

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 - arrest. The fact that Mr. Alsaadi served three months of house arrest needs to be taken into account.
 - Mr. Alsaadi also pointed to the fact that he voluntarily withdrew from pharmacy practice as of October 2016.

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 - Mr. Alsaadi accepts that any breach of privacy is legitimately regarded as concerning by the person whose privacy has been breached. There is no requirement that the Complaints Director prove the materiality of the breach. Mr. Alsaadi accepts that there was a breach of privacy and it doesn’t matter what the nature of the health information was.

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 - Regarding other mitigating factors, Mr. Alsaadi submitted that he was suffering from depression and anxiety at the time of the offences and at the time of the hearing. He provided a copy of his doctor’s letter from November 20, 2017, which suggested Mr. Alsaadi was suffering “depression and anxiety problems”. Mr. Alsaadi suggested his

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 - depression and anxiety may explain his behaviour and demeanour during the hearing. He indicated he is prepared to tender a formal apology to the College or to submit to a reprimand for this conduct.
 - Mr. Alsaadi is currently in an Honours Biochemistry/BASc in Chemical Engineering Program at the University of Ottawa. He was initially living with his brother who was

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 - interning in Ottawa but is now living alone. He is doing very well in his current program. Mr. Alsaadi intends to complete the program and potentially pursue graduate studies

thereafter. He has ongoing issues with depression and anxiety but he is under the care of physicians to address these issues and he is doing well.

- 625
- Mr. Alsaadi wishes to return to the practice of pharmacy. He intends to seek pharmacy work during the school year and during school breaks. He also considers it a lifelong profession and intends to pursue practice in pharmacy even if he is successful in his BSc/BASc Program. Mr. Alsaadi sees himself as a pharmacist and can't imagine being anything other than a pharmacist.
- 630
- Mr. Alsaadi's father and brother are both pharmacists. He has excellent family support from his parents, who are also financially supporting him while he is going to school in Ottawa.
- 635
- Mr. Alsaadi has already suffered considerable penalties, both from having pled guilty to breaches of the *Health Information Act* in court and being found guilty of unprofessional conduct by his professional body, which is in and of itself a significant penalty and contributor towards specific deterrence.
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- Mr. Alsaadi will be deterred from any further unprofessional conduct simply because of everything he has been through, the Hearing Tribunal's findings, and the likelihood of some further sanctions. No further specific deterrence is necessary.
- 645
- Mr. Alsaadi agrees that a period of suspension would be appropriate for general deterrence for breaches of the *Health Information Act*. This is the precedent set by the *Songgadan* case. He did not agree that cancellation was required, or that any additional period of suspension should be imposed for his lack of cooperation with the Complaints Director and the Investigator appointed by the Complaints Director.
- 650
- Mr. Alsaadi similarly acknowledges that his proven conduct was outside the range of permitted conduct and he submits that public confidence in the integrity of the profession will be maintained with a suspension for breaches of privacy under the *Health Information Act*.
- 655
- Mr. Alsaadi acknowledged that the *Songgadan* case was an appropriate comparator, but he argued there is an important distinction to be made between his case and that of Ms. Songgadan. Ms. Songgadan had improperly accessed information on Netcare about individuals who were unconnected to her pharmacy practice. She posted some of that information on Facebook in a way that would cause humiliation to the individuals. In contrast, Mr. Alsaadi made no attempt to publish any of the information he accessed, and he had no intention to humiliate anyone. Any suspension imposed on Mr. Alsaadi should therefore be less than the four-month (two months conditional) suspension that Ms. Songgadan received.
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- Mr. Alsaadi argued that using the principle of “totality” when dealing with a number of findings of unprofessional conduct, the Hearing Tribunal must consider the cumulative impact of the sanctions imposed for each component of his unprofessional conduct. A suspension was warranted for improperly accessing private health information but considering the total impact of the sanctions, only a reprimand would be warranted for the other findings.
- 670
- The severity of a reprimand should not be discounted. A reprimand is very serious by itself, and should be seen as no less serious than a fine.
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- Mr. Alsaadi concluded his submissions by proposing that the Hearing Tribunal should make the following orders:
 - a) A suspension of one month in respect of the findings of unprofessional conduct in allegations 1, 2, 5, 6 and 8;
 - b) A reprimand in respect of the finding of unprofessional conduct in allegation 7 including the additional particulars;
 - c) A reprimand in respect of the findings of unprofessional conduct in allegations 2 and 3;
 - d) A reprimand in respect of the finding of unprofessional conduct in allegation 6
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- 685
- Mr. Alsaadi argued there was no need for separate sanctions for the proven unprofessional conduct in allegation 6 since the conduct was essentially the same as in other allegations.
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- Mr. Alsaadi argued that no orders for fines should be made. There is precedent to impose a suspension, but fines would amount to a “licensing fee” for misuse of Netcare.
- Mr. Alsaadi submitted that no order for costs should be made since he had admitted to the core allegations of accessing health information and since some of the particulars of the allegations were withdrawn at the hearing or found not to be substantiated. He agreed with the Complaints Director’s proposal for any order of costs that is made to allow payments over a 10-year period.
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- In response to the Complaints Director’s alternative proposal on sanctions, Mr. Alsaadi argued that a two-year suspension would be excessive. Ms. Songgadan received only a four-month suspension (two months conditional) and her conduct was motivated by malice.
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- Mr. Alsaadi said he had already completed a course similar to PROBE in British Columbia in 2017, but he was not opposed to taking the PROBE course after a period of suspension if directed by the Hearing Tribunal.
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- Mr. Alsaadi suggested that a 5-year period within which he would be required to disclose the Hearing Tribunal decisions to any employer where he has access to health information and to any pharmacy licensee would be excessive. Mr. Alsaadi suggested 1 year would be appropriate.

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- He also suggested that 1,000 hours of direct supervision upon reinstatement would be excessive and problematic. He suggested 100 hours of indirect supervision instead. Further, Mr. Alsaadi suggested that compliance with the proposed supervision order would depend on what the Netcare system could accommodate.

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The Complaints Director's reply arguments can be summarized as follows:

- In response to Mr. Alsaadi's argument that reprimands are very serious, the Complaints Director agreed that any hearing is serious for a professional, but there is a second aspect, which is the public aspect and deterrence. When the public reviews decisions, they often focus on the sanctions. The public will be aware that sanctions range up to cancellation, and they will understand that reprimands are on the low end of the range.

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- A reprimand for Mr. Alsaadi's lack of cooperation with the investigation would be seen as a very light sentence. The Complaints Director has serious concerns with the message that would send to the profession and to the public.

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- The Complaints Director disagreed with Mr. Alsaadi's comments that access to Netcare is not core to what a pharmacist does. Pharmacy practice has evolved to the point that Netcare access is core. Further, one of the factors that led Mr. Alsaadi to cease practicing was when he was denied access to Netcare and he considered it essential to his practice.

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- The Complaints Director also disagreed with Mr. Alsaadi's efforts to minimize his failure to cooperate with the investigation. Mr. Alsaadi asserted that he was somewhat naïve and that his attempts were not well done. Credit should not be given for being bad at misleading. The College is entitled to expect its regulated members to be forthright. Professionals should not be misleading the College at all. Further, Mr. Alsaadi did mislead the College's Investigator and Complaints Director about the events of April 19, 2014.

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- The Complaints Director questioned the efficacy of a relatively short suspension for Mr. Alsaadi. The evidence was that Mr. Alsaadi is currently attending university in Ottawa. A relatively short suspension such as Mr. Alsaadi proposed would have virtually no impact on him.

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- The Complaints Director argued that the Hearing Tribunal could determine that Mr. Alsaadi was ungovernable and cancel his registration. In the alternative, if the evidence of ungovernability was found to be insufficient, a significant suspension should be imposed instead.

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- The Complaints Director also referred to two additional cases on the indicia of un Governability. In *Kuny v. College of Registered Nurses of Manitoba*, 2017 MBCA 111 at para. 73, the Court of Appeal held that a finding of un Governability is based on a case-by-case analysis in which the guiding principle is the public interest. A demonstrated inability or unwillingness to abide by a decision of a regulatory body will support a finding of un Governable conduct.
- 755
- In *Ahluwalia v. College of Physicians and Surgeons of Manitoba*, 2017 MBCA 15, Dr. Ahluwalia had been found un Governable by the College’s Discipline Panel. On appeal, the Court endorsed that a professional can be held un Governable if the nature, duration and repetitive character of their misconduct demonstrates an inability on the part of the professional to respond appropriately to the authorities who are authorized to regulate. In Dr. Ahluwalia’s case the fact that he had made written and oral misrepresentations to the College and that the misrepresentations indicated he was prepared to lie to his governing body were important to the finding of un Governability. There was also the fact that he had committed similar transgressions years earlier.
- 760
- The Complaints Director responded to Mr. Alsaadi’s suggestion that he had acknowledged much of the alleged conduct. Mr. Alsaadi did admit that he had done a number of things. Mr. Alsaadi did not admit that his conduct constituted unprofessional conduct. This was a fully contested matter and Mr. Alsaadi spent a fair amount of time talking about his authority to do what he did.
- 765
- The Complaints Director also responded to the suggestion that issues had been withdrawn or that issues had not been proven. The Complaints Director did withdraw some particulars of allegations 1 and 2 but very little time was spent on these matters. Allegation 4 was factually proven but found not to constitute unprofessional conduct. Part of allegation 7 was also unproven. These unproven issues took very little hearing time. These factors have been accounted for in the Complaints Director’s suggestion that Mr. Alsaadi pay 60% of the costs.
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- The Complaints Director also responded to the suggestion that issues had been withdrawn or that issues had not been proven. The Complaints Director did withdraw some particulars of allegations 1 and 2 but very little time was spent on these matters. Allegation 4 was factually proven but found not to constitute unprofessional conduct. Part of allegation 7 was also unproven. These unproven issues took very little hearing time. These factors have been accounted for in the Complaints Director’s suggestion that Mr. Alsaadi pay 60% of the costs.
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- Regarding Mr. Alsaadi’s assertion that he suffered from depression and anxiety, there was a letter from a family physician stating that Mr. Alsaadi was suffering from depression and anxiety problems in November 2017. There was no evidence that Mr. Alsaadi’s depression and anxiety caused his proven unprofessional conduct.
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- In response to Mr. Alsaadi’s arguments that the *Songadan* case should be seen as an upper limit on the duration of a suspension, the Complaints Director argued that her accesses had been fewer and there was a joint submission on sanctions in that case.
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- Lastly, the Complaints Director submitted that cancellation would not preclude Mr. Alsaadi from applying for reinstatement after three years.
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Replies to the Hearing Tribunal’s questions can be summarized as follows:

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- The Complaints Director believes that he has demonstrated Mr. Alsaadi's ungovernability and that cancellation is the appropriate sanction. The Complaints Director pointed specifically to the evidence that Mr. Alsaadi had manufactured documents, lied to investigators and mislead them through the hearing. These types of conduct warrant cancellation.
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- The Hearing Tribunal can order cancellation even without a finding of ungovernability, if the proven unprofessional conduct is sufficiently serious.
 - There have been cases in which regulated professionals found to have demonstrated only aspects of ungovernability have received significant suspensions instead of cancellation.
- 805
- Mr. Alsaadi submits that he is not ungovernable and there are no aspects of ungovernability in this case. Mr. Alsaadi participated in the hearing and there have been no repeat offenses.
 - Mr. Alsaadi acknowledged that a finding of ungovernability is not necessary to justify cancellation as some conduct is so reprehensible it justifies cancellation.
- 810
- In response to a question about the sources of costs, the Complaints Director advised that the bulk of the costs come from the hearing itself, after the Notice of Hearing is issued. The investigation contributes only a minor amount to the costs. Salaries of College staff such as Mr. Krempien are not included in the claimed costs. Legal fees are the primary component of costs and they are proportional to the number of hearing days.
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Mr. Alsaadi was also given the opportunity to provide the Hearing Tribunal with some remarks. He indicated:

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- He fully respects and accepts the findings of the Hearing Tribunal.
 - He believes he made admissions of unprofessional conduct during the hearing.
 - He asserted that he is not ungovernable. He is here participating in the hearing process.
 - He values the pharmacy profession and wishes to continue being a pharmacist for the betterment of people's health.
- 825
- He believes cancellation would be hugely unfair.

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During its deliberations on sanctions, the Hearing Tribunal considered whether, if Mr. Alsaadi's registration was not cancelled and he was instead suspended for a period of time, he should also be prohibited from serving as a pharmacy licensee for a period of time, perhaps five years. As this was not addressed in either party's submissions, the Hearing Tribunal asked the parties, via email through independent counsel, Mr. Sim, for their positions on this question on March 15, 2019. The parties were asked to provide any submissions by March 22, 2019.

835 The Complaints Director responded on March 19, 2019 and reiterated that his position remains
that the appropriate sanction in this matter is cancellation. He submitted that any sanction short of
cancellation should involve a lengthy suspension and should include a condition prohibiting Mr.
Alsaadi from acting as a licensee for at least 5 years after the expiry of his suspension. The
Complaints Director went on to submit that there should also be a requirement that Mr. Alsaadi
840 provide a copy of the Hearing Tribunal's decision to each proprietor and licensee of any pharmacy
at which he is employed for a period of five years after the expiry of his suspension.

Mr. Alsaadi did not respond. On March 26, 2019, Mr. Sim reached out to the parties to confirm
that Mr. Alsaadi did not have a response. Mr. Renouf responded on March 26, 2019, noting that
he would respond by the end of next week. With no response from Mr. Renouf by April 17, 2019,
845 the Hearing Tribunal informed the parties on April 17th, via email through Mr. Sim, that the
Hearing Tribunal would conclude its deliberations on sanction without Mr. Alsaadi's response if
there was no response by April 29, 2019.

Mr. Alsaadi responded on April 25, 2019 and reiterated his position that this is not an appropriate
850 case for cancellation and submitted that if the Hearing Tribunal is considering a suspension it
would be appropriate to take into account the period of time since Mr. Alsaadi voluntarily ceased
practising as a pharmacist. Mr. Alsaadi indicated that while his current plans are to pursue graduate
studies in biotechnology in Ontario, he would like to be able to seek employment as a pharmacist
while a graduate student to maintain his knowledge and familiarity with the profession and to
855 support himself during his studies. Mr. Alsaadi did not oppose an order that he could not be a
pharmacy licensee for a period of time and he also did not oppose a provision requiring notification
to potential employers.

860 **IV. ORDERS AND REASONS FOR ORDERS**

The Hearing Tribunal carefully considered the evidence presented at both stages of the hearing,
the findings of unprofessional conduct, and the written and oral submissions of both parties. The
Hearing Tribunal makes the following orders pursuant to section 82 of the *Health Professions Act*:

- 865 1. Mr. Alsaadi's practice permit is suspended for three years from the date the
written decision on sanctions (the "Sanctions Decision") is received;
2. Mr. Alsaadi is ordered to pay a \$10,000 fine for his unprofessional conduct
related to the inappropriate access of Netcare information proven in Allegations
1, 2, 5, 6 and 8;
3. Mr. Alsaadi is ordered to pay a \$2,000 fine for his unprofessional conduct
related to failure to create records of care proven in Allegations 2 and 3;

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4. Mr. Alsaadi is ordered to pay a \$10,000 fine for his unprofessional conduct related to failure to cooperate with the investigation proven in Allegation 7 including the additional particulars;
- 875 5. Before Mr. Alsaadi can apply for the reinstatement of his practice permit after completing his period of suspension, he must, at his expense, complete and receive an unconditional pass in the PROBE: Ethics & Boundaries Program – Canada course, and this course will not count towards Mr. Alsaadi’s required continuing education credits;
- 880 6. Mr. Alsaadi must provide notice to the Alberta College of Pharmacy when he commences work at any pharmacy in Alberta commencing on the date the Sanctions Decision is received and extending for a period of five years from the expiry of his suspension;
- 885 7. Mr. Alsaadi must provide a copy of the Hearing Tribunal’s Findings Decision and the Sanctions Decision to any employer where Mr. Alsaadi has access to health information and to any licensee in any pharmacy where he works, commencing on the date the Sanctions Decision is received and extending for a period of five years from the expiry of his suspension, and he must provide confirmation to the Alberta College of Pharmacy that he has done so;
- 890 8. Mr. Alsaadi is prohibited from serving as a licensee of a pharmacy in Alberta for a period of five years after the expiry of his suspension;
- 895 9. Upon reinstatement of his practice permit, Mr. Alsaadi’s practice permit will be subject to a condition requiring that he practice under direct supervision for a period of 500 hours and indirect supervision for a further period of 500 hours with a supervisor or supervisors who are aware of the Findings Decision and the Sanctions Decision and who agree:
- 900 a. to review Mr. Alsaadi’s Netcare access log once every two months during the period of supervision and to provide a copy of the log to the Complaints Director, along with any noted concerns, including access by Mr. Alsaadi to individuals who are not patients of the pharmacy or who are his immediate family members;
- 905 b. To report to the Complaints Director at the end of the period of supervision and advise the Complaints Director whether any incidents of inappropriate access to Netcare have occurred;
- 910 10. Mr. Alsaadi shall be required to pay the fines imposed above within 180 days after the Sanctions Decision and the schedule of costs are provided to Mr. Alsaadi by the Hearings Director; and

915 11. Mr. Alsaadi shall pay the costs of the investigation and hearing of this matter to
a maximum of \$120,000, to be paid within 10 years from the date the Sanctions
Decision and schedule of costs are provided to Mr. Alsaadi, pursuant to a
payment schedule satisfactory to the Hearings Director.

920 The Hearing Tribunal determined that there were factors that warranted severe sanctions, including
a very long suspension. Mr. Alsaadi inappropriately accessed the personal electronic health
information of a number of individuals, over hundreds of accesses, on separate occasions, and over
a lengthy period of time. As stated in the Hearing Tribunal's Findings Decision, pharmacists are
entrusted by society and patients with access to personal health information, which is important to
925 provide optimal patient care, but with that access comes significant legal and ethical professional
duties around the access, use and protection of that very sensitive information. Breaking this trust
and duty brings disrepute to the profession and harms the ability for the profession to self-regulate.
What was particularly concerning was Mr. Alsaadi's lack of understanding of the privilege of
access to health information and his duties with respect to access during the findings hearing. With
respect to ■■■, he claimed that he was entitled to access her Netcare information because she was
a patient of the pharmacy where he worked. He also claimed to have an administrative role at a
930 particular pharmacy to prospectively review patients' Netcare information for eligibility for health
services in a seemingly systematic versus patient-specific approach. Access to personal health
information is a privilege and a tool for the provision of patient care; there are no absolute rights
to access patients' personal health information for pharmacists, and certainly no "carte blanche".
What was also concerning was that Mr. Alsaadi's inappropriate Netcare accesses continued during
935 the investigation which started on October 1, 2014, and even after Mr. Alsaadi's response to the
Complaints Director, which was dated April 26, 2015.

Mr. Alsaadi also tried to coerce ■■■ to give a false statement to the College indicating that he had
provided pharmacy services to her. Mr. Alsaadi was dishonest with and actively misled the
940 Complaints Director and investigator. He also attempted to mislead the Hearing Tribunal by
submitting admissions regarding ■■■ and ■■■ that he believed to be false and that he later testified
were false. The *Ahluwalia* case from the Manitoba Court of Appeal cited by the Complaints
Director confirms that this type of conduct is an indicator of ungovernability. It is also conduct of
an extremely serious nature and must be severely sanctioned in order to deter it. Self-regulation
945 and the College's ability to protect the public depends on a complaints process in which regulated
members have a legal and ethical obligation to cooperate, and that is why these responsibilities are
codified in the *Health Professions Act*. What is particularly troubling to the Hearing Tribunal is
that Mr. Alsaadi did not seem to understand the gravity of his conduct. There were numerous
times when Mr. Alsaadi seemed to believe that he had a "right to remain silent" or a right to
950 withhold important information during the investigation, and he seemed to confuse professional
complaints and discipline proceedings which are governed under the *Health Professions Act* with
criminal proceedings.

955 The Hearing Tribunal seriously considered ordering cancellation of Mr. Alsaadi's registration, as
there were aspects of his conduct that could have warranted cancellation, including indicia of

ungovernability. The Hearing Tribunal ultimately concluded that there was insufficient evidence that Mr. Alsaadi is ungovernable.

960 Recognizing that cancellation could still be ordered without a finding of ungovernability, the Hearing Tribunal determined that it was not prepared to order cancellation of Mr. Alsaadi's registration and to conclude that he should not have a "second chance". Assessing the factors from *Jaswal v Newfoundland Medical Board*, supra, there were a number of mitigating factors, including Mr. Alsaadi being a young, relatively new practitioner, the absence of any prior findings of unprofessional conduct, the penalties Mr. Alsaadi has already suffered in the *Health Information*
965 *Act* proceedings, the fact that he lost his employment at Grey Nuns Hospital, and the lack of evidence of any malicious intent or of any particular purpose or use that Mr. Alsaadi made of the personal health information that he accessed. There was also some information suggesting that Mr. Alsaadi was suffering from depression and anxiety. The Hearing Tribunal has taken this into account as a mitigating factor but notes there was no evidence that Mr. Alsaadi's condition caused
970 his proven unprofessional conduct.

Mr. Alsaadi made a series of bad decisions through the investigation and hearing which compounded and increased the severity of the allegations he faced. As a result of Mr. Alsaadi's conduct during the hearing, the Hearing Tribunal heard and allowed an application to add
975 particulars to allegation 7. These additional particulars were found proven and increased the scope and severity of Mr. Alsaadi's proven unprofessional conduct.

The serious nature and gravity of the proven allegations and the fact that the conduct falls well outside the range of permitted conduct has already been discussed. While there was no evidence
980 of harm to the health of the individuals whose personal health information was accessed, there was certainly evidence of adverse impacts to those individuals who had a reasonable expectation and right to the privacy of their confidential and sensitive personal health information. Mr. Alsaadi accepted this in his submissions on sanctions. The need to promote both specific and general deterrence for the ultimate protection and safety of the public and the need to maintain the public's
985 confidence in the integrity of the profession is significant, particularly due to the inappropriate accesses of individuals' personal health information and failure to cooperate with the Complaints Director and the investigation. While there are mitigating factors, they do not excuse the conduct or its severity. On balancing the factors, the Hearing Tribunal landed just "below the line" to warrant cancellation. Had there been a pattern of similar, prior behaviour (i.e. a prior finding of
990 unprofessional conduct) or lack of active participation in the process, the Hearing Tribunal would likely have ordered cancellation.

The Hearing Tribunal ordered a suspension for a period of three years. This is a severe sanction. Were Mr. Alsaadi's registration cancelled, he would be eligible to make an application to the College for reinstatement under section 37(1) of the *Pharmacists and Pharmacy Technicians*
995 *Profession Regulation* under the *Health Professions Act* after a period of three years. Reinstatement under that process is not certain and is subject to the review and decision of the College's Competence Committee. The Hearing Tribunal ordered a suspension for the same

amount of time as Mr. Alsaadi would have had to wait to apply for reinstatement had his registration been cancelled.

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The Hearing Tribunal considered that a four-month suspension (two months conditional) was ordered in the *Songgadan* case. Mr. Alsaadi accessed the information of a far greater number of individuals, over hundreds of instances and over a lengthy period of time. The *Songgadan* case was also from 2011, and the Hearing Tribunal considered that the importance of Netcare to a pharmacist's practice and the importance of privacy of personal health information to the public is greater today than it may have been in the past. Rightly so, there is today a very high expectation around the privacy of personal health information, and therefore the sanction for inappropriately accessing personal health information today needs to be commensurate with this in order to protect the public and the integrity of the profession.

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The remainder of the Hearing Tribunal's orders combined with the suspension order are intended to be onerous, severe, and punitive, reflecting the seriousness of the conduct, with the intention to serve notice to the profession and public that such conduct is not acceptable and will not be tolerated. The Hearing Tribunal considered whether reprimands would be sufficient to sanction Mr. Alsaadi instead of fines as he suggested. It was determined that reprimands would not be sufficient. The Hearing Tribunal considered that the profession and the public would view reprimands as insufficient to address the very serious unprofessional conduct in this case.

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The Hearing Tribunal recognized that \$10,000 is the maximum fine that can be imposed for each finding of unprofessional conduct. A fine of \$10,000 for the allegations related to inappropriate access of Netcare information, and a fine of \$10,000 for the failure to cooperate are warranted due to the gravity of this type of conduct. While Ms. Songgadan was fined \$4,000 (\$1,000 for each individual whose information was accessed), the case is from 2011 and should be distinguished for the reasons set out above.

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The separate fine of \$2,000 for failure to create records of care is reasonable to indicate the inappropriateness and seriousness of this conduct as well as for precedence and general deterrence. There were a number of individuals whose personal health information Mr. Alsaadi accessed and whom he claimed to have provided pharmaceutical services to outside of a pharmacy, but there were no pharmacy records of care available to corroborate the provision of these services or to meet the minimum requirements under Standards of Practice. Mr. Alsaadi made admissions with respect to Allegations 2 and 3 and his failure to create records of care, and the Hearing Tribunal accepted those admissions and found the conduct to constitute unprofessional conduct during the findings stage. As stated in the Findings Decision, pharmacy records of care are a critical component in the provision of health care, not only in meeting medico-legal requirements, but also in the provision of individual patient care and quality of care. When there are no records of care, this means that a patient's health record is incomplete and missing potentially important information that will no longer be available to either the patient or other healthcare providers, as the patient moves across the continuum of the healthcare system. This fragments continuity of care and depending on the nature of the missing or incomplete information, could be very serious.

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As proposed by the Complaints Director, a separate fine for unprofessional conduct related to Netcare accesses of health information of family members and treatment of family members as proven in Allegation 6 was considered. However, the Hearing Tribunal determined that this was not necessary in this case, similar to a separate sanction not being required for Mr. Alsaadi's unprofessional conduct proven in Allegation 5. The conduct has already been found to be unprofessional conduct by the Hearing Tribunal, and the fine of \$10,000 imposed for inappropriate access of Netcare information sufficiently addresses the unprofessional conduct proven in Allegation 6.

Taken together, the totality of the sanctions is appropriate for the combination of conduct in this case.

Mr. Alsaadi indicated a passion for the profession and a strong desire to return to practice. Orders 4 through 8 pave a path for him to return to practice but with strict conditions that are onerous and intended to protect the public. He must unconditionally pass the PROBE Canada course, and this will not count towards his continuing education credits. The PROBE Canada course is a specific requirement the Hearing Tribunal is imposing on Mr. Alsaadi related to this matter and the concerns regarding his conduct, and it is not intended to replace or count towards his continuing education credits required as a pharmacist.

He must notify the College if he commences work at a pharmacy in Alberta from the date the Sanctions Decision is received and extending for a period of five years after the expiry of his suspension, and he must confirm that he has provided the Findings Decision and the Sanctions Decision to any employer where he has access to health information and to the licensee of any pharmacy where he works during the same period. He also cannot serve as a pharmacy licensee for the same period. In his April 25, 2019 submissions, solicited by the Hearing Tribunal via email, Mr. Alsaadi did not oppose these orders requested by the Complaints Director.

Upon reinstatement of his practice permit, Mr. Alsaadi's practice permit will be subject to a condition that he practice under direct supervision for a period of 500 hours and indirect supervision for a further period of 500 hours. The supervisor(s) must be made aware of the Findings Decision and the Sanctions Decision and they must agree to review Mr. Alsaadi's Netcare access log once every two months during the period of supervision and to provide a copy of the log to the Complaints Director, along with any noted concerns including any access by Mr. Alsaadi to individuals who are not patients of the pharmacy or are immediate family members. The supervisor(s) must also report to the Complaints Director at the end of the period of supervision and advise the Complaints Director whether any incidents of inappropriate access to Netcare have occurred. The purpose of this order is specific deterrence and ensuring the protection of the public on Mr. Alsaadi's return to practice. No concerns were identified during the hearing regarding Mr. Alsaadi's competence. Therefore, direct supervision for a full 1,000 hours is not required. Oversight over Mr. Alsaadi's Netcare access, which is a significant concern, is required and can

be accomplished to the same effect with 500 hours of direct supervision and 500 hours of indirect supervision.

1085 Costs for the investigation and hearing of this matter were significant. According to the
Complaints Director's submissions, they may reach as high as \$240,000. These costs are directly
proportional to the number of hearing days that were required (total of nine days, including the
sanctions stage). While Mr. Alsaadi is entitled to a hearing and the opportunity to put forward a
1090 fulsome defence, for the most part, the allegations in the Notice of Hearing were proven and found
to constitute unprofessional conduct. The Complaints Director did withdraw two individuals from
the particulars alleged in allegation 1 and one individual from the particulars alleged in allegation
2, but these were noted by the Complaints Director during the hearing and little to no hearing time
was spent on these. Allegation 4 was factually proven but found not to constitute unprofessional
1095 conduct. A part of Allegation 7 was not factually proven because of the way it was worded, but
for the most part allegation 7 including the additional particulars was proven and found to
constitute unprofessional conduct.

Regarding Mr. Alsaadi's admissions of unprofessional conduct entered as exhibits on November
1100 7, 2017, the Hearing Tribunal certainly relied on that evidence in coming to its findings regarding
the allegations, but the Hearing Tribunal agrees with the Complaints Director that the admissions
were partial and qualified, and the Hearing Tribunal acknowledges they were unacceptable to the
Complaints Director. A hearing was still necessary, and the Complaints Director's case and the
time taken to present the case was not excessive. The Hearing Tribunal was more concerned with
1105 Mr. Alsaadi presenting a new story and conflicting information during the hearing. This led to the
Complaints Director's application to add particulars to allegation 7 which certainly extended the
hearing. The Hearing Tribunal also notes that Mr. Alsaadi had required adjournments of the
hearing by retaining and then discharging counsel prior to the start of the hearing, and that he
walked out of the hearing on November 8, 2017, causing half of a scheduled hearing day to be
1110 wasted.

The Hearing Tribunal accepted the Complaint's Director's submission and ordered that Mr.
Alsaadi pay the costs of the investigation and hearing of the matter in an amount capped at the sum
of \$120,000 to be paid within 10 years from the date the Sanctions Decision and schedule of costs
1115 are provided to Mr. Alsaadi pursuant to a payment schedule satisfactory to the Hearings Director.
This represents less than 60% of the total costs to date and likely much less. The Hearing Tribunal
considered imposing a larger percentage of the costs on Mr. Alsaadi as the membership of the
College should not have to bear the cost. However, the Hearing Tribunal recognizes and accepts
the case law, including *Zuk v Alberta Dental Association and College*, 2018 ABCA 270, which
1120 requires that costs orders not be a "crushing financial blow" to the member. While costs are not
intended to be punitive sanctions, they invariably have that effect and have to be considered in the
totality of the fines and other penalties being imposed. The Hearing Tribunal considered the
amount of costs that have been incurred, Mr. Alsaadi's degree of success in resisting the
allegations, the necessity of the evidence that was called during the hearing, and the conduct of the
1125 parties at the hearing. The Hearing Tribunal considered that 60% of costs is an appropriate

percentage of costs for Mr. Alsaadi to pay. The Hearing Tribunal had to balance what Mr. Alsaadi ought to fairly pay as costs with ensuring it does not become a “crushing financial blow”. \$120,000 over a period of 10 years is not unreasonable in this case, taking into account that Mr. Alsaadi will be able to apply to return to practice in three years.

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Signed on behalf of the Hearing Tribunal by its Chairperson this fourteenth day of May 2019:

Per: [Naeem Ladhani]

Naeem Ladhani, Pharmacist and Chairperson