

ALBERTA COLLEGE OF PHARMACY

IN THE MATTER OF
THE HEALTH PROFESSIONS ACT

AND IN THE MATTER OF A HEARING
REGARDING THE CONDUCT OF

Madiha Asim

Registration number: 14146

DECISION OF THE HEARING TRIBUNAL

September 30, 2022

I. INTRODUCTION

1. The Hearing Tribunal held a hearing into the conduct of Madiha Asim, Registration number 14146 (“Ms. Asim” or the “Investigated Member”). In attendance on behalf of the Hearing Tribunal were Rick Hackman (pharmacist and Chair), Anita McDonald (pharmacist), Pat Matusko (public member), and Naz Mellick (public member).
2. The hearing took place via videoconference on June 14, 2022. The hearing was held under the terms of Part 4 of the *Health Professions Act*.
3. In attendance at the hearing were Aman Costigan and Raymond Chen, representing the Complaints Director; James Krempien, the Complaints Director; Brett Code, counsel for the Investigated Member; and Julie Gagnon, independent legal counsel to the Hearing Tribunal. Ms. Asim was not present at the hearing.

II. ALLEGATIONS

4. The Allegations considered by the Hearing Tribunal are as follows:

IT IS ALLEGED THAT, between October 1, 2016, and August 31, 2018, while Mr. Nadim Khan and Ms. Madiha Asim were registered Alberta pharmacists and the licensees of CougarRidge Pharmacy & Travel Clinic (ACP Licence #3063) (the “Pharmacy”), they:

1. Submitted, or allowed for the submission of, claims to Alberta Blue Cross when they should have known they were not entitled under the Pharmacy’s agreement with Alberta Blue Cross to the fees claimed, the particulars of which include the submission of:
 - a. 2,365 claims worth approximately \$47,300 as Assessments for Trial Prescriptions when the claims were for post-injection follow-ups and follow-ups to initial access and did not meet the definition of Trial Prescription under Section 1 of the Alberta Health Ministerial Order;
 - b. three claims worth approximately \$60 as Assessments for Administration of a Product by Injection when the claims were for post-injection follow-ups and did not meet the definition of Administration of a Product by Injection under Section 1 of the Alberta Health Ministerial Order;
 - c. 13 claims worth approximately \$420 for more than one pharmacy service per patient per day in the absence of an exclusion, in breach of Article 3.1 of the Pharmacy’s agreement with Alberta Blue Cross and Section 2(5) of the Alberta Health Ministerial Order; and
 - d. eight claims worth approximately \$3,455 for Comprehensive Annual Care Plan (“CACP”) Initial Assessments within 365 days of a Standard Medication Management Assessment (“SMMA”) Initial Assessment, in breach of Article

3.1 of the Pharmacy's agreement with Alberta Blue Cross and Section 2(4) of the Alberta Health Ministerial Order.

2. Failed to create or maintain required and accurate pharmacy records, the particulars of which include:
 - a. 34 prescriptions that were not provided by the Pharmacy to support the claims to Alberta Blue Cross;
 - b. five pharmacy service assessments where the Pharmacy did not provide the documentation to support the CACP or SMMA Initial Assessment or the Follow-up CACP or SMMA Assessment;
 - c. two pharmacy service assessments where the prescription documentation did not include the date the service was performed;
 - d. seven pharmacy service assessments where the Pharmacy's documentation did not contain the rationale for writing the prescription; and
 - e. required pharmacy records in respect to approximately \$25,353 worth of claims to Alberta Blue Cross for six drug products and one nutritional product.

IT IS ALLEGED THAT the conduct of Mr. Khan and Ms. Asim in these matters:

- a. Breached their statutory and regulatory obligations to the Alberta College of Pharmacy as Alberta pharmacists and pharmacy licensees;
- b. Had the potential to undermine the integrity of the profession;
- c. Had the potential to decrease the public's trust in the profession; and
- d. Failed to exercise the professional and ethical judgment expected and required of an Alberta pharmacist and a pharmacy licensee.

IT IS ALLEGED THAT the conduct of Mr. Khan and Ms. Asim constitutes a breach of the following statutes and standards governing the practice of pharmacy:

- Standards 1 and 18, and sub-standards 1.1 and 1.2 of the Standards of Practice for Pharmacists and Pharmacy Technicians;
- Standards 1 (sub-standards 1.1 and 1.2) and 8 (sub-standards 8.1(a), 8.1(b) and 8.3(a)) of the Standards for the Operation of Licensed Pharmacies;
- Principles 1(1, 12) and 10 (1, 2, 3) of the Alberta College of Pharmacy's Code of Ethics;

- Sub-Section 12(1) of the Pharmacy and Drug Regulation; and
- Sub-Section 10(1)(a) and 10(1)(d)(iv) of the *Pharmacy and Drug Act*;

All of which may constitute unprofessional conduct under sub-sections 1(1)(pp)(ii), 1(1)(pp)(iii), 1(1)(pp)(xii) of the *Health Professions Act* and misconduct under sub-sections 1(1)(p)(i), 1(1)(p)(ii), and 1(1)(p)(ix) of the *Pharmacy and Drug Act*.

5. The matter proceeded by Admission of Unprofessional Conduct, an Agreed Statement of Facts and a Joint Submission on Sanction. Through the Admission of Unprofessional Conduct, the Investigated Member admitted the Allegations set out above.

III. PRELIMINARY MATTERS

6. The hearings for both Ms. Madiha Asim and Mr. Nadim Khan were held concurrently. However, separate decisions have been issued for each investigated member.
7. The parties confirmed there were no objections to the composition of the Hearing Tribunal or the jurisdiction of the Hearing Tribunal to hear this matter.
8. There were no objections made with regard to the timeliness of service of the Notice of Hearing.
9. Pursuant to section 78 of the *Health Professions Act*, the hearing was open to the public. No applications were made to have the hearing or part of the hearing held in private.
10. Hearing Tribunal member, Anita McDonald, asked why Ms. Asim chose not to attend the proceedings. Mr. Code indicated that she was currently out of the country.

IV. EVIDENCE

11. An Agreed Exhibit Book, which included the Notice of Hearing, the Admission of Unprofessional Conduct, and the Agreed Statement of Facts, was entered as Exhibit 1 by agreement of the parties.
12. The Agreed Statement of Facts sets out the following agreed facts.

Brief Chronology

13. At all relevant times, Mr. Nadim Khan and Ms. Madiha Asim were registered Alberta pharmacists and the licensees of the Pharmacy. Mr. Khan and Ms. Asim were first registered as clinical pharmacists with the Alberta College of Pharmacy on July 3, 2009 and March 10, 2017, respectively.
14. Mr. Khan was the licensee of the Pharmacy from June 20, 2016 to September 18, 2017.

15. Ms. Asim was the licensee of the Pharmacy from September 19, 2017 to August 31, 2018.
16. On December 20, 2019, the Complaints Director received a letter from a team manager with Claims Audit and Investigation Services for Alberta Blue Cross ("ABC"). The letter indicated that ABC had reviewed claims submitted by the Pharmacy, and other pharmacies, and had determined there were claims submitted to ABC that may represent a breach of the Alberta College of Pharmacy's Code of Ethics, Standards of Practice for Pharmacists and Pharmacy Technicians and Standards for the Operation of Licensed Pharmacies.
17. On December 20, 2019, the Complaints Director also received a letter from an analyst with Claims Audit and Investigation Services for ABC. The letter provided a summary of the findings from ABC's review of the claims made by the Pharmacy during the period of October 1, 2016 to November 30, 2018 (the "Audit Period"). The letter indicated that the Pharmacy had submitted claims to ABC where the pharmacy service provided was ineligible or where the documentation was missing or invalid.
18. The Complaints Director treated the information from ABC as a complaint and commenced an investigation. On December 20, 2019, he appointed himself, Ms. Jennifer Mosher and Mr. Monty Stanowich as investigators.
19. On May 26, 2020, the Complaints Director received an email from legal counsel for Ms. Asim which attached the Pharmacy's responses to the ABC draft report, and the Pharmacy's response to the Allegations in the Notice of Hearing. Legal counsel for Ms. Asim also indicated that Ms. Asim and Mr. Khan no longer had any interest or involvement with the Pharmacy and were unable to provide any further records relating to the Pharmacy.
20. On July 2, 2020, Ms. Mosher sent an email to the new licensee of the Pharmacy and requested assistance in retrieving the documentation that the Investigated Member was unable to access. On July 31, 2020, the new licensee of the Pharmacy provided the requested documentation to Ms. Mosher and noted that he could not locate most of the requested records.
21. As part of the investigation, Ms. Mosher received copies of the following from ABC: (A) Pharmacy Services Ministerial Orders covering the Audit Period; (B) Pharmacy Services compensation guides that are available on ABC's website; (C) the 2014 and 2018 ABC Pharmaceutical Services Provider Agreements covering the Audit Period; and (D) Pharmacy Benefacts, a Bulletin published by ABC referring to trial prescriptions and how to claim them.
22. On October 14, 2020, Ms. Mosher met with Ms. Asim and her legal counsel. In her meeting notes Ms. Mosher recorded the following:
 - a. In relation to the ABC audit, Ms. Asim indicated that since the audit, she reviewed the Ministerial Order and that she is "trying to absorb everything."

- b. When she returns to work, Ms. Asim will follow-up to assess patient safety post-injection and to remind patients of subsequent doses but will not bill ABC for these follow-ups.
 - c. Regarding trial prescription claim follow-ups, she said that Patient safety is "her priority" but she will not bill for these follow-ups.
 - d. Outside of the ABC audit, she received no additional communication from ABC that her billing practices were unacceptable and contrary to the Ministerial Order.
23. Following the investigation, the Complaints Director referred the matter to a hearing.

Agreed Facts Supporting Allegations

24. Between October 1, 2016 and August 31, 2018, Mr. Khan and Ms. Asim were registered Alberta pharmacists and licensees of the Pharmacy.

Allegation 1

25. Article 3.1 of the Pharmacy's agreement with ABC states:

The Provider will provide Pharmaceutical Services according to the applicable legislation/regulations of the jurisdiction in which the Pharmaceutical Service is provided and according to the provisions of this Agreement including, without limitation, according to the applicable Coverage.

26. As pharmacists and licensees, Mr. Khan and Ms. Asim are expected to be aware of, and comply with, the applicable legislation governing the practice of pharmacy and the operation of pharmacies in Alberta.

Particular 1a

27. Mr. Khan and Ms. Asim submitted, or allowed for the submission of, claims to ABC when they should have known they were not entitled under the Pharmacy's agreement with ABC to the fees claimed, including the submission of:
- a. 2,365 claims worth approximately \$47,300 as Assessments for Trial Prescriptions when the claims were for post-injection follow-ups and follow-ups to initial access and did not meet the definition of Trial Prescription under Section 1 of the Alberta Health Ministerial Order.

28. Section 1 of the Alberta Health Ministerial Order states that:

"Trial Prescription" means a Determination by a Clinical Pharmacist to dispense a reduced quantity of a newly prescribed Drug in order to assess the patient's response and tolerance to the Drug before dispensing the balance of the Prescription.

29. Post-injection follow-ups and follow-ups to initial access do not meet the definition of Trial Prescription under Section 1 of the Alberta Health Ministerial Order.

Particular 1b

30. Mr. Khan and Ms. Asim submitted, or allowed for the submission of claims to ABC when they should have known they were not entitled under the Pharmacy's agreement with ABC to the fees claimed, including the submission of:
- b. three claims worth approximately \$60 as Assessments for Administration of a Product by Injection when the claims were for post-injection follow-ups and did not meet the definition of Administration of a Product by Injection under Section 1 of the Alberta Health Ministerial Order;

31. Section 1 of the Alberta Health Ministerial Order states that:

"Administration of a Product by Injection" means administration of a Product other than a Publicly Funded Vaccine by Injection.

32. Post-injection follow-ups do not meet the definition of Administration of a Product by Injection under Section 1 of the Alberta Health Ministerial Order.

Particular 1c

33. Mr. Khan and Ms. Asim submitted, or allowed for the submission of, claims to ABC when they should have known they were not entitled under the Pharmacy's agreement with ABC to the fees claimed, including the submission of:

- c. 13 claims worth approximately \$420 for more than one pharmacy service per patient per day in the absence of an exclusion, in breach of Article 3.1 of the Pharmacy's agreement with ABC and Section 2(5) of the Alberta Health Ministerial Order; and

34. Section 2(5) of the Alberta Health Ministerial Order provides that subject to specified exclusions, only one pharmacy service fee shall be payable per patient per day.

35. Mr. Khan and Ms. Asim submitted, or allowed for the submission of, 13 claims worth approximately \$420 for more than one pharmacy service per patient per day in the absence of an exclusion under the Alberta Health Ministerial Order.

Particular 1d

36. Mr. Khan and Ms. Asim submitted, or allowed for the submission of, claims to ABC when they should have known they were not entitled under the Pharmacy's agreement with ABC to the fees claimed, including the submission of:

- d. eight claims worth approximately \$3,455 for Comprehensive Annual Care Plan ("CACP") Initial Assessments within 365 days of a Standard Medication Management Assessment ("SMMA") Initial Assessment, in breach of Article 3.1 of the Pharmacy's agreement with ABC and Section 2(4) of the Alberta Health Ministerial Order.
37. Section 2(4) of the Alberta Health Ministerial Order provides that "[w]here a Fee has been paid for a [SMMA Initial Assessment for a patient], no Fee for [a CACP Initial Assessment] shall be claimed or payable within 365 days in respect of that [patient] by any Community Pharmacy."

Allegation 2

38. Mr. Khan and Ms. Asim failed to create or maintain required and accurate pharmacy records for:
- a. 34 prescriptions that were not provided by the Pharmacy to support the claims to ABC;
 - b. five pharmacy service assessments where the Pharmacy did not provide the documentation to support the CACP or SMMA Initial Assessment or the Follow-up CACP or SMMA Assessment;
 - c. two pharmacy service assessments where the prescription documentation did not include the date the service was performed;
 - d. seven pharmacy service assessments where the Pharmacy's documentation did not contain the rationale for writing the prescription; and
 - e. required pharmacy records in respect to approximately \$25,353 worth of claims to ABC for six drug products and one nutritional product.
39. As Complaints Director, James Krempien, acknowledged that Mr. Khan and Ms. Asim were fully cooperative throughout the investigation and hearing process.
40. Ms. Asim acknowledged that she received legal advice prior to entering into the Agreed Statement of Facts and that she understood that the Hearing Tribunal may use this Agreed Statement of Facts as proof of the Allegations set out in the Notice of Hearing.

Admission of Unprofessional Conduct

41. Pursuant to section 70 of the *Health Professions Act*, Ms. Madiha Asim wished to provide a written admission of unprofessional conduct under the *Health Professions Act* for consideration by the Hearing Tribunal.

42. Ms. Asim acknowledged and admitted that while she was a registered Alberta pharmacist and the licensee of the Pharmacy, she and Mr. Khan:
- a. Submitted, or allowed for the submission of, claims to ABC when she should have known, she was not entitled under the Pharmacy's agreement with ABC to the fees claimed, the particulars of which include the submission of:
 - i. 2,365 claims worth approximately \$47,300 as Assessments for Trial Prescriptions when the claims were for post-injection follow-ups and follow-ups to initial access and did not meet the definition of Trial Prescription under Section 1 of the Alberta Health Ministerial Order;
 - ii. three claims worth approximately \$60 as Assessments for Administration of a Product by Injection when the claims were for post-injection follow-ups and did not meet the definition of Administration of a Product by Injection under Section 1 of the Alberta Health Ministerial Order;
 - iii. 13 claims worth approximately \$420 for more than one pharmacy service per patient per day in the absence of an exclusion, in breach of Article 3.1 of the Pharmacy's agreement with ABC and Section 2(5) of the Alberta Health Ministerial Order; and
 - iv. eight claims worth approximately \$3,455 for Comprehensive Annual Care Plan ("CACP") Initial Assessments within 365 days of a Standard Medication Management Assessment ("SMMA") Initial Assessment, in breach of Article 3.1 of the Pharmacy's agreement with ABC and Section 2(4) of the Alberta Health Ministerial Order.
 - b. Failed to create or maintain required and accurate pharmacy records, the particulars of which include:
 - i. 34 prescriptions that were not provided by the Pharmacy to support the claims to ABC;
 - ii. five pharmacy service assessments where the Pharmacy did not provide the documentation to support the CACP or SMMA Initial Assessment or the Follow up CACP or SMMA Assessment;
 - iii. two pharmacy service assessments where the prescription documentation did not include the date the service was performed;
 - iv. seven pharmacy service assessments where the Pharmacy's documentation did not contain the rationale for writing the prescription; and
 - v. required pharmacy records in respect to approximately \$25,353 worth of claims to ABC for six drug products and one nutritional product.

43. Ms. Asim agreed and acknowledged that her conduct in these matters:
- Breached her statutory and regulatory obligations to the Alberta College of Pharmacy as an Alberta pharmacist and pharmacy licensee;
 - Had the potential to undermine the integrity of the profession;
 - Had the potential to decrease the public's trust in the profession; and
 - Failed to exercise the professional and ethical judgment expected and required of an Alberta pharmacist and a pharmacy licensee.
44. Ms. Asim further agreed and acknowledged that her conduct, as set out above, constitutes breaches of the following statutes and standards governing the profession of pharmacy:
- Standards 1 and 18, and sub-standards 1.1 and 1.2 of the Standards of Practice for Pharmacists and Pharmacy Technicians;
 - Standards 1 (sub-standards 1.1 and 1.2) and 8 (sub-standards 8.1(a), 8.1(b) and 8.3(a)) of the Standards for the Operation of Licensed Pharmacies;
 - Principles 1(1, 12) and 10 (1, 2 ,3) of the Alberta College of Pharmacy's Code of Ethics;
 - Sub-Section 12(1) of the Pharmacy and Drug Regulation; and
 - Sub-Section 10(1)(a) and 10(1)(d)(iv) of the *Pharmacy and Drug Act*;

and that her conduct set out above and the breach of some or all of these provisions constitutes unprofessional conduct under sub-sections 1(1)(pp)(ii), 1(1)(pp)(iii), 1(1)(pp)(xii) of the *Health Professions Act* and misconduct under sub-sections 1(1)(p)(i), 1(1)(p)(ii), and 1(1)(p)(ix) of the *Pharmacy and Drug Act*.

45. Ms. Asim acknowledged that she received legal advice prior to entering into this Admission of Unprofessional Conduct and that she understood that if the Hearing Tribunal accepts her Admissions of Unprofessional Conduct, the Hearing Tribunal may proceed to issue one or more orders set out in section 82(2) of the *Health Professions Act*.

VI. SUBMISSIONS ON THE ALLEGATIONS

46. The parties confirmed that the issues in this hearing were similar to issues in a prior hearing held the morning of June 14, 2022 and that submissions from that hearing would apply here as well. The parties confirmed that the transcript from the morning hearing on June 14, 2022 could be referenced for the purposes of the hearing involving Ms. Asim and in the Hearing Tribunal's decision or in the event of appeal.

47. Ms. Costigan acknowledged the assistance and cooperation of Mr. Code and Ms. Asim in reaching an agreement without the need for a full hearing or for the calling of any witnesses.
48. Ms. Costigan detailed the basis for the Allegations brought forward and the chronology of how the complaint materialized. She explained each allegation in detail.
49. Ms. Costigan highlighted aspects of the Agreed Exhibit Book and gave a detailed explanation of the Admission of Unprofessional Conduct and the Agreed Statement of Facts. She detailed the chronology of the events and the communications that occurred throughout the investigative process.
50. Mr. Khan was the licensee for the portion of the ABC audit that included June 20, 2016 to September 18, 2017. Ms. Asim was the licensee for the portion of the ABC audit that included September 19, 2017 to August 31, 2018. The licensee after this date was a different owner and, therefore, the conduct after this was not a part of the investigation. The new owner provided the requested documentation relevant to the Audit Period and the time Ms. Asim was the licensee on July 31, 2020, however, he could not locate most of the requested records.
51. Ms. Costigan contended that the agreed documents provided by the parties demonstrate that the admissions made by Ms. Asim are supported by the evidence. Further, Ms. Asim's conduct amounts to unprofessional conduct based on the evidence presented and should be accepted by the Hearing Tribunal.
52. Ms. Costigan added that Ms. Asim's submission of claims and her failure to create or maintain accurate pharmacy records as outlined in the Notice of Hearing amounted to breaches of the legislation, the Standards of Practice for Pharmacists and Pharmacy Technicians, the Standards for the Operation of Licensed Pharmacies and the Code of Ethics, as cited in the Notice of Hearing.
53. Ms. Costigan pointed out that the Hearing Tribunal will have to decide whether the Allegations in the Notice of Hearing were proven on the balance of probabilities and whether Ms. Asim's conduct constituted unprofessional conduct under the *Health Professions Act* and misconduct under the *Pharmacy and Drug Act*.
54. Mr. Code agreed with the submissions made by Ms. Costigan. He noted that the Allegations read "should have known" and not that the Investigated Member "knew" she was not entitled to submit the claims. He pointed out that there was no allegation of actual knowledge.
55. Mr. Code noted that the words "had the potential" that are used in the Notice of Hearing is followed through in the admission document. The Notice of Hearing does not say that her conduct undermined the integrity of the profession or that it decreased the public trust, but rather that the conduct had the potential to do both.

56. Mr. Code referred to his submissions from the morning's hearing in relation to understanding how thousands of mistakes could happen and how there was a reliance on ABC to identify and communicate the mistakes. That is, many mistakes were made by Ms. Asim. There is a "long and hard" way to proper practice and there is a "shortcut" approach. The "long and hard" approach is to fully read and understand all of the documents relating to the appropriate submission of claims to ABC. The second approach, the "shortcut" approach, is what happened to Ms. Asim. She submitted claims to ABC and when these claims were not rejected, she assumed that the claim was valid and in line with all of the rules and requirements.

VII. FINDINGS ON THE ALLEGATIONS

57. During the hearing on June 14, 2022, the Hearing Tribunal verbally advised the parties that it considered the submissions and the evidence relative to the Allegations specified in the Notice of Hearing and that it accepted Ms. Asim's admissions of unprofessional conduct. The facts as admitted by Ms. Asim support the admissions.
58. Ms. Asim was added to the clinical register of pharmacists of the Alberta College of Pharmacy on March 10, 2017. She was the licensee of CougarRidge Pharmacy and Travel Clinic (ACP License # 3063) from September 19, 2017 to August 31, 2018. During this period of time, the relevant facts and events in Allegations 1 and 2 occurred.
59. Ms. Asim is expected, both as a pharmacist and as a licensee, to be aware of and comply with all applicable legislation governing the practice of pharmacy and the operation of licensed pharmacies in Alberta. The Standards of Practice for Pharmacists and Pharmacy Technicians at Standards 1.1 and 1.2 and the Standards for the Operation of Licensed Pharmacies at Standards 1.1 and 1.2 specify the expectations of pharmacists and licensees to comply with all relevant legislation and laws relating to their practice. These standards specify compliance both in terms of the letter and the spirit of the law.
60. Ms. Asim failed to obtain an adequate understanding of the eligibility and limitations of the submission of claims for professional services. Furthermore, it was her responsibility to assess each individual professional service for eligibility. She chose to rely simply on the "adjudication message" from ABC as verification of eligibility. This approach falls well short of what is expected. There are resources available for pharmacists to ask questions about the eligibility for claim submission. ABC publishes a regular newsletter (Pharmacy Benefact). The ABC Pharmacy Agreement is also a resource that was readily available.
61. The public, of which ABC is a part, expects pharmacists to have complete and up to date knowledge of the legislation and standards that govern their practice. Furthermore, the public expects pharmacists to be in full compliance with applicable legislation and standards at all times and this certainly includes the submission for payment for

professional services. The self regulatory nature of the profession of pharmacy is dependent upon this principle.

62. The Standards of Practice for Pharmacists and Pharmacy Technicians at Standard 18; the Standards for the Operation of Licensed Pharmacies at Standards 8; and the *Pharmacy and Drug Act* at section 10(1)(a) and 10(1)(d)(iv) and the Pharmacy and Drug Regulation at section 12(1)¹ relate to the requirement for pharmacists and licensees to ensure that there is an effective and secure system to create and maintain pharmacy records. In the course of the ABC Audit it was found that 34 prescriptions were not provided to support claims; no supportive documentation was provided with respect to 5 pharmacy services assessments; the documentation did not include the date of service with respect to 2 pharmacy service assessments; the rationale for writing the prescription was not provided for 7 pharmacy services assessments ; and, pharmacy records with respect to about \$25,353 worth of claims for 6 drug products and one nutritional product were not provided. The public must have confidence that pharmacists maintain accurate and complete records at all times. In the absence of this, patients are placed at significant risk as clinical decisions may be made on incorrect information or the absence of pertinent information. Ms. Asim failed to maintain the proper records, and therefore, failed in her responsibilities as a pharmacist and as a licensee.
63. The Hearing Tribunal also considered the Allegations as they relate to the Code of Ethics. Specifically, the Hearing Tribunal considered Principle 1, “Hold the well-being of each patient to be my primary concern” (and sub-principles 1 and 12) and Principle 10 “Act with honesty and integrity” (and sub-principles 1, 2 and 3). In the view of the Hearing Tribunal, the Allegations, as admitted by Ms. Asim, result in breaches of these principles. Every submission for a professional service must be assessed for validity and appropriateness on its own merit. Failure to do so invites error and inaccurate records could impact patient health. The absence of any record is even more egregious. Ms. Asim failed to uphold her responsibilities as she simply relied on the adjudication message from ABC for the submission of all the claims she submitted. The absence of any record is even more egregious. Ms. Asim failed to uphold her professional responsibilities.
64. The failures to comply with the Standards of Practice, Standards for the Operation of Licensed Pharmacies and Principles of the Code of Ethics outlined above are serious, as is the failure to comply with the *Pharmacy and Drug Act* and Pharmacy and Drug Regulation.
65. The public must be able to have complete confidence that pharmacists are aware of and abide by the legislation and standards that govern the practice of pharmacy. Failure to do so undermines public confidence in the profession and harms the integrity of the profession in the eye of the public. Ms. Asim’s conduct in Allegations 1 and 2 also undermined the integrity of the profession.
66. ABC is also a member of the public. Irrespective of the fact that ABC has a contractual relationship with Ms. Asim, ABC too must be able to have confidence that pharmacists

¹ Section 12 of the *Pharmacy and Drug Regulation* has since been repealed (AR 81/2022, section 11) but was in effect at the relevant time.

conduct themselves in accordance with all laws and Standards governing the practice of pharmacy. There is no practical way to monitor the thousands of transactions that occur each day across Alberta. Therefore, the conduct of Ms. Asim undermines the integrity of the profession and has affected the public's trust in the profession.

67. The Hearing Tribunal also concluded that Ms. Asim ought to have reasonably understood her obligations relative to record keeping of prescriptions. Her failure in this regard places the health of the public at risk. This is because inaccurate or incomplete records can affect decision making and this has the potential to cause harm. The public must have confidence that processes exist in the management of a pharmacy that ensure that pharmacy records are current and accurate. This conduct undermines the integrity of the profession and is detrimental to the best interests of the public.
68. The Hearing Tribunal was satisfied that Ms. Asim's admitted and proven conduct in Allegations 1 and 2 was unprofessional conduct pursuant to sections 1(1)(pp)(ii), 1(1)(pp)(iii), 1(1)(pp)(xii) of the *Health Professions Act* and misconduct under section 1(1)(p)(i), 1(1)(p)(ii) and 1(1)(p)(ix) of the *Pharmacy and Drug Act*.
69. The Hearing Tribunal recognized that Ms. Asim is under no obligation to attend the proceedings and was aware that she was out of the country. The Hearing Tribunal did not consider her absence against her in reaching a decision. However, the Hearing Tribunal wishes to emphasize the value in having an investigated member present at a hearing, both from an accountability and transparency aspect.

VIII. SUBMISSIONS ON SANCTION

70. Ms. Costigan advised the Hearing Tribunal that the parties had reached a Joint Submission on Sanction. The Joint Submission on Sanction was entered as Exhibit 2.
71. In the Joint Submission on Sanction, the parties jointly proposed the following sanctions:
 1. Ms. Asim shall, within 3 months from the date the Hearing Tribunal issues its written decision, provide evidence to satisfy the Complaints Director that she has completed Part A and Part B of the Alberta College of Pharmacy Licensee Education Program. Ms. Asim is responsible for the costs of the program.
 2. Ms. Asim's practice permit shall be suspended for 3 months, with
 - a. 1 month to be served on dates acceptable to the Complaints Director and completed within 6 months from the date the Hearing Tribunal issues its written decision; and
 - b. 2 months to be held in abeyance pending Ms. Asim's completion of Order 1 above.

If Ms. Asim fails to complete Order 1, the Complaints Director shall be at liberty to impose the remaining 2-month suspension on Ms. Asim's practice permit. If Ms. Asim successfully completes Orders 1, the remaining 2-month suspension shall expire.

3. Ms. Asim shall pay fines of \$2,500 with respect to Allegation 1 and \$2,500 with respect to Allegation 2, for total fines of \$5,000. Payment will occur in accordance with a payment schedule satisfactory to the Hearings Director. The costs shall be paid within 1 year of the date Ms. Asim receives a copy of the Hearing Tribunal's written decision.
 4. Ms. Asim shall provide a copy of the Hearing Tribunal's written decision to any pharmacy employer or licensee of a pharmacy in which she is employed for a period of 3 years, commencing on the date she receives a copy of the Hearing Tribunal's written decision.
 5. If the Complaints Director refers concerns similar to the Allegations in the Notice of Hearing to a hearing under section 66(3)(a) of the *Health Professions Act* within 5 years from the date the Hearing Tribunal Issues its written decision, the Complaints Director shall be at liberty to direct that Ms. Asim not be permitted to serve as the owner, proprietor or licensee of a pharmacy for 3 years, commencing one month from the date the Complaints Director provides notice to Ms. Asim of the Complaints Director's intention to effect this Order. If the Complaints Director does not refer concerns similar to the Allegations in the Notice of Hearing to a hearing for a period of 5 years from the date the Hearing Tribunal issues its written decision, this order shall expire.
 6. Ms. Asim shall be responsible for payment of 50% of the costs of the investigation and hearing. Payment will occur in accordance with a payment schedule satisfactory to the Hearings Director. The costs shall be paid within 24 months of the date Ms. Asim receives a copy of the Hearing Tribunal's written decision.
72. Ms. Costigan explained in detail the six orders in the Joint Submission on Sanction. Ms. Costigan confirmed that Ms. Asim had successfully completed Part A and B of the ACP Licensee Education Program and has provided certificates of completion to the Complaints Director.
73. Ms. Costigan referred the Hearing Tribunal to the submissions from the morning hearing with regard to the law on joint submissions and the case authorities provided, including *Jaswal v Newfoundland Medical Board* and *R v. Anthony-Cook*. She further referred the Hearing Tribunal to the morning submissions on sentencing principles and the Book of Authorities.
74. She pointed out that the Allegations were serious, and that Ms. Asim breached the ethical and professional responsibilities of a pharmacist and licensee over a period of approximately 2 years. Ms. Costigan noted that Ms. Asim became a registered clinical

pharmacist in March of 2017 and became the licensee of the pharmacy in September of 2017. There are no prior findings of misconduct on the part of Ms. Asim and no prior complaints. This weighs in her favor. Ms. Costigan noted that this was not a onetime error but was repeated over a two-year period. As an important mitigating factor, Ms. Costigan acknowledged Ms. Asim's admission of unprofessional conduct in taking responsibility for her conduct. Ms. Asim has provided a certificate of completion of the Licensee Education Program. She also acknowledged the cooperation of her legal counsel in helping in the development of the agreed documents.

75. Ms. Costigan noted that while the amounts owing to ABC have been repaid, the Complaints Director does not view this as a penalty. In the view of the Complaints Director, the orders in the Joint Submission serve as a specific and general deterrent. Ms. Costigan referred to the 3 case examples provided to the Hearing Tribunal and submitted that the proposed sanctions fall reasonably within the possible range of sanctions. Ms. Asim has jointly agreed to pay for the full costs of the hearing and the investigation. The order of 50% costs reflects that the two investigated members are sharing the costs of the hearing and investigation equally.
76. Ms. Costigan noted that the Complaints Director views that the Joint Submission will serve as a specific and general deterrent. She also referred the Hearing Tribunal to the cases provided in the morning hearing and submitted that the proposed sanctions fall within the possible range of sanctions.
77. Ms. Costigan concluded by saying that the Orders proposed in the Joint Submission on Sanction are appropriate and fair and should be accepted by the Hearing Tribunal.
78. Mr. Code submitted that he agreed with the submissions made on behalf of the Complaints Director and that the Joint Submission on Sanction is in the public interest.
79. Mr. Code further submitted that while it may not be a mitigating factor, Ms. Asim is out of pocket money.
80. Mr. Code pointed out that Ms. Asim offers services to a specific linguistic and cultural community and that the public interest is promoted by having pharmacists of this level of diversity in our cities and our province. This supports a shorter suspension period.
81. In Mr. Code's view, these proposed sanctions have a strong deterrence effect. He concluded by saying that Ms. Asim is anxious to fulfil the terms of the Joint Submission on Sanction so that she can move past this.
82. The Hearing Tribunal had a question about Allegation 2(e). The question was why it was not reflected in sanctions when it appears as though it references records outside of pharmacy services. Ms. Costigan confirmed that Allegation 2(e) was considered when sanction orders were negotiated. In the view of the Complaints Director, Allegation 2(e) is a record keeping issue and was considered based on the orders that were proposed and nothing further is required.

IX FINDINGS ON SANCTION

83. The Hearing Tribunal assessed the Joint Submission on Sanction for appropriateness of sanction and effectiveness as a deterrent for Ms. Asim and the profession at large. The submissions of both parties were considered as well.
84. The Hearing Tribunal considered the explanation of Order 5 from the morning submissions where both parties submitted that the Hearing Tribunal had jurisdiction to make such an order and that both parties had agreed to this Order.
85. At the conclusion of the hearing on June 14, 2022 the Hearing Tribunal provided a verbal decision accepting the Joint Submission on Sanction. This written decision confirms the decision of the Hearing Tribunal and provides reasons. The Hearing Tribunal acknowledges deference should be provided to joint submissions and that it ought not depart from the joint submission unless the sanctions are considered to bring the administration of justice into disrepute or to be contrary to the public interest.
86. The Hearing Tribunal noted that sanctions must serve the following purposes: public protection, maintenance of the profession's integrity, fairness to Ms. Asim, and specific and general deterrence.
87. The Hearing Tribunal considered several factors in arriving at its decision. Ms. Asim was a registered clinical pharmacist at the material times, as well as the licensee of the Pharmacy. The Hearing Tribunal considered Ms. Asim's experience and concluded that she reasonably ought to have been aware of and be able to comply fully with all legislation and standards governing her practice of pharmacy and the operation of the Pharmacy. She should have known the specific eligibility criteria for the submission of claims for professional services. Her simple reliance on the adjudication messages from ABC is no defense for the conduct. There are several resources available to all Alberta pharmacists to clarify questions surrounding the legitimate submission of claims for professional services. The conduct in question occurred many times and, therefore, suggests that she failed in this regard.
88. The public must have confidence that pharmacists conduct themselves in accordance with all laws and standards that govern the practice of pharmacy. The profession's ability to self-regulate depends on this. The Hearing Tribunal was satisfied that the jointly proposed sanctions will maintain public confidence in the integrity of the profession.
89. The Hearing Tribunal noted the course proposed, being Part A and Part B of the Alberta College of Pharmacy Licensee Education Program. The remedial aspect of the Joint Submission on Sanction helps to ensure the protection of the public and that the Investigated Member will be practicing appropriately and in accordance with Standards and the Code of Ethics.
90. The public must have the confidence that all Alberta pharmacists and licensees operate in full compliance with all legislation and standards that govern the practice of pharmacy in

Alberta and the Standards and Codes of Ethics set forth by the Alberta College of Pharmacy. The public must also have the confidence that failure to uphold these obligations will be met with significant sanction. The suspension and fines address this.

91. In addition, requiring Ms. Asim to provide a copy of the Hearing Tribunal's decision to any pharmacy employer or licensee of a pharmacy where she is employed for a period of 3 years and the ability of the Complaints Director to direct that Ms. Asim not serve as the owner, proprietor or licensee of a pharmacy for a period of time if similar Allegations are referred to a hearing serve to protect the public interest and serve as a deterrent to Ms. Asim specifically and to the profession generally.
92. The Hearing Tribunal considered the cases that were reviewed and compared to the sanctions being proposed. The Hearing Tribunal concluded that the sanctions proposed in the Joint Submission on Sanction are appropriate.
93. Finally, the Hearing Tribunal noted the joint agreement that Ms. Asim pay 50% of the full costs of the investigation and hearing with Mr. Khan paying the other 50%. The Hearing Tribunal found this was an appropriate case to order the full payment of costs by the two investigated members.
94. The Hearing Tribunal was satisfied that the Joint Submission on Sanction will maintain the public confidence.
95. The Hearing Tribunal applied the public interest test and finds the Joint Submission on Sanction to be appropriate. The jointly proposed sanctions serve the purposes of sanctions in professional discipline cases and protect the public interest.

X. ORDERS OF THE HEARING TRIBUNAL

96. The Hearing Tribunal accepts the Joint Submission and makes the following orders under Section 82 of the *Health Professions Act*:
 1. Ms. Asim shall, within 3 months from the date the Hearing Tribunal issues its written decision, provide evidence to satisfy the Complaints Director that she has completed Part A and Part B of the Alberta College of Pharmacy Licensee Education Program. Ms. Asim is responsible for the costs of the program.
 2. Ms. Asim's practice permit shall be suspended for 3 months, with
 - a. 1 month to be served on dates acceptable to the Complaints Director and completed within 6 months from the date the Hearing Tribunal issues its written decision; and
 - b. 2 months to be held in abeyance pending Ms. Asim's completion of Order 1 above.

If Ms. Asim fails to complete Order 1, the Complaints Director shall be at liberty to impose the remaining 2-month suspension on Ms. Asim's practice permit. If Ms. Asim successfully completes Orders 1, the remaining 2-month suspension shall expire.

3. Ms. Asim shall pay fines of \$2,500 with respect to Allegation 1 and \$2,500 with respect to Allegation 2, for total fines of \$5,000. Payment will occur in accordance with a payment schedule satisfactory to the Hearings Director. The costs shall be paid within 1 year of the date Ms. Asim receives a copy of the Hearing Tribunal's written decision.
4. Ms. Asim shall provide a copy of the Hearing Tribunal's written decision to any pharmacy employer or licensee of a pharmacy in which she is employed for a period of 3 years, commencing on the date she receives a copy of the Hearing Tribunal's written decision.
5. If the Complaints Director refers concerns similar to the Allegations in the Notice of Hearing to a hearing under section 66(3)(a) of *the Health Professions Act* within 5 years from the date the Hearing Tribunal issues its written decision, the Complaints Director shall be at liberty to direct that Ms. Asim not be permitted to serve as the owner, proprietor or licensee of a pharmacy for 3 years, commencing one month from the date the Complaints Director provides notice to Ms. Asim of the Complaints Director's intention to effect this Order. If the Complaints Director does not refer concerns similar to the Allegations in the Notice of Hearing to a hearing for a period of 5 years from the date the Hearing Tribunal issues its written decision, this order shall expire.
6. Ms. Asim shall be responsible for payment of 50% of the costs of the investigation and hearing. Payment will occur in accordance with a payment schedule satisfactory to the Hearings Director. The costs shall be paid within 24 months of the date Ms. Asim receives a copy of the Hearing Tribunal's written decision.

Signed on behalf of the hearing tribunal by the Chair on September 30, 2022.


Richard Hackman (Sep 30, 2022 10:13 MDT)

Rick Hackman, Chair