

ALBERTA COLLEGE OF PHARMACISTS (ACP)

IN THE MATTER OF
THE HEALTH PROFESSIONS ACT

AND IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF CALVIN BOEY

DECISION OF THE HEARING TRIBUNAL

November 4, 2013

I. INTRODUCTION

The hearing tribunal held a hearing into the conduct of Calvin Boey. In attendance on behalf of the hearing tribunal were: Kim Fitzgerald, Pharmacist and Chair; Carin Jensen, Pharmacist; Gillian Hansen, Pharmacist; Sandra Pichler, Public Member; and Ayla Akgungor, Independent Counsel to the hearing tribunal.

The hearing took place on June 6, 2013 at the Evergreen Room, Lister Conference Centre 1-047 Lister Centre, University of Alberta, Edmonton, Alberta. The hearing was held under the terms of Part 4 of the *Health Professions Act*.

In attendance at the hearing were: James Krempien, Complaints Director; David Jardine, Counsel for the Alberta College of Pharmacists; Calvin Boey, Investigated Member; Eleanor Olszewski, Counsel for the investigated member, and Ms. T.L. Reid, Court Reporter.

There were no objections to the composition of the hearing tribunal or the jurisdiction of the hearing tribunal to proceed with a hearing.

II. ALLEGATIONS

The hearing tribunal held a hearing to inquire into the following complaints or matters:

IT IS ALLEGED THAT during the period from November 2011 to June 2012, the member:

1. Diverted medications from Shoppers Drug Mart #343 including zopiclone, clonazepam, and on one occasion Dexedrine in the approximate amounts of 10,000 zopiclone tablets, 1,000 clonazepam tablets and 1 tablet of Dexedrine 5mg for his personal use and possibly for other undetermined uses.

Mr. Boey admitted to the complaints director that he diverted medications for his personal use although he did not acknowledge diverting the full amounts of these medications that have been found to be missing from the pharmacy during this period and in the absence of any other reasonable explanation for the missing medications it is alleged that it is more probable than not that the actual amounts of tablets diverted are as set out in the previous paragraph.

2. Routinely practiced while incapacitated, thereby creating an environment that endangered the public with his practice, based on the following:
 - a. His admissions of using excessive quantities of zopiclone and clonazepam before and during his shifts;
 - b. His admissions of being “heavily sedated” through much of this period;

- c. The comments on his practice made by Nadine Bryk-Jones and Kambo Githu; and
 - d. The fact that he customarily worked as the only pharmacist (often without any pharmacy assistant/technician support).
3. Abused his position of trust by altering the electronic inventory records of the pharmacy to both initiate and conceal his diversion of the zopiclone.

Mr. Boey admitted altering the electronic inventory records of the pharmacy in respect to the May 29, 2012 order/receipt of zopiclone to conceal his diversion and based on the pharmacy staffing schedule (relative to other large orders of zopiclone) and Mr. Veniot's statements it is alleged that he also altered the pharmacy records on other occasions.

IT IS ALLEGED THAT his conduct in these matters

- a. Undermined the integrity of the profession,
- b. Is contrary to accepted pharmacy practice,
- c. Created an environment in which an accurate accounting of the zopiclone and clonazepam stocks at the pharmacy may never be determined,
- d. Resulted in him practising while he knowingly was impaired by drugs,
- e. Involved multiple diversions of medications over an extended period from November 2011 to June 2012, and
- f. Ended only when his employer discovered the diversions and terminated his employment.

IT IS FURTHER ALLEGED THAT

- a. He not only diverted the medications, but then used his position of trust and authority as a pharmacist to alter electronic inventory records in an attempt to conceal his actions and prolong his ability to divert medications without detection; and
- b. His actions have placed patients at risk and have the potential to decrease the public's trust in the profession.

IT IS ALLEGED THAT his conduct constitutes a breach of the following statutes, regulations, and standards governing the practice of pharmacy:

- Section 1 and Subsections 1.1 and 1.2 of the Standards of Practice for Pharmacists and Pharmacy Technicians;
- Sections 1(1)(pp)(ii), 1(1)(pp)(iii), and 1(1)(pp)(xii) of the *Health Professions Act*;
- Sections 31(2)(a) and 38 of the *Pharmacy and Drug Act*;
- Principles I(1), X(1 and 2) and XI(2, 3 and 5) of the ACP Code of Ethics;
- Section 4(1) of the *Controlled Drugs and Substances Act*;

- Section 51(1) of the Benzodiazepines and Other Targeted Substances Regulations;
- Section C.01.041(1.1) of the Food and Drug Regulations; and
- Section 31(1) of the Narcotic Control Regulations.

and that his conduct set out above and the breach of some or all of these provisions constitutes unprofessional conduct pursuant to the provisions of Sections 1(1)(pp)(ii), 1(1)(pp)(iii), and 1(1)(pp)(xii) of the *Health Professions Act*.

III. PRELIMINARY MATTERS

Mr. Jardine noted for the record that the hearing was originally scheduled for February 28, 2013 and it was adjourned at the request of counsel for Mr. Boey by consent to June 6, 2013.

IV. EVIDENCE

Mr. Jardine began by entering the Hearing Binder of Calvin Boey, Complaint File #2584 as Exhibit 1 and it was accepted into evidence. The binder contained the following documents:

Tab A Notice of Hearing dated April 24, 2013;

Tab B Record of the Decision for Complaint File #2584 dated October 23, 2012;

Tab C Sequence of Events Report from James Krempien, Complaints Director, dated September 17, 2012;

Tabs 1–26 Copies of the evidence gathered by James Krempien throughout the course of his investigation.

Mr. Jardine proceeded to call one witness, James Krempien, Complaints Director for the Alberta College of Pharmacists.

Mr. Krempien testified that the evidence submitted in Exhibit 1 was comprised of documents from the Alberta College of Pharmacists investigation file on this matter.

Mr. Jardine then proceeded to take Mr. Krempien through the various documents submitted in Exhibit 1.

Mr. Krempien testified that he initially became aware of this matter in June 2012 when he received voicemails from both Mr. Calvin Boey and Mr. Bill Veniot regarding concerns of medication diversion being detected in Shoppers Drug Mart (SDM) #343 in Rocky Mountain House.

Tab 1, Exhibit 1 was a memo from Mr. Krempien containing a transcript of the telephone conversation between Mr. Krempien and Mr. Boey on June 22, 2012.

Mr. Krempien testified that Mr. Boey had contacted him to report that he had been terminated from Shoppers Drug Mart, Rocky Mountain House because they had detected his diversion and ingestion of medications.

In the transcript of the telephone conversation reviewed by the tribunal, Mr. Boey informed Mr. Krempien that he had been diverting, for personal use, zopiclone and clonazepam from SDM #343 in Rocky Mountain House where he had been working. Mr. Boey indicated that his employment with SDM #343 had been terminated by Bill Veniot on June 20, 2012 and that on June 21, 2012 he had enrolled in a Steps Recovery Program offered to him through SDM. Mr. Boey stated that he was not practising at the time of the call.

Mr. Krempien testified that the information gathered during this telephone conversation was the basis for initiating a complaint investigation.

Tab 2, Exhibit 1 was a copy of the Alberta College of Pharmacists Complaint Referral Form completed by Mr. Krempien on June 22, 2012.

Tab 3, Exhibit 1 was a memo from Mr. Krempien, dated June 22, 2012, outlining his decision to conduct an investigation based on the information gathered during his initial conversation with Mr. Boey.

Tab 4, Exhibit 1 was a memo from Mr. Krempien containing the transcript of the telephone conversation between Mr. Krempien and Mr. Bill Veniot, SDM Regional Manager on June 22, 2012.

Mr. Krempien testified that Mr. Veniot confirmed that Mr. Boey had admitted to diversion of zopiclone and clonazepam for personal use when confronted on June 20, 2012 and his employment was subsequently terminated. He testified that Mr. Veniot described some of the information he and the SDM loss prevention personnel had gathered from inventory and electronic service records. Mr. Krempien testified that, based on this information, he estimated that approximately 1,000 tablets of clonazepam in various strengths and brands and approximately 10,000 tablets of zopiclone of various strengths and brands were diverted. Mr. Krempien indicated that Mr. Veniot also referred to a surveillance video from the pharmacy that showed Mr. Boey “opening a bottle, pouring a couple of tablets in his hand and popping them.” Mr. Krempien concluded testimony on this evidence by stating that Mr. Veniot indicated that Mr. Boey admitted to diverting for personal use; however, denied diverting for beyond his personal use, (i.e., trafficking, or giving or selling to friends or associates) and that it was Mr. Veniot’s belief that Mr. Boey did not have any other substance abuse issues beyond the use of clonazepam and zopiclone.

Tab 5, Exhibit 1 was a copy of the Notice of Complaint Letter to Calvin Boey from James Krempien.

Mr. Krempien testified that he hand delivered the letter to Mr. Boey on June 25, 2012.

In the letter, Mr. Krempien requested that Mr. Boey provide written responses to the following concerns by July 22, 2012:

- That he had diverted medications for both personal use and for the use of others;
- That he may have in the past used illegal drugs and/or drugs illegally while at work as a pharmacist; and
- That his employment as a pharmacist with Shoppers Drug Mart ended on or about June 20, 2012 due to their detection of your diversion.

Tab 6, Exhibit 1 was a memo prepared by James Krempien summarizing his meeting with Mr. Boey on June 25, 2012.

Mr. Krempien testified that, during the discussion, he and Mr. Boey discussed his experience as a pharmacist and the stressors Mr. Boey said contributed to his drug diversion and use.

With respect to Mr. Boey's experience as a pharmacist, the summary indicated:

- He has been a resident of Canada for at least 5 or 6 years and prior to that he resided in Singapore where he attended high school and the first part of university;
- He graduated from the University of Alberta in 2011 and was licensed with the Alberta College of Pharmacists in July 2011;
- After being licensed, he began working at the Shoppers Drug Mart in Rocky Mountain House and continued to work there full time, approximately 40 hours per week;
- While in school, he had also worked at a couple of Shoppers Drug Marts in Edmonton for approximately 3 years as a student, most frequently with the Meadowlark Shoppers Drug Mart.

According to the transcript of the summary of the conversation, the stressors Mr. Boey said led to his initial diversion and drug use in the workplace were:

- The work environment at the Shoppers Drug Mart in Rocky Mountain House
Mr. Boey indicated that it was a very busy work environment and that there was a lot of staff turnover. He felt that as a young, keen, newly graduated pharmacist he was overzealous in his approach to his work and felt that other staff members were not as keen. This continually stressed him and got him down. He also felt that as a result of the significant staff turnover, the staff were not well trained. He felt that the stress of this environment resulted in him making some big mistakes. It was only after he made some large patient

errors that he finally got a technician to work with him past 7:00 pm in the evenings.

- His work schedule

He had volunteered/been required to work most of the night shifts in the pharmacy. In addition, for the first number of months, he had worked by himself after 7:00 pm. Mr. Boey indicated that he found this situation very stressful.

- Family stressors

Mr. Boey's father, who lives in Toronto, experienced a serious medical event in September 2011. Because his parents did not live together, Mr. Boey was receiving pressure from family in Toronto to move to Ontario to care for his father. He indicated that he had started the application process for moving provinces and was planning to move to Ontario around summer 2012.

At the same time, Mr. Boey indicated that his mother was diagnosed with a serious illness. He felt significant pressure from his sister, who was caring for his mother, to take over that role as the healthcare professional in the family.

Mr. Krempien testified that Mr. Boey:

- Admitted to diverting clonazepam, zopiclone and on one occasion a single tablet of Dexedrine 5mg for his personal use;
- Admitted to using these medications both at home and while practising at the pharmacy;
- Confirmed that he diverted somewhere in the range of 500 to 2,000 zopiclone tablets during the prior five to six months; however, he was not able to provide an exact quantity;
- Admitted to altering one of the electronic cycle counts to cover up his zopiclone diversions;
- Confirmed that he had been fired from the Shoppers Drug Mart in Rocky Mountain House on June 20, 2012 after they had detected his diversion; and
- Indicated that he was currently abstinent from the clonazepam and zopiclone and was enrolled in a Steps Recovery Program offered through Shoppers Drug Mart.

Mr. Krempien also testified that he gave Mr. Boey the option to voluntarily cancel his practice permit and he agreed to do so.

Additional evidence noted by the tribunal from the summary was:

- In addition to work stress, Mr. Boey had few or no social support systems in Rocky Mountain House. Because he did not have a car and was not able to get weekends off, he was not able to see his family on a regular basis,
- Mr. Boey denied diverting zopiclone in the range of 5,000 tablets or more, and

- At the end of the discussion, Mr. Krempien informed Mr. Boey that in cases where it could be confirmed that there had been no diversion beyond personal use, the pharmacist was able to acknowledge their addiction and unprofessional conduct and was willing to be monitored for reinstatement, that the matter could be resolved through an agreement.

Tab 7, Exhibit 1 was a copy of an email forwarded to Linda Hagen, Registration Manager, by James Krempien on June 26, 2012 requesting that Mr. Boey's name be removed from the Alberta College of Pharmacists Clinical Register.

Mr. Krempien testified that, as per his request, Mr. Boey's practice permit was cancelled effective June 26, 2012.

Tab 8, Exhibit 1 is a letter received at the college on July 3, 2012. Mr. Krempien testified that the letter was written by Mr. Boey in response to the Notice of Complaint.

The members of the hearing tribunal reviewed the letter. In the letter, Mr. Boey:

- Admitted to diverting and ingesting zopiclone and clonazepam at work at Shoppers Drug Mart #343, as well as at home on multiple occasions;
- Indicated that all drugs diverted were for personal use and that he had never diverted them to any other person;
- Stated he had never used illegal drugs in the past nor been involved in diversion of drugs from the previous pharmacies he had worked at;
- Indicated his employment with Shoppers Drug Mart ended on June 20, 2012 and that he was told that legal action or criminal investigation would not be brought against him;
- Stated that he deeply regretted his actions. He noted that stressing factors from home and work clouded his judgment and led to this series of events; however, acknowledged that his actions were unprofessional and compromised the integrity of the profession;
- Stated that he was determined to resolve his personal and mental issues and had begun to seek professional help; and
- Sent in his 2012/13 practice permit.

Tab 9, Exhibit 1 was an email dated July 3, 2012 to Mr. Boey from Mr. Krempien. In the email, Mr. Krempien acknowledges the receipt of Mr. Boey's written response and the return of his 2012/13 practice permit. He also informs Mr. Boey that he is awaiting additional documentation from Shoppers Drug Mart regarding this matter and would contact him with the next steps once he had reviewed all of the information gathered.

Tab 10, Exhibit 1 was a memo from James Krempien summarizing a telephone conversation that took place on July 4, 2012 between Mr. Krempien and Mr. Veniot.

Tab 11, Exhibit 1 was a copy of the email dated July 11, 2012 to Mr. Boey from Mr. Krempien.

Tab 12, Exhibit 1 was a memo from James Krempien summarizing a telephone conversation between Mr. Krempien and Mr. Veniot on July 11, 2012.

Mr. Krempien testified that Tabs 10, 11 and 12 were records of contacts with Mr. Boey and Mr. Veniot while he was waiting to receive the information from Shoppers Drug Mart.

Tab 13, Exhibit 1 included the following documents forwarded to the ACP by Bill Veniot.

- Shoppers Drug Mart Count Cycle Reports
- Shoppers Drug Mart Product Audit Trails
- Handwritten Admission Statement to Shoppers Drug Mart written by Mr. Boey dated June 20, 2012

Mr. Krempien testified that the Cycle Count Reports were provided by Kambo Githu, who was the pharmacy manager and licensee of the Shoppers Drug Mart in Rocky Mountain House at that time. Mr. Krempien stated that it was his understanding that towards the beginning of May, Kambo and other members of Shoppers Drug Mart became suspicious of Mr. Boey. The reason for suspicion was the discovery of unexplained electronic adjustments of pharmacy inventory records attributed to Mr. Boey. As a result, they began monitoring inventories of zopiclone and clonazepam more closely by conducting on-hand inventories for zopiclone and clonazepam.

Tab 14, Exhibit 1 was a memo from James Krempien containing a copy of the transcript of the telephone conversation between Mr. Krempien and Mr. Boey on July 11, 2012 where Mr. Boey was informing Mr. Krempien of his plans to travel to Calgary and Toronto to visit family.

Mr. Krempien testified that, throughout the investigation, Mr. Boey was very good to contact and conscientious to inform him of travel plans so he could be contacted.

Tab 15, Exhibit 1 was a memo from James Krempien containing a transcript of a telephone conversation between Mr. Krempien and Mr. Veniot dated July 12, 2012. Mr. Krempien had contacted Mr. Veniot to clarify the information in the Shoppers Drug Mart Count Cycle Reports and Product Audit Trails.

Mr. Krempien testified that through his review of the reports and confirmation with Mr. Veniot, he identified three very large electronic adjustments made to the inventory records of zopiclone 7.5mg tablets made in March, April and May corresponding with shifts when Mr. Boey was the pharmacist on duty and are attributed to him. Mr. Veniot confirmed that these adjustments resulted in the ordering and receipt of large quantities of zopiclone.

Tab 16, Exhibit 1 was a memo from James Krempien summarizing a telephone conversation between James Krempien and Bill Veniot on August 7, 2012. The purpose of the conversation was to request complete pharmacy records as it was identified that the report provided in Tab 13 only included every second page.

Tab 17, Exhibit 1 was a copy of an email exchange between Mr. Boey and Mr. Krempien on August 7, 2012. In the exchange, Mr. Krempien updated Mr. Boey on the status of the investigation and Mr. Boey informed Mr. Krempien that he was back in Rocky Mountain House.

Tab 18, Exhibit 1 was a copy of the Shoppers Drug Mart Product Audit Trail received by ACP on August 8, 2012. The reports contained the complete in and out receipts and sales for all of the different clonazepam and zopiclone products at the pharmacy from November 1, 2011 to June 2012.

Mr. Krempien testified that through his analysis of the documentation in Tab 13 and Tab 18, he calculated that there were an approximately 10,600 tablets of zopiclone unaccounted for and approximately 1,600 tablets of clonazepam unaccounted for. He indicated that the electronic adjustments of inventory records accounted for similar quantities (10,700 zopiclone and 1,200 clonazepam).

Tabs 19 and 20, Exhibit 1 were records of contact between Mr. Boey and Mr. Krempien on August 22 and 23, 2012 respectively for the purpose of setting up a meeting to review the documentation from Shoppers Drug Mart.

Tab 21, Exhibit 1 was a memo from James Krempien summarizing a telephone conversation between James Krempien and Kambo Githu, SDM #343 pharmacy licensee, on August 29, requesting a meeting for September 7, 2012.

Tab 22, Exhibit 1 was a memo from James Krempien summarizing a meeting between Mr. Krempien and Mr. Githu on September 7, 2012.

Mr. Krempien testified that Mr. Githu advised him that he had reviewed a surveillance video that showed Mr. Boey, primarily in the month of May, diverting and ingesting zopiclone while on duty as a pharmacist. Mr. Krempien stated that he reviewed the product audit reports with Mr. Githu. Mr. Githu indicated that there was no need for the large receipts of zopiclone based on their usage. He referred specifically to the receipt of 5,500 tablets on January 17, 2012 and 5,000 tablets on May 29, 2012. Mr. Krempien testified that based on Mr. Githu's monitoring of the pharmacy inventory, he determined that Mr. Boey was responsible for diverting approximately 10,000 tablets of zopiclone and 1,000 tablets of clonazepam. Mr. Githu also shared that between January and June 2012 clonazepam and zopiclone were the only medications found unaccounted for and that no further zopiclone or clonazepam tablets had gone missing since Mr. Boey's employment was terminated. Mr. Krempien also referenced the staffing schedule from January to June 2012 provided to him by Mr. Githu. He indicated that he reviewed the staff schedule to correlate the electronic edits that were made on the product audit reports under

Mr. Boey's sign in and confirmed that these edits corresponded to when Mr. Boey was working.

Tab 23, Exhibit 1 was a memo from James Krempien summarizing a meeting between Mr. Krempien and Calvin Boey on September 7, 2012.

As per the summary, the intent of the meeting was to get an update regarding Mr. Boey's progress in the STEPS program and to discuss the additional documentation and pharmacy records that Mr. Krempien had received through Bill Veniot and Kambo Githu. Mr. Krempien testified that similar to their previous meeting, Mr. Boey appeared very remorseful and admitted to diverting and ingesting clonazepam and zopiclone.

In his testimony, Mr. Krempien highlighted the following points from the discussion:

- When confronted with the inventory records that appeared to prove that Mr. Boey had diverted approximately 10,000 zopiclone tablets and 1,000 clonazepam tablets, Mr. Boey admitted to diverting an increased number of tablets. Mr. Boey continued to dispute the total numbers calculated by Mr. Krempien, but admitted to using 10 to 20 tablets of zopiclone daily, with a total in the range of 2,700.

Additional information from the summary noted by the tribunal included:

- Mr. Boey continued to be very adamant about diverting for only personal use and denied selling or trading to anyone,
- Mr. Boey stated he never manipulated on hand inventories nor did he ever create an order for large quantities of zopiclone or clonazepam and then divert these receipts. He indicated he simply took the zopiclone off the shelf. Mr. Boey suggested that pharmacy staff members may have placed additional orders for these medications with McKesson, and
- Mr. Boey had been attending weekly meetings at the SDM funded STEPS program since June 2012.

Tab 24, Exhibit 1 was a copy of an email exchange between Mr. Krempien and Khoi Nguyen, Regulatory Officer/AQPIC/ARPIC McKesson Canada, on September 10, 2012. Mr. Krempien indicated that through this email exchange he determined that SDM #343 had not ordered clonazepam or zopiclone through McKesson.

Tab 25, Exhibit 1 is a memo from James Krempien containing a typed transcript of a telephone conversation between Mr. Krempien and Calvin Boey on September 11, 2012.

Mr. Krempien testified that he and Mr. Boey discussed the quantity of medications diverted and Mr. Boey admitted to taking more tablets than he had previously admitted to. Mr. Boey had shared that around February 2012, he tried to kick the zopiclone habit and on those occasions he flushed any remaining tablets he had in his residence, suggesting that this could potentially account for some of the missing zopiclone tablets.

On review of the transcript, the tribunal also noted that Mr. Boey admitted to changing the electronic records in May 2012 that triggered the computer system to order in a large quantity of zopiclone. He continued to deny making the changes in January 2012.

Tab 26, Exhibit 1 was a memo from James Krempien summarizing a telephone conversation that took place between Mr. Krempien and Nadine Bryk-Jones, the former pharmacy manager at Shoppers Drug Mart in Rocky Mountain House, on September 13, 2012.

Mr. Krempien testified that Ms. Bryk-Jones was not aware of the investigation, nor did she recall the receipt or returning of large quantities of zopiclone in January 2012.

Mr. Krempien testified that it is at this point that he concluded his investigation and made the decision to refer the matter to the hearings director for a hearing. He indicated that the time period of November 2011 to June 2012 was selected for review due to the capability of obtaining 6 months of records from the pharmacy computer system. He submitted that, based on the information collected, it was his conclusion that the most likely number of tablets missing from Shoppers Drug Mart #343 were;

- 10,000 zopiclone tablets,
- 1,000 clonazepam tablets, and
- one tablet of Dexedrine.

He further submitted that he came to this conclusion based on:

- Mr. Boey's admissions he was diverting and ingesting both zopiclone and clonazepam;
- The fact that during the three to four times that he interviewed Mr. Boey, the quantity of medication he admitted to diverting kept increasing; and
- The fact that Mr. Boey admitted to the May 2012 electronic edit that resulted in large quantities of zopiclone coming into the pharmacy.

Mr. Jardine then asked Mr. Krempien if he believed that the quantities diverted were all for personal use.

Mr. Krempien testified that the number of tablets Mr. Boey admitted to taking did not account for the 10,000 zopiclone tablets found missing. He further stated that, in his limited clinical experience, it was difficult to see how an individual could get out of bed and function if ingesting in the range of 50 to 70 zopiclone tablets daily given the manufacturer's recommended maximum dose of 7.5mg daily.

Mr. Jardine then asked Mr. Krempien to explain what in his investigation led him to allege that Mr. Boey routinely practiced while incapacitated.

Mr. Krempien testified that Mr. Boey admitted to using these medications before, during and after his shift. He indicated that Mr. Boey admitted to using increasing

quantities of zopiclone and clonazepam and to being heavily sedated through much of the period between January 2011 and June 2012. Mr. Krempien then shared that in his conversations with both Nadine Bryk-Jones and Kambo Githu, both had observations of him that would, in retrospect, lead one to conclude that he was impaired while working. These observations included:

- Mr. Boey was making drug errors, and
- Mr. Boey was described as having an abnormal affect including disorganized thoughts, disorganized communications, slurring his words and appearing sedated while at work.

Mr. Jardine then produced a document dated February 19, 2013 to Mr. Krempien. Mr. Krempien testified that the document included a one-page summary of a meeting between him and Mr. Boey on February 19th, a transcript of the telephone call Mr. Boey had initiated subsequent to that meeting and an email exchange between Mr. Krempien and Mr. Boey again subsequent to the meeting.

Mr. Jardine asked that this document be marked as EXHIBIT 2, Alberta College of Pharmacist Memo dated February 19, 2013.

Mr. Krempien summarized that in the meeting, Mr. Boey provided him with additional background regarding his entry at the University of Alberta and prior to that in 2006. This background information included:

- Prior to 2006, Mr. Boey had been residing in Vancouver, working in the after-hours club scene, and it was there that he developed a significant drug problem, with heroin being his drug of choice.
- While in school 2006 to 2011, his drug use had essentially stopped due to having a better support network that included his sister and classmates.
- Upon graduation in 2011, Mr. Boey started his position at the Shoppers Drug Mart in Rocky Mountain House.
- In the fall of 2011, Mr. Boey shared that he went out to Vancouver, where he resumed his use of heroin. Mr. Boey indicated he had purchased some heroin for use while in Vancouver and brought the remainder back to Rocky Mountain House and continued to use until the supply was gone. Mr. Boey shared that it was at this point that he started to use clonazepam and zopiclone in an attempt to self-treat his withdrawal symptoms.
- Mr. Boey then indicated that around November/December 2011, he visited Calgary, attended a club and purchased more heroin and continued on with his heroin addiction.
- Upon his return to Rocky Mountain House, Mr. Boey told Mr. Krempien that he again tried to self-medicate to minimize his addiction. He stated he used clonazepam, which caused him light flashes, so he primarily turned to zopiclone.
- Mr. Boey shared that his recollection of how much zopiclone he was taking in the early part of 2012 was approximately five tablets per dose with multiple doses throughout each day.

- Mr. Boey also shared that he had been abstinent from heroin and other drugs for about two months at the time of the February 19th meeting and that he had started to receive some addictions treatment through Alberta Health Services.

Mr. Jardine then asked Mr. Krempien to summarize his subsequent telephone conversation with Mr. Boey later that day.

Mr. Krempien testified that Mr. Boey provided more context regarding his heroin use and clarified the quantities of zopiclone he was using. Mr. Krempien stated that Mr. Boey again denied that he had ever trafficked, sold or given away any of the zopiclone or other medications he diverted. Mr. Krempien then referred to an email exchange between him and Mr. Boey on February 23, 2013. He testified that Mr. Boey shared details of his treatment and Mr. Krempien provided Mr. Boey with potential resources he should consider accessing.

Mr. Krempien indicated this was his last contact with Mr. Boey.

Mr. Krempien was then cross-examined by Ms. Olszewski.

Ms. Olszewski asked Mr. Krempien if, in the course of his investigation, he found any evidence that suggested Calvin was trafficking, giving away or selling either clonazepam or zopiclone.

Mr. Krempien testified that he found no direct evidence of this. He indicated that his conclusion was based on the discrepancy in the numbers.

Ms. Olszewski referred to the fact that Mr. Boey shared with Mr. Krempien that the Shoppers Drug Mart in Rocky Mountain House had failed two inventory audits in 2011. She asked Mr. Krempien if he ever followed up with Shoppers Drug Mart with respect to these audits. Mr. Krempien testified that he did not look specifically into these audits and that he based his conclusions on the documentation provided to him by Mr. Veniot.

Ms. Olszewski asked Mr. Krempien if Mr. Boey shared with him that he was not in debt or in need of money during the period of time that he was at Shoppers Drug Mart in Rocky Mountain House.

Mr. Krempien testified that Mr. Boey shared this information with him and that Mr. Boey also shared that he always paid cash and didn't have a lot of expenses.

Ms. Olszewski asked Mr. Krempien if he recalled asking Kambo Githu questions regarding whether or not he was aware of Mr. Boey being in debt.

Mr. Krempien responded that he did discuss this with Mr. Kambo and that Mr. Kambo was not aware of Mr. Boey having any financial difficulties.

Ms. Olszewski commented that Mr. Krempien had spoken to at least 2 individuals at the store that stated they observed that Mr. Boey seemed to be impaired while he was at work.

Mr. Krempien agreed with this statement.

She then asked Mr. Krempien if these individuals told him if they did anything in response to these observations.

Mr. Krempien testified that he did not recall anything specific. However, he did recall Mr. Boey shared that he had expressed concerns regarding the need for more staff at the pharmacy and that he was working mostly evenings and weekends. Mr. Krempien stated that there was an offer of extra help, but did not recall whether or not Mr. Veniot provided additional support.

Ms. Olszewski referred specifically to Tab 22 (a summary between Mr. Krempien and Mr. Githu). She referred to the top of page 2, where it looks like Mr. Githu reported that at times it looked like Mr. Boey was asleep in the dispensary, that he seemed to have a nervous personality, that he was often shaking at work, and that other staff members had commented he appeared not to be there. She then repeated her previous question and asked if Mr. Githu ever indicated whether he or anyone in the store had taken steps to address these observations.

Mr. Krempien testified that he was not aware of any steps that were taken.

Both Ms. Olszewski and Mr. Jardine indicated they had no further questions for the witness.

The hearing tribunal then posed some questions to Mr. Krempien.

The tribunal asked for Mr. Krempien to clarify why the records were only reviewed back to November 2011.

Mr. Krempien testified that it was his understanding from discussions with both Mr. Veniot and Mr. Boey that diversion was not suspected prior this time period and that the records from the distribution centre were easily accessible 6 months back.

The tribunal then asked if there was any attempt to determine the nature of the previous inventory problems identified with the audits or the general inventory problems at the Shoppers Drug Mart in Rocky Mountain House.

Mr. Krempien testified that he was only aware of the information Mr. Boey had shared with him and that he had not looked further into the nature of these audits.

The tribunal asked if Mr. Krempien had viewed the surveillance video where Mr. Boey was observed diverting and ingesting medications in the dispensary.

Mr. Krempien testified that he had asked to see the video during his investigation; however, he had difficulty obtaining a copy of the video. He submitted that it was his understanding that both Mr. Veniot and Mr. Githu had reviewed the video and given him an account of what they had seen. He stated that since Mr. Boey had admitted to ingesting medication in the pharmacy, there was no need to delay the process in order to obtain the video.

The tribunal's final question was to ask for clarification regarding the steps the employer took to address Mr. Boey's observed behaviors.

Mr. Krempien testified he did not believe that they underwent progressive discipline, tried to intervene or made an effort to put in additional staffing or support. It was his impression that many of the observations were noted based on reflection after Mr. Boey's admissions. He added that no earlier concerns were brought forward to the college.

The Hearing tribunal concluded their questioning.

Both Mr. Jardine and Ms. Olszewski indicated they had no further questions for the witness. Mr. Krempien was excused.

The college called no further witnesses.

Ms. Olszewski, counsel for Mr. Boey, indicated they would not be calling any witnesses on behalf of Mr. Boey.

V. SUBMISSIONS

Alberta College of Pharmacists Submissions

Mr. Jardine submitted that there are two things that must be proven on the balance of probabilities. First, the college must prove the specific allegations in the Notice of Hearing and then prove that the allegations constitute unprofessional conduct.

Mr. Jardine referred to the Notice of Hearing.

With respect to the first allegation that during the period from November 2011 to June 2012 Mr. Boey:

1. Diverted medications from Shoppers Drug Mart #343 including zopiclone, clonazepam, and on one occasion Dexedrine in the approximate amounts of 10,000 zopiclone tablets, 1000 clonazepam tablets and 1 tablet of Dexedrine 5mg for his personal use and possibly for other undetermined uses

Mr. Jardine submitted that the allegation that medications were diverted for personal use were proven based on:

- The member's admissions,
- The member's signed acknowledgements,

- Specific admissions made by the member to the complaints director, and
- Evidence provided by Shoppers Drug Mart and the Audit Trail.

With respect to the quantity of medications diverted, Mr. Jardine indicated that there is no way to obtain an exact quantity of medications diverted by Mr. Boey and that Mr. Boey's admissions regarding the quantity diverted had been a moving target. He submitted that it is more probable than not that Mr. Boey diverted the quantities of medications that were determined to be missing through examinations of the pharmacy records, with the proviso that the exact number is impossible to determine.

With respect to the allegation that Mr. Boey diverted medications possibly for other undetermined uses, Mr. Jardine submitted that the amount of medication diverted by Mr. Boey was very significant. He further added that the figures provided by Mr. Boey increased over time with the last figure in the range of 20 to 50 tablets per day. He indicated that this left a suspicious unanswered question, because the exact medical limits are not known, but from the college's perspective this was pushing it. Mr. Jardine indicated that the college had no evidence other than the discrepancy to support this allegation. It was the college's submission that the allegation was proven.

With respect to the second allegation that Mr. Boey:

2. Routinely practiced while incapacitated, thereby creating an environment that endangered the public with his practice

Mr. Jardine submitted that the allegation that the environment endangered the public was clearly proven based on:

- Mr. Boey's admissions of using excessive quantities of zopiclone and clonazepam before and during his shifts;
- Mr. Boey's admission, during a telephone call with Mr. Krempien, of being "heavily sedated" through much of the time period examined;
- The comments on Mr. Boey's practice made by the other two pharmacists;
- The fact that Mr. Boey customarily worked as the only pharmacist, when there was no second check.

With respect to the third allegation that Mr. Boey:

3. Abused his position of trust by altering the electronic inventory records of the pharmacy to both initiate and conceal his diversion of the zopiclone

Mr. Jardine stated that Mr. Boey clearly admitted to altering the records involving the May 29, 2012 order. Mr. Jardine submitted that if you look at the balance of probabilities there were several other large diversions that occurred while Mr. Boey was on shift and pharmacy records indicated that 10,000 zopiclone tablets were missing. Mr. Jardine submitted when you add these up, it is more probable than not that these were done by Mr. Boey. Given the critical role that record keeping plays in the practice of pharmacy, it is the college's submission that this is a very serious issue and is proven in this case.

Mr. Jardine went on to say that it was the college's submission that the factual allegations outlined in the Notice of Hearing were proven on the balance of probabilities.

Mr. Jardine went on to state that the college's next responsibility, was to prove that the allegations constitute unprofessional conduct.

He then submitted that the evidence proved that Mr. Boey's conduct;

- Undermined the integrity of the profession,
- Is contrary to accepted pharmacy practice,
- Created an environment in which an accurate accounting of the zopiclone and clonazepam stocks at the pharmacy may never be determined,
- Resulted in him practising while he knowingly was impaired by drugs,
- Involved multiple diversions of medications over an extended period from November 2011 to June 2012, and
- Ended only when his employer discovered the diversions and terminated his employment.

In addition, the college submitted that the evidence proved that Mr. Boey;

- Diverted medications, then used his position of trust to alter the inventory records to conceal this and prolong the ability to do so, and
- Placed patients at risk and had the potential to decrease the public's trust in the profession.

He went on to state that for a member of the public to have any doubts in the integrity of the pharmacist and a system where a pharmacist can alter inventory has a major impact on the profession and should be considered a serious matter.

Mr. Jardine then submitted that Mr. Boey's conduct constituted a breach of the following statutes, regulations, and standards governing the practice of pharmacy:

- Section 1(1)(pp)(ii), 1(1)(pp)(iii), and 1(1)(pp)(xii) of the *Health Professions Act*

Section 1(1)(pp) indicates that "unprofessional conduct" means one or more of the following, whether or not it is disgraceful or dishonorable. The wording means that in a serious enough case one does not need to prove intent or dishonorable intent. Mr. Jardine submitted that Mr. Boey's actions of stealing from an employer, diverting drugs, altering pharmacy records constitute a:

- Contravention of this Act, a code of ethics or standards of practice;
 - Contravention of another enactment that applies to the profession; and
 - Conduct that harms the integrity of the regulated profession.
- Standard 1, Subsections 1.1 and 1.2 of the Standards of Practice for Pharmacists and Pharmacy Technicians;
 - Section 31(2)(a) and 38 of the *Pharmacy and Drugs Act*,

- Sections 31(2)(a) and 38 of the *Pharmacy and Drug Act*,
- Principles I(1), X(1 and 2) and XI(2, 3 and 5) of the ACP Code of Ethics,
- Section 4(1) of the *Controlled Drugs and Substances Act*,
- Section 51(1) of the *Benzodiazepines and Other Targeted Substances Regulations*,
- Section C.01.041(1.1) of the *Food and Drug Regulations*, and
- Section 31(1) of the *Narcotic Control Regulations*.

Investigated Member's Submissions

Ms. Olszewski submitted that they agreed that the college had proven that medication was diverted for personal use and that Mr. Boey admitted to this allegation when first confronted by Shoppers Drug Mart personnel in June 2012.

Ms. Olszewski indicated that regarding the exact quantities of medication taken and the suggestion that medications were diverted possibly for other undetermined uses, the college has the burden to prove these findings on the balance of probabilities.

With respect to the exact quantities, Ms. Olszewski submitted that it was not possible for them to comment as they did not have access to the SDM records. She stressed that Mr. Boey had shared with Mr. Krempien that the store had failed two internal audits in 2011, one before he started and one after. It was her submission that this suggested inventory problems that potentially influenced the accuracy of the exact quantities. Ms. Olszewski submitted that they were prepared to agree that a significant number of medications were diverted, but there was no way of knowing the exact number.

With respect to the suggestion that medications were diverted for reasons beyond personal use, Ms. Olszewski stated that Mr. Boey steadfastly said that under no circumstances was he involved in trafficking, giving, trading or selling the diverted medications. Ms. Olszewski submitted that the college failed to provide the tribunal with any evidence to prove this allegation.

With respect to Allegations 2 and 3, Ms. Olszewski submitted that Mr. Boey admitted to these allegations previously. She however clarified that Mr. Boey admitted to altering the electronic inventory for zopiclone only.

Ms. Olszewski concluded by submitting that the allegations that Mr. Boey admitted to are a breach of the statutes, regulations and standards.

Mr. Jardine responded to the closing statement by Ms. Olszewski by stating that he agreed that the college bears the onus on any allegation; however, noted that it is his submission that the uncertainty is the direct result of the conduct of the member, including the altering of records, making it very difficult to know exact numbers. Mr. Jardine further submitted that, although the college did not have direct proof of trafficking or the like, in the interest of the public, the college had the responsibility

to consider that the significant quantity of medication diverted may not be only for personal use.

VI. FINDINGS

The hearing tribunal carefully considered the evidence presented during the hearing and the submissions from both the college and the member. The hearing tribunal makes the following findings:

With respect to the first allegation that during the period from November 2011 to June 2012 Mr. Boey:

1. Diverted medications from Shoppers Drug Mart #343 including zopiclone, clonazepam, and on one occasion Dexedrine in the approximate amounts of 10,000 zopiclone tablets, 1,000 clonazepam tablets and 1 tablet of Dexedrine 5mg for his personal use and possibly for other undetermined uses

The hearing tribunal finds that that the allegation that medications were diverted for personal use is proven, based on the following reason:

- Mr. Boey openly admitted to using the diverted medications for personal use since the beginning of the investigation, both verbally and in signed, written acknowledgements.

The hearing tribunal finds that the allegation that the approximate amounts of 10,000 zopiclone tablets, 1,000 clonazepam tablets and 1 tablet of Dexedrine 5mg tablet were diverted for personal use is proven on the balance of probabilities. This finding is based on the following reasons:

- A comprehensive analysis of the inventory records from Shoppers Drug Mart #343 revealed that there were an approximately 10,600 tablets of zopiclone unaccounted for and approximately 1,600 tablets of clonazepam unaccounted for.
- A cross referencing of the electronic adjustments of inventory records accounted for similar quantities (10,700 zopiclone and 1,200 clonazepam).
- Electronic alterations in inventory records reviewed by Mr. Krempien were done under Mr. Boey's sign on.
- Mr. Krempien confirmed that Mr. Boey was working on the dates and times that that the electronic adjustments occurred, by comparing the records for the electronic adjustments with the staffing schedule at the pharmacy.
- Mr. Boey's admissions with respect to the quantity of medication diverted increased throughout the course of the investigation from an initial quantity of 5-10 zopiclone tablets per day to a final admission of zopiclone use in the range of 50 tablets per day.
- Mr. Boey admitted that on three occasions he attempted to kick his drug habit and at those times he flushed any remaining medications he had at his

residence down the toilet. This provides a potential explanation for the unaccounted quantity.

The tribunal acknowledges that it is impossible to determine the exact quantities of medication diverted. However, based on the above evidence the tribunal finds that it is more probable than not that Mr. Boey is responsible for diverting the approximate quantities identified through the review of the pharmacy records.

With respect to the allegation that the investigated member diverted medications for undetermined uses, the tribunal finds that the allegations are not proven. The tribunal makes this finding based on the following reasons:

- In the evidence presented by the college, Mr. Boey consistently denied any use of the diverted medications beyond personal use in all of his interactions with the complaints director.
- According to evidence presented by the college, none of the individuals questioned through the course of the investigation had any reason to suspect that Mr. Boey diverted medications for beyond personal use.
- The argument presented by the college supporting this allegation was based on the significant quantity of medications diverted and the fact that the quantity Mr. Boey admitted to ingesting did not account for this quantity. The college admitted that there was no evidence to support this allegation beyond this discrepancy.
- Mr. Boey admitted to a heroin addiction which led him to start using clonazepam and zopiclone to help him to manage his withdrawal symptoms. Mr. Boey admitted to taking up to 50 tablets of zopiclone daily and to flushing significant quantities of the diverted medications when he tried to “kick the habit” on 3 different occasions. This admission provides a potential explanation for the discrepancy.

Based on the above evidence, the tribunal finds that there is insufficient evidence to prove this allegation.

With respect to the second allegation that Mr. Boey:

2. Routinely practiced while incapacitated, thereby creating an environment that endangered the public with his practice

The hearing tribunal finds that the allegation is proven. This finding is based on the following reasons:

- Mr. Boey admitted to this allegation. He admitted to using excessive quantities of zopiclone and clonazepam before and during his shifts. He also admitted to being “heavily sedated” through much of the time period examined.
- When questioned by the complaints director, staff who worked with Mr. Boey during the investigated time period recalled observing that Mr. Boey had an abnormal affect, disorganized thoughts, disorganized communications, slurred his words and appeared sedated while at work. In addition, these individuals

commented that Mr. Boey was involved in notable drug errors during this time period.

- Mr. Boey frequently worked as the only pharmacist, when there was no second check. Given Mr. Boey's state of mind, the tribunal feels that this placed the public at significant risk.

With respect to the third allegation that Mr. Boey:

3. Abused his position of trust by altering the electronic inventory records of the pharmacy to both initiate and conceal his diversion of the zopiclone

The tribunal finds that the allegation is proven on the balance of probabilities. This finding is based on the following evidence:

- Mr. Boey admitted to altering the zopiclone records resulting in the May 29, 2012 order.
- Review of the pharmacy records revealed that several other large diversions occurred while Mr. Boey was on shift.
- Electronic alterations of inventory for clonazepam and zopiclone reviewed by Mr. Krempien were completed under Mr. Boey's sign on.
- Mr. Krempien confirmed that Mr. Boey was working on the dates and times that that the electronic adjustments occurred.

Mr. Boey initially denied responsibility for any of the electronic alterations. He later admitted to altering records for zopiclone on only one occasion. The tribunal finds that given the fact that the other alterations to the electronic inventory record were made to the medications Mr. Boey admitted to diverting and the fact that Mr. Boey was at work when these alterations occurred, it is more probable than not that these were done by Mr. Boey.

The hearing tribunal finds that the above proven allegations constitute unprofessional conduct.

The tribunal agrees with the college's submission that Mr. Boey's conduct undermined the integrity of the profession and is contrary to accepted pharmacy practice. The integrity of the profession depends on the public being able to trust that pharmacists manage medications in accordance with the standards. The diversion of medication for personal use, practicing while in an altered state and manipulating records to conceal this activity are all actions that compromise the integrity of the profession, both in the eyes of other professionals and the public.

Mr. Boey submitted that his conduct constitutes a breach of the statutes, regulations and standards governing the profession of pharmacy and left it to the tribunal to determine the specific breaches.

The tribunal reviewed the submissions made by the college and finds that the proven allegations constitute the following breaches:

- Section 1(1)(pp)(ii), 1(1)(pp)(iii), and 1(1)(pp)(xii) of the *Health Professions Act*

The hearing tribunal finds that Mr. Boey's actions of stealing from an employer, diverting and abusing drugs and altering pharmacy records constitute a:

- Contravention of this Act, a code of ethics or standards of practice,
- Contravention of another enactment that applies to the profession; and
- Conduct that harms the integrity of the regulated profession.

The specific breaches in question are discussed below;

- Standard 1, Subsections 1.1 and 1.2 of the Standards of Practice for Pharmacists and Pharmacy Technicians

Subsection 1.1 refers to the pharmacist's responsibility to comply with all laws that govern their practice. Subsection 1.2 states that pharmacists must comply with both its letter and its spirit to ensure that the public and each patient receive the full protection of the law. Mr. Boey's conduct constitutes breaches of the *Health Professions Act, Pharmacy and Drug Act, Code of Ethics, Food and Drug Regulations, Controlled Drugs and Substances Act* and the Narcotic Control Regulations.

- Section 31(2)(a) and 38 of the Pharmacy and Drug Act

Section 31(2)(a) states that Schedule 1 drugs may be, subject to Subsection (3), compounded, dispensed or sold only pursuant to a prescription. Mr. Boey diverted and ingested clonazepam, zopiclone and Dexedrine without any form of a prescription, thus breaching Section 31(2)(a). Further, Section 38 of the *Pharmacy and Drug Act* states a person who contravenes Section 31(2)... is guilty of an offence. The tribunal finds Mr. Boey's actions constitute a breach of the above sections of the *Pharmacy and Drug Act*.

- Principle I(1) of the ACP Code of Ethics

Principle I states that a pharmacist is to hold the well-being of the patient as their primary consideration. To uphold this, Principle 1(1) states that a pharmacist must act in the best interest of the patient. The tribunal finds that Mr. Boey breached this principle by practising while incapacitated, thus putting his patients at risk.

- Principle X(1 and 2) of the ACP Code of Ethics

Principle X states that a pharmacist is to act with honesty and integrity. The tribunal finds that Mr. Boey's diversion of medication for personal use, attempts to alter pharmacy inventory records to conceal his actions and practicing in an altered state are all breaches of this principle.

- Principle XI(1,3,4 and 5) of the ACP Code of Ethics

Principle XI states that a pharmacist shall demonstrate responsibility for self and other health professionals. The tribunal finds that continuing to practise while abusing medications before, during and after work shifts, practising in a state he describes as heavily sedated, attempting to conceal this behavior and not admitting or seeking help for the behavior until getting caught all constitute breaches of this principle.

- Section 4(1) of the *Controlled Drugs and Substances Act*
The tribunal finds that diverting and ingesting Dexedrine without a legal prescription constitutes a breach of this section of the *Controlled Drugs and Substances Act*.
- Section 51(1) of the *Benzodiazepines and Other Targeted Substances Regulation*
The tribunal finds that diverting and ingesting clonazepam without a legal prescription constitutes a breach of this section of the *Benzodiazepines and Other Targeted Substances Regulation*.
- Section C.01.041(1.1) of the *Food and Drug Regulations*
The tribunal finds that diverting and ingesting zopiclone without a legal prescription constitutes a breach of this section of the *Food and Drug Regulations*.

VI. ORDERS

After the hearing tribunal advised the parties verbally of its findings of unprofessional conduct, both the college and Mr. Boey were invited to make submissions on sanctions.

Alberta College of Pharmacists Submissions on Sanction

On behalf of the college, Mr. Jardine began by stating that the purpose of sanctions is

1. To protect the public,
2. To protect the integrity of the profession both internally and in the eyes of the public,
3. To be fair to the member, and
4. Deterrence,
 - Specific (related to the member),
 - General (both educates and deters other members).

Mr. Jardine then took the hearing tribunal through the factors referenced in *Jaswal v. Newfoundland (Medical Board)* (1996), 42 Admin. L.R. (2d) 233 and described the application of the factors in this case. Key points were:

- Nature and gravity of the conduct
The college submitted that diversion and abuse of drugs, practising while incapacitated and altering records are very serious actions.
- Age and experience of the member
Mr. Boey is a new pharmacist. He graduated in 2011 and the position at the SDM in Rocky Mountain House was his first job as a licensed pharmacist. While one must consider his limited experience, the college submitted that the nature of the offence is not related to inexperience.

- Prior offences
Mr. Boey has not had any prior complaints or disciplinary actions against him.
- Number of times the offense was committed
Mr. Boey's conduct occurred over a period of six to nine months, and only ended when he was caught by his employer. The college submitted that his conduct was not a one time lapse in judgment; it involved a series of acts that occurred over an extended period of time.
- Role of the member in acknowledging what occurred
Mr. Boey was cooperative and remorseful throughout the course of the investigation. However, Mr. Boey did not offer his admissions from the beginning of the investigation. The college submitted that his admissions were revealed in installments over an extended time period, thereby prolonging the investigation process and creating room for uncertainty.
- Has the member already suffered financial or other penalties
The college submitted that Mr. Boey voluntarily suspended his license and has not been practicing for almost a year. The college acknowledges that this has resulted in a significant financial impact for Mr. Boey.

With respect to specific and general deterrence, the college submitted that this is a very serious issue that cuts at the very root of the professional responsibility of a pharmacist and of operating a safe pharmacy. The college submitted that the nature and gravity of the issue requires substantial penalties. With respect to general deterrence, the college submitted that it must be clear to the members that this type of conduct is clearly outside what would be considered acceptable and will attract substantial penalties.

The college submitted that maintaining the public's confidence and the integrity of the profession should be a key factor in determining penalty. To do so, the penalty must clearly demonstrate that the pharmacy profession takes these actions very seriously.

The college submitted that the conduct of the member was clearly outside what would be considered acceptable conduct.

Mr. Jardine then reviewed four relevant decisions involving pharmacists who were investigated for complaints involving medication diversion and dependency.

Prior to making the college's submission on penalty, Mr. Jardine noted that a joint recommendation was not agreed to with the member because some of the relevant information provided by the member was only made available a couple days before the hearing. Mr. Jardine then submitted the following sanctions on behalf of the college:

1. A suspension for a period of 18 months
2. The costs of the investigation and hearing

3. Conditions on practice licence including:
 - The member must be enrolled in a monitoring and compliance program prior to returning to practice and remain enrolled in the compliance and monitoring program satisfactory to the complaints director for a period of 5 years.
 - The member should practice under direct supervision for a period of at least a year after the member starts to practice again.
 - For a period of 5 years, the member must provide any employer or licensee with a copy of the decision and the orders so they are aware of the potential concerns.
 - The member shall not be permitted to be a pharmacy licensee for a period of 5 years.

Members Submissions on Sanctions

Ms. Olszewski began her submissions for sanction on behalf of Mr. Boey by submitting a binder entitled “Materials on Sanction” and asked that it be marked as Exhibit 3. Mr. Jardine consented to this item being marked as Exhibit 3 with the caveat that accepting this into evidence did not mean accepting the proof provided in the submission and he reserved the right to examine on issues that he found objection with.

Ms. Olszewski asked the tribunal to consider the following points regarding Mr. Boey’s background:

- Mr. Boey was born in Singapore on December 24, 1983. He finished school in Singapore, and then spent 2002-2005 in the army as required by law.
- He joined his family in Canada in 2005 after completing his service. His first few years were quite rocky.
- The members of Mr. Boey’s immediate family (his father, mother and sister) are all professionals. His family is one that places high value on personal success.
- He attended the University of Alberta from 2006-2011.
- As a student, he worked for SDM #329 in Calgary from May to August 2008 and at SDM #313 in Edmonton from September 2008 to July 2011.
- At SDM #313, Mr. Boey worked with the owner Derek Durocher, as well as Kathy McDonald and Jodi Mills. Mr. Boey indicated that these individuals were very supportive and felt like family to him. Further, the dispensary was always well organized; things were done properly and left in good order for the next shift.
- Mr. Boey worked up to 30 hours per week while studying at university. He was described as very keen, passionate and dedicated to the profession.
- Upon graduation, he signed up for the scholarship program with SDM and was placed at the SDM in Rocky Mountain House. Shortly after moving to Rocky Mountain house Mr. Boey began to feel isolated because his work

schedule and lack of transportation made it very difficult to visit friends and family.

- Mr. Boey found the working conditions at the store and personality problems between coworkers very stressful.
- Mr. Boey stressed that the store had failed two internal inventory audits (one before and one after he started working at the store).
- Serious family issues, including his father suffering a medical event in September, also added to Mr. Boey's stress.
- Mr. Boey indicated that he had placed a number of calls to the regional manager at the store indicating that he was having difficulty and he was told to "hang in there."

She then summarized the history regarding Mr., Boey's drug use.

- Around October 15, Mr. Boey attended an SDM conference in Vancouver where he met up with an old friend from a club that he used to work at. It is here that he bought some heroin.
- Mr. Boey admitted that he had a previous issue with heroin, but had not had any issues during his time at the University of Alberta.
- He brought heroin home with him and continued to use for the next couple of weeks. After he ran out, he began suffering from severe withdrawal symptoms including flashing lights that wouldn't stop, intensification of sound, intensification of light and anxiety.
- He initially tried to take over the counter medications; however, this was not effective. He then proceeded to take clonazepam from the store because he knew this was used for withdrawal. He admits to taking significant amounts of clonazepam to deal with withdrawal symptoms, then experiencing symptoms of withdrawal when he attempted to stop taking clonazepam.
- Mr. Boey then took a trip to Calgary in December. He again purchased and used heroin.
- When he returned to Rocky Mountain House, he began taking and using large quantities of zopiclone from the store. He continued to do so until he was confronted by his employer.

Ms. Olszewski submitted that the following factors influenced Mr. Boey's initial reluctance to admit to his actions:

- An inherent part of a substance abuse problem is a reluctance for the affected individual to admit to their problem and a deep sense of shame regarding what they have done. These feelings are compounded for individuals who have families with very high expectations.
- Mr. Boey had arranged to meet with Mr. Krempien at an earlier date to reveal the details regarding his heroin addiction; however, it was at that time that Mr. Boey sought counsel. It was based on Ms. Olszewski's advice that he postponed that meeting until she could review the details of the case.

- The fact that Mr. Boey was unable to admit to an exact number of medications diverted was a reflection of his inability to recall the exact number based on his state of mind during the investigated time, not a reluctance to cooperate.

Ms. Olszewski submitted that Mr. Boey has made changes that demonstrate his desire to make a healthy recovery. These include:

- Mr. Boey has developed a stronger support system. He moved back to Edmonton in November 2012, lives with a very supportive roommate, has reconnected with friends/colleagues and his mother and sister are now aware of his situation.
- Mr. Boey started a job as a receptionist at a hair salon in March 2013. According to Mr. Boey's AADAC counselor, this is an important part of his progression because it enables him to deal with members of the public instead of becoming reclusive and withdrawn, something that can happen in these situations.
- Mr. Boey began attending AA meetings in January 2013. He currently attends AA meetings on Tuesdays, alternating with the Caduceus group, which is for health care professionals, and another local AA meeting. He attends an AADAC self-esteem class on Wednesdays and a Narcotics Anonymous meeting on Thursdays.
- He also attended an intensive day program in April 2013. Evidence for completion of this program was provided for the panel in Tab 5, Exhibit 3.
- Mr. Boey also attended counseling sessions at AADAC and had sessions with Dr. Forbes, a psychologist at Forbes Psychological and continues to do so.
- Mr. Boey meets with his AA sponsor on Mondays and Fridays.
- Mr. Boey is writing a blog to help him deal with his recovery issues.

Ms. Olszewski then proceeded to take the hearing tribunal through Exhibit 3.

Tab1, Exhibit 3 included several reference letters written by friends and colleagues.

Tab 2, Exhibit 3 contained two reports written by Dr. Forbes. The first, a substance abuse assessment dated March 4, 2013 and the second an update dated June 4, 2013.

The recommendations from the March 4, 2013 assessments include:

- Abstinence from the use of alcohol or other mood altering substances unless prescribed by a physician fully aware of Mr. Boey's substance dependency;
- Attendance and successful completion of a residential treatment program for addictions;
- Attendance at a minimum of 4 AA/NA group meetings per week for at least 12 months;
- While attending group meetings, obtain a sponsor and work toward completing a 12 Step program as a part of understanding substance dependency;

- Administration of at least 12 follow-up drug/alcohol tests per year for the next 2 years;
- Psychotherapy, specifically Stress Inoculation Training with a relapse prevention component; and
- Recovery Maintenance/Relapse Prevention Plan for a period of not less than 3 years with compliance to be reviewed regularly.

Tab 3, Exhibit 3 is a report written by Lyndsey Niddrie from AADAC.

Tab 4, Exhibit 3 is a letter written by Mr. Boey's sponsor [REDACTED].

Tab 5, Exhibit 3 is Mr. Boey's Certificate of Completion of the AADAC Male Day Program.

Tab 6, Exhibit 3 is a letter written by Robert J. Hillock, the counselor that Mr. Boey saw in Rocky Mountain House.

Tab 7, Exhibit 3 is a letter of apology from Mr. Boey dated June 6, 2013 and addressed to the Hearing Tribunal;

Tab 8, Exhibit 3 contains copies of Mr. Boey's bank records.

Tab 9, Exhibit 3 is a demand letter from Shoppers Drug Mart for \$35,000 as a result of the breach of Mr. Boey's Scholarship Agreement.

Ms. Olszewski then took the Hearing Tribunal through the factors referenced in *Jaswal v. Newfoundland (Medical Board)* (1996), 42 Admin. L.R. (2d) 233 and described the application of the factors in this case. Key points were:

- Ms. Olszewski agreed that Mr. Boey's offenses are indeed serious offenses. She did, however, point out that with the exception of one tablet of Dexedrine, the drugs diverted were not narcotics or controlled drugs. Further, she stressed that the diverted medications were only for Mr. Boey's personal use, not given or sold to third parties that could be harmed by them. Mr. Boey's bank statements were submitted to the hearing tribunal in **Tab 8, Exhibit 1** to provide evidence that there were not any suspicious deposits into his account. Ms. Olszewski indicated this was meant prove Mr. Boey was not selling the diverted medications.
- There was no evidence that any patient or member of the public was harmed.
- Mr. Boey is a new grad who found he was unable to cope with the stressors of isolation, not seeing his family and concerns regarding his work environment.
- Previous character: Ms. Olszewski submitted that friends and colleagues all described Mr. Boey as someone who has a strong work ethic and a dedication to his profession. She indicated he successfully managed his drug addiction while at the University of Alberta despite the intensity of the program.

- Number of times the conduct has occurred: Ms. Olszewski acknowledged that Mr. Boey's conduct did occur over an extended period of time on multiple occasions. She added that this behavior is characteristic of substance abuse and it is unfortunate that no action was taken when coworkers at the SDM in Rocky Mountain House observed Mr. Boey's suspicious behaviors.
- Acknowledgement: Ms. Olszewski submitted that Mr. Boey admitted to most of the allegations and freely admitted that these actions constitute unprofessional conduct. In addition, Mr. Boey has expressed remorse for his actions throughout this process.
- Mitigating circumstances include the issues identified at the store (working conditions and personality conflicts) and the fact that Mr. Boey had never been in trouble with ACP before.
- Deterrence: Ms. Olszewski submitted that deterrence is a less significant factor in this case. With respect to general deterrence, it was her submission that the sanctions placed on Mr. Boey would not deter other members from having drug problems. Further, with respect to specific deterrence, Ms. Olszewski submitted that it is Mr. Boey's effort and the success of the program, rather than the sanction, that will deter Mr. Boey.

Ms. Olszewski then responded to the college's proposed sanctions:

1. A suspension for a period of 18 months
Ms. Olszewski reviewed similar cases involving diversion and substance abuse that resulted in suspensions in the range of seven-and-a-half months to four years. She noted that in Mr. Boey's situation, there was a voluntary suspension for the period of one year. Given the facts and circumstances of Mr. Boey's conduct compared to that of the other cases reviewed, she submitted that one year would be an appropriate timeline for suspension.
2. The costs of the investigation and hearing
Ms. Olszewski submitted that additional costs could be prohibitive for Mr. Boey and that the stress of additional costs could be a detriment to his recovery. She asked that the tribunal consider Mr. Boey's other financial burdens including not being able to practice pharmacy for the past year, legal fees, treatment costs and a \$35,000 demand repayment to Shoppers Drug Mart for breaching the terms of his scholarship agreement.
3. Conditions on practice license
 - a. Member shall not be permitted to be a pharmacy licensee for a period of 5 years
 - b. The member must be enrolled in a monitoring and compliance program prior to returning to practice and remain enrolled in the compliance and monitoring program satisfactory to the complaints director for a period of 5 years.
 - c. The member must provide any employer of licensee with a copy of the decision and the orders so they are aware of the potential concerns

With respect to the conditions of not being a pharmacy licensee, being enrolled in a compliance and monitoring program and providing a copy of the decision to the employer Ms. Olszewski stated that the review of similar cases showed that the usual time limit for this order is three years. She submitted that at least three years was also the time period recommended by Dr. Forbes and would be a more appropriate time period in this case.

- d. A period of direct supervision for at least a year after the member starts to practice again.

With respect to the above conditions, Ms. Olszewski submitted that the cases where direct supervision was ordered involved conduct more serious than that of Mr. Boey. Specifically, these involved the member having breached a previous agreement regarding their conduct. Ms. Olszewski further submitted that from an economic standpoint, this requirement would significantly limit Mr. Boey's employment opportunities. It was her submission that the other two conditions were sufficient to address Mr. Boey's conduct.

Once Ms. Olszewski finished her submissions, Mr. Jardine submitted the following clarifications on behalf of the college:

- Mr. Jardine clarified that direct supervision does not require that all of Mr. Boey's work be observed directly and checked. The intention of direct supervision is to ensure that Mr. Boey is not working alone when he returns to practice. The college believes that a setting where more than one pharmacist is on duty at a time would be preferred for Mr. Boey's re-entry to practice.
- With respect to costs, Mr. Jardine indicated it is not the college's intention to try to be prohibitive. The college is willing to defer payment until Mr. Boey is back at work and to negotiate a repayment schedule that would work for Mr. Boey.

ORDERS

The hearing tribunal carefully considered the submissions from both the college and Mr. Boey and imposes the following orders:

1. The suspension of Mr. Boey's practice permit shall continue until December 31, 2013. The hearing tribunal notes that Mr. Boey's practice permit was initially suspended on June 26, 2012.
2. Conditions on practice permit including:
 - a. The member must develop a Recovery Maintenance/Relapse Prevention Plan that includes being enrolled, at his own cost, in a monitoring and compliance program prior to returning to practice. This plan must be in place for 3 years after return to practice, involve a minimum of 12 drug/alcohol tests per year and be satisfactory to the complaints director. The member must make the results of any of the drug screens available to the complaints director upon request.

- b. The member must provide the complaints director with a clean drug screen to demonstrate his abstinence prior to returning to practice.
 - c. For a period of three years after the member's return to work, the member must provide any employer or licensee with a copy of this decision and the orders for penalty so they are aware of the potential concerns.
 - d. The member must practice under direct supervision for a period of 6 months upon his return to practice.
 - e. The member shall not be permitted to be a pharmacy licensee for a period of 5 years upon his return to practice.
3. Pay the costs of the investigation and hearing, up to a maximum of \$10,000, on a reasonable payment schedule acceptable to the complaints director. Any disputes over the payment schedule or the costs owing may be remitted by the parties to a hearing tribunal.
 4. Should Mr. Boey fail to comply with any of the above orders for penalty, or in the event that any of Mr. Boey's drug screens disclose the use of any narcotics, zopiclone, clonazepam or Dexedrine without a valid physician's prescription, this matter may be remitted to a hearing tribunal, which shall retain jurisdiction with respect to penalty. Alternatively, the complaints director may treat Mr. Boey's non-compliance as information under s.56 of the *Health Professions Act* and seek an immediate interim suspension.

The above orders are based on the fact that the tribunal finds the member's conduct very serious due to both the significant quantities and the extent of time that medications were diverted and ingested. Further, the tribunal has great concern that the member continued to practice in a "heavily sedated" state, putting his patients at significant risk.

With respect to the length of the suspension, the tribunal acknowledges that Mr. Boey voluntarily suspended his licence on June 26, 2012 and has not practised since June 20, 2012. The tribunal considered the orders and individual circumstances of the cases referenced by the college and the member, citing a range of suspensions from seven-and-a-half months to 4 years. The tribunal placed significant weight on the seriousness of the circumstances in this case, the significant risk that the member's conduct placed on the safety of the public and the integrity of the profession. The tribunal also considered the reports from the health professionals the member has been working with and the progress he has made to date in both acknowledging and addressing his substance abuse. After considering these factors, as well as what the tribunal believes is in the best interest of the member and his recovery, the tribunal agrees with the recommendation of the college that the member's license should be suspended for a total period of 18 months. This period will include the period of interim suspension which commenced on June 26, 2012. The suspension shall remain in place until December 31, 2013.

With respect to the monitoring and compliance program, the tribunal considered carefully the assessment and recommendations of both Dr. Forbes and Lyndsey

Niddrie, Mr. Boey's addiction counselor from Addiction Services Edmonton. It is apparent to the tribunal that through his work with these individuals, Mr. Boey has been able to openly acknowledge his present and past issues with substance abuse and is making progress with respect to his recovery. We commend Mr. Boey for his efforts in this area. The tribunal carefully reviewed the evidence entered by the member. While he is indeed making progress, the member remains in the early stages of recovery and was unable to provide any concrete evidence proving his abstinence. Further, one of the key recommendations made by Mr. Boey's psychologist, Dr. Forbes, was that Mr. Boey needs to develop a Recovery Maintenance/Relapse Prevention Plan for a period of not less than 3 years and commit to a minimum of 12 follow-up drug/alcohol tests per year for at least 2 years. Based on the information presented to the tribunal, Mr. Boey has not yet acted on these recommendations. The tribunal believes that implementing these recommendations is critical to ensuring the well-being of the member, the safety of the public and the integrity of the profession.

The tribunal has imposed the condition for a monitoring and compliance program to be in place for a period of three years as this time frame is consistent with the recommendation of Dr. Forbes. Given that Mr. Boey has already taken many steps to work on his recovery, including the completion of Alberta Health Services' Addiction Services Edmonton Male Day program in April 2013, regular counseling sessions with Ms. Niddrie since in January 2013, regular attendance at AA/NA meetings and sessions with Dr. Forbes commencing in January 2013, the hearing tribunal did not feel it was necessary to extend the requirement for a monitoring and compliance program for 5 years as requested by the College. In addition, the tribunal has imposed the monitoring and compliance program contain a requirement for at least 12 drug/alcohol tests per year as this is also consistent with the recommendations of Dr. Forbes.

The rationale for the condition that the member must provide any employer or licensee with a copy of the decision and the orders so they are aware of the potential concerns for a period of 3 years is the same as outlined above. In addition, an important part of recovery is acknowledgement of one's actions. The tribunal believes that it is in the best interest of the member's ongoing recovery to openly acknowledge his issues. Further the tribunal believes that it is in the best interest of the public and the integrity of the profession that the member's employers are aware of this finding in order to give them the opportunity to be vigilant with addressing any concerns regarding Mr. Boey's conduct. The opportunity to address concerning behavior proactively reduces potential risk to the public. The 3-year time frame is also consistent with similar orders in two of the cases presented to the tribunal for review.

With respect to the requirement for direct supervision, the tribunal considered that significant triggers for Mr. Boey were the challenging work environment and isolation he felt while working at the Shoppers Drug Mart in Rocky Mountain House. In the penalty cases presented to the hearing tribunal, the periods of supervised practice ordered ranged from six to twelve months. The tribunal is concerned that putting this restriction on Mr. Boey's license for a period of as much as 12 months

would likely have a negative impact his ability to find employment and hamper his efforts at recovery. It is the tribunal's opinion that this condition should be put in place instead for a period of 6 months after Mr. Boey re-enters practice. As indicated by the college, direct supervision does not imply that all of Mr. Boey's work be double checked. The primary reason for this order is to ensure Mr. Boey re-enters practice in an environment where he is scheduled to work with a second pharmacist. The tribunal believes that this will provide a more supportive environment for the member.

The tribunal finds it to be in the best interest of the member, the public and the integrity of the profession to order that the member not be permitted to be a licensee for a period of 5 years. A licensee is responsible for the operations of a pharmacy, a situation that would not only place a great deal of responsibility on the member, but, may also put the member in a situation where he is a sole practitioner. The tribunal believes it is in the best interest of the member, the public and the integrity of the profession that the member has an opportunity to practice successfully without the need for ongoing monitoring and compliance for a couple of years prior to taking on the additional responsibilities of a pharmacy licensee.

With respect to costs, the tribunal acknowledges that the member has already experienced significant financial impact due to licence suspension. Further, the tribunal recognizes that a costs order will be a significant financial burden to Mr. Boey given his status as a new graduate and that he was not working from the time of his termination from the Shoppers Drug Mart in Rocky Mountain House on June 20, 2012 until he began work as a receptionist at a hair salon in March 2013. The tribunal also took into account that Mr. Boey is facing a demand for \$35,000 from Shoppers Drug Mart (received on June 15, 2012) for breach of his scholarship agreement.

However, the tribunal also recognizes that this matter was prolonged by the member's reluctance to admit to his conduct. It is clear to the tribunal that the member struggled to admit to his conduct, resulting in the admissions being made over an extended period of time and only after he was confronted with evidence proving his conduct. Further critical details were not produced to the college until days before the hearing.

The tribunal orders that Mr. Boey pay a portion of the costs of the investigation and hearing. Balancing the above factors, the tribunal orders that the repayment of costs be capped at \$10,000 and asks that the college negotiate a payment schedule that is not prohibitive to Mr. Boey.

Signed on behalf of the hearing tribunal by
the Chair

Dated:

November 4, 2013

Per: _____

Kim Fitzgerald