

ALBERTA COLLEGE OF PHARMACISTS

**IN THE MATTER OF
THE PHARMACEUTICAL PROFESSION ACT OF ALBERTA**

**AND IN THE MATTER OF AN INVESTIGATION HEARING REGARDING THE
CONDUCT OF**

**LAUREEN BRITTON, BARNEY BRITTON, NC BRITTON HOLDINGS LTD. AND MINIT
DRUG COMPANY LTD**

DECISION OF THE INVESTIGATING COMMITTEE

March 26, 2010

I. INTRODUCTION

The Investigating Committee held a hearing into the conduct of Laureen Britton, Barney Britton, NC Britton Holdings Ltd. and Minit Drug Company Ltd. In attendance on behalf of the Investigating Committee were Mrs. Bonnie J. Oldring (Chair), Ms. Judy Baker, Mr. Norm Hodgson and Mr. Bob Sprague.

The hearing took place on November 19, 2009 at the offices of the Alberta College of Pharmacists at 1200, 10303 Jasper Avenue, Edmonton, Alberta. The hearing was held under the terms of Part 7 of the *Pharmaceutical Profession Act*, R.S.A. 2000, c. P-12.

In attendance at the hearing were Mr. David Jardine, Mr. Merv Blair, and Mr. James Krempien representing the College and Mrs. Laureen Britton and Mr. Barney Britton. Mrs. Britton acknowledged that she has consulted and sought advice from legal counsel regarding the matters set out in the notice of hearing, but she was not represented at the hearing by legal counsel.

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

II. ALLEGATIONS

The Investigating Committee considered the following complaints or matters:

1. Whether Laureen Britton and Barney Britton refused to cooperate with the preliminary investigator's investigation and whether this warrants a finding of proprietary misconduct in respect to both Barney Britton and Laureen Britton and professional misconduct in respect to Laureen Britton pursuant to Section 50(6) of the *Pharmaceutical Profession Act*.

It will be alleged that in a series of letters the preliminary investigator requested information and documents from Minit Drugs and from Laureen Britton and Barney Britton. Despite these written requests, none of the requested documents or records were provided. The details of these requests are set out in the correspondence sent to Laureen Britton and Barney Britton.

It will be alleged that this conduct breaches Section 50(6) and Sections 57(a)(i), 57(a)(ii) and 57(a)(v) of the *Pharmaceutical Profession Act*.

In addition to dealing with the allegations of proprietary misconduct and professional misconduct arising from the failure to cooperate and to provide the requested information and documents, the Investigating Committee will be asked to provide directions requiring the production by Laureen Britton and Barney Britton of the evidence and records requested by the preliminary investigator.

2. Whether the License Agreements, and the later revised agreements, entered into by Minit Drug Company Ltd. with various pharmacies and the actions taken by NC Britton Holdings Ltd., Minit Drug Company Ltd. , Barney Britton and Lauren Britton as proprietors of the Minit Drugs #3 pharmacy in respect to these agreements and in respect to the transfer of prescriptions from Minit Drugs #3 to the other pharmacies constitutes proprietary misconduct in the following respects:
- (i) The agreements contemplate a pharmacist or proprietor giving something of value to another person for recommending the pharmacist or pharmacy's services contrary to Section 32(8) of the Pharmaceutical Profession Regulation;
 - (ii) It is not appropriate for a pharmacist or a proprietor to sell, either directly or indirectly, a patient's prescription to another pharmacy where this is not part of a sale of the entire pharmacy;
 - (iii) There was not adequate disclosure to patients of the fact that their prescriptions and personal health information would be transferred to another pharmacy and the patients did not provide informed consent to the transfer of their personal health information to another pharmacy;
 - (iv) Minit Drug Company Ltd. and Mr. Britton had no basis for representing that Minit Drug Company Ltd., a non-pharmacy had the ability and the right to receive and transfer prescriptions;
 - (v) The activities contemplated in the License Agreements involve the practice of pharmacy by Minit Drug Company Ltd., a non-pharmacy and its principals contrary to Section 2(1) of the *Pharmaceutical Profession Act*;
 - (vi) The agreement to provide a portion of the proceeds from the sale of each drug to Minit Drug Company Ltd. allowed a non-pharmacy to participate in the practice of pharmacy and the sale of drugs contrary to Section 2(1) and Schedule 1, Sections 1(a) and 2(3) of the *Pharmaceutical Profession Act* and the combination of Section 15 of the *Food and Drugs Act* and Section C.01.041 of the Food and Drug Regulations;
 - (vii) Minit Drugs # 3 had no valid basis for receiving prescriptions and then transferring prescriptions to other pharmacies pursuant to the agreement entered into by Minit Drug Company Ltd. and it is not proper for a pharmacy to be undertaking these transfers for the benefit of a company owned by the pharmacy's proprietors;
 - (viii) The agreements entered into with the other pharmacies were intended to avoid the restrictions placed upon sales to U.S. customers by various drug suppliers by using an intermediary pharmacy to order the drugs and fill the prescriptions thereby

concealing the involvement of Minit Drugs contrary to the Code of Ethics, Principle VI, Guidelines 2 and 4;

- (ix) The arrangements and the system established meant that it was unclear who was responsible for contacts with patients and physicians and the pharmacy filling the prescription did not have adequate information to fill the prescription and establish a relationship with the patient as required by Section 15 of the Pharmaceutical Profession Regulation and Section 4 of the Standards of Practice;
- (x) The system established pursuant to the license agreements compromises patient safety by limiting the access of the dispensing pharmacies to patient information, patient profiles, and contacts with the prescribing physicians and the patients;
- (xi) The system established limited or hindered the ability of the patients to receive counseling from the dispensing pharmacist as required by Section 15(5) of the Pharmaceutical Profession Regulation and Section 4.5 of the Standards of Practice;
- (xii) Laureen Britton and Barney Britton as the proprietors of a pharmacy sought to avoid the duties imposed on a pharmacy and proprietors under the *Pharmaceutical Profession Act* by carrying out these activities through the use of a separate company, Minit Drug Company Ltd.;
- (xiii) The agreements made by the Laureen Britton and Barney Britton through the vehicle of Minit Drug Company Ltd. with the other pharmacies and the system that was established did not comply with their obligations as proprietors under Principles VI and VII of the Code of Ethics.

It will be alleged that that these matters breach all of the subsections of Section 57(a) of the *Pharmaceutical Profession Act*.

The Alberta College of Pharmacists requested full details of all license agreements or revised agreements entered into with affiliate pharmacies. Despite these requests, this information was not provided by Laureen Britton, or Barney Britton.

The Investigating Committee will be asked to provide directions regarding the production by Laureen Britton and Barney Britton of the evidence and records relating to the agreements with the affiliate pharmacies and the prescriptions that were transferred pursuant to these agreements and the system used to carry out these arrangements.

3. Whether the role of Laureen Britton and Barney Britton in creating relationships between Minit Drugs, its affiliate pharmacies and the Canadian physicians who provide the Canadian prescriptions used to dispense prescription drugs to American patients constitutes proprietary

misconduct in respect to Barney Britton and Laureen Britton and professional misconduct in relation to Laureen Britton in that:

- (a) The physicians were being contracted and paid to provide professional services of nature that was considered improper practice by the medical regulatory authorities in the Canadian jurisdictions in which the physicians were licensed;
- (b) Laureen Britton and Barney Britton chose to retain Ontario physicians to provide these services after being advised by the Registrar of the Alberta College of Pharmacists that Ontario physicians were not permitted by their regulatory authority to provide these services;
- (c) The actions of the Laureen Britton and Barney Britton in soliciting and entering into these arrangements breached:
 - i. Principle VI of the Code of Ethics, Guidelines 2, 3 and 7
 - ii. Principle VII of the Code of Ethics, Guideline 1
 - iii. The Internet Guidelines of the Council of the Alberta College of Pharmacists
 - iv. Section 4.3(a) of the Standards of Practice

It is alleged that such arrangements were standard practice in relation to all drugs dispensed by the pharmacy to American patients.

It is alleged that these practices and the conduct of Laureen Britton and Barney Britton breach all of the subsections of Section 57(a) of the *Pharmaceutical Profession Act*.

The names and jurisdictions of the Canadian physicians and the volumes of prescriptions that they issued have been requested from Laureen Britton and Barney Britton and Minit Drugs # 3 but have not been provided.

The Investigating Committee will be asked to provide directions regarding the production by Laureen Britton and Barney Britton of the evidence and records necessary to determine the names and jurisdictions of the Canadian physicians who provided prescriptions to Minit Drugs and the volumes of prescriptions that were issued by each of these physicians.

- 4. Whether Laureen Britton and Barney Britton as proprietors directed the development and use of a computer system where apparently valid signed prescriptions were created that had not been reviewed or signed by a Canadian physician and whether such conduct, if established, constitutes proprietary misconduct.

This allegation was made by the complainant Zahir Propat. Despite repeated requests from the preliminary investigator, Laureen Britton and

Barney Britton did not provide information that would show the dealings that Minit Drugs #3 and the Brittons had with Canadian physicians during the period covered by the allegation.

The Investigating Committee will be asked to provide directions regarding the production by Laureen Britton and Barney Britton of the evidence and records necessary to determine the validity of the allegation.

It is alleged that this conduct, if established, breaches each of the subsections of Section 57(a) of the *Pharmaceutical Profession Act*.

5. Whether Laureen Britton and Barney Britton imposed conditions which compromised pharmacists' ability to provide high levels of pharmaceutical service in their roles as proprietors of Minit Drugs #3 and thereby breached Principle VII, Guideline 3 of the Code of Ethics and thereby committed proprietary misconduct.

It will be alleged that a number of the pharmacists who left the employment of Minit Drugs felt that the working environment and conditions under which they operated and the controlling role exercised by Barney Britton over the operations of the pharmacy compromised their ability to provide high levels of pharmaceutical service including the following concerns:

- (a) There was a very high turnover of pharmacists at Minit Drugs # 3;
- (b) Pharmacists were not well treated and promises were made to them by Barney Britton that were not kept;
- (c) Staff members were not treated well or fairly and there were instances where Barney Britton was rude and "blew up" at people or threatened to fire them;
- (d) Barney Britton pressured pharmacy staff and several felt that they were forced to operate "very close to the line" by Mr. Britton's emphasis on maximizing business rather than emphasizing professional matters;
- (e) Pharmacists were concerned by the very high volume of prescriptions being filled and felt that it was a very stressful and sometimes unpleasant place to work.
- (f) Pharmacists were concerned that too many of the decisions regarding pharmacy issues were made by Barney Britton rather than pharmacists.
- (g) A significant number of non-pharmacy staff were brought into management by Barney Britton to run the pharmacy and to develop and operate the computer system;
- (h) There was an emphasis by Barney Britton on business and making money rather than good pharmacy practice;

- (i) Pharmacists felt that they had to struggle to maintain professional standards and to insist that rules governing the practice of pharmacy were not relaxed;
- (j) Too many matters were pushed close to the line and pharmacist were stressed about whether there were things that were occurring in the grey areas of practice;
- (k) Some pharmacists who were terminated felt that one of the reasons they were terminated by Barney Britton was that they asked too many questions and put too much emphasis on doing things properly and in accordance with proper pharmacy practice.
- (l) Laureen Britton was seldom at the pharmacy and she would defer to Barney Britton including on matters of pharmacy practice.

It will be alleged that this conduct breached Sections 2.1, 4.5, 5.1, 6.1 and 6.5 of the Standards of Practice, Principles VI and VII of the Code of Ethics Bylaw, Section 15 of the Pharmaceutical Profession Regulation, and Sections 57(a)(i), 57(a)(ii), 57(a)(iii), and 57(a)(v) of the *Pharmaceutical Profession Act*.

6. Whether Barney Britton engaged in proprietary misconduct by:

- (a) Directing Minit Drugs #3 or related companies to purchase a list of patient names and addresses from Peter Stein and his company, knowing that this list contained personal information of those who had received a certain health service - prescriptions - from one or more Canadian pharmacies and that the individuals on the list were patients of those pharmacies;
- (b) Directing Minit Drugs #3 or related companies to collect and use personal information of the individuals on the list purchased from Peter Stein without the knowledge or consent of those individuals;
- (c) Directing the purchase and use of a list containing the personal information of one or more other pharmacy's patients.

It will be alleged that these actions:

- (a) Breached Principle IV of the Code of Ethics Bylaw;
- (b) Breached Principle VI of the Code of Ethics Bylaw and in particular Guideline 2 of that Principle;
- (c) Breached the provisions of the *Personal Information Protection and Electronic Documents Act*, the *Personal Information Protection Act*, or the *Health Information Act* or any of them;

- (d) Was detrimental to the best interests of the public contrary to Section 57(a)(i) of the *Pharmaceutical Profession Act*,
- (e) Harmed or tended to harm the standing of the profession of pharmacy generally contrary to Section 57(a)(v) of the *Pharmaceutical Profession Act*;

The Investigating Committee will determine whether the above noted conduct constitutes professional misconduct or proprietary misconduct or both.

III. EVIDENCE

An Agreed Statement of Facts was submitted to the hearing.

INTRODUCTION

1. Laureen Britton is registered as a pharmacist (Registration #3915) with the Alberta College of Pharmacists ("ACP"). Mrs. Britton was a proprietor and licensee of Minit Drugs (License #1371) from April 14, 1999 when this pharmacy opened until May 6, 2002. This pharmacy was closed on January 12, 2004 when it was sold to Shoppers Drug Mart.
2. Mrs. Britton was also shown on the ACP records as the licensee of Minit Drugs #3 (License # 1556) for the period May 6, 2002 to November 29, 2002. However, Mrs. Britton has advised that she did not act as the licensee for this pharmacy and based on its investigations in this matter the ACP accepts that this appears to be correct. Minit Drugs #3 (License #1556) was opened on May 6, 2002 and closed on July 1, 2003.
3. Barney Britton is the husband of Laureen Britton. He was a proprietor of Minit Drugs (License #1371) and the proprietor of Minit Drugs #3 (License #1556). He was also a proprietor of Minit Drugs #3 (License #1657) which opened on July 1, 2003 after the previous Minit Drugs #3 had closed. Minit Drugs #3 (License #1657) began operations on July 1, 2003 and closed in September, 2007. Mrs. Laureen Britton was not associated with Minit Drugs #3 (License #1657) as a proprietor, a licensee or an employee.
4. NC Britton Holdings Ltd. is a company owned by Barney Britton that was a proprietor of the Minit Drugs #3 pharmacies. Minit Drug Company Ltd. is a company owned by Barney Britton that entered into "license agreements" with a number of pharmacies in Alberta in relation to prescriptions to be transferred from the Minit Drugs pharmacies.
5. None of the Minit Drugs pharmacies have operated since September 2007 and Mr. Britton has not been involved in the pharmacy business since that date. Mrs. Britton remains a registered pharmacist with the ACP but has not been involved in the operations of the Minit Drugs #3 pharmacies.

6. Between September 2001 and September 2007 the Minit Drugs pharmacies provided distance-based pharmacy services to patients residing in the United States under the name "Minit Drugs". In carrying out its distance-based pharmacy business, Minit Drugs used a number of websites and names including "www.swiftrx.com", and its main website: "www.Pharmacy-Online.ca"
7. The present matter arises out of the investigation by the ACP of 4 complaints:
 - a) a complaint from David Graham, a patient in California, received by the ACP on August 25, 2003 [Complaint File 03-29];
 - b) a complaint from Jill Moore, the then Complaints Director of the ACP, dated January 2, 2004 arising from information provided by the Ontario College of Pharmacists [Complaint File 03-46];
 - c) a complaint from Jeremy Charney, the owner of an internet pharmacy in Winnipeg, Manitoba received by the ACP on March 24, 2004 [Complaint File 04-17];
 - d) a complaint from Zahir Popat, a former business associate of Mr. Britton, received January 14, 2005 [Complaint File 05-03].

SEQUENCE OF EVENTS RELATING TO THE INVESTIGATION

8. Mr. Merv Blair, who was the Complaints Director of the ACP for most of the period of the investigations, was appointed as a preliminary investigator by the Infringement Committee of the ACP to investigate the complaints. Mr. Blair proceeded to investigate each of the complaints. Ms. Jill Moore, the previous Complaints Director of the ACP was also involved in the earliest investigations which began in 2003 but these investigations were concluded by Mr. Blair.
9. During the course of his investigations, Mr. Blair became aware of certain additional matters of concern that arose during the course of his investigations. Mr. Blair advised the Brittons of his intention to investigate these additional concerns which related to:
 - a) "License Agreements" entered into by Minit Drug Company Ltd. and various pharmacies in Alberta under which prescriptions sent to Minit Drugs were transferred to the other pharmacies in return for payments to Minit Drug Company Ltd.; and
 - b) Relationships between Minit Drugs and Canadian physicians contracted by Minit Drugs to provide Canadian prescriptions for drugs to be dispensed to American patients.

10. Mr. Blair also filed an additional complaint under section 50(6) of the *Pharmaceutical Profession Act* regarding the failure or refusal of Barney Britton and Laureen Britton to cooperate with his investigations by providing information and documents he had requested on numerous occasions.
11. Each of the investigations resulted in an extended series of letters between Mr. Blair and the lawyers for the ACP and the lawyers for the Brittons. These letters and the other steps in each investigation are detailed in the sequence of events set out in the reports prepared by Mr. Blair for the Infringement Committee. Copies of the 3 reports made by Mr. Blair to the Infringement Committee in March 2007 are contained as TABS 1, 2 and 3 of a binder to be marked as Exhibit 3 in these proceedings. The documents referred to in each of the sequences of events will be available for review at the hearing but will not be entered at the hearing.

SEQUENCE OF EVENTS SUBSEQUENT TO THE REPORTS TO THE INFRINGEMENT COMMITTEE

12. On March 21, 2007 the Infringement Committee determined that, with the exception of the matters referred to in Complaint File 03-46 and certain allegations made by Mr. Popat in Complaint File 05-03, the complaints were not frivolous and vexatious and that in relation to those complaints there was sufficient evidence of proprietary misconduct and professional misconduct to warrant referring a number of matters to an Investigating Committee under Part 7 of the *Pharmaceutical Profession Act*.
13. On March 22, 2007 the Council of the ACP appointed an Investigating Committee in these matters.
14. As a result of its decisions on March 21, 2007, the Infringement Committee wrote 3 letters to Laureen Britton and Barney Britton advising of its decisions in respect to the complaint files and the reasons for those decisions:
 - a) a letter of March 30, 2007 relating to Complaint Files 03-29 and 05-03 referring the majority of the complaints to a hearing;
 - b) a letter of March 30, 2007 relating to Complaint File 04-17 referring the complaint to a hearing;
 - c) a letter of March 30, 2007 relating to Complaint File 03-46 advising why this complaint would not be referred to a hearing.
15. As a result of the decision of the Council, a hearing of the Investigating Committee was set for June 27, 2007. On June 26, 2007 the Investigating Committee considered a request from Mr. Rinus de Waal, legal counsel for Laureen Britton and Barney Britton, and agreed to adjourn the hearing to a date in October prior to October 31, 2007.

16. On October 23, 2007 the parties made a joint request to the Investigating Committee for a further adjournment of the hearing. The Investigating Committee granted this request.
17. On March 14, 2008 the Investigating Committee held a teleconference meeting with the lawyers for the ACP and the Brittons to review a number of preliminary matters raised by each party.
18. After hearing from the parties on March 14, 2008 the Investigating Committee issued a decision on March 18, 2008 directing that the parties provide written submissions on the issues raised.
19. Each of the parties provided detailed Written Submissions and Authorities to the Investigating Committee. On June 30, 2008 the Investigating Committee issued a decision on the preliminary issues rejecting the application by the Brittons to dismiss the complaints and directing that certain documents be delivered to the ACP by the Brittons by July 25, 2008 with the hearing to commence prior to September 18, 2008.
20. At the request of the lawyer for the Brittons, the date for providing the documents was extended to August 8, 2008 by the Investigating Committee.
21. On August 8, 2008 the lawyer for the Brittons provided 10 binders of documents to the Hearings Director. Copies of the documents were also provided in electronic form later in August.
22. On August 28, 2008 the Investigating Committee extended the date for continuation of the hearing as a result of the need for the ACP to review the documents provided. A further extension to February 13, 2009 was granted by the Investigating Committee on November 13, 2008.
23. After further correspondence between the lawyers for the parties and the Hearings Director, the matter was set down for a 3 day hearing to be held on August 11, 12 and 13, 2009 and a Notice of Hearing for these dates was sent to the parties.
24. On July 16, 2009 the lawyers for the ACP wrote to the Hearings Director confirming that the parties had reached an agreement in the matter and that the 3 day hearing in August was not required and that the parties intended to proceed with an Agreed Statement of Facts and Joint Submission on Penalty. As a result the letter requested that the August dates be cancelled and that a single day be set for September or October 2009. On August 5, 2009 the Investigating Committee granted this request and directed that a single day be set for the hearing prior to December 15, 2009.
25. As a result of communications between the parties and the Hearings Director, the hearing of this matter was set for November 19, 2009 and a

new Notice of Hearing was issued for this date and served on the lawyers for the parties on September 16, 2009.

26. Subsequent to this date, the Hearings Director was advised by Mr. Rinus de Waal that he was no longer acting for the Brittons.
27. Subsequent to this, both Laureen Britton and Barney Britton have confirmed to the ACP that they wish to proceed to implement the agreement reached between the parties and wish to proceed with this Agreed Statement of Facts, Admissions and Joint Submissions on Penalty.

THE NATURE OF THE INTERNET AND MAIL-ORDER PHARMACY OPERATIONS CARRIED OUT BY MINIT DRUGS AND THE BRITTONS

General Background

28. Minit Drugs was one of the first pharmacies in Alberta to become involved in providing distance-based pharmacy services (also referred to as international pharmacy services) to American citizens. It began operations in September 2001. In response to the demand from American customers, the distance-based pharmacy business grew rapidly and substantially.
29. The Brittons have advised the ACP that in mid-2002 the distance-based pharmacy business was growing rapidly and Barney Britton wished to expand the business aggressively. However, Laureen Britton did not wish to remain involved in the distance-based pharmacy business.
30. In May 2002, Barney Britton opened a second pharmacy as Minit Drugs #3 (License # 1556) to focus exclusively on distance-based pharmacy. From that point onwards, the Brittons advise that Laureen Britton had very little involvement in any aspect of the distance-based pharmacy business and that she had no involvement with the third pharmacy, Minit Drugs #3 (License # 1657) which opened on July 1, 2003 in place of Minit Drugs #3 (License #1556) which closed on that date.
31. Based on its investigations and Mr. Blair's interviews with former employees of Minit Drugs, the ACP accepts that the information provided by the Brittons concerning the involvement of Laureen Britton after mid-2002 appears to be accurate.
32. The distance-based pharmacy operations of Minit Drugs continued to grow substantially through the period between 2002 and 2005. At one point Minit Drugs employed up to 80 to 100 individuals, including a number of pharmacists, in its pharmacy and call centre.
33. While the number of employees and pharmacists declined during late 2005 and during 2006, as a result of various factors affecting the entire international prescription service pharmacy business in Canada that lead to a reduction of over 50% in the total international pharmacy business in

Canada, the Minit Drugs pharmacy operation remained significant until it was closed in September 2007.

34. The Minit Drug #3 (License 1657) that operated after July 1, 2003 was located in a commercial building in Calgary, Alberta. Its facilities included a call centre, prescription preparation areas, shipping areas, a dispensing pharmacy, and IT facilities. Minit Drugs developed its own pharmacy software and pharmacy management systems for use in its operations.
35. The drugs dispensed by Minit Drugs to U.S. patients were Schedule F drugs that were mainly long-term maintenance medications including for example, anti-hypertensives, and cholesterol lowering medications. Minit Drugs did not supply any narcotics or controlled substances to U.S. patients.
36. In addition to dispensing drugs from its Calgary premises, Minit Drugs also transferred prescriptions to approximately 20 to 30 other Alberta pharmacies pursuant to "Licensing Agreements" entered into between Minit Drug Company Ltd. and these other pharmacies. The Licensing Agreements contemplated the transfer of up to 100 prescriptions a day to each pharmacy although these projected volumes were not achieved. These agreements will be dealt with in detail below.

The Basis on Which Prescriptions Were Filled for U.S. Patients

37. The basis upon which Minit Drugs would fill prescriptions from U.S. patients was described to Mr. Merv Blair and Mr. Jamie Raisbeck by Mr. Barney Britton at a meeting held at the pharmacy on May 24, 2006 as follows:
 - generally about 85% of the patients would contact the call centre by phone arising either from word-of-mouth or direct-mail-advertising. Approximately 15% of the patients would contact the pharmacy through its website;
 - a patient who phoned would call on a toll-free 800 line and would speak to a patient representative;
 - the patient representative would provide price quotes for medications available and if the customer decided that they wished to proceed to place an order, they would be required to fill out a patient registration form that could be printed from the internet, mailed to the patient or completed by phone;
 - the patient registration form would include name and contact information, medical information and the primary physician's name, credit card information and the medications to be ordered
 - once a completed form was received it would be entered into the computer system to create a patient profile;

- the patient would be required to provide an original U.S. prescription or a faxed copy from a U.S. physician followed by the original prescription;
- once the original prescription was received, it would be digitally archived into the system as part of the patient profile;
- any client contacts including the call centre contacts were to be digitally recorded to create chronological history of every contact and correspondence with the patient;
- trained technicians would review the information on file including the digital original prescription and create an order form that would then be sent to a portion of the computer system used by a particular Canadian licensed physician;
- the Canadian physician would log onto the web site using their own particular name and password;
- the system was designed to require the Canadian physician to review each document in the patient profile at which point the Canadian physician could accept or reject the prescription or discuss the matter by contacting a pharmacist;
- Canadian physicians were paid based on reviewing a prescription rather than upon issuing the prescription;
- once the physician approved the prescription, a fax copy of the prescription was sent to the pharmacy by the system and there was also an electronic record of the approval;
- the approved prescription was then placed in an electronic queue and the filling pharmacy technicians would review it and proceed to fill the order;
- the completed orders would then be provided to a pharmacist who would review the electronic profile and the physician approval and then proceed to check and approve the order;
- once the pharmacist approved the order it would be released from their station;
- the patient would then be billed on their credit card and the order would be sent to the shipping department for shipping;
- medications would usually be sent in their original factory-sealed containers rather than a prescription bottle;
- initial contacts from patients would generally be received by patient representatives in the call centre but pharmacists were available to consult with patients if a request was made;

38. During their visit on May 24, 2006, Mr. Blair and Mr. Raisbeck were shown the systems and processes described by Mr. Britton. They were also able to observe Minit Drugs staff and a Minit Drugs pharmacist as they worked. At this point the size of the operation had been reduced to less than 30 staff and two pharmacists. Based on his observations, Mr. Blair agrees that the description of the systems and processes provided by Mr. Britton appeared to be accurate and that the Minit Drug pharmacy that he observed was well designed and appeared to be a professional operation.

The Refusal to Cooperate

39. Throughout his investigation, Mr. Blair made numerous requests for information and documents. While Laureen Britton and Barney Britton met with Mr. Blair on May 24, 2006 and provided some information in that meeting, there remained significant information and documents that Mr. Blair still required.

40. On September 28, 2006 Mr. Blair wrote to Barney and Laureen Britton detailing the information he still required and requesting that it be provided to him. On November 3, 2006 Mr. Blair wrote again advising that he had not received the information and requesting that it be provided. On December 13, 2006 he wrote again to the Laureen Britton and Barney Britton pointing out that he had not received the information despite several requests. His letter of December 13, 2006 pointed out the obligation to cooperate imposed under the *Pharmaceutical Profession Act* and advised that a failure to cooperate could result in a charge of failure to cooperate with the investigation under section 50(6) of the Act.

41. Mr. Blair had still not received the information when he submitted his reports to the Infringement Committee on March 19, 2007 and at that time he advised as follows at page 25 of the Report:

I have outlined the steps taken in the investigation of these two complaint files in considerable detail because both of these investigation have been hampered by lack of documentary information and limited responses to some questions I asked. I have requested significant amounts of information and documents from Minit Drugs and the Brittons and their companies on both of these files. While Mr. and Mrs. Britton met with me and discussed these matters, I have received none of the actual records or documents that I have requested. This lack of cooperation has continued despite repeated requests from myself and extended correspondence between the ACP's lawyers and the Brittons' lawyers. It has prevented the investigation of these matters being complete and has left a number of concerns unresolved.

I am not prepared to see these matters delayed further to wait for documentation, the bulk of which has been requested for over 14 months and so I am preparing this report. However, while I will deal with the

outstanding issues as best as I can with the information available to me, I am reluctantly forced to complain to the Infringement Committee pursuant to section 50(6) that Barney Britton as a proprietor and Laureen Britton as a proprietor and a pharmacist have failed or refused to cooperate with my investigation into these two complaint files. I have made my concern clear in my letters and have drawn to the Brittons' attention section 50(6) of the *Pharmaceutical Profession Act* and the potential consequences of not cooperating with my investigation.

I would therefore ask that the Infringement Committee consider referring my complaint regarding this refusal to cooperate to an Investigating Committee pursuant to section 50(6) of the *Pharmaceutical Profession Act*.

42.No further information was produced by the Brittons until August 8, 2009 when some of the information that had been ordered to be produced by the Investigating Committee was provided by the lawyer for the Brittons to the Hearings Director.

The License Agreements

43.The issue of the License Agreements arose out of an investigation by the ACP of a complaint from a patient of Minit Drugs named David Graham [Complaint File 03-29] concerning an incorrectly filled prescription. While the patient had contacted and dealt with Minit Drugs and "Pharmacy Online" the actual prescription had been dispensed by Medicine Shoppe #129 in High Prairie, Alberta and the investigation was expanded to include the Medicine Shoppe #129.

44. In course of this expanded investigation, Mr. Blair determined that the proprietor and licensee of Medicine Shoppe #129, Mr. Vien Truong, had entered into an agreement with Minit Drugs whereby prescriptions were being transferred from Minit Drugs to Medicine Shoppe #129. Mr. Truong provided Mr. Blair with a copy of this agreement.

45.Mr. Truong summarized his dealings with Minit Drugs as follows:

- He entered into a document called a license agreement dated September 17, 2002 between his pharmacy and Minit Drug Co. Ltd.
- His understanding of the agreement as presented by Barney Britton was that he would pay \$200,000.00 with \$20,000.00 down and the balance to be paid off under terms. For this he would become part of the Minit Drugs network and would receive about 100 prescriptions per day to fill.
- The promised volume did not happen and most days he received 4 or 5 prescriptions and filled about 1500 prescriptions in the 6 or 6 ½ months that he was affiliated with Minit Drugs. He thought he filled

prescriptions from about July or August 2003 to February 2004 (some initial time was spent setting up the system).

- He stopped because he was not getting what he was promised and because he was worried about increasing pressures from large drug companies regarding supplies of drugs used to fill prescriptions for U.S. patients.
- Most of the prescriptions he received were refills of prescriptions filled at Minit Drugs. Minit Drugs would keep the original prescription.
- He found that the transfer of files to his computer did not work so instead they were sent to the Minit Drugs website with a password for him to access. When he or his staff entered the site the orders would be there and they would print copies. What he printed and gave to the College regarding the March prescriptions is what he would see on the screens. His pharmacy would then print a pharmacy label and fill the prescription.
- He would fill the one refill and then transfer the prescription back to Minit Drugs.
- He was one of a group of 30 or 40 pharmacists who met with the Brittons to hear their proposal.
- He did not receive the original prescriptions from Dr. Walman or Dr. Warraich for Mr. March. He received a computer copy of the prescriptions. He relied on the fact that Minit Drugs had dealt correctly with the physician to get the original prescription.
- Minit Drugs would pay him by cheque every two weeks for prescriptions that he filled.
- Mr. Truong made a copy of the agreement for Mr. Blair. He indicated that he believed that the other pharmacies signed the same agreement.

46. Mr. Blair's review of the License Agreement provided by Mr. Truong indicated the following:

- The Agreement was with Minit Drug Company Ltd. – this company was not a licensed pharmacy and was not shown on the ACP's records as the owner either Minit Drugs #3 or the previous pharmacy, Minit Drugs #1.
- The Agreement suggested that Minit Drug Company Ltd. ("the Corporation") had entered into agreements with parties in the US to fulfill prescriptions for US residents and to forward the medications to the US residents and that the Licensee pharmacy was prepared to fulfill the prescriptions and ship them to the US.

- A License Fee of \$200,000.00 was to be paid by each pharmacy with \$20,000.00 paid initially and the balance paid at the rate of \$12.00 per prescription to make up the \$180,000.00.
- The Corporation would try to provide on a daily basis, 7 days a week, approximately 100 prescriptions for filling and shipment direct to the US customers by the Licensee pharmacy.
- The Corporation would pay the Licensee for the drugs shipped as follows:

The wholesale cost of the drugs as established by the Corporation's wholesalers with an 8.5% up charge on brand products and no up charge on generic products, plus \$10.00 per prescription plus a shipping fee of \$15.00 for each shipment. The Licensee would pay shipping costs.

- The Licensee would pay the Corporation \$12.00 per prescription after the first 1500 prescriptions to be credited toward the \$180,000.00 owing for the license.¹
- The prescriptions to be provided by the Corporation were derivative of prescriptions from specific United States Affiliates. The Corporation would "ramp up" the number of prescriptions towards the target of 100 per day as orders were received from the United States Affiliate.
- If the Licensee was prevented from performing by the Pharmacy College or any other governing laws or rules or if the prescriptions fell below 20 per day at any time after January 1, 2003, the pharmacy could terminate.
- There was no guarantee of longevity and if the orders from the US Affiliate ceased, the contract would cease.

47. During the interview on May 24, 2006 Mr. Britton provided the following comments concerning the License Agreements to Mr. Blair:

- All of the agreements were identical and these agreements were now all defunct as they do not use licensees anymore.
- There were initially 33 pharmacies who signed License Agreements but after setting up the structure the anticipated number of prescriptions from the American affiliate did not materialize.
- Many licensees chose not to continue when the anticipated volumes did not arise.

¹ The rates would be adjusted in the second year to a payment of \$8.00 per prescription to the Licensee.

- Approximately 2 or 3 years after the License Agreements were entered into [many were signed in 2002 or 2003] there were about 8 or 10 licensees who continued to fill about 50 prescriptions a day for Minit Drugs. At this point the License Agreements were replaced with new contracts that more clearly reflected what was happening.
- These contracts were not with the Minit Drugs pharmacy. They were with Minit Drug Company Ltd. Mr. Britton regarded this as strictly a business relationship. He stated that “Any of the pharmaceutical end is done between NC Britton and the pharmacies themselves”.
- At one point he began giving approximately 60% of their [the Minit Drugs pharmacy’s] volume to licensee pharmacists to thank them for staying with him. At this same time it became difficult to get brand name drugs from Pfizer, Glaxo and Merck Frosst, Eli Lilly, etc. So by necessity prescriptions for these drugs were transferred to the licensee pharmacists to fill.
- This is no longer an issue and the contracts they now have are not licenses but a different arrangement.
- The prescriptions to be transferred are all dealt with in electronic fashion and are transferred to a fill queue on the system that the pharmacy has access to. The pharmacies get access to the same server and database as Minit Drugs.
- The information is all transferred and this is tracked on the database. At this point the other pharmacy is responsible for filling the prescription.
- When refills come they generally come to the Minit Drug call centre at the 800 number. When a refill order is received, it will be sent out the other pharmacy to be filled.
- All of the pharmacies use blank labels on the top in the Minit Drugs form so that the laser printer with the software can print the appropriate information for that pharmacy.
- It also puts on the label both the Canadian and the American doctor for the benefit of patients who are used to the American doctor.
- Mr. Britton suggested that the patient care representatives in the call centre would tell patients that their prescriptions were being transferred or if they were not informed it would be obvious when they got the prescription because this would be shown on the package. In such a case the patient could contact either the pharmacy or the call centre. In his experience they usually call the 800 number which is the call centre operated by Minit Drugs.

- The call centre or the pharmacy could call up all available information on the computer system so either could answer questions from patients.
- In relation to a question about the License Agreements and section 32(8) of the Pharmaceutical Profession Regulation, Mr. Britton emphasized that the license agreement was with Minit Drug Company Ltd. and had nothing to do with the pharmacy. He suggested that the agreement was totally unrelated and that what they were paying was a franchise fee to become a franchise. His lawyers advised him that although it was called a license agreement, it was really a franchise. For these reasons, he thought it had nothing to do with section 32(8) of the Regulation.

48. In August 2008 as a result of the order of the Investigating Committee, the lawyer for the Brittons provided copies of License Agreements and partial details of prescriptions filled for approximately 20 to 30 other pharmacies that entered into these agreements. These records are part of the 10 binders and the electronic records that are available for review but that have not been entered as exhibits in this hearing.

49. It is agreed that Laureen Britton was not involved in entering into or managing the Licensing Agreements and that this was handled by Barney Britton.

Arrangements with Canadian Physicians

50. At the meeting on May 24, 2006, Mr. Britton described the arrangements that Minit Drugs had with Canadian physicians who were paid to review American prescriptions and to issue Canadian prescriptions to American patients in the following way:

- at present Minit Drugs used only 3 physicians;
- there are no written agreements with physicians;
- that the pharmacy had been using electronic signatures from physicians until they were advised by Health Canada in January 2004 that this was not authorized when they changed the practice so that they now receive faxed copies of signed Canadian prescriptions from the doctors;
- when American prescriptions and orders are received, they are transcribed into a form that can be signed by the Canadian physician as a new prescription. The physician then logs onto a password protected and encrypted portion of the website. The system then makes them review every single document in the patient profile (which is the medical history form filled out by the patient) and the US prescriptions and the proposed Canadian prescription. The physician can then approve or reject the prescription;

- the physician is paid for the review and not on a prescription basis so there is no incentive to approve scripts;
- once the prescription is approved it is faxed to Minit Drugs. The pharmacist is also usually in daily contact with the physician to get verbal authorizations of all their electronic activity;
- Once this is done the prescription is placed electronically in the queue for filling.

51. The information that was provided by the lawyer for the Brittons in August 2008 contained the names of approximately 13 physicians and provided partial printouts of the prescriptions that they had issued. This information is available for review but has not been entered into evidence at the hearing. In addition, the prescriptions provided by Mr. Graham with his complaint identified another physician, a Dr. Warraich who was licensed in Newfoundland and Manitoba.

52. Two of the physicians shown in the information provided, Dr. Hoy and Dr. Warraich have been disciplined in Manitoba for co-signing prescriptions for American patients.

53. The records produced also show that a Dr. Heinrichs provided a substantial number of prescriptions for Minit Drugs during the period from April 2004 to February 2005. Dr. Heinrichs was also noted by Mr. Blair as the physician shown on one of the prescriptions that he reviewed in May 2006 as one of the physicians issuing prescriptions at that time for Minit Drugs.

54. Dr. Heinrichs is known to the ACP from other cases involving internet pharmacies. During this same time period in 2004 into 2005 that Dr. Heinrichs was issuing prescriptions to Minit Drugs, he was also issuing between 80 to 100 prescriptions a day for two other Alberta pharmacies, Appollo Drugs, Herbs and Neutraceuticals and Lifhaus Medicines, and was also issuing significant prescriptions for a third Alberta pharmacy, Total Care Pharmacy. It is not suggested by the ACP that any of these pharmacies including Minit Drugs was aware that Dr. Heinrichs was also issuing prescriptions for the other pharmacies.

55. The parties agree that since Minit Drugs commenced its operations in 2001 the position of the various medical regulatory authorities in Canada have been clarified and that almost all of those medical regulatory authorities have established policies or standards indicating that issuing prescriptions for American patients without establishing a physician patient relationship and without conducting an adequate physical examination is not acceptable practice. As a result, physicians have been disciplined for this conduct in 7 provinces.

56. The parties also acknowledge that there have now been a series of decisions by Investigating Committees of the ACP that have disciplined pharmacists for entering into arrangements with Canadian physicians to

pay the Canadian physicians to conduct reviews and issue Canadian prescriptions for U.S. patients in circumstances where it was clear that the physician had not seen the patient or conducted a physical examination of the patient.

Purchase of a Patient List

57. The parties agree that only Barney Britton was involved in this matter and that Lauren Britton had no role in the purchase of the patient list.

58. The parties also agree that the purchase of this patient list by Minit Drugs occurred in the following manner:

- In approximately November 2003 Minit Drugs and Mr. Britton were approached by an individual named Peter Stein who operated a company known as Rx Canada Consulting Inc.
- Mr. Stein advised Minit Drugs that his company had developed and operated software that allowed US-based affiliates who had customers who had prescriptions that they needed filled to process orders and prescriptions with Canadian pharmacies. Mr. Stein suggested that up to 30 Canadian pharmacies had sent prescriptions through this on-line based system. Many of these affiliates were located in Florida.
- Mr. Stein suggested that since the storefront operation of RxDepot had been shut down by an injunction obtained by the FDA, other affiliates had become nervous and wanted "out of the business". Mr. Stein suggested that these affiliates wished to sell their lists.
- Mr. Stein suggested that there were over 100 affiliates that were using his system and some 44,000 patients.
- Minit Drugs entered into an agreement to purchase the list provided they could conduct due diligence on the names on the list. They were given sample names and eventually contacted about 300 – 400 names using the Minit Drugs call centre. Mr. Britton advises that the proposed price was \$1.00 to \$1.50 per prescription.
- Many of these individuals indicated they had their medications filled by CanadaDrugs.com. Mr. Britton says they also indicated that their affiliates were not around any more.
- Based on the due diligence conducted, Minit Drugs purchased the list from Mr. Stein and placed the names in their system under a grouping called CanRx. They then began a telephone campaign and a mass mailing to these individuals which they followed up with further phone calls. Mr. Britton advises that what was received and placed into the system were the names and addresses of the

patients. He indicates that no medical information or prescription information was included.

- After this mass mailing was conducted, Minit Drugs began receiving a large number of complaints from various other pharmacies particularly internet pharmacies from Winnipeg.
- Mr. Britton indicated that he had received an email from the owner of CanadaDrugs.com suggesting that he should be careful about buying any mail lists as they were not legitimate.
- Mr. Britton felt that based on the affiliate agreements his pharmacy had with affiliates in the U.S. that the customers were the customers of the affiliate and not the pharmacy. He felt the affiliates owned the customers and could sell the information:

So basically my answer to Kris at that time was, no. If it's an affiliate, they are not your customers, you know. This is business, you know. So sad; too bad sort of thing. Same thing if it went the other way. And I've lost --- we've all lost affiliates, and that happens in this industry.

- Subsequently, the owner of CanadaDrugs.com advised that he believed that the list was his customer list and that there had been a security breach where a former employee had left with this list.
- Based on this information and further discussions, Mr. Britton indicates that an agreement was reached with CanadaDrugs.com where Minit Drugs agreed to delete the information from their system and not make further contacts with the people on the list with exception of about 130 customers who had begun ordering from Minit Drugs.
- At some point a complaint was made by a number of U.S. customers who alleged that their personal information had been disclosed without their consents so that they were contacted by a number of internet pharmacies some of which appeared to have detailed medical information.
- The Federal Privacy Commissioner investigated the matter in relation to CanadaDrugs (referred to as Company A), Minit Drugs (referred to as Company B) and a third internet pharmacy (referred to as Company C) that also purchased part of the list. .
- The Commissioner's Findings included the following:
 1. There had been a breach of security at CanadaDrugs where two staff members downloaded the company's customer list onto a disk and sold it to an American who was operating an internet pharmacy in the U.S. and also had opened a Canadian pharmacy. This individual then sold all or parts of the list to two other internet

pharmacies in 2003. Neither the Canadian pharmacy nor the U.S. company is still in business

2. CanadaDrugs believed that the information stolen included the first and last names of customers, their addresses and telephone numbers and their age. They also believed, but could not confirm, that the list included prescription information. The Privacy Commissioner could not confirm that the prescription information had been stolen or sold.
3. In 2003 Minit Drugs (Company B) purchased a list of approximately 40,000 names all of them allegedly customers of defunct U.S. based on-line pharmacies. It contacted a random sample of approximately 300 and was satisfied that the list was genuine.
4. Minit Drugs suggested that all it received was the name, address and telephone number of the customer. The Privacy Office examined Minit Drug's database and confirmed that it only had basic contact information on the individuals who had approached the Privacy Office with their concerns.
5. Once it had finalized the purchase of the list, Minit Drugs sent out a standard form letter inviting the person to contact it and followed up with a phone call. It noticed that a number of people contacted indicated that they were clients of CanadaDrugs. Minit Drugs assured those people that they did not have any medical information about them.
 - Based on these findings, the Privacy Commissioner concluded that the disclosure of personal information from the CanadaDrugs list and the lack of adequate safeguards took place before PIPEDA came into force in January 1, 2004 so there was no jurisdiction to make findings regarding the disclosure and safeguards issue.
 - In respect to Minit Drugs, the Privacy Commissioner determined that this occurred in 2003 prior to PIPEDA coming into force so there was no jurisdiction to deal with the collection of the information by Minit Drugs. However, since the information was used by Minit Drugs in 2004 without the knowledge or consent of the customers so there was a finding that the complaint regarding the use of the personal information without consent was well-founded.
 - The Privacy Commissioner noted that both CanadaDrugs and Minit Drugs were victims of fraud and that Minit Drugs acted in good faith when it purchased the list not realizing that it had been stolen by a former employee of CanadaDrugs and that although Minit Drugs took steps to ensure the customer list was being acquired legally, it had been duped.

- The Privacy Commissioner also noted that both CanadaDrugs and Minit Drugs had increased their vigilance to ensure that a similar situation did not occur.

Allegations by Mr. Popat

59. Complaints 4 and 5 in the Notice of Hearing are based on a complaint by Mr. Zahir Popat [Complaint File 05-03]. Mr. Popat who was a former business associate of Mr. Britton made a series of complaints and provided some limited information to the ACP but then failed to respond to numerous requests by Mr. Blair for more information.
60. As a result a number of Mr. Popat's complaints were dismissed by the Infringement Committee on the basis that no evidence had been found that would support them. The complaints in respect to charges 4 and 5 were sent to a hearing because information requested from the Brittons that might have answered these complaints was not forthcoming.
61. Based on the lack of cooperation of Mr. Popat, the lack of any further information that would substantiate these complaints, and the fact that Minit Drugs is now closed and Mr. Britton is prepared to accept a prohibition from any further involvement in a pharmacy business in Alberta, the ACP will be calling no evidence in respect to these two charges and does not intend to proceed with them.

ADMISSIONS

62. In view of the closure of the pharmacy and the admissions the Brittons are prepared to make in this proceeding, the ACP will be calling no evidence in respect to the fourth and fifth allegations in the Notice of Hearing relating to the computer system and to the working conditions at Minit Drugs and it does not intend to proceed with these allegations.
63. It is acknowledged and agreed that NC Britton Holdings Ltd. and Minit Drug Company Ltd. are no longer active companies and so no relief is claimed against them by the ACP since they are no longer active and since they were owned by Mr. Britton.
64. The parties agree that at the time that the investigation of the first complaint in this matter began the Internet Pharmacy Guidelines of the Council of the Alberta College of Pharmacists were in place but there were no previous decisions of an Investigating Committee that applied these Guidelines or that reviewed the other legislative and regulatory provisions in relation to internet pharmacy operations.
65. Mr. Barney Britton acknowledges and agrees that in hindsight:
- (a) in respect to the third allegation contained in the Notice of Hearing regarding arrangements with Canadian physicians, his involvement as a proprietor and licensee in the arrangements that Minit Drugs entered into with various Canadian physicians in relation to the

reviewing and issuing of prescriptions for American patients not seen by the Canadian physicians was inappropriate and he should have known that this conduct did not comply the Code of Ethics Bylaw and in particular Principle VI, Guidelines 2 and 7 and Principle VII, Guideline 1, contrary to sections 57(a)(i), 57(a)(ii) and 57(a)(v) of the *Pharmaceutical Profession Act* particulars of which include the following:

- (i) It was apparent that Canadian physicians were signing the prescriptions they provided without personally seeing the patients and Mr. Britton now acknowledges that such a practice became explicitly regarded as unacceptable practice by the Colleges of Physicians and Surgeons in the Canadian jurisdictions that licensed these physicians and that after this fact became clear continuing to participate in these arrangements could be seen as a breach of Principle VII, Guideline 1 of the Code of Ethics Bylaw.
 - (ii) Mr. Britton acknowledges in hindsight that he ought to have known that the arrangements under which the pharmacy filled the prescriptions from the Canadian physicians did not pay sufficient regard to Statement 3 of the Internet Pharmacy Guidelines of the Council of the Alberta College of Pharmacists.
 - (iii) Mr. Britton acknowledges that in hindsight his continued participation in the arrangements with the Canadian physicians could be seen as a breach of Principle VI, Guidelines 2 and 7 of the Code of Ethics Bylaw.
- (b) the License Agreements, and the later revised agreements, entered into by Minit Drug Company Ltd. with various pharmacies and the actions taken by NC Britton Holdings Ltd., and Barney Britton as proprietors of the Minit Drugs pharmacies in respect to these agreements and in respect to the transfer of prescriptions from Minit Drugs #3 to the other pharmacies constitutes proprietary misconduct in the following respects:
- (i) the agreements contemplate a pharmacist or proprietor giving something of value to another person for recommending the pharmacist or pharmacy's services contrary to section 32(8) of the Pharmaceutical Profession Regulation;
 - (ii) it is not appropriate for a proprietor to sell, either directly or indirectly, a patient's prescription to another pharmacy where this is not part of a sale of the entire pharmacy;

- (iii) there was not adequate disclosure to patients of the fact that their prescriptions and personal health information would be transferred to another pharmacy and the patients did not provide informed consent to the transfer of their personal health information to another pharmacy;
- (iv) Minit Drug Company Ltd. and Mr. Britton had no basis for representing that Minit Drug Company Ltd., a non-pharmacy had the ability and the right to receive and transfer prescriptions;
- (v) the activities contemplated in the License Agreements involve the practice of pharmacy by Minit Drug Company Ltd., a non-pharmacy and its principals contrary to Section 2(1) of the *Pharmaceutical Profession Act*;
- (vi) the agreement to provide a portion of the proceeds from the sale of each drug to Minit Drug Company Ltd. allowed a non-pharmacy to participate in the practice of pharmacy and the sale of drugs contrary to Section 2(1) and Schedule 1, sections 1(a) and 2(3) of the *Pharmaceutical Profession Act* and the combination of section 15 of the *Food and Drugs Act* and section C.01.041 of the Food and Drug Regulations;
- (vii) Minit Drugs # 3 had no valid basis for receiving prescriptions and then transferring prescriptions to other pharmacies pursuant to the agreement entered into by Minit Drug Company Ltd. and it is not proper for a pharmacy to be undertaking these transfers for the benefit of a company owned by the pharmacy's proprietors;
- (viii) the agreements entered into with the other pharmacies were intended to avoid the restrictions placed upon sales to U.S. customers by various drug suppliers by using an intermediary pharmacy to order the drugs and fill the prescriptions thereby concealing the involvement of Minit Drugs contrary to the Code of Ethics, Principle VI, Guidelines 2 and 4;
- (ix) the arrangements and the system established meant that it was unclear who was responsible for contacts with patients and physicians and in many cases the pharmacy filling the prescription did not establish a relationship with the patient as required by section 15 of the *Pharmaceutical Profession Regulation* and section 4 of the *Standards of Practice*;
- (x) the system established pursuant to the License Agreements limited the contacts of the dispensing

pharmacies with the prescribing physicians and the patients;

- (xi) the limited contacts between the patient and the dispensing pharmacy limited or hindered the ability of the patients to receive counseling from the dispensing pharmacist as required by section 15(5) of the *Pharmaceutical Profession Regulation* and section 4.5 of the *Standards of Practice*;
- (xii) Barney Britton as the proprietor of a pharmacy sought to avoid the duties imposed on a pharmacy and proprietors under the *Pharmaceutical Profession Act* by carrying out these activities through the use of a separate company, Minit Drug Company Ltd.;
- (xiii) the agreements made by Barney Britton through the vehicle of Minit Drug Company Ltd. with the other pharmacies and the system that was established did not comply with their obligations as proprietors under Principles VI and VII of the *Code of Ethics*.

(c) he engaged in proprietary misconduct by:

- (i) directing Minit Drugs #3 or related companies to purchase a list of patient names and addresses from Peter Stein and his company, knowing that this list contained personal information of those who had received a certain health service – prescriptions - from one or more Canadian pharmacies and that the individuals on the list had been patients of those pharmacies;
- (ii) directing Minit Drugs #3 or related companies to collect and use personal information of the individuals on the list purchased from Peter Stein without the knowledge or consent of those individuals;
- (iii) directing the purchase and use of a list containing the personal information of one or more other pharmacy's patients.

and that these actions:

- (i) breached Principle IV of the *Code of Ethics Bylaw*;
- (ii) breached Principle VI of the *Code of Ethics Bylaw* and in particular Guideline 2 of that Principle;
- (iii) breached the provisions of the *Personal Information Protection and Electronic Documents Act*, the *Personal*

Information Protection Act, or the Health Information Act or any of them.

- (iv) were detrimental to the best interests of the public contrary to section 57(a)(i) of the *Pharmaceutical Profession Act*;
- (v) harmed or tended to harm the standing of the profession of pharmacy generally contrary to section 57(a)(v) of the *Pharmaceutical Profession Act*;

66. Mr. Barney Britton also admits that

- a) in a series of letters the preliminary investigator Mr. Blair requested information and documents from Minit Drugs and Barney Britton. Despite these written requests the requested documents or records were not provided until they were ordered to be produced by the Investigating Committee;
- b) he refused to cooperate with the preliminary investigator's investigation and that this conduct warrants a finding of proprietary misconduct pursuant to section 50(6) of the *Pharmaceutical Profession Act*.
- c) this conduct breaches section 50(6) and sections 57(a)(i), 57(a)(ii) and 57(a)(v) of the *Pharmaceutical Profession Act*.

67. Mr. Britton acknowledges that the breaches of the *Pharmaceutical Profession Act*, the *Pharmaceutical Profession Regulation*, and the Code of Ethics Bylaw amount to conduct that an Investigating Committee may determine constitute breaches of the following subsections of section 57(a) of the *Pharmaceutical Profession Act*;

- (i) Subsection 57(a)(i) – conduct detrimental to the best interests of the public;
- (ii) Subsection 57(a)(ii) – conduct that contravenes the *Pharmaceutical Profession Act* and the *Pharmaceutical Profession Regulation*;
- (iii) Subsection 57(a)(v) – conduct that harms or tends to harm the profession of pharmacy generally.

68. Mrs. Lauren Britton admits that

- a) in a series of letters the preliminary investigator requested information and documents from Minit Drugs, Barney Britton and herself. Despite these written requests the requested documents or records were not provided until they were ordered to be produced by the Investigating Committee;

- b) her failure to respond to these requests amounted to a lack of cooperation with the preliminary investigator's investigation and that this conduct warrants a finding of professional misconduct pursuant to section 50(6) of the *Pharmaceutical Profession Act*.
- c) this conduct breaches section 50(6) and sections 57(a)(i), 57(a)(ii) and 57(a)(v) of the *Pharmaceutical Profession Act*.

IV SUBMISSIONS

Submissions from Mr. David Jardine, counsel for the College were received by the Investigating Committee. Counsel was not retained by Mr. Barney Britton and Mrs. Lauren Britton, therefore they were able to provide additional information or clarification as required.

- Mr. Jardine confirmed that Mrs. Lauren Britton was not associated with Minit Drugs #3 # 1556 and Minit Drugs #3 #1657 opened July 1, 2003 as a proprietor or licensee or an employee and therefore she had very little involvement in any aspect of the distance –based pharmacy services.
- Mr. Jardine confirmed that none of the Minit Drugs pharmacies have operated since September 2007 and Mr. Britton has not been involved in the pharmacy business since that date. Minit Drug Company and NC Britton Holdings named in the Notice of Hearing have been or are in the process of being dissolved. Mrs. Britton remains a licensed pharmacist but has not been involved in the operations of the Minit Drugs #3.
- During the investigation by the College of four initial complaints, two additional concerns were identified and investigated:
 - License agreements and
 - Relationship between Minit Drugs and Canadian physicians providing Canadian prescriptions for drugs to be dispensed to American patients.
- The investigating process was hampered by Mr. and Mrs. Britton failing or refusing to cooperate with the investigation by not providing requested information and documents when requested by the College. This resulted in an additional complaint to be filed under Section (50) 6 of the *Pharmaceutical Profession Act* for failing to comply with the request for information required to conduct an investigation. The requested information was delivered to the College in August 2009. The College began requesting the information in 2006. Considerable ACP time and resources were required to investigate and bring this matter to a hearing.
- Correspondence from the College went to each of Mr. and Mrs. Britton. Mrs. Britton acknowledged that there is a responsibility to reply to requests from the College and failure to respond amounted to a lack of cooperation even though she admitted she thought Mr. Britton was responding on her behalf. It was not

until July 2009 that the College was able to speak with Mrs. Britton and confirm that she was not involved in the distance – based pharmacy services.

JOINT SUBMISSION

69. In view of the admissions in these proceedings, the fact that Minit Drugs was closed in September 2007, and the previous decisions of the Investigating Committees in respect to the operation of internet pharmacies, the parties jointly submit that the following orders would be appropriate:

70. In respect to Barney Britton:

1. a fine of \$6000.00 for proprietary misconduct in respect to the failure to cooperate with the preliminary investigation;
2. a fine of \$5000.00 for proprietary misconduct in respect to the Licensing Agreements with other pharmacies and the arrangements with Canadian physicians;
3. a reprimand for proprietary misconduct in relation to the purchase of a patient list from Mr. Stein;
4. an order prohibiting Barney Britton from acting directly or indirectly in the future as a proprietor of a pharmacy in Alberta;
5. an order that Barney Britton pay costs to the ACP in the amount of \$27,000.00 within a time period or on a periodic basis to be set by the Investigating Committee after hearing submissions from the ACP and Mr. Britton;

71. In respect to Laureen Britton:

1. a reprimand and a fine of \$1000.00 for professional misconduct for failure to cooperate with the preliminary investigation;
2. an order that Laureen Britton pay costs to the ACP in the amount of \$3000.00;
3. an order that the fines and the costs be paid to the ACP within a time period or on a periodic basis to be set by the Investigating Committee failing which Mrs. Britton's certificate of registration shall be suspended until the fine and costs are paid.

72. The parties also agree that a summary of the decision should be published in the acpNews. The parties are agreed that Mr. Britton will be named in the publication and the parties will make submissions on whether Mrs. Britton should be named.

V FINDINGS

The Investigating Committee accepted the admissions of Mr. and Mrs. Britton as outlined in the Agreed Statement of Facts, Admission of Proprietary and Professional Misconduct and Joint Submissions on Penalty dated November 19, 2009.

The Investigating Committee agrees that Mrs. Britton was likely not involved in the development or day to day operations of the distance based pharmacy service even though her name did appear in College records as the licensee of one of the Minit Drugs #3. The Investigating Committee agrees that allegations of proprietary misconduct related to distance based pharmacy services and Mrs. Britton were not well founded.

Mrs. Britton did admit that she did not comply with the College's request for information until the Investigating Committee ordered it. Failure to comply with the request for information, hampers the ability of the College to protect the public and the integrity of the profession of Pharmacy, and also makes it difficult to provide the member a chance to be fairly treated and heard. The Investigating Committee agrees that this is a breach of the *Pharmaceutical Profession Act* and constitutes Professional misconduct.

Mr. Britton has admitted he was responsible for the distance based pharmacy service including arrangements with Canadian physicians to review and rewrite prescriptions for American patients not seen by Canadian physicians. This is viewed by the Investigating Committee as a breach of the Principles and Guidelines of the *Code of Ethics Bylaw*.

Mr. Britton, Minit Drug Company Ltd., and NC Britton Holdings established License Agreements with various pharmacies to allow for the transfer of prescriptions to other pharmacies. This resulted in a non-pharmacy participating in the practice of pharmacy and the sale of drugs, the sale of a patient's prescription to another pharmacy, the giving of something of value for recommending a pharmacy or pharmacist, and patients not being adequately informed or consenting to their health information being transferred to another pharmacy. These actions are contrary to the *Pharmaceutical Profession Regulations, Pharmaceutical Profession Act, the Food and Drugs Act, the Food and Drug Regulations, the Standards of Practice* and/or the *Code of Ethics* and the Investigating Committee agrees this constitutes proprietary misconduct.

Mr. Britton did admit that he did not comply with the College's request for information until it was ordered by the Investigating Committee. Failure to comply with the request for information hampers the ability of the College to protect the public and the integrity of the profession of Pharmacy. The Investigating Committee agrees that this is a breach of the *Pharmaceutical Profession Act* and constitutes proprietary misconduct.

The Investigating Committee agrees with the College that Complaints 4 and 5 in the original Notice of Hearing, based upon complaints by Mr. Zahir Popat (Complaint File 05-03) will not proceed. Mr. Popat is not willing to provide any additional information to substantiate the complaint, Mr. Britton has closed the pharmacy implicated in the complaint and Mr. Britton has also agreed to accept a prohibition of involvement with any pharmacy business in Alberta. Counsel for the ACP did not call any evidence related to these allegations.

The Investigating Committee agrees with Mr. Britton's admission that he engaged in proprietary misconduct when he directed the purchase of a patient list that contained personal information and used this information without the knowledge or consent of the individuals named on the list. This was a breach of the Code of Ethics Bylaw, the provisions of the *Personal Information Protection, Electronic Documents Act, Personal Information Protection Act* and/or the *Health Information Act*. The committee agrees that these actions were detrimental to the best interests of the public and harmed or tended to harm the standing of the profession of Pharmacy generally, contrary to the *Pharmaceutical Profession Act*.

VI ORDERS

The Investigating Committee accepted the Joint Decision on Penalty, but was required to order on the terms of payment for the fines and costs of conducting the investigations and the publication of Mrs. Britton's name in acpNews.

Mr. Britton explained to the Investigating Committee that he has been without a job since September 2007. He is currently looking for a job as a commercial pilot, but is unsure when he will be employed again. Mr. Britton shared his credit report from Equifax with the Investigating Committee. He stated that six vehicles repossessed in the last six months and lines of credit and credit cards closed, delinquent and written off. Mr. Britton indicated that he would like to comply with the fines and costs agreed to, but is trying to figure out how. He did not rule out declaring bankruptcy. He indicated he could maybe pay off \$10,000.00 to \$15,000.00 over a year and a half.

The Investigating Committee supported Mr. Britton's intention to pay the fines and costs by allowing payments to commence after Mrs. Britton's fine and costs were completed. Mrs. Britton is currently working as a relief pharmacist in retail pharmacy. Mrs. Britton advised the Investigating Committee that she has a daughter who is starting grade 4 and an older daughter that is requiring much of her time and attention with Barney away a lot. She indicated that she was trying to prevent working full time for the sake of the girls.

As Mrs. Britton is not currently employed full time, the Investigating Committee agreed that the fines and costs could be paid over a six-month period if necessary.

In respect to Mr. Barney Britton:

1. A fine of \$6,000.00 for proprietary misconduct in respect to the failure to cooperate with the preliminary investigation;
2. A fine of \$5,000.00 for proprietary misconduct in respect to the Licensing Agreements with other pharmacies and the arrangements with Canadian physicians;
3. A reprimand for proprietary misconduct in relation to the purchase of a patient list from Mr. Stein;

4. An order prohibiting Barney Britton from acting directly or indirectly in the future as a proprietor of a pharmacy in Alberta;
5. An order that Barney Britton pay costs to the ACP in the amount of \$27,000.00;
6. Fines and costs must be paid in full within 30 months from the date of receipt of the decision of the Investigating Committee. Payments may commence six (6) months after the date of receipt of the decision of the Investigating Committee and should be 23 monthly payments of \$1,583.33 and one (1) monthly payment of \$1,583.41;
7. A summary of the decision will be published in the acpNews and Mr. Britton will be named in the publication.

In respect to Mrs. Lauren Britton:

1. A reprimand and a fine of \$1,000.00 for professional misconduct for failure to cooperate with the preliminary investigation;
2. An order that Lauren Britton pay costs to the ACP in the amount of \$3,000.00;
3. Fines and costs must be paid in full within six (6) months from the date of receipt of the decision of the Investigating Committee and should be five (5) monthly payments of \$666.66 and one (1) payment of \$666.70. Failure to comply with this payment schedule for the fine and costs shall result in Mrs. Britton's certificate of registration being suspended until payment is received.
4. A summary of the decision will be published in the AcpNews and Mrs. Lauren Britton will be named in the publication. The Investigating Committee acknowledges that publication of a member's name may be educational and act as a general deterrent to other members of the profession. Specifically as it relates to Mrs. Britton, failing to cooperate with an investigation by your professional association and then requesting and being granted anonymity is not in the best interest of the ACP and members or the public.

Dated: _____

Per: _____
Bonnie J. Oldring
Chairman, Investigating Committee