

ALBERTA COLLEGE OF PHARMACISTS

IN THE MATTER OF
THE HEALTH PROFESSIONS ACT

AND IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF **E. JOYCE CHEN PON**

DECISION OF THE HEARING TRIBUNAL

October 27, 2015

I. INTRODUCTION

The Hearing Tribunal held a hearing into the conduct of E. Joyce Chen Pon. In attendance on behalf of the Hearing Tribunal were: Ms. Anita Warnick, pharmacist and Chair; Mr. Chris Heitland, pharmacist; Mr. Naeem Ladhani, pharmacist; and Mr. Larry Loven, public member. Mr. Gregory Sim attended as independent legal counsel for the Hearing Tribunal.

The parties in attendance at the hearing were Mr. James Krempien, Complaints Director for the Alberta College of Pharmacists (the “College”), Mr. David Jardine, legal counsel for the Complaints Director, Ms. E. Joyce Chen Pon, Investigated Member, Mr. Stuart Chambers, legal counsel for Ms. Pon and Mr. Chambers’ associate Ms. Kate Whittleton. Mr. Wes Pon was also present during the hearing.

The hearing was held under the terms of Part 4 of the *Health Professions Act*.

The hearing took place on September 16, 2015 at the offices of the College in Edmonton, Alberta. There were no objections to the composition of the Hearing Tribunal, the jurisdiction of the Hearing Tribunal to proceed with the hearing, or the timelines of the service of the Notice of Hearing. The hearing was open to the public.

II. ALLEGATIONS

The allegations to be considered by the Hearing Tribunal were set out in the Notice of Hearing dated June 17, 2015 as follows:

IT IS ALLEGED THAT:

During the period from December 2005 to February 2015, as a registered pharmacist (ACP Cert. #3726) and as the pharmacy owner and proprietor of Corner Pharmacy (License #1845) in Edmonton, Alberta you:

1. Owned and operated an unlicensed pharmacy at the Enoch Health Care Centre.
2. As owner and proprietor of Corner Pharmacy used the pharmacy staff you employed at Corner Pharmacy and the operational resources of Corner Pharmacy to provide pharmacy services on-site at the unlicensed pharmacy you operated at the Enoch Health Care Centre site and provided off-site support to the unlicensed pharmacy services being provided at the Enoch Health Care Centre site including the following:
 - The pharmacy records for services provided at the unlicensed site at the Enoch Health Care Centre were stored at Corner Pharmacy and these pharmacy records included: original prescriptions, records of care, and prescription transaction records;

- All medications that were stored and then dispensed at the unlicensed site at the Enoch Health Care Centre were first ordered from, received by, and provided to the Enoch Health Care Centre by Corner Pharmacy and all drugs dispensed at the Enoch Health Care Centre site were ordered and paid for under the Corner Pharmacy wholesale accounts;
 - Original prescriptions that were first received by the Corner Pharmacy pharmacist at the unlicensed site at the Enoch Health Care Centre that could not be dispensed with drug inventory onsite at the Enoch Health Care Centre site were taken back to the Corner Pharmacy to be filled and then returned to the Enoch Health Care Centre site for provision to the patients;
 - The computerized dispensing system at the unlicensed site at the Enoch health Care Centre enabled the pharmacist to remotely log into the dispensing system at Corner Pharmacy in order for prescriptions to be dispensed at the unlicensed site at the Enoch Health Care Centre;
 - The pharmacy services provided at the unlicensed site at the Enoch Health Care Centre (including prescriptions dispensed) were recorded on the patients' record at Corner Pharmacy; and
 - The narcotics stored at the unlicensed site at the Enoch Health Care Centre were accounted for through the inventory records at Corner Pharmacy.
3. Failed during your 10 years as owner and proprietor of Corner pharmacy:
- To contact the Alberta College of Pharmacists ("the ACP") personnel to confirm your understanding or to inquire about the licensing status of the Enoch Health Care Centre site;
 - To inform the ACP about the operations occurring at the unlicensed site at the Enoch Health Care Centre;
 - To apply for or establish separate third party billing agreements for the unlicensed site at the Enoch Health Care Centre (one result of which would have been that the ACP would had to have been notified about prescriptions being dispensed at the Enoch Health Care Centre Site);
 - To apply for or establish separate medication wholesale accounts for the unlicensed site at the Enoch Health Care Centre (one result of which would have been that the ACP would had to have been notified about drugs being received and stored at the Enoch Health Care Centre site); and
 - To advise the ACP field personnel who made 8 separate visits to Corner Pharmacy between 2006 and 2012 about the pharmacy operations at the unlicensed site at the Enoch Health Care Centre.

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

- Sections 1(1)(p)(i), 1(1)(p)(ii), 1(1)(p)(iv), 1(1)(ix), 3(a), 3(b), 11(2)(c), 11(2)(f), 31(2)(f), 31(2)(b), 31(2)(c), 32(2)(a), 32(2)(c), 32(2)(d), 33(2)(a), 33(2)(d) and 36(2) of the *Pharmacy and Drug Act*,
- Section 8 and section 9(2) of the *Pharmacy and Drug Regulation*;
- Sections 2.3 and 14 of the Standards for the Operations of Licensed Pharmacies;
- Sections 1(1)(pp)(ii), 1(1)(pp)(iii) and 1(1)(pp)(xii) of the *Health Professions Act*;
- Sections 1.1, 1.2, 1.3 and 1.14 of the Standards of Practice for Pharmacists and Pharmacy Technicians; and
- Principles 1(1), 7(2), 10(1) and 10(2) of the ACP Code of Ethics.

and that your 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)(i), 1(1)(pp)(ii), and 1(1)(pp)(xii) of the *Health Professions Act* and constitutes misconduct pursuant to sections 1(1)(p)(i), 1(1)(p)(ii), 1(1)(p)(iv), and 1(1)(p)(ix) of the *Pharmacy and Drug Act*.

III. EVIDENCE

By agreement, the parties entered the following documents at the hearing:

Exhibit 1 Notice of Hearing dated June 17, 2015

Exhibit 2 Agreed Statement of Facts, Admission of Unprofessional Conduct and Misconduct and Joint submission on Sanctions and Tabs 1-10 containing evidence from Mr. Krempien gathered during the course of his investigation

Exhibit 2 set out the following facts:

Agreed Facts: Introduction

1. Ms. E. Joyce Chen Pon is a pharmacist registered with the Alberta College of Pharmacists (“the ACP”). Her registration certificate number is 3726.

2. On or about December 3, 2005, Ms. Pon became the owner and proprietor of Corner Pharmacy (ACP #1845) located at 15557 Stony Plain Road, NW, Edmonton, Alberta and remained the owner and proprietor of Corner Pharmacy at all times relevant to this hearing.

The Complaint and Investigation

3. On or about February 26, 2015, [REDACTED], a staff pharmacist from Corner Pharmacy, attended at the ACP Office and spoke with Ms. Linda Hagen, ACP Registration Manager, and requested a variety of posters and signage that are normally displayed in a pharmacy. He advised that this request related to a pharmacy that was operating in Enoch. Ms. Hagen advised Mr. [REDACTED] that there was no pharmacy licensed at Enoch and that the ACP would need to review this matter. Shortly after this conversation Ms. Pon phoned Ms. Hagen and they discussed this issue and the pharmacy services provided by Corner Pharmacy at Enoch. Ms. Hagen advised that the ACP would need to review the current operations at Enoch. Ms. Pon was fully cooperative in this conversation.
4. On February 27, 2015, Ms. Jennifer Voice, who is a Professional Practice Consultant for the ACP, was directed by Dale Cooney, ACP Deputy Registrar, to attend the Enoch Health Care Centre (“EHC”) to determine the extent of pharmacy services being provided there by Corner Pharmacy.
5. On March 2, 2015, Ms. Voice attended at EHC with Mr. [REDACTED], who had been directed by Ms. Pon to assist Ms. Voice in her review of the Corner Pharmacy operations at EHC. Thereafter, Ms. Voice sent a letter of complaint dated March 3, 2015 to Mr. James Krempien, the Complaints Director of the ACP, which set out her observations from her March 2, 2014 visit to the EHC and included her report to the Registrar and Deputy Registrar of the ACP, and a series of photographs that Ms. Voice indicated that she took at the site. In her letter of complaint, Ms. Voice described a conversation with a physician at EHC who advised her that the operations she had observed had been occurring for 30 to 35 years.
6. On March 3, 2015, Mr. Krempien opened a complaint file and appointed himself as the investigator for the complaint. Mr. Krempien also sent a letter to Ms. Pon advising her of the complaint and his investigation. In his letter, Mr. Krempien requested that Ms. Pon provide a written response to the complaint by April 7, 2015.
7. On March 24, 2015, Mr. Krempien received a further photograph of the EHC pharmacy area from Ms. Voice. This photograph illustrated that prior to March 24, 2015, the previous signage had been changed and no longer indicated that patients could access their records at Corner Pharmacy. The photograph also showed a letter from the EHC Director, indicating that the Corner Pharmacy/EHC site was closed so that improvements to the “pharmacy area” could be made.
8. On April 7, 2015, Mr. Krempien received a response from Ms. Pon through her legal counsel. In that letter, Ms. Pon advised that when she acquired Corner Pharmacy in 2005, she was advised by the prior owner and proprietor that the

practices observed by Ms. Voice had been provided by Corner Pharmacy at EHC for over 30 years. While the ACP cannot confirm the length of time that these practices had been ongoing since it had never been advised of them, it does agree that it appears that the practices had been underway for a significant period of time prior to Ms. Pon acquiring Corner Pharmacy in 2005.

9. During his review of this matter, Mr. Krempien reviewed the pharmacy registration file for Corner Pharmacy which indicated as follows:
 - a. November 2005 “Application for Change of Pharmacy Ownership” was provided to the ACP indicating that Ms. Pon was the new owner;
 - b. Ms. Pon signed as the proprietor of Corner Pharmacy for all 10 pharmacy applications from 2005 to 2014;
 - c. Starting with the 2008/2009 annual “Pharmacy Renewal Form” pharmacy owners were notified about and provided with the additional pharmacy license category of “Satellite” pharmacy. On the 2008/2009 renewal form that was received from Corner Pharmacy on June 13, 2008 the “Satellite 2009/09” category was not applied for;
 - d. On the 2009/10 annual “Pharmacy Renewal Form” it appeared that initially the “Satellite 2009/10” category (in addition to the “Community 2009/10” category) was selected, the total cost of the two categories (“\$1754.07”) calculated, and then the total calculated cost was crossed out and the selected “Satellite 2009/10” category was whited out. Ultimately, only the “Community 2009/10” pharmacy license was applied for; and
 - e. On the next five annual Pharmacy Renewal Forms (2010 to 2014, inclusive) only the “Community” pharmacy category was applied for.
10. On April 10, 2015, Mr. Krempien received an email from Ms. Hagen, the Registration Manager of the ACP, detailing her recollection of her conversations with Mr. [REDACTED] and Ms. Pon.
11. On April 14, 2015, Mr. Krempien met with [REDACTED], a staff pharmacist at Corner Pharmacy.
12. On April 14, 2015, Mr. Krempien also met with [REDACTED], who was the Corner Pharmacy Licensee.
13. On April 22, 2015, Mr. Krempien met with Ms. Pon, her husband, Mr. Wes Pon, and Ms. Pon’s legal counsel.
14. After he completed his investigation, Mr. Krempien reviewed the information collected and determined that the matter would be referred to a hearing tribunal. As a result, he prepared a Record of Decision referring the matter to the Hearings Director to appoint a hearing tribunal to hear this matter.
15. A Notice of Hearing was issued in this matter on June 17, 2015 and set a hearing date of September 16, 2015.

Exhibit 2 also set out admissions of unprofessional conduct by Ms. Pon pursuant to section 70 of the *Health Professions Act* and of misconduct as a pharmacy proprietor pursuant to the *Pharmacy and Drug Act*. Ms. Pon expressly acknowledged and admitted that during the period from December 2005 to February 2015 as a registered Pharmacist and as the pharmacy owner and proprietor of Corner Pharmacy she:

- a. Owned and operated an unlicensed pharmacy at Enoch Health Centre (EHC);
- b. As owner and proprietor of Corner Pharmacy used the pharmacy staff she employed at Corner Pharmacy and the operational resources of Corner Pharmacy to provide pharmacy services on-site at the unlicensed pharmacy she operated at the EHC site, and provided off-site support to the unlicensed pharmacy services being provided at the EHC site including the following:
 - The pharmacy records for services provided at the unlicensed site at the EHC were stored at Corner Pharmacy and these pharmacy records included original prescriptions, records of care, and prescription transaction records;
 - All medications that were stored and then dispensed at the unlicensed site at the EHC were first ordered from, received by, and provided to the EHC site by Corner Pharmacy and all drugs dispensed at the EHC site were ordered and paid for under the Corner Pharmacy wholesale accounts;
 - Original prescriptions that were first received by the Corner Pharmacy pharmacist at the unlicensed site at the EHC site that could not be dispensed with drug inventory onsite at the EHC site were taken back to Corner Pharmacy to be filled and returned to the EHC site for provision to the patients;
 - The computerized dispensing system at the unlicensed site at the EHC enabled the pharmacist to remotely log into the dispensing system at Corner Pharmacy in order for prescriptions to be dispensed at the unlicensed site at the EHC;
 - The pharmacy services provided at the unlicensed site at the EHC (including prescriptions dispensed) were recorded on the patients' records at Corner pharmacy; and
 - The narcotics stored at the unlicensed site at the EHC were accounted for through the inventory records at Corner Pharmacy.
- c. Failed during her 10 years as owner and proprietor of Corner Pharmacy to;
 - Contact the ACP personnel to confirm her understanding or to inquire about the licensing status of the EHC site;

- Inform the ACP about the operations occurring at the unlicensed site at the EHC;
- Apply for or establish separate third party billing agreements for the unlicensed site at the Enoch Health Care Centre (one result of which would have been that the ACP would had to have been notified about prescriptions being dispensed at the Enoch Health Care Centre Site);
- Apply for or establish separate medication wholesale accounts for the unlicensed site at the Enoch Health Care Centre (one result of which would have been that the ACP would had to have been notified about drugs being received and stored at the Enoch Health Care Centre site); and
- Advise the ACP field personnel who made 8 separate visits to Corner Pharmacy between 2006 and 2012 about the pharmacy operations at the unlicensed site at the Enoch Health Care Centre.

Ms. Pon also expressly acknowledged and admitted that her conduct constitutes a breach of the following statutes, regulations and standards governing the practice of pharmacy and that her conduct was unprofessional conduct as defined in sections 1(1)(pp)(i), 1(1)(pp)(ii) and 1(1)(pp)(xii) of the *Health Professions Act* and constitutes misconduct for a proprietor of a pharmacy as defined in sections 1(1)(p)(i), 1(1)(p)(ii) and 1(1)(p)(ix) of the *Pharmacy and Drug Act*:

- Sections 3(a), 3(b), 11(2)(c), 31(2)(b), 31(2)(c), 32(2)(a), 32(2)(c), 32(2)(d), 33(2)(a), 33(2)(c), 33(2)(d) and 36(2) of the *Pharmacy and Drug Act*;
- Section 8 of the Pharmacy and Drug Regulations;
- Sections 2.3 and 14 of the Standards for the Operations of Licensed Pharmacies;
- Sections 1.1, 1.2, 1.3 and 1.14 of the Standards of Practice for Pharmacists and Pharmacy Technicians; and
- Principles 1(1), 7(2) and 10(1) of the ACP Code of Ethics.

After hearing from both Mr. Jardine and Mr. Chambers the Hearing Tribunal caucused to review Exhibits 1 and 2 and to consider all of the information that the parties provided. After reviewing the Agreed Statement of Facts and the Admissions of Unprofessional Conduct and Misconduct, the Hearing Tribunal identified several questions about the scope of the Complaints Director's investigation and the resulting allegations. In particular the Tribunal questioned whether the investigation had considered issues of proper medication labeling and storage, Netcare access, medication and personal health information transportation and security and the conduct of other regulated members of the College.

Mr. Jardine submitted that the scope of the investigation and allegations is a matter of prosecutorial discretion to be exercised by the Complaints Director. It is based on his assessment of the evidence gathered during the investigation.

Mr. Jardine called upon Mr. Krempien to make submissions to the Tribunal providing further details about the investigation and the evidence he collected and included with Exhibit 2. Mr. Krempien explained how he came to focus the investigation on Ms. Pon as she was the proprietor of the pharmacy and a regulated member of ACP. Mr. Krempien also described his assessment of the photographic and other evidence and how he felt there was insufficient evidence of breaches of regulatory standards to pursue allegations about the questions raised by the Tribunal. Mr. Krempien further explained that the focus of his investigation was the unlicensed status of the pharmacy and while he might have investigated and referred additional allegations, they would be based on circumstances that arose from the unlicensed status that is addressed in the allegations before the Tribunal.

In response to a question about the current ownership of the pharmacy, Mr. Krempien added that as of September 14, 2015 Ms. Pon sold Corner Pharmacy and there was a new licensee in place by the date of the Hearing. The new owner is not related to Ms. Pon or her husband Wes, and is also not associated with their previous operation, nor is it one of the former pharmacy staff members or licencees.

In response to a question about Allegation 2 and any distinction between bullet points 1 and 5, Mr. Krempien explained that the first bullet deals with the storage of pharmacy records at a different location from the EHC site while the fifth bullet relates to the lack of any records documenting that pharmacy services were provided at the EHC site.

Mr. Krempien also spoke to each of the Tabs in Exhibit 2 and summarized the key points he derived from the evidence under each Tab in his role as Complaints Director:

TAB 1 EXHIBIT 2

March 2, 2015 email and a March 3, 2015 letter of complaint from Jennifer Voice, ACP Pharmacy Practice Consultant to Mr. Krempien Complaints Director, outlining the discussions held during the month of February 2015 between staff pharmacists from Corner Pharmacy and herself regarding how pharmacy services were being conducted at an unlicensed premises. Photographs were included depicting the location of the unlicensed dispensary within the Enoch Health Centre (EHC), drug inventory including OTC and narcotic storage, transportation containers, computer system and patient records.

TAB 2, EXHIBIT 2

March 3, 2015 letter from Mr. Krempien to Ms. Pon, the owner and operator of the unlicensed pharmacy, outlining the letter of complaint from Ms. Voice and requesting Ms. Pon's response.

TAB 3, EXHIBIT 2

March 24, 2015 email from Ms. Voice to Mr. Krempien with an additional photograph.

TAB 4, EXHIBIT 2

April 7, 2015 written response to Mr. Krempien from Ms. Pon's legal counsel addressing the complaint. Key points made in the response to the complaint included:

- Ms. Pon purchased Corner Pharmacy in 2005 and understood that the practice of dispensing prescriptions at the Enoch Health Centre (EHC) was one that had been ongoing for over 30 years.
- Pharmacists employed at Corner Pharmacy would travel to the EHC three times a week to fill prescriptions issued by the physician in attendance at the EHC. Prescriptions were filled from existing inventory kept on site and if the inventory was not sufficient, the prescriptions were taken back to Corner Pharmacy to be filled and sent back to EHC for patient pick up.
- Ms. Pon assumed from the previous owner(s) of Corner Pharmacy that the College had been informed about the pharmacy practices at the EHC.
- Ms. Pon also assumed that in or around 2012/13 the Enoch pharmacy dispensary was identified as a "satellite" pharmacy during or as part of the pharmacy license renewal for Corner Pharmacy.
- As of February 23, 2015 all prescriptions and dispensing from the EHC ceased, signage was removed and inventory was returned to Corner Pharmacy. At present all prescriptions from the attending physician at EHC are faxed to Corner Pharmacy where patients can pick up their filled prescriptions.
- A staff pharmacist continues to attend EHC three times a week strictly for the purposes of patient counselling only.
- Ms. Pon was not aware that the Enoch dispensary could be a breach of licensing and professional requirements nor was it the intent to operate a pharmacy to breach these obligations.
- Ms. Pon has willingly cooperated in full with the investigation and the complaint process.

TAB 5, EXHIBIT 2

Copy of a 2009/2010 Pharmacy Renewal form signed by Ms. Pon indicating she was applying for a community license and what appears to be an indication for an additional application for a satellite pharmacy along with the calculations of cost with GST. The indication that a satellite pharmacy was sought appears to have been erased or crossed out prior to submitting the form to the College.

TAB 6, EXHIBIT 2

April 10, 2015 email from Linda Hagen, Registration Manager to Mr. Krempien indicating that in or around February 19, 2015 a search of ACP's database revealed that no pharmacy license had been issued for the EHC site.

TAB 7 EXHIBIT 2

April 14, 2015 memo from Mr. Krempien outlining his meeting and conversation with [REDACTED] staff pharmacist at Corner Pharmacy and his duties at the EHC site. The memo includes the following key evidence:

- [REDACTED] had been at Corner Pharmacy as a staff pharmacist since 1989.
- [REDACTED] did not believe that the Ms. Pon or Mr. Pon were being deliberately deceitful with the ACP regarding the omission of a pharmacy license at the EHC site.
- [REDACTED] did not have any specific knowledge of any agreement for pharmacy services between Corner Pharmacy and the EHC facility other than he thought there was a verbal agreement.

TAB 8 EXHIBIT 2

April 14, 2015 memo from Mr. Krempien outlining his meeting and conversation with [REDACTED] who was the licensee at Corner Pharmacy from 2005 and the duties of the Corner Pharmacy pharmacists practicing at the EHC site. The memo includes the following key points:

- [REDACTED] had been the licensee for Corner Pharmacy since 2005.
- [REDACTED] was not aware of any specific conversation with Ms. Pon regarding the licensing of EHC dispensary. She assumed that all licensing obligations had been fulfilled as the dispensary at the EHC site had been operational for many years previously.
- [REDACTED] recalled in or around 2009 having a discussion with [REDACTED] business manager for Corner Pharmacy as to whether an application for a satellite pharmacy should be made to the ACP for the EHC site. She was told that this decision was being considered by herself and Mr. and Ms. Pon.

TAB 9, EXHIBIT 2

April 22, 2015 memo from Mr. Krempien regarding his meeting with Ms. Pon, Mr. Pon and Ms. Pon's legal counsel Mr. Stuart Chambers. The memo includes the following key points:

- Ms. Pon indicated that she did not practice at either Corner Pharmacy or at the EHC site.
- The business manager [REDACTED] retired in April 2014.
- Pharmacy records including original prescriptions, records of care and prescription transaction records for the EHC site were stored at Corner Pharmacy.
- Pharmacy records indicate that prescriptions dispensed at the EHC site show that service was received at Corner Pharmacy.
- Even though patients may have received prescriptions and services at two separate site there is only one central record maintained at Corner Pharmacy.
- A separate perpetual narcotic registry was not maintained at the EHC site.
- The inventory at the EHC site was ordered, received and provided by Corner Pharmacy.
- Drugs dispensed at the EHC site were ordered and paid by Corner Pharmacy wholesale accounts and there was not a separate wholesale account for EHC.

- A computerized dispensing system at Corner Pharmacy enabled a pharmacist at the EHC location to remotely access patient prescriptions/records but Netcare was not accessible remotely.
- The EHC site did not have a third party insurer agreement and such claims for pharmacy services were provided through Corner Pharmacy.
- Ms. Pon felt that there was increased patient compliance when prescriptions were filled at the EHC site due to the convenience of its location and for the physician; and there was less travelling time involved to another pharmacy for the patients.
- Ms. Pon did not actively conceal pharmacy operations at the EHC site or deliberately deceive ACP about the existence of the EHC site.
- Renewal for license application in 2009/10 was completed by [REDACTED] and that the calculations were that of [REDACTED] handwriting. As owner and proprietor of Corner Pharmacy, Ms. Pon reviewed and signed the application but it was [REDACTED] who was responsible for coordinating the application for licensure.
- When Ms. Pon purchased Corner Pharmacy in 2005, she understood that the EHC dispensary was not an operational pharmacy but was a “service” by Corner Pharmacy to the EHC site.
- Ms. Pon did not advise ACP of pharmacy operations at the EHC site.
- Ms. Pon was not aware that any of the previous owners of Corner Pharmacy had advised ACP of pharmacy operations at the EHC site.
- ACP conducted eight site visits to Corner Pharmacy from 2006-2012. Ms. Pon was not in attendance for any of these visits but as owner and proprietor she would have been aware of follow-up visits due to identified deficiencies. Neither Ms. Pon nor her staff mentioned the pharmacy operations at the EHC site to the College’s staff.
- Mr. Wes Pon indicated that the Zadell dispensing software was maintained at Corner Pharmacy from 2005 to 2010. Prescriptions dispensed during this time at the EHC site were labelled by a pharmacist using a typewriter. The original prescriptions were transported back to Corner Pharmacy where they were entered electronically into the patient’s record, generating a paper transaction and the electronic billing was sent for adjudication.
- In or around 2010/2011, Ms. Pon purchased the Kroll dispensing software and updated the pharmacy dispensing from Zadall. At this time there was remote access and dispensing from the EHC site.
- Mr. Pon recalled a discussion he had with [REDACTED] regarding application for a satellite pharmacy license in 2009 and that he may have asked [REDACTED] to make inquiries to ACP about the need for a satellite license.

TAB 10, EXHIBIT 2

April 22, 2015 record of the decision by Mr. Krempien that there is evidence of unprofessional conduct and misconduct and that the matter be referred to the Hearing Director for a hearing pursuant to section 66(3)(a) of the *Health Professions Act*. Key points from this evidence included:

- Ms. E. Joyce Chen Pon has been the pharmacy owner and proprietor of Corner Pharmacy in Edmonton, Alberta since December 2005.
- From December 2005 to February 2015 Ms. Pon owned and operated an unlicensed pharmacy at the Enoch Health Care Centre and provided pharmacy services under the umbrella of the existing license for Corner Pharmacy including staff that she employed at Corner Pharmacy to provide off-site support to the EHC site.
- Ms. Pon failed to notify ACP about the unlicensed pharmacy operations.
- Ms. Pon failed to establish separate third party billing agreements for the unlicensed site.
- Ms. Pon failed to establish separate medication wholesale accounts for the unlicensed site.
- Ms. Pon did not apply for a satellite pharmacy license category for the pharmacy operations at the unlicensed EHC site even though she was aware of the category in 2009/10.
- Ms. Pon and her staff failed to notify field personnel for ACP on eight different visits to Corner Pharmacy about the pharmacy operations at the unlicensed site.

While Mr. Chambers indicated he had nothing to add to Mr. Jardine's and Mr. Krempien's submissions, the Hearing Tribunal noted that Mr. Chambers was not agreeing to admit the evidence under the Tabs attached to Exhibit 2 as proof of any facts. The Tribunal did not consider the evidence under the Tabs as proof of any facts. The Tribunal relied on the Agreed Statement of Facts to determine what occurred in relation to this case.

The Hearing Tribunal caucused to discuss the evidence received and the parties' submissions about the scope of the investigation and the allegations. On reconvening, the Hearing Tribunal accepted the Agreed Statement of Facts, Admission of Unprofessional Conduct and Misconduct. The Tribunal finds that Ms. Pon committed unprofessional conduct and misconduct as admitted in Exhibit 2.

IV. FINDING

The Hearing Tribunal examined the following statutes, regulations and standards governing the practice of pharmacy in determining that unprofessional conduct and misconduct were founded.

Pharmacy and Drug Act; sections 3(a), 3(b), 11(2)(c), 31(2)(b), 31(2)(c), 32(2)(a), 32(2)(c), 32(2)(d), 33(2)(c), 33(2)(d) and 36(2)

Ms. Pon breached sections of the *Pharmacy and Drug Act* by providing pharmacy services from an unlicensed pharmacy at the EHC clearly contravening section 3(a) and 3(b) of this Act. As owner and proprietor of Corner Pharmacy and the EHC pharmacy Ms. Pon operated an unlicensed pharmacy and did not fulfill her obligations under section 11(2)(c) of the *Pharmacy and Drug Act* to refrain from influencing others from contravening the Act. Ms. Pon also, through her employees, knowingly transported, compounded, stored, dispensed and provided Schedule 1, Schedule 2, Schedule 3 drugs

and narcotics for sale at the EHC site. Her conduct, through her staff, contravened sections 31, 32 and 33 of the Act. Ms. Pon operated a pharmacy at the EHC site without the requisite pharmacy license which is in direct contravention of and constitutes an offence under the *Pharmacy and Drug Act* section 36(2).

Pharmacy and Drug Regulation section 8

Section 8 provides that licensed pharmacies may operate only at the location specified in their license. The pharmacy license was issued for Corner Pharmacy 15557 Stony Plain Road NW, Edmonton, Alberta yearly for a period of 10 years. Ms. Pon did not apply for a separate license or satellite license during this time period for the EHC site.

Standards for the Operations of Licensed Pharmacies sections 2.3 and 14

Standard 2.3 prohibits a proprietor like Ms. Pon from imposing conditions on staff that would compromise their professional independence, judgment or integrity. Standard 14 relates to the proprietor ensuring the licensee is capable and supported including to ensure compliance with regulatory standards. As owner and proprietor of an unlicensed pharmacy at EHC, Ms. Pon compromised the independence, judgment and integrity of other pharmacists working under the license of Corner Pharmacy by dispatching her employees to provide pharmacy services in an unlicensed pharmacy. Ms. Pon placed the licensee of Corner Pharmacy in a compromising position by assuming that pharmacy services were in compliance at the EHC site, when in fact pharmacy operations were being carried out in an unlicensed facility.

Standards of Practice for Pharmacists and Pharmacy Technicians section 1.1, 1.2, 1.3, and 1.14

These standards require proprietors to practice in accordance with the law and its spirit and intent and to be aware of and comply with changes in the law. They also address ensuring that other professionals do not compromise their independence, judgment or integrity. Ms. Pon acted in an unprofessional manner by failing to ensure compliance with the Standards of Practice for Pharmacists and Pharmacy Technicians and by totally disregarding the need for a license to perform pharmacy operations at the EHC site.

ACP Code of Ethics Principles 1(1), 7(2), 10(1), and 10(2)

These principles require regulated members of the College to act in the best interests of patients, create a work environment that allows others to comply with the law and its spirit and to be honest in all dealings with others. Ms. Pon was in violation of Principles 1(1), 7(2) and 10(1) of the ACP's Code of Ethics by operating an unlicensed pharmacy thereby potentially putting her employees and the public at risk of being harmed and tarnished the integrity of the pharmacy profession.

The term "unprofessional conduct" is defined in section 1(1)(pp) of the *Health Professions Act*:

- Displaying a lack of knowledge of, or skill or judgment in, the provision of professional services;
- Contravening a code of ethics or standards of practice.
- Conduct that harms the integrity of the profession.

Ms. Pon acknowledged operating a pharmacy providing services without a pharmacy license at the EHC site. Her actions not only endangered the public because the College was unaware of the EHC pharmacy and unable to provide adequate regulatory oversight to protect the public, but also harmed the integrity of the regulated pharmacy profession. The public should be entitled to expect all regulated pharmacists to be aware of the regulatory requirements for pharmacies and to comply with them. When pharmacists demonstrate that they have not exercised due diligence, it harms the integrity of the pharmacy profession. Ms. Pon also admitted to the following over a 10 year period:

- a) Failure to keep proper pharmacy records at the EHC site.
- b) Failure to receive, store and dispense medications including narcotics accurately at the EHC site.
- c) Failure to comply with third party billing agreements.
- d) Failure to establish separate wholesale accounts for the EHC site.

Taken in its entirety this demonstrates unprofessional conduct in that it displays a lack of knowledge, judgment and responsibility in providing safe pharmaceutical services to the public.

The term “misconduct” is defined in 1(1)(p)(i), 1(1)(p)(ii), and 1(1)(p)(ix) of the *Pharmacy and Drug Act* as an act or omission that contravenes the Act and is detrimental to the best interest of the public and conduct that harms the integrity of the profession of pharmacy. Ms. Pon is guilty of misconduct in that she continued to operate an unlicensed pharmacy at the EHC site for a period of 10 years, thereby directly contravening the *Pharmacy and Drug Act*. Her actions were detrimental to the public and the integrity of the pharmacy profession for the reasons described above.

V. ORDERS

Once the parties were advised that the Hearing Tribunal had accepted Ms. Pon’s admissions and found unprofessional conduct and misconduct, the parties were invited to present evidence and make submissions with respect to sanctions. The parties referred to their joint submission on sanctions in Exhibit 2.

The Complaints Director and Ms. Pon jointly submitted that the following sanctions would be appropriate pursuant to section 82 of the *Health Professions Act* and sections 23 and 26 of the *Pharmacy and Drug Act*:

Complaints Director's Submission on Sanctions:

1. A fine of \$10,000.00 payable within 90 days of receipt by Ms. Pon of the written decision of the Hearing Tribunal.
2. A reprimand to Ms. Pon.
3. An order that Ms. Pon shall not act as a licensee or proprietor for a period of one year.
4. An order that Ms. Pon shall pay the costs of the investigation and hearing within a period of 6 months from the date of receipt by Ms. Pon of the written decision of the Hearing Tribunal, upon a payment schedule satisfactory to the Complaints Director.

Mr. Jardine submitted that from the College's point of view, the purpose of sanctions was threefold:

- To protect the public,
- To maintain the confidence of the public and the integrity of the profession, and
- To be fair to the member.

Mr. Jardine spoke to a number of factors that are taken into account for the purpose of sanctions. He referred to *Jaswal v. Medical Board (Newfoundland)* (1996) 42 Admin L.R. (2d) 233 which lists these factors. Mr. Jardine explained how these factors should apply in this case:

1. Nature and gravity of the proven allegations: Pharmacy is a self-regulating profession and is subject to licensing and inspections of pharmacies and pharmacists for the protection of the public. The College cannot inspect pharmacies of which it is unaware through the licensing process. In as far as Ms. Pon is concerned no complaints or incidents from the public were identified to ACP.
2. The age and experience of the pharmacist: Ms. Pon has over 30 years of experience so inexperience is not a mitigating factor.
3. Prior complaints or findings: there are none.
4. The age and mental condition of the offended patient: this is not relevant as there were no patient complaints, however there was the potential for a negative impact on patients.
5. The number of times the offence was proven to have occurred: this was an ongoing issue for 10 years.
6. The role of the member in acknowledging what had occurred: Ms. Pon has been fully cooperative with the college and its investigation. The Enoch Health Centre site was immediately shut down in February 2015. Ms. Pon has acknowledged her errors and has accepted full responsibility.
7. Whether the member had suffered other serious financial or other penalties as a result of the allegations: Ms. Pon has not experienced any financial penalties as a result of the allegations.

8. The impact of the incident on the offended patient: while there was no direct harm to the public, the potential for harm was evident.
9. The presence or absence of any mitigating circumstances: Although mentioned above, it is worth noting again that Ms. Pon has been fully cooperative. There is no history of any complaints on file with the College. There was not a deliberate attempt by Ms. Pon to deceive the college.
10. The need to promote specific and general deterrence: Specific deterrence to the member is of lesser concern as the operational practice of pharmacy was stopped immediately at the EHC site. Recently Ms. Pon has sold Corner Pharmacy. The general deterrence is achieved by educating members of ACP that performing pharmacy operations without a license has serious consequences and the seriousness of this situation will result in severe penalties and substantial sanctions.
11. The need to maintain the public's confidence in the integrity of the profession: As the profession of pharmacy is self-regulated, the College relies on its membership to be honest and open about their operations when applying for license renewals and their professional declarations must be transparent in the consequences for unprofessional conduct. The College enforces these rules to protect the public from harm and in this case the College acted quickly to shut down pharmacy operations at the EHC site.
12. The degree to which the offensive conduct is clearly regarded, by consensus, as falling outside the range of permitted conduct: Operating a pharmacy without a license clearly falls outside of the range of permitted conduct, with potential consequences of harm to the public and trust in the profession, and undermines the integrity of the pharmacy profession.
13. The range of sanctions in other similar cases: this case sets a precedent for operating an unlicensed pharmacy in Alberta. It is evident that a pharmacy owner and proprietor must be scrupulous and attentive to all statutes, regulations and standards governing the practice of pharmacy in this province.

Mr. Jardine submitted that:

- a. The fine of \$10,000 is the maximum for a single finding of unprofessional conduct so it is of significance.
- b. There is no request for a suspension rather a reprimand should be placed on Ms. Pon's file.
- c. It is an important message for owners and proprietors to be aware of licensing requirements not only for the self-regulation of the profession but to ensure the public's protection and safety.
- d. While Ms. Pon has been fully cooperative, the costs of the investigation and hearing are significant and should serve as a deterrent to other members for practicing pharmacy in an unlicensed premises.

Investigated Member's Submission on Sanctions

Mr. Chambers was in full agreement with the Complaints Director on sanctions. He again reiterated that Ms. Pon was fully cooperative with the investigation and had complied immediately when asked to cease pharmacy operations at the EHC site. There have been no actual complaints of harm from the public. Ms. Pon's conduct was unfortunate and

inadvertent. She did not set out intentionally to maliciously or deliberately deceive the College in not applying to license the EHC site.

The Hearing Tribunal adjourned to discuss the Joint Submissions on Sanctions. After reconvening, the Hearing Tribunal advised the parties that it agreed with the Joint Submissions on Sanctions in its entirety. The sanctions are commensurate with the severity of Ms. Pon's admitted conduct and appropriately severe to achieve the intended general deterrence. The sanctions also appear to have been proposed taking into account that Ms. Pon was fully cooperative with the College once her conduct came to light.

Ms. Pon inherited an unfortunate set of circumstances in the purchase of Corner Pharmacy and the services it offered at the EHC dispensary. The Hearing Tribunal has no allegations before it or any evidence that Ms. Pon's ability to practice as a clinical pharmacist in Alberta is compromised. However the Hearing Tribunal does have grounds for concerns for the public's safety based on her operational practices at the Corner Pharmacy/EHC dispensary.

As described above, the Hearing Tribunal was deeply concerned about many aspects of the unlicensed pharmacy operations at EHC though the Tribunal was limited to considering the allegations and evidence placed before it. The Tribunal observes that on the evidence before it, Ms. Pon did not actually practice at Corner Pharmacy or the EHC site and so other individuals were involved in the unlicensed operations. The Tribunal hopes that all regulated members of the College will take notice of this case and the importance of ensuring that all pharmacy operations in Alberta are properly licensed and thus supervised by the College.

The Hearing Tribunal did not take this matter lightly and had genuine and warranted safety concerns for the general public in Ms. Pon's operation of an unlicensed pharmacy. The Hearing Tribunal agreed with and accepted the jointly proposed sanctions. The Hearing Tribunal found the sanctions to be appropriate in part because the Hearing Tribunal is confident that Ms. Pon has learned from this experience. The Hearing Tribunal is also confident that if Ms. Pon should choose to become a proprietor/licensee after her one year prohibition on holding such a role expires, she will exercise due diligence in operating a pharmacy in compliance with the laws and guidelines set forth by the College, under the *Health Professions Act* and the *Pharmacy and Drug Act*.

This written decision shall serve as a reprimand on Ms. Pon's file with College.

Signed on behalf of the Hearing Tribunal by its Chair on October 27, 2015.

[Anita Warnick]

Anita Warnick, Chair