

ALBERTA COLLEGE OF PHARMACISTS

IN THE MATTER OF
THE HEALTH PROFESSIONS ACT

AND IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF DENYSIA WINCOTT

DECISION OF THE HEARING TRIBUNAL

August 20, 2013

I. INTRODUCTION

The Hearing Tribunal held a hearing into the conduct of Denysia Wincott. The members of the Hearing Tribunal were:

Mr. Jeremy Slobodan, Pharmacist, Chair;
Ms. Anita Warnick, Pharmacist;
Mr. Mark Percy, Pharmacist;
Ms. Nancy Brook, Public Member.

In attendance at the hearing was Mr. David Jardine, legal counsel for the Alberta College of Pharmacists (the “College”), and Mr. Fred Kozak, independent legal counsel for the Hearing Tribunal. Also present was Mr. James Krempien, Complaints Director for the College, and Ms. Denysia Wincott, who appeared without legal counsel.

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

The hearing took place on January 16, 2013 and March 11, 12, 13, and 27, 2013 at the offices of the College in Edmonton, Alberta. There were no objections to the composition of the Hearing Tribunal or the jurisdiction of the Hearing Tribunal to proceed with a hearing.

II. PRELIMINARY MATTERS

The hearing was originally scheduled to take place on October 2, 3 and 4, 2012. In September, 2012, Ms. Wincott requested an adjournment to obtain legal counsel. The College did not oppose the adjournment request, and the hearing was adjourned to January 15, 16 and 17, 2013.

On December 11, 2012 Ms. Wincott corresponded with the Hearings Director of the College by email indicating she would not be available for the hearing. In further email correspondence, Ms. Wincott clarified that she was required to attend to a court application respecting a personal matter on January 15, 2013. The Hearings Director sought submissions from counsel for the College, who submitted by email on December 13, 2012 that the College opposed this second request for an adjournment. The Hearing Tribunal agreed to adjourn the matter by one day, to January 16, 2013, but declined to adjourn the matter to an unspecified date. The Hearing Tribunal advised both Ms. Wincott and the College of its decision by letter dated December 14, 2012 sent by email.

On January 14, 2013, Ms. Wincott corresponded with the Hearings Director by email requesting confirmation of the date of the hearing. The Hearings Director confirmed that the hearing was scheduled to begin on January 16, 2013.

On January 16, 2013, prior to the beginning of the hearing, Ms. Wincott advised the Hearings Director by email that she was not able to attend the hearing, but wanted to rely on written submissions. This matter was addressed at the beginning of the hearing on January 16, 2013. Mr. Jardine, counsel for the College, submitted that Ms. Wincott had been properly served, and was aware of the scheduled dates of the hearing. Accordingly, the College submitted that

it would prefer that the hearing proceed. The College also submitted that Ms. Wincott's written submissions could serve as an opening statement, but should not be considered evidence given under oath. After deliberating, the Hearing Tribunal agreed to a third adjournment, with new dates being peremptory on Ms. Wincott, barring a medical opinion that Ms. Wincott is not fit to attend the hearing.

III. ALLEGATIONS

The allegations to be considered by the Hearing Tribunal were set out in the Notice of Hearing dated October 16, 2012 as follows:

1. It is alleged that you dispensed prescriptions for yourself that were not for minor conditions, required in an emergency or where another pharmacist was not available. You frequently assessed, filled and/or dispensed your own Metadol, methylphenidate and other Schedule 1 medications, sometimes in the absence of a valid prescription including the following prescriptions:
 - a. January 21, 2010, original fill (240 of 720) of your own prescription for Metadol 25mg (This prescription was also filled ONE day before the prescription's stated issue date);
 - b. February 24, 2010, filled your own part fill (240 of 720) of Metadol 25mg;
 - c. March 24, 2010, filled your own part fill (240 of 720) of Metadol 25mg;
 - d. April 23, 2010, filled your own part fill (240 of 720) of Metadol 25mg;
 - e. May 21, 2010, filled your own part fill (240 of 720) of Metadol 25mg;
 - f. June 19, 2010, filled your own part fill (240 of 720) of Metadol 25mg;
 - g. August 12, 2010, filled your own part fill (240 of 720) of Metadol 25mg;
 - h. September 13, 2010, filled your own part fill (240 of 720) of Metadol 25mg;
 - i. October 16, 2010, deferred your own prescription for Metadol 25mg;
 - j. October 30, 2010, filled your own part fill (240 of 720) of Metadol 25mg;
 - k. November 25, 2010, filled your own part fill (240 of 720) of Metadol 25mg;
 - l. November 7, 2011, filled your own part fill (120 of 720) of Metadol 25mg;
 - m. November 18, 2011, filled your own part fill (120 of 720) of Metadol 25mg;

- n. December 2, 2011, filled your own part fill (120 of 720) of Metadol 25mg (Although the hardcopy is initialed by Naeem Mujahid, he will state that you had previously filled the part fill for yourself and left the hardcopy for him to initial the next day);
- o. December 9, 2011, filled your own part fill (100 of 720) of Teva-methylphenidate ER-C 54mg; and
- p. Other Schedule 1 medications as listed in your patient profile records.

It is alleged that during your interview with Mr. James Krempien on June 14, 2012, you admitted that you assessed, filled and dispensed your own medications.

- 2. It is alleged that you dispensed prescriptions for a member of your immediate family [REDACTED] that were not for minor conditions, required in an emergency or where another pharmacist was not available. You frequently assessed, filled and/or dispensed [REDACTED]'s Concerta, sometimes in error from the original prescription including the following prescriptions:

- a. January 18, 2010, filled part fill of Concerta 54mg;
- b. February 16, 2010, filled part fill of Concerta 54mg;
- c. March 16, 2010, filled part fill of Concerta 54mg;
- d. May 19, 2010, filled Apo-Methylphenidate20mg;
- e. April 21, 2010, filled part fill of Concerta 54mg;
- f. June 3, 2010, filled part fill of Concerta from April 23, 2010 prescription. (Note this prescription was filled incorrectly as the physician ordered SIG was 54mg twice daily and the dispensed SIG by Denysia Wincott was "Take 1 to 2 tablet(s) as directed.");
- g. July 7, 2010, filled part fill of Concerta from Apr 23, 2010 prescription; and
- h. July 10, 2010, filled Apo-Methylphenidate20mg.

It is alleged that during your interview with James Krempien on June 14, 2012, you admitted that you assessed, filled and dispensed [REDACTED] prescriptions for Concerta.

- 3. It is alleged that you dispensed medication for yourself in the absence of valid prescriptions in respect to the following matters:
 - a. Rx #2094711 Metadol 25mg, written on or about April 15, 2011 for Denysia Wincott for 720 tablets. Although partial transaction records are available for this dispensing transaction, there is no record of this prescription at the Triplicate Prescription Program (TPP) and the

physician shown as the prescriber, Dr. Jackman, indicates he did not prescribe this prescription and no original prescription for the dispensed 720 tablets can be located;

- b. Rx #N7233 Metadol 25mg, written on or about August 16, 2011 for Denysia Wincott for 720 tablets. Although partial transaction records are available for this dispensing transaction, there is no record of this prescription at the TPP and the physician shown as the prescriber, Dr. Jackman, indicates he did not prescribe this prescription and no original prescription for the dispensed 720 tablets can be located; and
 - c. Rx #11500 metformin 500mg written on or before January 6, 2012 for Denysia Wincott. It is alleged that in your interview with James Krempien on June 14, 2012 you indicated that you directed Naeem Mujahid to have delivered to you 20 tablets of metformin on the basis of a legitimate metformin prescription you indicated that you previously had on file at Medicine Shoppe Pharmacy #189 but that during the interview you could not recall which physician may have prescribed you this medication and this metformin prescription could not be located in the pharmacy, nor was the previous licensee aware of its existence.
4. It is alleged that you were unable to locate or produce required pharmacy records including the following:
- a. Narcotic invoices

The following narcotic invoices that could not be located at the pharmacy by Ms. Voice, Mr. Shenouda or yourself:

- i. McKesson invoices from: September 14, 2010 (572327), November 2, 2010 (688361), December 9, 2010 (780343), December 28, 2010 (822975), January 10, 2011 (849223), January 14, 2011 (863434), February 22, 2011 (953971);
- ii. Imperial invoices from: January 8, 2011 (062088), March 23, 2011 (069899), May 7, 2011 (074804), June 3, 2011 (309344), August 15, 2011 (085175); and
- iii. Amerisource invoice from: October 17, 2010 (6124932).

- b. Complete transaction hardcopies

Original transaction documents which are required as part of the prescription audit trail, were either missing entirely or did not clearly identify all individuals involved in the dispensing process (i.e., no pharmacist original signature/initials) for the following prescriptions:

- i. no hardcopy for the deferral of the January 20, 2011 Concerta 54mg prescription for Denysia Wincott. As there was no locatable hardcopy of the deferral that occurred on or about January 20, 2011 there is no required audit trail and no way of knowing if this is the prescription that formed the basis of the November 7, 2011 (Rx10612/Tx9902 for 200 tablets) and December 9, 2011 (Rx10612/Tx11540 for 100 tablets) "Teva-methylphenidate ER-C 54mg" part fills that were dispensed to you. Also, there is no electronic record of the January 20, 2011 Concerta prescription on your pharmacy patient profile;
- ii. no complete hardcopy of the April 23, 2010 Metadol 25mg part fill (Rx/87769/Tx179580). Only electronic initials on hardcopy, no pharmacist initials/signature;
- iii. for the January 19, 2011 original Metadol 25mg TPP prescription it is not possible to determine from the record which pharmacist placed the incomplete signature and & certificate number on the prescription. Although the initials look like "JB" (referring to [REDACTED] as the pharmacist dispensing the Metadol), in your June 14, 2012 meeting with James Krempien you admitted that this was your handwriting and you dispensed this part fill to yourself. However, the associated hardcopy for the January 19, 2011 part fill does not have your original signature/initials and the electronic initials indicate "JRB;" and
- iv. no hardcopy for the following transactions: February 15, 2011 part fill of Metadol 25mg, October 16, 2010 deferral of Metadol 25mg, November 25, 2011 part fill of Metadol 25mg, December 17, 2010 part fill of Metadol 25mg, August 16, 2011 part fill of Metadol 25mg, May 16, 2011 part fill of Teva-methylphenidate ER-C 54mg, August 15, 2011 part fill of Teva-methylphenidate ER-C 54mg.

c. Original prescriptions

The following original prescriptions could not be located at the pharmacy by Ms. Voice, Mr. Shenouda or you:

- i. Rx #2090978 Metadol 25mg, written on October 15, 2010 for Denysia Wincott (logged by you on October 16, 2010). Although the original TPP prescription could not be located at the pharmacy, the College copy was available through the CPSA/TPP;
- ii. Rx #2094711 Metadol 25mg, written on or about April 15, 2011 for Denysia Wincott. Although partial transaction records are available for this dispensing transaction, there is no record

of this prescription at the TPP and Dr. Jackman who is indicated as the prescribing physician indicates he did not prescribe this prescription;

- iii. Rx #N7233 Metadol 25mg, written on or about August 16, 2011 for Denysia Wincott. Although partial transaction records are available for this dispensing transaction, there is no record of this prescription at the TPP and Dr. Jackman, who is indicated as the prescribing physician, indicates he did not prescribe this prescription; and
- iv. Rx #11500 metformin 500mg written on or before January 6, 2012 for Denysia Wincott. It is alleged that in your interview with James Krempien on June 14, 2012 you indicated that you directed Naeem Mujahid to deliver to you 20 tablets of metformin on the basis of a legitimate metformin prescription you indicated that you had previously had on file at Medicine Shoppe #189 although during the June 14, 2012 interview you could not recall which physician may have prescribed you this medication and this metformin prescription could not be located in the pharmacy, nor was the previous licensee aware of its existence.

d. Health Canada Loss or Theft Report Forms for Controlled Substances and Precursors

You suggested that you were aware of the theft or losses of narcotics on three occasions (October 21, 2010, November 1, 2010 and May 16, 2011) while acting as the licensee but although you indicated that you had reported these losses/thefts to Health Canada, Health Canada personnel confirmed that these forms were not received at Health Canada and during Mr. Raisbeck's July 4, 2011 visit with you at Medicine Shoppe #189 you could not locate these allegedly completed forms, nor did you follow up by faxing these allegedly completed forms to Mr. Raisbeck or the Alberta College of Pharmacists.

It is alleged that these forms were not faxed to Health Canada within 10 days of each loss/theft being detected and that these forms were either completed upon detection and not submitted to Health Canada, or completed subsequent to the initiation of the investigation into your conduct. It is further alleged that Mr. Naeem Mujahid indicated that he previously asked you for copies of these forms and you were unable to provide them.

e. No systematic perpetual narcotic records and/or lack of narcotic perpetual entries

It is alleged that prior to April 2011 as licensee of the pharmacy you did not have a systematic, current or accurate method of monitoring the inventory of the pharmacy's narcotics.

It is also alleged that in April 2011 you implemented narcotic perpetual records based on previous pharmacy sales/receipt records but these perpetual records were not maintained until Naeem Mujahid restarted this record keeping practice in November/December 2011.

It is also alleged that the perpetual records you created in April 2011 did not track the current inventory of the narcotics and that when comparing the sales/receipt records on the perpetual records to all the sale/receipt records found in the investigation by the College even for the back dated period range recorded on the April 2011 perpetuals, many narcotic entries were missing.

5. Lack of narcotic control in the pharmacy

It is alleged that as a pharmacist, licensee and proprietor, you did not comply or attempt to comply with the legislative requirements pertaining to narcotics in respect to the narcotics you received from the pharmacy including the following matters:

- a. the August 16, 11 Metadol 25 "prescription" record, which is a pharmacy generated refill authorization request, from which subsequent Metadol part fills were dispensed but no August 2011 Metadol TPP was prescribed by Dr. Jackman, even though the "Narcotic Sales Report" indicates it was a "W" (written) prescription;
- b. your admission to Mr. Krempien, supported by the documentation referred to above that you routinely assessed and dispensed your own narcotic prescriptions;
- c. a medication in/out analysis at Medicine Shoppe #189 for the period from January 1, 2010 to January 11, 2012 for Metadol 25 mg, shows that the Metadol In for the pharmacy (3700) does not equal the Metadol Out for the pharmacy (2880); and
- d. the medication analysis for the same period for the Teva-MPD ER-C 54mg tablets shows that the Teva-MPD ER-C 54mg in for the pharmacy (1200) does not equal the Teva-MPD ER-C 54mg Out (463).

It is alleged that the disparities in the medication in/outs referred to above largely occur while you were licensee of the pharmacy and before Naeem Mujahid took over as licensee and that this also applies for the missing

records, as most of the missing records are for the period before Naeem Mujahid took over as licensee.

6. Diverted narcotics

It is alleged that you diverted for your personal use, in addition to the prescriptions summarized above in paragraphs 3a and 3b, an additional ~800 tablets of Metadol 25mg and ~700 tablets of methylphenidate ER-C 54mg tablets based on the unaccounted discrepancies in the totals of these medications received versus sold by the pharmacy from September 2010 to January 2012.

It is alleged that you were the pharmacy's only patient on Metadol 25mg, you had a demonstrated pattern of dispensing your own medications and you have demonstrated the behavior of obtaining medication without a valid prescription and that for the pharmacy's only other methylphenidate ER-C 54mg patient [REDACTED], an original prescription could be located for the tablets he was dispensed by pharmacy staff.

7. Lack of compliance with the Triplicate Prescription Program (TPP)

It is alleged that as a pharmacist and licensee you failed to comply with the TPP and that your lack of compliance with the TPP is evidenced by:

- a. the January 19, 2011 Metadol 25mg TPP prescription not submitted to CPSA/TPP;
- b. the April 15, 2011 Metadol 25mg prescription not submitted to TPP & no prescription found;
- c. the August 16, 2011 Metadol 25mg "prescription" not submitted to TPP & no prescription found;
- d. Concerta prescriptions for you and other patients dispensed as Teva-MPD; and
- e. you filling your own Metadol 25mg on January 21, 2010 ONE day in advance of authorized Rx written on January 22, 2010 by Dr. Jackman.

8. Breach of condition to practice under direct supervision

On July 25, 2011 the Registrar placed, in part, the following condition on your practice permit: "Requires direct supervision by a clinical pharmacist".

It is alleged that according to the information provided by Naeem Mujahid and supported by the reprint of the transaction label sheet that you, without supervision, dispensed your own part fill of methylphenidate ER-C 54mg tablets at 12:06 a.m. on December 9, 2011.

Although you indicated on June 14, 2012 in your interview with James Krempien that you only “rebilled” this prescription at 12:06 a.m., albeit without supervision, no original prescription or hardcopy transaction record could be located for this part fill and you had a demonstrated history of frequently filling your own prescriptions.

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

- Standards 1, 5, 6 and 18 and Sub-Standards 1.1, 5.1, 5.4(b), 5.5, 5.6, 6.1(a), 6.15, 6.17, 18.3 and 18.4 of the Standards for Pharmacist Practice that were in place until July 1, 2011 and the equivalent sections after July 1, 2011;
- Sections 1(1)(pp)(i), 1(1)(pp)(ii), 1(1)(pp)(iii), 1(1)(pp)(viii) and 1(1)(pp)(xii) of the *Health Professions Act*;
- Standard 4 and Sub-Standards 73(a) and 73(b) of the Standards for Operating Licensed Pharmacies that were in place until July 1, 2011 and the equivalent sections after July 1, 2011;
- Sections 12(1), 12(6)(c), 12.1(b), 12.1(c)(i), 12.1(d)(i), 12.1(e), 12.1(f), and 12.1(i) of the Pharmacy and Drug Regulation;
- Sections 1(1)(p)(i), 1(1)(p)(ii), 1(1)(p)(iv), 1(1)(p)(vi), 1(1)(p)(ix), 10(1)(a), 10(1)(b), 10(1)(d)(1)(iv) and 11(3) of the *Pharmacy and Drug Act*;
- The provisions of the Triplicate Prescription Program requiring the pharmacist to dispense TPP drugs only pursuant to TPP prescriptions and requiring the pharmacist to submit the College of Physicians and Surgeons’ copy of TPP prescriptions to the CPSA and the requirement for all methylphenidate products (with the exception of brand name Concerta) to be dispensed from TPP prescriptions;
- Principles I(1), III(4), X(1) and XI(5) of the ACP Code of Ethics;
- The *Controlled Drugs and Substances Act*, section 4(1); and
- Sections 30, 31(1), 31(3) and 40(2) of the Narcotic Control Regulations

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), 1(1)(pp)(iii), 1(1)(pp)(viii) and 1(1)(pp)(xii)

of the *Health Professions Act* and sections 1(1)(p)(i), 1(1)(p)(ii), 1(1)(p)(iv), 1(1)(p)(vi) and 1(1)(p)(ix) of the *Pharmacy and Drug Act*.

IV. EVIDENCE

The parties entered the following documents at the hearing:

Notice of Hearing	Exhibit 1
Correspondence Log Scheduling Complaint Number 2342	Exhibit 2
Continuation Notice of Hearing	Exhibit 3
Record of Decision Under s. 66(3) of the <i>Health Professions Act</i>	Exhibit 4
Two Binders and the Sequence of Events Report	Exhibit 5
Letter sent to Ms. Wincott on August 23, 2012, and the e-mail exchange with Ms. Wincott on September 6 and September 5, 2012	Exhibit 6
My Defence: Complaint 22342, 4 pages	Exhibit 7
Revised My Defence: Complaint 22342	Exhibit 8
E-mail from Denysia Wincott to Margaret Morley December 16, 2011	Exhibit 9
E-mail from Denysia Wincott to Margaret Morley July 29, 2012	Exhibit 10
E-mail from Denysia Wincott to Margaret Morley August 16, 2012	Exhibit 11
E-mail from Denysia Wincott to Margaret Morley July 5, 2011	Exhibit 12
E-mail from Denysia Wincott to Margaret Morley August 6, 2011	Exhibit 13
E-mail from Denysia Wincott to Margaret Morley August 17, 2011	Exhibit 14
E-mail from Denysia Wincott to Margaret Morley December 30, 2011	Exhibit 15
Call Log, 17 pages	Exhibit 16
E-mail from Denysia Wincott sent March 12, 2013 to Margaret Morley	Exhibit 17

The College called four witnesses, Mr. James Krempien, Ms. Jennifer Voice, Mr. Jamie Raisbeck, and Mr. Muhammad Naeem Mujahid. Ms. Wincott testified on her own behalf. No other witnesses were called.

James Krempien

Mr. Krempien is the Complaints Director for the College, and has held this position since May, 2008.

Mr. Krempien testified that Ms. Wincott was registered as a pharmacist with the College on or about July 1, 2006 and that previously she had practiced in Manitoba.

Mr. Krempien testified extensively about the sequence of events of the complaint and investigation, summarized in a Sequence of Events Report and two accompanying binders

(Exhibit 5) containing a combined 87 tabs, which set out a chronological sequencing of all of his actions or interactions regarding the complaint, starting with the complaint itself, containing summaries of contacts, documents received, information gathered throughout the investigation, and finally setting out an analysis and conclusion about how to proceed with the complaint. While Mr. Krempien went through each of the 87 tabs, a summary of his testimony and the evidence in the tabs is set out below.

Mr. Krempien testified that he had received a complaint from Ms. Jennifer Voice, a professional practice consultant with the College on January 11, 2012 (Exhibit 5, Tab 1). The complaint stemmed from what was originally a routine assessment of Ms. Wincott's pharmacy, The Medicine Shoppe #189, in September 2011, at which time several deficiencies with the practice of the pharmacy were noted. Ms. Voice attended again on December 16, 2011 in order to work with Mr. Mujahid, who was the licensee of the pharmacy at the time. She attended again on January 4, 2012. Following this third visit, Ms. Voice filed a complaint with Mr. Krempien. Attached to the complaint were several documents about which Mr. Krempien testified, including the following:

- A movement report generated by the pharmacy software system for Metadol solution summarizing the number of prescriptions and corresponding quantity units dispensed for monthly periods;
- A Narcotic Sales Report from October 2011 until January 4, 2012, identifying that the one patient on Metadol for the pharmacy was Ms. Wincott;
- A Patient Tax Receipt Report for Ms. Wincott identifying the medication she had dispensed at the pharmacy from approximately August 16, 2011 to mid-December, 2011.

Mr. Krempien testified that as a result of the complaint, he appointed himself and Mr. Jamie Raisbeck as investigators under the HPA. Mr. Krempien wrote to Ms. Wincott on January 11, 2012 (Exhibit 5, Tab 5) notifying her of the complaint and requesting a written response to the complaint. In addition to his general request for a response, Mr. Krempien requested specific pharmacy records from September 1, 2010 to January 11, 2012 for Metadol 1mg, Metadol 5mg, Metadol 10mg and Metadol 25mg tablets, Metadol 10mg/ml solution and Teva-methylphenidate ER-C 54mg tablets. Mr. Krempien's January 11, 2012 letter requested a response date of February 11, 2012.

Mr. Krempien testified that Ms. Wincott, after initially indicating a response was forthcoming, and after obtaining a one month extension to March 11, 2012, indicated that she was not close to completion and asked for another extension, proposing a date of March 23, 2012. Mr. Krempien agreed and set a time of 4:00 p.m. on March 23, 2012. On March 25, 2012, Ms. Wincott sent Mr. Krempien an email purporting to attach a response, but no attachment was included in the email. On March 26, 2012, Mr. Krempien advised Ms. Wincott that there was no attachment to her email. She replied on March 30, 2012 with an attachment; however her response did not include any supporting documentation.

Mr. Krempien testified, with supporting email documentation that on April 2, 2012, Ms. Wincott advised that her son would deliver the supporting documents to the offices of the College in good time. Mr. Krempien responded on April 3, 2012 and advised her to deliver the documents personally by 4:00 p.m. that day. She advised by email that she would see to the delivery of the documents immediately. On April 5, 2012, Mr. Krempien wrote to Ms. Wincott advising her that she had not provided the documents, nor had she been in contact since she advised that she would deliver the documents immediately. In this email, Mr. Krempien expressed concern that Ms. Wincott had established a pattern of not being able to meet document submission deadlines, which could be considered failure to cooperate with his investigation, which could result in another allegation of unprofessional conduct.

On April 10, 2012, Mr. Krempien had a telephone conversation with Ms. Wincott during which she advised she would look into the documentation and get back to him by noon the following day. She left a voicemail message for Mr. Krempien the following day at approximately 1:35 p.m. stating that her son had delivered the documentation to the wrong location, but that she could retrieve it and deliver it by April 13, 2012 at the latest. Ms. Wincott left another voicemail on April 16, 2012 indicating that she would drop the documentation off that afternoon. On April 17, 2012, Mr. Krempien emailed Ms. Wincott advising that he had not yet received the documentation and wished to speak to her personally. Ms. Wincott replied that same day, and in a second email to her that day, Mr. Krempien directed Ms. Wincott to propose a date and time within the following 10 days where she would drop off the documentation. On April 20, 2012, Ms. Wincott delivered the supporting documentation to the College.

Mr. Krempien testified that when he reviewed Ms. Wincott's supporting documentation; he noted that she supplied originals, and not copies as requested. He noted that the documents provided included a table of contents, two binders of assorted inventory reports, selected prescriptions and associated hardcopies, a partial pharmacy prescription history report from one of the two pharmacy software systems, wholesaler invoices for selected medications, perpetual inventory records for selected medication, methadone daily witnessed ingestion maintenance therapy records from January and February, 2012, and an incomplete drug error report from January 25, 2012. She also included three completed Health Canada Loss or Theft Reports including accompanying Edmonton Police Service witness statements.

Over the next several weeks, Ms. Wincott and Mr. Krempien had several more email exchanges respecting Ms. Wincott's collection of her original documents, and indicating she had further information to provide. During these email exchanges, Mr. Krempien requested that Ms. Wincott provide complete prescription histories for the pharmacy patients receiving the medications subject to the investigation; Mr. Krempien testified Ms. Wincott had provided other, incomplete information on different medications.

Mr. Krempien testified that further information was collected by Jennifer Voice when she attended the pharmacy on May 18, 2012, including information and records demonstrating that Ms. Wincott had dispensed prescriptions for herself and [REDACTED].

After some difficulty coordinating scheduling, Mr. Krempien and Ms. Wincott agreed to meet on June 14, 2012 at the offices of the College. Mr. Krempien testified that several things, including the following, took place at that meeting:

- Ms. Wincott explained all the invoices for Metadol 25mg, Metadol 10mg and methylphenidate ER-C 54mg from September 2010 to January 2012 she provided;
- Ms. Wincott provided some explanation for the narcotic perpetual sheets she started in April 2011;
- Ms. Wincott stated the pharmacy had switched software systems in or around April 2011;
- Ms. Wincott confirmed that she customarily dispensed her own Metadol prescriptions, as well as ████████'s prescriptions for Concerta; and
- Ms. Wincott admitted that she was unable to locate many of the transaction hardcopies and original prescriptions required for the investigation;
- Ms. Wincott stated that she had completed and faxed the required Health Canada Narcotic Loss or Theft reports shortly after each of the three losses/thefts;
- Ms. Wincott offered no explanation for her missing April 2011 and August 2011 Metadol prescriptions, and attempted to explain the several inconsistencies with respect to dates of issue and dates of fill for her January 2011 Metadol prescription;
- Ms. Wincott indicated that she often worked independently in the pharmacy after hours rebilling prescriptions; and
- Ms. Wincott described the events related to Allegation 3(c) respecting the January 6, 2012 metformin prescription dispensed to her by Mr. Mujahid. Mr. Krempien and Ms. Wincott agreed to meet again the next day so that she could provide him with a copy of the prescription. Mr. Krempien testified that at the June 15, 2012 meeting, Ms. Wincott did not provide him with a copy of the prescription, indicating that she had been sick and was not able to attend the pharmacy. Mr. Krempien attended the pharmacy that day with the intention of searching for the prescription. He did not find the prescription, but he did find other documentation, including a handwritten note by Mr. Mujahid outlining what had happened.

In addition to Mr. Krempien's dealings with Ms. Wincott, he also provided testimony and documents pertaining to other avenues pursued over the course of the investigation. Mr. Krempien contacted physicians who had prescribed or purportedly prescribed medication to Ms. Wincott in order to request summary prescribing records, and contacted Health Canada who confirmed that they had not received any Narcotic Loss or Theft reports from Ms. Wincott's pharmacy. Additionally, Mr. Krempien contacted the College of Physicians and Surgeons of Alberta and the Triplicate Prescription Program to request records for Ms. Wincott and her pharmacy. Mr. Krempien also contacted wholesalers with whom Ms. Wincott had done business: McKesson, Imperial and AmerisourceBergen, in an attempt to

locate records which could not be found or produced by Ms. Wincott. These aspects of the investigation are set out clearly in Mr. Krempien's Sequence of Events Report and accompanying binders (Exhibit 5).

Based on all of the information gathered over the course of the investigation, Mr. Krempien testified that he prepared a detailed In/Out Analysis (Exhibit 5, Tab 87), as well as the Sequence of Events Report. The In/Out Analysis, Mr. Krempien testified, consisted of a summary of all of the receipts into the pharmacy, primarily from the pharmacy and wholesalers, as well as all of the sales out.

Mr. Krempien testified that the conclusions of his investigation formed the basis of the allegations as set out in the Notice of Hearing. Based on Mr. Krempien's investigation he directed that the matter be referred to a Hearing Tribunal.

During Mr. Krempien's testimony, Ms. Wincott alleged that she did not receive certain tabs of the evidence binders ahead of the Hearing. Upon review, the Hearing Tribunal determined to proceed and ensure that Ms. Wincott received those materials. The following day Ms. Wincott confirmed that she had in fact received the materials in question.

The primary focus of Ms. Wincott's cross-examination of Mr. Krempien related to the interactions between Mr. Krempien and Ms. Wincott, and Mr. Krempien's knowledge of the circumstances of Ms. Wincott's life at the time. During cross-examination, Mr. Krempien acknowledged that he was aware that Ms. Wincott was being sued by former wholesalers respecting medications that were not paid for. He also testified that through his discussions and correspondence with Ms. Wincott, he understood that she believed that former staff members and wholesalers had worked together to either provide her with invoices requesting payment for drugs that were not received, or to have drugs diverted.

Ms. Wincott asked Mr. Krempien questions related to the restrictions placed on her practice by the Registrar of the College. Mr. Krempien testified that he understood that some of the concerns related to Ms. Wincott's lack of or failing eyesight. Ms. Wincott asked Mr. Krempien if he had considered whether her poor eyesight would have an effect on all of the documentation he asked her to obtain as part of the investigation. Mr. Krempien responded that at no point during the investigation did Ms. Wincott ask for an accommodation in that respect. He also stated that it was his understanding that Ms. Wincott only considered her eyesight a moderate impairment.

Ms. Wincott asked Mr. Krempien why the complaint came against her during the period of time when she was no longer licensee. Mr. Krempien responded that the complaint from Ms. Voice pertained to Ms. Wincott as licensee, but also as proprietor of the pharmacy.

Ms. Wincott suggested to Mr. Krempien that he was biased towards her, and should not have been involved in the investigation. Mr. Krempien testified that he was unsure as to the reason why she would think he was biased towards her.

Jennifer Voice

Ms. Voice testified that she has been a pharmacist since 1992, and had been employed with the College as a pharmacy practice consultant since 2010. She testified that in this role, she conducts routine assessments of community pharmacies, as well as directed assessments as assigned by other departments of the College. Ms. Voice testified that prior to her first attendance at Ms. Wincott's pharmacy she had conducted approximately 50 assessments. Ms. Voice testified that her initial site assessment in September 2011 was a routine pharmacy assessment and that she did not do any additional or special preparation for the assessment. She testified that both Ms. Wincott and Mr. Mujahid attended the assessment.

Ms. Voice testified that pursuant to her practice, upon assessment she made note of deficiencies in the pharmacy in a document, which was signed by Mr. Mujahid, which he was to then fill out addressing whether deficiencies had been dealt with. Ms. Voice testified that she had several main areas of concern from the initial assessment in September 2011. She was concerned about a lack of control of narcotic inventory, including the inability to retrieve the appropriate invoices, the appearance that a narcotic had been dispensed without a valid prescription, and a lack of an up-to-date perpetual inventory system.

She noted these concerns as "deficiencies" which must be acted upon, as opposed to "recommendations" and stated that she advised Mr. Mujahid that all prescriptions must have an associated valid prescription, that a perpetual inventory must be in place, and that narcotic invoices must be retrievable. She also noted that the general state of pharmacy was unorganized and messy, including the office/patient counseling room which was full of clutter and mail.

Ms. Voice testified that following the first assessment, although she did not submit a complaint, she advised Mr. Krempien by email of what she observed as she had not before come across a pharmacy in that condition.

As a result of the September 2011 assessment, Ms. Voice testified that she conducted a follow-up assessment on December 16, 2011. In attendance that day was Mr. Qureshi, a relief pharmacist. Ms. Voice testified that during this visit she noted six deficiencies, notably that the narcotic deficiency remained, that the patient counseling area needed to be kept free for counseling patients, that there was a lack of access to Netcare, that there was a website deficiency, that there was a deficiency in the storage of refrigerated items, and that there was a continued lack of a narcotic perpetual inventory as well as a lack of a quality assurance process to report medication errors. Ms. Voice testified that these deficiencies were noted in an Action Report that was left at the pharmacy for a follow-up.

Ms. Voice testified that she conducted another assessment of the pharmacy on January 4, 2012, as directed by the Registrar of the College, Mr. Eberhart. Ms. Voice testified that the assessment was directed because the licensee, Mr. Mujahid, was stepping down from his position. Ms. Voice testified that Mr. Mujahid was present for this assessment. She testified that during the assessment, she documented deficiencies as she had done before. She testified that there continued to be a lack of control over narcotic inventory, as well as some other operational deficiencies.

Ms. Voice testified that she attended the pharmacy next on January 11, 2012, as directed by Mr. Eberhart, to secure records and inventory in anticipation of the pharmacy's closure because it no longer had an active licensee. She provided a report from that visit, which was submitted in evidence as part of Exhibit 5. In that report she provided details on securing the inventory and the preparation of a drug inventory listing for the medications which were secured. She also described the efforts made to retrieve hardcopies of narcotic prescriptions, as requested by Mr. Krempien. Ms. Voice's report also noted that during that visit, a Metadol 25mg prescription which had been identified in September, 2011 could no longer be located.

Ms. Voice testified that following her January 11, 2012 attendance at the pharmacy, she submitted the complaint memo to Mr. Krempien because over her three visits to the pharmacy, her documented deficiencies respecting the lack of care and control of narcotics and narcotic records had not been corrected.

Ms. Voice testified that she next attended the pharmacy on May 18, 2012, due to a change in hours of operation. Following the visit, Ms. Voice noted in an email to Mr. Eberhart that the new licensee, Mr. Shenouda, had made significant progress in terms of overall cleanliness and compliance. Ms. Voice recommended a follow-up visit in 2-3 months to check the progress and provide support.

Ms. Voice testified that she attended the pharmacy on June 15, 2012 to secure drug inventory and facilitate a narcotic count due to the closing of the pharmacy. Ms. Voice did not provide a report for this visit.

Upon cross examination, Ms. Wincott asked Ms. Voice if she recalled anything about Ms. Wincott's concerns and personal situation over the course of Ms. Voice's visits. Ms. Voice testified that she did not remember Ms. Wincott's specific concerns respecting her practice.

Jamie Raisbeck

Mr. Raisbeck testified that he worked on a contract basis with the College as an investigator to help with complaints, and had done so for about seven years. He testified that he practiced in community pharmacies for 35 years.

Mr. Raisbeck testified that he had received a telephone call from Mr. Krempien in or about June 2011 in which Mr. Krempien mentioned that Ms. Wincott had called the College respecting narcotics that she believed were missing from her store. He testified that Mr. Krempien asked him to attend the pharmacy, look at Ms. Wincott's procedures and policies respecting narcotics, discuss the possibility of narcotics being missed, discuss notifying the proper authorities if there were missing narcotics, and do an inventory of OxyContin and methadone. He testified that at this point, his involvement was not part of a complaint investigation.

Mr. Raisbeck testified that he attended the pharmacy on June 20, 2011. He arrived at approximately 8:50 a.m., ten minutes before the 9:00 a.m. opening time of the pharmacy. He testified that at approximately 9:10 a.m., the pharmacy technician Ms. Youssef went into the pharmacy and turned the lights on. A patient arrived at 9:30 a.m., however the doors to the

pharmacy were still locked. Mr. Raisbeck remained at the pharmacy and testified that between 9:30 a.m. and 10:30 a.m., he observed nine patients arrive at the pharmacy who were unable to enter as the doors remained locked. He testified that he was let into the pharmacy after introducing himself to Ms. Youssef, and observed that while the front of the store was very tidy, the dispensary and Ms. Wincott's office were quite cluttered and disorganized, with stacks of papers up to a foot high going along the base of walls and on Ms. Wincott's desk. He testified that he was told by the pharmacy technician that Ms. Wincott would not be at the pharmacy that day as she was ill in the hospital.

Mr. Raisbeck testified that he returned to the pharmacy on July 4, 2011 to meet with Ms. Wincott. She advised him that she suspected that two former staff members, who had been responsible for keeping the narcotics records, were involved with the missing narcotics. Mr. Raisbeck testified that when he inquired about whether Ms. Wincott had contacted the authorities, Ms. Wincott provided him copies of police reports, but that the reports contained very little about missing narcotics. He testified that Ms. Wincott could not locate the Health Canada notification she stated was completed for the missing narcotics. Mr. Raisbeck testified that Ms. Wincott advised him that she was not doing a computer-based perpetual inventory, but that she was physically observing what was coming into the store and what was being dispensed, and that she was in the midst of changing computer programs, which would enable her to have a computer inventory. Mr. Raisbeck testified that he also requested from Ms. Wincott a list of those drugs about which she had concerns. He testified that to his knowledge, Ms. Wincott never provided such a list.

Mr. Raisbeck testified that when he asked Ms. Wincott if he could conduct an inventory count of OxyContin and methadone, Ms. Wincott advised him that she no longer carried those in stock, and would instead order stock from the supplier as needed, who could provide it to her within an hour.

Mr. Raisbeck testified that he spoke with Ms. Wincott respecting the concern of another pharmacist about difficulty in obtaining a copy of a prescription from her pharmacy. Mr. Raisbeck testified that Ms. Wincott felt the other pharmacist was asking for a copy of the prescription in an extremely tight timeline and had telephoned her five times in 30 minutes. Mr. Raisbeck testified that Ms. Wincott advised him that while she understood that the prescription belongs to the patient, she felt that her handling of the situation had been reasonable.

Mr. Raisbeck testified that he prepared a report and provided it to Mr. Krempien.

Ms. Wincott did not cross-examine Mr. Raisbeck.

Muhammad Naeem Mujahid

Mr. Mujahid testified that he had been registered with the College as a pharmacist since April 29, 2011. He testified that he was previously a pharmacist in his home country of Pakistan, where he graduated in 1995. Prior to becoming registered in Alberta, Mr. Mujahid interned at a pharmacy in Edmonton. He testified that after being registered with the College, he first worked as a locum pharmacist in various locations throughout Alberta. Mr. Mujahid testified

that Ms. Wincott brought him to the College to be registered as the licensee of Ms. Wincott's pharmacy on August 16, 2011, and that he started to work there the following day as licensee.

Mr. Mujahid testified that he had been told that this pharmacy would be a challenge. When he began working there, he found there was no regular pharmacist on staff, and that patients complained of not being able to obtain their medication for various reasons, such as not being able to locate the prescription or the medication not being in stock and not being available from wholesalers. He testified that the pharmacy was messy, that there was a lack of signed hardcopies, and that there were prescriptions and other records missing.

Mr. Mujahid testified that he recalled Ms. Voice's visits and her reported deficiencies. He testified that he made efforts to improve the things that Ms. Voice identified, including making a new compounding area, cleaning, and organizing. He testified that Ms. Voice had expressed that she recognized his efforts in trying to improve the situation.

Mr. Mujahid testified that he had problems with narcotic storage and documentation, and with the fact that there was no perpetual count. He testified that on one occasion, he could not find certain records that should have been in the narcotic cupboard, and upon confronting Ms. Wincott, discovered that she had taken the records home. Mr. Mujahid testified that he had attempted to change the code to the narcotic cupboard but that the other pharmacist, against Mr. Mujahid's wishes, had provided the new code to Ms. Wincott.

Mr. Mujahid provided testimony with respect to his supervisory role vis-à-vis Ms. Wincott. He testified that she would come to the pharmacy in the middle of the night when he was not there, and that on some occasions, he would arrive at the pharmacy in the morning to find that prescriptions had been filled by Ms. Wincott overnight, albeit without a signature or complete processing.

Mr. Mujahid testified that Ms. Wincott was the pharmacy's only narcotic patient for some time, and that at first, he was unaware that Ms. Wincott was the patient receiving Metadol. He also testified that it was Ms. Wincott who would order this medication. He testified that he had difficulty determining how many tablets she took, as she would often change the number of tablets from one dosage to another.

Mr. Mujahid testified that Ms. Wincott was very aggressive towards him, treating him poorly and without respect. Accordingly, he decided to resign his position. His last day at the pharmacy was January 10, 2012.

With respect to Allegation 3(c) pertaining to the January 6, 2012 dispensing of a metformin prescription, Mr. Mujahid testified that at first he was resistant to providing Ms. Wincott with the medication, but that he did so on good faith that there was a valid prescription, and that he documented his actions.

On cross-examination, Ms. Wincott asked Mr. Mujahid about a potential business deal between herself, Mr. Mujahid, and another pharmacist working at the pharmacy. Mr. Mujahid testified that there had been discussion about the potential of opening other

pharmacies together, but that he eventually decided not to take part because Ms. Wincott's existing pharmacy was in debt, and she did not have a good relationship with vendors.

Ms. Wincott asked Mr. Mujahid about his knowledge of her paper-based perpetual inventory system and showed him binders. He testified that at the time he worked at the pharmacy, he was not aware of her processes. He testified that he started his own perpetual inventory count sheets in or about October 2012, and did these monthly. Mr. Mujahid testified that the old computer system, Simplicity, would not perform printouts, and so he developed manual charts.

Ms. Wincott asked Mr. Mujahid if he was aware that Ms. Wincott did monthly sales reports for the franchise. Mr. Mujahid testified that he recalled printing out reports for Ms. Wincott, and that he understood that these reports were to determine financial matters for the franchise.

Ms. Wincott asked Mr. Mujahid about his handling of blister packs, and if he recalled her reminding him that standards and regulations had to be followed and were required by the College. She asked him if he recalled saying to her that he had worked in many places and knew what to do. Mr. Mujahid testified that he did not have any specific recollection of discussing blister packaging with Ms. Wincott, but that when Ms. Voice provided him with direction respecting the blister packaging, he corrected his practice to comply with the College's requirements.

When questioned by the Hearing Tribunal, Mr. Mujahid testified that Ms. Wincott had keys to the pharmacy and would come to the pharmacy after hours, or stay at the pharmacy after he left for the day.

Denysia Wincott

Ms. Wincott testified that she had worked as a pharmacist for nearly 30 years, mainly in community pharmacy, and had practiced in Ontario, Manitoba, and Alberta. Ms. Wincott testified that over the course of her career she has been involved with various educational committees and boards, including sitting on the board of the diabetes education section of the Canadian Diabetes Association, and has acted as a preceptor for students.

Ms. Wincott testified that she relocated to Edmonton in 2005. First she managed a small pharmacy in Beaumont, and became involved in a program for international pharmacy graduates seeking licensure. She testified that the University of Alberta approached her to instruct courses through the experiential program. She testified that she began to take this on, but decided not to continue as the workload was too much.

Ms. Wincott has been the owner of Medicine Shoppe #189 since December 2008. She testified that while the first couple of years went well, this changed when she hired a technician, [REDACTED], in August or September 2010 and a pharmacist, [REDACTED] in October 2010. She testified that sometime after hiring [REDACTED] and [REDACTED], she started to notice an increase in narcotics orders, to the point where a distributor told her there were insufficient funds to pay her invoice.

Ms. Wincott testified that there were also several burglaries at the pharmacy during this time, and referred to two burglaries during which both she and ██████ were in the pharmacy. During the first of these, Ms. Wincott testified that ██████ did not look afraid of the perpetrator and went to the narcotic drawer before the perpetrator asked for anything. Ms. Wincott testified that at the time of the second burglary, both she and ██████ were in the back of the pharmacy, and that when the perpetrator entered the store, ██████ went straight to the front, opened the narcotics drawer, and provided the narcotics to the perpetrator. Ms. Wincott testified that she had ██████ help in preparing the reports and paperwork associated with the burglaries. Although Ms. Wincott referred to video evidence of these burglaries, no videos were produced at the hearing.

Ms. Wincott testified that when Mr. Raisbeck attended her pharmacy, she had been very ill in the hospital. Ms. Wincott testified that after her meeting with Mr. Raisbeck, she forgot to fax him the follow-up information he requested. Ms. Wincott testified that at the time of Mr. Raisbeck's visit, the pharmacy was in disarray because ██████ had done some reorganizing.

Ms. Wincott testified that it was around this time that it became apparent to her that ██████ was involved in the missing narcotics. She confronted ██████ in approximately May 2011, and advised her that she did not want her returning. She testified that ██████ worked at the pharmacy until approximately March 2011.

Ms. Wincott testified that it was the situation with these former staff members that led her to contact the College.

Ms. Wincott testified that during the time leading up to and during the investigation, in addition to her health issues and the staff issues, she was going through a difficult period including the breakdown of her marriage of 25 years, the conditions placed on her license, and the transition between two computer systems.

With respect to Allegation 1, Ms. Wincott acknowledged filling prescriptions for herself as outlined in the Notice of Hearing, but that at the time she had a registered technician on staff full-time. She testified that she no longer filled prescriptions for herself and would not in the future.

With respect to Allegation 2, Ms. Wincott acknowledged filling prescriptions for ██████ as outlined in the Notice of Hearing. She testified that ██████ had been on Concerta for a considerable amount of time and that in filling ██████'s prescriptions, she acted carefully and pursuant to the doctor's orders.

With respect to Allegation 3(a) pertaining to Rx# 2094711 for Metadol 25mg written on or about April 15, 2011, and Allegation 3(b) pertaining to Rx #N7233 for Metadol 25mg written on or about August 16, 2011, Ms. Wincott testified that although not intentional, these were filled in the absence of a valid prescription. She testified that this was partly because of the transfer to the new computer system.

With respect to Allegation 3(c), Rx #11500 for metformin, Ms. Wincott testified that while she was in the hospital for blood sugar levels, she was provided with a prescription for metformin by a hospital physician. She testified that this prescription was in the pharmacy, but could not be located. She testified that Mr. Mujahid's dispensing of the metformin was within his allowed scope of practice as a pharmacist.

With respect to Allegations 4 and 5 pertaining to her inability to produce a number of required pharmacy records, and to the lack of narcotic control in the pharmacy, Ms. Wincott relied on the evidence above pertaining to the previous staff members. She testified that in early 2011 she had left [REDACTED] and [REDACTED] to primarily run the dispensary, and that they did not properly manage the pharmacy systems and paperwork. Ms. Wincott also testified that once conditions were placed on her license in July 2011, she felt this placed her store and practice in the hands of locums, and eventually Mr. Mujahid, who did not meet the standards required of the College to maintain narcotic security and required paperwork. Additionally, Ms. Wincott testified that between May 2011 and the end of 2011 she did not make any entries into the narcotic count forms she created in 2010 and that the two computer systems, Zadall and Simplicity, caused confusion and mix up with the transfer of data.

With respect to Allegation 6 pertaining to the diversion of narcotics, Ms. Wincott testified that she suffers from post-polio syndrome, which causes significant pain. She testified that her pain is currently well-managed with methadone in the form of Metadol and methylphenidate, but that she had tried several different combinations of medications before finding effective treatment. She testified that Dr. Jackman has been her prescribing physician since approximately 2007 or 2008. Ms. Wincott testified that she understands the risks and side effects of methadone and the consequences of going above her treatment dose. Ms. Wincott denied diverting narcotics of any kind.

With respect to Allegation 8 pertaining to Ms. Wincott's breach of the condition that she practice under supervision, Ms. Wincott testified that she did occasionally sign into the computer system, so her electronic signature may appear on a transaction when she was not actually involved in the filling of the prescription.

Ms. Wincott testified that Mr. Krempien should not have been the lead investigator due to a bias towards Ms. Wincott. Ms. Wincott also alleged other members of College were biased towards her. To support this claim, she presented a series of emails (Exhibits 9-11). As part of her testimony, Ms. Wincott read a prepared written statement that was then entered as an exhibit (Exhibit 7).

Mr. Jardine, counsel for the College, cross-examined Ms. Wincott on a number of matters.

With respect to the August 16, 2011 Metadol 25mg prescription (Allegations 3(b), 4(c)(iii), and 5(a)), Mr. Jardine asked Ms. Wincott if she could produce the prescription. Ms. Wincott testified that the prescription was in the pharmacy, to which she no longer had access. She testified that although she had several months to produce all Metadol prescriptions as requested in Mr. Krempien's January 11, 2012 letter to her, she produced all that she had on hand. Mr. Jardine went through several entries on Mr. Krempien's In/Out Analysis (Exhibit 5, Tab 87), and illustrated that the prescription was filled for an extra 480 tablets. Ms.

Wincott testified that she admitted that this had occurred but that it was an error on her part. When questioned about the April 15, 2011 Metadol 25mg prescription (Allegations 3(a) and 4(c)(2)(ii)) Ms. Wincott testified that this prescription was dispensed without a prescription. She testified that she had no issue obtaining a prescription from Dr. Jackman, and that this was an oversight. When questioned by Mr. Jardine about the January 6, 2012 metformin prescription (Allegation 4(c)), Ms. Wincott testified that although the prescription has not been located, she was certain she had obtained a prescription at the hospital.

When questioned about a perpetual narcotics register, Ms. Wincott testified that she had set up such a register with her previous staff pharmacist, but that she did not make any of the entries, as it was the staff pharmacist's responsibility.

When questioned about the conditions placed on her practice in 2011, Ms. Wincott testified that the conditions on her license did not prohibit her signing authority for narcotics.

When questioned about her invoices and record-keeping, Ms. Wincott testified that her bookkeeping had been done properly for 2009 and 2010, but that this derailed in 2011 when the suspected staff diversion began.

V. SUBMISSIONS

Mr. Jardine made closing arguments on behalf of the College, setting out that the College must, on the balance of probabilities, prove two things:

1. The factual allegations in the Notice of Hearing; and
2. That such allegations are serious enough to constitute unprofessional conduct under the HPA.

Mr. Jardine went through each of the allegations in the Notice of Hearing in detail, referring frequently to Mr. Krempien's Sequence of Events Report and binders (Exhibit 5).

With respect to the first and second allegations, pertaining to Ms. Wincott's dispensing of prescriptions for herself and ██████████ that were not for minor conditions, required in an emergency or where another pharmacist was not available, Mr. Jardine submitted that the allegations were proven based on Mr. Krempien's evidence in the Sequence of Events Report and binders, as well as Ms. Wincott's testimony at the hearing.

The third allegation respecting Ms. Wincott's dispensing medication for herself in the absence of valid prescriptions, dealt with three different instances: two instances of dispensing Metadol 25mg, and one instance of dispensing metformin 500mg. With respect to the two instances of dispensing Metadol, Mr. Jardine relied on Mr. Krempien's Sequence of Events Reports and binders, namely the fact that despite the existence of dispensing records, there was no record of the prescriptions in the Triplicate Prescription Program, no original prescription in the dispensary, and no evidence that the purported subscriber, Dr. Jackman, made such prescriptions. Mr. Jardine also outlined that during cross-examination, Ms. Wincott acknowledged that these medications were dispensed without prescriptions. Mr. Jardine accordingly submitted that these allegations were proven on a balance of

probabilities. With respect to the third instance involving metformin, in this case Mr. Mujahid was asked by Ms. Wincott to deliver tablets on the basis of a prescription that Ms. Wincott had indicated to Mr. Mujahid was in the dispensary. He obliged, but a prescription was never found. Mr. Jardine submitted that this is the most minor of the three instances.

The fourth allegation pertained to Ms. Wincott's inability to locate or produce required pharmacy records including narcotic invoices, complete transaction hardcopies, original prescriptions, Health Canada Loss or Theft Report forms for Controlled Substances and Precursors, and perpetual narcotic records. Mr. Jardine submitted that Mr. Krempien's evidence demonstrated Ms. Wincott's inability to produce the relevant records and information. Mr. Jardine also noted that, in the case of the Health Canada Loss or Theft Report forms, Ms. Wincott, while she could produce the forms, could produce no evidence that the forms had been sent to Health Canada, and that it was beyond the realm of plausibility that on three separate occasions, the forms were faxed but lost. Mr. Jardine submitted that the evidence was clear enough to prove the allegation.

The fifth allegation dealt generally with the lack of narcotic control in the pharmacy, including inconsistencies between refills and recorded written prescriptions, Ms. Wincott's admission that she routinely assessed and dispensed her own narcotic prescriptions, the lack of concordance in the in/out count for Metadol and Teva-MPD ER-C 54mg, particularly while Ms. Wincott was the licensee of the pharmacy. Mr. Jardine relied on Mr. Krempien's evidence, including his In/Out Analysis (Exhibit 5, Tab 87) to submit that the allegation was proven factually on a balance of probabilities.

The sixth allegation, pertaining to Ms. Wincott's purported diversion of narcotics for personal use, is based on the unaccounted discrepancies of narcotics set out in the fifth allegation. Mr. Jardine submitted that the evidence proved factually that Ms. Wincott was the only Metadol patient, and that she had the most use for the missing tablets.

The seventh allegation, respecting a lack of compliance with the Triplicate Prescription Program, set out five distinct instances where it is alleged Ms. Wincott failed to comply. Mr. Jardine submitted that Mr. Krempien's records show that these prescriptions, while some did actually exist, were not submitted to the College of Physicians and Surgeons of Alberta or the Triplicate Prescription Program.

The eighth allegation, respecting Ms. Wincott's alleged breach of condition to practice under direct supervision, refers to an incident after midnight on December 9, 2011 wherein Ms. Wincott dispensed a part-fill prescription for personal use without supervision. Mr. Jardine submitted that while Ms. Wincott's position was that she simply rebilled the prescription at that time and did not dispense it, it would be up to the Hearing Tribunal to determine whether, on the balance of probabilities, Ms. Wincott in fact dispensed the prescription.

Mr. Jardine then presented a package of statutory authorities. As set out in the Notice of Hearing, this matter is complex due to the fact that the allegations pertain to Ms. Wincott's role as a pharmacist, a licensee and a proprietor and accordingly many statutes, regulations and standards apply, often simultaneously. The relevant authorities submitted by Mr. Jardine are summarized in Appendix 1 of this decision. Mr. Jardine submitted that the evidence

shows a breach of each of the provisions listed in Appendix 1 serious enough to constitute unprofessional conduct.

Mr. Jardine also made general submissions that Ms. Wincott's admissions during the hearing came only after pointed cross-examination, and that Ms. Wincott has not accepted sufficient accountability for her own actions during this hearing, instead blaming other staff, the College, and suppliers.

With respect to Ms. Wincott's allegation of bias on Mr. Krempien's part, Mr. Jardine submitted that the fact that Ms. Wincott did not like that she was being asked to account for certain matters does not create bias, and that an allegation of that magnitude required considerable and compelling evidence, which Ms. Wincott did not have. Mr. Jardine also rejected Ms. Wincott's proposal that there was bias on Mr. Krempien's part because Ms. Wincott had said rude things to him; Mr. Jardine submitted that such an argument would render it extremely difficult to conduct an investigation, as the person being investigated could act rudely towards an investigator and subsequently allege bias.

Mr. Jardine concluded his submissions by reinforcing that it is the Hearing Tribunal who ultimately makes the decision in accordance with the HPA.

Ms. Wincott began her closing submissions by submitting that in her view, the College, and specifically Mr. Krempien on behalf of the College, was not accommodating or empathetic in considering her personal circumstances in assessing her compliance with laws and regulations. Ms. Wincott submitted that she felt as though Mr. Krempien took advantage of the protection provided by his position and used it against her, and that he had to analyze her actions very closely in order to make allegations against her.

Ms. Wincott submitted that she did not deliberately display a lack of skill or knowledge, and that many of her problems related to issues she was having with her staff, who she felt took advantage of her while she was ill and incapable of carrying out her full duties. She submitted that nothing new was gleaned over the course of the hearing, as nothing was discovered that she hadn't already acknowledged.

With respect to the first allegation pertaining to Ms. Wincott dispensing her own prescriptions, Ms. Wincott stated that while she did dispense prescriptions for herself, she did not do so without taking the necessary steps and without ensuring standards were met. She submitted that she thought she was able to dispense her own prescriptions because she had a staff pharmacist and a registered technician, and could therefore rely on the input of other professionals. She submitted that she realized this became challenging to maintain, and so she reverted to using another pharmacy.

With respect to the second allegation pertaining to ██████████'s prescriptions, Ms. Wincott submitted that although at the time she did not see it as a contravention of the regulations, as soon as she realized that it was not permitted, she stopped dispensing ██████████'s prescriptions.

With respect to the third allegation, pertaining to Ms. Wincott's dispensing medication for herself in the absence of valid prescriptions, in the first two instances of Metadol 25mg prescriptions, Ms. Wincott submitted that she could obtain a valid prescription, and so there was no reason to dispense her own medication without a prescription. She stated that she did not even realize there was a triplicate prescription missing until just before the hearing. Instead, she mistakenly thought it was a transfer from one system to another. She submitted that this was an oversight and was not something she planned or intended. With respect to Allegation 3(c) pertaining to metformin, Ms. Wincott submitted that it would be up to the Hearing Tribunal to decide whether or not it was worthwhile for the College to bring the matter forward, and that Mr. Mujahid took the appropriate steps in dispensing Ms. Wincott's prescription.

With respect to the fourth allegation pertaining to Ms. Wincott's narcotics records, she submitted that during her licensure and under her old record-keeping system, she knew exactly what was happening and kept track of everything diligently, however the transfer of computer systems from Zadall to Simplicity, combined with her poor health and the staff diversion created inconsistencies, and caused a breakdown in the pharmacy's record-keeping. She submitted that this issue was exacerbated by the fact that some of the records requested by Mr. Krempien during his investigation were being used concurrently in relation to the matters with the wholesalers. She submitted that she provided what she could, and that it was up to the Hearing Tribunal to decide if in fact the record keeping was flawed.

With respect specifically to Allegation 4(b)(i) pertaining to the Teva-methylphenidate prescription, Ms. Wincott submitted that this was an oversight for which she takes the blame, as she mixed up this drug with its generic equivalent. With respect specifically to Allegation 4(d) pertaining to the Health Canada forms, Ms. Wincott submitted that although she had her former technician involved in these matters, she was ultimately accountable for the fact that those forms were not sent in.

Ms. Wincott submitted that in her view, at no time did she do anything that was detrimental to the best interests of the public. With respect to the application of the regulations and legislation, Ms. Wincott submitted that these should not be interpreted in such a way that is insensitive to human compassion.

On the issue of bias, Ms. Wincott submitted that it was up to the Hearing Tribunal, having heard all the evidence, to determine whether or not Mr. Krempien should have been the sole investigator on the matter. Ms. Wincott submitted that the investigation was deliberately conducted to deal with a personal agenda, and constituted an abuse of the position of the Complaints Director. She submitted that the complaint was vexatious in nature and in contravention of section 66(3)(b)(i) of the HPA.

Mr. Jardine rebutted Ms. Wincott's submissions. He submitted that the hearing is about specific allegations arising from an investigation, and that several of the allegations have been admitted to. Accordingly, he submitted that it is concerning to characterize such allegations as vexatious, trivial, or inhuman, and shows a lack of understanding on Ms. Wincott's part of compliance.

Mr. Jardine also submitted that Ms. Wincott's lack of evidence to support her testimony creates an issue when the matter is looked at from an evidentiary perspective of the balance of probabilities.

VI. FINDINGS – FACTUAL ALLEGATIONS

The Hearing Tribunal has reviewed the evidence carefully. The Hearing Tribunal acknowledges that it is the responsibility of the College to prove each allegation on the balance of probabilities.

Allegation 1: Ms. Wincott dispensing prescriptions for herself that were not for minor conditions, required in an emergency or where another pharmacist was not available

The Hearing Tribunal finds that, on the balance of probabilities, the allegation is proven in its entirety. The Hearing Tribunal finds that the evidence shows Ms. Wincott admitted to this allegation.

Allegation 2: Ms. Wincott dispensing prescriptions for ██████ that were not for minor conditions, required in an emergency or where another pharmacist was not available

The Hearing Tribunal finds that, on the balance of probabilities, the allegation is proven in its entirety. The Hearing Tribunal finds that the evidence shows Ms. Wincott admitted to this allegation.

Allegation 3: Ms. Wincott dispensing prescriptions for herself in the absence of valid prescriptions

The Hearing Tribunal finds that Allegation 3(a), respecting Rx #2094711 for Metadol 25mg, written on or about April 15, 2011, is proven. The Hearing Tribunal finds that on the evidence, there is no record of this prescription, either at the Triplicate Prescription Program, with the purported prescriber Dr. Jackman, or produced by Ms. Wincott. Additionally, Ms. Wincott provided evidence that there was not a prescription, and this was an oversight. Accordingly, the Hearing Tribunal finds that on the balance of probabilities, there was not a valid prescription written.

The Hearing Tribunal finds that Allegation 3(b), respecting Rx #N7233 for Metadol 25mg, written on or about August 16, 2011, is proven. The Hearing Tribunal finds that on the evidence, there is no record of this prescription, either at the Triplicate Prescription Program, with the purported prescriber Dr. Jackman, or produced by Ms. Wincott. Additionally, Ms. Wincott provided evidence that there was not a prescription, and this was an oversight. Accordingly, the Hearing Tribunal finds that on the balance of probabilities, there was not a valid prescription written.

The Hearing Tribunal finds that Allegation 3(c), respecting Rx #11500 for metformin 500mg, written on or before January 6, 2012, is not proven. While no prescription was presented, on the balance of probabilities, the Hearing Tribunal accepts Ms. Wincott's evidence that a prescription was obtained. Additionally, the Hearing Tribunal accepts that Mr. Mujahid, a

licensed pharmacist, provided the prescription to Ms. Wincott in an emergency situation, on good faith that a valid prescription existed.

Allegation 4: Inability to locate or produce required pharmacy records

The Hearing Tribunal finds that the allegation is proven in its entirety and that on a balance of probabilities the records were not kept in a system to be easily retrieved, or that the files never existed.

With respect to Allegation 4(a) pertaining to narcotic invoices, the Hearing Tribunal accepts the evidence of the College that the McKesson, Imperial and AmerisourceBergen invoices in question were not produced and could not be found.

With respect to Allegation 4(b) pertaining to complete transaction hardcopies, the Hearing Tribunal accepts the evidence of the College and finds that all original transaction documents in question, on a balance of probabilities, were not sufficient as set out in the Notice of Hearing.

With respect to Allegation 4(c) pertaining to original prescriptions, the Hearing Tribunal accepts the evidence of the College and finds that the original prescriptions could not be located at the pharmacy, as set out in the Notice of Hearing.

With respect to Allegation 4(d) pertaining to Health Canada Loss or Theft Report Forms for Controlled Substances, the Hearing Tribunal finds, on the evidence, that Ms. Wincott did not report the losses/thefts in question to Health Canada. The Hearing Tribunal accepts the evidence of the College that Health Canada did not receive the required forms.

With respect to Allegation 4(e) pertaining to a perpetual narcotic record, the Hearing Tribunal finds that the evidence shows that there was not a perpetual inventory of narcotics kept as early as 2010. The Hearing Tribunal finds that while there is evidence that certain attempts to keep a perpetual inventory were made, no system was maintained, except for a short period from October to December 2011. Additionally, the Hearing Tribunal finds that there were significant discrepancies between narcotics received and dispensed at the pharmacy, which in the view of the Hearing Tribunal supports its finding that there was no perpetual narcotics record. The Hearing Tribunal is of the view that a perpetual inventory system would most likely have caught discrepancies in the received and dispensed narcotics at the pharmacy.

Allegation 5: Lack of narcotic control in the pharmacy

The Hearing Tribunal accepts the evidence of the College and finds that the allegation is proven in its entirety on the balance of probabilities.

With respect to Allegation 5(a) pertaining to Rx #N7233 for Metadol 25mg, written on or about August 16, 2011, the Hearing Tribunal accepts the evidence of the College that despite an indication in the pharmacy's Narcotic Sales Report that there was a written prescription, on the balance of probabilities, there was no written prescription.

With respect to Allegation 5(b) pertaining to Ms. Wincott dispensing her own prescriptions, the Hearing Tribunal finds on the evidence that Ms. Wincott admitted to dispensing her own prescriptions.

With respect to Allegations 5(c) and 5(d), the Hearing Tribunal accepts the evidence of the College, including specifically the In/Out Analysis prepared by Mr. Krempien (Exhibit 5, Tab 87).

Allegation 6: Diverted narcotics

The Hearing Tribunal finds that the allegation is not proven on the balance of probabilities.

The Hearing Tribunal finds that while there is evidence of very poor record keeping of the products that Ms. Wincott dispensed for herself, sufficient evidence was not provided to convince the Hearing Tribunal that, on the balance of probabilities, Ms. Wincott diverted narcotics for either personal use or benefit. The Hearing Tribunal accepts Ms. Wincott's testimony about the knowledge of her disease state and her testimony that she would not abuse the products prescribed to her.

Allegation 7: Lack of compliance with the Triplicate Prescription Program

With respect to Allegation 7(a) pertaining to the January 19, 2011 prescription for Metadol 25mg, the Hearing Tribunal accepts the evidence of the College and finds that on a balance of probabilities, the prescription was not submitted to the Triplicate Prescription Program and the allegation is proven.

With respect to Allegation 7(b) pertaining to the April 15, 2011 prescription for Metadol 25mg for which no prescription was found, the Hearing Tribunal finds that because this prescription did not exist, it is not possible to submit this information to the Triplicate Prescription Program. Accordingly, the Hearing Tribunal finds that on the balance of probabilities, this allegation is not proven.

With respect to Allegation 7(c) pertaining to the August 16, 2011 prescription for Metadol 25mg not submitted to the Triplicate Prescription Program and for which no prescription was found, the Hearing Tribunal finds that because this prescription did not exist, it is not possible to submit this information to the Triplicate Prescription Program. Accordingly, the Hearing Tribunal finds that on the balance of probabilities, this allegation is not proven.

With respect to Allegation 7(d) pertaining to Concerta prescriptions for Ms. Wincott and other patients which were dispensed as Teva-MPD, the Hearing Tribunal finds that on a balance of probabilities, the prescriptions were not submitted to the Triplicate Prescription Program and the allegation is proven.

With respect to Allegation 7(e) pertaining to Ms. Wincott dispensing her January 21, 2010 prescription for Metadol 25mg one day in advance of a January 22, 2010 prescription of Dr. Jackman, the Hearing Tribunal accepts the evidence of the College and finds that on a balance of probabilities, the prescription was not submitted to the Triplicate Prescription Program and the allegation is proven.

Allegation 8: Breach of condition to practice under direct supervision

The Hearing Tribunal finds that on the balance of probabilities, this allegation is not proven. While the College's evidence suggested that in a single instance, Ms. Wincott dispensed without supervision just after midnight on December 9, 2011, Ms. Wincott testified that this was a rebilling of an existing prescription. Without supporting documentation on either side, the Hearing Tribunal is not convinced, on the balance of probabilities, that this allegation is proven.

Ms. Wincott's allegation of bias

Ms. Wincott testified and submitted that Mr. Krempien was biased towards her and in his investigation of the complaint made against her. The Hearing Tribunal accepts the submissions of the College in their entirety on this point and finds that Mr. Krempien did not conduct his investigation in a manner that was biased towards Ms. Wincott. The Hearing Tribunal finds that Mr. Krempien acted objectively and reasonably including allowing for several extensions of document submission deadlines. In addition, the Hearing Tribunal does not find that the complaint made against Ms. Wincott was vexatious, especially in light of the fact that several allegations were proven.

VII. FINDINGS – UNPROFESSIONAL CONDUCT

In determining whether or not the allegations constituted unprofessional conduct and professional misconduct, the Hearing Tribunal considered that Ms. Wincott was pharmacist and licensee of the pharmacy until July 2011 and was the proprietor of the pharmacy for the entire period of time to which the allegations apply. The Hearing Tribunal also considered section 1(1)(pp) of the HPA, which states, in part, the following:

- (pp) “unprofessional conduct” means one or more of the following, whether or not it is disgraceful or dishonourable:
 - (i) displaying a lack of knowledge of or lack of skill or judgment in the provision of professional services;
 - (ii) contravention of this Act, a code of ethics or standards of practice;
 - (iii) contravention of another enactment that applies to the profession; ...
 - (xii) conduct that harms the integrity of the regulated profession;

The Hearing Tribunal also considered section 1(1)(p) of the *Pharmacy and Drug Act* (“PDA”), which states in part the following:

- (p) “misconduct” means an act or omission that

- (i) contravenes this Act;
- (ii) is detrimental to the best interests of the public; ...
- (iv) contravenes any Act of the Legislature of Alberta or of the Parliament of Canada relating to the compounding, dispensing, manufacturing, prescribing, providing for sale, sale, supply or distribution of drugs;...
- (vi) contravenes the *Health Professions Act* or a regulation made under that Act;...
- (ix) conduct that harms the integrity of the profession of pharmacists;

With respect to proven Allegations 1 and 2, the Hearing Tribunal finds that in dispensing her own prescriptions, and prescriptions for ██████, Ms. Wincott breached section 3(4) of the College's Code of Ethics. The Hearing Tribunal finds that it is immaterial that Ms. Wincott dispensed these prescriptions in the presence of a pharmacy technician. Section 1(1)(pp)(ii) of the HPA provides that a breach of a Code of Ethics, whether or not it is disgraceful or dishonourable, constitutes unprofessional conduct. Accordingly, although Ms. Wincott may feel that she did not intend to breach the Code of Ethics, and did not act dishonourably, the Hearing Tribunal finds that Ms. Wincott's actions constitute unprofessional conduct.

With respect to the proven allegations in Allegation 3, the Hearing Tribunal finds that in filling her own narcotic prescription without a valid prescription, Ms. Wincott demonstrated a lack of skill and a lack of knowledge with respect to the following:

- Standards for Pharmacist Practice, sections 1.1 and 5;
- The College's Code of Ethics, sections 3(4) and 10;
- *Controlled Drugs and Substances Act*, sections 4(1) and s. 31(2)(b);
- PDA, sections 10(1)(b), 10(1)(d)(i)(iv), and 11(3); and
- The Standards for Operating Licensed Pharmacies, section 4.

The Hearing Tribunal finds that this constitutes unprofessional conduct pursuant to section 1(1)(pp) of the HPA, particularly section 1(1)(pp)(i).

With respect to Allegation 4, the Hearing Tribunal notes that it is paramount to the public safety that individuals' medical records are kept well organized and retrievable, and that records can account for the medications that are received and dispensed by the pharmacy. The Hearing Tribunal finds that Ms. Wincott's inability to produce the listed records is in contravention of the following:

- PDA, sections 10(1)(d)(iv) and 11(3);

- Pharmacy and Drug Regulation, section 12(1);
- Standards for Pharmacist Practice, sections 1.1, 6.15, and 6.17;
- Standards for Operating Licensed Pharmacies, sections 4 and 73; and
- *Controlled Drugs and Substances Act*, sections 4(1), 30, and 40.

The Hearing Tribunal finds that this constitutes unprofessional conduct pursuant to sections 1(1)(pp)(i), (ii), (iii) and (xii) of the HPA. The Hearing Tribunal also finds that this constitutes misconduct pursuant to sections 1(1)(p)(i)(ii)(iv)(vi) and (ix) of the PDA.

With respect to Allegation 5, the Hearing Tribunal finds that Ms. Wincott's inability to properly account for narcotics received and dispensed by the pharmacy is a serious breach. Narcotics can have a potentially harmful effect on society if not properly dispensed and accounted for. As such, the public trusts pharmacies will properly dispense and account for these agents. The inability to account for a pharmacy's narcotics supply can have potentially serious negative effects on society and shake the public's confidence in the security of the narcotic drug supply. The Hearing Tribunal finds that this is a contravention of the following:

- PDA, sections 10(1)(d)(iv) and 11(3);
- Standards for Operating Licensed Pharmacies, sections 4 and 73;
- *Controlled Drugs and Substances Act*, section 40(2);
- *Pharmacy and Drug Regulation*, section 12; and
- Standards for Pharmacist Practice, sections 1.1, 6.15, and 6.17.

The Hearing Tribunal finds that this constitutes unprofessional conduct pursuant to sections 1(1)(pp)(i), (ii), (iii) and (xii) of the HPA. The Hearing Tribunal also finds that this constitutes misconduct pursuant to sections 1(1)(p)(i)(ii)(iv)(vi), and (ix) of the PDA.

With respect to Allegations 7(a) and 7(e), the Hearing Tribunal finds that Ms. Wincott's failure to file the proper paperwork with the Triplicate Prescription Program demonstrated a pattern of not complying with the regulatory standards around narcotic control. In the opinion of the Hearing Tribunal, not filing the appropriate paperwork is a contravention of:

- PDA, sections 10(1)(d)(iv) and 11(3);
- Standards for Operating Licensed Pharmacies, sections 4 and 73;
- *Pharmacy and Drug Regulation*, section 12; and
- Standards for Pharmacist Practice, section 1.1.

The Hearing Tribunal finds that this constitutes unprofessional conduct pursuant to sections 1(1)(pp)(i) and (xii) of the HPA. The Hearing Tribunal also finds that this constitutes misconduct pursuant to sections 1(1)(p)(i)(ii)(iv) and (ix) of the PDA.

With respect to Allegation 7(d), the Hearing Tribunal finds that while the alleged prescription was not filled as a triplicate as required, the Hearing Tribunal noted the anomaly within the standards wherein the brand name product did not require a triplicate but the generic product did. While this does not absolve Ms. Wincott, or any other pharmacist, of being aware of the regulations, the Hearing Tribunal does not find this to constitute unprofessional conduct pursuant to the HPA or misconduct pursuant to the PDA.

VIII. ORDERS/SANCTIONS

The Hearing Tribunal will receive submissions from both parties with respect to penalty. The Hearing Tribunal is agreeable to have these submissions in writing in an effort to keep the costs as reasonable as possible unless either party applies to also make oral submissions in addition to those in writing.

Signed on behalf of the Hearing Tribunal by
the chair

Dated:
August 20, 2013

Per:
[Jeremy Slobodan]

APPENDIX I: SUMMARY OF RELEVANT AUTHORITIES

AUTHORITY	RELEVANT PROVISION(S)
<p><i>Health Professions Act, RSA 2000, c. H-7</i></p>	<p>section 1 – Interpretation (pp) “unprofessional conduct” means one or more of the following, whether or not it is disgraceful or dishonourable: (i) displaying a lack of knowledge of or lack of skill or judgment in the provision of professional services; (ii) contravention of this Act, a code of ethics or standards of practice; (iii) contravention of another enactment that applies to the profession; (iv) representing or holding out that a person was a regulated member and in good standing while the person’s registration or practice permit was suspended or cancelled; ... (viii) contravening an order under Part 4, conditions imposed on a practice permit or a direction under section 118(4); ... (xii) conduct that harms the integrity of the regulated profession;...</p>
<p><i>Pharmacy and Drug Act, RSA 2000, c. P-13</i></p>	<p>section 1 – Interpretation (p) “misconduct” means an act or omission that: (i) contravenes this Act; (ii) is detrimental to the best interests of the public;... (iv) contravenes any Act of the Legislature of Alberta or of the Parliament of Canada relating to the compounding, dispensing, manufacturing, prescribing, providing for sale, sale, supply or distribution of drugs;... (ix) conduct that harms the integrity of the profession of pharmacists;...</p> <p>section 10 - Obligations of licensee (1) A licensee must... (b) ensure that due diligence is exercised in the dispensing of drugs in accordance with the standards of practice under the <i>Health Professions Act</i> for the practice of pharmacy, ... (d) ensure that (i) all drugs dispensed to or for a patient are dispensed pursuant to a prescription that has been received by the pharmacy, ... (iv) all required records are created and maintained in accordance with this Act...</p> <p>section 11 – Proprietor’s obligation (3) A proprietor must ensure that all required records are created and maintained in accordance with this Act.</p>
<p><i>Pharmacy and Drug</i></p>	<p>section 12 – Records</p>

AUTHORITY	RELEVANT PROVISION(S)
<p>Regulation, AR 240/2006</p>	<p>12 (1) A licensee must ensure that records referred to in section 12.1 are created and maintained in accordance with the Standards for Operating Licensed Pharmacies adopted under section 29.1 of the Act with respect to the provisions of pharmacy services and the practice of pharmacy in or from the licensed pharmacy...</p> <p>(6) In complying with the proprietor's obligations under section 11 (3) of the Act, a proprietor must take reasonable steps...</p> <p>(c) to provide to the licensee any records referred to in subsection (1) that are in possession or under the control of the proprietor or any person associated with the proprietor if those records are requested by the licensee.</p> <p>section 12.1 – Types of records</p> <p>12.1 The following types of records constitute records for the purposes of section 1(1)(z.1) of the Act:...</p> <p>(b) records of all Schedule 1 and Schedule 2 drugs received by the pharmacy, which must include:</p> <p>(i) any information relating to the drugs required by any of the legislation and standards referred to in clause (a);</p> <p>(ii) the name and contact information of the suppliers who sell or provide drugs to the pharmacy;</p> <p>(iii) the name and quantity of each drug received by the pharmacy, and</p> <p>(iv) the date on which each drug was received.</p> <p>(c) records of all prescriptions received by a pharmacy, which must include...</p> <p>(i) any information relating to prescriptions required by any of the legislation and standards referred to in clause (a)...</p> <p>(d) records of all Schedule 1 and Schedule 2 drugs dispensed from or through the pharmacy, which must include</p> <p>(i) all information regarding the processing of a prescription and the dispensing of a drug required by any of the legislation and standards referred to in clause (a)...</p> <p>(f) records of patients, including all information regarding patient records required by any of the legislation and standards referred to in clause (a)...</p> <p>(i) any record created or received by a</p> <p>(i) proprietor or a person associated with a proprietor,...</p>
<p>Standards for Pharmacist Practice (in force until July 1, 2011)</p>	<p>STANDARD 1</p> <p>Pharmacist's duty to act professionally</p> <p>1. In the practice of pharmacy, a pharmacist must act professionally.</p> <p>APPLICATION OF STANDARD 1</p> <p><i>Compliance with the law</i></p> <p>1.1 A pharmacist must conduct the pharmacist's practice in accordance with the law that governs the practice of pharmacy, including but not limited to:</p>

AUTHORITY	RELEVANT PROVISION(S)
	<p>(a) the <i>Health Professions Act</i>, its regulations, these standards;</p> <p>(b) the <i>Pharmacy and Drug Act</i>, its regulations, the Standards for Operating Licensed Pharmacies;</p> <p>(c) the Code of Ethics;</p> <p>(d) section 7.1 of the <i>Government Organization Act</i>;</p> <p>(e) the <i>Scheduled Drugs Regulation</i>, Alberta Regulation 86/2002;</p> <p>(f) the <i>Food and Drug Act</i> and its regulations;</p> <p>(g) the <i>Controlled Drugs and Substances Act</i>, the regulations made under it and the Narcotic Control Regulations; and</p> <p>(h) the <i>Health Information Act</i> and its regulations.</p> <p>1.2 In approaching the law that governs the practice of pharmacy, a pharmacist must comply with its letter and its spirit to ensure that the public and each patient receives the full protection of the law.</p> <p>STANDARD 5 Pharmacist's duties before dispensing a drug</p> <p>5. A pharmacist must not dispense a drug or blood product under a prescription unless the pharmacist has determined that the prescription is current, authentic, complete and appropriate.</p> <p>APPLICATION OF STANDARD 5</p> <p><i>Determining the currency of a prescription</i></p> <p>5.1 A pharmacist must review the prescription to determine when it was written...</p> <p><i>Determining the authenticity of a prescription</i></p> <p>5.4 A pharmacist must determine the authenticity of a prescription by taking reasonable steps to:</p> <p>(a) Determine whether the prescriber is legally authorized to prescribe the drug or blood product for which the prescription has been given...</p> <p><i>Determining the completeness of a prescription</i></p> <p>5.5 A pharmacist must determine the completeness of a prescription by ensuring that the prescription includes:</p> <p>(a) name and address of the patient;</p> <p>(b) drug or blood product name;</p> <p>(c) drug strength, if applicable;</p> <p>(d) dosage form, if applicable;</p> <p>(e) quantity of drug or blood product to be dispensed;</p> <p>(f) directions for use;</p> <p>(g) number of refills authorized and interval between each refill, if applicable;</p> <p>(h) prescriber's name and phone number;</p> <p>(i) prescriber's signature, in the case of a written prescription; and</p> <p>(j) the date of the prescription.</p> <p><i>Factors to be considered in determining the appropriateness of a</i></p>

AUTHORITY	RELEVANT PROVISION(S)
	<p><i>prescription</i></p> <p>5.6 A pharmacist must determine the appropriateness of a prescription for the condition being treated by considering relevant factors that a reasonable pharmacist would consider in the circumstances including, but not limited to, whether:</p> <ul style="list-style-type: none"> (a) the prescription is accurate; (b) the prescription orders a drug or blood product for an indication that is: <ul style="list-style-type: none"> (i) approved by Health Canada; (ii) considered a best practice or accepted clinical practice in peer-reviewed literature; or (iii) part of an approved research protocol; (c) the dose, frequency and route of administration are appropriate; (d) there is therapeutic duplication; (e) there are actual or potential adverse reactions, allergies or sensitivities; (f) there are actual or potential drug interactions; (g) the regimen for administration is practical, based on the patient's functional ability; (h) the patient's organ function, such as renal and hepatic function, will tolerate the drug or blood product; (i) the results of laboratory or other tests, if applicable, support that prescription; and (j) other patient-specific characteristics such as age; pregnancy or lactation status; cognitive, mental and physical challenges; lifestyle; cultural beliefs or living environment may negatively affect the appropriateness of the drug or blood product... <p>STANDARD 6 Pharmacist's duties when dispensing a drug APPLICATION OF STANDARD 6 <i>Filling the prescription correctly</i></p> <p>6.1 A pharmacist who dispenses a drug or blood product must ensure that:</p> <ul style="list-style-type: none"> (a) the drug or blood product is correct and in accordance with the prescription; (b) the dosage form, strength, manufacturer and quantity dispensed are correct and in accordance with the prescription; and (c) the proper amount of the drug or blood product is provided... <p><i>Requirement for an audit trail of the dispensing process</i></p> <p>6.15 A pharmacist must ensure that there is a clear audit trail that identifies all individuals who were involved in the processing of a prescription and dispensing of the drug and the role of each individual...</p> <p><i>More than one pharmacist involved in dispensing process</i></p> <p>6.17 If more than one pharmacist is involved in dispensing a drug, the pharmacists must work together to ensure that:</p>

AUTHORITY	RELEVANT PROVISION(S)
	<p>(a) the role and responsibility of each pharmacist is clear; (b) each step required to be performed is properly performed; and (c) the audit trail clearly identifies the pharmacist that fulfilled each role and responsibility...</p> <p>STANDARD 18 Obligation to create and maintain a patient record 18 A pharmacist must create and maintain patient records.</p> <p><i>Requirements of a patient record</i> 18.3 A patient record must include: (a) patient demographics, (b) a profile of drugs provided, and (c) a record of care provided.</p> <p>18.4 In addition to the requirements set out in this standard a patient record must meet the requirements of Appendix A...</p>
<p>Standards for Operating Licensed Pharmacies (in force until July 1, 2011)</p>	<p>Law governing pharmacies and drugs <i>Compliance with the law</i> 4. A licensee must ensure that the licensed pharmacy operates in accordance with the law that governs pharmacy operation, pharmacist practice and drug distribution including, but not limited to: (a) the <i>Pharmacy and Drug Act</i>, its regulations and these Standards for Operating Licensed Pharmacies; (b) the <i>Health Professions Act</i>, its regulations, the Standards for Pharmacist Practice; (c) the Code of Ethics; (d) Schedule 7.1 of the <i>Government Organization Act</i>; (e) the <i>Scheduled Drugs Regulation</i>, Alberta regulation 86/2002; (f) the <i>Food and Drugs Act</i> and its regulations; (g) the <i>Controlled Drugs and Substances Act</i>, its regulations and the <i>Narcotic Control Regulations</i>; (h) the <i>Health Information Act</i> and its regulations, and (i) the <i>Personal Information Protection Act</i> and its regulations...</p> <p>Record Keeping and information management <i>Keeping records</i> 73. A licensee must ensure that written prescriptions and transaction records for Schedule 1 drugs that have been dispensed are: (a) filed systematically; and (b) retained for at least two years past the completion of therapy with regard to the prescription or for 42 months, whichever is greater...</p>
<p>Alberta College of Pharmacists Code of</p>	<p>PRINCIPLE 1 Hold the well-being of each patient to be my primary consideration</p>

AUTHORITY	RELEVANT PROVISION(S)
Ethics Bylaw	<p>To uphold this principle, I:</p> <ol style="list-style-type: none"> 1. Act in the best interest of each patient. 2. Provide appropriate treatment and care. 3. Actively seek out information to make informed decisions. 4. Advocate for appropriate drug therapy that meets each patient's values and health goals. 5. Provide drugs, non-prescription medicines or health-related products that are from safe and proven sources. 6. Dispense, distribute or promote drugs, non-prescription medications or health-related products that are of good quality only. 7. Safeguard the well-being of each patient and in particular any patient who is vulnerable. 8. Prevent harm to each patient; but, should harm occur, disclose it to the patient, and initiate steps to mitigate/treat the harm. 9. Do not exploit a patient for personal advantage. 10. Avoid conflict of interest and declare any personal or professional interests to any patient who may be affected. 11. Resolve any conflict of interest that may arise in the interest and for the well-being of the patient affected. 12. Do not allow my professional judgment to be impaired by personal or commercial benefits such as monetary or financial gain or incentive targets. I do not ask for or accept gifts, inducements, hospitality or referrals that may affect or be perceived to affect my professional judgment. 13. Do not provide rewards or incentives that have the potential to cause harm to a patient. 14. Cooperate with colleagues and other health professionals to assist a patient to achieve the patient's health care goals. 15. Consult with other health professionals to benefit a patient as appropriate. <p>PRINCIPLE 3 Maintain a professional relationship with each patient To uphold this principle, I:...</p> <ol style="list-style-type: none"> 4. Limit treatment of myself or members of my immediate family only to minor conditions, emergency circumstances or when another appropriate health professional is not readily available... <p>PRINCIPLE 10 Act with honesty and integrity To uphold this principle, I:</p> <ol style="list-style-type: none"> 1. Comply with both the letter and the spirit of the law that governs the practice of pharmacy and the operation of pharmacies...
<i>Controlled Drugs and Substances Act, SC</i>	<p>PART 1 OFFENCES AND PUNISHMENT Particular Offences</p>

AUTHORITY	RELEVANT PROVISION(S)
1996, c. 19	<p>4. (1) Except as authorized under the regulation, no person shall possess a substance included in Schedule I, II or III...</p> <p>PHARMACISTS</p> <p>30. A pharmacist, upon receipt of a narcotic from a licensed dealer, shall forthwith enter in a book, register or other record maintained for such purposes, the following:</p> <ul style="list-style-type: none">(a) the name and quantity of the narcotic received;(b) the date the narcotic was received; and(c) the name and address of the person from whom the narcotic was received. <p>31. (1) No pharmacist shall sell or provide narcotics except in accordance with subsections (2), (2.1) and (3) and sections 34 to 36.</p> <ul style="list-style-type: none">(2) A pharmacist may sell or provide a narcotic other than Methadone to a person...<ul style="list-style-type: none">(b) if the pharmacist has first received a written order or prescription therefore signed and dated by a practitioner and the signature of the practitioner, where not known to the pharmacist, has been verified by him... <p>40. (1) A pharmacist shall maintain a special narcotic prescription file in which shall be filed in sequence as to date and number all written orders or prescriptions for narcotics dispensed and the written record of all verbal prescription narcotics dispensed pursuant to a verbal order or prescription as provided in section 39.</p> <ul style="list-style-type: none">(2) A pharmacist shall retain in his possession for a period of at least two years any records which he is required to keep by these Regulations...