

ALBERTA COLLEGE OF PHARMACISTS

IN THE MATTER OF  
THE HEALTH PROFESSIONS ACT

AND IN THE MATTER OF A HEARING #2774  
REGARDING THE CONDUCT OF **ROBIN SMALL**

**DECISION OF THE HEARING TRIBUNAL**

January 31, 2014

## **I. INTRODUCTION**

The Hearing Tribunal held a hearing into the conduct of Mr. Robin Small. In attendance on behalf of the hearing tribunal were Ms. Dianne Veniot, Chairperson, Ms. Denise Batiuk, Pharmacist, Mr. Jim Johnston, Pharmacist and Ms. Sandra Pichler, Public Member.

The hearing took place on October 15, 2013 at Alumni House located at 11515 Saskatchewan Drive, Edmonton, Alberta. The hearing was held under the terms of Part 4 of the *Health Professions Act* ("HPA").

In attendance at the hearing were Mr. James Krempien, Complaints Director and Mr. David Jardine, legal counsel representing the complaints director, Ms. Eleanor Olszewski, Q.C. counsel for Mr. Small, and Mr. Robin Small. In addition, Mr. James T. Casey, Q.C. was independent counsel for the hearings tribunal.

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

## **II. ALLEGATIONS**

The Notice of Hearing was entered as Exhibit 1, and stated the following:

It is alleged that:

1. You did not act professionally or exhibit a professional demeanor on September 11, 2012 during your interactions with Ms. [REDACTED], Ms. [REDACTED] and Mr. [REDACTED] including the following statements made by you:
  - a. your use of the expression "she plays head games and creates work for all of us" in reference to Ms. [REDACTED] in the original fan-out fax you sent out is extremely distasteful and disrespectful, especially in referring to a patient with identified mental health issues and the force of the disrespectful and demeaning statement in the original fan-out fax was compounded by suggesting that it was a joint statement being made by yourself and Dr. Singhal;
  - b. your reference to Ms. [REDACTED] as a "pain in the ass" in your initial telephone conversation with Ms. [REDACTED];
  - c. your angry and aggressive demeanor in your second telephone conversation with Ms. [REDACTED] including your suggestion that "someone squealed like the little pig he is" and your statement that Ms. [REDACTED] should make sure she told Mr. [REDACTED] this;
  - d. your statement to Mr. [REDACTED] that "someone is going to get written up about this" and your angry, loud and aggressive tone in stating "Yeah, you want to

- talk about this after work” which left Mr. ██████ feeling his personal safety had been threatened;
- e. your subsequent fax to Dr. Singhal in which you referred to another pharmacist who had received his original fan-out as an ”immature link in that chain;”
  - f. your implicit threat of physical violence toward Mr. ██████ and the inappropriate comments you made in referring to pharmacists as immature and squealing like a pig were neither collaborative, professional or acceptable;
  - g. similar inappropriate references to pharmacists made in your voicemail to the registrar on September 12, 2012 in which you indicated in part in reference to your fan-out about Ms. ██████ restricting her to your pharmacy that:
    - (i) “somebody obviously squealed to the psychiatrist” [about your fan-out]; and
    - (ii) “you would think that people can talk to one another square, one to one, without people having to tattle tale like that.”
2. You did not maintain a trusting and professional relationship with Ms. ██████ including the following actions:
- a. your original fan-out, in attempting to suggest that Ms. ██████ was restricted to South Side Pharmacy and in indicating this restriction was at the direction of Dr. Singhal, was at a minimum inaccurate and misleading and might be classified as deliberate misrepresentation or falsehood;
  - b. you made derogatory statements in your fan-out concerning Ms. ██████ and her conduct that were not true and suggested that these were joint statements from yourself and Dr. Singhal, which was not true;
  - c. you made statements that were not true about Ms. ██████ to Dr. Singhal during your September 11, 2012 phone call (such as Ms. ██████ was allegedly picking and choosing her medications from the discharge prescription), that had the potential to damage Ms. ██████’s patient-physician relationship;
  - d. your inaccurate or false statements made about Ms. ██████ in your fan-out harmed her potential relationship with other Grande Prairie pharmacies and was intended to restrict her ability and her right to deal with any pharmacist or pharmacy other than your pharmacy; and
  - e. the harsh and derogatory comments you made concerning Ms. ██████ to Dr. Singhal and to other pharmacies show a lack of respect and lack of trust in Ms. ██████ and a lack of professionalism on your part in referring to one of your patients in this manner.
3. You did not honor Ms. ██████’s request to transfer her care to another pharmacy and created the misleading fan-out as a means to prevent Ms. ██████ from transferring her pharmacy services elsewhere; and
4. You did not maintain proper patient records for Ms. ██████ as required by the legislation pertaining to the practice of pharmacists and the operation of licensed pharmacies including the following:

- a. you have admitted to not keeping a record of the information you disclosed about Ms. [REDACTED] through your faxed fan-outs;
  - b. you did not create an accurate record for Ms. [REDACTED];
  - c. your original fan-out indicated that Ms. [REDACTED]'s pharmacy services had been restricted to South Side Pharmacy by Dr. Singhal, when this was not the case.
5. Your actions involve inappropriate deportment and generally disreputable conduct on the part of a pharmacist and fail to meet the standards of practice and professional deportment reasonably expected of a pharmacist and are contrary to the ethics of the profession and harm the integrity of the profession.

It is alleged that your conduct constitutes a breach of the following statutes, regulations, and standards governing the practice of pharmacy:

- Standard 1, 2, and 18 and Sub-sections 1.1, 1.2, 1.4, 1.11(1), 2.1(a), 2.7, 18.3, 18.4 and Appendix A of the Standards of Practice for Pharmacists and Pharmacy Technicians;
- Sub-sections 1.1, 1.2(a) and 8.8 of the Standards for the Operation of Licensed Pharmacies;
- Sub-sections 41(1) and (2) of the *Health Information Act*;
- Sections 1(1)(pp)(i), 1(1)(pp)(ii), 1(1)(pp)(iii) and 1(1)(pp)(xii) of the *Health Professions Act*;
- Section 12(1) of the Pharmacy and Drug Regulation
- Sections 1(1)(p)(i), 1(1)(p)(ii), 1(1)(p)(ix), and 10(1)(d)(iv) of the *Pharmacy and Drug Act*;
- Principles I(1,14), II(5), III(1), X(2b,6) and XII(2) of the ACP Code of Ethics;

and that your conduct set out above and the breach of some or all of these provisions constitutes unprofessional conduct pursuant to the provisions of Sections 1(pp)(1), 1(pp)(ii), 1(pp)(iii) and 1(1)(pp)(xii) of the *Health Professions Act* and misconduct pursuant to Sections 1(1)(p)(i), 1(1)(p)(ii), 1(1)(p)(iv) and 1(1)(p)(ix) of the *Pharmacy and Drug Act*.

### **III. EVIDENCE**

Mr. Small admitted to Allegations 1, 2, 4, and 5 but did not admit to Allegation 3. The college's first and only witness was Mr. James Krempien, the complaints director. Mr. Jardine introduced the point that there was meant to be four or five witnesses from Grande Prairie who were no longer required to attend with the cooperation and partial admission by Mr. Small. Ms. Olszewski declined to make an opening statement.

Mr. Krempien reviewed Exhibit 4: Sequence of Events Report, being a bound group of documents entered by consent.

Set out below is a summary of the key documents entered at the hearing:

Exhibit 4	Sequence of Events Report – the initial summary report prepared at the end of the investigation based on evidence found in the following tabs
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January 31, 2014

including analysis and conclusion of Mr. Raisbeck, contract field investigator, and further analysis and conclusion of Mr. Krempien and ending with the decision to refer the matter to Hearing in Exhibit 1 and 2. This includes inaccuracies in times, dates and interpretation of the events as well as deficiency in maintaining record of the disclosure of patient specific information via faxed fan-out.

Exhibit 4, Tab 1, 5 Complaint reporting form completed by Ms. [REDACTED] received by the ACP October 13, 2012 describing the events on September 11, 2012. This document was then provided to Mr. Small in the notification in Tab 5 that a complaint had been filed, was being investigated and required a written response.

Exhibit 4,  
Tab 6, 7, 8 Written request for information from Dr. Singhal, Mr. [REDACTED], pharmacist and Mr. [REDACTED], pharmacist regarding the complaint.

Exhibit 4, Tab 12 Transcript of a voicemail left September 12, 2012 by Mr. Small for Mr. Eberhart, Registrar, admitting to sending the fax fan-out in an attempt to restrict her access to pharmacy services. Phrases used include “she’s going to create work and I did use wrong terminology... she’s playing head games... somebody obviously squealed to the psychiatrist... people having to tattle tale like that....”

Exhibit 4, Tab 9, 13 Communication between the complainant and the complaints director seeking additional information and other potential contacts that confidential patient information may have been disclosed to, and providing explanation of the process and next steps. Allegations by Ms. [REDACTED] that Mr. Small may have disclosed personal health information to a relative were not supported as the relative declined.

Exhibit 4, Tab 14 Response from Mr. [REDACTED], Licensee and Ms. [REDACTED], Pharmacy Assistant at Shamrock Pharmacy West stating Mr. Small refused to transfer the patient file, stated the patient will be a “pain in the ass” and in a later angry telephone call implied a fellow pharmacist “squealed like the little pig he is.” Also included is the faxed fan-out documents received at 1510h and modified to include “Sorry, all is resolved c Dr. Singhal, Robin” received at 1542h.

Exhibit 4, Tab 15 Response from Mr. [REDACTED], Licensee at Shamrock Pharmacy with his summary of the events of September 11, 2012, noting unprofessional wording of the fax fan-out which spurred the conversation he initiated with Dr. Singhal regarding restricting Ms. [REDACTED]’s care to Mr. Small’s pharmacy. Mr. [REDACTED] details a phone conversation where he felt threatened by Mr. Small, concerned for his safety enough so he contacted the RCMP who opened a case file. Both versions of the fax fan-out are

included in this response; only one version with “as she plays head games and creates work for all of us. By Dr. Rishi Singhal/Robin Small” clearly visible.

- Exhibit 4, Tab 15 Mr. Small’s written response to the complaint in which he still refers to the need to correct a patient’s behaviour, should have used the term “manipulative” instead of “head case,” placing blame on the other pharmacy professionals actions and the need to apologize to Ms. [REDACTED].
- Exhibit 4, Tab 22 Interview summaries, analysis within the sequence of events and conclusions as made by contract inspector Mr. Jamie Raisbeck after meeting with Mr. Small, Ms. [REDACTED], Mr. [REDACTED], Ms. [REDACTED] and Mr. [REDACTED] on February 4, 2013 in Grande Prairie.
- Exhibit 4, Tab 24, 26 Confirmation from staff at Shoppers Drug Mart #2311 and Drugstore Pharmacy #1544 in Grande Prairie that they also received the first fax from Mr. Small with the derogatory comments “plays head games” and the inaccurate representation of Dr. Singhal’s direction restricting Ms. [REDACTED] to South Side Pharmacy.

As Ms. Olszewski and the hearing panel members had no questions for the sole witness, Mr. Jardine proceeded and provided an Admission of Unprofessional Conduct Pursuant to Section 70 of the *Health Professions Act*. This was marked Exhibit 3.

Mr. Jardine proceeded to detail the key factual admissions in Exhibit 3, pertinent details of which Mr. Small admits are as follows:

1. On September 11, 2013 Mr. Small did not act professionally or exhibit a professional demeanor during his interactions with Ms. [REDACTED], Ms. [REDACTED] and Mr. [REDACTED] including the following statements made by Mr. Small:
  - a. Use of the expression “she plays head games and creates work for all of us” in reference to Ms. [REDACTED] in the original fax fan-out is extremely distasteful and disrespectful, especially in referring to a patient with identified mental health issues and the force of the disrespectful and demeaning statement in the original fax fan-out was compounded by suggesting that it was a joint statement being made by himself and Dr. Singhal;
  - b. Reference to Ms. [REDACTED] as a “pain in the ass” in the initial conversation with Ms. [REDACTED];
  - c. Angry and aggressive demeanor in the second telephone conversation with Ms. [REDACTED] including suggesting “someone squealed like the little pig he is” and statement that Ms. [REDACTED] should make sure [REDACTED] she told Mr. [REDACTED] this;
  - d. The statement to Mr. [REDACTED] that “someone is going to get written up about this” and angry, loud and aggressive tone in stating “Yeah, you want to talk about this after work” which left Mr. [REDACTED] feeling his personal safety had been threatened;
  - e. The subsequent fax to Dr. Singhal referring to another pharmacist as an “immature link in the chain;”

- f. The implicit threat of physical violence toward Mr. [REDACTED] and the inappropriate comments made in referring to pharmacists as immature and squealing like a pig were neither collaborative, professional nor acceptable;
  - g. Similar inappropriate references to pharmacists made in the voicemail to the registrar on September 12, 2012 indicating in part reference to the fan-out about Ms. [REDACTED] restricting her to Mr. Small's pharmacy that:
    - (i) "somebody obviously squealed to the psychiatrist" and
    - (ii) "you would think that people can talk to one another square, one to one, without people having to tattle tale like that."
2. Mr. Small did not maintain a trusting and professional relationship with Ms. [REDACTED] including the following actions:
- a. The original fan-out, in attempting to suggest that Ms. [REDACTED] was restricted to South Side Pharmacy and in indicating this restriction was at the direction of Dr. Singhal, was at a minimum inaccurate and misleading and might be classified as deliberate misrepresentation or falsehood;
  - b. Derogatory statements in the fan-out concerning Ms. [REDACTED] and her conduct that were not true and suggested that these were joint statements from yourself and Dr. Singhal which was not true;
  - c. Statements that were not true about Ms. [REDACTED] to Dr. Singhal during the September 11 phone call, such as Ms. [REDACTED] was allegedly picking and choosing her medications from the discharge prescription, that had the potential to damage Ms. [REDACTED]'s patient – physician relationship;
  - d. Inaccurate and false statements made about Ms. [REDACTED] in the fan-out harmed her potential relationship with other Grande Prairie pharmacies and was intended to restrict her ability and her right to deal with any pharmacist or pharmacy other than Mr. Small's pharmacy; and
  - e. The harsh and derogatory comments made concerning Ms. [REDACTED] to Dr. Singhal and to other pharmacies show a lack of respect and lack of trust in Ms. [REDACTED] and a lack of professionalism in referring to a patient in this manner
3. Mr. Small did not admit to not honoring Ms. [REDACTED]'s request to transfer her care to another pharmacy and created the misleading fan-out as a means to prevent Ms. [REDACTED] from transferring her pharmacy services elsewhere, as she eventually did receive pharmaceutical care from another pharmacy in Grande Prairie.
4. Mr. Small did not maintain proper patient records for Ms. [REDACTED] as required by the legislation pertaining to the practice of pharmacists and the operation of licensed pharmacies including the following:
- a. Admitting to not keeping a record of the information disclosed about Ms. [REDACTED] through the faxed fan-outs;
  - b. Did not create an accurate record for Ms. [REDACTED];
  - c. The original fan-out indicated that Ms. [REDACTED]'s pharmacy services had been restricted to South Side Pharmacy by Dr. Singhal, when this was not the case.

5. Mr. Small's actions involved inappropriate deportment and generally disreputable conduct on the part of a pharmacist and fail to meet the standards of practice and professional deportment reasonably expected of a pharmacist and are contrary to the ethics of the profession and harm the integrity of the profession.

Mr. Small admitted that he contravened:

- Standard 1, 2 and 18 and Sub-sections 1.1, 1.2, 1.4, 1.11(a), 2.1(a), 2.7, 18.3, 18.4 and Appendix A of the Standards of Practice for Pharmacists and Pharmacy Technicians;
- Sub-sections 1.1, 1.2(a) and 8.8 of the Standards for the Operation of Licensed Pharmacies;
- Sub-sections 41(1) and (2) of the *Health Information Act*;
- Sections 1(1)(p)(i), 1(1)(p)(ii), 1(1)(p)(iii), 1(1)(p)(xii) of the *Health Professions Act*;
- Section 12(1) of the Pharmacy and Drug Regulation;
- Section 1(1)(p)(i), 1(1)(p)(ii), 1(1)(p)(ix) and 10(1)(d)(iv) of the *Pharmacy and Drug Act*; and
- Principles I(1,14), II(5), III(1), X(2b,6) and XII(2) of the Alberta College of Pharmacists' Code of Ethics;

His conduct set out above and the breach of some or all of these provisions constitutes unprofessional conduct pursuant to the provisions of Sections 1(1)(pp)(ii), 1(1)(pp)(iii) and 1(1)(pp)(xii) of the *Health Professions Act*, and misconduct pursuant to Sections 1(1)(p)(i), 1(1)(p)(ii) and 1(1)(p)(ix) of the *Pharmacy and Drug Act* for each of allegations except the third.

Mr. Small acknowledges that the conduct described in the above charges is unacceptable and unprofessional and constitutes unprofessional conduct, after receiving independent legal advice.

The hearing tribunal then heard submissions from Mr. Jardine about unprofessional conduct. Mr. Jardine explained that he believed the evidence showed, on a balance of probabilities, that each of the three allegations was factually proven by sufficient evidence and Mr. Small's admission to show unprofessional conduct.

Ms. Olszewski had no submissions with respect to the admissions of unprofessional conduct because Mr. Small has voluntarily signed a document to that affect.

The hearing tribunal was tasked with determining whether the admitted conduct is unprofessional conduct, if Allegation 3 was also proven, and whether any orders (sanctions) should be made under Section 82(1) of the HPA.

## V. FINDINGS

The hearing tribunal has considered whether the conduct constitutes "unprofessional conduct" within the meaning of S.1(1)(pp) of the HPA, which is defined to include:

- Displaying a lack of knowledge of skill or judgment in the provision of professional services;

- Contravening a code of ethics or standards of practice;
- Contravening another enactment that applies to the practice of the profession, such as the *Pharmacy and Drug Act* or the *Controlled Drugs and Substances Act*;
- Conduct that harms the integrity of the profession.

Implicitly threatening violence, demeaning another pharmacist, publishing false statements on another professional's behalf, and the extremely distasteful, disrespectful, demeaning statements about a patient is clearly unprofessional conduct. This behaviour is also conduct that harms the integrity of the profession of regulated pharmacists.

Mr. Small did not apologize to the other involved pharmacists, technicians or other colleagues affected by his offensive behaviour and actions. While Mr. Small acknowledged he should apologize to Ms. [REDACTED], there was no evidence provided that he actually followed through. This is clearly contrary to Standard 1 to act professionally and Standard 2 to establish and maintain professional relationships of the Standards of Practice for Pharmacists and Pharmacy Technicians. It is also contrary to Principles I, II, III, X and XII of the ACP Code of Ethics which require honesty, integrity, collaboration between colleagues, holding the patient's best interest and respecting their autonomy and dignity.

The tribunal accepts that Mr. Small's admitted conduct in the first allegation constitutes unprofessional conduct.

With regard to the second allegation there was again an admission of misconduct in the lack of professionalism displayed and the breach in maintaining the trusting patient – caregiver relationship. The hearing tribunal finds these actions clearly breached the ACP Code of Ethics Principles 1, 2 and 3, as well as Standard 2 of the Standards of Practice for Pharmacists and Pharmacy Technicians in harming the patient's relationship with his own pharmacy and staff, with other pharmacies within the community and their staff, and with the patient's own trusted doctor – patient relationship. Mr. Small's breaches of the ACP Code of Ethics and of the Standards of Practice constitute unprofessional conduct as defined in the *Health Professions Act* Section 1(1)(pp)(ii), (iii) and (xii). The second allegation and admission are well founded.

As for the third allegation and subsequent denial of not facilitating the transfer of care to another pharmacy, the tribunal agrees that Ms. [REDACTED] was eventually able to receive care and medications from another pharmacy in Grande Prairie. While the misleading and offensive fax fan-out was inappropriate, contravenes ethical standards and regulations, and was intended as a means to prevent Ms. [REDACTED] from transferring her pharmacy services elsewhere, based on the wording of the allegation we do not find it to be proven based on a balance of probabilities as she was subsequently able to receive appropriate care and because the second fax fan-out had the misleading and unprofessional information removed.

Failing to create or maintain record of denial of care and of communication of the use of personal information about the patient as described in the fourth allegation constitutes breaches of Standard 18 in the Standards of Practice, Sub-section 8.8 of the Standards for the Operation of Licensed Pharmacies, Sub-sections 41 (1, 2) of the *Health Information Act*, Section 12(1) of the

Pharmacy and Drug Regulation, and Principle III of the Code of Ethics and demonstrates an unprofessional action. Standard 1.1 of the Standards of Practice for Pharmacists and Pharmacy Technicians speaks to practicing within the law and Standard 1.2 speaks to practice within the spirit of the law.

As Mr. Small was also the licensee, Section 10(1) of the *Pharmacy and Drug Act* requires that a licensee must ensure the pharmacy operates in accordance with the Act and that all required records are created and maintained in accordance with the Act. The intentional omission or falsifying of records also does not hold up to Principles 1 or 10 of the Code of Ethics which speak to holding the well-being of each patient as the primary consideration and acting with honesty and integrity in complying with the letter and intention of the law.

Mr. Small's contraventions of the Standards of Practice, the *Pharmacy and Drug Act* and the ACP Code of Ethics constitute unprofessional conduct as defined in the *Health Professions Act* Section 1(1)(pp)(ii), (iii) and (xii).

With regard to the final allegation in this matter involving inappropriate department and generally disreputable conduct, the tribunal agrees Mr. Small's actions, behaviours and reactions are contrary to the ethics of the profession and harm the integrity of the profession. Not only were other colleagues and health care professionals made aware of the inaccurate and harmful fax fan-out, the RCMP had an open file on record of absurd pharmacist conduct. Clearly Mr. Small's conduct is harmful directly to the profession of pharmacy. The bullying attitude displayed repeatedly in communications with Ms. [REDACTED], perhaps her family members, her other caregivers, regulators within the college and within law enforcement, and with others is a breach of all of the regulations set out above and constitutes unprofessional conduct.

**The Tribunal, after deliberation has accepted the Admission of Unprofessional Conduct and finds Mr. Small committed unprofessional conduct for each of the four allegations: 1, 2, 4 and 5.**

## **V. SANCTIONS**

The parties were offered the opportunity to make submissions on sanctions. Both Mr. Jardine and Ms. Olszewski indicated that they were prepared to make submissions regarding penalty, and had in fact had a partial joint submission on sanction document, marked Exhibit 9.

Mr. Jardine referred to an excerpt from James Casey's *Regulation of Professions in Canada*, which makes it clear that the primary consideration at the penalty phase of the proceedings in a self-regulating profession is to impose an order which ensures that the public is adequately protected from future conduct of a similar nature. Additionally, the second principle is protection of the integrity of the profession, both in the eyes of the profession and the public, and the third is fairness to the member. It is necessary to balance all of these factors in determining appropriate sanctions.

Mr. Jardine also referred to some of the factors referenced in *Jaswal v. Newfoundland (Medical Board)* (1996), 42 Admin L.R. (2d) 233 (T.D) suggesting that the hearing tribunal should consider the following when determining which orders should be imposed:

1. Nature and gravity of the proven allegations: These are serious allegations. Deliberately interfering with the patient's choice, making comments about the patient, and enlisting a physician by association in comments which could damage the patient relationship, could damage the patient, and could damage the patient in the eyes of other medication professionals she might be dealing with, are grave offenses.
2. Age and experience of the offender: Mr. Small has practiced as a pharmacist for a number of years. This is not something that occurred due to his inexperience. Mr. Small has acknowledged his addiction issues had resurfaced during this timeframe.
3. Previous character of the offender: There was no previous finding of unprofessional conduct. However, there were five previous complaints between 1999 and 2009 which involved some element of conduct or anger in responding to people. These complaints were dealt with by the Infringement Committee and via an agreement that there would be anger management courses taken.
4. Age and mental condition of offended patient: Ms. [REDACTED] was vulnerable in that she had just been discharged from hospital with a complicated medication regime as prescribed by a psychiatrist.
5. Number of times offence occurred: This was the only instance we are aware of that involved Ms. [REDACTED].
6. Role of member in acknowledging what occurred: Mr. Small has cooperated with what has come forward, however his initial response was to place blame on others including the patient. The concern is that certain types of conduct are clearly marked as unacceptable. Not only was his behaviour at the time unacceptable, also his reaction to being confronted with his inappropriate behaviour.
7. Other serious or financial penalties: Nothing as a direct result of this issue.
8. Impact on offended patient: Obviously Ms. [REDACTED] while ultimately assisted in her pharmacy needs, was very upset, was intimidated and felt treated in an unprofessional manner.
9. Mitigating circumstances: As a result of Mr. Small's cooperation, a number of witnesses who were prepared to travel from Grande Prairie were no longer required to attend.
10. Need to promote deterrence: There is a need to ensure that Mr. Small and other members of the profession are deterred from engaging in similar conduct with patients and with other professionals. This conduct is significantly beyond acceptable.

11. Public confidence in the integrity of the profession: The public has a certain expectation of the way pharmacists treat their patients. This decision needs to make clear to the public that the profession shares that point of view and will not accept this conduct.
12. Degree to which the conduct is clearly regarded, by consensus, as falling outside the range of permitted conduct: Clearly Mr. Small's conduct was well beyond the boundary of what would be considered professional conduct.
13. Range of penalties in similar cases: Mr. Jardine referred the tribunal to the following previous case, noting there has never been an exact similarity.

Mr. Jardine referred to [REDACTED] in which prescriptions had been pre-filled and billed before the refill was due and the patient was prevented from filling it in a different pharmacy. It establishes the principle that a patient's choice must not be compromised. It is partly relevant, however in some ways Mr. Small's case will be precedent setting and should make it very clear to other pharmacists there are certain lines not to be crossed.

Mr. Jardine submitted on behalf of the complaints director and Mr. Small agreed that the following sanctions are appropriate in this matter:

1. A reprimand.
2. A suspension of one month to be served concurrently with any suspension imposed in the hearing concerning Complaint File #3077.
3. An order that Mr. Small shall arrange and complete a series of sessions with a counselor satisfactory to the complaints director on anger management and patient relationships. Upon satisfactory completion of the counseling, Mr. Small shall arrange to have a report from the counselor confirming satisfactory completion of the counseling provided to the complaints director.
4. An order that any and all costs or expenses required to satisfy the condition in order 3 above shall be the responsibility of and be paid by Mr. Small.
5. An order that Mr. Small pay the full costs of the investigation and hearing in this matter. Payment of these costs will be deferred during the suspension in this matter and during any suspension imposed in the hearing concerning Complaint File #3077 and thereafter shall be made on a periodic basis satisfactory to the complaints director. It is agreed that the payment of these costs may be deferred for a further reasonable period satisfactory to the complaints director if Mr. Small is not immediately employed after his suspension.

The parties are not agreed on the following issue:

The complaints director believes that a fine of \$5,000 should also be imposed in this matter to make clear to Mr. Small, the public, and other pharmacists that actions of this nature constitute serious unprofessional conduct. In the circumstances of this case, the complaints director agrees that once the fine is paid, this amount could be deducted from the amount of the costs of the investigation and hearing to be paid by Mr. Small.

Mr. Small, via Ms. Olszewski, does not agree that a fine is required or appropriate. Ms. Olszewski, on behalf of Mr. Small, submitted that a fine was neither required nor appropriate. She noted that Mr. Small had already suffered very significant financial losses from the closing of the pharmacy and was under great stress due to workload at the time of the misconduct. In addition he was medically unwell due to his relapse. He apologized to the doctor and should be given credit for his admissions of unprofessional conduct and his cooperation.

## **VI. ORDERS**

The hearing tribunal has carefully considered the submissions made by Mr. Jardine on behalf of the complaints director and Ms. Olszewski on behalf of Mr. Small in relation to sanctions, and the factors referenced in the *Jaswal* decision. In addition, the hearing tribunal considered that Mr. Small was in agreement with the orders sought on behalf of the complaints director with one exception being the fine sought.

The hearing tribunal feels that the orders sought achieve the goal of sentencing in the professional discipline context, which is largely concerned with ensuring that the public is protected from future misconduct of a similar nature. The hearing tribunal is of the view that the orders sought on behalf of the complaints director properly reflect the seriousness of the conduct, but at the same time are fair to Mr. Small given his candor in these proceedings and his willingness to eventually admit responsibility for his actions.

The hearing tribunal has concluded that a \$5,000 fine is appropriate taking into account Mr. Small's actions and choice of words, his disrespect for his patient's wishes, his omission in record keeping, his reprehensible treatment of colleagues, and his untrue statements made on behalf of another of the patient's healthcare professionals. The hearing tribunal considers the overall conduct to be egregious and as a result justifies a fine in addition to the other sanctions imposed.

The hearing tribunal hereby makes the following orders pursuant to S.82 of the HPA:

1. Mr. Robin Small is issued a reprimand and this decision will serve as the reprimand.
2. A suspension of one month to be served concurrently with the suspension imposed by this hearing tribunal upon Mr. Small in Complaint File 3077.
3. Mr. Small shall arrange and complete a series of sessions on anger management and patient relationships, with a counselor satisfactory to the complaints director. Upon satisfactory completion of the counseling, Mr. Small shall arrange to have a report from the counselor confirming satisfactory completion of the counseling provided to the complaints director.
4. Any and all costs or expenses required to satisfy the condition in Order 3 above shall be the responsibility of and be paid by Mr. Small.

5. Mr. Small will pay the full costs of the investigation and hearing in this matter. Payment arrangements to be satisfactory to the complaints director.
6. Mr. Small is fined \$5,000.00. Once paid, this fine may be deducted from the sum of the costs of the investigation and hearing as set out in Number 5 above.

Signed on behalf of the hearing tribunal by the  
chair

Dated:

January 31, 2014

Per:

[Dianne Veniot]