

ALBERTA COLLEGE OF PHARMACISTS

IN THE MATTER OF
THE HEALTH PROFESSIONS ACT

AND IN THE MATTER OF A HEARING #3077
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 the 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 5, and stated the following four allegations:

It is alleged that:

Between May 1, 2012 and early May 2013 you:

1. Diverted and misused narcotics, controlled substances and targeted substances and diverted from South Side Pharmacy, Grande Prairie, Alberta (Pharmacy Reg. #2289) approximately:
 - a. 73,229 mg of hydromorphone;
 - b. 266 caps of Co-temazepam 30 mg caps;
 - c. 280 spansules of Dexedrine 15 mg spansules;
 - d. 666 tabs of Endocet;
 - e. 2,072 tabs of Oxycocet 5 mg tabs;
 - f. 846 tabs of Sandoz Morphine SR 60 mg tabs;
 - g. 258 tabs of Supeudol 10 mg tabs, and;
 - h. additional undetermined quantities of Valium and zopiclone.
2. Abused your position of trust as a pharmacist and pharmacy licensee by altering the electronic inventory records of the pharmacy to conceal your diversion of the drugs you diverted from the pharmacy. Specifically you, without legitimate cause, altered the pharmacy's electronic inventory records for Dilaudid 8 mg tabs, Co-temazepam 30 mg caps, Dexedrine 15 mg spansules, Endocet, Oxycocet 5 mg tabs, Sandoz

Morphine SR 60 mg tabs, Supeudol 10 mg tabs and likely other hydromorphone products.

3. Practiced while incapacitated over a prolonged period, thereby creating an environment that endangered the public with your practice based on:
 - a. your admissions of using a wide range of drugs (hydromorphone, Dexedrine, Valium, other benzodiazepines, zopiclone and other sedative/hypnotics) over a lengthy period of time;
 - b. the observations of Mr. [REDACTED] and Mr. [REDACTED] of your practice in May 2013;
 - c. the fact that you customarily worked as the only pharmacist and therefore routinely practiced while incapacitated;
 - d. the pattern and timeframe of the diverted drugs which indicate that it is likely that you practiced in this manner for a prolonged period of time;
 - e. the fact that you continued practicing while diverting and abusing significant quantities of a wide range of powerful narcotics, stimulants, sedatives/hypnotics and anxiolytics created an environment that had the real potential to have created patient harm and to decrease the public's trust in the profession, and;
 - f. you continued to practice in this manner until you were confronted in early May, 2013 by the pharmacy owner, Mr. Shaw, and by the complaints director.

It is further alleged that

4. While you have indicated that all of the drugs you diverted were for your personal use, the total quantity of unaccounted for and manually "adjusted" drugs does not make it clinically reasonable to conclude that you personally ingested all of the missing medications and a reasonable conclusion is that some of the missing amounts were diverted by you for purposes beyond your personal use.

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

- Standard 1 and Sub-standards 1.1 and 1.2 of the Standards of Practice for Pharmacists and Pharmacy Technicians;
- Sections 1(1)(pp)(ii), 1(1)(pp)(iii) and 1(1)(pp)(xii) of the *Health Professions Act*;
- Standards 1, 5 and Sub-standards 1.1, 1.2 and 5.11 of the Standards for the Operation of Licensed Pharmacies;
- Sections 1(1)(p)(i), 1(1)(p)(ii), 1(1)(p)(iv), 1(1)(p)(ix), 10(1)(a), 10(1)(d)(iv), 31(2)(a) and 38 of the *Pharmacy and Drug Act*;
- Principles 1(1), 10(1) and 11(1,2,3,4 and 5) of the Alberta College of Pharmacists' Code of Ethics;
- Section 51(1) of the Benzodiazepines and Other Targeted Substances Regulations;
- Section 4(1) of the *Controlled Drugs and Substances Act*, and;
- Section 31(1) 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(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*.

Exhibit 6 was entered as the Record of Decision and Exhibit 7 entered is the Admission of Unprofessional Conduct.

III. EVIDENCE

Mr. Small admitted Allegations 1, 2 and 3 but did not admit Allegation 4.

The college's first and only witness was Mr. James Krempien, the complaints director. Mr. Krempien reviewed Exhibit 8, being a binder of documents including the Sequence of Events Report, entered by consent.

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

- Exhibit 8, Tab 1 Sequence of Events Report – the initial call was from Mr. Ken Shaw, the owner of South Side Pharmacy, expressing concerns that he had received reports from Mr. [REDACTED], a contractor for Mr. Shaw and also a patient of the pharmacy. Mr. [REDACTED] observed Mr. Small's behaviour at the pharmacy on a few occasions that lead him to conclude that Mr. Small was under the influence of a substance while on duty and practicing in a state of impairment.
- Exhibit 8, Tab 2 Statements from Mr. Shaw and Mr. [REDACTED] both indicating they witnessed Mr. Small in the pharmacy in obvious distress. Tabs 3, 4, and 5 are setting up the complaint file between Mr. Krempien and Mr. Shaw.
- Exhibit 8,
Tab 6, 7, 8, 9 Email and registered mail from the complaints director to Mr. Small informing him of the new complaint #3077 as a previous pending complaint #2774 was also being concluded and may have been confused.
- Exhibit 8, Tab 12 Transcribed conversation between Mr. Small and Mr. Krempien discussing the closure and transfer of patient care from South Side Pharmacy in which Mr. Small references a previous substance abuse issue in the late 90's and his expressed intention to voluntarily cancel his practice permit in the next few days.
- Exhibit 8,
Tab 13,16, 35 Email from Mr. Krempien to Mr. Small indicating that Mr. Small would be subject to submitting to assessment under Section 118 of the *Health Professions Act*, incapacity including substance abuse, if he failed to voluntarily cancel his practice permit. Tab 16 is recognition of Mr. Small's voluntary cancellation of his practice permit. Tab 35 confirms that Mr. Small's name has been removed from the Clinical Register of ACP.

- Exhibit 8, Tab 23 An email string regarding a Grande Prairie pharmacist, Mr. Brad Willsey, who was enquiring about assisting Mr. Shaw with the final closure of South Side Pharmacy, and who subsequently did deal with the closure.
- Exhibit 8, Tab 25 Meeting summary of Mr. Krempien and Mr. Small in Grande Prairie on May 13, 2013 in which Mr. Small acknowledges his relapse with his substance abuse issue and diverting medications from South Side Pharmacy for personal ingestion, including narcotics, controlled substances and prescription drugs, and would be addressing his substance abuse by accessing counseling for stress burnout.
- Exhibit 8, Tab 33 Correspondence from Ms. Janet Wright, Prescription Data Administrator with the College of Physicians & Surgeons of Alberta (CPSA) containing records of all triplicate prescriptions entered into the CPSA database that were filled at South Side Pharmacy between May 2012 to May 2013, as an indication of what narcotics were leaving the pharmacy pursuant to a valid triplicate order and in what quantities.
- Exhibit 8, Tab 37 Correspondence from Khoi Nguyen, Regulatory Officer at McKesson Canada containing sales totals of three hydromorphone products between May 14, 2012 and May 14, 2013. This data was then compared to the validated dispensing history as provided in Tab 33 to determine unaccounted missing quantities.
- Exhibit 8,
Tab 40,41,42 Purchase history from McKesson of narcotic and controlled items; transfer of narcotics on hand from South Side Pharmacy to Medicine Shoppe, to [REDACTED] and to [REDACTED].
- Exhibit 8,
Tab 41,42,43 Narcotic history inventory reports including manual adjustments made to the perpetual inventory provided by Mr. Willsey at the request of Mr. Krempien. Evident are a large number of instances at a high rate of frequency of manual adjustments to the drugs Mr. Small has previously disclosed he was diverting for his personal use.
- Exhibit 8, Tab 44 Mr. Krempien's analysis of the missing doses of narcotic and controlled substances that are unaccounted for from May 2012 to May 2013 and the significant totals appear above in the Notice of Hearing (Exhibit 5). Of interest, the hydromorphone powder quantity that is unaccounted for may not be considered a reasonable amount that could have been ingested by a single person for personal use while maintaining a compounding pharmacy business, approximately equivalent to 1000 milligrams of morphine each day 365 days of the year, in addition to other formats of hydromorphone and many other consciousness effecting drugs.

Mr. Jardine concluded with his only witness. As counsel for Mr. Small requested a brief recess, questioning of Mr. Krempein followed the lunch break and proceeded as follows:

Ms. Olszewski's questions arose from the review of the drug inventory records in comparison to the Triplicate Prescription Program (TPP) information and used in the calculations of the unaccounted for hydromorphone powder presented in Tab 44 above. In the TPP data a patient was identified "JC" with three entries for her that made reference to hydromorphone powder: 10,000 mg on June 4th; 6,000 mg on July 4th; 60,000 mg 19th of December; no entries for August, September, October or November of 2012; and no entries for all the months of 2013. Additionally, in Tab 40, Mr. Willsey did not make note of any manual adjustments to this particular dosage form although it appears that for the other drugs admittedly diverted, there were, in fact inventory adjustments captured in the records.

Ms. Olszewski declined to call any witnesses and by consensus Mr. Jardine proceeded to review submissions on this matter, Exhibit 7 Admission of Unprofessional Conduct Pursuant to Section 70 of the *Health Professions Act*.

The hearing tribunal then heard submissions from Mr. Jardine about unprofessional conduct. Mr. Jardine first clarified that the Notice of Hearing contained four allegations of unprofessional conduct. Mr. Jardine explained that he believed the evidence showed on a balance of probabilities that each of the first three allegations was factually proven and that there was sufficient evidence to show unprofessional conduct. On the fourth allegation, this is a case where the balance of probability does have some meaning and the test of more probable than not that the allegation has been proven as there has been no explanation by Mr. Small with respect to the enormous quantity of missing hydromorphone powder.

Ms. Olszewski had no submissions on the three allegations addressed by Mr. Small's signature on the admission document as they are readily admitted to.

Mr. Small has not admitted to taking any medication for other than personal use and there has been no evidence presented of anything beyond personal consumption. As the onus was on the college to prove the allegation that the significant missing amount of hydromorphone powder was diverted beyond Mr. Small's personal use, Ms. Olszewski submitted that there was no clear, convincing and cogent evidence to satisfy the balance of probabilities test.

Further, Mr. Small has cooperated with the investigation into this matter, admitted freely to every other allegation, has taken responsibility for his actions, and has taken steps to address his addiction. Ms. Olszewski asserts Mr. Small has no motive for diverting hydromorphone powder as he already had full access to drugs through the pharmacy and had shown no evidence of serious financial strain, and had admitted to altering the records of narcotics he freely admitted to ingesting. The possibility that the hydromorphone powder dispensed to a specific patient was under-reported and perhaps skewed the figures calculated was offered as a reasonable conclusion.

Mr. Jardine responded to clarify the balance of probabilities is the test to be used to determine if Mr. Small has diverted the very high amount of unaccounted for narcotic powder, not the more serious clear, convincing and cogent evidence as a test; whether it more probable that Mr. Small diverted narcotics above and beyond his own personal use or not. The missing records should have been generated from South Side Pharmacy if indeed the medication was dispensed legitimately pursuant to a triplicate prescription, and Mr. Small as licensee was responsible for the generation or perhaps intentional omission of those records.

The hearing tribunal was tasked with determining whether the admitted conduct is unprofessional conduct and whether any orders should be made under Section 82(1) (sanctions) 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 or 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.

The hearing tribunal, after caucus, concluded that with respect to the first allegation there was an admission of diversion and personal use of the narcotics, controlled substances, targeted substances, and other medicines. This conduct is clearly unprofessional as it harms the integrity of the profession for registered pharmacists to be diverting and misusing the controlled substances with which they are entrusted.

Additionally, the diversion contravenes Standard 5 of the Standards for the Operation of Licensed Pharmacies which speaks to a licensee ensuring the drug supply in the licensed pharmacy is managed so as to protect the integrity, quality and safety of drugs, and specifically 5.11 stating a licensee must ensure drugs are secured against theft, loss or diversion, and Code of Ethics Principle 11(5) which guides members to not misuse or abuse substances. The tribunal accepts that Mr. Small's admitted conduct in the first allegation constitutes unprofessional conduct.

As for the subsequent admission of altering pharmacy records, this also constitutes unprofessional conduct. Standard of Practice for Pharmacists and Pharmacy Technicians 1.1 speaks to practicing within the law and Standard 1.2 speaks to practice within the spirit of the law. Tampering with or falsifying inventory records breached Standards 1.1 and 1.2 and demonstrates an unprofessional action. Section 8(10)(1)(a) and (d)(iv) of the *Pharmacy and Drug Act* require 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 falsifying of records also does not hold up to Principle 10 of the Code of Ethics which speaks to acting with honesty and integrity in complying with the letter and intention of the law.

Mr. Small was also a licensee therefore his conduct was also subject to the provisions of the *Pharmacy and Drug Act* which contains specific prohibitions on failing to adequately follow legislation relating to the prescribing, dispensing, supply or distribution of drugs including controlled and targeted substances. Mr. Small clearly failed to comply with the requirements of the *Pharmacy and Drug Act* when he diverted numerous narcotics from the pharmacy's supply without a valid prescription and used them himself. Such failures are defined as misconduct under the *Pharmacy and Drug Act*, S. 1(1)(p)(iv) and they are therefore part of the definition of unprofessional conduct under the *Health Professions Act* Section 1(1)(pp).

With regard to the third allegation, there was an admission of practicing while incapacitated over a prolonged period. The hearing tribunal finds these actions clearly breached the ACP Code of Ethics Principles 11(2), (4) and (5) in failing to demonstrate responsibility for himself, failing to declare circumstances calling his fitness to practice into question and misusing and abusing substances. The tribunal also noted that Mr. Small breached the *Controlled Drugs and Substances Act* Section 4(1) with the consumption of a controlled substance he was not authorized under the regulations to possess. Mr. Small's breaches of the ACP Code of Ethics and of the *Controlled Drugs and Substances Act* constitute unprofessional conduct as defined in the *Health Professions Act* Section 1(1)(pp)(ii), (iii) and (xii).

Mr. Small's patients were at risk of being harmed by his repeated actions, and his behaviour was indeed observed. He did not stop until confronted and thus created an environment that not only endangered the public but also harmed the public trust in the profession of pharmacy.

It is unprofessional for a registered pharmacist to be diverting prescription medications and controlled and targeted substances for his own use. 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). There is no question that diverting for personal abuse, practicing in an incapacitated state and altering electronic health records to cover up the diversion of drugs such as narcotics is unprofessional conduct for a pharmacist.

The Tribunal, after deliberation has accepted the Admission of Unprofessional Conduct and finds Mr. Small committed unprofessional conduct for each of the three allegations.

As for the fourth and disputed allegation of diverting narcotics for use beyond Mr. Small's own personal use, the onus was on the college to prove the allegation based on the balance of probabilities. While the tribunal members may have lingering suspicions, they are not fully satisfied that the evidence provided proves that Mr. Small was using the missing and unaccounted for narcotics for anything other than personal use.

V. SANCTIONS

After hearing evidence and submissions from the parties regarding the conduct in issue, the Hearing Tribunal caucused. After resuming, the chair advised the parties of the tribunal's findings of unprofessional conduct. 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 Partial Joint Submission on Sanctions, marked Exhibit 10

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 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 very serious matters. Diversion of drugs and falsifying of records goes to the root of pharmacy practice. The conduct in this case was deliberate rather than an accident or mistake.
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 and thus is not a mitigating factor.
3. Previous character of the offender: There were no previous findings of unprofessional conduct. However, there was a previous incident prior to 1999 where Mr. Small came forward, dealt with an addiction issue, was under a monitoring and compliance agreement and was completed.
4. Age and mental condition of offended patient: No evidence of actual patient harm was presented.
5. Number of times offence occurred: This was not an isolated event. The conduct occurred over a significant period of time, was a series of decisions made and a series of personal diversions for at least a one year period. There were opportunities to have stopped and only ended when there was an investigation and complaint.
6. Role of member in acknowledging what occurred: Mr. Small made an early admission once confronted in May 2013 and remained cooperative throughout the process. This factor weighs somewhat in his favor although it was not a self report and the diversion only stopped when a third party observed and reported it and the member was confronted.

7. Other serious or financial penalties: Mr. Small did give up his practice permit in May 2013 and thus lost his employment. Mr. Small had invested some of his own funds in the South Side Pharmacy stock and equipment.
8. Impact on offended patient: Not applicable.
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 of misusing narcotics, diversion, and altering records to conceal that diversion. Not practicing while incapacitated is fundamental to the safe practice of pharmacy, and there is a very definite need to promote specific deterrence for this member and general deterrence.
11. Public confidence in the integrity of the profession: The tribunal must ensure that the sanctions ordered will ensure public confidence in the integrity of the sanctioning process. It must be clear to members and to the public that in cases of diversion for personal use, there will be very serious consequences in addition to an expectation of rehabilitation.
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 8 cases that may be of assistance in determining penalty.

Mr. Jardine referred to **M. Leonard Johnson 2001** which is an admission of unprofessional conduct and dependence on narcotics. He stole first from his own family store, then removed drugs from a health care centre pharmacy. The case involved a breach of a prior maintenance and monitoring agreement and resulted in an order for a 24 month suspension, counseling and rehabilitation program, return to practice under supervision for not less than 6 months, prohibition from registering as a pharmacy manager, random drug screening and undertaking to abide by the support program, and all costs.

Bassam Soufan's hearing was decided by a tribunal and was then taken to council. This was not an addiction instance; the individual got himself into a position where he felt pressured and was effectively selling the diverted narcotics to individuals thought to be associated with a gang. This is a different situation yet diversion of significant quantities of narcotics by the licensee occurred. A 24 month suspension, including credit for the interim suspension and a series of limitations to return to practice after that including not being a pharmacy manager or licensee, no narcotic signing authority, advising the college when employed, prohibited from a proprietary interest, advising all employers of this

documentation and potential for narcotic audits were the sanctions. After appeal to the council all decisions were upheld including full payment of the costs of both.

The **Leanne Rogalsky** case involved diversion of approximately \$35,000 worth of OxyContin resulting in serious concerns this was not only for personal use. She was a licensee at one store and a staff pharmacist at a second store. Her suspension was for 4 years with credit for the 4 years to the time of the hearing while criminal proceedings were addressed. Mitigating factors included a potential abusive relationship. There was a fine imposed of \$5,000 plus costs, a condition on her practice permit including satisfying conditions of re-entry to practice by the competence committee given that she had been out of the profession for a significant period of time, not to act as licensee or have signing authority, voluntary random drug screens for the following 3 years, and she was prohibited from taking Schedule 1 or 2 drugs without a prescription. Ms. Rogalsky requested a lower fine with a delay in time for payment which was reduced to \$2,500 as she had been out of practice for 48 months.

The unpublished registrant case as well included a monitoring agreement during which time she relapsed, consumed drugs, and ended up in hospital. Her prior conduct was considered and included a 9 month suspension prior to the time of her hearing (costs of which were her responsibility) and a 10 month total suspension was imposed as any longer suspension was felt to not be a necessary deterrent given her 9 month clean history and residential treatment. Other conditions imposed on her practice permit included 36 months of no licensee or narcotic signing, using drugs only pursuant to a prescription, drug monitoring and screening, and then practice under direct supervision and disclosure of the matter to any employer and pursuing counseling for 12 months.

While the **Bryan McIntyre** case is not directly relevant, the basic allegation was that he allowed himself to be pressured into diverting narcotics and manipulation of the inventory to conceal it. The amounts were clearly beyond what the individual pharmacist could consume with an element of giving these to a patient beyond that patient's expected usage. Orders included a \$10,000 fine for the finding of unprofessional conduct, 30 month suspension (of which 24 months were stayed), costs, and a multitude of practice permit conditions upon return to practice. The college took this decision to an appeal panel that increased the suspension to 24 months from the appeal, must pass the jurisprudence exam, must not act as a licensee, must provide details to any employer for 3 years after resuming practice, and ordered to pay all costs of the original hearing, the appeal and the fine.

Finally, the **Trent Walsh** case was highlighted which was a first instance with relatively limited diversions, and cooperation. However, he did not immediately acknowledge his conduct. His sanctions included an additional 8 month suspension, a prohibition from acting as licensee for 5 years, requirements to inform employers of the tribunal decision for 5 years and submit to a monitoring and recovery program for 5 years, as well as costs of the investigation and hearing.

Mr. Jardine summarized many similarities in the suspensions and penalties, often rehabilitative in nature and with protection of the public in terms of the monitoring and support in recovery. In Mr. Small's case there is acknowledgment of cooperation and agreement on certain parts of the sanctions. Mr. Jardine then submitted, on behalf of the complaints director, that the hearing tribunal should impose the following orders:

1. 24 months overall suspension from the date of the written decision. This is an area of contention as Mr. Small suggests a suspension of 18 months from October 15, 2013, or 24 months from the date he stopped practicing in May 2013. The parties are agreed that an order imposing a significant suspension is appropriate.
2. Upon completion of the suspension:
 - A. Mr. Small provides evidence satisfactory to the complaints director that Mr. Small has received appropriate treatment for his addiction issues and is no longer incapacitated and is fit to practice;
 - B. Mr. Small provides to the complaints director a recent (within 2 months) report from a qualified health professional satisfactory to the complaints director outlining the treatments undertaken by Mr. Small, confirming that Mr. Small is now fit to practice pharmacy, and outlining the supports and continuing monitoring and recovery programs that Mr. Small will be engaged in to support his return to practice; and
 - C. Mr. Small satisfactorily completes all the requirements of the registration department of the Alberta College of Pharmacists required for his registration and practice,
 - D. Mr. Small satisfactorily completes the jurisprudence exam making it clear Mr. Small is aware of and has an understanding of the requirements and the rules and has refocused his attention on these requirements of practice. If the suspension results in absence from practice of more than 24 months then this sanction will automatically become simply a requirement of the registration department. Mr. Small does not agree to this further condition.
3. An order that any practice permit issued to Mr. Small upon completion of his suspension, and satisfaction of the provisions of the order above, shall be subject to the following conditions:
 - A. Mr. Small shall be enrolled in a monitoring and support program satisfactory to the complaints director for a period of 5 years;
 - B. Mr. Small shall not be a licensee or proprietor of a pharmacy for a period of 5 years but this term can be reduced to 3 years at the discretion of the complaints director based on satisfactory reports from the health professionals involved in Mr. Small's monitoring and treatment;
 - C. Mr. Small shall practice under direct supervision for a minimum of 12 months following his return to practice. At the end of the year, and prior to the removal of the condition, the supervisor must provide the complaints director with a favourable report on Mr. Small's supervised conduct that is satisfactory to the complaints director. (The supervisor providing the report must have directly observed the practice and conduct of Mr. Small for a minimum of 6 months; and
 - D. For a period of 5 years, Mr. Small will provide verification to the complaints director that he has advised the licensee and proprietor of any pharmacy at which he is employed of

the decision of the hearing tribunal and the orders made by the hearing tribunal and will provide such verification any time that he changes employment.

4. An order that any and all costs and expenses required to satisfy the conditions in the orders 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 with payment of the costs to be deferred during the period of the suspension but to be payable thereafter upon a basis satisfactory to the complaints director. It is agreed that payments 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.

Ms. Olszewski responded with Exhibit 11 – Materials on Sanction and was then provided with a further opportunity to make submissions on sanctions and to respond to Mr. Jardine’s submissions.

Mr. Small’s spouse was recognized as witnessing these proceedings, is fully knowledgeable of his circumstances and remains loving and supportive, as do their three adult children. Mr. Small previously voluntarily participated in an AADAC recovery program for a couple years and had been free from substance abuse issues since sometime in 1993. Mr. Small has an interest and feels he has developed some expertise in compounding medication for his patients.

Mr. Small has abstained from drugs and alcohol since May 8, 2013. By May 10, 2013 he was seeing a psychologist. He experienced significant withdrawal symptoms which resulted in hospitalization as documented in Exhibit 11; has had a negative ‘Firststep Drug Screen Dip Test’ in August 2013 and again on October 11, 2013. He continues to be supported with psychological assistance and attends AADAC Relapse and Recovery weekly meetings. Ms. Olszewski reviewed 5 letters of support from friends and patients and one from his spouse. Ms. Olszewski proposed that an appropriate length of a suspension would be 18 months from the date of the hearing or 24 months from the date that Mr. Small voluntarily stopped practicing.

After hearing submissions from the parties, the complaints director’s proposal for a 24 month suspension was clarified. The parties confirmed that Mr. Small has been off the clinical register since May 2013. Up to 24 months after May 2013, Mr. Small may be re-registered using only the usual re-registration evidence, including proof of insurance, continuing education credits and payment of licensing fees. Beyond 24 months Mr. Small would need to complete structured practical training for 200 hours and successfully pass the jurisprudence exam. Beyond 5 years he would also have to do the PEBC - OSCE.

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

modification suggested to the duration of suspension and rejection of the mandatory jurisprudence exam.

With respect to the length of the suspension, the hearing tribunal notes that Mr. Small voluntarily relinquished his practice permit on May 9, 2013. The hearing tribunal believes that a 24 month suspension commencing May 10, 2013 would be appropriate. We also require that Mr. Small take the jurisprudence examination prior to re-commencing practice. The hearing tribunal is of the view that these Orders, coupled with the other agreed upon Orders, will achieve the goal of ensuring that the public is protected. The 24 month suspension commencing May 10, 2013 reflects the very serious nature of the misconduct while also recognizing that Mr. Small relinquished his practice permit May 9, 2013. The hearing tribunal was of the view that a longer suspension in this case would not act as a greater deterrent to Mr. Small or other members of the profession. The jurisprudence examination will ensure that prior to returning to practice Mr. Small is aware of and has an understanding of the requirements and the rules and has refocused his attention on these requirements of practice. As there were numerous instances of very serious misconduct, Mr. Small should take the jurisprudence examination to ensure that when he returns to practice he fully understands and complies with his obligations. Overall, there has been a widespread and prolonged failure by Mr. Small to comply with his basic obligations as a pharmacist. We consider the Orders to be fair to Mr. Small and provide an appropriate balance between recognizing the seriousness of the misconduct while also recognizing his candor in these proceedings, his willingness to admit responsibility for his actions, and his seeking continuing treatment for his addiction issues.

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

1. Robin Small's practice permit shall be suspended for a period of 24 months commencing May 10, 2013.
2. Upon completion of the suspension, Mr. Small's practice permit shall not be reinstated until the following conditions are met:
 - A. Mr. Small provides evidence satisfactory to the complaints director that Mr. Small has received appropriate treatment for his addiction issues and is no longer incapacitated and is fit to practice;
 - B. Mr. Small provides to the complaints director a recent (within 2 months) report from a qualified health professional satisfactory to the complaints director outlining the treatments undertaken by Mr. Small, confirming that Mr. Small is now fit to practice pharmacy, and outlining the supports and continuing monitoring and recovery programs that Mr. Small will be engaged in to support his return to practice; and
 - C. Mr. Small satisfactorily completes all the requirements of the registration department of the Alberta College of Pharmacists required for his registration and practice
 - D. Mr. Small satisfactorily completes the jurisprudence exam.

3. Any practice permit issued to Mr. Small upon completion of his suspension, and satisfaction of the provisions of the order above, shall be subject to the following conditions:
 - A. Mr. Small shall be enrolled in a monitoring and support program satisfactory to the complaints director for a period of 5 years;
 - B. Mr. Small shall not be a licensee or proprietor of a pharmacy for a period of 5 years but this term can be reduced to 3 years at the discretion of the complaints director based on satisfactory reports from the health professionals involved in Mr. Small's monitoring and treatment;
 - C. Mr. Small shall practice under direct supervision for a minimum of 12 months following his return to practice. At the end of the year, and prior to the removal of the condition, the supervisor must provide the complaints director with a favourable report on Mr. Small's supervised conduct that is satisfactory to the complaints director. (The supervisor providing the report must have directly observed the practice and conduct of Mr. Small for a minimum of 6 months); and
 - D. For a period of 5 years, Mr. Small will provide verification to the complaints director that he has advised the licensee and proprietor of any pharmacy at which he is employed of the decision of the hearing tribunal and the orders made by the hearing tribunal and will provide such verification any time that he changes employment.
4. Any and all costs and expenses required to satisfy the conditions in the orders above shall be the responsibility of and be paid by Mr. Small.
5. Mr. Small shall pay the full costs of the investigation and hearing with payment of the costs to be deferred during the period of the suspension but to be payable thereafter upon a basis satisfactory to the complaints director. It is agreed that payments 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.

Signed on behalf of the hearing tribunal by the
chair

Dated:

January 31, 2014

Per:

[Dianne Veniot]